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TO: DIRECTOR, DIVISION OF THE COMMISSION
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (DANIEL, MESSER, JOHNSON, REDEMANN, CLAPP, RIEGER) SDR
DIVISION OF LEGAL SERVICES (CIBULA, ESPINOZA) PS

RE: DOCKET NO. 990696-WS - APPLICATION FOR ORIGINAL CERTIFICATES TO OPERATE A WATER AND WASTEWATER UTILITY IN DUVAL AND ST. JOHNS COUNTIES BY NOCATEE UTILITY CORPORATION.

DOCKET NO. 992040-WS - APPLICATION FOR CERTIFICATES TO OPERATE A WATER AND WASTEWATER UTILITY IN DUVAL AND ST. JOHNS COUNTIES BY INTERCOASTAL UTILITIES, INC.
COUNTY: DUVAL AND ST. JOHNS

AGENDA: 08/07/01 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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CASE BACKGROUND

On June 1, 1999, Nocatee Utility Corporation (NUC) filed an application for original certificates to provide water and wastewater service to a development located in Duval and St. Johns Counties known as Nocatee. Docket No. 990696-WS was assigned to that application. On June 30, 1999, Intercoastal Utilities, Inc. (Intercoastal, IU, or utility) timely filed a protest to NUC's application and requested a formal hearing. By Order No. PSC-99-1764-PCO-WS, issued September 9, 1999, the procedure for this case was established.

On December 30, 1999, Intercoastal filed an application requesting an amendment of certificates to provide water and wastewater service in the Nocatee development; to extend its service territory in St. Johns County; and for an original certificate for its existing service area. Docket No. 992040-WS was assigned to that application. NUC and its parent company, DDI, Inc. (DDI), Sawgrass Association, Inc. (Sawgrass or Association), and JEA (formerly known as Jacksonville Electric Authority) timely filed objections to Intercoastal's application and requested a formal hearing. St. Johns County (County) was granted intervention by Order No. PSC-00-0336-PCO-WS, issued February 17, 2000. By Order No. PSC-00-0210-PCO-WS, issued February 2, 2000, Dockets Nos. 990696-WS and 992040-WS were consolidated.

On January 24, 2000, NUC and DDI filed a joint Motion to Dismiss Intercoastal's application based on the doctrines of res judicata and collateral estoppel. On January 26, 2000, the County also filed a Motion to Dismiss Intercoastal's application, stating that the Commission does not have jurisdiction over the application based on Section 367.171, Florida Statutes, and based on doctrines of res judicata and collateral estoppel. Also, by Order No. PSC-

On May 10 and 11, 2000, Sarasota and Hillsborough Counties, respectively, filed Petitions for Intervention in these dockets, requesting the opportunity to file Motions to Dismiss based on the argument that the Commission lacks jurisdiction under Section 367.171, Florida Statutes, to consider Intercoastal's and NUC's applications. On May 15, 2000, Collier and Citrus Counties filed a Petition for Intervention, and Alternative Petitions for Declaratory Statement, for Initiation of Rulemaking, and for Permission to Submit Amicus Curiae Motion on Jurisdiction. On May 23, 2000, Sarasota and Hillsborough Counties filed Motions to Dismiss and Collier and Citrus Counties filed a joint Motion to Dismiss.

On June 2, 2000, NUC and DDI withdrew their joint Motion to Dismiss Intercoastal's application. On June 12, 2000, St. Johns County withdrew the portion of its Motion to Dismiss which pertained to the arguments of res judicata/collateral estoppel.

By Order No. PSC-00-1265-PCO-WS, issued July 11, 2000, the Commission determined that it has jurisdiction to consider NUC's and Intercoastal's applications. Also, the Commission denied the Petitions for Intervention filed by Sarasota and Hillsborough Counties and the joint Petition for Intervention filed by Collier and Citrus Counties, and consequently denied the Motions to Dismiss filed by these Counties based on lack of standing. However, the Commission allowed the Counties to address the Commission on the issue of jurisdiction as amicus curiae. Further, the Commission denied the Motion to Dismiss filed by St. Johns County.

Sarasota, Hillsborough, Collier and Citrus Counties appealed the Commission decision to deny them intervention to the First District Court of Appeals. The court dismissed their appeal, but stated that they could file another appeal when this matter became final.

A prehearing conference was held on July 12, 2000. On July 21 and 26, 2000, respectively, Intercoastal filed its Motion for Continuance and its Supplemental Motion for Continuance, and on July 26, 2001, the County filed its Motion for Continuance. On July 24 and 31, 2000, respectively, NUC filed its Response in Opposition to Motion for Continuance and its Supplemental Response in Opposition to Motions for Continuance. By Order No. PSC-00-1462-PCO-WS, issued August 11, 2000, the Motions for Continuance were granted and the second prehearing conference and hearing dates

were rescheduled to March 28, 2001, and April 4 through 6, 2001, respectively.

On July 31, 2000, NUC filed a Motion for Leave to File Supplemental Direct Testimony for Douglas C. Miller and Deborah D. Swain. By Order No. PSC-00-2320-PCO-WS, issued December 5, 2000, the motion was granted. Pursuant to that Order, Intercoastal and St. Johns County filed supplemental testimony in response to NUC's supplemental testimony.

On February 23, 2001, the County, JEA, and NUC filed a Joint Motion for Continuance. On February 27, 2001, Intercoastal timely filed its Response in Opposition to Joint Motion for Continuance. By Order No. PSC-01-0543-PCO-WS, issued March 7, 2001, the Joint Motion for Continuance was granted, and the second prehearing conference and hearing dates were again rescheduled for April 16, 2001, and May 7 through 9, 2001, respectively.

On March 22, 2001, NUC filed a Motion for Leave to File Additional Direct Testimony, requesting that it be allowed to file additional testimony for Deborah D. Swain to correct a computational error contained in her prefiled testimony. On March 29, 2001, Intercoastal timely filed its Response in Opposition to NUC's motion. By Order No. PSC-01-0932-PCO-WS, issued April 11, 2001, NUC's motion was granted, and the parties and staff were given 14 days from the issuance date of the Order to file rebuttal testimony to NUC witness Swain's additional testimony.

A second prehearing conference was held on April 16, 2001. Order No. PSC-01-1032-PHO-WS (Prehearing Order), issued April 27, 2001, set forth the procedure for the hearing.

Subsequent to the prehearing conference, on April 25, 2001, Intercoastal filed a Motion to Accept Prefiled Testimony as Additional Rebuttal or, in the Alternative, Motion to Allow Additional Direct Testimony. Attached to its motion, Intercoastal provided the testimony of witnesses H.R. James, Jim L. Bowen, and Michael E. Burton. In a separate pleading filed contemporaneously with the motion, Intercoastal requested that oral argument on the motion be granted.

On April 30, 2001, the County filed its Motion to Accept Prefiled Testimony as Supplemental Intervenor Testimony or, in the Alternative, Motion to Allow Intervenor Direct Testimony. Attached

to its motion was the testimony of William G. Young and Donald E. Maurer. Also on April 30, 2001, the County filed a Motion for Continuance of the hearing in this matter.

By Order No. PSC-01-1055-PCO-WS, issued May 3, 2001, Intercoastal's Motion for Oral Argument was denied, and its Motion to Accept Prefiled Testimony as Additional Rebuttal or, in the Alternative, Motion to Allow Additional Direct Testimony, was granted to the extent that it allowed portions of Mr. Burton's testimony that was found to be proper rebuttal testimony. Order No. PSC-01-1055-PCO-WS denied Intercoastal's motion to the extent that it disallowed the remainder of Mr. Burton's testimony and the testimony of Mr. James and Mr. Bowen, as this testimony was found to be additional testimony. Order No. PSC-01-1055-PCO-WS also granted the County's Motion to Accept Prefiled Testimony as Supplemental Intervenor Testimony or, in the Alternative, Motion to Allow Intervenor Direct Testimony, but denied the County's Motion for Continuance. On May 4, 2001, the County filed its Notice of Withdrawal from participating in these dockets.

A hearing was held on May 7 through 9, 2001. Ten o'clock a.m. and 6 o'clock p.m. were set aside to take customer testimony. No customers attended the 10 o'clock session, and one customer attended the 6 o'clock session.

Pursuant to the Prehearing Order, the parties were required to include in their post-hearing statements a summary of each position of no more than 50 words, set off with asterisks. Staff notes that Intercoastal failed to include a summary of each of its positions in its post-hearing statement. Therefore, staff used the analysis contained in the utility's brief, if the analysis did not exceed 50 words, or the utility's position on the issue contained in the Prehearing Order. In the instances where Intercoastal's position in the Prehearing Order exceeded 50 words, staff included the position up to the 50 word limit. Staff also notes that some of the other parties exceeded the 50 word limit in their summaries of position. Likewise, staff included the position up to the 50 word limit.

This recommendation addresses all issues related to NUC's and Intercoastal's applications for certificates to operate a water and wastewater utility in Duval and St. Johns Counties. The Commission has jurisdiction pursuant to Sections 367.171(7), 367.031, and 367.045, Florida Statutes.

RULINGS ON MOTIONS

I. Motion for Continuance of the Hearing

At the start of the hearing, Intercoastal made an ore tenus motion that the Commission continue the hearing. In support of its motion, Intercoastal argued that one of its witnesses, Mr. M. L. Forrester, was unable to attend the hearing because he was hospitalized. Intercoastal stated that Mr. Forrester sponsored over half of Intercoastal's prefiled testimony. Intercoastal asserted that Mr. Forrester is Intercoastal's major witness and that not having Mr. Forrester available substantially affected its preparation for the hearing and would affect its trial strategy and its ability to effectively put on its case. Intercoastal argued that the prejudice to Intercoastal by going forward far outweighed the prejudice to any other party that would result from granting a continuance. Intercoastal stated that it would be opposed to entering Mr. Forrester's deposition into the record because the deposition contains testimony that is inadmissible and the procedure would deprive Intercoastal of redirect.

NUC opposed any continuance of the hearing, but offered to stipulate Mr. Forrester's testimony into the record and enter his deposition into the record in lieu of cross-examination. JEA supported NUC's position and also suggested that Intercoastal be given the opportunity to file written redirect to the deposition. Sawgrass stated that it had no position on the matter, but stated that it would not be opposed to NUC's suggestion to enter Mr. Forrester's deposition into the record and waive cross-examination. Staff counsel agreed that Mr. Forrester's deposition could be entered into the record, in lieu of cross-examination, and suggested that Intercoastal be given the opportunity to go through the deposition and identify the portions of the deposition that it would be opposed to entering into the record and that those portions could be redacted from the deposition before it was entered into the record.

After hearing argument of counsel, the Commission denied Intercoastal's motion for continuance of the hearing. The Commission, however, decided that Mr. Forrester's testimony would be stipulated into the record; that Mr. Forrester's deposition would be entered into the record in lieu of cross-examination; that Intercoastal would have the opportunity to review the deposition and redact those portions to which it was opposed; and that

Intercoastal would be allowed to proffer written redirect questions to the deposition.

II. Motion for Reconsideration of Order No. PSC-01-1055-PCO-WS

At the start of the hearing, Intercoastal made an ore tenus motion for the Commission to reconsider Order No. PSC-01-1055-PCO-WS as it relates to the Commission's decision to disallow a portion of Mr. Burton's testimony and the testimony of Mr. James and Mr. Bowen. After hearing argument of counsel, the Commission found that there was no mistake of fact or law contained in Order No. PSC-01-1055-PCO-WS. Therefore, the Commission denied Intercoastal's Motion for Reconsideration of Order No. PSC-01-1055-PCO-WS.

III. Motion to Strike Portions of Ralph Don Flurry's Testimony

During the course of the hearing, Intercoastal moved to strike portions of Sawgrass witness Ralph Don Flurry's testimony. Sawgrass agreed to withdraw page 9, line 1 through page 10, line 10; page 12, line 19 through page 13, line 5; and page 16, line 6 through line 14 of the testimony. Intercoastal withdrew its motion as Sawgrass withdrew the testimony at issue. No ruling by the Commission was necessary.

IV. Request to Extend the Page Limit of Briefs

During the course of the hearing, the Commission requested that the parties include argument in their briefs on the following issues: 1) the implications of the decisions in the Alafaya Utilities and Lake Utility Services cases on these dockets; 2) whether the Commission should consider denying both pending applications; 3) whether the agreement between JEA and NUC for operations, management and maintenance service makes NUC exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes; and 4) whether the Commission should defer a decision in these cases until after the conclusion of a pending administrative challenge to the Department of Community Affairs' decision. NUC requested that the Commission extend the page limit of the briefs from 50 to 60 pages to allow the parties to address the extra issues that the Commission requested the parties brief during the hearing. The Commission granted NUC's request and set the page limit for briefs at 60 pages.

ISSUE A: Has NUC factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for original certificates?

RECOMMENDATION: Yes. NUC has factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for original certificates. (CIBULA, ESPINOZA)

POSITION OF PARTIES

NUC: Yes. Phase I of the Nocatee development includes development in both Duval and St. Johns Counties. NUC will serve that development through a single water, wastewater and reuse system which includes utility invested and/or developer contributed lines that physically cross the county boundary.

IU: No.

JEA: Yes. NUC has established that its proposed system satisfies the requirements of Section 367.171(7), Florida Statutes. The Nocatee development includes land in both Duval and St. Johns Counties. NUC proposes to serve the development through a single water, wastewater and reuse system which includes lines that physically cross the county boundaries.

SAWGRASS: As set forth in the Pre-Hearing Order, the Association takes no position on this issue.

STAFF ANALYSIS: Section 367.171(7), Florida Statutes, states:

Notwithstanding anything in this section to the contrary, the [C]ommission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional.

NUC witness Douglas Miller testified that Nocatee will be developed in five phases over a total development horizon of approximately 25 years. (TR 130) Mr. Miller explained that Phase

I, which covers the time period from approximately 2001 to 2005, includes property in both Duval and St. Johns Counties. (TR 130) Mr. Miller testified that NUC's proposed service area is identical to that of the Nocatee development. (TR 130) Mr. Miller further testified that the first phase of the Nocatee development will be the town center, which is bisected by Duval County and St. Johns County. (TR 149) Mr. Miller further testified that NUC will construct water, wastewater, and reuse throughout the town center through a grided distribution system and collection system which will crisscross back and forth across the county line and create one cohesive uniform utility in both counties to serve this first phase of the downtown center. (TR 149) Moreover, wastewater from both counties will be collected and pumped to JEA from a single master lift station located in St. Johns County. (TR 187) (EX 6, DCM-7)

Intercoastal argues that NUC has failed to factually establish that its proposed systems will transverse county boundaries pursuant to Section 367.171(7), Florida Statutes. (BR 9) Intercoastal asserts that the testimony and evidence reveal that NUC will own very little infrastructure which will comprise the utility system. (BR 9) Further, Intercoastal argues that "NUC has failed to establish, as a matter of fact, that it would own a 'utility system', as that phrase is used in Section 367.171(7), Florida Statutes, which would transverse the Duval County/St. Johns County line." (BR 9)

While the record shows that NUC will not own all of the lines which will physically transverse the county boundary, the record also shows that NUC will own some of those lines. Moreover, by Order No. PSC-00-1265-PCO-WS, issued July 11, 2000, in this docket, the Commission determined that it has the jurisdiction to consider NUC's application pursuant to Section 367.171(7), Florida Statutes. Thus, staff recommends that the Commission find that NUC has factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for original certificates.

ISSUE 1: Is there a need for service in the territory proposed by NUC's application, and if so, when will service be required?

RECOMMENDATION: Yes, there is a need for water, wastewater, and reuse service for the Nocatee development. Service will be required in the fourth quarter of 2002. (REDEMANN, JOHNSON)

POSITION OF PARTIES

NUC: Yes. The boundaries of NUC's proposed territory are the same as those of the Nocatee development which has obtained approval as a Development of Regional Impact. NUC expects that service will be required beginning in late 2002.

IU: In addition to those other areas for which Intercoastal has applied, there is a need for service in the territory proposed by NUC's application. Intercoastal proposes to meet that need and is in the best position to do so. The date on which service will first be required is in dispute. Intercoastal suggests the appropriate initial date of service will be required in 2001.

JEA: Yes.

SAWGRASS: No position.

STAFF ANALYSIS: This issue is intended to determine the need for utility service in the territory proposed to be served by NUC. Section 367.045(1)(b), Florida Statutes, requires an examination of the need for service in the requested area. Rule 25-30.033(1)(e), Florida Administrative Code requires an applicant for original certificate to provide a statement showing the need for service in the proposed area. NUC, IU and JEA agree there is a need for service in the Nocatee area which NUC seeks to obtain water and wastewater certificates of authorization. However, the parties have a conflict on the timing of the need for service. NUC and JEA believe the need for service will present itself in the fourth quarter of 2002. IU believes there will be a need for service, but that the timing of the construction water for the development will be in 2001. Sawgrass took no position on this issue.

Witness Skelton, the president of DDI, Inc. and NUC, provided testimony on the general plans for the Nocatee development. He

stated that DDI owns, through its affiliate SONOC Company, LLC, approximately 15,000 acres in St. Johns and Duval Counties that will be developed by the PARC Group over the next 25 years as a multi-use development known as "Nocatee". (TR 95-96) Witness D. Miller, NUC's engineer, sponsored Exhibits D and F of NUC's Application - Exhibit 4, which contained more specific details on the Nocatee development plan. These Exhibits describe that at build-out, NUC will serve about 10,024 residential dwelling units, 3,960 multi-family dwelling units, 650 hotel rooms, three clubhouses, 4,118,000 square feet of general office space, 50,000 square feet of governmental office space, 1,000,000 square feet of retail/commercial space, 250,000 square feet of light industrial space, 206 acres of regional park, 3,500 students at elementary and middle schools, 200,000 square feet of church space, and various other civic facilities, fire stations, community clubs, athletic complex, learning centers, and utility sites.

To serve the development, NUC and JEA entered into an Agreement for Wholesale Utilities, Operations, Management and Maintenance (the "Wholesale Agreement") on July 24, 2000. The Wholesale Agreement indicates that JEA will provide NUC bulk water, wastewater and reuse service to Nocatee for at least 25 years. (TR 141-142, EX 7, DCM 13A; TR 540-541) JEA agrees to comply with the applicable provisions of the Nocatee Environmental Water Resource and Area Plan (NEWRAP) in the provision of these services. (EX 7, DCM 13A, EX E, TR 142) NEWRAP is a development plan created by the owners of the Nocatee development which requires that there will be no on-site potable water wells, no use of groundwater as a primary or secondary source for irrigation, no on-site wastewater treatment facilities, and no effluent discharges to the Tolomato River. (TR 141-142) The requirements of the NEWRAP are discussed in more detail in Issue 3.

Initially, witness Skelton indicated that the need for service in the territory will begin in 2001. (TR 97) However, at the hearing, witness D. Miller updated the timing of the development and need for service to be in the 4th quarter of 2002. (TR 146, 185-186) According to NUC witness D. Miller, this delay is due to the longer than anticipated Development of Regional Impact review process. (TR 145) Staff witness Gauthier of the Department of Community Affairs (DCA), provided testimony regarding the delays due to the challenge of DCA's Notice of Intent to approve the revisions to the Duval and St. Johns County Comprehensive Plans by

the Florida Wildlife Federation. Additional details regarding this process are described later in this issue.

Although the need for service relates primarily to an actual development plan and future customers, in this case the ability of the Nocatee developers to move forward is also controlled by various permitting procedures and processes. For example, witness Gauthier testified that from a land use standpoint, there is no need for the expansion of the proposed NUC service area without an approved Development of Regional Impact (DRI) and Comprehensive Plan Amendments. (TR 938) The record reflects a number of steps that have to be successfully completed before any development can proceed in NUC. These steps include: submittal of the Application for Development Approval (ADA); approval of the ADA by St. Johns and Duval Counties; approval of Development of Regional Impact Orders (DRIs) by Duval and St. Johns Counties and approval of the Comprehensive Plan Amendments by the Department of Community Affairs (DCA). Witness Skelton stated because of the magnitude of the NUC development, the project is subject to review under Chapter 380, Florida Statutes, as a DRI. (TR 96-97) According to witness Gauthier, Comprehensive Plan Amendments are governed by Chapter 163. (TR 934)

The ADA for the project was filed in early February 2000 and was submitted to St. Johns County, Duval County, the DCA, and other interested agencies. (TR 130) St. John's County Resolution No. 2001-30 and the Duval County Ordinance No. 2001-13-E approved the developments and were officially noticed and entered into the record as EX 1. (TR 47-48) Both development orders contained the NEWRAP provisions. (TR 147)

Staff witness Gauthier testified that besides approval of the development orders, the developer also has received approval of its DRIs. (TR 933) The DRIs have been approved by both Duval and St. Johns Counties.

The St. Johns and Duval County Comprehensive Plans currently provide for rural and silvicultural development for the area proposed to be served by NUC. The silvicultural designation means the land use is categorized as being used for the commercial raising of pine trees. (TR 947) If amendments to the Comprehensive Plans are made, that would change the land use designations to allow residential and commercial development and it would then be appropriate for the area to be served by central water and

wastewater. (TR 938-939) The DCA has published notices of intent to find the Comprehensive Plan Amendments for Duval and St. Johns Counties in compliance; however, the amendments are not yet in effect, because the DCA's proposed approval of the changes in the Comprehensive Plans has been protested. (TR 933-934)

According to witness Gauthier, under Chapter 163 of the Florida Statutes, Comprehensive Plan Amendments do not go into effect until the issuance of a final order. In the case of the St. Johns County Comprehensive Plan Amendment for NUC, two petitions were received to challenge the "in compliance" determination as of the date of the Commission Hearing. One petition was dismissed by the Department due to legal insufficiency. A second petition from the Florida Wildlife Federation was accepted by the DCA and is being referred to the Division of Administrative Hearings. Because a valid petition was received relative to the St. Johns County plan amendment, a final order cannot issued. (TR 934) Witness Gauthier also stated that it takes between 4 and 12 months, to resolve a case and reach a final order which will allow a plan amendment to go into effect. The period of time within which third parties may challenge these plan amendments and the notice of intent had not elapsed at the time of the Commission hearing, May 7-9, 2001. The window of 21 days for the St. Johns County amendment ended May 9th. Relative to the City of Jacksonville amendment, the Department had not received any petitions to challenge; however, the window of time through which challenges may be submitted ran through May 18th, so that window had not yet closed. (TR 934-935)

Although witness Gauthier testified that there is no need for service now (TR 934, 935, 944), he also testified that NUC did not prematurely apply for a certificate to operate a utility. Since the processes for approval of the comprehensive plan amendments and DRI are lengthy, he stated that it makes sense to allow concurrent processing with regard to PSC approval. (TR 940)

Witness Gauthier also testified that the developer has made substantial progress toward establishing the Comprehensive Plan Amendments in demonstrating the need for service. (TR 935) He stated that the local governments have adopted the development orders and the Department has issued a favorable notice of intent. (TR 935)

IU witness Forrester stated that if in fact Nocatee has a need for construction water service in 2001, IU's engineers advise that

IU can provide temporary facilities to meet those needs. However, he also noted that the need for construction water may be delayed two years, based on the plans to four-lane CR 210, and since IU would be able to construct its water production facilities within those two years, a need for temporary water service for construction seems unlikely. (TR 339)

Staff believes that the majority of the steps necessary for the Nocatee developer to move forward with the development have taken place. For example, approval has been obtained for the Development Orders, the DRIs, the proposed changes in the Duval and St. Johns County Comprehensive Plans and the DCA's favorable notice of intent to change the Comprehensive Plans. It appears that final approval of the Comprehensive Plan Amendments, which will indicate a need for service, is highly likely and will be forthcoming.

Most of the parties agree that a need exists for the provision of water, wastewater and reuse service for the Nocatee development. Staff is persuaded that, consistent with witness D. Miller's testimony, it will be needed in the fourth quarter of 2002. (TR 146, 185-186) This is also consistent with testimony from witness Gauthier on the timeline for resolving disputes on Comprehensive Plan Amendments. (TR 934, 935) JEA concurred with NUC's time line and Sawgrass did not refute it. While IU initially suggested that the need for construction water might generate a need for service in 2001, it later stated that a need for service before two years was highly unlikely. (TR 339)

Therefore, staff recommends that there is a need for water, wastewater, and reuse service for the Nocatee development. Service will be required in the fourth quarter of 2002.

ISSUE 2: Does NUC have the financial ability to serve the requested territory?

RECOMMENDATION: Yes, NUC and JEA have the financial ability to serve the requested territory. (REDEMANN, JOHNSON)

POSITION OF PARTIES

NUC: Yes. NUC has entered into a Master Service Agreement with DDI, Inc. to ensure funding for the utility construction and operations until the utility becomes self-sufficient. DDI has ample net worth (currently over \$2 billion) to fund the utility operations during this start-up period.

IU: NUC probably has the financial ability to serve the requested territory.

JEA: Yes. Through its agreement with JEA, NUC has in place a long-term arrangement to provide all of the technical needs for the utility by contracting with the experienced operator of one of the largest utilities in the state.

SAWGRASS: No position.

STAFF ANALYSIS: Rule 25-30.033(1)(e), Florida Administrative Code requires a statement showing the financial and technical ability of the utility to provide service and the need for service in the proposed area. This issue is intended to determine the utility's financial ability to provide service. In this case, NUC, Intercoastal and JEA agree that NUC has the financial ability to serve the requested territory. Sawgrass takes no position.

DDI, Inc. and Nocatee's president, Mr. Skelton, provided testimony that DDI owns through its affiliate SONOC Company, LLC, approximately 15,000 acres in St. Johns and Duval Counties that will be developed by the PARC Group over the next 25 years as a multi-use development known as "Nocatee". DDI created Nocatee Utility Corporation (NUC), the certificate applicant in this case, as a wholly-owned subsidiary to provide water, wastewater and reuse service to the Nocatee development. (TR 95-96). To ensure funding for the utility, DDI and NUC entered into a "Master Service Agreement," which was included as Exhibit H-1 (HJS-2, EX 5) to the application. Under this Agreement, DDI is obligated to provide

initial funding for the utility construction and operations until the utility becomes self-sufficient. NUC witness Skelton stated that given the integral role that utility service plays in the Nocatee community, DDI is firmly committed to providing NUC the required financial resources. (TR 98-99) In the initial filing, Mr. Skelton estimated DDI's net worth in excess of \$1 billion dollars. (TR 99) At the hearing, Mr. Skelton revised DDI's net worth to over \$2 billion dollars. (TR 90)

NUC plans to obtain bulk water, wastewater and reuse service from JEA as demonstrated by the "Wholesale Agreement for Water, Wastewater and Reuse" (Agreement) between the above parties. (DCM-13A, EX 7) JEA's water main and force main have been extended to the point of connection referenced in the Agreement. (TR 508-509, 525) NUC is responsible for extending the large trunk mains for water, wastewater, and reuse service, and smaller distribution mains will be contributed by the developer. (TR 134) JEA will provide the operations and management service to NUC. (DCM-4, Page 2, EX 6, DCM-13A, EX 7) Although the Commission does not regulate JEA, staff believes that JEA's financial ability should also be addressed because JEA plans to provide the plant capacity for water, wastewater, and reuse to NUC.

Mr. Kelly, JEA's witness, states that JEA has the financial ability and resources to provide service to the Nocatee development. JEA has a five year, \$600,000,000 capital expansion and replacement program underway. JEA has existing bond funds sufficient to finance the facilities necessary to provide service under the agreements, and JEA's bond ratings are among the best in the nation for utilities. This allows JEA to finance its capital needs at very low interest rates. This benefit is passed on to JEA's customers in the form of low water and sewer rates. JEA's debt service coverage for water and sewer related debt for Fiscal Year 1999 was a very high 3.44 times. JEA's water and sewer debt ratio for fiscal Year 1999 was a very low 31%. Both of these indicators, as well as the strong water and sewer bond ratings awarded to JEA by Standard & Poor's Ratings Group (AA-), Fitch IBCA, (AA-) and Moody's Investors Service (Aa3), demonstrate that JEA's financial condition is excellent. (TR 533-534)

JEA's position supports NUC's financial ability to serve. Intercoastal offered no testimony contradicting NUC's financial ability and Sawgrass took no position.

Staff believes the record supports the financial ability of NUC, with DDI as its' parent, and JEA as the provider of bulk service. The provision of utility service is integral to the success of the development. Since the utility is the wholly owned subsidiary of the developer, every incentive exists for the utility to be adequately funded now and in the future. No parties presented information to discredit either DDI's or JEA's financial ability.

Therefore, staff recommends that NUC and JEA have the financial ability to serve the requested territory.

ISSUE 3: Does NUC have the technical ability to serve the requested territory?

RECOMMENDATION: NUC has the technical ability to provide water wastewater and reuse service to the requested territory, through its Agreement for Wholesale Utilities, Operations, Management and Maintenance with JEA. (REDEMANN, JOHNSON)

POSITION OF PARTIES

NUC: Yes. NUC has entered into an agreement to obtain bulk water, wastewater and reuse service from JEA. Under the agreement, JEA will provide line maintenance, meter reading, billing, customer service, and other day-to-day operational services to NUC.

IU: The evidence clearly established that NUC does not have the technical ability to serve the requested the territory. Consideration of the record as a whole clearly indicates that NUC is simply a shell which was formed to obtain a certificate so that JEA could then, provided service to these large...

JEA: Yes. Through its agreement with JEA, NUC has put in place a long-term arrangement to provide all of the technical needs for the utility by contracting with the experienced operator of one of the largest utilities in the state.

SAWGRASS: No position.

STAFF ANALYSIS: This issue is intended to determine the utility's technical ability to serve the requested territory. A part of the filing requirement for an original certificate of authorization application is the demonstration of technical ability to serve. Rule 25-30.033(1)(e), Florida Administrative Code, requires a statement showing the financial and technical ability of the utility to provide service and the need for service in the proposed area. NUC and JEA agree that through the contract between the two, NUC has the technical ability to provide service. However, Intercoastal does not believe that NUC has the technical ability, because NUC does not have any experience in utility operations. Sawgrass takes no position on this issue.

Witnesses Skelton and D. Miller testified on NUC's ability to provide service. They stated NUC's plan is to: (1) purchase water, wastewater and reuse service on a wholesale basis from an existing utility; and (2) to contract with an experienced third-party utility operator to provide management and operations services. (TR 99-100, TR 136) This is similar to the manner in which DDI typically uses third-party contractors to handle day-to-day operations of its various business ventures. (TR 100-101, NUC BR 9)

Witness' Skelton and D. Miller testified that at the time NUC filed the application for certificate with the Commission, DDI, NUC's parent corporation, had entered into a Letter of Intent with JEA to provide wholesale service, with an option to also obtain management services. (TR 100-101; TR 136; EX 6 DCM 4) NUC had continued to explore other options with respect to the provision of operations and maintenance of NUC, receiving interested feedback from other area utilities such as United Water Florida, Inc. (TR 101; TR 136, NUC BR 9)

Ultimately, NUC entered into an agreement with JEA for service to Nocatee, which was finalized on July 24, 2000. The plan to serve the development is called the Agreement for Wholesale Utilities, Operations, Management and Maintenance (Agreement) (TR 141; EX 7, DCM 13A; TR 541)

As testified by witness' D. Miller and Kelly, under the Agreement, JEA will provide NUC bulk wholesale water, wastewater and reuse service to NUC for at least 25 years. (TR 141, EX 7, DCM 13A; TR 541) NUC will pay a rate that is equal to 80% of the JEA retail rates that would apply if service were provided directly by JEA to end-users within NUC's territory. The Agreement obligates JEA to provide operations, management and maintenance (O&M) service to NUC for a minimum of 10 years, with automatic renewals for three additional 5-Year periods, unless terminated by either party. (TR 141-142, 199, 203, 541) If the O&M provisions are terminated, JEA will continue to provide wholesale utility service at its prevailing wholesale rates. (TR 143, 208; EX 7 DCM 13A paragraphs 6.3, 7.2) JEA agrees to comply with the applicable provisions of the Nocatee Environmental Water Resource and Area Plan (NEWRAP) which is the development plan created by the owners of Nocatee, in the provision of these services. (TR 141-142; EX7, DCM 13A, EX E) This means that there will be no on-site potable water wells, no use of groundwater as a primary or secondary source for irrigation, no on-site wastewater treatment facilities, and no effluent

discharges to the Tolomato River. (TR 142) These requirements parallel the utility-related development order conditions that have been imposed on the Nocatee development and outlined in the NEWRAP. (TR 149)

Also, under the Agreement, witness D. Miller testified that JEA does not have responsibility for planning or construction of the on-site utilities system. He stated that NUC will own the on-site water and transmission distribution facilities, the wastewater collection facilities, and reuse distribution facilities, including on-site reuse storage and high pressure pumping facilities. (TR 133-134, 148) Mr. Miller stated that the master planning for NUC-owned facilities is being conducted for NUC by a professional engineering firm, which has substantial experience in water and wastewater utility work for major land development projects. (BR 12, TR 128, 129, 133-137, 187-188; EX 6, DCM-1)

Although the Commission does not regulate JEA, because JEA plans to provide the plant capacity for water, wastewater, and reuse, staff believes that JEA's technical ability should also be addressed.

JEA witness Kelly, who is JEA's Vice-President of Construction and Maintenance, testified that JEA is one of the largest utilities in Florida. As a combined electric, water and sewer utility, JEA's annual operating revenues are in excess of \$910 million. Water and sewer operating revenues in Fiscal Year 1999 were \$132,000,000. The water and sewer system has a historical annual customer growth of more than 3.5%. JEA serves over 200,000 residential water accounts and over 147,000 sewer accounts. JEA has over 2,000 miles of sewer lines and more than 2,500 miles of water lines. Witness Kelly further testified that JEA will make sure the facilities necessary to meet the obligations of this agreement are constructed. (TR 541)

Furthermore, JEA has a management that is directly involved in environmental concerns. JEA witness Perkins, vice-president of system planning, testified that he is responsible for oversight of environmental compliance and permitting issues related to JEA's utility operations in JEA's four county service area. (TR 590)

Staff witness Cordova, supervisor of the potable water section at the Jacksonville Department of Environmental Protection (DEP) office, testified on JEA's capacity to provide water to the

proposed Nocatee territory and on its water quality. Witness Cordova stated that there are no water quality concerns with JEA supplying water to Nocatee. The JEA system meets the DEP's primary and secondary standards, radio nuclides, organics, and inorganic standards. In addition, the water from JEA meets all of the DEP's requirements. (TR 817 - 819) DEP staff witness Lear stated in his testimony that JEA's Mandarin wastewater treatment facility should be able to meet the excess reuse demands of Nocatee in its early stages development. (TR 830)

Intercoastal's position on NUC's technical ability was described in it's brief, and generally centers around five points. First, Intercoastal states that NUC is nothing more than a shell for the operations of JEA, to allow JEA to serve customers in St. Johns County with NUC taking a profit off the top. Second, Intercoastal states that the record clearly shows that none of the NUC personnel have any prior utility experience. Third, Intercoastal argues that NUC's lack of building its own treatment facilities on site allows NUC to simply "pass through" utility services, which also demonstrates a lack of technical ability by NUC. Fourth, Intercoastal describes various scenarios of how NUC will relate to its customers, and questions the level of service customers will receive from NUC through JEA. Finally, Intercoastal argues that the real, functional result of the Agreement between NUC and JEA will be that JEA will actually be the service provider to the customers of NUC. Since JEA is a governmental entity centered in Duval county, Intercoastal questions whether NUC customers in St. Johns county will have any recourse or rights with respect to political decisions that will affect service through JEA. (BR 11-13)

The issue of NUC's technical ability seems to boil down to whether or not the fact that NUC has contracted its treatment functions as well as operations and management functions to another entity, constitutes a complete lack of technical ability, as argued by Intercoastal. Intercoastal also focuses strongly on the impact that type of arrangement might have on NUC customers.

