

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-01-1032-PHO-WS

ISSUED: April 27, 2001

**PREHEARING ORDER**

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on April 16, 2001, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

RICHARD MELSON, ESQUIRE, Hopping, Green, Sams & Smith, P.A., Post Office Box 6526, Tallahassee, Florida 32314  
On behalf of Nocatee Utility Corporation and DDI, Inc.

JOHN WHARTON, ESQUIRE, Rose, Sundstrom & Bentley, LLP, 2548 Blainstone Pines Drive, Tallahassee, Florida 32301  
On behalf of Intercoastal Utilities, Inc.

J. STEPHEN MENTON, ESQUIRE, Rutledge, Ecenia, Purnell & Hoffman, P.A., Post Office Box 551, Tallahassee, Florida 32302  
On behalf of JEA.

SUZANNE BROWNLESS, ESQUIRE, Suzanne Brownless, P.A., 1311-B Paul Russell Road, Suite 201, Tallahassee, Florida 32301  
On behalf of St. Johns County.

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FPSC-REC'DS REPORTING

MICHAEL J. KORN, ESQUIRE, Korn & Zehmer, P.A., 6620  
Southpoint Drive, Suite 200, Jacksonville, Florida 32216  
On behalf of Sawgrass Association, Inc.

SAMANTHA M. CIBULA and LORENA A. ESPINOZA, ESQUIRES,  
Florida Public Service Commission, 2540 Shumard Oak  
Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commission Staff.

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. 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.

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), 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, St. Johns

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-00-0393-PCO-WS, issued February 23, 2000, JEA was granted intervention in Docket No. 990696-WS to support NUC's application.

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.

At the June 19, 2000, special agenda conference, 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. Further, the Commission denied the Motion to Dismiss filed St. Johns County.

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 (Order Denying Oral Argument, Granting Motions for Continuance, and Order on Prehearing Conference), issued August 11, 2000, 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.

Opening statements shall not exceed ten minutes per party.

### III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, and Order No. PSC-00-1462-PCO-WS, issued August 11, 2000, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages, and shall be filed at the same time.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity

to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct/</u> <u>Supplemental Direct/</u> <u>Additional Direct</u>		
H. Jay Skelton	NUC	1,2,3,8,11
Douglas C. Miller (Direct and Supplemental Direct)	NUC	A,1,3,4,8,10,11
Deborah D. Swain (Direct, Supplemental Direct, and Additional Direct)	NUC	5,6,7,10,11
M.L. Forrester	IU	A,1,3,4,6,9,10,11, B,13,14,15,16,17,20
Jim Miller	IU	A,1,3,4,9,10,11,B,1 5,16,17,20

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Michael Burton	IU	1,3,6,9,10,11,14, 15,16,17,20
H.R. James	IU	1,9,10,11,14,15,16, 20
<u>Intervenors</u>		
Scott Kelly	JEA	A,1,2,3,4,8,11,12, 13,15,16,20
Timothy Perkins (Intervenor and Rebuttal)	JEA	4,11,15,16,20
Pat Arenas	Sawgrass	All
A. Richard Olson  (Don Flury may substitute for and adopt the testimony of Mr. Olson)	Sawgrass	All
William G. Young	County	A,1,2,3,4,8,9,10, 11,12,B,13,14,15, 16,19,20,21
Charles Gauthier (Direct and Supplemental)	Staff	1,13
Edward Cordova  (Will substitute for and adopt the testimony of Dr. T. James Tofflemire and Mr. Scott Trigg)	Staff	4,15,16
Rob Lear  (Will substitute for and adopt the testimony of Mr. Edward Cordova)	Staff	4,16
Caroline Silvers	Staff	4
<u>Intervenor/ Supplemental Intervenor/ Rebuttal</u>		
H. Jay Skelton	NUC	8,11,13,20



<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Douglas C. Miller	NUC	9, 11, 12, 13, 15, 16, 20
Deborah D. Swain	NUC	14, 17, 20
M.L. Forrester (Intervenor, Supplemental Intervenor, and Rebuttal)	IU	2, 8, 12, 18, 19, 21
Jim Miller (Intervenor, Supplemental Intervenor, and Rebuttal)	IU	A, 1, 3, 4, 9, 10, 11, 13, B, 15, 16, 17, 20
Michael Burton (Intervenor, Supplemental Intervenor, and Rebuttal)	IU	2, 5, 7, 18, 19
Jim Bowen (Rebuttal only)	IU	10, 11, 14, 15, 20

#### VII. BASIC POSITIONS

**NUC:** This consolidated docket involves competing applications to provide service to territory in Duval and St. Johns Counties. NUC is a wholly-owned subsidiary of DDI, Inc. DDI is the owner of approximately 15,000 acres of land located west of the Intracoastal Waterway in Duval and St. Johns Counties that has been permitted for development as the Nocatee Development of Regional Impact. NUC has an agreement with JEA under which NUC will obtain bulk water, wastewater and reuse service from JEA in quantities and time frames which meet the needs of the development. As an affiliate of the landowner of a major development project, NUC is uniquely positioned to provide service in a way that is consistent with the overall plans and needs of the development, including its

strong environmental ethic. DDI is also the owner of additional land in Duval and St. Johns Counties which is not planned for development and which has no need for service.

