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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 3, 2000

WEDGEFIELD UTILITIES, INC.'S
MOTION TO STRIKE AND DISMISS
THE OFFICE OF PUBLIC COUNSEL'S
PETITION REQUESTING SECTION 120.57 HEARING AND
PROTEST OF PROPOSED AGENCY ACTION

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

1. 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.

2. 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 are attached hereto as Attachment "A" and Attachment "B", respectively .

APP
CAF
CMP
COM 3
CTR
ECR Willis
LEG 2
OPC
PAI
RGO Vandiver
SEC 1
SER
OTH Henry

3. 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

10/05/00

charges, such as changes to depreciation expense, should be made to reflect a negative acquisition adjustment?" (See OPC Petition, paragraph 5.)

4. 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.

5. Wedgefield Utilities, Inc. is a public utility, subject to the jurisdiction of the Florida Public Service Commission pursuant to Chapter 367, Florida Statues. 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.

6. 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.

7. 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.

8. 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.

9. 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 adjustmennt. 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 statues cited in the OPC petition related to general hearing procedures and to standing.

10. 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 <u>again</u> reaffirming its prior policy on acquisition adjustments,

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

11. 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.

12. 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.

13. 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.

14. Without further belaboring the history of the Commission's decisions and policy on acquisition adjustments, Wedgefield hereby attaches 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 are attached and incorporated herein as Attachment "C", Attachment "D", and Attachment "E", respectively. 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.

15. 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.

16. 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."

17. 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.

18. 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.

19. The doctrine of administrative res judicata is applicable in this state. Hays v. State Dept. of Business Regulatioin, 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 DCA1972). 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).

20. 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.

21. 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.)

22. 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.]

23. 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.

24. 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.

25. 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.]

26. 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.

27. 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.

28. 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.]

29. 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.

30. 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.

31. 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.

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
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 hand delivery*) this 3rd day of October, 2000.

Patty Christensen, Esq.*
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2540 Shumard Oak Blvd.
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(850)413-6220

Charles Beck, Esq.*
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111 W. Madison St., Rm. 812
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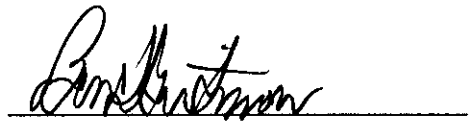

Ben E. Girtman

WEDGEFIELD UTILITIES, INC.'s
Attachments to Its
MOTION TO STRIKE AND DISMISS

The Attachments to this Motion to Strike include the following:

Originally filed in the current proceeding

A. Notice of Intervention - filed by OPC on September 13, 2000.

B. Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action - filed by OPC on September 13, 2000.

Originally filed in the Wedgefield transfer proceeding (Docket No. 960235-WS)

C. Post-Hearing Statement of Issues and Positions and Brief - filed by Wedgefield on April 28, 1998.

D. Motion by Wedgefield Utilities, Inc. to File Post-Hearing Documents in Excess of Those Permitted by Rule 25-22.056)1)(d), F.A.C. - filed by Wedgefield on April 28, 1998.

E. Post - Hearing Proposed Findings of Fact and Conclusions of Law of Wedgefield Utilities, Inc. - filed by Wedgefield on April 28, 1998.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Application for increase in water rates in Orange County by Wedgefield Utilities, Inc.	))))	Docket No. 991437-WU Filed: September 13, 2000

NOTICE OF INTERVENTION

Pursuant to Section 350.0611, Florida Statutes, the Citizens of the State of Florida, by and through Jack Shreve, Public Counsel, serve their Notice of Intervention in this docket.

Respectfully submitted,

Charles J. Beck
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Attorney for the Citizens
of the State of Florida

A

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 13th day of September, 2000.

Charles J. Beck

Patricia Christensen
Division of Legal Services
Fla. Public Service Commission
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Tallahassee, FL 32399-0850

Ben Girtman, Esq.
1020 E. Lafayette St., #207
Tallahassee, FL 32301-4552

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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 September 13, 2000

PETITION REQUESTING SECTION 120.57 HEARING AND PROTEST OF PROPOSED AGENCY ACTION

Pursuant to Rules 25-22.029 and 28-106.201, Florida Administrative Code, the Citizens of Florida (Citizens), by and through Jack Shreve, Public Counsel, file this petition to protest proposed agency action order no. PSC-00-1528-PAA-WU issued August 23, 2000, and request an evidentiary hearing under section 120.57, Florida Statutes (2000).

1. Section 350.0611, Florida Statutes (2000) provides that it shall be the duty of the Public Counsel to provide legal representation for the people of the state in proceedings before the Commission. It specifically provides the Public Counsel the power to appear, in the name of the state or its citizens, in any proceeding or action before the Commission and urge therein any position which he or she deems to be in the public interest.

2. The name, address and telephone numbers of petitioner are as follows: Jack Shreve, Public Counsel, Charles J. Beck, Deputy Public Counsel, c/o Florida Legislature, 111 West Madison Street, room 812, Tallahassee, FL 32399-1400,

telephone 850-488-9330, fax 850-488-4491. Petitioner received notice of the Commission's decision by downloading a copy of order no. PSC-00-1528-PAA-TL from the Commission's web site on or about August 24, 2000.

3. Wedgefield Utilities, Inc., is a utility as defined by §367.021(12), Florida Statutes (2000), subject to the jurisdiction of the Commission under §367.011(2), Florida Statutes (2000).

4. The action taken by the Florida Public Service Commission (Commission) in its proposed agency action order no. PSC-00-1528-PAA-WU affects the substantial interests of petitioner because the order uses an excessive rate base amount. This excessive rate base leads to the imposition of excessive rates on the citizens served by Wedgefield Utilities, Inc. The Commission should have used the actual purchase price paid by Wedgefield Utilities, Inc., for the utility in calculating the rate base, instead of the amount on the books of the selling utility Econ Utilities. Had the Commission done so, the proposed agency action order would have reduced the rates paid by the citizens in Wedgefield instead of increasing the rates.

5. Petitioner submits the following disputed issues of material fact, policy, and law for resolution in a hearing conducted under section 120.57, Florida Statutes (2000):

a. Should the utility's rate base include a negative acquisition adjustment?

b. What other changes, such as changes to depreciation expense, should be made to reflect a negative acquisition adjustment?

WHEREFORE, the Citizens protest the Commission's proposed agency action order no. PSC-00-1528-PAA-WU issued August 23, 2000, and request an evidentiary hearing to be held pursuant to §120.57, Florida Statutes (2000), as described in this petition.

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

Attorneys 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 13th day of September, 2000.

Charles J. Beck

Patricia Christensen
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991437.paa

TRANSMISSION VERIFICATION REPORT

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DATE,TIME	09/15 11:54
FAX NO./NAME	SEIDMAN
DURATION	00:03:09
PAGE(S)	06
RESULT	OK
MODE	STANDARD

$BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Transfer of Certificate Nos. 404-W and 341-S in Orange County from Econ Utilities Corporation to Wedgefield Utilities, Inc.	DOCKET NO. 960235-WS
In Re: Application for Amendment of Certificate Nos. 404-W and 341-S in Orange County by Wedgefield Utilities, Inc.	DOCKET NO. 960283-WS
	Filed: April 28, 1998

POST-HEARING

STATEMENT OF ISSUES AND POSITIONS

and

BRIEF

of

WEDGEFIELD UTILITIES, INC.

Ben E. Girtman
FL BAR NO. 186039
1020 E. Lafayette St.
Suite 207
Tallahassee, FL 32301

Attorney for Utilities, Inc.
and Wedgefield Utilities, Inc.

TABLE OF CONTENTS

I. BACKGROUND -

A. The Case

On January 17, 1997, Utilities, Inc. entered into a contract to purchase the assets of Econ Utilities Corporation (Econ) in Orange County. Through its newly formed subsidiary, Wedgefield Utilities, Inc., it subsequently filed an application with the Florida Public Service Commission seeking approval for transfer of the utility. [Ex. 11, Application for Transfer, at Exhibit B]. Wedgefield also filed an application for extension of territory.

On October 7, 1996, the Commission entered its Order No. PSC-96-1241-FOF-WS, a final order approving both the transfer and the extension of territory. A portion of the order was issued as a PAA, and set rate base for purposes of the transfer at $1,462,487 for water and $1,382,904, for wastewater. [See also, Tr. 166, Wenz Additional Direct Testimony page 3, line 17 to page 4, line 14.]

OPC protested the order, and a hearing was set and noticed to ". . . consider whether a negative acquisition adjustment should be included in rate base for the purpose of the transfer . . . ." [Notice of Hearing, issued March 2, 1998].

After several motions and other pleadings were disposed of, a hearing was held at Wedgefield on March 19, 1998. A continuation of that hearing for cross examination was held at the Public Service Commission in Tallahassee on March 26, 1998.

B. The Witnesses

There were four primary witnesses: Mr. Carl Wenz and Mr.

Frank Seidman on behalf of Wedgefield Utilities, Inc.; Mr. Hugh Larkin, Jr., on behalf of the Office of Public Counsel (OPC); and Ms. Kathy L. Welch on behalf of the Commission Staff (Staff). In addition, several customers presented statements during the customer phase of the hearing.

A customer witness, Mr. Nathan, acknowledged that the customers received notice of the applications [Tr. 84, lines 14-16] and that no one had requested that anyone notify the homeowners associations in the area of the proceeding, separate and apart from the notifications which to all customers. [Tr. 83, lines 2-6.]

C. References to the Record

Pages in the original transcript were numbered consecutively from the first page in Volume 1 to the last page in Volume 3, so reference to Volume numbers are not used. References to the hearing transcript include the transcript page and line number(s). Example: [Tr. 175, lines 4-7.]

References to testimony of witness appearing at the hearing include the witness's last name, transcript page, and line number(s). Example: [Seidman, Tr. 350, lines 13-19.]

References to prefiled testimony include both the transcript page number and the original page number. Line numbers are the same for both the transcript and for the original prefiled testimony. Example: [Tr. 170-171, Wenz Additional Direct Testimony page 7, line 18 to page 8, line 1.]

References to Exhibits include the exhibit number. Example: [Ex. 11.] "Negative Acquisition Adjustment" is sometimes

abbreviated as "NAA".

The Acquisition Feasibility Analysis of Econ Utilities Corporation (1995), prepared by the Orange County Public Utilities Division, (OCPUD) and issued under the name of Mr. Alan Ispass, is referred to as the Orange County Utility report.

The draft Capital Improvement Plan and Utility Rate and Impact Fee Analysis prepared by John B. Webb and Associates is referred to as the "Webb draft".

D. Wedgefield Utilities, Inc.

Wedgefield Utilities, Inc., was incorporated in Florida on January 23, 1996, and is a wholly owned subsidiary of Utilities, Inc., which was incorporated in Illinois in 1965. [Ex. 11, Application for Transfer, Part I, Para. E. and Part II, Para. A.]

Utilities, Inc. has 63 subsidiaries which own and operate water and/or wastewater utilities in fifteen states. [Tr. 157, Wenz Direct Testimony page 1, lines 17-18 and 24-25.] For a listing of all except the most recently added systems, see Ex. 11, Application for Transfer, and its Exhibit A.

E. Econ Utilities Corporation

Econ has about 700 customers. The rate case in which its rate base was last established was in 1984 [Docket No. 840368-WS, Order No. 15459]. In 1987, it applied for a rate increase, but the application was challenged by OPC. As a result of a stipulation, rates were set at less than the amount applied for. Therefore, the Commission did not render a decision on rate base at that time.

Some indexing and pass-through adjustments have occurred since the Public Service Commission (PSC) obtained jurisdiction.

Environmental standards for Econ utility are set by the Florida Department of Environmental Protection (DEP) and by the Orange County Environmental Protection Department (OCEPD). The Orange County Public Utilities Division (OCPUD) has no regulatory authority over, and sets no regulatory standards for, Econ.

F. Purpose of the Commission Policy

A major purpose for the current Commission policy on acquisition adjustments is to create an incentive for larger utilities to acquire small, troubled utilities. [Tr. 319, Seidman Rebuttal Testimony page 4, lines 19-23.]

G. Purchaser's Reliance on Existing Commission Policy

Utilities Inc., in deciding to purchase Econ Utilities:

1) relied on the established Commission policy on acquisition adjustments in justifying its decision to purchase [Tr. 162-1633, Wenz Direct Testimony page 6, line 16 to page 7, line 5];

2) relied on the fact that the burden of proof rests with the proponent of an acquisition adjustment [Tr. 161, Wenz Direct Testimony page 5, lines 20-23]; and

3) relied on the fact that the existing Commission policy on negative acquisition adjustments cannot be changed on a case-by-case basis [Tr. 160, Wenz Direct Testimony page 4, lines 10-19].

Utilities, Inc. was fully aware of the long-standing policy of this Commission on acquisition adjustments prior to entering into

the contract to purchase Econ Utilities. Its understanding of that policy was based both on its experience in purchasing and operating twelve utilities in Florida under this Commission's jurisdiction, and on reading the Commission's orders establishing, investigating and reconfirming its policy on acquisition adjustments. [Tr. 168-169, Wenz Additional Direct Testimony page 5, line 20 to page 6, line 2.]

Utilities, Inc. relied on that policy when entering into negotiations to purchase these utility companies in Florida. [Tr. 169, Wenz Additional Direct Testimony page 6, lines 8-20.] To change that policy now, during pendency of this case and after the fact of entering into a contract to purchase Econ Utilities, not only would be a denial of due process but it also would defeat the purposes of the policy as originally developed and implemented by the Commission.

The Commission has already found that the transfer in this case is in the public interest. The contract was signed because of the incentive provided by the existing Commission policy. The existing policy does work. [Seidman, Tr. 353, lines 12-23.]

However, since the protest of the PAA order in this proceeding was filed, it has been unclear whether OPC was seeking to challenge the current Commission policy on acquisition adjustments. [Tr. 159-160, Wenz Direct Testimony page 3, line 22 to page 4, line 3.]

H. Benefits to Customers

Contrary to Mr. Larkin's assertion, any benefit that comes to the purchaser as a result of the Commission's policy on acquisition

adjustments is at the expense of the seller, not the customers. If a benefit results from the purchase price being lower than book value, it is at the expense of the seller, not at the expense of the customer. It comes out of the seller's pocket, not the customers'. [Seidman, Tr. 352, line 22 to Tr. 353, line 3.] [See also, Tr. 335-336, Seidman Rebuttal Testimony page 20, line 15 to page 21, line 12.]

Similarly, if the buyer paid more than book value, it's at the buyer's expense, not at the expense of the customer. The customer's position remains neutral when ownership of the utility changes, regardless of whether the buyer pays book value, less than book value or more than book value. Therefore, it is an absurdity to suggest that the acquiring utility will benefit at the expense of the customer. [Tr. 335-336, Seidman Rebuttal Testimony page 20, line 15 to page 21, line 12.]

In fact, benefits will accrue to the customers from the Commission's current policy and from the sale. [Seidman, Tr. 353, lines 4-7.]

As discussed in Order No. 25729 in the investigation docket, Docket No. 891309-WS, several years ago, the Commission's existing policy on acquisition adjustments translates into several benefits for the customers which result from the new ownership of utilities purchased under that policy. [See, Order No. 25729; Tr. 320-321, Seidman Rebuttal Testimony page 5, line 1 to page 6, line 4.]

Conversely, in that investigation OPC had proposed the same changes in the negative acquisition policy that it proposes in this

docket, and the Commission rejected those proposals. Order No. 23376 stated that: "Not only might OPC's proposed change not benefit the customers of troubled utilities, it might actually be detrimental, by removing any incentive for larger utility companies to acquire distressed systems." [Tr. 336, Seidman Rebuttal Testimony page 21, lines 12-21.]

Mr. Wenz testified that a change in ownership will benefit the utility customers because the new owner: 1) is utility-oriented and replaces a developer-related owner that has expressed disinterest in operating and funding the utility; 2) will not have the financial pressures faced by the previous owner of deciding whether to invest in utility operations or in real estate development; 3) has the ability to attract capital at a reasonable cost; 4) has the ability and commitment to make any necessary improvements; 5) has a professional staff with years of experience in utility operations; 6) has the potential to reduce costs through the allocation of existing administrative expenses and through access to an established purchasing system; and 7) is familiar with, and has the ability to comply with, all state and federal regulations. [Tr. 173-174, Wenz Additional Direct Testimony page 10, line 23 to page 11, line 15.]

Mr. Seidman testified about beneficial changes (due to a change in ownership) as listed by the Commission in its Order No. 25729. They include: 1) elimination of financial pressure due to the inability of the old owner to attract capital; 2) the ability of the new owner to attract capital; 3) a reduction in the high

cost of debt of the old owner due to lower risk of the new owner; 4) the limitation of sub-standard operating conditions; 5) the ability of the new owner to make necessary improvements; 6) the ability of the new owner to comply with DEP regulatory requirements; 7) reduced costs due to economies of scale and the ability of the new owner to buy in bulk; 8) the introduction of more experienced management; and 9) the elimination of a general disinterest in utility operations in the case of a developer owned system. [See, Order No. 25729; Tr. 320, Seidman Rebuttal Testimony page 5, lines 1-25.]

In its Order No. 25729 the Commission also found that the customers of utilities acquired under its acquisition adjustment policy are not harmed, and indeed benefit from a better quality of service at a reasonable cost. [See, Order No. 25729; Tr. 321, Seidman Rebuttal Testimony page 6, lines 1-4.]

I. Detrimental Consequences of Imposing NAA

If a negative acquisition adjustment is imposed, for whatever reason, several detrimental consequences would result. If the Commission's policy were changed now, it would make future changes in ownership unlikely. With no change in ownership, many of the benefits which the Commission identified in its Order No. 25729 would not be available to the customers of a "troubled" utility.

In addition, rates that are set to recover a return on a rate base that has been reduced by a negative acquisition adjustment would not reflect the actual cost of providing water and wastewater service to the customers of the utility. The rate base, excluding

a negative acquisition adjustment, is the actual cost of the assets serving those customers. Those dollars were actually spent to provide service to those customers. The transfer of the system from one owner to another does not change that fact.

Furthermore, it is important to use the costs which were actually incurred in order to encourage the conservation of scarce resources. Rates set below cost would give customers a false signal regarding the cost of obtaining, treating and distributing potable water. Below-cost water rates would encourage excessive use. Below-cost wastewater rates would give a false signal as to the cost of treating and disposing of wastewater in an environmentally acceptable manner and would understate the cost to conserve and preserve our natural resources.

In addition, imposing a negative acquisition adjustment would discourage the purchase of a system such as Econ, and that thwarts Commission policy and is a detrimental consequence. [Tr. 345-346, Seidman Rebuttal Testimony page 30, line 12 to page 31, line 23.]

And there is another matter to consider. If Econ had not been purchased, Econ would still be entitled to apply for rates based on the net original cost of assets serving the public. That is the same asset base that the Commission would deny to a purchaser if the Commission were to impose a negative acquisition adjustment. [Tr. 347, Seidman Rebuttal Testimony page 32, lines 1-8.]

