

HOPPING GREEN SAMS & SMITH

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET
POST OFFICE BOX 6526
TALLAHASSEE, FLORIDA 32314
(850) 222-7500
FAX (850) 224-8551
FAX (850) 425-3415

GARY V. PERKO
MICHAEL P. PETROVICH
DAVID L. POWELL
WILLIAM D. PRESTON
CAROLYN S. RAEPPL
DOUGLAS S. ROBERTS
GARY P. SAMS
TIMOTHY G. SCHOENWALDER
ROBERT P. SMITH
DAN R. STENGLE
CHERYL G. STUART
W. STEVE SYKES
T. KENT WETHERELL, II
OF COUNSEL
ELIZABETH C. BOWMAN

JAMES S. ALVES
BRIAN H. BIBEAU
RICHARD S. BRIGHTMAN
KEVIN B. COVINGTON
PETER C. CUNNINGHAM
RALPH A. DeMEO
RANDOLPH M. GIDDINGS
WILLIAM H. GREEN
WADE L. HOPPING
GARY K. HUNTER, JR.
JONATHAN T. JOHNSON
ROBERT A. MANNING
FRANK E. MATTHEWS
RICHARD D. MELSON
ANGELA R. MORRISON
GABRIEL E. NIETO
ERIC T. OLSEN

Writer's Direct Dial No.
(850) 425-2313

January 24, 2000

BY HAND DELIVERY

Blanca S. Bayó
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Intercoastal Utilities, Inc.
Docket No. 992040-WS

Dear Ms. Bayó:

Enclosed for filing are the original and 15 copies of each of the following:

- (1) Nocatee Utility Corporation's Objection and Request for Hearing. ~~00997-00~~
- Hong* (2) DDI, Inc.'s Objection and Request for Hearing ~~00998-00~~
- (3) DDI Inc. and Nocatee Utility Corporation's Joint Motion to Dismiss or, in the Alternative, to Preclude Litigation of Issues ~~00999-00~~

By copy of this letter, these documents have been furnished to the parties on the attached service list.

If you have any questions regarding these filings, please call.

Very truly yours,

Richard D. Melson

Richard D. Melson

RDM/mee
Enclosures
cc: Certificate of Service

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

RECEIVED-FPSC
03 JAN 24 PM 4:00
RECORDS AND REPORTING

AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAS _____
LEG _____
IAS _____
OPC _____
RER _____
SEC _____
VAV _____
OTH _____

Done 1/27/00

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of)	
Intercoastal Utilities, Inc.)	Docket No. 992040-WS
for Water and Wastewater)	
Certificates in Duval and)	Filed: January 24, 2000
St. Johns Counties, Florida)	
)	

NOCATEE UTILITY CORPORATION'S
OBJECTION AND REQUEST FOR HEARING

Nocatee Utility Corporation ("NUC"), pursuant to Section 367.045(4), Florida Statutes, hereby objects to the application filed by Intercoastal Utilities Inc. ("Intercoastal") on December 30, 1999 for extension of its service area in Duval and St. Johns County, insofar as the proposed extension includes property covered by NUC's Application for Original Water and Wastewater Certificates filed on June 1, 1999 in Docket No. 990696-WS. NUC hereby requests a formal evidentiary hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on Intercoastal's application. As grounds for its objection, NUC states:

1. NUC's name and business address is:

Nocatee Utility Corporation
4310 Pablo Oaks Court
Jacksonville, FL 32224

2. The name and address of NUC's counsel to receive copies of correspondence, pleadings and other documents in this docket is:

Richard D. Melson
Hopping Green Sams & Smith, P.A.
P.O. Box 6526
Tallahassee, FL 32314

3. NUC received notice by U.S. Mail on December 31, 1999 and by publication on January 3, 2000 of Intercoastal's intent to file an application with the Commission for both (a) an initial certificate of authorization to serve the existing territory in St. Johns County for which Intercoastal currently holds a franchise from St. Johns County; and (b) an extension of that existing territory to serve additional lands in Duval and St. Johns Counties.

4. NUC is a water and wastewater utility organized in 1999 to provide service to the proposed Nocatee development in Duval and St. Johns County, Florida. Nocatee is a multi-use development on approximately 15,000 acres owned by NUC's parent company, DDI, Inc. (DDI). NUC filed an application with the Commission on June 1, 1999 for original, multi-county water and wastewater certificates to serve the land comprising the Nocatee development.

5. Intercoastal's application for extension of its water and wastewater service area includes all of the territory that NUC has previously applied to serve in Duval and St. Johns County.

6. As the planned provider of water and wastewater service to Nocatee, NUC's substantial interests as a utility will be substantially affected by the Commission's action on Intercoastal's competing application to serve the same territory. NUC is best able to serve the Nocatee development, and

certification by the Commission of Intercoastal would result in an uneconomic duplication of facilities and utility services.

