

SUZANNE BROWNLESS, P. A.

ATTORNEY AT LAW

1311-B Paul Russell Road, Suite 201
Tallahassee, Florida 32301

ADMINISTRATIVE LAW
GOVERNMENTAL LAW
PUBLIC UTILITY LAW

TELEPHONE (850) 877-5200
TELECOPIER (850) 878-0090

ORIGINAL

September 13, 2000

RECORDS AND
REPORTING

100 SEP 13 PM 2:24

RECEIVED-FPSC

BY HAND DELIVERY

Blanca Bayo
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

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

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

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of
the Request for Acknowledgement of Intervenor Status or, in the
Alternative, Petition for Intervention to be filed by St. Johns
County in the above cited docket.

Very truly yours,



Lewis Barwick
Legal Assistant for Suzanne Brownless
Attorney for St. Johns County

APP _____
CAF _____
CMP _____
COM 5 _____
CTR _____
ECR _____
LEG 2 _____
OPC _____
PAI _____
RGO Redeman _____
SEC 1 _____
SER _____
OTH Daly _____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

11413 SEP 13 8

Donna A. ...

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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
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

REQUEST FOR ACKNOWLEDGMENT OF INTERVENOR STATUS OR, IN THE ALTERNATIVE, PETITION FOR INTERVENTION

St. Johns County, Florida (County), by and through its undersigned attorney, files this Request for Acknowledgment of Intervenor Status, or in the Alternative, Petition for Intervention, and in support thereof states as follows:

1. On January 11, 2000, Intercoastal Utilities, Inc. (ICU) filed a Motion to Consolidate Dockets Nos. 990696-WS and 992040-WS. In its Motion to Consolidate ICU does not limit its request for relief to consolidation for the purpose of hearing only. [Attachment A] Nocatee Utility Corporation (NUC) did not object to ICU's request for consolidation of these dockets nor raise the issue of consolidation for the limited purposes of hearing only.¹

2. On January 26, 2000 the County filed its Petition for Intervention and Motion to Dismiss in Docket No. 992040-WS, ICU's certification docket. No objection to the County's intervention petition was filed.

2. Based on the fact NUC did not object to the

¹ NUC is now taking the position that consolidation was only for the "purpose of hearing." NUC Response in Opposition to Motion for Continuance at ¶¶ 1, 3.

consolidation; that both ICU and NUC were requesting certification of virtually the same service territory, the Nocatee development; and that "these dockets will raise similar issues of fact and law and involve identical parties"; Prehearing Officer Jacobs issued Order PSC-00-0210-PCO-WS, Order Granting Motion to Consolidate Dockets Nos. 992040-WS and 99-696-WS, on February 2, 2000 (Order 00-210). [00 F.P.S.C. 2:8, 9 (2000); Attachment B].

3. The relevant ordering paragraph of Order 00-210 states as follows: "Ordered by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that Intercoastal Utilities, Inc.'s Motion to Consolidate Docket Nos. 992040-WS and 990696-WS is hereby granted." 00 F.P.S.C. 2:9. Since no language limiting consolidation for the purpose of hearing only was requested by ICU or argued for by NUC, no such limiting language appears in Order 00-0210.

4. *Fifteen days after Order 00-210 was issued, on February 17, 2000, the Commission granted the County intervention in this consolidated docket by the issuance of Order PSC-00-0336-PCO-WS (Order 00-0336). [00 F.P.S.C. 2:340, 341 (2000); Attachment C]* There is no language in Order 00-0336 limiting the County's intervention in any way. On the contrary, the Commission rejected the County's request that its intervention be limited to the ability to raise a challenge to the subject matter jurisdiction of the Commission to hear ICU's certification, and stated:

[T]he 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. Furthermore, pursuant to Rule 25-22.039, Florida Administrative Code, the County as intervenor, takes the case as it finds it.

[00 F.P.S.C. 2:341; emphasis added.]

5. The case as the County "found it" on February 17, 2000 when its intervention was granted was a case in which Dockets Nos. 990696-WS and 992040-WS were consolidated for all purposes. The relevant ordering paragraph of Order 00-0336 states as follows:

Ordered by the Florida Public Service Commission that the Petition of St. Johns County, Florida to intervene in this proceeding is hereby granted as set forth in the body of this Order.

