

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**ORIGINAL**

In re: Applications For An Amendment )  
Of Certificate For An Extension )  
Of Territory And For an Original )  
Water And Wastewater Certificate )  
(for a utility in existence and charging )  
for service) )

Docket No. 992040-WS

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

Docket No. 990696-WS

**REBUTTAL TESTIMONY OF**

**M.L. FORRESTER**

**ON BEHALF OF INTERCOASTAL UTILITIES, INC.**

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**REBUTTAL TESTIMONY OF M.L. FORRESTER**

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Q. Are you the same M.L. Forrester that has previously filed testimony in this case?

A. Yes, I am.

Q. What have you reviewed in preparation for your participation in this case?

A. I have reviewed all the testimony and exhibits filed in this case, I have reviewed documents which were retained during the course of discovery or public records request or otherwise obtained from parties to this case, and I have reviewed many of the pleadings filed in this matter. Additionally, I have reviewed those documents which either support my testimony or which I relied upon in arriving at the opinions in my testimony.

Q. How did Intercoastal determine the portion of transmission systems reflected in its Conceptual Master Plan which would be invested by the utility, as opposed to those to be contributed by the developer?

A. Intercoastal included the portion of transmission systems it considered to be a proper investment on the part of the utility. Regardless of its large size, Nocatee is simply one, contiguous project being developed by a single entity. Therefore, all of the lines serving Nocatee are "onsite"; that is, within the boundaries of that development. Intercoastal's service availability policy calls for the developer to bear the cost of and contribute to the utility at no cost, all onsite lines.

Q: How does that practice affect Intercoastal's projected rates?

A: A result of that practice is that less of the total system costs find their way into Intercoastal's rate base, and future ratepayers do not pay a return on the contributed system assets. This helps to lower the projection of future rates.

Q: If all of the lines to be constructed are located within the Nocatee development, why would Intercoastal invest in any of those lines?

1 A: To the extent that the "backbone" lines will be employed to interconnect with  
2 Intercoastal's existing easterly system, and may serve properties other than  
3 Nocatee, Intercoastal believes it appropriate to add the cost of those lines to its  
4 investment in the water production, wastewater treatment and reuse facilities.

5 Q: Will NUC require the developer to make the same degree of investment in the  
6 systems serving Nocatee?

7 A: No. Ms. Swain made it clear in her direct testimony that NUC will be responsible  
8 for the cost of all on-site transmission, distribution and collection facilities, with the  
9 developer contributing only the smaller distribution and collection systems. In effect,  
10 the NUC investment in a greater proportion of the onsite systems relieves the  
11 developer of a large degree of cost responsibility and increases development profits.  
12 Such an investment plan is in keeping with Nocatee developer documents I have  
13 reviewed establishing priorities, goals, and objectives for NUC, which cite  
14 infrastructure cost efficiencies to the developer ,through capital improvements, as  
15 one of the reasons for creating their own utility.

16 Q: How would you expect NUC's system investment policy to affect their projected  
17 rates?

18 A: I would expect a shifting of such system cost responsibilities from the developer to  
19 the utility to escalate NUC's investment, its rate base, the total volume of return  
20 dollars on that rate base, and therefore, to increase NUC's service rates to its  
21 future customers. Although NUC will not be investing in plant facilities, in the first  
22 few years I would expect NUC's rates to be comparable to those of any other  
23 utility proposing plant construction. That's because NUC's policy for proportionately  
24 greater investment in initial system costs, within those first years would tend to act  
25 as a surrogate for investment in production and treatment facilities. However,

1 NUC's greater degree of investment in transmission system assets would depreciate  
2 very slowly, providing a relatively stable rate base value. With a high rate of  
3 development growth such as projected for Nocatee, the inventory of such assets  
4 would continue to accumulate and their rate base value would escalate, thereby  
5 increasing NUC's eligibility for more return dollars. Unless NUC's rate projections  
6 indicate an intent to accept lower than allowed returns, those conditions will exert  
7 upward pressure on NUC's rates.

8 Q: Does Intercoastal's current application differ from the one it filed in the previous St.  
9 Johns County case?

10 A: Yes, there are very significant differences. As I explained in my direct testimony, the  
11 St. Johns County application was prepared prior to the announcement of the  
12 Nocatee development, and therefore did not include Nocatee's significant service  
13 demands. Consequently, the St. Johns application only proposed service to the  
14 initial phases of the Marsh Harbor and Walden Chase projects, by extension from  
15 Intercoastal's existing easterly systems. That application also proposed permanent  
16 service for those projects, and for reasonable incremental growth of the balance of  
17 Intercoastal's requested St. Johns County area by the subsequent installation of  
18 appropriately sized water production and wastewater treatment facilities west of the  
19 Intracoastal Waterway. As such, that application followed the general plan of  
20 service outlined by Intercoastal in its 1996 Water 2020 planning, and its 1997  
21 management letter submitted to the St. Johns County Water and Sewer Authority.  
22 The instant Intercoastal application has been prepared to specifically include service  
23 to the Nocatee development, after gaining detailed knowledge of the very  
24 aggressive development schedules and service projections for Nocatee. Accordingly,  
25 the scope of and construction schedules for those plant and system installations

1 have been appropriately modified by Intercoastal for this proceeding. This  
2 application was also prepared to enable Intercoastal to overcome a major "finding"  
3 of the St. Johns Final Order denying Intercoastal's application; specifically, that  
4 "Due to the multi-county nature of Phase I of Nocatee, Intercoastal cannot provide  
5 service under its application to the entire area that has one of the most immediate  
6 needs for service." Which of course referred to the Duval County portion of the  
7 Nocatee development. Obviously, Intercoastal did not include that area in its  
8 application because (a) Intercoastal had no knowledge of the Nocatee development,  
9 or its protrusion into Duval County, when that application was prepared, and (b)  
10 Intercoastal would not have prepared an application for submittal to St. Johns  
11 County to include a Duval County area, when St. Johns County had no authority  
12 to grant such an application. Somehow, that simple logic was lost in the Final Order  
13 issued by St. Johns County.

