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ORIGINAL

January 26, 2000

BY HAND DELIVERY

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

RECEIVED-FPSC
01 JAN 26 PM 4:26
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 Motion to Compel or, In The Alternative, Motion to Strike Testimony and Exhibit.

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

Very truly yours,

Richard D. Melson

Richard D. Melson

APP
CAF
CMP
COM 5
CTR
ECR
LEG 1
OPC
PAI
RGO
SEC 1
SER
OTH

RDM/mee
Enclosures
cc: Service List
Mr. O'Steen
Mr. Skelton
Mr. Miller
Ms. Swain

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FPSC-BUREAU OF RECORDS

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01235 JAN 26 00
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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

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: January 26, 2001

**NOCATEE'S MOTION TO COMPEL
OR, IN THE ALTERNATIVE,
MOTION TO STRIKE TESTIMONY AND EXHIBIT**

NOCATEE UTILITY CORPORATION ("NUC") hereby files its Motion to Compel Intercoastal Utilities, Inc. ("Intercoastal") to provide a full response to Request No. 13 of NUC's First Request for Production of Documents. This request relates to the Financial Analysis presented by Intercoastal's witness Burton. In the alternative, NUC moves to strike Mr. Burton's testimony and exhibits regarding that Financial Analysis. In support of this motion, NUC states:

1. On February 15, 2000, Intercoastal filed the Prefiled Direct Testimony of Michael E. Burton, with an attached Exhibit MB-1 entitled "Financial Analysis."
2. On March 17, 2000, Nocatee served its First Request for Production of Documents on Intercoastal. Item No. 13 of that Request stated:

Please provide all workpapers or other documents underlying or supporting the Financial Analysis (Exhibit MB-1) filed by Mr. Burton in this docket. This request specifically includes, but is not limited to:

- (a) any workpapers used to translate revenue requirements into rates, including information regarding number of meters by meter size; and
- (b) any workpapers or supporting documents reflecting or projecting costs associated with Intercoastal's existing or planned system located East of the Intracoastal Waterway.

3. Also on March 17, 2000, Intercoastal filed the Intervenor Testimony of Mr. Burton and included a "Financial Analysis - Revised" (Exhibit MB-2) as an attachment to that testimony.

4. Intercoastal responded in a timely manner to the First Request for Production, but did not include in that production an electronic copy of the spreadsheets contained in the appendices to Mr. Burton's Exhibit MB-1.

5. Counsel for NUC subsequently contacted counsel for Intercoastal to advise him that NUC believed that the electronic version of the spreadsheets (i.e. the "Model") was included in the category of "workpapers or other documents underlying or supporting the Financial Analysis" and requested that Intercoastal supplement its response with an electronic copy of the Model. Counsel for NUC advised that it was willing to hold the Model confidential pursuant to the terms of the Protective Agreement (Exhibit "A") previously entered into by the parties on November 8, 1999 to govern the protection of confidential documents exchanged during discovery in these dockets.

6. By letter dated May 24, 2000 (Exhibit "B"), Intercoastal memorialized its position that the Model is "a privileged document which Intercoastal contends is protected from disclosure in this proceeding."

7. On June 2, 2000, Intercoastal filed Rebuttal Testimony of Mr. Burton accompanied by its "Financial Analysis - 2nd Revision" (Exhibit MB-3).

8. By letter dated January 18, 2001 (Exhibit "C"), counsel for NUC confirmed prior conversations in which counsel for Intercoastal had agreed informally to treat the First Request for Production as covering not only the version of the Model supporting Exhibit MB-1, but also the versions supporting the later filed revisions to the Model (Exhibits MB-2 and MB-3). NUC renewed its offer to treat the Model as confidential and indicated that if Intercoastal continued to object to producing the Model, NUC intended to file a motion to compel.

