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-01-1916-FOF-WS ISSUED: September 24, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

APPEARANCES:

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On behalf of the Commission.

FINAL ORDER GRANTING NOCATEE UTILITY CORPORATION CERTIFICATES NOS. 617-W AND 531-S AND ESTABLISHING RATES AND CHARGES AND DENYING INTERCOASTAL UTILITIES, INC.'S APPLICATION FOR CERTIFICATES

BY THE COMMISSION:

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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, 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-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 we lack 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, we determined that we have jurisdiction to consider NUC's and Intercoastal's applications. Also, we 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, we allowed the Counties to address the issue of jurisdiction as amicus curiae. Further, we denied the Motion to Dismiss filed by St. Johns County.

Sarasota, Hillsborough, Collier and Citrus Counties appealed our decision to deny them intervention to the First District Court of Appeal. The court dismissed their appeal, but stated that they could file another appeal when this matter became final. See Board of County Commissioners of Hillsborough County v. Deason, 770 So. 2d 242 (Fla. 1st DCA 2000) and Collier, Citrus, and Sarasota Board of County Commissioners v. Deason, 770 So. 2d 239 (Fla. 1st DCA 2000).

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 (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 our 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.

This Order 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. We have jurisdiction pursuant to Sections 367.171(7), 367.031, and 367.045, Florida Statutes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND POLICY

Having heard the evidence presented at hearing in this proceeding and having heard the recommendation of Commission staff, as well as the briefs and arguments of the parties, we now enter our findings and conclusions.

RULINGS ON MOTIONS

Motion for Continuance of the Hearing

At the start of the hearing, Intercoastal made an ore tenus motion for continuance of 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 examination.

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, we denied Intercoastal's motion for continuance of the hearing. We decided, however, 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.

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

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

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. Therefore, no ruling on the matter was necessary.

Request to Extend the Page Limit of Briefs

During the course of the hearing, we 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 we should consider denying both pending applications; 3) whether the agreement between JEA and NUC for operations, management and maintenance service makes NUC exempt from our regulation pursuant

to Section 367.022(2), Florida Statutes; and 4) whether we should defer a decision in these cases until after the conclusion of a pending administrative challenge to the Department of Community Affairs' (DCA) decision. NUC requested that we extend the page limit of the briefs from 50 to 60 pages to allow the parties to address the extra issues that we requested the parties brief during the hearing. We granted NUC's request and set the page limit for briefs at 60 pages.

NUC NOT EXEMPT FROM COMMISSION REGULATION PURSUANT TO SECTION 367.022(2), FLORIDA STATUTES

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 our 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 regulation pursuant to Section 367.022(2), Florida Statutes. 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: Windstar Development Company, Docket No. 870406-SU, Order No. 17659.

NUC states that in Windstar, we considered a request for a governmental exemption by a private sewer company, Windstar Development Company (Windstar), 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. NUC states that Windstar claimed entitlement to the governmental exemption because the system was "owned" by Collier County. We 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, we 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."

NUC states that the essence of the decision in Windstar is that we 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. 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.

JEA adopted 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.

Intercoastal addresses this issue in its brief by stating that the evidence and exhibits in this case establish that NUC's proposed system will not be subject to our regulation as a utility, and will not be subject to the provisions of Chapter 367. In support of this contention, Intercoastal cites to testimony given by NUC's president in which he states that JEA will provide the operations 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.

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. 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."

Findings and Conclusion

Whether an investor owned water or wastewater utility receiving operations and management services by contract from a governmental authority is exempt from our regulation under Section 367.022(2), Florida Statutes, is a matter of first impression. Our analysis of the relationship between NUC and JEA and the ramifications of Section 367.022(2), Florida Statutes, in light of this relationship is discussed below.

Section 367.022(2), Florida Statutes

As previously stated, Section 367.022(2), Florida Statutes, provides an exemption from our regulation for utilities that are owned, operated, managed or controlled by governmental authorities. Thus, for NUC to be exempt from our regulation, JEA, a governmental authority, must either own, operate, manage, or control the proposed utility. See Sparkman v. McClure, 498 So. 2d 892, 895 (Fla. 1986)(finding that when the word "or" is used in a statute, it is generally construed in the disjunctive, indicating that alternatives were intended). If NUC is exempt from our regulation, it would be unnecessary for us to rule upon the issue of whether NUC's application should be granted. Below is a discussion of each component of Section 367.022(2), Florida Statutes, as it relates to the NUC/JEA relationship.

Owned

NUC witness Douglas Miller testified that NUC will own the water transmission and distribution facilities, the wastewater collection facilities, and the reuse transmission, storage and distribution facilities within the proposed territory. Mr. Miller testified that NUC and JEA have entered into an Agreement for Wholesale Utilities, Operations, Management and Maintenance (Wholesale and Operations Agreement or Agreement). Mr. Miller further testified that under the Wholesale and Operations Agreement there will be some joint project lines located in the Nocatee development which will be owned by JEA and that NUC will own the hydraulic share of those lines necessary to serve the development. He stated that the off-site reuse main will be constructed and owned by NUC.

Although JEA will own some of the facilities in the Nocatee development, the evidence shows that NUC will own most of those facilities. Thus, we find that NUC is not exempt from our regulation as a utility system owned by a governmental authority.

Operated

Pursuant to the Wholesale and Operations Agreement, JEA will provide bulk water, wastewater and reuse service to NUC for at least 25 years. The Agreement also obligates JEA to provide operations, management and maintenance service to NUC for a minimum of 10 years. According to the Agreement, JEA's operations and maintenance of the utility will include billing and collection services for NUC. The Agreement states that NUC will pay JEA to perform these services for NUC.

The Wholesale and Operations Agreement requires JEA to develop and implement a preventive and corrective maintenance program for NUC's system. The Agreement states that JEA will be liable for preventive and corrective maintenance and repair up to $4,000 per event, with JEA responsible for the initial $4,000 per event. NUC will pay for the cost of repairs to its system in excess of $4,000 per event.

In regard to the billing and collections, the Wholesale and Operations Agreement states that JEA will provide for meter reading, monthly billings, and collections. The Agreement states that JEA shall not assume any responsibility for third party collections of debts or the balance owed on late or unpaid accounts. Under the Agreement, JEA will be responsible for collections in accordance with its customary internal demand for payment and collection practices, cut-on and cut-off practices and meter testing and shall make all necessary billing adjustments if there are errors. The Agreement states that NUC will be responsible for post cut-off collections.

In regard to maintenance, the Wholesale and Operations Agreement states that JEA will be responsible for the operation and maintenance of all components of the reclaimed water system owned by NUC. Furthermore, the Agreement requires JEA to comply with the provisions of the Nocatee Environmental Water Resource Plan (NEWRAP), which is attached to the Agreement.

NUC witness H. Jay Skelton testified about the Agreement. When asked why JEA would not be allowed to directly serve NUC, Mr. Skelton replied that

> We want to have the control to make sure that we control it rather than JEA. We want to make sure that we can have the infrastructure put in when we need it in our 15,000 acre development. We want to make sure we control the quality of what is going in there. We are very concerned about the environmental aspects of our development, and we feel to turn it over directly to JEA would take that control away from us. And we just have very high standards and we want to make sure that we comply with our own standards.

Mr. Skelton further testified that the arrangement with JEA enables NUC to provide service to the future customers of the Nocatee development at competitive rates. Mr. Skelton stated that the reason the operations and maintenance portion of the Agreement is only for a term of ten years is so that another entity can be hired if JEA does not perform to NUC's standards.

Mr. Skelton also stated that it would be represented to customers that they are customers of NUC serviced by JEA. He stated that customers could call either JEA or NUC if they have a complaint. He stated that NUC will be very responsive to its customers because the customers will also be property owners in the Nocatee development. He stated that JEA will be an agent for NUC and that NUC has the right to direct the way that JEA represents the utility.

NUC witness Douglas Miller also testified about the relationship and Agreement between NUC and JEA. Mr. Miller stated that he was involved in negotiating the Letter of Intent between DDI and JEA and that it was his job to develop a plan of service to meet the environmental standards of the project. He testified that NUC opted to provide service through a wholesale agreement with JEA rather than through the construction of its own on-site water and wastewater facilities because JEA is the largest provider of utility service in the area and working with JEA would enable NUC and its customers to enjoy the benefits of JEA's experience and economies of scale.

Mr. Miller testified that it became obvious in the early analysis of utility service that there was going to be a reuse deficiency because the Nocatee development would require 100 percent reuse. Mr. Miller stated that that is when DDI initially approached JEA, because JEA had excess wastewater effluent that it was discharging into the St. Johns River. Mr. Miller testified that NUC investigated whether JEA would provide only reuse service to the development, but that JEA declined to provide only reuse service.

Mr. Miller testified that he was involved in the negotiations that led to the Agreement between NUC and JEA. He testified that during the course of the negotiations, JEA never asked NUC to act as a front or a strawman for JEA retail service in St. Johns County and that that is not his understanding of the Agreement.

NUC witness Deborah Swain also testified as to the responsibilities of NUC and JEA under the Agreement. Ms. Swain stated that JEA will be doing the billing and collections and turning on and turning off the service to customers. Ms. Swain stated that NUC plans to have one employee who will oversee the Agreement and who will be the direct contact with JEA and oversee JEA's activities. She stated that it is intended that this employee will have the utility experience necessary to be able to oversee those activities. She stated that there will be an opportunity for customers to call this employee to respond to questions if necessary.

As for contact information on the customers' bills or NUC's tariff, Ms. Swain testified that NUC had not developed that fully, but that she would imagine that there may be a primary number for JEA and another number for NUC or DDI. She stated that the primary questions that customers would have regarding service would go to the operator, JEA, but that the person on NUC's staff would "certainly be capable and available to respond to questions when appropriate."

In regard to how questions from our staff and our Division of Consumer Affairs would be answered, Ms. Swain testified that NUC would be responsible for answering those questions. When asked what the difference was between a customer calling JEA in regard to a complaint and the Commission calling NUC regarding a customer

complaint, Ms. Swain stated that the we should contact NUC because NUC is the utility company that will be responsible for providing service. She further stated that to the extent that a question would need to be pursued with JEA, NUC would contact JEA.

When questioned about the specifics of the Agreement, Ms. Swain testified that all of the details have not been worked out and that NUC and JEA have not "gotten anywhere near the point of working out all of the finer points." Ms. Swain also stated that "if we start actually performing under this contract, things need to change and telephone numbers need to change, then that will happen." Ms. Swain stated that it is NUC's intent to make the process simple and straightforward for the customers.

JEA witness Scott Kelly also testified about the Agreement. When asked why JEA would agree to this type of arrangement with NUC rather then attempting to serve the Nocatee development on a retail basis, Mr. Kelly indicated that retail service by JEA would result in a bifurcation of service and that bifurcation of the service to the Nocatee development would be inefficient. He also stated that JEA agreed with the arrangement because it was excited about the environmental proposals for the development. He stated that JEA believes that it has the right to serve in areas outside of Duval County and that it prefers to be a retail service provider, but that its policy has been to only go where it has been invited, or where it has a prior contractual commitment or relationship, or has acquired territory through an acquisition of a Commission certificated area or a county franchise area where it has acquired those rights.

In regard to customer service under the Wholesale and Operations Agreement, Mr. Kelly testified that JEA will consider NUC to be its only customer under the Agreement. Mr. Kelly further testified that NUC will respond to customer complaints through JEA's contract operations by use of a separate telephone number for NUC customers answered under the name of NUC and that personnel will be on duty 24 hours per day to respond to customer complaints and problems. Mr. Kelly stated that JEA will be standing in the shoes of NUC when answering the telephone calls and will respond to complaints in a manner similar to the way in which JEA assists other utilities in responding to customer complaints where JEA is the contract operator.

As to whether NUC or JEA will perform the accounting and legal matters for NUC, NUC has requested, as shown in Exhibit 13, funds for Contractual Services - Accounting and Contractual Services - Legal. These allocations are shown in Schedules Nos. 3-A and 3-B, which are incorporated herein by reference. This money is separate from the funds allocated in Contractual Services- Management Fees, which NUC will use to pay JEA for its services. Thus, this indicates that NUC, not JEA, will handle the accounting and legal matters for NUC.

It appears that NUC will have the ultimate say in the operations of the system because the evidence shows that NUC has the authority to direct the manner in which JEA will provide the contract services to NUC; NUC will have an employee with utility experience who will oversee the Agreement and JEA's operations of the NUC system; and NUC, not JEA, will be handling the utility's accounting and legal matters. Although JEA is performing the day-to-day operations of the utility, the evidence indicates that JEA is being compensated by NUC to perform these services for NUC and NUC views itself as the utility that is responsible to this Commission. Thus, we find that NUC is not exempt from our regulation as a utility that is operated by a governmental authority.

Managed

NUC witness H. Jay Skelton testified that he is the President of NUC, as well as President of its parent company DDI. He also testified that NUC entered in a "Master Service Agreement" whereby DDI is obligated to provide the initial funding for utility construction and operations until NUC becomes self-sufficient.

Mr. Skelton testified that NUC created the plan of service for the development. He stated that NUC will determine when the infrastructure will be in place to serve the development and where the lines will be located. In addition to Mr. Skelton's testimony, NUC witness Douglas Miller testified that all of the planning and engineering will be done by NUC, not JEA. Also, the Agreement states that NUC will be responsible for obtaining all of the permits for the system.

