

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: June 25, 2001

RENEWAL OF
WEDGEFIELD'S MOTION TO STRIKE AND DISMISS
THE OFFICE OF PUBLIC COUNSEL'S
PETITION REQUESTING SECTION 120.57 HEARING AND
PROTEST OF PROPOSED AGENCY ACTION, AS AMENDED

Wedgefield Utilities, Inc. ("Wedgefield" or "the Utility") hereby files its Renewal of Motion to Strike and Dismiss the Office of Public Counsel's Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action, as Amended, and in support thereof states:

1. On December 13, 2000, the Florida Public Service Commission entered its Order No. PSC-00-2388-AS-WU in this docket. The Order was titled Order Denying Motion for Summary Final Order Without Prejudice, Granting Motion to Amend, Denying Motion to Strike and Dismiss, and Accepting Wedgefield's Settlement Offer.

2. Because the dismissal was without prejudice, Wedgefield has leave to renew matters initially decided by that Order.

3. Order No. PSC-00-2388-AS-WU, the Order Denying Motion, granted Wedgefield's Motion to Amend its Motion to Strike and Dismiss. The Order stated that:

On November 3, 2000, Wedgefield filed a Motion to Amend its Motion to Strike and Dismiss. In it, it requests that we take official notice of Order No. PSC-98-1092-FOF-WS. OPC did not file a response. Accordingly, Wedgefield's Motion to Amend its Motion to Strike and Dismiss is granted and official notice is

taken of Order No. PSC-98-1092-FOF-WS. [Order No. PSC-00-2388-AS-WU, the Order Denying Motion, page 6.]

4. The Motion to Strike and Dismiss was then denied, notwithstanding the fact that the only defect cited in the Staff's Recommendation on the Motion was that none of the parties had requested that the Commission take official notice of that specific order.

The Order denying the Motion to Strike and Dismiss stated:

In reviewing a Motion for Summary Final Order, we may consider all documents on file in reaching our decision, including the Transfer Order. However, in reviewing a Motion to Dismiss, we are confined to the four corners of the initial pleading. . . . [Citation omitted.] Based on the constraints of this standard, and consistent with our decision to deny Wedgefield's Motion for Summary Final Order, we deny Wedgefield's Motion to Strike and Dismiss. [Order No. PSC-00-2388-AS-WU, the Order Denying Motion, page 7.]

5. Consistent with the Order granting leave to refile the Motion for Summary Final Order, Wedgefield renews its Motion to Strike and Dismiss the Office of Public Counsel's Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action, as amended. As previously stated, the Commission Order granted Wedgefield's Motion to Amend its Motion to Strike and Dismiss, and the Commission took official notice of final Order approving the transfer, Order No. PSC-98-1092-FOF-WS.

6. Pursuant to Order No. PSC-00-2388-AS-WU, the Order Denying Motions, it is now an appropriate time to renew the Motion to Strike and Dismiss the Office of Public Counsel's Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action, as amended.

BACKGROUND

7. On August 12, 1998, the Florida Public Service Commission issued its final Order No. PSC-98-1092-FOF-WS in Docket No. 960235-WS approving the transfer of the Utility from Econ Utilities Corporation to Wedgefield Utilities, Inc. A certified copy of that Order has previously been filed with the Commission as Attachment "A" to the original Motion for Summary Final Order.

8. Copies of all Attachments cited in and attached to Wedgefield's original Motion to Strike and Dismiss (filed October 3, 2000) and its Motion for Summary Final Order (filed November 3, 2000) were filed with those motions. The Attachments are referred to and incorporated herein by the same identification, but duplicate copies are not filed herewith. If any party needs duplicate copies of the Attachments, they can obtain them by contacting the undersigned attorney.

9. As a part of that transfer proceeding (originally filed in 1996 and decided in 1998), the issue of negative acquisition adjustment was raised by the Office of Public Counsel (OPC). That issue was fully litigated, hearings were held thereon, customer and expert witnesses testified, 18 exhibits were submitted on behalf of the various parties, and the issues were the subject of extensive post-hearing briefs. The Commission's final Order approving the transfer denied OPC's petition for a negative acquisition adjustment.

