

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

APPLICATION FOR ORIGINAL
CERTIFICATES TO OPERATE WATER
AND WASTEWATER UTILITY IN DUVAL
AND ST. JOHNS COUNTIES BY NOCATEE
UTILITY CORPORATION.

DOCKET NO. 990696-WS

APPLICATION FOR CERTIFICATES TO
OPERATE A WATER AND WASTEWATER
UTILITY IN DUVAL AND ST. JOHNS
COUNTIES BY INTERCOASTAL UTILITIES
INC.

DOCKET NO. 992040-WS

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PROCEEDINGS: SPECIAL AGENDA CONFERENCE

BEFORE: CHAIRMAN E. LEON JACOBS, JR.
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI



DATE: Wednesday, August 29, 2001

TIME: Commenced at 9:30 a.m.
Concluded at 12:45 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: KORETTA E. FLEMING
Official FPSC Reporter

FLORIDA PUBLIC SERVICE COMMISSION

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1 PARTICIPATING:

2 ROSANNE GERVASI, SAMANTHA CIBULA, and LORENA ESPINOZA,
3 Division of Legal Services.

4 PATTI DANIEL, BILLIE MESSER, RICHARD REDEMANN,
5 STAN RIEGER, CHERYL JOHNSON, and STEPHANIE CLAPP, Division of
6 Regulatory Oversight.

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P R O C E E D I N G S

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2 CHAIRMAN JACOBS: Good morning. We'll go on the
3 record for Agenda, and we're here on Special Agenda for Docket
4 Numbers 990696-WS and 992040-WS. Staff, do you want to
5 introduce the item?

6 MS. CIBULA: Yes. Commissioners, the item for the
7 Commission's consideration today is Staff's recommendation to
8 approve the application of Nocatee Utility Corporation for
9 water and wastewater certificates and to deny the application
10 of Intercoastal Utilities, Inc. Staff is prepared to go
11 through the recommendation issue by issue; however, there are a
12 few issues that Staff believes are threshold issues which the
13 Commission may want to address first. These issues are Issue
14 24, Issue 25, Issues A and B, and Issue 12.

15 CHAIRMAN JACOBS: Commissioners, do you have a
16 preference?

17 COMMISSIONER JABER: I would agree with Staff on the
18 preference.

19 CHAIRMAN JACOBS: Okay, so that would be 24, 25 and
20 Issue --

21 MS. CIBULA: Issues A and B, and Issue 12.

22 CHAIRMAN JACOBS: Let's begin with Issue 24.

23 COMMISSIONER JABER: Mr. Chairman, I have a
24 procedural question to ask Staff, just so I get it straight in
25 my head with respect to St. Johns County. St. Johns County,

1 Samantha, withdrew its participation from the hearing when?

2 MS. CIBULA: They withdrew, I guess, technically the
3 day before the hearing. The hearing was on a Monday. They
4 withdrew on a Friday at, like, 4:45.

5 COMMISSIONER JABER: Okay. So, they voluntarily
6 withdrew their positions, any participation in this proceeding.

7 MS. CIBULA: That's correct.

8 COMMISSIONER JABER: And you have not incorporated
9 their positions or any of their testimony in this
10 recommendation.

11 MS. CIBULA: No, we have not.

12 COMMISSIONER JABER: And we should not -- I should
13 not incorporate any of their preliminary positions in my
14 decision, because they voluntarily withdrew.

15 MS. CIBULA: That's correct.

16 COMMISSIONER JABER: Okay.

17 CHAIRMAN JACOBS: Any other questions, Commissioners?

18 COMMISSIONER JABER: I do have questions on Issue 24.

19 CHAIRMAN JACOBS: Go right ahead.

20 COMMISSIONER JABER: Staff, it's not necessarily
21 questions on your legal analysis, and I'm not sure this is the
22 right place to address it, but -- and you can tell me, feel
23 free to tell me where it's more appropriate to be addressed. I
24 wanted to be very clear with this company, if NUC actually does
25 get the certificate, that the application for service, any

1 tariff on file, any billing, make clear that NUC is the utility
2 and JEA is the operator, for lack of a better word, the billing
3 agent, and I think that's probably consistent with what the
4 Commission has done in the past. Is that something to address
5 in this issue or should I wait until we get to maybe technical
6 ability?

7 MS. DANIEL: Either technical ability or in the
8 public interest issue.

9 COMMISSIONER JABER: Okay.

10 MS. DANIEL: We can certainly put things in the
11 tariff or in the final order that comes out that would address
12 those concerns.

13 COMMISSIONER JABER: Okay. To help me prepare for
14 that, on Page 156 there's a statement from Exhibit 7, I
15 believe, that JEA's operations and maintenance of the utility
16 will include billing and collection services for NUC. This is
17 under the operated analysis. Do we know if they anticipate
18 that the bill clearly will come from NUC? I know there was a
19 lot of testimony with respect to -- we haven't ironed out the
20 details.

21 MS. DANIEL: When we approve the final tariff,
22 they're required to have a copy of the customer bill in that
23 final tariff, so that would certainly be a point that we could
24 refine there.

25 COMMISSIONER JABER: Okay. On Page 157, there's some

1 analysis, again, from the agreement that JEA intends to use the
2 cut-on and cut-off practices from JEA. They'll follow whatever
3 their internal procedures are that they have at JEA, and my
4 question to you is, is that appropriate to the degree that
5 whatever JEA does for its internal operations are inconsistent
6 with the PSC rules on disconnect and billing, we should
7 probably make clear that they need to follow PSC standards,
8 right?

9 MS. DANIEL: Certainly. And there, again, in the
10 tariff, there will be a place in the tariff for those
11 miscellaneous service charges, and I think it would be
12 appropriate to put something in the final order, perhaps, that
13 would correct that concern as well.

14 CHAIRMAN JACOBS: Is there a general provision in the
15 agreement that JEA's contract to Nocatee has to be consistent
16 with Commission -- rendering of service in Nocatee has to be
17 consistent with Commission rules?

18 MR. REDEMANN: I don't recall anything specifically,
19 but it says the PSC has to approve the agreement, I believe so
20 yeah. I think, you know, JEA would work with us to, you know,
21 whatever requirements we would have for Nocatee.

22 COMMISSIONER JABER: And if it requires a
23 modification to the contract, the parties should be willing to
24 do that.

25 MS. DANIEL: It would be incumbent on Nocatee to take

1 care of that.

2 COMMISSIONER JABER: Okay.

3 COMMISSIONER DEASON: Well, let me ask the question,
4 are you talking about on a going-forward basis or are there
5 concerns with the contract as it exists or is being proposed?
6 Is there anything in particular that we want to change at this
7 point? Are we just advising the parties that we want to be
8 kept informed of the status of the contract, and if there are
9 changes to the contract, to see if that has any effect upon
10 tariff services?

11 COMMISSIONER JABER: I think, the only place that
12 might require a modification, Commissioner Deason, and I'm not
13 sure, I mean, Staff will have to explain this to us. The
14 agreement states that Nocatee will be responsible for post
15 cut-off collections. And I read into this that JEA, under the
16 agreement, will follow its internal procedures for collection
17 and for cutting service off for nonpayment. So, to the degree
18 that's spelled out in the agreement and it's inconsistent with
19 our rules, perhaps that would require a modification, but that
20 is my question. I mean, to the degree something's inconsistent
21 with our rules, should we take the step of requiring a
22 modification to the agreement or do our rules just supersede
23 the agreement and --

24 CHAIRMAN JACOBS: In issue -- I don't want to go
25 there, because I guess we're going to talk about technical

1 ability, but I was particularly struck by the analysis in Issue
2 3, because you recognized these deficiencies with regard -- or
3 maybe some lack of clarity in the exchange of responsibilities
4 between Nocatee and JEA.

5 And what we say is that we have a long time before
6 this project begins development and do you think that will be
7 -- those issues will be clarified within the time that
8 development begins? And so, I had a question written down to
9 myself, so that are we placing that condition on our granting
10 of a certificate that by the time of development all the
11 matters with regard to the certainty of who has ultimate
12 accountability for compliance with Commission rules is dealt
13 with?

14 MS. DANIEL: Commissioners, I think, your concern is
15 inherent in any original certificate filing that we see. This
16 is generally the companies have not broken ground, they have
17 not installed facilities and so forth, and certainly this is a
18 bulk purchase agreement, but for any original certificate, we
19 would certainly expect them to be cognizant of all of our rules
20 and statutes and policies and procedures.

21 In fact, when we send out not only original
22 certificate applications but, I believe amendments as well, but
23 certainly on original certificates we send them a stack of
24 documentation and a letter that very clearly identifies the
25 requirements that they must follow, so we have that process in

1 place to make sure that the company is very much aware that our
2 rules and statutes are what they must abide by.

3 COMMISSIONER JABER: I guess, my concern, though, is
4 twofold; not necessarily, you know, I don't have a concern with
5 respect to NUC or Intercoastal, for that matter, having the
6 sophistication to understand that the PSC rules and statutes
7 apply to them. That's not as much a concern to me. The other
8 concern though is the consumers -- I don't want consumers to be
9 confused about who the utility is and who they need to call, so
10 it's a twofold thing. I'd really like the application for
11 service to be clear, when a customer comes in for service from
12 NUC, in particular, since we're dealing with NUC in this issue,
13 that they understand that NUC is the utility, but JEA will do
14 the billing and some of the operations.

15 MS. DANIEL: Again, the application for service is a
16 part of the tariff filing that they'll be required to have, and
17 we can certainly just confirm before we approve that final
18 tariff that the application for service as well is very clear.

19 COMMISSIONER JABER: And we can put that in the
20 order.

21 MS. DANIEL: Certainly.

22 COMMISSIONER JABER: Now, does any of that require a
23 modification to the contract?

24 MS. CIBULA: I don't know if that was specifically
25 addressed in the contract, so I don't think that it would

1 require a modification to the contract.

2 MS. MESSER: Also, the contract requires that the
3 Commission approve -- that might be -- I'm sorry, that the
4 application, of course, provide the Commission and that the
5 contract is approved by -- inherently approved by the
6 Commission. My point being that you're verbally making these
7 comments and additional requirements and clarifications to the
8 contract, and I think that that's something that can be handled
9 after the fact.

10 COMMISSIONER JABER: By the parties?

11 MS. MESSER: By the parties and also through our --
12 the Staff. As Patti -- as Ms. Daniel mentioned, the Staff
13 continues to work with the utility after the certification,
14 after the Commission makes their decision. And so, as we
15 review their tariff and we review their application forms and
16 the information that they submit, we'll be ensuring that
17 everything they give us is consistent with Commission rules.
18 And if they aren't, then we'll be working with them to make
19 sure they understand what needs to be changed.

20 COMMISSIONER PALECKI: So, you'll make sure that the
21 tariffs are in compliance. And if they are not, you will not
22 approve the tariffs, you'll send them back to the utility --

23 MS. MESSER: Exactly right.

24 COMMISSIONER PALECKI: -- to be resubmitted.

25 MS. MESSER: That's right.

1 COMMISSIONER PALECKI: So, most of these issues when
2 you see, perhaps, JEA procedures that are not consistent with
3 Commission rules, you can insist that the tariffs that are
4 submitted are consistent with the Commission rules.

5 MS. MESSER: Absolutely.

6 COMMISSIONER PALECKI: Thank you.

7 COMMISSIONER JABER: And on Page 160 --

8 COMMISSIONER DEASON: Let me interrupt just a second,
9 follow-up on that point. The exercise of our jurisdiction is
10 going to be through the enforcement of the tariffs, whichever
11 utility is granted this area. And if one of those utilities
12 has a contract with a third party to provide services, we're
13 not going to be enforcing that contract, we're going to be
14 enforcing our regulation through the tariffs, which we will
15 approve.

16 Now, if there's something in the contract that is in
17 violation of a policy or a procedure or a tariff, we will hold
18 the certificated party responsible, and it will be incumbent
19 upon them to either change that contract, but we're not going
20 to be in the business of enforcing that contract, correct?

21 MS. MESSER: That's correct.

22 COMMISSIONER DEASON: Okay.

23 COMMISSIONER JABER: And that clarification can be in
24 the order that comes out of this decision, right?

25 MS. MESSER: Absolutely.

1 CHAIRMAN JACOBS: One of the -- and that's an
2 interesting point, because one of the provisions of the
3 contract for -- I think, it's for both O&M and for the other
4 side, it's for ten years initial term and then five years --
5 three five-year renewable terms. And if it is not renewed,
6 it's my understanding that the terms of service for bulk
7 service from JEA to Nocatee changes.

8 MS. DANIEL: That's correct.

9 CHAIRMAN JACOBS: So, the interesting kind of
10 sideline of that is that if Nocatee finds itself in a position
11 where it is being provided service that is not consistent with
12 our rules and it has to seek some exit from that contract, it
13 essentially has to also accept a higher rate of service from
14 JEA; is that not correct?

15 MS. DANIEL: Or install their own facilities or do
16 whatever it would take to honor the provisions of that
17 certificate to provide safe, sufficient service to the
18 customers.

19 COMMISSIONER DEASON: Commissioners, let me -- I
20 agree with that and, I guess, I try to make an analogy of sorts
21 and it seems like the topic of the day is competitive
22 generation and electric business. And, you know, if we have a
23 regulated company that signs a contract with a third party to
24 provide capacity over a period of time, we don't regulate that
25 third party. We have responsibility to regulate the entity

1 that provides service to the customers. And if they need that
2 capacity to read our reserve margins, to provide adequate
3 service to customers in a cost-effective manner, we hold them
4 responsible.

5 And if it comes time for that contract to terminate
6 and the utility we regulate we still hold responsible, either
7 they're going to have to build capacity themselves or they're
8 going to have to find another party to contract with or they're
9 going to have to renew the existing contract that is about to
10 terminate. And numerous options are out there, so unless I'm
11 looking at this too narrowly, I just don't really see where
12 this is really that much different.

13 And this is something that's been going on in the
14 electric business now for sometime where we allow our utilities
15 to contract with third parties to provide -- and we look at our
16 ten-year site plans, if they have capacity under contract with
17 an unregulated entity, you know, that's fine, and we count
18 that, but we hold them responsible. And if there is a problem
19 between the regulated entity and the contracted party, they're
20 not meeting the obligations of that contract, they don't come
21 to us, I guess that goes to court.

22 And I think that this is probably going to be the
23 same type of an arrangement, if Nocatee is granted this area
24 and JEA provides service consistent -- provides services to
25 Nocatee which in turn provides end use service to customers. I

1 guess, I'm just trying to draw an analogy. And if I'm
2 incorrect in the analogy, somebody correct me.

3 MS. DANIEL: Not at all, Commissioner.

4 COMMISSIONER DEASON: Staff's in agreement with that,
5 correct?

6 MS. DANIEL: Yes.

7 COMMISSIONER BAEZ: Commissioner Deason, I'm glad you
8 brought that up, because I was sitting here asking myself what
9 I thought was a dumb question, and it seems to me, you know, a
10 bulk contract should be transparent to the customer. Now, that
11 doesn't take away whatever concerns there might be on the
12 record as to how customer service is going to be addressed and
13 suspect we'll have some discussion on that at the appropriate
14 time, but in terms of -- you know, I hear things like
15 clarifications on bills that, you know, it is NUC that's
16 providing the service and not JEA, I fail to see where that
17 comes into play.

