

1                                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2  
3 **In re: Applications For An Amendment )**  
4 **Of Certificate For An Extension )**  
5 **Of Territory And For an Original )**  
6 **Water And Wastewater Certificate )**  
7 **(for a utility in existence and charging )**  
8 **for service) )**

**Docket No. 992040-WS**

9  
10 **In re: Application by Nocatee Utility )**  
11 **Corporation for Original Certificates for )**  
12 **Water & Wastewater Service in Duval )**  
13 **and St. Johns Counties, Florida )**

**Docket No. 990696-WS**

14                                   **SUPPLEMENTAL INTERVENOR'S TESTIMONY OF M.L. FORRESTER**

15 Q.    Are you the same M.L. Forrester who has previously filed testimony in this case?

16 A.    Yes, I am.

17 Q.    What have you reviewed in preparation for your participation in this case?

18 A.    I have reviewed all the testimony and exhibits filed in this case, I have reviewed documents  
19 which were obtained during the course of discovery or public records requests or otherwise  
20 obtained from parties in this case, and I have reviewed many of the pleadings filed in this  
21 matter. Additionally, I have reviewed various other documents which either support my  
22 testimony or which I relied upon in arriving at the opinions in my testimony.

23 Q.    Have you also reviewed specifically the Supplemental Direct Testimonies of Douglas Miller  
24 and Ms. Deborah Swain, filed July 31, 2000 on behalf of Nocatee Utility Corporation (NUC)  
25 in this proceeding?

A.    Yes, I have.

Q.    Were there portions of those testimonies which caused you any concerns?

A.    Yes. During my review of page 2 of 2 in Ms. Swain's Exhibit DDS-12, I noted that the total  
cost of water and wastewater service to NUC customers would equal or exceed the total cost

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1 of water and wastewater service to those same customers of Intercoastal Utilities (ICU)  
2 customers for at least the first ten years of operations. Her comparison of Service  
3 Availability Charges shows that the combination of Plant Capacity Charges by JEA and the  
4 Main Extension Charges by NUC are \$ 515.05 higher than similar charges by ICU. I believe  
5 that higher cost differential constitutes a prepaid service cost addition or “premium” for an  
6 NUC water and sewer customer to receive services. An NUC customer’s recovery of that  
7 premium (through the currently proposed, lower NUC service rates) over 120 months (or ten  
8 years) amounts to approximately \$4.29 per month (without considering the customer’s  
9 interest costs for the prepayment). Looking at Ms. Swain’s comparison of Combined Water  
10 and Sewer Residential Bills at the 3,000 gallons per month level, and recognizing the added  
11 monthly recovery cost of that premium brings the NUC charges, brings those bills into  
12 virtual parity with the bill she shows for Intercoastal. The “savings” she shows for NUC  
13 customer bills in those same comparisons at the 5,000 and 5,333 gallon levels is even less  
14 than that \$4.29 per month premium recovery cost, which indicates that even more than ten  
15 years would be required for an NUC customer to recover that higher initial cost to receive  
16 service. Furthermore, NUC customers using at least 10,000 gallons could never recover that  
17 service cost premium because the NUC and ICU rates are essentially the same at that level  
18 of service. That situation substantially worsens for NUC customers at the indicated 25,000  
19 gallon level, because the NUC bill without that premium recovery cost is even higher than  
20 that of ICU.

21 Q. In your opinion, have Ms. Swain’s rate comparisons emphasized customer usage levels  
22 which you believe are reasonable and appropriate in this circumstance?

23 A. No. In addition to this premium cost recovery issue that I discussed above, I think it’s  
24 extremely important for the Commission to notice that Ms. Swain’s bill comparison schedule  
25 attempts to emphasize customer bills at use levels far below those anticipated to be