Intercoastal is an existing single-county utility whose service territory is located east of the Intracoastal Waterway in St. Johns County. Intercoastal's application includes the Nocatee development which NUC proposes to serve, additional DDI lands in St. Johns County which have no need for service, and two other proposed developments in St. Johns County which St. Johns County is serving or plans to serve. Intercoastal's current plan for service (which has changed repeatedly over the past two years) involves the construction of new facilities west of the Intracoastal Waterway, use of groundwater to supplement reuse for irrigation purposes, and wet weather discharges into the Intracoastal Waterway. These features are inconsistent with the development order conditions for the Nocatee development; hence Intercoastal's plan of service is not technically feasible. Additionally, following a six day evidentiary hearing, St. Johns County previously denied Intercoastal's application to extend its service area to include the portion of its requested territory that is located in St. Johns County.

When all factors are considered, including the need for service, the financial and technical capabilities of the parties, the projected rates, the feasibility of the plans for service, and the landowner's preference, it is in the public interest to grant NUC's application and to deny Intercoastal's application.

**IU:** It is in the public interest to grant the application of Intercoastal. Certification of the areas sought by Intercoastal's application to Intercoastal will result in the orderly growth of an existing utility and will ultimately benefit Intercoastal's existing and future customers in its present service area as well as the future customers who will ultimately receive service in its proposed extended service area. Intercoastal is best

able to serve the Nocatee development and certification by the PSC of NUC will result in an uneconomic duplication of facilities and utility services.

**JEA:** These consolidated dockets involve competing applications to provide service to territory in Duval and St. Johns Counties. JEA supports the application submitted by NUC and opposes the application submitted by Intercoastal. Granting the NUC application will enable the developer of the property in question to meet its environmental goals and ensure that utility service is consistent with the long-term development plans for the property. Furthermore, the NUC application best accommodates the sensitive environmental needs of the area and will result in reliable, cost-effective service for the ultimate residents

JEA and NUC have entered into an Agreement for Wholesale Utilities, Operations, Management and Maintenance dated July 24, 2000, pursuant to which JEA has agreed to provide bulk water, wastewater and reuse service to NUC in the quantities and time frames which meet the needs of the development. Furthermore, JEA has entered into an agreement with St. Johns County pursuant to which JEA will provide bulk water and wastewater service to the County including certain portions of the territory requested by Intercoastal. Construction of the infrastructure necessary for JEA to meet its obligations to St. Johns County is well underway. The construction of these facilities is part of JEA's on-going development of integrated water, wastewater and reuse systems in northeast Florida. Approval of the NUC application will enable that territory to be integrated into these regional systems. Approval of Intercoastal's application would result in unnecessary duplication of facilities JEA has already constructed, as well as additional facilities that are being added to the JEA's regional network. The public interest will be best served if NUC's application is approved and Intercoastal's application is denied.

**COUNTY:** The Florida Public Service Commission is without jurisdiction at this time to hear the applications for

original certificates filed by NUC and Intercoastal. Further, Intercoastal is estopped from seeking to certify in this proceeding the same service territory in St. Johns County that the St. Johns County Water and Sewer Authority previously denied it permission to serve. Even should the Commission have jurisdiction to grant Intercoastal an original certificate, the Commission should not grant Intercoastal service territory located in the County's Exclusive Service Territory which the County is already contractually obligated to serve and is in the process of constructing, through its agreement with JEA, the facilities to serve. With regard to NUC, NUC is a straw man for JEA. JEA is without the authority to provide utility services in St. Johns County without the County's permission. St. Johns County, not the FPSC, is the proper forum for that determination.

**SAWGRASS:** The Association takes no position on the application of NUC for an original certificate for water and wastewater service in Duval County and St. Johns County, Florida. The Association opposes the application filed by Intercoastal for an amendment of its certificate for an extension of territory, and for an original water and wastewater certificate. It is the Association's position that Intercoastal does not possess the requisite technical ability to serve the requested area, and it is not in the public interest for Intercoastal to be granted a water and wastewater certificate for the proposed territory.

**STAFF:** Non-testifying staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary position. The information gathered through discovery and prefiled testimony indicates, at this point, that there may be a need for service in the proposed Nocatee development if the Development of Regional Impact (DRI) is approved. The determination as to which utility should serve the proposed Nocatee development cannot be made until the evidence presented at hearing is analyzed. The positions

of the witnesses testifying on behalf of staff are set forth below in Issues 1, 3, 4, 13, 15 and 16.

VIII. ISSUES AND POSITIONS

**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?

**POSITIONS**

**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. (Forrester, Miller)

**JEA:** NUC has established that its proposed system satisfies the requirements of Section 367.171(7), Florida Statutes.