10. The Office of Public Counsel did not seek reconsideration of that final Order No. PSC-98-1092-FOF-WS by the Commission, nor did OPC seek appellate review of that final Order of any other order of the Commission in that case. The Order is 32 pages in

length, and the issue of negative acquisition adjustment was considered and discussed on pages 5 through 22, inclusive, of that Order.

11. On November 12, 1999, over a year after Order No. PSC-98-1092-FOF-WS was issued by the Commission, Wedgefield Utilities filed its petition for a rate increase for its water system at Wedgefield. The current Docket (No. 991437-WU) was opened, and on August 23, 2000, the Commission entered its Proposed Agency Action Order No. PSC-00-1528-PAA-WU (the PAA Order) in this Docket.

12. On September 13, 2000, the Office of Public Counsel (OPC) filed its Notice of Intervention and its Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action. The only matter which OPC attempted to raise for resolution as a “disputed issue” in this second case was “Should the Utility’s rate base include a negative acquisition adjustment?” The OPC Petition also stated the obvious fall-out question “What other changes, such as changes to depreciation expense, should be made to reflect a negative acquisition adjustment?” See OPC Petition, paragraph 5.

13. On October 3, 2000, Wedgefield Utilities, Inc. filed its Motion to Strike and Dismiss the Office of Public Counsel’s Petition Requesting Section 12.057 Hearing and Protest of Proposed Agency Action (hereinafter referred to as the Motion to Strike and Dismiss). In support thereof, Wedgefield relied upon res judicata, collateral estoppel, stare decisis, and administrative finality.

14. After due consideration, on October 26, 2000, the Staff of the Florida Public Service Commission filed its written Recommendation on Wedgefield’s Motion to Strike

and Dismiss. Staff recommended that Wedgefield's Motion be granted.

(Recommendation, Issue 1, Page 3.) Five days later, on October 31, 2000, Commission Staff filed a second written recommendation on Wedgefield's Motion to Strike and Dismiss. Staff took the almost unprecedented action of making changes in a Staff recommendation. Staff went even further and reversed its previous recommendation to grant Wedgefield's motion, and in the second recommendation Staff recommended denial of that Motion.

15. Wedgefield adopts, as if set forth verbatim herein, the allegations set forth in its Renewal of Motion for Summary Final Order.

RENEWAL OF
MOTION TO STRIKE AND DISMISS
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16. For the purposes of its Renewal of Motion to Strike and Dismiss The Office of Public Counsel's Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action, as Amended, (the original Motion and the Renewal thereof sometimes being referred to herein as Motion to Strike and Dismiss), Wedgefield adopts the allegations set forth in the preceding paragraphs 1 - 15, and adopts the allegations set forth in its Renewal of Motion for Summary Final Order, filed simultaneously herewith.

17. On August 23, 2000, the Florida Public Service Commission (PSC or "the Commission") entered its Proposed Agency Action Order No. PSC-00-1528-PAA-WU (the PAA Order) in the above styled Docket, setting rates and charges for the Wedgefield water utility system. Any protests and petitions for hearing on that PAA Order were due to be filed on or before September 13, 2000.

18. On September 13, 2000, the Office of Public Counsel (OPC) filed its Notice of Intervention and its Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action. Copies of the Notice and the Petition and Protest have been previously filed with the Commission as Attachment "A" and Attachment "B", respectively, to the original Motion to Strike and Dismiss.

19. The only matter which OPC has attempted to raise for resolution as a "disputed issue" is, "Should the utility's rate base include a negative acquisition

adjustment?" The OPC petition also stated the obvious fall-out question, "What other charges, such as changes to depreciation expense, should be made to reflect a negative acquisition adjustment?" (See OPC Petition, paragraph 5.)