To staff's knowledge, there are no legal prohibitions to a utility implementing utility service through various contract operations. This general concept is employed by both JEA and Intercoastal. Witness Kelly stated that JEA has other contract management arrangements, including one with the Navy military bases in North Florida. (TR 566) Intercoastal itself has all of its

operations, management and maintenance handled by a separate company called Jax Utilities Management, Inc. (JUM), as stated by witness James. (TR 432-433) Witness Skelton testified that DDI has a history of using third-party contractors to handle day-to-day operations of its various ventures, and that there is no shortage of potential contract utility operators in the Duval/St. Johns County area. (TR 100-101)

Although Intercoastal has its own treatment facilities, the lack of ownership of treatment facilities does not prevent NUC from being considered a utility. Witnesses Skelton and D. Miller testified that NUC will own its internal distribution lines, and the rate design has been developed to recognize the contract operations and maintenance expenses and the internal lines. (TR 111-112, 148) In fact, NUC will own its reuse storage and pumping facilities and has provided the contract indicating it has an agreement to purchase the land under those facilities. (EX 27)

What seems to raise the question of technical ability to a higher standard in this case, is the potential impact that the contractual arrangement between JEA and NUC will have on NUC's customers. As of the hearing, many of the details of exactly how customer complaints or questions would be handled, were unclear. (TR 263, 266, 270) Witness Swain stated that NUC plans to have an officer/employee responsible for managing the JEA contract arrangement. NUC also recognizes that as the certificated utility, it is responsible to the Commission and its customers to ensure that the utility is operated in full compliance with all Commission rules. (TR 264-268) Witness Kelly stated that on a day-to-day operating level, JEA at a minimum, will establish a separate telephone number, manned 24 hours a day, to handle billing and service inquiries from NUC customers. Details such as whether this number will be answered by a single employee dedicated to servicing NUC, or by a pool of call center employees that handle calls for both NUC and JEA, have not yet been worked out. (TR 543, 560, 567) However, witnesses Skelton and Kelly reiterated that in this capacity, JEA will be acting as the agent of NUC, and NUC will have the ultimate right to direct the manner in which JEA represents it. (TR 114,560)

A related issue to customer service details is the reality that JEA is a governmental entity, exempt from Commission regulation pursuant to Chapter 367.022(2), Florida Statutes.

Intercoastal has suggested in its brief that JEA would favor its Duval County customers over customers in St. Johns County.

Witness Swain stated that if the Commission grants NUC the certificates, NUC will be responsible for the customers. NUC recognizes this responsibility. (TR 264-268) Witness D. Miller stated that if JEA fails to perform in accordance with obligations of the Agreement, NUC can proceed to enforce its right provided in Agreement. NUC, at its option, can make arrangements for alternative service. (EX 7, DCM-13A)

Staff believes that the testimony shows that NUC is clear about its regulatory responsibilities if it receives its certificates. Further, staff believes that NUC is clear that these responsibilities extend to, and include how customers are treated, handled and what procedures are in place to protect those service customers. However, staff agrees with Intercoastal to the extent that many of the details were not resolved as of the hearing.

Staff has some level of comfort about this apparent deficit, in that the actual development is 1 ½ years away from its initial construction. (TR 146, 185-186) That lead time will certainly provide ample opportunity for these details to be resolved between NUC and JEA to the Commission's satisfaction.

Furthermore, staff believes that NUC has presented a case with respect to its ability to provide service through its contract agreement with JEA. The utility being certificated is NUC, and service to all customers within the Nocatee area must be provided pursuant to Commission standards, rules and regulations, whether they reside in St. Johns or Duval County. Staff believes NUC has made it clear that it understands and is prepared to meet these responsibilities and obligations.

Therefore, staff recommends that NUC has the technical ability to provide water wastewater and reuse service to the requested territory, through its Agreement for Wholesale Utilities, Operations, Management and Maintenance with JEA.

ISSUE 4: Does NUC have the plant capacity to serve the requested territory?

RECOMMENDATION: NUC has the capacity to provide water and wastewater, reuse service to the proposed Nocatee Development through its bulk water, wastewater and reuse service agreement with JEA. The utility should file an executed and recorded copy of the deed for the land on which the reuse storage and pumping facilities will be located, within 30 days of the issuance date of the order granting the certificates, as required by Rule 25-30.033(1)(j), Florida Administrative Code. (REDEMANN, JOHNSON)

POSITION OF PARTIES

NUC: Yes. NUC has an agreement to obtain bulk water, wastewater and reuse service from JEA. JEA has the capacity to serve the requested territory, including the capacity to provide sufficient reuse for the utility's needs from the outset of the project.

IU: NUC does not have the plant capacity to serve the requested territory, and does not propose to construct the plant capacity to serve the requested territory. The evidence and exhibits at hearing also revealed that NUC's purported supplier of water (JEA) may in fact not have the present authority to...

JEA: Yes.

SAWGRASS: No position.

STAFF ANALYSIS: This issue is intended to determine whether the utility has the plant capacity to serve the requested territory. A part of the filing requirement for an application for original certificate of authorization is the demonstration of adequate capacity to serve pursuant to Rule 25-30.033(1)(o), Florida Administrative Code. NUC and JEA agree that NUC has the water, wastewater and reuse plant capacity to serve the area. Intercoastal does not believe that NUC has the plant capacity to serve the area. Sawgrass takes no position.

As discussed in Issue 1, the Nocatee development is planned to cover 15,000 acres in St. Johns and Duval counties, and to be developed in five phases over a twenty-five year period. (TR 95-

96) Witness D. Miller, Nocatee's engineer, prepared estimates of the projected water, wastewater and reuse needs for Nocatee by phase, over the life of the development. The development is intended to be built-out around 2025. TABLE 1 reflects the projected demand estimates. (TR 131) (EX 6, DCM-3)

TABLE 1

NOCATEE WATER, WASTEWATER AND REUSE DEMAND BY PHASE

Phase	Water ADF** (mgd)	Wastewater ADF (mgd)	Reuse* ADF (mgd)
Phase 1	0.729	0.614	1.228
Phase 2	1.111	0.941	0.840
Phase 3	1.494	1.285	1.352
Phase 4	1.422	1.213	1.341
Phase 5	1.365	1.156	0.629
Total	6.121	5.209	5.390

*An additional 20% reuse demand will be provided by on-site storm water.

**Average Daily Flow

Witness D. Miller, Nocatee's engineer explained that NUC will be supplying this capacity to its residents, through its contract with JEA to obtain bulk water, wastewater and reuse service from JEA. (TR 133) Witness D. Miller sponsored the Wholesale Utilities, Operations, Management and Maintenance (Agreement) dated July 24, 2000 between NUC and JEA. He stated that this Agreement obligates JEA to provide bulk water, wastewater and reuse service to NUC for at least 25 years in sufficient quantities to meet the needs of the Nocatee development (EX 7, DCM-13A). According to witness Miller, NUC obtained a letter from JEA confirming the availability of wholesale water, wastewater and reuse service in the quantities required by the project. (EX 6, DCM-5) (TR 134) He stated that JEA agreed to comply with the applicable provisions of the Nocatee Environmental Water Resource and Area Plan (ENWRAP) in the provision of these services, which means that there will be no on-

site potable water wells, no use of groundwater as a primary or secondary source for irrigation, no on-site wastewater treatment facilities, and no effluent discharges to the Tolomato River. (TR 141-142)

Witness D. Miller also testified that the point of connection between JEA's system and NUC's system will be located in Duval County, at the boundary of NUC's service territory. He stated that NUC will own the water transmission and distribution facilities, the wastewater collection facilities, and the reuse transmission, storage and distribution facilities within its territory, and large trunk mains will be provided by NUC and smaller distribution mains will be contributed by the developer. In addition, he testified that NUC will provide on-site reuse and storage and pumping facilities. (TR 133-134) NUC has provided an agreement to purchase the land on which the reuse storage and pumping facilities will be located. (EX. 27) As required by Rule 25-30.033(1)(j), Florida Administrative Code, the utility must file an executed and recorded copy of the deed within 30 days after the order granting the certificate.

Since NUC's capacity is directly related to its contract with JEA, the following analysis will discuss NUC's demand and JEA's various capacities. Generally speaking, JEA witness Kelly testified that the capacity of JEA's existing water and wastewater treatment plants exceeds current usage. (TR 514)

NUC/JEA Water and Wastewater Lines

Witness Kelly testified that the 20 inch water line and 16 inch force main that will enable JEA to serve Nocatee is in place with the exception of one small component. (TR 508, 525-526)

NUC/JEA Water Capacity

According to JEA witness Perkins, JEA currently meets the water needs of its current customers through two separate interconnected grids of large water plants. Witness Perkins testified that one such interconnected grid (the "North Grid") is located north of the St. Johns River in Duval County. He stated that the second interconnected grid (the "South Grid") is located on the south side of Duval County. (TR 598)

Witness Perkins testified that an interconnected water plant configuration provides a very high level of reliability and allows JEA to balance withdrawals from the Floridan Aquifer in order to minimize draw down and other adverse impacts. He stated that the interconnected grids also provide back-up reliability in case of an outage in the system. According to witness Perkins, JEA is in the process of implementing a long term strategy to interconnect its North and South Grids. He stated that there is excess capacity available in the North Grid which, through interconnection, can be utilized to minimize the risk of adverse impacts in the South Grid. He testified that the St. Johns River inhibits the flow of groundwater from the North side to the South side of the river. (TR 598)

JEA witness Kelly stated that this interconnection will be accomplished by installing a large diameter pipeline under the river which will provide access to additional permitted capacity to the South Grid. (TR 522-523) Witness Perkins testified that there are no anticipated environmental permitting obstacles to JEA's delivery of services to the disputed territory. (TR 599)

JEA witness Perkins further testified that the water capacity to serve the Nocatee area will initially be provided from JEA's South Grid. He stated that the interconnected water plants that comprise JEA's South Grid have a total permitted capacity of 104.4 million gallons per day (mgd) with a commitment to existing and future customers of 43.32 mgd. He also testified that JEA currently has approximately 60 mgd of excess capacity in its South Grid, which is enough current capacity to meet the projected needs of at least Phase 1 of Nocatee (which is expected to take five years to build). (TR 596-597)

According to witness Perkins, JEA's long term plans can handle the anticipated growth in this area and include several options to address the additional demands as they arise. (TR 595) He stated that JEA has several water plant expansion projects under construction which will add 7 mgd of additional capacity to the South Grid. He also stated that although the St. Johns River Water Management District (SJRWMD) has not established a safe yield for the Aquifer in this region, preliminary results of studies undertaken by JEA indicate that it can safely withdraw at least 55 mgd from its existing South Grid well fields without unacceptable adverse environmental impacts. He testified that the water plants

most likely to be affected by services to St. Johns County and Nocatee are shown in TABLE 2: (TR 596-597)

TABLE 2

PERMITTED WATER CAPACITY FOR JEA WATER TREATMENT PLANTS
BRIARWOOD, DEERWOOD 111 AND COMMUNITY HALL

	Permitted (mgd)	Feb. 2000 Flow (mgd)
Briarwood	14.4	7.122
Deerwood 111	14.4	8.578
Community Hall	12.96	6.355
Total	40.0 (plus)	22.00 (plus)

The sum of the permitted capacity for these water plants is in excess of 40 mgd and the February, 2000 flows were 22 mgd. As reflected in EX 6 (DCM-5) to the prefiled testimony of witness D. Miller, Nocatee's water needs upon complete build out are projected to be 6.121 mgd. Thus, witness Perkins stated that JEA already has adequate capacity to meet this demand. (TR 597-598)

Witness Perkins also stated that JEA has secured all of the necessary permits to operate the facilities at the capacities he cited. He stated that JEA received a 10 year Consumptive Use Permit (CUP) from the SJRWMD in February 2000 for the well fields that supply all of JEA's water plants (including all those in JEA's South Grid). (TR 598)

Finally, witness Perkins testified that JEA offers several environmental benefits as the provider of services. He stated that because the well fields north of the St. Johns River are outside the water use caution area established by the SJRWMD, completing the interconnection of JEA's North and South Grids will put JEA in a unique position to provide water service with minimal adverse impact. (TR 601-602)

NUC/JEA Wastewater Capacity

JEA witness Kelly stated that JEA's Mandarin Wastewater Treatment Plant has capacity available to serve the Nocatee

development. He testified that the Mandarin Plant currently has a permitted capacity of 7.5 mgd with approximately 6 millions gallons committed to existing and future customers. Thus, he stated that there is more than enough excess capacity available at Mandarin to serve the immediately foreseeable needs of the areas described in the St. Johns/JEA Agreement and Nocatee. (TR 523) In addition, witness Kelly testified that flows could be diverted at a minimal cost to JEA's Arlington East Wastewater Treatment Plant. (TR 523)

Witness Perkins testified that JEA's Mandarin plant was built with the ability to expand to 15 mgd if necessary. (TR 596) HE also stated that JEA's Arlington East wastewater treatment plant had recently been expanded to 15 mgd and has reserve capacity capable of supplementing Mandarin, if needed. According to witness Perkins, JEA has plans to expand Arlington East to 20 mgd and construction should be complete by December 2001. Since Nocatee flows are projected to be 5.209 mgd at buildout, witness Perkins stated that JEA has more than enough capacity planned to be available to meet Nocatee's long-term needs. (TR 596)

NUC/JEA Reuse Capacity

NUC witness D. Miller testified that NUC anticipated that 20% of the reuse demand would be met by using storm water, which left 80% of reuse demand to be met by treated effluent. Witness Miller testified that the 80/20 split was based on the contracted engineering firm's experience with consumptive use permitting and operations of irrigation systems in large scale community developments with golf courses located in St. Johns County. He stated that these include Julington Creek Plantation DRI and St. Johns DRI, both of which use reuse and storm water as irrigation sources. (TR 131-132) He also explained that the 80/20 split means that 1.228 (mgd) of treated effluent will be required at the end of Phase 1, increasing to 5.390 (mgd) at build-out, as shown earlier in TABLE 1. (TR 131)

Witness D. Miller stated that based on the estimates shown in TABLE 1, Nocatee's total requirement for treated effluent cannot be met by wastewater generated by the project. He stated that the requirements for treated effluent for reuse exceeds the wastewater generated by the development in every phase, and the shortfall is most significant in the early stages of the development. For example, he stated that at the end of Phase 1, only about 50% of the need for treated effluent can be met by wastewater generated on

DATE: JULY 26, 2001

site. He testified that this means that NUC must secure an off-site source of treated effluent in order to satisfy the needs of the service territory. (TR 132)

Witness Miller further testified that the shortfall cannot be met by increased use of storm water, since storm water is derived from the runoff component of rainfall. He stated that the highest irrigation demands obviously occur during periods of low rainfall, which is particularly true in years of low rainfall or drought. He stated that storm water is not a reliable source of reuse wastewater for a large community that is committed to meeting 100% of its irrigation demand by reuse. (TR 132)

Witness D. Miller further stated that the irrigation demands cannot be met by using a groundwater source. He testified that Nocatee is committed in its DRI Application for Development Approval to not use groundwater as a primary source for irrigation. He stated that this commitment is part of Nocatee's Comprehensive Water Resource Protection Plan. Specifically, he testified that the Floridan Aquifer is the region's primary potable water supply and the aquifer is problematic as an irrigation source for Nocatee because of the approximately 7,000 acres of wetland systems on the site. He stated that the wetlands systems are primarily supported by the surficial groundwater system in the area, and large withdrawals from this source for irrigation would likely have an adverse impact on these wetland systems. (TR 133)

JEA witness Perkins testified as to JEA's ability to meet the reuse demand in Nocatee with its Mandarin wastewater treatment facility (TR 603). Witness Perkins testified that JEA is in the process of implementing an extensive reuse system for its Mandarin Wastewater Treatment Plant. He stated that the wastewater services provided to the requested territory will be tied into JEA's reuse system, and will include 25 miles of reuse transmission mains. He testified that ultraviolet high level disinfectant is also being added at the plant to insure enhanced disinfection. He stated that the construction of the reuse system is well along. According to witness Perkins, the filtering system has been completed, the lines are under construction and the reuse system will be completed by June, 2001. When completed, he stated that this reuse system will allow JEA to reuse over 50% of the flow generated by the Mandarin Wastewater Treatment Plant. He testified that JEA has identified nine potential reuse customers for its reuse water, that letters of intent have been executed by eight of the nine potential reuse

customers, and that JEA is negotiating service contracts with these customers. He stated that JEA estimates that these customers will use 1.5 mgd of reuse from the Mandarin Wastewater treatment facility. (TR 602-603) NUC has provided an unexecuted copy of the agreement to purchase the land on which the reuse storage and pumping facilities will be located. (EX 27)

Witness Perkins summarized JEA's position by stating that the needs of the first phase of the project, which is projected to take five years to complete, can be met by reuse water from the Mandarin plant. He stated that several options exist for meeting the reuse needs of the later phase, and how those needs will be met will depend on JEA's decision on expanding Mandarin or routing wastewater to Arlington East or a new dedicated reuse plant. Regardless of which treatment option is selected, he testified that JEA will have sufficient reuse capacity to meet Nocatee's needs. (TR 603)

Intercoastal's Response to NUC/JEA Plant Capacity

In its brief, Intercoastal's position with respect to the plant capacity of NUC was that it didn't exist, since NUC had no plans to build its own treatment facilities. In addition, there was now a question as to whether JEA could provide enough water to the new development, through its current consumptive use permit as approved by the SJRWMD. Intercoastal did not offer any testimony to support their position.

Staff Testimony on NUC/JEA Plant Capacity

Staff sponsored the testimony of three technical witnesses with respect to JEA's water, wastewater and reuse. These included witness Cordova, supervisor of the potable water section at the Department of Environmental Protection (DEP) (TR 814), witness Lear, coordinator of all domestic wastewater permitting activities in the Jacksonville DEP office (TR 826) and witness Silvers, lead Hydrologist with the SJRWMD. (TR 846)

Witness Cordova testified on JEA's capacity in providing water to the proposed Nocatee territory and the overall quality of water provided by the JEA system. He stated that the JEA South Grid system could potentially provide the water to Nocatee, since the current limiting Grid capacity is 123.2 mgd, with a recorded maximum day flow of 67.3 mgd. (TR 817 - 819) As discussed in Issue

3, Witness Cordova stated that there are no water quality concerns with JEA supplying water to Nocatee. He testified that the JEA system meets the DEP's primary and secondary standards, radio nuclides, organics, and inorganic standards. In addition, he stated that the water from JEA meets all of the DEP's requirements. (TR 817 - 819)

Witness Lear testified that the most recent permit from JEA's Mandarin wastewater treatment facility was issued on November 12, 1996 and expires on November 12, 2001. He stated that this permit allows JEA to operate a 7.5 mgd Annual Average Daily Flow (AADF) activated sludge plant. He testified that the plan to serve the Nocatee development would likely require JEA to modify its Mandarin plant. According to witness Lear, the permit was revised on September 30, 1999, to authorize construction of a 2.5 mgd AADF public reuse system. (TR 829-830)

Witness Lear also testified on DEP's concerns related to effluent disposal, since this is the primary concern of DEP's for wastewater treatment plants in this area. He stated that utilizing reuse and residential reuse is a high priority for Duval and St. Johns Counties. (TR 827) He also stated that a portion of the St. Johns River has been designated an impaired waterway, and any new or expanded discharge to any surface water body would require anti-degradation studies in accordance with Rule 62-4.242(2), Florida Administrative Code. Also he stated that as part of the anti-degradation study, the permittee must demonstrate that their discharge will not impair the receiving water. Furthermore, he stated that the permittee must also demonstrate that there are not other reasonable alternatives to discharging to surface water, such as including reuse. (TR 828)

Witness Lear testified that the recent expansion of JEA's Mandarin plant's discharge to the St. Johns River is an example of the difficulties involved in obtaining an expanded discharge surface water permit. He stated that JEA's Mandarin plant recently expanded its discharge to the St. Johns River from 5.0 mgd AADF to 7.5 mgd AADF, and as part of the expansion, its effluent limits were reduced to the level necessary to ensure that actual pollutant loadings to the St. Johns River were not increased. (TR 828)

Witness Lear further stated that the DEP has significant concerns with new or expanded discharges to the two major water bodies in the area. He testified that the primary alternative to

discharging to these water bodies is to implement reuse. Further, he stated that in accordance with Section 403.064 Florida Statutes, all applicants for permits to construct or operate a domestic wastewater treatment facility located within a water resource caution area must prepare a reuse feasibility report as part of its application for the permit. (TR 828-829)

Witness Silvers with the SJRWMD, testified about the concerns the SJRWMD staff has with respect to the provision of water service within the area included in the original certificate application of NUC.

In her testimony, witness Silvers first discussed the issues of concern for the SJRWMD staff that relate to the provision of potable water service by any utility in the District. She stated that the District is primarily concerned with ensuring the availability of an adequate and affordable supply of water for all reasonable-beneficial uses while protecting the water and related land resources of the District. Also, she stated that the District is concerned with protecting existing surface and ground water quality from degradation and, where appropriate, improving or restoring the quality of water not currently meeting State water quality standards. (TR 847-848)

Witness Silvers testified that, with respect to the concern of water supply, the District, through the Consumptive Use Permitting process, evaluates whether the utility's proposed use of water can be accomplished without causing unacceptable adverse impacts. She stated that this process involves evaluating each utility for the following: 1) whether the requested use is in such quantity as is necessary for economic and efficient utilization (evaluated through audit process); 2) whether the use is both reasonable and consistent with the public interest; 3) whether the source of water is capable of producing the requested amounts of water; 4) the environmental or economic harm caused by the consumptive use permit must be reduced to an acceptable amount; 5) all available water conservation measures must be implemented unless the applicant demonstrates that implementation is not economically, environmentally or technologically feasible; 6) when reclaimed water is readily available it must be used in place of higher quality water sources unless the applicant demonstrates that it is not economically, environmentally or technologically feasible; 7) the lowest acceptable water quality source, including reclaimed water must be utilized for each consumptive use; 8) the consumptive

use should not cause significant saline water intrusion or further aggravate existing saline water intrusion problems; and finally, 9) the water quality of the source of the water should not be seriously harmed by the consumptive use. (TR 858, 848-849)

She stated that the Nocatee area is within a Priority Water Resource Caution Area, which includes southeastern Duval and northern St. Johns counties. She further explained that a Priority Water Resource Caution Area (PWRCA) is defined as an area where a needs and sources assessment projects resource problems which might occur if existing public water supply plans were implemented. (TR 849)

As part of the needs and sources assessment process, Ms. Silvers discussed water demand and alternative sources to meet that demand for the entire PWRCA area. She stated that public supply water use is expected to increase in this PWRCA area, also designated as Work Group V in the Water 20/20 Planning process, from about 65.9 mgd in 1995, to approximately 112.1 mgd in 2020, or about 46 mgd (70 percent). (TR 849)

Witness Silvers identified utility-specific options for regional utilities to meet the demand deficits. She stated that specific to this case, JEA had the largest percentage of needs and deficits in the County portion of Work Group V, which was 10.20 mgd. She stated that Intercoastal was estimated to have an average day demand deficit of 2.78 mgd. Lastly, she testified that no deficits were identified for NUC, since it is not yet in operation. (TR 850-851)

Witness Silvers stated that JEA appears to have most of the facilities required to meet the projected 2020 needs, which include well field capacity and facilities needed to meet maximum daily demand. She stated that options include new well fields in the north grid portion of the JEA system, an interconnect from the north to the south grid to convey new supply, surface water supply from the lower Ocklawaha River, seawater desalting, and the potential of acquiring other private utilities within the south grid service area around the year 2005. (TR 850-851) For Intercoastal, she stated that the study found that it has existing facilities to meet the deficit needs. She testified that since Intercoastal did not have an actual application for a permit filed with the District, she could not comment on Intercoastal's

potential capacity relating to its proposed plan to serve Nocatee.
(TR 861)

Witness Silvers also testified on other concerns the SJRWMD staff have in regard to utilities providing service in the Nocatee development such as the ability of a system to satisfy its water demands without resulting in harm to water quality or to native vegetation and the ability of a utility to make reclaimed water available for reuse. In this area, she stated that ground water quality changes are occurring rapidly concurrent with growth and increased withdrawals. She stated that the concerns include elevated chloride and sulfate concentrations and the corresponding upward trends, total dissolved solids concentrations in the Floridan wells and harm to native vegetation from use of the surficial aquifer wells. (TR 851-852)

Ms. Silvers further testified on the use of reclaimed water for irrigation or other uses, which is considered a part of the CUP application review process. She stated that in this area of limited water resources, the ability to make reclaimed water readily available for both golf courses, residential, and commercial purposes will be a priority. She testified that this area is virtually undeveloped and is a prime candidate for feasibly constructing dual distribution systems within each large development. (TR 852) She commented on the current status of reuse by JEA and Intercoastal. She also stated that reuse within Nocatee would be required and evaluated by the District, pursuant to Chapter 40C-2.30(f), Florida Administrative Code. (TR 853)

In addition, witness Silvers testified that the District is focusing heavily on reducing wastewater discharges to the lower basin of the St. Johns River and Intracoastal Waterway. She stated that reuse implementation will either eliminate or significantly reduce effluent discharges to the St. Johns River and Intracoastal Waterway. (TR 852-853)

Witness Silvers stated that JEA's water CUP was issued in February 2000. She stated that in the permit review process for the area at issue, the District's emphasis is in evaluating each utility's ability to adequately supply the projected customer base without resulting in harm to water quality or to native vegetation. (TR 850) She modified her testimony at the hearing to state that although it was unlikely, JEA had yet to demonstrate to the

District that it could supply the Nocatee development without resulting in harm to the resources. (TR 845, 857)

At the hearing, Witness Silvers indicated that she did not believe that JEA's CUP included the Nocatee Development. She stated her belief that the JEA CUP only allowed for a water allocation of 1.0 mgd in St. Johns County directly associated with the Marshall Creek corridor development. (TR 871) She said that in the course of evaluating factors for the CUP renewal, JEA never submitted any contracts or agreements to serve outside their county, other than a 1.0 mgd allocation for the Marshall Creek corridor. (TR 870-872) Witness Silvers stated that JEA did indicate in its supplemental application that it was requesting a 3.3 mgd CUP for the northern St. Johns area, but that she didn't agree that the CUP included this allocation. (TR 871)

She also stated that the Local Sources First Act (Local Sources First) would apply to an agreement such as the one between NUC and JEA, because water was going to be used outside the county of origin (Duval). (TR 870, 872) The testimony on the Local Sources First was a correction to her testimony in a prior deposition where she had stated it would not apply. (TR 872) On cross-examination, she agreed that Local Sources First was not a policy officially adopted by the District at this time. However she affirmed that the standards were used in the evaluation of JEA's CUP. (TR 873)

In additional testimony at the hearing, witness Silvers stated that the District did not take a position on whether the Nocatee property is not permissible with onsite facilities, or that the District required there to be no onsite wells through its comments on the development orders. However, she clarified that while the agency gives everyone the ability to demonstrate whether or not they can meet its permitting criteria, since there was no application pending and no wells specified, she could not draw any conclusions whether or not onsite wells in Nocatee would be permitted by the District. (TR 861-862)

NUC/JEA's Response

At the hearing, JEA responded to the testimony of witness Silvers with respect to the disputed allocation amount in its CUP and consistency of the CUP with the Local Sources First Act. On both topics, JEA offered the testimony of witness Perkins. Witness

Perkins is the Permitting Director for JEA and has been involved in the renewal process for several permits involving the SJRWMD. (TR 910, 930-931)

With respect to the dispute over the allocation amount in JEA's CUP, Witness Perkins testified that JEA applied to the SJRWMD for a CUP which would authorize JEA to provide 3.3 mgd of water service to northern St. Johns County up to the year 2010. (TR 906, 907-908, 912, 913, 920, 924, 926, 929; EX 34, EX 35) The detail of exactly how JEA broke down the projected new service within northern St. Johns County, which was the reason for asking for the revised level of the CUP, was contained with the permit application as supplemental information. He stated that nowhere in the permit application was there any reference to the District approving JEA to provide 1 mgd of water service pursuant to its wholesale agreement with St. Johns County. He also stated that the District did not object or require any changes with respect to JEA's requested allocation of 3.3 million gallons per day for the northern St. Johns County area. In fact, JEA had requested a minor modification to the permit in the prior month, to add an additional well on the North Grid, and the allocation remained the same when it was reissued. (TR 906-908) He affirmed that the CUP has been approved by the SJRWMD, and it authorizes JEA to receive an allocation that included the full 3.3 mgd. (TR 901, EX 34, 35) He further clarified that the CUP does not address 1 million gallons per day or 3.3 million gallons a day. It addresses 52.6 million gallons a day from the South Grid, which includes all the areas that JEA is serving. (TR 919, EX 34, 35)

With respect to the Local Sources First area, witness Perkins testified that it was his understanding that Local Sources First meant that, before water is transported from one area to another, the transporting authority should confirm that the anticipated needs of the area from which the water is being withdrawn has been met. He stated that there has been a considerable amount of controversy as to how and when to apply this concept, but that it is irrelevant in the context of the water needs of southern Duval and northern St. Johns Counties. He testified that JEA has not proposed to transport any water out of this area. According to witness Perkins, there are existing sources of water which can reasonably be expected to meet the future growth. He stated that by including this area as part of a regionalized, interconnected network, JEA will be able to minimize the risk of environmental harm. (TR 599-600) In addition, he stated that the technical staff

report that JEA received states that the service in St. Johns County met the local sources first criteria. (EX 35, TR 907, 909)

Witness Perkins also responded to witness Silvers' testimony on the consistency of JEA's service plan with the 2020 Water Supply Plan. He stated that the plan is a continuation of the water management district's assessment of needs and sources of water for the areas within its jurisdiction through the year 2020 and an evaluation of potential resource shortfalls. He state that it identifies 5 areas where demands are projected to exceed the capacity of existing facilities. (TR 600)

Witness Perkins testified that JEA's plans are entirely consistent with the 2020 Plan. He stated that an interconnected system is specifically recognized as one method to address the long-term needs in this planning area. According to witness Perkins, this system provides JEA with the capacity to supply water under the agreements in a matter consistent with the 2020 Plan, and that JEA has been involved with the SJRWMD planning for the water needs of the south Duval and the north St. Johns areas. (TR 601)

Staff Analysis

Based on JEA's proposed plan of service and the Nocatee proposal, the staff has compiled a chart which shows the anticipated demand as proposed by Nocatee for the development, and JEA's plan to meet that same demand. JEA's water information is from testimony, and NUC's data is from EX 6, DCM-3.

TABLE 3

JEA'S EXISTING AND PROPOSED PLANT CAPACITIES VS. NUC'S DEMAND

	(MGD)	PHASES				
		P1	P2	P3	P4	P5
WATER:						
NUC Demand		.73	1.84	3.30	4.76	6.12
JEA's Existing-unused		18.00	18.00	18.00	18.00	18.00
Mgd		\P1	\P2	\P3	\P4	\P5
WASTEWATER:						
NUC Demand		.61	1.56	2.84	4.05	5.20
JEA's Existing-unused		1.50				
REUSE:						
NUC Demand		1.23	2.07	3.42	4.76	5.39
JEA's Existing-unused		1.50				

Water

NUC and JEA witnesses provided substantial testimony supporting the conclusion that NUC, through its contract with JEA, would have the plant capacity to serve Nocatee through all five of its phases for water. The interconnection of the northern and southern grid wells would provide a high level of reliability and allow JEA to balance withdrawals from the Floridan Aquifer. (Perkins, TR 598) Witness Perkins testified that the overall permitted capacity of the South Grid is 104.4 mgd, with a commitment to existing and future customers of 43.2 mgd. Therefore, JEA currently has approximately 60 mgd of excess capacity in its South Grid. JEA's preliminary studies indicate that it could safely withdraw at least 55 mgd of this excess capacity, without adverse environmental impacts. Of JEA's existing wells, it appears that the three plants that would provide water to Nocatee have a permitted capacity in excess of 40 mgd with flows of 22 mgd. (TABLE 2) Therefore, with current facilities, it appears there is about 18 mgd available to Nocatee, which is more than the 6.121 mgd it has projected it needs at buildout, as shown in TABLE 3. In addition to these existing facilities, JEA stated its plans for water plant expansion which will add 7 mgd of additional capacity to the grid. (Perkins, TR 597)

However, witness Silver's testimony clouded the issue with respect to whether or not JEA's CUP included authorization for withdrawals of 3.3 mgd from the South Grid to be used for Nocatee. She stated that she understood the permit referenced JEA providing 1 mgd only in conjunction with its contract with St. Johns County to serve Marshall Creek. (TR 869, 871)

Witness Perkins ultimately explained that the permit itself does not identify territory, or allocations of water to various areas within the utility service area. The CUP itself just states the total amount for which it has been approved, and that this was the 52.6 mgd approved by the District for JEA to provide service from the South Grid in the year 2010. The detail included in the supplemental information to obtain the permit specifically broke down projected new service within the northern St. Johns county area, which was identified as 3.3 mgd. (TR 907) The permit was submitted as late-filed Exhibit 34 and the supplemental information as late-filed Exhibit 35.

Staff reviewed both Exhibits 34 and 35. Exhibit 34 shows a cover letter from the District to JEA dated February 22, 2001, which indicated that JEA had received its permit on February 8, 2000, and the permit was attached. It's first paragraph of the permit reads,

The District authorizes JEA, as limited by the attached conditions, the use of 23,797.80 million gallons per year (mgy) of ground water from the Floridan Aquifer to serve an estimated population of 325,800 people located in the North Grid service area and 19,198.90 mgy of ground water from the Floridan Aquifer to serve an estimated population of 307,100 people located in the South Grid service area.

The permit also includes map references which appear to be well site locations, since they do not indicate the overall service area of JEA. Staff confirmed that these location references are in the northern and southern portions of Duval county. Some of the conditions referenced in the permit include the maximum annual ground water withdrawals for household/commercial industrial use, that JEA would be allowed to obtain from its North and South Grid from the year 2000 up to February 8, 2010. From the North Grid, the amounts range from 15.1 mgd in 2000 to 21.4 mgd in 2010. From the South Grid, the amounts range from 13.3 mgd in 2000 to 17.28 mgd in 2010.

Exhibit 35 is a copy of the second revised staff technical report, which recommended approval of the application with specific conditions. The cover letter to JEA from the District was dated February 8, 2000, and notified JEA of when the permit was scheduled to be reviewed by the governing board of the District. The first page of the technical report states the requested allocation amounts by JEA and the recommended allocation amounts of the staff, which were the same as those specified in Exhibit 34. These allocations were based on historic use, future growth projections, proposed service area acquisitions and staff recommendations.

On the second page of Exhibit 35, the technical report stated that the application, "is a renewal and modification of a previously issued permit to combine two existing permits and with a request for an increase in allocation that is based on a projected increase in population." On that same page, JEA's service area is described as, "two, unconnected water supply

distribution systems designated the **North** and **South Grids**. The **North** Grid is the largest of the two service areas and serves the area north and west of the St. Johns River. The **South** Grid serves the area south and east of the St. Johns River (see Exhibit A)."

The next two paragraphs of the staff report are as follows:

During the last 3 years, JEA began implementing a water facility consolidation plan that resulted from the findings in their Water System Master Plan. This consolidation plan will ultimately result in abandonment and construction of numerous water supply wells and the phasing out of older and smaller water treatment plants (WTP).

To meet increasing demands and to address declining water quality on the South Grid and in St. Johns County, JEA is proposing to transport water from the **North Grid** to the **South Grid**. This transport will start within 3 years and JEA will construct an interconnection underneath the St. Johns River to begin supplementing the **South Grid's** Briarwood WTP and, ultimately, the Deerwood WTP.