**COUNTY:** No. NUC has not produced any maps or plats which indicate that it will ultimately hold legal title to water and wastewater lines which cross county boundaries.

**SAWGRASS:** No position.

**STAFF:** 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.

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

**POSITIONS**

**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 2002. (Skelton, Miller)

**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 as set forth in its Prefiled testimony. (Forrester, Burton, James, Miller)

**JEA:** Yes. JEA has been negotiating with the developer of the territory included in NUC's application to coordinate the timely delivery of service. JEA anticipates that it will be able to meet the expected service needs of NUC. (Kelly)

**COUNTY:** No to the extent that such territory is located in St. Johns County since St. Johns County claims it intends to provide service to that portion of the proposed service territory.

**SAWGRASS:** No position.

**STAFF:** From a land use planning standpoint, there is no need for the expansion of central water and wastewater service into the rural area of the proposed Nocatee development at the present time. However, the determination of need will change if the proposed Nocatee DRI is approved by the DCA. Provided the DRI is approved, the land use designations will change and allow development at an urban density and intensity. (Gauthier)

Non-testifying staff has no position pending further development of the record as to when service to the proposed Nocatee development will be required.

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

**POSITIONS**

**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 to fund the utility operations during this period. (Skelton)

**IU:** Assuming it provides sufficient proof to the same in an admissible form at the time of hearing, NUC probably has the financial ability to serve the requested territory. Such financial ability is incumbent upon NUC's calculations regarding rates, fees, and charges having been done properly and correctly and upon a finalization of NUC's plan of service. (Forrester, Burton)

**JEA:** Yes. From the information provided to JEA, it appears that NUC will have the financial ability to serve the requested territory. (Kelly)

**COUNTY:** The real party providing service to the proposed NUC territory is JEA. NUC's and/or DDI's financial resources will be called upon only to provide the collection and distribution lines normally contributed by a developer. DDI, NUC's parent company appears to have the ability to do this.

**SAWGRASS:** No position.

**STAFF:** NUC appears to have the financial ability to serve the requested territory through its parent company, DDI.

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

**POSITIONS**

**NUC:** Yes. NUC has entered into an agreement to obtain bulk water, wastewater and reuse service from JEA. Under the

agreement, JEA will also provide line maintenance, meter reading, billing, customer service, and other aspects of day-to-day operations. NUC has also assembled a team of consultants with experience in utility planning and ratemaking. (Skelton, Miller)

**IU:** NUC has no experience operating a utility and therefore does not have the technical ability to serve the requested territory. (Forrester, Miller, Burton)

**JEA:** Yes. JEA and NUC have entered into an Agreement for Wholesale Utilities, Operations, Management and Maintenance dated July 24, 2000. JEA will provide its extensive experience and technical ability to NUC in the provision of service to NUC's requested territory. (Kelly)

**COUNTY:** NUC does not have the technical, managerial or operational ability to serve the requested service territory. However, the real party providing service to the proposed NUC territory is JEA who does have such expertise.

**SAWGRASS:** No position.

**STAFF:** NUC has the technical ability to serve the requested territory through its contract with JEA. (Lear, Cordova, Silvers)

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

**POSITIONS**

**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. (Miller)

**IU:** No, NUC does not presently have the plant capacity to serve the requested territory. (Forrester, Miller)



**JEA:** Yes. 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. (Kelly, Perkins)

**COUNTY:** No. Water, reuse and wastewater treatment will be provided by JEA. While JEA may have the treatment capacity to serve Phase I, it does not possess the current ability to serve because there are no existing water, wastewater or reuse lines to the Nocatee development.

**SAWGRASS:** No position.

**STAFF:** NUC has the plant capacity to serve the requested territory through its contract with JEA. (Lear, Cordova, Silvers)

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

**POSITIONS**

**NUC:** Based on the Commission's 1999 leverage graph formula, the appropriate return on equity for NUC is 9.46%. NUC does not object to updating this return to reflect the most recent leverage graph. (Swain)

**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. (Burton)

**JEA:** No position.

**COUNTY:** No position.

**SAWGRASS:** No position.

**STAFF:** NUC's proposed return on equity is based on the 1999 Commission-approved leverage graph formula. However, 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.

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

**POSITIONS**

**NUC:** The appropriate water and wastewater 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. These rates and charges are shown in Revised Exhibit DDS-12. The appropriate reuse rates are ones that will recover the utility's cost while not being so high as to discourage reuse. The rates shown in DDS-10 and DDS-12 have been redesigned to reduce the charge to large users while keeping the average monthly residential bill at an affordable level. These are the appropriate reuse rates and charges for NUC. (Swain)

**IU:** The appropriate rates and charges for NUC are yet to be established by the evidence at trial. (Forrester, Burton)

**JEA:** No position.

**COUNTY:** No position.

**SAWGRASS:** No position.

**STAFF:** No position pending further development of the record as to final rates. However, the factored ERCs and gallons used to set the wastewater rates should be used for setting the water rates adjusted to recognize the appropriate cap on water usage for wastewater billing.