20. The principles of res judicata, collateral estoppel, stare decisis, and administrative finality prevent proceeding on the OPC petition. Furthermore, the need for judicial economy, the unnecessary duplication of cost to the utility (and ultimately to the ratepayers) to re-litigate the same issue again for the same utility, and the pendency of a generic rule proceeding (Docket No. 001502-WS) on the Commission's policy on acquisition adjustments dictate that the OPC petition be stricken.

21. Wedgefield Utilities, Inc. is a public utility, subject to the jurisdiction of the Florida Public Service Commission pursuant to Chapter 367, Florida Statutes. Utilities, Inc. is the parent company of Wedgefield Utilities, Inc., and owns and operates over 75 utilities in sixteen states. It owns and operates Cypress Lakes Utilities, Inc., which also is subject to the jurisdiction of the Florida Public Service Commission. Both Wedgefield and Cypress Lakes are Florida corporations.

22. There are four relevant cases, involving four separate Commission dockets, which show the applicability of res judicata, collateral estoppel, stare decisis, and administrative finality to the instant case:

a) The first case is the generic proceeding - whereby OPC filed a request over a decade ago (1989) for the Commission to initiate rulemaking proceedings regarding negative acquisition adjustments. The Commission denied OPC's request

to initiate rulemaking, and instead reaffirmed its policy on acquisition adjustments in a proposed agency action order (Docket No. 891309-WS, PAA Order No. 23376 issued August 21, 1990). OPC protested that PAA order, and the Commission opened a full investigation in that same docket and held hearings at which OPC and other interested parties, including utility companies, participated. The Commission then issued its final order, again reaffirmed its acquisition adjustment policy which had been in effect at least since 1983 (Docket No. 891309-WS, Order No. 25729 issued February 17, 1992).

b) The second case is the previous Wedgefield transfer proceeding , whereby the Commission approved the transfer of the water and wastewater utility systems from Econ Utilities Corporation to Wedgefield Utilities, Inc. (Docket No. 960235-WS, Order No. PSC-98-1092-FOF-WS issued August 12, 1998);

c) The third case is the transfer proceeding for Cypress Lakes Utilities, Inc., a sister company of Wedgefield Utilities, Inc., whereby the Commission approved the transfer of the utility systems from Cypress Lakes Associates, Ltd. to Cypress Lakes Utilities, Inc. (Docket No. 971220-WS, Order No. PSC-00-0264-FOF-WS issued February 8, 2000); and

d) The fourth case is the current Wedgefield rate proceeding to set rates and charges for the Wedgefield water system (Docket No. 991437-WU, Proposed Agency Action Order No. PSC-00-1528-PAA-WU issued August 23, 2000). It is this PAA Order which OPC has now protested, only on the basis of negative acquisition

adjustment.

23. Also, there are over 100 cases decided by the Commission on the issue of acquisition adjustments. Those cases are consistent with the Commission's final orders in the generic proceeding, the Wedgefield transfer case, and the Cypress Lakes case.

24. In the Wedgefield transfer case, on February 27, 1996, Wedgefield Utilities, Inc. filed an application for transfer, seeking Commission approval to acquire the water and wastewater utility systems of Econ Utilities Corporation, in Orange County. OPC filed a protest, seeking to have the Commission impose a negative acquisition adjustment, the identical and only issue which OPC relies upon in its protest of the current Wedgefield rate case. After pre-hearing pleadings were considered and disposed of in the Wedgefield transfer case, the matter went to hearing in the Utility's service territory on March 19, 1998. The Commission received testimony and exhibits from several customers and from witness for the Utility and for OPC, respectively. Additional hearings were held at the Commission headquarters building in Tallahassee on March 26, 1998. The record in that PSC proceeding included three volumes of testimony containing 412 pages; 18 exhibits submitted on behalf of the various parties; and detailed prefiled direct and rebuttal testimony by the parties. After extensive post-hearing briefs were filed, the Commission entered its final order, Order No. PSC-98-1092-FOF-WS, on August 12, 1998, determining that no negative acquisition adjustment should be imposed. OPC did not seek reconsideration of the final order by the Commission, nor did OPC seek appellate review by the First District Court of Appeal.