As stated above, NUC has entered into an Agreement to manage the day-to-day operations of NUC. Mr. Skelton, Ms. Swain, Mr. Douglas Miller and Mr. Kelly testified, as set forth above, about the tasks that JEA will be performing for NUC under the Agreement.

The evidence shows that NUC, not JEA, will be the ultimate manager of the utility system because NUC will be performing the management functions of obtaining financing for the utility; planning and engineering the system; and determining when the utility infrastructure will be built and where the lines will be placed. Moreover, there is no evidence in the record indicating that JEA will decide if or when the utility will be transferred or sold or that JEA has any authority over when rate increases will be requested. Thus, we find that NUC is not exempt from our regulation as a utility that is managed by a governmental authority.

Controlled

Under the Wholesale and Operations Agreement, NUC will be charged 80 percent of JEA's retail rates for the bulk water, wastewater, and reuse water and the operations management services provided by JEA. NUC witness Deborah Swain testified that the rates that NUC is proposing are designed to cover the utility's cost of providing service and a reasonable return on its investment in property used and useful in public service at the time that the first phase of the utility system is projected to reach 80 percent capacity.

As stated above, NUC witness Skelton testified that NUC will determine when the infrastructure will be in place to serve the development and where the lines will be placed. Also, as indicated above, there is no evidence in the record showing that JEA will decide if or when the utility will be transferred or sold or that JEA has any authority over when rate increases will be requested.

The evidence shows that NUC will have the ultimate control over the utility system because NUC, not JEA, will set the rates and charges for the utility and will determine when facilities will be built to serve the development and where those facilities will be placed. Thus, we find that NUC is not exempt from our

regulation as a utility system which is controlled by a governmental authority.

Plain Meaning

"When the language of a statute is unambiguous and conveys a clear and ordinary meaning, there is no need to resort to other rules of statutory construction; the plain language of the statute must be given effect." Starr Tyme, Inc. v. Cohen, 659 So. 2d 1064, 1067 (Fla. 1995). If it is determined that the statute on its face is ambiguous or unclear, then one would resort to the other rules of statutory construction. See Id. "Only when a statute is doubtful in meaning should matters extrinsic to the statute be considered in construing the language employed by the Legislature." Capers v. State, 678 So. 2d 330, 332 (Fla. 1996). As illustrated above, based on the plain meaning of Section 367.022(2), Florida Statutes, we find that NUC is not exempt from our regulation as a utility system owned, operated, managed or controlled by a governmental authority.

Legislative Intent

If a statute is ambiguous, the first means one should use to construe the statute is to look at the legislative intent because the primary guide to statutory interpretation is to determine the purpose of the legislature. See Tyson v. Lanier, 156 So. 2d 833, 836 (Fla. 1963). As stated above, based on the plain meaning of the statute, NUC is not exempt from our regulation under Section 367.022(2), Florida Statutes. Nevertheless, in an abundance of caution, we researched the legislative history of Section 367.022(2), Florida Statutes. However, the legislative history provides no guidance as to the issue of whether NUC is exempt under the facts of this case.

Commission Orders

Prior to June 1996, pursuant to Section 367.031, Florida Statutes, it was necessary for a utility to obtain an order recognizing that the system was exempt from our regulation as provided by Section 367.022, Florida Statutes. In 1996, Section 367.031, Florida Statutes, was amended in that the requirement that utilities obtain an order recognizing that they were exempt was

deleted, thus making Section 367.022(2), Florida Statutes, "self-executing."

We note that the majority of the cases discussed below pertain to governmental authorities which were appointed receivers of abandoned utilities. Prior to 1996, whenever a county or city was named receiver for a private utility, it was necessary for the county or city to request exemption from our regulation pursuant to Section 367.022(2), or it would remain subject to our rules and regulation. Although there is no issue in this case of a governmental authority acting as a receiver for the utility, the analysis in these past orders is helpful in our current analysis of whether NUC, by virtue of its agreement with JEA, is exempt from our regulation.

King's Point

In re: Petition for exemption from Florida Public Service Commission regulation as a utility by City of Kissimmee as Receiver for Kings Point Utilities, Inc. in Osceola County, Order No. 25213, issued October 14, 1991, in Docket No. 910813-WS, is one such case in which a city requested that it be recognized as an exempt entity. The City of Kissimmee (City) was appointed receiver for King's Point Utilities, Inc. (King's Point or utility) after the utility failed to bring the systems into compliance with the Department of Environmental Regulation standards. The Circuit Court appointed the City as receiver, in part because the City had expressed an interest in eventually purchasing the utility, and because the City had undertaken the task of bringing the systems into compliance. After being appointed receiver by the Circuit Court, the City, as receiver for the utility, filed a petition requesting exemption from our regulation pursuant to Section 367.022(2), Florida Statutes.

In determining whether the utility qualified for an exemption, we considered the "police powers" of the state that are enumerated in Section 367.011(2), Florida Statutes. Specifically, we stated, at page 2 of the order, that "In conferring jurisdiction over the regulation of utilities to this Commission, the legislature relied on the police power of the state for the protection of the public, health, safety, and welfare." We further stated that in establishing certain exemptions to regulation, the legislature

determined that the exercise of the police power was not necessary in certain instances, such as with respect to the exemption for systems owned, operated, managed, or controlled by governmental authorities. We went on to note that this is the only exemption provision which does not contemplate ownership of the system as a requirement for exempt status. In King's Point, because the receivership order specifically provided that the City, as receiver, was required to operate, manage, and control the utility, we found that the exemption provision of Section 367.022(2), Florida Statutes, applied.

We also considered the fact that the utility would be subject to the provisions of Chapter 180, Florida Statutes, which governs municipal public works, and would also be under the oversight of the receivership by the Circuit Court. We concluded that the public health, safety, and welfare of the utility and the customers of King's Point would be adequately protected by the provisions of Chapter 180, Florida Statutes, and by the oversight of the receivership by the Circuit Court, and because of that protection, it was not also necessary for us to assert our regulatory authority.

Although the facts of King's Point are substantially different from the facts before us in this docket, the rationale we used is helpful in determining whether NUC should be considered exempt by virtue of its agreement with JEA. Like King's Point, the NUC/JEA agreement proposes that an entity which does not own the utility be responsible for its operations and management. However, it is important to distinguish that in King's Point, the public health, safety, and welfare of the utility and its customers was well protected by both Chapter 180, Florida Statutes, and by the oversight of the Circuit Court. If the conclusion were made that NUC is an exempt governmental entity by virtue of its relationship with JEA, there would be no such protection of the public health, safety, and welfare of the utility or its customers by us. Furthermore, because Chapter 180, Florida Statutes, governs municipal public works, NUC as a private utility, would not be subject to the provisions of Chapter 180, Florida Statutes. Nor would there be any oversight by a Circuit Court because this is not a situation in which a receiver has been appointed.

Three "S" Disposal

Another case in which we considered whether a receiver, who was a governmental authority, qualified for exempt status is In re: Request for Exemption from Florida Public Service Commission Regulation for Provision of Wastewater Service in Lee County for Three "S" Disposal, Inc. by Lee County, Receiver, Order No. PSC-96-0251-FOF-SU, issued February 21, 1996, in Docket No. 951252-SU. The owners of Three "S" Disposal, Inc. (Three "S" or utility) provided us notice of its intent to abandon the utility in October of 1990. In December of 1990, the Lee County Circuit Court appointed Bonita Springs, Utilities, Inc., as receiver for the utility. We acknowledged this appointment by order. The same Circuit Court later granted Bonita Springs Utilities, Inc.'s Motion for Withdrawal as receiver and appointed Lee County (County) as the new receiver in July of 1991. The County later filed a request on behalf of the utility for an exemption from our regulation pursuant to Section 367.022(2), Florida Statutes.

Attached to its application for exemption, the County provided a copy of the order in which the court appointed Lee County as successor receiver for the utility. Pursuant to the order issued by the Circuit Court, the County, as receiver, was granted the authority to act on behalf of the utility in many aspects.

We found that the County, as receiver, was adequately fulfilling its obligations as receiver for the utility pursuant to the provisions of Section 367.165(3), Florida Statutes, in that the County was operating the utility pursuant to the Circuit Court's order. We found it appropriate to acknowledge both the appointment of Lee County as the successor receiver, and also to approve the County's request as receiver of the utility for an exemption from our regulation pursuant to Section 367.022(2), Florida Statutes.

Once again, the facts of Three "S" Disposal differ greatly from the facts before us in this docket. The important distinction to be made is the amount of control that the County was authorized to exert on behalf of the utility pursuant to the Circuit Court's order and the amount of control that JEA is authorized to exert on behalf of the utility pursuant to its agreement with JEA.

The County, as receiver for the utility, was authorized to provide and maintain wastewater service in compliance with permits, regulations, and statutes. This also included making extensions, expansions, repairs, replacements and improvements as appropriate and necessary. While JEA, pursuant to its Agreement with NUC, has some of these similar duties, the distinction is that under the Agreement, JEA is only authorized to the degree that NUC allows or directs JEA to act on its behalf. Also, the evidence shows that NUC will construct its system, and that NUC will determine when the infrastructure will be in place to serve the development and where the lines will be placed.

The County also had the authority to collect rates, fees, charges and deposits for Three "S" utility. Again, JEA has similar duties under the Agreement with NUC, but only at the specific direction and to the degree allowed by NUC. The record indicates that NUC will have an employee that oversees the Agreement and JEA's activities under the Agreement.

The County was given the authority to borrow money against utility assets, to enter into contracts and agreements, and accept gifts and contributions on behalf of the utility. There is no evidence that indicates that the contract between JEA and NUC allows JEA to act on its behalf with respect to borrowing money, entering into contracts or agreements, or accepting gifts or contributions.

The County had the authority to retain and pay, from revenues collected from the customers of Three "S", all necessary and reasonable operating expenses to ensure continued efficient, effective and environmentally sound operation of the utility. There is no evidence in the record showing that JEA, through its contract with NUC, has the authority to perform any of these elements.

Finally, the County was also authorized to handle all court actions and to apply for and obtain all applicable permits, certificates and licenses. The evidence in this case indicates that NUC will handle its own legal matters as evidenced by its request in Exhibit 13 to have funds allocated to Contractual Services - Legal. Also, the Agreement with JEA states that NUC

must obtain all permits. Moreover, NUC, not JEA, applied with this Commission for a certificate of authorization.

Enterprise and Skyview

As stated previously, after 1996, the statute that exempted government authorities from our regulation was considered to be self-executing, and utilities no longer had to request an acknowledgment of their exempt status. The orders that involve cities or counties as receiverships subsequent to this change in 1996 generally acknowledge the receivership appointment and cancel the certificates. Two such case are In re: Request for acknowledgment of transfer of receivership of Enterprise Utilities Corporation (Deltona) from Florida Water Services Corporation to Volusia County and cancellation of Certificates Nos. 316-W and 264-S, Order No. PSC-00-1375-FOF-WS, issued July 31, 2000, in Docket No. 000242-WS, and In re: Notice of appointment of Polk County as substitute receiver for Skyview Utilities Receivership in Polk County and cancellation of Certificates Nos. 596-W and 511-W, Order No. PSC-00-1643-FOF-WS, issued September 14, 2000, in Docket No. 000363-WS.

Both Enterprise and Skyview involved private utilities whose owners noticed their intent to abandon the utilities. Enterprise Utilities had several successor receivers appointed until Volusia County was finally appointed the successor receiver. We found that it was appropriate to acknowledge the County as receiver and to cancel the utility's certificates. The issue of whether the County was considered an exempt utility was not addressed. We only recognized that the utility was exempt from our regulation as of the effective date of the transfer of receivership to the County.

Skyview Utilities, located in Polk County, was also abandoned by its owner and the County was appointed as successor receiver. The previous receiver was Andrew R. Reilly, Esq. Mr. Reilly's duties as receiver specifically included any actions necessary to ensure that the utility's wastewater treatment plant was removed from service in a timely manner, including connection to the City of Lakeland. At that time, the City of Lakeland was already providing the utility with potable water for resale to its customers. The Florida Department of Environmental Protection (DEP) petitioned the Circuit Court to have the County appointed

substitute receiver for the utility, and the DEP's motion was subsequently granted. Although the County was the new appointed receiver, Mr. Reilley's operational duties continued because the appointment of the County as substitute receiver was intended to involve the County more directly with the solution of the wastewater connection with the City. The County subsequently indicated its intent by letter to exempt the utility from Commission regulation. We found that because the utility had been operated by a governmental entity since October 12, 1998, that was the effective date that the utility became exempt from our regulation.

The only significant aspect of the Skyview case for our purposes is the fact that even though the County was appointed substitute receiver for the utility, the operation of the utility remained in the hands of Mr. Reilly, a non-governmental entity. The order does not specifically describe the duties that Mr. Reilly was authorized to perform on behalf of the utility beyond stating that he was in charge of operating the utility. However, when compared to the facts before us in this docket, one could draw a correlation between Mr. Reilly's and JEA's involvement with Skyview Utilities and NUC. Although Mr. Reilly was in charge of operations of the utility, we still found that the utility was exempt from our regulation by virtue of the County, a government authority, having been named substitute receiver. The County had control over the utility to such a degree that even though the utility was being operated by a non-governmental entity, the utility still qualified as an exempt utility. Applying that rationale to the case before us, NUC would be in the place of the County, retaining the larger amount of control, and JEA would be in the place of Mr. Reilly, retaining the authority to operate the utility. Thus, because NUC is the entity with ultimate control over the utility, the contract between JEA and NUC does not put JEA in control to such an extent that the contract would render NUC exempt from our regulation.