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

**POSITIONS**

**NUC:** The appropriate main extension charges for NUC are as follows:

Water	\$ 95
Wastewater	\$ 115
Reuse	\$ 550

In addition, NUC will collect from customers and remit to JEA the actual amount of JEA's plant capacity charges, which are currently as follows:

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

(Swain)

**IU:** The appropriate service availability charges for NUC will be determined by the evidence to be developed at hearing.  
(Burton)

**JEA:** No position.

**COUNTY:** No position.

**SAWGRASS:** No position.

**STAFF:** No position pending further development of the record.

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

**POSITIONS**

**NUC:** Using a 9.46% cost of equity from the Commission's 1999 leverage graph formula, the appropriate AFUDC rate is 9.68%, which is a discounted monthly rate of .7799%. NUC does not object to updating this rate to reflect the cost of equity based on the most recent leverage graph.

**IU:** No position.

**JEA:** JEA adopts NUC's position.

**COUNTY:** No position.

**SAWGRASS:** No position.

**STAFF:** NUC's AFUDC rate 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.

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

**POSITIONS**

**NUC:** The landowner prefers to receive service from NUC. 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. The Commission should give significant weight to this landowner preference. (Skelton, Miller)

**IU:** It is entirely predictable that a land owner who proposes to certificate a utility to serve his proposed development would "prefer" service from himself. This type of "land owner preference" should be given no weight by the Commission in this case because such "preference" is not determinative or reflective of the public interest nor in the ultimate interest of the future customers who will live in the areas to be developed. In fact, in this case the interest of the land owners and the interests of those customers who will ultimately receive service may be diametrically opposed. (Forrester)

**JEA:** With respect to the Nocatee development, the developer of the property has sought bulk service arrangements with JEA as the best and most efficient way to ensure that its environmental goals are met while providing service on a timely basis with the capacity required to meet the needs

of the development. The Commission should give significant weight to this landowner preference. (Kelly)

**COUNTY:** Storey v. Mayo, 217 So.2d 304 (Fla. 1968), the controlling case in this area, clearly articulates current Florida law that customers cannot choose their utility.

**SAWGRASS:** No position.

**STAFF:** Pursuant to Storey v. Mayo, 217 So. 2d 304, 307-08 (Fla. 1968), "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself." Therefore, no weight should be given to the landowner's preference.

**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?

**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. There is no existing utility in the area proposed for certification by NUC. Intercoastal's system is located entirely on the east side of the Intracoastal Waterway. Intercoastal's proposed service to Nocatee would require the construction of new facilities on the west side of the Intracoastal Waterway. Thus there is no duplication of or competition with any existing system. (Miller)

**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. (Forrester, James, Miller, Burton)

**JEA:** JEA adopts NUC's position.

**COUNTY:** Yes. The County claims it intends to provide service to the Nocatee development located in St. Johns County by modification of its existing water and wastewater utility systems.

**SAWGRASS:** No position.

**STAFF:** Since there is no other existing utility in the proposed Nocatee development, there will not be a duplication of a system. Staff has no position pending further development of the record as to whether the granting of certificates to NUC will result in a system which is in competition with another 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?

**POSITIONS**

**NUC:** No. Section 367.045(5)(a) does not apply. First, NUC's wastewater system will not be a Class C system as defined by the Commission rules. Second, Nocatee cannot be served by the modification or extension of an existing system. Intercoastal does not propose to modify or extend its current system to serve Nocatee, but instead proposes to build a new system west of the Intracoastal Waterway. (Miller, Swain)

**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. (Forrester, James, Miller, Bowen, Burton)

**JEA:** JEA adopts NUC's position.

**COUNTY:** Yes, if one assumes that NUC is the real party in interest in this proceeding, the NUC proposed wastewater system is a Class C system under Commission rules and the County claims that the public can be adequately served by modifying and extending the County's existing wastewater system.

**SAWGRASS:** No position.

**STAFF:** 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 Intercoastal has not proposed to modify or extend its current 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?

**POSITIONS**

**NUC:** Yes. (Skelton, Miller, Swain)

**IU:** No. (Forrester, Miller, Burton, James, Bowen)

**JEA:** Yes. (Kelly, Perkins)

**COUNTY:** No, the St. Johns County Utilities Department is the proper utility service provider in St. Johns County. Further, the proper forum to determine who should provide service to the Nocatee development is the St. Johns County Board of County Commissioners.