25. OPC's protest and petition for hearing in the instant case cannot be construed to be based on any other disputed issue than negative acquisition adjustment. In the instant petition there was no other statement regarding disputed issues of material fact (required by Rule 26-106-201(2)(d), F.A.C.), nor was there "A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner [OPC] to relief" (required by Rule 26-106-201(2)(e), F.A.C.). The only rules or statutes cited in the OPC petition related to general hearing procedures and to standing.

26. The Office of Public Counsel also raised the issue of negative acquisition adjustment in the recent Cypress Lakes transfer case whereby that utility was transferred from Cypress Lakes Associates, Ltd. to Cypress Lakes Utilities, Inc., in Polk County. The Commission issued an order approving the transfer, and by PAA order set rate base for purposes of the transfer (Docket No. 971220-WS, Order No. PSC-98-0993-FOF-WS issued July 20, 1998). OPC filed a protest and petition for hearing on the issue of negative acquisition adjustment, but failed to even allege a single "extraordinary circumstance", which the Commission requires before a negative acquisition adjustment can be considered. The Commission denied several motions filed by Cypress Lakes seeking to have the protest dismissed based on the question of negative acquisition adjustment. Upon stipulation by the parties, the case was then decided on the pre-filed testimony and exhibits, without a hearing. The Commission entered its final order denying OPC's demand for a negative acquisition adjustment (Docket No. 971220-WS, Order No. PSC-00-0264-FOF-WS issued February 8, 2000), thereby again reaffirming its prior policy on acquisition adjustments,

which has been in effect, and has remained unchanged, since at least 1983.

27. In one aspect, the Cypress Lakes case is different than the pending Wedgefield case. In Cypress Lakes, the issue of negative acquisition adjustment had never been addressed and decided for that specific utility. In the current Wedgefield rate proceeding, the issue specifically has been addressed in the prior Wedgefield transfer proceeding, and has been exhaustively considered at hearing, through testimony and exhibits, and by extensive briefing. The Commission's final order in the prior Wedgefield (transfer) case not only was consistent with the Commission's prior one hundred decisions on acquisition adjustments, it also resulted from the specific consideration of the same issue, involving the same utility, involving identical parties (OPC and Wedgefield Utilities, Inc.) that OPC now seeks to pursue again by its current protest and petition for hearing. The Wedgefield transfer decision and the Cypress Lakes decision clearly exemplify the legal principles of res judicata, collateral estoppel, and stare decisis.

28. The issue has been decided previously as to Wedgefield Utilities, Inc.; OPC's petition is barred by res judicata, collateral estoppel, stare decisis, administrative finality, and for the other reasons set forth herein; and OPC has no legal basis to re-litigate the issue.

29. It is also important to note that the Office of Public Counsel did not seek further review of either the Wedgefield transfer final order or the Cypress Lakes final order, both of which denied OPC's request for a negative acquisition adjustment in the respective cases. In neither case did OPC seek reconsideration (by the Commission) of the

final orders pursuant to Rule 25-22.060, Florida Administrative Code, nor did OPC seek judicial review (by the First District Court of Appeal) of the final orders pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The Commission's final orders in both cases set forth the right, and the obligation, of a party "adversely affected" to seek reconsideration before the Commission or to appeal to the First District Court of Appeal. (See page 27 of the Wedgefield transfer final order and page 13 of the Cypress Lakes transfer final order.) OPC, a party to both the Wedgefield transfer case and the Cypress Lakes case, took no action in either case to seek reconsideration or to appeal the final orders.

