

ORIGINAL

RECEIVED-FPSC

01 APR 30 PM 4:46

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECORDS AND REPORTING

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

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 REGARDING ADDITIONAL TESTIMONY

NOCATEE UTILITY CORPORATION ("NUC") hereby files its response in opposition to St. Johns County's ("County's") Motion to Accept Prefiled Testimony as Supplemental Intervenor Testimony or, in the alternative, Motion to Allow Intervenor Direct Testimony (the "Motion"). As grounds for its opposition, NUC states:

1. The additional testimony that the County seeks to file addresses two inter-related topics arising from the County's recent decision to attempt to compete for the provision of water and wastewater service to the Nocatee development:

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

- (a) the adoption on April 24, 2001 by the Board of County Commissioners of St. Johns County ("Board") of a resolution designating the Nocatee development as part of the County's "exclusive service area"; and
(b) the Plan of Service for the Nocatee development that was considered by the Board when it adopted the resolution.

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

05345 APR 30 01

FPSC-RECORDS/REPORTING

2. NUC submits that this testimony is both untimely and is not relevant to any of the issues that the Commission must decide in its certificate application proceeding.

Untimeliness

3. NUC's application to serve the territory comprising the Nocatee development was filed with the Commission on June 1, 1999. St. Johns County first moved to intervene in this proceeding in January, 2000, in opposition to a competing application filed by Intercoastal Utilities, Inc. ("Intercoastal") on December 30, 1999.

4. The County has had an ordinance in place since May 19, 1999, which designates certain areas of St. Johns County as the "exclusive service area" of the County. That exclusive service area designation does not cover the lands comprising the Nocatee development. On April 24, 2001, less than two weeks prior to the third rescheduled hearing in this docket, the County adopted a resolution which purports to include the Nocatee development within that exclusive service area.

5. Based on this recent action, the County now seeks not only to file proof of the newly adopted exclusive service territory designation (which is a matter that the Commission could officially notice) but also to sponsor a plan of service for the Nocatee development.

6. As the County concedes, "the time to file direct and supplemental intervenor testimony is long past." (Motion, ¶4) Indeed this filing comes more than three months after the last date (January 26, 2001) established for the intervenors to file testimony in this docket. It also comes two weeks after the prehearing conference (April 16, 2001) and only one week prior to the hearing scheduled to begin on May 7, 2001.

7. By any standard of reasonableness, this substantial, eleventh-hour filing is untimely and should not be allowed.

Lack of Relevancy

8. This hearing is not about the County's new plan to serve the Nocatee development -- it is about whether NUC (or Intercoastal) should be certificated to provide such service. Under Section 367.045(5)(a), Florida Statutes, the Commission can grant NUC its requested certificate unless it finds that NUC's proposed system "will be in competition with, or duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public, or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service."

9. The County's testimony and exhibits show on their face that NUC's proposed system will not compete with, or duplicate, any existing County system. That existing system is approximately 15 miles away from the Nocatee development. The County's testimony regarding a plan of service that makes use of a *proposed system* that does not exist today is simply not relevant to the issues the Commission must decide in this docket.

10. Assuming that the Commission grants a multi-county certificate to NUC as requested in this docket, the ultimate question of whether that certificate give NUC rights which are superior to the County's "exclusive service area" designation will be a matter for the courts, not this Commission, to resolve.

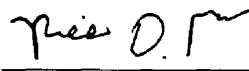
Alternative Request for Leave to File Rebuttal

11. In the event the Commission accepts the County's late-filed testimony regarding its new plan of service, NUC respectfully requests that it be granted until the close of business on Thursday, May 3, 2001 (or, if later, 24 hours after entry of an order allowing such testimony) in which to file rebuttal testimony regarding the County's plan of service.

WHEREFORE, NUC urges that the Commission deny the County's Motion to allow the filing of additional direct testimony of William Young and Donald Maurer. In the event the County is permitted to file this additional testimony, NUC requests leave to file rebuttal to this testimony by the close of business on Thursday, May 3, 2001.

RESPECTFULLY SUBMITTED this 30th day of April, 2001.

HOPPING GREEN SAMS & SMITH, P.A.

By:  _____

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