On page 4 of the report, it states that, "JEA is projecting population increases in the **South Grid** of approximately 7,200 people per year through 2010 or an increase in demand of approximately 2.9% per year. Growth, the acquisition of other utilities, and the agreement to wholesale water to St. Johns County (emphasis added) will result in increased water demands and increased ground water withdrawals from the **South Grid**... JEA has agreed to commit to a cap or limit on ground water withdrawals from the **South Grid** to no more than 55.0 mgd."

Local Sources First is discussed on page 8 of the report, and it states that, "Staff have reviewed this project pursuant to the requirements of Local Sources First set forth in subsection 373.223(3), F.S., and have concluded that the proposed withdrawal and use of water to be authorized in this permit meets the requirements of the Local Sources First legislation."

Unfortunately, the map referred to as Attachment A was not included in the Exhibit. If it had been included, it might have clarified the exact area in St. Johns County contemplated by JEA in

the permit request, and also settled the apparent discrepancy in testimony between witness' Silvers and Perkins.

However, the permit information as filed clearly states JEA's allocations and plans to interconnect the two grids and provide service to areas which could certainly ultimately include the proposed Nocatee development. The timeline of this case also indicates that Nocatee could have been part of JEA's planning process, yet without a final permit from JEA or without Nocatee yet being recognized as a utility, NUC was not codified in the permit request to the SJRWMD. Nocatee applied to the Commission for a certificate on June 1, 1999. Included in this application was a Letter of Intent between JEA and DDI, Inc. to provide utility service to Nocatee. This contract was finalized as an official Agreement on July 24, 2000. (EX 7)

It is unknown when JEA applied to the SJRWMD for its permit renewal. It appears that it may have been in January 2000, since page 2 of the staff technical report states a 90 day critical time frame of March 8, 2000. (EX 35) However, the record does reflect that it was actually approved February 8, 2000. Several months after that approval, JEA and NUC finalized their service contract (July 24, 2000). Staff believes that the testimonies of both witness Silvers and Perkins testimony are compatible and can be reconciled.

Witness Silvers stated her understanding of JEA's intentions at the time of its permit renewal with respect to service in St. Johns county, were to serve a specific area in St. Johns County not related to Nocatee. Staff believes that this appears to be referenced on Page 4 of 28 in the staff technical report, which describes the sources of JEA's projected increase in water demand including the wholesale contract with St. Johns county. She also stated that part of the District's permit review process included an analysis of whether the water used from that permit would comport with the Local Sources First Provision Act. She suggested that JEA did not include anything specific in the recent permit relating to the Nocatee development, only relating to the wholesale contract with St. Johns County. She stated, "we do not have any agreements or contracts between the parties or PSC approval." (TR 870)

Staff believes that it is also feasible that JEA's unofficial plans included the Nocatee area when requesting its permit, since

the application with the Commission included a Letter of Intent, which JEA was able to codify into an actual agreement for service, once its permits and allocation requests were approved by the SJRWMD. However, it would not have been appropriate for JEA to formally include that area in its permit request, since NUC had not been granted a certificate by the Commission at the time JEA submitted its CUP to the District for approval.

Perhaps much of this confusion might have been cleared up, if Exhibit A to the Staff Technical Report had been included in late-filed Exhibit 35. However, even that may have been of little help, since it referred to existing service areas of JEA, and JEA may not have included Nocatee since the Commission proceeding was still pending at the time of its permit application. Witness Silvers alluded to this timing difference in her testimony, and added that she didn't know if it was included in the map, but she had not looked at the JEA map in five or six years. (TR 864-865, 870)

The issue before the Commission is whether NUC through its agreement with JEA, has capacity to serve its development. The staff believes that, in spite of the confusing testimony with respect to specific areas, the broader concern is whether JEA has the CUP allocations, the wells, the treatment and distribution facilities to provide water, and the wastewater treatment and collection facilities to provide wastewater and reuse to Nocatee. The staff is unable to match exactly all the various allocations in witness Perkins and witness Cordova's testimony with the numbers stated in Exhibits 34 and 35. For example, Witness Cordova stated the South Grid's current limiting capacity was 123.2 mgd. (TR 818) Witness Perkins stated the total permitted capacity of the South Grid was 104.4 mgd. (TR 586-597) Exhibit 34 shows JEA's total permitted capacity to be 42,996.70 million gallons per year [23,797.80 (North Grid) + 19,198.90 (South Grid)] in 2010, and total approved withdrawals to be 38.68 mgd [21.4(North Grid) + 17.28 (South Grid)] in 2010. Witness Perkins has stated the permit authorizes JEA 52.6 mgd to provide service in the year 2010. The staff is simply unable at this time to resolve the various permitted and withdrawal amounts with respect to the total JEA CUP.

The testimony and Exhibits did coordinate on two points. One was that JEA's withdrawals from the South Grid could be up to 55 mgd. (Perkins, TR 597; EX 35, page 5) The second point was that the permit did not contain a specific reference to 1.0 mgd allocation associated with service to north St. Johns County, as

testified to by witness Silvers. However, the permit did reference the wholesale agreement with St. Johns County, which was also testified to by witness Silvers. (TR 871, EX 35, page 5)

Whatever the disputed amounts are in the permit, the record continues to reflect that the three wells which would likely provide service to Nocatee, have current excess capacity of 18 mgd. Since Nocatee's demand at buildout is expected to be 6.121 mgd, it still appears that JEA has sufficient water capacity to provide service to Nocatee in the short and long term. Further, it appears that the standards of the Local Sources First Provision Act were used in evaluating the JEA CUP and the technical staff report indicated that the permit meets the requirements of the Act. Therefore, staff believes that JEA currently has sufficient capacity to serve the Nocatee development during the initial and final phases. If there are additional requirements that JEA must meet to specifically reference Nocatee within the permit, JEA has acknowledged that it will pursue those. (TR 923) Presumably, this would also encompass another review of the District's Local Sources First policy, as suggested by witness Silvers. (TR 870)

Wastewater and Reuse

With respect to wastewater and reuse, JEA has the initial excess capacity to provide service to Nocatee. As stated earlier, with respect to wastewater service, the Mandarin Plant has an existing capacity of 7.5 mgd with current flows and commitments of 6.0 mgd, and was built to expand to 15.0 mgd if necessary. If needed, JEA's Arlington East Wastewater Plant has recently been expanded to 15 mgd with plans to expand to 20 mgd. (Perkins TR 596) The Mandarin reuse system will have a capacity of 2.5 mgd (Lear, TR 829-830) It is estimated that customers will use 1.5 mgd of reuse. (TR 602-603) The reuse needs of phase one of development can be met from the Mandarin Plant. The later phases can be met by Mandarin, Arlington East, or a new dedicated reuse plant. (Perkins TR 603) Future expansion plans are already underway to insure that this capacity remains available for the duration of the Nocatee development. (TR 596, 602-603, 829-830)

It appears that JEA certainly has a permit to provide a substantial amount of water from its South Grid, some of which could serve Nocatee. At worst, JEA could pursue amending this permit to clarify its intent to serve Nocatee. If the amendment is required, the time frame for actual development is expected to be

in the fourth quarter 2002, which seems more than enough time to clarify permit issues. None of the parties questioned the plan to provide wastewater or reuse to Nocatee. Therefore, the staff recommends that NUC has the capacity to provide water, wastewater and reuse service to the proposed Nocatee Development through its service agreement with JEA. The utility should file an executed and recorded copy of the deed for the land on which the reuse storage and pumping facilities will be located, within 30 days of the issuance date of the order granting the certificates, as required by Rule 25-30.033(1)(j), Florida Administrative Code.

ISSUE 5: What is the appropriate return on equity for NUC?

RECOMMENDATION: NUC's return on equity should be based on the leverage graph formula contained in Order No. PSC-00-1162-PAA-WS, issued June 26, 2000, in Docket No. 000006-WS. Using this leverage graph formula the appropriate return on equity for NUC is 9.62%. (JOHNSON)

POSITION OF PARTIES

NUC: The appropriate return on equity for NUC is 9.62%, based on the Commission's leverage graph for 2000.

IU: The appropriate return on equity for NUC is that consistent with the Commission-approved leverage graph formula at the time of the Final Order in this case.

JEA: No position.

SAWGRASS: No position.

STAFF ANALYSIS: This issue addresses the return on equity that should be used in determining a fair rate of return for NUC. The return on equity is determined by using the current Commission approved leverage graph formula in effect.

NUC's position is that the appropriate return on equity for NUC should be based on the Commission's leverage graph. Since the leverage graph formula was updated for the year 2000, the appropriate return on equity for NUC is 9.62%. (BR 16) Intercoastal believes the return on equity should be consistent with the Commission order in effect at the time of the final order in this case. (BR 15) JEA and Sawgrass took no position on this issue.

Rule 25-30.033(3), Florida Administrative Code, provides that a return on common equity shall be established using the current equity leverage formula established by order of this Commission pursuant to Section 367.081(4), Florida Statutes, unless there is competent substantial evidence supporting the use of a different return on common equity. To determine the return on equity, information is required on the current Commission approved leverage graph formula, and the debt to equity ratio of the utility.

Witness Swain testified that in developing the NUC rates, she developed a projected capital structure for the utility using a 40/60 ratio of debt to equity. (TR 247) Witness Swain further testified that the 40/60 debt to equity ratio was selected to provide adequate equity while minimizing the rate impact on customers. (TR 298)

Witness Swain initially proposed a return on equity of 9.46% which was calculated using the 1999 Commission approved leverage graph that was in effect at that time. (EX 10, DDS-13, SCH 3) However, Swain later testified that it would be appropriate to update NUC's return on equity to 9.62% using the current Commission approved leverage graph formula established in Order No. PSC-00-1162-PAA-WS, issued June 26, 2000, in Docket No. 000006-WS. (TR 292) (EX 13 Page 8)

Intercoastal has taken the position that the current leverage graph that is in effect by the issuance of the final order for this case is the leverage graph formula that should be used to calculate the return on equity. (BR 15) This position would result in adopting the leverage graph formula established in Order No. PSC-01-1226-PAA-WS, issued June 1, 2001, in Docket No. 010006-WS. Staff believes that the appropriate order to use in updating information in the docket would be the order referenced through judicial notice at the beginning of the hearing. That order was Order No. PSC-00-1162-PAA-WS, issued June 26, 2000, in Docket No. 000006-WS. This order is the most current leverage graph order. Order No. PSC-01-1226-PAA-WS has been protested and is scheduled for hearing. Furthermore, the parties made no objection to the judicial notice of the 2000 leverage graph order at the hearing.

Therefore, staff recommends that the Commission approve a return on equity for NUC of 9.62%, consistent with Order No. PSC-00-1162-PAA-WS, issued June 26, 2000, in Docket No. 000006-WS.

ISSUE 6: What are the appropriate water, wastewater, and reuse rates and charges for NUC?

RECOMMENDATION: If NUC is granted original water and wastewater certificates, the rates and charges as detailed in the staff analysis should be approved. The utility should be required to file tariffs which reflect the recommended rates and charges. NUC should be required to continue to charge these rates and charges until authorized to change by the Commission. The tariff should be effective for services rendered or connections made on or after the stamped approval date of the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. (JOHNSON, REDEMANN)

POSITION OF PARTIES

NUC: The appropriate rates and charges for NUC are designed to recover the utility's cost of providing service, and a reasonable return, at the time the first phase of the utility system is projected to reach 80% of capacity (100% of capacity for the reuse system), as shown on Late-Filed Exhibit 13.

IU: The appropriate water and wastewater and reuse rates for NUC are those proposed by NUC, as adjusted, in order to recognize the resolution of other issues in this case concerning rate base, rate of return, and operating costs. In keeping with Commission policy, to the extent that initial rates are established ...

JEA: JEA takes no position.

SAWGRASS: Sawgrass no position.

STAFF ANALYSIS: This issue addresses the appropriateness of NUC's proposed water, wastewater, and reuse rates and charges. Rules 25-30.033(1)(k), (t), (u), (v), (w), (2), and (3), Florida Administrative Code, require the applicant for an original certificate requesting initial rates and charges to file a proposed tariff and cost justification for the proposed rates and charges.

NUC amended its originally proposed water, wastewater, and reuse rates on July 31, 2000, when Witness Swain filed recalculated rates to reflect the impact on NUC's costs of the final bulk service agreement with JEA. The impact of the JEA contract

resulted in the removal of all general plant from the water and wastewater plant accounts and adjustments to the costs of purchased water, wastewater, and reuse. In addition, as a result of concerns raised at the hearing regarding billing determinants and certain expenses, NUC's proposed rates were again recalculated and submitted as Late Filed Exhibit 13.

Witness Swain testified that her approach in designing proposed water, wastewater, and reuse rates and charges for NUC is in accordance with Commission policy for developing initial rates in an original certificate application. She stated that in original certificate applications, water and wastewater rates are calculated to allow the utility to recover the utility's cost of providing service and to earn a reasonable return on its investment in property used and useful in the public service at the time the first phase of the utility system is projected to reach 80% of capacity. (TR 245)

Witness Skelton testified that the proposed service territory covers approximately 15,000 acres that will be developed in phases over a period of 25 years. (TR 95-96) According to Witness Swain, the NUC water and wastewater rates are designed to recover the utility's cost of providing service when the utility reaches 80% of its design capacity for the first phase (year four) and to allow the utility to earn a fair rate of return on its investment in year four of the first phase. (TR 245, 260)

Witness Swain testified that NUC's proposed reuse rates are based on costs and usage assumptions for the last year of Phase 1 rather than for 80% of design capacity of Phase 1. (TR 1068) The utility development is projected to serve approximately 1,875 ERCs for water and wastewater and 1805 ERCs for reuse once the first phase is completed in five years. (EX 13, Page 2)

Further, witness Swain testified that the revised reuse rates, as proposed in Exhibit 13, are more affordable and encourage participation in the reuse water program. The reuse rates are more affordable because of the increase in the contribution level by the developers that is going toward the capital costs for the system. NUC proposes a higher level of contributions than prescribed by Rule 25-30.580, Florida Administrative Code. (TR 255, 290) The rates are designed to recover the costs that NUC will incur under the JEA agreement, operating costs and the utility's investment in the system. (TR 261)

Witness Swain testified that although the proposed water and wastewater rates will not be compensatory for the first three years, they will be fully compensatory by year four. She indicated that because of the Commission's policy in setting rates for original certificates, any new utility must subsidize short falls in the early years of the development until it reaches 80 percent of its design capacity. (TR 1078-1079) Witness Skelton testified that DDI and Nocatee entered into a Master Service Agreement to ensure funding for the utility. Under the agreement, DDI is obligated to provide initial funding for the utility construction and operations until the utility becomes self sufficient, and that given the integral role that utility service plays in the Nocatee community, DDI is firmly committed to providing Nocatee the required financial resources. (TR 99)

RATE BASE

The utility's proposed schedules of rate base appear on Schedule Nos. 1-A, 1-B, and 1-C. The projected rate base for water at 80% of design capacity is \$959,318. (EX 13, Page 6) The projected rate base for wastewater at 80% of design capacity is \$1,719,834. (EX 13, Page 17) The projected rate base for reuse at 100% of design capacity is \$358,621. (EX 13, Page 28) The schedules of rate base are being presented only as a tool to aid the Commission in establishing initial rates and are not intended to establish rate base. This is consistent with Commission practice in original certificate applications.

Utility Plant in Service

The projected water plant cost of \$3,639,832 includes NUC's proposed investment in pumping equipment, transmission and distribution mains, service lines, meters, and hydrants to serve 80% of the first phase of the development. (EX 13, Pages 6 and 10)

The projected wastewater plant cost of \$6,248,160 includes NUC's proposed investment in structures and improvements, force and gravity collection lines, flow meters, and pumping equipment to serve 80% of the first phase of the development. (EX 13, Pages 17 and 21)

The projected reuse plant cost of \$6,327,452 includes NUC's proposed investment in pumping equipment, ground storage, transmission and distribution mains, services, and meters to serve

100% of the first phase of the development. (EX 13, Pages 28 and 32)

No water, wastewater, or reuse treatment facilities are included in rate base since NUC will purchase bulk service from JEA. In addition, pursuant to the Agreement with JEA, JEA may elect to provide for increased capacity in the NUC transmission and distribution lines over and above the capacities anticipated for NUC in order to allow JEA to serve customers other than NUC (Joint Project). JEA will bear the additional construction cost of the increased capacity on a hydraulic share basis. NUC witness Douglas Miller testified that if JEA makes that election, JEA's participation on a hydraulic share basis will result in a reduced cost per ERC to NUC. (TR 143, 152-153) JEA has elected to provide for increased capacity for Phase 1 of the NUC development. (EX 7, DCM-13A)

Accumulated Depreciation

The projected Accumulated Depreciation balances for water and wastewater of \$238,496 and \$562,387, respectively, reflect the projected balances at 80% of design capacity in year four. (EX 13, Pages 6, 14, 17, and 25) The projected Accumulated Depreciation balance for reuse of \$688,651 reflect the projected balance at 100% of design capacity in year five. (EX 13, Pages 28 and 36) The projected Accumulated Depreciation balances were calculated using the guideline average service lives in Rule 25-30.140, Florida Administrative Code. (EX 13, Pages 10, 21, and 32)

Contributions-in-aid-of-construction

The projected CIAC balance for water of \$2,586,045 reflects the projected balance at 80% of design capacity. The balance includes project donated lines as well as cash contributions based on NUC's proposed main extension charge of \$95 per ERC. As will be discussed in Issue 7, NUC's projected contribution level at design capacity will be 78.19%. (EX 13, Pages 6, 9, and 13)

The projected CIAC balance for wastewater of \$4,314,796 reflects the projected balance at 80% of design capacity. The balance includes project donated lines as well as cash contributions based on NUC's proposed main extension charge of \$115 per ERC. As will be discussed in Issue 7, NUC's projected contribution level at design capacity will be 76.83%. (EX 13, Pages 17, 20 and 24)

The projected CIAC balance for reuse of \$5,659,731 reflects the projected balance at 100% of design capacity. The balance includes project donated lines as well as cash contributions based on NUC's proposed main extension charge of \$550 per ERC. As will be discussed in Issue 7, NUC's projected contribution level for reuse at design capacity will be 94.17%. (EX 13, Pages 28, 31, and 35)

Should the Commission approve service availability charges other than those proposed by NUC and recommended by staff in Issue 7, the projected CIAC balances, rate base, revenue requirements, and rates will need to be adjusted to reflect that decision.

Accumulated Amortization of CIAC

The projected Accumulated Amortization of CIAC balances for water and wastewater of \$108,847 and \$260,370, respectively, reflect the projected balances at 80% of design capacity in year four. (EX 13, Pages 6, 13, 17, and 24) The projected Accumulated Amortization balance for reuse of \$349,919 reflects the projected balance at 100% of design capacity in year five. (EX 13, Pages 28, 31, and 35) The projected Accumulated Amortization balances were calculated using composite rates of 2.01%, 2.96% and 2.16% for water, wastewater, and reuse, respectively. The composite rates appear reasonable based on the guideline average service lives in Rule 25-30.140, Florida Administrative Code. (EX 13, Pages 13, 24, and 35)

Working Capital

Working capital allowances of \$35,179, \$88,487, \$29,631 for water, wastewater, and reuse, respectively, are included in the projected rate base calculations based on 1/8 of operating and maintenance expenses for each system. This is consistent with Rule 25-30.433(2), Florida Administrative Code. (EX 13, Pages 6, 17, and 28)

COST OF CAPITAL

The NUC projected capital structure appears on Schedule No. 4. As required by Rule 23-30.033(1)(w) Florida Administrative Code, NUC provided a schedule of its projected capital structure including the methods of financing the construction and operation of the utility. The proforma capital structure, consisting of 60%

equity and 40% debt, was provided by the utility. Witness Swain testified that the debt for NUC will be provided by its parent, DDI. (TR 294) The cost of debt is 10.00% (EX 13, Page 8)

As discussed in Issue 5, the current leverage graph should be used in determining the return on equity. Witness Swain testified that it would be appropriate to update the return on common equity to 9.62% using the current approved leverage formula, authorized by Order No. PSC-00-1162-PAA-WS, issued June 26, 2000, in Docket No. 000006-WS. (TR 292) Therefore, the projected overall cost of capital for NUC is 9.77%. (EX 13, Pages 8, 19, and 30)

RETURN ON INVESTMENT

Based on the projected rate base for each system and the projected overall cost of capital of 9.77%, NUC's proposed return on investment for water, wastewater and reuse is \$93,746, \$168,061, and \$35,045, respectively. (EX 13, Pages 7, 18, and 29)

REVENUE REQUIREMENT

NUC's proposed revenue requirements of \$497,784 for water, \$1,119,830 for wastewater, and \$367,672 for reuse are shown on Schedule Nos. 2-A, 2-B, and 2-C. Staff has adjusted the utility's proposed revenue requirements as a result of the parent debt adjustment the operating revenues are reduced by \$18,317 for water, \$33,080 for wastewater, and \$6,920 for reuse. The staff recommended revenue requirements for water, wastewater, and reuse are \$479,467, \$1,086,750 and 360,752, respectively.

Operation and Maintenance Expense

The projected operation and maintenance expenses at 80% of design capacity for water and wastewater are \$281,435 and \$707,893, respectively. The most significant expense included in the projected operation and maintenance expenses is the cost of bulk water and wastewater service from JEA. The Contractual Services - Management Fees for purchased water and wastewater service are \$252,038 and \$676,355. (EX 13, Pages 7, 11, 18, and 22) The projected operation and maintenance expenses at 100% of design capacity for reuse is \$237,048, including \$212,108 for bulk reuse service. (EX 13, Pages 29 and 33) Staff has reviewed the utility's project costs for bulk service and they appear to be consistent with the terms of the agreement with JEA. The utility proposed and

staff recommended operation and maintenance expenses are shown on Schedules Nos. 3-A, 3-B, and 3-C. (EX 7, DCM-13A)

Depreciation and Amortization of CIAC

NUC's projected depreciation expense for water, wastewater, and reuse are \$85,726, \$197,565, and \$169,173, respectively. NUC's projected amortization of CIAC for water, wastewater, and reuse are \$46,036, \$112,263, and \$113,595, respectively. The utility's projected depreciation expenses, net of amortization of CIAC, are consistent with the depreciation rates prescribed in Rule 25-30.140, Florida Administrative Code. (EX 13, Pages 7, 18, and 29)

Taxes Other than Income

NUC's projected balances for taxes other than income of \$42,519, \$85,927, and \$25,082 for water, wastewater, and reuse, respectively, include projected regulatory assessment fees of 4.5% of gross revenues, property taxes of 1.8% of rate base, payroll taxes of 7.65% of salaries, and other taxes and licenses for each system. These amounts appear reasonable. (EX 13, Pages 12, 23, and 34) However, as a result of the decrease to the operating revenues based on a parent debt adjustment, a corresponding adjustment to decrease the regulatory assessment fees by \$824 for water, \$1,489 for wastewater, and \$311 for reuse is appropriate. Staff recommends that the appropriate balance for taxes other than income is \$41,695 for water, \$84,438 for wastewater, and \$24,771 for reuse.

Income Taxes

NUC included projected income taxes of \$40,394, \$72,647, and \$14,918 for water, wastewater, and reuse, respectively. NUC is a wholly owned subsidiary of DDI, Inc. (TR 93) Witness Swain testified that NUC's debt will be obtained from DDI. DDI will file a consolidated tax return to include NUC and there will not be a tax deduction associated with interest on the debt. According to Ms. Swain, although a tax sharing agreement between DDI and NUC has not yet been developed, the intention is that NUC would pay "its full share of taxes at the highest level in the year when it has that taxable income and the years when it has taxable losses that would be paid to the full extent down to the subsidiary." (TR 295, Lines 7-15)

Witness Swain further stated that she had not explored the possibility of a parent debt adjustment, but that it would be offsetting. (TR 294-296) (EX 13, Pages 7, 18, and 29) Witness Swain testified that because NUC's tax return will be filed on a consolidated basis with its parent and sister companies, NUC will pay its parent company the maximum federal tax rate applied to its income. (TR 246-247) A stand alone corporation pays lower income taxes for the lower income brackets. NUC's projected income taxes are calculated using the maximum federal tax rate of 39%. (TR 291, EX 13, Pages 7, 18, and 29)

Rule 25-14.004, Florida Administrative Code, provides that:

In Commission proceedings to establish revenue requirements or address over-earnings, ... the income tax expense of a regulated company shall be adjusted to reflect the income tax expense of the parent debt that may be invested in the equity of the subsidiary where a parent-subsidiary relationship exists and the parties to the relationship join in the filing of a consolidated income tax return.

(1) Where the regulated utility is a subsidiary of a single parent, the income tax effect of the parent's debt invested in the equity of the subsidiary utility shall reduce the income tax expense of the utility.

(3) The capital structure of the parent used to make the adjustment shall include at least long term debt, short term debt, common stock, cost free capital and investment tax credits, excluding retained earnings of the subsidiaries. It shall be a rebuttable presumption that a parent's investment in any subsidiary or its own operations shall be considered to have been made in the same ratios as exist in the parent's overall capital structure.

(4) The adjustment shall be made by multiplying the debt ratio of the parent by the debt cost of the parent. This product shall be multiplied by the equity dollars of the subsidiary, excluding its retained earnings. The resulting dollar amount shall be used to adjust the income tax expense of the utility.

DDI's capital structure as of November 30, 1998, reflected 77.48% debt and 32.52% equity. (EX 4) DDI's weighted average cost of debt was 5.86% based on the U.S. money market rates for London Interbank Offered Rates, prime rate, and the 90 day treasury bill rates as published in Moody's Credit Perspectives. NUC's projected equity for water, wastewater, and reuse is 60% of the rate base for each system, \$575,591, \$1,031,900, and \$215,172, respectively. (EX 13, Page 8) Assuming DDI's debt ratio of 77.48%, a weighted average cost of debt of 5.86%, and an income tax rate of 39%, adjustments should be made to reduce NUC's income tax expense to reflect the parent debt adjustments. The income tax expense should be decreased by \$17,493, \$31,591, and \$6,609 for water, wastewater, and reuse respectively to reflect the appropriate income tax expense of \$22,901 for water, \$41,056 for wastewater, and \$8,309 for reuse.

WATER, WASTEWATER AND REUSE RATES

The utility's requested residential and general service rates for water, wastewater and reuse are calculated using the base facility charge rate structure and are based on revenue requirements of \$497,784 for water, \$1,119,830 for wastewater, and \$367,672 for reuse. NUC's proposed rates for water, wastewater, and reuse are shown on Schedules Nos. 5-A, 5-B, and 5-C. (EX 13, page 1)

Miscellaneous Service Charges

Rule 25-30.460, Florida Administrative Code, defines four categories of miscellaneous service charges. Consistent with Commission practice, when both water and wastewater services are provided, a single charge is appropriate unless circumstances beyond the control of the utility require multiple actions. NUC's proposed miscellaneous service charges are consistent with Rule 25-30.460, Florida Administrative Code.

Intercoastal took the position that the appropriate water, wastewater, and reuse rates for NUC are those proposed by NUC, as adjusted, in order to recognize the resolution of other issues in this case concerning rate base, rate of return, and operating costs. In keeping with Commission policy, to the extent that initial rates are established for NUC, those rates should be set to recover 80% of the expenses and return on the NUC Phase 1 system at build out. JEA and Sawgrass took no position on this issue.

The utility's proposed rate base, rate of return, and revenue requirements for water, wastewater, and reuse appear reasonable, with the one exception of the staff recommended parent debt adjustment. No other testimony was offered to refute the utility's proposed rates and charges. Therefore, staff recommends that if NUC is granted original water and wastewater certificates, the staff recommended water, wastewater, and reuse rates and charges should be approved. The staff recommended rates are calculated using the base facility charge rate structure and are based on a revenue requirement of \$479,467 for water, \$1,086,750 for wastewater, and \$360,752 for reuse. NUC's proposed rates, staff recommended rates and a comparison of the typical monthly bills are shown on Schedules Nos. 5-A, 5-B and 5-C.

The utility proposed and staff recommended rates for water, wastewater and reuse are:

MONTHLY WATER RATES
Residential & General Service

<u>Base Facility Charge</u>	Utility	Staff
<u>Meter Size</u>	<u>Proposed</u>	<u>Recommended</u>
5/8" x 3/4"	\$ 8.87	\$ 8.85
3/4"	13.35	13.28
1"	22.25	22.13
1-1/2"	44.50	44.25
2"	71.20	70.80
3"	142.40	141.60
4"	222.50	221.25
6"	445.00	442.50
8"	712.00	708.00
Charge per 1,000 gallons	\$ 1.59	\$ 1.50

MONTHLY WASTEWATER RATES
Residential & General Service

<u>Base Facility Charge</u>	<u>Utility</u>	<u>Staff</u>
<u>Meter Size</u>	<u>Proposed</u>	<u>Recommended</u>
5/8" x 3/4"	\$ 13.47	\$ 13.47
3/4"	20.21	20.21
1"	33.68	33.68
1-1/2"	67.35	67.35
2"	107.76	107.76
3"	215.52	215.52
4"	336.75	336.75
6"	673.50	673.50
8"	1,077.60	1,077.60
Charge per 1,000 gallons		
Residential (Maximum 10,000 gallons)	4.07	3.91
General Service	4.88	4.70

MONTHLY REUSE RATES
Residential & General Service

<u>Base Facility Charge</u>	<u>Utility</u>	<u>Staff</u>
<u>Meter Size</u>	<u>Proposed</u>	<u>Recommended</u>
5/8" x 3/4"	\$ 9.71	\$ 9.36
3/4"	14.57	14.04
1"	24.28	23.40
1-1/2"	48.55	46.80
2"	77.68	74.88
3"	155.36	149.76
4"	242.75	234.00
6"	485.50	468.00
8"	776.80	748.80
Charge per 1,000 gallons	.35	.35

Staff recommends that the utility be required to file tariffs which reflect the recommended rates and charges. Staff further recommends that NUC be required to continue to charge these rates and charges until authorized to change by the Commission. The tariffs should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code.

DATE: JULY 26, 2001

ISSUE 7: What are the appropriate service availability charges for NUC?

RECOMMENDATION: The service availability charges and policy set forth within the staff analysis are appropriate and should be approved. NUC and JEA should be put on notice that if JEA's plant capacity charge changes, NUC may not pass any change on to the customers without prior Commission approval. The charges should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets. (REDEMANN, JOHNSON)

POSITION OF PARTIES

NUC: The appropriate service availability charges consist of main extension charges for NUC plus a pass-through of JEA's capacity charges as follows:

	<u>NUC</u>	<u>JEA</u>	<u>Total</u>
Water	\$ 95	\$ 140	\$ 235
Wastewater	\$ 115	\$1,025	\$1,140
Reuse	\$ 550	\$ 240	\$ 790

IU: The final resolution of this issue is subject to the resolution of other issues concerning rate base and rates established in this proceeding. However, any consideration of the service availability charges of NUC must recognize the additional service availability charge of JEA which will be passed through to the customer...

JEA: JEA takes no position.

SAWGRASS: Sawgrass takes no position.

STAFF ANALYSIS: In its application, the utility requested approval of the following service availability charges:

NUC Main Extension Charges per ERC:

Water	\$ 95.00
Wastewater	\$ 115.00
Reuse	\$ 550.00

JEA Plant Capacity Charges per ERC:

Water	\$ 140
Wastewater	\$1,025
Reuse	\$ 240

The service availability charges for NUC include a main extension charge and a pass-through of JEA's charge for plant capacity. The main extension charge is based upon NUC's own investment in its facilities for water, wastewater, and reuse. In addition to the main extension charge, the utility is requesting a pass-through of the actual JEA cost for plant capacity. The plant capacity charge represents the customer's contribution toward the cost of the JEA plant facilities for bulk service.

The application also contained the utility's proposed service availability policy for water, reuse, and wastewater. The utility's proposed service availability policy for water, wastewater and reuse requires developers to construct and convey, at no cost to the utility, all on-site water distribution and wastewater collection lines, services, fire hydrants and meters, pursuant to the standards and specifications of the utility. (TR 248, 261, EX 4) The policy further states that at the utility's option, where facilities, either on-site or off-site, are required to serve more than one developer, the first developer may be required to construct oversized facilities. In that event, subsequent developers, builders and individuals who connect to those facilities or use those facilities may be required to pay their pro rata share of the cost of the facilities, which will be refunded to the developer who constructed the facilities, less a reasonable administrative fee, not to exceed 10 percent, to be retained by the utility. (EX 4)

According to the application, the utility's proposed main extension charge is designed to produce the maximum contributions-in-aid-of-construction (CIAC) level of 75%, which is within the guidelines set forth in Rule 25-30.580, Florida Administrative Code. Rule 25-30.580(1), Florida Administrative Code, states:

the maximum amount of CIAC, net of amortization, should not exceed 75% of the total original cost, net of accumulated depreciation, of the utility's facilities and plant when the facilities and plant are at their designed capacity.

Rule 25-30.580(2), Florida Administrative Code, states:

the minimum amount of CIAC should not be less than the percentage of such facilities and plant that is represented by the water transmission and distribution and wastewater collection systems.

NUC's witness Swain testified that she targeted 75% as her maximum amount of CIAC charge net of amortization for water and wastewater. Swains testified further that, because the utility's facilities are mostly lines and not treatment plant, the minimum CIAC requirement level is higher than the maximum requirement for CIAC. (TR 290-291, EX 13, Pages 9 and 20)

In regards to the reuse system, NUC's proposes to require the developer of Nocatee to contribute approximately 80% of the cost of the off-site reuse transmission main, or roughly \$1.2 million. This means that the amount of contributions-in-aid-of-construction for reuse plant will meet the Commission's guideline for a minimum CIAC amount equal to 100% of the cost of transmission and distribution facilities. According to NUC's witness Swain, most of the reuse plant is represented by transmission and distribution facilities, the overall net CIAC for the reuse system will be approximately 94% of net plant. (TR 290, 1067, EX 13, Page 31)

According to witness Kelly for JEA and witness Swain for NUC, NUC will collect the plant capacity charge and remit it to JEA. (TR 248, 280, 561) The utility's rate base projections do not include the impact of the JEA plant capacity charges in the utility's plant in service or CIAC balances. (EX 13, Page 13, 24 and 35)

Intercoastal only briefed this issue to point out that the resolution of this issue is dependent upon the resolution of other issues such as rate base and setting rates. Intercoastal further stated that NUC's service availability charges must include JEA's plant capacity charge that will be passed on to the customers. JEA and Sawgrass took no position on this issue.

As shown on Schedule No. 6, NUC's projections shows that the proposed main extension charge of \$95 per ERC for water will result in a 78% contribution level when the utility is at design capacity. Consistent with Rule 25-30.580(2), Florida Administrative Code, the utility's minimum contribution level at design capacity should be

97% to allow the utility to recover the cost of its transmission and distribution lines. However, because the minimum contribution level of 97% exceeds the 75% maximum, staff recommends that the utility's proposed 78% contribution level is reasonable. (EX 13, Page 9) A lower main extension charge would result in a higher rate base and higher rates for NUC.

NUC's projections for the wastewater system indicated that the proposed main extension charge of \$115 per ERC will result in a 77% contribution level at design capacity. (EX 13, Page 20) Schedule No. 6 shows that the utility's minimum contribution level at design capacity should be 70%, pursuant to Rule 25-30.580(2), Florida Administrative Code. Therefore, staff recommends that the utility's proposed wastewater main extension charge is reasonable.

NUC's projected CIAC level for reuse using its proposed main extension charge of \$550 per ERC is 94% at design capacity. (EX 13, Page 31) Schedule No. 6 shows that pursuant to Rule 25-30.580(2), Florida Administrative Code, the minimum contribution level based on the water transmission and distribution and wastewater collection system is 90%. As with the water system projections, the projected minimum contribution level exceeds the maximum guideline. Staff recommends that the utility's proposed main extension charge for reuse is reasonable because the higher contribution level will help to keep reuse rates low.