30. Without further belaboring the history of the Commission's decisions and policy on acquisition adjustments, Wedgefield hereby references and incorporates herein, its post-hearing documents in the Wedgefield transfer case, including its Post-hearing Statement of Issues and Positions and Brief, Motion to File Post-Hearing Documents in excess of those Permitted by Rule 25-22.056(1)(d), F.A.C., and Post-hearing Proposed Findings of Fact and Conclusions of Law, all of which were filed on April 28, 1998, in the Wedgefield transfer case. Copies of those post-hearing documents have been previously filed with the Commission as Attachment "C", Attachment "D", and Attachment "E", respectively, to the original Motion to Strike and Dismiss. A similar Brief was filed on behalf of the utility in the Cypress Lakes case, almost verbatim except for matters specifically relating to the name and corporate history of Cypress Lakes Utilities, Inc. The Wedgefield Brief goes into great detail regarding both the generic proceedings whereby the Commission reaffirmed its prior policy on negative acquisition adjustments, and the

Wedgefield transfer proceedings whereby the Commission already found that it was inappropriate to require a negative acquisition adjustment, specifically with regard to Wedgefield Utilities, Inc.

31. In the instant case, OPC has not raised a disputed issue requiring resolution by the Commission. The issue of negative acquisition adjustment has already been decided by this Commission in 1998, in relation to this specific utility system, upon the urging of the same Office of Public Counsel, by the same two OPC attorneys, involving identical parties, and with a final order rendered, after extensive hearings, after receiving testimony from several customers, after receiving testimony from expert witnesses representing all parties, after considering the 18 exhibits, after considering the more than one hundred prior Commission orders establishing the precedent of the Commission regarding acquisition adjustments, after extensive briefing by Wedgefield and by OPC , and after the failure of OPC (or anyone else) either to request reconsideration of that final order by the Commission or to appeal that final order to the First District Court of Appeal.

32. Therefore, the issue of whether there should be a negative acquisition adjustment for his utility has already been decided. Loosely translated, "res judicata" means "The thing has been decided."

33. If there ever was a case where the principles of res judicata, collateral estoppel, stare decisis, and administrative finality demand dismissal of a proceeding, it is this Wedgefield rate case.

34. Res judicata operates as an estoppel between parties to a specific case, so

that ". . . a right, question of fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies." Effective Legal Research, pages 120-121, Price and Bitner, 1969.

35. The doctrine of administrative res judicata is applicable in this state. Hays v. State Dept. of Business Regulation, Div. of Pari-Mutuel Wagering, 418 So.2d 331 (Fla. 3rd DCA 1982). Administrative proceedings are subject to the doctrine of res judicata. Rubin v. Sanford, 168 So.2d 774 (Fla. 3rd DCA 1964). The doctrine of res judicata is equally applicable to decisions of administrative tribunals and courts. Flesche v. Interstate Warehouse, 411 So.2d 919 (Fla. 1st DCA 1982). Where an administrative agency acting in a judicial capacity has resolved disputed issues of fact which were properly before it and which parties have had an adequate opportunity to litigate, a court will apply the doctrine of res judicata or collateral estoppel. Jet Air Freight v. Jet Air Freight Delivery, Inc., 264 So.2d 35 (Fla. 3rd DCA 1972). Only where there has been a substantial change of circumstances relating to the subject matter with which the ruling was concerned is it sufficient to prompt a different determination. Coral Reef Nurseries, Inc. v. Babcock, Co., 410 So.2d 648 (Fla. 3rd DCA 1982); Metropolitan Dade County Bd. of County Com'rs v. Rockmatt Corp., 231 So.2d 41 (Fla. 3rd DCA 1970); Holiday Inns, Inc. v. City of Jacksonville, 678 So.2d 528 (Fla. 1st DCA 1996).

36. There has been no substantial change of circumstances, relating to the substance of OPC's petition to impose a negative acquisition adjustment. The mere change of membership of the Florida Public Service Commission is not a sufficient "change of

circumstances" to ignore the requirements of res judicata.

