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April 25, 2001

**VIA HAND DELIVERY**

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Blanca S. Bayo, Director  
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Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

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RECORDS AND REPORTING

Re: Intercoastal Utilities, Inc.; ~~Docket Nos. 990696-WS and 992040-WS~~  
Our File No. 26003.13

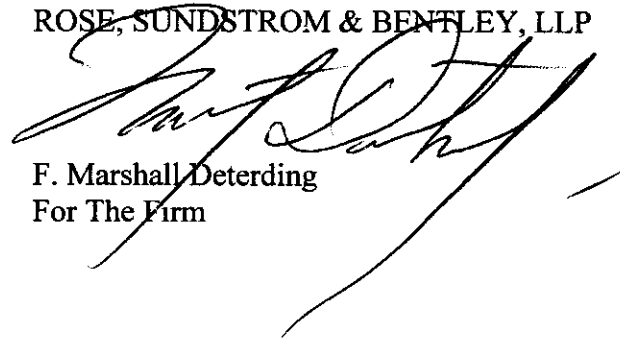
Dear Ms. Bayo:

Attached are the original and fifteen copies of Intercoastal's Motion to Accept Prefiled Testimony as Additional Rebuttal or, in the Alternative, Motion to Allow Additional Direct Testimony. In addition, we are also attaching the original and fifteen copies of Intercoastal's Request for Oral Argument.

Should you or any members of the Commission staff have any questions in this regard, please let me know.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



F. Marshall Deterding  
For The Firm

FMD/tmg

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Enclosures

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*Motion*      *Oral Argument*  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application by Nocatee	)	
Utility Corporation for Original	)	
Certificates for Water & Wastewater	)	Docket No. 990696-WS
Service in Duval and St. Johns	)	
Counties, Florida	)	
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In Re: Application for certificates	)	
to operate water & wastewater	)	Docket No. 992040-WS
utility in Duval and St. Johns	)	
Counties by Intercoastal Utilities, Inc.	)	
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**INTERCOASTAL’S MOTION TO ACCEPT PREFILED TESTIMONY AS  
ADDITIONAL REBUTTAL OR, IN THE ALTERNATIVE,  
MOTION TO ALLOW ADDITIONAL DIRECT TESTIMONY**

INTERCOASTAL UTILITIES, INC. (“Intercoastal”), by and through undersigned counsel, hereby files this Intercoastal’s Motion to Accept Prefiled Testimony as Additional Rebuttal or, in the Alternative, Motion to Allow Additional Direct Testimony and in support thereof would state and allege as follows:

1. Throughout these consolidated proceedings, it has been Intercoastal’s unwavering intent to make known to the Commission its commitment that its rates, in each and every year (over the next ten years commencing upon the completion of the project proposed by its Application), would be approximately equal to or below those rates proposed by the Nocatee Utility Corporation (“NUC”). Intercoastal felt this commitment was not only appropriate in terms of the rather unique posture of this case, but also that it was in the best interests of the Company and its customers over the long run. This Motion is in furtherance of that consistent position of Intercoastal.

2. While it is perhaps unusual to file a motion requesting that testimony labeled “Additional Rebuttal” be recognized for what it is (i.e., as additional rebuttal), the timing of the

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events which precipitated this filing, and the date set for commencement of the formal administrative hearing, require no less.

3. This case is currently scheduled to commence formal hearings on May 7, 2001 (pursuant to a requested continuance to which only Intercoastal was opposed). Throughout this proceeding, the compensatory rates as proposed by Intercoastal Utilities have been demonstrated to be lower than the non-compensatory rates of NUC (based upon cost when the system reaches 80% of capacity), at all reasonably expected levels of consumption for future residential customers.

4. Despite the fact that its Application was filed on June 1, 1999, NUC filed additional direct testimony which only became a part of this record by order of the Prehearing Officer issued on April 11, 2001 (22 months after the original filing). Ms. Swain's "corrected" testimony adjusted NUC's proposed non-compensatory initial rates such that they now, for the first few years, fall below those existing and projected compensatory rates of Intercoastal. Such change requires Intercoastal to revise its position in order to effectuate its long-standing decision and position that Intercoastal's rates should be proposed at a level lower than those of NUC from startup and throughout the projection period.