9. Intercoastal's counsel responded by letter dated January 23, 2001 (Exhibit "D") that it remains the position of Intercoastal that the Model is not discoverable and Nocatee's request for the same is objectionable. Intercoastal then set forth its objection as follows:

Intercoastal objects to Nocatee's request for the computer model on the grounds that such a request seeks information which is [i] irrelevant, and is [ii] redundant, overbroad, not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of allowable discovery. Additionally, Intercoastal objects on the basis that the computer model is a [iii] trade secret, proprietary business information, work product, and may be subject to further analogous privileges or protections provided under Florida law.

10. Because the parties have reached an impasse in their informal attempts to resolve their discovery dispute, NUC files this Motion to Compel.

11. Under Rule 1.280, Fla.R.Civ.P., NUC is entitled to discover any information, not privileged, that is relevant to the subject matter of the proceeding and is reasonably calculated to lead to the discovery of admissible evidence. The Model is clearly discoverable under this test. Access to the Model is necessary to adequately prepare to cross-examine Mr. Burton regarding the validity of the information contained in his Exhibits MB-1, MB-2, and MB-3, and the conclusions therefrom that he presents in his prefiled testimony. Without access to the electronic

version of the Model, NUC is hampered in its efforts to determine what numbers are inputs, what numbers represent calculated results, and what calculations are performed to produce those results. NUC recognizes that some of the same information might be available via a lengthy deposition of Mr. Burton involving a line-by-line and column-by-column inquiry regarding the printed spreadsheets contained in Exhibits MB-1, MB-2 and MB-3. However, NUC is entitled to its choice of discovery methods and the order in which they are used, and is therefore entitled to review the Model in preparation for Mr. Burton's deposition. (See Rule 1.280(d).)

12. NUC briefly responds to each of Intercoastal's objections as follows:

(a) Irrelevant. The Model is clearly relevant to the subject matter of this proceeding. Intercoastal contends that its certification to serve the disputed territory is in the financial best interests of Intercoastal's present and future ratepayers. That contention relies in large part on Mr. Burton's Financial Analyses. The Model contains the inputs and logic underlying the Financial Analysis and used to support that contention.

(b) Redundant, overbroad, not reasonably calculated to lead to the discovery of admissible evidence. The request is not redundant. The paper copy of the Model included in Exhibits MB-1, MB-2 and MB-3 does not identify which numbers are inputs, which are calculated, and the logic used to perform those calculations. The request is not overbroad. Access to the model is not burdensome and provides the quickest and best way for NUC and its consultants to review and attempt to understand the basis for Mr. Burton's calculations and conclusions. The request is reasonably calculated to lead to the discovery of admissible evidence. The information learned by analysis of the Model can and will be used to cross-examine Mr. Burton at the hearing about the basis of the opinions expressed in his prefiled testimony and the validity of the information presented in his exhibits.

(c) Trade secret, proprietary business information, work product, or other similar privilege. NUC does not concede that the Model is either a trade secret or proprietary business information. In any event, such information is not ordinarily immune from discovery, it is simply subject to limitations on the manner in which the information is disclosed and can be used. The parties have signed a Protective Agreement (Exhibit A) which NUC believes is more than sufficient to protect any interest Intercoastal or Mr. Burton may have in protecting the Model. Further, in its January 18, 2001 letter NUC offered to agree to reasonable additional requirements designed to protect the information, but Intercoastal has offered none. The Model also does not qualify as work product. If the Model ever qualified for such status, it was lost when the Financial Analysis containing printed copies of the spreadsheets produced by the Model were filed as exhibits in this proceeding.

13. NUC therefore requests that Intercoastal be ordered to produce the Model, including the versions used to generate the spreadsheets in Exhibits MB-1, MB-2 and MB-3, subject only to the parties' existing Protective Agreement.

