

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 990696-WS  
ORDER NO. PSC-99-1986-PCO-WS  
ISSUED: October 11, 1999

ORDER GRANTING IN PART AND DENYING IN PART  
MOTION FOR PROTECTIVE ORDER

On June 1, 1999, Nocatee Utility Corporation (NUC or utility) filed an application for original certificates to operate a water and wastewater utility in Duval and St. Johns Counties. On June 30, 1999, Intercoastal Utilities, Inc. (Intercoastal) timely filed a protest to NUC's application and requested a formal hearing. Accordingly, this matter has been scheduled for an administrative hearing on May 9 and 10, 2000.

On August 12, 1999, Intercoastal filed a Notice of Taking Deposition Duces Tecum of Mr. Roger M. O'Steen and Mr. Douglas C. Miller. On August 16, 1999, NUC filed a Motion for Protective Order and to Quash Subpoenas for the taking of Messrs. O'Steen's and Miller's depositions. On August 24, 1999, Intercoastal filed a Notice Canceling Depositions of Messrs. O'Steen and Miller. By Order No. PSC-99-1806-PCO-WS, issued September 16, 1999, NUC's Motion for Protective Order and to Quash Subpoenas was denied as moot.

On August 18, 1999, Intercoastal served Intercoastal's First Request for Production of Documents to NUC. On September 14, 1999, NUC filed its Second Motion for Protective Order. In its motion, NUC states that on September 7, 1999, the Board of County Commissioners of St. Johns County (County), the body that regulates Intercoastal, denied Intercoastal's application to serve the area at issue, and that consequently, NUC has filed a motion to dismiss Intercoastal's objection in this docket, arguing that Intercoastal no longer has standing to oppose NUC's application. NUC further states that it "should not be required to incur the time and expense of responding to Intercoastal's broad document production demands while there is a cloud over Intercoastal's right to continue as a party to this proceeding." NUC requests that a protective order be issued, postponing the due date for NUC's response and objections to Intercoastal's First Request for

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Production of Documents until ten days after the Commission has ruled on NUC's Motion to Dismiss Intercoastal's Objection.

On September 21, 1999, Intercoastal filed a response to NUC's motion for protective order. In its response, Intercoastal states that NUC's filing of a motion for protective order and statement that it will make any objections to the document request if and when document production goes forward is contrary to the ten-day protest period to make objections to discovery requests provided in Order No. PSC-99-1764-PCO-WS (Order Establishing Procedure), issued September 9, 1999. Intercoastal further states that it is prejudiced by any further delay in moving forward with discovery and that NUC's motion to dismiss is not a basis for the delay of NUC's response to Intercoastal's discovery "until some unknown and nebulous future date." Also, Intercoastal states that it is already prejudiced by the fact that NUC has yet to file the portion of its application pertaining to the establishment of its rates and charges.

In its motion for protective order, NUC cites Rule 1.280(c), Florida Rules of Civil Procedure, which states that the presiding officer has broad discretion, upon motion by a party for good cause shown, to enter any order to protect a party from undue burden or expense. Also, NUC cites cases in which discovery was postponed pending resolution of a motion to dismiss. See In re: Petition of Lee County Electric Cooperative Against Florida Power and Light Company, Order No. 15360, issued November 15, 1985, in Docket No. 850129-EU (allowing the postponement of depositions until a reasonable time following a vote on a motion to dismiss); Feigin v. Hospital Staffing Services, 569 So. 2d 941 (Fla. 4th DCA 1990) (finding that the trial court did not abuse its discretion by staying discovery depositions pending a motion to dismiss a hearing).

By its motion for protective order, NUC is not objecting to the discovery request, but is instead requesting a temporary postponement of the document request until the Commission renders its decision on NUC's motion to dismiss. Furthermore, NUC was unable to move for a protective order sooner because the County did not vote to deny Intercoastal's application until September 7, 1999. Additionally, in the event the motion to dismiss is granted, any resources and effort expended in discovery will be needless. Moreover, Intercoastal's testimony and exhibits are not due to be filed until mid-January; therefore, it will have sufficient time

ORDER NO. PSC-99-1986-PCO-WS  
DOCKET NO. 990696-WS  
PAGE 3

prior to filing its testimony to obtain this discovery if the motion to dismiss is denied.


In consideration of the foregoing, NUC's Second Motion for Protective Order is hereby granted in part and denied in part. The motion is denied to the extent that NUC requests that it be given ten days after the Commission has ruled on the Motion to Dismiss Intercoastal's Objection in which to respond to the discovery request. Instead, if the Commission votes to deny NUC's Motion to Dismiss Intercoastal's Objection, NUC shall produce the documents contained in Intercoastal's document request within three days of the Commission vote, as this was the amount of time remaining to produce the documents before NUC filed its motion for protective order.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Nocatee Utility Corporation's Second Motion for Protective Order is hereby granted in part and denied in part, as set forth herein. It is further

ORDERED that if the Commission votes to deny Nocatee Utility Corporation's Motion to Dismiss Intercoastal Utilities, Inc.'s Objection, Nocatee Utility Corporation shall produce the documents contained in Intercoastal Utilities, Inc.'s First Request for Production of Documents to Nocatee Utility Corporation within three days of a Commission vote denying Nocatee Utility Corporation's motion to dismiss.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 11th day of October, 1999.

  
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J. TERRY DEASON  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.