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ADMINISTRATIVE LAW  
GOVERNMENTAL LAW  
PUBLIC UTILITY LAW

July 6, 2000

VIA HAND DELIVERY

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RECORDS AND REPORTING

Ms. Blanca Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

RE: Docket No. 990696-WS IN RE: Application by Nocatee Utility Corporation for original certificates for water and wastewater service in Duval and St. Johns Counties, Florida.

Docket No. 992040-WS IN RE: Application for certificates to operate a water and wastewater utility in Duval and St. Johns County by Intercoastal Utilities, Inc.

Dear Ms. Bayo:

Attached please find the originals and fifteen copies each of St. Johns County's Response in Opposition to Amended Motion to Compel Deposition and Request for Oral Argument to be filed in the above-styled cases. Also attached are copies of these filings to be stamped and returned to us for your files.

Thank you for your attention to this matter. Please contact me if you have any questions or if I can be of further assistance in this matter.

Very truly yours,

*Suzanne Brownless*  
Suzanne Brownless  
Attorney for St. Johns County, Florida

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 5 \_\_\_\_\_
- CTR \_\_\_\_\_
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- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- REGO 1 \_\_\_\_\_
- SEC \_\_\_\_\_
- SER \_\_\_\_\_
- OTH \_\_\_\_\_

cc: Bill Young  
c: 3155

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*M. Rockland*  
FPSC-BUREAU OF RECORDS

*Response*  
DOCUMENT NUMBER-DATE  
08197 JUL-68  
FPSC-RECORDS/REPORTING

*Oral Argument*  
DOCUMENT NUMBER-DATE  
08198 JUL-68  
FPSC-RECORDS/REPORTING

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RECORDS AND REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for certificates )  
to operate a water and wastewater )  
utility in Duval and St. Johns County )  
by Intercoastal Utilities, Inc. )

DOCKET NO. 992040-WS

IN RE: Application by Nocatee Utility )  
Corporation for original certificates )  
for water and wastewater service in )  
Duval and St. Johns Counties, Florida. )

DOCKET NO. 990696-WS

RESPONSE IN OPPOSITION TO AMENDED  
MOTION TO COMPEL DEPOSITION

Pursuant to Rule 28-106.204(1), Florida Administrative Code, St. Johns County, Florida (County), by and through its undersigned attorney, hereby files this Response in Opposition to Amended Motion to Compel Deposition, and in support thereof states:

1. On June 27, 2000, Intercoastal Utilities, Inc. (ICU) filed a Motion to Compel Deposition with the Commission and served the same on the County by U.S. Mail. Upon notification that service was only by U.S. Mail and had not been also sent by facsimile as the certificate of service indicated, ICU's counsel filed an Amended Motion to Compel Deposition (Amended Motion) on June 29, 2000. The Amended Motion was both sent by U.S. Mail and facsimile on June 29, 2000. There appears to be no substantive difference between the original and amended motions.

2. In its Amended Motion, ICU is seeking the Commission's permission to depose Bill Young, the Director of Utilities for St. Johns County. Neither Mr. Young, nor any other person, has filed testimony in this docket on behalf of the County. As indicated in the County's Prehearing Statement, the County is sponsoring no

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witnesses and all of the exhibits which the County will offer are County ordinances, resolutions or orders which can be taken judicial notice of under §§ 90.202 and 90.203, Florida Statutes.

3. Order PSC-99-1764-PCO-WS (Order 99-1764), issued on September 9, 1999, the procedural order that controls this combined proceeding, states unequivocally that "[e]ach party shall prefile, in writing, all testimony that it intends to sponsor." In re: Application for original certificates to operate water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corp., 99 F.P.S.C. 9:156, 157 (1999). Order 99-1764 goes on to state that "[f]ailure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony." 99 F.P.S.C. 9:158.

4. Although not precluded by Order 99-1764, it has been the experience of the County's counsel that parties have not been allowed to sponsor witnesses at hearing when testimony has not been prefiled for the simple reason that the prejudice to the other parties outweighs the value of the testimony to be given in all but the most unusual circumstances. This Commission procedure, the fact that the County will not seek to sponsor a witness at trial<sup>1</sup>, and the fact that all of the County's positions are stated clearly

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<sup>1</sup> There is no possibility that evidence could be introduced at trial through the cross or redirect examination of a nonexistent County witness, or that the Commissioners could ask questions outside the scope of prefiled testimony of such a witness as postulated by ICU. Amended Motion at ¶ 4.

in the County's Prehearing Statement, should remove any prejudice that ICU could suffer by not being allowed to depose Mr. Young.

5. The County would note here that it did not, as ICU alleges, "petition for an administrative hearing adverse to IU's application." Amended Motion at ¶ 4. The County filed a Motion for Intervention and Motion to Dismiss in ICU's docket. The County never sought to intervene in the Nocatee Utility certification docket and only sought to intervene in the ICU certification docket for the limited purpose of raising jurisdictional, res judicata and collateral estoppel issues. County Petition For Intervention and Motion to Dismiss at 1, 6. The County has raised the jurisdictional issue via Motion to Dismiss and it has been ruled upon, after both written responses and oral argument by ICU was had, by the full Commission at Special Agenda on June 19, 2000. There can be no doubt that on this issue ICU has been granted its full due process rights.

6. The County intends to appeal this jurisdictional ruling and to file a Motion for Summary Order to raise the res judicata and collateral estoppel issues associated with the denial of service territory to ICU by the St. Johns County Board of County Commissioners. ICU will also have the right to respond to that motion, and to orally argue same before the Commission. The County is continuing as a party to this case in order to retain its right to appeal these procedural issues upon the issuance of a final order by the Commission.

6. Thus, while it is true as ICU indicates, that the

Commission's order granting intervention does not limit the County's participation in this combined proceeding, the County's intentions have not changed.

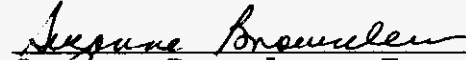
7. While the Rules of Civil Procedure are applicable to the Commission and encompass a very broad range of materials, the Commission, like a civil court, has the discretion to limit discovery where justified.<sup>2</sup> This is such a case. While scoffed at by ICU, the expense and burden of providing Mr. Young for deposition is significant and is not limited to the time and expense it takes to actually conduct the deposition. The St. Johns County Utility Department staff is very small and Mr. Young is involved in virtually every operational and policy decision affecting the department. Given the posture of the County in this case, depositions do constitute an undue expense and burden in this proceeding for the County.

WHEREFORE, St. Johns County, Florida requests that the Amended Motion to Compel filed by Intercoastal Utilities, Inc. in this docket be denied.

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<sup>2</sup> "[T]he court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires." Rule 1.280(c), Florida Rules of Civil Procedure.

Respectfully submitted this 6 day of July, 2000 by:

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by Hand Delivery (\*) or regular U.S. Mail to the following on this 6th day of July, 2000:

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c: 3153