

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 990696-WS

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

DOCKET NO. 992040-WS
ORDER NO. PSC-00-1462-PCO-WS
ISSUED: August 11, 2000

ORDER DENYING ORAL ARGUMENT, GRANTING MOTIONS
FOR CONTINUANCE, AND ORDER ON
PREHEARING CONFERENCE

BACKGROUND

On June 1, 1999, Nocatee Utility Corporation (NUC) filed an application for original certificates to provide water and wastewater service to a development located in Duval and St. Johns Counties known as Nocatee. Docket No. 990696-WS was assigned to that application. On June 30, 1999, Intercoastal Utilities, Inc. (Intercoastal, IU, or utility) timely filed a protest to NUC's application and requested a formal hearing.

On December 30, 1999, Intercoastal filed an application requesting an amendment of certificates to provide water and wastewater service in the Nocatee development; to extend its service territory in St. Johns County; and for an original certificate for its existing service area. Docket No. 992040-WS was assigned to that application. NUC and its parent company, DDI, Inc. (DDI), Sawgrass Association, Inc. (Sawgrass), and JEA (formerly known as Jacksonville Electric Authority) timely filed objections to Intercoastal's application and requested a formal hearing. St. Johns County (County) was granted intervention by Order No. PSC-00-0336-PCO-WS, issued February 17, 2000. By Order No. PSC-00-0210-PCO-WS, issued February 2, 2000, Dockets Nos. 990696-WS and 992040-WS were consolidated.

On January 24, 2000, NUC and DDI filed a joint Motion to Dismiss Intercoastal's application based on the doctrines of res judicata and collateral estoppel. On January 26, 2000, St. Johns

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County also filed a Motion to Dismiss Intercoastal's application, stating that the Commission does not have jurisdiction over the application based on Section 367.171, Florida Statutes, and based on doctrines of res judicata and collateral estoppel. Also, by Order No. PSC-00-0393-PCO-WS, issued February 23, 2000, JEA was granted intervention in Docket No. 990696-WS to support NUC's application.

On May 10 and 11, 2000, Sarasota and Hillsborough Counties, respectively, filed Petitions for Intervention in these dockets, requesting the opportunity to file Motions to Dismiss based on the argument that the Commission lacks jurisdiction under Section 367.171, Florida Statutes, to consider Intercoastal's and NUC's applications. On May 15, 2000, Collier and Citrus Counties filed a Petition for Intervention, and Alternative Petitions for Declaratory Statement, for Initiation of Rulemaking, and for Permission to Submit Amicus Curiae Motion on Jurisdiction. On May 23, 2000, Sarasota and Hillsborough Counties filed Motions to Dismiss and Collier and Citrus Counties filed a joint Motion to Dismiss.

On June 2, 2000, NUC and DDI withdrew their joint Motion to Dismiss Intercoastal's application. On June 12, 2000, St. Johns County withdrew the portion of its Motion to Dismiss which pertained to the arguments of res judicata/collateral estoppel.

At the June 19, 2000, special agenda conference, the Commission determined that it has jurisdiction to consider NUC's and Intercoastal's applications. Also, the Commission denied the Petitions for Intervention filed by Sarasota and Hillsborough Counties and the joint Petition for Intervention filed by Collier and Citrus Counties, and consequently denied the Motions to Dismiss filed by these Counties based on lack of standing. However, the Commission allowed the Counties to address the Commission on the issue of jurisdiction. Further, the Commission denied the Motion to Dismiss filed by St. Johns County.

On July 21 and 26, 2000, respectively, Intercoastal filed its Motion for Continuance and its Supplemental Motion for Continuance. Included with its Supplemental Motion for Continuance was Intercoastal's Request for Oral Argument. On July 26, 2000, St. Johns County filed its Request for Oral Argument and Motion for Continuance. On July 24 and 31, 2000, respectively, NUC filed its Response in Opposition to Motion for Continuance and its Supplemental Response in Opposition to Motions for Continuance.