If Econ had not been sold, the limited capital available for improvements would cause service to deteriorate further; without access to capital at reasonable costs, any capital it could obtain

would be more costly; and without access to economies of scale and bulk purchasing, the cost of improvements would be higher. Clearly, Econ utility customers are better off with the utility being purchased under the current Commission acquisition adjustment policy, than to continue to be served under the older ownership. [Tr. 347, Seidman Rebuttal Testimony page 32, lines 8-18.].

J. The Generic Proceedings Before the Commission

In 1990, at the urging of OPC, the Commission opened a docket to inquire into its acquisition adjustment policy. [Docket No. 891309-WS.] By its PAA Order No. 23376 issued on August 21, 1990, the Commission reaffirmed its policy on acquisition adjustments. OPC protested the PAA order and requested formal hearings. The PSC opened a full investigation and held hearings at which OPC and other interested parties, including utility companies, presented their views on July 29, 1991.

In the Investigation proceeding, OPC unsuccessfully tried to make "prior maintenance" a basis for granting acquisition adjustments. [Tr. 161, Wenz Direct Testimony page 5, lines 7-17.] It also tried to shift the burden of proof from the proponent of the acquisition adjustment so it would always be on the utility company. [See, Order No. 23376 issued 8/21/90 and Order No. 25729 issued 2/17/92.]

On February 17, 1992, the Commission issued its Order No. 25729 reaffirming its acquisition adjustment policy which had been developed, and which had been in place and followed, at least since 1983. [Tr. 319, Seidman Rebuttal Testimony page 4, lines 1-17.]

Those Orders They discussed the pros and cons of negative acquisition adjustments, and set forth arguments by participating utility companies and by OPC regarding acquisition adjustments, particularly relating to negative acquisition adjustments. The Commission specifically considered the same arguments made by OPC which OPC is now making again in the Wedgefield case. The Commission previously rejected the effort to change the acquisition adjustment policy, and it should do so again now.

K. Net Original Cost

Since 1971, when the Florida Legislature removed from the statues any reference to the "fair value" ratemaking concept, the Commission has set rates based not on so-called "worth" or "value," but on the cost of utility property when first dedicated to public service. [See, Section 367.081(2)(a), Fla. Stat.; Tr. 323, Seidman Rebuttal Testimony page 8, lines 2-17.]

For ratemaking, the Commission has interpreted "cost basis" to mean the original cost of property when first dedicated to public service. That interpretation applies not only in the context of acquisition adjustments, but elsewhere as well. [Order No. 25729; Tr. 323-324, Seidman Rebuttal Testimony page 8, line 19 to page 9, line 21.]

L. Earnings and Depreciation Expense

Mr. Larkin correctly notes that, without a negative acquisition adjustment, the utility would be allowed to earn on,

and depreciate, the full rate base of the seller. Mr. Larkin doesn't agree with that established policy, either. His testimony simply ignores the fact that this is also part of the Commission's policy developed over the years and reaffirmed in its investigation docket. In its order on the investigation docket, the Commission specifically indicated that, without these benefits, large utilities would have no incentive to look for and acquire small troubled utilities. [Seidman, Tr. 351, lines 9-23.]

It is misleading (at best) when the OPC witness states that the benefits to the purchaser occur at the expense of the customer, and that they provide a return on assets which do not exist. [Seidman, Tr. 351 line 24 to Tr. 352, line 3.] Certainly, the assets exist. They didn't just vanish into thin air, and they didn't disappear with the sale. They are still there. The original cost that was incurred to put them into service is still there. According to the audits testified to by Ms. Welch [Composite Ex. 9 and Ex. 10], there was approximately $7 million in assets to serve the customers. The assets now have a net book value of $2.8 million after taking into consideration accumulated depreciation and CIAC. These are real costs for real assets. They didn't just go away. In fact, rate base is unchanged, and the Commission's investigation Order found that, because of this, there is no harm to the customer. The rate base is the same, both before and after the sale. [Seidman, Tr. 352, lines 4-21.]

In the past, the Commission has considered the question of whether the acquiring utility should recover depreciation expense

on the original cost of the assets. The Commission found that it is appropriate to do so. From the customer's point of view, nothing changes as a result of change in ownership. [Tr. 337-338, Seidman Rebuttal Testimony page 22, line 11 to page 23, line 6.]

In its Order No. 25729, the Commission stated:

> We still believe that our current policy provides a much needed incentive for acquisitions. The buyer earns a return on not just the purchase price but the entire rate base of the acquired utility. The buyer also receives the benefit of depreciation on the full rate base. Without these benefits, large utilities would have no incentive to look for and acquire small, troubled systems. The customers of the acquired utility are not harmed buy this policy because, generally upon acquisition, rate base has not changed, so rates have not changed. Indeed, we think the customers receive benefits which amount to a better quality of service at a reasonable rate. [Emphasis added. Commission Order No. 25729; See also, Tr. 338-339, Seidman Rebuttal Testimony page 23, line 4 to page 24, line 5.]

If the revenues from depreciation expense on used and useful plant are not available, the funds would have to come from somewhere and that somewhere is additional utility funding, the return on which would end up in rates. Depreciation expense averages about 4% of the asset cost and there is no tax consequence. Replacing those funds with investment would cost about 12-14%, including any tax effect. So, disallowing recovery of depreciation expense would be at the customer's expense. [Tr. 339-340, Seidman Rebuttal Testimony page 24, line 20 to page 25, line 5.]

The utility will not earn an excessive return. It will continue to be afforded the opportunity to earn a fair return on

the net original cost of the assets, used and useful in serving the public. From the customer's point of view, nothing changes as a result of the change in ownership. [Tr. 337, Seidman Rebuttal Testimony page 22, lines 1-9.]

M. Purchase Price

Mr. Larkin's argues that a negative acquisition adjustment must be included in rate base merely because the assets were purchased for less than net book value. This is simply a re-argument against current, established Commission policy. Mr. Larkin doesn't agree with that policy, but the matter was settled by the Commission in its investigation, Docket No. 891309-WS. [Seidman, Tr. 350, line 20 to Tr. 351, line 8.]

N. The Policy Works

The Commission's current policy on acquisition adjustments is an appropriate policy because: 1) it works; 2) it provides a better quality of service, more experienced management, and access to economies of scale in construction and operation; and 3) except for extraordinary circumstances, there will be continuity and consistency in the rate base which reflects the actual costs incurred to provide service to utility customers, and rates will not fluctuate simply as a consequence of changes in ownership. [Tr. 321-322, Seidman Rebuttal Testimony page 6, line 6 to page 7, line 5.]

The transfer of Econ Utilities to Wedgefield Utilities is just the type of transfer intended to be encouraged by existing

Commission policy and which will produce the type of benefits anticipated by the existing Commission policy. [Tr. 322, Seidman Rebuttal Testimony page 7, lines 7-12 and 21-25.]

O. Lack of Authority to Change Current Policy On a Case-by-Case Basis

Chapter 120, Fla. Stat., prohibits a state agency from changing its policy statements without full notice to all affected entities and a right to a formal hearing in which all affected entities can participate. Such a change cannot occur on a case-by-case basis, and incipient rulemaking no longer available. [Eg., see sections 120.536 and 120.54, Fla. Stat.]

At the beginning of this case, Wedgefield raised the question whether either OPC or the Commission were intending to use this case to try to change the existing Commission policy. Orders on various Wedgefield motions indicated that no change in existing policy was contemplated. [See prior orders, including but not limited to, Order Nos. PSC-96-1241-FOF-WS (10/7/97) Order Approving Transfer, PSC-97-0104-FOF-WS (1/27/97) Order Granting OPC's Motion to Strike and Denying Wedgefield's Motion to Dismiss or Strike, PSC-97-0377-FOF-WS (4/7/97) Order Denying Motion to Assign Dockets to Full Commission, PSC-97-0949-PCO-WS (8/7/97) Order Declining to Withdraw from Proceeding, (PSC-97-1041-PCO-WS (9/2/97) Order Revising Order on Procedure and Scheduling Hearing Date (see also PSC-97-0953-PCO-WS 8/11/97), PSC-97-1178-FOF-WS (10/2/97) Order Denying Verified Petition and Suggestion of Disqualification, and PSC-97-1510-FOF-WS (11/26/97) Order Denying Motion for Reconsideration.] Such a change cannot be made by a PSC panel.

II. STATEMENT OF ISSUES AND POSITIONS -

The following are the nine issues in this case, followed by Wedgefield's position on each issue and a discussion of evidence as to each issue.

SUMMARY OF WEDGEFIELD'S OVERALL POSITION:

Rate base for purposes of transfer is $1,462,487 for water and $1,382,904, for wastewater. Established Commission policy requires that no acquisition adjustment be included in the rate base calculation. The burden of proof is always on the proponent of an acquisition adjustment (whether positive or negative) to show why one should be granted.

ISSUE 1: What was the condition of the assets sold to Wedgefield Utilities, Inc.?

*****The assets were all functioning and not in violation of any state regulations. They were not in the best of condition, but were not in extremely poor condition, either.*****

Allegations were made - erroneously made - regarding the condition of the utility plant. OPC's witness, Mr. Larkin, asserted that the plant was in such allegedly poor condition that that must be the reason why the purchase price was lower than the net book value. [Tr. 340-341, Seidman Rebuttal page 25, line 7 to page 26, line 2; Seidman, Tr. 353, line 24 to Tr. 359, line 9; [Tr. 266, Larkin Direct Testimony page 20, lines 1-20.]

A. The Orange County Utility Report

Mr. Larkin relied solely upon reports of others, particularly the report prepared by the Orange County Public Utility Division (OCPUD). It was a feasibility report to determine whether Econ should be incorporated into the County Utility system. However, it

was taken out of context by the witness and misapplied to a stand-alone, privately owned system which operates under different regulatory requirements and a substantially different operating situation. The County system has 70,000 customers and a 900-mile system; the stand-alone system has 700 customers and a 17-mile system. [Seidman, Tr. 405, line 18 to Tr. 406, line 9.]

The County Utility report was done at the request of the Econ customers to see if they could hook up to the County system at lower rates. The report showed that the County could not provide service at lower rates than Econ. Apparently one reason the County Utility didn't want to hook up to Econ utility was because the County's nearest main was some ten miles away. [Seidman, Tr. 354, line 16 to Tr. 355, line 3.]

B. Inspection of the Plant

The testimony for the OPC witness was initially prepared by Mr. DeWard. In the absence of Mr. DeWard, that testimony was later adopted by Mr. Larkin, who eventually testified for OPC.

Neither Mr. DeWard nor Mr. Larkin ever visited or inspected the utility system prior to preparing the testimony. Nor did Mr. Larkin inspect the system prior to testifying at the hearing and expressing what were represented to be "authoritative" opinions about the condition of the utility assets, even though the wastewater plant was next door to the hearing location and the water plant was only a few blocks away.

In addition, Mr. Larkin and Mr. DeWard are not even engineers and were not in a position to judge the condition of the

facilities. [Tr. 248, Larkin Direct Testimony page 1, lines 8-9; Tr. 254, Larkin adopted DeWard Direct Testimony page 8, line 20.]

Mr. Larkin, and Mr. DeWard's original prepared testimony, supported writing off approximately 80% of the utility plant based upon its condition, but they didn't even feel it was "necessary" to inspect the plant to do so. [Tr. 254, Larkin Direct Testimony page 8, lines 18-20; See Seidman, Tr. 354, lines 4-15.]

Therefore, their characterization of the condition of the plant was second-hand, hearsay, and not convincing, and such expressions of opinion by the witness are not authoritative and are not reliable.

Prior to purchase, Utilities, Inc. had the utility system inspected by Mr. Don Rasmussen, Vice President of Utilities Inc. of Florida. [Tr. 172, Wenz Additional Direct Testimony page 9, lines 6-10.]

During the inspection of the Econ system by Mr. Rasmussen, he found that the water and wastewater systems were not in the best of condition, but they were not in extremely poor condition, either. Mr. Rasmussen's finding was that they were typical of developer-owned utilities, in that they were not in violation of any state regulations, but they were not up to the standard which Utilities, Inc. would want to maintain. [Tr. 172, Wenz Additional Direct Testimony page 9, lines 12-19.]

The Econ water and wastewater systems need some additional maintenance, but they are in compliance with regulatory requirements and are not in immediately danger of falling out of

compliance. [Tr. 173, Wenz Additional Direct Testimony page 10, lines 3-6.]

Mr. Seidman made inspections of the plant prior to writing his prepared testimony and again before the hearings held on March 19, 1998. At he first inspection he had with him the prepared testimony of Mr. Larkin.

> . . . I had already read what was then Mr. DeWard's testimony adopted by Mr. larkin. I expected to find that place in a shambles based on what I read. It's not. I wouldn't mind taking you out for an inspection of the place and showing you. [Seidman, Tr. 355, lines 4-12.]

Mr. Seidman summarized, from his prefiled rebuttal testimony, what he found during his inspection. The

> . . . utility is in pretty average condition for utilities that size. It's not [in] violation of anything. It's certainly not perfect. There are things that should be done maintenance-wise. . . . It's not in bad shape. And if we look at the conclusions from the Orange County study, I think you'd come to the same findings as I did.
>
> * * *
>
> The concluding statements [in the Orange County Utility study], and I'll just read these. . . . [For the] water supply system, the report says:
>
> 'It generally appears to be in good operating condition.'
>
> With regard to the water treatment plant,
>
> 'It appears to be in good working condition.'
>
> With regard to the water distribution system,
>
> 'The system appears to be functioning adequately at the present time.'

When we get to the wastewater system it's different. There's nothing in it [the report] that says that the plant is not operating properly, [or] is not functioning well, [or] it's in bad shape in general. But it does indicate that they had an indication of significant inflow infiltration problems. That in itself is not . . . something that puts a system in poor condition. We know that the pipes in this system are old. There's indication that a portion of them are asbestos cement pipe, which represents about 20% of the pipe that's in the ground now. That was the standard at the time they were put in. There's not much you can do with them except take them out. That is not feasible for a system this size.

With regard to the wastewater treatment plant, the report indicated that [there] was sever corrosion along the water line and at the base of the chlorine contact tank. I inspected those. There is corrosion. Corrosion on the external portions of the plant have been taken care of, both at the water plant and the sewer plant. . . . There has been painting done and cleaning up. With regard to the corrosion along the water line, it affects the weirs; it affects the arms of the plant. But in my mind this is not sever because this is something that could be taken care of and will be taken care of with maintenance. It does not affect the operation of the plant. It does not affect the safety of the plant. It is not going to require a plant shutdown to be taken care of[;] just dropping the water level, in order to take care of it. It is not something that is going to result in large capital outlays as a result of not being done right now. . . .

With regard to the effluent disposal system, the only comments [in the County Utility's study] were not with the operation so much, but with the indication of flows . . . during rainy season being in excess or up to the capacity of the plant. The capacity of the effluent disposal system is 200,000 gallons per day, and they found flows in excess of that during the rainy season.

[This] 200,000 gallons per day is an annual average daily flow rating, and you've indicated in other cases that you don't . . .

> match the flows at max during the rainy season against the average to determine whether or not there's excess flows. The flows that occur at rainy season are taken care of by emergency holding ponds that are adequate. The only thing that was indicated along with this was that they had difficulty disposing of the flows on the golf course during the rainy season which you would expect. It's very difficult to dispose of water through spraying during the rainy season. They just can't handle it, and that 's what the ponds are for.
>
> To me, at face value, without even following up on the inspection, these are not conditions I would consider poor, and especially so poor as to warrant some type of an acquisition adjustment because of them.
>
> . . . I also looked at the lift stations. . . . [B]y the time I had looked at them . . . maintenance had been performed on all of them, the six of them, and the master lift station had been rehabilitated. . . . That was done in 1996. In any case, it was not a significant dollar amount to do this work, and they are all functioning adequately. [Seidman, Tr. 355, line 12 to Tr. 359, line 9.]

The amount estimated by the purchaser for anticipated improvements and repairs was $409,000. Of that amount, more than half is related to capacity expansion. [Tr. 330, Seidman Rebuttal Testimony page 15, lines 5-10.]

C. Preventive Maintenance Program

The Orange County Utility report stated that repairs by Econ were made on an "emergency basis" only, and that there was "no preventive maintenance program in effect". However, Mr. Seidman pointed out that the people who did the report couldn't know on what basis the repairs were made. "They don't know that repairs were only done when something broke. And I don't know it. . . . [I]t's not whether they did or didn't." [Seidman, Tr. 387, line 5

to Tr. 388, line 25.] As correctly interpreted by one of the Commissioners, ". . . if you don't have a preventative maintenance program, it doesn't necessarily follow that every repair you do is on an emergency basis." [Tr. 388, lines 13-16.]

After discussing the County Utility's assertion that major portions of Econ Utilities' underground pipes should be replaced, correspondence from Mr. Ispass (See D. Comparison of Standards, below) explained what the County Utility report meant by a "preventive maintenance program":

> You [Mr. Blake, Econ's president] state that your engineer recommended replacing only pipe that breaks. Orange County [utility] takes a more proactive approach to maintenance. A broken or blocked sewer main can cause extensive damage to homes and the environment, and can create health hazards. A broken water main can cause contamination of the water system which can also create a health hazard. The liabilities created by these situations justify the cost of a preventive maintenance program. . . . [Ex. 8, Ispass ltr., page 4, para. 4.]

Therefore, the County Utility report interprets a "preventive maintenance program" to mean not just taking action to prevent an undesired event from occurring or taking action to preserve your assets. The County Utility uses the phrase "preventive maintenance program" to include tearing out pipe that is still performing satisfactorily, and replacing or relocating that pipe just because it is not in the most convenient location or it may eventually wear out! That is a completely different type of "preventive maintenance program" than was applicable to Econ Utilities, and different than the Econ Utilities maintenance program, the alleged

absence of which was discussed so incessantly in Mr. Larkin's testimony.

To Mr. Seidman, "preventive maintenance" is something that is engaged in prior to an event happening, to do two things: prevent some event from happening, and to preserve the condition of your capital assets. [Tr. 383, line 23 to Tr. 384, line 8.]

In regard to the allegations that there was no preventive maintenance program, Mr. Seidman testified that it:

> . . . was mentioned many times, that there's no preventive maintenance program, therefore, the plant is in bad shape. It isn't. So I don't know what the consequence is. The only thing I would mention there is I think you have to look at it in the context of what a utility the size of Orange County considers preventive maintenance versus what a utility that's only 700 customers would consider as economically feasible preventive maintenance . . . . [Seidman, Tr. 361 lines 1-11.]

Wedgefield has a preventive maintenance program [Seidman, Tr. 384, line 22 to Tr. 385, line 12.]. And there was no evidence that Econ Utilities did <u>not</u> engage in preventive maintenance. Mr. Seidman did not find a standard operating procedures manual for Econ Utilities, but then, Wedgefield doesn't have a written preventive maintenance manual, either. [Seidman, Tr. 385, line 13 to Tr. 386, line 1; Tr. 384, lines 22-24.]

There is nothing in the County Utility report to substantiate its statement that repairs were being performed on an "emergency" basis. Maintenance may be performed on an "as needed" basis without it being an emergency. An emergency implies that a crisis will exist if immediate action is not taken. There is nothing in

the report that leads one to reach that conclusion. [Tr. 331, Seidman Rebuttal Testimony page 16, lines 1-18.]