18 I mean, we don't have FPL or Progress Energy's bill
19 saying, you know, even though this power is being provided to
20 you by a competitive wholesale provider, you've got to call us.
21 It's always been that way, and the tariff is going to reflect
22 what the tariff is going to reflect. And the name on that
23 tariff is NUC, if in fact, it is NUC. So, I'm glad you brought
24 that up, because it answered -- I think, it clarified for me
25 what I felt all along is that, you know, a bulk contract is

1 just another -- it's a substitute for owning facilities. It's
2 another alternative for supply. And I don't think we need to
3 consider -- that's, in essence, transparent to the customer.

4 Again, I'll say there's concerns as to how those
5 customers are going to be relating to the regulated utility,
6 and we'll discuss that later, but at least for purposes of, you
7 know, what kind of clarifications we have to make, I think, the
8 comments of the Commissioners that we're making up here might
9 stand as guidance for when this contract finally comes to
10 fruition, and I would hope that the parties would listen to
11 what we're saying up here. But in terms of, you know, real
12 concrete concerns, I don't have any. I think, Commissioner
13 Deason's correct, it's just an alternative.

14 COMMISSIONER JABER: Well, herein lies the
15 difference, though. When Seminole or Calpine or whoever the
16 analogy could be; it could be TECO --

17 COMMISSIONER BAEZ: Fill in the blank.

18 COMMISSIONER JABER: Yeah, TECO and FP&L. The
19 difference with this particular situation -- and do not
20 misunderstand, I don't have a problem with JEA being the
21 operator; I think, actually, they should be commended for sort
22 of looking at these unique situations where the economies of
23 scale could be maximized. My concern really relates to
24 consumer confusion.

25 With the TECO, Calpine analogies, you don't have that

1 generation company sending the bill to the consumer. You don't
2 have the generation company setting up the phone number for the
3 consumer to call. It's not a reason not to go forward. It's
4 just a reason to be cautious with respect to our expectations
5 as it relates to the utility.

6 COMMISSIONER BAEZ: And I understand your concern.

7 COMMISSIONER JABER: And that would be my only
8 concern.

9 COMMISSIONER BAEZ: Right. And, I think, we've -- at
10 least our Staff -- has ample experience in those types of
11 billing arrangements from the telecommunications side. I mean,
12 up until a little while ago, it was your local provider that
13 billed for long-distance --

14 COMMISSIONER JABER: And that hasn't worked very
15 well.

16 COMMISSIONER BAEZ: That has a whole bunch of other
17 problems and I'm hoping we've learned from that experience.

18 COMMISSIONER JABER: We shouldn't talk about that.

19 COMMISSIONER BAEZ: Not to bring up a bad subject,
20 but, in essence, I mean, I think, we have some understanding of
21 those relationships.

22 COMMISSIONER JABER: Right, right.

23 COMMISSIONER BAEZ: And I still think that wherever
24 we can avoid creating that confusion, again, I'll stand on what
25 I said before. I think, the method of supply has to be

1 transparent to the customer, and I would expect that it would
2 be on, you know, as part of the tariff that would reflect
3 transparency. So, I'm not so concerned where the supply is
4 coming from, I guess, is my point.

5 COMMISSIONER JABER: Right, and neither am I. My
6 only concern, Patti, and if you could make sure that it is
7 articulated well in the order, is to put NUC on notice that
8 whatever it takes to make clear to the customer who their
9 utility is and how they're relating and interacting with JEA,
10 that would really satisfy me. With respect --

11 COMMISSIONER DEASON: Let me follow-up and just --
12 Staff, you indicated that in the tariff-approval process the
13 actual application for service that a customer would submit
14 that is part of that tariff-approval process, and we would have
15 the ability, under our regulatory ability, to review that
16 application, and also they're required to submit a sample
17 bill --

18 MS. DANIEL: That's correct.

19 COMMISSIONER DEASON: -- in that part of the
20 tariff-approval process.

21 MS. DANIEL: That's correct.

22 COMMISSIONER DEASON: Okay.

23 COMMISSIONER JABER: And then on Page 170, this is
24 probably a nit, but I'm thinking about future cases. The
25 question before us is not whether NUC can also be considered a

1 governmental authority by virtue of the fact that it's either
2 owned, operated, managed or controlled, right? The question
3 before us is are they exempt because they are owned, managed,
4 or controlled by JEA? The reason I'm being cautious here is I
5 don't -- we're not making a finding with respect to whether NUC
6 is a governmental authority. Is that a distinction without a
7 difference? Maybe I'm being extra cautious.

8 MS. CIBULA: No, I think, you're correct.

9 COMMISSIONER JABER: Okay. So, you'll clarify that?

10 MS. CIBULA: Mm-hmm.

11 COMMISSIONER JABER: Those are all my questions on
12 24.

13 COMMISSIONER PALECKI: I just have one further
14 question already answered, that you'll review the sample bill
15 that's submitted. I just want to make sure that the sample
16 bill clearly identifies the service provider as Nocatee. And I
17 understand that JEA is going to be doing the billing, that this
18 is going to be more expensive, and it's going to be, you know,
19 really probably difficult for JEA to distinguish these bills
20 from the rest of their bills, but I think that it's absolutely
21 necessary to avoid customer confusion that we have a bill, it
22 goes to these customers that clearly identifies the provider as
23 Nocatee.

24 MS. DANIEL: Yes, sir, Commissioner, we'll make sure
25 that it's clear.

1 COMMISSIONER PALECKI: Thank you.

2 COMMISSIONER DEASON: I have just one question. The
3 -- review with me, for a moment, the time frame of the
4 contract. Is it a ten-year initial period with five-year
5 renewals; is that correct?

6 MS. DANIEL: Up to a maximum of 25 years.

7 COMMISSIONER DEASON: To a maximum of 25 years. So,
8 if the area is granted to Nocatee and the contract comes to
9 fruition, it will have a period of ten years initially,
10 correct?

11 MS. DANIEL: Correct.

12 COMMISSIONER DEASON: Okay. Now, is the renewal --
13 is it at the agreement of both parties or does one party have
14 superior right in that regard?

15 MR. REDEMANN: Well, basically, it's addressed in
16 6.3, unless terminated by either party upon written notice,
17 basically, it's going to continue to be extended.

18 COMMISSIONER DEASON: Well, I guess, my question is
19 can we, as a condition of if the area is to be granted to
20 Nocatee, have a condition of that approval or can we just under
21 our general regulatory ability when it comes time for the
22 contract to be renewed to have the regulated entity come
23 forward to the Commission and give us a status report of the
24 negotiations for the continuation of that contract?

25 My concern is that, you know, I made the analogy of

1 one of our electric utilities getting power under contract.
2 It's pretty rare, though, when you get 100% of your service
3 from an under contract basis. And then, we do have two
4 electric utilities who do that and have done it extremely
5 successfully, by the way.

6 Can we make that a requirement to have the regulated
7 entity keep the Commission informed of the status of contract
8 negotiations? Because it's incumbent upon them that they still
9 have to provide service. And if they no longer do it under a
10 contractual basis, they're going to have to either enter a
11 contract with another entity or they're going to have to build
12 the treatment facilities and the water treatment facilities and
13 whatever else that goes along with providing service, they'll
14 have that responsibility. And I just think that we need to be
15 kept informed as to how they're going to meet their obligation
16 to provide service.

17 MS. DANIEL: Okay, we could handle that in a couple
18 of ways. One would be to have a more open-ended provision in
19 this order that would be something to the effect if anything
20 changes substantively with regard to your provision of service
21 that you would let us know or we could definitively say, prior
22 to the renewal of this contract, to give us a status report.

23 COMMISSIONER BAEZ: Ms. Daniel, are there actually
24 two contracts or is the management -- the O&M contract part of
25 the supply contract?

1 MS. DANIEL: It's a single contract.

2 COMMISSIONER BAEZ: So then, when the ten-year term
3 is up, you have both supply and management up for renegotiation
4 or --

5 COMMISSIONER DEASON: Are you sure that there's not
6 two different contractual --

7 COMMISSIONER BAEZ: That was my understanding or that
8 was my impression, anyway.

9 MR. REDEMANN: My understanding is that the O&M part
10 was to be renewed, not in this specific section, but in terms
11 of the capacity, once they've paid for that capacity they would
12 continue to have that capacity.

13 COMMISSIONER BAEZ: So, the two are severable
14 somehow. The capacity can still be available, whether or not
15 O&M is attached.

16 MR. REDEMANN: Right. Basically, if, for example,
17 Nocatee determined that JEA was not doing a good job, they
18 could sever the O&M part of the contract and then they could
19 hire their own operators, do their own billing to provide that
20 service, so they still would be getting the bulk service, you
21 know, the water and wastewater reuse capacity from JEA.

22 COMMISSIONER BAEZ: But as it stands, they would both
23 be up ten years. I mean, they both run ten years.

24 MR. REDEMANN: I think, the capacity is permanent.

25 COMMISSIONER BAEZ: Is permanent? Okay.

1 MR. REDEMANN: Yes, it is.

2 COMMISSIONER BAEZ: All right.

3 COMMISSIONER JABER: This says -- your recommendation
4 is 6.3 says, JEA will provide bulk water, wastewater, and reuse
5 service to NUC for at least 25 years. This agreement also
6 obligates JEA to provide operations management and maintenance
7 service for a minimum of ten years; is that --

8 MS. DANIEL: That's correct.

9 COMMISSIONER DEASON: Well, that alleviates some of
10 my concern, because I was under the false impression -- and I'm
11 glad it's been brought to light -- that the actual capacity
12 requirements is at a 25-year contractual obligation.

13 MS. DANIEL: I apologize on that.

14 COMMISSIONER DEASON: Well, still, I think that if
15 there are any changes to the contract it probably would be
16 incumbent upon the parties to bring that to the attention of
17 the Commission.

18 MS. DANIEL: Okay. And do you prefer that we
19 definitively require them to come back at the renewal period
20 for the O&M portion of the contract or to leave it more open
21 ended, if there is a substantive change to apprise us?

22 COMMISSIONER DEASON: Well, I'm open to input on
23 that. Whatever is most workable and practical way go about
24 that. And Staff, you may have had some experience in the past
25 about how to do that. I just -- you know, I want to make sure

1 that the Commission is kept apprised of the status of the
2 contract, and if there are significant changes to that that
3 we're kept apprised of that in whatever is the most efficient
4 way to do that.

5 MS. DANIEL: I believe, if you put them on notice
6 that if there is a substantive change and put it in an order,
7 if they come back in for a rate case and there's been a
8 substantive change and they haven't apprised us, then they're
9 in a lot of trouble.

10 COMMISSIONER DEASON: Does Legal agree with that?

11 MS. CIBULA: Yes, we agree with that.

12 COMMISSIONER DEASON: Okay. I'm satisfied with that,
13 then.

14 CHAIRMAN JACOBS: I want to walk through a couple of
15 issues here. This issue ultimately goes to our jurisdiction,
16 and the legal analysis, which I must say is well-laid out,
17 contains some issues that I just want to be real clear on. On
18 Page 160 in the second full paragraph begins as to whether NUC
19 or JEA will perform the accounting and legal matters for NUC,
20 NUC has requested, as shown, some allocation for these
21 services, and I take that to mean that JEA will then perform
22 certain services, certain of these services for NUC.

23 MS. DANIEL: I get the impression from this
24 statement, Commissioner, in the recommendation and from the
25 proposed operating and maintenance expenses that NUC is

1 requesting that monies be included in their revenue requirement
2 so that they can have their own accounting and contractual
3 services separate and apart from the JEA contract.

4 CHAIRMAN JACOBS: Okay. That's important, because
5 the fact upon which our jurisdictional conclusion turns is the
6 level of control that JEA, as a governmental entity, will
7 exercise over the provision of services in this territory and
8 specifically on Page 166, when we look at an analysis of the
9 cases, and this one case -- I think, this is a Three "S" case
10 -- one of the particular factors that was evaluated to
11 determine to what extent there is control by the governmental
12 entity over the private entity as to whether or not it can
13 borrow money against the assets, enter into contracts and
14 agreements and accept gifts and contributions on behalf of the
15 utility. That's in the next to last paragraph, and what we're
16 saying is that there's no evidence that indicates JEA would do
17 any of that for NUC.

18 MS. DANIEL: That's correct.

19 CHAIRMAN JACOBS: Okay. And the last paragraph is
20 pay revenues collected from customers. JEA won't be collecting
21 customer deposits and paying anything out of those, will they?

22 MS. JOHNSON: Whatever JEA collects over their
23 required charges will be permitted to NUC.

24 CHAIRMAN JACOBS: So, they'll simply be acting as a
25 collecting agent.

1 MS. JOHNSON: Yes.

2 CHAIRMAN JACOBS: And subtract out their charges that
3 they're imposing on NUC.

4 MS. JOHNSON: That's correct.

5 CHAIRMAN JACOBS: And then, giving to NUC what's left
6 over.

7 MS. JOHNSON: That's correct.

8 CHAIRMAN JACOBS: Okay. On Page 170 in the last
9 paragraph, again, as an aspect to what the level of control has
10 been exercised as to whether or not there's any transfer of
11 authority to -- operational authority to the governmental
12 entity -- I'm sorry, no, in this instance it was whether or not
13 the governmental entity has such control over the operations of
14 the private company that the private company is kind of de
15 facto considered to be a governmental entity. And the
16 distinguishing factor is that there's no ability of the
17 governmental entity to affect the governance of the private
18 entity, and we're saying that that does not occur, that JEA has
19 no ability to affect the board of directors or the governance
20 of the private company.

21 MS. DANIEL: That's correct.

22 CHAIRMAN JACOBS: Okay. And then over on Page 173,
23 again, in the last paragraph again, and we're looking again at
24 the analysis of a case and, basically, again, also looking at
25 the level of control that there might be, and one of the

1 factors that is considered here is whether or not the
2 governmental entity has any ability of power or control to set
3 rates for the private utility. Now, and this is an interesting
4 aspect, because while ultimately the actual -- we're saying
5 here that the tariffs are going to be filed with us. One must
6 acknowledge that there is, you know, virtually the whole
7 expense structure of this private company is determined by the
8 contract with JEA.

9 However, what I'm reading this analysis to say is
10 that that still does not constitute setting the rates for this
11 company, because it's simply a contract -- provisions by
12 contract. The company's not actually coming in and determining
13 what the expense structure actually will be. They're just
14 providing a contract to NUC.

15 MS. DANIEL: That's correct, Commissioners. If for
16 some reason JEA were to have a rate increase, then NUC would
17 have to come to us and either request a pass-through, they
18 certainly have the authority to request an index or a full rate
19 case, but NUC's rates will be established here, and whatever
20 JEA does will be a separate matter.

21 CHAIRMAN JACOBS: There was a point on that. We can
22 talk about it later -- let me bring it up now. I think, it's
23 in the provision on what JEA will charge is 80% of their retail
24 rate.

25 MS. DANIEL: Correct.

1 CHAIRMAN JACOBS: And I had a question to myself,
2 then, is that an automatic escalator? So, if JEA's retail
3 rates go up, does that contract provision kick in to also kick
4 up NUC's rates?

5 MS. DANIEL: No, Commissioner. You are setting
6 rates --

7 CHAIRMAN JACOBS: Okay.

8 MS. DANIEL: If you give Nocatee a certificate, you
9 are setting their rates. If they want to increase those rates,
10 they will have to come to this Commission and request a rate
11 increase.

12 CHAIRMAN JACOBS: All right. Those are all the
13 questions I had.

14 COMMISSIONER JABER: Commissioners, I can move Issue
15 24 with all of the clarifications that were made by
16 Commissioner Deason, Commissioner Baez, all of us.

17 COMMISSIONER PALECKI: Second.

18 CHAIRMAN JACOBS: Been moved and second. Further
19 discussion? All in favor? Aye.

20 COMMISSIONER DEASON: Aye.

21 COMMISSIONER JABER: Aye.

22 COMMISSIONER BAEZ: Aye.

23 COMMISSIONER PALECKI: Aye.

24 CHAIRMAN JACOBS: Opposed? Show it approved with
25 those modifications. Do you have clarity on what all those

1 are?