Generally, in original certificate dockets, staff recommends service availability charges which will achieve a 75% contribution level at build out. However, in consideration of this utility's unique situation, staff believes that NUC's proposed service availability policy and charges are reasonable and should be approved. NUC and JEA should be put on notice that if JEA's plant capacity charge changes, NUC may not pass any change on to the customers without prior Commission approval. Staff recommends that the utility's requested main extension and plant capacity charges should be approved. Staff recommends that these charges should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

ISSUE 7A: What is the appropriate AFUDC rate for NUC?

RECOMMENDATION: If NUC is granted a certificate, an AFUDC rate of 9.77% should be approved and a discounted monthly rate of .813802% should be applied to qualified construction projects beginning on the date the certificate of authorization is issued. (REDEMANN, JOHNSON)

POSITION OF PARTIES

NUC: The appropriate AFUDC rate for NUC is 9.77%, which is equal to its overall weighted of capital using a 9.62% cost of equity from the Commission's 2000 leverage graph.

IU: The establishment of the AFUDC rate for NUC should be calculated in accordance with standard Commission policy and rule for establishing such rates, utilizing the most recent information concerning cost of capital and the most recent leverage formula in effect at the time the Final Order is issued on NUC's...

JEA: JEA takes no position.

SAWGRASS: No position.

STAFF ANALYSIS: Rule 25-30.033(4), Florida Administrative Code, allows utilities obtaining initial certificates pursuant to this rule authorization to accrue allowance for funds used during construction (AFUDC) for projects found eligible pursuant to Rule 25-30.116(1), Florida Administrative Code. Rule 25-30.033(4), Florida Administrative Code, states:

(a) the applicable AFUDC rate shall be determined as the utility's projected weighted cost of capital as demonstrated in its application for original certificates and initial rates and charges.

(b) a discounted monthly AFUDC rate calculated in accordance with Rule 25-30.116(3), Florida Administrative Code, shall be used to insure that the annual AFUDC charged does not exceed authorized levels.

(c) the date the utility shall begin to charge the AFUDC rate shall be the date the certificate of authorization

is issued to the utility so that such rate can apply to the initial construction of the utility facilities.

NUC originally requested an AFUDC rate of 9.68%, discounted to a monthly rate of .7799%. According to NUC's witness Swain, the annual AFUDC rate of 9.68% is the weighted average cost of capital that is calculated using a return on equity of 9.46%. (TR 251-252) (EX 4, Supplemental EX U)

Ms. Swain later testified that it would be appropriate to update the initial proposed AFUDC calculation using the current leverage graph formula in Order No. PSC-00-1162-PAA-WS, issued June 26, 2000, in Docket No. 000006-WS. (TR 292) Therefore, Ms. Swain's updated calculation is based on the current leverage graph formula using a 10.0% debt interest rate and a 9.62% return on equity, resulting in an AFUDC rate of 9.77%. Ms. Swain testified that the appropriate AFUDC rate for NUC is equal to its overall weighted cost of capital of 9.77%. (TR 292) (EX 13, Page 8)

Intercoastal stated a position in its brief that the establishment of the AFUDC rate for NUC should be calculated in accordance with standard Commission policy and rule for establishing such rates, utilizing the most recent information concerning cost of capital and the most recent leverage formula in effect at the time the final order is issued on NUC's application. JEA and Sawgrass did not take a position on this issue or provide specific testimony.

Based upon the information above, and staff's review of the calculation submitted by NUC, staff agrees with NUC's calculation of the cost of equity capital as derived from the current leverage formula found in Order No. PSC-00-1162-PAA-WS, issued June 26, 2000, in Docket No. 000006-WS. Staff has reviewed and determined that NUC's calculation of an AFUDC rate of 9.77%, with a discounted monthly rate of .813802% is in compliance with all pertinent rules and statutes. There was no other testimony in the record disputing this fact.

Therefore, staff recommends that the current leverage formula as found in Order No. PSC-00-1162-PAA-WS, issued June 26, 2000, in Docket No. 000006-WS should be used to determine NUC's AFUDC rate. An AFUDC rate of 9.77% should be approved and a discounted monthly rate of .813802% should be applied to the qualified construction projects beginning on the date the certificate of authorization is

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issued. The utility's AFUDC rate should be applied to eligible construction projects beginning on the date the certificate of authorization is issued.

ISSUE 8: What is the Nocatee landowner's service preference and what weight should the Commission give the preference?

RECOMMENDATION: While the Nocatee landowner's service preference is to receive service from NUC, the Commission should not give the landowner's service preference any particular weight. (CIBULA, ESPINOZA)

POSITION OF PARTIES

NUC: The landowner prefers service from NUC. Because this preference is based on the need to plan for utility service as an integral part of the overall development and to see that utility service is provided consistent with the environmental standards for Nocatee, the Commission should give significant weight to this preference.

IU: It is entirely predictable that a landowner who proposes to certificate a utility to serve his proposed development would "prefer" service from himself. This type of "landowner preference" should be given no weight by the Commission in this case because such "preference" is not determinative or reflective of the public...

JEA: The developer of Nocatee specifically established NUC to meet the ambitious environmental goals of the project while providing service on a timely basis with the capacity required to meet the needs of the development. Under these circumstances, the Commission should give significant weight to the landowner's preference.

SAWGRASS: Consistent with the Pre-Hearing Order, the Association takes no position on this issue.

STAFF ANALYSIS: NUC witness H. Jay Skelton testified that the landowner prefers to receive service from NUC. (TR 985) Mr Skelton testified that NUC was organized by the developer to provide retail service to the Nocatee development to ensure that the utility planning is done efficiently and effectively and that utility service is available when and where it is needed to support the overall development effort. (TR 97-98) Mr. Skelton also testified that by retaining control over utility planning and operations, the landowner is in the best position to ensure that its environmental

goals and development order obligations are met while providing service on a timely basis in the quantities required to meet the needs of the development. (TR 985-986, 993)

NUC argues that the landowner's preference should be given significant weight. In its brief, NUC states that staff cited in its prehearing statement Storey v. Mayo, 217 So. 2d 304 (Fla. 1968) for the general proposition that customers cannot choose their utility. (BR 23) NUC asserts that the facts of this case are significantly different than the facts in Storey, and that the decision in Storey does not prevent the Commission from giving significant weight to the landowners's preference. (BR 23)

NUC argues that in Storey, two electric companies had agreed on a territorial boundary and the Commission had approved their territorial agreement as being in the public interest. (BR 23) NUC states that in upholding the Commission decision against a challenge by customers who desired to be served by the utility, the court stated that an individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself. Id. at 307-308 (BR 23)

NUC argues that in Gulf Coast Electric Cooperative v. Clark, 674 So. 2d 120 (Fla. 1996), which is a more recent case involving a dispute between two electric utilities, the court found that it was reversible error for the Commission to disregard customer preference in a situation where each utility is capable of serving the territory in dispute. (BR 23) Moreover, NUC argues that in St. Johns North Utility Corporation v. Florida Public Service Commission, 549 So. 2d 1066 (Fla. 1st DCA 1989), the court upheld a Commission order which gave weight to the importance of having an overall plan for the orderly development of a large scale land development project and the unique ability of a developer-related utility to perform such planning. (BR 23) NUC states that in the order that the court was reviewing, In re: Objections by St. Johns North Utility Corp. and General Development Utilities, Inc. to Notice of Sunray Utilities, Inc. of Intention to Apply for Original Certificates Authorizing Water and Sewer Service in St. Johns County, Order No. 19428, issued June 6, 1988, in Docket No. 870539-WS, the Commission stated:

The Commission may consider service preference of the majority landholder in the disputed territory....That such preference may be a factor in certification cases

has been recognized by the Supreme Court. Davie Utilities, Inc. v. Yarborough, 263 So. 2d 214 (Fla. 1972), at 218.

(BR 23-24) NUC argues, that based on these precedents, the Commission is entitled to consider both landowner preference and the unique ability of a developer-related utility to integrate utility planning with overall planning for the development in making its public interest determination in a disputed certificate extension case. (BR 24) NUC further states that the Commission should give great weight to these factors in the particular circumstances of this case. (BR 24)

Like NUC, JEA also argues that the Commission should give significant weight to the landowner's preference. (BR 13) In addition to the cases cited by NUC, JEA also states that in In re: Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County by South Broward Utility, Inc., the Commission stated that a specific request for service by a developer in the requested territory expansion "would bolster the merit of [the applicant's] filing." (BR 14) JEA asserts that the particular circumstances of this case that merit the Commission's consideration are: 1) the entire area proposed by NUC for service is planned for development and is owned by a single party, DDI; 2) as part of its overall plan for the development of Nocatee, DDI is proposing to provide retail water, wastewater, and reuse service through an affiliated, multi-county utility company; and 3) the development plans incorporate ambitious environmental standards that will require close coordination with the utility provider. (BR 14)

Intercoastal argues that no weight should be given to the landowner's preference. (BR 16) Intercoastal states that DDI would benefit financially from the certification of the subsidiary company, NUC, as the service provider for Nocatee. (BR 17) Intercoastal asserts that pursuant to Storey "DDI has no right to demand or receive service by a particular utility simply by virtue of the fact that DDI would benefit from the arrangement." (BR 17) Intercoastal further states that because the Commission has been given regulatory authority over privately-owned utilities, a landowner preference should be given no weight by the Commission. (BR 17) Moreover, Intercoastal argues that future residents of the Nocatee development will be the ultimate landowners, and as these ultimate landowners are not yet known, it is impossible to

establish a landowner preference which properly reflects the public interest. (BR 18)

Staff's Analysis

While it is correct that the court in Gulf Coast Electric reserved a Commission order and stated that customer preference should have been considered a significant factor, staff believes NUC's and JEA's reliance on this case is misplaced. Gulf Coast Electric involved a territorial dispute between two electric utilities. As set forth by the court in that case, electrical utility territory disputes are governed by Rule 25-6.0441, Florida Administrative Code. Rule 25-6.0441(2), Florida Administrative Code, sets forth all the factors that the Commission may consider in resolving territorial disputes for electric utilities. Subsection (d) of Rule 25-6.0441(2), Florida Administrative Code, states that customer preference may be considered if all other factors are substantially equal. In contrast to Rule 25-6.0441(2), Florida Administrative Code, there are no water and wastewater rules or statutes that explicitly state that customer preference may be considered in water and wastewater territory disputes.

Staff also believes that Order No. PSC-96-1137-FOF-WS, cited by JEA, is not applicable in this instance. While the Commission did indeed state that a request for service by a developer located in the requested territory expansion area would bolster the merit of the applicant's filing, the Commission made that statement in regard to whether there was a need for service in the territory at issue in that case, not in reference to a landowner's preference for service from a specific utility.

It is correct that the Commission stated in Order No. 19428 that it may consider the service preference of the majority shareholder in the disputed territory, although such preference is not enumerated in the criteria for certification of water and wastewater utilities. The Commission, however, further stated that

such service preference is not binding on the Commission. It may be true that the apparent unity of interest between Sunray and the affiliated Rayonier Group, which owns a substantial portion of the disputed area, would encourage appropriate planning for development of the service area and the utilities required to foster such development. However, the Commission is not bound by

such a preference. As the Supreme Court has stated in the context of a territorial dispute between a privately-owned electric utility and a municipal electric utility, "an individual has no organic, economic or political right to service by a particular utility merely because it deems it advantageous to himself." Story v. Mayo, 217 So. 2d 304, (Fla. 1968) at 307-308.

In In re: Objection by St. Johns North Utility Corp. to Notice by General Development Utilities, Inc., of Intent to Amend Certificates Nos. 451-W and 396-S in St. Johns County and Application for Amendment, by Order No. 20668, issued January 27, 1989, in Docket No. 880207-WS, the Commission again addressed the weight that should be given to the service preference of the landowner. Again, the Commission stated that it could consider the service preference of the landowner even though such preference is not enumerated in the water and wastewater statutes and rules. Id. at 22. Nevertheless, the Commission again cited to Storey and stated that it was not bound by the service preference of the landowner. Id. The Commission concluded that it would not give the landowner service preference any particular weight. Id. at 23.

Thus, staff believes that the Commission may consider the landowner's service preference. Nevertheless, staff recommends that based on Storey and Orders Nos. 19428 and 20668, the Commission should not give the landowner's service preference any particular weight.

ISSUE 9: Will the certification of NUC result in the creation of a utility which will be in competition with, or duplication of, any other system?

RECOMMENDATION: No, the certification of NUC will not result in the creation of a system which will be in competition with or a duplication of any other system. (CIBULA, ESPINOZA)

POSITIONS

NUC: No. The certification of NUC will not result in creation of a utility that will be in competition with, or duplication of, any other system.

IU: Approval of NUC's application will result in the certification of a utility which will be in competition with, and in duplication of, Intercoastal's extended and existing system. Intercoastal's system as existing and proposed is adequate to meet the reasonable needs of the public in Intercoastal's current and proposed service area (and Intercoastal is ready, willing, and able to provide that service).

JEA: No.

SAWGRASS: Consistent with the Pre-Hearing Order, the Association takes no position on this issue.

STAFF ANALYSIS: Pursuant to Section 367.045(5)(a), Florida Statutes, the Commission may not grant a certificate of authorization for a proposed system or an amendment to a certificate of authorization for the extension of an existing system which 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. Section 367.021(11), Florida Statutes, defines "system" as facilities and land used and useful in providing service.

In Order No. PSC-92-0104-FOF-WU, issued March 27, 1992, in Docket No. 910114-WU, the Commission stated:

we cannot determine whether a proposed system will be in competition with or duplication of another system when such other system does not exist. We do not believe Section 367.045(5)(a), Florida Statutes, requires this Commission to hypothesize which of two proposed systems might be in place first and, thus, which would compete with or duplicate the other. Engaging in such speculation would be of little use.

In Order No. 17158, issued February 5, 1987, in Docket No. 850597-WS, the Commission stated that it was not required to

speculate as to competition with, or duplication of, proposed systems which are essentially little more than future possibilities. Rather, the statute addresses the existing system as that which warrants a closer investigation as to the potentially undesirable effects of duplication and/or competition.

No utility currently provides service to the Nocatee development. (EX 3) NUC witness Douglas Miller testified that the County approved a resolution which placed the Nocatee development into the County's exclusive service area. (TR 1042) Mr. Miller further testified that the Board of County Commissioners of St. Johns County recently reviewed a plan of service whereby the County would provide service from well fields approximately 15 miles away from Nocatee and wastewater treatment plant approximately 20 miles south of Nocatee. (TR 1041)

Mr. Miller testified that the plan of service presented to the Board of County Commissioners could not be implemented. He set forth the following reasons as to why the County's plan could not be implemented: 1) the proposed 9.5 million gallon well field that is approximately 15 miles away from the Nocatee project is in an area that has some significant water quality problems; 2) there are letters from the Water Management District stating that the well fields in general in that area cannot be developed to beyond about 2.5 million gallons per day; 3) the County is proposing the U.S. 1 corridor as a utility corridor, but the Department of Transportation issued a statement that they did not believe there was any room in that corridor to construct any more utility lines; 4) the County did not have reuse available to serve Nocatee and it is proposing a storm water treatment plant to treat storm water on the Nocatee development, but the problem with this is that there

will not be enough storm water available to meet the needs. (TR 1042-1043)

All of Intercoastal's existing water and wastewater facilities are on the east side of the Intracoastal Waterway. Intercoastal witness M.L. Forrester testified that Intercoastal will construct water and wastewater facilities in the Nocatee development to serve the territory. (TR 366-367) Thus, Intercoastal does not have existing facilities that are capable of serving the Nocatee development.

There is no evidence in the record to indicate that there is an existing system in or in close proximity to the Nocatee development which would warrant review by this Commission. Further, Orders Nos. PSC-92-0104-FOF-WU and 17158 state that the Commission does not have to speculate as to whether a proposed system would be in competition with, or a duplication of, another proposed system. Therefore, staff recommends that the certification of NUC will not result in the creation of a system which will be in competition with or a duplication of any other system.

ISSUE 10: Should the Commission deny NUC's application based on the portion of Section 367.045(5)(a), Florida Statutes, which states that the Commission may deny an application for a certificate of authorization for any new Class C system, as defined by Commission rule, if the public can be adequately served by modifying or extending a current wastewater system?

RECOMMENDATION: No. The Commission should find that the portion of Section 367.045(5)(a), Florida Statutes, pertaining to the denial of a certificate for a new Class C wastewater system is not applicable because NUC's proposed wastewater system will not be a Class C system, and because Intercoastal has not proposed to modify or extend its current wastewater system. (ESPINOZA, CIBULA, DANIEL)

POSITIONS OF PARTIES

NUC: No. First, NUC's wastewater system will not be a Class C system. Second, Nocatee cannot be served by the modification or extension of an existing system. Intercoastal proposes to build a new wastewater system to serve Nocatee, not to modify or extend its existing system.

IU: Yes, the Commission should deny the application of NUC based upon the fact that the new wastewater system to be created by NUC will be a Class C wastewater system as defined by Commission Rule and the public can adequately be served by modifying or extending the current wastewater system of Intercoastal.

JEA: No. Section 367.045(5) does not apply.

SAWGRASS: The Association takes no position on this issue.

STAFF ANALYSIS: Section 367.045(5)(a), Florida Statutes, provides in pertinent part that "the Commission may deny an application for a certificate of authorization for any new Class C wastewater system, as defined by Commission rule, if the public can be adequately served by modifying or extending a current wastewater system." In order to determine whether the Commission should deny NUC's application based on Section 367.045(5)(a), it must be determined whether NUC's proposed system would be defined as a Class C system according to Commission rules, and whether the

Nocatee development can be served by modifying or extending a current wastewater system.

Intercoastal states that based upon the information provided by NUC for at least its first year of operation, the proposed NUC system will be a Class C system as defined by Rule 25-30.110(4), Florida Administrative Code. Further, Intercoastal argues that nowhere in the statutes does it require that the system must be a Class C system at build out, nor do the statutes or rules refer to the need for the system to include a new treatment facility. Intercoastal argues that the purpose of this statutory provision is to allow the Commission to reduce the proliferation of new wastewater utilities where existing utilities can provide the service, and this intent is furthered regardless of whether the new system will ultimately be larger than a Class C system. (BR 19)

NUC argues that as defined by Rule 25-30.110(4), Florida Administrative Code, a Class C utility is a utility whose average annual water or wastewater revenues (whichever is greater) for the past three years are less than \$200,000, and based on this rule, NUC's wastewater system will not be a Class C wastewater system. In support of this contention, NUC, citing Exhibit 13, page 18, states that it has proposed rates that are designed to produce \$1,119,666 in wastewater revenues during its fourth year of operation. Further, based on its projection of steady growth from year one to year four, revenues would increase approximately as follows: \$279,916, \$599,833, \$839,749, \$1,119,666. Thus, NUC argues that its wastewater system should exceed the Class C threshold during its first year of operation and will continue to exceed that threshold on an average basis over its first three years of operation. (BR 26)

JEA adopts NUC's position on this issue, and also states that NUC's wastewater system will not be a Class C system as defined by the Commission Rules. (BR 15) As stated previously, Sawgrass takes no position on this issue.

Staff agrees with NUC's position in that the wastewater system proposed by NUC would not be a Class C utility as is defined by the Commission's rules. The rates proposed by NUC contained in Exhibit 13 show that the estimated wastewater revenues would increase steadily throughout its first three years of operation, and exceed the minimum Class C requisite amount of \$200,000 during its first

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year of operation. Thus, the proposed NUC utility would not be classified as a Class C utility under Commission rules.

Although staff recommends that NUC's proposed wastewater system would not be considered a Class C system as defined by the Commission rules, it is necessary to also consider whether the Nocatee territory could be adequately served by modifying or extending a current wastewater system in determining whether NUC's application should be denied based on Section 367.045(5)(a), Florida Statutes.

Intercoastal argues that because wastewater "system" under the provisions of Section 367.021(11) is defined as including not only pipes in the ground, but also "a combination of functionally related facilities and land," the statute does not envision a requirement that the existing system be merely an extension of existing lines and utilization of existing facilities. Intercoastal argues that instead, the statute clearly envisions that the current wastewater system is an existing utility company utilizing "functionally related facilities and land." (BR 20, citing Section 367.021(11)) Thus, the system as proposed by Intercoastal to provide service to the Nocatee development does include "functionally related facilities and land," regardless of whether new facilities are constructed and/or interconnected. (BR 20)

Intercoastal further states that the Commission must also consider whether or not it "should" deny NUC's application, based upon its statutory provisions, and that it is clear from the provisions of Section 367.045(5)(a), Florida Statutes, and the related underlying statutes, rules, and statutory intent that the Commission has the authority to deny NUC's application. Further, Intercoastal states that the Commission, in deciding whether to exercise that authority, must look at the public interest and to the underlying purpose of the statute. Intercoastal argues that the underlying purpose of the statute is to restrict the creation of new utilities where service can be provided by existing utility companies, and that this intent is nowhere limited to interconnected systems, and in fact, the statutes specifically authorize consideration of "functionally related facilities and land." (BR 20)

Thus, Intercoastal argues that based upon the facts and the statutory intent, the Commission should deny NUC's application as

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contrary to the public interest, and contrary to the clear intent of the provisions of Section 367.045(5)(a), Florida Statutes. (BR 21)

NUC states that there is no evidence that the Nocatee system could be served by the modification or extension of an existing system. Further, NUC states that the only competing plan in the record was put forth by Intercoastal, and that plan proposes to serve Nocatee through the construction of a new stand-alone wastewater system on the west side of the Intracoastal Waterway, not through the modification or extension of its existing system on the east of the waterway. (BR 26)

On this point, JEA again adopts NUC's position, and states that there is no evidence in the record that Nocatee can be served by the modification or extension of an existing system. JEA further states that Intercoastal proposes to serve Nocatee through the construction of a new stand-alone wastewater system on the west side of the Intracoastal Waterway, and not through the modification or extension of its existing system on the east-side of the waterway. (BR 15)

Staff agrees that Intercoastal has not proposed to modify or extend its current wastewater system. In fact, Intercoastal witness, M.L. Forrester, testified that Intercoastal chose to propose a plan for service to the Commission whereby Intercoastal would extend its reuse system across the Intracoastal Waterway to serve the Nocatee development, but would construct a separate water and wastewater system on the west side of the Intracoastal Waterway to serve the development. (TR 366-369)

Thus, because staff believes that NUC's proposed wastewater system will not be considered a Class C utility, and because Intercoastal has not proposed to extend or modify its current wastewater system, NUC's application should not be denied based on the portion of Section 367.045(5)(a), Florida Statutes, pertaining to the denial of a certificate for a new Class C wastewater system.

ISSUE 11: Is it in the public interest for NUC to be granted a water certificate and wastewater certificate for the territory proposed in its application?

RECOMMENDATION: Yes, it is in the public interest to grant NUC its request for water and wastewater certificates. Nocatee should be granted Certificates Nos. 617-W and 531-S for water and wastewater to serve the territory described in Attachment A. (JOHNSON, REDEMANN)

POSITIONS:

NUC: Yes. There is a need for service to the requested territory; NUC has demonstrated both the financial and technical ability to serve; NUC has the only plan of service that complies with the Nocatee development orders; the landowner prefers service by NUC; NUC's arrangement with JEA results in reasonable, competitive rates; and NUC's application is superior to the competing application of Intercoastal.

IU: For all of the reasons mentioned in this Brief, it is not in the public interest for NUC to be granted a water certificate and wastewater certificate for the territory proposed in it's Application. The evidence has clearly established that any certificate granted to NUC will, in all probability, never...

JEA: Yes. Granting the NUC application will enable water and wastewater service to be provided to the Nocatee development in the most environmentally sensitive manner possible. Through its contract with JEA, NUC will be able to provide future customers with low cost, reliable service.

SAWGRASS: Sawgrass takes no position on this issue.

STAFF ANALYSIS: The public interest determination as to whether NUC should be granted an original certificate to serve the proposed territories is based on all of the factors contained in each of the previous issues. This issue will summarize the major points made in the prior issues relating to granting NUC a certificate.

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Issue A addresses whether NUC has factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction in evaluating the granting of its application for original certificates. Testimony of witness D. Miller stated that lines within the development would be constructed such that they create a grid running back and forth along county lines, in order to serve the town center in the first phase of the development. (TR 187) (EX 6, DCM-7) The record shows that while NUC will not own all of the lines which will physically transverse the county boundary, it also shows that NUC will own some of those lines. Also, the Commission previously determined that it has the jurisdiction to consider NUC's application pursuant to Section 367.171(7), Florida Statutes, in Order No. PSC-00-1265-PCO-WS, issued July 11, 2000. Therefore, this issue recommended that the Commission find that NUC had factually established that its systems satisfy the requirements of the statute, sufficient to invoke Commission jurisdiction.

Issue 1 discussed the need for service in the area requested by NUC. One of the considerations under need was whether there was need based on the local comprehensive plan. Witness Gauthier testified that there is no need for service now, based on the present land designations for the area in the local comprehensive plan. (TR 947) However, he also testified that NUC did not prematurely apply for a certificate to operate a utility. Since the processes for approval of the comprehensive plan amendments and DRI are lengthy, it makes sense to allow concurrent processing with regard to PSC approval. (TR 940) Further, he testified that the developer has made substantial progress toward establishing the Comprehensive Plan Amendments in demonstrating the need for service. The local governments have adopted the development orders and the DCA has issued a favorable notice of intent. (TR 935) Intercoastal and NUC and JEA all agreed on the need for service, and Sawgrass took no position on this issue. Staff was persuaded by NUC's testimony that the timing of the need would be in the fourth quarter of 2002. (TR 146) Therefore, staff recommended that a need for water, wastewater and reuse service exist in the area requested by NUC in its original certificate.

In Issues 2 and 3, the staff evaluated whether NUC had the financial and technical ability to provide service. The record reflected that NUC demonstrated that it has the financial resources through its master service agreement with DDI and the technical

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ability through its bulk service agreement with JEA to provide utility service. (DCM-13A, EX 7; TR 541) DDI has committed its resources to provide sufficient and quality utility service in an environmentally sensitive manner. (TR 98-99, 141-142, 590) Staff recommended that the bulk service agreement with JEA appears to be a cost-effective method for providing water, wastewater, and reuse service to the development. JEA will provide the needed plant capacity, as well as the operations and maintenance services. NUC will also have employees available to respond directly to customers' questions and concerns.

Issue 4 examined the plant capacity of NUC. Witness D. Miller of NUC and witness Perkins of JEA provided extensive testimony on the details of the bulk service agreement between the two entities, the physical plan of service to Nocatee by JEA, and which wells and treatment plants it would use to provide water, wastewater and reuse to Nocatee. At the hearing, a question arose with respect to the criteria to supply water as specified in the current Consumptive Use Permit issued by the SJRWMD, which was testified to by witness Silvers. There was conflicting testimony from the DEP, JEA and information gathered from Exhibits 34 and 35 (JEA's Consumptive Use Permit and the SJRWMD Staff Technical Report), as to the total allocations approved by the District for JEA. However, the record stated that if any changes to the permit were necessary with respect to service to Nocatee, JEA would pursue that with the SJRWMD. (TR 923) The record was uncontested with respect to the specific wells that would provide water to Nocatee. This information stated an excess capacity of 18 mgd, which is more than enough to serve Nocatee initially and at buildout. (EX 6, DCM-3) No testimony was offered to dispute the capacity of JEA to provide NUC with wastewater or reuse capacity. Therefore, staff recommended that NUC, through its agreement with JEA, has the capacity to provide water, wastewater and reuse to Nocatee.

Issue 5 determined what would be the appropriate return on equity for NUC, should it be granted certificates. Rule 25-30.033(3), Florida Administrative Code, provides that a return on common equity shall be established using the current equity leverage formula established by order of this Commission pursuant to Section 367.081(4), Florida Statutes, unless there is competent substantial evidence supporting the use of a different return on equity. NUC witness Swain agreed at the hearing that it would be appropriate to update NUC's return on equity to 9.62% using the current Commission approved leverage graph at the time of the

hearing. (TR 292) Although Intercoastal suggested in it's brief that the leverage graph issued after the hearing should be used, the staff recommended that information was outside of the record. Therefore, staff recommended that the Commission approve a return on equity for NUC of 9.62%, consistent with the order issued in Docket No. 000006-WS.

Issues 6 and 7 concerned the recommendations on appropriate rates and charges for NUC. Staff recommended specific water, wastewater and reuse rates and various charges that should be approved for the proposed Nocatee service area. The following are typical monthly single family residential water, wastewater and reuse bills, based on staff's recommended rates.

<u>Gallons</u>	<u>Water</u>	<u>Wastewater</u>	<u>Water & Wastewater</u>	<u>Reuse</u>
5,000	\$16.35	\$33.02	\$49.37	\$11.11
10,000	23.85	52.57	76.42	12.86
20,000	38.85	52.57	91.42	16.36

Issues 8, 9 and 10 discussed various legal issues that were identified by the parties and the Commission. Issue 8 evaluated whether or not Nocatee's landowner's service preference should be considered and what weight the Commission should give that preference. After evaluating various orders and their application to the water and wastewater industry, the staff recommended that while the Commission may consider the landowner's service preference, but based on Storey and Orders Nos. 19428 and 20668, the Commission should not give the landowner's service preference any particular weight. Issue 9 considered whether or not granting a certificate would result in the creation of a utility that would be in competition with, or a duplication of, any other system. The staff recommended that there was no testimony in the record that there is an existing system in or in close proximity to Nocatee which would warrant review by this Commission. Issue 10 questioned whether Section 367.045(5)(a), Florida Statutes, was invoked with respect to the approval of a certificate to NUC. The staff recommended that the Commission should find that the portion of this statute pertaining to the denial of a certificate for a new Class C wastewater system is not applicable, because NUC's proposed wastewater system will not be a Class C system, and because Intercoastal has not proposed to modify or extend its current wastewater system.

The record also contains testimony on environmental considerations that would be satisfied through NUC being granted a certificate. Witness Skelton testified that "as part of our environmental ethic we gave up 26,000 acres along the Intercoastal Waterway for a preserve, and 7,000 acres of green lands will be preserved." (TR 988) The Nocatee Preserve separates the developable lands from the Guana-Tolomato River Aquatic Preserve by a varying distance of .5 miles to 1.5 miles and extends for over 3.5 miles. Certain areas (Deep Creek, Smith Creek and Durbin Creek) will have 100-foot buffers.

JEA's witness Perkins testified that JEA's agreement to provide service to NUC and St. Johns County is consistent with the long-term environmental needs of the area. The agreements will allow implementation of regionalized water and wastewater service in the area. Witness Perkins further testified that JEA has a wealth of knowledge and expertise regarding the hydrogeology and environment in this part of the state. (TR 593-594) The interconnected grid system of JEA, minimizes the risk of adverse environmental impacts from water withdrawals. JEA's interconnected system and available resources will allow JEA to detect and address any localized problems that could arise as a result of fractures near withdrawal sites. (TR 593, 614) The grid also complies with suggested solutions to provide water in the region from the SJRWMD, as testified to by witness Silvers. (TR 851)

Staff is persuaded that while NUC is not in total compliance with the comprehensive plan at the time of hearing, the few remaining differences will be resolved and met by NUC. There appears to be a need for service by the fourth quarter of 2002, and the utility appears to have the financial ability to meet the service date. NUC does not have prior utility experience, however, it does have a contract with JEA which has the technical ability, plant capacity and the experience in providing water, wastewater and reuse service. In addition, the utility has proposed reasonable rates and charges that are similar to other area utilities. Based upon these factors, staff is persuaded that it is not premature to grant NUC the certificate of authorization.

For all the reasons summarized above, and as discussed in other issues, staff recommends that it is in the public interest to grant NUC its requested water and wastewater certificates. Nocatee should be granted Certificates Nos. 617-W and 531-S for water and wastewater to serve the territory described in Attachment A.

ISSUE 12: Is Intercoastal barred by the doctrines of res judicata and/or collateral estoppel in this proceeding from applying for the same service territory in St. Johns County which it was previously denied by St. Johns County?

RECOMMENDATION: No. The Commission should find that neither the doctrine of res judicata nor collateral estoppel apply in this proceeding to bar Intercoastal from applying for the same service territory in St. Johns County to which it was previously denied by St. Johns County. (ESPINOZA, CIBULA)

POSITION OF PARTIES

NUC: Yes. Intercoastal fully litigated an application to serve the St. Johns County portion of its proposed territory before the County, which denied its application. The Commission should honor that decision, and bar Intercoastal from re-litigating its request to serve the St. Johns County portion of its proposed territory.

IU: No. Intercoastal's application in this case is not the same application which was filed before St. Johns County. The law to be applied in this case is not the law which was applied in the proceeding before St. Johns County. The territory applied for in this case is not the...

JEA: Yes. Intercoastal has previously sought approval from the St. Johns County Water and Sewer Authority ("Authority") to serve the territory in St. Johns County requested by Intercoastal in this docket. The Authority denied Intercoastal's request and that decision was affirmed by the St. Johns County Board of County Commissioners. The...

SAWGRASS: Yes.

STAFF ANALYSIS: Both NUC and JEA take the position that Intercoastal should be barred by the doctrine of res judicata and collateral estoppel in this proceeding from applying for the same service territory in St. Johns County for which it was previously denied by St. Johns County. Sawgrass adopts the arguments on this issue as set forth by NUC and JEA.

NUC states that because the same issues regarding Intercoastal's application to serve the St. Johns portion of its requested territory have previously been heard and resolved by the County, the Commission should apply the principles of res judicata and/or collateral estoppel and deny Intercoastal's application. (BR 34) In support of this, NUC states that Intercoastal's current application to serve the St. Johns County portion of its requested expansion territory covers virtually the same territory that it previously sought authorization to serve from St. Johns County. NUC further states that this application was considered and denied by the St. Johns County Water and Sewer Regulatory Authority ("Authority") during a six-day formal evidentiary hearing in June, 1999, and that the Authority's Preliminary Order denying Intercoastal's application was voted upon and adopted by the Board of County Commissioners of St. Johns County. (BR 34)

In further support of its position, NUC states that there has been no substantial change since June 1999 in the need for service in the St. Johns County Expansion Territory, in the landowner's service preference, or in Intercoastal's ability to service the territory, and that all of these issues were fully and fairly litigated in the hearings held before the Authority in 1999. Thus, the Commission should apply the doctrines of res judicata and collateral estoppel and deny Intercoastal's application to serve the portion of its requested territory that was at issue in the earlier proceedings. (BR 35-36)

JEA also cites to the application submitted by Intercoastal to the Authority in 1999 for extension of its service area to include additional territory in St. Johns County, which was subsequently denied by the Authority and finalized by the Board. (BR 19-20)

JEA further states that many of the specific findings made by the Authority and ultimately adopted by the Board in connection with Intercoastal's prior application are clearly relevant to the issues in this docket. Further, JEA argues that even if Intercoastal's application is not denied by res judicata, then collateral estoppel should be applied to preclude Intercoastal from contesting or relitigating factual issues that were fully presented and addressed during the earlier proceeding. (BR 24)

Intercoastal takes the position that neither the doctrine of res judicata or collateral estoppel apply in this situation to deny its application. Intercoastal states that NUC has failed to

provide evidence sufficient to establish that the elements of res judicata and collateral estoppel have been met. (BR 22)

With respect to the proceeding that was held before the St. Johns County Water and Sewer Authority, Intercoastal states that in that proceeding, DDI complained that Intercoastal should not be allowed to extend its service area to serve its prospective development because the first phase of that development was located in Duval County and DDI did not want two separate providers of water and sewer service for its development. Intercoastal goes on to state that in the current proceeding, NUC is arguing that the St. Johns' portion of Intercoastal's application has already been litigated and should therefore be denied by the Commission. Intercoastal states that these two arguments reveal that Intercoastal's application before the Commission is not the same application pursued before St. Johns County, and that in fact, this is only one of many factual matters that differ between the instant application and the prior application of Intercoastal. (BR 23)

Intercoastal further points to the fact that the County withdrew from these proceedings at the last minute, and states that the County's withdrawal assures that the Commission would not be in the position to question the County in order compare the facts of the prior and current application. (BR 23)

Intercoastal also points to the fact that in the prior case before St. Johns County, the County was not operating under Chapter 367; nor was the County operating under the Commission's Administrative Code Rules, the Commission's precedents, or the Commission's case law and policies. Furthermore, in this case, the Commission will not be operating under the St. Johns County Ordinance applicable to the Authority, or under the rules, precedents, or policies of the Authority or of the St. Johns County Board of County Commissioners. (BR 23-24)

Intercoastal, citing University Hospital, Ltd. v. Agency for Health Care Administration, 697 So. 2d 909 (Fla 1st DCA 1997), argues that collateral estoppel does not apply where unanticipated events create a new legal situation, and res judicata cannot bar a subsequent application for a permit if the second application is supported by new facts, changed conditions, or additional submissions by the applicant. In the proceeding before the Commission, the application is before a different agency, applying different rules, policies, objectives, and for a different permit.

