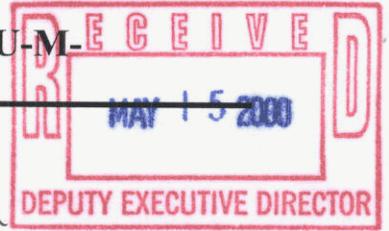




Public Service Commission

-M-E-M-O-R-A-N-D-U-M-



DATE: May 15, 2000

TO: Dr. Mary Bane, Deputy Executive Director, Technical Division

FROM: Samantha Cibula, Division of Legal Services *S.M.C. used*
Cissy Rehwinkel, Division of Water and Wastewater *ORC BSM JMW*

RE: Request for Deferral of Item #41, Docket No. 990696-WS - Application for original certificates to operate water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corporation.

Docket No. 992040-WS - Application for original certificates to operate water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corporation.

Attached are Petitions for Intervention filed by Sarasota and Hillsborough Counties in the above-referenced dockets. In its Petition, Sarasota County requests that the Commission postpone its consideration of Item No. 41 for two weeks from the May 16, 2000, agenda conference to allow Sarasota County the opportunity to file a Motion to Dismiss based on the argument that the Commission lacks jurisdiction under Section 367.171, Florida Statutes, to consider Intercoastal Utilities, Inc.'s (Intercoastal) and Nocatee Utility Corporation's (NUC) applications in the above-referenced dockets. Likewise, in its Petition for Intervention, Hillsborough County requests that the Commission delay consideration of Item No. 41 and grant Hillsborough County until May 30, 2000, to file a Motion to Dismiss based on the same grounds stated by Sarasota County. In support of their requests to defer Item No. 41, both Sarasota and Hillsborough Counties state that the parties in this proceeding will not be prejudiced by postponing the item because the hearing in Dockets Nos. 990696-WS and 992040-WS is not scheduled until August 9 and 10, 2000.

Item No. 41 involves staff's recommendation on the Motions to Dismiss Intercoastal's application filed by NUC and its parent company, DDI, and by St. Johns County. Specifically, in its Motion to Dismiss, St. Johns County raised the issue of whether the Commission has jurisdiction over Intercoastal's application pursuant to Section 367.171, Florida Statutes.

Staff has contacted the parties in regard to Sarasota and Hillsborough Counties' requests to defer Item No. 41. Counsels for NUC and Intercoastal stated that they are opposed to deferral of this item, as it has already been deferred three times and Sarasota and Hillsborough Counties have waited until the last minute to file requests for intervention. Counsels for St. Johns County and Sawgrass Association, Inc., stated that they are not opposed to the deferral. JEA stated that it had no position at this time.

While there are no statutory deadlines governing this case, staff notes that this item has been deferred from three prior agenda conferences. Prior to the third deferral, staff was made aware that certain nonjurisdictional counties were considering requesting intervention in these dockets.

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FPSC-RECORDS/REPORTING

Three weeks passed before this recommendation was filed again on May 4, 2000, and no requests for intervention were filed during that time.

Further, there is a question as to whether Sarasota and Hillsborough Counties have a substantial interest which would give them standing to intervene and file Motions to Dismiss in these dockets. Moreover, even if Sarasota and Hillsborough Counties are granted intervention, intervenors take the case as they find it and the Motions to Dismiss filed by NUC and DDI and St. Johns County pending in this case are set for consideration by the Commission at the May 16, 2000, agenda conference.

As stated above, St. Johns County's Motion to Dismiss, addressed in Item No. 41, includes the issue of whether the Commission has jurisdiction over Intercoastal's application pursuant to Section 367.171, Florida Statutes. As interested persons are able to participate on this item at the agenda conference, Sarasota and Hillsborough Counties will have the opportunity to address the Commission at that time in regard to the Commission's jurisdiction. For the foregoing reasons, staff recommends that Item No. 41 not be deferred from the May 16, 2000, agenda conference.

SMC/dm

Attachments

cc: Division of Records and Reporting

I:\DEFER2.SMC

I agree with staff and recommend denial of the County's request for deferral. Callier from the April 18th agenda was for the purpose: "to give Callier County and possibly other county governments an opportunity to file appropriate petitions and motions."

MAB
5/15/00