2 COMMISSIONER JABER: Patti, rather than repeat them,
3 do you understand the discussion?

4 MS. DANIEL: I have all of them, yes.

5 CHAIRMAN JACOBS: Okay, very well. Item 25.

6 COMMISSIONER JABER: On Item 25 on Page 176 in the
7 middle of the page it says, "NUC states that the local
8 governments have begun the process of amending their
9 comprehensive plans" and you cite to the brief. Is that
10 statement in the record? Did someone testify to that or was
11 that an argument in the brief?

12 And I have the same question for the next paragraph,
13 first sentence, "NUC states that NUC and DDI will suffer
14 financial harm if the Commission defers its decision." And
15 then the same question -- I'm giving you all these, Samantha,
16 at once because if they're not in the record, I don't think
17 they're critical to this issue anyway. The last sentence of
18 the last paragraph says, "NUC states that if the Commission
19 defers its decision the Nocatee development may be delayed.
20 Each of those sentences cite to the brief.

21 MS. CIBULA: The last two sentences that you refer to
22 were arguments that NUC made in its brief as to why this item
23 shouldn't be deferred. I believe that there is testimony in
24 the record that they are in the process of changing the
25 comprehensive plans.

1 COMMISSIONER JABER: Okay.

2 MR. REDEMANN: Yes, in Issue 1 we go into detail
3 about the comprehensive plans.

4 COMMISSIONER JABER: Okay. But with respect to your
5 recommendation, you're saying we shouldn't defer it, because
6 we're not bound by the local comprehensive plan, statute, and
7 there were two reasons, I thought.

8 MS. CIBULA: That there isn't a legal basis as to --
9 that would require us to defer this item.

10 COMMISSIONER JABER: I can move this issue, but would
11 you please go back and make sure that to the degree these
12 statements are not supported by testimony and that they're not
13 critical to this issue that they be taken out. I don't --
14 briefs are not in the record, right?

15 MS. CIBULA: That's correct.

16 COMMISSIONER PALECKI: I second the motion.

17 CHAIRMAN JACOBS: Further questions? Been moved and
18 second. All in favor? Aye.

19 COMMISSIONER DEASON: Aye.

20 COMMISSIONER JABER: Aye.

21 COMMISSIONER BAEZ: Aye.

22 COMMISSIONER PALECKI: Aye.

23 CHAIRMAN JACOBS: Opposed? Show it approved. Takes
24 us back, then, to Item -- I'm sorry, to Issue A.

25 COMMISSIONER JABER: Move Issue A.

1 COMMISSIONER DEASON: Second.

2 CHAIRMAN JACOBS: I think, I had one question. The
3 -- I think, you stated here that NUC -- yeah, on Page 14, the
4 last paragraph. Is this a significant ownership of the
5 facilities that cross county lines? It says some. It does not
6 say how much. NUC's ownership of the facilities that traverse
7 county lines; is that a significant ownership, is it a de
8 minimis ownership, what is that?

9 MS. CIBULA: Well, they would be owning -- JEA will
10 be owning some of the main lines that come into the utility as
11 the joint project. NUC will own a hydraulic share of those
12 lines.

13 CHAIRMAN JACOBS: Own what share?

14 MS. CIBULA: A hydraulic share of those lines.

15 CHAIRMAN JACOBS: I saw that term. I didn't
16 understand.

17 MS. CIBULA: The amount that's going to be used to
18 serve the Nocatee development will be owned by Nocatee.

19 CHAIRMAN JACOBS: Okay. So, and that includes those
20 facilities that traverse the county boundaries.

21 MS. CIBULA: Correct.

22 CHAIRMAN JACOBS: That's my only questions. Been
23 moved. I think, I had a second.

24 COMMISSIONER PALECKI: Second.

25 CHAIRMAN JACOBS: All in favor?

1 COMMISSIONER DEASON: Aye.

2 COMMISSIONER JABER: Aye.

3 COMMISSIONER BAEZ: Aye.

4 COMMISSIONER PALECKI: Aye.

5 CHAIRMAN JACOBS: Opposed? Show Issue A is approved.

6 Takes us to Issue B. Any questions?

7 COMMISSIONER JABER: Move Issue B.

8 COMMISSIONER DEASON: Second.

9 CHAIRMAN JACOBS: Been moved and second. All in
10 favor? Aye.

11 COMMISSIONER DEASON: Aye.

12 COMMISSIONER JABER: Aye.

13 COMMISSIONER BAEZ: Aye.

14 COMMISSIONER PALECKI: Aye.

15 CHAIRMAN JACOBS: Opposed? Show it approved.

16 And then, next was Issue 12.

17 COMMISSIONER JABER: Move Issue 12.

18 COMMISSIONER PALECKI: Second.

19 CHAIRMAN JACOBS: Okay; have a move and a second.

20 All in favor? Aye.

21 COMMISSIONER DEASON: Aye.

22 COMMISSIONER JABER: Aye.

23 COMMISSIONER BAEZ: Aye.

24 COMMISSIONER PALECKI: Aye.

25 CHAIRMAN JACOBS: Opposed? Show Issue 12 is

1 approved. And then, Staff, we'll go back to Issue 1.

2 Commissioners, is it your preference to go issue by issue?

3 COMMISSIONER JABER: Please.

4 CHAIRMAN JACOBS: All righty. Issue 1.

5 MR. REDEMANN: Commissioners, Issue 1 is intended to
6 determine the need for utility service for the proposed Nocatee
7 service area. Staff is recommending that, yes, there is a need
8 for water, wastewater, and reuse service for the Nocatee
9 development. Service will be required in the fourth quarter of
10 2002.

11 COMMISSIONER JABER: My question on this goes to Page
12 19. In the middle of the page you make the statement, "It
13 appears that final approval of the comprehensive plan
14 amendments, which will indicate a need for service, is highly
15 likely and will be forthcoming."

16 Our -- we can consider -- we should consider the
17 comprehensive plans; we're not bound by it. This makes it
18 sound like the need for service is tied to the comprehensive
19 plan amendment, so this confused me, and it sounded
20 speculative. You're not really tying need for service to the
21 comprehensive plan amendment, right? Can you clarify that for
22 me?

23 MS. DANIEL: If those comprehensive plan amendments
24 are not approved, then the DRI will not be able to go forward.
25 So, to some degree, there is a relationship between the need

1 for service and the need for those comprehensive plan
2 amendments.

3 COMMISSIONER JABER: Okay. So, then, should our
4 finding on this issue be contingent on that? Is this something
5 where we need to say, assuming all of the requirements are met
6 related to the comprehensive plan amendments there is a need
7 for service. I guess, I always -- the Commission's past
8 decisions, in my experiences, have been that we establish needs
9 for service based on a request for service, a developer's
10 agreement, and our orders have made it real clear that we will
11 consider comprehensive plan issues but are now bound by them.
12 And now I'm hearing Staff say, well, but if the amendments are
13 not successful, then there really isn't a need for service.

14 MS. DANIEL: In most instances we're not -- in a lot
15 of instances, we're not requiring comprehensive plan amendments
16 to establish a need for service. It is simply the
17 comprehensive plan as it exists at the time of the application
18 or the application is consistent with the comprehensive plan.

19 In this instance, this application is specifically
20 for a development of regional impact, a DRI, so to the degree
21 that that's the nature of the application, if those
22 comprehensive plan amendments fail, I believe, there would be a
23 problem.

24 Now, it's my understanding of the process that the
25 Department of Community Affairs goes through is that there is a

1 lot of give and take. And the reason for this, it is highly
2 likely and will be forthcoming language has to do with Witness
3 Gauthier's testimony as far as we're going through this
4 litigation process and I would expect that there would be some
5 resolution that would be satisfactory to all the parties
6 involved.

7 COMMISSIONER PALECKI: What happens if we find need
8 and the county does not agree to amend its comprehensive plan?
9 The project just doesn't move forward, correct?

10 MS. DANIEL: The county has already agreed to the
11 comprehensive plan amendments. The hold-up is that the
12 Department of Community Affairs, the secretary at DCA has
13 issued an order recommending approval of the comprehensive plan
14 amendments, but during their protest period they did receive an
15 objection, and they're in the process of litigating that now.

16 COMMISSIONER PALECKI: But if the approval is not
17 granted ultimately by the DCA, the project does not move
18 forward, but that doesn't really affect the fact that we found
19 the need. I mean, we moved forward and, you know, if the
20 project doesn't move forward, well, that's just the way the
21 chips fall, correct?

22 MS. DANIEL: That's the catch 22 in an original
23 certificate application, because the companies are required to
24 come to us to get an original certificate before they can get
25 their Department of Environmental Protection construction

1 permits and the Department of Community Affairs process is
2 going on simultaneously. We are not bound by those
3 comprehensive plans, and so we are basing our recommendation on
4 the utility's application, and we believe that it is likely
5 that there will be some resolution to those comprehensive plan
6 amendments.

7 COMMISSIONER JABER: See, that's the distinction I'm
8 trying to make, Patti, that our application process is
9 independent of their comprehensive plans. And I've always
10 taken the view that need is established by a demonstrated
11 showing of the utility that someone has requested service or
12 that there is a development proposed --

13 MS. DANIEL: Certainly that's a reasonable view.

14 COMMISSIONER JABER: Okay.

15 COMMISSIONER DEASON: But at the same time, the fact
16 that they -- getting a DRI is a very difficult undertaking.
17 And the fact that they have made all the necessary filings and
18 have gotten this far, to me, is evidence that they are
19 extremely serious about going forward with the development and
20 that they will -- based upon that, that there is a strong
21 likelihood that there will be need for service.

22 MS. DANIEL: That is exactly the rationale for this
23 statement in the recommendation. We've seen a serious
24 commitment. They have had -- Nocatee has had serious
25 negotiations to undertake in going through the Water Management

1 District and JEA and our process, and to have gotten as far as
2 they have with those comprehensive plan amendments is quite a
3 serious undertaking.

4 COMMISSIONER JABER: And that's a showing, though,
5 that Nocatee has made, not tied to what DCA is doing.

6 MS. DANIEL: That is correct, Commissioner.

7 COMMISSIONER JABER: Okay. Well, with that
8 understanding I can move Issue 1.

9 CHAIRMAN JACOBS: I have one brief question. It goes
10 to that point -- where is it -- on Page 17, the last paragraph.
11 And I want to be clear, it could be taken from this paragraph
12 that if the land use designation is not achieved that then
13 there is some restriction on whether or not it would be
14 appropriate to extend central water and wastewater facilities
15 to this area. Is that what this is saying?

16 MS. DANIEL: That's correct. The discussion we were
17 just having about the process that is happening at the
18 Department of Community Affairs.

19 CHAIRMAN JACOBS: Right, I understand.

20 MS. DANIEL: That is the process that will resolve
21 this issue.

22 CHAIRMAN JACOBS: No. My question is this: If for
23 some reason the protest succeeds and the land use designation
24 not achieved, is that a legal limitation or prohibition on them
25 being -- I shouldn't say should it be legal, legal is not

1 really the issue. Will the bank not finance the extension of
2 facilities to this area?

3 MS. DANIEL: It's not a matter of the bank not
4 financing, it is the matter that the current land designation
5 does not allow for the level of residential density that
6 Nocatee is proposing and they would not be able to construct.

7 CHAIRMAN JACOBS: Okay. So, then it is, for all
8 intents and purposes, a legal limitation on the ability to
9 construct facilities.

10 MS. DANIEL: That's correct, but it's my
11 understanding that, as I said, there is a high degree of
12 likelihood that those amendments will be resolved to one degree
13 or another.

14 CHAIRMAN JACOBS: Okay.

15 MS. DANIEL: Even if it meant that they had to go
16 back and make modifications to the DRI.

17 CHAIRMAN JACOBS: Very well. Any other questions?

18 COMMISSIONER PALECKI: I second the motion.

19 COMMISSIONER BAEZ: Before we take -- I just want to
20 get some comfort from Legal that we're not creating a
21 technicality here. If we're not put-- you know, not having
22 checked all the boxes before, I understand that we're not bound
23 by a comprehensive plan, but in the situation like this where
24 it seems to be that the need is dependent on these amendments,
25 you know, we don't have to consider what the amendments or the

1 value of the amendments, but if we -- if we find a need before
2 one is created what kind of legal position does that put the
3 Commission's decision in?

4 MS. CIBULA: Well, I agree with Commissioner Jaber
5 that our analysis of need for service is different than the
6 Department of Community Affairs, and we have an application
7 here at the Commission requesting service, and we base it on
8 that as whether there is a need for service.

9 And we did consider the comprehensive plan, looking
10 at this. And although the comprehensive plan hasn't changed
11 yet, we still think that there is a need for service. And even
12 though it hasn't changed, the Commission isn't bound by the
13 comprehensive plan not having been changed yet to make their
14 decision.

15 COMMISSIONER BAEZ: I'll tell you why I'm concerned.
16 I'm concerned about doing -- making a decision based on a high
17 likelihood. It's not that I don't agree that there's a need
18 for service, it's the basis for that service. And if what you
19 all are suggesting -- if what Staff is suggesting and what
20 we're adopting is a finding of a need for service based on an
21 independent showing, that's one thing. If we're finding a need
22 for service based on a high likelihood of amendments coming
23 through, then I think that we're perhaps being premature. And
24 if you are -- if the Staff is comfortable that there is an
25 independent showing of a need for service, I'm comfortable with

1 that. I -- and I don't know if I'm echoing Commissioner
2 Jaber's concerns.

3 COMMISSIONER JABER: You are. You are. We have
4 struggled over the last five years to make clear to DCA and the
5 companies and everyone else that we recognize we are supposed
6 to consider the comprehensive plan process, we are not bound by
7 it. There are two different levels of need, and DCA defines
8 need different from the way the PSC has. If you can clarify
9 that NUC has demonstrated a need and it's upon that that we're
10 making a determination of need, but at the same time we have
11 considered that there are comprehensive plan amendments out
12 there, I'm fine with that.

13 COMMISSIONER BAEZ: Right. As long as -- I guess,
14 and that's a question for what the order would ultimately say,
15 that it not focus on a high likelihood that these amendments
16 will create the need, but rather that there's some independent
17 basis for findings.

18 MS. MESSER: I may get kicked under the table by my
19 supervisor, but we saw that -- I think that this information is
20 in here to tell you that there is a compliment to our process.
21 Our process made its own independent determination, but we have
22 a complimentary process going on that is supporting that
23 decision.

24 COMMISSIONER PALECKI: We have an analogy here to the
25 electric industry also where we have a power pit plant siting

1 authority in this Commission and we go ahead and make a
2 determination of need, but we don't really know whether or not
3 the power plant siting board and the governor and the cabinet
4 are going to approve that power plant to be built based upon
5 the ecological issues and various other issues that are outside
6 of our jurisdiction.

7 So, when we're looking at this issue, the way I see
8 it is we make a determination of need based upon what evidence
9 we have on the record and that, you know, there may be issues
10 that the DCA considers with regard to a comprehensive plan,
11 which consider the ecology and other factors that are
12 completely outside of our jurisdiction.

13 And we're not really looking at the likelihood of DCA
14 approval as a contingency. We're looking at it more in terms
15 of this is an indication that the applicant is a serious
16 applicant and has taken steps to jump through all the hoops
17 necessary to make this a reality.