14 Q: What is the "strong environmental ethic" and "environmental sensitivity" to which  
15 the NUC witnesses refer?

16 A: In my opinion, those are advertising slogans tailored for the Nocatee development,  
17 which have been stretched-over the NUC plan to wholesale water and wastewater  
18 services from JEA. These concepts are just some of the roadblocks which NUC has  
19 tailored for the apparent purpose of making it more difficult for the Commission to  
20 approve Intercoastal's application. I believe there is no substance behind these  
21 particular concepts. Like most such advertising, I believe that repeated use of the  
22 "environmental ethic" slogan is designed to mesmerize us into acceptance of the  
23 NUC plan of service as our moral duty and obligation to the environment. That term,  
24 and the phrase "environmentally sensitive," have been sprinkled into the NUC  
25 testimony without definition or factual support for their use, to the point of

1 becoming cliches.

2 Q: Is there factual support to indicate that those terms should not be applied to the  
3 NUC plan?

4 A: Yes. If we disregard those slogans and examine the NUC plan in light of the state's  
5 current environmental policies and objectives, the NUC plan is, at the very least, not  
6 the best fit with the state's guidelines and directives. At most, the NUC plan is  
7 contrary to state objectives.

8 Q: Please discuss how the NUC plan doesn't fit the state's environmental policies and  
9 guidelines.

10 A: I think it's very clear that Florida's reuse rules, policies and guidelines include the  
11 state's intent to encourage wastewater utilities to maximize their production of  
12 high quality reclaimed water. First, in order to ensure the environmental  
13 acceptability of the process discharge, and second, to enhance the supply of that  
14 resource for reuse, for the obvious purpose of reducing the use and therefore the  
15 withdrawals of potable groundwater. While both Intercoastal and NUC have stated  
16 their intent to reuse reclaimed water, only Intercoastal has fashioned a plan to  
17 ensure that 100% of the wastewater generated in both its existing and proposed  
18 service territories will be treated to those high standards and made available for  
19 reuse. Conversely, the NUC plan to send Nocatee's wastewater to the JEA  
20 Mandarin Wastewater Treatment Facility (WWTF) will not accomplish that objective.  
21 JEA's Mandarin WWTF is currently permitted for recycling only 33.3% (2.5 MGD)  
22 of its total 7.5 MGD wastewater design flows into reclaimed water for reuse.  
23 Therefore, 66.7% of the Nocatee wastewater would be discharged to the St. Johns  
24 River each and every day. I don't see how that type of planning would be  
25 deserving of a label like "environmentally sensitive".

1 Q: Is that the extent of the JEA Reuse Program?

2 A: To the credit of JEA, it is not the total extent of their reuse plan. According to the  
3 Mandarin WWTF permit (Part VI, 2), by October 1, of the year 2004, JEA has  
4 committed to increase its reclaimed water production and reuse up to 4.0 Million  
5 Gallons per Day (MGD). However, that limited reuse target seems to apply to the  
6 entire network of JEA's Wastewater systems, because the Mandarin permit says  
7 JEA may use any combination of the City of Jacksonville's WWTFs to meet that  
8 schedule. If the Mandarin WWTF is the only plant employed to meet that 4.0 MGD  
9 reuse target, then the Mandarin facility, by 2004, would still recycle only 53.3% of  
10 the wastewater flows it receives. However, JEA's Mr. Perkins seems to suggest  
11 that the JEA Arlington WWTF may be utilized as part of that reuse plan. If we  
12 compare the combined capacities of both the Mandarin and Arlington WWTFs (7.5  
13 MGD + 15MGD = 22.5MGD) to the JEA reuse target of 4.0 MGD, then JEA would  
14 recycle for reuse only 17.7% of the flows those facilities receive. If more plants are  
15 added to the reuse system roster, but the 4.0 MGD reuse target is not raised, then  
16 JEA's recycling percentage would decline even more.

17 Q: Would you briefly compare Intercoastal's reuse record and planning with that of the  
18 NUC and JEA plans?

19 A: Yes. Intercoastal has for years treated all of its easterly system wastewater flows  
20 to reclaimed water standards, in order to supply a golf course with reclaimed water  
21 for irrigation reuse. About 36% (0.300 MGD-AADF) of Intercoastal's current flows  
22 (0.833 MGD-AADF; 3/2000) are reused in that fashion. The balance of that  
23 reclaimed water is discharged to the Intracoastal Waterway (ICWW). Intercoastal's  
24 revised Conceptual Master Plan (CMP) describes how Intercoastal will not only treat  
25 all of the wastewater flows from its proposed new territory to reclaimed water

1 standards and distribute it for reuse, it also shows how the permitted discharge  
2 flows will be removed from the ICWW and converted to a supply resource for the  
3 reuse system serving Intercoastal's proposed westerly service area. Therefore,  
4 combining the new west area wastewater facility initial capacity (1.0 MGD) with  
5 that east area permitted discharge flow (1.2 MGD), the west area reuse system will  
6 recycle 2.2 MGD, while the (existing) east system recycling and reuse adds another  
7 0.300 MGD, for a total recycling volume of 2.5 MGD; which would be 100% of  
8 Intercoastal's east and (initial system) west area flows. On that basis, Intercoastal  
9 will recycle 100% of its wastewater flows (including 100% of Nocatee's  
10 wastewater) while JEA's Mandarin plant would recycle (a maximum) of 53.3% of  
11 its ( and Nocatee's) flows.

12 The bottom line is that while JEA may be throwing around some large numbers, its  
13 commitment to reuse and its plans to reuse the wastewater generated by customers  
14 in the Nocatee development is in no way superior to the reuse plan of Intercoastal.

15 Q: How does the NUC plan to wholesale water from JEA not follow state guidelines  
16 or achieve state objectives?

17 A: In my intervenor's testimony, I quoted the St. Johns River Water Management  
18 District's DWSP (District Water Supply Plan) comments related to JEA's year 2020  
19 water supply deficit and how JEA proposes to meet its south water grid deficit by  
20 transporting water from other areas. The state's "Local Sources First Policy" in  
21 Section 373.016, F.S. says that this policy was designed to protect such areas with  
22 "abundant water" from reallocation and transportation of their water resources,  
23 which in the past has had adverse effects. Therefore, the Legislature has issued a  
24 directive to the Department of Environmental Protection and the water management  
25 districts "to encourage the use of water from sources nearest the area of use or

1 application whenever practicable". The Nocatee Water Resources Study  
2 demonstrates and confirms by peer review that an adequate and sustainable supply  
3 of water exists within the proposed service area, to meet the water supply needs  
4 throughout its development. Consequently, the utilization of local sources for the  
5 provision of water to this territory is "practicable"; and the Local Sources First  
6 policy is applicable to water resource planning and permitting for this territory. As  
7 a result, to the extent that the JEA plan to import water from another area proposes  
8 utilizing such water for service to the Nocatee development, I believe that plan is  
9 clearly not in accordance with the state's policy.

