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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.

RECORDS AND REPORTING DOCKET NO. 992040-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

REVISED PREHEARING STATEMENT

Pursuant to Orders Nos. PSC-99-1764-WS and PSC-00-1036-PCO-WS, and Rule 29-106.211, Florida Administrative Code, St. Johns County, Florida (County), files this prehearing statement, and states as follows:

A. Witnesses

Name: William G. Young Issues: A, 1, 2, 3, 4, 8, 9, 10, 11, 12, B, 13, 14, 15, 16, 19, 20, 21.

B. Exhibits

(WGY-1) Young Resume (WGY-2) Young Water and Wastewater Utility Services Agreement Between JEA and St. Johns County (WGY-3) Young St. Johns County/JEA Water and Wastewater Interlocal Agreement

The County reserves the right to identify additional exhibits upon the completion of discovery.

C. Basic Position

The Florida Public Service Commission is without jurisdiction at this time to hear the applications for original certificates filed by Nocatee Utility Corporation (NUC) and Intercoastal Utilities, Inc. (ICU). Further, ICU is estopped from seeking to certify in this proceeding the same service territory in St. Johns County that the St. Johns County Water and Sewer Authority previously denied it permission to serve. Even should

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the Commission have the jurisdiction to grant ICU an original certificate, the Commission should not grant ICU service territory located in the County's Exclusive Service Territory which the County is already contractually obligated to serve and is in the process of constructing, through its agreement with JEA, the facilities to serve. With regard to NUC, NUC is a straw man for JEA. JEA is without the authority to provide utility services in St. Johns County without the County's permission. St. Johns County, not the FPSC, is the proper forum for that determination.

D. Questions of Fact

Issue A: Has NUC established that its proposed water and wastewater systems satisfy the requirements of §367.171(7), F.S., to invoke Commission jurisdiction to grant its application for an original certificate?

Position: No. NUC has not produced any maps or plats which indicate that it will ultimately hold legal title to water and wastewater lines which cross county boundaries.

Issue 1: Is there a need for service in the territory proposed by NUC's application, and if so, when will service be required?

Position: No to the extent that such territory is located in St. Johns County since St. Johns County intends to provide service to that portion of the proposed service territory.

Issue 2: Does NUC have the financial ability to serve the requested territory?

Position: The real party providing service to the proposed NUC territory is JEA. NUC's and/or DDI's financial resources will be called upon only to provide the collection and distribution lines normally contributed by a developer. DDI, NUC's parent company appears to have the ability to do this.

Issue 3: Does NUC have the technical ability to serve the requested territory?

Position: NUC does not have the technical, managerial or operational ability to serve the requested service territory. However, the real party providing service to the proposed NUC territory is JEA who does have such expertise.

Issue 4: Does NUC have the plant capacity to serve the requested territory?

Position: No. Water, reuse and wastewater treatment will be provided by JEA. While JEA may have the treatment capacity to serve Phase I, it does not possess the current ability to serve because there are no existing water, wastewater or reuse lines to the Nocatee development.

Issue 5: What is the appropriate return on equity for NUC?

Position: No position.

Issue 6: What are the appropriate water, wastewater and reuse rates and charges for NUC?

Position: No position.

Issue 7: What are the appropriate service availability charges for NUC?

Position: No position.

Issue 7A: What is the appropriate AFUDC rate for NUC?

Position: No position.

Issue 8: What is the landowner's service preference and what weight should the Commission give the preference?

Position: Storey v. Mayo, 217 So.2d 304 (Fla. 1968), the controlling case in this area, clearly articulates current Florida law that customers cannot choose their utility.

Issue 9: Will the certification of NUC result in the creation of a utility which will be in competition with, or duplication of, any other system?

Position: Yes. The County intends to provide service to the Nocatee development located in St. Johns County by modification of its existing water and wastewater utility systems.

Issue 10: Should the Commission deny NUC's application based on the portion of Section 367.045(5)(a), Florida Statutes, which states that the Commission may deny an application for a certificate of authorization for any new Class C system, as defined by Commission rule, if the public can be adequately

served by modifying or extending a current wastewater system?

Position: Yes, if one assumes that NUC is the real party in interest in this proceeding, the NUC proposed wastewater system is a Class C system under Commission rules and the public can be adequately served by modifying and extending the County's existing wastewater system.