18 COMMISSIONER JABER: Sounds like you just need to
19 take that sentence out.

20 MS. MESSER: I was going to say thank you for that
21 eloquent rewrite.

22 COMMISSIONER JABER: And the part that's confusing is
23 "which will indicate a need for service," and that's not what
24 you're saying at all.

25 CHAIRMAN JACOBS: We've exercised this level of

1 discretion before us, Legal, where we have a certificate
2 application, and there are certain aspects of the development
3 that are pending. We've exercised discussion to go ahead and
4 grant that based on our determination of the application and --

5 MS. CIBULA: Yes, we have. I can't think of any
6 orders off the top of my head, but I remember being involved in
7 a couple of cases where that was the case.

8 CHAIRMAN JACOBS: Any other questions, Commissioners?
9 Motion?

10 COMMISSIONER JABER: Moved.

11 COMMISSIONER PALECKI: Second.

12 CHAIRMAN JACOBS: Moved and second. All in favor?
13 Aye.

14 COMMISSIONER DEASON: Aye.

15 COMMISSIONER JABER: Aye.

16 COMMISSIONER BAEZ: Aye.

17 COMMISSIONER PALECKI: Aye.

18 CHAIRMAN JACOBS: Opposed? Show Issue 1 is approved.
19 Issue 2.

20 MR. REDEMANN: Commissioners, Issue 2 is intended to
21 determine the utility's financial ability to provide service.
22 Staff is recommending that, yes, NUC and JEA have the financial
23 ability to serve the requested territory.

24 COMMISSIONER JABER: My only question on this is do
25 we really need to reach the level of making a finding that JEA

1 has the financial ability? The statute and the rules say the
2 applicant has to make a showing that it has the technical and
3 financial ability. JEA is not the applicant, but --

4 MS. DANIEL: I agree, Commissioner, certainly NUC is
5 self-sufficient in the financial ability.

6 CHAIRMAN JACOBS: It, in fact, is the execution of
7 the contract between NUC and JEA which renders NUC competent;
8 isn't that the case?

9 MS. DANIEL: Our finding on the financial ability
10 simply had to do with the funding that NUC is receiving.

11 CHAIRMAN JACOBS: I'm sorry. With regard to the
12 funding is the executing of the master agreement between NUC
13 and DDI; is that correct?

14 MS. DANIEL: I see, between DDI, yes, absolutely.

15 COMMISSIONER DEASON: Right, it has nothing to do
16 with JEA's financial ability.

17 MS. DANIEL: Correct.

18 COMMISSIONER DEASON: In other words, if for some
19 reason -- certainly don't think this would be the case -- but
20 if for some reason JEA could not go forward and uphold its end
21 of the contractual obligation, Nocatee, NUC, has the financial
22 ability, and we would look to them either to construct
23 facilities themselves or contract with another entity, they
24 would have the requirement to provide service, regardless of
25 whether JEA defaulted on the agreement or not, and we would

1 hold them accountable.

2 MS. DANIEL: If you'd like, we can amend this in the
3 final order to indicate that NUC has financial ability.

4 COMMISSIONER JABER: That would be the motion,
5 unless you have questions.

6 CHAIRMAN JACOBS: Do we know if the agreement has
7 been actually executed between NUC and DDI?

8 MR. REDEMANN: Yes, it's in HJ-2.

9 MS. DANIEL: Yes, Commissioner, it has been executed.

10 CHAIRMAN JACOBS: Thank you. Any other questions?

11 COMMISSIONER JABER: Motion to approve Staff on Issue
12 2 with the modification to delete references to JEA having the
13 financial ability.

14 COMMISSIONER PALECKI: Second.

15 CHAIRMAN JACOBS: Moved and second. All in favor?
16 Aye.

17 COMMISSIONER DEASON: Aye.

18 COMMISSIONER JABER: Aye.

19 COMMISSIONER BAEZ: Aye.

20 COMMISSIONER PALECKI: Aye.

21 CHAIRMAN JACOBS: Opposed? Show it's approved.
22 Issue 3.

23 MR. REDEMANN: Commissioners, Issue 3 is intended to
24 determine the utility's technical ability to serve the
25 requested territory. Recommendation is that NUC has a

1 technical ability to provide water, wastewater, and reuse
2 service to the requested territory through its agreement for
3 wholesale utilities operation and management and maintenance
4 with JEA.

5 CHAIRMAN JACOBS: Questions?

6 COMMISSIONER PALECKI: Move Staff.

7 CHAIRMAN JACOBS: I have a couple questions. On Page
8 25, consistent with discussions we've had thus far about the
9 level of control of JEA, that was somewhat of a confusing
10 analysis here. In the first full paragraph on Page 25, the
11 first sentence says essentially that JEA does not have
12 responsibility for planning or construction of the on-site
13 utilities system. In the third paragraph beginning JEA witness
14 Kelly, at the end of that paragraph, the last sentence says,
15 "Witness Kelly further testified that JEA will make sure the
16 facilities necessary to meet the obligation of this agreement
17 are constructive." Do you see the apparent -- this is Page 25.

18 MR. REDEMANN: Right. I think, what Mr. Miller was
19 saying he's going to put in internal lines for water,
20 wastewater, and reuse and Mr. Kelly is going make sure that the
21 plant facilities and the point of interconnect will be there
22 for NUC to connect that to the internal lines of Nocatee
23 Utilities.

24 CHAIRMAN JACOBS: Okay. So, that's from JEA's side
25 more so than any hand-holding or handshaking, I should say,

1 with NUC's personnel.

2 MR. REDEMANN: Right. They're operated as two
3 separate entities and NUC is going to put in, like, the
4 internal lines and JEA is just going to make sure the capacity
5 is going to be available for NUC.

6 CHAIRMAN JACOBS: Okay. That then takes me to my
7 next question. One of the challenges raised by Intercoastal
8 was that the personnel that NUC actually would have are --
9 don't have very much technical capability. And the response of
10 NUC was that most of this work is going to be outsourced to a
11 private engineering firm. And we're clear that that
12 engineering firm, then, is going to to be in control of this
13 handshaking here that has to take place between Mr. Kelly and
14 Mr. Miller and NUC, that contract with that outsource firm is
15 going to be in charge of this handshaking that needs to occur.

16 MR. REDEMANN: Right, the firm of England, Tims &
17 Miller, they're quite experienced in designing water and
18 wastewater and reuse facilities.

19 CHAIRMAN JACOBS: Right.

20 MR. REDEMANN: So, they're working with the developer
21 to decide and Nocatee Utilities to determine what will actually
22 be needed. Although, JEA has specific design requirements, NUC
23 is going to design a unit for their specifications on, you
24 know, where water and wastewater will be needed and, you know,
25 design it with good engineering design standards.

1 CHAIRMAN JACOBS: Very well. One other question.
2 It's actually on Page 24, and here in the last paragraph it
3 gives the terms of the bulk contract between NUC and JEA, and
4 my thought is, is that -- do we have any benchmark out there as
5 to what favorable terms in a bulk contract like this and how
6 does this one compare?

7 MR. REDEMANN: Well, I believe, typically, that 80%
8 that NUC is paying JEA seems like quite a good deal since the
9 other customers are paying 100% for almost a similar service.
10 NUC is getting a pretty good deal with the contract.

11 CHAIRMAN JACOBS: And then, that 80% is the total
12 price of bulk service, then they will still pay over and above
13 that, the O&M service piece -- no. I mean --

14 MS. DANIEL: No, Commissioner. That 80% includes
15 both the provision of bulk service and all of operational
16 maintenance expenses.

17 MR. REDEMANN: For JEA.

18 CHAIRMAN JACOBS: And if for some reason they have to
19 get out of the contract for O&M, it goes back to a wholesale
20 price for bulk service.

21 MS. CIBULA: I believe that's what the contract says.

22 CHAIRMAN JACOBS: I think that -- no, you answered
23 that one. That's all the questions I have.

24 COMMISSIONER JABER: Ms. Daniel, this is where I was
25 going to ask all of the consumer service questions. We

1 addressed that early on, so I don't have any questions on this
2 issue.

3 CHAIRMAN JACOBS: There was a question related to
4 that. Is there -- in these kinds of agreements, and we saw and
5 heard testimony in this docket that both JEA has experience in
6 these kinds of contracting arrangements and even the other
7 applicant, IU, has experience in these kinds of contracting
8 arrangements. It occurs to me, then, that there would have
9 been some thought given to the whole line of questioning from
10 Commissioner Jaber earlier as to how do you minimize the
11 confusion to consumers about who's doing what.

12 I would look for us -- if there is such a background
13 as that, I'd like for us to kind of do some research on that.
14 And if not, I think, the size of this -- the ultimate size of
15 this service territory would seem to warrant special effort
16 being made to do that.

17 MS. DANIEL: Commissioner, it's interesting that you
18 bring up Intercoastal, because as you're aware there was a time
19 when the Commission had jurisdiction over Intercoastal, and
20 also Intercoastal uses JUM in much the same way that Nocatee
21 intends to use JEA, to provide virtually all of the provision
22 of service, other than JEA providing the actual bulk service
23 itself.

24 Because we've had that experience with Intercoastal
25 and as you've mentioned we have similar arrangements, I assume,

1 in the other industries, this does not appear to be a point --
2 I was particularly familiar with Intercoastal during the time
3 that we had jurisdiction of them before, and I was never aware
4 of any point of customer confusion regarding the provision of
5 service.

6 COMMISSIONER JABER: See, but there was testimony
7 about that --

8 MS. DANIEL: That's correct.

9 COMMISSIONER JABER: -- and the distinction I see
10 between JUM as opposed to JEA is JEA is a stand-alone utility
11 in that area, very well-known and --

12 MS. DANIEL: Not affiliated.

13 COMMISSIONER JABER: -- and has its own employees;
14 that's all in the record. And JUM, in the record, indicates
15 that those are pretty much employees dedicated to serve
16 Intercoastal.

17 MS. DANIEL: Right.

18 COMMISSIONER JABER: And, you know, in terms of
19 billing, apparently it's real clear that it's Intercoastal, and
20 we're just striving for that same sort of clarity.

21 MS. DANIEL: Right.

22 COMMISSIONER JABER: And not only does this happen in
23 the other industries, but even in water there are counties that
24 do billing for water companies, sewer-only companies come to my
25 mind that actually treat and bill for sewer-only companies, but

1 the bill indicates who the utility is and the application for
2 service is clear, and that's really the only thing I'm trying
3 to achieve here.

4 CHAIRMAN JACOBS: And, I think -- what I'm adding to
5 that, I think we want to have some clear identifiable standards
6 by which the customer relations function would occur and the
7 standard would, in my mind, begin to minimize any confusion
8 consumers would have about, number one, getting service, about
9 inquiring about service, and maintaining service. And one of
10 our best practices are out there, whether they come from JUM or
11 whoever else they come from, whatever best practices are out
12 there, I'd like to have some thought given to them applying to
13 this arrangement. Any other questions, Commissioners? Have a
14 motion?

15 COMMISSIONER PALECKI: I can move Staff on this
16 issue.

17 COMMISSIONER JABER: Second.

18 CHAIRMAN JACOBS: Moved and second. All in favor?
19 Aye.

20 COMMISSIONER DEASON: Aye.

21 COMMISSIONER JABER: Aye.

22 COMMISSIONER BAEZ: Aye.

23 COMMISSIONER PALECKI: Aye.

24 CHAIRMAN JACOBS: Opposed? Show it is approved.

25 Issue 4.

1 MR. REDEMANN: Commissioners, Issue 4 is intended to
2 determine whether the utility has a plant capacity to serve the
3 requested territory. Staff recommends that NUC has the
4 capacity to provide water, wastewater, and reuse service to the
5 proposed Nocatee development through its bulk water and
6 wastewater service agreement with JEA. The utility should file
7 an executed and recorded copy of the deed for land in which the
8 reuse, storage, and pumping facilities will be located within
9 30 days of the issue date of the order granting the
10 certificates as required by Rule 2530.0331-J, Florida
11 Administrative Code.

12 COMMISSIONER JABER: I have questions on Issue 4, and
13 just a favor to ask of Staff. Ms. Silvers' testimony, I'm
14 always real appreciative, of course, and encourage sister
15 agencies to testify to fill the record, but my favor of you all
16 is to touch base with those witnesses right before the hearing
17 and prepare them for the hearing so that there are no surprises
18 at the hearing.

19 I found the testimony from Witness Silvers about the
20 consumptive use permit to be confusing at first, and it
21 appeared to be a modification at the hearing that, I think,
22 could have been avoided. Saying all of that, I do want to get
23 clear in my mind her testimony. Page 41, if I understand her
24 testimony correctly, she takes the view that JEA, in their
25 request for a consumptive use permit, asked for whatever the

1 MGD amount was, sufficient to cover Nocatee. That was the
2 request. She took the view that the Water Management District,
3 however, only approved the consumptive use permit for three
4 million gallons per day, right?

5 MS. CIBULA: Well, for only the area that JEA is
6 currently serving in St. Johns County.

7 COMMISSIONER JABER: So, her testimony was the
8 consumptive use permit approved by the Water Management
9 District for JEA did not include the Nocatee development.

10 MS. CIBULA: Correct.

11 COMMISSIONER JABER: Now, in your recommendation,
12 though, you go through the application, you cite to the
13 application, and then you cite to the Water Management District
14 Staff's recommendation on this issue. Do we have anything in
15 the record on the Water Management District's final decision?
16 Is there an order that comes out of the Water Management
17 District? Is there a letter they send back that tells what the
18 final decision is?

19 MS. MESSER: The -- my understanding is that the
20 consumptive use permit is the final decision, that the Staff
21 technical report was the preliminary information that was
22 provided by the Staff in consideration of consumptive use
23 permit, and the permit is the final document.

24 COMMISSIONER JABER: Okay. And the consumptive use
25 permit, does it indicate how much JEA was approved for and

1 whether it included the Nocatee development?

2 MR. REDEMANN: It just includes a number for the
3 north grid and the south grid. It doesn't even break it down
4 by county.

5 COMMISSIONER JABER: But you've analyzed it and
6 you've taken the view that those flows should be sufficient to
7 include the Nocatee development?

8 MR. REDEMANN: Yes, they have sufficient capac--

9 COMMISSIONER JABER: That's the analysis that you
10 needed.

11 MS. MESSER: Exactly.

12 COMMISSIONER JABER: Now, that's inconsistent with
13 the testimony we have from Witness Silvers.

14 MS. MESSER: That's right.

15 COMMISSIONER JABER: And she's the Water Management
16 District lady. So, how much weight should I give to that?

17 MS. CIBULA: Well, I think, her testimony was that
18 when they were issuing the permit they were only looking at the
19 area in St. Johns County that JEA was currently serving. I
20 don't think she said that Nocatee or JEA couldn't come in and
21 get their consumptive use permit modified to include the
22 Nocatee area and that they wouldn't have sufficient flows to
23 provide that service to the Nocatee area. I think, there was
24 just confusion about whether they had actually already had the
25 consumptive use permit or whether they would need to get a

1 modification to the consumptive use permit.

2 COMMISSIONER JABER: Okay. And where there's
3 conflicting testimony we should be able to impose our own
4 expertise to reach a reasonable conclusion?

5 MS. CIBULA: Correct.

6 COMMISSIONER JABER: And it's reasonable to look at
7 the face of the consumptive use permit and recognize that there
8 are enough flows to cover the Nocatee development?

9 MR. REDEMANN: Yes.

10 CHAIRMAN JACOBS: Any other questions? I have some
11 questions on that. The confusion had something to do with the
12 initial application and then a supplemental application; is
13 that correct? Let me ask this question: Was there a
14 supplemental application?