14. In the alternative, in the event the Model is not produced, NUC requests an order prohibiting Intercoastal from introducing Exhibits MB-1, MB-2 and MB-3 in these proceedings and striking all portions of Mr. Burton's testimony which relate to or rely on his Financial Analysis. If discovery is not allowed, NUC will be unable to fully and adequately prepare to challenge the information contained in those exhibits and the related contentions in Mr. Burton's testimony.

WHEREFORE, NUC moves that the Commission order Intercoastal to produce the Model constituting the electronic version of Mr. Burton's Exhibits MB-1, MB-2 and MB-3 or, in the alternative, order that Intercoastal is precluded from offering Mr. Burton's Exhibits MB-1,

MB-2, and MB-3 as evidence in this proceeding and striking all portions of Mr. Burton's prefiled testimony which relates to or is based on the Financial Analysis contained in those exhibits.

RESPECTFULLY SUBMITTED this 26th day of January, 2001.

HOPPING GREEN SAMS & SMITH, P.A.

By:  _____

Richard D. Melson
P.O. Box 6526
Tallahassee, FL 32308
(850) 425-2313

Attorneys for Nocatee Utility Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following persons by U.S. Mail or Hand Delivery (*), this 26th day of January, 2001.

*John L. Wharton

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Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Donald R. Odom
Chief Assistant County Atty
Hillsborough County, Florida
P.O. Box 1110
Tampa, FL 33601

*Samantha Cibula

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Counsel Citrus/Collier Co.
P.O. Box 5256
Tallahassee, FL 32314-5256



Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION *Hopping, Green, Sams & Smith*

In re: Application for original)
certificates to operate water) Docket No. 990696-WS
and wastewater utility in Duval)
and St. Johns Counties by)
Nocatee Utility Corporation)
_____)

PROTECTIVE AGREEMENT

This Protective Agreement (Agreement) is entered into by and between Nocatee Utility Corporation (Nocatee) and Intercoastal Utilities, Inc. (Intercoastal) as represented by and through their respective counsel.

WHEREAS, Intercoastal desires Nocatee to provide, as part of ongoing discovery in the above-captioned docket, certain information that Nocatee considers to be proprietary confidential business information and/or trade secret information; and

WHEREAS, in order to provide Intercoastal reasonable access to the proprietary confidential business information and/or trade secret information requested without unduly risking public disclosure of such information (a) Nocatee has agreed to provide Intercoastal the requested information pursuant to the terms of this Agreement, and (b) the persons executing this Agreement for Intercoastal, both in their individual and in their representative capacity, have agreed to accept such information subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, Nocatee and Intercoastal agree as follows:

1. As used in this Agreement, the term:

(a) "Producing Party" shall mean the party receiving the request, the response to which is deemed Protected Materials.

(b) "Requesting Party" shall mean the party propounding the request, the response to which is deemed Protected Materials.

(c) "Authorized Representative" shall mean the Requesting Party's counsel of record in this proceeding and any persons expected to provide testimony in this proceeding.

2. Nocatee and Intercoastal agree that this Agreement shall govern the availability and use of all proprietary confidential business documents or information produced that is designated in good faith as "Protected Materials" by the party producing them. This Agreement reflects the manner in which "Protected Materials," as that term is defined herein, are to be treated.

3. Nothing in this Agreement shall constitute a waiver by Producing Party of any right it may have to protect the proprietary confidential business information provided to a Requesting Party. Nor shall the Requesting Party's participation in this Agreement be construed as an admission that the requested

information in fact contains proprietary confidential business information nor act as a bar to Intercoastal's right to challenge Nocatee's classification of the information provided pursuant to this Agreement. This Agreement is not intended to constitute a final resolution of the merits concerning the confidentiality of any of the Protected Materials nor of any objection to the proprietary or scope of a data request. Nothing contained in this Agreement shall be construed as precluding any objections to the use of the Protected Materials at hearing on grounds other than confidentiality.