Much of the costs discussed in documents provided to the Commission are related to expanding the system to enable it to serve growth, some of the costs are related to normal near-term maintenance and improvements and preventive maintenance, and some are just a "wish list" contemplated by the Orange County Utility, which also had been reviewing the Econ utility for possible purchase. [Tr. 173, Wenz Additional Direct Testimony page 10, lines 10-18.]

D. Comparison of Standards

The Orange County Utility report was the subject of a letter dated February 27, 1995 from the president of Econ Utilities, Inc. (Mr. Blake) to the director of the Orange County Utility Division (Mr. Ispass), and a return letter dated April 13, 1995 from Mr. Ispass to Mr. Blake. [Composite Ex. 8.] This Mr. Ispass is head of the Orange County Public Utility Division and is the same person who signed off on the Orange County Utility report [Ex. 5]. [Tr. 408, line 25 to Tr. 409, line 5.]

Mr. Blake's letter questioned whether some of the cost estimates and standards applicable to the County Utility system should also be applicable to the stand-alone, Econ system. [Eg., see Ex. 8, Blake ltr., para. 2, 3, 4 and 5.]

The response by Mr. Ispass to Mr. Blake pointed out that the Orange County Utility report intended to apply different standards when evaluating the Econ system.

> . . . Many of the comments in your letter dispute the cost estimates in our report based on comparisons to the costs Econ Utilities has incurred for operation of the system. The analysis contained in our report does not portend that Orange County would acquire the system and immediately assume the historical system characteristics under which Econ Utilities has been operating. Rather, the analysis was based on the assumption that upon acquiring Econ Utilities, the system would assume the characteristics of a facility owned and operated by Orange County. As a result, your comments which relate to the operational costs, capacity charges, the relationship between customers and ERC's, as well as the average revenue generated per ERC must be viewed within the context of the County's utilities system. The cost estimates in the report were based upon the assumption that the system would be operated in accordance with County [Utility system] standards and personnel policies, resulting in costs that will substantially differ from Econ utilities' historical costs. [Emphasis added. Composite Ex. 8, ltr. dtd 4/13/1995, Mr. Ispass to Mr. Blake, page 1.]

Furthermore, the letter from Mr. Ispass acknowledged that: ". . . acquisition of the facilities with the intent to operate them independently was not considered." [Ex. 8, Ispass ltr., page 2, end of para. 1.]

Mr. Seidman testified regarding the completely erroneous procedure of trying to take the "standards" developed by and for the Orange County Public Utilities Division and apply them to a small, stand-alone system:

> . . . Here's a large utility that was asked to look at feasibility of a purchase. It's governmentally operated. . . . But what applies to a 70,000-customer, 900-mile system is not the same thing that applies to 700 customers with 17 miles. You don't have the option of doing some of the things that they are able to do for a full county system like

> that. And when they are talking about applying their standards to the system, and it being indicated that they are going to result in higher costs, I think that's why. It's fine for them. And it may very well [be] economical for them, but it just doesn't necessarily work on a microcosm [like this small Econ system]. [Emphasis added. Seidman, Tr. 405, line 19 to Tr. 407, line 9.]

Mr. Seidman further commented on the comparison of the Orange County system with the Econ (now Wedgefield) system:

> . . . We're talking about an assumption here, operating under the standards and costs associated with a 70,000-customer system. They don't apply to a system [Econ's] size [and which is] run under private funding and regulation. [Seidman, Tr. 409, lines 6-14.]

The utility at Wedgefield operates under the environmental jurisdiction of both the Florida Department of Environmental Protection (DEP) and the Orange County Environmental Protection Department (OCEPD). It is inspected regularly by DEP and by OCEPD. These two agencies provide standards for Wedgefield and determine what is necessary for compliance, based on Federal and Florida laws and regulations. The Orange County Public Utilities Division does not have jurisdiction over this privately owned utility. [Tr. 328, Seidman Rebuttal Testimony page 13, lines 13-22.]

Wedgefield Utilities and its predecessor, Econ Utilities, were and are in compliance with the requirements of DEP and of OCEPD. [Tr. 328-329, Seidman Rebuttal Testimony page 13, line 25 to page 14, line 1.]

The Orange County Public Utilities Division is just another operating utility with no authority over Wedgefield or any other utility, except itself. [Tr. 328, Seidman Rebuttal Testimony page

13, lines 22-25.]

As long as the Wedgefield utility operates as an independent utility and does not become a part of the Orange County Public Utilities Division (PUD), it must comply with state and federal laws, regulations and standards applicable to such a utility. Only if it were to become a part of the Orange County utility would it have to comply with the requirements of that utility. It is those County Utility standards which formed the basis of the Orange County Utility report of Econ Utilities Corporation. [See Ex. 5, the County Utility report.] If the utility continues to operate independently, it does not need to spend the $4.6 million to "bring it up to County [Utility system] standards". [Tr. 329, Seidman Rebuttal Testimony page 14, lines 1-22.]

The County Utility study [Ex. 5.] was conducted and based on standards which the County Utility has imposed upon itself. They are not standards necessarily required for, or even a sound economical undertaking for, an independent utility to provide safe, efficient and sufficient service. [Tr. 329, Seidman Rebuttal Testimony page 14, lines 12-16.]

Of the $4.6 million identified as capital improvements by the County Utility report, $3.3 million was either to relocate mains from rear lot lines to front lot lines or to replace all of the existing C-A pipe or to replace all of the cast iron pipe at once because it is asserted to be "old". There is no requirement on a privately owned utility to engage in such a massive replacement program. The Orange County Environmental Protection Department

(OCEPD) and the DEP are not requiring the utility at Wedgefield to do so. [Tr. 329-330, Seidman Rebuttal Testimony pages 14, line 16 to page 15, line 1.]

Of the remaining $1.3 million in capital improvements identified by the County Utility report, approximately 65% of it is related to expansion. The remaining 35% or approximately $500,000 may be associated with existing facilities, but there is nothing in the analysis that indicates that such needs are immediate. [Tr. 330, Seidman Rebuttal Testimony page 15, lines 12-20.]

The County Utility's practice of moving utility lines from the rear or from the sides of residences to the front, regardless of the condition of the lines, is done merely for easier access. [Ex. 8, Ispass ltr., page 3, para. 4.] It isn't based on need.

E. Comparison of Costs

The letter from Mr. Ispass compared the cost of operating Wedgefield as an integrated part of the County system and stated:

> 3. The operation and maintenance expenses to Orange County Public Utilities will not be comparable to the historic costs incurred by Econ Utilities, but will, in fact, be higher: . . . [Emphasis added. Ex. 8, Ispass ltr., page 2, para. 3.] [See also, Seidman, Tr. 404, line 17 to Tr. 406, line 9.]

In regard to future costs of operating a utility at Wedgefield, the letter from Mr. Ispass stated:

> . . . we believe that future costs will be substantially higher than past costs. [Emphasis added. Ex. 8, Ispass ltr., page 2, para. 1.]

F. The Webb Draft

The engineering firm (John B. Webb and Associates) which did work for Econ Utilities suggested in a draft report (about June, 1995) that the utility ought to start putting away some money to prepare for the eventual replacement of all C-A lines when they reach the end of their useful lives, but that has nothing to do with determining rate base until the lines are actually replaced and a change in rates is considered and rate base reviewed by the Commission. [Tr. 332-333, Seidman Rebuttal Testimony page 17, line 18 to page 18, line 15.]

The engineering firm's draft report was never completed and the section that would have translated any recommended improvements into customer rates and fees was never done. [Tr. 333-334, Seidman Rebuttal Testimony page 18, line 17 to page 19, line 5.]

On cross examination, Mr. Seidman was asked about the partial draft report. [Ex. 17; Tr. 372, line 19.] Page 9 of the draft document listed several possible capital improvements that should be looked at. [Tr. 373, lines 17-24.]

Three items were listed as being solely for existing customers. Of the items on the list that Mr. Webb felt should be looked at in the next 12 months, one of them, addition of a water softener, has been done. [Tr. 376, line 17 to Tr. 377, line 3.] In regard to the new well, Mr. Seidman testified that ". . . there doesn't seem to be any requirement right now from the flows to handle that." [Tr. 377, lines 6-9.] The chemical handling and storage building was considered to be a nice-to-have item, but not

necessary. The utility is currently using a storage building which is a protective frame for the equipment, and it seems to be adequate. However, it is not a solid building (which would cost $80,000). [Seidman, Tr. 377, line 15 to Tr. 378, line 2.]

So, of the three items listed for existing customers (the water softener, a new well, and a permanent storage building), only the water softener has been installed, and it is the only one which appears to be necessary at this time. [Seidman, Tr. 378, lines 3-6.]

Mr. Seidman was asked about the C-A pipes. He testified that they are functioning and not "falling apart". To go ahead and replace them would be a nice program, but expensive. You have to weigh that against the cost of repairing breaks that occur and the inconveniences of that versus an overall addition of plant. That pipe would be replaced, not because there was anything wrong with it, but because it is C-A. It was a good standard when it was put in, but the utility would like to replace it eventually. Wedgefield has no current plans to regularly take out portions and just replace it whether it's needed or not at that particular time. [Seidman, Tr. 378, line 8 to Tr. 380, line 1.]

Mr. Seidman agreed with the position taken by the president of Econ Utilities that the C-A pipe need only be replaced when a section breaks. [Tr. 390, lines 6-9.] Furthermore, ". . . you have to look at it system by system and see what the circumstances are with regard to . . . how the pipe has been situated and whether there's susceptibility to undue settling or anything like that that

would add to [the need for replacement]." [Tr. 391, lines 7-14.]

Mr. Seidman testified that some comments under discussion were generalizations and not necessarily applicable to a particular utility system and whether it is having any particularly type of problem. Furthermore, you have to weigh costs. In the Econ system there is about $2 million gross investment in water and wastewater lines combined, and the County Utility was talking about spending $3 million just to replace the C-A portion, which is only about 20% of the system. You have to take cost and the rate of deterioration into consideration before deciding to replace everything that's eventually going to deteriorate. Mr. Seidman was not aware of any great amount of breaks happening in the system currently that would warrant such an investment. [Tr. 392, line 1 to Tr. 393, line 2.]

Mr. Seidman testified that it was his understanding that the utility could meet its fire flow requirements, although he hadn't investigated it. Furthermore, it wasn't known whether there was a different standard for the County system and for the Econ system. [Tr. 375, lines 3-16.]

G. Plant Condition as a Basis for Purchase Price

Just because a utility is purchased at less than net book value, it does not mean that there is anything wrong with the plant and facilities. In this case, there was an arm's length, negotiated purchase. The seller's motivation for selling could been based upon the fact that a $4 million loss was experienced over an 8 year period. Also, substantial investment would have been needed to meet anticipated growth. The previous owner was

primarily a developer who wants to devote its capital to development. But, based upon the two inspections of the water and wastewater facilities done by Mr. Seidman, and based upon his many years of experience in the water and wastewater industry, he did not believe that the condition of the existing plant would have been a significant factor in the developer's decision to sell the utility at a price less than net book value. [Tr. 340-341, Seidman Rebuttal Testimony page 25, line 7 to page 26, line 2.]

H. Customer Statements Regarding Plant Condition and Service

Customer Witness Bruno stated that a water main break occurred on December 20, 1997, and that she was without water for several days. She also alleged that the pipes were brittle and shattering, that she was not notified to boil her water, and that the water was scummy. [Tr. 87, line 4 to Tr. 88, line 11.] Witness Fleming stated that he heard tanker trucks running, usually during heavy rains, because the utility didn't have sufficient capacity. [Tr. 100, line 21 to Tr. 101, line 1.]

I. Response to Customer Service Statements

During rebuttal testimony on March 25, Mr. Seidman addressed customer concerns about utility condition expressed on March 19:

> There was a complaint about what was characterized as a main break . . . .
> What happened was that late on the evening of December 19th . . . it was noticed that there was water building up at the intersection of Bagdad and Marlin Streets. At that location there are four valves . . . .
> What happened . . . was that apparently, as a result of traffic over a period of time, [due to] some shifting and setting, there was

> a separation of the mains from the valves and causing leakage right at that connection. It wasn't a breakage in itself. The pipes didn't break. It wasn't any settling . . . from water flows or anything that caused that. The pipes just separated from the connection at the valve. The contractor was hired [and] came in that night. They performed a hasty type of repair to get through the night. Then they came back, and over a period of about three days, about 48 man-hours of work, they went ahead and reconnected the lines . . . . They had to work with more than one valve . . . . So during that period, there's approximately 17 customers that were without service for some period of time. . . . A boil water notice was provided to those that would be affected, and that would be anybody with a pressure drop below 20 pounds per square inch, because you have to do that for health reasons just in case something can get into the water. . . . [Seidman, Tr. 363, line 25 to Tr. 365, line 17.]
>
> There was a customer that mentioned that he heard tanker trucks during the night. They thought they were carrying effluent that couldn't be handled by the Company. There is no carting of effluent by the Company. They do have tankers that periodically remove sludge. They do make their hauls at night. My guess is that's what they heard . . . , sludge haulers and saw sludge haulers because that's the area where that would be taking place. [Seidman, Tr. 365, line 20 to Tr. 366, line 3.]
>
> I believe somebody mentioned something about scummy water, and that's probably true too. [I]f they got some scummy water it's because of hardness. There water down there is pretty hard. The Company treats for it. But the way, it's an aesthetic thing. It's not some type of health requirement that you have to treat for under the state provisions.

Sometimes the water is hard, and sometimes it is soft. Mr. Seidman testified that the utility uses water softeners, big machines manufactured by Culligan. It is

. . . just basically an industrial size Culligan softening unit. It's an ion-exchange type softening unit. The media in which ion-exchange takes place is zeolite. The zeolite is now at the end of its useful life in those things, and it has to be changed out. . . . [U]ntil it is changed out the amount of softening that is being done is not adequate to meet the goals of the Company and bring it down to the level that the customers should be expecting. That's something that is in progress, . . . [and] it would be in the order of 30-odd days before the zeolite can be received, changed out, recalibrated to provide the service that they should expect. But that's really where your scum comes from. It's not scum; it's the hardness of the water. [Seidman, Tr. 366, line 4 to Tr. 367, line 11.]

ISSUE 2: Was Econ Utilities Corporation a "troubled" utility?

*****Yes. It was financially troubled, having sustained cumulative net losses in excess of $4 million over the most recent eight year period and lacked either the means or commitment to invest in future capital needs or future maintenance.*****

Even if the system was not in as bad shape as plaintiff's witnesses alleged (which the evidence clearly shows it wasn't), the utility was still a "troubled" utility.

The owner of Econ Utilities was a small developer who was no longer interested in operating a utility or committing funds to it. The owner either did not have the funds or was not willing to commit the funds necessary to operate the utility system in the manner consistent with state requirements. [Tr. 170-171, Wenz Additional Direct Testimony page 7, lines 8-12 and page 8, lines 5-11.]

There was a danger that the condition of plant and quality of service would deteriorate because of the prior owner's expressed disinterest in continuing to fund and operate the utility. [Tr. 173, Wenz Additional Direct Testimony page 10, lines 6-10.]

The utility's annual reports filed with the Commission show that the utility incurred an operating loss in each year 1988 through 1995 and a cumulative loss of over $2 million in operating income and $4 million in net income. Econ was not in a position to increase its maintenance expenses or to actively pursue a capital improvement program or finance capital additions. [Tr. 332, Seidman Rebuttal Testimony page 17, lines 3-16.] These are just the types of "troubles" that acquisition by a stable, adequately

funded utility can solve and the kind of acquisition that the Commission policy was meant to encourage. [Tr. 342, Seidman Rebuttal Testimony page 27, lines 6-20.]

In stark contrast, Utilities, Inc. is not a developer, and its only business is to own and operate water and wastewater utilities. It has the financial ability, and is willing, to commit funds to the operation of Wedgefield Utilities. Utilities, Inc. can attract capital at reasonable costs. [Tr. 170-171, Wenz Additional Direct Testimony page 7, lines 14-16; page 7, line 18 to page 8, line 1; page 8, lines 3-4.] Utilities, Inc. has the necessary professional and experienced utility management. It operates 63 water and wastewater utilities in fifteen states, and it has an established management team and professional operators in Florida. [Tr. 171, Wenz Additional Direct Testimony page 8, line 13-18.]

Utilities, Inc. can benefit from economies of scale in its operation because: 1) it already has experienced management in place in Florida, so no additional management will be required; 2) a portion of the overall management expense of Utilities, Inc. can be allocated to the operated at Wedgefield Utilities; and 3) equipment and supply purchases for Wedgefield will benefit from the established vendor resources already being used for sister systems in Florida. [Tr. 171-172, Wenz Additional Direct Testimony page 8, line 20 to page 9, line 4.]

Econ was a "troubled" utility. Mr. Larkin's testimony goes to great lengths, repeatedly, to allege the poor condition of the utility system and to allege high cost for "bringing it up to

standards". Then he turns to the PSC staff engineer's report which says, well it's not so bad, it needs some improvements, but there is no problem with the water, and the wastewater plant is fine. [Tr. 341, Seidman Rebuttal Testimony page 26, lines 4-18.]

If the OPC witness admitted that the utility is "troubled, that would support the applicability of the Commission's policy of no negative acquisition adjustment for this purchase. [Tr. 341-342, Seidman Rebuttal Testimony page 26, line 21 to page 27, line 4.]

ISSUE 3: Are there any extraordinary circumstances which warrant an acquisition adjustment to rate base, and if so, what are they?

*****No. There are no extraordinary circumstances, and there should be no acquisition adjustment.*****

With regard to whether extraordinary circumstances exist in this case, witness Seidman testified that:

> . . . I just don't see any. I don't see anything with regard to the plant condition, or anything about the sale, the arrangements of the sale, that is different from anything else that you see in normal acquisitions in this state.
>
> The only thing that was brought up by Mr. Larkin that was extraordinary to him was the price differential, and it seems to me circular reasoning to determine whether the price differential is an extraordinary circumstance. The price differential is the incentive that the utility gets when it purchases. The Commission has looked at lots of cases and the price differential has varied all over the place. The price differential in this case falls somewhere in the middle to lower cost of those that have been approved without a negative acquisition adjustment. This in itself is not extraordinary. [Seidman, Tr. 361 lines 1-11.]

At the hearing on March 16, one of the Commissioners raised the question, if the purchasing utility were going to get the benefit of stepping into the shoes of the selling utility as far as rate base for transfer purposes is concerned, shouldn't the purchaser be held responsible for "maintenance failures" of the seller? [Tr. 214, line 15 to Tr. 215, line 1.]

At the continuation of the hearing on March 26, Mr. Seidman provided a follow-up response. Whenever the Commission grants a negative acquisition adjustment to rate base, everything has to be written off completely.