15 MR. REDEMANN: Yes. JEA supplied a supplemental
16 application to get another area in their consumptive use
17 permit.

18 CHAIRMAN JACOBS: Okay. So, the original application
19 is what we're focused on or are we focused on the total of the
20 two, the original plus the supplemental?

21 MR. REDEMANN: We've been just looking at the
22 consumptive use permit. We haven't gotten a copy of whatever
23 the modification was.

24 CHAIRMAN JACOBS: Okay, because it was my
25 understanding that 3.3 was applied for in the supplemental.

1 MR. REDEMANN: Right, that's what the JEA witness
2 said --

3 CHAIRMAN JACOBS: Right.

4 MR. REDEMANN: -- that we couldn't find a breakdown
5 of the 3.3. He said that JEA requested 3.3 for the St. Johns
6 County area.

7 CHAIRMAN JACOBS: Okay. So to be clear, regardless
8 of whether or not it was applied for in the supplemental or
9 original, what you're saying is that the CUP that was actually
10 issued encompassed the 3.3; correct?

11 MR. REDEMANN: Well, it includes a total amount. It
12 doesn't actually break it down between the counties.

13 CHAIRMAN JACOBS: Okay. Because one of the confusing
14 points from Ms. Silvers' testimony is that the original
15 application is the one that only anticipated the narrow area in
16 St. Johns County, and the 3.3 was confusing because it didn't
17 specify. And so, what I'm hearing us say now is that we're not
18 -- we don't really need to get bogged down in how these numbers
19 were trying to be allocated to specific areas, but what we
20 determined is that there was sufficient application for
21 additional capacity to the CUP, and the agency, the appropriate
22 agency, has now rendered a decision which grants that
23 additional capacity to JEA CUP; is that a fair statement?

24 MR. REDEMANN: Right. They've got -- with the
25 consumptive use permit they allocate on, like, a yearly basis

1 what they're proposing to serve, and there's ample capacity in
2 their total consumptive use permit for the Nocatee Utility
3 area.

4 CHAIRMAN JACOBS: For the one that they've just been
5 issued?

6 MR. REDEMANN: Correct.

7 CHAIRMAN JACOBS: The one amended or whatever, the
8 one that was issued. Okay. Now, local services first. We
9 determined -- well, the Water Management District determined
10 that they were in compliance with that; is that correct?

11 MR. REDEMANN: Right. The consumptive use permit
12 addresses the local sources first.

13 CHAIRMAN JACOBS: Okay. And they say that they're in
14 compliance with that. Okay. And -- I think that was -- oh, I
15 know the other question I had. The consumptive use permit was
16 very concerned with the grids being interconnected. And it's
17 my understanding that that technically has to do with the
18 quality or the level of service ultimately that can be provided
19 from JEA's wells to Nocatee. And then, finally, it's my
20 understanding that the two grids are not interconnected
21 presently.

22 MR. REDEMANN: Right, the two grids are not
23 interconnected, but we've got testimony that they're going to
24 -- they've -- they're in the design stage of interconnecting
25 the two grids, they're going to have a subaqueous pipe under

1 the St. Johns River to connect the two, and JEA or I don't know
2 the exact timing, but they should have it within a few years,
3 have the two grids interconnected.

4 CHAIRMAN JACOBS: Okay. And we don't need to -- we
5 can review -- it does not put any risk on the -- the timing of
6 that won't put any risk on the consumptive use permit? In
7 other words, they have the appropriate latitude under the
8 consumptive use permit to develop that and complete it?

9 MR. REDEMANN: Yes, I believe so.

10 CHAIRMAN JACOBS: Okay. Let's confirm that just to
11 be sure. I think, that's -- those are all the questions that I
12 have. Any other questions? Motion?

13 COMMISSIONER JABER: Move 4.

14 COMMISSIONER PALECKI: Second.

15 CHAIRMAN JACOBS: Been moved and second. All in
16 favor? Aye.

17 COMMISSIONER DEASON: Aye.

18 COMMISSIONER JABER: Aye.

19 COMMISSIONER BAEZ: Aye.

20 COMMISSIONER PALECKI: Aye.

21 CHAIRMAN JACOBS: Opposed? Show Issue 4 is approved.
22 Issue 5.

23 MS. JOHNSON: Commissioners, Item number 5, addresses
24 the appropriate return on equity for Nocatee. Staff has
25 recommended Nocatee's return on equity should be based on a

1 leverage graph formula contained in order number
2 PSC-00-1162-PAA-WS issued June 26, 2000, in docket number
3 000006-WS. Using the leverage graph formula, the appropriate
4 return on equity for Nocatee is 9.62.

5 CHAIRMAN JACOBS: You choose to reject the position
6 that the latest leverage graph should be used here. Is that
7 primarily because it's being challenged?

8 MS. JOHNSON: Yes; therefore, the most current one in
9 effect would be the one I mentioned in the rec, because it was
10 objected to and doesn't go to hearing until November the 5th, I
11 believe -- to Agenda, I'm sorry.

12 MS. CIBULA: Yeah, the most current leverage graph
13 formula is that order, PSC-001162.

14 CHAIRMAN JACOBS: Well, so what are we doing outside
15 of this case? We're simply continuing to implement the prior
16 leverage graph docket, then? Okay. Well, if that's
17 consistent, then I assume that would be appropriate. Any other
18 questions?

19 COMMISSIONER JABER: Move it.

20 CHAIRMAN JACOBS: Moved and second. All in favor?
21 Aye.

22 COMMISSIONER DEASON: Aye.

23 COMMISSIONER JABER: Aye.

24 COMMISSIONER BAEZ: Aye.

25 COMMISSIONER PALECKI: Aye.

1 CHAIRMAN JACOBS: Opposed? Show it approved. Why
2 don't we take a brief recess. We'll come back in 15 minutes.

3 (Recess taken.)

4 CHAIRMAN JACOBS: We'll go back on the record. I
5 believe, we were at Item 6.

6 MS. JOHNSON: Commissioners, Item number 6 addresses
7 the appropriate water, wastewater, and reuse rates and charges
8 for Nocatee. Staff recommends that if Nocatee is granted the
9 original water and wastewater certificates, the rates and
10 charges, as detailed in the Staff analysis, should be approved.

11 The utility should be required to file tariffs which
12 reflect the recommended rates and charges. Nocatee should be
13 required to continue to charge these rates and charges until
14 authorized to change by the Commission. The tariff should be
15 effective for services rendered or connections made on or after
16 the stamped approval date of the tariff sheets pursuant to Rule
17 25-30.475 Florida Administrative Code.

18 CHAIRMAN JACOBS: Questions?

19 COMMISSIONER DEASON: I have no questions. I can
20 move Staff.

21 CHAIRMAN JACOBS: I have a couple of questions. On
22 Page 58 of the recommendation -- actually, beginning on Page 57
23 and the discussion on cost of capital, my concern goes to the
24 cost of debt. We are -- we're going on with a 10% cost of
25 debt, which contrasts with a, I believe, slightly lower 9.77

1 cost of equity, right?

2 MS. DANIEL: Yes, sir.

3 CHAIRMAN JACOBS: And I understand that generally the
4 cost of equity is generally lower than equity -- I mean, the
5 cost of debt is generally lower than equity; is that correct?

6 MS. DANIEL: In some cases it is, Commissioners, and
7 in others it is not. I've done a little bit of research on
8 some recent Commission orders in rate cases, and in three of
9 four of the orders that I reviewed the cost of debt was, in
10 fact, higher than the cost of equity.

11 CHAIRMAN JACOBS: Is that right?

12 MS. DANIEL: Yes, sir.

13 CHAIRMAN JACOBS: It strikes me, particularly, in
14 this case -- and what I mean by that, in this case, is that I
15 think it's been pretty much stated in the testimony that -- in
16 fact, in this item on Page 55 on this issue, rather, on Page 55
17 that the lender to NUC will primarily be its parent; is that
18 correct?

19 MS. DANIEL: That's correct.

20 CHAIRMAN JACOBS: Okay. And we also state on Page
21 61, what the parent's cost of debt -- average cost of debt is.
22 And this is going to be a fairly substantial development,
23 fairly substantial size and scope. The rationale that we say
24 here that would justify this is that, historically, water
25 companies can experience some challenges in going out and

1 getting debt at reasonable rates. And it occurs to me that
2 that won't be an issue with this company.

3 MS. DANIEL: If they were to try to receive funding
4 outside the parent, it potentially could.

5 CHAIRMAN JACOBS: Understood. But arguably, even if
6 they didn't have the parent's guarantee, and they tried to go
7 to the private market, given the scope and size of this
8 development, they'd probably get a more favor than perhaps
9 other developments or applications.

10 MS. DANIEL: Perhaps, sir.

11 CHAIRMAN JACOBS: So, it strikes me, then, that there
12 is some latitude here for -- and, quite frankly, I'm sure that
13 that is fair -- is a fair statement to look at what the company
14 has asked for. But I would want to balance that request
15 against the interest of consumers, of the ratepayers of this
16 company. And my thought is how we look at this occurrence when
17 the parent is, essentially, a strong guarantor of a company,
18 whether it be a new company or not.

19 MS. DANIEL: Yes, sir. Let me see if I can answer
20 that question for you. Certainly, that is a good point. The
21 parent's cost of debt is substantially less than what we're
22 recommending for the utility's cost of debt. My response is
23 very much a big-picture response, and if you will allow me, in
24 an original certificate case, had this not been protested, we
25 would have had 90 days to come to you with a recommendation on

1 the certificate portion of the application.

2 In original certificate applications, because the
3 utility and, particularly in this instance, has not broken
4 ground, everything in the application is projected data. The
5 capital costs are projected, the O&M expenses are projected,
6 and certainly the capital cost is projected.

7 So, in original certificate applications, we look for
8 benchmarks, for sanity checks for all of those aspects of the
9 application. And in this instance, when I saw a 10% proposed
10 cost of debt, my experience in the water and wastewater
11 industry has been that 10% is a reasonable cost of debt.

12 As I said, I did some research and looked at some
13 rate case orders. In the four orders that I pulled up that had
14 been issued in the last year, the cost of debt in each and
15 every one of those was in the 10% range. So, my answer to you
16 is not specific to balancing the 586 to the 10% as much as it
17 is we looked for sanity checks, not only for the cost of debt,
18 but for all aspects of this application, and the end result to
19 us did not appear unreasonable.

20 COMMISSIONER DEASON: Let me say something at this
21 point. I agree with Staff. What we're doing here is we're
22 using estimates to try to come up with initial rates, and we
23 need to be as accurate as possible, but at the same time they
24 are estimates. We don't want the initial rates to be
25 unrealistically high, but neither do we want them to be

1 unrealistically low and give consumers false expectations as to
2 what their rates are going to be. We need to try to reach that
3 balance. 10% did not strike me as being out of that realm of
4 reasonableness, but at the same time, because we approve these
5 as initial rates does not mean that we have to continue to
6 approve 10%.

7 If we get into a rate proceeding for this company,
8 they have the burden to demonstrate that 10% is a reasonable
9 cost of debt or something else. And we can further explore the
10 reasonableness of that and maybe be a little bit more
11 aggressive than we are at this point, so I'm comfortable with
12 setting initial rates. This probably gives the correct initial
13 price signal to customers, but it certainly doesn't tie our
14 hands in any way in the future. And I would also note that we
15 are making apparent debt adjustment, which substantially
16 reduces income tax expense, which is for the customer's
17 benefit.

18 CHAIRMAN JACOBS: I saw that. And, in fact, the
19 basis of the adjustments were in light of the parent's cost of
20 debt.

21 MS. DANIEL: That's correct, Commissioner.

22 CHAIRMAN JACOBS: It does not seem grossly out of
23 line to look at it. It would cause me concern if we say this.
24 In terms of the precedential value of this, I had a question of
25 going back to the cases that you looked at, were those cases

1 across all classes of systems, were they Class Cs,
2 predominantly, or were they across all classes of systems?

3 MS. DANIEL: I'd have to go back and review that,
4 Commissioner, I'm not entirely certain.

5 CHAIRMAN JACOBS: Okay. In my understanding,
6 historically, we have used some benchmarks on this; have we
7 not?

8 MS. DANIEL: In an original certificate application
9 we, basically, have nothing but benchmarks to look at.

10 CHAIRMAN JACOBS: Okay.

11 MS. DANIEL: We have no historical information upon
12 which to base a determination.

13 CHAIRMAN JACOBS: And it's my understanding that that
14 benchmark would have been, like, a prime plus one or two
15 percent?

16 MS. DANIEL: Right. Prime plus two, as of the date
17 of the hearing, would have been very close to 10%.

18 CHAIRMAN JACOBS: Mm-hmm. Well, I -- when I saw that
19 difference, it just struck me. I would not want to use any --
20 the 10% as a benchmark. If indeed, we've used prime plus 1% or
21 2% and that would have yielded something similar to what you
22 found on the whole.

23 MS. DANIEL: 9.5%, as of the date of the hearing.

24 CHAIRMAN JACOBS: Then, we can use discretion since
25 there was nothing to counter the 10% in the record, but I'm

1 uncomfortable, and I'll tell you, to be frank and honest with
2 you, I'm uncomfortable, particularly in an instance where
3 there's such a guarantee from a parent that we would give this
4 system, and the system is not going to be a small struggling
5 system, it's going to be of an interesting size.

6 COMMISSIONER JABER: Won't those sort of concerns --
7 Mr. Chairman, I'm sorry I interrupted, but won't those kinds of
8 concerns be addressed also in the annual report when Staff
9 looks at the --

10 CHAIRMAN JACOBS: That was going to be my next point.
11 We would have the opportunity in subsequent reports to
12 evaluate, and if need be as indicated by Commissioner Deason,
13 if it seems apparent to review, if further review is warranted,
14 then we can take a look at it at that time, but I think I would
15 also want to be clear in order to limit the scope of this
16 particular determination to the facts in this case.

17 MS. DANIEL: Yes, sir.

18 CHAIRMAN JACOBS: Okay.

19 COMMISSIONER BAEZ: Second.

20 CHAIRMAN JACOBS: A motion and a second. All in
21 favor? Aye.

22 COMMISSIONER DEASON: Aye.

23 COMMISSIONER JABER: Aye.

24 COMMISSIONER BAEZ: Aye.

25 COMMISSIONER PALECKI: Aye.

1 MS. JOHNSON: Commissioner, Item number 7 addresses
2 the utility's request for service availability charges. Staff
3 is recommending that the service availability charge and policy
4 set forth within the Staff analysis are appropriate and should
5 be approved. Nocatee and JEA should be put on notice that if
6 JEA's plant capacity charge change --

7 CHAIRMAN JACOBS: I think, we may have a motion for
8 you. Just a second. Any questions?

9 COMMISSIONER JABER: If the Commissioners don't have
10 questions on 7 and 7-A, I can move both of those.

11 COMMISSIONER PALECKI: Second.

12 CHAIRMAN JACOBS: A motion and a second. Been moved
13 and second. All in favor? Aye.

14 COMMISSIONER DEASON: Aye.

15 COMMISSIONER JABER: Aye.

16 COMMISSIONER BAEZ: Aye.

17 COMMISSIONER PALECKI: Aye.

18 CHAIRMAN JACOBS: All opposed? Show Issue 7 and 7-A
19 are approved. Issue 8.

20 COMMISSIONER JABER: Move Issue 8.

21 COMMISSIONER DEASON: Mr. Chairman, I have a question
22 on Issue 8. In reading the analysis, and it was a very
23 thorough analysis by the way, I appreciate that, I had a little
24 bit of confusion as to what exactly Staff is recommending. Are
25 you recommending that we should -- we should ignore land owners

1 service preference as a matter of policy, not only for this
2 case but for all cases? Or are you just saying that based upon
3 the evidence in this record that it's really not necessary to
4 give it any particular weight?