[00 F.P.S.C. 2:341 (2000)].

6. Subsequent to the issuance of Order 00-0336 NUC has consistently treated the County as a "full" intervenor and provided the County with all pleadings, notices and other documents which it filed in this consolidated proceeding as required by the second ordering paragraph of Order 00-0336.²

7. The first time that the County was aware that NUC did not consider the County a party to the consolidated docket, but only a party to ICU's certification docket was on July 24, 2000.³ This position has been reiterated in NUC's Supplemental Response in

² "Ordered that all parties to this proceeding shall furnish copies of all pleadings and other documents that are hereinafter filed to Suzanne Brownless, Esquire, Suzanne Brownless, P.A., 1311-B Paul Russell Road, Suite 201, Tallahassee, Florida 32301, counsel for St. Johns County, Florida." [00 F.P.S.C. 2:341 (2000)].

³ Nocatee's Response in Opposition to Motion for Continuance, ¶¶ 1, 2, and 3.

Opposition to Motions for Continuance filed on July 31, 2000.⁴

8. The fact that the County has not to date opposed NUC's certification application in its pleadings does not affect its party status or limit its ability to oppose NUC's application for certification at hearing or in post hearing briefs and arguments.⁵

9. The Commission's decision to grant the County intervention in this consolidated proceeding with the ability to oppose NUC does not harm NUC since its application is already being vigorously protested by ICU, whom even NUC admits is a party to its certification application by virtue of the fact that it filed a timely protest.⁶

10. In sum, Order 00-0210 consolidated ICU's and NUC's certification application dockets and Order 00-0336 granted the County full intervenor status in this consolidated proceeding, i.e., both dockets. NUC's assertions to the contrary are simply

⁴ "[T]he County has not protested NUC's application and has not intervened in NUC's certificate application case. It is therefore entirely unclear how the County's rights are affected in any way by the finalization of this Agreement." [Supplemental Response at ¶ 4(a).]

⁵ Prehearing Order PSC-99-1764-PCO-WS (Order 99-1764), the controlling procedural order as modified by Order PSC-00-1036-PCO-WS, prohibits parties to a docket from raising new issues after the issuance of a prehearing order except for good cause shown. However, nothing in these orders prohibits a party from adopting the issues or positions timely raised by another party to the docket. ICU has consistently opposed NUC's application. The County is free to adopt ICU's stance at the hearing and in post-hearing briefs. NUC cannot be harmed by such action. It is already on notice that its certificate application is opposed.

⁶ NUC Response in Opposition to Motion For Continuance at ¶ 1.

incorrect.

11. However, should the Commission determine that Order 00-0336 granted the County full intervenor status in ICU's certification application docket only and not in the consolidated proceeding, or alternatively, that ICU's and NUC's dockets were only consolidated for the purpose of hearing, the County has standing to intervene in NUC's certification application docket as set forth below.

12. The County is a political subdivision of the State of Florida who is authorized by Resolution 89-214, adopted by the Board of County Commissioners of St. Johns County, Florida (Board) on September 26, 1989, pursuant to §367.171(1), Florida Statutes, to regulate the water and wastewater utilities within St. Johns County.

13. County Ordinance 99-36, the St. Johns County Water and Wastewater Service Area Ordinance, effective May 19, 1999, divides the County into Designated and Exclusive Service Areas. In Exclusive Service Areas, the County is obligated to provide service; in Designated Service Areas the County has the right to provide service itself or to designate the provider through the St. Johns County Water and Sewer Authority certificate application process. [County Ordinance 99-36, §§ 5, 6, and 7].

14. NUC has requested certification of a service area from the Commission of approximately 15,000 acres, of which approximately 13,000 acres is located in St. Johns County. The service area located in St. Johns County included in NUC's

application for certification is classified as Designated Service Area. [County Ordinance 99-36, Exhibit "A"]. Thus, NUC's application for a multicounty certificate, even if one assumes that the Commission has the jurisdiction to hear NUC's certificate application, removes approximately 13,000 acres, a substantial portion of the undeveloped property in the northeastern portion of St. Johns County from County jurisdiction and regulatory control.⁷ On this basis alone, the County will be substantially affected by the decision granting NUC's request for water and wastewater certificates in this consolidated proceeding.