Gulf Environmental Services

Another area in which it is sometimes necessary for us to define whether an entity is a governmental authority is when a private utility is being transferred pursuant to Section 367.071, Florida Statutes. This section governs the sale, assignment, or transfer of a utility's certificate of authorization, facilities,

or control. Section 367.071(4)(a), Florida Statutes, provides that the sale of facilities to a governmental authority shall be approved as a matter of right.

In re: Joint Application for transfer of facilities of Gulf Coast Utility Company to Gulf Environmental Services, Inc. in Lee County and cancellation of Certificates Nos. 072-W and 064-S, Order No. PSC-98-1642-FOF-WS, issued December 7, 1998, in Docket No. 980767-WS, addressed whether a particular entity was in fact a governmental authority for purposes of Section 367.071(4)(a), Florida Statutes. This docket involved a private utility, Gulf Utility Company (Gulf or Utility) whose facilities were sold to Gulf Environmental Services, Inc. (GES). Prior to the effective date of the transfer, the utility and GES filed a joint application pursuant to Section 367.071(4)(a), Florida Statutes. However, based upon the information filed with the transfer application, our staff made a preliminary evaluation that GES was not a "governmental authority" as defined by Section 367.021(7), Florida Statutes, and that the transfer could not be approved as a matter of right.

Rather than refile its application, the utility requested that the parties meet with our staff so that additional information could be provided to us about the creation, structure, and purpose of GES and its acquisition of the utility. We ultimately found that it was reasonable to conclude that GES constituted a "governmental authority" as contemplated by Section 367.021(7), Florida Statutes. We also concluded that it was appropriate to treat the transfer of the utility to GES as a transfer to a governmental authority.

In arriving at the conclusion that GES was a governmental authority, we considered that GES had been formed for the sole purpose of acquiring the utility's assets and facilities. We also considered elements of GES' Articles of Incorporation which provided that Lee County had full control over the appointment of GES' Board of Directors in that its Board of Directors had to be appointed or confirmed by Lee County's Board of County Commissioners. Lee County also had the sole beneficial interest in GES' assets and facilities in that GES' Articles of Incorporation also provided that the assets of GES could not be sold except to

Lee County. Upon retirement of GES' bond indebtedness, Lee County would automatically acquire title to GES' assets.

Furthermore, a specific condition to the closing of GES' purchase of the utility was that Lee County had to approve the transaction as contemplated by the Purchase and Sale Agreement. This requirement was met when Lee County, at a noticed public meeting, adopted the resolution in which the transfer was found to serve a public purpose and be in the public interest. We also noted that GES had adopted a written policy which subjected it to the Florida Sunshine and Public Records Laws, and also that its Board of Directors' meetings were open to the public, and its records were open to inspection by the public. Furthermore, the Utility Director of Lee County also sat on GES' Board of Directors, and both Lee County's utility system and GES used the same contract operator.

For the foregoing reasons, we found that GES conducted itself essentially as a branch of Lee County, and that it was therefore appropriate to approve the transfer to the governmental authority as matter of right, pursuant to Section 367.071(4)(a), Florida Statutes.

Although the docket before us does not involve a transfer to a governmental authority, the analysis used by the Commission in Gulf Environmental Services is useful to determine whether NUC, by virtue of its contract with JEA, should be considered exempt from our regulation as a governmental authority. In Gulf Environmental Services, we found that, although a private corporation, GES was essentially operating as a branch of Lee County. It is undisputed that JEA is a governmental authority; however, the question before us is whether NUC can also be considered exempt from our regulation by virtue of the fact that it is either owned, operated, managed or controlled by JEA. Unlike the GES corporation, NUC was not formed for the purpose of acquiring a utility. In fact, the evidence shows that NUC was created for the sole purpose of providing water and wastewater service to the Nocatee development. There is no evidence in the record showing that JEA has the authority to appoint or confirm members of NUC's Board of Directors, nor is there any evidence that JEA has a beneficial interest in NUC's assets and facilities. Furthermore, NUC is not conducting itself as branch of JEA, and there is no evidence in the record that it

has adopted a written policy subjecting itself to the Florida Sunshine and Public Records Laws. Thus, in applying the analysis of Gulf Environmental Services to the facts before us in this docket, it would not be appropriate to consider NUC exempt from our regulation as a governmental authority.

Tradewinds

Another docket in which we considered a transfer of a private utility to a governmental authority is In re: Request for Approval of Transfer of Certificates Nos. 405-W and 342-S in Marion County from Tradewinds Utilities, Inc. to Resolution Trust Corporation, as Receiver for Miami Savings Bank, Order No. PSC-92-0699-FOF-WS, issued July 22, 1992, in Docket No. 911078-WS. This docket involved an application to transfer a portion of Tradewinds Utility's territory to the Resolution Trust Corporation (RTC) as receiver for Miami Savings Bank. Miami Savings Bank had held the title for a portion of the utility until the bank failed and the RTC was named receiver for the bank. The RTC is a federal agency that was created by Congress in order to contain, manage, and resolve failed savings associations. The RTC gained ownership of a portion of the utility's territory under a Judgement of Foreclosure issued by the Circuit Court in Marion County. The foreclosure granted the RTC ownership of a portion of the utility's territory, and ordered the utility to transfer to the RTC all of its security deposits and records of its customers.

The RTC, on behalf of the utility, subsequently filed an application to transfer another portion of the utility's property to the RTC as receiver for Miami Savings Bank. The RTC requested that we approve the application pursuant to Section 367.071(4)(a), Florida Statutes, thus stating in its application that it should be considered a governmental authority and that the transfer be approved as a matter of right. We ultimately determined that the RTC did not meet the definition of a "governmental authority" as defined by Section 367.021(7), Florida Statutes, nor did it qualify for an exemption as a "governmental authority" as defined by Section 367.022(2), Florida Statutes.

In determining whether the RTC could be defined as a governmental authority, we looked at the intent of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989,

(FIRREA) Pub.L.No.101-73, Title 1, Section 101, 1103 Stat. 183, under which the RTC was created. The FIRREA was enacted by the United States Congress in 1989, and established the RTC as an instrumentality and agency of the United States, with the purpose of containing, managing, and resolving failed savings associations. Under FIRREA, Section 501(a), it was stated that the RTC be deemed a governmental agency when acting in its capacity as conservator or receiver. The provision also allowed the receiver to operate without interference from other agencies. In Tradewinds, the RTC was acting as receiver for Miami Savings Bank, and was considered an "agency" under FIRREA, Section 501(a).

In determining whether the RTC qualified as governmental authority exempt from our regulation, we also considered the legislative intent behind the provisions of Section 367.021(7), Florida Statutes, which defines a governmental authority, and of Section 367.071(4)(a), Florida Statutes, which governs the transfers of utilities to government authorities. In finding that the RTC did not qualify as a governmental authority exempt from our regulation, we stated that the rationale behind a governmental authority receiving a transfer as a matter of right and an exemption from our regulation is that the utility's customers have an opportunity through the political process to elect officials to serve their interests. Further, if their interests are not being served by a governmental agency, ratepayers can appeal to their local officials. We incorporated the example of a cooperative situation, where customers have redress to a board of trustees, and also in a municipality, where customers can protest to city or county commissioners. We found that in Tradewinds, however, the RTC as a federal government agency did not provide customers this opportunity. We stated that if the RTC were to fail in its obligation to serve Tradewinds' customers, the customers would not have effective redress to any elected persons to whom they could voice their concerns.

If NUC were to be considered exempt from our regulation by virtue of its agreement with JEA, the customers of NUC would be in a situation similar to the one contemplated us in Tradewinds. Like those customers, the NUC customers would not have an effective redress to any elected person to whom they could voice their concerns, nor would those customers have an opportunity through the political process to elect officials to serve their interests.

Windstar

As discussed above, NUC cited In re: Request by Windstar Development Company for Exemption from Jurisdiction of Florida Public Service Commission, Order No. 17659, issued June 4, 1987, in Docket No. 870406-SU, to support its position that NUC is exempt from our regulation as a system owned, operated, managed or controlled by a governmental authority. In Windstar, we considered a request for a governmental exemption by a private wastewater company, Windstar Development Company (Windstar), which had deeded its utility system to Collier County and then leased it back until the County's off-site wastewater facilities were ready to receive wastewater from the Windstar development. Windstar claimed entitlement to the governmental exemption since the system was "owned" by Collier County. We 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, we 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."

Windstar is the order that is most on point with the facts set forth in this docket and we agree with NUC's analysis of our decision in that order. Specifically, in order for NUC to be considered an exempt governmental entity by virtue of its agreement with JEA, the governmental 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, we would be setting the retail rates for NUC and these rates would be based on whatever costs were legitimately proven to the Commission.

Further, Mr. Skelton testified that, in dealings with the customers of NUC, JEA 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. 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.

Based on the plain meaning of Section 367.022(2), Florida Statutes, NUC would not be considered exempt from our regulation as a governmental authority. Although JEA is a governmental entity not subject to our regulation, the fact that JEA will be providing management and operation services to NUC does not render NUC an exempt entity as well. As stated above, NUC is the ultimate owner, operator, and manager of the utility and has retained control over its proposed system. Moreover, JEA will not be setting rates for the customers of NUC; therefore, 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. Thus, we 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.

NUC, however, is hereby on notice that it must keep this Commission informed of any significant changes to the Agreement with JEA. Failure to do so may result in Commission action under Section 367.161, Florida Statutes.

Moreover, if there are provisions in the Agreement that are in violation of this Commission's policies or procedures or NUC's tariffs, we will hold NUC responsible and it will be incumbent on NUC to make any necessary changes to its Agreement with JEA. We want to make it clear, however, that this Commission will not be involved in enforcing the NUC/JEA Agreement.

COMMISSION JURISDICTION PURSUANT TO SECTION 367.171(7), FLORIDA STATUTES, FACTUALLY ESTABLISHED

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.

In regard to whether NUC factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke our jurisdiction, the NUC witness Douglas Miller testified that Nocatee will be developed in five phases over a total development horizon of approximately 25 years. 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. Mr. Miller testified that NUC's proposed service area is identical to that of the Nocatee development. 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. 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. Moreover, wastewater from both counties will be collected and pumped to JEA from a single master lift station located in St. Johns County.

In its brief, 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. Intercoastal asserts that the testimony and evidence reveal that NUC will own very little infrastructure which will comprise the utility system. Further, Intercostal 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."

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, we determined that we have jurisdiction to consider NUC's application pursuant to Section 367.171(7), Florida Statutes. Thus, we 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 our jurisdiction to grant its application for original certificates.

In regard to whether Intercoastal factually established that its proposed system is such that would invoke our jurisdiction under Section 367.171(7), Florida Statutes, NUC witness testified that the Nocatee development transverses the Duval/St. Johns county line. Intercoastal is proposing to provide service to the entire Nocatee development. 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. Intercoastal witness M.L. Forrester testified that Intercoastal will construct water and wastewater facilities in the Nocatee development to serve the territory.

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. As stated above, we already determined by Order No. PSC-00-1265-PCO-WS, that we have jurisdiction to consider Intercoastal's application pursuant to Section 367.171(7), Florida Statutes. Based on the foregoing, we 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 our jurisdiction to grant its application for certificates.

NO DEFERRAL OF COMMISSION DECISION

Staff witness Charles Gauthier of the Department of Community Affairs (DCA) testified that the Nocatee development orders have been approved by both St. Johns County and Duval County. Mr. Gauthier also testified, however, that a protest to the DCA's notice of intent to find the comprehensive plans in compliance has been filed by the Florida Wildlife Federation. An issue was raised at hearing as to whether we should defer our decision in this matter until after the resolution of the litigation resulting from the protest filed in regard to the DCA's proposed action.

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. However, during cross-examination, Mr. Miller testified that the fourth quarter of 2002 will be when service is needed for the Nocatee development.

Mr. Gauthier 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. Mr. Gauthier also 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. Mr. Gauthier testified that he was unaware of any objection by either St. Johns County or the City of Jacksonville to NUC's application.

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 us 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 us to defer our decision in these dockets. Moreover, as discussed later in this Order, we find that there is a need for service in the Nocatee development. Therefore, we shall not defer our decision in this matter until after the conclusion of a pending administrative challenge to the DCA's decision.

RES JUDICATA/COLLATERAL ESTOPPEL

In their briefs, 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 NUC and JEA's arguments on this issue.

NUC states in its brief 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, we should apply the principles of res judicata and/or collateral estoppel and deny Intercoastal's application. 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.

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, we 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.

In its brief, 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. 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.

In its brief, Intercoastal takes the position that neither the doctrine of res judicata nor 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.

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 further states 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 us. Intercoastal states that these two arguments reveal that Intercoastal's application before us 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.

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 we would not be in the position to question the County in order compare the facts of the prior and current application.