1 representative of typical customer consumptions. Based on the family-oriented development  
2 planned for Nocatee and Intercoastal's similar experience in this geographic area, and based  
3 on my knowledge and experience in these issues and in the general geographical area of the  
4 Nocatee development, I would anticipate that the most typical family home use in this  
5 requested territory will range between 10,000 and 25,000 gallons per month. In fact (while  
6 countering a criticism of Nocatee's 350 gpd estimated single-family potable water  
7 consumption), the Sufficiency Response attached to Mr. Douglas Miller's testimony  
8 (Ex. DCM-14, Exhibit page Numbers 4 & 5) vigorously defended that engineering estimate  
9 (of potable/indoor water use **in excess** of 10,000 gallons per month), and effectively rejected  
10 as too low a Water Management District estimate of even 270 gpd (8,100 + gals./month)  
11 potable/indoor use for a typical (2.7 person) single-family home. Apparently, the  
12 development's own engineers categorically agree that Ms. Swain's schedule does not  
13 emphasize gallonage levels which will actually be achieved in the Nocatee development. For  
14 the above reasons, Ms. Swain's analyses do not reflect a reasonable comparison of residential  
15 bills based upon expected use within the area. As a result of those facts, and in my opinion,  
16 residential bill comparisons more closely grouped within the 10,000 to 25,000 gallons per  
17 month usage range would be more representative. I believe it is apparent that utilization of  
18 these more appropriate gallonage rates would actually favor service by Intercoastal as  
19 opposed to NUC, in contrast to the way Ms. Swain has presented her bill comparison  
20 schedules.

21 Q. Why did you use a ten year period to calculate the above monthly recovery charge?

22 A. I felt that it was reasonable to do so. We are comparing the rates of two entities for the  
23 purpose of measuring, as best we can, the impact on future customers served under each of  
24 the competing rate proposals, as presented. We therefore should consider how the customer  
25 is affected by the rate and charge programs during a given period. While NUC's rate

1 projections cover a period of less than ten years, Intercoastal has projected rates over  
2 approximately ten years. If I had assumed a five or even four year recovery period (reflective  
3 of the NUC rate proposal and the combined rate comparisons Ms. Swain presented for that  
4 period), the cost recovery requirement for an NUC customer would have ranged from \$8.58  
5 to \$10.73 per month which, added to each level of NUC bills calculated by Ms. Swain,  
6 would substantially exceed the comparable bills she calculated for Intercoastal. However,  
7 it seemed reasonable to extend that cost recovery period to cover the greater range of  
8 Intercoastal's proposed rate program, even though Ms. Swain's shorter-term rate  
9 comparisons do not reflect the future customer rate advantage of service by Intercoastal.  
10 Mr. Burton's projections do demonstrate this future customer rate advantage of service by  
11 Intercoastal.

12 Q. What is your understanding of that future rate advantage?

13 A. I have reviewed Mr. Burton's projections and have supplied information to him as requested.  
14 Very simply, Mr. Burton's projections show a declining trend in Intercoastal's rates  
15 beginning in the year 2005, with progressively lesser costs to the future customer than  
16 reflected by the current NUC rate proposal. This clearly indicates to me that , under either  
17 of the foregoing cost recovery scenarios and appropriately revised cost comparison analyses,  
18 the Intercoastal customer's costs are at the very least at parity with (and for the majority of  
19 typical service - actually less than) those of NUC during the recovery period. More  
20 importantly, before the end of that recovery period, ICU's rates will be even less than those  
21 of NUC, making the issue of that added cost recovery moot – most likely beyond the year  
22 2005 – but certainly within the ten years. In any case, I believe the evidence continues to  
23 demonstrate that if Intercoastal's application is approved, all of Intercoastal's present and  
24 future customers, in both its existing and requested service territories, will receive quality  
25 service at a more reasonable cost than NUC proposes.

1 Q. Does the possibility of JEA's investment in "Joint Projects" with NUC change your prior  
2 testimony with respect to NUC's system investment policies, and the effects you expected  
3 those policies to have on NUC's future rates?

