

MINUTES OF AUGUST 29, 2001  
SPECIAL COMMISSION CONFERENCE  
COMMENCED: 9:30 A.M.  
ADJOURNED: 12:30 P.M.

COMMISSIONERS PARTICIPATING: Chairman Jacobs  
Commissioner Deason  
Commissioner Jaber  
Commissioner Baez  
Commissioner Palecki

Parties were allowed to address the Commission on items designated by double asterisks (\*\*).

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1 Docket No. 990696-WS - Application for original certificates to operate a water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corporation.  
Docket No. 992040-WS - Application for certificates to operate a water and wastewater utility in Duval and St. Johns Counties by Intercoastal Utilities, Inc. (Deferred from August 14, 2001 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer Deason

Staff: RGO: Daniel, Messer, Johnson, Redemann, Clapp,  
Rieger  
LEG: Cibula, Espinoza

ISSUE A: Has NUC factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for original certificates?

RECOMMENDATION: Yes. NUC has factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for original certificates.

DECISION: The recommendation was approved.

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<u>ITEM NO.</u>	<u>CASE</u>
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ISSUE 1: Is there a need for service in the territory proposed by NUC's application, and if so, when will service be required?

RECOMMENDATION: Yes, there is a need for water, wastewater, and reuse service for the Nocatee development. Service will be required in the fourth quarter of 2002.

DECISION: The recommendation was approved with clarifications made at the conference.

ISSUE 2: Does NUC have the financial ability to serve the requested territory?

RECOMMENDATION: Yes, NUC ~~and JEA have~~ has the financial ability to serve the requested territory.

DECISION: The recommendation was approved with the noted modification.

ISSUE 3: Does NUC have the technical ability to serve the requested territory?

RECOMMENDATION: NUC has the technical ability to provide water, wastewater, and reuse service to the requested territory, through its Agreement for Wholesale Utilities, Operations, Management and Maintenance with JEA.

DECISION: The recommendation was approved.

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ISSUE 4: Does NUC have the plant capacity to serve the requested territory?

RECOMMENDATION: NUC has the capacity to provide water and wastewater, reuse service to the proposed Nocatee Development through its bulk water, wastewater and reuse service agreement with JEA. The utility should file an executed and recorded copy of the deed for the land on which the reuse storage and pumping facilities will be located, within 30 days of the issuance date of the order granting the certificates, as required by Rule 25-30.033(1)(j), Florida Administrative Code.

DECISION: The recommendation was approved.

ISSUE 5: What is the appropriate return on equity for NUC?

RECOMMENDATION: NUC's return on equity should be based on the leverage graph formula contained in Order No. PSC-00-1162-PAA-WS, issued June 26, 2000, in Docket No. 000006-WS. Using this leverage graph formula the appropriate return on equity for NUC is 9.62%.

DECISION: The recommendation was approved.

ISSUE 6: What are the appropriate water, wastewater, and reuse rates and charges for NUC?

RECOMMENDATION: If NUC is granted original water and wastewater certificates, the rates and charges as detailed in the analysis portion of staff's August 17, 2001 memorandum should be approved. The utility should be required to file tariffs which reflect the recommended rates and charges. NUC should be required to continue to charge

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these rates and charges until authorized to change by the Commission. NUC should be put on notice that it may not refuse or discontinue water or wastewater service if a customer declines to use the reuse system. The tariff should be effective for services rendered or connections made on or after the stamped approval date of the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code.

DECISION: The recommendation was approved with clarifications made at the conference.

ISSUE 7: What are the appropriate service availability charges for NUC?

RECOMMENDATION: The service availability charges and policy set forth within the staff analysis are appropriate and should be approved. NUC and JEA should be put on notice that if JEA's plant capacity charge changes, NUC may not pass any change on to the customers without prior Commission approval. The charges should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

DECISION: The recommendation was approved.

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ISSUE 7A: What is the appropriate AFUDC rate for NUC?

RECOMMENDATION: If NUC is granted a certificate, an AFUDC rate of 9.77% should be approved and a discounted monthly rate of .813802% should be applied to qualified construction projects beginning on the date the certificate of authorization is issued.

DECISION: The recommendation was approved.

ISSUE 8: What is the Nocatee landowner's service preference and what weight should the Commission give the preference?