10 Q: Have you had an opportunity to review other materials which support your  
11 interpretation of the intent of the "Local Sources First" policy and its application to  
12 these circumstances?

13 A: Yes. According to page 7 of the April 7, 1997 House of Representatives Committee  
14 On Water & Resource Management Bill Analysis & Economic Impact Statement, the  
15 intent of that policy was clearly articulated: "This policy simply states that 'local  
16 sources' are to be developed to the greatest extent feasible prior to importing water  
17 from distant sources." (emphasis added).

18 Q: Are there provisions in that policy for transportation of water under any conditions?

19 A: Yes. The legislature recognized such a need may exist "under certain  
20 circumstances" for environmental, technical, or economic reasons. However, all of  
21 Intercoastal's testimonies and exhibits demonstrate that employment of available  
22 local sources first for service to this new territory are environmentally sound,  
23 technically feasible, and economically reasonable. Therefore, those "certain  
24 circumstances" which might support the transport of water from a distant source,  
25 into and for service to the disputed territory, do not exist.

1 Q: Doesn't that also cloud the possibility of Intercoastal wholesaling service from JEA?

2 A: Certainly it does. However, the wholesaling of water from JEA isn't Intercoastal's  
3 exclusive plan for providing water services to its requested area. Wholesaling water  
4 from JEA is merely an alternative which Intercoastal would not turn a blind eye to  
5 if the Commission determined that such a relationship was in the public interest.  
6 The purpose of Intercoastal's testimony regarding its willingness to explore that  
7 option only exhibits that NUC does not propose anything by its utilization of JEA as  
8 a wholesale source which Intercoastal could not also propose. It is not to intimate  
9 that it is Intercoastal's opinion that utilizing JEA as a wholesale supplier is the  
10 superior method of service.

11 Q: Intercoastal's plan to construct plants within the service area and the use of  
12 groundwater to initially supplement reuse appears to be a concern of DDI. Are such  
13 concerns justified?

14 A: No. The concern for plant construction appears to be one of aesthetics, however,  
15 the DDI/JEA Letter of Intent (LOI) agrees to a similar contingent need for plant  
16 construction on the part of JEA; and we can assure the Commission that  
17 Intercoastal's plants will be at least as aesthetically pleasing as those of JEA. In  
18 addition, the same LOI provision also provides for the contingent utilization of area  
19 groundwater by JEA for service to Nocatee. Aside from that obvious agreement by  
20 DDI to local plant construction and groundwater use, the Nocatee Water Resources  
21 Study, and its review by Intercoastal's engineers, confirm that groundwater  
22 withdrawals to provide the very significant projections of potable water needs for  
23 this area will not adversely affect the area water resources. The use of groundwater  
24 to supplement reclaimed water produced for irrigation is allowed by Section  
25 373.250 (3) (a) F.S., is commonly permitted; is clearly identified by Intercoastal's

1 CMP as a relatively minor, temporary, and declining use over only the first 3 years;  
2 and will draw from the lower Floridan aquifer to avoid impacting the upper aquifer  
3 fresh water supply.

4 Q: Should there be any concern regarding occasional wet weather discharges or the  
5 use of open basins for storage of the reclaimed water?

6 A: No. As I explained in earlier testimony, wet weather discharges of reclaimed water  
7 to the Intracoastal Waterway, which given the reuse demands of Nocatee will be  
8 very infrequent, will be Advanced Waste Treatment (AWT) quality; and in  
9 accordance with F.S. 403.064 "shall be considered environmentally acceptable and  
10 not a threat to public health and safety". . In addition to those facts, the revised  
11 Intercoastal CMP provides a very unique cost-saving design for a combined flow  
12 transfer and wet weather discharge mechanism which allows Intercoastal to  
13 utilize the existing and future reclaimed water flows from its eastern service area.  
14 This will effectively remove those currently permitted discharges from the  
15 Intracoastal Waterway and convert them to beneficial reuse service; resulting in a  
16 net reduction of discharge to area waters. Utilizing that design, the residual wet  
17 weather discharge will be in the same location as currently permitted for  
18 Intercoastal's eastern system, which is considerably north of the CR210 bridge  
19 where the Intercoastal Waterway is generally considered to become an Outstanding  
20 Florida Water. Finally, there will be no open basins used for reclaimed water  
21 storage. Intercoastal's revised CMP already provides for closed tank storage of  
22 reclaimed water to protect its quality.

23 Q: Has Intercoastal's wastewater force main been undersized for service to Nocatee's  
24 first phase ?

25 A: No. The wastewater force main serving Phase 1 of Nocatee was resized based on

1 the new data provided by NUC's engineer in February. However, Intercoastal's  
2 engineer has raised some rather serious questions regarding the size of transmission  
3 systems designed by NUC's engineer for NUC's plan to receive service from JEA's  
4 proposed systems. Those concerns are detailed in Mr. Jim Miller's Rebuttal  
5 Testimony for Intercoastal.

6 Q: Will Intercoastal have a supply of reclaimed water sufficient to meet the initial and  
7 future reuse demands of the Nocatee development?

8 A: Yes. As outlined in Intercoastal's revised CMP and discussed in my prior testimony,  
9 Intercoastal will utilize the reclaimed water flows from its eastern and proposed  
10 western wastewater systems to provide the vast majority of those needs. And if  
11 actually necessary, will temporarily supplement those reclaimed water sources with  
12 a declining withdrawal of lower quality groundwater for the first three years. While  
13 Intercoastal's engineers continue to disagree with Mr. Miller's estimate of 650,000  
14 gallons per day of reuse need for each golf course- as an annual average daily flow  
15 - the revised CMP utilizes that demand for planning purposes and to show that such  
16 needs can be met. However, Mr. Doug Miller's April 10, 2000 deposition testimony  
17 appears to retreat from that excessive golf course reuse demand estimate,  
18 recognizing that it would be more appropriate for dry weather conditions than as  
19 an annual average daily flow. A more reasonable estimate of AADF for golf course  
20 reclaimed water consumption would reduce that demand by approximately  
21 300,000 gallons per day, eliminating Intercoastal's CMP estimate of need for such  
22 a groundwater supplement.