4. The documents furnished subject to the terms of this Agreement and the information contained therein shall be referred to as "Protected Materials." Protected Materials shall include all answers to interrogatories and all documents produced that the Producing Party has determined in good faith must be protected from public disclosure to avoid the potential of commercial injury to the Producing Party. Such Protected Materials will clearly be identified as such by the Producing Party at the time copies are furnished to the Requesting Party. Protected Material shall be deemed to include additional copies of, and notes of confidential information derived from, Protected Material. All Protected Materials and the contents thereof are being made available, and shall be used, solely for the purpose of Docket No. 990696-WS and any other Florida Public Service Commission (Commission) docket involving a competing multi-county application filed by Intercoastal with the Commission.

The Agreement is intended to prevent unauthorized use or disclosure of both (i) the documents constituting the Protected Materials and (ii) the proprietary information contained in the Protected Materials, which the Producing Party deems to be proprietary, trade secrets, or to constitute other similar information, the disclosure of which could be commercially damaging, including commercially sensitive plans, strategies, and similar commercially sensitive information.

5. Producing Party shall make its Protected Material available to a Requesting Party's Authorized Representatives at a mutually acceptable date and time, and access to Protected Materials is permitted only to a Requesting Party's Authorized Representatives. An Authorized Representative may not disclose Protected Materials or the contents thereof to any other person other than another Authorized Representative. It shall be the responsibility of the Authorized Representative conveying or communicating Protected Materials to ensure that the Protected Materials are being conveyed or communicated solely to another Authorized Representative.

6. Prior to receiving a copy of or inspecting any Protected Materials or any confidential information derived from Protected Material, each Authorized Representative shall first execute the "Certificate of Authorized Representative" attached. Further, each executed certificate must be delivered to counsel for the Producing Party. Each executed certificate shall

identify the Authorized Representative, his or her firm or affiliation, title, and the date of execution.

In the event that any person to whom such Protected Materials are disclosed ceases to be engaged in this proceeding, access to such materials by such person shall be terminated immediately and such person shall promptly return any Protected Materials in his or her possession to another Authorized Representative of the Requesting Party. If there shall be no such Authorized Representative, such person shall treat such Protected Material in the manner set forth in Paragraph 13 hereof as if the proceedings herein had been concluded. Any person who executes this Agreement shall continue to be bound by the provisions of this Agreement even if he or she no longer qualifies as an Authorized Representative.

7. Reviewing Party may take notes or derive other information from the Protected Materials, provided that any such notes or other information shall be treated as Protected Material subject to this Agreement.

8. If a signatory to this Agreement desires to use, in the course of this proceeding, any Protected Material in prefiled testimony, in direct or cross-examination of any witness, in rebuttal or a proffer of evidence, the signatory shall notify Producing Party at least five (5) days in advance of the proposed use, and shall meet with representatives of Producing Party for the purpose of attempting in good faith to establish a procedure that will accommodate the needs of the signatory for obtaining

evidence without risking public disclosure of the proprietary confidential business information contained in the Protected Material and that will allow Producing Party sufficient time to invoke the Commission's confidentiality procedures. If the parties are unable to reach agreement on a means of preventing public disclosure of the proprietary information, the parties will submit the issues to the Florida Public Service Commission (Commission) for resolution before the Requesting Party attempts to make public use of the information. If for good cause shown, it is not possible for the signatory to notify the Producing Party five (5) days in advance of the proposed use, the signatory will give such notification as quickly as possible and advise the Producing Party of the circumstances.

9. All Protected Material, as well as an Authorized Representative's notes or other information regarding or derived therefrom, are to be treated confidentially by the Authorized Representatives, except as permitted and provided in this Agreement, and are to be made available to Authorized Representative solely for the purposes described in this Agreement. Protected Material or confidential information derived therefrom or describing the same shall not be placed in the public or general files of the Authorized Representatives except in accordance with provisions of this Agreement. An Authorized Representative must take all reasonable and necessary precautions to ensure that Protected Materials (including handwritten notes and analyses made therefrom) are not viewed,

taken or used by any person other than an Authorized Representative or used for any purpose other than this proceeding.

