

ORIGINAL

RECEIVED-PPSC

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

01 APR 30 PM 4:46

In re: Application for original certificates)
to operate water and wastewater utility)
in Duval and St. Johns Counties)
by Nocatee Utility Corporation)

Docket No. 990696-WS

RECORDS AND REPORTING

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

Docket No. 992040-WS

Filed: April 30, 2001

NUC'S RESPONSE IN OPPOSITION TO ST. JOHNS COUNTY'S MOTION FOR CONTINUANCE

NOCATEE UTILITY CORPORATION ("NUC") hereby files its response in opposition to St. Johns County's ("County's") Motion for Continuance (the "Motion"). As grounds for its opposition, NUC states:

1. As the County concedes, this is the third continuance that the County has requested in this docket. (Motion ¶5) Each request for continuance has come shortly before the then-current hearing dates.

(a) On July 26, 2000, the County filed a Motion for Continuance of the hearings then scheduled to begin on August 16, 2000, on the grounds that it had first been informed on July 25, 2000 of the finalized agreement between NUC and JEA for operations, management and bulk utility service. This request was supported by Intercoastal Utilities, Inc.

- APP _____
- CAF _____
- CMP _____
- COM 5
- CTR _____
- ECR _____
- LEG 1
- OPC _____
- PAI _____
- RGO _____
- SEC 1
- SER _____
- OTH _____

("Intercoastal") which filed both (i) a motion for continuance based on a recently announced

County proposal to purchase Intercoastal which was scheduled for public hearing on August 15,

2001, and (ii) a supplemental motion for continuance based on the finalization of the NUC/JEA

RECEIVED & FILED

DOCUMENT NUMBER-DATE

05344 APR 30 01

PPSC-BUREAU OF RECORDS

PPSC-RECORDS/REPORTING

agreement. A continuance was granted over the objection of NUC. The proposed acquisition of Intercoastal did not come to fruition, with the County Commission voting on August 15, 2000 not to authorize the purchase of Intercoastal at the price that had been negotiated by the county staff.

(b) On February 23, 2001, the County (joined by NUC and JEA) filed a motion for continuance of the hearings then scheduled for April 4, 2001 on the grounds that (i) the County had under consideration a proposal it had solicited from JEA to provide service on a retail basis to various areas in northern St. Johns County, and (ii) the County had directed its staff to present to it on March 6, 2001 a revised proposal for the acquisition of Intercoastal. This motion was granted over Intercoastal's objection. In the order granting this second continuance, the Commission advised the parties that "unless good cause can be shown, no further continuances will be granted in this matter." Order No. PSC-01-0542-PCO-WS, page 4. Although the County subsequently appointed a county team to negotiate with JEA, no further action has been taken on the JEA proposal. Further, no revised proposal for acquisition of Intercoastal was presented to the County on March 6.

(c) On April 30, 2001, the County filed the current motion for at least a six week continuance of the hearings now scheduled for May 7, 2001. As grounds for that motion, the County recites that on April 24 it adopted a resolution declaring the Nocatee development to be part of the County's exclusive service territory and also voted to schedule a public hearing in the first week of June, 2001, on another proposed acquisition of Intercoastal. It is worthy of note that, unlike the situation in July, 2000, the county staff apparently does not have a draft purchase agreement with Intercoastal, but simply has a staff proposal to make a unilateral offer to

Intercoastal which may or may not be acceptable to that utility. (See Young Deposition at pages 111-114)

2. The County gives no reason for a further continuance except that if the County approves the purchase of ICU in the first week of June, 2001, the positions of the parties in this case, and the parties themselves, could be radically changed. (Motion ¶6) NUC submits that such a change is unlikely. Since both Intercoastal and the County oppose the grant of a certificate to NUC, the acquisition of one by the other should not make any change that is relevant to NUC's certificate application. This is especially true since Mr. William Young, Director of Utilities for St. Johns County, has testified at deposition that the acquisition of Intercoastal by the County would have no effect on the County's plan to serve the Nocatee development. (Young Deposition, page 114, line 24 to page 115, line 3)

3. Most of the rest of the County's request for continuance is an argument that the Commission does not have jurisdiction over NUC's application. The Commission, however, has already ruled that it does have jurisdiction. The County's continued assertions to the contrary are a matter for appeal, not grounds for a continuance.

4. The County's Motion also makes numerous factual or legal assertions that NUC disputes. For example, the County incorrectly maintains that NUC is not the "real party in interest" in this case (Motion ¶7); that the County has both the technical ability and financial resources to provide timely service to the Nocatee development within St. Johns County (Motion ¶9); that NUC's application is not ripe for consideration by the Commission (Motion ¶10); that "there is no question that the County has the legal authority to enact County Ordinance 99-36 and Resolution 2001-82 (Motion ¶5); and that there is no "need" for either certificate being requested in this docket (Motion ¶13). To the extent that any of these factual and legal questions are

properly before the Commission in this docket, they will presumably be resolved based on the evidence and legal arguments received by the Commission, not based on the County's motion for continuance. The existence of such questions, however, provides absolutely no support for a continuance. They are matters that can be resolved at hearing or in the standard post-hearing process.

5. Enough is enough. The Commission should not grant a further continuance in order to allow the County even more time to develop, refine or change its position on County service to northern St. Johns County and/or the acquisition of Intercoastal. NUC believes that at hearing it will demonstrate a need for service to the Nocatee development that is best met by certification of NUC by the Commission as a multi-county utility. NUC's plan to provide service through a bulk arrangement with JEA has not changed since its application was filed in June, 1999. It is now time for the Commission to hear and rule on that proposal.

6. NUC has simultaneously filed in opposition to the County's request for the Commission to accept additional testimony regarding the County's ever-changing plans. If the County's additional testimony is rejected, there is absolutely no basis for a further continuance, since the case will proceed to hearing on the existing prefiled testimony. Even if the County's proposed additional testimony is accepted, however, a continuance would not be warranted. NUC is prepared to file rebuttal to the County's testimony by Thursday, May 3, and to proceed to hearing as scheduled on May 7.

WHEREFORE, NUC urges that the Commission deny the County's Motion for Continuance and proceed to hearing as currently scheduled on May 7.

RESPECTFULLY SUBMITTED this 30th day of April, 2001.

HOPPING GREEN SAMS & SMITH, P.A.

By: Richard D. Melson

Richard D. Melson

P.O. Box 6526

Tallahassee, FL 32308

(850) 425-2313

Attorneys for Nocatee Utility Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served this 30TH day of April, 2001, on the following:

Samantha Cibula
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

By Hand Delivery

John L. Wharton
Marshall Deterding
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

By Facsimile & U.S. Mail

Suzanne Brownless
1311-B Paul Russell Road, Suite 201
Tallahassee, FL 32301

By Facsimile & U.S. Mail

Kenneth A. Hoffman
J. Stephen Menton
Rutledge, Ecenia, Purnell & Hoffman
P.O. Box 551
Tallahassee, FL 32302

By Facsimile & U.S. Mail

Michael B. Wedner
St. James Building, Suite 480
117 West Duval Street
Jacksonville, FL 32202

By Facsimile & U.S. Mail

Michael J. Korn
Korn & Zehmer
6620 Southpoint Drive South
Suite 200
Jacksonville, FL 32216

By Facsimile & U.S. Mail



Attorney