23 Q: Is Intercoastal continuing to plan for services to the Walden Chase development?

24 A: Given the actual start of off-site utility construction for service to the Walden  
25 Chase development by St. Johns County, that project has been dropped from

1 Intercoastal's planning. However, should such services to that development not  
2 be adequately finalized, they could be reinstated as part of Intercoastal's CMP with  
3 minimal financial effect.

4 Q: Can Intercoastal provide construction water services to Nocatee in 2001?

5 A: If in fact Nocatee has a need for construction water service in 2001, Intercoastal's  
6 engineers advise that Intercoastal can provide temporary facilities to meet those  
7 needs. However, a recent (3/31/2000) news article quoted the Nocatee developer  
8 ( Roger O'Steen, PARC Group) as saying: "The four-laning of CR 210 will start at  
9 the end of this summer and will take about 2 years. It will be done before any  
10 building begins in Nocatee, he said". Considering that information, and the  
11 expectation that this proceeding will be decided by the Commission virtually  
12 concurrent with the start of that road construction, Intercoastal can construct its  
13 water production facilities within the subsequent two years, and such a need for  
14 temporary service seems highly unlikely.

15 Q: Do you agree that Intercoastal's participation in the Water 2020 planning effort by  
16 the SJRWMD should be given no weight in these proceedings?

17 A: No I do not. Mr. Doug Miller's intervenor testimony seems to discount  
18 Intercoastal's participation, along with the entire Water 2020 planning process, by  
19 labeling that process as simply a "general attempt to project supply and demand  
20 for water resources in the district for planning purposes only". However, the District  
21 indicated in their October 15, 1996 letter to Intercoastal that developing the Water  
22 2020 plan information would be very important to the future of water resources  
23 for the District. Intercoastal took that planning process very seriously, compiling  
24 detailed responses it felt were in keeping with its responsibilities as a public service  
25 provider. In my opinion, Intercoastal's participation in the Water 2020 process also

1 demonstrates managerial, planning, and technical capability on the part of  
2 Intercoastal, which are all important to the Commission's decision in this  
3 proceeding.

4 Q: Does such participation give any participant either a Consumptive Use Permit (CUP)  
5 or a right to serve any particular area?

6 A: While I would agree that no such permit or right is granted by that participation,  
7 there is no doubt in my mind that Intercoastal's cooperation with the District  
8 demonstrates prudence on the part of Intercoastal. It was my understanding, from  
9 a telephone conversation with Cynthia Moore of the SJRWMD District office, that  
10 the information provided by such participation would facilitate District approval of  
11 the expansion of Intercoastal's current CUP and new well permitting for service to  
12 this proposed territory; and Intercoastal made reference to that advice in  
13 Intercoastal's Management Letter attached to its 1997 Annual Report, to show that  
14 those planning investments were prudent expenditures in preparation for future  
15 consumptive use permitting of this territory.

16 Q: What do you see as other benefits of Intercoastal's participation in the Water 2020  
17 planning process?

18 A: As a result of Intercoastal's efforts the vast majority, if not all, of the proposed  
19 service area's year 2020 water resource requirements (including Nocatee) have  
20 been included in the final St. Johns River Water Management District, Group V,  
21 District Water Supply Plan ( Ref: Tables 23, 24, 25, within Intercoastal Utilities'  
22 listings; & pg. 106 describing Intercoastal's ability to meet its year 2020 demand  
23 projections). I believe Intercoastal's participation and the adequacy of its service  
24 projections are why the Nocatee planners showed no concern for joining in the  
25 Water 2020 planning process, even though projections of service requirements for

1 Nocatee were available at least as early as mid-1998, while the 2020 process was  
2 still on-going. Otherwise, I would expect that professional concern by the Nocatee  
3 planners, with omission from such an important planning process, would have  
4 driven a much earlier announcement of the Nocatee Development.

5 Q: Please summarize for the Commission why the Commission should take note of  
6 Intercoastal's participation in the Water 2020 planning process.

7 A: In my opinion, the Commission should take particular note of all of the foregoing  
8 facts as a demonstration of the managerial, planning, and technical capabilities of  
9 Intercoastal as well as Intercoastal's professionalism and experience.

10 Q: Mr. Tim Perkins of the JEA has testified to his interpretation of the meaning of the  
11 Local Sources First policy of the state, and to his opinion that such policy is  
12 irrelevant to the water needs of southern Duval and northern St. Johns Counties.  
13 Do you agree with his statements?

14 A: No, I do not. Mr. Perkins' interpretation of that policy's meaning is in direct  
15 opposition to the meaning articulated within the House Committee Statement I  
16 quoted earlier. The language in subsection 373.016 (4)(a), F.S. very clearly and  
17 simply shows that policy's intent is to protect areas of the state which have  
18 "abundant" water resources, from having those resources unnecessarily withdrawn  
19 and transported to a distant area of use or application. The method of protection is  
20 to require that available Local Sources are or will be utilized before such water  
21 transports are authorized. Mr. Perkins' statement that JEA has not proposed to  
22 transport any water out of the disputed service area strongly suggests an attempt  
23 to divert attention from JEA's plan to withdraw from "abundant" water supplies  
24 located in northern or western Duval County; and to transport water from those  
25 distant sources in major part to provide a water supply for this disputed territory,

1 which already has adequate, if not abundant resources. In essence, Mr. Perkins'  
2 testimony turns the circumstances in this issue upside down to support his  
3 statement that this policy has no application or relevancy in this case, and to block  
4 any recognition that the JEA water transport plan does not comply with that policy.