**SAWGRASS:** No position.

**STAFF:** No position pending further development of the record.

**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?

POSITIONS

- 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 apply the doctrines of res judicata and/or collateral estoppel to bar Intercoastal from re-litigating its right to serve the St. Johns County portion of its proposed territory expansion (Miller)
- 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 same territory applied for in St. Johns County. The circumstances under which Intercoastal's application was filed are not the circumstances under which Intercoastal's application was filed before St. Johns County. The Commission should also consider the fact that in the "hearing" before St. Johns County, the County itself opposed Intercoastal's application by filing a petition requesting that the application be denied; the County presented witnesses adverse to Intercoastal's application who testified that the County intended to compete with Intercoastal in terms of serving some of the areas for which Intercoastal had applied; the County engaged in cross examination of Intercoastal's witnesses; and the County engaged in legal and factual arguments adverse to Intercoastal's application. Despite all of this, the County saw no problem with the fact the County also sat in the position of "judge" in the case, and two motions to recuse the County (or its alter ego, the Authority) and to allow a neutral hearing officer to try the case were denied. (Forrester)
- JEA: Yes. Intercoastal has previously sought approval from the St. Johns County Water and Sewer Authority to serve



the same additional territory in St. Johns County requested by Intercoastal in this docket. After an extensive evidentiary hearing, the St. Johns County Water and Sewer Authority denied Intercoastal's request and that decision was affirmed by the St. Johns County Board of County Commissioners. Among other things, the Authority and the Board concluded that adequate arrangements had already been made for service to those portions of the requested territory in St. Johns County. Intercoastal has appealed the Board's decision. The Commission should honor those determinations and apply the doctrines of res judicata and/or collateral estoppel to bar Intercoastal from re-litigating its second request to serve the additional territory in St. Johns County. (Kelly)

**COUNTY:** No position.

**SAWGRASS:** Yes.

**STAFF:** No position pending further development of the record.

**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?

**POSITIONS**

**NUC:** No position.

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

**JEA:** Intercoastal cannot meet the requirements of Section 367.171(7), Florida Statutes, because its request for an original certificate for specific new territory in St. Johns County has previously been denied by the St. Johns County Water and Sewer Authority and St. Johns County Board of County Commissioners.

**COUNTY:** No.

**SAWGRASS:** No position.

**STAFF:** 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 Intercoastal's application.

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

**POSITIONS**

**NUC:** There is a need for service beginning in 2002 in the portion of Intercoastal's proposed territory comprising the Nocatee development. There is no need for service to the DDI lands outside Nocatee that have been included in Intercoastal's application. NUC understands that service was required in 2000 to the Walden Chase development included in Intercoastal's application and that the Walden Chase developer is receiving service from St. Johns County under a bulk service arrangement between the County and JEA. Thus, there is no need that will not be satisfied either by NUC's proposal or by facilities that are under construction by JEA. (Skelton, Miller)

**IU:** As our basic position, there is a need for service in the territory proposed by Intercoastal's application. That area which comprises the Nocatee development will experience demand for service at a time to be established by the evidence in this proceeding. Certificating the remainder of the territory requested by Intercoastal will allow the orderly planning for, and provision of, service by Intercoastal to these areas in the most effective and efficient manner. (Forrester)

**JEA:** Pursuant to an agreement between St. Johns County and JEA, JEA has been appointed the exclusive provider of wholesale water and wastewater services in the service area identified in that agreement which includes portions of the territory sought by Intercoastal in this

consolidated docket. The landowners of much of the additional territory in St. Johns County sought by Intercoastal have entered into agreements with St. Johns County, which will be providing service under a bulk service arrangement with JEA. There is no need for service from Intercoastal for the Walden Chase development in St. Johns County. Intercoastal has included this development in its application even though the Walden Chase developer has arranged to receive service from St. Johns County under a bulk service arrangement between the County and JEA. JEA has completed construction of the lines necessary to provide service to Walden Chase. With respect to the Nocatee development which is also included in the territory requested by Intercoastal, there will be a need for service in accordance with the landowners' development plan. JEA has been working closely with the developer to meet that need for service. There are additional lands outside of Nocatee owned by the developer of that project which have been included in Intercoastal's application. To JEA's knowledge, there is no need for service in those areas. (Kelly)

**COUNTY:** With regard to the Nocatee development area located in St. Johns County, there is no need for service because the County claims it intends to provide that service. With regard to Intercoastal's current service territory, the County has previously determined the need for service in that area. With regard to the service territory being requested by Intercoastal which does not include the Nocatee area or its current service territory, there is no need for service either because there are no plans for development or because the area is located in the County's Exclusive Territory and is being served by the County.

**SAWGRASS:** Based upon the Prefiled Direct Testimony in this cause, and documents produced in connection therewith, it would appear that the territory comprising the Nocatee development will need water and wastewater service, both in the near term and during Nocatee's projected long-range development. The Association has no basis to

determine when service would be required by Nocatee's developers.

**STAFF:** From a land use planning standpoint, there is no need for the expansion of central water and wastewater service into the rural area of the proposed Nocatee development at the present time. However, the determination of need will change if the proposed Nocatee DRI is approved by the DCA. Provided the DRI is approved, the land use designations will change and allow development at an urban density and intensity. (Gauthier)

Non-testifying staff has no position pending further development of the record as to when service will be required for the Nocatee development. There is a need for service in Intercoastal's existing service area. There is no need for service in the area north of the Nocatee and Walden Chase developments. Staff has no position pending further development of the record as to whether there is a need for service in the remaining territory proposed in Intercoastal's application and when service will be required in these areas.