Issue 11: Is it in the public interest for NUC to be granted a water certificate and a wastewater certificate for the territory proposed in its application?

Position: No, the St. Johns County Utilities Department is the proper utility service provider in St. Johns County. Further, the proper forum to determine who should provide service to the Nocatee development is the St. Johns County Board of County Commissioners.

Issue 12: Is Intercoastal barred by the doctrines of res judicata and/or collateral estoppel in this proceeding from applying for the same service territory in St. Johns County which it was previously denied by St. Johns County?

Position: No position.

Issue B: Has ICU established that its proposed water and wastewater systems satisfy the requirements of §367.171(7), F.S., to invoke Commission jurisdiction to grant its application for an original certificate?

Position: No.

Issue 13: Is there a need for service in the territory proposed by Intercoastal's application, and if so, when will service be required?

Position: With regard to the Nocatee development area located in St. Johns County, there is no need for service because the County intends to provide that service. With regard to ICU's current service territory, the County has previously determined the need for service in that area. With regard to the service territory being requested by ICU which does not include the Nocatee area or its current service territory, there is no need for service either because there are no plans for development or

because the area is located in the County's Exclusive Territory and will be served by the County.

Issue 14: Does Intercoastal have the financial ability to serve the requested territory?

Position: Based upon the materials produced in this proceeding, ICU does not appear to have the financial ability to serve the requested service territory.

Issue 15: Does Intercoastal have the technical ability to serve the requested territory?

Position: Based on the materials produced in this proceeding, ICU does not appear to have a technically or economically feasible plan to serve the requested service territory.

Issue 16: Does Intercoastal have the plant capacity to serve the requested territory?

Position: ICU does not have sufficient current plant capacity to provide for the service needs NUC has identified nor does their proposed plan of service provide future plant capacity that is technically or economically feasible to provide service to Nocatee or the other developments within the proposed service territory.

Issue 17: What are the appropriate water, wastewater, and reuse rates and charges for Intercoastal?

Position: No position.

Issue 18: What are the appropriate service availability charges for Intercoastal?

Position: No position.

Issue 19: Do Intercoastal's existing customers support the proposed extension of its service territory and what weight should the Commission give to their preference?

Position: ICU's existing customers do not support the extension of ICU's service territory based on the poor performance of ICU in its current service territory. However, Storey v. Mayo, 217 So.2d 304 (Fla. 1968), the controlling case in this area,

clearly articulates current Florida law that customers cannot choose their utility.

Issue 20: Is it in the public interest for Intercoastal to be granted a water certificate and wastewater certificate for the territory proposed in its application?

Position: No.

Issue 21: Can the Commission grant Intercoastal or NUC an original certificate which will be in competition with, or a duplication of, the County's water and wastewater system?

Position: No. To the extent that ICU has requested service territory located in the Exclusive Service Territory of the County which the County is currently serving, Section 367.045(5)(a), Florida Statutes, prohibits such action. Further, the Commission is prohibited from granting a certificate for a proposed system which duplicates the County's water and wastewater system unless it determines that the County's systems are inadequate to meet the needs of the public or the County is unable, refuses or neglects to provide reasonably adequate service. The County has the ability to provide adequate and timely service to the Nocatee service area in St. Johns County, the Commission cannot grant either ICU or NUC the right to serve this portion of the service area requested.

E. Stipulated Issues

There are no stipulated issues at this time.

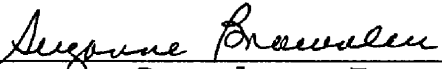
F. Pending motions or other matters

The County has a Motion To Take Judicial Notice filed on April 2, 2001 pending.

H. Compliance

The County has complied with all requirements of Orders Nos. PSC-99-1764-PCO-WS and PSC-00-1036-PCO-WS.

Respectfully submitted this 9th day of April, 2001 by:


Suzanne Brownless, Esq.
Suzanne Brownless, P.A.
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 regular U.S. Mail to the following on this 9 th day of April, 2001:

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

Michael B. Wedner, Esq.
Asst. General Counsel
JEA
St. James Building, Suite 480
117 West Duval Street
Jacksonville, FL 32202


Suzanne Brownless, Esq.

c: 3363