15. Additionally, NUC's agreement with JEA for wholesale water and wastewater service and for the operation and maintenance of NUC's proposed system raises significant jurisdictional issues which impact the County. First, it is now clear that JEA will hold fee simple title to the backbone water and wastewater lines, defined as "joint projects" in the JEA/NUC agreement⁸, which cross county boundary lines. These joint projects will, by definition, allow JEA to provide water and wastewater services to other

⁷ As the Commission is aware, it is the County's position that the Commission does not have subject matter jurisdiction to consider original certificates for service territory in non-jurisdictional counties until a non-jurisdictional county has considered and granted the applicant that portion of the service territory located in the non-jurisdictional county. While the County did not raise this issue initially with regard to NUC, as pointed out at the oral argument on the County's Motion to Dismiss, NUC is in the same jurisdictional posture as ICU. Thus, neither NUC nor ICU have the right to file their respective applications at issue in this proceeding.

⁸ "Agreement for Wholesale Utilities, Operations, Management and Maintenance Between JEA and Nocatee Utility Corporation" at 2.

entities/developments within the County.

16. These facts raise a new and fundamental jurisdictional issue: whether the Commission has jurisdiction over a utility whose service transverses county boundaries where the actual facilities (lines and mains) providing that service are owned, at least in part, by a third party (JEA) who is not subject to the Commission's jurisdiction.

17. Additionally, the construction of these joint projects must inevitably result in the County being deprived of the right and/or ability to provide wholesale or retail water and wastewater services to other developments/entities within St. Johns County which the County would otherwise have the opportunity to serve.⁹ That is, the construction of these joint projects in the Designated Service Areas of the County may deprive the St. Johns County Water and Sewer Authority of the ability to regulate the service provider, JEA, and deprive the County of the ability to provide water and wastewater services to those areas itself.

18. The standard to be applied to determine whether intervention should be granted is found in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981, rev.den. 415 So.2d 1359 (Fla. 1982)). This standard has recently been reaffirmed by the Florida Supreme Court in Ameristeel Corporation v. Clark, 691 So.2d 474, 477 (Fla. 1997) as follows:

⁹ The County has the right to provide water and wastewater services within county boundaries pursuant to Article VIII, s. 1(f), Florida Constitution, and §125.01(1)(k)1, Florida Statutes.

To demonstrate standing to intervene under Agrico, a petitioner must demonstrate:

1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of the type or nature which the proceeding is designed to protect.

406 So.2d at 482. As the district court explained in that case, the first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

19. Both prongs of the Agrico test are met by the County. Granting NUC's certificates will immediately affect the St. Johns County Water and Sewer Authority's ability to regulate the water and sewer utility providing service to a substantial portion of St. Johns County. Further, the legal issues raised by the ownership of joint project facilities by JEA as well as the fact that the construction of those facilities will significantly affect the ability of the County to provide wholesale and retail water and wastewater services to the northeastern portion of the County constitute immediate injury in fact to support intervention. The immediate injury to the County is neither indirect nor speculative. The first prong of the Agrico test is met.

20. This proceeding is designed to evaluate NUC's and ICU's ability to provide water and wastewater services to their respective proposed service territories. Part and parcel of such a determination are the legal jurisdictional issues associated with the provision of such services and the availability of alternative service providers. The County through its regulatory authority, as

well as through its right to provide water and wastewater services to these proposed service areas is immediately and significantly impacted by the Commission decision on NUC's certificate application. The second prong of the Agrico test is met.

WHEREFORE, St. Johns County, Florida requests that for the reasons stated above the Commission should issue an order which:

a) Acknowledges that Order 00-0336's previous grant of intervention in this proceeding applies to a proceeding consolidated for all purposes and grants St. Johns County, Florida intervenor status with regard to NUC's certificate application (Docket No. 990696-WS) as well as that of ICU (Docket No. 992040-WS); or in the alternative

b) Grants St. Johns County, Florida intervenor status with regard to NUC's certificate application (Docket No. 990696-WS).