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

**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. (Swain)

**IU:** Yes. (Forrester, James, Burton, Bowen)

**JEA:** JEA adopts NUC's position.

**COUNTY:** Based on the materials produced in this proceeding, Intercoastal does not appear to have the financial ability to serve the requested service territory.

**SAWGRASS:** Based upon the testimony previously set forth in proceedings before the St. Johns County Water and Sewer Authority in June 1999, and based on the Prefiled Direct Testimony submitted in these dockets, it would appear that Intercoastal may have the financial ability to serve the requested expansion territory, based on the financial strength of Intercoastal's owners and investors. However, any such service would have to take into account the Association's objections to any increase in its water or wastewater rates based on any requested expansion into the requested territory.

**STAFF:** Intercoastal appears to have the financial ability to serve the territory requested in its application.

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

**POSITIONS**

**NUC:** No. Intercoastal's plan of service is not technically feasible in light of the conditions that have been placed on the Nocatee development by its DRI development order. For example, Intercoastal's plan of service includes on-site treatment facilities, use of groundwater to supplement reuse for irrigation purposes, and wet weather discharges to the Intracoastal Waterway, all of which are inconsistent with the Development Order for Nocatee. (Miller)

**IU:** Yes, Intercoastal's experience clearly demonstrates it has the technical ability to effectuate the proposals in its application. (Forrester, James, Miller, Bowen, Burton)

**JEA:** JEA adopts NUC's position. Only JEA can provide service to Nocatee in accordance with the conditions placed on the development pursuant to the development orders issued as part of the DRI process. (Kelly, Perkins)

**COUNTY:** Based on the materials produced in this proceeding, Intercoastal does not appear to have a technically or

economically feasible plan to serve the requested service territory.

**SAWGRASS:** It is the Association's position that Intercoastal does not have the technical ability to serve the requested territory. Over 1,500 property owners in Sawgrass community (who comprise the Association), as well as others, have been subjected to regular noxious odor from Intercoastal's only wastewater treatment plant, located immediately adjacent to the Sawgrass community. This is even after Intercoastal changed its wastewater processing method, which Intercoastal said would eliminate or significantly reduce the odor. As indicated in the Prefiled Testimony, there is also significant concern about Intercoastal's technical capacity to serve any expanded territory when it appears to be having problems serving its current territory.

**STAFF:** Intercoastal has the technical ability to serve the requested territory. (Cordova)

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

**POSITIONS**

**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. (Miller)

**IU:** Intercoastal will have sufficient plant capacity to provide service to all of the requested territory in a timely fashion as the need for service arises. (Forrester, Miller, James, Burton)

**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. (Kelly, Perkins)

**COUNTY:** Intercoastal does not have sufficient current plant capacity to provide for the service needs NUC has identified nor does their proposed plan of service provide future plant capacity that is technically or economically feasible to provide service to Nocatee or the other developments within the proposed service territory.

**SAWGRASS:** It is the Association's position that Intercoastal's only current wastewater treatment facility, located immediately adjacent to the Sawgrass community, does not have the requisite plant capacity to serve the requested territory. Intercoastal has affirmatively represented in these dockets that no wastewater generated from the Nocatee development (in the requested territory) will be transported to or processed at the Sawgrass Wastewater Treatment Facility. Intercoastal now states it plans to construct and operate new plants at or in the Nocatee development, should it be granted any expanded territory. The Association has no way of evaluating the technical, financial or operational, capacity of Intercoastal's proposed new plants, other than based on its past performance.

**STAFF:** Intercoastal may have the water capacity to serve the requested territory in the future. Intercoastal does not have the wastewater or reuse capacity to serve the requested territory at this time. (Cordova, Lear)

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

**POSITIONS**

**NUC:** Intercoastal appears to be requesting that its existing water and wastewater rates and charges be applied to the expansion territory. However, its financial projections show that the rates are insufficient to produce a reasonable return on its investment and that they produce insufficient net operating income to pay interest on its existing and projected debt. Intercoastal has not asked the Commission to establish specific reuse rates and

charges, therefore the appropriate rates are unknown.  
(Swain)

**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 rate at the appropriate time. (Miller, Forrester, Burton)

**JEA:** No position.

**COUNTY:** No position.

**SAWGRASS:** The Association takes the position that any Intercoastal rates and charges must be considered in conjunction with the pending rate case which is still ongoing before the St. Johns County Water and Sewer Authority. In any event, any action taken by the Commission should not operate in any respect to increase the water and wastewater rates for existing Intercoastal customers. Intercoastal is obligated under the terms of the aforementioned Utility Service Agreement to provide all reuse water needed by the Sawgrass County Club at no charge until 2013. The Association has no other position with respect to the issue of reuse rates and charges.