5 MS. CIBULA: That based on the evidence in this
6 record that it's not necessary to give it any particular
7 weight.

8 COMMISSIONER DEASON: Okay. That doesn't cause me
9 any problem, if that's what we're doing. I do not want to make
10 a decision in this case that could be interpreted that we're
11 saying that not only in this case are we not giving it any
12 weight, but as a matter of policy we're going to ignore land
13 owners preference, and I do not want to be in that position, so
14 that is not your recommendation.

15 MS. CIBULA: That's not our recommendation.

16 COMMISSIONER DEASON: Okay. It's just not necessary
17 for it to come into play in this particular case.

18 MS. CIBULA: Correct.

19 COMMISSIONER DEASON: Okay. With that understanding,
20 I can move Staff's recommendation.

21 COMMISSIONER JABER: Second.

22 CHAIRMAN JACOBS: I'm sorry, one brief question on
23 that as well. We -- actually, that's all right, never mind.
24 Moved and second. All in favor? Aye.

25 COMMISSIONER DEASON: Aye.

1 COMMISSIONER JABER: Aye.

2 COMMISSIONER BAEZ: Aye.

3 COMMISSIONER PALECKI: Aye.

4 CHAIRMAN JACOBS: Opposed? Show it approved. Issue
5 9.

6 MS. CIBULA: Staff would suggest that the Commission
7 may consider Issue 21 along with Issue 9 as the issues are
8 almost identical.

9 CHAIRMAN JACOBS: Commissioners, do you have a
10 preference?

11 COMMISSIONER PALECKI: I can move Staff on both
12 issues, if there are no questions.

13 COMMISSIONER JABER: I can second that.

14 CHAIRMAN JACOBS: No other questions? Moved and
15 second we approve Issues 9 and 21. All in favor? Aye.

16 COMMISSIONER DEASON: Aye.

17 COMMISSIONER JABER: Aye.

18 COMMISSIONER BAEZ: Aye.

19 COMMISSIONER PALECKI: Aye.

20 CHAIRMAN JACOBS: Opposed? Show Issues 9 and 21 are
21 approved. Issue 10.

22 COMMISSIONER JABER: Move 10.

23 COMMISSIONER PALECKI: Second.

24 CHAIRMAN JACOBS: One quick moment.

25 COMMISSIONER BAEZ: Mr. Chairman?

1 CHAIRMAN JACOBS: Yes.

2 COMMISSIONER BAEZ: I had more of a general question.
3 There's some discussion or there seemed to be some analysis as
4 to whether, because this was a phased-in development that there
5 seemed to be some question as to whether a Class C
6 classification applied in the earlier years, not with respect
7 to this particular utility, I think, they adequately address
8 that, but in other cases is it my understanding that phased-in
9 developments do have this -- that this is an issue with any
10 development that's phased in, depending on the scope --
11 depending on the size of the development? I'm sorry --

12 MS. DANIEL: Commissioners, if I may, the Class C
13 determination is based on the revenue of the utility and we
14 look at, I believe, it's three average years of revenue. And
15 the reason we're showing the various years for this utility is
16 in the early years there's, of course, going to be very few
17 customers. It's not so much the phasing in as it is simply the
18 growth of the utility, and it will be three to four years into
19 the development of the utility before they would have
20 sufficient revenues, I believe, to be considered greater than a
21 Class C.

22 COMMISSIONER BAEZ: Okay, that takes care of my
23 question. I guess, I was concerned as to whether in any case,
24 particular in any question, because the development might be a
25 phased-in development that there may be questions as to

1 classifications in years leading up to the end of the
2 development --

3 MS. DANIEL: It's based on the revenues in a given
4 year.

5 COMMISSIONER BAEZ: It's based on an average? Thank
6 you.

7 CHAIRMAN JACOBS: Any other questions? Is there a
8 motion?

9 COMMISSIONER JABER: I lost my place. What issue was
10 that, Commissioner Baez?

11 COMMISSIONER BAEZ: 10.

12 CHAIRMAN JACOBS: 10, I'm sorry.

13 MS. DANIEL: Commissioner, Issue 11 is the -- have
14 you already voted on Issue 10? I'm sorry.

15 COMMISSIONER PALECKI: Move Staff on 10.

16 COMMISSIONER JABER: Second.

17 CHAIRMAN JACOBS: Moved and second. All in favor?
18 Aye.

19 COMMISSIONER DEASON: Aye.

20 COMMISSIONER JABER: Aye.

21 COMMISSIONER BAEZ: Aye.

22 COMMISSIONER PALECKI: Aye.

23 CHAIRMAN JACOBS: Opposed? Issue 10 is approved.

24 COMMISSIONER JABER: On 11, Ms. Daniel, our vote on
25 11 does not moot out the rest of -- we go forward.

1 MS. DANIEL: I was going to ask you if perhaps you
2 wanted to discuss the following issues and come back to 11.

3 COMMISSIONER JABER: I think, I'd like to do that,
4 make 11 sort of a fallout.

5 MS. DANIEL: Okay, so we might go on to Issue 13.

6 MR. RIEGER: Commissioners, Issue 13 deals with the
7 need for service in the territory proposed by Intercoastal's
8 application. Staff recommends that there is a need for service
9 in Intercoastal's existing territory --

10 CHAIRMAN JACOBS: We have a motion. Is there a
11 second?

12 COMMISSIONER PALECKI: Second.

13 COMMISSIONER JABER: I can actually move Issues 13,
14 14 and 15, Commissioners, if you don't have any questions.

15 COMMISSIONER PALECKI: I can second those motions.

16 CHAIRMAN JACOBS: Questions? Have a motion and a
17 second on 13, 14 and 15. All in favor? Aye.

18 COMMISSIONER DEASON: Aye.

19 COMMISSIONER JABER: Aye.

20 COMMISSIONER BAEZ: Aye.

21 COMMISSIONER PALECKI: Aye.

22 CHAIRMAN JACOBS: Opposed? Show those issues are
23 approved. Issue 16.

24 MR. RIEGER: Commissioners, Issue 16 deals with
25 Intercoastal having the adequate plant capacity to serve the

1 requested territory. Staff recommends that Intercoastal does
2 not currently have the sufficient water, wastewater, or reuse
3 capacity to serve the requested territory.

4 COMMISSIONER JABER: I had a question on this issue,
5 Page 119. Again, the Water Management District, second
6 paragraph, discusses that -- I think, throughout her testimony
7 she says we haven't really formed an opinion with respect to
8 the on-site water wells, because there hasn't been an
9 application for that.

10 MR. RIEGER: Yes, that is correct.

11 COMMISSIONER JABER: And she says, however, there was
12 no application for such a permit filed with the Water
13 Management District, therefore, she couldn't come to a
14 conclusion. We are not holding against Intercoastal the fact
15 that they haven't made application to the Water Management
16 District, right? Because the law requires them to come here
17 first anyway.

18 MR. RIEGER: We're not holding that against them, no.

19 COMMISSIONER JABER: And that is the process, they
20 come and get a certificate first.

21 MR. RIEGER: Right.

22 COMMISSIONER JABER: And then they go to DEP and the
23 Water Management District.

24 MR. RIEGER: I believe that's correct. In this case
25 there is so much environmental concerns, the process or even

1 the filing of such an application has not been made to cause us
2 concern, and we're just not sure and we didn't get any positive
3 reaction from the -- not only the Water Management District or
4 the DEP, as far as in reference to those concerns.

5 COMMISSIONER JABER: Okay. My concern relates to
6 what is allowed in the law. It's one thing to say, based on
7 the record, Intercoastal has not demonstrated itself that it
8 has the plant capacity. It's another thing to say because they
9 haven't gotten the permits, they haven't demonstrated plant
10 capacity, because in law they're not required to get the
11 permits first. In fact, the opposite is true. In law, they're
12 required to come here, so could you walk me through that? I
13 want to make sure that if we reach the decision that they don't
14 have the plant capacity it has nothing do with the fact that
15 they didn't go to the Water Management District and apply.

16 MR. RIEGER: Well, in the case that we have an
17 alternative in this situation. We have NUC's agreement with
18 JEA, that we have -- they have an alternative supply that
19 appears to be adequate and that there really, in this case, is
20 no need for them to proceed on if NUC's application is approved
21 the way they proposed.

22 COMMISSIONER JABER: That gives me trouble, because
23 the two applications are independent of each other. We looked
24 -- should look at NUC's application as a stand-alone, I think,
25 and Intercoastal's application as a stand-alone, which is why I

1 didn't want to make a finding on that Issue 11 until we
2 discussed this. Just because you find that NUC has the
3 technical financial ability and it's in the public interest to
4 serve the Nocatee development doesn't mean that you wouldn't be
5 able to find the same showing, I suppose, for another utility,
6 assuming there isn't duplication.

7 I'm not suggesting that we do that. I just don't
8 want any of our findings related to Intercoastal to be, well,
9 we just approved NUC's certificate so, therefore,
10 Intercoastal's application shouldn't go forward. Tell me that
11 Intercoastal doesn't have the plant capacity because, based on
12 the record in this case, they have not demonstrated an
13 independent showing that they've got the plant to provide
14 service to Nocatee and I'm satisfied.

15 MR. RIEGER: I understand.

16 COMMISSIONER JABER: If you tell me that there is a
17 flaw with respect to they didn't go to the Water Management
18 District to get a CUP, I have a problem with that, because
19 they're not legally required to do that.

20 MR. RIEGER: I understand. Well, the first hurdle
21 that we had to get over was whether or not they comply with the
22 utility's rule in reference to the application to serve this
23 area and they did not in reference to the ownership or leasing
24 of plant property. That in itself is a flaw, and it's a
25 serious one. They did not provide evidence in this case to

1 prove that they can or they could get property. There was
2 speculation, it wasn't enough evidence to go beyond that fact.
3 That, in itself, would take time to prove.

4 And to move further than that, complicated with the
5 fact that there are environmental concerns in the area,
6 complicated by the fact that the developer itself had proposed
7 environmental restrictions in reference to the four situations
8 in their developer amendments that they proposed providing the
9 plant property is concerned, the wastewater treatment -- no
10 treatment plants on the property, no effluent disposal to the
11 river, there are irrigation concerns; all that, combined with
12 the situation that Intercoastal did not comply with the
13 Commission's rule concerning plant owner -- land ownership.

14 COMMISSIONER JABER: Okay. And that's your analysis
15 on 121?

16 MR. RIEGER: Yes.

17 COMMISSIONER JABER: Okay.

18 CHAIRMAN JACOBS: Well -- I'm sorry, can I interject
19 just a second now? You say you listed those criteria, then you
20 say that those were components of Commission rules that
21 Intercoastal could not comply with. I was under the impression
22 that those were more conditions of the -- what's it called?
23 The --

24 COMMISSIONER BAEZ: Development order?

25 CHAIRMAN JACOBS: -- development order, right.

1 MR. RIEGER: Development order, that's correct.
2 That's correct.

3 CHAIRMAN JACOBS: Okay.

4 MR. RIEGER: But there was some other --

5 CHAIRMAN JACOBS: In the development order --
6 actually, it wasn't a question of the development order.
7 Actually, it was included in the agreement that the developer
8 has, as to its commitment, to adhere to environmental and other
9 efficiency practices there which, I think, were excellent
10 provisions, but I'm concerned here.

11 The only concern I have is this: Those provisions,
12 while all of them were beneficial, were drawn up as sort of a
13 covenant to go along with this development. And the concern is
14 it could be viewed as having set the bar too high for any
15 competitor if we say that we take those conditions, and I make
16 them part and parcel of the rules that an applicant for service
17 has to adhere to. Do you understand my distinction?

18 MR. RIEGER: Yes.

19 MS. MESSER: Commissioner, I think that Mr. Rieger
20 was referring to the requirement for land ownership and then he
21 was speaking also about the NEWRAP conditions of development,
22 and I don't think he meant to imply that the NEWRAP conditions
23 were rule requirements.

24 MR. RIEGER: No, they were not. All we know is that
25 if there's any changes to the NEWRAP, they would have to go

1 back to the counties to amend their comprehensive land use
2 plan.

3 COMMISSIONER DEASON: Review for me a moment the
4 evidence and testimony we had concerning the disposal into the
5 Intercoastal water life, and how does that impact your
6 recommendation?

7 MR. RIEGER: Well, basically, upon review, once the
8 application to do that -- we know that DEP had a concern with
9 any additional effluent disposal to that river and that an
10 application would have to be made for them to review it, of
11 course. Nocatee had concerns with having effluent going to
12 that river, being that it's a protected river and that the fact
13 that that interferes with their development plan. We, of
14 course, are not concerned about that, primarily because
15 Intercoastal is already disposing effluent to that river.

16 And there is enough testimony to that fact that any
17 additional flows to that river probably would not degradate the
18 water quality, being that the permit is already there for
19 Intercoastal to dispose to that river, so that necessarily
20 isn't really a problem to us, other than that it conflicts with
21 the development plan and that development plan has been
22 introduced and approved by the counties and their comprehensive
23 plan.

24 COMMISSIONER JABER: My only -- what I'm trying to
25 avoid, Ms. Cibula, is making a mistake of law. I'm fine with

1 respect to the evidentiary record on plant capacity as it
2 relates to not being able to show that they can obtain the
3 property with respect to the effluent discharge, I'm completely
4 okay with that. I don't want to add a legal requirement to
5 Intercoastal that I don't believe exists. I think that that
6 would be a mistake of law.

7 I can move Staff with the modification that any
8 references to the fact that Intercoastal has not sought permits
9 from local and state agencies be deleted, and I'm suggesting
10 the references to Ms. Silvers' testimony on Page 119, and
11 there's also a sentence on Page 122 at the bottom, do you see
12 where, in summarizing your recommendation, although its plan
13 may be viable on paper, the lack of active permits from local
14 and state agencies, et cetera, lead Staff to conclude that the
15 utility does not have the ability to provide plant capacity. I
16 think, it would be inappropriate for us to rely on the fact
17 that they didn't go to the Water Management District and apply
18 for a permit as a showing that they lacked plant capacity.

19 COMMISSIONER BAEZ: But we are supporting at least
20 that threshold requirement that there be land ownership. I
21 mean, if I'm understanding Staff's position or Mr. Rieger's
22 statement correctly, that's enough to -- that's enough to say
23 we don't have the capacity.

24 MR. RIEGER: Basically, Commissioner Jaber, the thing
25 about the plant capacity was in reference to whether or not

1 they could do it on a timely basis to get that infor-- to get
2 the permit in and everything. That's what basically is
3 questionable. There's no doubt that it probably cannot be
4 done, that they -- we've already -- they've already proven that
5 they're technically able to do just about anything a utility is
6 required to do. It's just that there are concerns and that
7 they will take time to work out those concerns. I think, the
8 DEP representatives have already considered that, and it'll
9 take time to do that. And we don't know how long it would do
10 that on a timely basis.

11 COMMISSIONER JABER: And that's enough for me,
12 Commissioner Baez, is what I'm saying. It's adding the legal
13 imposition of the permit to the Water Management District that,
14 I think, would be inappropriate.

15 COMMISSIONER BAEZ: Well, and then I have other --
16 then, on that basis, I have other questions as to how we regard
17 the inconsistency with the development order. I mean, I guess,
18 I'm a little confused as to whether this is, in fact, an
19 evaluation of the plan of service, the merits of the plan of
20 service, or answering a question as to whether the utility has
21 the capacity necessary to serve.

22 And to the extent that one bleeds over to the other,
23 you know, if you can help me clarify that, because I was -- I'm
24 a little bit concerned also creating -- using as a basis -- you
25 know, some evaluation of whether it's consistent or

1 inconsistent with the development order.

