

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 990696-WS

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

DOCKET NO. 992040-WS  
ORDER NO. PSC-01-0932-PCO-WS  
ISSUED: April 11, 2001

ORDER GRANTING NOCATEE UTILITY CORPORATION'S MOTION  
FOR LEAVE TO FILE ADDITIONAL TESTIMONY

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) timely filed a protest to NUC's application and requested a formal hearing. By Order No. PSC-99-1764-PCO-WS (Order Establishing Procedure), issued September 9, 1999, controlling dates were established in this docket. On November 23, 1999, NUC and Intercoastal filed a Joint Motion to Revise Schedule and Hearing Dates. That motion was granted by Order No. PSC-99-2428-PCO-WS, issued December 13, 1999, and the controlling dates were changed accordingly.

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 (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), and JEA (formerly known as Jacksonville Electric Authority) timely filed objections to Intercoastal's application and requested a formal

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hearing. By Order No. PSC-00-0210-PCO-WS, issued February 2, 2000, Dockets Nos. 990696-WS and 992040-WS were consolidated. The County was granted intervention by Order No. PSC-00-0336-PCO-WS, issued February 17, 2000. JEA was granted intervention by Order No. PSC-00-0393-PCO-WS, issued February 23, 2000. The prehearing conference was held on July 12, 2000. The administrative hearing was scheduled for August 16, 17, and 18, 2000.

On July 21 and July 26, 2000, respectively, Intercoastal filed a Motion for Continuance and Supplemental Motion for Continuance, and on July 26, 2000, the County filed its Motion for Continuance. By Order No. PSC-00-1462-PCO-WS (Order Denying Oral Argument, Granting Motions for Continuance, and Order on Prehearing Conference), issued August 11, 2000, another prehearing conference and hearing dates were scheduled for March 28, 2001, and April 4 through 6, 2001, respectively.

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 prehearing conference and hearing dates were rescheduled for April 16, 2001, and May 7 through 9, 2001, respectively.

#### MOTION

On March 22, 2001, NUC filed a Motion for Leave to File Additional Direct Testimony. The additional direct testimony requested is that of Deborah D. Swain. In support of its motion, NUC states that in preparing its response to Staff's Second Set of Interrogatories and Second Request for Production of Documents, NUC discovered that a computational error had been made in the calculation of wastewater rates. NUC seeks leave to file additional direct testimony of Ms. Swain in order to correct the computational error and to furnish a REVISED Exhibit \_\_\_ (DDS-12) which will present the revised wastewater rates. NUC attached a copy of the testimony and exhibit to its motion, and also furnished the workpapers supporting the corrected computation to all of the parties on the same day it filed its motion.

NUC states that the granting of its motion will give the Commission the information necessary to set appropriate wastewater rates for NUC, and that permitting NUC to file the additional direct testimony will not prejudice any other party. NUC further states that because the deposition of Ms. Swain is currently scheduled for April 6, 2001, the parties will have full opportunity to inquire into the wastewater rate computation at that time.

On March 29, 2001, Intercoastal timely filed its Response in Opposition to Nocatee's Motion for Leave to File Additional Direct Testimony. In its response, Intercoastal points to the fact that NUC's application has been pending for well over a year, and Ms. Swain first filed prefiled testimony in this case in February, 2000. Intercoastal further points to the fact that Ms. Swain's deposition is scheduled for April 4, 2001. Also, Intercoastal states that there is no further opportunity contemplated by the Order Establishing Procedure for any party to file any further testimony between now and the time of the hearing.

In further support of its position that NUC's motion be denied, Intercoastal states that it will be greatly prejudiced if it has to devote time and resources in understanding the complex and varied changes introduced by Ms. Swain's additional testimony. Intercoastal states that its prior testimony, exhibits, and trial strategy were at least partly responsive to the conclusions of Ms. Swain. Intercoastal further asserts that "to allow NUC to wait until all the testimony is filed and then miraculously discover rates which put it in a more favorable position in relation to Intercoastal is unfair, prejudicial to Intercoastal, and should not be tolerated or otherwise allowed by this Commission."

Intercoastal further states that NUC's contention that the filing of the additional testimony will not prejudice any other party because the deposition of the witness has not yet taken place is "patently incorrect." Intercoastal states that its expert has already filed responsive testimony to the prior testimony of the witness, and all of Intercoastal's activities assumed that the prior testimony provided by Ms. Swain would be the testimony she would offer at the hearing. Thus, Intercoastal requests that NUC's motion be denied, or at the very least, that Intercoastal be given an opportunity to respond to the testimony if NUC's motion is granted.

Because the discovery of Ms. Swain's miscalculation was brought to light in response to discovery submitted by staff, it appears that NUC's effort to correct the miscalculation is motivated by an effort to provide this Commission with all the correct data necessary to appropriately set wastewater rates for NUC. In addition, it appears that the calculation in question involves a recognized, established formula which is mechanical and not complex in nature.

In addition, if NUC's motion were denied, Ms. Swain's miscalculation would likely be addressed and corrected during cross-examination at the hearing. Allowing the additional testimony to be filed at this time gives all the parties prior notice of the miscalculation as well as the opportunity to respond by filing rebuttal testimony on this issue.

Accordingly, NUC's Motion for Leave to File Additional Direct Testimony is reasonable and is hereby granted. Parties and staff will be given 14 days from the issuance date of this Order to file rebuttal testimony to Ms. Swain's additional testimony.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.


Based on the foregoing, it is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Nocatee Utility Corporation's Motion for Leave to File Additional Direct Testimony is granted. It is further

ORDERED that parties and staff will have 14 days from the issuance date of this Order to file rebuttal testimony to NUC witness Swain's additional testimony.

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By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 11th day of April, 2001.

  
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J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

LAE

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

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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.