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 our rules, precedents, or case law and policies. Furthermore, in this case, we 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.

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. It states that in this proceeding, the application is before a different agency, applying different

rules, policies, objectives, and for a different permit. 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, citing Brock v. Associates Finance, Inc., 625 So. 2d 135 (Fla 1st DCA 1993), Intercoastal states that there is no identity in relief sought by Intercoastal in the St. Johns County proceeding and the instant proceeding.

Findings and Conclusion

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. We agree with Intercoastal's position that its current application before us 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 this matter 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 of collateral estoppel does not apply in this instance to bar us 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 us. Also, 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 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, Intercoastal'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.

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. 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.

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

COMPETITION WITH OR DUPLICATION OF ANY OTHER WATER OR WASTEWATER SYSTEM

Pursuant to Section 367.045(5)(a), Florida Statutes, we 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 we first determine 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, we 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, we stated that we are 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. NUC witness Douglas Miller testified that the County approved a resolution which placed the Nocatee development into the County's exclusive service area. 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.

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.

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. 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 our review. Further, Orders Nos. PSC-92-0104-FOF-WU and 17158 state that we do not have to speculate as to whether a proposed system would be in competition with, or a duplication of, another proposed system. Therefore, we find 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.

There was also a legal issue identified for the hearing as to whether we may grant a certificate of authorization to NUC or Intercoastal which will be in competition with, or a duplication of, any other water and wastewater system. As stated above, there is no evidence in the record indicating that there is an existing system in or in close proximity to the Nocatee development which would warrant our review. Further, as discussed above, Order Nos. PSC-92-0104-FOF-WU and 17158 state that we do not have to speculate

as to whether a proposed system would be in competition with, or a duplication of, another proposed system. Thus, while we 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, we find 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.

NUC'S APPLICATION

Need for Service

Section 367.045(1)(b), Florida Statutes, and Rule 25-30.033(1)(e), Florida Administrative Code, require an applicant for original certificate to provide a statement showing the need for service in the proposed area. NUC, Intercoastal 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. Intercoastal 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 and NUC, provided testimony on the general plans for the Nocatee development. He stated that DDI owns all the land in the Nocatee development, through its affiliate SONOC Company, LLC, which consists of approximately 15,000 acres in St. Johns and Duval Counties that will be developed by the PARC Group over the next 25 years. NUC witness Douglas Miller, NUC's engineer, sponsored Exhibits D and F of NUC's Application, identified as Exhibit 4. Exhibit 4 contained more specific details on the Nocatee development plan. This Exhibit 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.

As previously stated, to serve the development, NUC and JEA entered into Wholesale and Operations Agreement. The Agreement indicates that JEA will provide NUC bulk water, wastewater and reuse service to Nocatee for at least 25 years. JEA agrees to comply with the applicable provisions of the Nocatee Environmental Water Resource and Area Plan (NEWRAP) in the provision of these services. 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. The requirements of the NEWRAP are discussed in more detail later in this Order.

Initially, witness Skelton indicated that the need for service in the territory will begin in 2001. However, at the hearing, NUC witness Douglas Miller updated the timing of the development and need for service to be in the fourth quarter of 2002. According to Mr. Miller, this delay is due to the longer than anticipated Development of Regional Impact (DRI) review process. Staff witness Gauthier of the DCA provided testimony regarding the delays due to the challenge by the Florida Wildlife Federation to the DCA's Notice of Intent to approve the revisions to the Duval and St. Johns County Comprehensive Plans. Additional details regarding this process are described later in this Order.

Although for our purposes a finding as to whether there is a need for service relates primarily to a request for service and to an actual development plan and future customers, we also considered whether service to the proposed area comports with the local comprehensive plans. 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 DRI and Comprehensive Plan Amendments. 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 the DRIs by Duval and St. Johns Counties and approval of the Comprehensive Plan Amendments by the DCA. Witness Skelton stated that because of the magnitude of the NUC development, the project is subject to review under Chapter 380, Florida Statues, as a DRI. According to witness Gauthier, Comprehensive Plan Amendments are governed by Chapter 163.

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. St. Johns County Resolution No. 2001-30 and the Duval County Ordinance No. 2001-13-E approved the developments and were entered into the record as Exhibit 1. Both development orders contained the NEWRAP provisions.

Staff witness Gauthier testified that besides approval of the development orders, the developer also has received approval of its DRIs. 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. 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. 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.

According to witness Gauthier, under Chapter 163, 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 our hearing in these matters. One petition was dismissed by the DCA 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 be issued. 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 hearing, May 7 through 9, 2001. The window of 21 days for the St. Johns County amendment ended May 9, 2001. Relative to the City of Jacksonville amendment, the DCA had not received any petitions to challenge; however, the window of time through which challenges may be submitted ran through May 18, 2001, so that window had not yet closed at the time of the hearing.

Although witness Gauthier testified that there is no need for service now, 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 our approval.

Witness Gauthier also testified that the developer has made substantial progress toward establishing the comprehensive plan amendments in demonstrating the need for service. He stated that the local governments have adopted the development orders and the DCA has issued a favorable notice of intent.

Intercoastal witness Forrester stated that if in fact Nocatee has a need for construction water service in 2001, its engineers advise that Intercoastal 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 because Intercoastal would be able to construct its water production facilities within those two years, a need for temporary water service for construction seems unlikely.

It appears 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 issued favorable notice of intent to change the comprehensive plans.

Most of the parties agree that a need exists for the provision of water, wastewater and reuse service for the Nocatee development. We are persuaded that, consistent with NUC witness Douglas Miller's testimony, it will be needed in the fourth quarter of 2002. This is also consistent with testimony from witness Gauthier on the time line for resolving disputes involving comprehensive plan amendments. JEA concurred with NUC's time line and Sawgrass did not refute it. While Intercoastal 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. Therefore, we find that there is a need for water, wastewater, and reuse service for the Nocatee development as there has been a request for service from the Nocatee development and that service will be required in the fourth quarter of 2002.

Financial Ability

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. In this case, NUC, Intercoastal and JEA agree that NUC has the financial ability to serve the requested territory. Sawgrass takes no position.

DDI and Nocatee's president, Mr. Skelton, provided testimony that DDI owns through its affiliate SONOC Company, LLC, the Nocatee development land, which is comprised of approximately 15,000 acres in St. Johns and Duval Counties. He testified that DDI created NUC as a wholly-owned subsidiary to provide water, wastewater and reuse service to the Nocatee development. To ensure funding for the utility, DDI and NUC entered into a "Master Service Agreement," which was included in Composite Exhibit 5. Under the "Master Service 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. In the initial filing, Mr. Skelton estimated DDI's net worth in excess of $1 billion. At the hearing, Mr. Skelton revised DDI's net worth to over $2 billion.

NUC plans to obtain bulk water, wastewater and reuse service from JEA through the Wholesale and Operations Agreement. JEA's water main and force main have been extended to the point of connection referenced in the Agreement. 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. JEA will provide the operations and management service to NUC. Intercoastal offered no testimony contradicting NUC's financial ability and Sawgrass took no position.

The record supports the financial ability of NUC, with DDI as its parent, to provide service to the area proposed by NUC. 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. Therefore, we find that NUC has the financial ability to serve the requested territory.

Technical Ability

Rule 25-30.033(1)(e), Florida Administrative Code, requires a statement showing the technical ability of the utility to provide service. NUC and JEA agree that through their Wholesale and Operations Agreement, NUC has the technical ability to provide service. However, Intercoastal's position was that NUC does not have the technical ability because NUC does not have any experience in utility operations. Sawgrass took no position on this issue.

NUC witnesses Skelton and Douglas Miller testified on NUC's ability to provide service. They stated that NUC's plan is to purchase water, wastewater and reuse service on a wholesale basis from an existing utility and to contract with an experienced third-party utility operator to provide management and operations services. 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.

Witnesses Skelton and Douglas Miller testified that at the time NUC filed the application for certificates, NUC's parent corporation, DDI, had entered into a Letter of Intent with JEA to provide wholesale service, with an option to also obtain management services. NUC had continued to explore other options with respect

to the provision of operations and maintenance of NUC and the utility received feedback from other area utilities expressing an interest to provide such service.

Ultimately, NUC entered into the Wholesale and Operations Agreement with JEA for service to Nocatee, which was finalized on July 24, 2000. The plan to serve the development is contained in the Agreement.

As previously mentioned, witnesses Douglas Miller and Kelly testified that, under the Agreement, JEA will provide NUC bulk wholesale water, wastewater and reuse service to NUC for at least 25 years. 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 five-year periods, unless terminated by either party. If the O&M provisions are terminated, JEA will continue to provide wholesale utility service at its prevailing wholesale rates. JEA agrees to comply with the applicable provisions of the NEWRAP, which is the development plan created by the owners of Nocatee, in the provision of these services. 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. These requirements parallel the utility-related development order conditions approved by St. Johns and Duval Counties that have been imposed on the Nocatee development.

Witness Douglas Miller also testified that JEA does not have responsibility for planning or construction of the on-site utilities system under the Agreement. 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. 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.

Although we do not regulate JEA, we reviewed JEA's technical ability to provide service because JEA plans to provide the plant capacity for water, wastewater, and reuse, as well as operation and management services under the Agreement. 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 wastewater utility, JEA's annual operating revenues are in excess of $910 million. Water and wastewater operating revenues in fiscal year 1999 were $132,000,000. The water and wastewater system has a historical annual customer growth of more than 3.5%.

JEA serves over 200,000 residential water accounts and over 147,000 wastewater accounts. JEA has over 2,000 miles of wastewater 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 the Wholesale and Operations Agreement are constructed.

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.

Staff witness Cordova, supervisor of the potable water section at the Jacksonville Department of Environmental Protection (DEP), testified on JEA's capacity to provide water to the proposed Nocatee territory and on JEA's 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, as well as the radio nuclides, organics, and inorganic standards. In addition, the water from JEA meets all of the DEP's requirements. Staff witness Lear, who is also employed by DEP, 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.

Intercoastal's position on NUC's technical ability was described in its 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.

The issue of NUC's technical ability seems to boil down to whether 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.

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. Intercoastal itself has all of its operations, management and maintenance handled by a separate company called Jax Utilities Management, Inc. (JUM), as stated by Intercoastal witness James. NUC 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.

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 Douglas 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. 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.

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. 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 us and its customers to ensure that the utility is operated in full compliance with all our rules. JEA 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. Witnesses Skelton 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.

A related issue to customer service details is the reality that JEA is a governmental entity, exempt from our 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 we grants NUC the certificates, NUC will be responsible for the customers. NUC recognizes this responsibility. NUC, at its option, can make arrangements for alternative service.

The testimony shows that NUC is clear about its regulatory responsibilities if it receives its certificates. Further, it appears that NUC is clear that these responsibilities extend to and include how customers are treated and handled and what procedures should be in place to protect customers. However, we agree with Intercoastal to the extent that many of the details were not resolved as of the hearing.

We have some level of comfort, however, because the actual development is one and a half years away from its initial construction. This lead time will certainly provide ample opportunity for these details to be resolved between NUC and JEA to our satisfaction. Moreover, NUC shall ensure that its tariff, application form, and bills make it clear to its customers that NUC is the utility, but that JEA will be performing the billing and some of the operations. As part of the tariff approval process, our staff will review NUC's tariff, the actual application for service that customers would submit to the utility, and a sample bill to ensure that these documents are in compliance with our rules and this Order.

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 our standards, rules and regulations, whether the customers reside in St. Johns or Duval County. NUC has made it clear that it understands this and is prepared to meet these responsibilities and obligations. Based on the foregoing, we find that NUC has the technical ability to provide water wastewater and reuse service to the requested territory, through the Wholesale and Operations Agreement with JEA.

Plant Capacity

A part of the filing requirement for an application for original certificate of authorization, the utility must demonstrate 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 took the position that it does not believe that NUC has the plant capacity to serve the area. Sawgrass takes no position.

As discussed previously, 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 25 year period. Witness Douglas Miller, NUC'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. The table below reflects the projected demand estimates.

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 Douglas Miller explained that NUC has this capacity through its Wholesale and Operations Agreement with JEA. He stated that the 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. According to Mr. Miller, NUC obtained a letter from JEA confirming the availability of wholesale water, wastewater and reuse service in the quantities required by the project. He stated that JEA agreed to comply with the applicable provisions NEWRAP 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.

Mr. Miller also testified that the point of connection between JEA's and NUC's systems 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. NUC has provided an agreement to purchase the land on which the reuse storage and pumping facilities will be located. 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.

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.

NUC/JEA Water Capacity

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

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.

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. Witness Perkins testified that there are no anticipated environmental permitting obstacles to JEA's delivery of services to the disputed territory.

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 the Nocatee development which is expected to take five years to build.

According to witness Perkins, JEA's long term plans allow for anticipated growth in this area and include several options to address the additional demands as they arise. 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 service to St. Johns County and NUC are shown in Table 2 below.

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 Composite Exhibit 6, DCM-5, the Nocatee development'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.

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.

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.

NUC/JEA Wastewater Capacity

JEA witness Kelly stated that JEA's Mandarin wastewater treatment plant has capacity available to provide bulk serve to NUC. 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 the Nocatee development. In addition, witness Kelly testified that flows could be diverted at a minimal cost to JEA's Arlington East wastewater treatment plant.