A prehearing conference was held on July 12, 2000, and the hearing is scheduled for August 16, 17, and 18, 2000.

MOTIONS FOR CONTINUANCE

I. REQUESTS FOR ORAL ARGUMENT

On July 26, 2000, Intercoastal filed its Request for Oral Argument in support of its Supplemental Motion for Continuance. In its request, Intercoastal states that oral argument will "assist the prehearing officer and the parties in understanding the facts and circumstances which support a motion for continuance in this matter."

Also on July 26, 2000, the County filed its Request for Oral Argument in support of its Motion for Continuance. In support of its request, the County states that oral argument will greatly aid the prehearing officer in reaching a decision on the motions because of the "complex nature of these combined dockets which have been made even more complex by recent events which will significantly modify the prefiled testimony of the parties."

Upon review of their motions, I find that the arguments of Intercoastal and the County are adequately contained in their respective motions. Therefore, Intercoastal's and the County's requests for oral argument are hereby denied.

II. MOTIONS FOR CONTINUANCE

On July 21 and 26, 2000, respectively, Intercoastal filed a Motion for Continuance and Supplemental Motion for Continuance, in which the utility requests that the hearing be continued for at least 60 days. In support of these motions, Intercoastal states that on August 15, 2000, the County Commission of St. Johns County is expected to consider the acquisition of Intercoastal by St. Johns County, and that the acquisition of Intercoastal by the County would substantially affect the issues, facts and circumstances of these proceedings and possibly even some of the parties' positions. Moreover, the utility states that there are a number of expensive and time consuming activities currently scheduled in this case, including depositions, and that a continuance of this matter will allow the parties to engage in only such discovery as is necessary given the substantial change in circumstances.

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Intercoastal further states that a continuance of the hearing is necessary because it recently learned, on July 25, 2000, of a finalized wholesale utilities, operations, management, and maintenance agreement between NUC and JEA. Intercoastal contends that NUC has stated that it will be filing a motion requesting leave to file additional prefiled testimony to address this agreement and any changes in NUC's witnesses' testimony or application resulting from the finalization of the agreement. Intercoastal asserts that if such a motion to file additional testimony is granted, it will not, under the present hearing schedule, have the opportunity to adequately engage in discovery, file rebuttal testimony, or change or modify its own conclusions and testimony as necessary. Intercoastal argues that a continuance will not prejudice NUC because NUC's own witnesses have acknowledged that the Nocatee development will not begin construction or need utility service until the 1st or 2nd quarter of 2002.

On July 26, 2000, the County filed its Motion for Continuance. Like Intercoastal, the County states that it was informed for the first time of the finalized agreement between NUC and JEA on July 25, 2000. The County asserts that the "magnitude of the impacts of the JEA/NUC Agreement are such that all parties should be given an opportunity to conduct discovery on the Agreement and file supplemental testimony of their own should such be warranted," and that this "cannot be effectively completed in a mere 20 days."

On July 24 and 31, 2000, respectively, NUC filed its Response in Opposition to Motion for Continuance and its Supplemental Response in Opposition to Motions for Continuance. In its responses, NUC states that the potential acquisition of Intercoastal by the County will not affect NUC's application and that any potential affect that it may have on other matters in these dockets can be addressed at the hearing. NUC further states that if Intercoastal is acquired by the County, Intercoastal's application will no longer require action by the Commission because Intercoastal will be a governmentally-owned system, and thus Intercoastal could withdraw its application at the start of the August 16, 2000, hearing and the Commission could issue a bench decision granting NUC's unopposed application. NUC also states that if the County decides not to acquire Intercoastal, there will be no change in the case and the matter can proceed to hearing based on the previously filed testimony of all of the parties.