5 Q: How does Intercoastal's plan comply with the Local Sources First policy and the  
6 JEA plan does not?

7 A: The Intercoastal CMP, supported in part by the Nocatee Water Resources Study,  
8 demonstrates that Intercoastal's plan of service to utilize naturally occurring water  
9 sources (groundwater), conservation, and reuse is environmentally acceptable,  
10 technically competent, and economically feasible. Consequently, the "certain  
11 circumstances" in subsection (4)(b) of that statute which might support a necessity  
12 for withdrawals and transfer of water from a **distant** source, for service to this  
13 area, do not exist. As a result, the Local Sources First policy in subsection (4)(a) is  
14 "practicable" and applicable to the permitting of water resources for the proposed  
15 territory. Therefore the Intercoastal plan of service to utilize the existing adequate  
16 and sustainable water resources available within the area of intended use ( the  
17 proposed service area ) would clearly be in accordance with that policy; whereas  
18 a JEA plan to transport water from a **very remote** location, which includes  
19 allocations for the purpose of serving an area with adequate and sustainable water  
20 resources, would be in conflict with that policy.

21 Q: Who will ultimately make that decision; and how will that decision be triggered?

22 A: The St. Johns River Water Management District ( the District) will likely make that  
23 type of decision, possibly as a result of an Intercoastal application to expand its  
24 Consumptive Use Permit (CUP) for service to this territory (if the Commission  
25 approves Intercoastal's certificate request), or possibly as a result of a JEA (CUP)

1 application to withdraw and transport the water according to their plan. Beyond  
2 that, the scenarios within which such a decision might be made become very  
3 speculative.

4 Q: If the Water Management District has yet to make a decision on either application,  
5 why should this Commission be concerned with the Local Sources First policy  
6 issue?

7 A: Because the Legislature's creation of that policy in 1998 makes it the criteria upon  
8 which the Commission should assess the viability of future service plans of utilities  
9 proposing water service which are or may be affected by that policy, such as the  
10 NUC plan. According to the District Water Supply Plan (DWSP), this policy "could  
11 impact the development of water supply projects that are technically,  
12 environmentally, and economically feasible." The DWSP also states that "SJRWMD,  
13 in this DWSP, has not tried to specifically evaluate the feasibility of any identified  
14 water supply solutions based on 'local sources first' criteria. Before any selected  
15 option can be permitted, 'local sources first' criteria must be addressed by the  
16 applicant." The JEA plan to transport water across the Duval- St. Johns County  
17 boundary must undergo the seven scrutinies of Section 373.223(3),FS which will  
18 evaluate whether such a potential transport and use of ground or surface water  
19 across county boundaries is consistent with the public interest. Given the adequate  
20 and sustainable water resources already available in the disputed area, I believe it  
21 is reasonable to expect that process to at least present a high hurdle for the JEA  
22 plan to overcome with respect to the wholesaling of water to NUC; and should give  
23 the Commission some concern as to the viability of the NUC-proposed singular plan  
24 of service to wholesale water from JEA. That same viability question would apply  
25 to any attempt by Intercoastal to wholesale water from JEA. Conversely, with

1 respect to the Local Sources First policy, the existence of those adequate and  
2 sustainable water resources within Intercoastal's proposed, contiguous service area  
3 avoids any substantial hurdle in Intercoastal's CUP expansion permitting path, and  
4 in fact adds credibility to the Intercoastal plan of service for conservative  
5 employment of those resources. I believe that increases the viability of Intercoastal's  
6 CMP-proposed plan of service.

7 Q: What hurdles might Intercoastal encounter with its application to expand its existing  
8 CUP for service to this new territory?

9 A: It's difficult to imagine any significant hurdles Intercoastal could encounter in that  
10 permitting process. According to the Intercoastal CMP, supported by the Nocatee  
11 Water Resources Study, there will not be any adverse impact on the area's water  
12 resources related to Intercoastal's water plans. Intercoastal's furnishing of water to  
13 Nocatee's Phase 1 area, in Duval County, is not a transport of water from a **distant**  
14 source; in fact the two use areas are intertwined into a contiguous service area; and  
15 in relation to the overall requirements of the proposed service area, neither would  
16 provision of that service be a substantial transfer of the available resources. Also,  
17 Intercoastal's participation in the Water 2020 planning, which has become part of  
18 the SJRWMD District Water Supply Plan , should facilitate such a permitting  
19 process. In terms of the magnitude of Intercoastal's projected water withdrawals,  
20 the DWSP has already incorporated and recognized the 1996 estimates of  
21 Intercoastal's year 2020 water resource requirements, and further finds that  
22 "Intercoastal Utilities has existing facilities that will meet the 2020 ADD (Average  
23 Daily Demand). Its deficit is based on the permitted wellfield capacity and facilities  
24 needs to meet the MDD (Maximum Daily Demand). A decrease in the system  
25 demand ratio, possibly through additional water conservation or reuse activities,

1 could lessen the MDD." (clarification added). While those statements regarding  
2 Intercoastal's facilities refer to Intercoastal's systems located east of the  
3 Intracoastal Waterway; the demands to which they refer include 20 years of water  
4 requirements for Intercoastal's proposed service territory [Identified on the District's  
5 2020 Planning Maps of Intercoastal's Service Area as "Proposed Acquisitions"].  
6 Intercoastal made it abundantly clear in its December 4, 1996 response to the  
7 District's call for that planning, that Intercoastal's 2020 projections of water  
8 resources needs included those outside of its existing franchise certificate area;  
9 specifically including this proposed territory west of the Intracoastal Waterway.  
10 Intercoastal's water production and reuse pumping facilities being proposed for  
11 service to this territory are designed to meet all ADD and MDD needs of those  
12 proposed territory demands and will therefore be in compliance with the DWSP. The  
13 area-wide 100% wastewater recycling and area-wide reuse system Intercoastal  
14 proposes will be the most efficient utilization possible of all the combined (existing  
15 and proposed) Intercoastal service territories' wastewater flows. In our opinion,  
16 that recycling and reuse system will reduce the Nocatee development's projected  
17 demands for potable water, resulting in a more efficient and reasonable utilization  
18 of the groundwater resource, as intended by Intercoastal. And the plan to convert  
19 the existing (easterly system) permitted reclaimed water discharges to beneficial  
20 reuse service will be in accordance with the District's objective for reduction of such  
21 discharges. For all these reasons, I believe Intercoastal's CUP application will have  
22 most of the earmarks of a successful effort. Of course, Intercoastal must first  
23 receive this Commission's approval of its application before the District will review  
24 Intercoastal's CUP application.

25 Q: Do you expect that final conditions of the Nocatee Application for Development

1 Approval (ADA) will exclude the possibility of service by Intercoastal, using  
2 Intercoastal's proposed plan of service?