Respectfully submitted this 13th day of September, 2000 by:



Suzanne Brownless, Esq.
1311-B Paul Russell Road
Suite 201
Tallahassee, Florida 32301
Phone: (850) 877-5200
FAX: (850) 878-0090

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by Hand Delivery (*) or U.S. Mail this 13th day of September, 2000 to the following persons:

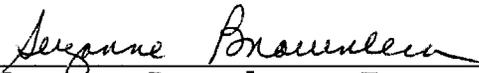
Richard D. Melson, Esq.
Hopping Law Firm
P.O. Box 6526
Tallahassee, Florida 32314-6526

(*) Samantha Cibula, Esq.
Division of Legal Services
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

J. Stephen Menton, Esq.
Kenneth A. Hoffman, Esq.
Rutledge Law Firm
P.O. Box 551
Tallahassee, Florida 32302

Michael J. Korn, Esq.
Korn & Zehmer, P.A.
Suite 200, Southpoint Bldg.
6620 Southpoint Drive South
Jacksonville, FL 32216

John L. Wharton, Esq.
Rose Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301



Suzanne Brownless, Esq.

c: 3180

ORIGINAL

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)
(for a utility in existence and charging)
for service))

Docket No. 992040-WS

RECEIVED FPSC
03 JAN 11 PM 3:17
RECORDS AND REPORTING

**INTERCOASTAL UTILITIES, INC.'S MOTION
TO CONSOLIDATE DOCKET 992040-WS AND 990696-WS**

Intercoastal Utilities, Inc. ("Intercoastal") hereby files this Motion To Consolidate Docket 992040-WS, and Docket No. 990696-WS, and in support thereof would state and allege as follows:

1. Nocatee Utility Corporation ("NUC") filed an application with this Commission in 1999 seeking a PSC water and wastewater certificate to serve a large area of St. Johns County and a portion of Duval County. That application is currently in litigation (Docket No. 99-0696-WS) and the scheduling of this matter is as reflected in Order No. PSC-99-2428-PCO-WS (attached hereto as Appendix "A"). That Order expressly provided,

In support of their Motion, the parties state that Intercoastal intends to file an application with the Commission during December, 1999 for a multi-county certificate to serve the territory covered by NUC's application. Further, the parties assert that Intercoastal plans to request a consolidation of its application docket with this docket. In light of these anticipated events which will have an effect on this docket, the parties state that it will be beneficial to reschedule the controlling dates in this docket, including the prehearing conference and hearing dates.

FA
PP
AT
C
AG
S
CO
R
C
AW
ST

RECEIVED & FILED

ATTACHMENT A

DOCUMENT NUMBER-DATE

MW
FPSC-BUREAU OF RECORDS

Rose, Sundstrom & Bentley, LLP

00462 JAN 11 8

The Order thereafter indicated that the representations of the parties were well-taken, and that the Joint Motion of Intercoastal and NUC to revise schedule and hearing dates and change controlling dates, would be granted.

2. In late 1999, Intercoastal filed for the necessary PSC certification to serve a large area of St. Johns County and a portion of Duval County. The territory for which NUC has applied is wholly contained within the territory for which Intercoastal has applied.

3. Intercoastal has filed a protest to NUC's application and the schedule of that case is reflected in Appendix "A". While the protest period is not completed for Intercoastal's application, it is anticipated that (in addition to certain letters from customers already received by counsel for Intercoastal) certain parties will protest Intercoastal's application. These parties certainly include, but may not be limited to, NUC and/or the developer which owns and controls NUC and a substantial portion of the territory for which Intercoastal has sought certification. All parties and the staff, as well as the Prehearing Officer, has been aware that Intercoastal's "competing" application was imminent and the schedule in Docket No. 990696-WS was fixed in anticipation that the cases would be consolidated and the two applicants and any intervenors could comply with the schedule appended hereto as Appendix "A."

4. Consolidation of these matters will require the filing of direct testimony by NUC and Intercoastal, in support of their applications, on February 11, 2000. NUC has been aware of this filing date for its direct testimony since the order reflected in

Appendix "A" was entered by the Prehearing Officer. Intercoastal is ready, willing and able to meet the February 11 Direct Testimony deadline.