Witness Perkins testified that JEA's Mandarin plant was built with the ability to expand to 15 mgd if necessary. 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 NUC's flows are projected to be 5.209 mgd at build out, witness Perkins stated that JEA has more than enough capacity planned to be available to meet NUC's long-term needs.

NUC/JEA Reuse Capacity

NUC witness Douglas 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. Mr. 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 the Julington Creek Plantation DRI and the St. Johns DRI, both of which use reuse and storm water as irrigation sources. 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 in Table 1.

NUC witness Douglas Miller stated that based on the estimates shown in Table 1, the development'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 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.

NUC witness Miller further testified that the shortfall cannot be met by increased use of storm water because 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.

NUC witness 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 the Nocatee development 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 that large withdrawals from this source for irrigation would likely have an adverse impact on these wetland systems.

JEA witness Perkins testified as to JEA's ability to meet the reuse demand in Nocatee with its Mandarin wastewater treatment facility. 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 ensure 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. As previously stated, NUC has provided an unexecuted copy of the agreement to purchase the land on which the reuse storage and pumping facilities will be located.

Witness Perkins summarized JEA's position by stating that the need for the first phase of the project can be met by reuse water from the Mandarin plant. He stated that several options exist for meeting the reuse needs of the later phases and how those needs will be met will depend on JEA's decision in regard to expanding its Mandarin plant 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 NUC's needs.

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 did not exist because 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 CUP as approved by the SJRWMD. Intercoastal did not offer any testimony to support its position.

Staff Testimony on NUC/JEA Plant Capacity

Staff witness Cordova of the DEP testified on JEA's capacity to provide 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 NUC because the current limiting grid capacity is 123.2 mgd, with a recorded maximum day flow of 67.3 mgd. As previously discussed, 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, as well as

the radio nuclides, organics, and inorganic standards. In addition, he stated that the water from JEA meets all of the DEP's requirements.

Staff witness Lear, also of the DEP, 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.

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. He also stated that a portion of the St. Johns River has been designated an impaired waterway and that 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. He also stated that as part of the anti-degradation study, the permittee must demonstrate that its 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.

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.

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.

Staff witness Silvers, of the SJRWMD, testified about the concerns the SJRWMD's staff have with respect to the provision of water service within the area included in the original certificate application of NUC. 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 SJRWMD 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 SJRWMD 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.

Witness Silvers testified that, with respect to the concern of water supply, the SJRWMD, through the CUP 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.

Witness Silvers stated that the Nocatee area is within a Priority Water Resource Caution Area (PWRCA), which includes southeastern Duval and northern St. Johns counties. She further explained that a 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.

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).

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 because it is not yet in operation.

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. 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 SJRWMD, she could not comment on Intercoastal's potential capacity relating to its proposed plan to serve Nocatee.

Witness Silvers also testified that the SJRWMD's staff have concerns about the ability of a system serving the Nocatee development 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.

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. 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 SJRWMD, pursuant to Chapter 40C-2.30(f), Florida Administrative Code.

In addition, witness Silvers testified that the SJRWMD 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.

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 SJRWMD's emphasis is on evaluating each utility's ability to adequately supply the projected customer base without resulting in harm to water quality or to native vegetation. She modified her testimony at the hearing to state that although it was likely, JEA had yet to demonstrate to the SJRWMD that it could supply the Nocatee development without resulting in harm to the resources.

At the hearing, witness Silvers indicated that she did not believe that JEA's CUP included the Nocatee Development. She stated 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. 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. Witness Silvers stated that JEA indicated 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 an allocation for the Nocatee development.

Witness Silvers 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). The testimony on Local Sources First was a correction to her testimony in a prior deposition where she had stated it would not apply. On cross-examination, she agreed that Local Sources First was not a policy officially adopted by the SJRWMD at this time. However she affirmed that the standards were used in the evaluation of JEA's CUP.

In additional testimony at the hearing, witness Silvers stated that the SJRWMD did not take a position on whether the Nocatee property is not permittable with onsite facilities, or that the SJRWMD required through its comments on the development orders that there be no onsite wells in the development. 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 SJRWMD.

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 Local Sources First. 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.

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. 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 SJRWMD approving JEA to provide 1 mgd of water service pursuant to its wholesale agreement with St. Johns County. He also stated that the SJRWMD 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. He affirmed that the CUP has been approved by the SJRWMD and that it authorizes JEA to receive an allocation that included the full 3.3 mgd. He further clarified that the CUP does not address 1 million gallons per day or 3.3 million gallons a day. He stated that the CUP addresses 52.6 million gallons a day from the South Grid, which includes all the areas that JEA is serving.

With respect to Local Sources First, witness Perkins testified that it was his understanding that Local Sources First meant that, the transporting authority should confirm that the anticipated needs of the area from which the water is being withdrawn has been met before water is transported from one area to another. 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. In addition, he stated that the technical staff report JEA received states that the service in St. Johns County met the Local Sources First criteria.

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 SJRWMD'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 stated that it identifies five areas where demands are projected to exceed the capacity of existing facilities.

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.

Findings and Conclusion

Table 3 below shows the anticipated demand as proposed by NUC for the development and JEA's plan to meet that same demand based on JEA's proposed plan of service and the NUC proposal. JEA's water information is from testimony, and NUC's data is from Composite Exhibit 6, DCM-3.

TABLE 3

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

	PHASES				
(MGD)	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
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 water plant capacity to serve NUC through all five of its development phases. Witness Perkins testified that 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. Witness Perkins also 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 NUC have a permitted capacity in excess of 40 mgd with flows of 22 mgd, as indicated in Table 2. Therefore, with current facilities, it appears there is about 18 mgd available to NUC, which is more than the 6.121 mgd it has projected it needs at build out, as shown in Table 3. In addition to these existing facilities, JEA witness Perkins testified that JEA plans to expand its water plant which will add 7 mgd of additional capacity to the grid.

Witness Silver's testimony, however, 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 provided to NUC. 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.

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 only states the total amount for which JEA has been approved and that this was the 52.6 mgd approved by the SJRWMD 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. The permit was submitted as

late-filed Exhibit 34 and the supplemental information as late-filed Exhibit 35.

We reviewed both Exhibits 34 and 35. Exhibit 34 shows a cover letter from the SJRWMD to JEA dated February 22, 2001, which indicated that JEA had received its permit on February 8, 2000, and the permit was attached. The first paragraph of the permit states

> 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. We 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 of the SJRWMD, which recommended approval of the application with specific conditions. The cover letter to JEA from the SJRWMD 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 SJRWMD 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 SJRWMD staff report, it states

> 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 <u>wholesale water to St. Johns County</u> (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

> 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 witnesses Silvers and Perkins.

The permit information as filed, however, 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 time line of this case also indicates that service to NUC could have been part of JEA's planning process, yet without a final permit from JEA or without NUC yet being recognized as a utility, NUC was not included in the permit request to the SJRWMD. NUC applied to us for a certificate on June 1, 1999. Included in this application was a Letter of Intent between JEA and DDI to provide utility service to the Nocatee development. This contract was finalized on July 24, 2000.

It is not known 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 SJRWMD staff technical report states a 90 day critical time frame of March 8, 2000. However, the record does reflect that it was actually approved February 8, 2000. Several months after that approval, JEA and NUC finalized their Wholesale and Operations Agreement. It appears that the testimony of both witness Silvers and witness Perkins are compatible and can be reconciled.

Witness Silvers stated her understanding was that JEA intended at the time of its permit renewal with respect to service in St. Johns County to serve a specific area in St. Johns County not related to NUC. This appears to be referenced on page 4 of 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 SJRWMD's permit review process included an analysis of whether the water used from that permit would comport with Local Sources First. She suggested that JEA did not include anything specific in the recent permit relating to service to NUC, but included only the wholesale contract with St. Johns County. She stated "we do not have any agreements or contracts between the parties or PSC approval."

It is also feasible that JEA's unofficial plans included service to NUC when requesting its permit, since the application filed with us included a Letter of Intent. 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 from us at the time JEA submitted its CUP to the SJRWMD for approval.

Perhaps much of this confusion might have been cleared up, if Exhibit A to the SJRWMD staff's technical report had been included in late-filed Exhibit 35. However, even that may have been of little help because it referred to existing service areas of JEA, and JEA may not have included service to NUC because our 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 did not know if it was included in the map. However, she stated that she had not looked at the JEA map in five or six years.

The issue before us is whether NUC, through its agreement with JEA, has capacity to serve the Nocatee development. Despite 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 NUC. We were 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. Witness Perkins stated the total permitted capacity of the South Grid was 104.4 mgd. 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 stated the permit authorizes JEA 52.6 mgd to provide service in the year 2010. We are simply unable at this time to resolve the various permitted and withdrawal amounts with respect to the total JEA CUP.

The testimony and exhibits coordinated on two points. One was that JEA's withdrawals from the South Grid could be up to 55 mgd. 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.

Whatever the disputed amounts are in the permit, the record continues to reflect that the three wells which would likely provide service to NUC have current excess capacity of 18 mgd. Since NUC's demand at build out is expected to be 6.121 mgd, it still appears that JEA has sufficient water capacity to provide service to NUC in the short and long term. Further, it appears that the standards of Local Sources First were used in evaluating the JEA CUP and the SJRWMD technical staff report indicated that the permit meets the Local Sources First requirements. Therefore, we find that JEA currently has sufficient capacity to provide bulk service to NUC during the initial and final phases. If there are additional requirements that JEA must meet to specifically reference NUC within the permit, JEA has acknowledged that it will pursue those requirements. Presumably, this would also encompass another review of the SJRWMD's Local Sources First policy, as suggested by witness Silvers. Based on the foregoing, we find that NUC, through its Agreement with JEA, has the plant capacity to provide water service to the proposed Nocatee development.

Wastewater and Reuse

With respect to wastewater and reuse, JEA has the initial excess capacity to provide service to NUC. 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. The Mandarin reuse system will have a capacity of 2.5 mgd. It is estimated that customers will use 1.5 mgd of reuse. The reuse needs of Phase 1 of the development can be met from the Mandarin plant. The later phases can be met by Mandarin, Arlington East, or a new dedicated reuse plant. Future expansion plans are already underway to ensure that this capacity remains available for the duration of the Nocatee development.

None of the parties questioned the plan to provide wastewater or reuse to Nocatee. Based on the foregoing, we find that NUC, through its Agreement with JEA, has the wastewater and reuse capacity to provide service to the proposed Nocatee development. The utility shall 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 this Order, as required by Rule 25-30.033(1)(j), Florida Administrative Code.

Landowner's Service Preference

NUC witness H. Jay Skelton testified that the landowner prefers to receive service from NUC. 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. 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.

In its brief, NUC argues that the landowner's preference should be given significant weight. NUC states that our 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. 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 us from giving significant weight to the landowners's preference.

NUC argues that in Storey, two electric companies had agreed on a territorial boundary and that we had approved their territorial agreement as being in the public interest. NUC states that in upholding our 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.

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 us to disregard customer preference in a situation where each utility is capable of serving the territory in dispute. 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. 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, we 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.

NUC argues, that based on these precedents, we are 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. NUC

further states that we should give great weight to these factors in the particular circumstances of this case.

Like NUC, JEA also argues in its brief that we should give significant weight to the landowner's preference. 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., we stated that a specific request for service by a developer in the requested territory expansion "would bolster the merit of [the applicant's] filing." JEA asserts that the particular circumstances of this case that merit our 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.

In its brief, Intercoastal argues that no weight should be given to the landowner's preference. Intercoastal states that DDI would benefit financially from the certification of the subsidiary company, NUC, as the service provider for Nocatee. 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." Intercoastal further states that because we have been given regulatory authority over privately-owned utilities, we should give no weight to a landowner's preference. 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.

While it is correct that the court in Gulf Coast Electric reversed a Commission order and stated that customer preference should have been considered a significant factor, we find that 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 we 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.

We also believe that Order No. PSC-96-1137-FOF-WS, cited by JEA, is not applicable in this instance. While we did indeed state that a request for service by a developer located in the requested territory expansion area would bolster the merits of the applicant's filing, we 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 we stated in Order No. 19428 that we 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. However, we 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, we again addressed the weight that should be given to the service preference of the landowner. Again, we stated that we 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, we again cited to Storey and stated that we are not bound by the service preference of the landowner. Id. We concluded that we would not give the landowner service preference any particular weight. Id. at 23.

We may consider the landowner's service preference. Nevertheless, based on Storey, Orders Nos. 19428 and 20668, and the facts of this case, we do not find it necessary to give the landowner's service preference any particular weight.

NUC Not a Class C System

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 we 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 under our rules, and whether the Nocatee development can be served by modifying or extending a current wastewater system.

In its brief, 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 us to reduce the proliferation of new wastewater utilities where existing utilities can provide the service, and that this intent is furthered regardless of whether the new system will ultimately be larger than a Class C system.

In its brief, 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.

JEA adopts NUC's position on this issue, and also states in its brief that NUC's wastewater system will not be a Class C system as defined by our rules. Sawgrass took no position on this issue.

We agree with NUC's position in that the wastewater system proposed by NUC would not be a Class C utility as is defined by our 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 year of operation. Thus, the proposed NUC utility would not be classified as a Class C utility under our rules.