10. Neither a Requesting Party nor an Authorized Representative shall tender for filing any testimony, exhibits, briefs, or any other submission that includes, incorporates or refers to Protected Materials or their contents, or any confidential information derived therefrom, until the Requesting Party or Authorized Representative has complied with paragraph 8 of this Agreement. When tendering for filing any testimony, exhibits, briefs or any other submission that includes, incorporates or refers to Protected Material, the Requesting Party or Authorized Representative will take all necessary precautions to ensure that the Protected Materials are not distributed to unauthorized persons.

11. Materials designated protected shall continue to be protected unless and until the Commission finds that such information is not properly subject to protection and during the pendency of any proceeding for judicial review of the Commission's decision. If the Commission denies protected status to any materials so designated by a Producing Party, those materials shall nonetheless be subject of the protection afforded by this Agreement for ten (10) days from the date of issuance of such decision by the Commission to provide an opportunity to seek judicial review.

12. All notices, applications, responses, or other correspondence shall be made in a manner to ensure that the Protected Materials are not disclosed.

13. Within 30 days following the conclusion of this proceeding and any appeal therefrom, all Protected Materials provided by Producing Party pursuant to this Agreement and any copies reproduced by Requesting Party must be returned to counsel for Producing Party or destroyed. Counsel for Requesting Party shall provide to counsel for Producing Party written certification that, to the best of his or her knowledge, information, and belief, all Protected Materials, copies of Protected Materials and originals and copies of notes, memoranda, and other documents regarding or derived from the Protected Materials have been disposed of in accordance with the terms of this Agreement.

14. This Agreement shall be binding on the parties to this Agreement from the date of its execution. Each executed copy of this Agreement shall be deemed an original.

Executed this 8th day of November, 1999.

NOCATEE UTILITY CORPORATION

By: Richard D. Melson
Richard D. Melson

INTERCOASTAL UTILITIES, INC.

By: John Wharton
John Wharton

CERTIFICATE OF AUTHORIZED REPRESENTATIVE

I certify my understanding that Protected Materials are being furnished to me pursuant to the terms and restrictions of the Protective Agreement in Docket No. 990696-WS, that I have been given a copy of and have read the Protective Agreement, and that I agreed to be bound by it. I understand that the contents of Protected Materials, and any notes, memoranda, or any other form of information regarding or derived from Protected Materials, and any notes, memoranda, or any other form of information regarding or derived from Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes described in the Protective Agreement.

By: _____

Date of Execution _____

NAME: _____

TITLE: _____

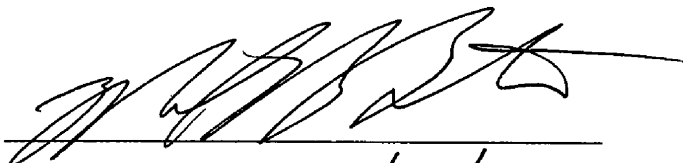
COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

CERTIFICATE OF AUTHORIZED REPRESENTATIVE

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By: 
Date of Execution 11/23/99

NAME: MICHAEL E. BURTON
TITLE: PRESIDENT
COMPANY: BURTON ASSOCIATES, INC.
ADDRESS: 440 OSCEOLA AVE
JACKSONVILLE BEACH, FL 32250
TELEPHONE: (904) 297-0787

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May 24, 2000

ROBERT M. C. ROSE
of Counsel

VIA TELECOPY

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

RE: Intercoastal Utilities, Inc.
Our File No. 26003.13

Dear Rick:

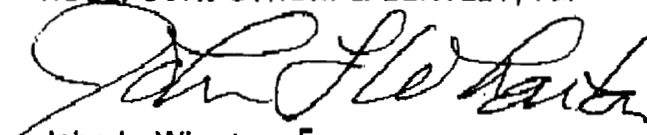
As we have discussed, and consistent with our prior conversations, please accept this letter as a memorialization of the fact that it is the position of Intercoastal that the model, utilized by Mike Burton and developed exclusively for Intercoastal, which you have requested discovery of is a privileged document which Intercoastal contends is protected from disclosure in this proceeding.