5. It will promote judicial economy to consolidate these cases. These two cases reflect investor-owned utilities applying for certification for substantial portions of territory in St. Johns and Duval County which significantly overlap. The Nocatee development, for which both Intercoastal and NUC have sought certification, is expected to need substantial and significant water and wastewater service as it develops. Both Intercoastal and NUC are seeking certification to allow each entity to serve the Nocatee development with water, wastewater, and reuse service.

6. Only Intercoastal will be put on a "hurry-up" schedule by the consolidation of these dockets. Intercoastal is ready, willing and able to meet the established February 11, 2000 deadline. Intervenors in either case will thereafter have until March 17, 2000 to file testimony.

WHEREFORE, and in consideration of the above, Intercoastal respectfully requests that Docket Nos. 992040-WS and 990696-WS be consolidated such that they be heard together by the same Commission panel and be bound by the same procedural dates as reflected in Appendix "A."



John L. Wharton, Esq.
ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by regular U.S. Mail on this 11th day of January, 2000 to the following persons.

Samantha Cibula, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

VIA FAX & U.S. MAIL

Richard D. Melson, Esq.
Hopping, Green, Sams & Smith, P.A.
P.O. Box 6526
Tallahassee, FL 32301

VIA FAX & U.S. MAIL


John L. Wharton, Esq.

Intercoa\psc\consolidate.mot

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original certificates to operate water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corporation.	DOCKET NO. 990696-WS ORDER NO. PSC-99-2428-PCO-WS ISSUED: December 13, 1999
--	---

ORDER GRANTING JOINT MOTION TO REVISE SCHEDULE
AND HEARING DATES AND CHANGING
CONTROLLING DATES

On June 1, 1999, Nocatee Utility Corporation (NUC or utility) filed an application for original certificates to operate a water and wastewater utility in Duval and St. Johns Counties. On June 30, 1999, Intercoastal Utilities, Inc. (Intercoastal) timely filed a protest to NUC's application and requested a hearing. Accordingly, this matter was set for an administrative hearing.

By Order No. PSC-99-1764-PCO-WS (Order Establishing Procedure), issued September 9, 1999, controlling dates were established in this docket. Pursuant to Order No. PSC-99-1934-PCO-WS, issued September 29, 1999, testimony filing dates were changed. Currently, NUC's direct testimony is due on December 10, 1999, and the prehearing conference and hearing dates are scheduled for April 3, 2000, and May 9 and 10, 2000, respectively.

On November 23, 1999, NUC and Intercoastal filed a Joint Motion to Revise Schedule and Hearing Dates. In support of their motion, the parties state that Intercoastal intends to file an application with the Commission during December 1999 for a multi-county certificate to serve the territory covered by NUC's application. Further, the parties assert that Intercoastal plans to request the consolidation of its application docket with this docket. In light of these anticipated events which will have an affect on this docket, the parties state that it will be beneficial to reschedule the controlling dates in this docket, including the prehearing conference and hearing dates.

Intercoastal's intent to file its own application to service the territory covered by NUC's application along with a motion to consolidate its application docket with this docket has a potential impact on this proceeding that justifies a change in the filing and hearing dates. Thus, NUC and Intercoastal's joint motion is reasonable, and it is hereby granted. The Chairman's Office has concurred with the change in the hearing dates. The following revised dates shall govern this case.

- 1) Company's direct testimony and exhibits February 11, 2000
- 2) Intervenor's direct testimony and exhibits March 17, 2000
- 3) Staff's direct testimony and exhibits, if any April 17, 2000
- 4) Rebuttal testimony and exhibits May 12, 2000
- 5) Prehearing statements June 2, 2000
- 6) Prehearing conference July 10, 2000
- 7) Hearing August 9-10, 2000
- 8) Briefs September 6, 2000

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Nocatee Utility Corporation and Intercoastal Utilities, Inc.'s Joint Motion to Revise Schedule and Hearing Dates is hereby granted as set forth in the body of this Order. It is further

ORDERED that the dates for filing testimony and prehearing statements and the dates for the prehearing conference and hearing are hereby changed as set forth in the body of this Order.

ORDER NO. PSC-99-2428-PCO-WS
DOCKET NO. 990696-WS
PAGE 3

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 13th Day of December, 1999.