**STAFF:** No position pending further development of the record.

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

**POSITIONS**

**NUC:** No position at this time.

**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. (Forrester, Burton)



**JEA:** No position.

**COUNTY:** No position.

**SAWGRASS:** No position at this time.

**STAFF:** No position pending further development of the record.

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

**POSITIONS**

**NUC:** No position.

**IU:** Yes, Intercoastal should be authorized an appropriate AFUDC rate by the Commission in accordance with the Commission's presently existing procedures and policies.

**JEA:** No position.

**COUNTY:** No position.

**SAWGRASS:** No position.

**STAFF:** Intercoastal's AFUDC rate 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.

**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?

**POSITIONS**

**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 may benefit those same customers in the long run. (Forrester, Burton)

**JEA:** It appears that 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. The Commission should consider the concerns raised by the customers in reaching its decision in these consolidated dockets.

**COUNTY:** Intercoastal's existing customers do not support the extension of Intercoastal's service territory based on the poor performance of Intercoastal in its current service territory. However, Storey v. Mayo, 217 So.2d 304 (Fla. 1968), the controlling case in this area, clearly articulates current Florida law that customers cannot choose their utility.

**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:** Sawgrass Association does not support Intercoastal's application. The Commission should consider the customers' concerns as to Intercoastal's financial and technical ability to serve and the utility's rates and charges. However, pursuant to Story v. Mayo, 217 So. 2d 304, 307-08 (Fla. 1968), "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself."

**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?

**POSITIONS**

**NUC:** No. (Skelton, Miller, Swain)

**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 the future customers which Intercoastal will serve in the extension areas. Certification of Intercoastal will allow the Commission to retain oversight and regulatory jurisdiction over Intercoastal in the public interest. (All witnesses)

**JEA:** No. (Kelly, Perkins)

**COUNTY:** No.

**SAWGRASS:** For the reasons set forth above, the Association does not believe it would be in the public interest for Intercoastal to be granted a water certificate or wastewater certificate for the proposed territory.

**STAFF:** No position pending further development of the record.

**ISSUES OF LAW**

**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?

**POSITIONS**

**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. (Forrester)

**JEA:** With respect to Intercoastal's application, JEA has already completed construction of a substantial portion of the facilities necessary to provide bulk service to St. Johns County in accordance with the agreement between JEA and St. Johns County. Accordingly, the Commission should not grant Intercoastal's application which will duplicate those facilities. With respect to NUC's application, the Commission may grant NUC an original certificate to serve the Nocatee development and that certificate would not conflict with or duplicate the County's system because the County's system lacks the capacity to provide the needed service.

**COUNTY:** No, to the extent that Intercoastal has requested service territory located in the Exclusive Service Territory of the County which the County is claiming that it is currently constructing facilities to serve, Section 367.045(5)(a), Florida Statutes, prohibits such action. Further, the Commission is prohibited from granting a certificate for a proposed system which duplicates the County's water and wastewater system unless it determines that the County's systems are inadequate to meet the needs of the public or the County is unable, refuses or neglects to provide reasonably adequate service. The County claims it has the ability to provide adequate and timely service to the Nocatee service area in St. Johns County, the Commission cannot grant either Intercoastal or NUC the right to serve this portion of the service area requested.

**SAWGRASS:** No position at this time pending further development of the record.

**STAFF:** 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. Staff has no position pending further development of the record as to whether granting Intercoastal or NUC an original certificate will result in a system which will be in competition with or a duplication of the County's water and wastewater system.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
H. Jay Skelton	NUC	Composite Exhibit	NUC Application and Exhibits H, I, J, M, N
	NUC	HJS-1	DDI, Inc. Consolidated Financial Statements
	NUC	HJS-2	Master Service Agreement
	NUC	HJS-3	Intercoastal Proposed Territory vs. DDI/Estuary Land Holdings
Douglas C. Miller	NUC	Composite Exhibit	NUC Application Exhibits A-G and K-L and Supplemental Exhibit Q
	NUC	DCM-1	Vitae
	NUC	DCM-2	NUC Phase I Map

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Douglas C. Miller	NUC	DCM-3	Summary of Water, Wastewater and Reuse Demand by Phase
	NUC	DCM-4	Letter of Intent between DDI, Inc. and JEA
	NUC	DCM-5	JEA Service Availability Letter and Request
	NUC	Revised DCM-6	Nocatee Master Water, Wastewater and Reuse Plans - Phase I
	NUC	Revised DCM-7	Nocatee Master Water, Wastewater and Reuse Plans - Buildout
	NUC	DCM-8	Water, Wastewater and Reuse Facility Cost Estimates - Phase I
	NUC	DCM-9	St. Johns County Water and Sewer Authority Preliminary Order denying Intercoastal's Certificate Amendment Application