4 A. No, not based on either of the two testimonies filed on July 31, 2000. While Mr. Douglas  
5 Miller's testimony suggested that such "Joint Projects" may reduce NUC's capital costs,  
6 Ms. Swain said that she did not take into account (in her rate proposals) any possible  
7 reductions in capital associated with such "Joint Projects" - because she did not know the  
8 extent to which such cost sharing might be applied and that any potential cost savings to  
9 NUC would be speculative. She did, however, leave open the possibility that NUC might  
10 try to better define such costs and their impact on rates, but Ms. Swain did not comment as  
11 to what might precipitate such an attempt, or at what point in these proceedings that may  
12 occur. Therefore, it would appear that NUC intends to proceed with its plan to invest in  
13 "... all on-site transmission, distribution and collection facilities...", and will require the  
14 developer to contribute only "... the smaller distribution and collection system lines..."  
15 (D. Swain, Direct, pg. 6, lines 13-21). As I discussed in earlier testimony, this additional  
16 investment in on-site facilities by NUC (versus their contribution by the developer, which,  
17 in my experience, is the norm for both regulated and unregulated utilities), and the resulting  
18 return on such additional investments that can be achieved at customer expense, seems to be  
19 a primary motivating factor for the creation of NUC as a go-between JEA and the customers  
20 of NUC. The NUC investment in a greater proportion of the on-site systems also relieves  
21 the Nocatee developers of a large degree of cost responsibility and increases development  
22 profits. (ref: my Rebuttal Testimony, pg. 2, line 9 through pg. 3, line 7) In summary, this  
23 investment policy of NUC can only result in an increased cost of service to NUC's customers  
24 in the long run. This should be contrasted with Intercoastal. As a result of Intercoastal's  
25 investment policies, Intercoastal's rates are projected to decline in future years.

1 Q. Do you have any concerns or comments regarding the new agreement between JEA and  
2 NUC?

3 A. Yes. It would appear that after I pointed out that the original Letter Of Intent (LOI) between  
4 JEA and DDI agreed to a contingent need for plant construction by JEA, and the contingent  
5 utilization of the area's groundwater by JEA for service to Nocatee – (ref: my Rebuttal  
6 Testimony, pg. 9, lines 15-19) – those provisions have been omitted from this new  
7 agreement. However In my opinion, those omissions do not foreclose the same opportunities  
8 for JEA plant construction or utilization of available groundwater – within the service area  
9 – whether or not located specifically upon the Nocatee development property. I believe that  
10 a reading of the omnibus provisions of subsection 1.5 – Governmental Acts, Part 1–  
11 GENERAL CONDITIONS in this new agreement plainly demonstrates that the agreement  
12 would allow for broad-ranging modifications in the JEA-NUC plan of service if during the  
13 plan approval or permitting process it is determined (or possibly proposed) that a basis for  
14 such modifications exists. While I believe this section is reasonable to include in this type  
15 of agreement, it is clear to me that following the omission of those prior provisions, the  
16 appearance of this new language in the current agreement accomplishes the same purpose  
17 (to allow substantial modifications to the JEA-NUC proposed service plans) subsequent to  
18 the close of these proceedings – even to the extent of simulating the service plans proposed  
19 by Intercoastal.

20 Q. In your opinion, is there a possibility or probability that the JEA-NUC service plans would  
21 change if NUC's application is approved?

22 A. Yes. For instance, if the JEA announced plans – to import water from the northern or  
23 western parts of Duval County into its south grid and northern St. Johns County – which  
24 were determined to conflict with the “Local Sources First” policy of the State, or were  
25 discovered to be less desirable, less effective, or more expensive than utilization of the

1 groundwater resources available within the disputed area, I believe it's likely that those plans  
2 to import water will change to provide for construction of full water supply and production  
3 facilities within the Nocatee development, or adjacent to the Nocatee development. My  
4 opinion is supported by the July, 2000 NEWRAP document – attached to Mr. Douglas  
5 Miller's Supplemental Direct Testimony – which states that “despite” the availability of an  
6 “ample supply” of groundwater, in and around Nocatee, “The groundwater at Nocatee will  
7 be conserved.” (Orig. document pg. 6, renumbered as exhibit pg. 19). However, because that  
8 supply is mutually agreed upon to be “sustainable” (ibid.), and “of high quality”, and  
9 “sufficient “ to serve Nocatee at its build out with “minimal impacts offsite”, this should  
10 raise some very logical approval agency questions such as: For what future use are the  
11 Nocatee area supplies being conserved? Also, if the future, permanent water supplies for  
12 Nocatee are being proposed to come from a distant source, at a cost that is likely higher than  
13 utilizing these available and ample sources, does that “conservation” actually constitute  
14 “hoarding” at public expense? And, if Nocatee is to be accepted as a self-sustaining  
15 community, why should its available and ample resources not be utilized before drawing  
16 water from a distant source? In my opinion, the most likely answer to these or similar  
17 questions is that these groundwater supplies are not being “conserved”. More accurately,  
18 they are being effectively “reserved” for use by JEA, to be eventually utilized in the same  
19 fashion as Intercoastal proposes – for service to Nocatee and the surrounding areas of  
20 St. Johns County. But, in the case of JEA, it is highly likely that those reserved groundwater  
21 supplies would **also** add sufficient support for solution of the source of supply problems in  
22 JEA's (adjacent) Duval County South Grid Service Area. I believe these are additional  
23 reasons for the presence of the aforementioned subsection 1.5 in this JEA-NUC agreement,  
24 and are also motivations for JEA's attempt to establish (in this agreement) that it has a  
25 contingent right to the Duval County portion of NUC's proposed systems, as well as a First