> . . . Even if they [the purchaser] are not responsible and even if there are only some little parts of it that might have some impact it's permanent, it [is punitive], it's done. There's no incentive to me under that type of arrangement for anybody to make a purchase.
>
> If you do not include a negative adjustment, the purchaser gets the incentive, but the door is still left open [in] the rate case proceeding to review the condition of the plant, to review what's happened, to review if there is capital having to be put out in future years because something caused that in the past. You can look at it at that time and you can make those decisions at that time, so you have the opportunity to review it. In addition, the purchasing utility is protected because it will have the opportunity at that time to address any of those concerns and give you its story on it. Because not everything is going to be affected, even by past problems. You know there may be an adjustment appropriate in one particular account and not in another, instead of across the board and it's gone forever. . . . I've talked to [Mr. Wenz, Wedgefield's vice president] and he has no problem with that type of an approach. [Seidman, Tr. 369, line 13 to Tr. 370, line 10.]

Mr. Seidman testified that the size of the used and useful adjustment in the last Econ rate case should not have an effect on whether to recognize a negative acquisition adjustment now, but today the plant probably would be found to be more used and useful than in the last rate case (which was in 1985). [Tr. 381, lines 16-24.] [% used and useful, see Tr. 382, line 18 to Tr. 383, line 11.]

Commission Order No. PSC-96-1241-FOF-WS approved the transfer in this case. OPC seems to interpret the Order as suggesting that if used and useful adjustments may be made in the future, that alone justifies not granting a negative acquisition adjustment.

[Eg., see Ex. 13, page 5 of the order approving transfer.] In fact, the two regulatory concepts have separate and uniquely different purposes. They are considered at different times and under different circumstances.

A negative acquisition adjustment is considered at the time of transfer and requires that extraordinary circumstances be found for taking the extreme step of permanently reducing the net original cost as rate base. A used and useful adjustment is used in a rate case for temporarily removing from rate base certain assets which are not currently used and useful in providing utility service to the customers. The two regulatory concepts perform different functions at different times. [Tr. 343-344, Seidman Rebuttal Testimony page 28, line 22 to page 29, line 18.]

In response to questions from PSC Staff, Mr. Seidman agreed that used and useful adjustments reduce the rate base amount, and Wedgefield's rate base amount would be reduced if used and useful adjustments were applied. [Tr. 394, lines 5-18.] Used and useful adjustments would be expected to be made in regard to Wedgefield's rate base, just as used and useful adjustments were made to the Econ rate base. [Tr. 394, line 19 to Tr. 395, line 2.] Wedgefield's rate base amount in its next rate case would be whatever is used and useful of the net assets at the time of the rate case. The adjustments would be made similarly to the adjustments that were made in the Econ rate case. By the time the next rate case comes up, the $2.8 million would be lower anyway due to accumulation of more depreciation and an addition of more CIAC

(assuming no other assets are added). [Seidman, Tr. 395, lines 3-18.]

In the negotiations to acquire the utility, the purchaser discussed the used and useful condition of the utility. [Tr. 395, lines 19-25.] But the purchase price is negotiated and many factors would be considered [Seidman, Tr. 396, lines 14-15.]

The used and useful factors are there for ratemaking purposes, which come later. It is only to be considered when revenue requirements are being determined. [Tr. 396, lines 1-8.]

Wedgefield has already spent about $108,000 on improvements, including $29,000 to redo the master lift station; between $8,000 and $9,000 on repainting the tanks and the major equipment at both the water and wastewater sites; $25,000 to replace both blowers at the wastewater plant; a net of about $8,000 ($38,000 less about $30,000 credits) to install mains in Block 40 (to correct work which the developer had someone do, but improperly); and $7,800 to replace the driveway at the wastewater plant. There was another $15,000 spent so far on the engineering application for the wastewater treatment expansion, but that's for future work. [Tr. 396, line 16 to Tr. 398, line 4.]

Mr. Seidman described the growth potential as "medium": if they get 50 additions a year they would be doing well. [Tr. 398 lines 5-13.] In February, 1995, at the time of the correspondence from Econ's president to Mr. Ispass, the utility had approximately 700 customers. [Composite Ex. 8, ltr. dtd 2/27/1995, Mr. Blake to Mr. Ispass, para. 2; See also, Mr. Seidman's testimony, Tr. 404,

line 17 to Tr. 406, line 9.]

Staff requested that Mr. Seidman prepare a Late Filed Exhibit 18, showing a comparison of the per customer operating costs. The exhibit was prepared and filed. OPC filed an objection and Wedgefield filed a response and motion. As of this writing, no ruling has been entered on that matter. Therefore, the observation is merely made here that Late Filed Exhibit 18 (showing that the per customer operating costs were lower under Wedgefield), confirmed the testimony of Mr. Wenz and Mr. Seidman that they both expected the operating costs under the new owner to be lower than the operating costs under Econ.

Mr. Seidman confirmed that the transfer between Econ and Wedgefield was not a non-taxable exchange, and Wedgefield's purchase of the Econ system was an arms-length transaction. [Tr. 402, line 21 to Tr. 403, line 18.]

Mr. Seidman was also asked, "In your opinion was Wedgefield's purchase of the Econ system prudent?" After first responding "Yes", Mr. Seidman acknowledged that he didn't know what Wedgefield considered in the decision to purchase the system, and he couldn't answer for them. [Tr. 403, line 19 to Tr. 404, line 3.] Just because this is a regulated utility, there is no guarantee that the purchase will be a good investment.

In contrast, the question was not asked of Mr. Seidman whether the purchase was prudent from the customers' perspective. However, that question was answered by the Customer Witness, Mr. Nathan, speaking on behalf of the customers:

> Do the residents of Wedgefield want the sale reversed? No. As we said, we have confidence. They have demonstrated a willingness, the new company, to improve the area, you know, do the necessary improvements to it. . . . [Nathan, Tr. 75, lines 7-11.]
>
> * * *
>
> We do not wish to stop the transfer of the utility to Wedgefield Utilities Incorporated, and [we] support their efforts to invest in improvements. [Nathan, Tr. 77, lines 6-8.]

That question was also answered by the Commission in its approval of the transfer in Order No. PSC-96-1241-FOF-WS:

> Because Wedgefield will have the benefit of Utilities, Inc's extensive operating experience and financial resources, we believe that it has the technical and financial ability to assure continued service to customers of ECON. [96 FPSC 10:88]
>
> * * *
>
> Because of the foregoing, we find the transfer . . . from Econ to Wedgefield is in the public interest and it is approved. [96 FPSC 10:89]

The only mention made in Mr. Larkin's prepared testimony regarding "extraordinary circumstances" was that he believed the purchase price was an extraordinary circumstance. [Tr. 343, Seidman Rebuttal Testimony page 28, lines 4-8, commenting on Tr. 266, Larkin Direct Testimony page 2,lines 12-14; Cf., Attachment "A", Comments on Prior Commission Orders.]

Mr. Larkin's testimony does not identify any "extraordinary circumstance" justifying a negative acquisition adjustment in this case. [Tr. 343-344, Seidman Rebuttal Testimony page 28, line 1 to page 29, line 22.]

No evidence was presented to show extraordinary circumstances

was taken warranting an acquisition adjustment for ratemaking purposes, and none should be made. [Tr. 349, Seidman Rebuttal Testimony page 34, lines 2-5.]

Mr. Nathan stated that he felt a number of items inflated Econ's costs, [Tr. 81, lines 11-18.] That testimony refers to the operating costs of the seller and ignores the testimony of Mr. Wenz regarding reduced costs of the purchaser. Late Filed Exhibit 18 also confirms the testimony of Mr. Wenz that the customers benefit from lower costs (which include lower management fees) under the new owner.

ISSUE 4: How should the Commission treat the contingent portion of the purchase price for rate base purposes?

*****It has no effect on rate base.*****

Based upon the discussion of the purpose and effect of acquisition adjustments elsewhere in this Brief, there is no relationship between a contingent portion of the purchase price and an acquisition adjustment. It has no effect on rate base.

Furthermore, the addition to the service area in the Reserve (formerly known as The Commons) is neither speculative nor unlikely to occur. It is already under construction, and several customer witnesses expressed concern about what impact that construction might have on rates. The utility purchase agreement requires contingent payments to be made as soon as each new home is hooked up [Exhibit 11, Application Exhibit B, Purchase Agreement, page 6]. Therefore, concern about "uncertainty" or "speculation" about whether payments will be made is unwarranted. [See also, Seidman, Tr. 367, line 12 to Tr. 368, line 10.]

ISSUE 5: What is the net book value for the water and wastewater systems?

*****As of the date of the transfer, the net book values for the water and wastewater systems are $1,462,487 and $1,382,904, respectively. *****

The net book value of the assets is not in dispute. The CIAC is properly accounted for, the depreciation is properly accounted for, and the net book value is $2,845,391. This agrees with the amounts in the Staff audit ($1,462,487 water plus $1,382,904 wastewater equals $2,845,391). Wedgefield agrees with the Staff audit and OPC takes no exception to it. [Tr. 27, line 24 to Tr. 275, line 8; Tr. 166-168, Wenz Direct Testimony page 3, line 17 to page 5, line 1; Ex. 10.]

ISSUE 6: Should a negative acquisition adjustment be included in the rate base determination, and if so, what is the appropriate amount?

*****No. A negative acquisition adjustment is neither appropriate nor authorized in this case.*****

The Commission's policy is that "absent extraordinary circumstances, the purchase of a utility system at a premium or discount shall not affect rate base." [Tr. 318, Seidman Rebuttal Testimony page 3, lines 14-19.] The burden of proof rests with the party requesting an acquisition adjustment. [Tr. 345, Seidman Rebuttal Testimony page 30, lines 1-10.]

The only proponent of an adjustment in this case is OPC. No evidence has been presented to show extraordinary circumstances warranting an acquisition adjustment. [Tr. 349, Seidman Rebuttal Testimony page 34, lines 1-5.] OPC has shown only a general dissatisfaction with existing Commission policy. [Tr. 344, Seidman

Rebuttal Testimony page 29, lines 18-22.]

No acquisition adjustment should be made to rate base.

ISSUE 7: What is the rate base for the water and wastewater systems, for the purposes of this transfer?

*****The rate base amount should match the net book value of the required assets. Wedgefield accepts the results of the Staff Audit that the rate base for the purposes of this transfer is $1,462,487 and $1,382,904, for the water and wastewater systems, respectively.*****

Utilities, Inc. agrees with the Commission Staff audit finding that the rate base of the utility at the time of transfer was $1,462,487 for the water system and $1,382,904 for the wastewater system, for a combined rate base of 2,845,391. [Tr. 166, Wenz Additional Direct Testimony page 3, lines 17-25; Commission Order No. PSC-96-1241-FOF-WS, page 4.]

These amounts do not reflect any used and useful or other ratemaking adjustments such as an allowance for working capital. [Tr. 167-168, Wenz Additional Direct Testimony page 4, lines 2-8, and page 4, line 21 to page 5, line 1.]

The Staff audit was prepared by Ms. Kathy Welch, a CPA and audit supervisor who has been an employee of the Commission for 19 years. She participated extensively in all four of the Commission audits of Econ. Based on the audits and on her knowledge of the system and its records, she concluded that, for purposes of the transfer, water rate base is $1,462,487.37 and wastewater rate base is $1,382,904.13, and these amounts are supported by invoices. [Welch, Tr. 147, lines 8-19.]

Mr. Larkin asserted that the rate base should be set at the

"value" of the assets which he implies is represented by purchase price. Mr. Larkin further asserted that the seller argued that the value of the assets was the selling price when it attempted to reduce its property taxes. [Tr. 252-254, Larkin Direct Testimony page 6, line 19 to page 8, line 17.] Both of these arguments are irrelevant to the Commission for setting rate base. Under the ratemaking authority granted this Commission in Section 367.081, Fla. Stat., it must set rates based on cost, specifically, the original cost of the utility property when first dedicated to public service. This has been the law since 1971. The Commission recognized this interpretation of the law in its investigation Order No. 25729. [Tr. 323, line 7 to Tr. 326, line 17.]

ISSUE 8: Who bears the burden of proving whether an acquisition adjustment should be included in the rate base?

*****Commission Order Nos. 23376 issued 8/21/90 and 25729 issued 2/17/92, require that the proponent of an acquisition adjustment, either negative or positive, bears the burden of proof. OPC, the only proponent of an acquisition adjustment in this case bears the burden of proof. The dissent in Order No. PSC-96-1241-FOF-WS agrees.*****

Rule 25-30.037(2)(m), F.A.C., Application for Authority to Transfer, sets forth what a utility must file with the Commission when it seeks authority for a utility transfer. The rule requires that an application for transfer must include:

> (m) a statement setting out the reasons for the inclusion of an acquisition adjustment, if one is requested; . . . [Emphasis added.]

Therefore, if, and only if, a utility is seeking an acquisition adjustment, it must justify the adjustment. The rule

does not require the utility applicant to allege or prove why an acquisition adjustment requested by someone else should not be granted by the Commission. There is no rule, statute or order placing the burden of proof on anyone other than the proponent of the acquisition adjustment.

Therefore, the Office of Public Counsel, which is the only entity requesting an acquisition adjustment in this case, bears the exclusive burden of proof to show why a negative acquisition adjustment should be granted. To do otherwise would require the non-requesting party to prove a negative of something for which they are not a proponent and have not requested in the first place.

At the hearing, one hundred prior orders of the Public Service Commission were given official recognition. Exhibit 6 is a list of the orders submitted by Commission Staff. [Tr. 110, lines 13-15.] Exhibit 7 is the list of orders submitted by Wedgefield Utilities. [Tr. 116, lines 5-10. See also, Tr. 125, line 1 to Tr. 126, line 7.] The orders are part of the record in this case. [Section 120.57(1)(f), Fla. Stat.]

Although the motion to file supplemental direct testimony of Mr. Seidman discussing the facts of the cases was denied [Tr. 130, line 11], it was stated several times that the material therein could be used in the brief:

> I agree that . . . the orders are in the record now pursuant to the request for official notice. They can be used in the briefing. That was also mentioned in the Order [denying the motion to file supplemental testimony]. [Statement by Staff Counsel. Tr. 127, lines 8-11.]

* * *

> . . . in reading the testimony it seems to me the same arguments can be made in the brief. That's where you make these arguments. [Statement by Commissioner. Tr. 129, lines 6-9.]

Accordingly, Attachment "A" to this Brief is a condensed version of points made in the requested supplemental testimony, accompanied by a motion to file post-hearing pages in excess of the number provided by Rule 25-22.056(1)(d), F.A.C.

The Commission's policy is clear that the burden of proof rests solely with the party requesting an acquisition adjustment, whether positive or negative, and that party must show that extraordinary circumstances exist. [Tr. 345, Seidman Rebuttal Testimony page 30, lines 6-10.]

ISSUE 9: Must extraordinary circumstances be shown in order to warrant rate base inclusion of an acquisition adjustment?

> *****Yes. The Commission must comply with its own Order Nos. 23376 (8/21/90) and 25729 (2/17/92), which confirmed the requirements for acquisition adjustments. Generic proceedings confirmed prior case-by-case development of the requirement that extraordinary circumstances must be shown before an acquisition adjustment is warranted. The dissent agrees in Order No. PSC-96-1241-FOF-WS.*****

The current Commission policy regarding acquisition adjustments, which has been in effect at least since 1983, is that "absent extraordinary circumstances, the purchase of a utility system at a premium or a discount, shall not affect rate base." [Tr. 318, Seidman Rebuttal Testimony page 3, lines 14-23.]

The Commission's policy is clear that there will be no acquisition adjustment for ratemaking purposes, absent

extraordinary circumstances. [Tr. 345, Seidman Rebuttal Testimony page 30, lines 4-6; See also, Attachment "A", Comments on Prior Commission Orders.]

All the arguments set forth by Mr. Larkin have been made before and have been rejected by this Commission in generic proceedings. [Seidman, Tr. 353, lines 9-12. See also, Order No. 23376 issued 8/21/90 and Order No. 25729 issued 2/17/92.]

In this case, there was nothing extraordinary about Econ Utility or the circumstances leading up to its purchase; the utility and the circumstances surrounding the purchase were pretty much like those of the other utility systems which Utilities, Inc. has purchased in Florida. [Tr. 174, Wenz Additional Direct Testimony page 11, lines 17-21.] OPC is just re-arguing the OPC position rejected by the Commission in Order No. 25729. [Tr. 339, Seidman Rebuttal Testimony page 24, lines 7-9.]

Contrary to the testimony of Mr. Larkin, the utility will not be allowed to recover a return on assets which do not exist. Clearly, the assets do exist. They didn't disappear when ownership changed. [Tr. 339, Seidman Rebuttal Testimony page 24, lines 11-16.] [See also, Tr. 263, Larkin Direct Testimony page 17, lines 13-17.]

A negative acquisition adjustment is an across the board write-down, without the benefit of exploring the condition and functions of plant, item by item, the underlying circumstances, and without the ability for reversal if any circumstance is corrected. [Tr. 344, Seidman Rebuttal Testimony page 29, lines 13-18.]

Mr. Larkin's testimony does not make a case for extraordinary circumstances. He has only shown general dissatisfaction with Commission policy. [Tr. 344, Seidman Rebuttal Testimony page 29, lines 18-22, commenting on Tr. 266, Larkin Direct Testimony page 20, lines 1-20.]

For ratemaking purposes, the proper way to address any inadequate plant condition, if one exists, is in rate case adjustments for prudency and used and useful. [Tr. 344, Seidman Rebuttal Testimony page 29, lines 6-8.]

III. CONCLUSION -

Rate base for purposes of the transfer is $1,462,487 for water and $1,382,904 for wastewater.

The burden of proof is always on the proponent of an acquisition adjustment (whether positive or negative) to show why one should be granted.

Extraordinary circumstances must be shown to warrant an acquisition adjustment, and none were shown to exist in this case. Therefore, established Commission policy requires that no acquisition adjustment be included in the rate base calculation.

ATTACHMENT "A"

Comments on Prior Commission Orders -
Brief of Wedgefield Utilities, Inc.

As requested by Wedgefield Utilities at the hearing on March 19, 1998, the Commission took official notice of 100 prior decisions of the Commission involving acquisition adjustments. Each of the first 99 orders from January, 1988 through December, 1997, were identified as Case No. 1 through Case No. 99 at the top right corner on the first page thereof. These 99 orders were reviewed for applicability, and they make up the statistics for the various categories of orders discussed below. One subsequent order from 1982 (prior to the 10-year period) was found and added to the list as Case No. 0, and it will be discussed separately.

These 100 Commission orders are evidence and are part of the record. [Section 120.57(1)(f), Fla. Stat.; Tr. 114, lines 9-20.] A list of all 100 orders is contained in Exhibit 7. [Tr. 116, lines 5-10.]

The orders which discussed the reasons for deciding a case on acquisition adjustments are set forth below under these headings.

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The review was limited to the ten year period beginning January, 1988, through December, 1997, because current Commission policy was established in generic proceedings by two orders, PAA Order No. 23376, issued 8/21/90 and Final Order No. 25729, issued 2/17/92. The two year period 1988-1989 leading up to the first formal, generic statement of Commission policy in 1990 was included as an indication of how policy was being established on a case-by-case basis. The rest of the orders indicate how the Commission addressed the acquisition adjustment issue after it had formally established its policy on a generic basis.