(BR 24) Further, Intercoastal's current application differs from the application filed with the Authority in its scope, projected costs, and in its specific implementation of Intercoastal's plan of service. In addition, there is no identity in relief sought by Intercoastal in the St. Johns County proceeding and the instant proceeding. (BR 24, citing Brock v. Associates Finance, Inc., 625 So. 2d 135 (Fla 1st DCA 1993))

Staff's Analysis

In order for the doctrine of res judicata to apply, the following conditions must exist: 1) identity of the thing sued for; 2) identity of the cause of action; 3) identity of the persons and parties to the action; and 4) identity of the quality in the person for or against whom the claim is made. All four of these conditions must coincide before the doctrine of res judicata is applicable. See Daniel v. Dept. of Transportation, 259 So. 2d 771, 773 (Fla. 1st DCA 1972).

To demonstrate collateral estoppel, it must be shown that: 1) the parties and issues are identical; 2) the particular matter was fully litigated and determined; 3) a final decision was rendered; and 4) the matter was resolved in a court of competent jurisdiction. See United States Fidelity & Guaranty Co. v. Odoms, 444 So. 2d 78, 79 (Fla. 5th DCA 1984).

Res judicata is claim preclusion, and bars a later suit between the same parties upon the same cause of action. Collateral estoppel is issue preclusion, and is applicable only in cases where the parties are the same in the second suit as in the former, but the cause of action is different. Staff agrees with Intercoastal's position that its current application before the Commission should not be barred by the doctrines of res judicata or collateral estoppel.

The parties involved in Intercoastal's application before the Authority were Intercoastal, DDI, JEA, Sawgrass, and the County. The parties involved in the matter before the Commission are Intercoastal, DDI, NUC, JEA, and Sawgrass. NUC could possibly be considered as the same party as DDI because DDI is the parent company of NUC, but the County withdrew from this proceeding prior to the hearing in this matter. Therefore, the parties are not identical as required by Odoms, 444 So. 2d at 79, and the doctrine

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of collateral estoppel does not apply in this instance to bar the Commission from considering Intercoastal's application.

Furthermore, NUC Witness Doug Miller testified that the application filed by Intercoastal before the St. Johns County Water and Sewer Regulatory Authority proposed a different plan of service than the application filed with the Commission. (TR 183-184)

NUC Witness M.L. Forrester testified that there are significant differences in Intercoastal's current application from the one it filed in the previous St. Johns County case; this was because the St. Johns County application was prepared prior to the announcement of the Nocatee development, and did not include Nocatee's significant service demands. Furthermore, NUC's St. Johns application only proposed service to the initial phases of the Marsh Harbor and Walden Chase projects, by extension from Intercoastal's existing easterly systems. (TR 330)

NUC Witness Doug Miller testified that Intercoastal's application before the St. Johns County Water and Sewer Authority (Authority) contained approximately the same territory in St. Johns County that is at issue in this case. (TR 1014) However, Mr. Miller further testified that Intercoastal's current application differs from the application filed with St. Johns County in that it now includes the portion of the Nocatee development that lies in Duval County, and that Intercoastal now states that it plans to serve the territory west of the Intracoastal Waterway from new water and wastewater plants built within the Nocatee development, and that this plan contrasts with its previous plan. (TR 1014-1015)

Thus, because there are significant differences between Intercoastal's current application before the Commission, and the application filed before the Authority, and because the parties in this proceeding are not identical to the parties before the Authority, staff believes that neither the doctrine of res judicata nor collateral estoppel should bar Intercoastal's application.

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ISSUE B: Has Intercoastal factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for original certificates?

RECOMMENDATION: Yes. Intercoastal has factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for certificates. (CIBULA, ESPINOZA)

POSITION OF PARTIES

NUC: Yes. By definition, any utility that proposes to serve the multi-county Nocatee development will necessarily have facilities that cross a county line.

IU: Intercoastal has established that its proposed water and wastewater systems satisfy the requirement of Section 367.171(7), Florida Statutes.

JEA: JEA takes no position.

SAWGRASS: The Association takes no position on this issue.

STAFF ANALYSIS: Section 367.171(7), Florida Statutes, states

Notwithstanding anything in this section to the contrary, the [C]ommission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional.

NUC witness testified that the Nocatee development transverses the Duval/St. Johns county line. (TR 146)(EX 3) Intercoastal is proposing to provide service to the entire Nocatee development. (TR 311)(EX 3) Intercoastal witness H.R. James testified that, by its application, Intercoastal is proposing to consolidate the operations and management of the water, wastewater and reuse systems for the utility's existing and proposed territories. (TR 311) Intercoastal witness M.L. Forrester testified that Intercoastal will construct water and wastewater facilities in the Nocatee development to serve the territory. (TR 366-367)

The record indicates that Intercoastal will have lines that physically transverse the county boundary as the utility is proposing to provide service to the entire Nocatee development. Thus, staff recommends that the Commission find that Intercoastal has factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for certificates.

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ISSUE 13: Is there a need for service in the territory proposed by Intercoastal's application, and if so, when will service be required?

RECOMMENDATION: Yes, in addition to Intercoastal's existing area, there is a need for service in the fourth quarter of 2002 for the Nocatee development. There is no need for service for other areas included in Intercoastal's application. (RIEGER)

POSITIONS

NUC: There is a need in 2002 for service to Nocatee that complies with the conditions of the Nocatee development order. There is no need for service to the Davis family lands outside Nocatee that are included in Intercoastal's application. Thus, there is no need that will not be satisfied by...

IU: There is a need for service in the territory proposed by Intercoastal's Application. The need for service in the Nocatee development is obvious, a matter of substantial testimony in this proceeding, and incontroverted. The need for service in those territories which lie between Intercoastal's existing territory and the anticipated boundaries...

JEA: No.

SAWGRASS: Based upon the testimony presented in this docket, and documents produced in connection therewith, the territory comprising Phase One of the Nocatee development will need water and wastewater service within the coming five (5) years, and thereafter.

STAFF ANALYSIS: This issue is intended to determine the need for service in the area proposed to be served by Intercoastal. Section 367.045(1)(b), Florida Statutes, and Rule 25-30.033 (1)(e), Florida Administrative Code, require an examination of the need for service in the requested area. Intercoastal originally requested a certificate that would encompass its existing utility service area east of the Intracoastal Waterway and also new areas west of the Intracoastal Waterway that include the Nocatee development, two other additional planned developments known as Walden Chase and Marsh Harbor, and a large undeveloped area owned by DDI and the

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Davis family located north of Nocatee. All parties concerned with this case agree that there is a need for service in the proposed Nocatee development, in addition to Intercoastal's existing area east of the Intracoastal Waterway. However, there is dispute over the need for service to the additional territory beyond Intercoastal's existing service area and the Nocatee development.

As detailed in its Conceptual Master Plan (CMP) (EX 17), Intercoastal's existing territory currently encompasses a service area of approximately 4,500 acres located in the Northeast part of St. Johns County on the east side of the Intracoastal Waterway. Intercoastal provides water and sewer service to approximately 3,500 customers, as well as reuse to the Sawgrass golf course. Intercoastal's application also initially included the Nocatee development with its 16,000 acres which will eventually have a population of 35,000 people; the 346 acre Walden Chase development with its proposed 585 single family residences, 160 multi family units, and multiple commercial customers; and the 123 acre area called Marsh Harbor with a potential of 76 single family residences. (EX 17, pages 2-1, 3-1) Nocatee witness Skelton testified that Intercoastal's proposed territory on the west side of the Intracoastal Waterway also included approximately 10,000 acres owned by DDI that is not planned for development. (TR 993)

As stated in its CMP, which was revised in March of 2000, Intercoastal omitted from its document any planning for Walden Chase or Marsh Harbor. These projects were dropped because St. Johns County has started off-site utility construction to Walden Chase, and the development schedule for Marsh Harbor is uncertain. However, it was noted that these developments can easily be integrated into Intercoastal's service area if requested. In reference to other areas owned by DDI, Inc., Intercoastal has not made any plans for service. (EX 17, Page 3-3) (TR 338-339) (TR 404-405, 1019-1020) As a result of this change, Intercoastal's proposed new service area now includes the existing territory already being served, the Nocatee development, and the DDI, Inc. property.

Intercoastal witness Forrester testified that he believed that there would be a need for service in the areas north of the Nocatee development. He stated that regardless of the present intentions of the owners of lands surrounding a giant project such as Nocatee, he believed that common logic indicates that even in the early stages of the Nocatee construction, the adjacent properties will

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experience an increase in both their desirability for development and also their value. The resulting "spin-off development" pressure could change the intents of those land owners with respect to land sales and create a concurrent need for additional utility planning and service which Intercoastal could and would provide. (TR 346-347)

However, in response to Intercoastal's testimony, witness Skelton testified that there are no plans to develop the lands owned by DDI and its related parties that fall outside of the boundaries of Nocatee. Thus, there is no foreseeable need for utility service to these lands. He stated that in this situation, no one should be granted a certificate to serve these areas. (TR 984-985) Although areas north of Nocatee are not intended to be developed, Witness Skelton agreed that if they ever were, he would not object to Intercoastal serving that adjacent territory. (TR 1000)

With respect to need for service within the Nocatee development, NUC's engineer, witness Doug Miller, testified that the Nocatee development will be built in five phases over 25 years and will serve a population at build-out of approximately 35,000 people. He went on to say that utility service will be needed in the fourth quarter of 2002. (TR 146) Intercoastal witness Forrester initially testified that if needed, construction water through temporary facilities could be provided to the Nocatee development in 2001. However, he amended this date to 2002 due to a road widening project of CR 210. (TR 339)

Appearing on behalf of Staff, Florida Department of Community Affairs' (DCA) witness Charles Gauthier testified that the balance of the area at issue is within St. Johns County and currently has a rural silvicultural designation. This designation indicates that a need for service does not exist at the present time. However, he also explained that once the various permitting processes had been finalized, this designation would likely change. Acknowledging the process in which the Nocatee development application has progressed, Witness Gauthier stated that the DCA undertakes a consistency review relative to the requirements of Chapter 380 of the Florida Statutes. He recognized that the Nocatee development orders have been approved by St. Johns and Duval Counties, and that the DCA has elected to not appeal either of the development orders. (TR 944-950) In addition, as discussed in Issue 1, although the amendments to the local comprehensive plans for Duval and St. Johns

Counties have not yet been approved, staff believes that those approvals will be obtained.

Staff believes that Intercoastal has not proven the need for service for areas other than its existing territory and the proposed Nocatee development. Although witness Forrester stated a potential "spin off" development interest, there is no compelling evidence to support that in the record. Intercoastal has no plans for service for the Walden Chase and Marsh Harbor areas, and there are no development plans for the DDI properties located north of the Nocatee area. The DDI lands are not zoned for residential development, and there has not been a service request for those areas.

Therefore, staff recommends that based on the record evidence, in addition to Intercoastal's existing territory, the only other area that is in need of service is the proposed Nocatee development. Staff also recommends that given the permitting processes required for the Nocatee development, it appears that service will be needed by the fourth quarter of 2002.

ISSUE 14: Does Intercoastal have the financial ability to serve the requested territory?

RECOMMENDATION: Yes. Intercoastal has the financial ability to serve the territory requested in its application. (CLAPP, RIEGER)

POSITIONS:

NUC: Intercoastal's financial statements and financial projections raise grave concerns about its ability to provide adequate service to the requested territory over the long term. In any event, NUC has superior financial ability.

IU: Yes.

JEA: JEA adopts NUC's position on this issue.

SAWGRASS: Based upon the testimony previously presented in proceedings before the St. Johns County Water and Sewer Authority in June 1999, and based on the testimony submitted in these dockets, it is unclear whether Intercoastal has the financial ability to serve the requested expansion territory.

STAFF ANALYSIS: This issue is intended to assess the utility's financial ability to provide service. Rule 25-30.033(1)(e), Florida Administrative Code, requires each applicant for an original certificate of authorization to provide a statement showing the financial and technical ability to provide service and the need for service in the proposed area. In this case, Intercoastal asserts it has the financial ability to serve the requested territory. NUC, JEA, and Sawgrass question that ability.

In order for Intercoastal to be able to serve the Nocatee development, Intercoastal would need to construct new water, wastewater, and reuse plants, or would need to enter into a bulk service agreement with another provider. Intercoastal's position is that it has the financial resources to provide the service to the entire area identified in the application because of the financial commitment of its shareholders and because of its financial history with the banks in the Jacksonville area. (BR 29)

Intercoastal's support for its financial ability comes from testimony of Intercoastal witnesses Forrester, James, Burton, and Bowen. Witnesses James and Forrester testified that Intercoastal's financial strength is in its stockholders. (TR 325, 429) Witness James further stated that all of the Intercoastal shareholders have signed affidavits acknowledging that they understand how much it would cost them if Intercoastal would receive the requested territory. (TR 486) Additionally, witness James stated that Intercoastal has lending relationships with most of the principle banks in the City of Jacksonville and that Intercoastal and its Board of Directors have the ability to borrow money from their line of credit which exceeds \$50 million. (TR 429-430) Witness Bowen asserted that five of the sixteen shareholders have a combined net worth of over \$30 million. (TR 1253) Further, witness Bowen provided a copy of a letter from First Union Bank in Jacksonville which expressed the bank's interest in providing financing for the Intercoastal expansion into the Nocatee service area. (EX 45, JLB-3)

NUC and JEA's position is that Intercoastal's financial statements and financial projections raise grave concerns about its ability to provide adequate service in the long term. This position is based primarily on the testimony of NUC witness Swain. NUC also cites cross examination testimony of Intercoastal witness Burton to support its position. (BR 39-41)

NUC witness Swain stated that Intercoastal was unable to pay its debt service from its operating earnings in 1997 and 1998; and, as a result, Intercoastal requested and received an increase in its wastewater rates in excess of 40%. (TR 1054) Witness Swain opines that negative equity and the highly leveraged position of Intercoastal indicated a high level of financial risk. (TR 1054)

During cross-examination, Intercoastal witness Burton conceded that, assuming the continuation of 100% debt financing, Intercoastal would require additional debt financing of over \$12 million in 2002 to build new facilities to serve its requested territory. (TR 679, 885, EX 33) Witness Burton further conceded that Intercoastal's proposed use of existing rates for the development would produce a shortfall for the utility and that, at 100% debt financing, Intercoastal's shareholders would be required to provide significant subsidies of over \$1 million to enable the utility to pay its bills. (TR 883-889; EX 33)

Support for Intercoastal's use of 100% debt financing comes from testimony from Intercoastal witnesses Burton and Bowen. Both witnesses agree that the use of debt to leverage business operations is a sound business decision and a reasonable alternative to the use of equity. Since the cost of debt is lower than the Commission's leverage graph for return on equity, the customers benefit with lower rates. (TR 1220, 1249, 1260)

Intercoastal witness James provided exhibits to support Intercoastal's financial capability. These exhibits are found in Composite Exhibit 45. Intercoastal's financial report of August 31, 1999, changed significantly from the 1998 report due to plant expansion and the related increase in rates effective November 1, 1998. This report reflected a net income of \$181,370. (TR 1247-1248, EX 45, JLB-1) Further, Intercoastal's cash flow projection for the years 2000 through 2005 shows a positive net cash flow. (TR 1251, EX 45, JLB-2) Additionally, a letter from First Union Bank states that, based upon history with Intercoastal and in-depth knowledge of its management team, the bank is interested in financing Intercoastal's expansion. (EX 45, JLB-3)

Sawgrass' position is that it is unclear whether Intercoastal has the financial ability to provide the service, but cautions against consideration of a rate increase on its customers. (BR 5-7) Sawgrass witness Flury testified that he does not understand how the new water, wastewater, and reuse facilities in the western expansion area would operate as a helpful factor for the rates of the existing customers. (TR 735)

Intercoastal witness James addressed the concern that the existing rates would produce a shortfall for the utility, thus requiring a rate increase for all customers. Witness James stated that in all of his years in developing and running utilities he has found the utility must have at least 1,000 customers before it reaches the break-even point. (TR 487) Since Intercoastal has approximately 3600 retail water and wastewater customers (TR 307), it is above the break-even point. Intercoastal witness Burton stated that economies of scale play a part in spreading operation and management costs over existing and new customers. (TR 791) Witnesses James and Burton agree that if Intercoastal were awarded the certificate to serve the area there would be downward pressure on the rates due to economies of scale. (TR 479, 689)

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The Intercoastal application for certification contains plans to provide service to the area by way of building water, wastewater, and reuse plants in the new service area. However, according to Intercoastal witness Burton, Intercoastal is also considering the alternative of contracting with JEA to provide service to the area. (TR 678) However, with either plan, Intercoastal has determined that it does not need to increase its rates to offset the planned shortfall in the utility's income, because it will rely on its shareholders to fund the shortfall. (TR 786)

Staff is concerned that Intercoastal appears to have few firm plans for this service area. For example, according to Intercoastal witness James, the utility has not made a decision on exactly what percentage of debt to equity it will use for the new construction, as it may be 100% debt or it may be 70/30 or 60/40. (TR 435) NUC witness Swain pointed out that although Intercoastal has been in business for many years, by December 1998, it had a negative retained earnings of over \$1,600,000. (TR 1053)

Staff relies on Intercoastal's representation that the funding is available for this endeavor through the financial support of its shareholders and through banks that have provided past financing. Based on the testimony by Intercoastal's witnesses: 1) five of the shareholders have a combined net worth over \$30 million (TR 1253); 2) all of the Intercoastal shareholders support the application and have signed affidavits stating they understand how much it would cost them if Intercoastal would receive the requested territory (TR 486); 3) at least one bank in Jacksonville has issued Intercoastal a letter stating interest in funding an expansion into the Nocatee service area (EX 45, JLB-3); and 4) Intercoastal and its Board of Directors have the ability to borrow money from their line of credit that exceeds \$50 million. (TR 429-430) Therefore, the staff recommends that Intercoastal has the financial ability to serve the territory requested in its application.

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ISSUE 15: Does Intercoastal have the technical ability to serve the requested territory?

RECOMMENDATION: Yes, Intercoastal has the technical ability necessary to serve the requested territory. (RIEGER)

POSITIONS

NUC: In the abstract, Intercoastal may have the technical ability to operate a utility. However, it has not proposed a technically feasible plan of service for the requested territory. To the contrary, its plan of service admittedly violates all of the utility related conditions of the development orders governing Nocatee.

IU: Yes, Intercoastal's experience clearly demonstrates it has the technical ability to effectuate the proposals in its application.

JEA: No. Only NUC through its Wholesale Agreement with JEA can provide service to Nocatee in accordance with the conditions that have been placed on the development through the Development Orders.

SAWGRASS: No. The Sawgrass community has been subjected to regular noxious odors from ICU's adjacent wastewater treatment plant, even after ICU changed its sewage processing system. There is significant concern about whether ICU can serve the large area of Nocatee when it has problems serving its current territory.

STAFF ANALYSIS: Section 367.045(1)(b), Florida Statutes, and Rule 25-30.033 (1)(e), Florida Administrative Code require a utility applying for an original certificate to provide information showing that it has the technical ability to provide service in the area requested. Technical ability usually refers to the utility's operations and management abilities, and whether it is capable of providing service to the development in question.

In this case, there are conflicting arguments regarding whether Intercoastal has the technical ability to serve either its current territory or the requested territory. Intercoastal clearly believes that its experience demonstrates it has the technical ability. NUC and JEA believe that although Intercoastal may have

the technical ability to operate the utility, its proposed plan of service for the Nocatee Development is not a technically feasible plan. Noting existing operational problems with Intercoastal's wastewater treatment plant, Sawgrass has concerns about the utility being able to serve the large area of Nocatee, and maintain an acceptable level of service to its existing service area.

In support of Intercoastal's technical ability claims, the Vice-President of Jax Utilities Management, Inc. (JUM), witness M. L. Forrester testified he has been in the water and wastewater utility industry since 1959, working for various utility construction and supply companies, as well as operating utility systems for the City of Jacksonville and Southern States, Utilities Inc. Among other things, his work experience includes service planning to new developments, water and sewerage rate studies management, federal and state legislation reviews, private utility acquisition, water quality management planning, and directing utility systems operations. He has been employed by JUM since 1984. He has appeared numerous times before the Duval County and St. Johns County Commissions, the Public Service Commission and Duval County Circuit Court, and has been qualified as an expert in utility operations and management, service territory and rate matters, and utility valuation. (TR 305-306)

Witness Forrester stated that JUM has been managing Intercoastal since 1983. Concentrating its operations in the Duval, Nassau, Clay, and St. Johns Counties, JUM has been operating water and wastewater utilities for over 25 years. It provides the operation, maintenance, and management services for Intercoastal, as well as the administration of the utility's business and economic/environmental regulatory affairs. JUM specializes in operations of water and wastewater utilities through two major divisions. The contracting division provides utility construction services and the utility management services division includes operations and maintenance services. (TR 307) (EX 14, MLF-1, Pages 3-4)

Witness Forrester also testified that Intercoastal's provision of services will be in compliance with environmental regulations, comprehensive plans, and that it will supply a level of service equal to or exceeding that of any other utility entity. He noted that Intercoastal has the qualifications, experience, capabilities, and resources to provide excellent and reliable service to its proposed territory, and is willing to assume those

responsibilities. In his opinion, Intercoastal has the technical capability, operational expertise, managerial experience and financial strength to accomplish all of its proposals. According to witness Forrester, Intercoastal is also well-supported in all of the necessary engineering, legal, and economic disciplines by its consulting team to ensure that its plans are formulated and carried out in an efficient and effective manner. (TR 310-311)

Also testifying for Intercoastal was witness H.R. James, President of both Jax Utilities Management (JUM) and Intercoastal Utilities. Witness James testified that JUM presently has 37 projects under construction in the area including clearing land, installing water and wastewater lines, storm drains, streets, curbs and gutter, and digging numerous lakes in development areas. The year before, JUM completed over \$14,000,000 of projects. (TR 431) He went on to say that JUM has owned over 25 utilities and has sold 23 over the years. The two remaining are Intercoastal and True Cove Oaks. (TR 461) He further testified to JUM's involvement with Intercoastal by stating that JUM manages the utility by doing everything, which includes providing thirteen operating personnel, billing and collection services, and making repairs. (TR 463-466).

To further bolster its claim that it has the necessary technical experience, Intercoastal's Conceptual Master Plan (CMP) as presented through engineering witness Jim Miller's Exhibit No. 17, describes the utility's existing treatment facilities located in its present service area on the east side of the Intracoastal Waterway. It also explains the expansion and upgrading plans necessary for those facilities to meet growth and new regulatory requirements. In addition to meeting Intercoastal's present service area needs, the CMP details how it is technically possible to provide service to the proposed Nocatee Development Area located on the west side of the Intracoastal Waterway. The plan suggests that the utility is technically capable of obtaining the professional services necessary to develop and operate existing and future utility services. (EX 17)

NUC provided testimony to refute Intercoastal's technical ability. NUC's engineer, Witness Douglas Miller, testified that while Intercoastal may be capable of constructing and operating water and wastewater utility systems, their CMP for serving Nocatee is inconsistent with the regulatory requirements that will be imposed on the development, and as such, that plan is not technically feasible. (TR 1020) He also stated that in the early

planning stages for Nocatee, DDI considered and rejected seeking utility service from Intercoastal. The reasoning behind that decision was that if new construction was required, Intercoastal would not bring anything to the table that could not be accomplished better through an affiliated utility that shared the project's environmental ethic. Also, Nocatee representatives questioned whether Intercoastal could cost-effectively serve west of the Intracoastal Waterway. (TR 1024)

Sawgrass also provided testimony to refute Intercoastal's technical ability through two Intercoastal customers, witness Flurry and witness Arenas. Witness Flurry represented the Sawgrass Homeowner's Association, and witness Arenas operates a business located next to the utility's wastewater treatment plant in the Sawgrass development. Both witnesses expressed concerns about significant and continuous noxious odors from the Sawgrass wastewater treatment plant. Witness Flurry stated he did not believe Intercoastal had taken all the steps necessary to stop the odors and that the problem continues to the present day. (TR 725-726) Witness Arenas testified that the plant regularly gives off strong and foul odors. (TR 705) She also testified that Intercoastal told the community that when the new processing system was placed in operation as a result of the plant expansion in early 2000, it would substantially reduce odors. However, the odors were not reduced. (TR 708)

Witness Flurry provided additional testimony regarding Intercoastal's technical ability. He referred to problems relating to possible infractions by Intercoastal operating its wastewater plant in excess of its Florida Department of Environmental Protection permit, failure of a lift station, problems with chemical storage which might generate an increased health risk, and noted that the utility was cited for excessive coliform bacteria. (TR 724-726, 732-733, 736-737) Witness Flurry's overall belief is that the existing customers would be adversely affected if Intercoastal received a territory expansion, contrary to what the utility had represented to its existing customers. (TR 740)

Staff sponsored two witnesses from the Florida Department of Environmental Protection (FDEP), witness Edward Cordova testifying on water service, and witness Robert Lear, testifying on reuse service. Witness Cordova testified that Intercoastal has an excellent history of compliance and has adequate staff to provide water to the area at issue. To his knowledge, Intercoastal has not

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had any past problems in regard to safety, water quality, reliability, or customer service that would indicate that the customers would be better served by JEA. He testified that there was no reason as to why Intercoastal cannot satisfy the requirements for the potable water needs of the Nocatee development. (TR 816, 820) In reference to Witness Flurry's concern about the elevated level of coliform bacteria, witness Cordova stated that he was not aware of that fact. (TR 822) Witness Lear testified that in reference to providing residential reuse, neither utility should not have a significant technical hurdle. (TR 831)

Intercoastal responded to the various comments of witnesses Flurry and Arenas with the testimony of witness Forrester. With respect to witness Flurry's testimony about the design capacity of Intercoastal's existing wastewater treatment plant, witness Forrester stated that the facility size was properly and prudently determined by professional engineering analyses, as required by regulation. Specifically, he stated the plant was operating within the parameters as stated in Rule 17-600.405, Florida Administrative Code, which requires a permittee to provide for the timely planning, design, and construction of wastewater facilities capacities necessary to supply proper treatment and reuse or disposal, based on the historical, current and projected wastewater flows within the permittee's existing service area. (TR 355-356)

Witness Forrester also responded to witness's Flurry's and Arenas's statements questioning the utility's technical capability relating to odors coming from the utility existing wastewater treatment plant. He explained that odors existed prior to the recent conversion, upgrade and expansion of the Sawgrass facility. Even during frequent visits to this facility by FDEP inspectors and other utility experienced personnel, and during extended training sessions conducted at the site, there was no detection of unusual odors. However, because both the FDEP and Intercoastal continued to receive odor complaints from customers after that conversion, Intercoastal covered open channels and added lime to the headworks to remove residual odors. He stated that as a last resort, Intercoastal also ordered odor neutralization equipment. He stated that Witness Cordova, and other FDEP personnel have been unable to verify that such complaints of unreasonable odors are justified. (TR 353-354)

In response to witness Flurry's statement questioning the utility's technical capability relating to the North Gate sewage lift station which failed in December of 1999, Witness Forrester explained that a power service malfunction caused extensive damage to that station. While replacement parts were on order, it was necessary to install a temporary pump and hydraulic hose connection from the pump discharge into the force main adjacent to the station. The liftstation was completely repaired on approximately April 1, 2000. The failure did cause an overflow of sewage, which was minimized as much as possible by field personnel who worked on the problem. He indicated that while such extensive damages of equipment are not common, they do occur and field personnel take all reasonable steps to return the system to proper operation as quickly as possible. (TR 352-353)

Witness Forrester also responded to witness Flurry's observation that a reported excessive coliform bacteria incident showed Intercoastal's lack of operational expertise. He stated that Mr Olson's testimony, which has been adopted by Witness Flurry, was at least an uninformed misinterpretation if not a deliberate distortion of the language contained in the Water Quality Report. (TR 354-355) During cross examination of witness Flurry by Intercoastal, he admitted to not really knowing what coliform bacteria was, and was unaware of how long the excessive problem existed. In reference to chemical storage at the wastewater treatment plant site, witness Flurry was pleased that Intercoastal switched to an alternative substance which is considered safer than chlorine, and agreed that it was a positive development. Finally, although he knew that Intercoastal implemented a plan to reduce odors, witness Flurry stated that he was not aware of any recent attempt by the Association to discuss with the utility the situation regarding odor. (TR 749-752)

Staff believes that Intercoastal is technically able to provide service to the existing and proposed territories. The utility has adequately provided proof that it has the professional capability through its management company, JUM, to provide the necessary administration, operations, customer service, planning, and regulatory compliance duties. The testimony of witnesses James and Forrester detailed the company's history, staffing and ability to provide service. In addition, the utility's CMP adequately featured Intercoastal's plan of action to provide service. NUC's argument that Intercoastal's plan for service conflicts with Nocatee's development plan, does not equate to the lack of

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Intercoastal's technical ability to serve. Also, staff believes that the technical problems identified by the customers were substantially addressed by witness Forrester. The utility's compliance record with FDEP rules and recent plant improvement efforts also show the utility as being technically able to provide service.

In conclusion, Intercoastal has proven that it has the personnel experience and financial support to serve its existing territory and the requested area. Therefore, based on the testimony presented in the record, staff recommends that Intercoastal has the technical ability necessary to serve the requested territory.

ISSUE 16: Does Intercoastal have the plant capacity to serve the requested territory?

RECOMMENDATION: No, Intercoastal does not currently have sufficient water, wastewater, or reuse capacity to serve the requested territory. Although Intercoastal has developed a Conceptual Master Plan to serve the Nocatee development, the utility's ability to provide capacity on a timely basis is questionable. (RIEGER)

POSITIONS OF PARTIES

NUC: No. Intercoastal's plan of service requires the construction of new water, wastewater and reuse facilities on the west side of the Intracoastal Waterway. Intercoastal has not provided proof that it owns the sites on which such facilities are proposed to be located.

IU: Intercoastal does not presently have all the plant capacity necessary to serve the requested territory, but Intercoastal has proposed a plan of service which reveals that it will be able to meet all the demands of the requested territory while benefitting Intercoastal's present customers in its existing certificated territory.

JEA: No. Intercoastal would have to construct new water, wastewater and reuse facilities on the west side of the Intracoastal Waterway in order to provide service to the requested territory.

SAWGRASS: ICU's current WWTF has insufficient capacity to serve the requested territory, and it is not cost effective to serve Nocatee from ICU's existing system. The Association cannot evaluate the technical, financial or operational capacity of ICU's proposed new plants, other than based on past performance.

STAFF ANALYSIS: The purpose of this issue is to discuss concerns brought forward by NUC, JEA and Sawgrass with respect to Intercoastal's ability to provide service to the Nocatee development from existing or proposed plant facilities. Intercoastal contends that Nocatee's Development Plan which requires specific parameters concerning treatment plant locations,

groundwater usage, effluent discharge, and irrigation demands, should not prevent it from providing service as proposed through its Conceptual Master Plan. Both JEA and Nocatee believe that Intercoastal's plan for service is not attainable because it will require new plant construction of water, wastewater and reuse facilities on the west side of the Intracoastal Waterway (ICWW). Sawgrass' position is that Intercoastal's existing plant does not have capacity to serve the requested area. Furthermore, Sawgrass states there is no way for it to evaluate any new plan to build plant to serve the new area, other than to look to past performance, which it believes is negative.

Intercoastal filed its plan of service to the Nocatee development with its application as its Conceptual Master Plan (CMP) (EX 17). The objectives of the CMP include the following: 1) develop recommendations for providing water, wastewater, and reclaimed water services to Intercoastal West, while continuing to provide for service and growth in Intercoastal East for the 20 year planning horizon; 2) concentrate on facilities that are needed to serve the developments, rather than providing service within the developments; 3) develop recommendations for the time sensitive initial phases of the strategy. (EX 17 p.1-1)

In its proposed application, the CMP laid out two initial alternatives for Intercoastal to provide service to its requested territory. The first was for the utility to provide initial service from the existing easterly facilities with future service provided by new facilities west of the ICWW. The second option was to provide new facilities in the westerly portion for initial and future phases of the development. These facilities would use design concepts consistent with all regulatory requirements, and the westerly facilities would provide, at a minimum, the same level of service that could be expected from a governmental entity providing the same service. (EX 17 p. 3-7)

It was quickly determined that the cost to provide a subaqueous transmission main under the ICWW for water, as well as a new force main and master liftstation from the Sawgrass wastewater treatment plant and subaqueous force main for wastewater, were not cost effective alternatives. (EX 19 p.3.7, 3-11) Therefore, Intercoastal refocused on the second alternative in its CMP, which was based on a separate, stand alone facility for water and wastewater service to the westerly franchise area including Nocatee. (EX 17 p. 3-7) However, it was noted in the

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CMP that the utility does not rule out a future interconnection to the easterly system to provide even more system reliability and backup for customers on both sides of the ICWW. (EX 17 p.3-7)

With regard to other supply sources, witness Forrester testified that he considered wholesaling water from JEA as merely an alternative which Intercoastal would not turn a blind eye to, if the Commission determined that such a relationship was in the public interest. (TR 336) In short, if Intercoastal's application were to be approved, the utility would renew its January 4, 1998, request for wholesale service from JEA for the purpose of testing the ability of that alternative to reduce future costs of all services to the proposed territory. (TR 318)

In evaluating alternatives for a reclaimed water system, the CMP reflected that a reclaimed water pumping station capable of pumping the projected excess of 1.150 mgd from the easterly system to the westerly reclaimed water storage facilities would be provided with a pipeline crossing under the ICWW. The pipeline from the westerly side of the ICWW to the reclaimed water storage and pumping facility would double as a wet weather discharge to the waterway under conditions when storage was full and usage was minimal. A temporary supply well is also identified in the CMP, to supplement the development's need for reclaimed water. Reclaimed water storage options were also given further consideration in the revised CMP. It was determined that storage reservoirs were considered the better option versus open storage ponds. (EX 17, Pages 3-14 and 15)

With respect to wet weather discharge, Intercoastal's CMP provides for a discharge into the ICWW. (EX 17, Pages 3-10 and 11) The disposal line is located in the ICWW north of State Road 210, which was a location picked by the FDEP for discharge from the existing plant owned by Intercoastal. At the hearing, Intercoastal's witness J. Miller stated that during wet weather, between 700,000 to 3 million gallons per day could be discharged into to ICWW. (TR 1109) However, when considering annual averaging, Intercoastal believed it would be below its already existing 1.2 million gallons per day permitted amount to the FDEP approved disposal site in the ICWW. With its plan for service, Intercoastal would be reducing its discharge into the ICWW to almost zero. (TR 1112)

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Additionally, in Intercoastal's CMP (Exhibit 17), the following information concerning system phasing for water, wastewater, and reuse were given. They are as follows:

Intercoastal's Proposed Water System Phasing

- Phase 1 - (Year 2002) - A 2.0 MGD water treatment plant on ten acres of land, including three supply wells @750gpm each, 2.0 mg ground storage reservoir, with transmission mains to connect to developer provided distribution systems. Maximum day capacity = 2.0 MGD. Total estimated cost of Phase 1 = \$4,023,750.
- Phase 2 - (Year 2007) - Expansion of water treatment to 4.0 MGD with addition of additional supply wells and 2.0 mg ground storage reservoir. Maximum day capacity = 4.0 MGD. Total estimated cost of Phase 2 = \$2,527,500.
- Phase 3 - (Year 2012) - Addition of second water treatment plant (WTP #2) on ten acres of land complete with supply wells, transmission mains, and 2.0 mg ground storage reservoir. Maximum day capacity = 7.0 MGD. Total estimated cost of Phase 3 = \$4,097,500.
- Phase 4 - (Year 2017) - Expansion of WTP #2 with new supply wells and 2.0 mg ground storage reservoir. Maximum day capacity = 10.0 MGD. Total estimated cost of Phase 4 = \$2,192,500.
- Phase 5 - (Year 2022) - Additional supply wells and well headers. Maximum day capacity = 13.0 MGD. Total estimated cost of Phase 5 = \$262,500

Intercoastal's Proposed Wastewater System Phasing

- Phase 1 - (Year 2002) - A 1.0 MGD wastewater treatment plant on 25 acres of land, complete with master lift station, force mains, and wet weather outfall. Total estimated cost of Phase 1 = \$8,967,500.
- Phase 2 - (Year 2007) - Expansion of wastewater treatment plant to 2.0 MGD, with additional force main. Total estimated cost of Phase 2 = \$6,550,000.