7. Intercoastal currently operates as a single county utility subject to the jurisdiction of the Board of County Commissioners of St. Johns County ("Board"). In 1999, Intercoastal applied to St. Johns County for an extension of its certificated territory to serve the St. Johns County portions of the territory for which it has now applied to the Commission. NUC's parent company, DDI, was one of several parties which filed objections to that application. After six days of formal hearings before the St. Johns County Water and Sewer Authority ("Authority"), the Authority on August 4, 1999 issued a preliminary order denying Intercoastal's application to extend its certificated territory. That preliminary order was confirmed and made final by the Board in its order issued September 7, 1999 and served on the parties on September 21, 1999.

8. The disputed issues of material fact known at this time are as follows. NUC reserves the right to supplement this list in accordance with Commission procedures if and when additional issues are identified.

(a) Whether Intercoastal has the technical ability to provide reliable, high quality service to the disputed territory within the time frames required by the development plan for Nocatee.

(b) Whether Intercoastal has the financial ability to provide reliable, high quality service to the disputed territory

with the time frames required by the development plan for Nocatee and for the life of the development.

(c) Whether Intercoastal has the managerial ability to provide reliable, high quality service to the disputed territory within the time frames required by the development plan for Nocatee.

(d) Whether Intercoastal has the operational ability to provide reliable, high quality service to the disputed territory within the time frames required by the development plan for Nocatee.

(e) Whether Intercoastal has sufficient water, wastewater and reuse capacity to provide service to the disputed territory within the time frames required by the development plan for Nocatee.

(f) Whether Intercoastal's application is in compliance with all applicable law, rules and policies of the Commission, the Department of Environmental Protection, and the St. Johns County Water Management District.

(g) Whether Intercoastal can provide service to the disputed territory in a more cost-effective manner than NUC.

(h) Whether Intercoastal can provide service to the disputed territory in an environmentally sensitive manner that is consistent with the development plan for Nocatee.

(i) What is the effect on rates and charges to existing customers of Intercoastal of its proposed service to the disputed territory?

(j) What is Intercoastal's current quality of service?

(k) Whether the landowner of the disputed territory prefers to receive service from Intercoastal or from NUC.

(l) Whether Intercoastal or NUC is best suited to serve the disputed territory.

(m) Whether it is in the public interest for Intercoastal to serve the disputed territory.

(n) [Issue of Law] Whether Intercoastal's application is barred in whole or in part by the doctrines of res judicata and/or collateral estoppel.

9. The ultimate facts alleged are as follows:

(a) Intercoastal proposes to extend its service territory to include areas which NUC has requested and plans to serve under its pending application with the Commission.

(b) NUC proposes to serve the disputed territory by obtaining wholesale water, wastewater and reuse service from JEA, which has facilities in close proximity to the disputed territory. Service in this manner will be less costly, more efficient, and more environmentally sensitive than service by Intercoastal.

(c) Intercoastal is not ready, willing and able to provide all required services, including reuse service, to the disputed territory in the quantities and time frames required by the development. NUC is ready, willing and able to provide such service.

(d) NUC can provide superior water, wastewater and reuse service to the disputed territory more efficiently and more cost-effectively than can Intercoastal.

(e) The landowner desires to receive service from NUC and not from Intercoastal. As an affiliated utility, NUC is uniquely positioned to ensure that utility planning and provisioning is integrated with the overall development and resource management planning for Nocatee.

(f) Intercoastal's application is not consistent with or in compliance with all applicable statutes, rules and policies of the Commission, the Department of Environmental Protection, and the St. Johns River Water Management District.

(g) Intercoastal's application proposes a utility system which will be in competition with, or a duplication of, the proposed system of NUC.

(h) It is not in the public interest for Intercoastal to serve the disputed territory.

(i) It is in the public interest for NUC to serve the disputed territory.

(j) The Authority and the Board have previously considered and rejected Intercoastal's application to extend its service area to serve the portion of the disputed territory which is located in St. Johns County. Intercoastal's application is therefore barred by application of the doctrines of res judicata and/or collateral estoppel.

10. NUC is entitled to relief pursuant to Chapters 120 and 367, Florida Statutes; Chapters 25-22, 25-30, and 28-106, Florida Administrative Code; and relevant Commission and judicial precedents.

WHEREFORE, NUC requests that the Commission:

- (a) conduct a formal hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on Intercoastal's application and on NUC's objection thereto; and
- (b) deny Intercoastal's application insofar as it covers territory subject to NUC's prior certificate application to the Commission.

RESPECTFULLY SUBMITTED this 24th day of January, 2000.

HOPPING GREEN SAMS & SMITH, P.A.

By: Richard D. Melson
Richard D. Melson
P.O. Box 6526
Tallahassee, FL 32314-6526
(850) 425-2313
(850) 224-8551 (fax)

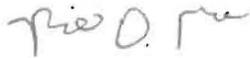
Attorneys for Nocatee Utility
Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by Hand Delivery on the following this 24th day of January, 2000.

Samantha Cibula
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

John L. Wharton
Rose, Sundstrom & Bentley, LLP
2548 Blaiirstone Pines Drive
Tallahassee, FL 32301



Attorney