1 Right of Purchase of all of NUC's proposed future systems. I further believe the above  
2 questions, and my proposed answer, are appropriate for this Commission's consideration in  
3 this proceeding because NUC and its witnesses have attempted to frame Intercoastal's plans  
4 for service as insensitive to the environment and therefore less palatable than the JEA-NUC  
5 plans that have been announced to date and described to the Commission. I also believe that  
6 it is appropriate for the Commission, and in fact typical of the Commission in a proceeding  
7 such as this, to attempt to look beneath the superficial representations of the parties and to  
8 try to understand or anticipate what will really happen in the future in the area which is at  
9 issue in any particular proceeding. In this case, that would involve this Commission  
10 attempting to ascertain, as I have done, what will really happen in the future with regard to  
11 utility service in the Nocatee development if the JEA-NUC plan of service is certificated by  
12 this Commission.

13 Q. Is there anything else regarding NUC's testimony and exhibits which concerns you?

14 A. Yes. I believe it's important for the Commission to recognize that, as stated in the prior  
15 referenced Sufficiency Response (Ex. DCM-14, Exhibit Numbered as pg. 3), the developer  
16 has not explored options other than JEA wholesaling, for provision of these services to the  
17 Nocatee development. This singular service source approach would produce a situation in  
18 which JEA's future rates for service to NUC could not be controlled by NUC, this  
19 Commission, or any objective regulatory entity. Neither would the St. Johns County  
20 customers of NUC, which at build out would be the majority of customers in Nocatee, have  
21 effective political standing before any local governmental body or regulatory agency which  
22 might exert some influence over those charges. The same would be true of ICU and its  
23 customers, if ICU's application was approved on the condition that it purchases services  
24 from JEA. But, the critical difference between ICU's plan and NUC's plan, other than ICU's  
25 lower rates, is that ICU, for the future well being of its customers, offers adequately planned,



1 cost-effective, and cost-controllable alternatives to the JEA by and through ICU's proposed  
2 plan of service.

3 Q. Are you aware that it is the position of the Nocatee developer and NUC that Intercoastal can  
4 not meet the "requirements" of the Development Order for the Nocatee development if  
5 Intercoastal proposes to locate wastewater treatment plants or water treatment plants within  
6 the Nocatee development?

7 A. Yes, I am aware of that testimony. Initially, I would point out that as I file this testimony,  
8 the Development Order is not even issued yet. Additionally, I know the Department of  
9 Community Affairs (DCA) has taken the position that when it reviewed the Nocatee ADA,  
10 it did not "require" those facilities to be offsite, and it did not profer an opinion regarding  
11 on-site vs. off-site. In my opinion, to present this as a "requirement" as if DCA had  
12 "imposed that requirement" because they had reviewed or analyzed the matter, or because  
13 they preferred or suggested or supported that the facilities be located offsite as opposed to  
14 on-site, was misleading. DCA's review of the project's overall impacts was based on  
15 Nocatee's representation in the Application for Development Approval. For whatever  
16 reason, the Nocatee developer chose not to disclose in the ADA any plan of service other  
17 than that proposed by its wholly-owned subsidiary. It failed to disclose that there was a  
18 proposed alternative by ICU (for providing water and wastewater to Nocatee) even though  
19 this case was pending before the Public Service Commission (PSC). The Department of  
20 Community Affairs did not even consider the specific provider of utility services to the  
21 development as part of its review. In other words, DCA made no comparison of NUC or its  
22 proposals to Intercoastal and its proposals. It is the position of the Department of  
23 Community Affairs that the service provider for the Nocatee development is not its primary  
24 concern, and that its primary concern is only that adequate facilities are available to the  
25 Nocatee development at the time of final permitting. I am attaching, as Exhibit MLF-3, a