RECOMMENDATION: While the Nocatee landowner's service preference is to receive service from NUC, the Commission should not give the landowner's service preference any particular weight.

DECISION: The recommendation was approved.

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ISSUE 9: Will the certification of NUC result in the creation of a utility which will be in competition with, or duplication of, any other system?

RECOMMENDATION: No, the certification of NUC will not result in the creation of a system which will be in competition with or a duplication of any other system.

DECISION: The recommendation was approved.

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ISSUE 10: Should the Commission deny NUC's application based on the portion of Section 367.045(5)(a), Florida Statutes, which states that the Commission may deny an application for a certificate of authorization for any new Class C system, as defined by Commission rule, if the public can be adequately served by modifying or extending a current wastewater system?

RECOMMENDATION: No. The Commission should find that the portion of Section 367.045(5)(a), Florida Statutes, pertaining to the denial of a certificate for a new Class C wastewater system is not applicable because NUC's proposed wastewater system will not be a Class C system, and because Intercoastal has not proposed to modify or extend its current wastewater system.

DECISION: The recommendation was approved.

ISSUE 11: Is it in the public interest for NUC to be granted a water certificate and wastewater certificate for the territory proposed in its application?

RECOMMENDATION: Yes, it is in the public interest to grant NUC its request for water and wastewater certificates. Nocatee should be granted Certificates Nos. 617-W and 531-S for water and wastewater to serve the territory described in Attachment A of staff's August 17, 2001 memorandum.

DECISION: The recommendation was approved.

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ISSUE 12: Is Intercoastal barred by the doctrines of res judicata and/or collateral estoppel in this proceeding from applying for the same service territory in St. Johns County which it was previously denied by St. Johns County?

RECOMMENDATION: No. The Commission should find that neither the doctrine of res judicata nor collateral estoppel apply in this proceeding to bar Intercoastal from applying for the same service territory in St. Johns County to which it was previously denied by St. Johns County.

DECISION: The recommendation was approved.

ISSUE B: Has Intercoastal factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for original certificates?

RECOMMENDATION: Yes. Intercoastal has factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for certificates.

DECISION: The recommendation was approved.



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ISSUE 13: Is there a need for service in the territory proposed by Intercoastal's application, and if so, when will service be required?

RECOMMENDATION: Yes. In addition to Intercoastal's existing area, there is a need for service in the fourth quarter of 2002 for the Nocatee development. There is no need for service for other areas included in Intercoastal's application.

DECISION: The recommendation was approved.

ISSUE 14: Does Intercoastal have the financial ability to serve the requested territory?

RECOMMENDATION: Yes. Intercoastal has the financial ability to serve the territory requested in its application.

DECISION: The recommendation was approved.

ISSUE 15: Does Intercoastal have the technical ability to serve the requested territory?

RECOMMENDATION: Yes, Intercoastal has the technical ability necessary to serve the requested territory.

DECISION: The recommendation was approved.

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ISSUE 16: Does Intercoastal have the plant capacity to serve the requested territory?

RECOMMENDATION: No, Intercoastal does not currently have sufficient water, wastewater, or reuse capacity to serve the requested territory. Although Intercoastal has developed a Conceptual Master Plan to serve the Nocatee development, the utility's ability to provide capacity on a timely basis is questionable.

DECISION: The recommendation was approved with the clarification that references that Intercoastal has not sought a permit from the water management district were deleted.

ISSUE 17: What are the appropriate water, wastewater, and reuse rates and charges for Intercoastal?

RECOMMENDATION: If the Commission does not approve staff's recommendation in Issue 11 and Intercoastal is granted the certificates, Intercoastal's existing water and wastewater rates and charges should be approved for its existing customers and the Nocatee development. Staff further recommends that the utility be required to retain these rates and charges until authorized to change by the Commission. Intercoastal has filed tariffs for water and wastewater which reflect the existing rates and charges. Intercoastal should also be required to file a reuse tariff reflecting a zero rate for the Sawgrass Country Club until 2013. The tariffs should be effective for services provided

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on or after the stamped approval date on the tariff sheets, in accordance with Rule 25-30.475, Florida Administrative Code. The utility should return to the Commission for a determination regarding reuse rates prior to providing that service to any other customers.

DECISION: This issue was rendered moot.

ISSUE 18: What are the appropriate service availability charges for Intercoastal?

