

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for original certificates )  
to operate water and wastewater utility )  
in Duval and St. Johns Counties ) Docket No. 990696-WS  
by Nocatee Utility Corporation )  
\_\_\_\_\_) )  
) )  
In re: Application for certificates to )  
operate water and wastewater utility )  
in Duval and St. Johns Counties ) Docket No. 992040-WS  
by Intercoastal Utilities, Inc. )  
\_\_\_\_\_) )  
) ) Filed: April 26, 2001

**NUC'S RESPONSE IN OPPOSITION TO  
INTERCOASTAL'S MOTION REGARDING ADDITIONAL TESTIMONY**

NOCATEE UTILITY CORPORATION ("NUC") hereby files its response in opposition to Intercoastal's Motion to Accept Prefiled Testimony as Additional Rebuttal, or, In the Alternative, Motion to Allow Additional Direct Testimony (the "Motion"). As grounds for its opposition, NUC states:

1. In preparing its response to Staff's Second Set of Interrogatories and Second Request for Production of Documents, NUC discovered that a computational error had been made in the calculation of wastewater rates. This error resulted in proposed rates that would over-recover the wastewater revenue requirement. By motion dated March 22, 2001, NUC sought leave to file Additional Direct Testimony of Ms. Swain to correct the computational error. By Order No. PSC-01-0932-PCO-WS (the "Order on Additional Testimony"), the Prehearing Officer granted NUC's request and gave Intercoastal permission to file rebuttal testimony no later than April 25, 2001.

2. On April 25, 2001, Intercoastal filed "Additional Rebuttal Testimony" of H.R. James, Jim L. Bowen, and Michael E. Burton accompanied by its Motion to accept the testimony as additional rebuttal or, in the alternative, to accept the testimony as additional direct testimony.

3. As detailed below, the "Additional Rebuttal Testimony" filed on April 25 goes far beyond the scope of proper rebuttal as contemplated by the Order on Additional Testimony. To the extent this testimony exceeds proper rebuttal, it should not be allowed at this late date either under the guise of "rebuttal testimony" or as "additional direct testimony."

4. In this regard, Mr. Burton's testimony contains both proper rebuttal (questioning the validity of Ms. Swain's corrected calculations) and improper rebuttal (proposing new rates for Intercoastal that are designed simply to be lower than Nocatee's corrected rates).

Proper Rebuttal:

- (i) page 1, line 1 through page 2, line 3
- (ii) page 3, line 4 through page 6, line 17
- (iii) page 11, line 5 through page 11, line 6
- (iv) Exhibit MB4-1 to MB4-2

Improper Rebuttal:

- (v) page 2, line 4 through page 3, line 3
- (vi) page 6, line 18 through page 11, line 4
- (vii) Exhibit MB4-3 to MB4-8

The entirety of both Mr. James' and Mr. Bowen's testimony is improper rebuttal relating to the commitment and capability of Intercoastal's shareholders to fund the additional losses that would

result from Mr. Burtons' proposed new rates that are even less compensatory than the rates Intercoastal has previously advocated in this docket.

5. The testimony of Messrs. Burton, James and Bowen relating to a new Intercoastal rate proposal should not be allowed either as rebuttal testimony or as additional direct testimony. If Intercoastal's "unwavering intent" (Motion, ¶1) has been to make known to the Commission a commitment that its rates would be equal to or below those proposed by NUC for the next ten years, it should have made that intent known in its earlier testimony in this docket. One and a half weeks before hearing is not the time for an existing utility to abandon its proposal to keep rates at their existing level for a period of years and to substitute a proposal to arbitrarily lower such rates even further below a compensatory level in order to improve the posture of its certificate extension application.

6. This is totally unlike the situation in which the Commission allowed additional direct testimony of Ms. Swain to correct an error discovered during the preparation of discovery responses. Here there is no error, there is simply an eleventh-hour change in Intercoastal's rate proposal for strategic purposes. Except to the extent (noted above) that Mr. Burton has provided proper rebuttal, this new testimony should not be allowed.

7. Alternatively, in the event Intercoastal is permitted to file the entire testimony of Mr. Burton, NUC requests that the Prehearing Officer modify the existing April 30, 2001 discovery cut-off and:

- (a) direct Intercoastal to provide NUC with an electronic version of Exhibits MB4-3 to MB4-8 **and** both paper and electronic versions of all supporting calculations and spreadsheets, including but not limited to (i) those that calculate the additional shareholder subsidy requirements referred to in

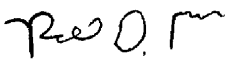
Mr. Burton's testimony (page 10, lines 12-15) and (ii) reflect the "several adjustments" referred to in Mr. Burton's testimony (page 10, lines 23-24), no later than the close of business on Monday, April 30; and

- (b) direct Intercoastal to make Mr. Burton available in Tallahassee for deposition on his additional testimony, exhibits and workpapers on Wednesday, May 2, unless counsel mutually agree to a different time and place.

WHEREFORE, NUC urges that the Commission deny Intercoastal's Motion to allow the filing of (i) the Additional Rebuttal Testimony of H.R. James and Jim L. Bowen, and (ii) the portions of the Additional Rebuttal Testimony of Michael Burton that are identified as "improper rebuttal" in paragraph 4 of this response. In the alternative, NUC requests that the Commission direct Intercoastal to provide NUC with the additional documents enumerated in paragraph 7 of this response and to make Mr. Burton available for deposition as set forth in that paragraph.

RESPECTFULLY SUBMITTED this 26th day of April, 2001.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served this 26TH day of April, 2001, on the following:

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