5. The posture of this Motion, and the relief requested herein, is required so that Intercoastal does not find itself caught in a procedural trap not of its own making. If Intercoastal merely waited to see if the other parties would object to this testimony as improper rebuttal testimony to the late filed addition to Ms. Swain's testimony, and the Commission agreed with that position, then Intercoastal would have no time or ability to request the testimony be considered as

additional direct.<sup>1</sup> Thus, even though it is Intercoastal's position that the testimony is clearly rebuttal testimony which is within the scope of Ms. Swain's altered testimony and which is responsive to the same, it became necessary for Intercoastal to file this Motion in order to preserve time so that the other parties may respond to the testimony, should it be considered additional direct.

6. Unless Intercoastal's testimony filed on this date is accepted, Ms. Swain's eleventh-hour "correction" effectively deprives Intercoastal of its intention to make its commitment known to the Commission that it will pledge that its rates be held below those non-compensatory rates which would have been proposed by NUC. Obviously, Intercoastal's commitment in this regard is to the benefit of both its present customers and the customers who will require service in the areas for which Intercoastal has applied. If Intercoastal's additional testimony, filed on this date, is not accepted by the Commission then Intercoastal will be effectively thwarted in its intent to make its pledge regarding its projected rates known to this Commission and the record will remain silent as to the pledge Intercoastal was willing to make. Intercoastal will be thusly frustrated despite the fact that neither its own actions nor conduct has contributed or otherwise caused the situation in which Intercoastal now finds itself.

7. The testimony filed by Intercoastal on this date should be accepted as rebuttal testimony. It is testimony which is specifically responsive, in all respects, to Ms. Swain's alteration of her prior testimony such that NUC's projected rates went down. In the absence of Ms. Swain's testimony, Intercoastal would not seek to file the testimony it has filed on this date.

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<sup>1</sup> NUC has filed additional direct testimony in this case twice (July 31, 2000 and March 22, 2001).

8. Should the Prehearing Officer determine that this testimony is not proper rebuttal, it should be allowed as additional direct testimony. The parties have already engaged in discovery on many of these issues, and Intercoastal understands that it may be necessary to make these witnesses available for additional discovery if the Prehearing Officer determines the same is appropriate. This testimony is not a significant alteration to Intercoastal's previous filings, but rather is entirely consistent with Intercoastal's intent and posture throughout this entire case. While no party will be prejudiced by allowing this additional testimony, if Intercoastal is not allowed to file the additional testimony it will effectively be muzzled as to a position and a posture it has maintained throughout this proceeding. This would neither be fair nor appropriate. It is in the Commission's interest, and ultimately the customers' interest, to have these matters placed in the record and considered by the Commission in making its decision in this case.

9. Whether the alteration to Ms. Swain's testimony at such a late date was by sleuth or by serendipity is irrelevant. The fact of the matter is that Intercoastal elected early on to put itself in a responsive posture with regard to the projected rates of NUC to the extent feasible and necessary. In point of fact, Intercoastal's rates will be lower than NUC's (for the majority of the years for which Intercoastal has projected rates) without any additional commitment or capital infusion from the shareholders. However, Ms. Swain's most recent changes to her testimony do create a short 3-4 year window in which this is not the case, and it has always been the intention of Intercoastal to take whatever actions are necessary so that such a window would not exist.

10. Oral argument on these Motions, requested in a separate pleading filed contemporaneously herewith, will aid the Prehearing Officer in his decision on these matters. Whether held in person or over the telephone, such oral argument will allow the parties to state their

positions and allow Intercoastal to further explain the vagaries of the situation in which it now finds itself, such that the Prehearing Officer may make a more fully informed decision. Additionally, it is hoped the parties will file expedited responses to these Motions (which were hand-delivered or faxed to all parties on this date along with all of the prefiled testimony) so that these matters may be resolved in the most timely fashion possible.

WHEREFORE, and in consideration of the above, Intercoastal requests the Commission acknowledge that the testimony which Intercoastal has filed on this date is appropriate as, and shall be recognized as, additional rebuttal testimony. In the alternative, Intercoastal respectfully requests this Commission allow the filing of additional direct testimony, and accept the testimony filed on this date as that additional direct testimony, and provide the other parties such due process rights as the Prehearing Officer deems appropriate.

DATED this 25<sup>th</sup> day of April, 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 Facsimile(\*) to the following this 25<sup>th</sup> day of April, 2001.


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