

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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990696-WS

In re: Application by Nocatee )  
Utility Corporation for )  
Original Certificates for Water )  
& Wastewater Service in Duval )  
and St. Johns Counties, Florida )

Docket No. 99-704-RECORDS AND REPORTING

Filed: June 1, 1999

PETITION FOR TEMPORARY VARIANCE  
FROM OR TEMPORARY WAIVER OF RULES 25-30.033

(1) (h), (j), (k), (m), (o), (r), (t), (u), (v), (w);  
(2); (3) and (4) and 25-30.433(10),  
Florida Administrative Code

Nocatee Utility Corporation (NUC), by and through its undersigned attorneys and pursuant to Section 120.542, Florida Statutes, hereby petitions the Florida Public Service Commission (the Commission) for a variance or waiver of certain requirements of Rule 25-30.033, Florida Administrative Code, as specifically identified below. In support of its petition, NUC states:

1. The name, address, telephone number, and facsimile number of Nocatee Utility Corporation are as follows:

Nocatee Utility Corporation  
4310 Pablo Oaks Court  
Jacksonville, FL 32224  
(904) 223-4700 telephone  
(904) 223-7499 fascimile

2. The name, address, telephone number and facsimile number of the attorneys representing NUC in this matter are as follows:

Richard D. Melson  
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3. Rules 25-30.033(1) (h), (j), (k), (m), (o), (r), (t), (u), (v), (w); (2); (3) and (4) implement Sections 367.031 and 367.045(1), Florida Statutes. Rule 25-30.433(10) implements Section 367.081, Florida Statutes.

4. DDI, Inc. (DDI), the parent company of NUC, and Estuary Corporation own all of the land (approximately 15,000 acres) included within the boundary of the territory proposed to be served by the above-referenced application. DDI intends to develop this land as a large-scale multi-use development to be known as "Nocatee." Due to the size of the development, DDI must obtain approval for Nocatee as a "Development of Regional Impact" under Section 380.06, Florida Statutes. DDI expects to file an application for development approval for Nocatee in September, 1999, and expects to commence development within two years. The development plans, which have not been finalized, are predicated on the availability and economic feasibility of water and wastewater service on a timetable and in quantities which meet the needs of the development. The assurance of such service can only be achieved through the creation of a utility entity and the construction of the required water and wastewater infrastructure to serve the development.

5. DDI therefore recently created Nocatee Utility Corporation as a wholly-owned subsidiary for the specific purpose of providing water and wastewater service to Nocatee.

6. Concurrently with this Petition for Temporary Variance or Temporary Waiver, NUC has filed its application for original certificates for water and wastewater service in Duval and St. Johns Counties. NUC believes that its application complies with the essential filing requirements for original certification by demonstrating the ability of the applicant to provide service, the need for service in the area involved, that there is no duplication of service with any existing utility, and the consistency of the proposed certification with the local comprehensive plans of Duval and St. Johns Counties. Thus, NUC believes that acceptance by the Commission of the application as submitted will achieve the fundamental purposes of the underlying statutes, which are to allow certification of investor-owned water and wastewater utilities which are financially and technically viable and otherwise capable of satisfying the need for service within designated areas, while avoiding the certification of utilities which may be in competition with or duplicate other utility systems or which may otherwise violate local comprehensive planning.

7. NUC's application as submitted requests issuance of original certificates only. Such certification would provide NUC and DDI, its affiliate developer, with the reasonable assurances required to effectively plan and coordinate the development of Nocatee and the utility infrastructure necessary to provide water and wastewater service in an efficient and cost-effective manner.

8. NUC seeks Commission authorization to submit its request for initial rates and charges, and the financial, engineering and operating information supporting such request, at a later date through a separate application. Although the Commission has traditionally required the information for certification and for initial rates and charges to be filed concurrently, bifurcated consideration by the Commission, first of certification, and, subsequently, of initial rates and charges, has been an accepted manner of processing such applications. See Order No. PSC-98-1374-PCO-WS (October 12, 1999) granting a similar waiver request filed by Ocala Springs Utilities, Inc. See also Order No. 18817 (February 8, 1988), which accepted bifurcation, Order No 19428 (June 6, 1988), which granted certification, and Order No. 23341 (August 10, 1990), which established initial rates and charges, for Sunray Utilities, Inc. The appropriateness of this procedure is further borne out by Section 367.031, Florida Statutes, which requires the Commission to grant or deny an application for certification within 90 days after the official filing date of the completed application, unless an objection thereto is filed. No statutory time periods govern the approval of initial rates and charges.