2 MS. DANIEL: Commissioners, if I could step in here
3 and, Mr. Rieger, correct me when I go astray, please.

4 Intercoastal offered two proposed plans of service, and one
5 would be that they would install their own facilities on the
6 western side of the Intercoastal. The other would be that they
7 would expand on the eastern side and, I'm sorry, there was a
8 third one where they would quote, unquote, step in the shoes of
9 Nocatee and obtain bulk service from JEA. Based on the
10 evidence they presented, I believe, it's fair to say that Staff
11 was not convinced that any of those plans were sufficiently
12 well-developed to give us the confidence that they have the
13 plant capacity.

14 COMMISSIONER BAEZ: Well, as a matter of fact, as I
15 recall the record, there was more of a focus on, I guess, a
16 second alternative which was --

17 MR. RIEGER: The second alternative, yes.

18 COMMISSIONER BAEZ: -- which was to create or build
19 their own facilities. Now, but that doesn't get me to where --
20 I guess, the question that I'm asking is, is this an evaluation
21 of the viability of that plan of service or whether it's a
22 question of in actuality are they able to serve because they
23 have the capacity? And maybe that's a distinction without a
24 difference. The fact that it's a proposed plan kind of raises
25 that issue of whether they're willing and able to. And one of

1 those requirements is to have access to the land or have the
2 land in their possession or --

3 MS. DANIEL: Their access to the land gives us reason
4 to doubt the credibility of the option that would require the
5 construction of the facilities on the western side of the
6 Intercoastal.

7 COMMISSIONER BAEZ: Without ever getting to whatever
8 developer created --

9 MS. DANIEL: Without environmental issues.

10 COMMISSIONER BAEZ: Without getting to the
11 environmental issues, without getting into the development
12 order issues, consistency or inconsistency with those kinds of
13 things.

14 MR. RIEGER: Right. That on its own is a serious
15 concern.

16 COMMISSIONER BAEZ: I agree. I'm just not -- I
17 wasn't persuaded and, I guess, that's -- maybe that's not a
18 discussion for this issue, but personally I wasn't persuaded so
19 much by the development orders and how they came to be and what
20 their concreteness is. And it would be my position that that
21 doesn't matter in this issue, I mean, that there is, again, an
22 independent basis on which to find that the capacity isn't
23 available.

24 And if, I guess, going to back to the suggestion you
25 made, Commissioner, is if we remove any implication that

1 permits from other state agencies would be required to meet the
2 demands of an issue like this, then also any references to any
3 inconsistencies to development orders and so on aren't
4 necessary if, in fact, they haven't really met a requirement of
5 having available land to provide service to begin with.

6 COMMISSIONER JABER: I agree. There was testimony in
7 the record, whether it was to be difficult -- a difficult
8 process or not, but that the development orders could go
9 through some sort of revision process. Now, that may be
10 tedious and difficult but, nevertheless, there was testimony
11 that they could.

12 But let me explain the next series of questions I
13 have for you and how I've approached this case and perhaps why
14 I'm taking extreme cautions to ask you these questions. This
15 isn't let's get through Nocatee's application and then
16 Intercoastal is less important. I have not viewed this docket
17 that way. I have looked at Nocatee and Intercoastal in the
18 same light, we've got the same issues, and they are two
19 independent applications, in my eyes.

20 MS. DANIEL: Absolutely.

21 COMMISSIONER JABER: Okay. I need that assurance
22 from you all, because something Mr. Rieger said really gives me
23 concern. It is not, as it relates to these issues going
24 forward, that Intercoastal has received less review in light of
25 what we just went through on the Nocatee issues.

1 MS. DANIEL: Not at all.

2 MR. RIEGER: That's definitely not. We reviewed the
3 comprehensive -- their management plan as what they proposed to
4 provide service to the Nocatee area. And we detail pretty much
5 everything that they provided. And on paper we believe it
6 looks good. Can it be applied in a timely manner? Maybe, I
7 don't know. But the fact that we have the problem with the
8 land is one of the first hurdles that we just can't get over.
9 They are deficient in the rule.

10 MS. DANIEL: That's the fatal flaw.

11 COMMISSIONER JABER: And I can accept that. And with
12 the request to delete the portions related to the permit and
13 with the clarifications that Commissioner Baez just made I can
14 move Staff's recommendation. Is that sufficient to cover your
15 concern?

16 COMMISSIONER PALECKI: I'd like to take it a step
17 further. Based upon the entirety of the record, I was not
18 convinced of Intercoastal's ability to provide plant capacity
19 on a timely basis. I would like -- and I'm concerned about
20 based upon statements in Staff's recommendation that there
21 could be a finding of an error of law. And I would like the
22 order to reflect that as the finders of fact and based upon the
23 entirety of the record that this Commission was not convinced
24 Intercoastal's ability to provide plant capacity on a timely
25 basis. And I would like the order to specifically state that,

1 as well as to make the changes that Commissioner Jaber and Baez
2 have already described.

3 COMMISSIONER DEASON: Well, let me ask a question at
4 this point. Commissioner Palecki, I agree with you, and that's
5 where I'm going, but what you just said I'm not sure is
6 entirely consistent with what I've heard Commissioner Jaber and
7 Baez say, and I want to try and reconcile the two.

8 I think that we can consider this record in its
9 entirety, and I certainly don't want to make an error of law,
10 so you all keep me straight in that regard, but looking at the
11 sum total of all of the evidence, I agree with you,
12 Commissioner Palecki, I was not convinced. But if we remove
13 all reference to the lack of applications to other regulatory
14 bodies and things of that nature, are we sending a message out
15 there then for future cases? Are we saying, well, as long as
16 you own the land, it's fine. And I don't want to send that
17 message, because someone could come in and buy an acre of land
18 and say I own the land and so everything else is fine. I've
19 got the capacity, because I've got a plan out here to build the
20 capacity. And we may look at that and say, no, that that plan
21 is flawed. I want to be able to look at the plan and see if
22 there are flaws in the plan, not just say they own the land so
23 they meet the only requirement within our rule.

24 We have the ability, I think, as regulators to look,
25 make judgments; that's what we sit here for is to make

1 judgments and look at the record in its entirety. And I think,
2 Commissioner Palecki, that's where you're going, and I can
3 support that. But at the same time, Commissioner Jaber, I
4 don't want to make a mistake of law, but I want to be able to
5 be in a position to consider the entire record and not just
6 ignore certain things and just hang our hat on that one peg and
7 say they didn't own the land, therefore, they lose.

8 COMMISSIONER JABER: Commissioner Deason, we are
9 saying the same thing.

10 COMMISSIONER DEASON: Okay.

11 COMMISSIONER JABER: The only -- here was the
12 distinction I was trying to make, and I'll let Commissioner
13 Baez handle his end. 367.031 says that companies -- that's the
14 original certificate statute -- says that utilities come to the
15 PSC and receive their certificate of authorization before they
16 go to DEP and before they go to the Water Management District.

17 The way Staff reaches its conclusion by referring to
18 the fact that Intercoastal didn't go to the Water Management
19 District for permits, they take that and say, therefore,
20 there's a lack of plant capacity. And I'm saying that's an
21 error of law to hold them to that standard in reaching your
22 conclusion. That was my only concern. That's the only mistake
23 of law I'm referring to, because you can't -- they don't --
24 they wouldn't have known that was going to be what we were
25 going to look at is plant capacity; otherwise, they would have

1 been on notice to go to DEP and the Water Management District.
2 That's the mistake of law I don't want to make as it relates to
3 the permits.

4 So, when I'm talking about deleting references to the
5 Water Management District, I'm only talking about the
6 references that Witness Silvers makes to the fact that they
7 didn't come in and get a permit; and then, also on Staff's
8 conclusion, they say because they didn't go to the local
9 agencies to get permits and all of these other things, we think
10 that they don't have plant capacity. And I'm saying I'm okay
11 with all the other things. I don't think we should impose a
12 legal requirement on them that doesn't exist.

13 COMMISSIONER BAEZ: And, I guess, for my part is that
14 I'm concerned about sending -- I'm concerned about what basis
15 we establish for the determinations that we make. I mean, it
16 may not be an error of law, but from a personal standpoint I
17 didn't feel comfortable and I don't feel comfortable with
18 making -- with implying that we've made any determination as to
19 how solid the development orders are and to use that as a
20 basis, an additional basis, for finding that the utility didn't
21 have the ability to provide the capacity, that that be just one
22 more -- I don't know what you would call it, one more drop in
23 the bucket.

24 I don't disagree with you, Commissioner Deason, that
25 you have to be able to and the Commission is able to look at

1 the complete record and to take all of those things into
2 account when they make their determination. However, depending
3 on how the recommendation is worded or, rather, the order is
4 worded, ultimately, you might have the mistaken effect of
5 creating specific requirements where, in fact, all you need is
6 to look at the totality of the circumstances. And I think that
7 the Commission has done that, certainly the Commission Staff
8 has done that in their recommendation.

9 I just wasn't comfortable adding the issue of the
10 development order to that totality of the circumstances, and
11 that's just -- you know, I may be just one sitting up here, and
12 that's fine with me, but I needed to raise that point.

13 COMMISSIONER JABER: Can't -- I mean, Staff can
14 accommodate all of our concerns. If they don't have plant
15 capacity because the first requirement doesn't exist, you
16 almost don't have to reach anything else anyway.

17 COMMISSIONER BAEZ: Well, I guess, that's what I was
18 driving to, but I think Commissioner Deason's point is well
19 taken. You don't want to have the reverse effect of creating
20 the implication that land ownership is the only requirement.

21 MS. GERVASI: Commissioners, if I may, I think, what
22 we can do is incorporate in the order all of these concerns by
23 reorganizing the language of the issue to state that the
24 Commission's finding, based on the evidence of the record, is
25 that Intercoastal doesn't have the present ability, the present

1 capacity, nor will it have the land upon which to build the
2 facilities in the foreseeable future based on the record and
3 that being the legal basis for finding that there -- that they
4 don't have the capacity.

5 And then we can note, for informational purposes,
6 that the record also reflects where Intercoastal was in the
7 process of obtaining permits and the environmental types of
8 concerns, but merely for informational purposes so that the
9 order is clear that the Commission is basing its decision on
10 the appropriate legal standard.

11 COMMISSIONER DEASON: Well, let me make sure I
12 understand. What is the appropriate legal standard when it
13 comes to the issue of adequate capacity?

14 MS. GERVASI: Well, the utility has to show that it
15 has the present capacity or that it will be able to obtain the
16 capacity, the plant capacity, to serve the area.

17 COMMISSIONER DEASON: Now, when you get into the
18 latter that show that they can obtain, to me, that's an area of
19 judgment. I mean, they presented a case and they presented
20 evidence; you know, witnesses were asked questions and they,
21 you know, well, isn't it possible that you could potentially
22 buy the land? Well, yeah, potentially they could buy the land.
23 So, you have to weigh that; no, they don't own the land today
24 or they didn't at the time of the hearing. I don't know what
25 transpired after the hearing, but based upon the evidence in

1 the record, they didn't own the land, but you can't make a
2 finding that they didn't own it and they never will, we don't
3 know, but you're making a judgment and trying to put everything
4 in its totality.

5 MS. GERVASI: The law requires that the utilities
6 show that they have either ownership of the land or a right to
7 continued use of land that's necessary to provide the service.
8 And I think that's the legal standard that we need to be
9 focused on.

10 COMMISSIONER DEASON: Okay. So, the legal standard
11 is that they have to -- at the time they're making their case
12 before the Commission they either have to own the land or they
13 have to have a showing that they have some type of a long-term
14 lease or some arrangement that they have a presence there to be
15 able to provide the service.

16 MS. GERVASI: Correct; or that they will have it
17 within the foreseeable future. And sometimes in orders what
18 we'll do is keep the docket open and give them an additional
19 specific period of time in which to provide proof of that. But
20 in this case, I think, the record is clear that Intercoastal's
21 ability to obtain that is speculative.

22 MS. DANIEL: Commissioners, if I may, I want to make
23 sure that you're clear that this ownership of land issue was
24 only one of the three proposals, and I'd like to focus on the
25 consideration of our question of them having plant capacity

1 under any of those three scenarios on a timely basis. I don't
2 want to get too bogged down in the land issues, since that is
3 only one of three proposals that the terminnee made.

4 CHAIRMAN JACOBS: I was just going to comment because
5 if you take and balance that issue, just think about what we
6 concluded with regard to Nocatee that they only have some
7 ownership of facilities at this time.

8 MS. DANIEL: But Nocatee has an agreement with JEA in
9 place. It really is very distinctive in that regard.

10 CHAIRMAN JACOBS: Understood. But if we're saying
11 the capacity issue rests on land ownership, I understand that
12 there's a tenuous balancing that goes on there, so I'm
13 advocating and supporting the idea that we look at an overall
14 broader scope of analysis.

15 MS. DANIEL: Yes.

16 COMMISSIONER PALECKI: I can say that from my
17 presence at the hearing and my recollection of the record that
18 I was not convinced of Intercoastal's ability to serve with
19 their existing plant capacity. I was not convinced that they
20 have the ability to provide the capacity on a timely basis.
21 I'm not saying absolutely not, that they could not, but I'm
22 saying that in my judgment I was not convinced, I have serious
23 doubts, I have serious questions as to whether they can provide
24 that capacity on a timely basis, and that's why I support the
25 Staff's recommendation.

1 COMMISSIONER DEASON: And let me say that I agree
2 with what you've just said.

3 COMMISSIONER JABER: But aren't we all agreeing? I
4 could be dense here. Maybe I've completely confused the issue.

5 COMMISSIONER BAEZ: I'm not sure that there's a
6 disagreement --

7 COMMISSIONER DEASON: Okay. I hope there's not.

8 COMMISSIONER BAEZ: -- an ultimate disagreement as to
9 what the result should be --

10 COMMISSIONER JABER: Right.

11 COMMISSIONER BAEZ: -- but there's some fine-tuning
12 going on.

13 COMMISSIONER JABER: Yeah, let me ask legal Staff.
14 And fine-tuning is an excellent word, because I keep hearing
15 Commissioner Deason and Palecki, I don't think we're
16 disagreeing. Legal, isn't it inappropriate to make reference
17 to Intercoastal not seeking permits as a basis for not having
18 plant capacity?

19 MS. GERVASI: Yes, we agree with you on that.

20 COMMISSIONER JABER: Okay. So, legally, we should
21 take out those references.

22 MS. GERVASI: As being reasons for finding that
23 there's not capacity, yes, we agree with that, and we'll make
24 sure that the order reflects that.

25 COMMISSIONER JABER: That is all I'm saying,

1 Commissioners.

2 MS. MESSER: I would just have to add -- I hope I'm
3 not digging a hole here -- that those -- and, I think, I'm just
4 reiterating something Mr. Rieger said earlier, that those
5 references were used in coming to the conclusion which was on a
6 timely basis. I don't think that our recommendation indicates
7 that that was a reason we came to the conclusion. It was an
8 element.

9 MR. RIEGER: That's right. There was no intent to
10 that.

11 COMMISSIONER JABER: You know, I'm satisfied with
12 clarifying it. I've made it real clear what I'm trying to
13 avoid. I think, it should be obvious. That's really all I'm
14 trying to avoid. So, making it clear in the order will help us
15 all, so with that I would move Staff's recommendation with
16 those clarifications.