RECOMMENDATION: If the Commission does not approve staff's recommendation in Issue 11 and Intercoastal is granted the certificates, Intercoastal's existing water and wastewater service availability policy and charges should be approved. Staff further recommends that the utility be required to retain these charges until authorized to change by the Commission. Intercoastal has filed tariff sheets for water and wastewater which reflect the current charges. The tariff should be effective for services provided on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code.

DECISION: This issue was rendered moot.

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ISSUE 18A: Should Intercoastal be authorized an AFUDC rate by the Commission?

RECOMMENDATION: Yes. If the Commission does not approve staff's recommendation in Issue 11 and Intercoastal is granted certificates, an annual AFUDC rate of 7.09% should be approved with a discounted monthly rate of 0.590641%. The approved rate should be applicable for eligible construction projects beginning on the date the certificate of authorization is issued.

DECISION: This issue was rendered moot.

ISSUE 19: Do Intercoastal's existing customers support the proposed extension of its service territory and what weight should the Commission give to their preference?

RECOMMENDATION: The Sawgrass Association, Inc., which represents a portion of Intercoastal's customers, does not support Intercoastal's proposed extension of its service territory. Although customers cannot choose their utility, the Commission may consider the concerns of Intercoastal's current customers that are set forth in the record which pertain to the utility's quality of service. Quality of service of a utility is directly linked to the technical ability of that utility. Therefore, the Commission should consider Intercoastal's technical ability in conjunction with this issue. Whether Intercoastal has the technical ability to serve the requested territory is addressed in Issue 15.

DECISION: The recommendation was approved.

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ISSUE 20: Is it in the public interest for Intercoastal to be granted a water certificate and a wastewater certificate for the territory proposed in its application?

RECOMMENDATION: No. It is not in the public interest for Intercoastal to be granted water and wastewater certificates for the territory proposed in its application.

DECISION: The recommendation was approved with changes discussed at the conference.

ISSUE 21: Can the Commission grant Intercoastal or NUC a certificate which will be in competition with, or a duplication of, any other water and wastewater system?

RECOMMENDATION: No. The Commission may not grant a certificate of authorization for a proposed system or an amendment to a certificate of authorization for the extension of an existing system which will be in competition with, or duplication of any other system or portion of a system. However, granting either Intercoastal or NUC an original certificate will not result in a system which will be in competition with or a duplication of another water or wastewater system.

DECISION: The recommendation was approved.

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ISSUE 22: What are the implications for this case of the decisions in the Alafaya Utilities and Lake Utility Services cases?

RECOMMENDATION: Neither the Alafaya Utilities case nor the Lake Utility Services case prohibits the Commission from granting either NUC or Intercoastal a certificate to serve the Nocatee development.

DECISION: No vote - informational only.

ISSUE 23: What would be the ramifications of denying both pending applications?

RECOMMENDATION: Potential ramifications as identified in the staff analysis are speculative and not based on the evidence of record in this case. While it is in the Commission's discretion to deny both applications, to do so, the Commission would need to find, based on the record evidence, that it is not in the public interest to grant either application. Staff recommends that there is no such evidence in the record.

DECISION: No vote - informational only.

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ISSUE 24: In light of the agreement between JEA and NUC for operations, management and maintenance service, is NUC exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes?

RECOMMENDATION: The Commission should find that the agreement between JEA and NUC for operations, management and maintenance service does not render NUC exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes.

DECISION: The recommendation was approved with clarifications made at the conference.

ISSUE 25: Should the Commission defer a decision in these cases until after the conclusion of a pending administrative challenge to the Department of Community Affairs' decision that found the St. Johns County Comprehensive Plan Amendments for Nocatee in compliance with Chapter 163, Florida Statutes?

RECOMMENDATION: No. The Commission should not defer its decision in this matter until after the conclusion of a pending administrative challenge to the Department of Community Affairs' decision.

DECISION: The recommendation was approved.

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ISSUE 26: Should these dockets be closed?

RECOMMENDATION: No. These dockets should remain open for an additional thirty days from the date of the Order so that Nocatee Utility Corporation may file proof of ownership or continued use of the land upon which its reuse facilities will be located as discussed in Issue 4. Staff should be given administrative authority to close these dockets once staff has verified that this information has been filed.

DECISION: The recommendation was approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki