

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Applications For An Amendment	)	
Of Certificate For An Extension	)	
Of Territory And For an Original	)	
Water And Wastewater Certificate	)	Docket No. 992040-WS
(for a utility in existence and charging	)	
for service)	)	
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In re: Application by Nocatee Utility	)	
Corporation for Original Certificates for	)	
Water & Wastewater Service in Duval	)	Docket No. 990696-WS
and St. Johns Counties, Florida	)	
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AMENDED  
MOTION TO COMPEL DEPOSITION

Intercoastal Utilities ("IU"), by and through undersigned counsel, hereby files this Amended Motion To Compel Deposition, and in support thereof would state and allege as follows:

1. St. Johns County is a party in the above-referenced matter. The position of St. Johns County is adverse to the position of IU and St. Johns County has requested that IU's application be denied (see Petition of St. Johns County, page 16). St. Johns County participation has been established as follows:

However, the County's intervention shall not be limited. Rule 25-22.039, Florida Administrative Code, does not contemplate or provide for limited intervention. As a party to this proceeding, the County may limit its participation to only certain issues, as it sees fit.

See Order No. PSC-00-0336-PCO-WS.

DOCUMENT NUMBER-DATE

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discoverable matter. It is not ground for objection that the information sought will be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

See Rule 1.280(b)(1), Florida Rules of Civil Procedure.

4. Nothing could be more simple than what IU proposes: St. Johns County has petitioned for an administrative hearing adverse to IU's application. St. Johns County is a party in the litigation resulting from that Petition and others. IU seeks to do discovery of matters relevant to the subject matter or matters which are reasonably calculated to lead to the discovery of admissible evidence. The fact is, the evidence that comes into a Commission proceeding is usually not limited to the prefiled testimony. Witnesses also introduce evidence while being cross examined, while subject to redirect and often in response to questions from the Commission panel. Thus, it may be that witnesses who will testify in this proceeding will learn information which is very pertinent and relevant to the subject matter of the litigation by reviewing Mr. Young's sworn testimony. Additionally, Mr. Young's sworn testimony could lead to a search for additional evidence, based on documents, actions, discussions, or other matters which he may testify about at the deposition, which were previously unknown.

5. If the County has nothing relevant to say in this proceeding, it should get out. The County has already made representations, whether in writing or orally, that the County intends to serve part of the area for which IU has applied, the County is opposed to IU's application, the County believes that the prior litigation involving a separate IU application should be given "full faith and credit" at the PSC, etc. Additionally, perhaps the deposition

of Mr. Young will finally get at the answer to the question that is begged by the County's posture in this case: why has the County filed a jurisdictional Motion to Dismiss IU's application, but did not bother to file a similar motion adverse to the application of NUC, whose application raises this same jurisdictional argument? If the County has a "hidden agenda", that agenda should be brought to light and considered by the parties and the Commission to the extent that it is relevant and admissible in this hearing. For the County to hide in the dark will not benefit the parties, the public, or the Commission. Mr. Young is a County employee and the County is a public entity and party-litigant to this case. What does the County have to hide? If the deposition does not yield information which addresses a major issue in this hearing or which eventually supports a finding of fact pertinent to this matter, then the deposition will merely go on the heap upon which millions of other depositions transcripts lie. However, that is exactly what the discovery process is all about. Often unanticipated or unknown information is yielded which is highly pertinent to the issues in a case. Other times, depositions or other discovery matters result in the transmission of information which is perhaps not so pertinent.

6. Assuming that the County has nothing to hide, and that the County's posture on this issue is based on the inconvenience or expense of producing Mr. Young for deposition, that inconvenience pales in comparison to the expense to IU by the County's participation in this case. Again, assuming the County has nothing to hide, for the County to take the implicit position that its decision to sue IU in administrative litigation represents an inconvenience to the County is certainly ironic at best.

7. To deny IU the opportunity to engage in discovery as to another party litigant in this case would be to deny due process to IU. The County must have some position in this case, otherwise, why did it file a petition? The County must have something relevant to say about IU's application, otherwise, why has it filed motions adverse to IU's application and argued those motions before the Commission? The County is a full party in this case and can (whether they presently intend to do so or not) engage in cross examination of IU's witnesses, at least attempt to move documents into evidence, brief issues, and support motions adverse to IU. A cost benefit analysis (in actuality, the "benefit" of allowing the County to be immune from the normal deposition process is not clear to counsel for IU) clearly indicates that IU's need to explore this information exceeds any "need" on the part of County to somehow be exempt from the Florida Rules of Civil Procedure as made applicable by the Florida Administrative Code.

8. IU seeks to do nothing extraordinary, oppressive or out of the ordinary in this case. It gave ample notice for its intent to depose this single individual on the part of the County. While the rules would clearly allow IU to take the deposition of an individual who was unconnected to the litigation or any party, in this case the individual is, in fact, connected to a party and is, in fact, the director of the County Utility Department. The County wants to have its cake and eat it too. It wants to be able to attack IU, all the way to the point where IU's application is dismissed and its proposal frustrated, but it does not want to subject itself to even the dimmest light of discovery. This attempt to prevent a deposition under these circumstances should not be allowed by the Commission and would set an untenable precedent.

9. Additionally, it is irrelevant that Mr. Young is not "witness" in this matter. Depositions routinely occur before witness lists have been exchanged and/or witnesses are known. Sometimes an individual who a party might intend to be a witness turns out not to be witness because his deposition "didn't go well". Depositions are part of the discovery process, and while they are sometimes taken for the purpose of cross examination, they are also taken for the purpose of discovering information. While this deposition may not be used to impeach the testimony of Mr. Young at the hearing (since he apparently doesn't intend to be a witness), the deposition can certainly be put to any of the other myriad uses which depositions serve under Florida law.

WHEREFORE, and in consideration of the above, IU respectfully requests the Commission order St. Johns County to produce Mr. Young for deposition at a time and place convenient to IU and as expeditiously as possible following the Commission's order.

DATED this 29<sup>th</sup> day of June, 2000.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by the facsimile\* and regular U.S. Mail to the following on this 29<sup>th</sup> day of June, 2000.

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