Despite this long history of the burden of proof always being on the proponent of an acquisition adjustment, Issue No. 8 in the Prehearing Order No. PSC-97-0952-PHO-WS raised the question of "who has the burden of proof" on acquisition adjustments. Based on a survey of all of the water and wastewater orders the Commission issued from 1988 through 1997, and a review of the Commission's decisions in those orders that address acquisition adjustments, the proponent, and <u>only</u> the proponent, of an acquisition adjustment, whether positive or negative, bears the burden of proof. In this case, that is OPC and <u>only</u> OPC.

Issue No. 8 reads, "Who bears the burden of proving whether an acquisition adjustment should be included in the rate base?"

The Staff position was stated in the Order:

> Rate base inclusion of an acquisition adjustment changes rate base and will ultimately affect the utility's rates. While the burden of going forward with the evidence as to the issue of rate base inclusion of an acquisition adjustment may shift in any

particular case, the ultimate burden of proof remains on the applicant utility. [Emphasis added.]

Staff has taken a position on burden of proof, without support of its own testimony and after all testimony deadlines had passed, that is contrary to established Commission policy.

Wedgefield petitioned this Commission to approve the transfer of the water and wastewater certificates of Econ Utilities Corporation to Wedgefield. The Commission approved the transfer and, in a proposed agency action (PAA), established the rate base at the time of transfer as the net original cost of the plant of the selling utility. No acquisition adjustment was requested, and in accordance with Commission policy, in the absence of extraordinary circumstances, none was included in rate base. In other words, the Commission ruled that rate base was not affected by the transfer.

The Office of Public Counsel (OPC) protested the PAA, specifically with regard to the lack of an acquisition adjustment. In presenting its case, Wedgefield directed its testimony to stating Commission policy, establishing that Wedgefield, acting within that policy, had not requested an acquisition adjustment, and to rebutting OPC's testimony regarding extraordinary circumstances and other claims.

In other words, Wedgefield relied upon prior Commission policy that, because it had not requested an adjustment, the burden was on the proponent of the requested acquisition adjustment, OPC, to prove why one should be included. The Staff position, expressed in

response to Issue No. 8, contravenes Commission policy and seeks to place the burden on the utility to prove a negative - that extraordinary circumstances do not exist, and why it is not appropriate to adjust rate base to something other than original cost.

Wedgefield had no reason to believe that it carried any burden of proving why a negative acquisition adjustment should not be included in rate base. In fact, one Commissioner dissented from the majority decision in the PAA regarding the acquisition adjustment but expressed his disagreement with current Commission policy on negative acquisition adjustments and burden of proof. The dissent's reaffirmation of current Commission policy also reaffirmed Wedgefield's understanding of that policy.

The dissent specifically stated:

> Under the current Commission policy, the Commission does not place the burden of proof on the utility to identify extraordinary circumstances. The only 'burden' is on the utility to identify such circumstances if they want the acquisition adjustment recognized." [Emphasis added.]

Wedgefield subsequently requested a full Commission hearing because it appeared that the case might be construed to involve a change in regulatory policy. However, the Commission denied that request. The clear indication to Wedgefield was that "policy change", including burden of proof, was not an issue. But the Staff's position, raised in the prehearing order process, to shift the burden to the utility to prove why no adjustment to rate base is appropriate, would result in a significant change in policy.

Wedgefield strongly disagrees with the Staff's position, but since that position is not supported by Staff testimony, Wedgefield has no opportunity to cross-examine Staff or otherwise rebut it. Therefore, Wedgefield filed a motion to file supplemental testimony to address this matter, but the Prehearing Officer denied that motion. The Commission panel denied Wedgefield's motion for reconsideration.

The Staff's position does not make sense. The premise for that position is that "Rate base inclusion of an acquisition adjustment changes rate base and will ultimately affect the utility's rates." (Emphasis added). But since Wedgefield did not request the inclusion of an acquisition adjustment, it has done nothing that will result in a change to rate base or rates.

Furthermore, what is a utility supposed to prove? Is the burden on the utility to prove why it is not changing rate base and rates? If so, how? Or is the burden on the utility to prove why it is following established Commission policy? Again, how? What are the standards of proof? What is the procedure to be followed if an applicant is to be required to prove a negative? There are no such Commission standards or procedures established for Wedgefield, or any other utility, to follow in a circumstance like this.

The best way to understand the Commission's policy on burden of proof is to review the orders of the Commission in previous cases which addressed acquisition adjustments. Is there some guidance as to what, if anything, the Commission has previously

required of a utility as proof that extraordinary circumstances do not exist and that no adjustment is appropriate? By comparing Wedgefield's situation with those circumstances, it is evident that there is no authority in prior cases for this change of policy.

Acquisition adjustments are not a new issue for the Commission. It cannot now just take action in a vacuum in the Wedgefield case, as if the subject had never been considered before. If Wedgefield had the burden to prove something, it should have the right and the ability look at statutes, rules or orders for guidance. With the exception of Rule 25-30.037(2)(m), F.A.C., Application for Authority to Transfer, the only official position taken by the Commission on this subject is in its orders.

During the ten-year period for which Commission orders were reviewed there were 99 orders, including the PAA in this case, which addressed acquisition adjustments. Of those, 31 specifically addressed negative acquisition adjustments, 33 specifically addressed positive acquisition adjustments, and 35 others appear from the discussion to address positive acquisition adjustments, but that fact was not specifically stated in the orders.

A. NEGATIVE ACQUISITION ADJUSTMENTS (NAA)

Of the 31 orders which addressed negative acquisition adjustments, only three orders included an adjustment in rate base. Of the remaining 28 orders in which a negative acquisition adjustment was not included in rate base, twelve of them relied solely on a statement of the Commission's acquisition adjustment policy as the reason for not including an acquisition adjustment in

rate base. The policy statement in each of those orders was the same as or similar to the language in other orders addressing either positive or negative acquisition adjustments. For example, Order No. 19163 (identified as Case No. 3) reads:

> In the absence of extraordinary circumstances, Commission policy is that the purchase of a utility at a premium or discount shall not effect the rate base calculation. The circumstances in this transfer are not unusual or extraordinary; therefore, no positive acquisition adjustment is included in rate base. Further, the Applicants did not request that an acquisition adjustment be included in rate base. [Emphasis added.]

The remaining 16 orders which did not include a negative acquisition adjustment in rate base did contain some additional discussion (either in the majority opinion or the dissent) that gave some insight into the Commission or Commissioner's reasoning for their decisions in those cases. See Ex. 7, Case Nos. 16, 19, 43, 47, 50, 53, 55, 59, 63, 65, 76, 77, 78, 83, 89 and 91.

B. ORDERS EXPLAINING WHY NO NAA

The following paragraphs summarize each of the 16 orders discussing why a negative acquisition adjustment was not included, and then relate those comments to Wedgefield's situation. This will determine if the orders provide guidance in this case regarding what is necessary to prove to show that rate base not be altered by a negative acquisition adjustment. Each order is identified by its case number (from No. 1 to No. 99).

Case No. 16 was a transfer case between Utility Systems, Inc. and Sunshine Utilities. The purchase price was less than rate

base, but the Commission did not include a negative acquisition adjustment in rate base. The Commission indicated that in other orders related to a negative acquisition adjustment, it had considered whether the system was in such poor condition that it needed replacing and whether the purchase was prudent in light of such factors as jurisdictional status, growth potential and per-customer operating costs.

There was nothing in the order suggesting that it was the utility's burden to prove whether or not these conditions existed or whether they were or were not extraordinary circumstances.

Nevertheless, in Wedgefield's case, the system does not require replacing, the jurisdictional status is known, there is growth potential, and the company has indicated that the system will benefit from certain economies under new ownership. The Wedgefield transfer meets the conditions considered in the Utility Systems, Inc. order. Therefore, there is no basis in these factors for including a negative acquisition adjustment in Wedgefield's rate base or for a change in the burden of proof.

Case No. 19 was a rate case for the Marion County division of Southern States Utilities. In a previous docket for transfer of this utility, the Commission had decided not to include a negative acquisition adjustment. At issue in this case was whether to reverse that ruling based on the testimony in the current record.

The OPC witness testified that the Commission should change its policy and shift to the utility the burden of proving that an adjustment not be included, and why, without an adjustment,

customers would pay a return on the previous owner's rate base plus a return on SSU's improvements.

The SSU witness testified that a negative adjustment should not be included because the customers would benefit by SSU's ability to attract capital at a lower cost and by economies of scale and managerial and operational expertise. He also testified that the revenue requirement associated with the net original cost of the system would be no more than under the previous ownership.

The Commission noted that any improvements that had to be made were in the public interest and that there was no new evidence presented on which to alter its previous decision. The arguments made OPC in the SSU-Marion County case, and rejected by the Commission, are the same arguments made now by OPC in the Wedgefield case. OPC's arguments are the same, its conclusions are still incorrect, and the benefits discussed in that order also accrue to Wedgefield's customers.

The response to OPC's arguments and a discussion of the benefits to Wedgefield's customers was included in testimony by Wedgefield's witnesses, Mr. Seidman and Mr. Wenz. The SSU-Marion County case supports Wedgefield's position that the Commission policy is, absent extraordinary circumstances, not to include a negative acquisition adjustment in rate base and that the burden of proof is on the proponent of an adjustment.

Case No. 43 involved a transfer from Grand Terrace to SSU. The purchase price was approximately 40% of rate base. OPC argued that no incentive to purchase the system was necessary because the

utility was not having any problems. But the Commission responded that its policy on acquisition adjustments did not require the seller to prove hardship. OPC also argued that the seller would show the below-cost sale as a loss on its tax return. The Commission ruled the tax treatment of the seller was irrelevant. In addition, OPC argued that rate base should equal the original cost at the time the assets were dedicated to public service. The Commission agreed with the principle of rate base equal to original cost, but not with OPC's interpretation of when the assets were dedicated to public service. In accordance with Commission policy, a negative acquisition adjustment was not included in rate base.

The Grand Terrace case provides some guidance for the Wedgefield case with regard to the OPC's and the Commission's agreement that rate base recognize the original cost of assets at the time they are dedicated to public service. This is consistent with the Commission's ruling in Order No. 25729 (issued some 16 months following the order in the Grand Terrace case) concluding its investigation and confirming its acquisition adjustment policy.

Wedgefield and the PSC Staff have presented testimony establishing net original cost as rate base. The Grand Terrace case also provides guidance as to what Wedgefield does not have to prove - hardship on the part of the seller. The Grand Terrace case supports Wedgefield's position that the Commission policy is, absent extraordinary circumstances, not to include a negative acquisition adjustment in rate base and that the burden of proof is on the proponent of an adjustment.

Case No. 47 was a transfer from Springside, Inc. to Springside at Manatee. The purchase price was at 12% of rate base. In accordance with its policy, the Commission did not include a negative acquisition adjustment in rate base. The Commission stated that, although a large negative acquisition adjustment resulted, the circumstances did not appear to be extraordinary.

The Springside case provides guidance in that OPC has alleged that a large differential between purchase price and rate base is an extraordinary circumstance. The Springside order does not find a purchase at 12% of rate base to be extraordinary. The Wedgefield differential is not nearly as great as in Springside. Consistent with the Springside order, the Wedgefield price/rate base differential is not extraordinary. The Commission decision in the Springside Manatee case supports Wedgefield's position that the Commission policy is, absent extraordinary circumstances, not to include a negative acquisition adjustment in rate base. There is nothing in this case suggesting there was any burden on the utility to prove why a negative acquisition adjustment should not be included.

Case No. 50 was a transfer from Pine Harbour to Pine Harbour Water Utilities at a price less than rate base. In accordance with its policy, the Commission did not include a negative acquisition adjustment. No additional explanation was given. One Commissioner dissented, asserting that there was no evidence to support the Commission's decision and that the utility should bear the burden of proving why an adjustment should not be included. He also

stated that a negative acquisition adjustment may not be proper in all cases, but the dissenting opinion provided no indications of what situations may be proper.

This case does not provide any guidance to Wedgefield beyond the oft-stated Commission generic policy, nor is there anything in this case suggesting there was any burden on the utility to prove why a negative acquisition adjustment should not be included.

Case No. 53 was a Staff Assisted Rate Case (SARC) for The Woods, a division of Homosassa Utilities. In that case, due to a lack of original cost documentation, the original cost was determined by a Staff-prepared original cost study. The capital structure was composed solely of negative retained earnings. To balance the books, the Commission increased common equity to equal rate base "to reflect the unrecognized negative acquisition adjustment resulting from the purchase of this utility at a discount."

One Commissioner dissented, stating that because the case involved an initial determination of rate base, the purchase price was superior to an engineering estimate. He also stated that the Commission's acquisition adjustment policy was incentive-based, and that since the original cost study was performed after the purchase, there is no evidence that an incentive was needed in the acquisition.

The Homosassa Utilities case provides guidance through both the majority opinion and the dissent. The determination of rate base in the Wedgefield transfer is not an initial determination.

Rate base has been determined by the Commission in an earlier docket. Econ Utilities was purchased by Wedgefield with full knowledge of the Commission's acquisition adjustment policy, and Wedgefield took that policy into consideration, as an incentive, in making the purchase.

The stated concerns of the dissent in the Homosassa case are not applicable to the Wedgefield application. The Homosassa case is supportive of Wedgefield's position that a negative acquisition adjustment not be included in rate base. Also, there is nothing in that case suggesting there was any burden on the utility to prove why a negative acquisition adjustment should not be included.

Case No. 55 was a transfer from Hideaway Services to FIMC Hideaway resulting from a foreclosure. The purchase price was less than rate base. In accordance with PSC policy, a negative acquisition adjustment was not included in rate base. No further explanation was given.

One Commissioner dissented, stating that there was no indication an incentive (i.e., no negative acquisition adjustment included in rate base) was needed or that the buyer was even aware of the Commission's policy on acquisition adjustments. Wedgefield was aware of Commission policy, which was a major consideration in Wedgefield's purchase.

The dissent in the FIMC Hideaway case also noted that the previous owner had failed to maintain the system, that the new owner would have to spend considerable amounts to bring the system into compliance and the customer would "pay twice."

In that case, the Commission specifically noted that, even though the previous owner had failed to maintain the system properly and the new owner had to make considerable expenditures to bring the system into compliance, these events did not appear to be extraordinary.

Similar allegations have been made by OPC in the Wedgefield case. The rebuttal testimony by Mr. Seidman responded to those allegations, and the allegations are neither correct nor applicable. Nevertheless, relying on the FIMC Hideaway decision, even if such allegations relating to maintenance were correct in the Wedgefield case, they do not constitute extraordinary circumstances and are not a basis to include a negative acquisition adjustment in rate base.

Contrary to the dissent's statement, the customers would not have to "pay twice". As long as accounting and ratemaking treatment is consistent, regardless of ownership, the customers pay only for the legitimate cost of assets and expenses incurred and actually paid in their behalf. By <u>not</u> including a negative acquisition adjustment in rate base, neither the rate base nor the rates to customers are affected by the transfer.

Customers will not pay for anything under the new ownership that they would not have been required to pay for under prior ownership. The transfer is customer-neutral, except for the forthcoming <u>benefits</u> to the customers summarized in testimony by Mr. Wenz.

The FIMC Hideaway case is supportive of Wedgefield's position

that the Commission policy is, absent extraordinary circumstances, not to include a negative acquisition adjustment in rate base and that the burden of proof is on the proponent of an adjustment.

Case No. 59 was a transfer of assets from San Pablo to Jacksonville Suburban (Jax). Jax had requested that a negative acquisition adjustment not be included in rate base. The Commission agreed, noting that Jax had made improvements in the system and in its management. Wedgefield also has made improvements to the system it purchased and in the management of that system.

The Jacksonville Suburban case is supportive of Wedgefield's position that a negative acquisition adjustment not be included in rate base. Additionally, there is nothing in this case suggesting there was any burden on the utility to prove why a negative acquisition adjustment should not be included.

Case No. 63 was a transfer of assets from Countryside to Pennbrooke Utilities. The sale was a result of a bankruptcy and foreclosure. In accordance with its policy, the PSC did not include a negative acquisition in rate base. One Commissioner dissented, but gave no reasons in his dissent that would provide guidance. There is nothing in the case which provides any guidance, other than generic policy. Additionally, there is nothing in that case suggesting there was any burden on the utility to prove why a negative acquisition adjustment should not be included.

Case No. 65 was the SSU/Deltona rate case, concluded in 1993.

In its post-hearing brief, OPC had argued that a negative acquisition adjustment be included in rate base. However, it did not specify the adjustments nor did it sponsor or solicit any evidence at hearing supporting its position. The SSU/Deltona case supports Wedgefield's position that the Commission policy is, absent extraordinary circumstances, not to include a negative acquisition adjustment in rate base and that the burden of proof is on the proponent of an adjustment.

Case No. 76 was a case establishing rate base in the transfer from Lake Placid to Lake Placid Utilities, Inc. That system was purchased out of bankruptcy by a subsidiary of Utilities, Inc. at a price less than rate base. In accordance with Commission policy, rate base did not include a negative acquisition adjustment. One Commissioner dissented, but gave no guidance.

That case supports Wedgefield's position that the Commission policy is, absent extraordinary circumstances, not to include a negative acquisition adjustment in rate base. There is nothing in this case suggesting there was any burden on the utility to prove why a negative acquisition adjustment should not be included.

Case No. 77 was the transfer of Lakeside Golf to SSU at a price of approximately 40% of rate base. In accordance with its policy, the PSC did not include a negative acquisition in rate base.

The Commission noted there were no major service problems, no extraordinary circumstances, and that SSU uniform rates would be lower than the stand-alone rates would have been under the prior

owner, had the prior owner been charging for service. SSU, in support of its position that a negative acquisition adjustment was inappropriate, stated that, as a starting point in its purchase negotiations with the seller, it had calculated rate base as if used and useful adjustments had been made. It argued that to reduce rate base by a negative acquisition and then apply used and useful adjustments in the future would be double counting. In the Wedgefield PAA, the Commission did mention that it considered the likely impact of used and useful adjustments.

There is no indication in the SSU order that SSU's argument was a factor in the Commission's decision. Although no estimate of used and useful adjustments has been made for Wedgefield, SSU was correct that to include both a negative acquisition adjustment and used and useful adjustments on the same plant is double counting.

There need not be any correlation between used and useful rate base and purchase price. The Commission, in an earlier order (see Case No. 47) indicated that price/rate base differential is not an extraordinary circumstance. Although estimated used and useful may be a factor considered by a potential purchaser in its negotiations, used and useful adjustments are never a factor in calculating rate base for purposes of a transfer. They will be a factor in any rate case, but the calculation of used and useful is not dependent on who owns the system.

The SSU/Lakeside Golf case supports Wedgefield's position that the Commission policy is, absent extraordinary circumstances, not to include a negative acquisition adjustment in rate base. There

is nothing in this case suggesting there was any burden on the utility to prove why a negative acquisition adjustment should not be included.

Case No. 78 involved a transfer of assets from Lake Utilities, LTD to SSU. That case is similar to Lakeside Golf in Case No. 77. As a starting point in its negotiations, SSU had calculated rate base as if used and useful adjustments had been made and argued that to reduce rate base by a negative acquisition adjustment and then apply used and useful adjustments in the future would be double counting.