As for the recently finalized agreement between NUC and JEA, NUC asserts that no continuance is needed to allow Intercoastal and the County the opportunity to respond to the agreement because Intercoastal and the County had the opportunity, through Mr. Douglas Miller's deposition on July 25, 2000, to conduct discovery regarding the terms of the agreement. Further, NUC states that it is willing to make both Mr. Miller and Ms. Deborah Swain available for additional depositions related to any supplemental testimony filed in regard to the agreement and that NUC would not object to the parties being given until August 11, 2000, to file supplemental rebuttal testimony. Thus, NUC states that the rights of Intercoastal and the County can be fully protected without a continuance.

By letter dated July 24, 2000, Sawgrass states that it has no objection to the requested continuance. Staff counsel contacted counsel for JEA, and JEA indicated that it adopts NUC's position.

Upon consideration, it appears that the potential acquisition of Intercoastal by the County and NUC's intent to file a motion requesting leave to file supplemental testimony in regard to a recently formalized agreement between NUC and JEA has a potential impact on these proceedings that justifies a change in the hearing dates. Accordingly, Intercoastal's Motion and Supplemental Motion for Continuance and the County's Motion for Continuance are reasonable and are hereby granted. The following revised dates shall govern this case.

- | | |
|--------------------------|-----------------|
| 1) Prehearing Conference | March 12, 2001 |
| 2) Hearing | April 4-6, 2001 |

PREHEARING CONFERENCE

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on July 12, 2000, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer. Although the issues in this case may be modified because of the matters discussed herein related to the Motions for Continuance, I believe it appropriate to memorialize the issues and positions taken, as well as the rulings made, at the July 12, 2000, Prehearing Conference.

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APPEARANCES:

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On behalf of JEA.

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On behalf of the Commission Staff.

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this
Order is issued to prevent delay and to promote the just, speedy,
and inexpensive determination of all aspects of this case.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request
for which proprietary confidential business information status is
requested shall be treated by the Commission and the parties as
confidential. The information shall be exempt from Section

119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court

Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

III. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages, and shall be filed at the same time.

IV. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

V. ORDER OF WITNESSES

| <u>Witness</u> | <u>Proffered By</u> | <u>Issues #</u> |
|-------------------|---------------------|---------------------------------------|
| <u>Direct</u> | | |
| H. Jay Skelton | NUC | 1,2,3,8,11 |
| Douglas C. Miller | NUC | 1,3,4,8,10,11 |
| Deborah D. Swain | NUC | 5,6,7,10,11 |
| M.L. Forrester | IU | 1,3,4,6,9,10,11, 13,14,15,16,17,20 |
| Jim Miller | IU | 1,3,4,9,10,11,15, 16,17,20 |
| Michael Burton | IU | 1,3,6,9,10,11,14, 15,16,17,20 |

| <u>Witness</u> | <u>Proffered By</u> | <u>Issues #</u> |
|--|---------------------|---------------------------------|
| H.R. James | IU | 1,9,10,11,14,15,16, 20 |
| <u>Intervenors</u> | | |
| Scott Kelly | JEA | 1,2,3,4,8,11,12, 13,15,16,20 |
| Timothy Perkins (Intervenor and Rebuttal) | JEA | 4,11,15,16,20 |
| Pat Arenas | Sawgrass | All |
| A. Richard Olson | Sawgrass | All |
| (Don Flury may substitute for and adopt the testimony of Mr. Olson) | | |
| Charles Gauthier | Staff | 1,13 |
| Dr. T. James Tofflemire | Staff | 4 |
| Edward Cordova | Staff | 4,16 |
| Scott Trigg | Staff | 15,16 |
| Caroline Silvers | Staff | 4 |
| <u>Intervenor/Rebuttal</u> | | |
| H. Jay Skelton | NUC | 8,11,13,20 |
| Douglas C. Miller | NUC | 9,11,12,13,15,16, 20 |
| Deborah D. Swain | NUC | 14,17,20 |
| M.L. Forrester | IU | 2,8,12,18,19,21 |
| Jim Miller | IU | |
| Michael Burton | IU | 2,5,7,18,19 |
| Jim Bowen | IU | 10,11,14,15,20 |

VI. BASIC POSITIONS

NUC: This consolidated docket involves competing applications to provide service to territory in Duval and St. Johns Counties. NUC is a wholly-owned subsidiary of DDI, Inc.

