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May 30, 2001

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Blanca L. Bayó
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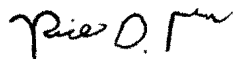
Re: Docket Nos. 990696-WS and 992040-WS

Dear Ms. Bayó:

Enclosed for filing on behalf of Nocatee Utility Corporation are the original and fifteen copies of its Motion to Strike.

By copy of this letter, this document has 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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

In re: Application for)
certificates to operate water) Docket No. 992040-WS
and wastewater utility in Duval)
and St. Johns Counties by)
Intercoastal Utilities, Inc.) Filed: May 30, 2001

**NOCATEE UTILITY CORPORATION'S
MOTION TO STRIKE**

Nocatee Utility Corporation (NUC) hereby moves that the Commission strike certain portions of the written redirect testimony filed on behalf of M.L. Forrester on May 22, 2001 and included at pages 1176 through 1190 of the transcript of this proceeding.¹ In support of this motion, NUC states:

1. There are two categories of objectionable material contained in Mr. Forrester's written redirect testimony:

(a) portions of two answers which refer to a commitment by Intercoastal to reduce its rates if a certificate

¹ The procedure for dealing with objectionable material contained in the prefiled redirect testimony by motion to strike was spelled out by the Commission at the time the testimony was authorized to be filed. (Tr. 1172-1175) Counsel for NUC has consulted with counsel for Intercoastal and was unable to obtain Intercoastal's agreement to voluntarily withdraw the disputed testimony.

is granted, a topic which the prehearing officer, the full Commission, and the Chairman have all previously ruled is not properly before the Commission at this time; and

(b) a question and answer relating to JEA's Consumptive Use Permit which shows within the four corners of the answer that Mr. Forrester is not competent to testify on this subject.

Testimony Regarding Rate Reduction

2. The two objectionable questions and answers related to Intercoastal's commitment to make a rate reduction if its certificate is granted are set forth below. The objectionable material is shown in ~~strike-through~~ mode:

(a) Page 1181, lines 13-20:

Q. You were asked several questions about the pending rate case which Intercoastal had contemplated filing in St. Johns County. What is the status of that matter?

A. It's my clear understanding that if Intercoastal comes under the jurisdiction of the Public Service Commission, any proceeding that is currently being conducted by the County will cease to continue. This would apply to any potentiality that Intercoastal

would be filing a rate case with St. Johns County or the PSC in the near future given ~~our Principal's commitment in recent months to reduce rates if the requested territory is granted.~~

(b) Page 1189, lines 15-25:

Q. Mr. Melson asked you about Intercoastal's position that rates for existing customers would fall if Intercoastal's application was granted. Do you anticipate that those rate decreases could become a reality if the Application were granted?

A. Yes, ~~not only do~~ I believe the rates, as projected by Mr. Burton, will fall if the Application is granted, ~~I know that the shareholders have committed to reduce the rates if the Application is granted. The shareholders were informed of the commitment necessary in order to put into place such a rate reduction, and the shareholders made the commitment necessary in order to make such a rate reduction come to fruition. The shareholders have the wherewithall to make~~

~~this commitment, they did make the commitment
and I would expect Intercoastal's present and
future ratepayers to benefit from that
commitment.~~

3. The subject of the objectionable material in these two questions and answers -- the eleventh-hour proposal by Intercoastal to reduce its rates below the level requested in its application² -- is the same as the subject of the prefiled rebuttal testimony submitted by Intercoastal on April 25, 2001. The Prehearing Officer ruled in Order No. PSC-01-1055-PCO-WS that

² The eleventh-hour nature of this position is underscored by Mr. Forrester's own testimony during his deposition -- which is the testimony which the written redirect aims to cure -- that Intercoastal proposed to continue its current rates in the event the Commission granted it a certificate:

Q Now, if I am correct, your application to the Public Service Commission proposes to continue in effect the water rates and water service availability charges for Intercoastal that are in effect today; is that correct?

A Yes.

Q Is the same true for wastewater, that you will continue your existing wastewater rates and service availability charges?

A To the best of my knowledge, yes.

Forrester Deposition, Exhibit 15, page 76, lines 6-15.

testimony on this subject would not be allowed, and denied Intercoastal's motion to accept prefiled testimony on that topic.

4. At the outset of the hearings in this case, Intercoastal moved to reconsider the Prehearing Officer's ruling. After hearing argument from the parties, the Commission unanimously ruled not to reconsider the ruling excluding that testimony. (Tr. 26-41)

5. Not satisfied with the full Commission's ruling, Intercoastal attempted to elicit live testimony on this subject during its redirect examination of Mr. James. On objection by NUC, the Chairman ruled -- consistent with the prior rulings by the Prehearing Officer and the full Commission -- that testimony on this topic would be excluded. (Tr. 492-495)

6. Intercoastal now takes another bite at the apple by attempting to introduce testimony on this subject in the form of written redirect. This testimony is no less objectionable now than it was before. To be consistent with the Commission's prior rulings, this testimony must now be stricken from the record.

Testimony Regarding JEA's Consumptive Use Permit

7. The objectionable question and answer related to JEA's consumptive use permit appears on page 1184, lines 10-18, and is set forth below. The objectionable material is shown in ~~strike through~~ mode:

Q. Mr. Menton asked you whether it was true that JEA's Consumptive Use Permit includes water designated for the northern St. Johns County area. What is your understanding in that regard?

A. As I testified, I have not reviewed the permits. ~~But I understand now that a significant question in that regard arose at trial based upon the testimony of the witness from the St. Johns River Water Management District. It now appears that JEA's pertinent Consumptive Use Permits do not provide for the provision of water to the portion of the Nocatee development which lies with St. Johns County, as JEA previously thought they did.~~

8. Mr. Forrester begins this answer by candidly stating that he has not reviewed JEA's consumptive use permits. He then proceeds to describe the legal effect of permits which he admits he has not reviewed. While comment on the interpretation of and weight to be given to Ms. Silver's testimony may be proper for argument in the briefs, it is not proper testimony from a witness who has disclaimed any first hand knowledge of the facts at issue. Accordingly, this portion of Mr. Forrester's answer should be stricken from the record.

WHEREFORE, NUC respectfully requests that the Commission grant its motion to strike the specific portions of Mr. Forrester's prefiled redirect testimony identified in the body of this motion.

RESPECTFULLY SUBMITTED this 30th day of May, 2001.

HOPPING GREEN SAMS & SMITH, P.A.

By: Richard D. Melson
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Attorneys for Nocatee Utility
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served this 30th day of May, 2001, on the following:

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