In accordance with its policy, and without further explanation, the Commission did not include a negative acquisition adjustment in rate base. One Commissioner dissented, without opinion. There is nothing in this SSU/Lake Utilities, LTD case suggesting there was any burden on the utility to prove why a negative acquisition adjustment should not be included. The case provides no other guidance, other than generic policy.

Case No. 83 involved a transfer of assets from Tamiami Village Utility to Tamiami Village Water. The purchase price was approximately 41% of rate base. In accordance with its policy, the Commission did not include a negative acquisition adjustment in rate base. The order provided no other basis for the decision.

One Commissioner dissented on the basis that the Commission policy was supposed to be an incentive, but this buyer was unaware of the policy and misunderstood the purpose of an acquisition adjustment. Wedgefield was aware of the policy, and it was a major

factor in its considerations.

The only guidance from this case is that Wedgefield showed that Commission policy was a factor in its purchase. It has done that in its testimony. There is nothing in this case suggesting there was any burden on the utility to prove why a negative acquisition adjustment should not be included.

Case No. 89 was a full rate case for SSU's PSC regulated systems. In that case, OPC revisited the issue of acquisition adjustment specifically with regard to the purchase of the Lehigh and Deltona systems and with regard to policy in general. It was pointed out by the Commission that both purchases were stock transfers, and acquisition adjustments were not applicable. Nevertheless, the Commission discussed the Lehigh and Deltona purchases and noted that even a showing that Lehigh was purchased at 45% of book value did not demonstrate that extraordinary circumstances exist.

The Commission went on to reaffirm its generic acquisition adjustment policy. The Commission also reiterated its observation that not including a negative acquisition adjustment does no harm to customers, because, generally, rate base and rates do not change and customers often receive a better quality of service.

This case is supportive of Wedgefield's position that the Commission policy is, absent extraordinary circumstances, not to include a negative acquisition adjustment in rate base. The guidance this case provides is that the PSC's policy is still intact and that the differential between rate base and purchase

price does not demonstrate that extraordinary circumstances exist. One Commissioner dissented, restating his basic position but also seeking to distinguished the SSU case because of the issue of uniform rates and the allegation that uniform rates result in a cross subsidy of the effect of no negative acquisition adjustment.

Uniform rates is not a factor in the Wedgefield case, so there are no special issues in the SSU dissent to which to respond. There is nothing in that case suggesting there was any burden on the utility to prove why a negative acquisition adjustment should not be included.

Case No. 91 was a Staff assisted rate case (SARC) for J&J Water and Sewer. The $32,000 system was purchased for one dollar, or .003% of rate base. The Commission noted that circumstances were extraordinary due to the combination of the $1.00 price and the sale of 91 lots to the new owner at a price of $17,500. However, the Commission did not include a negative acquisition adjustment because of other mitigating circumstances.

The seller had filed for abandonment of the utility system, but the abandonment was put off due to the sale of the system. Furthermore, including a negative acquisition adjustment would have resulted in inadequate operating funds and might possibly have triggered another abandonment proceeding.

One Commissioner dissented, asserting that the transfer did not meet the goals of the Commission's policy because there was no incentive involved and because the sale of the utility was a by-product of the sale of the lots; the purchase was not by a large

utility; and the purchaser had no previous experience.

None of concerns in the dissent are factors in the Wedgefield case. The incentive that flows from the Commission's acquisition adjustment policy was a factor for Wedgefield, the purchaser is a large utility, and the purchaser does have utility experience. The dissent's concerns in the J&J Water and Sewer case do provide guidance and are supportive of Wedgefield's position that there are no extraordinary circumstances in this transfer that would warrant including a negative acquisition adjustment in rate base. There is nothing in that case suggesting there was any burden on the utility to prove why a negative acquisition adjustment should not be included.

Case No. 0 was a transfer of San Carlos Utility to RBN (Order No. 11266, issued 10/25/1982). It denied an acquisition adjustment which, although not stated, appeared to be negative acquisition adjustment. The sales agreement contained a provision that the deal would not go through if the rate base were changed by the Commission. The Commission did not include an adjustment, stating that the buyer steps into the shoes of the seller. Any ratemaking adjustments would have to considered in the context of a rate case.

C. SUMMARY OF 16 ORDERS EXPLAINING WHY NO NAA

As a summary of these 16 cases, the following are factors which the Commission considered when ruling not to include a negative acquisition adjustment in rate base:

1. Is the system in such poor condition that it needs replacing? (Case No. 16)

2. Was the purchase prudent in light of jurisdictional status, growth potential and per customer operating costs? (Case No. 16)

3. Are there benefits due to the purchaser's ability to attract capital at lower costs, economies of scale and managerial and operational expertise? (Case No. 19)

4. Is the purchaser making improvements in the public interest? (Case Nos. 19, 59)

At the hearing, Wedgefield provided testimony regarding each of the above considerations, confirming that there are no extraordinary circumstances in this purchase and that, consistent with current Commission policy and with the decisions of the Commission over the last ten years, a negative acquisition adjustment should not be included in rate base, and the burden of proof is on the proponent of the acquisition adjustment.

In addition to the list of factors set forth above, the Commission also found that it was not necessary to show hardship on the part of the seller (Case No. 43), that the purchase price to rate base relationship was not an extraordinary factor (Case Nos. 47, 89), and that the failure of the previous owner to maintain the system (and considerable expenditures by the new owners) were <u>not</u> extraordinary circumstances and were not reasons to include a negative acquisition adjustment in rate base. (Case No. 55).

Additional concerns raised in dissenting opinions were that the purchaser be aware of, and have considered, the "incentive" purpose of the Commission policy (Case Nos. 53, 55, 83); that

uniform rates not result in cross subsidies (Case No. 89); that the purchaser be a large utility with expertise in utility operations (Case No. 91); and that customers not pay for anything twice (Case No. 55).

Regardless of whether these factors were of concern to the majority in any Commission order, Wedgefield has addressed those concerns in this case, confirming that there are no extraordinary circumstances in this purchase and that, consistent with current Commission policy and with the decisions of the Commission over the last ten years, a negative acquisition adjustment should not be included in rate base. Wedgefield believes it has met all the legitimate burdens of proof it may have had in this case.

In the 16 orders which discussed the decision not to include a negative acquisition adjustment, not a single one suggested that the burden of proof was on the purchaser. Otherwise, the purchaser would have to prove a negative. It would have to show why rate base should not be changed by not including a negative acquisition adjustment.

D. NEGATIVE ACQUISITION ADJUSTMENT APPROVED IN JUST 3 CASES

An acquisition adjustment has very rarely ever been approved. Of the 31 cases which specifically addressed the subject, a negative acquisition adjustment was approved in only 3.

Case No. 36 occurred in 1990 and addressed the purchase of the Beacon 21 water and wastewater utility by Laniger Enterprises. In that case, the Commission had, in a PAA, not included a negative acquisition adjustment in rate base. The PAA was protested by OPC.

Eventually, the Applicant and OPC entered into a settlement in which they agreed that rate base be set at the purchase price. In the order accepting the settlement, the Commission noted that the OPC had alleged extraordinary circumstances. The Commission also noted that recognition of acquisition adjustments for ratemaking purposes goes against its established practice. The Commission did not rule on the allegations, but in the absence of any evidence to the contrary, and with the acquiescence of the utility, it approved the settlement.

Because this was a settlement, no issues of fact were addressed. The only guidance is: 1) the Commission's statement that recognition of acquisition adjustments for ratemaking purposes goes against its established practice, and 2) its seeming reluctance to include the adjustment in rate base. This case suggests that the purchaser does not have to prove that not including a negative acquisition in rate base is necessary. Wedgefield has not requested anything that would cause a change to rate base or rates as a result of the circumstances of the transfer.

Case No. 36 was the second of the three cases in which a negative acquisition adjustment was approved. It was a Staff assisted rate case for CGD Corp. which occurred in 1993. In that case, the Commission explained that the transfer involved an extraordinary circumstance and set rate base equal to the purchase price. The Commission identified the following as extraordinary circumstances: 1) it involved a three-party, nontaxable exchange in

which two of the parties, the initial developer and the final utility owner (developer family trust) were considered virtually the same; 2) the developer fully recovered its investment in the utility through the exchange, and 3) without the adjustment, the developer (i.e., the developer family trust) would allegedly double recover its investment.

None of the circumstances in the CGD Corp. case are applicable to Wedgefield. The Wedgefield transfer involved an arms length transaction between unrelated parties. There are no trusts involved. There is nothing in the CGD order that provides guidance in the Wedgefield case.

Case No. 69 was the third and final case in which a negative acquisition adjustment was approved. It was decided in 1993, and involved a rate application for Jasmine Lakes in which the Commission reversed its prior decision in a 1990 transfer case. In the transfer docket (Case No. 44), the Commission, based on its policy, did not include a negative acquisition adjustment. The rate case order stated that OPC had argued that: 1) the utility was in "bad shape" at purchase; 2) the prior owner did not maintain the utility; 3) the prior management was neglectful; and 4) a negative acquisition adjustment would insulate the customers from the failures of prior management. A majority of the Commission agreed with OPC's position that a negative acquisition adjustment was appropriate. The Commission stated that it based its decision on customer testimony, the need for repairs and improvements at the time of transfer, and the lack of responsibility of (prior)

management. Also, the Commission noted that, at the time of transfer, the utility was already purchasing 80% of its water from the county, yet the utility had earned a return on the water plant components for two years.

A different Commissioner dissented from this decision, and stated three reasons: 1) the Commission had already rendered its decision on this issue in a previous order; 2) the OPC witness had testified that the purchase was not extraordinary; and 3) in the absence of extraordinary circumstances, the prior decision should remain undisturbed. That dissent is consistent with the policy and prior decisions of the Commission.

There is one similarity between the circumstances in the Jasmine Lakes case and the Wedgefield case. There is an allegation in the Wedgefield case that maintenance, by the prior management, was done only on an emergency basis and that significant investment may be needed to bring the utility up to standards. Wedgefield's testimony responded to that allegation, and it is addressed in the main body of this Brief.

If the Commission's decision in Jasmine Lakes (Case No. 69, 11/18/93) were to be construed to include the prior owner's failure to maintain the system as a reason to include a negative acquisition adjustment, then such an interpretation would be inconsistent with its decision in the earlier FIMC Hideaway case discussed above (Case No. 55, 1/18/92). Such an inconsistency would leave affected parties with little guidance as to what the policy of the Commission actually is.

The Jasmine Lakes decision (Case No. 69) is more properly construed to prevent full recovery of the costs associated with water plant components in a system for which 80% of the water was being purchased from another utility system while the utility was still receiving revenues as though based on use of its entire system.

There is no similarity at Wedgefield to the Jasmine Lakes situation wherein allegations were made of earning on unused treatment plant while purchasing most of the water from the county. That situation does not exist in this case. There is nothing in Jasmine Lakes order which would support including a negative acquisition adjustment in rate base or of shifting the burden to Wedgefield to prove why a negative acquisition adjustment is not appropriate.

Even if the circumstances in the Wedgefield case were the same as in Jasmine Lakes with regard to alleged failures of the prior owners, the majority's solution in the Jasmine Lakes case cannot be interpreted to mean that prior poor maintenance is an extraordinary circumstance warranting a negative acquisition adjustment.

If the Jasmine Lakes case were to be interpreted to mean that prior poor maintenance by the previous owner were the basis for the Commission's decision, then it would raise the question as to how a utility under the jurisdiction and surveillance of this Commission for many years would be allowed by the Commission to provide allegedly inadequate maintenance and be negligent in its management, without being subject to a show cause order or subject

to investigation and penalty. If that situation were true, the question also would arise as to why the solution to the Commission's own failure to act would be to penalize a new owner (committed to correcting the situation) by assessing a permanent reduction to the new owner's rate base through a negative acquisition adjustment, especially when the asset transfer had already been found to be in the public interest.

The Commission's regulatory and monitoring programs should prevent that level of poor maintenance from happening. The Commission has issued many orders to show cause to utilities for poor maintenance and poor service, but there is no evidence that the Commission issued a show cause order against Jasmine Lakes. (Nor has the Commission issued a show cause order against Econ, which in fact was in compliance with PSC and DEP standards.) Therefore, the Jasmine Lakes case cannot be interpreted as simply standing for the proposition that prior poor maintenance is an extraordinary circumstance warranting a negative acquisition adjustment. Furthermore, such an interpretation of the Jasmine Lakes case would be totally contrary to decisions made in prior case-by-case and generic proceedings before this Commission.

An asset transfer, without an acquisition adjustment, puts the buyer in the shoes of the seller. Therefore, only solutions to problems that would have been applicable to the seller should be applicable to the buyer. If maintenance were inadequate, could the Commission have permanently reduced the rate base of the seller? No, of course not. What it could do, at the time of a rate case,

would be to make used and useful adjustments for plant that is not properly functioning or reduce expenses for ratemaking purposes, if expenses are found to be inappropriate.

If prior owners were found to be negligent, could the Commission permanently reduce the rate base of those owners as a solution? No, definitely not. But it could reduce its allowed rate of return, or adjust allowed management salaries, or even impose a penalty on that management, if the negligence was willful. Even the condition wherein the utility is purchasing most of its water from another utility while still owning a water plant is usually addressed by applying used and useful adjustments or by retiring the plant.

The point is, the Commission cannot do to the buyer what it could not do to the seller. The acquisition adjustment recognizes extraordinary circumstances in a sale, if they exist. It is not an arbitrary punishment to get back at the seller because of perceived misdeeds against which the Commission failed to act in the past. That procedure results in an arbitrary and capricious punishment against the purchaser.

E. SUMMARY OF THE 3 ORDERS EXPLAINING WHY NAA APPROVED

In summary, there is no guidance in these three cases as to what Wedgefield needed to do to prove why it is being consistent with established policy in not requesting an acquisition adjustment to rate base. One of the three cases involved a settlement which resolved none of the facts in that case. Another case involved a three-party nontaxable exchange with unique circumstances that are

not generally applicable and are specifically not applicable to the Wedgefield case. The third case (Jasmine Lakes) involved a reversal of a prior decision, having circumstances unique to that one case among the 100 cases which have dealt with acquisition adjustments, and resulted in apparent inconsistent treatment of the same facts regarding a prior owner's alleged failure to maintain. But as was discussed, there were other factors involved, so the case provides no guidance.

POSITIVE ACQUISITION ADJUSTMENTS

There were 68 orders which deal with, or appear to deal with, purchase prices above rate base (positive acquisition adjustment). Of these, only three had positive acquisition adjustments included in rate base. All but ten of the orders relied solely on a statement of the Commission's acquisition adjustment policy as the reason for not including an acquisition adjustment in rate base.

In general, the ten orders that included some additional support for the decisions, identified the benefits which customers should be expected to receive if a positive acquisition adjustment is included. For the most part, these are the same benefits identified in the two generic orders arising from the investigation of the acquisition adjustment policy. Wedgefield provided testimony describing those benefits which are anticipated to enure to Wedgefield's customers as a result of the change in ownership. Although those benefits are usually considered the justification for increasing rate base through a positive adjustment, Wedgefield's customers will enjoy those benefits without an

increase in rate base.

G. CONCLUSION

Hearing Exhibit 7 is a list of 100 cases which provide a concise history of the Commission consideration of acquisition adjustment issues for the last ten years (including 1 case from 1982). The Commission has rarely ever included an acquisition adjustment, either positive or negative, in rate base. The 3 cases that included a negative acquisition adjustment involve circumstances that were quite unique. The purchase of Econ by Wedgefield is not unique.

In one of the cases reviewed (Jasmine Lakes), the Commission included a negative acquisition adjustment by reversal of a prior order which did not include a negative acquisition adjustment. If all of the factual matters relating to that case were to be construed to be the basis for including a negative acquisition adjustment in rate base, the reasons given would be entirely inconsistent with the Commission's prior decision in the same case, inconsistent with the two decisions rendered in the generic investigation proceedings, and inconsistent with the otherwise consistent policy followed over that ten year period.

There is nothing in the history of acquisition adjustment cases that suggests there was any burden on the utility to prove why a negative acquisition adjustment should not be included in rate base. It has always been the proponent of the adjustment who had to carry the burden.

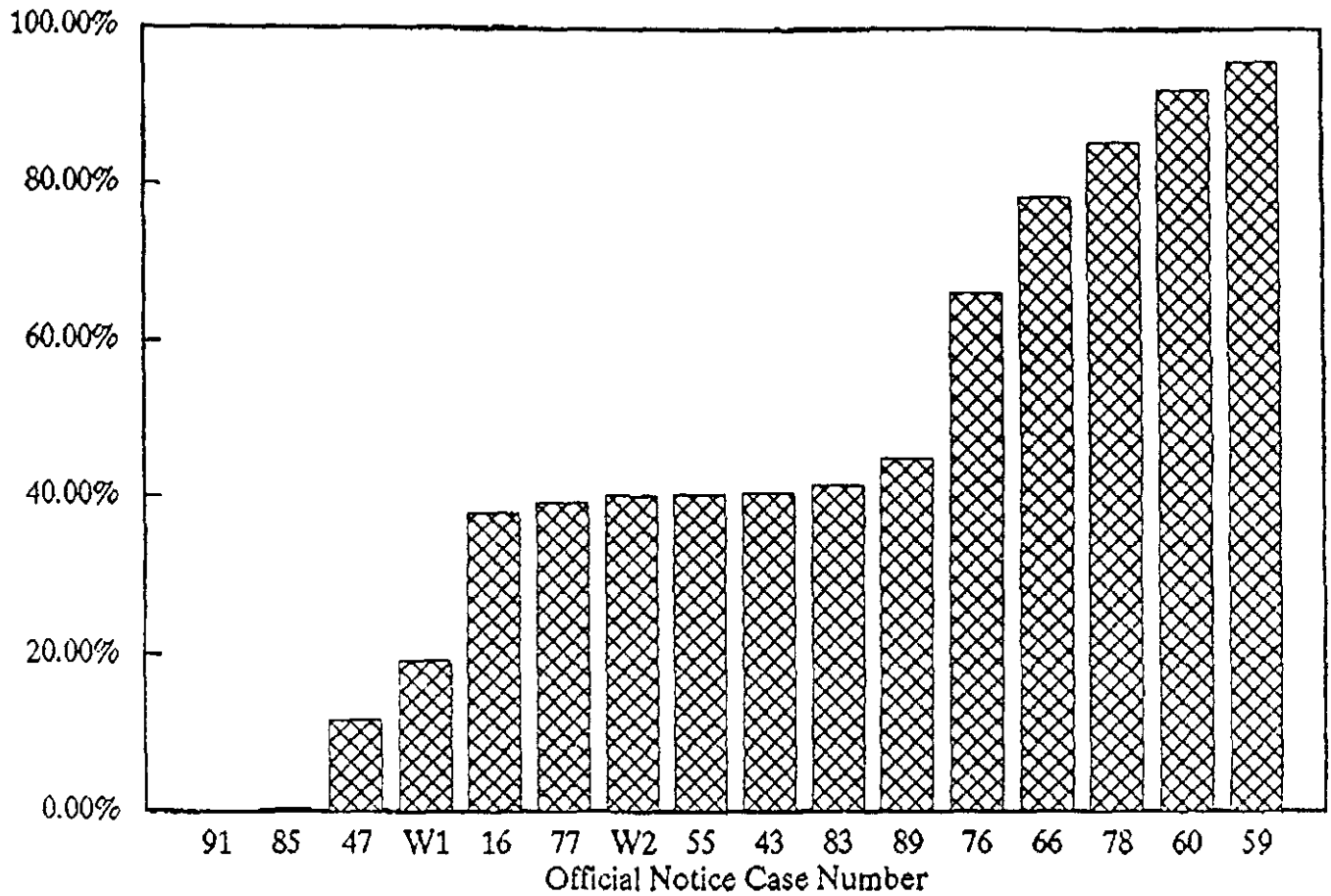
The Staff position on burden of proof in the Wedgefield case

is inconsistent with the Commission's acquisition adjustment policy. An analysis of the cases, in concert with Wedgefield's direct and rebuttal testimony, support Wedgefield's positions that a negative acquisition adjustment not be included in rate base and that the burden of proof resides exclusively on the proponent of the acquisition adjustment, positive or negative.