17 COMMISSIONER PALECKI: I would second the motion.

18 CHAIRMAN JACOBS: Any other questions? Been moved
19 and second. All in favor? Aye.

20 COMMISSIONER DEASON: Aye.

21 COMMISSIONER JABER: Aye.

22 COMMISSIONER BAEZ: Aye.

23 COMMISSIONER PALECKI: Aye.

24 CHAIRMAN JACOBS: Opposed? That takes care of
25 Issue -- that was 16, right?

1 COMMISSIONER JABER: Okay, now, do we need a ruling
2 on Issue 17 and 18, Ms. Daniel?

3 MS. DANIEL: If you choose to grant Nocatee the
4 certificate, you certainly don't need to vote on rates and
5 charges for Intercoastal.

6 MS. CIBULA: You may want to consider Intercoastal's
7 -- the issue on Intercoastal's -- whether it's in the public
8 interest to grant Intercoastal's certificate first; and then,
9 if based on your decision there, it might make those other
10 issues moot.

11 COMMISSIONER JABER: Which issue is that, Ms. Cibula?

12 MS. DANIEL: Issue 11 is the --

13 MS. MESSER: Issue 20 is the public interest issue
14 for Intercoastal.

15 CHAIRMAN JACOBS: Right, Issue 17 and 18 is a
16 condition on our consideration of Issue 11. So, if we resolve
17 Issue 11, then Issues 17 through 18-A become moot.

18 COMMISSIONER DEASON: Well, let me ask this: Should
19 we decide Issue 20?

20 CHAIRMAN JACOBS: That was actually the question I
21 was going to pose. I think, Issue 20 is probably a good issue.

22 COMMISSIONER DEASON: And, I think, before we do
23 Issue 20, it may be that 17, 18, and 18-A are really moot,
24 depending on what you do in Issue 20; is that correct?

25 MS. CIBULA: That's correct.

1 COMMISSIONER DEASON: And I would suggest that before
2 we address Issue 20, we address Issue 19.

3 CHAIRMAN JACOBS: If that's the preference.

4 COMMISSIONER DEASON: We had a party who had
5 presented a case and presented evidence in a lot of issues, but
6 primarily contained within Issue 19 and, I think, it's an issue
7 we should address.

8 CHAIRMAN JACOBS: All right. It sounds -- if that's
9 the preference of the Commissioners, we'll go to Issue --

10 COMMISSIONER JABER: Why did I think we voted on 19?

11 COMMISSIONER DEASON: We didn't vote on 19.

12 MS. CIBULA: We voted on 9 and 21 together, but not
13 19.

14 COMMISSIONER JABER: Thank you.

15 CHAIRMAN JACOBS: With that consensus, let's go to
16 Issue 19.

17 COMMISSIONER PALECKI: Commissioners, if there are no
18 questions on Issue 19, I can move Staff's recommendation.

19 COMMISSIONER JABER: Second.

20 CHAIRMAN JACOBS: It's been moved and second. All in
21 favor? Aye.

22 COMMISSIONER DEASON: Aye.

23 COMMISSIONER JABER: Aye.

24 COMMISSIONER BAEZ: Aye.

25 COMMISSIONER PALECKI: Aye.

1 CHAIRMAN JACOBS: Opposed? Issue 19 is approved.
2 And by consensus, let's go to Issue 20.

3 COMMISSIONER JABER: 20, I have a question. It
4 relates to the concern I had just a few minutes ago, but
5 perhaps on Page 140 it's not as significant. We, again, say
6 Intercoastal does not currently have the necessary CUP or DEP
7 construction permits to begin construction on facilities. And
8 my concern is they wouldn't. They would not have it until they
9 get a certificate from here, so we shouldn't --

10 MS. CIBULA: We can delete that out of the order.

11 COMMISSIONER JABER: Okay. And on Page 141, "While
12 it is within the Commission's discretion to deny both NUC's and
13 Intercoastal's applications, Staff recommends that the
14 Commission not do so, because the record does not contain
15 evidence of an alternative plan for service by another
16 utility." Again, that's not one of the -- what did you mean by
17 that? Is that part of the public interest determination that
18 we should make, you know, in denying certificate applications
19 or even transfers we don't -- I guess, amendments as opposed to
20 transfers -- we don't take into account as to whether there's
21 another utility that can provide the service?

22 MS. CIBULA: I don't know if that's really necessary
23 in this issue, the reference to Issue 21.

24 COMMISSIONER DEASON: I agree, I don't think that's
25 necessary either.

1 COMMISSIONER JABER: So with those changes, I could
2 move this issue.

3 COMMISSIONER PALECKI: Second.

4 COMMISSIONER DEASON: Second.

5 CHAIRMAN JACOBS: Moved and second. All in favor?
6 Aye.

7 COMMISSIONER DEASON: Aye.

8 COMMISSIONER JABER: Aye.

9 COMMISSIONER BAEZ: Aye.

10 COMMISSIONER PALECKI: Aye.

11 CHAIRMAN JACOBS: Opposed? Issue 20 is approved.

12 Now, where do we go from here? Do we need to take up
13 Issue 11 at all?

14 MS. DANIEL: Yes, sir, you need to vote on Issue 11.

15 CHAIRMAN JACOBS: All right. Issue 11.

16 COMMISSIONER JABER: I can move Issue 11.

17 COMMISSIONER PALECKI: Second.

18 CHAIRMAN JACOBS: Questions? Moved and second. All
19 in favor? Aye.

20 COMMISSIONER DEASON: Aye.

21 COMMISSIONER JABER: Aye.

22 COMMISSIONER BAEZ: Aye.

23 COMMISSIONER PALECKI: Aye.

24 CHAIRMAN JACOBS: Opposed? Show Issue 11 is
25 approved.

1 MS. CIBULA: And in regard to Issue 17, 18, and 18-A,
2 you may want to vote that those issues are now moot and don't
3 need to be considered.

4 COMMISSIONER JABER: Move that Issues 17, 18, and
5 18-A are moot.

6 COMMISSIONER PALECKI: Second.

7 CHAIRMAN JACOBS: Moved and second. All in favor?
8 Aye.

9 COMMISSIONER DEASON: Aye.

10 COMMISSIONER JABER: Aye.

11 COMMISSIONER BAEZ: Aye.

12 COMMISSIONER PALECKI: Aye.

13 CHAIRMAN JACOBS: Opposed? Show that stated for the
14 record.

15 COMMISSIONER PALECKI: And I would also move that
16 Issue 23 is unnecessary for the Commission to decide.

17 COMMISSIONER JABER: What about 22, too, Commissioner
18 Palecki? 22 and 23 were more informational, right?

19 COMMISSIONER PALECKI: 23 was the ramifications of
20 denying both pending applications, and we've made a specific
21 vote not to deny one of the two, so that one's clear. I'm not
22 sure about Issue 22.

23 CHAIRMAN JACOBS: Issue 22 had to do with, in my
24 mind, the idea where the government was involved, but it's
25 interesting because we just had a discussion in the -- I can't

1 remember which issue it was about whether -- it was the issue
2 on Intercoastal's capacity. And when I read this issue, it
3 struck -- it is what led me to that balancing idea, because
4 while this deals very specifically with whether or not a
5 governmental entity is involved and first in time and all that,
6 it struck me that, well, if that's the case, then the
7 governmental entity gets the right to serve first in time, but
8 does not exercise that right in a meaningful manner, which is
9 what I understand this case to be saying.

10 What are we saying about, then, what are two private
11 entities where one gets the right to serve and does not
12 exercise that right? We are effectively saying here that, in
13 our judgment, while we recognize Intercoastal does not have
14 capacity, we're saying that we don't think it has the ultimate
15 opportunity -- the ultimate ability to acquire that capacity.
16 That's really what we're saying, because if we were saying it
17 simply doesn't have the capacity now, we have to go back and
18 look at Nocatee and say, okay, now, let's measure up.

19 If Nocatee, we're saying, has ability now, then are
20 we giving them a time certain to come to service? Because we
21 recognize also in our discussion that we're talking one and a
22 half years before some of the criteria that we even want to
23 assess this development by will be finalized. We can say in
24 this discussion that, well, there's some uncertainties here and
25 we want to give a year and a half before all those

1 uncertainties play themselves out, and we're kind of
2 acknowledging, then, that while we're giving them the
3 certificate that they have a period of time to kind of get
4 their ducks in a row. That doesn't comport with what I
5 understand this decision to be saying, albeit, purportedly only
6 for a governmental entity.

7 MS. CIBULA: I think, there was some concern at the
8 hearing as to the ramifications of the county withdrawing from
9 these proceedings and whether these cases would somehow
10 prohibit the Commission from making the decision on these
11 applications, and Staff is recommending in this issue that they
12 wouldn't prohibit the Commission from making a decision.

13 CHAIRMAN JACOBS: My discussion doesn't even really
14 go to this issue. It's a different thing. I agree with
15 Staff's recommendation here, essentially, that the county would
16 not have had even an opportunity to place itself in the same
17 position as this county was, because it withdrew. I'm fine
18 with that. What I'm suggesting is that the theory behind this
19 case is that somebody gets the right to serve, in this
20 instance, because they exercised first in time issue; they then
21 have to exercise that right. Is that what I take this case to
22 be saying? If they don't exercise that right within some
23 reasonable time, then they lose that right.

24 MS. CIBULA: Correct.

25 CHAIRMAN JACOBS: Okay. And what I'm suggesting to

1 you is we have acknowledged, in this case, that that is at
2 least is year and a half where this company has the opportunity
3 to exercise its right to go ahead and finish its consumptive
4 use permit issues, its comprehensive plan issues, and other
5 things that are out there to finalize and actually implement
6 its right to serve here. And therein, is a similarity I see
7 between this case and our case, and I don't think we even
8 adjust that.

9 I take that back. We did implicitly -- as I said, we
10 did implicitly in our discussion just now of Intercoastal's
11 capacity, because what we're saying is that Intercoastal hasn't
12 even demonstrated ability to do that in a year and a half,
13 okay? But I want to acknowledge that we are implicitly saying
14 that, and I don't necessarily have a problem with saying that,
15 but I want it to be clear that we are saying that.

16 COMMISSIONER JABER: Chairman Jacobs, is your concern
17 whether Intercoastal can start serving before Nocatee can get
18 all of the --

19 CHAIRMAN JACOBS: No, no, no.

20 COMMISSIONER JABER: I'm not clear on what your
21 concern is. And let me tell you, I identified -- I had this
22 issue identified at the hearing precisely because of what
23 Ms. Cibula said. I was aware of these cases, and I knew that
24 the county, because we found out at the hearing, had withdrawn
25 from this case.

1 CHAIRMAN JACOBS: Right.

2 COMMISSIONER JABER: And this case stands for the
3 notion that the governmental body had the opportunity to serve,
4 was first in right, but did not meet that obligation in a
5 timely fashion, therefore, LUSI was entitled to go forward.

6 CHAIRMAN JACOBS: Understood.

7 COMMISSIONER JABER: As it relates to two private
8 companies, Intercoastal cannot encroach, for lack of a better
9 word, because their attempt to serve brings them into the
10 jurisdiction of the PSC, theoretically, and they'd have to file
11 another application, I would imagine, so I'm not sure I
12 understand what your concern is.

13 CHAIRMAN JACOBS: When we evaluated Intercoastal's
14 application, an essential and central element of our discussion
15 was its capacity to serve. And in coming to the conclusion
16 that it did not have capacity, we determined that in some realm
17 of foreseeable future they can't invoke or exercise or acquire
18 the capacity to serve this development.

19 At the same time, we're granting the capacity to
20 serve to Nocatee with an express understanding that it may take
21 as much as a year and a half before that can be fully
22 completed. And in my mind, I think, that's an adequate and a
23 fair exercise of our discretion, but when I read this analogy
24 it kind of cropped up some thoughts in my mind and, I think,
25 it's a fair and reasonable exercise of our discretion, but it

1 is an exercise of our discretion.

2 COMMISSIONER JABER: Yes. And for whatever reason
3 NUC cannot serve, they come in and we revoke their certificate
4 or actually there's the statute allows us to do that on our
5 own.

6 CHAIRMAN JACOBS: Right.

7 MS. CIBULA: Yeah, that's 367.111 says that if a
8 utility doesn't provide service within three years we can
9 review, amend, or revoke their certificate.

10 CHAIRMAN JACOBS: Okay. Very well.

11 COMMISSIONER JABER: I think, Issue 22 is
12 informational, so the motion would be to not rule on Issue 22.

13 COMMISSIONER DEASON: Second.

14 CHAIRMAN JACOBS: Moved and second. All in favor?
15 Aye.

16 COMMISSIONER DEASON: Aye.

17 COMMISSIONER JABER: Aye.

18 COMMISSIONER BAEZ: Aye.

19 COMMISSIONER PALECKI: Aye.

20 CHAIRMAN JACOBS: Opposed?

21 COMMISSIONER PALECKI: And let's make it clear that
22 was a motion for Issues 22 and 23 also.

23 CHAIRMAN JACOBS: Show the modification, Issue 22 and
24 23. Now, where are we?

25 MS. MESSER: 26.

1 COMMISSIONER DEASON: 26. I'll move 26.

2 COMMISSIONER JABER: Second.

3 CHAIRMAN JACOBS: Been moved and second. All in
4 favor?

5 COMMISSIONER DEASON: Aye.

6 COMMISSIONER JABER: Aye.

7 COMMISSIONER BAEZ: Aye.

8 COMMISSIONER PALECKI: Aye.

9 CHAIRMAN JACOBS: Opposed? Show Issue 26 is
10 approved.

11 COMMISSIONER PALECKI: Have we missed any issues?

12 CHAIRMAN JACOBS: I'm sorry. 26, I should have --
13 this says proof of ownership. Until we get proof of ownership
14 I'm concerned about the comprehensive plan. Do we want to keep
15 -- I know we're assuming that it'll happen by this time, but do
16 we want to expressly say that?

17 MS. CIBULA: I don't know if we need to keep the
18 docket open for that. Like I said, under Section 367.111, the
19 Commission can always come back and review that.

20 CHAIRMAN JACOBS: Okay. All right. Very well.

21 COMMISSIONER JABER: Staff, I wanted to thank you,
22 personally. I deferred this item a few Agendas ago because I
23 wanted some additional analysis made, and I really appreciate
24 your patience. I think, it made for a better recommendation,
25 and I think that you guys have worked very hard on this item.

1 I know it was difficult, and I thank you.

2 COMMISSIONER PALECKI: This was an excellent
3 recommendation and, I think, especially on Issue 24, the
4 analysis was superb. Thanks.

5 CHAIRMAN JACOBS: I'd like to echo. I think, this
6 was an excellent work product from all the Staff. Legal
7 analysis was very well done, technical analysis dovetail, very
8 well helped us, in my mind, in a substantial way to evaluate
9 the issues.

10 Anything else to come before us today? Thank you all
11 very much. We're adjourned.

12 (Special Agenda concluded at 12:23 p.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

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5 I, KORETTA E. FLEMING, RPR, Official Commission
6 Reporter, do hereby certify that a Special Agenda was held at
7 the time and place herein stated in Docket Numbers 990696-WS
8 and 992040-WS.

7

8 IT IS FURTHER CERTIFIED that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript constitutes a true transcription of my notes of said
12 proceedings.

10

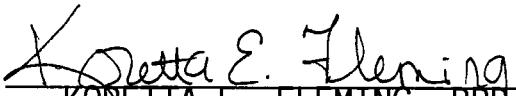
11 I FURTHER CERTIFY that I am not a relative, employee,
12 attorney or counsel of any of the parties, nor am I a relative
13 or employee of any of the parties' attorneys or counsel
14 connected with the action, nor am I financially interested in
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DATED this Wednesday, September 5, 2001.

14

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KORETTA E. FLEMING, RPR
FPSC Official Commissioner Reporter
(850) 413-6734

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