9. The specific rule requirements pertaining to initial rates and charges for which NUC seeks a waiver or variance are as follows:

a) Rule 25-30.033(1)(h)

The number of equivalent residential connections (ERCs) proposed to be served by meter size and customer class.

b) Rule 25-30.033(1)(k)

Copies of a sample tariff, containing all rates, charges, rules and regulations.

c) Rule 25-30.033(1)(o)

A statement regarding the separate capacities of the proposed lines and treatment facilities, in terms of ERC, and gallons per day.

d) Rule 25-30.033(1)(r)

A detailed financial statement prepared in accordance with Rule 25-30.115, Florida Administrative Code.

e) Rule 25-30.033(1)(t)

A cost study, including customer growth projections supporting the proposed rates, charges and service availability charges.

f) Rule 25-30.033(1)(u)

A schedule showing the projected cost of the proposed systems by uniform system of accounts (USOA) account numbers and the related capacity of each system in ERCs and gallons per day.

g) Rule 25-30.033(1)(v)

A schedule showing the projected operating expenses of the proposed system by USOA account numbers when 80% of the desired capacity of the system is being utilized.

h) Rule 25-30.033(1)(w)

The projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 80% of the designed capacity of the system(s).

- i) Rule 25-30.033(2)  
Information on alternative rate structures, if any.
- j) Rule 25-30.033(3)  
Information on alternative returns on common equity, if any.
- k) Rule 25-30.033(4)  
Authorization to accrue allowance for funds used during construction (AFUDC).

10. At the present time DDI is engaged in preparation for the filing for the Development of Regional Impact application for development of Nocatee. Pending completion of that effort, and a concurrent determination of the specific requirements of utility infrastructure to serve the development, DDI and NUC cannot provide a reliable projection of customer growth, the investment and plant capacity required, or the other cost of service information which would provide a valid basis upon which to develop initial rates and charges. Further, NUC was incorporated on March 30, 1999 and has no assets and no financial statements. In lieu of this information, NUC has submitted the financial statements of its parent, DDI for purposes of the certification application.

11. NUC also seeks waiver or variance from the following additional related rule requirements which it understands apply to certification:

- a) Rule 25-30.033(1)(j) and Rule 25-30.433(10), which require the application to include evidence of ownership or continued use of the land on which the utility treatment facilities are or will be

located (while allowing for filing of unexecuted documents with the proviso that if certification is granted, the applicant must file such documents as executed and recorded within 30 days of the order granting the certificates); and

- b) Rule 25-30.033(1)(m), which requires a detailed system map showing the location of the proposed lines, treatment facilities, and territory proposed to be served.

12. Pursuant to the terms of a Letter of Intent between DDI and JEA, JEA will provide wholesale water, wastewater and reuse service to NUC, and JEA will therefore own the water and wastewater treatment facilities and sites. (See Exhibit A-1 to NUC's certificate application.) Paragraph 2.6 of the Letter of Intent contains DDI's agreement to provide well sites and a water plant site to JEA as may be reasonably necessary to service the property. In addition, pursuant to the terms of a Master Service Agreement between NUC and DDI, in the event that any treatment facilities are to be owned by NUC, DDI agrees to grant NUC the right to use the land on which the treatment facilities are located either by conveying title to NUC, or by some alternate method that complies with Rule 25-30.433(10), F.A.C. (See Exhibit H-1 to NUC's certificate application.) The location of such facilities, if any, has not been determined since planning for the development has not been completed. For these reasons, NUC cannot at present comply with the requirements of the foregoing rules.

13. NUC does not seek a permanent waiver or variance from these rule requirements. Rather, NUC seeks to defer submission

of the requisite documentation until development approval has been obtained for Nocatee, a definitive Service Agreement has been negotiated with JEA, and information regarding the requisite utility infrastructure will be more definite and readily available. NUC requests that submission of the detailed system maps and the evidence of ownership of any required treatment plant sites be deferred until such time (for water) as NUC submits its application for a consumptive use permit with the water management district and (for wastewater) as NUC submits its application for construction permits to the Florida Department of Environmental Protection. NUC further requests that submission of a separate application for initial rates and charges, and the financial, engineering and operating information supporting same, be deferred until 24 months following issuance of any Commission order granting the instant application for original certificates.

14. The strict application of the foregoing rules would create a substantial hardship to NUC and its affiliated companies, in that DDI and NUC would be unable to obtain assurances of the availability and economic feasibility of water and wastewater service to Nocatee and would therefore be severely hindered in the cost-effective planning and coordination of the development of that land and the utility infrastructure needed to serve it.

15. Approval of the temporary waivers or variances of the foregoing rules, as requested herein, would avoid such



substantial hardship while ensuring that the purposes of the underlying statute will be achieved by the means proposed.

WHEREFORE, Nocatee Utility Corporation requests that the Commission grant the temporary waivers or variances requested in the body of this Petition and in that regard grant such other relief as the Commission may deem appropriate.

RESPECTFULLY SUBMITTED this 1st day of June, 1999.

HOPPING GREEN SAMS & SMITH, P.A.

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