Issue No. 8 should be decided consistently with the policy of the Commission as developed in policy Order Nos. 23376 and 25729 and consistent with the prior orders of the Commission considering acquisition adjustments over the past ten years. That is, the burden of proof is on the proponent of an acquisition adjustment. There is nothing in the Wedgefield case which is an extraordinary circumstance and there is no justification for a negative acquisition adjustment.

CHART

PURCHASE PRICE AS PERCENT OF RATE BASE



W1 = Wedgefield w/o Commons Contingency; W2 = Wedgefield with Commons Contingency
Case 47 – Per Order, although large neg. acq. adj., the circ. do not appear to be extraordinary.

LIST "B" WITH CASE NOS

HEARING, COMPOSITE EXHIBIT 7

PSC ORDERS ADDRESSING ACQUISITION ADJUSTMENT, 1988-1997

LIST OF ORDERS

Case No.	Adjust. P=Pos. N=Neg. ??	Reporter Cite	Docket No.	Order No.	Date	Short Title
1	??	88 FPSC 2: 288	870915-WU	18900	2/22/88	SSU re Crystal River Highlands
2	??	88 FPSC 2: 318	870810-SU	18907	2/22/88	Indians Springs Utilities re Days Inn Crystal River
3	P	88 FPSC 4: 325	871158-WU	19163	4/18/88	Tropical Park Water
4	N	88 FPSC 4: 406	871139-WU	19192	4/20/88	SSU re Bay Assoc.
5	N	88 FPSC 5: 36	871250-WU	19275	5/03/88	SSU re Locke Well & Pump
6	N	88 FPSC 6: 257	880206-WU	19505	6/16/88	SSU re Central Fla. Util.
7	P	88 FPSC 8: 207	870936-WS	19841	8/22/88	SSU re Sugar Mill Creek
8	??	88 FPSC 8: 241	880204-SU	19855	8/22/88	Security S&L re Harder Hall
9	P	88 FPSC 8: 272	880557-WS	19867	8/22/88	Royal Utility re University Utility
10	N	88 FPSC 9: 384	870249-WS	20063	9/26/88	Atlantic Util. of Jax
11	P	88 FPSC 9: 543	880352-WU	20068	9/29/88	SSU re Rolling Greens
12	??	88 FPSC 10: 215	880472-WS	20140	10/10/88	SSU re Ell-Nar & C.L. Smith
13	??	88 FPSC 12: 236	880292-WS	20469	12/20/88	SSU re Welaka Utilities
14	??	88 FPSC 12: 458	880485-SU	20518	12/23/88	Homosassa Utilities re Marathon U.S. Utilities
15	??	89 FPSC 1: 268	881011-WU	20647	1/24/89	SSU re Silver Lake Est.
16	N	89 FPSC 2: 44	880907-WU	20707	2/08/89	Sunshine Utilities re Utility Systems, Inc.
17	P	89 FPSC 3: 117	880605-WS	20869	3/09/89	SSU re 2 of W. Volusia Utilities' systems
18	N	89 FPSC 5: 164	881200-WU	21200	5/08/89	SSU re Lake Ajay
19	N	89 FPSC 6: 50	880520-WS	21322	6/05/89	SSU
20	P	89 FPSC 6: 388	890127-WS	21421	6/20/89	Tamiami Village Utility re Tamiami Utility
21	P	89 FPSC 7: 363	880354-WS	21557	7/17/89	King's Cove re Cove Utilities
22	P	89 FPSC 7: 616	881339-WS	21631	8/02/89	SSU re Twin County Utility
23	P	89 FPSC 7: 635	881340-WS	21632	7/31/89	SSU re Burnt Store
24	P	89 FPSC 7: 655	890348-WU	21636	7/31/89	SSU re Imperial Mobile Terr.
25	P	89 FPSC 8: 391	881502-WS	21758	8/21/89	SSU re Fisherman's Haven
26	P	89 FPSC 8: 410	881603-WU	21762	8/21/89	A.P. Utilities re N. Cent. Fla.
27	??	89 FPSC 9: 101	890215-WU	21829	9/05/89	SSU re Inverness Utilities
28	P	89 FPSC 9: 126	881339-WS	21836	9/05/89	SSU re Twin County Utility
29	??	89 FPSC 9: 385	881573-SU	21913	9/19/89	SSU re PIV(Seminole Co.)
30	N	89 FPSC 11: 98	890233-WS	22150	11/06/89	SSU re Point O' Woods
31	N	89 FPSC 11: 336	881500-WS	22203	11/21/89	Laniger Ent. re Beacon 21
32	??	89 FPSC 12: 332	891016-SU	22345	12/27/89	N. Peninsula Utilities re Shore Utility
33	P	90 FPSC 1: 39	890045-SU	22371	1/08/90	BFF Corp. re LTB Utility
34	??	90 FPSC 5: 111	891317-WU	22915	5/09/90	SSU re Lakeview Villas
35	??	90 FPSC 5: 122	891250-WS	22916	5/09/90	SSU re Leisure Lakes
36	N	90 FPSC 5: 237	881500-WS	22962	5/21/90	Laniger Ent. re Beacon 21
37	??	90 FPSC 6: 18	891321-WU	23024	6/04/90	SSU re Gospel Island Estates
38	P	90 FPSC 6: 386	891110-WS	23111	6/25/90	Jax Suburban re St. Johns N.
39	??	90 FPSC 8: 312	900106-WS	23378	8/21/90	J. Swiderski re King Cove
40	??	90 FPSC 8: 427	891157-WS	23397	8/23/90	SSU re Silver Lake
41	P	90 FPSC 10: 85	900222-WS	23542	10/01/90	San Pablo re El Agua
42	??	90 FPSC 10: 481	900475-SU	23643	10/22/90	Whiting Waterworks re Mid-County Services
43	N	90 FPSC 10: 536	891320-WU	23656	10/23/90	SSU re Grand Terrace
44	??	90 FPSC 11: 114	900291-WS	23728	11/07/90	Jasmine Lakes Utilities re Jasmine Lake Services
45	??	90 FPSC 12: 399	900312-WU	23880	12/14/90	Windstream re Utility Systems
46	??	90 FPSC 12: 674	900569-WU	23944	12/28/90	Marion Util. re Windgate
47	N	91 FPSC 1: 79	900408-WS	23970	1/08/91	Springside at Manatee re Springside, Inc.
48	??	91 FPSC 1: 163	900527-WS	23974	1/09/91	Crystal Lake Club re Century Group
49	??	91 FPSC 2: 10	900665-WS	24050	2/01/91	Ocean City Utilities re Beverly Beach Surfside
50	N	91 FPSC 3: 585	900525-WU	24273	3/21/91	Pine Harbor Water Utilities re Pine Harbour
51	P	91 FPSC 9: 220	910119-WU	25063	9/13/91	A.P. Utilities re Marico Prop.
52	P	91 FPSC 9: 267	910118-WU	25075	9/17/91	A.P. Utilities re Aqua Pure
53	N	91 FPSC 9 529	900966-WS	25139	9/30/91	The Woods, div. of Homosassa Utilities
54	??	91 FPSC 10: 249	910518-SU	25217	10/14/91	Fairmont Util re Farmer Util.

NOTES: Adjustment ?? – Order did not specify type of adjustment. From text it would appear to be positive.
Negative acquisition adjustments are shaded.

Summary of Adjustments addressed:	Addressed	Allowed	(Item Nos.)
Positive	33	3	38,61,70
??	35	0	
Negative	31	3	36,62,69
Total	99	5	

Brief, Attachment "A"

PSC ORDERS ADDRESSING ACQUISITION ADJUSTMENT, 1988-1997

LIST OF ORDERS

Case No.	Adjust. P=Pos. N=Neg. ??	Reporter Cite	Docket No.	Order No.	Date	Short Title
55	N	92 FPSC 1 : 124	910672-WS	25584	1/16/92	RMC Hideaway re Hideaway Services
56	P	92 FPSC 2 : 872	910020-WS	25821	2/27/92	Utilities, Inc. of Fla - PPW
57	??	92 FPSC 4 : 255	910467-SU	PSC-92-0193	4/13/92	Forest Park POA re Vista Vill.
58	??	92 FPSC 4 : 298	910895-WU	PSC-92-0204	4/14/92	C&S Water re chg in org. control fr. Stewart/Chernau to Stewart
59	N	92 FPSC 5 : 340	911095-WS	PSC-92-0370	5/14/92	Jax Suburban re San Pablo
60	N	92 FPSC 5 : 464	910847-SU	PSC-92-0407	5/26/92	Forty-One re Springs Plaza
61	P	92 FPSC 8 : 592	920177-WS	PSC-92-0896	8/27/92	Jax Suburban re Atlantic of Jax
62	N	93 FPSC 1 : 70	920367-WS	PSC-93-0011	1/05/93	CGD Corp.
63	N	93 FPSC 2 : 280	920598-WS	PSC-93-0194	2/09/93	Pennbrooke re Countryside
64	P	93 FPSC 3 : 217	920716-SU	PSC-93-0364	3/09/93	Tierra Verde (Utilities, Inc.) re Seagull Utilities
65	N	93 FPSC 3 : 504	920199-WS	PSC-93-0423	3/22/93	SSU/Deltona
66	N	93 FPSC 3 : 533	920834-WS	PSC-93-0430	3/22/93	Utilities, Inc. of Fla - PPW
67	P	93 FPSC 4 : 76	920717-SU	PSC-93-0508	4/05/93	Harder Hall-Howard
68	??	93 FPSC 6 : 278	921260-WS	PSC-93-0900	6/14/93	Tradewinds Utilities & RTC
69	N	93 FPSC 11 : 205	920148-WS	PSC-93-1575	11/18/93	Jasmine Lakes
70	P	93 FPSC 12 : 390	930204-WS	PSC-93-1819	12/22/93	Jax Suburban in St. Johns Co.
71	P	94 FPSC 1 : 262	930582-WU	PSC-94-0083	1/24/94	Rolling Hills re Rolling Acres
72	??	94 FPSC 6 : 110	931080-WS	PSC-94-0701	6/06/94	RTC (Tradewinds) re C.F.A.T. H2O
73	P	94 FPSC 8 : 264	930950-WU	PSC-94-0988	8/15/94	Ocala Oaks re Bellview Hills Et.
74	N	94 FPSC 9 : 336	930763-SU	PSC-94-1163	9/22/94	RHV re Homosassa Utilities
75	??	94 FPSC 12 : 302	940453-WU	PSC-94-1543	12/13/94	Harbor Hills re Lake Griffin
76	N	94 FPSC 12 : 526	930570-WS	PSC-94-1602	12/27/94	L. Placid Utilities, Inc. Lake Placid Utilities
77	N	95 FPSC 2 : 136	931122-WU	PSC-95-0189	2/09/95	SSU re Lakeside Golf
78	N	95 FPSC 2 : 423	940091-WS	PSC-95-0268	2/28/9	SSU re Lake Utilities, LTD
79	P	95 FPSC 3 : 315	940726-WU	PSC-95-0342	3/13/95	Seven Rivers Utilities
80	??	95 FPSC 5 : 375	940650-WS	PSC-95-0622	5/22/95	Colonies Water re same name
81	??	95 FPSC 5 : 389	940849-WU	PSC-95-0623	5/22/95	Buccaneer Water re same name
82	P	95 FPSC 10 : 518	941151-WS	PSC-95-1325	10/31/95	SSU re Orange/Osceola
83	N	95 FPSC 11 : 604	950015-WU	PSC-95-1441	11/28/95	Tamiami Village Water re Tamiami Village Utility
84	??	95 FPSC 11 : 616	950193-WS	PSC-95-1444	11/28/95	MHC Systems re FFEC-Six
85	N	96 FPSC 3 : 448	950880-WU	PSC-96-0432	3/28/96	J. Swiderski re Forty-Eight Est.
86	P	96 FPSC 3 : 547	950959-SU	PSC-96-0448	3/29/96	Utilities, Inc. re Longwood
87	N	96 FPSC 5 : 29	950696-WS	PSC-96-0581	5/03/96	Terra Mar Village Utilities re Terra Mar Village
88	N	96 FPSC 10 : 87	960283-WS	PSC-96-1241	10/7/96	Wedgefield re Econ
89	N	96 FPSC 10 : 386	950495-WS	PSC-96-1320	10/30/96	SSU
90	P	96 FPSC 11 : 432	960716-WU	PSC-96-1409	11/20/96	Crystal River Utilities re Ravenswood
91	N	96 FPSC 12 : 136	960523-WS	PSC-96-1474	12/04/96	J&J Water & Sewer
92	P	97 FPSC 1 : 112	960040-WS	PSC-97-0034	1/07/97	Sun Communities Finance re Water Oaks
93	??	97 FPSC 2 : 368	960842-WU	PSC-97-0187	2/18/97	Crystal River Utilities re Seven Rivers Utilities
94	??	97 FPSC 3 : 381	960643-WS	PSC-97-0312	3/24/97	Crystal River Utilities re Sumter Ware Co.
95	??	97 FPSC 4 : 73	960793-WU	PSC-97-0375	4/07/97	Crystal River Utilities re Hines Creek MH Waterworks
96	P	97 FPSC 5 : 405	960695-WS	PSC-97-0579	5/20/97	Clay Utility re S. Broward
97	??	97 FPSC 5 : 418	960844-WU	PSC-97-0580	5/20/97	Crystal River Utilities re Lands, Inc. of Rhinelander
98	??	97 FPSC 9 : 386	961535-WU	PSC-97-1149	9/30/97	Crystal River Utilities re Lake Osborne
99	P	--- online ---	970822-WU	PSC-97-1613	12/23/97	Lindrick Service re S.H. Utilities

NOTES: Adjustment ?? - Order did not specify type of adjustment. From text it would appear to be positive.
Negative acquisition adjustments are shaded.

Summary of Adjustments addressed:	Addressed	Allowed	(Item Nos.)
Positive	33	3	38,61,70
??	35	0	
Negative	31	3	36,62,69
Total	99	5	

LIST A WITH OUT CASE NOS.

LIST OF ORDERS FOR OFFICIAL RECOGNITION

Reporter Cite	Docket No.	Order No.	Date	Short Title
82 FPSC 10: 179	820280-WS	11266	10/25/82	RBN re San Carlos
88 FPSC 2: 288	870915-WU	18900	2/22/88	SSU re Crystal River Highlands
88 FPSC 2: 318	870810-SU	18907	2/22/88	Indians Springs Utilities re Days Inn Crystal River
88 FPSC 4: 325	871156-WU	19163	4/18/88	Tropical Park Water
88 FPSC 4: 406	871139-WU	19192	4/20/88	SSU re Bay Assoc.
88 FPSC 5: 36	871250-WU	19275	5/03/88	SSU re Locke Well & Pump
88 FPSC 6: 257	880206-WU	19505	6/16/88	SSU re Central Fla. Util.
88 FPSC 8: 207	870936-WS	19841	8/22/88	SSU re Sugar Mill Creek
88 FPSC 8: 241	880204-SU	19855	8/22/88	Security S&L re Harder Hall
88 FPSC 8: 272	880557-WS	19867	8/22/88	Royal Utility re University Utility
88 FPSC 9: 384	870249-WS	20063	9/26/88	Atlantic Util. of Jax
88 FPSC 9: 543	880352-WU	20088	9/29/88	SSU re Rolling Greens
88 FPSC 10: 215	880472-WS	20140	10/10/88	SSU re Eit-Nar & C.L. Smith
88 FPSC 12: 236	880292-WS	20469	12/20/88	SSU re Welaka Utilities
88 FPSC 12: 458	880485-SU	20518	12/23/88	Homosassa Utilities re Marathon U.S. Utilities
89 FPSC 1: 268	881011-WU	20647	1/24/89	SSU re Silver Lake Est.
89 FPSC 2: 44	880907-WU	20707	2/06/89	Sunshine Utilities re Utility Systems, Inc.
89 FPSC 3: 117	880605-WS	20869	3/09/89	SSU re 2 of W. Volusia Utilities' systems
89 FPSC 5: 164	881200-WU	21200	5/08/89	SSU re Lake Ajay
89 FPSC 6: 50	880520-WS	21322	6/05/89	SSU
89 FPSC 6: 388	890127-WS	21421	6/20/89	Tamiami Village Utility re Tamiami Utility
89 FPSC 7: 363	890354-WS	21557	7/17/89	King's Cove re Cove Utilities
89 FPSC 7: 616	881339-WS	21631	8/02/89	SSU re Twin County Utility
89 FPSC 7: 635	881340-WS	21632	7/31/89	SSU re Burnt Store
89 FPSC 7: 655	890348-WU	21636	7/31/89	SSU re Imperial Mobile Terr.
89 FPSC 8: 391	881502-WS	21758	8/21/89	SSU re Fisherman's Haven
89 FPSC 8: 410	881603-WU	21762	8/21/89	A.P. Utilities re N. Cent. Fla.
89 FPSC 9: 101	890215-WU	21829	9/05/89	SSU re Inverness Utilities
89 FPSC 9: 126	881339-WS	21836	9/05/89	SSU re Twin County Utility
89 FPSC 9: 385	881573-SU	21913	9/19/89	SSU re PIV(Seminole Co.)
89 FPSC 11: 98	890233-WS	22150	11/06/89	SSU re Point O' Woods
89 FPSC 11: 336	881500-WS	22203	11/21/89	Lanlger Ent. re Beacon 21
89 FPSC 12: 332	891016-SU	22345	12/27/89	N. Peninsula Utilllities re Shore Utility
90 FPSC 1: 39	890045-SU	22371	1/08/90	BFF Corp. re LTB Utility
90 FPSC 5: 111	891317-WU	22915	5/09/90	SSU re Lakeview Villes
90 FPSC 5: 122	891250-WS	22916	5/09/90	SSU re Leisure Lakes
90 FPSC 5: 237	881500-WS	22962	5/21/90	Lanlger Ent. re Beacon 21
90 FPSC 6: 18	891321-WU	23024	6/04/90	SSU re Gospel Island Estates
90 FPSC 6: 386	891110-WS	23111	6/25/90	Jax Suburban re St. Johns N.
90 FPSC 8: 312	900106-WS	23378	8/21/90	J. Swiderski re King Cove
90 FPSC 8: 427	891187-WS	23397	8/23/90	SSU re Silver Lake
90 FPSC 10: 85	900222-WS	23542	10/01/90	San Pablo re El Agua
90 FPSC 10: 481	900476-SU	23643	10/22/90	Whiting Waterworks re Mid-County Services
90 FPSC 10: 536	891320-WU	23656	10/23/90	SSU re Grand Terrace
90 FPSC 11: 114	900291-WS	23728	11/07/90	Jasmine Lakes Utilities re Jasmine Lake Services
90 FPSC 12: 399	900312-WU	23860	12/14/90	Windstream re Utility Systems
90 FPSC 12: 674	900568-WU	23944	12/28/90	Marion Util. re Windgate
91 FPSC 1: 79	900408-WS	23970	1/08/91	Springside at Manatee re Springside, Inc.
91 FPSC 1: 163	900527-WS	23974	1/09/91	Crystal Lake Club re Century Group
91 FPSC 2: 10	900665-WS	24050	2/01/91	Ocean City Utilities re Beverly Beach Surfside
91 FPSC 3: 585	900525-WU	24273	3/21/91	Pine Harbor Water Utilities re Pine Harbour
91 FPSC 9: 220	910119-WU	25063	9/13/91	A.P. Utilities re Marico Prop.
91 FPSC 9: 267	910118-WU	25075	9/17/91	A.P. Utilities re Aqua Pure
91 FPSC 9 529	900966-WS	25139	9/30/91	The Woods, div. of Homossasa Utilities
91 FPSC 10: 249	910518-SU	25217	10/14/91	Fairmont Util re Parmer Util.