In regard to whether the territory could be adequately served by modifying or extending a current wastewater system, Intercoastal argues in its brief that because term "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, citing Section 367.021(11), Florida Statutes, argues that instead, the statute clearly envisions that the current wastewater system is an existing utility company utilizing "functionally related facilities and land." Thus, Intercoastal argues that the system as proposed by Intercoastal to provide service to the Nocatee development includes "functionally related facilities and land," regardless of whether new facilities are constructed and/or interconnected.

Intercoastal further states that we 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 we have the authority to deny NUC's application. Further, Intercoastal states that, in deciding whether to exercise that authority, we 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." Thus, Intercoastal argues that based upon the facts and the statutory intent, we should deny NUC's application as contrary to the public interest, and contrary to the clear intent of the provisions of Section 367.045(5)(a), Florida Statutes.

NUC argues in its brief that there is no evidence that the NUC 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.

On this point, JEA again adopts NUC's position, and states in its brief 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.

We agree 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 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.

Because NUC's proposed wastewater system will not be considered a Class C utility and Intercoastal has not proposed to extend or modify its current wastewater system, NUC's application shall 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.

INTERCOASTAL'S APPLICATION

Need for Service

As previously stated, 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. As detailed in its Conceptual Master Plan (CMP), submitted as Exhibit 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 included the Nocatee development; 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; and land owned by DDI and the Davis family located north of the Nocatee development.

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. Intercoastal's revised proposed service area includes the existing territory it already serves, the Nocatee development, and the DDI property north of the Nocatee development.

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 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. Intercoastal witness James Miller testified, however, that Intercoastal has not made any plans to serve this area.

In response to Intercoastal's testimony, NUC 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, he stated that 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. 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.

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. There have been no requests for service to the DDI land north of the Nocatee development, and this land is not zoned for residential development.

Therefore, based on the record evidence, we find that in addition to Intercoastal's existing territory, the only other area that is in need of service is the proposed Nocatee development, as discussed previously in this Order. Furthermore, as previously discussed, service will be needed by the fourth quarter of 2002.

Financial Ability

As previously stated, Rule 25-30.033(1)(e), Florida Administrative Code, requires an applicant for an original certificate of authorization to provide a statement showing its financial ability to provide service. 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.

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. 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. 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. Witness Bowen asserted that five of the sixteen shareholders have a combined net worth of over $30 million. 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.

NUC's 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.

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%. Witness Swain opines that negative equity and the highly leveraged position of Intercoastal indicated a high level of financial risk.

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. 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.

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. They argue that since the cost of debt is lower than our leverage graph for return on equity, the customers benefit with lower rates.

Intercoastal provided Composite Exhibit 45 to support its financial capability. 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. Further,

Intercoastal's cash flow projection for the years 2000 through 2005 shows a positive net cash flow. 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.

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. 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.

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 a utility must have at least 1,000 customers before it reaches the break-even point. Since Intercoastal has approximately 3600 retail water and wastewater customers, 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. 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.

The Intercoastal application for certificates 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. 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.

We are 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. 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.

We rely 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. The testimony of Intercoastal's witnesses show that: 1) five of the shareholders have a combined net worth over $30 million; 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; 3) at least one bank in Jacksonville has issued Intercoastal a letter stating interest in funding an expansion into the Nocatee service area; and 4) Intercoastal and its Board of Directors have the ability to borrow money from their line of credit that exceeds $50 million. Therefore, we find that Intercoastal has the financial ability to serve the territory requested in its application.

Technical Ability

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 to 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, the parties disagree as to whether Intercoastal has the technical ability to serve either its current territory or the requested territory. Intercoastal clearly believes that its experience demonstrates that it has the technical ability to serve the proposed area. 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 technically feasible. Noting existing operational problems with Intercoastal's wastewater treatment plant, Sawgrass has concerns about Intercoastal's ability 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, Intercoastal witness M. L. Forrester, Vice-President of JUM, testified that 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, this Commission and the Duval County Circuit Court, and has been qualified as an expert in utility operations and management, service territory and rate matters, and utility valuation.

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.

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.

Also testifying for Intercoastal was witness H.R. James, President of both JUM and Intercoastal. 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 projects worth over $14,000,000. He further stated that JUM has owned over 25 utilities and has sold 23 over the years. The two remaining are Intercoastal and True Cove Oaks. He 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.

To further support that it has the necessary technical ability, Intercoastal's CMP, submitted as Exhibit 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. The plan suggests that the utility is technically capable of obtaining the professional services necessary to develop and operate existing and future utility services.

NUC provided testimony to refute Intercoastal's technical ability. NUC witness Douglas Miller testified that while Intercoastal may be capable of constructing and operating water and wastewater utility systems, its CMP for serving the Nocatee development is inconsistent with the regulatory requirements that will be imposed on the development, and thus that plan is not technically feasible. 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, NUC questioned whether Intercoastal could cost-effectively serve west of the Intracoastal Waterway.

Sawgrass also provided testimony to refute Intercoastal's technical ability through two Intercoastal customers, witnesses Flurry and Arenas. Witness Flurry is the president of 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 that he did not believe Intercoastal had taken all the steps necessary to stop the odors and that the problem continues to the present day. Witness Arenas testified that the plant regularly gives off strong and foul odors. 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, she stated that the odors were not reduced.

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 DEP 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. 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.

As previously mentioned, our staff sponsored two witnesses from the DEP, witnesses Cordova and Lear. 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 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 NUC. He testified that there was no reason as to why Intercoastal cannot satisfy the requirements for the potable water needs of the Nocatee development. 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. Witness Lear testified that in reference to providing residential reuse, neither utility should have a significant technical hurdle.

Intercoastal responded to the testimony 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.

Witness Forrester also responded to witness Flurry's and witness 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. During frequent visits to this facility by DEP 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 DEP and Intercoastal continued to receive odor complaints from customers after the 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 DEP personnel have been unable to verify that such complaints of unreasonable odors are justified.

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 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.

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 witness Flurry's testimony was at least an uninformed misinterpretation if not a deliberate distortion of the language contained in the Water Quality Report. During cross-examination of witness Flurry by Intercoastal, Mr. Flurry 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 homeowners' association to discuss with the utility the situation regarding odor.

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 described 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 Intercoastal's technical ability to serve. Also, the technical problems identified by the customers were substantially addressed by witness Forrester. The utility's compliance record with DEP rules and recent plant improvement efforts also show the utility's technical ability to provide service. Therefore, we find that Intercoastal has the technical ability to provide service to the existing and proposed territories.

Customer Preference

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. He further testified that Sawgrass Association, Inc., represents over 1,500 homeowners that are all customers of Intercoastal. Mr. Flurry stated that the Intercoastal plant has "consistently given off foul and disgusting odors which have not been adequately remedied yet."

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

Sawgrass argues in its brief 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. 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. Furthermore, Sawgrass also argues that NUC's plan for service is superior to that of Intercoastal.

We 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 we may consider customer preference if all other factors are substantially equal. Our 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 Sawgrass, 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, we 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. We will give the customers' concerns regarding Intercoastal's quality of service the weight that we deem appropriate. In addition, because the quality of service of a utility is directly linked to the technical ability of that utility, we considered Intercoastal's technical ability in conjunction with this issue. As previously discussed, we found that Intercoastal has the technical ability to provide service.

Plant Capacity

Intercoastal contends that Nocatee's development plan, NEWRAP, and the development orders approved by St. Johns and Duval Counties, both of which require specific parameters concerning treatment plant locations, groundwater usage, effluent discharge, and irrigation demands, should not prevent it from providing service as proposed through its CMP. Both JEA and NUC argue that Intercoastal's plan for service is not attainable because it will require new plant construction of water, wastewater and reuse facilities in the Nocatee development. Sawgrass' position is that Intercoastal's existing plant does not have capacity to serve the requested area. Furthermore, Sawgrass states that 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.

As previously discussed, Intercoastal's plan of service for the Nocatee development is contained in its CMP, submitted as Exhibit 17. The objectives of the CMP include the following: 1) develop recommendations for providing water, wastewater, and reclaimed water services to the area to the west of the Intercoastal Waterway, while continuing to provide for service and growth in its current service area for a 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.

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 constructed on the west side of the Intracoastal Waterway. The second option was to construct new facilities in the wester side of the Intracoastal Waterway 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.

According to the CMP, Intercoastal quickly determined that the cost to provide a subaqueous transmission main under the Intracoastal Waterway 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. Therefore, Intercoastal refocused on the second alternative in its CMP, which was based on the construction of separate, stand alone facilities for water and wastewater service on the west side of the Intracoastal Waterway to serve the area proposed in its application. Intercoastal noted, however, in its CMP that the it 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 Intracoastal Waterway.

With regard to other supply sources, witness Forrester testified that wholesaling water from JEA is an alternative which Intercoastal would not turn a blind eye to if we determined that such a relationship was in the public interest. Mr. Forrester testified that if we were to approve Intercoastal's application, 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.

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 system located on the east side of the Intracoastal Waterway to the proposed west side reclaimed water storage facilities would accomplished through the construction of a pipeline crossing under the Intracoastal Waterway. This pipeline would double as a wet weather discharge to the Intracoastal Waterway when conditions where such that 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.

Intercoastal's CMP provides for a wet weather discharge into the Intracoastal Waterway. The disposal line would be located in the Intracoastal Waterway north of State Road 210, which is a location picked by the DEP for discharge from Intercoastal's existing plant. At the hearing, Intercoastal witness James Miller stated that during wet weather, between 700,000 to 3 million gallons per day could be discharged into to Intracoastal Waterway. However, when considering annual averaging, Mr. Miller stated that it would be below the already existing 1.2 gallons per day (gpd) permitted by the DEP to the utility's disposal site in the Intracoastal Waterway. Mr. Miller stated that Intercoastal's plan of service would reduce its discharge into the Intracoastal Waterway to almost zero.

Additionally, in Intercoastal's CMP, the following information concerning system phasing for water, wastewater, and reuse were given. Phasing of Intercoastal's system is proposed as follows:

Water System:

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

Wastewater System:

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

Reclaimed Water System:

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.

The chart below shows the anticipated demand as proposed by NUC for the development and Intercoastal's plan to meet that demand. For water and wastewater, the utility would build a new plant on the west side of the Intracoastal Waterway. To provide effluent for reuse, Intercoastal would utilize excess effluent from its existing Sawgrass wastewater treatment plant, ultimately combined with effluent from its new facility located on the west side of the Intercoastal Waterway. The data for Intercoastal is from Exhibit 17, and the data for NUC is from Composite Exhibit 6, DCM-3.

		PHASES				
	(MGD)	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

		PHASES				
	(MGD)	P1	P2	P3	P4	P5
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)						

Intercoastal argues that the combination of facilities and service plan would allow it to fully meet the Nocatee development's demands for water, wastewater and reuse. This is based on Intercoastal's revised estimates of demand for effluent to the proposed Nocatee golf courses and the contractual obligation to Sawgrass. Intercoastal witness Forrester, however, acknowledged that the Nocatee development orders enacted by St. Johns County and Duval County are inconsistent with Intercoastal's plan of service. Witness Forrester stated that it would be in the best interest of Intercoastal and its present and future customers to modify the Nocatee development orders to accommodate Intercoastal's plan of service.

NUC's primary objection to Intercoastal's plan of service as described in Intercoastal's CMP, is that the Nocatee developer, NUC and JEA have committed to an environmentally sensitive project and that the Intercoastal plan is violates the development orders approved by St. Johns and Duval Counties. NUC states that the development orders require: 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) that irrigation demand must be met by reuse of either wastewater effluent or stormwater. According to NUC witness Douglas Miller, these four utility-related development conditions secure the development rights to build a city for 35,000 residents, and were not orchestrated to preclude service from Intercoastal, as alleged by Intercoastal.

NUC witness Douglas 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. Mr. Miller

stated that while Intercoastal may be capable of constructing and operating water and wastewater utility systems, its CMP is not technically feasible because it violates the development orders. Further, it was his professional opinion that the modifications to the development orders that would be required to implement Intercoastal's plan of service were unattainable, and therefore, Intercoastal's plan of service would not be implementable.

NUC witness Skelton stated that DDI and NUC 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. 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.

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 Intracoastal Waterway to serve Nocatee, the availability of water to serve Nocatee, and the adequate supply of irrigation water to serve Nocatee. Mr. Forrester stated that Intercoastal could either provide service in some way such that plants were not located on the development or, it could modify the development orders to accommodate Intercoastal's plan of service. 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. He stated that Intercoastal has condemnation authority as a public utility, if that were necessary.

In regard to the criticism of Intercoastal's plan with respect to the actual availability of water in the development, witness Forrester stated that Intercoastal's review of the Nocatee Water Resource Study, a water study done by NUC, confirmed the potential for significant ground water withdrawals which could provide potable water needs for this area. He stated that these withdrawals would not adversely affect water resources of the area.

In response the to the ability of the Intercoastal to provide adequate irrigation water to Nocatee, Mr. Forrester stated that Intercoastal's CMP proposes to supplement wastewater effluent (reclaimed water) with groundwater withdrawals to ensure an adequate flow of irrigation water. 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, he stated that Intercoastal will temporarily supplement those reclaimed water sources with a declining withdrawal of lower quality groundwater for the first three years. He stated that the use of groundwater to supplement reclaimed water produced for irrigation is allowed by Section 373.250(3)(a), Florida Statutes. In addition, Mr. Forrester stated that the SJRWMD's current 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.