/s/ J. Terry Deason
J. TERRY DEASON
Commissioner and Prehearing Officer

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

SMC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 992040-WS
ORDER NO. PSC-00-0210-PCO-WS
ISSUED: February 2, 2000

ORDER GRANTING MOTION TO CONSOLIDATE
DOCKETS NOS. 992040-WS AND 990696-WS

On December 30, 1999, Intercoastal Utilities, Inc. (Intercoastal or utility) filed an application requesting an amendment of certificates to provide water and wastewater service to a development located in both Duval and St. Johns Counties known as Nocatee; to extend its service territory in St. Johns County; and for an original certificate for its existing service area. Docket No. 992040-WS was assigned to that application. On January 11, 2000, Intercoastal filed a Motion to Consolidate Dockets Nos. 992040-WS and 990696-WS.

Docket No. 990696-WS involves an application filed on June 1, 1999, by Nocatee Utility Corporation (NUC) requesting certificates to provide water and wastewater service to the Nocatee development. On June 30, 1999, Intercoastal timely filed an objection and request for hearing in that docket. Accordingly, Docket No. 990696-WS is set for hearing on August 9 and 10, 2000. Order No. PSC-99-1764-PCO-WS, issued September 9, 1999, established the procedure and Order No. PSC-99-2428-PCO-WS, issued December 13, 1999, sets forth the controlling dates for Docket No. 990696-WS.

In support of its motion to consolidate, Intercoastal states that it is already a party in Docket No. 990696-WS because it has objected to Nocatee's application for an original certificate in that case. Moreover, Intercoastal states that its application in Docket No. 992040-WS wholly encompasses the territory for which Nocatee has applied in Docket No. 990696-WS. Intercoastal asserts that judicial economy will be promoted if these dockets are consolidated because the two cases "reflect investor-owned utilities applying for certification for substantial portions of territory in St. Johns and Duval Counties which significantly overlap" and both Intercoastal and NUC "are seeking certification to allow each utility to service the Nocatee development with water, wastewater, and reuse service." Intercoastal further states that it is aware that the utility's direct testimony would be due on February 11, 2000, pursuant to Order No. PSC-99-2428-PCO-WS, and that it is "ready, willing and able" to meet this filing deadline. Intercoastal contends that it will be the only party put on a "hurry-up" schedule resulting from the consolidation of these dockets because NUC has been aware of the testimony filing due date since December 13, 1999.

No response was filed to Intercoastal's motion; however, counsel for NUC has represented that NUC does not object to Intercoastal's motion to consolidate. On January 24, 2000, NUC and its parent company, DDI, Inc., timely filed objections to Intercoastal's application and requested a hearing on the matter.

Rule 28-106.108, Florida Administrative Code, states that, "If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be

consolidated if it appears that resolution of the proceeding Dockets Nos. 992040-WS provide service to the future issues of fact and law and Intercoastal's application re application and a certificate application will still raise issues application that coincides with

Holding separate hearings and resources. Also, the cost of an inexpensive resolution of the matter and able to file its direct testimony without undue prejudice to the parties. Consolidate Dockets Nos.

Orders Nos. PSC-99-1764-PCO-WS and PSC-99-2428-PCO-WS, shall also apply. The controlling dates for

- 1) Company testimony
- 2) Intervenor testimony
- 3) Staff's direct testimony and exhibits
- 4) Rebuttal and exhibits
- 5) Prehearing conference
- 6) Prehearing conference
- 7) Hearing
- 8) Briefs

Based on the foregoing

ORDERED by the Commission that the Motion of Intercoastal Utilities, Inc.'s to consolidate is hereby granted. It is further

consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party." In Dockets Nos. 992040-WS and 990696-WS, Intercoastal and NUC are both requesting to provide service to the future Nocatee development. Both of these dockets will raise similar issues of fact and law and will involve identical parties. Further, although a portion of Intercoastal's application requests an extension of territory that is not contained in NUC's application and a certificate for Intercoastal's current service area, this part of Intercoastal's application will still raise issues of law and fact similar to those raised in the portion of the application that coincides with NUC's application.

