

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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RECORDS AND REPORTING

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

Docket No. 990696-WS

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

Docket No. 992040-WS

INTERCOASTAL'S RESPONSE IN OPPOSITION TO NOCATEE'S MOTION FOR LEAVE TO FILE ADDITIONAL DIRECT TESTIMONY

INTERCOASTAL UTILITIES, INC. ("Intercoastal"), by and through undersigned counsel, hereby files this Response in Opposition to Nocatee's Motion for Leave to File Additional Direct Testimony and in support thereof would state and allege as follows:

1. On March 22, 2001, NUC filed a substantial and complex amendment to the prior testimony of Ms. Debbie Swain. NUC's application has been pending for well over a year, and Ms. Swain first filed prefiled testimony in this case in February, 2000. Depositions in this case are imminent (Ms. Swain's deposition is next Wednesday), and there is no further opportunity contemplated by the Procedure Order for any party to file any further testimony between now and

the time of trial. In point of fact, this matter was (until recently) scheduled to have gone to trial next week.

2. Intercoastal will be greatly prejudiced if it has to devote time and resources to attempting to understand the complex and varied changes introduced to her prior testimony by Ms. Swain's "Additional Direct Testimony". Additionally, Intercoastal's prior testimony and

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DOCUMENT NUMBER-DATE

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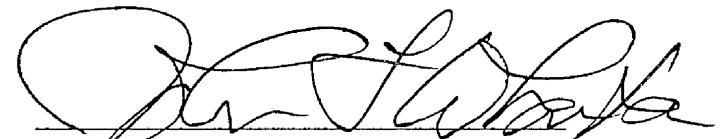
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exhibits, and in fact Intercoastal's trial strategy in this case, was at least in part directly responsive to the conclusions of Ms. Swain. To allow NUC to wait until all the testimony is filed and then miraculously discover rates which put it in a more favorable position in relation to Intercoastal is unfair, prejudicial to Intercoastal, and should not be tolerated or otherwise allowed by this Commission.

3. NUC's argument that the filing of this Additional Direct Testimony will not prejudice any other party because the deposition of Ms. Swain is yet to be determined is patently incorrect. Intercoastal's expert has already filed responsive testimony to the prior testimony of Ms. Swain, and the evidence in the case, at least as it is represented by the filing of all the parties' prefiled direct testimony, is closed. All of Intercoastal's activities assumed that Ms. Swain's prior testimony was, in fact, the testimony she would offer at hearing and not that some new (miraculously favorable to NUC) testimony would be introduced at the eleventh hour.

WHEREFORE, and in consideration of the above, Intercoastal respectfully requests the Commission deny Nocatee's Motion for Leave to File Additional Direct Testimony. At a minimum, Intercoastal should be given an opportunity to respond to the testimony if it is allowed. However, such response cannot remove the prejudice Intercoastal will suffer if Nocatee's Motion is granted.

DATED this 29th day of March, 2001.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by Hand Delivery(*) or by U.S. Mail to the following this 29th day of March, 2001.

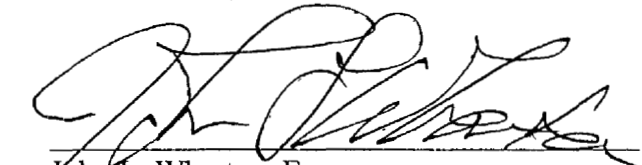
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