- Phase 3 - (Year 2012) - Expansion of wastewater treatment plant to 3.0 MGD on 25 acres of land, with additional force mains. Total estimated cost of Phase 3 = \$8,575,000.
- Phase 4 - (Year 2017) - Expansion of wastewater treatment plant to 4.5 MGD, including line for an additional outfall. Total estimated cost of Phase 4 = \$7,682,500.
- Phase 5 - (Year 2022) - Expansion of wastewater treatment plant to 5.5 MGD, with additional force main. Total estimated cost of Phase 5 = \$5,737,500

Intercoastal's Proposed Reclaimed Water System Phasing

- Phase 1 - (Year 2002) - A 3.0 mg storage reservoir, reclaimed water pumping station, temporary supply well, easterly transfer pumping station, waterway crossing, and transmission mains. Reclaimed water capacity = 1.50 M.G.D. Total estimated cost of Phase 1 = \$4,517,500.
- Phase 2 - (Year 2007) - Expansion of reclaimed water storage reservoirs to 6.0 mg with additional reclaimed water pumping, and reuse main. Reclaimed water capacity = 2.5 M.G.D. Total estimated cost of Phase 2 = \$1,880,000.
- Phase 3 - (Year 2012) - Expansion of reclaimed water storage reservoirs to 9.0 mg with additional reclaimed water pumping, reclaimed water main, and reuse main. Reclaimed water capacity = 4.0 M.G.D. Total estimated cost of Phase 3 = \$2,180,000.
- Phase 4 - (Year 2017) - Expansion of reclaimed water storage reservoirs to 12.0 mg with additional reclaimed water pumping, and reclaimed water main. Reclaimed water capacity = 5.0 M.G.D. Total estimated cost of Phase 4 = \$1,680,000.
- Phase 5 - (Year 2022) - Expansion of reclaimed water storage reservoirs to 15.0 mg with additional reclaimed water pumping. Reclaimed water capacity = 6.250 M.G.D. Total estimated cost of Phase 5 = \$1,500,000.

NUC's primary objection to Intercoastal's plan of service as described in Intercoastal's CMP, is that the Nocatee development, including the landowner and the developer, have committed to an

environmentally sensitive project and that commitment is reflected in the way that they have proposed to provide utility service to Nocatee in the Application for Development Approval (ADA). The ADA contains specific standards of providing utility service included in the Nocatee Environmental Water Resource and Area Plan (NEWRAP), which states the following: 1) no water or wastewater treatment plants located within the boundaries of Nocatee; 2) no reliance on groundwater; 3) no effluent discharges to the Tolomato River; and 4) Irrigation demand will be met by reuse of either wastewater effluent or stormwater. (EX 7, DCM 14) According to NUC witness D. Miller, these four utility-related development conditions were imposed by both Duval and St. Johns Counties to secure the development rights to build a city for 35,000 residents. These development order conditions were not imposed to preclude service from Intercoastal, as alleged by Intercoastal. (TR 1031-1032)

Witness D. Miller further stated that if Intercoastal proposes to construct water and wastewater plants within Nocatee and rely on ground water withdrawals, it will have insufficient reclaimed effluent to meet irrigation demands, in addition to sending wet weather discharges to the Tolomato River. (TR 1016-1018) The witness believes that while Intercoastal may be capable of constructing and operating water and wastewater utility systems, its CMP for serving Nocatee is inconsistent with the regulatory requirements that will be imposed on the development. As such, that plan is not technically feasible. (TR 1020) Further, it was his professional opinion that the development order modifications required to implement Intercoastal's plan of service were unattainable, and therefore, Intercoastal's plan of service would not be implementable. (TR 1036)

NUC witness Skelton stated that DDI and Nocatee have been advised that by retaining control over utility planning and operations, they are in the best position to ensure that the environmental goals are realized. (TR 985-986) Witness Skelton further stated that the major flaw with Intercoastal's application is its plan to put new utility plants in the middle of Nocatee and its inability to provide 100 percent reuse to meet the irrigation needs. (TR 993)

Intercoastal witness Forrester responded to the criticisms of the parties with respect to Intercoastal's ability to build facilities on the west side of the ICWW to serve Nocatee, the

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availability of water to serve Nocatee, and the adequate supply of irrigation water to serve Nocatee.

The primary argument against Intercoastal providing service to Nocatee revolved around the Nocatee Development Order which prohibited the construction of treatment plants within Nocatee. (EX 7, DCM 14) Witness Forrester stated that Intercoastal could either provide service in some way such that plants were not located on the development or, modify the Development Orders to accommodate Intercoastal's plan of service. (TR 1185) When asked about obtaining land on which to locate its facilities, he stated that once Intercoastal obtains the legal right to provide service to a development, it would immediately meet with the landowners and negotiate a fair price, or a contribution if possible. He testified that there is ample land on which to locate the facilities necessary to implement Intercoastal's plan of service. However, if necessary, Intercoastal has condemnation authority as a public utility. (TR 1186-1187)

Another criticism of Intercoastal's plan was the actual availability of water in the development area. Again, the Nocatee Development Order restricted the use of groundwater withdrawals within the project to meet potable water or irrigation water demands. Witness Forrester stated that the Nocatee Water Resource Study, and its review by Intercoastal's engineers, confirm the potential for significant ground water withdrawals which could provide potable water needs for this area, but would also not adversely affect the areas water resources. (TR 336)

Witness Forrester also responded to the ability of the utility to provide adequate irrigation water to Nocatee. Intercoastal's CMP proposed to supplement wastewater effluent (reclaimed water) with groundwater withdrawals to insure an adequate flow of irrigation water. (EX 17 p.3-15) He stated that Intercoastal will utilize the reclaimed water flows from its eastern and proposed western wastewater systems to provide the vast majority of those needs. If actually necessary, Intercoastal will temporarily supplement those reclaimed water sources with a declining withdrawal of lower quality groundwater for the first three years. (TR 338) He stated that the use of groundwater to supplement reclaimed water produced for irrigation is allowed by Section 373.250 (3)(a), Florida Statutes. (TR 336) In addition, Mr. Forrester stated that the St. Johns River Water Management District's (SJRWMD or District) current District Water Supply Plan, notes no known regional adverse

groundwater withdrawal impacts in this area. However, he also stated that further studies and strong well monitoring programs would be necessary to guide future planning. (TR 365-366)

Intercoastal also believes the projections made by NUC of 650,000 gallons per day for reclaimed water usage for golf courses within Nocatee are on the high side. (TR 338) Intercoastal witness J. Miller stated the annual average usage normally associated with central to north Florida golf courses is typically 300,000 to 400,000 gallons per day. Assuming that the reuse demand in Phase 1 is as represented, he stated that Intercoastal will be able to meet that demand by using a temporary water supply source in the amount ranging from a negligible 135,000 gpd the first year to 10,000 gpd the third year. He stated that this temporary water supply would only be needed if the projected reuse demands, which appear to be high, are actually achieved and if additional stormwater over the projected 20% cannot be utilized. This supply can be obtained from an irrigation well drilled into the lower Floridian aquifer, as recommended in the "Nocatee Groundwater Supply Development Plan". (TR 1090-1091)

Another part of the argument against the utility's ability to provide adequate irrigation water was that the demand from existing Sawgrass customers would result in a shortage being available to send over to Nocatee. (TR 728) However, witness J. Miller believes that Intercoastal can meet the demands utilizing the reclaimed water generated from the proposed wastewater treatment facility and the excess reclaimed water from Intercoastal's Sawgrass Wastewater Treatment Plant. The witness stated that the Sawgrass plant was at .8 MGD, with plant capacity expected to be reached by 2010. As far as the reuse commitment with the Sawgrass Golf Course, he and witness Forrester indicated that the utility was obligated to provide 300,000 gallons per day on an average annual basis. (TR 1116-1117, 1185) However, in responding to questions about possible shortfalls in meeting reuse demand, witness J. Miller indicated that reuse shortfalls were possible because of assumptions made that might not occur, such as Intercoastal's wastewater treatment plant not reaching capacity, and the Sawgrass golf course taking more than 300,000 gallons per day. (TR 1143-1144)

No testimony relating to Intercoastal's plant capacity was offered by JEA or Sawgrass.

Staff presented several witnesses representing various agencies which testified on Intercoastal's plant capacity. These included witness Silvers with the St. Johns River Water Management District (SJRWMD), witness Cordova and Lear representing water and wastewater, respectively, for the Florida Department of Environmental Protection (FDEP), and witness Gauthier with the Florida Department of Community Affairs (DCA).

Witness Silvers was questioned as to whether or not Intercoastal could meet the SJRWMD permitting criteria to obtain a consumptive use permit for water. (TR 860-862) Obtaining a permit is one of the preliminary steps involved in permitting any new utility facility plans. (TR 848-849) She agreed that the SJRWMD has not required that there be no on-site water wells at Nocatee, and everyone is given the ability to demonstrate whether or not they can meet the SJRWMD permitting criteria. However, there was no application by Intercoastal for such a permit filed with the SJRWMD. Therefore, she could not come to a conclusion on whether Intercoastal could obtain a permit for a well. (TR 862)

Witness Cordova with the FDEP testified that the water in the Intercoastal system currently meets all FDEP requirements for water quality, and that he did not know of any reason why Intercoastal could not satisfy the requirements for the potable water needs of the Nocatee development. However, he could not testify as to the adequacy of Intercoastal's proposed system in the Nocatee development, because the FDEP had not received a permit application or any details on that plant. (TR 820)

FDEP's wastewater witness Lear's testimony primarily related to permitting issues that Intercoastal would have to address at the time it filed with the FDEP. He stated the primary concern was with respect to effluent disposal into the ICWW. (TR 827-828,832,834) He also testified that all applicants for permits to construct or operate a domestic wastewater treatment facility located within a water resource caution area must prepare a reuse feasibility report as part of its application for the permit. (TR 829)

Witness Gauthier's testimony relating to Intercoastal's plant capacity was with respect to Intercoastal obtaining a change in the development order currently guiding Nocatee. As mentioned earlier, the development order restricted any onsite plants or withdrawals of water. Under cross from Intercoastal, he explained that

development orders can be changed through either a proposed change or a substantial deviation process. In either process, the local government would have to make that change. (TR 953) He also stated that he didn't see anything in the application that would trigger the substantial deviation standard for a change, or anything that would lead him to believe that the property would not be permittable with on-site plants. (TR 957)

On additional questioning by the Commission, witness Gauthier discussed possibilities for locating plants. He stated that although there are very significant wetland systems within Nocatee, it also appeared there were substantial upland areas away from the wetland and estuarine systems, where it would be possible to accommodate water and wastewater facilities. However, he noted that the area he would be most concerned about would be wastewater treatment facilities and the method of discharge. (TR 959)

Based on Intercoastal's CMP, and the Nocatee proposal, staff has compiled a chart which shows the anticipated demand as proposed by NUC for the development, and Intercoastal's plan to meet that same demand. For water and wastewater, the utility would build a new plant west of the ICWW. To provide effluent for reuse, Intercoastal would utilize excess effluent from its existing Sawgrass wastewater treatment plant, ultimately combined with effluent from its new west facility. Intercoastal's information is from Exhibit 17, and NUC's data is from Exhibit 6, DCM-3.

INTERCOASTAL'S EXISTING AND PROPOSED PLANT CAPACITIES vs. NOCATEE DEMAND

	(MGD)	<u>PHASES</u>				
		P1	P2	P3	P4	P5
WATER:						
NOCATEE Demand		.73	1.84	3.30	4.76	6.12
IU (existing @ 5.0)	(West)	2.00	4.00	7.00	10.00	13.00
WASTEWATER:						
NOCATEE Demand		.61	1.56	2.84	4.05	5.20
IU (existing @ 1.5)	(West)	1.00	2.00	3.00	4.50	5.50
REUSE:						
NOCATEE Demand		1.23	2.07	3.42	4.76	5.39
IU	(West)	1.50	2.50	4.00	5.00	6.25
ICWW EFF (existing @ 1.2)						
SAWGRASS REUSE (@ 0.3)						

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This chart shows that Intercoastal believes its combination of facilities and service plan would allow it to fully meet the demands for water, wastewater and reuse within the Nocatee development. This is based on Intercoastal's revised estimates of demand for effluent to Nocatee golf courses and contractual obligation to Sawgrass. However, Intercoastal witness Forrester acknowledged that Nocatee's development order is inconsistent with Intercoastal's plan of service. (TR 1182) Witness Forrester stated that it would be in the best interest of Intercoastal and its present and future customers, to modify Nocatee's development order to accommodate Intercoastal's plan of service. (TR 1185)

Staff's initial concern with this issue is the problem related to the utility's compliance with Rule 25-30.036(3)(d), Florida Administrative Code, which requires that the utility either own land, or have a lease agreement or some other instrument which provides for continued use of the land necessary for the utility treatment facilities that will serve the proposed territory. The utility failed to provide this evidence. In fact, the only evidence provided by Intercoastal's witnesses on this subject was that it did not have access to land needed for the plant sites. (TR 407-408) Although there was discussion by witnesses Forrester and J. Miller that property can be acquired, there was no evidence provided as to the certainty of that observation, or to its timeliness to meet Nocatee's development needs.

Although the land situation is important, it is still necessary to consider the pros and cons of Intercoastal's plan of service for the Nocatee area. If the utility had met the land requirement pursuant to Rule 25-30.036(3)(d), Florida Administrative Code, the argument would then boil down to two considerations: 1) does Intercoastal, through its plan for service, have the capacity to meet Nocatee's needs; and if so, 2) should the Commission disregard Nocatee's Development Order to allow the utility access to serve the development.

In review of Intercoastal's plan for service, disregarding Nocatee's development plan restrictions with respect to utility service, staff believes that in theory the plan could work. Its initial planning for plant and line construction can meet Nocatee's demand requirement for all planning stages of the development, including reuse demands. (EX 17) Although it is unclear as to how much reclaimed water from Intercoastal's existing treatment facility is available, (TR 338, 1185) staff believes that

augmentation from the proposed groundwater well could be feasible. However, given the sensitive environmental concerns brought up in relationship to permitting both the water and wastewater treatment plant facilities, staff believes that the utility has not adequately proven that its conceptual plan can stand up to possible permitting scrutiny. (TR 1104-1105) Even if permitting could be obtained, it is not known if this could be accomplished in a timely fashion. Staff believes that this leaves reasonable doubt about Intercoastal's ability to provide actual capacity, until such time as its applications are reviewed by the appropriate agencies. Also, if Intercoastal was forced to seek an alternative supply source rather than building its own facilities, another concern would be the timing involved with negotiation of a contract with JEA for wholesale services.

This brings us to the second consideration concerning the Nocatee Development Order. Staff is persuaded that Nocatee's environmental commitment as presented through the evidence is a primary concern in its development and utility service plan. There is no doubt that as it stands, Intercoastal's plan for service is in direct conflict with Nocatee's development plan. Staff believes that the evidence presented does not support the need to disregard the development plan. (TR 147) Also, NUC already has a JEA wholesale agreement that meets the environmental standards that have been established by Nocatee. (TR 150)

In conclusion, Staff does not accept Intercoastal's argument that it has adequate plant capacity. Although its plan may be viable on paper, the lack of active permits from local and state agencies, the lack of any firm commitments for an alternative service plan (such as a contract with JEA), in combination with the fact that there is no land available to Intercoastal to purchase for the purpose of building the facilities identified in its CMP, lead staff to conclude that the utility does not have the ability to provide plant capacity to Nocatee in the necessary or desired time frame. Therefore, staff recommends that Intercoastal does not currently have sufficient water, wastewater, or reuse capacity to serve the requested territory. Although Intercoastal has developed a Conceptual Master Plan to serve the Nocatee development, the utility's ability to provide capacity on a timely basis is questionable.

ISSUE 17: What are the appropriate water, wastewater, and reuse rates and charges for Intercoastal?

RECOMMENDATION: If the Commission does not approve staff's recommendation in Issue 11 and Intercoastal is granted the certificates, Intercoastal's existing water and wastewater rates and charges should be approved for its existing customers and the Nocatee development. Staff further recommends that the utility be required to retain these rates and charges until authorized to change by the Commission. Intercoastal has filed tariffs for water and wastewater which reflect the existing rates and charges. Intercoastal should also be required to file a reuse tariff reflecting a zero rate for the Sawgrass Country Club until 2013. The tariffs should be effective for services provided on or after the stamped approval date on the tariff sheets, in accordance with Rule 25-30.475, Florida Administrative Code. The utility should return to the Commission for a determination regarding reuse rates prior to providing that service to any other customers. (CLAPP)

POSITIONS

NUC: Intercoastal's application requests that its existing water and wastewater rates and charges be applied to the expansion territory even though its projections show that these rates do not provide a fair rate of return. Intercoastal has not requested specific reuse rates. Because the Commission should deny Intercoastal's application in any ...

IU: The appropriate rates and charges for Intercoastal are those to be established by the testimony and should be those for which Intercoastal is currently authorized to charge until further appropriate action by the Commission. Intercoastal is willing to work with the staff of the Commission to develop an appropriate reuse ...

JEA: JEA takes no position.

SAWGRASS: Any Intercoastal rates and charges must be considered in conjunction with the pending 1999 rate audit. Intercoastal is obligated under the Utility Service Agreement to provide reuse water needed by Sawgrass County Club at no charge until 2013.

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STAFF ANALYSIS: This issue addresses the appropriate rates and charges for Intercoastal. Intercoastal's position is that its current rates and charges, which were approved by St. Johns County, were those initially proposed to be utilized in providing service to the new territory. (BR 36) NUC's position is that continuation of Intercoastal's current rates applied to the Nocatee development would not provide a fair rate of return and, in fact, are estimated to produce a cumulative \$2.4 million shortfall over the first five years of the Nocatee development. (BR 46) Sawgrass' position is that the Commission does not have enough information to determine the rates because of St. Johns County's ongoing audit of Intercoastal's 1999 rate base. (BR 11)

Intercoastal indicates in its certificate application that the current rates for Intercoastal are the rates that the utility wishes to continue for the current and the proposed new territory. (EX 14, MLF-1) The current water rates were approved by the St. Johns County Water and Sewer Authority (Authority) through a 1996 price index and pass through filing on October 14, 1996. The current wastewater rates were approved by the Authority through a limited proceeding by BCC Order No. 98-00005, issued on October 19, 1998. (EX 14, MLF-1) Prior to the index and limited proceeding, Intercoastal's water and wastewater rates were set pursuant to a rate case by St. Johns County Commission Order No. 90-00089, issued September 27, 1990, in Docket No. 90-00007-0004-0001. The wastewater rates will decrease on October 26, 2002, pursuant to St. Johns County requirement after recovery of rate case expense. (EX 14, MLF-1)

NUC cites cross examination testimony of Intercoastal's witness Burton's financial analysis which shows that continuation of Intercoastal's current rates would not provide a fair rate of return. Further, the current rates projected over the first five years of the Nocatee development would produce a cumulative \$2.4 million shortfall. (TR 883-884)

Intercoastal witness Bowen stated that the shareholders of Intercoastal "have signed affidavits that they agree to fund whatever is necessary ... to satisfy the requirements related to this expansion." (TR 1277, Lines 23-25) According to Intercoastal witness Forrester, economies of scale have allowed Intercoastal to expand and sustain operations for nearly 10 years without a major increase in water rates and produced a similar effect for 8 years for wastewater rates. (TR 360) Intercoastal witness Burton stated

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that economies of scale play a part in spreading operation and management costs over existing and new customers. (TR 791) Witnesses James and Burton agree that if Intercoastal were awarded the certificate to serve the area there would be downward pressure on the rates due to economies of scale. (TR 479, 689)

Intercoastal proposes that the rates in effect on the date the utility applied to the Commission should be approved as the appropriate rates and charges for this utility. Schedules Nos. 7-A and 7-B show typical Intercoastal residential monthly water and wastewater bills. Intercoastal's current rates for water and wastewater service are as follows:

Quarterly Water Service Rates
General Service

Base Facility Charge

Meter Sizes:

5/8" x 3/4"	\$	20.73
1"		46.37
1 1/2"		90.41
2"		142.69
3" Displacement		264.65
3" Compound		282.08
3" Turbine		308.21
4"		438.88
4" Turbine		526.00
6"		874.47
6" Turbine		1,092.26
8"		1,397.16
8" Turbine		1,571.37
10"		2,006.96
10" Turbine		2,529.65
12"		3,749.26

Gallonge Charge

Per 1,000 gallons \$ 0.89

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Residential Service -Single Family
Base Facility Charge

Meter Sizes:

5/8" x 3/4"	\$ 20.73
1"	46.37
1 1/2"	90.41
2"	142.69

Gallouage Charge

Per 1,000 gallons	\$ 0.89
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Residential Service
Multi-Family/Master-Metered

Base Facility ChargeMeter Sizes:

All Meter Sizes	\$ 3.30 Per Meter
	17.42 Per Unit

Base Facility Charge = \$3.30+(# of units X \$17.42)

Gallouage Charge

Per 1,000 gallons	\$ 0.89
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Quarterly Wastewater Service Rates
General Service

<u>Base Facility Charge</u>	<u>During Recovery</u>	<u>After Recovery</u>
<u>Meter Sizes:</u>	<u>Rate Case Exp</u>	<u>Rate Case Exp*</u>
5/8" x 3/4"	\$ 57.26	\$ 53.62
1"	135.42	126.32
1 1/2"	265.71	247.51
2"	422.05	392.93
3" Displacement	786.83	732.23
3" Compound	838.96	780.72
3" Turbine	917.13	853.43
4"	1,308.00	1,217.00
4" Turbine	1,568.58	1,459.38
6"	2,610.85	2,428.85
6" Turbine	3,262.26	3,034.76
8"	4,174.28	3,883.08
8" Turbine	4,695.41	4,367.81
10"	5,998.25	5,579.65
10" Turbine	7,561.67	7,033.87
12"	11,209.69	10,427.09

Gallonge Charge
 Per 1,000 Gallons \$ 4.48 \$ 4.48
 (No Maximum charge)

*Effective October 26, 2002

Residential Service
Single Family

<u>Base Facility Charge</u>	<u>During Recovery</u>	<u>After Recovery</u>
<u>Meter Sizes:</u>	<u>Rate Case Exp</u>	<u>Rate Case Exp*</u>
All Meter Sizes	\$ 57.26	\$ 53.62

Gallonge Charge
 Per 1,000 Gallons \$ 4.48 \$ 4.48
 (Maximum charge of 30,000 gallons per quarter)

*Effective October 26, 2002

Residential Service
Multi-Family/Master-Metered

<u>Base Facility Charge</u>	<u>During Recovery</u>	<u>After Recovery</u>
<u>Meter Sizes:</u>	<u>Rate Case Exp</u>	<u>Rate Case Exp*</u>
With Separate Irrigation Meter	\$5.14 Per Meter \$52.10 Per Unit	\$5.14 Per Meter \$48.46 Per Unit
Without Separate Irrigation Meter	\$5.14 Per Meter \$52.10 Per Unit	\$5.14 Per Meter \$48.46 Per Unit

Base Facility Charge = \$5.14+(# of units X unit charge)

*Effective October 26, 2002

Gallonge Charge
 Per 1,000 gallons
 With separate irrigation meter \$3.58
 Without separate irrigation meter \$2.91

Meter Test Deposit

<u>Meter Size</u>	<u>Fee</u>
5/8" x 3/4"	\$10.00
1" and 1 1/2"	12.50
2"	15.00
2" and over	Actual Cost

Miscellaneous Service Charges

	<u>Water</u>	<u>Wastewater</u>
Initial Connection	\$15.00	\$15.00
Normal Reconnection	\$15.00	\$15.00
Violation Reconnection	\$15.00	Actual Cost
Premises Visit (in lieu of disconnection)	\$10.00	\$10.00

Intercoastal does not currently have an approved reuse rate. As stated in the Intercoastal position above, Intercoastal is willing to work with the Commission to develop appropriate reuse rates. However, Intercoastal did not provide sufficient evidence to support calculation of reuse rates in this docket. Sawgrass stated in its brief that pursuant to the terms of the Utility Service Agreement entered into between Intercoastal and Arvida, Inc., Intercoastal is providing reuse water for the Sawgrass Country Club at no charge until September 2013. (BR 11) Staff witness Silvers also testified that Sawgrass is one of three golf courses in the vicinity obtaining free reclaimed water. (TR 856)

Staff recommends that if the Commission does not approve staff's recommendation in Issue 11 and Intercoastal is granted certificates, Intercoastal's existing water and wastewater rates should be approved for its existing customers and the Nocatee development. Staff further recommends that the utility be required to retain these rates and charges until authorized to change by the Commission. Intercoastal has filed tariffs for water and wastewater which reflect the current rates and charges. Intercoastal should also be required to file a reuse tariff reflecting a zero rate for the Sawgrass Country Club until 2013. The utility should return to the Commission for a determination regarding reuse rates prior to providing that service to any other customers. The tariffs should be effective for service rendered on

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or after the stamped approval date on the tariff sheets, in accordance with Rule 25-30.475, Florida Administrative Code.

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ISSUE 18: What are the appropriate service availability charges for Intercoastal?

RECOMMENDATION: If the Commission does not approve staff's recommendation in Issue 11 and Intercoastal is granted the certificates, Intercoastal's existing water and wastewater service availability policy and charges should be approved. Staff further recommends that the utility be required to retain these charges until authorized to change by the Commission. Intercoastal has filed tariff sheets for water and wastewater which reflect the current charges. The tariff should be effective for services provided on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code. (CLAPP)

POSITIONS

NUC: Intercoastal's application requests that its existing water and wastewater service availability charges be applied to the expansion territory. Intercoastal has not requested specific reuse service availability charges. Because the Commission should deny Intercoastal's application in any event, this issue is moot.

IU: The utility is proposing to utilize its existing service availability charges, as currently approved throughout the projected period, for service to Phase I of the new certificated service territory. All of the projections by the utility encompass those charges as currently approved and in effect.

JEA: JEA takes no position.

SAWGRASS: The Association takes no position on this issue.

STAFF ANALYSIS: This issue addresses the appropriate service availability charges for Intercoastal. Intercoastal's position is that its current service availability charges should apply to the Nocatee service area. (BR 37) NUC's position is that Intercoastal has provided no evidence that the proposed service availability charges comply with the Commission's guidelines. (BR 47)

Intercoastal indicates in its certificate application that the current service availability charges for Intercoastal are those the utility wishes to continue for the current and the proposed new

territory. (EX 14, MLF-1) Additionally, the application indicates that the current water and wastewater charges were set by the Commission when St. Johns County was jurisdictional pursuant to Order No. 15911, issued March 28, 1986, in Docket No. 8600028-WS. (EX 14, MLF-1) Intercoastal's service availability policy is to require donated on-site and off-site lines. Intercoastal does not currently have an approved service availability policy for reuse; nor did Intercoastal propose a reuse service availability policy.

Intercoastal witness Burton testified that he developed Intercoastal application's financial analysis, Exhibit MB-1 which is found in Composite Exhibit 29, based on the assumption that Intercoastal would maintain its current charges. (TR 660) Figure 9 of MB-3, found in Exhibit 33, shows Intercoastal's current and projected rate base. According to that information, Intercoastal's contribution level for the water system is 85.61% and for the wastewater system is 59.40% for 1999. Both systems are shown to be 100% used and useful.

Intercoastal proposes that the charges in effect on the date the utility applied to the Commission should be approved as the appropriate charges for this utility. Intercoastal's current service availability charges for water and wastewater service are as follows:

Service Availability Charges

<u>Water</u>	
<u>Meter Installation Fee</u>	
5/8" x 3/4"	\$ 78.15
3/4"	117.22
1"	195.38
1 1/2"	390.75
2" and over	.Actual Cost (no less than \$390.75)

Plant Capacity Charge

Residential-per ERC (350 GPD)	\$234.45
All others-per gallon	0.67

Wastewater

Plant Capacity Charge

Residential-per ERC (275 GPD)	\$625.20
All others-per gallon	2.27

Staff recommends that Intercoastal's existing service availability policy and charges appear reasonable. If the Commission does not approve Issue 11 and Intercoastal is granted the certificates, Intercoastal's existing water and wastewater service availability policy and charges should be approved. Staff further recommends that the utility be required to retain these charges until authorized to change by the Commission. Intercoastal has filed tariff sheets for water and wastewater which reflect the recommended service availability charges. The tariff should be effective for services provided on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code.

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ISSUE 18A: Should Intercoastal be authorized an AFUDC rate by the Commission?

RECOMMENDATION: Yes. If the Commission does not approve staff's recommendation in Issue 11 and Intercoastal is granted certificates, an annual AFUDC rate of 7.09% should be approved with a discounted monthly rate of 0.590641%. The approved rate should be applicable for eligible construction projects beginning on the date the certificate of authorization is issued. (CLAPP)

POSITIONS

NUC: Intercoastal's application does not request authorization of an AFUDC rate nor present the financial information necessary to calculate such a rate. Because the Commission should deny Intercoastal's application in any event, this issue is moot.

IU: Yes, to the extent the Commission grants the additional territory to Intercoastal, it should establish an AFUDC rate in accordance with the standard Commission policy and rules, based upon the most recent cost of capital information available at the time the Final Order is issued in this proceeding.

JEA: JEA takes no position.

SAWGRASS: The Association takes no position on this issue.

STAFF ANALYSIS: This issue addresses whether Intercoastal should be authorized an AFUDC rate by the Commission. Intercoastal states that an AFUDC rate should be approved in accordance with the Commission's rules and policy. NUC contends that Intercoastal did not request an AFUDC rate and did not provide information necessary to calculate one. Neither JEA nor Sawgrass took a position.

Rule 25-30.033(4), Florida Administrative Code, provides that "utilities obtaining initial certificates pursuant to this rule are authorized to accrue allowance for funds used during construction (AFUDC) for projects found eligible pursuant to Rule 25-30.116(1), Florida Administrative Code." Although Intercoastal did not request an AFUDC rate in its application, Intercoastal did request that it be made an issue for the hearing.

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Rule 25-30.033(4)(a), Florida Administrative Code, states that "the applicable AFUDC rate shall be determined as the utility's projected weighted cost of capital as demonstrated in its application for original certificates and initial rates and charges." Further, Rule 25-30.033(4)(b), Florida Administrative Code, states that "a discounted monthly AFUDC rate calculated in accordance with Rule 25-30.116(3), Florida Administrative Code, shall be used to insure that the annual AFUDC charged does not exceed authorized levels."

Although NUC stated the information to calculate an AFUDC rate was not available, Intercoastal's filing did contain yearly schedules showing the utility's weighted average cost of capital. Intercoastal provided these schedules for water and wastewater based on both 100% debt and 60% equity to 40% debt financing. (EX 33)

According to Intercoastal witness James, Intercoastal has not stated which financing plan it intends to use for this development. (TR 435) However, according to Intercoastal witness Bowen, based upon Intercoastal's 1998 and 1999 financial statements, it appears that Intercoastal's practice is to use 100% debt financing. (TR 1259) Staff has relied upon the 100% debt financing schedules based on the expectation that Intercoastal will continue past practices into the future. Since the first phase of the development is to be completed in five years from its projected start of 2002, staff relied on the information contained in Exhibit 33, Figure 14, page 9 of 11 which has projections for fiscal year 2007 based on 100% debt financing. The projected weighted average cost of debt for Intercoastal is 7.09%.

Staff believes that an AFUDC rate can be calculated and that the correct rate for Intercoastal based on 100% debt is 7.09%. No other party provided any testimony on this issue. Rule 25-30.033(4)(c), Florida Administrative Code, states that "the date the utility shall begin to charge the AFUDC rate shall be the date the certificate of authorization is issued to the utility so that such rate can apply to the initial construction of the utility facilities." Accordingly, staff recommends that if the Commission does not approve staff's recommendation in Issue 11 and Intercoastal is granted a certificate, it should be granted an AFUDC rate of 7.09%, with a discounted monthly rate of 0.590641, effective for eligible construction projects beginning on the date the certificate of authorization is issued.

ISSUE 19: Do Intercoastal's existing customers support the proposed extension of its service territory and what weight should the Commission give to their preference?

RECOMMENDATION: The Sawgrass Association, Inc., which represents a portion of Intercoastal's customers, does not support Intercoastal's proposed extension of its service territory. Although customers cannot choose their utility, the Commission may consider the concerns of Intercoastal's current customers that are set forth in the record which pertain to the utility's quality of service. Quality of service of a utility is directly linked to the technical ability of that utility. Therefore, the Commission should consider Intercoastal's technical ability in conjunction with this issue. Whether Intercoastal has the technical ability to serve the requested territory is addressed in Issue 15. (CIBULA, ESPINOZA)

POSITION OF PARTIES

NUC: Intercoastal's existing customers have expressed concerns regarding the quality of service received from Intercoastal and appear to oppose the extension of its service territory. The Commission should consider this customer preference in making its ultimate decision in this proceeding.

IU: The testimony in this case does not establish whether Intercoastal's "existing customers" support or do not support the proposed extension of its service territory. The Commission should give weight to any expressed preference by any customer or group of customers, only as appropriate considering the fact that granting Intercoastal's application...

JEA: Intercoastal's existing customers are concerned about the continued adverse service implications if Intercoastal's application is approved. These concerns were voiced before the St. Johns County Water and Sewer Authority during the proceeding on Intercoastal's prior application to serve the additional territory in St. Johns County and are reflected by the...

SAWGRASS: Intercoastal's existing customers do not support the proposed extension of its service territory, based on Intercoastal's past performance, and the Commission

should consider this position and give it all due and appropriate weight.