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Douglas C. Miller	NUC	DCM-10	St. Johns County Board of County Commissioners' Final Order Confirming the Water and Sewer Authority's Preliminary Order
	NUC	DCM-11	Excerpts from Nocatee's Application for Development Approval
	NUC	DCM-12	Utility Service Agreement Between Walden Chase and St. Johns County
	NUC	DCM-13	Letter re Interim Service to Walden Chase
	NUC	DCM-13A	Agreement for Wholesale Utilities, Operations, Management and Maintenance
	NUC	DCM-14	Excerpts from ADA Sufficiency Response
Deborah D. Swain	NUC	Composite Exhibit	NUC Application Supplemental Exhibits O-P and R-U
	NUC	DDS-1	Qualifications

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Deborah D. Swain	NUC	DDS-2	NUC Schedule of Rates and Charges
	NUC	DDS-3	NUC Schedules Supporting Calculation of Wastewater Rates and Charges
	NUC	DDS-4	NUC Schedules Supporting Calculation of Wastewater Rates and Charges
	NUC	DDS-5	NUC Schedules Supporting Calculation of reuse Rates and Charges
	NUC	DDS-6	Intercoastal Utilities Financial Report dated 8/31/98
	NUC	DDS-7	Excerpts from Intercoastal Utilities, Inc. Annual Report for 1998
	NUC	DDS-8	Comparison of NUC Rates to Intercoastal Rates
	NUC	DDS-9	Summary of Intercoastal's Projected Revenue Requirements



<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Deborah D. Swain	NUC	DDS-10	Schedule of Reuse Rates and Revenues Generated (Revised Reuse Rate Proposal)
	NUC	DDS-11	NUC Schedules Supporting Calculation of Revised Reuse Rates and Charges
	NUC	Revised DDS-12	Comparison of Rates; Original Rates vs. Current Revised Rates
	NUC	DDS-13	Schedule of Water Rate Base at 80% of Design Capacity
	NUC	DDS-14	Schedule of Wastewater Rate Base at 80% Design Capacity
	NUC	DDS-15	Schedule of Reuse Rate Base at 100% Design Capacity
M.L. Forrester	IU	MLF-1	Composite Exhibit Application of Intercoastal to the FL. PSC
	IU	MLF-2	4/26/00 Letter from George J. Ely to Mr. James

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
M.L. Forrester	IU	MLF-3	Letter to John Wharton from Department of Community Affairs
Jim Miller	IU	JM-1	Intercoastal Conceptual Master Plan prepared by PBS&J 12/99
	IU	JM-2	Revised March 2000 Conceptual Master Plan by PBS&J
Michael Burton	IU	MB-1	Proforma forecast of financial dynamics of Intercoastal's operations and the effect upon its rates
	IU	MB-2	Revised Financial Analysis
	IU	MB-3	Revised Financial Analysis, 2nd Revision
	IU	MB-4	Analysis of Typical Single Family Residential Water Usage Profile
	IU	MB-5	Typical Single Family Homes in the Western Portion of Intercoastal's Service Area

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Michael Burton	IU	MB-6	Service Area Case - ERU Projections from NUC Phasing Schedule
	IU	MB-7	Service Area Case - Comparison of Intercoastal and NUC Rates
Jim Bowen	IU	JLB-1	Intercoastal's Financial Report prepared by Smoak, Davis & Nixon, LLP on 8/31/99
	IU	JLB-2	Intercoastal's Pro-Forma Projections of Cash Flow Compiled from Burton Exhibit MB-1
	IU	JLB-3	6/1/00 Letter from First Union Vice-President J. Andrew Hogshead to H.R. James of Intercoastal
Scott Kelly	JEA	SDK-1	Resume
	JEA	SDK-2	St. Johns County/JEA Agreement

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Scott Kelly	JEA	SKD-3	8/19/99 Letter from William G. Young, Utility Director for St. Johns County
Timothy Perkins	JEA	TEP-1	Resume
A. Richard Olson	Sawgrass	ARO-1	Sawgrass Country Club - Utility Service Agreement
	Sawgrass	ARO-2	Sawgrass Country Club - Assignment of Developer's Rights
	Sawgrass	ARO-3	Water Analysis
	Sawgrass	ARO-4	Letter from Intercoastal
	Sawgrass	ARO-5	North Gate Equipment
Patricia Arenas	Sawgrass	PA-1	Ms. King's Letter to Ms. Arenas
William G. Young	County	WGY-1	Resume
	County	WGY-2	Water and Wastewater Utility Service Agreement Between JEA and St. Johns County
	County	WGY-3	St. Johns County/JEA Water and Wastewater Interlocal Agreement
Charles R. Gauthier	Staff	CRG-1	Resume

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Charles R. Gauthier	Staff	CRG-2	DCA Letter-NUC Application
	Staff	CRG-3	DCA Letter- Intercoastal Application

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

A Request for Official Recognition filed by NUC on March 15, 2001, and the County's Motion to Take Judicial Notice, filed on April 2, 2001, are pending at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are none at this time.

XIII. RULINGS

The following is the order in which the parties will give their opening statements: NUC, Intercoastal, JEA, County, and Sawgrass.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 27th day of April, 2001.



J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

SMC

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.