LIST OF ORDERS FOR OFFICIAL RECOGNITION

Reporter Cite	Docket No.	Order No.	Date	Short Title
92 FPSC 1 : 124	910672-WS	25584	1/16/92	FIMC Hideaway re Hideaway Services
92 FPSC 2 : 872	910020-WS	25821	2/27/92	Utilities, Inc. of Fla – PPW
92 FPSC 4 : 255	910467-SU	PSC-92-0193	4/13/92	Forest Park POA re Vista Vill.
92 FPSC 4 : 298	910895-WU	PSC-92-0204	4/14/92	C&S Water re chg in org. control fr. Stewart/Chernau to Stewart
92 FPSC 5 : 340	911095-WS	PSC-92-0370	5/14/92	Jax Suburban re San Pablo
92 FPSC 5 : 464	910847-SU	PSC-92-0407	5/26/92	Forty-One re Springs Plaza
92 FPSC 8 : 592	920177-WS	PSC-92-0895	8/27/92	Jax Suburban re Atlantic of Jax
93 FPSC 1 : 70	920397-WS	PSC-93-0011	1/05/93	CGD Corp.
93 FPSC 2 : 280	920586-WS	PSC-93-0194	2/09/93	Pennbrooke re Countryside
93 FPSC 3 : 217	920716-SU	PSC-93-0364	3/09/93	Tierre Verde (Utilities, Inc.) re Seagull Utilities
93 FPSC 3 : 504	920199-WS	PSC-93-0423	3/22/93	SSU/Deltona
93 FPSC 3 : 633	920834-WS	PSC-93-0430	3/22/93	Utilities, Inc. of Fla – PPW
93 FPSC 4 : 76	920717-SU	PSC-93-0508	4/05/93	Harder Hall-Howard
93 FPSC 6 : 278	921260-WS	PSC-93-0900	6/14/93	Tradewinds Utilities & RTC
93 FPSC 11 : 205	920148-WS	PSC-93-1675	11/18/93	Jasmine Lakes
93 FPSC 12 : 390	930204-WS	PSC-93-1819	12/22/93	Jax Suburban in St. Johns Co.
94 FPSC 1 : 262	930582-WU	PSC-94-0083	1/24/94	Rolling Hills re Rolling Acres
94 FPSC 6 : 110	931080-WS	PSC-94-0701	6/08/94	RTC (Tradewinds) re C.F.A.T. H2O
94 FPSC 8 : 264	930950-WU	PSC-94-0988	8/15/94	Ocala Oaks re Bellview Hills Et.
94 FPSC 9 : 336	930763-SU	PSC-94-1163	9/22/94	RHV re Homossasa Utilities
94 FPSC 12 : 302	940453-WU	PSC-94-1543	12/13/94	Harbor Hills re Lake Griffin
94 FPSC 12 : 526	930570-WS	PSC-94-1602	12/27/94	L. Placid Utilites, Inc. Lake Placid Utilities
95 FPSC 2 : 136	931122-WU	PSC-95-0189	2/09/95	SSU re Lakeside Golf
95 FPSC 2 : 423	940091-WS	PSC-95-0268	2/28/9	SSU re Lake Utilities, LTD
95 FPSC 3 : 315	940726-WU	PSC-95-0342	3/13/95	Seven Rivers Utilities
95 FPSC 5 : 375	940850-WS	PSC-95-0622	5/22/95	Colonies Water re same name
95 FPSC 5 : 389	940849-WU	PSC-95-0623	5/22/95	Buccaneer Water re same name
95 FPSC 10 : 518	941151-WS	PSC-95-1325	10/31/95	SSU re Orange/Osceola
95 FPSC 11 : 604	950015-WU	PSC-95-1441	11/28/95	Tamiami Village Water re Tamiami Village Utility
95 FPSC 11 : 616	950193-WS	PSC-95-1444	11/28/95	MHC Systems re FFEC-Six
96 FPSC 3 : 448	950880-WU	PSC-96-0432	3/28/96	J. Swiderski re Forty-Eight Est.
96 FPSC 3 : 547	950959-SU	PSC-96-0448	3/29/96	Utilities, Inc. re Longwood
96 FPSC 5 : 29	950695-WS	PSC-96-0581	5/03/96	Terra Mar Village Utilities re Terra Mar Village
96 FPSC 10 : 87	960283-WS	PSC-96-1241	10/7/96	Wedgefield re Econ
96 FPSC 10 : 386	950495-WS	PSC-96-1320	10/30/96	SSU
96 FPSC 11 : 432	960716-WU	PSC-96-1409	11/20/96	Crystal River Utilities re Ravenswood
96 FPSC 12 : 136	960523-WS	PSC-96-1474	12/04/96	J&J Water & Sewer
97 FPSC 1 : 112	960040-WS	PSC-97-0034	1/07/97	Sun Communities Finance re Water Oaks
97 FPSC 2 : 368	960642-WU	PSC-97-0187	2/18/97	Crystal River Utilities re Seven Rivers Utilities
97 FPSC 3 : 381	960643-WS	PSC-97-0312	3/24/97	Crystal River Utilities re Sumter Ware Co.
97 FPSC 4 : 73	960793-WU	PSC-97-0375	4/07/97	Crystal River Utilities re Hines Creek MH Waterworks
97 FPSC 5 : 405	960695-WS	PSC-97-0579	5/20/97	Clay Utility re S. Broward
97 FPSC 5 : 418	960644-WU	PSC-97-0580	5/20/97	Crystal River Utilities re Lands, Inc. of Rhinelander
97 FPSC 9 : 386	961535-WU	PSC-97-1149	9/30/97	Crystal River Utilities re Lake Osborne
--- online ---	970822-WU	PSC-97-1613	12/23/97	Lindrick Service re S.H. Utilities

RESPECTFULLY SUBMITTED, this 28th day of April, 1998.

Ben E. Girtman
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Attorney for Utilities, Inc.
and Wedgefield Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent to Charles Beck, Esq., Office of Public Counsel, 111 W. Madison St., Tallahassee, FL 32399-1400; Mr. John Forrer, Econ Utilities Corporation, 1714 Hoban Rd. NW, Washington, D.C. 20007; and to Jennifer Brubaker, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, by U.S. Mail (or by hand delivery * or facsimile #) this 28th day of April, 1998.

Ben E. Girtman

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Transfer of Certificate Nos. 404-W and 341-S in Orange County from Econ Utilities Corporation to Wedgefield Utilities, Inc.	DOCKET NO. 960235-WS
In Re: Application for Amendment of Certificate Nos. 404-W and 341-S in Orange County by Wedgefield Utilities, Inc.	DOCKET NO. 960283-WS
	Filed: April 28, 1998

MOTION

by
WEDGEFIELD UTILITIES, INC.

TO FILE POST-HEARING DOCUMENTS
IN EXCESS OF THOSE
PERMITTED BY RULE 25-22.056(1)(d), F.A.C.

COMES NOW Utilities, Inc. and its wholly owned subsidiary, Wedgefield Utilities, Inc., (hereinafter collectively referred to as "Wedgefield") and in support of its Motion for Continuance of Hearing state:

1. Although Wedgefield's pre-hearing motion to file supplemental direct testimony of Mr. Seidman discussing the facts of the cases was denied [Hearing Tr. 130, line 11], it was stated several times at the hearing that the material therein should and could be used in the brief:

> I agree that . . . the orders are in the record now pursuant to the request for official notice. They can be used in the briefing. That was also mentioned in the Order [denying the motion to file supplemental testimony]. [Statement by Staff Counsel. Tr. 127, lines 8-11.]

* * *

> . . . in reading the testimony it seems to me the same arguments can be made in the brief. That's where you make these arguments. [Statement by Commissioner. Tr. 129, lines 6-9.]

2. Accordingly, a condensed version of points made in the requested supplemental testimony is attached as Attachment "A" to the Brief. Because the analysis causes the total number of pages of post-hearing documents to exceed 60, it is requested that an order be entered to authorize the filing of Attachment "A" consisting of approximately 37 pages.

3. The undersigned counsel has contacted Mr. Charles Beck by telephone, and he wishes to reserve possible objection until examining the document.

WHEREFORE, it is requested that an order be entered authorizing in the filing of Attachment "A" to Wedgefield's post-hearing documents.

Respectfully submitted this 28th day of April, 1998

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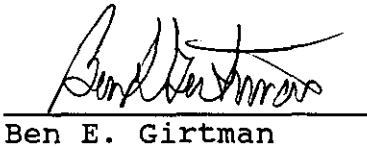
Attorney for Utilities, Inc.
and Wedgefield Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and fifteen copies of the foregoing has been filed with the Clerk, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850 by hand delivery and that a true and correct copy has been sent to Charles Beck, Esq., Office of Public Counsel, 111 W. Madison St., Tallahassee, FL 32399-1400; to Mr. John Forrer, Econ Utilities Corporation, 1714 Hoban Rd. NW, Washington, D.C. 20007; and to Jennifer Brubaker, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, by U.S. Mail this 1st day of August, 1997.



Ben E. Girtman

$BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Transfer of Certificate Nos. 404-W and 341-S in Orange County from Econ Utilities Corporation to Wedgefield Utilities, Inc.	)	DOCKET NO. 960235-WS
In Re: Application for Amendment of Certificate Nos. 404-W and 341-S in Orange County by Wedgefield Utilities, Inc.	)	DOCKET NO. 960283-WS
	)	Filed: April 28, 1998

POST-HEARING

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

of

WEDGEFIELD UTILITIES, INC.

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Attorney for Utilities, Inc.
and Wedgefield Utilities, Inc.

Utilities, Inc., submits the following proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. Utilities, Inc. is a privately owned public utility engaged solely in the business of owning and operating water and wastewater systems and has no developer relationships. It owns and operates 63 subsidiaries in fifteen states, including twelve in Florida where it maintains experienced management and professional operators. It is adequately financed, has access to capital at reasonable costs, and is capable of reducing costs of operation due to economies of scale. [Tr. 157, Wenz Direct Testimony page 1, lines 17-18 and 24-25; Tr. 173-174, Wenz Additional Direct Testimony page 10, line 23 to page 11, line 15; Ex. 11, Application for Transfer, and its Exhibit A.

2. Through Wedgefield Utilities, Inc., its wholly owned subsidiary, Utilities, Inc. has the ability and commitment to make the necessary improvements in this utility. It has the potential to reduce costs through the allocation of administrative expenses and through access to an established purchasing system, and it is familiar with, and has the ability to comply with, state and federal regulations. [Ex. 11, Application for Transfer, Part I, Para. E. and Part II, Para. A.; Tr. 173-174, Wenz Additional Direct Testimony page 10, line 23 to page 11, line 15.]

3. Econ Utilities Corporation was a small, developer-owned utility with financial pressures due to sustained losses that made it difficult to attract capital at a reasonable cost and to operate

and maintain the systems which put it in danger of not being able to expend the necessary capital to meet its obligations. The former owners either do not have, or are not willing to commit, the funds necessary to continue to operate and finance the utility. [Tr. 172, Wenz Additional Direct Testimony page 9, lines 12-19; Tr. 340-341, Seidman Rebuttal Testimony page 25, line 7 to page 26, line 2.]

4. In its negotiations to purchase Econ Utilities, Utilities, Inc. was fully aware of, and relied on, this Commission's acquisition adjustment policy stated in Commission Order Nos. 25729 and 23376. [Tr. 168-169, Wenz Additional Direct Testimony page 5, line 20 to page 6, line 20.]

5. The Orange County Utilities Division has no authority over Wedgefield or any other utility, whether privately or publicly owned, and its "standards" are applicable only to its own operations. [Composite Ex. 8, ltr. dtd 4/13/1995, Mr. Ispass to Mr. Blake, page 1.]

6. Econ operated (and now Wedgefield operates) under the jurisdiction of the Florida Department of Environmental Protection (DEP), the Orange County Environmental Protection Department (OCEPD), and the Florida Public Service Commission. It is inspected regularly by DEP and by OCEPD. These three agencies provide standards for Wedgefield and determine what is necessary for compliance, based on Federal and Florida laws and regulations. [Tr. 328, Seidman Rebuttal Testimony page 13, lines 13-22; Ex. 11, Application.]

CONCLUSIONS OF LAW

1. It is the policy of this Commission that, absent extraordinary circumstances, the purchase of a utility at a premium or discount shall not effect the rate base calculation and the proponent of an acquisition adjustment, either positive or negative, bears the burden of proof.

2. There is no extraordinary circumstances in this purchase, and no acquisition adjustment should be included in the rate base calculation.

3. For purposes of this transfer, the rate base is equal to the net book value of the assets, excluding ratemaking adjustments such as working capital or used and useful adjustments, and is $1,462,487 for water and $1,382,904 for wastewater.

4. Econ was (and now Wedgefield is) in compliance with the requirements of the Florida Department of Environmental Protection (DEP) and by the Orange County Environmental Protection Department (OCEPD).

5. Imposing a NAA would discourage the purchase of a system such as Econ, and that thwarts Commission policy and is a detrimental consequence to customers.

6. At the time of sale, the Econ assets were all functioning and not in violation of any state regulations. They were typical of developer-owned utilities, not in the best condition and not up to the standard which Utilities, Inc. would want to maintain, but not in extremely poor condition, either.

7. All the arguments set forth by Mr. Larkin have been made

before and have been rejected by this Commission in generic proceedings and in prior, case-specific orders of the Commission.

8. The utility will not be allowed to recover a return on assets which do not exist. Clearly, the assets do exist. They didn't disappear when ownership changed.

9. A NAA is considered at the time of transfer and requires that extraordinary circumstances be found for taking the extreme step of permanently reducing the net original cost as rate base. A used and useful adjustment is used in a rate case for temporarily removing from rate base certain assets which are not currently used and useful in providing utility service to the customers. The two regulatory concepts perform different functions at different times.

10. The contingent portion of the purchase price has no effect on rate base. In addition, the service area in the Reserve (formerly The Commons) is already under construction. The contract requires contingent payments to be made as soon as each new home is hooked up, so any "uncertainty" or "speculation" about whether payments will be made is unwarranted.

11. A major purpose of Commission policy on acquisition adjustments is to create an incentive for larger utilities to acquire small, troubled utilities. If a benefit to the purchaser results from the purchase price being lower than book value, it is at the expense of the seller, not at the expense of the customer. In fact, rate base is unchanged, and, because of this, there is no harm to the customer.

12. Commission Order No. 25729 listed several beneficial changes

due to a change in ownership, which the current Commission policy is intended to encourage. It also found that the customers of utilities acquired under its policy are not harmed, and indeed benefit from a better quality of service at reasonable cost.

13. To change the policy now not only would be a denial of due process but it also would defeat the purposes of the policy as originally developed and implemented by the Commission.

14. Rate base must recognize the original cost of assets at the time they were dedicated to public service.

15. Based on a review of prior Commission orders, including the dissenting opinions, the following factors either are not relevant to the Wedgefield transfer, are not "extraordinary circumstances", or do not otherwise authorize, require or warrant a negative acquisition adjustment.

The system does not require replacing, the jurisdictional status is known, there is growth potential, and the system will benefit from certain economies under new ownership. The improvements that have to be made are in the public interest. The revenue requirement associated with the net original cost of the system would be no more than under the previous ownership. There is no requirement to prove hardship on the part of the seller. The tax treatment of the seller is irrelevant. A large differential between purchase price and rate base is not, of itself, an "extraordinary circumstance". The determination of rate base in this case is not an initial determination; rate base was determined by the Commission in 1984, and there was no lack of original cost

documentation. Even when a previous owner failed to maintain a system properly and the new owner had to make considerable expenditures to bring the system into compliance, these events are not "extraordinary circumstances". The customers do not have to "pay twice" because, regardless of ownership, the customers pay only for the legitimate cost of assets and expenses incurred and actually paid in their behalf. Customers will not pay for anything under the new ownership that they would not have been required to pay for under prior ownership. The transfer is customer-neutral, except for benefits the customers will receive due to new ownership. The sale did not result from a bankruptcy of foreclosure. The purchaser does not have uniform rates among its systems. To include both a negative acquisition adjustment and used and useful adjustments on the same plant would be double counting. Regardless of whether a purchasing utility includes a consideration of used and useful adjustments in its negotiations for acquisition or for setting the purchase price, a NAA is not warranted. In the public interest, the purchaser has already made improvements in the system and in its management. Only utility property, and no lots or other assets, were bought or sold in the transaction between seller and purchaser. Seller had not filed to abandon the utility system. The seller has not been purchasing water or any other utility service from any other utility, and it has not been earning on unused plant components. Any ratemaking adjustments would have to considered in the context of a rate case. Not including a negative acquisition adjustment does no harm to

customers. Rate base and monthly rates will not change as a result of the transfer. The sale of the utility does not involved a three-party or a nontaxable exchange, there are no family trusts or other trusts involved in the sale, and even without a negative acquisition adjustment, the seller will not recover, much less double recover, its investment. There has been no agreement or settlement of this transfer docket for any transfer rate base less than full net book value, and Wedgefield has not requested anything that would cause a change to rate base or rates as a result of the transfer.

RESPECTFULLY SUBMITTED, this 28th day of April, 1998.

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Attorney for Utilities, Inc.
and Wedgefield Utilities, Inc.

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Ben E. Girtman