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October 23, 2000

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 991437-WU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' First Motion to Compel, Emergency Request for Hearing, and Request for Other Relief for filing in the above referenced docket.

Also enclosed is a 3.5 inch diskette containing the Petition in MS Word. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Charles J. Beck
Deputy Public Counsel

CJB/dsb

Enclosures

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FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase)
in water rates in Orange County)
by Wedgefield Utilities, Inc.)

Docket no. 991437-WU

Filed October 23, 2000

**CITIZENS' FIRST MOTION TO COMPEL, EMERGENCY REQUEST FOR HEARING,
AND REQUEST FOR OTHER RELIEF**

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, file this motion to compel Wedgefield Utilities, Inc. ("Wedgefield" or "Wedgefield Utilities") to answer all of the interrogatories contained in Citizens' first set of interrogatories and produce all of the documents requested in Citizens' first set of requests for production of documents. Citizens further request the Prehearing Officer to set an emergency hearing at the earliest practicable time to rule on this motion so that discovery will be received by Wednesday, November 1, 2000. Otherwise, Citizens seek additional time for pre-filing testimony.

INTRODUCTION

1. On October 12, 2000, Citizens served our first set of interrogatories (containing nine interrogatories) and our first set of requests for production of documents (containing eleven requests for documents) on Wedgefield. Answers to the interrogatories and the production of the requested documents are due Wednesday, November 1, 2000, pursuant to the discovery schedule set forth in the Order

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Establishing Procedure.¹ Wedgefield served its response and objections to these discovery requests on Friday afternoon, October 20, 2000, objecting in total to every interrogatory and to all but two of the requests for production of documents.

2. Citizens believe Wedgefield's objections can be put in two categories. The first category of objections goes to Wedgefield's claim that it need not respond to discovery on any matters related to its acquisition adjustment because it objects to the inclusion of that issue in this proceeding. The second category of objections consist of boilerplate objections for which Wedgefield provides no rationale, explanation, or supporting logic other than the boilerplate objection itself.

3. The Order Establishing Procedure issued October 16, 2000, contains a very tight time frame for filing testimony. Our testimony and exhibits are due three weeks from this Friday. If Wedgefield is able block discovery on the acquisition adjustment issue for any length of time, it will severely prejudice our ability to prepare our case and meet the schedule for filing testimony contained in the Order Establishing Procedure.

**WEDGEFIELD'S OBJECTIONS TO DISCOVERY RELATED TO CITIZENS'
ACQUISITION ADJUSTMENT ISSUE**

4. Wedgefield objects to all requests related to the acquisition adjustment issue raised by Citizens and cites its motion to strike the issue filed October 3, 2000, as

¹ Order no. PSC-00-1895-PCO-WU issued October 16, 2000.

support. Citizens filed a detailed response to that motion on October 13, 2000, showing that case law, section 120.68, Fla. Stat., and section 350.0611, Fla. Stat., all allow the Commission to recognize an acquisition adjustment in this proceeding. In fact, the response shows that the Commission actually recognized a negative acquisition adjustment in a rate case proceeding after initially denying an acquisition adjustment in a transfer application case, just like here. In addition, Citizens showed other examples of instances where the Commission changed policy that affected previous rate base determinations for utilities and showed that a substantial change in circumstances would also warrant a change to an acquisition adjustment decision. Wedgefield's discovery objections do not even attempt to answer any of these grounds for taking up the acquisition adjustment issue in this case.

5. Citizens respectfully request the Prehearing Officer to immediately deny Wedgefield's motion to strike the acquisition adjustment issue, since that motion is ripe for a decision, and then deny its discovery objection. If the Prehearing Officer is not yet ready to rule on the motion to strike, then Citizens request the Prehearing Officer to deny the objections to discovery raised by Wedgefield pending a decision on the motion to strike. Responses to the discovery requests are needed by the due date of November 1, 2000, so that Citizens will have sufficient time to prepare prefiled testimony. Otherwise, Citizens will need additional time before prefilng testimony.

WEDGEFIELD'S BOILERPLATE OBJECTIONS

6. Wedgefield's boilerplate objections include the following, without a scintilla of explanation concerning the reasons why these objections apply to any of the discovery requests:

a. overly broad, unduly burdensome, oppressive, time-consuming, harassing, vexatious, and/or unreasonably expensive, lacking particularity, vague, ambiguous, calling for unwarranted opinion, conclusion, contention or inference (objections, paragraph 7).

b. information readily available to OPC as it is to Wedgefield (objections, paragraph 8).

c. assumes the truth of matters not accepted as fact. Case applies only to water system, not sewer system (objections, paragraph 9).

d. seeks privileged and proprietary information, attorney-client privilege, work-product privilege, or any other applicable privilege (objections, paragraph 10).

7. Citizens do not know how any of these objections apply to any of the discovery requests served by Citizens because Wedgefield doesn't even attempt to explain how these objections apply to any of the discovery requests. Wedgefield has the burden of proving the validity of these objections. *Kyker v. Lopez*, 718 So.2d 957 (Fla. 5th DCA 1998); Fla. R. Civ. Proc. 1.280(c). It has utterly failed to do so.

8. In *Topp Telecom, Inc., Atkins*, 25 Fla. L. Weekly D315 (Fla.App. 4 Dist. 2000), the petitioner objected to discovery based on a claim that the discovery was overreaching, overbroad, and unduly burdensome. At a motion calendar hearing called to determine the sufficiency of the objection, petitioner provided no evidence in the record to support the claim. The trial court found the objections insufficient, and on appeal the 4th D.C.A. stated that "there is obviously no error in overruling this kind of objection when it is not supported by record evidence, such as an affidavit detailing the basis for claiming that the onus of supplying the information or documents is inordinate." *Id.* Objections such as "overly broad" or "burdensome," standing alone, have little meaning without substantive support. *First City Developments of Florida, Inc., v. Hallmark of Hollywood Condominium Association, Inc.*, 545 So.2d 502, 503 (Fla. 4th DCA 1989).

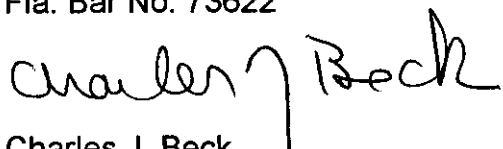
9. Here, not only does Wedgefield supply absolutely no evidence supporting its objections; it does not even supply a rationale for any of the objections applying to any of the discovery requests. The objections should be overruled.

CONCLUSION AND REQUEST FOR RELIEF

10. Citizens cannot meet the schedule for prefiling testimony on November 17, 2000, if Wedgefield is able to delay its responses to discovery. Citizens respectfully request the Prehearing Officer to hold an emergency hearing on Wedgefield's discovery objections so that Citizens will receive the requested discovery by the due date of November 1, 2000. If the Prehearing Officer is unable to rule in this time frame, Citizens ask the Prehearing Officer to extend the date for filing our testimony by one day for every day after November 1, 2000, that production of the discovery is delayed.

Respectfully submitted,

JACK SHREVE
Public Counsel
Fla. Bar No. 73622


Charles J. Beck
Deputy Public Counsel
Fla. Bar No. 217281

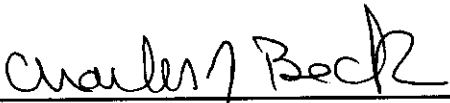
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(850) 488-9330

Attorney for Florida's Citizens

**DOCKET NO. 991437-WU
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.
Mail or hand-delivery to the following parties on this 23rd day of October, 2000.



Charles J. Beck

Patricia Cristensen
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1020 E. Lafayette St., #207
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