DDI is the owner of approximately 15,000 acres of land located west of the Intracoastal Waterway in Duval and St. Johns Counties that is being permitted for development as the Nocatee Development of Regional Impact. NUC has a Letter of Intent with JEA under which NUC will obtain bulk water, wastewater and reuse service from JEA in quantities and time frames which meet the needs of the development. As an affiliate of the landowner of a major development project, NUC is uniquely positioned to provide service in a way that is consistent with the overall plans and needs of the development, including its strong environmental ethic. DDI is also the owner of additional land in Duval and St. Johns Counties which is not planned for development and which has no need for service.

Intercoastal is an existing single-county utility whose service territory is located east of the Intracoastal Waterway in St. Johns County. Intercoastal's application includes the Nocatee development which NUC proposes to serve, additional DDI lands in St. Johns County which have no need for service, and two other proposed developments in St. Johns County which St. Johns County is serving or plans to serve. Intercoastal's current plan for service (which has changed repeatedly over the past two years) involves the construction of new facilities west of the Intracoastal Waterway, use of groundwater to supplement reuse for irrigation purposes, and wet weather discharges into the Intracoastal Waterway. These features are inconsistent with the expected development order conditions for the Nocatee development; hence Intercoastal's plan of service is not technically feasible. Additionally, following a six day evidentiary hearing, St. Johns County previously denied Intercoastal's application to extend its service area to include the portion of its requested territory that is located in St. Johns County.

When all factors are considered, including the need for service, the financial and technical capabilities of the parties, the projected rates, the feasibility of the plans for service, and the landowner's preference, it is in the public interest to grant NUC's application and to deny Intercoastal's application.

IU: It is in the public interest to grant the application of Intercoastal. Certification of the areas sought by Intercoastal's application to Intercoastal will result in the orderly growth of an existing utility and will ultimately benefit Intercoastal's existing and future customers in its present service area as well as the future customers who will ultimately receive service in its proposed extended service area. Intercoastal is best able to serve the Nocatee development and certification by the PSC of NUC will result in an uneconomic duplication of facilities and utility services.

JEA: These consolidated dockets involve competing applications to provide service to territory in Duval and St. Johns Counties. JEA supports the application submitted by NUC and opposes the application submitted by Intercoastal. Granting the NUC application will enable the developer of the property in question to meet its environmental goals and ensure that utility service is consistent with the long-term development plans for the property. Furthermore, the NUC application best accommodates the sensitive environmental needs of the area and will result in reliable, cost-effective service for the ultimate residents

JEA has entered into a Letter of Intent with DDI, Inc., the developer of Nocatee and the parent company of NUC, pursuant to which JEA has agreed to provide bulk water, wastewater and reuse service to NUC in the quantities and time frames which meet the needs of the development. Furthermore, JEA has entered into an agreement with St. Johns County pursuant to which JEA will provide bulk water and wastewater service to the County including certain portions of the territory requested by Intercoastal. Construction of the infrastructure necessary for JEA to meet its obligations to St. Johns County is well underway. The construction of these facilities is part of JEA's on-going development of integrated water, wastewater and reuse systems in northeast Florida. Approval of the NUC application will enable that territory to be integrated into these regional systems. Approval of Intercoastal's application would result in unnecessary duplication of facilities JEA has already constructed, as well as additional facilities that are being added to the JEA's regional network. The

public interest will be best served if NUC's application is approved and Intercoastal's application is denied.

COUNTY: The Florida Public Service Commission is without jurisdiction at this time to hear the applications for original certificates filed by NUC and Intercoastal. Further, Intercoastal is estopped from seeking to certify in this proceeding the same service territory in St. Johns County that the St. Johns County Water and Sewer Authority previously denied it permission to serve. Finally, even should the Commission have jurisdiction to grant Intercoastal an original certificate, the Commission should not grant Intercoastal service territory located in the County's Exclusive Territory which the County is already contractually obligated to serve and is in the process of constructing the facilities to serve through its agreement with JEA.