3 A: No. I believe the testimony of Mr. Gauthier makes it clear that if this Commission  
4 approves Intercoastal's application, the developer may be required to make  
5 appropriate modifications to the ADA to reflect service by Intercoastal. As Mr.  
6 Gauthier points out, the most important consideration in the DRI approval process  
7 with respect to utility service is to have a utility committed to provide service, and  
8 Intercoastal is clearly willing to make such a commitment.

9 Q: Should the Commission's approval of Intercoastal's application include those lands  
10 outside of the Nocatee development, as proposed by Intercoastal?

11 A: Yes, I believe such an approval would properly include those lands. Although Mr.  
12 Skelton of DDI has testified that there are no plans to develop those lands outside  
13 of the Nocatee development, Mr. Skelton was reported in a November 7, 1997  
14 news article to have made a very similar statement regarding the whole of the  
15 DDI/Davis owned properties, which would include those now being proposed for the  
16 Nocatee project. That was about 90 days prior to the time the Nocatee development  
17 planning is reported to have begun. That's a rather quick turnaround of intent to  
18 initiate planning for a project of the magnitude of Nocatee, but at least suggests  
19 a proclivity for recanting such statements when a profit opportunity presents itself.  
20 Regardless of the present intentions of the owners of lands surrounding a giant  
21 project such as Nocatee, I believe common logic tells us that even in the early  
22 stages of the Nocatee construction, the adjacent properties will experience an  
23 increase in both their desirability for development and also their value. The resulting  
24 "spin-off development" pressure could (and likely will) change the intents of those  
25 land owners with respect to land sales and create a concurrent need for additional

1 utility planning and service which Intercoastal can and will provide. As envisioned  
2 by Intercoastal, further development north of Nocatee would enhance the feasibility  
3 of a utilities interconnection between this western territory and the most northerly  
4 portion of Intercoastal's existing easterly system, to create a major transmission  
5 systems "loop", further improving the long range services to all of the Intercoastal  
6 proposed region. Granting Intercoastal all of its proposed territory will allow  
7 Intercoastal to continue expansion of its future master service planning for such  
8 improvements.

9 Q: Should the Commission assign any weight to the developer's preference for service  
10 by its own related entity, NUC, and its opposition to service by Intercoastal?

11 A: In my opinion, the Commission should assign little if any weight to the developer's  
12 "preference" to create a new, related entity, in large part because a new utility is  
13 simply unnecessary to ensure adequate services for the developer's proposed  
14 project. I believe the testimonies and evidence presented in this proceeding very  
15 successfully demonstrate that Intercoastal is an existing, qualified and experienced  
16 utility with the ability to plan and provide services to the developments within its  
17 proposed territory in a timely, efficient and economical manner. While the developer  
18 of Nocatee might be considered the initial "customer", its desires should be  
19 considered junior to the service and economic interests of the existing and  
20 anticipated "ultimate consumers" within Intercoastal's requested certificate  
21 territory.

22 Q: Would you briefly review some of those interests and how they would be best  
23 served by granting Intercoastal's application?

24 A: Intercoastal's proposed expansion is a logical and reasonable outgrowth of its  
25 current service area which will benefit both the existing and future consumers of its

1 services as well as the public at large. Intercoastal has shown the projected  
2 consumer rate benefits of consolidating its present operations with those of the  
3 proposed territory and how Intercoastal can fully utilize its existing reclaimed water  
4 as a reuse service resource while achieving a reduction in surface water discharges.  
5 I believe the testimonies also demonstrate that Intercoastal's service quality  
6 provided by its new facilities will be at least equal if not superior to that of any  
7 governmental utility, and that Intercoastal's wastewater plan is in fact a superior  
8 effort to further the state's objective to recycle all wastewater into reclaimed water  
9 and reuse those resources for irrigation, which is unquestionably in the public  
10 interest.

11 Q: Would you comment on Mr. Doug Miller's intervenor testimony that if new facilities  
12 were required to be constructed west of the Intracoastal Waterway, for service to  
13 Nocatee, Intercoastal would not bring anything to the table that could not be  
14 accomplished better by a new, developer related utility?

15 A: I believe my answers to the prior question are relative to Mr. Miller's comment on  
16 that subject. All of those benefits I just outlined are provided exclusively through  
17 service by Intercoastal. Conversely, service by NUC brings none of those added  
18 benefits to the table. The service proposed by NUC has absolutely no potential for  
19 economic or service benefits to Intercoastal's existing consumer population, and  
20 due to NUC's lack of a very substantial, existing customer base such as  
21 Intercoastal's, NUC could not for many years (if ever) achieve the same operating  
22 economy of scale and potential for consumer rate suppression as service by  
23 Intercoastal would provide. In fact, NUC's plan to invest heavily in the developer's  
24 utility systems will have the opposite effect of pressing consumer service rates  
25 upward. Environmentally, NUC's service plan could not provide the public benefit

1 of reducing an existing discharge, and would recycle no more than 53% of the  
2 Nocatee produced wastewater. For that reason , reuse service as proposed by NUC  
3 may very well be seen by the Nocatee residents as simply using the Nocatee  
4 development for a JEA disposal site of Duval County's treated wastewater. Such  
5 a perception would discourage residential reuse. Intercoastal's plan will promote  
6 community pride in their reuse system as a 100% recycling of all of the local  
7 service area's wastewater, including that of Nocatee.

8 Q: Are you aware of an instance in which a smaller developer was frustrated by years  
9 of unsuccessful attempts to obtain service from Intercoastal?

10 A: I believe Mr. Doug Miller's vague allusion to that situation refers to the Marsh  
11 Harbor development request for service, which Intercoastal received in mid summer  
12 of 1996. I reviewed that file and found that the developer never responded to  
13 Intercoastal's requests for an estimated \$ 7,500 deposit to initiate the legal  
14 proceeding necessary for Intercoastal to obtain the authority to serve that project,  
15 which was located immediately west of the Intracoastal Waterway, outside of  
16 Intercoastal's existing service area. Intercoastal certainly never did anything to  
17 "frustrate" the developer in that case.

18 Q: Would some additional discussion of the details of this project be informative to the  
19 Commission, as to both this project and the later intervention of DDI into  
20 Intercoastal's St. Johns County case and this proceeding?