37. The doctrine of collateral estoppel is applicable to administrative orders and decisions. Brown v. Dept. of Professional Regulation, Bd. of Psychological Examiners, 602 So.2d 1337 (Fla 1st DCA 1992). Collateral estoppel, or estoppel by judgment, prevents identical parties from relitigating issues that have previously been decided between them. Florida courts adhere to that rule that collateral estoppel may be asserted only when the identical issue has been litigated between the same parties. (32 Fla.Jur2d, Judgements and Decrees §125. Citations omitted.)

38. Although res judicata and estoppel are sometimes used interchangeably, they are not the same.

. . . [The] difference between the two doctrines is that under res judicata a final decree of judgment bars a subsequent suit on the same cause of action and is conclusive as to all matters germane thereto that were or could have been raised, while the principle of estoppel by judgment is applicable where the two causes of action are different, in which case the adjudication in the first suit only estops the parties from litigating in the second suit issues or questions common to both causes of action, which were actually adjudicated in the prior litigation. A distinction between the doctrine of estoppel by judgment and the doctrine of res judicata is important in cases where some but not all of the parties were before the court in the previous litigation, and where a part but not all of the present claim or demand was put in issue in the earlier suit. [Emphasis added. (32 Fla.Jur2d, Judgements and Decrees §135. Citations omitted.)]

39. By participating in both the Wedgefield Utility transfer case and the Cypress Lakes Utility case and failing to seek reconsideration or to appeal the final orders of the Commission in either case, OPC is now precluded by both res judicata and by collateral

estoppel from now raising the same issue in the instant case.

40. OPC is also bound by stare decisis in regard to the Commission's final orders in over 100 cases decided by the Commission on acquisition adjustments.

41. Although courts technically have the power to refuse to apply the principle of stare decisis (in contrast to res judicata which always must be adhered to),

[in] general, when a point has once been settled by judicial decision it should, in the main, be adhered to, for it forms a precedent to guide courts in future similar cases. This rule has become known as that of "stare decisis." Literally translated, its mandate is to let that which has been decided stand undisturbed.

The doctrine of stare decisis serves the important purpose of providing stability to the law and to the society governed by that law. The rule is often expressed in a statement to the effect that when a point of law has been settled by decision of the same or of a superior court, it forms a precedent from which departure should generally not be made. [13 Fla.Jur.2d, Courts and Judges §174. Citations omitted.]

42. The theory of Anglo-American law is that "stare decisis et non quieta movere" -- we must "adhere to precedent and not to unsettle things which are settled".

Effective Legal Research, pages 120-121, Price and Bitner, 1969.

43. The law of these cases on acquisition adjustments, as decided by the Florida Public Service Commission, and the legal precedent set thereby, is that: "Absent evidence of extraordinary circumstances, the rate base calculation should not include an acquisition adjustment." (Wedgefield Utilities, Inc. -- Final Order Establishing Rate Base for Purposes of Transfer, Declining to Include a Negative Acquisition Adjustment in the Calculation of Rate Base and Closing Docket, Docket No. 960283-WS, Order No. PSC-98-1092-FOF-WS

issued August 12, 1998). At page 16 of that Order the Commission also cites several other prior Commission orders of the Commission confirming the same policy. In the Wedgefield transfer case, OPC alleged but did not prove that any extraordinary circumstances existed. In the Cypress Lakes case, OPC did not even allege that extraordinary circumstances existed. In the current Wedgefield rate case, OPC again has not even alleged that extraordinary circumstances exist.

44. The Commission itself has addressed the issue of administrative finality. In the case In Re: Planning Hearings on Load Forecasts Generation Expansion Plans, and Cogeneration Prices for Florida's Electric Utilities, Docket No. 910004-EU, Order No. 24989 issued August 29, 1992, 91 FPSC 8:560, the Commission stated that,

" . . . case law indicates that the Commission has only limited power to change its prior decisions. In fact, at some point the Commission loses the power to change its decisions and must live with them." [Order page 71, 91 FPSC 8:560 at 630.]