STAFF ANALYSIS: Sawgrass witness Ralph Don Flurry testified that he is the president of the Board of Directors of Sawgrass Association, Inc., which is the master homeowners association for the Sawgrass residential community. (TR 717) He further testified that Sawgrass Association, Inc., represents over 1,500 homeowners that are all customers of Intercoastal. (TR 735) Mr. Flurry testified that the Intercoastal plant has "consistently given off foul and disgusting odors which have not been adequately remedied yet." (TR 735, lines 19-20)

Sawgrass witness Patricia Arenas testified that her office is approximately 100 feet from Intercoastal's wastewater treatment plant. (TR 710) Ms. Arenas testified that the Intercoastal plant regularly gives off strong and foul odors. (TR 705) Ms. Arenas testified that whatever Intercoastal has done to address odor problems at the Sawgrass plant has not worked. (TR 710) Ms. Arenas testified that she is concerned that if Intercoastal's application is granted, the odors will get worse. (TR 710)

Sawgrass argues that while Story v. Mayo, 217 So. 2d 304, 307-08 (Fla. 1968), states that customer preference, in and of itself, may not be the dispositive factor in determining which utility should provide service to a particular area, Sawgrass believes that the record demonstrates that Intercoastal's past performance shows that it lacks the technical and managerial ability to provide service to the Nocatee development. (BR 12) Sawgrass also asserts that in Gulf Coast Electric Cooperative, Inc. v. Clark, 674 So. 2d 120 (Fla. 1996), the court held that a customer's preference with regard to which company should provide electrical service should be controlling when all other factors are relatively equal. (BR 12) However, Sawgrass argues that NUC's plan for service is superior to that of Intercoastal. (BR 12)

Staff does not believe that Gulf Coast is applicable in this instance because the case involved a territory dispute between two electric utilities and the Commission rule that was reviewed by the court, Rule 25-6.0441, Florida Administrative Code, explicitly states that the Commission may consider customer preference if all other factors are substantially equal. The Commission rules and statutes that pertain to original certificates and amendment of

certificates for water and wastewater companies do not contain such a provision.

The record shows, however, that the Sawgrass Association, Inc., which represents a portion of Intercoastal's customers, does not support Intercoastal's proposed extension of its service territory. Although pursuant to Story, 217 So. 2d at 307-08, customers cannot choose their utility, the Commission may consider the concerns of Intercoastal's current customers that are set forth in the record which pertain to the utility's quality of service. The Commission should give the customers' concerns regarding Intercoastal's quality of service the weight that it deems appropriate. In addition, because the quality of service of a utility is directly linked to the technical ability of that utility, the Commission should consider Intercoastal's technical ability in conjunction with this issue. Whether Intercoastal has the technical ability to serve the requested territory is addressed in Issue 15.

ISSUE 20: Is it in the public interest for Intercoastal to be granted a water certificate and a wastewater certificate for the territory proposed in its application?

RECOMMENDATION: No. It is not in the public interest for Intercoastal to be granted water and wastewater certificates for the territory proposed in its application. (CLAPP, RIEGER)

POSITIONS:

NUC: No. As discussed in detail in Issue 11, NUC is the superior choice to provide service to Nocatee. It is in the public interest to grant a certificates to NUC, not to Intercoastal.

IU: Yes, it is in the public interest for Intercoastal's application to be approved. The approval of Intercoastal's application will provide for the orderly growth of an existing utility and will provide benefits to Intercoastal's existing and future customers in its presently certificated territory in St. Johns County, as well as ...

JEA: No.

SAWGRASS: No. The Association does not believe it is in the public interest for ICU to be granted a water certificate or wastewater certificate for the proposed territory.

STAFF ANALYSIS: This issue addresses whether or not it is in the public interest to grant Intercoastal certificates for the territory it has included in its application. As was done for the analysis in Issue 11, the staff has used this issue as a place to summarize the various points made in the prior issues relating to Intercoastal.

Issue B addresses whether Intercoastal has factually established that its request for certificates satisfies the requirements of Section 367.171(7), Florida Statutes, to a sufficient extent to invoke Commission jurisdiction. Testimony was provided that the Nocatee development will transverse the Duval/St. Johns County line. (TR 146)(EX 3) Intercoastal is proposing to provide service to the entire Nocatee development. (TR 311)(EX 3)

Because of this staff recommended that the Commission should find that the requirements have been satisfied to invoke Commission jurisdiction.

Staff recommended in Issue 13 that there appears to be a need for service and that if Intercoastal is granted the certificate, its authorized service territory should be limited to its existing service area and the proposed Nocatee territory. Support for the determination of need comes from staff witness Gauthier who testified that the Development Orders and modifications to the local comprehensive plans have been approved by Duval and St. Johns Counties. (TR 944-950) Witness Gauthier further stated that although DCA has published notices of intent to find the comprehensive plan amendments in compliance, a petition has been received to challenge that determination. (TR 933-934) Additional support comes from NUC witness D. Miller's testimony that water, wastewater, and reuse services will be needed by the fourth quarter of 2002.

In Issue 14, staff recommended that Intercoastal has the financial ability to serve both its existing and the requested Nocatee territories. Intercoastal witness Bowen testified that Intercoastal is 100% debt financed. (TR 1259) Intercoastal witness James stated that all of the Intercoastal shareholders have signed affidavits acknowledging that they understand how much it would cost them if Intercoastal would receive the requested territory. (TR 486) Additionally, witness James stated that Intercoastal has lending relationships with most of the principal banks in the City of Jacksonville and that Intercoastal and its Board of Directors have the ability to borrow money from their line of credit which exceeds \$50 million. (TR 429-430)

Intercoastal's technical ability is examined in Issue 15. Intercoastal witness Forrester testified that Jax Utilities Management, Inc. (JUM), through Intercoastal and other utilities, has demonstrated that it has provided quality water and wastewater service in a number of areas in St. Johns, Duval, Nassau, and Clay Counties for many years. (TR 307) Sawgrass witness Flury testified that Intercoastal has provided reuse service to the Sawgrass Country Club golf course since September 1, 1983. (TR 723) Based on testimony, staff recommended that the applicant has the technical ability needed to provide service.

As concluded in Issue 16, Intercoastal appears to have sufficient water and wastewater plant capacity to provide service to its existing service area including anticipated growth on the eastern side of the Intracoastal Water Way. Intercoastal does not currently have the necessary Water Management District CUP (TR 862) or Department of Environmental Protection construction permits (TR 826) to begin construction on facilities on the west side of the Intracoastal Water Way. Staff witness Gauthier testified that there appear to be areas on the west side of the Intracoastal Water Way that would be suitable for construction of water and wastewater facilities. (TR 959) However, Intercoastal did not introduce substantive evidence to show that it has been able to obtain sites on which to construct the facilities. Furthermore, Intercoastal's proposed plan of service does not comply with the various approved development orders for Nocatee, and it is questionable as to whether its service plan would stand up to permitting scrutiny without changes to the existing development orders. Consequently, staff recommended that Intercoastal does not currently have sufficient water, wastewater, or reuse capacity to serve the requested territory.

Staff recommended in Issues 14 and 15 that Intercoastal, through its relationship with JUM, has demonstrated that it has the financial and technical ability to provide service to its existing service territory and to the proposed Nocatee development. In addition, in Issues 17 and 18 it was recommended that if Intercoastal is granted the certificates, the current water and wastewater rates and service availability charges should be continued for the existing customers and the proposed Nocatee service area. Based upon the rates and charges provided by Intercoastal witness Forrester in Exhibit 14, MLF-1, the following are typical monthly single family residential water and wastewater bills:

<u>Gallons</u>	<u>Water</u>	<u>Wastewater</u>	<u>Combined</u>
5,000	\$11.36	\$41.49	\$52.85
10,000	15.81	63.89	78.70
20,000	24.71	63.89	88.60

While Intercoastal provided testimony that adding the Nocatee development to its existing service territory would result in economies of scale affecting its cost of service, Intercoastal stopped short of actually requesting to implement lower rates to its current and proposed customers in its certificate application.

The Intercoastal existing customers do not support the proposed extension of service to the Nocatee development as stated in Issue 19. The majority of the testimony provided by the Sawgrass witnesses involved foul odors. Sawgrass witness Arenas testified that she is concerned that if Intercoastal's application is granted, the odors will get worse. (TR 710) Staff recommended that the concerns of the customers be given the weight the Commission deems appropriate.

There is no record evidence that there is an existing system in or in close proximity to the Nocatee development which would warrant review by this Commission. Further, Orders Nos. PSC-92-0104-FOF-WU and 17158 state that the Commission does not have to speculate as to whether a proposed system would be in competition with, or a duplication of, another proposed system. Therefore, Staff recommended in Issue 21 that granting either Intercoastal or NUC original certificates will not result in a system which will be in competition with or a duplication of another water or wastewater system.

Issue 23 contains an analysis of whether the Commission should consider denying both pending applications. Staff does not recommend such an action. As set forth in Issues 1 and 13, staff is recommending that the Commission determine that there is a need for service in the Nocatee development. Both NUC and Intercoastal have filed applications with the Commission to serve the Nocatee Development. Neither JEA nor St. Johns County have proposed a plan to provide retail service to the areas at issue in these dockets and no other applications have been received from other utilities. While it is within the Commission's discretion to deny both NUC's and Intercoastal's applications, staff recommends that the Commission not do so because the record does not contain evidence of an alternative plan for service by another utility.

The Commission should not defer its decision in this matter until after the conclusion of a pending administrative challenge to the Department of Community Affairs' decision which found the St. Johns County Comprehensive Plan Amendments for Nocatee in compliance with Chapter 163, Florida Statutes. Staff made this recommendation in Issue 25 based upon Staff witness Gauthier's testimony that Chapter 367, Florida Statutes, does not require the Commission to consider consistency with the local comprehensive plan unless the local government has objected to an application

that comes before the Commission. (TR 950) In this instance, no local government objection has been filed.

Staff notes that there are many strong points to the Intercoastal application. However, although Intercoastal has demonstrated that it has the financial and technical ability to provide utility service to the Nocatee development, the application lacks definite site and financing plans for the new development. Furthermore, the record does not make clear whether or not Intercoastal's plan would be permitted by the SJRWMD. Intercoastal's current service plan violates the approved development orders. Also, as described in Issues 1 and 13, the permitting process for a Development of Regional Impact (DRI) is quite long and involved. Should Intercoastal require a modification of the DRI permits for approval of the placement of a future plant site, this could result in further delays for the development. Therefore, staff recommends that it is not in the public interest for Intercoastal to be granted water and wastewater certificates for the territory proposed in its application.

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ISSUE 21: Can the Commission grant Intercoastal or NUC a certificate which will be in competition with, or a duplication of, any other water and wastewater system?

RECOMMENDATION: No. While the Commission may not grant a certificate of authorization for a proposed system or an amendment to a certificate of authorization for the extension of an existing system which will be in competition with, or duplication of any other system or portion of a system. Nevertheless, granting either Intercoastal or NUC an original certificate will not result in a system which will be in competition with or a duplication of another water or wastewater system. (CIBULA, ESPINOZA)

POSITION OF PARTIES

NUC: No. However, granting NUC's application will not create such competition or duplication.

IU: Granting Intercoastal's application will not create competition with, or duplication of, the County's water and wastewater system. Intercoastal's proposal can be granted and its proposed territory certificated in harmony with the County's system.

JEA: No position given.

SAWGRASS: The Association adopts the argument of NUC on this issue.

STAFF ANALYSIS: Pursuant to Section 367.045(5)(a), Florida Statutes, the Commission may not grant a certificate of authorization for a proposed system or an amendment to a certificate of authorization for the extension of an existing system which 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. Section 367.021(11), Florida Statutes, defines "system" as facilities and land used and useful in providing service.

In Order No. PSC-92-0104-FOF-WU, issued March 27, 1992, in Docket No. 910114-WU, the Commission stated:

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we cannot determine whether a proposed system will be in competition with or duplication of another system when such other system does not exist. We do not believe Section 367.045(5)(a), Florida Statutes, requires this Commission to hypothesize which of two proposed systems might be in place first and, thus, which would compete with or duplicate the other. Engaging in such speculation would be of little use.

In Order No. 17158, issued February 5, 1987, in Docket No. 850597-WS, the Commission stated that it was not required to

speculate as to competition with, or duplication of, proposed systems which are essentially little more than future possibilities. Rather, the statute addresses the existing system as that which warrants a closer investigation as to the potentially undesirable effects of duplication and/or competition.

No utility currently provides service to the Nocatee development. (EX 3) NUC witness Douglas Miller testified that the County approved a resolution which placed the Nocatee development into the County's exclusive service area. (TR 1042) Mr. Miller further testified that the Board of County Commissioners of St. Johns County recently reviewed a plan of service whereby the County would provide service from well fields approximately 15 miles away from Nocatee and wastewater treatment plant approximately 20 miles south of Nocatee. (TR 1041) Mr. Miller testified that the plan of service presented to the Board of County Commissioners could not be implemented because: 1) the proposed 9.5 million gallon well field that is approximately 15 miles away from the Nocatee project is in an area that has some significant water quality problems; 2) there are letters from the Water Management District stating that the well fields in general in that area cannot be developed to beyond about 2.5 million gallons per day; 3) the County is proposing the U.S. 1 corridor as a utility corridor, but the Department of Transportation issued a statement that they didn't believe there was any room in that corridor to construct any more utility lines; 4) the County did not have reuse available to serve Nocatee and it is proposing a storm water treatment plant to treat storm water on the Nocatee development, but the problem with this is that there won't be enough storm water available to meet the needs. (TR 1042-1043)

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There is no evidence in the record to indicate that there is an existing system in or in close proximity to the Nocatee development which would warrant review by this Commission. Further, Orders Nos. PSC-92-0104-FOF-WU and 17158 state that the Commission does not have to speculate as to whether a proposed system would be in competition with, or a duplication of, another proposed system. Therefore, while the Commission may not grant a certificate of authorization for a proposed system or an amendment to a certificate of authorization for the extension of an existing system which will be in competition with, or duplication of any other system or portion of a system, staff recommends that granting either Intercoastal or NUC an original certificate will not result in a system which will be in competition with or a duplication of another water or wastewater system.

ISSUE 22: What are the implications for this case of the decisions in the Alafaya Utilities and Lake Utility Services cases?

RECOMMENDATION: Neither the Alafaya Utilities case nor the Lake Utility Services case prohibits the Commission from granting either NUC or Intercoastal a certificate to serve the Nocatee development. (CIBULA, ESPINOZA)

POSITION OF PARTIES

NUC: These cases support the proposition that the Commission should evaluate NUC's application based on the statutory standards in Chapter 367, and should give no weight to the fact that St. Johns County may ultimately claim in court that its right to serve Nocatee is superior to NUC's.

IU: No position given.

JEA: JEA defers to and adopts NUC's position.

SAWGRASS: The Association adopts the argument of NUC on this issue.

STAFF ANALYSIS: By Order No. PSC-92-1369-FOF-WU, issued November 24, 1992, in Docket No. 920174-WU, In re: Application for Amendment of Certificate No. 496-W in Lake County by Lake Utility Services, Inc., the Commission granted a certificate extension to Lake Utility Services, Inc. (LUSI) to provide water serve to a certain area in Lake County. The City of Clermont objected to the application, but withdrew its objection one week prior to the final hearing before the Commission in the matter. After the Commission issued LUSI a certificate to serve the area, the City of Clermont advised a developer in the area that it was required to obtain utility service from the City of Clermont in order to obtain development approval. LUSI requested that the Circuit Court issue a declaratory judgment that it had the exclusive right to provide water service to the territory set forth in its Commission certificate. The City of Clermont responded that it had the exclusive right to provide service to the area pursuant to an ordinance that had established a Chapter 180 utility district prior to the time that the Commission had issued a certificate of service to LUSI. In Lake Utility Services, Inc. v. City of Clermont, 727 So. 2d 984 (Fla. 5th DCA 1999), the court found that the City of Clermont was "first in time" to serve the area; however, the City's

failure to exercise its duty to promptly and efficiently provide service when needed resulted in a waiver of its right to serve.

In re: Application for Amendment of Certificate No. 379-S in Seminole County by Alafaya Utilities, Inc., Order No. PSC-96-1281-FOF-SU, issued October 15, 1996, in Docket No. 951419-SU, involved an application for an extension of Alafaya Utilities, Inc.'s (Alafaya) service area to provide wastewater service to a particular area in Seminole County. The application was protested by the City of Oviedo. The City of Oviedo asserted that it was planning to provide service to the area at issue. The City of Oviedo also maintained that service by Alafaya would violate the City's comprehensive plan, which it claimed required central wastewater service by the City, and that service by Alafaya would be in competition with or a duplication of the service proposed by the City in violation of Section 367.045(5)(a), Florida Statutes.

After a hearing in the matter, the Commission amended Alafaya's wastewater certificate to include the territory at issue. The Commission concluded that it was not bound by the City of Oviedo's comprehensive plan provisions that designated the City as the preferred service provider because the overriding goal of the plan was to ensure the provision of central wastewater service. The Commission also found that there could be no competition with or duplication of a proposed system which did not yet exist.

The City of Oviedo appealed the Commission's decision. In City of Oviedo v. Clark, 699 So. 2d 316 (Fla. 1st DCA 1997), the court affirmed the Commission's decision in an opinion that only addressed the comprehensive planning issue. The court stated that the Commission correctly applied the requirements of Section 367.045(5)(b), Florida Statutes, in its consideration of the comprehensive plan, and that the Commission was not required to defer to the local comprehensive plan. Id. at 318.

NUC argues that these cases indicate that "this Commission must judge NUC's application against the statutory standards in Chapter 367 without considering whether St. Johns County may ultimately claim a prior right to serve the territory at issue." (BR 53) NUC further asserts that "so long as NUC's proposed service does not duplicate or compete with any existing County service - which it does not - the matter of which entity ultimately has the legal right to serve is a matter for the courts." (BR 54) NUC states that "the possible outcome of such an action, however, is

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not a matter that the Commission should consider in making its certificate decision in this case." (BR 54)

Staff notes that the County chose to withdraw from these proceedings one business day prior to the hearing. No utility currently provides service to the Nocatee development. (EX 3) The only testimony contained in the record which addresses the County's proposed plan for service, that of NUC witness Douglas Miller, indicates that the County has placed the Nocatee development into its exclusive service area, but the water and wastewater facilities from which the County would provide service to the Nocatee development are 15 and 20 miles away from the development, respectively. (TR 1041-1042) As set forth in Issues 21, staff is recommending that granting either Intercoastal or NUC a certificate will not result in a system which will be in competition with or a duplication of another water or wastewater system.

Staff agrees with NUC that if the Commission chooses to grant a certificate to either NUC or Intercoastal to serve the Nocatee development and the County subsequently claims that the development is within its service area, the matter may become an issue for the courts to decide. Nevertheless, staff recommends that neither the Alafaya case nor the Lake Utility Services case prohibits the Commission from granting either NUC or Intercoastal a certificate to serve the Nocatee development.

ISSUE 23: What would be the ramifications of denying both pending applications?

RECOMMENDATION: Potential ramifications as identified in the staff analysis are speculative and not based on the evidence of record in this case. While it is in the Commission's discretion to deny both applications, to do so, the Commission would need to find, based on the record evidence, that it is not in the public interest to grant either application. Staff recommends that there is no such evidence in the record. (CIBULA, ESPINOZA, DANIEL)

POSITION OF PARTIES

NUC: No. Based on the legal positions that it has previously taken, if both applications were denied, St. Johns County would likely argue that JEA does not have the right to serve Nocatee on a retail basis. Resolving that issue could involve extended litigation that would prevent Nocatee from receiving...

IU: No position given.

JEA: JEA defers to and adopts NUC's position.

SAWGRASS: No. Based on the record testimony, it appears that St. Johns County might contest JEA's right to provide service to Nocatee, based on its April 24, 2001 ordinance.

STAFF ANALYSIS: This issue is in response to questions raised at the hearing by the Commission as to the ramifications of denying both NUC's and Intercoastal's applications. It should be noted that the parties have chosen to approach this issue in varying ways. NUC's analysis is hinged on whether the Commission should deny both applications with the expectation that JEA will provide retail service to the Nocatee development. Intercoastal addresses this issue in the form of whether there are policy considerations that indicate that this Commission should not deny both applications. JEA defers to NUC's position, and Sawgrass provides what is stated above.

NUC argues that if the Commission chooses to deny both Intercoastal's and NUC's applications in the hope that JEA will provide retail service, "it would not be fulfilling its obligation to grant a certificate when there is a demonstrated need for

service and a qualified applicant. (BR 54) NUC states that the County had taken the position in this proceeding, prior to its withdrawal from these dockets, that JEA does not have the authority to provide service to the Nocatee development without the County's permission and that the County intends to serve the St. Johns County portion of the Nocatee development. (BR 55) In light of the County's position, NUC asserts that if the Commission denies both Intercoastal's and NUC's applications, the Commission may unintentionally encourage a legal battle between NUC and the County which could delay service to Nocatee. (BR 54)

NUC further argues that there is no evidence in the record that JEA would agree to provide water, wastewater and reclaimed water service on a retail basis within Nocatee. (BR 56) NUC asserts that the record in fact supports the inference that JEA would not provide retail reuse service to Nocatee because JEA does not currently provide retail reuse service in Duval County. (BR 56) NUC states that if JEA does not provide reuse service to Nocatee, there will be no practical way to comply with the provisions which require 100% reuse in the development. (BR 56)

Intercoastal argues that there is a need for service to the areas for which it has applied, and that there is no evidence in the record as to how service would be provided by JEA and St. Johns County. (BR 8) Intercoastal asserts that there is no evidence in the record as to how JEA would provide retail service to Nocatee, and that JEA has spent a considerable amount of energy showing that it does not intend to provide retail service to the development. (BR 9)

Intercoastal argues that it is the Commission's responsibility to "effectuate the legislative scheme which provides for the provision of water and wastewater utility services in the State by investor-owned utilities." (BR 9) Intercoastal further states that there is no preference in Florida law for utilities operated by governmental utilities and that there is no evidence in the record which would support a Commission finding that retail service to the area at issue by JEA or St. Johns County is preferable to what has been proposed by Intercoastal. (BR 9)

Staff's Analysis

As set forth in Issues 1 and 13, staff is recommending that there is a need for service in the Nocatee development. Further,

in Issue 11, staff is recommending that it is in the public interest to grant NUC its request for water and wastewater certificates.

The record evidence in these dockets is based on NUC and Intercoastal's applications with the Commission to serve the Nocatee development. Neither JEA nor St. Johns County have proposed a plan to provide retail service to the areas at issue in these dockets. Therefore, staff believes that it is speculative at this time to consider whether another utility, such as JEA, could provide retail service to the Nocatee development. Moreover, the record does not contain evidence of an alternative plan for service by another utility.

The remaining question of what the ramifications would be if the Commission chose to deny both pending applications is also speculative, and the answer varies depending on the party. NUC has asserted that denying both applications would result in litigation between the County and JEA, which would ultimately deny the Nocatee development service from any source during the pending litigation. While Intercoastal does not directly address possible ramifications, it does state that "such a denial could only be predicated upon an unknown future, and upon utility service scenarios which are not a part of the record before the Commission." (BR 8)

Staff believes that a possible ramification of denying both applications is that it would delay the Nocatee developers' ability to begin construction. The delay would result from the developers having to obtain an alternative source for the provision of utility service. On the other hand, the delay would conceivably afford the developer the time to negotiate the provision of retail service with JEA. However, JEA witness Perkins stated that JEA does not provide residential reuse because of the additional cost, and that JEA is making a significant capital investment in order to provide wholesale reuse service to Nocatee. Witness Perkins further stated that JEA can not bear the additional cost burden to provide retail reuse service at this time. (TR 623-624) The record is silent with respect to whether JEA is willing to provide retail water and wastewater service to the Nocatee development.

Other alternatives might include obtaining either wholesale or retail water, wastewater, and reuse service from St. Johns County. However, because St. Johns County withdrew from participating in

this case, there is no evidence in the record to indicate whether this is a viable alternative. Alternatively, the developer could conceivably petition Duval and St. Johns Counties to revise the development orders to allow for the installation of facilities on-site. However, witness Skelton testified that Nocatee prefers not to have facilities constructed on-site because the plans for the Nocatee development must reflect a high degree of environmental sensitivity. (TR 985-986) Finally, the delay that would result from denying both applications would potentially allow Intercoastal additional time to obtain the needed capacity to serve the Nocatee development either through on-site or off-site facilities.

All of the above potential ramifications are speculative and not based on the evidence of record in this case. While it is in the Commission's discretion to deny both applications, to do so, the Commission would need to find, based on the record evidence, that it is not in the public interest to grant either application. Staff recommends that there is no such evidence in the record.

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ISSUE 24: In light of the agreement between JEA and NUC for operations, management and maintenance service, is NUC exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes?

RECOMMENDATION: The Commission should find that the agreement between JEA and NUC for operations, management and maintenance service, does not render NUC exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes. (ESPINOZA, CIBULA)

POSITION OF PARTIES

NUC: No. NUC is not a "system [] owned, operated, managed, or controlled by governmental authorities" within the meaning of Section 367.022(2).

IU: No position given.

JEA: JEA defers to and adopts the position of the applicant NUC with respect to additional issues raised at the hearing including the applicability of Section 367.022(2), Florida Statutes.

SAWGRASS: No, because based on the testimony, NUC would not be a system which is owned, operated, managed, or controlled by a governmental authority.

STAFF ANALYSIS: Pursuant to Section 367.022(2), Florida Statutes, systems owned, operated, managed, or controlled by government authorities are not subject to Commission regulation. This issue arose during the hearing, and its purpose is to determine whether, as a result of the operations, management and maintenance agreement between NUC and JEA, the resulting system would be considered a government authority, thereby exempting it from Commission regulation.

NUC's position is that because NUC is not a system that is owned, operated, managed, or controlled by a government authority, it is not exempt from Commission jurisdiction pursuant to Section 367.022(2), Florida Statutes. (BR 56). In support of its position, NUC states that it was able to find no judicial decisions, and only one Commission order which was relevant to this issue, In re:

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Windstar Development Company, Docket No. 870406-SU, Order No. 17659. (BR 57)

In Windstar, the Commission considered a request for a governmental exemption by a private sewer company which had deeded its utility system to Collier County and then leased it back until the County's off-site sewer facilities were ready to receive sewage from the Windstar development. Since the system was "owned" by Collier County, Windstar claimed entitlement to the governmental exemption. The Commission denied the exemption, finding that the arrangement between Windstar and the County "does not provide for any meaningful economic regulation of or regulatory oversight over Windstar's operation." Further, the Commission stated that in that situation, "we do not believe that the Legislature...intended that a utility, whose rate-setting operations and management are under private control, would be entitled to an exemption." (BR 57, citing Windstar at 60)

NUC states that the essence of the decision in Windstar is that the Commission found that in order to qualify for the governmental exemption, the governmental entity would need to exercise management and control to such a degree that it was responsible for setting rates and for operation of the utility. (BR 58) Using this rationale, NUC points to the fact that in NUC's case, JEA will have no rate-setting authority over NUC, and that the operations and management services provided by JEA are those of an independent contractor, and not of a proprietor. Further, NUC has the right under the contract to terminate the O&M relationship on proper notice, and ultimately has the right to require JEA to perform to the standards set forth in the agreement. Thus, in this situation, JEA does not "own, operate, manage or control" NUC within the meaning of the governmental exemption. (BR 58)

As stated previously, JEA adopts NUC's position on this matter. Sawgrass states that NUC would not be a system which is owned, operated, managed, or controlled by a governmental authority. Further, Sawgrass states that according to the testimony presented, the relationship of JEA to NUC would be akin to that of an independent contractor, and would be comparable to the proposed Plan of Service and relationship between Intercoastal and JUM. (BR 13, citing TR 443)

Intercoastal did not provide a separate position in its brief on this issue. However, in its analysis of Issue A, Intercoastal

addresses this issue by stating that the evidence and exhibits in this case establish that NUC's proposed system will not be subject to regulation by the Commission as a utility, and will not be subject to the provisions of Chapter 367. (BR 10) In support of this contention, Intercoastal cites to testimony given by the NUC president in which he states that JEA will provide the operation and collection for the utility, do the billing, provide the wholesale water to the development, collect the wastewater from the development, and provide reuse service to the development. (BR 10, citing TR 104-105)

Intercoastal states that JEA, a governmental entity, will be performing all the tasks that fall under the umbrella of the phrase "operations" as well as providing the management for the utility. (BR 10) Thus, Intercoastal states that "one cannot help but reach the inescapable conclusion that NUC is, in fact, controlled by a governmental authority as well as operated and managed by that same authority." (BR 11)

Staff agrees with NUC's analysis of the Commission's decision in Windstar. Specifically, in order for NUC to be considered an exempt government entity by virtue of its agreement with JEA, the government entity, JEA, would have to retain the control and power over NUC to the extent that JEA would be responsible for setting rates of the utility. According to the testimony of NUC witness Skelton, that is not the intention of the agreement between JEA and NUC. In fact, Mr. Skelton testified that to his understanding of the agreement, the Commission would be setting the retail rates for NUC and these rates would be based on whatever costs were legitimately proven to the Commission. (TR 114).

Further, Mr. Skelton testified that JEA, in dealings with the customers of NUC, would be acting solely as an agent of NUC, and that as an agent, NUC would have the right to direct the manner in which NUC was represented. (TR 114) Moreover, when questioned why JEA was not allowed to serve the Nocatee development directly, Mr. Skelton testified that the agreement was to ensure that NUC retain control over the development rather than JEA. To that end, the agreement between JEA and NUC was put in place for a period of only ten years so that NUC would be able to hire someone else, and terminate the agreement with JEA if JEA did not perform. (TR 110)

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Staff believes that Section 367.022(2), Florida Statutes, is inapplicable to the agreement between JEA and NUC, in that if granted a certificate of authorization, NUC would not be considered an exempt governmental authority. Although JEA is a governmental entity not subject to Commission regulation, the fact that JEA will be providing management and operation services to NUC does not render NUC an exempt entity as well. JEA would not be setting rates for the customers of NUC. Thus, there would be no governmental oversight of the rates if NUC were considered exempt by virtue of JEA providing management and operations services to NUC. Therefore, the Commission should find that if NUC is granted a certificate of authorization, its agreement with JEA does not render it an exempt governmental authority pursuant to Section 367.022(2), Florida Statutes.

ISSUE 25: Should the Commission defer a decision in these cases until after the conclusion of a pending administrative challenge to the Department of Community Affairs' decision that found the St. Johns County Comprehensive Plan Amendments for Nocatee in compliance with Chapter 163, Florida Statutes?

RECOMMENDATION: No. The Commission should not defer its decision in this matter until after the conclusion of a pending administrative challenge to the Department of Community Affairs' decision. (CIBULA, ESPINOZA)

POSITION OF PARTIES

NUC: No. In order to avoid delaying the Nocatee development, various licensing efforts must proceed in parallel. The Commission should not defer a decision in this case, particularly when there is a substantial likelihood that the Commission's decision will itself be appealed.

IU: No position given.

JEA: JEA defers to and adopts NUC's position.

SAWGRASS: The Association takes no position on this issue.

STAFF ANALYSIS: NUC witness Douglas Miller initially testified that the first need for service in NUC's proposed territory will be in the 1st or 2nd quarter of 2002. (TR 147) However, during cross-examination, Mr. Miller testified that the fourth quarter of 2002 will be when service is needed for the Nocatee development. (TR 185)

Staff witness Charles Gauthier testified that the Nocatee development orders have been approved by both St. Johns County and Duval County. (TR 947) Mr. Gauthier also testified that a protest to the Department of Community Affairs' (DCA) notice of intent to find the comprehensive plans in compliance has been filed by the Florida Wildlife Federation. (TR 933) Mr. Gauthier further testified that the DCA had the opportunity to appeal or challenge the development orders, but the DCA elected not to appeal either of the development orders. (TR 947) Mr. Gauthier testified that he was aware that pursuant to Chapter 367, Florida Statutes, the Commission is not required to consider consistency with the local comprehensive plan unless the local government has objected to an

application that comes before them. (TR 950) Mr. Gauthier testified that he was unaware of any objection by either St. Johns County or the City of Jacksonville to NUC's application. (TR 950)

NUC argues that the Commission should not defer its decision. (BR 59) NUC states that permitting for a project that is of the scale of the Nocatee development requires approval from many local, regional and state agencies and that "many of these approvals need to be pursued in parallel and every approval is potentially subject to administrative litigation and/or appeal by one or more entities." (BR 59) NUC further asserts that a challenge by one private group to one of these approvals should not be a basis for the Commission to defer its decision on a matter that is within its jurisdiction. (BR 59)

NUC states that the local governments have begun the process of amending their comprehensive plans and the DCA has issued a notice of intent to find the those amendments in compliance. (BR 59) Further, the utility points out that the governing law, Section 367.045(5)(b), Florida Statutes, states that the Commission is not bound by the local comprehensive plan and is not even required to consider such plans unless the local government has objected to the application, which is not the case. (BR 59)

NUC states that NUC and DDI will suffer substantial harm if the Commission defers its decision because the development cannot begin until there is an authorized utility provider. (BR 60) Moreover, NUC states that it is probable that Citrus, Hillsborough, Sarasota and Collier Counties will appeal the Commission's decision. (BR 60) NUC notes that these counties have already attempted to appeal the Commission's decision denying them intervention in this case, but the appellate court found that their appeal was premature and that the question of their standing could be appealed when the Commission issued its final order in these dockets. (BR 60) NUC states that if the Commission defers its decision, the Nocatee development may be delayed. (BR 60)

Staff's Analysis:

Section 367.045(5)(b), Florida Statutes, states that:

When granting or amending a certificate of authorization, the Commission need not consider whether the issuance or amendment of the certificate of authorization is

inconsistent with the local comprehensive plan of the county or municipality unless a timely objection to the notice required by this section has been made by an appropriate motion or application. If such an objection has been timely made, the Commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality.

This statutory provision requires the Commission to consider the local comprehensive plan, but it is silent regarding situations where that plan may be on appeal. Thus, there is no legal basis that would require the Commission to defer its decision in these dockets. Moreover, staff is recommending in Issues 1 and 13 that there is a need for service in the Nocatee development. Therefore, staff recommends that the Commission should not defer its decision in this matter until after the conclusion of a pending administrative challenge to the DCA's decision.

ISSUE 26: Should these dockets be closed?

RECOMMENDATION: No. These dockets should remain open for an additional thirty days from the date of the Order so that Nocatee Utility Corporation may file proof of ownership or continued use of the land upon which its reuse facilities will be located as discussed in Issue 4. Staff should be given administrative authority to close these dockets once staff has verified that this information has been filed. (CIBULA, ESPINOZA)

STAFF ANALYSIS: These dockets should remain open for an additional thirty days from the date of the Order so that NUC may file proof of ownership or continued use of the land upon which its reuse facilities will be located as discussed in Issue 4. Staff should be given administrative authority to close these dockets once staff has verified that this information has been filed.

ATTACHMENT A

Nocatee Utility Corporation
Duval and St. Johns Counties
Water and Wastewater Territory

Duval County, Florida

TRACT "A"

All of Sections 36, 46, and 53 and portions of Sections 25, 34, 35, 47, 48, 49, and 55, Township 4 South, Range 28 East, Duval County, Florida, being more particularly described as follows:

For Point of Beginning, commence at the point of intersection of the Southerly boundary of Section 34, Township 4 South, Range 28 East, with the Northeasterly right of way line of U.S. Highway 1, State Road No. 5, and run North $41^{\circ}50'26''$ West along said right of way line, a distance of 925.00 feet to a point; run thence North $76^{\circ}59'37''$ East, a distance of 4,715.0 feet to a point; run thence North $00^{\circ}37'22''$ West, a distance of 3625.0 feet to a point; run thence North $89^{\circ}34'10''$ East, a distance of 1,965.0 feet; run thence North $34^{\circ}06'08''$ East, a distance of 3,495.66 feet to a point on the Northerly boundary of Section 49; run thence North $75^{\circ}13'42''$ East along the Northerly boundary of Section 49 and 53, the same being Southerly boundary of Section 45 and along the Southerly boundary of Section 52, Township and Range aforementioned, and it's Northeasterly projection, a distance of 6,620.70 feet to a point on the East line of Section 25, said Township and Range, run thence South $00^{\circ}54'07''$ East along last said Section line and along the East line of Section 36, a distance of 9,798.05 feet to its point of intersection with the Northwesterly right of way line of Palm Valley Road, County Road No. 210; run thence South $55^{\circ}21'50''$ West along said right of way line, a distance of 146.60 feet to a point on the South line of said Section 36; run thence South $89^{\circ}37'49''$ West along the South line of Sections 34, 35 and 36, a distance of 14,298.23 feet to the Point of Beginning.