Holding separate hearings in these dockets will cause unnecessary duplication of time and resources. Also, the consolidation of these dockets will promote the just, speedy, and inexpensive resolution of the proceedings. Moreover, Intercoastal has stated that it is willing and able to file its direct testimony in this matter on February 11, 2000, so there will be no undue prejudice to the parties if the dockets are consolidated. Thus, Intercoastal's Motion to Consolidate Dockets Nos. 992040-WS and 990696-WS is hereby granted.

Orders Nos. PSC-99-1764-PCO-WS and PSC-99-2428-PCO-WS, issued in Docket No. 990696-WS, shall also govern Docket No. 992040-WS.

The controlling dates set forth in Order No. PSC-99-2428-PCO-WS are as follows:

- | | |
|--|-------------------|
| 1) Company's direct testimony and exhibits | February 11, 2000 |
| 2) Intervenor's direct testimony and exhibits | March 17, 2000 |
| 3) Staff's direct testimony and exhibits, if any | April 17, 2000 |
| 4) Rebuttal testimony and exhibits | May 12, 2000 |
| 5) Prehearing statements | June 2, 2000 |
| 6) Prehearing conference | July 10, 2000 |
| 7) Hearing | August 9-10, 2000 |
| 8) Briefs | September 6, 2000 |

Based on the foregoing, it is

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that Intercoastal Utilities, Inc.'s Motion to Consolidate Dockets Nos. 992040-WS and 990696-WS is hereby granted. It is further

ORDERED that Order No. PSC-99-1764-PCO-WS, issued September 9, 1999, which established the procedure in Docket No. 990696-WS, and Order No. PSC-99-2428-PCO-WS, which sets forth the controlling dates in Docket No. 990696-WS, shall also govern Docket No. 992040-WS.

By ORDER of Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, this 2nd Day of February, 2000.

E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration
concerning complaint of ITC^DeltaCom
Communications, Inc. against BellSouth
Telecommunications, Inc. for breach of
interconnection terms, and request for
immediate relief.

DOCKET NO. 991946-TP
ORDER NO. PSC-00-0211-PCO-TP
ISSUED: February 2, 2000

ORDER DENYING MOTION TO CONSOLIDATE

On December 17, 1999, ITC^DeltaCom Communications, Inc. (ITC) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) for breach of interconnection terms and conditions of the Interconnection Agreements and Amendments thereto between ITC and BellSouth dated March 12, 1997. Also on December 17, 1999, ITC filed a Motion to Consolidate its Complaint (Motion) with the Complaint filed by Global NAPs, Inc. (GNAPs) against BellSouth in Docket No. 991267-TP. On January 11, 2000, BellSouth filed its Response to ITC's Motion to Consolidate.

In support of its Motion, ITC states that the Commission has not ruled upon its Motion to Intervene in Docket No. 991267-TP. ITC states that GNAPs adopted the ITC/BellSouth Agreement in accordance with Section 252(i) of the Telecommunications Act of 1996, and therefore, the language contained in the GNAPs and ITC Interconnection Agreements is the same.

ITC further states that the same contract language and the same question of law underlying the dispute between GNAPs and BellSouth is the subject of ITC's complaint. ITC argues that Commission staff and resources, as well as the Parties' resources will be more efficiently utilized by consolidating the complaints. ITC asserts that judicial economy dictates that where the same contract language is at issue, only one proceeding is necessary.

Finally, ITC states that it is willing to accept the current hearing date of January 25, 2000, and suggests that direct testimony be filed on December 27, 1999, and rebuttal and

SUSAN F. CLARK
E. LEON JACOBS, JR.

ORDER GRANT
PETI

ORDER SUSPENDING TARIFFS

BY THE COMMISSION:

Pursuant to Rule 25-17.0021, Florida Administrative Code, on December 29, 1999, Tampa Electric Company (TECO) filed its Petition for Approval of a Demand-Side Management Plan designed to meet the conservation goals established by the Commission in Order No. PSC-99-1942-FOF-EG, issued October 1, 1999, in Docket No. 971007-EG. Due to the extensive nature of the filing, we find that it is appropriate to suspend the proposed tariff revisions in order to allow staff the opportunity to request more supporting data and to further evaluate the petition.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tampa Electric Company's proposed modifications to its tariff for its demand-side management plan shall be suspended. It is further

ORDERED that this docket shall remain open pending a final decision on Tampa Electric Company's proposed demand-side management plan.

