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COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original certificates to operate water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corporation

Docket No. 990696-WS

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

Docket No. 992040-WS

Filed: August 1, 2001

NOCATEE UTILITY CORPORATION'S RESPONSE IN OPPOSITION TO INTERCOASTAL'S MOTION TO SUPPLEMENT RECORD

Nocatee Utility Corporation (NUC) hereby files its Response in Opposition to Intercoastal's Motion to Supplement Record ("Motion") and urges that the Motion be denied.

1. On July 31, 2001, Intercoastal filed its Motion asking the Commission to supplement the record with a newspaper article which appeared in the St. Augustine Record on June 29, 2001. That article describes legal challenges to the comprehensive plan amendments related to the Nocatee development and speculates on the potential impact of those challenges on the development schedule.

2. Intercoastal's motion should be denied for the following reasons:

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(a) First, the article is only marginally relevant to the issues that the Commission must decide in this proceeding. The record already contains evidence of challenges to the comprehensive plan amendments. (Gauthier, T. 933-935) The article adds nothing but speculation as to potential time frames for resolving those challenges.

(b) Second, the article constitutes double hearsay. The entire article constitutes the out-of-court statement of Margo C. Pope, Senior Writer for the St. Augustine Record. That hearsay article then contains hearsay statements attributed to at least seven different individuals: Roger O'Steen, Sonya Doerr, Jim Loftus, Marc Jacalone, Ellen Whitmer, Mary Kohnke, and Nicholas Meiszer. None of these individuals has testified in this case. At this stage, none of them is available for discovery and none is available for cross-examination.

(c) Third, the question of whether the Commission should defer a ruling on Nocatee's certificate application based on the existence of these legal challenges is already before the Commission in Issue 25. Intercoastal chose not to address this issue in its post-hearing brief. The hearsay statements and speculation by several different individuals about the potential impacts of these challenges on the timing of development has no probative value.

3. None of the authority cited in Intercoastal's Motion supports granting the relief it requested. In the case of *In re BellSouth BSE, Inc.*, PSC-98-1165-FOF-TX, the Commission denied a motion to supplement the record. Similarly, the court in *Canova v. Florida National Bank*, 60 So.2d 627 (Fla. 1952) upheld a chancellor's discretionary action denying a request to reopen a case for the taking of further testimony. Finally, in *Wilson v. Johnson*, 41. So. 395 (1906), the court upheld a judge's ruling which continued a hearing for three days to allow testimony from a witness who had missed a train from Jacksonville. A three day continuance to take live testimony is vastly different from admitting a hearsay newspaper article authored almost two months after the hearing has concluded.

4. Based on quick research, the two cases NUC has found in which the Commission allowed the record to be supplemented involved situations in which (a) an exhibit identified at the hearing had inadvertently not been moved into the record, *In re JJ's Mobile Homes*, PSC-95-0735-PCO-WS, and (b) a deposition introduced at the hearing was inadvertently missing a late-filed deposition exhibit, *In re Comprehensive Review etc. of Southern Bell*, PSC-95-1391-FOF-TL. Neither of these decisions provides any support for Intercoastal's request in this case.

5. There also is nothing in the Commission's rules or the Uniform Rules of Procedure which contemplates reopening the record to admit information of this type. Further, the Prehearing Order in this docket was clear about the post-hearing procedures to be followed. Those procedures do not contemplate the taking of additional evidence after the hearing is adjourned. See, *In re Mad Hatter Utility, Inc.*, PSC-97-1004-FOF-WS.

6. NUC is concerned that Intercoastal's motion has been made at this time for purposes of delay. The article which is the subject of the motion is dated June 29, 2001. Intercoastal waited thirty-two days after this article was published -- and five days after the staff recommendation was filed -- to file its motion. This unexplained delay justifies denying the motion on timeliness grounds alone.

WHEREFORE, NUC urges that Intercoastal's motion to supplement the record be denied.

RESPECTFULLY SUBMITTED this 1st day of August, 2001.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served this 1st day of August, 2001, on the following:

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