SAWGRASS: The Association takes no position on the application of NUC for an original certificate for water and wastewater service in Duval County and St. Johns County, Florida. The Association opposes the application filed by Intercoastal for an amendment of its certificate for an extension of territory, and for an original water and wastewater certificate. It is the Association's position that Intercoastal does not possess the requisite technical ability to serve the requested area, and it is not in the public interest for Intercoastal to be granted a water and wastewater certificate for the proposed territory.

STAFF: Non-testifying staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary position. The information gathered through discovery and prefiled testimony indicates, at this point, that there may be a need for service in the proposed Nocatee development if the Development of Regional Impact (DRI) and St. Johns and Duval Counties' proposed comprehensive plan amendments are approved. The determination as to which utility should serve the proposed Nocatee development cannot be made until the evidence presented at hearing is analyzed.

VII. ISSUES AND POSITIONS

ISSUE 1: Is there a need for service in the territory proposed by NUC's application, and if so, when will service be required?

POSITIONS

NUC: Yes. The boundaries of NUC's proposed territory are the same as those of the Nocatee development which is currently undergoing review as a Development of Regional Impact. NUC expects that service will be required beginning in 2001. (Skelton, Miller)

IU: In addition to those other areas for which Intercoastal has applied, there is a need for service in the territory proposed by NUC's application. Intercoastal proposes to meet that need and is in the best position to do so. The date on which service will first be required is in dispute. Intercoastal suggests the appropriate initial date of service will be required as set forth in its prefiled testimony. (Forrester, Burton, James, Miller)

JEA: Yes. JEA has been negotiating with the developer of the territory included in NUC's application to coordinate the timely delivery of service. JEA anticipates that it will be able to meet the expected service needs of NUC. (Kelly)

COUNTY: No position.

SAWGRASS: No position.

STAFF: From a land use planning standpoint, there is no need for the expansion of central water and wastewater service into the rural area of the proposed Nocatee development at the present time. However, the determination of need will change if the proposed Nocatee DRI and the associated comprehensive plan amendments for Duval and St. Johns Counties are approved by the local governments and the DCA. Provided these plans are approved, the land use designations will change and allow development at an urban density and intensity. (Gauthier)

Non-testifying staff has no position pending further development of the record as to when service to the proposed Nocatee development will be required.

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

POSITIONS

NUC: Yes. NUC has entered into a Master Service Agreement with DDI, Inc. to ensure funding for the utility construction and operations until the utility becomes self-sufficient. DDI has ample net worth to fund the utility operations during this period. (Skelton)

IU: Assuming it provides sufficient proof to the same in an admissible form at the time of hearing, NUC probably has the financial ability to serve the requested territory. Such financial ability is incumbent upon NUC's calculations regarding rates, fees, and charges having been done properly and correctly and upon a finalization of NUC's plan of service. (Forrester, Burton)

JEA: Yes. From the information provided to JEA, it appears that NUC will have the financial ability to serve the requested territory. (Kelly)

COUNTY: No position.

SAWGRASS: No position.

STAFF: NUC appears to have the financial ability to serve the requested territory through its parent company, DDI.

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

POSITIONS

NUC: Yes. NUC's parent company, DDI, has entered into a Letter of Intent for NUC to obtain bulk water, wastewater and reuse service from JEA. NUC intends to enter into a contract with a third party to provide line maintenance, meter reading, billing, customer service, and other

aspects of day-to-day operations. NUC has also assembled a team of consultants with experience in utility planning and ratemaking. (Skelton, Miller)

IU: NUC has no experience operating a utility and therefore does not have the technical ability to serve the requested territory. (Forrester, Miller, Burton)

JEA: Yes. JEA has entered into a Letter of Intent to provide bulk water, wastewater and reuse services to NUC. JEA also stands ready to provide operations and maintenance services to NUC under a mutually acceptable contractual arrangement. (Kelly)

COUNTY: No position.