By ORDER of the Florida Public Service Commission this 17th day of February, 2000.

BLANCA S. BAYÓ, Director
Division of 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 Counties by Intercoastal Utilities, Inc.

DOCKET NO. 992040-WS

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

DOCKET NO. 990696-WS
ORDER NO. PSC-00-0336-PCO-WS
ISSUED: February 17, 2000

BY THE COMMISSION:

Intercoastal Utilities, Inc. located in and providing service December 30, 1999 Intercoastal certificate for a utility in existence certificates for an extension of Statutes, and Rules 25-30.034 ar

By petition filed January above-captioned proceeding for response in opposition to the pe

In support of its petitioner by Intercoastal's application in application is an attempt to circumvent the water and wastewater utilities Intercoastal is seeking through i obligated to serve by Ordinance

Pursuant to Rule 25-22 intervene must include allegation participate in the proceeding as Commission rule, or that the substance or will be affected through the p

Based on the nature of may affect the County's substantive intervenor status. However, the Florida Administrative Code, de a party to this proceeding, the Commission sees fit. Furthermore, pursuant to as intervenor, takes the case as

Based on the foregoing

ORDERED by the Florida County, Florida to intervene in this Order. It is further

ORDERED that all part other documents that are herein: P.A., 1311-B Paul Russell Road. County, Florida.

ORDER GRANTING ST. JOHNS COUNTY, FLORIDA'S
PETITION FOR INTERVENTION

BY THE COMMISSION:

Intercoastal Utilities, Inc. (Intercoastal or utility) is a water and wastewater utility located in and providing service to areas within St. Johns County, Florida (County). On December 30, 1999 Intercoastal filed applications for an original water and wastewater certificate for a utility in existence and charging for service, and for an amendment of certificates for an extension of service territory, pursuant to Section 367.171(7), Florida Statutes, and Rules 25-30.034 and 25-30.036, Florida Administrative Code.

By petition filed January 26, 2000, the County requests leave to intervene in the above-captioned proceeding for the limited purpose of filing a motion to dismiss. No timely response in opposition to the petition has been filed.

In support of its petition, the County states that its substantial interests are affected by Intercoastal's application in two ways. First, the County argues that Intercoastal's application is an attempt to circumvent the County's legitimate, statutory authority to regulate the water and wastewater utilities within St. Johns County. Second, the County states that Intercoastal is seeking through its application to serve areas which the County is currently obligated to serve by Ordinance 99-36 and by contract.

Pursuant to Rule 25-22.039, Florida Administrative Code, a motion for leave to intervene must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.

Based on the nature of the proceeding, it appears that the Commission's decision may affect the County's substantial interests. Therefore, the County shall be granted intervenor status. 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. Furthermore, pursuant to Rule 25-22.039, Florida Administrative Code, the County, as intervenor, takes the case as it finds it.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition of St. Johns County, Florida to intervene in this proceeding is hereby granted as set forth in the body of this Order. It is further

ORDERED that all parties to this proceeding shall furnish copies of all pleadings and other documents that are hereinafter filed to Suzanne Brownless, Esquire, Suzanne Brownless, P.A., 1311-B Paul Russell Road, Suite 201, Tallahassee, Florida 32301, counsel for St. Johns County, Florida.

By ORDER of the Florida Public Service Commission this 17th day of February,
2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rule 25-7.0335,
F.A.C., Transportation Service.

DOCKET NO. 960725-GU
ORDER NO. PSC-00-0337-NOR-GU
ISSUED: February 18, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

NOTICE OF RULEMAKING

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to adopt Rule 25-7.0335, Florida Administrative Code, relating to transportation service.

The attached Notice of Rulemaking will appear in the February 25, 2000, edition of the Florida Administrative Weekly.

If timely requested, a hearing will be held at the following time and place:

Florida Public Service Commission
9:30 a.m., Wednesday, April 5, 2000
Betty Easley Conference Center
Room 152, 4075 Esplanade Way
Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rule must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than March 17, 2000.