The Commission then went on to say,

Orders of administrative agencies must eventually pass out of the agency's control and become final, and, therefore, no longer subject to modification. There must be in every proceeding a terminal point at which the parties and the public may rely on a decision of an administrative agency as final and dispositive of the rights and issues involved therewith. [Citing, People's Gas Systems, Inc. v. Mason, 187 So.2d 335 (Fla. 1966) and Austin Tupler Trucking Inc. v. Hawkins, 377 So.2d 679 (Fla 1979). [Order page 72, 91 FPSC 8:560 at 631.]

Quoting from Reedy Creek Utilities Co. v. Florida Public Service Comm'n, 418 So.2d 249, 253 (Fla. 1982), the Commission stated,

" . . . an underlying purpose of the doctrine of finality is to protect those who rely on a judgment or ruling."

The importance of "administrative finality" was then stressed by the Commission:

The doctrine of administrative finality is one of fairness. It is based on the premise that the parties, as well as the public, may rely on Commission decisions." [Order page 72, 91 FPSC 8:560 at 631.]

45. There are many other cases showing why OPC's petition should be stricken and that the proceeding be dismissed. If the Commission would like the parties to more fully brief the issue, the Utility will provide such a brief.

46. If OPC wants to create a new legal principle or change an existing one, it must go through the APA generic hearing process, not ask the PSC to make up the principle out of thin air. Nor can OPC now seek to reverse a final order from a prior case, involving the identical parties and the identical utility customers, involving the identical issue, in a final order where OPC did not seek reconsideration or appeal, and which ultimately cost tens of thousands of dollars to pursue to conclusion with the final order. The issue does not need to be re-litigated, and the company and ultimately the utility ratepayers should not be burdened with that cost.

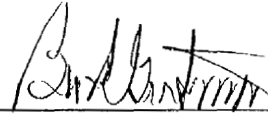
47. The Commission is without legal authority to entertain the protest and petition of OPC in the instant case. In case after case, (over 100 cases), the Commission has stated, affirmed, and reaffirmed, at least since 1983, its policy on negative acquisition adjustments. The PSC has held generic hearings on the issue, and OPC was a party to those proceedings as well as a party to many of the 100 cases on the subject. After extensive hearings relating to the transfer of this utility, the PSC has rendered a final order deciding the issue of negative acquisition adjustments, specifically as it relates to

Wedgefield Utilities, Inc. The doctrines of res judicata, collateral estoppel, stare decisis, and administrative finality all require that the OPC petition and protest be stricken and that the proceeding be dismissed. The need for judicial economy, the unnecessary duplication of cost to the utility (and ultimately to the ratepayers) to re-litigate the same issue again for the same utility, and the pendency of a generic rule proceeding on the Commission's policy on acquisition adjustments dictate that the OPC petition be stricken.

48. As required by Rule 28-106-204(3), F.A.C., the undersigned counsel has contacted Mr. Charles Beck for OPC and Mr. Jason Fudge for PSC Staff. OPC will file a response in opposition, and Staff reserves objections to the motion until they have had an opportunity to review it.

49. WHEREFORE, Wedgefield Utilities, Inc. requests that the Florida Public Service Commission strike the Office of Public Counsel's Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action, and that the Commission dismiss any proceedings based on OPC's request for a negative acquisition adjustment in this case.

RESPECTFULLY SUBMITTED,



Ben E. Girtman
FL Bar No. 186039
1020 E. Lafayette St.
Suite 207
Tallahassee, FL 32301

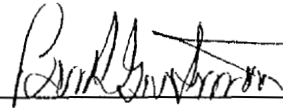
Attorney for
Wedgfield Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent to the following by U.S. mail (or by hand delivery *) this 25th day of June, 2001

Patty Christensen, Esq.*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
(850)413-6220

Charles Beck, Esq.*
Office of Public Counsel
111 W. Madison St., Rm. 812
Tallahassee, FL 32399-6588
(850) 488-9330



Ben E. Girtman