

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In Re: Application by Nocatee)
 Utility Corporation for Original)
 Certificates for Water & Wastewater)
 Service in Duval and St. Johns)
 Counties, Florida)

Docket No. 990696-WS

 In Re: Application for certificates)
 to operate water & wastewater)
 utility in Duval and St. Johns)
 Counties by Intercoastal Utilities, Inc.)

Docket No. 992040-WS

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**INTERCOASTAL'S RESPONSE IN OPPOSITION TO
 JOINT MOTION FOR CONTINUANCE**

INTERCOASTAL UTILITIES, INC. ("Intercoastal"), by and through undersigned counsel, hereby files this Response in Opposition to Joint Motion for Continuance and in support thereof would state and allege as follows:

1. Intercoastal filed its Application in December of 1999. On February 2, 2000, this Commission set this matter for hearing during August, 2000. On August 11, 2000, this Commission again rescheduled this proceeding for April 4-6, 2001. The hearing in this case is now set for a little over a month away. The most substantial portion of the discovery in this case is set to occur in the next three weeks in the form of the depositions of the various witnesses to this proceeding.

2. Now that JEA's proposal to provide retail service to the Nocatee development in Duval and St. Johns County effectively strips bare the facade created by NUC's application and testimony, the opponents of Intercoastal's Application suddenly believe this matter should be

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continued.¹ This case could only be continued to the great detriment of Intercoastal, despite the assertions of the “merits” to all concerned in the Joint Motion. In fact, no continuance is appropriate or necessary. Each of the matters referenced in the Joint Motion will take care of themselves in due course. If JEA proposes to serve the Nocatee development, with NUC’s acquiescence, then NUC may withdraw its Application (which surely could never be granted by this Commission under those circumstances in any case). If Intercoastal was acquired by St. Johns County, then the question would be before the Commission as to what would happen to Intercoastal’s Application. There is no need to delay this case based on nebulous events in an unknown future which may or may not occur.

3. Now that all the parties have finally laid all their cards on the table, the Commission can see this proceeding for what it really is. A private utility (Intercoastal), which would be regulated by the PSC if its Application is granted, seeks to expand its existing service territory to encompass the Nocatee development. A municipal utility, JEA, seeks to expand from the north such that it will provide retail service to the Nocatee development. St. Johns County stands, at least at present, in apparent opposition to both of the aforementioned proposals.

4. Nothing has occurred which should result in the delay of this proceeding. However, those very recent events which were acknowledged in the Joint Motion certainly make one thing clear: if this case is continued then Intercoastal remains stopped dead in its tracks. This should be contrasted with the regulatory freedom enjoyed by JEA and St. Johns County, who can move forward with their various (and ever-evolving) plans to the detriment of Intercoastal.

¹ It should be noted that this “recent” proposal by JEA is completely consistent with the testimony of Intercoastal’s experts who opined that, despite the representations in NUC’s Application and testimony, it was clear that the groundwork was being laid for JEA to provide retail service to the Nocatee development.

5. It is interesting to note that the Joint Motion strenuously argues, in effect, that “something is happening”. The Prehearing Officer should recall that “something was happening” when this case was shut down in August of 2000, also. One might observe that, at least when it comes to JEA and St. Johns County, “something seems to happen”, only when this case is about to go to trial. Shutting down this case now will deny Intercoastal its right to proceed to hearing in an expeditious and efficient manner; will shut Intercoastal out of the ever-changing plans of JEA and/or St. Johns County; will benefit Intercoastal’s opponents in this docket to the detriment of Intercoastal itself; and will remove whatever incentive this proceeding provides to these two governmental entities (JEA & St. Johns County) to move forward with whatever determinations they need to make such that Intercoastal’s Application may finally be acted upon by this Commission.

6. The depositions which are scheduled in the next three weeks were set up far in advance. In fact, the parties started to discuss them in December of last year.² To suggest that this proceeding be continued until May 1, 2001, is disingenuous on two counts. The first is that the movants know the Commission is not going to be able to come up with three days to try this case on such short notice. The second is that such a brief continuance (until May 1, 2001) would strongly indicate that the depositions should stay as scheduled.

7. The Joint Motion indicates that St. Johns County is going to be looking into “the acquisition of ICU” and “JEA’s proposal” on March 6, 2001. JEA’s proposal really has nothing to do with Intercoastal’s Application (although it seriously undermines the “Application” of the other applicant in this consolidated proceeding, Nocatee Utility Company). If JEA’s proposal is accepted,

² And, in fact, some of the schedules are still changing.

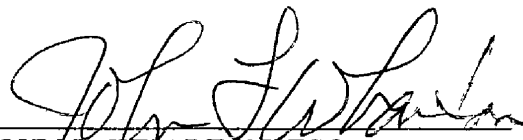
this in no way deprives Intercoastal of its right or ability to obtain a certificate to serve those portions of St. Johns and Duval Counties for which it has applied. If Intercoastal was certificated by this Commission, after this Commission deems its certification to be in the public interest, then any ultimate determination of whether a municipal utility (JEA) or whether the certificated utility (Intercoastal) should serve this area will be settled in another forum on another day.

8. The acceptance of any JEA proposal to provide service to the Nocatee development would obviously render the “Nocatee Utility Corporation” as an entity which exists in name only. While the Joint Motion states that JEA is proposing to serve the Nocatee development “with NUC’s consent”, the fact is that NUC’s Application will be instantly dismissible if that proposal is accepted (with NUC’s “consent”), and that in all likelihood NUC will cease to even exist. None of this is true of either Intercoastal or its Application. Intercoastal intends to pursue a certificate to serve the territories for which it has applied regardless of how many iterations the plans of JEA, NUC or St. Johns County go through. Intercoastal has proposed to serve this growing part of St. Johns County for years and intends to continue pursuing that proposal, which is both in the interest of Intercoastal and its existing and future customers.

9. The Prehearing Officer should fully consider the strategic advantage the movants achieve if this case is continued. This is no mere request for a continuance in some factual vacuum made in the public interest. It is a request for a continuance that effectively thwarts one party (Intercoastal) from effectuating its intentions (by the mere fact that it has to participate in this process before it can extend its service) while “competing” interests move forward with their plans (as they happen to exist on any certain day) unabated and unrestrained.

WHEREFORE, and in consideration of the above, Intercoastal respectfully requests that the Joint Motion be denied in its entirety.

DATED this 27th day of February, 2001.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of Intercoastal's Response in Opposition to Joint Motion for Continuance has been furnished by facsimile and U.S. Mail to the following this 27th day of February, 2001:


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