Intercoastal also argues that the projections made by NUC of 650,000 gpd for reclaimed water usage for the proposed Nocatee golf courses are on the high side. Intercoastal witness James Miller stated the annual average usage normally associated with central to north Florida golf courses is typically 300,000 to 400,000 gpd. 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. He stated that this supply can be obtained from an irrigation well drilled into the lower Floridian Aquifer, as recommended in the "Nocatee Groundwater Supply Development Plan."

Another aspect of the argument against Intercoastal's ability to provide adequate irrigation water was that the demand from the utility's existing customers located in the Sawgrass development would result in a shortage of reuse for the Nocatee development. Intercoastal witness James Miller stated that Intercoastal can meet the demands by using the reclaimed water generated from the proposed wastewater treatment facility and the excess reclaimed water from Intercoastal's Sawgrass wastewater treatment plant. He

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, Mr. Miller and witness Forrester indicated that the utility was obligated to provide 300,000 gpd on an average annual basis. However, in responding to questions about possible shortfalls in meeting reuse demand, witness James 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.

No testimony relating to Intercoastal's plant capacity was offered by JEA or Sawgrass. As previously mentioned, our staff presented several witnesses representing various agencies which testified on Intercoastal's plant capacity. These witnesses included witness Silvers of the SJRWMD, witnesses Cordova and Lear of the DEP, and witness Gauthier of the DCA.

Witness Silvers was questioned as to Intercoastal could meet the SJRWMD permitting criteria to obtain a CUP for water. Obtaining a permit is one of the preliminary steps involved in permitting any new utility facility plans. She agreed that the SJRWMD has not required that there be no on-site water wells at Nocatee, and that every applicant is given the ability to demonstrate whether or not they can meet the SJRWMD permitting criteria. However, she stated that there was no application by Intercoastal for such a permit filed with the SJRWMD at this time, so she could not come to a conclusion on whether Intercoastal could obtain a permit for a well.

Witness Cordova of the DEP testified that Intercoastal's water system currently meets all DEP 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. He stated, however, that he could not testify as to the adequacy of Intercoastal's proposed system in the Nocatee development, because the DEP had not received a permit application or any details on that plant.

Witness Lear of the DEP testified primarily on permitting issues that Intercoastal would have to address at the time it filed an application with the DEP. He stated that the DEP's primary

review would be with respect to effluent disposal into the Intracoastal Waterway. 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 a permit.

Witness Gauthier's testified with respect to Intercoastal obtaining a change in the development order currently imposed on the Nocatee development. As mentioned earlier, the development orders restrict any onsite plants or withdrawals of water. During cross-examination by Intercoastal, he explained that development orders can be changed through either a proposed change or a substantial deviation process. Mr. Gauthier explained that the local government would have to make that change in either process. He also stated that he could not foresee 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.

During additional questioning, witness Gauthier discussed possibilities for locating plants. He stated that although there are very significant wetland systems within Nocatee, it also appeared that there were substantial upland areas away from the wetland and estuarine systems where water and wastewater facilities could be located. He noted, however, that the aspect of service he would be most concerned about would be the wastewater treatment facilities and the method of discharge.

Findings and Conclusion

Rules 25-30.033(1)(j) and 25-30.036(3)(d), Florida Administrative Code, require an applicant to provide evidence in the form of a warranty deed or a long term lease that it owns the land or has the right to continued use of the land upon which the utility facilities will be located. In its primary plan for service submitted for our review, Intercoastal proposes to construct new facilities on the west side of the Intercoastal Waterway to provide service to the area proposed in its application. Intercoastal has not, however, produced any evidence showing that it owns or will own, or has or will have a right to continued use of the land upon which its proposed facilities will be located. In fact, Intercoastal witness James Miller stated that

the utility does not have access to land needed for the plant sites. Although there was discussion by witnesses Forrester and James Miller that property can be acquired, there was no evidence provided as to the certainty of that observation, or to its timeliness to meet the development needs of Nocatee. In regard to Intercoastal proposing to receive service though some sort of an agreement with JEA, there was no evidence in the record supporting this plan of service and it appears to be entirely speculative. Thus, based on the evidence in the record, we find that Intercoastal does not have the present water, wastewater or reuse capacity nor will the utility have the plant capacity in the foreseeable future, to provide service to the Nocatee development on a timely basis.

There was testimony from the SJRWMD and DEP witnesses indicating that Intercoastal has not yet filed applications for permits with these agencies to provide service to the development. Our finding that Intercoastal lacks the plant capacity to serve the Nocatee development is not based on the fact that Intercoastal has not yet filed for or received permits from these agencies. Section 367.031, Florida Statutes, specifically states that a utility must receive a certificate of authorization from this Commission before being issued a permit from the DEP and SJRWMD. Nor is our decision in regard to Intercoastal's plant capacity based on the fact that its plan is not in compliance with the development orders; however, we note that changing the conditions of the development orders may affect Intercoastal's ability to provide service on a timely basis.

PUBLIC INTEREST

Intercoastal

There are many strong points to Intercoastal's application. We found that Intercoastal has both the financial and technical ability to provide service to the Nocatee development. 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. Staff witness Gauthier testified that there appears to be areas on the west side of the Intracoastal Water Way that would be suitable for construction of water and wastewater facilities.

Intercoastal did not, however, introduce substantive evidence showing that it has been able to obtain sites on which to construct the facilities. In fact, the evidence in the record shows that the utility does not have the present capacity and not will have the capacity in the future to provide service to the Nocatee development on a timely basis. While proof of ownership or continued use of the land upon which the facilities will be located alone does not automatically mean that a utility would be granted a certificate of authorization, lack of such evidence prevents us from finding that Intercoastal has demonstrated the necessary plant capacity to serve the Nocatee development. Based on the totality of the record, we hereby find that it is not in the public interest to grant Intercoastal a water and wastewater certificate to provide service to the territory proposed in its application, and its application is hereby denied.

NUC

We examined the need for service in the area requested by NUC. We found that there was a need for service in the area proposed by NUC and that service would be needed by the fourth quarter of 2002. While we are not bound by the local comprehensive plans, we did consider the plans. The local governments have adopted the development orders and the DCA has issued a favorable notice of intent to change the comprehensive plan to allow the Nocatee development to move forward. The DCA's notice of intent to approve the plans have been protest and is currently being litigated. While NUC's proposal for service is not in total compliance with the comprehensive plans, the utility has taken the steps necessary to resolve those issues.

The evidence shows that NUC has the financial resources through its "Master Service Agreement" with its parent company, DDI. In the "Master Service Agreement, DDI has committed its resources to provide sufficient and quality utility service.

NUC also demonstrated its technical ability to service the area proposed in its application through its Wholesale and Operations Agreement with JEA. The Agreement with JEA appears to be a cost-effective method for providing water, wastewater, and reuse service to the development. Pursuant to the Wholesale and Operations Agreement, JEA will provide to NUC operations and

maintenance services. NUC will also have employees available to respond directly to customers' questions and concerns.

We examined NUC's plant capacity. NUC witness Douglas Miller and JEA witness Perkins provided extensive testimony on the details of the bulk service arrangement between the two utilities. The record was undisputed with respect to the specific wells that would provide water to NUC. The evidence showed that JEA has an excess capacity of 18 mgd, which is more than enough to provide bulk service to NUC initially and at build out. No testimony was offered to dispute the capacity of JEA to provide NUC with wastewater or reuse capacity. Therefore, we found that NUC, through its Wholesale and Operations Agreement with JEA, has the capacity to provide water, wastewater and reuse to the Nocatee development.

The record also contained 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." 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 the Wholesale and Operations Agreement is consistent with the long-term environmental needs of the area and 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 that it will offer to NUC. 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. The grid also complies with suggested solutions to provide water in the region from the SJRWMD, as testified to by witness Silvers.

Based on the totality of the record, we hereby find that it is in the public interest to grant NUC water and wastewater certificates to serve the territory described in Attachment A, which by reference is incorporated herein. NUC's application is hereby approved, and the utility is hereby granted Certificates Nos. 617-W and 531-S.

NUC'S RETURN ON EQUITY

NUC's position is that the appropriate return on equity for NUC should be based on our leverage graph formula. Since the leverage graph formula was updated for the year 2000, the appropriate return on equity for NUC is 9.62%. Intercoastal states the return on equity should be consistent with the leverage graph formula order in effect at the time of the final order in this case. 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 NUC's rates, she developed a projected capital structure for the utility using a 40/60 ratio of debt to equity. 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.

Witness Swain initially proposed a return on equity of 9.46% which was calculated using the 1999 leverage graph formula that was in effect at that time. However, Ms. Swain later testified that it would be appropriate to update NUC's return on equity to 9.62% using the current leverage graph formula established by Order No. PSC-00-1162-PAA-WS, issued June 26, 2000, in Docket No. 000006-WS.

In its brief, Intercoastal takes the position that the current leverage graph that is in effect at the issuance of the final order for this case is the leverage graph formula that should be used to

calculate the return on equity. That would also be Order No. PSC-00-1162-PAA-WS. Order No. PSC-01-1226-PAA-WS, which proposed the 2001 leverage graph formula has been protested and is scheduled for hearing, and thus is not in effect.

Based on the foregoing, we hereby approve a return on equity for NUC of 9.62%, consistent with the current leverage graph formula found in Order No. PSC-00-1162-PAA-WS.

NUC'S RATES AND CHARGES

Rules 25-30.033(1)(k), (t), (u), (v), (w), (2), and (3), Florida Administrative Code, require an applicant to file a proposed tariff and cost justification for its proposed rates and charges. NUC amended its proposed water, wastewater, and reuse rates on July 31, 2000, when witness Swain filed recalculated rates to reflect the impact on NUC's costs based on 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 our 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.

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. 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, which will be in year four,

and to allow the utility to earn a fair rate of return on its investment at that time.

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. NUC is projected to serve approximately 1,875 equivalent residential connections (ERCs) for water and wastewater and 1805 ERCs for reuse once the first phase is completed in five years.

Witness Swain further testified that the revised reuse rates, as proposed in Exhibit 13, are more affordable and encourage participation in the reuse water program 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. The rates are designed to recover the costs that NUC will incur under the Wholesale and Operations Agreement, its operating costs, and the utility's investment in the system.

Witness Swain testified that although the proposed water and wastewater rates will not be compensatory for the first three years of service, they will be fully compensatory by year four. She indicated that because of our 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. Witness Skelton testified that DDI and NUC entered into a "Master Service Agreement" to ensure funding for the utility. Under the "Master Service 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 NUC the required financial resources.

Rate Base

The utility's proposed schedules for rate base appear on Schedule Nos. 1-A, 1-B, and 1-C, which are incorporated herein by reference. The schedules of rate base are for informational purposes to establish initial rates and are not intended to establish rate base. This is consistent with our practice in

original certificate applications. The projected rate base for water at 80% of design capacity is $959,318. The projected rate base for wastewater at 80% of design capacity is $1,719,834. The projected rate base for reuse at 100% of design capacity is $358,621.

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. 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. 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.

No water, wastewater, or reuse treatment facilities are included in rate base because NUC will purchase bulk service from JEA. In addition, pursuant to the Wholesale and Operations Agreement, 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. 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. JEA has elected to provide for increased capacity for Phase 1 of the NUC development.

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. The projected Accumulated Depreciation balance for reuse of $688,651 reflect the projected balance at 100% of design capacity in year five. The projected Accumulated Depreciation balances were

calculated using the guideline average service lives in Rule 25-30.140, Florida Administrative Code.

Contributions-in-aid-of-construction (CIAC)

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. NUC's projected contribution level at design capacity will be 78.19%.

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. NUC's projected contribution level at design capacity will be 76.83%.

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. NUC's projected contribution level for reuse at design capacity will be 94.17%.

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. The projected Accumulated Amortization balance for reuse of $349,919 reflects the projected balance at 100% of design capacity in year five. 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.

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 one-eighth of operating and maintenance expenses for each system. This is consistent with Rule 25-30.433(2), Florida Administrative Code.

Cost of Capital

NUC's projected capital structure appears on Schedule No. 4. As required by Rule 25-30.033(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 pro forma 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. The cost of debt is 10.00%. Based on the particular facts of this case, 10.00% appears reasonable.

As previously discussed, the current leverage graph was used to determine the return on equity. Based on the current leverage graph formula, the projected overall cost of capital for NUC is 9.77%.

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.

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 Schedules Nos. 2-A, 2-B, and 2-C, which by reference are incorporated herein. The utility's proposed revenue requirements have been adjusted. 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. We find that the 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. The projected operation and maintenance expenses at 100% of design capacity for reuse is $237,048, including $212,108 for bulk reuse service. The utility's project costs for bulk service have been reviewed and they appear to be consistent with the terms of the Wholesale and Operations Agreement. The operation and maintenance expenses are shown on Schedules Nos. 3-A, 3-B, and 3-C, which by reference are incorporated herein.

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.