21 A: Yes, I believe they would be of interest to the Commission. Within a few days of  
22 the above request from Marsh Harbor, Intercoastal responded to the developer's  
23 representative, informing him of Intercoastal's applicable tariff charges, the  
24 developer's additional cost responsibility to design and construct extensions of the  
25 existing systems, the time estimated to obtain the authority to serve, and soliciting

1 the developer's confirmation of his decision to proceed and his submission of the  
2 above deposit. According to the file, no written response (or deposit) was received.  
3 In late summer of the following year (1997) in response to telephone requests, at  
4 least three meetings were held with the Marsh Harbor developer and his engineering  
5 representatives who were members of Mr. Doug Miller's firm, England, Thims &  
6 Miller, Inc. (ETM). Subsequent to discussion of possible service scenarios, ETM  
7 requested instructions on how to get the process for service going again. Once  
8 more, Intercoastal advised the developer's engineer of the need for the developer's  
9 deposit of the above sum to initiate the legal proceedings (in the fall of 1997).  
10 Neither a response nor the requested deposit was received. In both the  
11 correspondence and meetings Intercoastal advised that if other projects were being  
12 planned in the area, joint requests for service with that of Marsh Harbor would help  
13 spread the developers' investments to extend the systems. In an effort to further  
14 Intercoastal's own future planning for the territory, and to possibly assist the Marsh  
15 Harbor developer, one of Intercoastal's board of directors (as recited in my prior  
16 testimony), penned a memo to the president of DDI (Jay Skelton) (on November  
17 20, 1997) requesting a meeting to discuss that firm's future development plans for  
18 the DDI lands. My understanding is that the request was verbally rebuffed. In late  
19 November of 1997, a news article reported that the Marsh Harbor project had run  
20 into permitting problems, involving a proposal for docking facilities which was not  
21 part of the project's original County approval. In December 1997, Intercoastal  
22 correspondence provided ETM with requested pipe specifications for an Intracoastal  
23 Waterway crossing and fire flow test results. In January of 1998, the project owner  
24 contacted me, requesting a price estimate for the extension work and a letter of  
25 service capacity availability. Since it is not the policy of Intercoastal Utilities to

1 provide such estimates to developers, I referred him to the construction manager of  
2 Jax Utilities Management, Inc. (JUM) to possibly obtain what I considered to be a  
3 courtesy estimate. JUM informed the owner that it was unaware of any plan  
4 designs from which such estimates could be compiled. The owner then promised  
5 to contact ETM and obtain such plans from which JUM might provide such an  
6 estimate of the service extension construction costs. In that same conversation, for  
7 the third time, I informed the owner of his need to furnish the requested legal  
8 process deposit, and the owner asked me to hold off on the availability letter until  
9 the construction cost estimates were available. JUM did furnish a construction cost  
10 estimate of \$ 983,103.30 to ETM on February 27, 1998. On March 24, 1998, ETM  
11 wrote to JUM requesting itemized breakdowns of that estimate, but also  
12 acknowledging that final design drawings had not yet been produced. The file  
13 reflects no contact between Intercoastal and either the development owner or his  
14 engineers (ETM) beyond that point; but does contain news articles from mid-  
15 summer 1999, indicating the intent of St. Johns County to purchase all or part of  
16 the Marsh Harbor tract.

17 Q: Did the Marsh Harbor developer-owner ever complain to you that Intercoastal's  
18 request for the legal proceeding deposit was unreasonable or, did you at any point  
19 become aware as to why that owner never responded to Intercoastal's request for  
20 that deposit?

21 A: My answer is No, to both questions.

22 Q: At any point in time, did Intercoastal Utilities ever refuse to provide service to the  
23 Marsh Harbor project?

24 A: No.

25 Q: To the best of your knowledge and understanding, was the construction estimate

1 furnished by JUM based on information, if not final design drawings, produced by  
2 England, Thims & Miller engineers?

3 A: To the best of my knowledge, ETM engineers were the only source of such  
4 information.

5 Q: At any time, up to and including the March 24, 1998 date of last correspondence  
6 from ETM to Jax Utilities Management, did ETM contact you to advise of their  
7 involvement in any other projects being planned within the currently disputed area  
8 or, to discuss or request Intercoastal's submission of a proposal for service to any  
9 unnamed projects in this area?

10 A: No.

11 Q: How did you become aware of the Nocatee project and its prior planning?

12 A: On March 20, 1999, when the Nocatee project announcement appeared as the  
13 headline article of the Florida Times-Union newspaper. According to that article, the  
14 Nocatee project had been in planning for fourteen months prior to that  
15 announcement.

16 Q: Would you explain the circumstances surrounding a failure of Intercoastal's North  
17 Gate sewage lift station in December 1999?

18 A: Yes. A power service malfunction caused extensive damage to that station. To  
19 restore service, field crews installed a temporary pump and hydraulic hose  
20 connection from the pump discharge into the force main adjacent to the station. It  
21 was necessary to maintain that temporary installation until new pumps and  
22 mounting rails could be ordered, received and installed. Those new installations  
23 were completed on approximately April 1, 2000. That failure did cause an overflow  
24 of sewage from adjacent manholes, which was minimized as much as possible. Field  
25 personnel applied lime to the landscaped areas of the overflows and sprayed sodium

1       hypochlorite on the paved areas to disinfect them. While such extensive damages  
2       of equipment are not common, they do occur and field personnel take all reasonable  
3       steps to return the system to proper operation as quickly as possible.

4   Q:    Has Intercoastal experienced odor problems with its existing Sawgrass Wastewater  
5       Treatment facility in the past; and if so, are those problems continuing at this time.?