Mr. Burton, Mr. Forrester, or others as you deem appropriate will fully answer any questions about how they developed their testimony and opinions at the time of deposition. We hope that the deposition process will give you the information you need and avoid any necessity to get into a motion practice with regard to this proprietary model.

Should you have any questions or concerns regarding the above, please let me know.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



John L. Wharton, Esq.
For The Firm

JLW/lm

cc. M.L. Forrester
Mike Burton

Exhibit "B"

HOPPING GREEN SAMS & SMITH

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS

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ANGELA R. MORRISON
SHANNON L. NOVEY

January 18, 2001

BY FAX AND U.S. MAIL

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

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

Dear John:

Pursuant to our discussion on Tuesday, this letter renews Nocatee's request (first made in Item No. 13 of Nocatee's First Request for Production to Intercoastal) for the electronic workpapers (i.e. computer model) supporting the Financial Analysis attached as an exhibit to Mr. Burton's testimony in this docket. At the time the original discovery was served, that analysis was designated as Exhibit MB-1. The Financial Analysis has subsequently been updated twice, and our renewed request calls for the workpapers and computer model underlying the most recent version of that analysis.

You previously had informally objected by letter dated May 24, 2000 to production of the model on the grounds that it "is a privileged document which Intercoastal contends is protected from disclosure in this proceeding." As you are aware, Nocatee and Intercoastal have signed a Protective Agreement pursuant to which confidential documents of Nocatee have been provided to Intercoastal. Nocatee is willing to hold the computer model subject to that same Protective Agreement, and is willing to agree to reasonable additional requirements designed to protect any intellectual property interest that Mr. Burton or

Exhibit "C"

John Wharton
January 18, 2001
Page 2

Intercoastal claim to have in the model itself.

Please provide the requested documents by February 2, 2001, or reconfirm your position that the model is protected from discovery so that Nocatee can file a Motion to Compel Production. The time for depositions is rapidly approaching, and Nocatee will be unable to conduct meaningful examination of Mr. Burton regarding his financial analysis without having had an opportunity to review his model in advance.

Thanks for agreeing to handle this renewed request informally. If you have any questions, please call.

Very truly yours,



Richard D. Melson

RDM/mee

cc: Ms. Cibula
Mr. O'Steen
Mr. Miller
Ms. Swain

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JAN 23 2001

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January 23, 2001

VIA TELECOPY

ROBERT M. C. ROSE
OF COUNSEL

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

Re: Intercoastal Utilities, Inc.; PSC Extension
Docket Nos. 99-0696-WS and 99-2040-WS
Our File No. 26003.13

Dear Rick:

I wanted to expedite a response to your letter of January 18, 2001, so that you would have ample time to put these matters before the Commission, as you deem appropriate. It remains the position of Intercoastal that the computer model previously requested by Nocatee is not discoverable and your request for the same is objectionable. Since we agreed to handle this matter informally, I will put forth our objection below so that you may place that objection before the Commission as quickly as you deem necessary.

Intercoastal objects to Nocatee's request for the computer model on the basis that such a request seeks information which is irrelevant, and is redundant, overbroad, not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of allowable discovery. Additionally, Intercoastal objects on the basis that the computer model is a trade secret, proprietary business information, work product, and may be subject to further or analogous privileges or protections provided under Florida law.

Thank you in advance for your attention to this matter and if you have any questions or concerns regarding the above, please do not hesitate to contact me at your earliest convenience.

Sincerely,

ROSE, SUNDBSTROM & BENTLEY, LLP



John L. Wharton, Esq.
For The Firm

JLW/kll

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Exhibit "D"