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 (RAFs) of 4.5% of gross revenues, property taxes of 1.8% of rate base, payroll taxes of 7.65% for salaries, and other taxes and licenses for each system. These amounts appear reasonable. However, as a result of the decrease to the operating revenues based on a parent debt adjustment, a corresponding adjustment to decrease the RAFs by $824 for water, $1,489 for wastewater, and $311 for reuse is appropriate. We find 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. As previously noted, NUC is a wholly owned subsidiary of DDI. 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."

Witness Swain further stated that she had not explored the possibility of a parent debt adjustment, but that it would be offsetting. 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. 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%.

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 statutory tax rate applicable to the consolidated entity. This result 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.

As shown in Composite Exhibit 4, DDI's capital structure as of November 30, 1998, reflected 77.48% debt and 22.52% equity. DDI's weighted average cost of debt was 5.86% based on the U.S. money market rates for London Interbank Offered Rates (LIBOR), 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. 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 shall be made to reduce NUC's income tax expense to reflect the parent debt adjustments. The income tax expense shall 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.

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. Intercoastal further stated that, in keeping with our 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 adjustment we made to the parent debt. No other testimony was offered to refute the utility's proposed rates and charges. Therefore, the water, wastewater, and reuse rates and charges set forth below are hereby approved. These 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 rates and a comparison of the typical monthly bills are shown on Schedules Nos. 5-A, 5-B and 5-C, which by reference are incorporated herein.

The utility proposed and the Commission-approved rates for water, wastewater and reuse are:

MONTHLY WATER RATES
Residential & General Service

Base Facility Charge Meter Size	Utility Proposed	Commission Approved
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

Base Facility Charge Meter Size	Utility Proposed	Commission Approved
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

Base Facility Charge Meter Size	Utility Proposed	Commission Approved
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

In Composite Exhibit 7, DCM-14, the ADA Sufficiency Response, it states that the Nocatee development will have deed restrictions to prohibit the use of private wells, including private irrigation wells, throughout the project. We note that the developer, not NUC, would be required to enforce a deed restriction. Thus, NUC is hereby on notice that it may not refuse or discontinue water or

wastewater service if a customer declines to use the reuse system.

Miscellaneous Service Charges

Rule 25-30.460, Florida Administrative Code, defines four categories of miscellaneous service charges. Consistent with our 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.

NUC shall file tariffs which reflect the rates and charges approved herein. NUC shall continue to charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. The tariffs shall 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.

NUC'S SERVICE AVAILABILITY CHARGES

In its application, NUC 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. 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%, to be retained by the utility.

According to the application, NUC's proposed main extension charge is designed to produce the maximum 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 contributions-in-aid-of-construction, 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 contributions-in-aid-of-construction 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 witness Swain testified that she targeted 75% as her maximum amount of CIAC charge net of amortization for water and wastewater. Ms. Swain 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.

In regard to the reuse system, NUC 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 CIAC for reuse plant will meet our guideline for a minimum CIAC amount equal to 100% of the cost of transmission and distribution facilities. According to NUC 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.

According to JEA witness Kelly and NUC witness Swain, NUC will collect the plant capacity charge and remit it to JEA. 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.

In its brief, Intercoastal pointed 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, which is incorporated herein by reference, NUC's projections show 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, we find that the utility's proposed 78% contribution level is reasonable. A lower main extension charge would result in a higher rate base and higher rates for NUC.

NUC's projections for the wastewater system indicate that the proposed main extension charge of $115 per ERC will result in a 77% contribution level at design capacity. 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, we find 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. 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. We find 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, we approve service availability charges which will achieve a 75% contribution level at build out. However, in consideration of this utility's unique situation, we find that NUC's proposed service availability policy and charges are reasonable and are approved. NUC is hereby on notice that if JEA's plant capacity charge changes, NUC may not pass any change on to its customers without prior Commission approval. The utility's requested main extension and plant capacity charges are hereby approved. These charges shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

NUC'S AFUDC RATE

Rule 25-30.033(4), Florida Administrative Code, allows utilities obtaining initial certificates 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 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%.

Ms. Swain later testified that it would be appropriate to update the initial proposed AFUDC calculation using the current leverage graph formula set forth in Order No. PSC-00-1162-PAA-WS. 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%.

In its brief, Intercoastal stated that the establishment of the AFUDC rate for NUC should be calculated in accordance with standard Commission policy and the 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 that 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 our review of the calculation submitted by NUC, we agree with NUC's calculation of the cost of equity capital as derived from the current leverage formula. We have reviewed and determined that NUC's calculation of an AFUDC rate is in compliance with all pertinent rules and

statutes. There was no other testimony in the record disputing this fact.

Therefore, the current leverage formula as found in Order No. PSC-00-1162-PAA-WS shall be used to determine NUC's AFUDC rate. An AFUDC rate of 9.77% is hereby approved and a discounted monthly rate of .813802% shall be applied to the qualified construction projects beginning on the date the certificate of authorization is issued. The utility's AFUDC rate shall be applied to eligible construction projects beginning on the date the certificate of authorization is issued.

DOCKET TO REMAIN OPEN

We note that there were issues pertaining to establishing rates and charges, service availability charges, and an AFUDC rate for Intercoastal which were rendered moot by our decision to deny Intercoastal's application. There were also two issues identified at the hearing, including 1) the implications of the decisions in the Alafaya Utilities and Lake Utility Services cases on this case and 2) what the ramifications would be if both applications were denied. We decided not to rule upon those issues because we determined they were addressed for informational purposes only.

These dockets shall remain open for an additional thirty days from the issuance date of this Order so that NUC may file proof of ownership or continued use of the land upon which its reuse facilities will be located. Once our staff has verified that this information has been filed, these dockets shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained herein, whether set forth in the body of this Order or in the schedules attached hereto are by reference incorporated herein. It is further

ORDERED that Intercoastal Utilities, Inc.'s ore tenus Motion for Continuance of the Hearing is denied. It is further

ORDERED that Intercoastal Utilities, Inc.'s ore tenus Motion for Reconsideration of Order No. PSC-01-1055-PCO-WS is denied. It is further

ORDERED that Nocatee Utility Corporation's request to extend the page limit of the briefs to 60 pages is granted. It is further

ORDERED that Nocatee Utility Corporation is hereby on notice that it must keep this Commission informed of any significant changes to its Agreement for Wholesale Utilities, Operations, Management and Maintenance with JEA. Failure to do so may result in Commission action under Section 367.161, Florida Statutes. It is further

ORDERED that Nocatee Utility Corporation's application for certificates of authorization to provide water and wastewater service to the territory set forth in Attachment A is hereby approved. The utility is hereby granted Certificates Nos. 617-W and 531-S. It is further

ORDERED that Intercoastal Utilities, Inc.'s application for certificates of authorization is hereby denied. It is further

ORDERED that Nocatee Utility Corporation shall ensure that its tariff, application form, and bills make it clear to its customers that Nocatee Utility Corporation is the utility, but that JEA will be performing the billing and some of the operations. It is further

ORDERED that a return on equity of 9.62% is hereby approved for Nocatee Utility Corporation. It is further

ORDERED that Nocatee Utility Corporation shall charge the rates and charges approved as set forth in this Order. It is further

ORDERED that Nocatee Utility Corporation shall file tariffs which reflect the rates and charges approved in this Order. The utility shall continue to charge these rates and charges until

authorized to change by this Commission in a subsequent proceeding. The tariffs shall 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. It is further

ORDERED that Nocatee Utility Corporation's proposed service availability policy and charges, main extension charges and plant capacity charges are reasonable and are approved. Nocatee Utility Corporation is hereby on notice that if JEA's plant capacity charge changes, Nocatee Utility Corporation may not pass any change on to its customers without prior Commission approval. These charges shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that an allowance for funds used during construction rate for Nocatee Utility Corporation of 9.77% is hereby approved and a discounted monthly rate of .813802% shall be applied to the qualified construction projects beginning on the date the certificate of authorization is issued. The utility's AFUDC rate shall be applied to eligible construction projects beginning on the date the certificate of authorization is issued. It is further

ORDERED that these dockets shall remain open for an additional thirty days from the issuance date of this 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. Once our staff has verified that this information has been filed, these dockets shall be closed administratively.

By ORDER of the Florida Public Service Commission this 24th day of September, 2001.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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°50'26" West along said right of way line, a distance of 925.00 feet to a point; run thence North 76°59'37" East, a distance of 4,715.0 feet to a point; run thence North 00°37'22" West, a distance of 3625.0 feet to a point; run thence North 89°34'10" East, a distance of 1,965.0 feet; run thence North 34°06'08" East, a distance of 3,495.66 feet to a point on the Northerly boundary of Section 49; run thence North 75°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°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°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°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.

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°39'56" East along the North line of said Section, a distance of 1650.0 feet; run thence North 62°02'54" East, a distance of 7,000.0 feet; run thence South 66°36'10"East, a distance of 3133.65 feet; run thence South 17°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°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°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°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°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°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°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°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° 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° 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° 15' 54" East and distance of 389.23 feet; third course, North 79° 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° 09' 43" East, departing said right of way line, a distance of 2633.45 feet; run thence South 82°53'46"East, a distance of 711.15 feet; run thence South 08°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° 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° 27' 34" East, along the Southerly line of said Township, a distance of 3,363.65 feet; run thence North 00° 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° 07' 52" West, a distance of 3,916.31 feet; second 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.

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°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° 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 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° 37' 49" West, a distance of 795.13 feet; 2) South 89° 37' 49" West, a distance of 235.03 feet; 3) North 30° 22' 11" West, a distance of 760.49 feet; 4) South 89° 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° 36' 44" West, a distance of 309.21 feet; 6) South 89° 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° 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° 01' 01" East continuing along said Northeasterly right of way line, a distance of 911.85 feet; thence North 89° 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° 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° 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° 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.

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° 59' 33" West, along said West line of Section 2, a distance of 125.93 feet; thence North 89° 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° 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° 52' 04" East, continuing along said Southwesterly right of way line, a distance of 403.00 feet; thence South 89° 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° 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.

TRACT "F"

A tract of land comprised of the East ½ of Section 12 and the Northeast 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° 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° 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 1/4 of said Section; run thence South 87° 23' 00" West, along the Southerly line of said Northeast 1/4, a distance of 1,733.13 feet; run thence North 43° 10' 20" West, a distance of 1,268.24 feet; run thence North 50° 05' 18" East, a distance of 498.34 feet; run thence North 40° 25' 16" West, a distance of 766.09 feet to a point on aforesaid Westerly line of the Northeast 1/4 of Section 13; run thence North 00° 46' 57" West, along said Westerly line and along the Westerly line of the East ½ of Section 12, a distance of 6,046.27 feet to the Northwest corner of the said East ½ of Section 12; run thence North 89° 35' 26" East, along the Northerly boundary of said Section 12, a distance of 2,488.06 feet to the Point of Beginning.

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° 55' 04" West, along the Northwesterly boundary of said Section, a distance of 269.22 feet; run thence South 37° 41' 20" East, a distance of 148.80 feet; run thence South 52° 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° 47' 17" East, along said right of way line, a distance of 200.00 feet; run thence North 52° 12' 43" East, a distance of 240.00 feet; run thence South 37° 47' 17" East, a distance of 100.00 feet; thence South 52° 12' 43" West, a distance of 240.00 feet to said Northeasterly right of way line;

run thence South 37° 47' 17" East, along said right of way line, a distance of 300.00 feet; run thence North 52° 12' 43" East, a distance of 240.00 feet; run thence South 37° 47' 17" East, a distance of 50.00 feet; run thence South 52° 12' 43" West, a distance of 240.00 feet to aforesaid Northeasterly right of way line; run thence South 39° 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° 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° 14' 24" East, along said Section line, a distance of 1,126.79 feet; run thence North 56° 19' 41" West, continuing along said Section line, a distance of 1,301.59 feet; run thence North 43° 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° 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° 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° 56' 57" West, along said Section line, a distance of 5407.34 feet to the Southwest corner of said Section; run thence South 02° 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° 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° 40' 59" East, a distance of 1887.09 feet; second course, South 79° 34' 02" East, a distance of 639.79 feet; third course, South 07° 57' 59" East, a distance of 1679.42 feet; fourth course, North 59° 54' 33" West, a distance of 2797.08 feet to the Southwesterly corner of said Section; run thence South 01° 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° 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° 56' 37" East, along said Section line and subdivision line, a distance of 1096.67 feet; run thence North 13° 29' 52" West, along said subdivision line, a distance of 183.21 feet; run thence North 02° 39' 45" East, along said subdivision line, a distance of 265.41 feet; run thence South 89° 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 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.

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	Commission Adjust.	Balance Per Commission
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	Commission Adjust.	Balance Per Commission
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	Commission Adjust.	Balance Per Commission
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	Comm. Adjust.		Balance Per Commission
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	Comm. Adjust.	Balance Per Commission
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	Comm. Adjust.		Balance Per Commission
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	Comm. Adjust.	Balance Per Commission
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	Comm. Adjust.	Balance Per Comm.
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	Commission Adjust.	Balance Per Commission
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	Comm. Adjust.	Balance Per Comm.	Comm. Adjust.	Commission 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	COMMISSION APPROVED
	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	COMMISSION APPROVED
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	COMMISSION APPROVED
	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	COMMISSION APPROVED
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	COMMISSION APPROVED
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	COMMISSION APPROVED
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%
	Commission Approved Charge	$95	$115	$550