

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application 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

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

Docket No. 990696-WS

Supplemental Motion for Continuance

Intercoastal Utilities, by and through undersigned counsel, hereby files this Supplemental Motion for Continuance and would state and allege as follows:

1. On July 21, 2000, Intercoastal filed its Motion For Continuance of this case (the same which is hereby incorporated by this reference as if fully set forth herein). That Motion set forth good cause for continuance of this matter and demonstrated justification for a continuance based upon the facts and circumstances discussed therein. However, since the filing of that Motion there has been an additional substantial change in circumstances which would, in and of themselves, justify a continuance of this matter. Taken together, the facts and circumstances outlined in Intercoastal's July 21, 2000 Motion and the facts and circumstances set forth herein clearly state good cause for continuance of this matter either individually, or in combination with each other.

2. Intercoastal began to arrange for the depositions of Nocatee Utility Co.'s (NUC) witnesses in early June, 2000. Those depositions were ultimately scheduled to occur on July 25 and 26, 2000, in the city of Jacksonville. The depositions did occur as

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scheduled with the deposition of the president of NUC and the project engineer for NUC being deposed on July 25th.

3. During the course of those depositions, several additional matters came to light which demonstrate good cause for continuance of this matter.

A) Both the project engineer and the president for NUC agree that the Nocatee development will not commence (for various reasons) until the 1st or 2nd quarter of the year 2002. This is a delay of at least one year from the developer's expectations as expressed in the filings and application of NUC.

B) When the deposition commenced at 10:00 a.m. on July 25, 2000, counsel for NUC passed out to all of those in attendance an "Agreement For Wholesale Utilities, Operations, Management And Maintenance Between JEA and Nocatee Utility Corporation". This twenty-six page contract was executed late in the day on July 24, 2000 (the afternoon before the depositions). This Agreement between JEA and NUC has been the subject of negotiation for over a year. The Agreement contains substantial provisions and representations which relate to critical issues in this proceeding. The finalization of the Agreement at such a late date, in and of itself, justifies a continuance of this matter because Intercoastal will effectively be denied the opportunity to engage in discovery of the issues, facts, and circumstances raised or impacted by the Agreement and Intercoastal's witnesses will have no opportunity to adequately address those issues, facts, and circumstances in their testimony.

C) An even less subtle impact of the execution of this Agreement between JEA and NUC (on July 24, 2000) was the announcement by counsel for NUC (at the deposition on July 25th) that the only experts who have offered testimony on behalf of NUC in this case (the project engineer and the financial and rate expert) would be filing additional prefiled testimony to address the Agreement and to place into the record any changes in either their

testimony or NUC's application resulting from the finalization of the Agreement. Counsel for NUC represented that the Motion to allow additional testimony and the additional prefiled testimony itself would be filed by this Friday "if possible" but was unable to provide any assurance in that regard due to the schedule of all concerned. There was an indication that the Agreement might result in a difference between the rates, rate schedules, and costs and expenses of NUC as previously reflected in its application and prefiled testimony.

4. This matter is set to begin on August 16, 2000. It is apparent that if NUC files a motion to supplement its testimony and that motion is granted, that Intercoastal will not:

- Have any opportunity to engage in adequate and legitimate discovery on those issues (in fact the discovery cut-off in this case is next week)
- Have any opportunity to depose the witnesses who will file the supplemental testimony, which at this point is apparently not even in existence.
- Have a fair and reasonable opportunity to file rebuttal testimony or testimony which addresses these substantial changes and to change or modify its own conclusions and testimony as necessary.
- Be afforded due process with regard to any such testimony and additional facts.

5. The fact that NUC and JEA entered in this Agreement at the eleventh hour (and fifty-ninth minute) after all of the testimony had been filed in this case, after the prehearing conference, and only on the evening before the depositions of NUC's expert witnesses strongly indicates that proceeding to hearing for the mere convenience of NUC is inappropriate and untenable. Additionally, NUC's own witnesses have acknowledged that the project which NUC was created to serve (the Nocatee development) will not begin construction or need utility service until as late

as the 2nd quarter of the year 2002. Intercoastal will be denied due process if the Commission proceeds to adjudicate this case contrary to the orderly process outlined in the Order of Prehearing Procedure and to suddenly allow the case to go "wild west" at the last moment by the filing of additional exhibits and additional testimony which address important issues which have not have been addressed before because they are only raised by the Agreement, which was not in existence prior to July 24, 2000. To force Intercoastal to do expedited discovery (rather than trial preparation as would normally occupy the two weeks before trial) or to try to slap together responsive testimony to testimony which will be filed by NUC (but which is apparently not in existence on this date) would be a denial of due process to Intercoastal and potentially would be reversable error. Such could not possibly lead to a faster resolution of the issues raised by this case.

6. Additionally, Intercoastal learned for the first time yesterday that NUC had submitted "corrected exhibits" which replace exhibits of the project engineer in prior prefiled testimony. The "corrected exhibits" apparently correct a representation in exhibits appended to prefiled testimony which Intercoastal considered a vital issue in this proceeding and a weakness in NUC's case. Assumably, such corrected exhibits can only be allowed by motion. However, Intercoastal has not received any such "corrected exhibits". Other parties appear to have received the corrected exhibits and Intercoastal does not by this reference seek to impugn counsel for NUC in any way, shape, or form. Rather, the only point is that as counsel for Intercoastal drafts this motion, such "corrected exhibits" (whether appended to a motion or not) have never been received by this office.

7. This morning, during the deposition of NUC's financial and rate consultant, she revealed that she did not even know, as of the time of the deposition, what effect the Agreement would have on the numbers she had previously run on behalf of NUC and had submitted

in the form of prefiled testimony (She testified she had not had a chance to run the new numbers). Intercoastal was effectively denied the chance to do discovery (even last second discovery based on newly developed circumstances) because that witness had been unable to prepare her final opinions and calculations. The fault is not the fault of the witness, nor of Intercoastal who diligently arranged for these depositions almost six weeks in advance of their occurrence, but Intercoastal was denied the opportunity to engage in meaningful discovery nonetheless.

8. Continuance of this matter will benefit the Commission, its staff, and the affected public in St. Johns and Duval Counties. The fact that the Commission's calendar is somewhat crowded will not unduly prejudice NUC given a NUC's own testimony that the project will be started at least a year later than the date previously expressed in prefiled testimony and NUC's application and by the fact that NUC intends to file supplemental testimony which addresses major issues at this late date. A continuance of this matter may also completely avoid the need for any further expense on this case and possibly even result in a cancellation of the administrative hearing, depending on the facts and circumstances which unfold in the near future as outlined in Intercoastal's previous Motion For Continuance. This would obviously be in everyone's best interest.

9. Intercoastal's Motion For Continuance which was filed on July 21, 2000, set forth good cause for continuance in and of itself. This Supplement also sets forth good cause for continuance in and of itself. The good cause stated in both motions when taken together overwhelmingly demonstrates that continuance of this matter would promote judicial economy, would be in the interest of all parties concerned, and would ultimately benefit the Commission, its staff, and the affected public. There is simply no time for Intercoastal to do discovery on these new facts and issues, to do discovery on supplemental testimony which is apparently not even in

existence as of this date, to have its witnesses address those new facts and issues in supplemental testimony, and to engage in depositions of the witnesses who will file that supplemental testimony.

WHEREFORE, and consideration of the above, Intercoastal respectfully requests that this matter be continued for all of the reasons stated hereinabove.

Date this 26th day of July, 2000.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by the method indicated below to the following on this 20th day of July, 2000:

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