

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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

DOCKET NO. 991437-WU

Filed: November 30, 2000

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RECORDS AND REPORTING

WEDGEFIELD UTILITIES, INC.'S
MOTION TO ABATE
AND TO STAY PROCEEDINGS
PENDING APPELLATE REVIEW

Wedgefield Utilities, Inc. ("Wedgefield" or "the Utility") hereby files its Motion to Abate and to Stay Proceedings Pending Appellate Review, and in support thereof states:

1. At its regular Agenda Conference on November 28, 2000, the Florida Public Service Commission panel assigned to this case voted to deny several of Wedgefield's motions. Those motions were directed to whether the issue of negative acquisition adjustment should remain in this case.

2. The sequence of past and upcoming events makes it necessary to address the issue of discovery and stay of the proceedings at this time rather than wait until later in December when the order of the Commission is issued memorializing its rulings made at the November 28 Agenda Conference. As set forth in the Wedgefield's attached correspondence dated November 29 to Staff Counsel with copy to OPC's attorney, if discovery and other matters proceed at this time and the appeal is successful, the issue to which much of the discovery, by both parties, and much of the controversy in this case, will be moot. The rate case expenses relating thereto would turn out to be imprudent expenditures.

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3. Counsel for Wedgefield, for OPC, and for the Commission have discussed the timing and sequence problems and have endeavored to reach a reasonable solution.

Wedgefield proposes the following:

- a. All discovery efforts, by all parties, shall abate until after the decision on appeal becomes final. All objections to discovery previously filed shall be reserved to be ruled upon subsequent to that time. Any discovery and any objections subsequently filed shall be handled on a schedule and in accordance with normal discovery procedures.

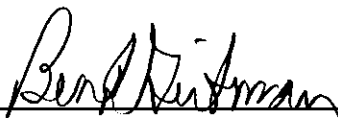
Wedgefield may file any objections to OPC's presently outstanding discovery (Third Set of Interrogatories and Requests for Production) within ten (10) days after receiving notice of the decision on appeal becomes final.
- b. All further actions in this case may be stayed by the Commission until after the decision on appeal becomes final, and all dates in the Case Assignment and Scheduling Record (CASR) shall abate and shall be rescheduled at that time.
- c. Wedgefield agrees to waive the time limitations set forth in Section 367.081(8), Florida Statutes, for a period not to exceed eight (8) months after the decision on appeal becomes final. Only the interim rates will remain in effect, subject to a corporate undertaking and possible refund.

d. When the decision becomes final on appeal, and consistent with the scheduling requirements of the Commission, the parties shall meet and agree to a new schedule for all remaining matters. After all required responses to discovery have been received by the party filing the discovery, such filing party shall have up to and including twenty (20) days thereafter in which to file and serve their prepared testimony and exhibits so as to be received within that time limit by the Commission and by the opposing counsel.

4. The undersigned counsel has consulted with counsel for the Office of Public Counsel, and OPC will file a written response to this motion.

WHEREFORE, Wedgefield Utilities, Inc. requests that the Florida Public Service Commission abate all discovery and stay the proceedings until the appellate review is final.

Respectfully submitted,



Ben E. Girtman
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Tallahassee, FL 32301

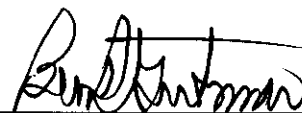
Attorney for
Wedgefield Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent to the following by U.S. mail (or by facsimile#) this 30th day of November, 2000.

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November 29, 2000

Patty Christensen, Esq.
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 991437-WS, Application of Wedgefield Utilities, Inc. to Increase its
Water Rates and Charges

Dear Ms. Christensen:

Thank you for the opportunity to discuss scheduling matters with you today. In light of yesterday's rulings by the Commission panel, this letter is to inform you that Wedgefield Utilities, Inc. has decided to seek appellate review. This brings up several questions about scheduling matters which all parties need to address.

As you stated in our conversation today, the Commission's order memorializing yesterday's vote is due by December 18, and it probably will not be filed much before that time, if any. Wedgefield cannot formally file its notice and start the appellate process until after the order is issued.

As I had previously discussed with you and Mr. Beck, our tentative plan to meet and discuss several discovery issues on Thursday, November 30, was conditioned on the outcome of the Commission vote yesterday. If the Commission granted Wedgefield's motion, the issue of negative acquisition adjustment would not be involved in this case, and the discovery conference could proceed based on what was necessary and appropriate to respond to the remaining issues. If the Commission denied Wedgefield's motion, then the likely appeal would need to be resolved before any of us would know if the negative acquisition issue would remain, and therefore whether the time and expense of dealing with discovery on that issue was necessary.

Now that the Commission has voted, it seems prudent to wait for the ruling of the appellate court to determine if the time and rate case expense should be incurred to deal with this issue. It is comparatively easy and inexpensive for a party to file interrogatories and requests for production, but the burden of acquiring information and developing responses is burdensome and expensive. With the possibility of avoiding that cost and workload, we hope that the Commission will allow the appellate decision to be made before proceeding with the discovery. Wedgefield also would have extensive discovery to serve on OPC, but we cannot in good conscience file that discovery or take depositions on that subject without knowing whether the negative acquisition adjustment issue will have to be heard in this case.

Patty Christensen, Esq.
November 29, 2000
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Wedgefield is trying to minimize the rate case expense and to avoid spending time and money on matters which, we hope, will not be required to be re-tried again from the last case. If the appellate court rules in Wedgefield's favor, then those rate case expenses can be avoided, and the utility's customers will not be called upon to pay them. If, on the other hand, the appellate court rules against Wedgefield, then there will be ample opportunity for both sides to address the discovery and objections of all parties.

The most prudent approach seems to be to stay any further proceedings on the case before the Commission until the appellate court tells us what the issues will be. That will necessitate a change in the dates in the CASR, including rescheduling the hearing. Although Wedgefield Utilities would like to reach a final resolution of this case sooner rather than later, the recent legal developments dictate that the best way to minimize rate case expense is to find out from the appellate court what the issues will be, then proceed on that basis.

Your assistance in helping to forge a workable schedule would be appreciated, for the benefit of the utility, OPC, the customers, and the Commission Staff whose workload also will be substantially affected by the outcome of the appeal.

Please let me know if there is agreement on this approach. If the Prehearing Officer directs that we attend the informal discovery meeting tomorrow, we will be there. However, that and other discovery matters would turn out to be unnecessary if the appellate court eventually rules in the utility's favor. There will be ample time to address all appropriate discovery after we know what the final issues list will contain. The utility is aware that this will require potential further waiver of the time limitations on its part and only the interim rates will remain in effect subject to a corporate undertaking and possible refund. However, Wedgefield is willing to work with the Commission on finalizing the details of such a change in schedule brought about by the appeal.

Thank you again for your efforts in keeping the schedule moving forward in a workable manner. I look forward to hearing from you.

Sincerely yours,



Ben E. Girtman

cc: Division of Records and Reporting
Charles Beck, Esq.
Mr. Carl Wenz
Mr. Frank Seidman