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RECORDS AND REPORTING

Re: Docket Nos. 990696-WS and 992040-WS

Dear Ms. Bayó:

Enclosed for filing on behalf of Nocatee Utility Corporation are the original and fifteen copies of its Response in Opposition to Motion for Continuance.

By copy of this letter, this document has been furnished to the parties on the service list. If you have any questions regarding this filing, please call.

Very truly yours,

R.D.M.

Richard D. Melson

RDM/mee

Enclosures

cc: Mr. O'Steen
Mr. Skelton
Mr. Miller

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following persons by Hand Delivery(*) or U. S. Mail this 24th day of July, 2000.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Application for original certificates)
to operate water and wastewater utility)
in Duval and and St. Johns Counties)
by Nocatee Utility Corporation)

Docket No. 990696-WS

In re: Application for certificates to)
operate water and wastewater utility)
in Duval and St. Johns Counties)
by Intercoastal Utilities, Inc.)

Docket No. 992040-WS

Filed: July 24, 2000

**NOCATEE'S RESPONSE IN OPPOSITION TO
MOTION FOR CONTINUANCE**

NOCATEE UTILITY CORPORATION ("NUC") hereby files its *Response in Opposition* to the Motion for Continuance (Motion) filed on Friday, July 21, 2000 by Intercoastal Utilities, Inc. (Intercoastal). For the reasons set forth below, the Commission should deny Intercoastal's Motion.

1. On June 1, 1999, NUC filed its application for a multi-county certificate to serve the Nocatee development in Duval and St. Johns Counties. Intercoastal filed a timely objection to that application. St. Johns County (County) has never filed an objection to NUC's application nor sought to intervene in NUC's certificate proceeding.

2. On December 30, 1999, Intercoastal filed its application for a multi-county certificate to serve its existing territory in St. Johns County, the Nocatee development in Duval and St. Johns Counties, and additional territory in St. Johns County. NUC and others filed timely objections to that application. The County sought, and was granted, intervention in that proceeding.

3. On February 2, 2000, the competing applications filed by NUC and Intercoastal were consolidated for purposes of hearing, which is currently scheduled for August 16-18, 2000, over a year after NUC's original application was filed.

4. On July 21, 2000, Intercoastal filed a Motion for Continuance based on a change in circumstances. In that Motion, Intercoastal represents that the County is expected to consider the acquisition of Intercoastal's existing utility system at its Board of County Commissioners meeting on or about August 15, 2000, the day prior to the start of the Commission hearings in these consolidated cases. Intercoastal contends that this change in circumstances warrants a continuance of the hearing because, among other things, the currently filed testimony does not reflect the present reality and because the acquisition of Intercoastal may result in an alteration of the current posture or position of certain parties.

5. NUC submits that the potential acquisition of Intercoastal by the County has no potential effect on NUC's application, or on the posture or position of the parties to NUC's docket, that cannot adequately be dealt with at the hearings currently scheduled to begin on August 16. Either the County will vote on August 15 to acquire Intercoastal or it will not.

6. If, as Intercoastal apparently expects, the County decides on August 15 to acquire Intercoastal, then:

- (a) Intercoastal would no longer require action by the Commission on its certificate application, since the Commission has no jurisdiction over the service territories of governmentally-owned systems. Intercoastal could therefore withdraw its application at the start of the August 16th hearings.

- (b) Intercoastal would no longer be a potential competitor of NUC, and its objection to NUC's application could either be voluntarily withdrawn, or should be dismissed for lack of standing.
- (c) NUC's application for certificate -- now unopposed -- could continue to hearing based on NUC's application and prefiled direct testimony, none of which is affected by the status of Intercoastal. In fact, with no remaining timely-filed objection, the Commission could presumably issue a bench decision granting NUC's certificate if it were so inclined.

7. On the other hand, if the County decides not to acquire Intercoastal, then there will be no change in the current posture of the case, and the matter can proceed to hearing based on the testimony previously filed by all parties.

8. A continuance would prejudice NUC by further delaying the grant of a certificate which is in the public interest. NUC originally agreed to a continuance to permit its certificate application to be consolidated with the competing application filed by Intercoastal, since a combined hearing on the two applications appeared to be necessary to serve the principles of administrative efficiency and ensure a consistent result. However, if Intercoastal is acquired by the County, there is no longer either a competing application or a timely objection to NUC's application, and the Commission should proceed to consider and rule on NUC's application without further ado.

9. Intercoastal is correct that the parties will expend some resources in further discovery and hearing preparation which could possibly be avoided if Intercoastal is in fact acquired by the County and its application and objection are withdrawn. However, this incremental cost does not warrant further delay in Commission action on NUC's application,

which has been pending for over a year, particularly in light of the amounts the parties have spent to date on earlier contested certificate proceedings before St. Johns County.

WHEREFORE, NUC urges that the Commission deny Intercoastal's Motion for Continuance, and allow this matter to proceed to hearing on the currently scheduled dates.

RESPECTFULLY SUBMITTED this 24th day of July, 2000.

HOPPING GREEN SAMS & SMITH, P.A.

By:  for

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