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St. Johns County, Florida

TRACT "B"

Portions of Section 19, 20, 28, 29, 30, 31, 32, 49, 50, 51, 55, 65, 66, and 67 Township 4 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

For Point of Beginning, commence at the Northwest corner of Section 30, said Township and Range and run North $88^{\circ}39'56''$ East along the North line of said Section, a distance of 1650.0 feet; run thence North $62^{\circ}02'54''$ East, a distance of 7,000.0 feet; run thence South $66^{\circ}36'10''$ East, a distance of 3133.65 feet; run thence South $17^{\circ}06'55''$ East, a distance of 5068.75 feet to the Northeasterly corner of that certain parcel of land described in Official Records Volume 97, Page 151, Public Records of said County; run thence South $76^{\circ}09'47''$ West, along the Northerly boundary of said parcel, a distance of 477.26 feet to the Northeasterly corner of that certain tract of land described in Official Records Book 673, Page 636 and 637, public records of said county; run thence South $88^{\circ}13'50''$ West along the Northerly boundary of said tract a distance of 622.02 feet to the Northwest corner thereof; run thence South $07^{\circ}59'59''$ East along the Westerly line of said tract and along the Westerly line of that parcel described in Official Records Book 368, page 550, a distance of 532.17 feet to a point on the line dividing Sections 28 and 55, Township and Range aforementioned; run thence South $86^{\circ}48'25''$ West along said Section line, a distance of 1,728.48 feet to the Northeast corner of that parcel identified as Parcel Six and described in documentation recorded in Official Records Volume 1084, Page 676, said public records, run thence South $11^{\circ}08'51''$ East along the Easterly line of said Parcel Six, a distance of 600.76 feet to the Northwesterly right of way line of Palm Valley Road, County Road No. 210; run thence South $55^{\circ}21'50''$ West along said right of way line, a distance of 11,438.24 feet to it's point of intersection with the Westerly line of Section 31, Township and Range aforementioned; run thence North $00^{\circ}54'07''$ West along said Westerly section line and along the Westerly line of Section 30, a distance of 10,614.31 feet to the Point of Beginning; less and except from the above described lands, the Northeast 1/4 of the Southeast 1/4 of Section 30, said Township and Range.

TRACT "C"

All of Sections 58 and 64 and portions of Sections 29, 31, 32, 55, 57, 59, 60, 61 and 63, Township 4 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

For Point of Beginning, commence at the Southwest corner of Section 32, Township 4 South, Range 29 East, and run South $89^{\circ} 27' 34''$ West, along the Southerly line of said Township, a distance of 5,245.88 feet to its point of intersection with the Southeasterly right of way line of Palm Valley Road, County Road No. 210; run thence Northeasterly, along said right of way line, as follows: first course, North $55^{\circ} 21' 50''$ East, a distance of 11,609.31 feet to a point of curvature; second course, along the arc of a curve concave Southeasterly with a radius of 943.73 feet, an arc distance of 392.05 feet to the point of tangency of said curve, said arc being subtended by a chord bearing North $67^{\circ} 15' 54''$ East and distance of 389.23 feet; third course, North $79^{\circ} 09' 57''$ East, a distance of 1439.56 feet to the extreme Westerly corner of that certain tract described in deed recorded in Official Records 664, Page 1159, Public Records of said County; run thence South $18^{\circ} 09' 43''$ East, departing said right of way line, a distance of 2633.45 feet; run thence South $82^{\circ} 53' 46''$ East, a distance of 711.15 feet; run thence South $08^{\circ} 41' 05''$ East, a distance of 4351.59 feet to a point on aforesaid Southerly line of Township 4 South, Range 29 East; run thence South $89^{\circ} 27' 34''$ West, along said Township line, a distance of 8263.12 feet to the Point of Beginning.

LESS AND EXCEPT: Those lands described in instrument recorded in Official Records Book 1097, Page 1072 and Official Records Book 1443, Page 1680, Public Records of said County being more particularly described as follows:

For Point of Reference, commence at the Southwest corner of Section 32, Township 4 South, Range 29 East, and run North $89^{\circ} 27' 34''$ East, along the Southerly line of said Township, a distance of 3,363.65 feet; run thence North $00^{\circ} 32' 26''$ West, departing said Township line, a distance of 233.82 feet to the Point of Beginning of the exception parcel.

From the Point of Beginning thus described, run along the boundary of aforesaid lands described in Official Records Book 1097, Page 1072 and Official Records Book 1443, Page 1680 as follows: first course, North $14^{\circ} 07' 52''$ West, a distance of 3,916.31 feet; second

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course, North 55° 20' 25" East, a distance of 2,950.56 feet; third course, South 75° 52' 33" East, a distance of 1,145.75 feet; fourth course, South 38° 30' 32" East, a distance of 824.85 feet; fifth course, South 62° 03' 30" West, a distance of 629.87 feet; sixth course, South 12° 24' 56" East, a distance of 2,308.87 feet; seventh course, South 80° 12' 24" West, a distance of 300.48 feet to a point of curvature; eighth course, Southwesterly, along the arc of a curve concave Southeasterly with a radius of 200.00 feet, an arc distance of 195.24 feet to the point of tangency of said curve, said arc being subtended by a chord bearing South 52° 14' 27" West, and distance of 187.58 feet; ninth course, South 24° 16' 29" West, a distance of 151.93 feet to a point of curvature; tenth course, Southwesterly along the arc of a curve concave Northwesterly with a radius of 900.00 feet, an arc distance of 715.22 feet to the point of tangency of said curve, said arc being subtended by a chord bearing South 47° 02' 27" West and distance of 696.55 feet; eleventh course, South 69° 48' 25" West, a distance of 243.38 feet; twelfth course, South 14° 07' 52" East, a distance of 843.73 feet; thirteenth course, South 80° 54' 41" West, a distance of 2,021.82 feet to the Point of Beginning.

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TRACT "D"

Portions of Sections 57 and unsurveyed Section 34, Township 4 South, Range 29 East, St. Johns County, Florida being more particularly described as follows:

For Point of Reference, commence at the Southwest corner of Section 32, Township 4 South, Range 29 East, and run North 89° 27' 34" East, along the Southerly line of said Township, a distance of 14,134.03 feet to its point of intersection with the Westerly right of way line of Florida East Coast Canal (Intracoastal Waterway) as recorded in Map Book 4, Pages 68 through 78, Public Records of St. Johns County, Florida and the Point of Beginning.

From the Point of Beginning thus described, run North 25° 46' 44" West along said Westerly right of way line, a distance of 2,500.00 feet; run thence South 49° 50' 45" West, departing said line, a distance of 3,546.61 feet to a point on aforesaid Southerly Township line; run thence North 89° 27' 34" East, along said Township line, a distance of 3,798.13 feet to the Point of Beginning.

LESS AND EXCEPT any portion of the above described lands lying below the mean high water line of the Tolomato River.

TRACT "E"

Parcel 1

A part of Sections 1, 2, 3 and 11, all in Township 5 South, Range 28 East, St. Johns County, Florida, more particularly described as follows:

For a Point of Beginning, commence at the Northeast corner of said Section 2; thence South $89^{\circ}37'49''$ West, along the North line of said Section 2 (the same being the North line of Township 5 South and being the line dividing Duval County from St. Johns County), a distance of 5349.29 feet to the Northeast corner of said Section 3; thence South $89^{\circ}37'49''$ West, along the North line of said Section 3, and along said line dividing Duval County from St. Johns County, a distance of 225.00 feet to the Northeast corner of the lands described in Official Records 919, Page 0475 of the Public Records of said County; thence along the boundary line of said lands the following six courses: 1) South $29^{\circ}37'49''$ West, a distance of 795.13 feet; 2) South $89^{\circ}37'49''$ West, a distance of 235.03 feet; 3) North $30^{\circ}22'11''$ West, a distance of 760.49 feet; 4) South $89^{\circ}37'49''$ West, 30 feet Southerly of and parallel with the aforementioned North line of Section 3, a distance of 1,833.24 feet; 5) South $75^{\circ}36'44''$ West, a distance of 309.21 feet; 6) South $89^{\circ}37'49''$ West, a distance of 107.20 feet to a point on the Northeasterly right of way line of U.S. Highway No. 1 (State Road No. 5); thence South $41^{\circ}52'01''$ East, along said right of way line, a distance of 2,505.37 feet to an angle point in said right of way line; thence South $41^{\circ}01'01''$ East continuing along said Northeasterly right of way line, a distance of 911.85 feet; thence North $89^{\circ}16'00''$ East, along the Southerly line of the lands described in Deed Book 204, Page 330 of the aforementioned Public Records, a distance of 1,557.93 feet to a point on the Northeasterly right of way line of a 50 foot right of way known as "Old Dixie Highway"; thence South $23^{\circ}06'04''$ East, along said Northeasterly right of way line, a distance of 409.90 feet to an angle point in said right of way line; thence South $23^{\circ}53'04''$ East, continuing along said Northeasterly right of way line, a distance of 1,470.07 feet to an angle point in said right of way line; thence South $39^{\circ}52'04''$ East, continuing along said Northeasterly right of way line, a distance of 1,680.82 feet to an intersection with the Northwesterly right of way line of Palm Valley Road, County Road No. 210, as now established as a 100 foot right of way; thence Northeasterly along said right of way line the

following six courses: 1) North 41° 36' 00" East, a distance of 1,021.40 feet to the point of curvature of a curve concave Southeasterly, having a radius of 416.47 feet; 2) Northeasterly along the arc of said curve, a chord bearing of North 56° 39' 27" East, a chord distance of 216.39 feet, an arc distance of 218.90 feet to the point of tangency of said curve; 3) North 71° 42' 54" East, a distance of 746.02 feet to the point of curvature of a curve concave Northwesterly, having a radius of 809.92 feet; 4) Northeasterly along the arc of said curve, a chord bearing of North 63° 32' 22" East, a chord distance of 230.35 feet and an arc distance of 231.14 feet to the point of tangency of said curve; 5) North 55° 21' 50" East, a distance of 1,769.51 feet to an intersection with the East line of aforementioned Section 2; 6) continue North 55° 21' 50" East, a distance of 6,269.03 feet to an intersection with the North line of aforementioned Section 1; thence South 89° 06' 30" West, along said North line of Section 1 (the same being the North line of Township 5 South and being the line dividing Duval County from St. Johns County), a distance of 5,223.14 feet to the Northwest corner of said Section 1 and the Point of Beginning.

Containing 881.20 acres, more or less.

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TRACT "E"

Parcel 2

A part of Section 2, Township 5 South, Range 28 East, St. Johns County, Florida more particularly described as follows:

For a Point of Beginning, commence at the intersection of the Northeasterly right of way line of U.S. Highway No. 1 (State road No. 5) with the West line of said Section 2; thence North $00^{\circ} 59' 33''$ West, along said West line of Section 2, a distance of 125.93 feet; thence North $89^{\circ} 16' 57''$ East, along the North line of Tract 11 of an unrecorded subdivision known as Durbin Subdivision, a distance of 836.38 feet to the point on the Southwesterly right of way line of a 50 foot right of way known as "Old Dixie Highway"; thence South $23^{\circ} 53' 04''$ East, along said Southwesterly right of way line, a distance of 388.35 feet to an angle point in said right of way line; thence South $39^{\circ} 52' 04''$ East, continuing along said Southwesterly right of way line, a distance of 403.00 feet; thence South $89^{\circ} 17' 26''$ West, along the South line of aforementioned Tract 11, a distance of 782.06 feet to a point on the aforementioned Northeasterly right of way line of U.S. Highway No. 1; thence North $41^{\circ} 01' 01''$ West, along said Northeasterly right of way line, a distance of 712.66 feet to the Point of Beginning.

Containing 12.60 acres, more or less.

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TRACT "F"

A tract of land comprised of the East $\frac{1}{2}$ of Section 12 and the Northeast $\frac{1}{4}$ of Section 13, Township 5 South, Range 28 East, St. Johns County, Florida, less and except that portion lying within the boundary of Subdivision of Hilden recorded in Map Book 3, Page 59, of the Public Records of said County, said tract being more particularly described as follows:

For Point of Beginning, commence at the Northeast corner of said Section 12, and run South $02^{\circ} 32' 48''$ East, along the Easterly boundary of said Section, a distance of 5,331.05 feet to the Southeast corner of said Section; run thence South $01^{\circ} 38' 27''$ East, along the Easterly boundary of said Section 13, a distance of 2,487.50 feet to the Southeast corner of the Northeast $\frac{1}{4}$ of said Section; run thence South $87^{\circ} 23' 00''$ West, along the Southerly line of said Northeast $\frac{1}{4}$, a distance of 1,733.13 feet; run thence North $43^{\circ} 10' 20''$ West, a distance of 1,268.24 feet; run thence North $50^{\circ} 05' 18''$ East, a distance of 498.34 feet; run thence North $40^{\circ} 25' 16''$ West, a distance of 766.09 feet to a point on aforesaid Westerly line of the Northeast $\frac{1}{4}$ of Section 13; run thence North $00^{\circ} 46' 57''$ West, along said Westerly line and along the Westerly line of the East $\frac{1}{2}$ of Section 12, a distance of 6,046.27 feet to the Northwest corner of the said East $\frac{1}{2}$ of Section 12; run thence North $89^{\circ} 35' 26''$ East, along the Northerly boundary of said Section 12, a distance of 2,488.06 feet to the Point of Beginning.

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TRACT "G"

A portion of Section 37, Township 5 South, Range 28 East, St. Johns County, Florida described in deed recorded in Official Records Book 675, Page 350, Public Records of said County and being more particularly described as follows:

For Point of Beginning, commence at the extreme Northerly corner of said Section 37 and run South $40^{\circ} 55' 04''$ West, along the Northwesterly boundary of said Section, a distance of 269.22 feet; run thence South $37^{\circ} 41' 20''$ East, a distance of 148.80 feet; run thence South $52^{\circ} 27' 18''$ West, a distance of 240.00 feet to a point on the Northeasterly right of way line of U.S. Highway No.1, State Road No. 5; run thence South $37^{\circ} 47' 17''$ East, along said right of way line, a distance of 200.00 feet; run thence North $52^{\circ} 12' 43''$ East, a distance of 240.00 feet; run thence South $37^{\circ} 47' 17''$ East, a distance of 100.00 feet; thence South $52^{\circ} 12' 43''$ West, a distance of 240.00 feet to said Northeasterly right of way line; run thence South $37^{\circ} 47' 17''$ East, along said right of way line, a distance of 300.00 feet; run thence North $52^{\circ} 12' 43''$ East, a distance of 240.00 feet; run thence South $37^{\circ} 47' 17''$ East, a distance of 50.00 feet; run thence South $52^{\circ} 12' 43''$ West, a distance of 240.00 feet to aforesaid Northeasterly right of way line; run thence South $39^{\circ} 04' 14''$ East, along said right of way line, a distance of 2,011.89 feet to its point of intersection with the Southwesterly line of said Section 37; run thence South $83^{\circ} 10' 07''$ East, along said Section line, a distance of 383.30 feet to the extreme Southerly corner of said Section; run thence North $00^{\circ} 14' 24''$ East, along said Section line, a distance of 1,126.79 feet; run thence North $56^{\circ} 19' 41''$ West, continuing along said Section line, a distance of 1,301.59 feet; run thence North $43^{\circ} 06' 02''$ West, along said Section line, a distance of 1,014.06 feet to the Point of Beginning.

TRACT "H"

A tract of land comprised of all or portions of surveyed and unsurveyed Sections 3, 10 and 15; all of Sections 4, 5, 7, 8, 9, 16, 17, 18, 20, 21, 39, 62, 63, 64, 65, 66, and portions of Sections 6, 19 and 61, Township 5 South, Range 29 East, St. Johns County, Florida, said tract being more particularly described as follows:

For Point of Beginning, commence at the Northeast corner of Section 6, Township 5 South, Range 29 East, and run South $89^{\circ} 27' 34''$ West, along the Northerly line of said Section, a distance of 5245.88 feet to its point of intersection with the Southeasterly right of way of Palm Valley Road, County Road No. 210; run thence South $55^{\circ} 21' 50''$ West, along said right of way line, a distance of 68.75 feet to a point on the Westerly boundary of said Section; run thence South $00^{\circ} 56' 57''$ West, along said Section line, a distance of 5407.34 feet to the Southwest corner of said Section; run thence South $02^{\circ} 32' 48''$ East, along the Westerly boundary of Section 7, said Township and Range, a distance of 5331.05 feet to the Southwest corner thereof; run thence South $01^{\circ} 38' 27''$ East, along the Westerly line of Section 18, said Township and Range, a distance of 4909.80 feet to the Northwesterly corner of Section 40; run thence along the boundary of said Section 40 as follows: first course, South $55^{\circ} 40' 59''$ East, a distance of 1887.09 feet; second course, South $79^{\circ} 34' 02''$ East, a distance of 639.79 feet; third course, South $07^{\circ} 57' 59''$ East, a distance of 1679.42 feet; fourth course, North $59^{\circ} 54' 33''$ West, a distance of 2797.08 feet to the Southwesterly corner of said Section; run thence South $01^{\circ} 29' 54''$ East, along the Westerly line of Section 19, aforesaid Township and Range, a distance of 395.62 feet to the Northeast right of way line U.S. Highway 1, State Road No. 5; run thence South $37^{\circ} 55' 34''$ East, along said right of way line, a distance of 3131.90 feet to its point of intersection with the Northerly line of Section 41, said Township and Range and the Northerly boundary of Woodland Heights according to the plat recorded in Map Book 3, Page 78, Public Records of St. Johns County, Florida; run thence South $74^{\circ} 56' 37''$ East, along said Section line and subdivision line, a distance of 1096.67 feet; run thence North $13^{\circ} 29' 52''$ West, along said subdivision line, a distance of 183.21 feet; run thence North $02^{\circ} 39' 45''$ East, along said subdivision line, a distance of 265.41 feet; run thence South $89^{\circ} 01' 13''$ East, along said subdivision line and its Easterly projection, a distance of 574.74 feet to the Easterly right of way line of Old Dixie Highway lying on the

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Westerly line of Official Records Book 1353, Page 1476, Public Records of said County; run thence South 15° 19' 35" East, along said line, a distance of 1354.50 feet to a point on the Southerly boundary of aforementioned Section 19; run thence North 88° 50' 30" East, along said Southerly boundary, a distance of 1401.68 feet to the Southeast corner of said Section; run thence North 89° 10' 44" East along the Southerly line of Sections 20 and 21, and its Easterly projection, a distance of 8762.95 feet, more or less to the center of the run of an unnamed creek (Sweetwater Creek); run thence Northeasterly along the center of said run following the meanderings of same, to its point of intersection with the line dividing unsurveyed Sections 15 and 22, said point of intersection bearing North 28° 40' 40" East and distance 5998.15 feet from last said point; run thence North 89° 17' 02" East, along said Section line, a distance of 2378.54 feet to a point on the Westerly right of way line of the Intracoastal Waterway, per Deed Book 193, Page 387, Public Records of said County; run thence in a Northerly direction along the West edge of the waters of the Tolomato River to a point on the North boundary of said Township 5 South, Range 29 East, said waters edge being traversed as follows: first course, North 07° 25' 34" West, along said Westerly right of way.

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TRACT "H"

line of the Intracoastal Waterway, a distance of 1870.17 feet; second course, North 36° 44' 53" East continuing along said right of way line, a distance of 202.90 feet; third course, North 14° 22' 06" East, a distance of 8564.35 feet to a point on said Westerly right of way line of the Intracoastal Waterway; fourth course, North 07° 59' 12" West along said right of way line, a distance of 740.00 feet; fifth course, North 21° 43' 09" West along said right of way line, a distance of 3362.70 feet; sixth course, North 25° 49' 03" West, along said right of way line, a distance of 1899.59 feet to the point of termination of said traverse on the Northerly boundary of said Township; run thence South 89° 27' 34" West, along said Township line, a distance of 14134.03 feet to the Point of Beginning.

LESS AND EXCEPT any portion of the above described lands lying below the mean high water line of the Tolomato River.

NOCATEE UTILITY CORPORATION
Schedule of Water Rate Base
At 80% of Design Capacity

DOCKET NO. 990696-WS
Schedule No. 1-A

Description	Balance Per Filing	Staff Adjust.	Balance Per Staff
Utility Plant in Service	3,639,832	0	3,639,832
Land	0	0	0
Accumulated Depreciation	(238,496)	(0)	(238,496)
Contributions-in-aid-of-Construction	(2,586,045)	0	(2,586,045)
Accumulated Amortization of C.I.A.C.	108,847	(0)	108,847
Plant Held for Future Use	0	0	0
Working Capital Allowance	35,179	0	35,179
TOTAL	959,318	(0)	959,318

NOCATEE UTILITY CORPORATION
Schedule of Wastewater Rate Base
At 80% of Design Capacity

DOCKET NO. 990696-WS
Schedule No. 1-B

Description	Balance Per Filing	Staff Adjust.	Balance Per Staff
Utility Plant in Service	6,248,160	0	6,248,160
Land	0	0	0
Accumulated Depreciation	(562,387)	(0)	(562,387)
Contributions-in-aid-of-Construction	(4,314,796)	0	(4,314,796)
Accumulated Amortization of C.I.A.C.	260,370	(0)	260,370
Working Capital Allowance	88,487	0	88,487
TOTAL	1,719,834	0	1,719,834

NOCATEE UTILITY CORPORATION
Schedule of Reuse Rate Base
At 100% of Design Capacity

DOCKET NO. 990696-WS
Schedule No. 1-C

Description	Balance Per Filing	Staff Adjust.	Balance Per Staff
Utility Plant in Service	6,327,452	0	6,327,452
Land	0	0	0
Accumulated Depreciation	(688,651)	0	(688,651)
Contributions-in-aid-of-Construction	(5,659,731)	0	(5,659,731)
Accumulated Amortization of C.I.A.C.	349,919	0	349,919
Plant Held for Future Use	0	0	0
Working Capital Allowance	29,631	0	29,631
TOTAL	358,621	0	358,621

NOCATEE UTILITY CORPORATION
 Schedule of Water Operating Revenues
 At 80% of Design Capacity

DOCKET NO. 990696-WS
 Schedule No. 2-A

Description	Balance Per Utility	Staff Adjust.	Balance Per Staff
Operating Revenues	497,784	(18,317)	479,467
Operating and Maintenance	281,435	0	281,435
Depreciation Expense	39,690	0	39,690
Taxes Other Than Income	42,519	(824) B	41,695
Income Taxes	40,394	(17,493) A	22,901
Total Operating Expenses	404,038	(18,317)	385,721
Net Operating Income	93,746	(0)	93,746
Rate Base	959,318		959,318
Rate of Return	9.77%		9.77%

NOCATEE UTILITY CORPORATION
 Schedule of Wastewater Operating Revenues
 At 80% of Design Capacity

DOCKET NO. 990696-WS
 Schedule No. 2-B

Description	Balance Per Utility	Staff Adjust.	Balance Per Staff
Operating Revenues	1,119,830	(33,080)	1,086,750
Operating and Maintenance	707,893	0	707,893
Depreciation Expense	85,302	(0)	85,302
Taxes Other Than Income	85,927	(1,489) B	84,438
Income Taxes	72,647	(31,591) A	41,056
Total Operating Expenses	951,769	(33,080)	918,689
Net Operating Income	168,061	(0)	168,061
Rate Base	1,719,834		1,719,834
Rate of Return	9.77%		9.77%

NOCATEE UTILITY CORPORATION
 Schedule of Reuse Operating Revenues
 At 100% of Design Capacity

DOCKET NO. 990696-WS
 Schedule No. 2-C

Description	Balance Per Utility	Staff Adjust.	Balance Per Staff
Operating Revenues	367,672	(6,920)	360,752
Operating and Maintenance	237,048	0	237,048
Depreciation Expense	55,579	0	55,579
Taxes Other Than Income	25,082	(311) B	24,771
Income Taxes	14,918	(6,609) A	8,309
Total Operating Expenses	332,627	(6,920)	325,707
Net Operating Income	35,045	(0)	35,045
Rate Base	358,621		358,621
Rate of Return	9.77%		9.77%

NOCATEE UTILITY CORPORATION
Schedule of Adjustments

DOCKET NO. 990696-WS
Schedule No. 2-D

	Water	Wastewater	Reuse
A. INCOME TAXES To reflect a parent debt adjustment pursuant to Rule 25-14.004	(\$17,493)	(\$31,591)	(\$6,609)
B. TAXES OTHER THAN INCOME To reflect the decrease in regulatory assessment fee associated with the reduced revenue requirement	(\$824)	(\$1,489)	(\$311)

NOCATEE UTILITY CORPORATION
 Schedule of Water Operation and Maintenance
 At 80% of Design Capacity

DOCKET NO. 990696-WS
 Schedule No. 3-A

Acct No.	Account Description	Balance Per Filing	Staff Adjust.	Balance Per Staff
601	Salaries and Wages - Employees	10,000	0	10,000
603	Salaries and Wages - Officers	0	0	0
604	Employee Pensions and Benefits	0	0	0
610	Purchased Water	0	0	0
615	Purchased Power	0	0	0
616	Fuel for Power Production	0	0	0
618	Chemicals	0	0	0
620	Materials and Supplies	600	0	600
631	Contractual Services - Engineering	0	0	0
632	Contractual Services - Accounting	3,500	0	3,500
633	Contractual Services - Legal	3,000	0	3,000
634	Contractual Services - Management Fees	252,038	0	252,038
635	Contractual Services - Other	10,000	0	10,000
641	Rental of Building / Real Property	0	0	0
642	Rental of Equipment	0	0	0
650	Transportation Expense	0	0	0
656	Insurance - Vehicle	0	0	0
657	Insurance - General Liability	551	0	551
658	Insurance - Workman's Compensation	75	0	75
659	Insurance - Other	671	0	671
660	Advertising Expense	0	0	0
666	Regulatory Commission Expense - Rate Case	0	0	0
667	Regulatory Commission Expense - Other	0	0	0
670	Bad Debt Expense	0	0	0
675	Miscellaneous Expense	1,000	0	1,000
	TOTAL	281,435	0	281,435

NOCATEE UTILITY CORPORATION
 Schedule of Wastewater Operation and Maintenance
 At 80% of Design Capacity

DOCKET NO. 990696-WS
 Schedule No. 3-B

Acct. No.	Account Description	Balance Per Filing	Staff Adjust.	Balance Per Staff
701	Salaries and Wages - Employees	10,000	0	10,000
703	Salaries and Wages - Officers	0	0	0
704	Employee Pensions and Benefits	0	0	0
710	Purchased Sewage Treatment	0	0	0
711	Sludge Removal Expense	0	0	0
715	Purchased Power	0	0	0
716	Fuel for Power Production	0	0	0
718	Chemicals	0	0	0
720	Materials and Supplies	600	0	600
731	Contractual Services - Engineering	0	0	0
732	Contractual Services - Accounting	3,500	0	3,500
733	Contractual Services - Legal	3,000	0	3,000
734	Contractual Services - Management Fees	676,355	0	676,355
735	Contractual Services - Other	10,000	0	10,000
741	Rental of Building / Real Property	0	0	0
742	Rental of Equipment	0	0	0
750	Transportation Expense	0	0	0
756	Insurance - Vehicle	0	0	0
757	Insurance - General Liability	718	0	718
758	Insurance - Workman's Compensation	75	0	75
759	Insurance - Other	2,645	0	2,645
760	Advertising Expense	0	0	0
766	Regulatory Commission Expense - Rate Case	0	0	0
767	Regulatory Commission Expense - Other	0	0	0
770	Bad Debt Expense	0	0	0
775	Miscellaneous Expense	1,000	0	1,000
	TOTAL	707,893	0	707,893

NOCATEE UTILITY CORPORATION
 Schedule of Reuse Operation and Maintenance
 At 100% of Design Capacity

DOCKET NO. 990696-WS
 Schedule 3-C

Acct. No.	Account Description	Balance Per Filing	Staff Adjust.	Balance Per Staff
601	Salaries and Wages - Employees	10,000	0	10,000
603	Salaries and Wages - Officers	0	0	0
604	Employee Pensions and Benefits	0	0	0
610	Purchased Water	0	0	0
615	Purchased Power	0	0	0
616	Fuel for Power Production	0	0	0
618	Chemicals	0	0	0
620	Materials and Supplies	600	0	600
631	Contractual Services - Engineering	0	0	0
632	Contractual Services - Accounting	0	0	0
633	Contractual Services - Legal	0	0	0
634	Contractual Services - Management Fees	212,108	0	212,108
635	Contractual Services - Other	10,000	0	10,000
641	Rental of Building / Real Property	0	0	0
642	Rental of Equipment	0	0	0
650	Transportation Expense	0	0	0
656	Insurance - Vehicle	0	0	0
657	Insurance - General Liability	731	0	731
658	Insurance - Workman's Compensation	0	0	0
659	Insurance - Other	2,609	0	2,609
660	Advertising Expense	0	0	0
666	Regulatory Commission Expense - Rate Case	0	0	0
667	Regulatory Commission Expense - Other	0	0	0
670	Bad Debt Expense	0	0	0
675	Miscellaneous Expense	1,000	0	1,000
	TOTAL	237,048	0	237,048

NOCATEE UTILITY CORPORATION
 Schedule of Capital Structure
 At 100% of Design Capacity

DOCKET NO. 990696-WS
 Schedule No. 4

Description	Balance Per Filing	Staff Adjust.	Balance Per Staff	Recon. Adjust.	Recon. Balance	Weight	Cost Rate	Weighted Cost
Common Equity	1,822,663	0	1,822,663	0	1,822,663	60.00%	9.62%	5.77%
Long and Short-Term Debt	1,215,109	0	1,215,109	0	1,215,109	40.00%	10.00%	4.00%
Customer Deposits	0	0	0	0	0	0.00%	8.00%	0.00%
Advances from Associated Companies	0	0	0	0	0	0.00%	0.00%	0.00%
Other	0	0	0	0	0	0.00%	0.00%	0.00%
	3,037,772	0	3,037,772	0	3,037,772	100.00%		9.77%

Range of Reasonableness:	High	Low
Common Equity	10.62%	8.62%
Overall Rate of Return	10.37%	9.17%

NOCATEE UTILITY CORPORATION
 Monthly Water Rates
 At 80% of Design Capacity
 WATER SERVICE

DOCKET NO. 990696-WS
 Schedule No. 5-A

BASE FACILITY CHARGE	UTILITY PROPOSED	STAFF RECOMMENDED
5/8" X 3/4"	8.87	8.85
3/4"	13.35	13.28
1"	22.25	22.13
1 1/2"	44.50	44.25
2"	71.20	70.80
3"	142.40	141.60
4"	222.50	221.25
6"	445.00	442.50
8"	712.00	708.00
CHARGE PER 1,000 GALLONS	1.59	1.50

TYPICAL RESIDENTIAL BILLS

	UTILITY PROPOSED	STAFF RECOMMENDED
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RESIDENTIAL BILLS	5/8" X 3/4"	
5,000 gallons	\$ 16.82	\$ 16.35
10,000 gallons	\$ 24.77	\$ 23.85
20,000 gallons	\$ 40.67	\$ 38.85

NOCATEE UTILITY CORPORATION
 Monthly Wastewater Rates
 At 80% of Design Capacity
 WASTEWATER SERVICE

DOCKET NO. 990696-WS
 Schedule No. 5-B

BASE FACILITY CHARGE	UTILITY PROPOSED	STAFF RECOMMENDED
5/8" X 3/4"	13.47	13.47
3/4"	20.21	20.21
1"	33.68	33.68
1 1/2"	67.35	67.35
2"	107.76	107.76
3"	215.52	215.52
4"	336.75	336.75
6"	673.50	673.50
8"	1,077.60	1,077.60
 CHARGE PER 1,000 GALLONS		
Residential	4.07*	3.91
General Service	4.88	4.70

* Maximum of 10,000 gallons

TYPICAL RESIDENTIAL BILLS		
	UTILITY PROPOSED	STAFF RECOMMENDED
RESIDENTIAL BILLS	5/8" X 3/4"	
5,000 gallons	\$ 33.82	\$ 33.02
10000 gallons	\$ 54.17	\$ 52.57
20,000 gallons	\$ 54.17	\$ 52.57

NOCATEE UTILITY CORPORATION
 At 80% of Design Capacity
 REUSE SERVICE

	UTILITY PROPOSED	STAFF RECOMMENDED
BASE FACILITY CHARGE		
5/8" X 3/4"	9.71	9.36
3/4"	14.57	14.04
1"	24.28	23.40
1 1/2"	48.55	46.80
2"	77.68	74.88
3"	155.36	149.76
4"	242.75	234.00
6"	485.50	468.00
8"	776.80	748.80
CHARGE PER 1,000 GALLONS	0.35	0.35

TYPICAL RESIDENTIAL BILLS

	UTILITY PROPOSED	STAFF RECOMMENDED
RESIDENTIAL BILLS	5/8" X 3/4"	
5,000 gallons	\$ 11.46	\$ 11.11
10,000 gallons	\$ 13.21	\$ 12.86
20,000 gallons	\$ 16.71	\$ 16.36

NOCATEE UTILITY CORPORATION
 Schedule of Projected C.I.A.C.
 At 100% of Design Capacity
 DOCKET NO. 990696-WS

Schedule No. 6

Acct. No.	Account Description	Water	Wastewater	Reuse
101	Utility Plant in Service	\$4,202,114	\$7,247,729	\$6,327,452
104	Accumulated Depreciation	(338,703)	(790,327)	(688,651)
	Net Plant	\$3,863,411	\$6,457,402	\$5,638,801
271	C.I.A.C.	(\$3,187,942)	(\$5,364,850)	(\$5,659,731)
272	Accum. Amortization of C.I.A.C.	167,214	403,744	349,919
	Net C.I.A.C.	(\$3,020,728)	(\$4,961,106)	(\$5,309,812)
	Net C.I.A.C. / Net Plant	78.19%	76.83%	94.17%
	Gross to Gross Minimum Contribution Level	97.26%	70.38%	89.51%
	Staff Recommended Charge	\$95	\$115	\$550

INTERCOASTAL UTILITIES INC.

Existing Residential Rates and Typical Bills
WATER SERVICE

DOCKET NO. 990696-WS
Schedule No. 7-A

BASE FACILITY CHARGE

5/8" X 3/4"	\$6.91
1"	\$15.62
1 1/2"	\$30.14
2"	\$47.56

CHARGE PER 1,000 GALLONS

\$0.89

RESIDENTIAL BILLS

	5/8" X 3/4"
5,000 gallons	\$11.36
10,000 gallons	\$15.81
20,000 gallons	\$24.71

INTERCOASTAL UTILITIES INC.

Existing Residential Rates and Typical Bills
 WASTEWATER SERVICE

DOCKET NO. 990696-WS
 Schedule No. 7-B

	During Recovery Rate Case Expense	After Recovery Rate Case Expense*
BASE FACILITY CHARGE		
All Meters	\$19.09	\$17.87
 CHARGE PER 1,000 GALLONS		
Residential - Maximum of 10,000 gallons	\$ 4.48	\$ 4.48
*Effective October 26, 2002		
 RESIDENTIAL BILLS		
5,000 gallons	\$41.49	\$40.27
10,000 gallons	\$63.89	\$62.67
20,000 gallons	\$63.89	\$62.67