

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application by Nocatee)	
Utility Corporation for Original)	
Certificates for Water & Wastewater)	Docket No. 990696-WS
Service in Duval and St. Johns)	
Counties, Florida)	
_____)	

**COMMENTS OF INTERCOASTAL UTILITIES, INC.
DIRECTED TO NOCATEE UTILITY CORPORATION'S
PETITION FOR TEMPORARY VARIANCE FROM
OR TEMPORARY WAIVER OF RULES**

Intercoastal Utilities Corporation, by and through undersigned counsel, and pursuant to § 120.542(6), Fla. Stat., and Rule 28-104.003, Fla. Admin. Code, hereby files this Comments Of Intercoastal Utilities, Inc. Directed To Nocatee Utility Corporation's Petition For Temporary Variance From Or Temporary Waiver Of Rules.

Section 120.542(6), Fla. Stat., and Rule 28-104.003, Fla. Admin. Code, provide that interested persons shall be provided an opportunity to comment on petitions for temporary variance from or temporary waiver of rules. Intercoastal would hereby submit the following comments:

1. Intercoastal and NUC are competitors for the provision of utility service for substantially all of the territory which is the subject of NUC's application at the PSC. It is not in the public interest that NUC should be granted a certificate by the PSC without having to supply all of the information required by Rule 25-30.033 and 25-30.433(10), Fla. Admin. Code.

2. Intercoastal has requested a hearing on the application of NUC for an original certificate. Temporary variance from or temporary waiver of rules as requested by

Done 7/08/99

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Nocatee will cause the hearing process to be disjointed, conducted in a vacuum, and attenuated since Intercoastal intends to contest Nocatee's ability to effectuate its application and to litigate whether it is in the public interest for Nocatee to so effectuate its application. Variance from or waiver of those rules referenced by NUC in its Petition would adversely affect Intercoastal's ability to fully litigate these issues.

3. NUC has not even attempted to demonstrate in its Petition that its variance or waiver should be granted pursuant to the type of demonstration contemplated by § 120.542(2), Fla. Stat. Compliance with the rules which a temporary variance from, or temporary waiver of, is requested will not violate principles of fairness. NUC's Petition states that NUC seeks to defer submission of the requisite documentation until development approval has been obtained for Nocatee, a definitive Service Agreement has been negotiated with JEA, and information regarding the requisite utility infrastructure will be more definite and readily available. Intercoastal suggests that NUC's application for an original certificate would be more appropriately filed at that time, if it is the position of NUC that this information is a prerequisite to the filing of an application for an original certificate which complies with all of the Commission's rules and statutes.

4. The representations regarding "substantial hardship" referenced in paragraph 14 of the Petition, which NUC is required to demonstrate pursuant to § 120.542(2), is not a sufficient demonstration of hardship. DDI and NUC are in the same position as any developer who proposes to develop property not currently served by a public or private utility.

Additionally, Intercoastal has demonstrated and will continue to demonstrate its readiness and willingness to serve substantially all of the territories which are the subject of NUC's application and stands ready to provide the water and wastewater service to Nocatee which the developer apparently believes will be required.

5. Nocatee's application for an original certificate and its Petition For Temporary Variance From Or Temporary Waiver Of Rules was filed the day before trial commenced on Intercoastal's application for substantially all of the same territories. DDI, Nocatee's parent, was a protesting party in that trial. There can be no doubt that the timing of NUC's application before the PSC is an attempt to "grab" these properties so that Intercoastal's application with the St. Johns County Water and Sewer Regulatory Authority will be frustrated.

6. Intercoastal does and will continue to object by every means available to NUC's Petition For Temporary Variance From Or Temporary Waiver Of Rules and NUC's application for an original certificate. Intercoastal hereby requests a copy of the Commission's Proposed Agency Action with regard to the Petition For Temporary Variance From Or Temporary Waiver Of Rules.

7. It is impossible to litigate the larger issues of Nocatee's Application at the same time this Petition is litigated. No orderly litigation can commence or be completed when the parties cannot know which rules apply to the Application until the final order from the litigation is issued.

In that regard, the issue of the variance should be completely addressed and exhausted, including any hearing on the same, before any review or litigation of Nocatee's Application for an original certificate can take place. Such a litigation will

be impossible for the Commission and the parties to address (since the parties really won't know whether the rules are waived or not waived until the final order). How can the Commission determine what is in the public interest if numerous rules requiring important information are determined, after a hearing in this case, to not be applicable to the proceeding? For this reason alone, the variance should be denied.

Completion of the variance is a prerequisite to the processing of the application. Otherwise, only a chaotic litigation would result. For instance, what if the PSC determined the variance should be granted and in the same order that the Application should be granted. If Intercoastal appealed both decisions and the District Court of Appeals determined that the variance should not have been granted, it will then not be able to dispose of Intercoastal's appeal on the Application (since the Application will be rendered fatally flawed at the moment the Court of Appeals determines the waiver should not have been granted). Basically, Nocatee will then be faced with either filing a new application or giving up its attempt to certificate this territory. In either case, the portion of the hearing which was directed to Nocatee's Application will essentially have been wasted, since the Court of Appeal's determination that the variance should not be granted really disposed of Nocatee's Application in and of itself.¹

This is only one example of the problems that can arise from deciding the Application and the request for variance or waiver in a single order. In reality, a

¹All of the evidence Intercoastal will have brought to bear in the litigation will have been for naught. All of that evidence will be irrelevant. It is the fact that the variance should not have been granted and that, therefore, Nocatee's Application is fatally flawed, that will carry the day.

plethora of problems will present themselves if the PSC proceeds in this fashion.

DATED this 30th day of June, 1999.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by the method indicated below to the following on this 30th day of June, 1999.

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Intercoa\nocatee\comments