1 Department of Community Affairs which addresses some of these points.

2 To the extent that the Development Order might have to be modified if NUC's Application  
3 is denied, and the Application of Intercoastal is granted, then the developer will find itself  
4 in a position into which it placed itself by only revealing half of the story in its ADA. That  
5 is, the developer could have presented both plans of service in its ADA, but instead chose  
6 to ignore Intercoastal's Application, this litigation, and the pending decision of the Public  
7 Service Commission, and to present its plan of service as if it was the only alternative which  
8 existed. It is clear that the Nocatee developer had several opportunities to present all of the  
9 information regarding potential water and wastewater service to Nocatee, as opposed to just  
10 some of the information, to the reviewers of the ADA. For instance, Mr. Doug Miller's own  
11 Supplemental Direct Testimony contains an exhibit (DCM-14) in which the Nocatee  
12 developer responded to two questions regarding potential water and wastewater service in  
13 the development. One of the questions was from the Department of Community Affairs and  
14 one was from St. Johns County. In its response to neither question did the Nocatee developer  
15 bother to set forth the information that in fact two competing utility proposals had been  
16 presented for the provision of water and wastewater service to the Nocatee development.  
17 Certainly, these were not the only examples of the opportunities the developer had to supply  
18 that information to the reviewing authorities, but these two examples are illustrative. If the  
19 developer had been more forthcoming in the ADA, then the potential for having to modify  
20 the Development Order probably would not exist.

21 Q. Does that complete your testimony?

22 A. Yes it does.

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STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

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JAN 25 2001

Rose Sundstrom & Bentley, LLP

24 January 2001

Mr. John L. Wharton
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

Dear Mr. Wharton:

This letter is in response to your letter of January 23, 2001, regarding the Application for Development Approval for the proposed Nocatee Development of Regional Impact (DRI). Your letter asked whether the Department required the potable and wastewater facilities to be located offsite as part of our review of the Application for Development Approval (ADA).

The developer represented in the ADA that the facilities would be located offsite. The Department did not require the facilities to be located offsite and does not proffer an opinion regarding onsite versus offsite. The Department's review of the project's overall impacts was based on the developer's representation. Since the developer represented facilities would be located offsite, the Department did not have to assess potential impacts that may result from facilities being onsite. If facilities were to be located onsite versus offsite, as represented in the ADA, the Department would want to assess whether this change would create an impact not previously reviewed. Therefore, we asked that a condition stating facilities would be located offsite be included in the development order.

Your letter also asked whether the Department considered the specific provider for the potable and wastewater facilities as part of its review. The Department did not consider the specific provider as part of its review. The Department's primary concern in this matter is that adequate potable and wastewater service is available when the development receives building permits and that any necessary mitigation to meet those demands are addressed in the development order.

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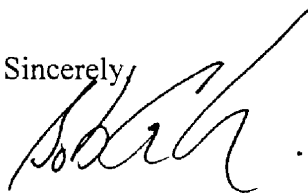
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Mr. John L. Wharton  
24 January 2001  
Page Two

Your final question addressed Mr. Gauthier's earlier testimony to the Public Service Commission which stated, in part, that he did "not anticipate any difficulties as long as there is a utility committed to serving the development." You asked whether any of the above matters change Mr. Gauthier's conclusions in his testimony. Mr. Gauthier has reviewed your correspondence of January 23, 20001, and has stated that the facts as you have represented them do not change the conclusion represented in his testimony. The service provider for the Nocatee development is not our primary concern, as stated earlier, our primary concern is that adequate facilities are available to the development at the time of final permitting.

If you have any questions regarding this matter please call James Stansbury or me at (850) 487-4545.

Sincerely

A handwritten signature in black ink, appearing to read "Bob Cambric", with a period at the end. The signature is written in a cursive style.

Bob Cambric, AICP  
Community and Citizen Liaison

Attachment (Wharton Letter)

cc: Ms. Billie Messer (Public Service Commission)  
Mr. Ed Lehman (Northeast Florida Regional Planning Council)  
Ms. Teresa Bishop (St. Johns County)  
Ms. Jeannie Fewell (City of Jacksonville)  
Ms. Lynn Pappas (Applicant's representative)