6   A:    Prior to the recent conversion, upgrade and expansion of that facility the incoming  
7       flow fluctuations were buffered by an open basin, the use of which was approved  
8       by the Florida Department of Environmental Protection (FDEP). Even though that  
9       basin was aerated, and sodium hypochlorite was added to the flows at contributing  
10      lift stations to help control odors, that basin was identified by FDEP as the major  
11      source of odor complaints being received by Intercoastal and the FDEP. Subsequent  
12      to completion of the new facilities construction, that basin was removed from  
13      service, and cleaned of all waste material. Under the new plant design, that basin  
14      now performs a similar flow equalization function, prior to final filtration. As such,  
15      that basin receives only the treated and clarified flows produced by the new  
16      Sequential Batch Reactors, and has been confirmed as no longer being a possible  
17      source of unreasonable odors. During frequent visits to this facility by FDEP  
18      inspectors and other utility experienced personnel, even during extended training  
19      sessions being conducted at the site, no unusual odors were detected. But because  
20      both the FDEP and Intercoastal continued to receive odor complaints from  
21      customers after that conversion, Intercoastal also covered the open channels of the  
22      new headworks, and added lime to the headworks removed material to remove any  
23      possible residual odors from that material. As a last resort, upon the suggestion of  
24      FDEP personnel, Intercoastal has also ordered odor neutralization equipment to be  
25      installed around the headworks area. After becoming concerned that these very

1 extensive measures did not eliminate the odor complaints, I contacted Mr. Ed  
2 Cordova of the FDEP and requested even more frequent inspections by FDEP  
3 personnel to ascertain whether such complaints could be justified. According to my  
4 May 11, 2000 conversation with Mr. Cordova, FDEP personnel have made daily  
5 odor checks of the plant site and surrounding areas in morning and evening hours  
6 and weekends; and are unable to verify that such complaints of unreasonable odors  
7 are justified. Attached to my testimony as Exhibit MLF-2 is an April 26, 2000 letter  
8 received from one of the original customer objectors to Intercoastal's application,  
9 Mr. George Ely. Mr. Ely is a resident of the Fairfield development located  
10 immediately west of this facility, from which many if not most of those odor  
11 complaints have been received. Mr. Ely's letter very succinctly and unambiguously  
12 also confirms that Intercoastal's efforts to eliminate both noise and odor from the  
13 Sawgrass Wastewater facility have been successful, and that the consistent  
14 response Mr. Ely has received to his calls have given him the feeling that someone  
15 at Intercoastal was concerned with the problems affecting his neighborhood.

16 Q: Has Intercoastal provided water to its customers that is contaminated and a threat  
17 to public health?

18 A: Absolutely not. I was sorely disappointed by comments of that sort in the testimony  
19 filed in this proceeding by Mr. Olsen of the Sawgrass Association; which were at  
20 least an uninformed misinterpretation if not a deliberate distortion, of the SDWA  
21 mandated language contained in Intercoastal's 1998 Water Quality Report. His  
22 reference to the December 1998 violation of the Total Coliform Bacteria violation  
23 disclosure totally ignored the wording that subsequent retesting of the water ,  
24 which is a FDEP required procedure, showed the water to be free of that indicator.  
25 If indeed Mr. Olsen was truly concerned about the quality of his water, he would

1 have called the utility number and person designated in that report to provide further  
2 information, or the FDEP, or the EPA. Any of those sources would have informed  
3 Mr. Olsen that such test results are very common, and when they are unverified by  
4 the immediate retesting required, are typically considered to be caused by mistakes  
5 in original sampling or subsequent laboratory handling procedures. His lack of  
6 reference to such inquires on his part indicates to me that he had no genuine  
7 concern as to the quality of the water he drinks, and strongly suggests that his sole  
8 purpose in making such references was a vicious attempt to malign the operations  
9 of Intercoastal. The direct testimony of Mr. Scott Trigg of the FDEP in this  
10 proceeding provides a much more accurate description of Intercoastal's operations,  
11 confirming that "Intercoastal has an excellent history of compliance..." and "has not  
12 had any past problems in regard to safety, water quality, reliability, or customer  
13 service...".

14 Q: Was it irresponsible for Intercoastal to nearly double the capacity of its Sawgrass  
15 wastewater facility?

16 A: Of course not. Mr. Olsen's testimony reference in that regard leaps upon a much  
17 too briefly worded attempt within the Intercoastal CMP to explain that very large  
18 tracts of land, which in the past contributed to a very significant rate of growth in  
19 the existing Intercoastal service area, are no longer available. While Mr. Olsen's  
20 comment has no bearing on Intercoastal's instant application, it does provide the  
21 opportunity to demonstrate that Intercoastal plans and acts in accordance with  
22 regulations and good engineering practices. The design capacity of that facility was  
23 properly and prudently determined by professional engineering analyses, as required  
24 by regulations, in accordance with a 1991 Capacity Analysis Report and its  
25 subsequent revisions, prepared pursuant to Rule 17-600.405, FAC which requires

1 a permittee to provide for the timely planning, design, and construction of  
2 wastewater facilities capacities necessary to supply proper treatment and reuse or  
3 disposal, based on the historical, current and projected wastewater flows within the  
4 permittee's existing service area. The revised CMP demonstrates that, if the growth  
5 of Intercoastal continues at its current and historical rate of plus or minus ten  
6 percent, the majority of that expanded capacity of this facility will be utilized by the  
7 year 2005. Because the very large tracts of previously available land in the present  
8 service area are already under development, it is possible that reduced densities  
9 resulting from future utilization of less developmentally desirable land areas,  
10 redevelopment of sparsely populated areas, and fill-in construction of the remaining  
11 small tracts may eventually reduce that historical growth rate and extend the time  
12 frame for complete build-out of the service area. Table 2-3 of the CMP reflects  
13 those two extremes.

14 Q. Do you have an opinion as to which of these applications should be granted by the  
15 Commission?

16 A. Yes, for all of the reasons set forth in Intercoastal's testimony and for all of the  
17 facts established by the testimony of all the parties in this matter, I believe that  
18 Intercoastal's plan of service and proposal is in the best interest of both  
19 Intercoastal's existing customers and of the ultimate customer, and by that I mean  
20 the individuals who will ultimately receive water and wastewater service, in the  
21 Nocatee development.

22 Q: Does that complete your testimony?

23 A: Yes, it does.

24

25

Date: 04/26/2000

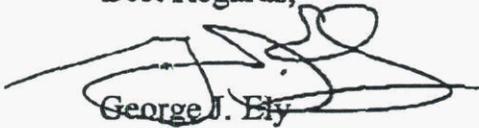
Dear Mr. James;

It is with great pleasure that I am able to write this letter complimenting you on the elimination of the high pitch noise and most of the odor from the Sawgrass Treatment Plant.

Since completion of the new holding tank and installation of soundproofing the above two problems have practically gone away.

In addition, I would like to thank you for always responding to my phone calls and giving me the feeling that someone at Intercoastal Utilities was concerned with problems that effected our neighborhood.

Best Regards,



George J. Ely