SAWGRASS: No position.

STAFF: NUC does not have the technical ability to serve the requested territory at this time. However, if NUC enters into a contract with JEA, JEA has the ability to serve the requested territory. Staff has no position pending further development of the record as to whether NUC has the technical ability to manage, operate, and maintain the utility.

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

POSITIONS

NUC: Yes. NUC's parent company, DDI, has a Letter of Intent from NUC to obtain bulk water, wastewater and reuse service from JEA. JEA has the capacity to serve the requested territory, including the capacity to provide sufficient reuse for the utility's needs from the outset of the project. (Miller)

IU: No, NUC does not presently have the plant capacity to serve the requested territory. (Forrester, Miller)

JEA: Yes. JEA has the capacity to serve the requested territory, including the capacity to provide sufficient

reuse for the utility's needs from the outset of the project. (Kelly, Perkins)

COUNTY: No position.

SAWGRASS: No position.

STAFF: NUC does not have the plant capacity to serve the requested territory at the present time. However, if NUC enters into a contract with JEA, JEA has the water, wastewater, and reuse capacity to serve the proposed area. (Tofflemire, Cordova, Silvers)

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

POSITIONS

NUC: Based on the Commission's leverage graph formula, the appropriate return on equity for NUC is 9.46%. (Swain)

IU: The appropriate return on equity for NUC is that consistent with the Commission-approved leverage graph formula at the time of the Final Order in this case. (Burton)

JEA: No position.

COUNTY: No position.

SAWGRASS: No position.

STAFF: NUC's proposed return on equity is consistent with the Commission-approved leverage graph formula, and it therefore appears to be reasonable.

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

POSITIONS

NUC: The appropriate water and wastewater rates and charges for NUC are designed to recover the utility's cost of providing service, and a reasonable return, at the time the first phase of the utility system is projected to

reach 80% of capacity. These rates and charges are shown in Exhibit DDS-2. The appropriate reuse rates are ones that will recover the utility's cost while not being so high as to discourage reuse. The rates shown in DDS-10 have been redesigned to reduce the charge to large users while keeping the average monthly residential bill at an affordable level. These are the appropriate reuse rates and charges for NUC. (Swain)

IU: The appropriate rates and charges for NUC are yet to be established by the evidence at trial. (Forrester, Burton)

JEA: No position.

COUNTY: No position.

SAWGRASS: No position.

STAFF: NUC's proposed water, wastewater, and reuse rates and charges appear to be reasonable.

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

POSITIONS

NUC: The appropriate main extension charges for NUC are as follows:

| | | |
|------------|----|-----|
| Water | \$ | 95 |
| Wastewater | \$ | 115 |
| Reuse | \$ | 550 |

In addition, NUC will collect from customers and remit to JEA the actual amount of JEA's plant capacity charges, which are currently as follows:

| | | |
|------------|----|-------|
| Water | \$ | 140 |
| Wastewater | \$ | 1,025 |
| Reuse | \$ | 240 |

(Swain)

IU: The appropriate service availability charges for NUC will be determined by the evidence to be developed at hearing.
(Burton)

JEA: No position.

COUNTY: No position.

SAWGRASS: No position.

STAFF: No position pending further development of the record.

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

POSITIONS

NUC: The landowner prefers to receive service from NUC. By retaining control over utility planning and operations, the landowner is in the best position to ensure that its environmental goals are met while providing service on a timely basis in the quantities required to meet the needs of the development. The Commission should give significant weight to this landowner preference.
(Skelton, Miller)

IU: It is entirely predictable that a land owner who proposes to certificate a utility to serve his proposed development would "prefer" service from himself. This type of "land owner preference" should be given no weight by the Commission in this case because such "preference" is not determinative or reflective of the public interest nor in the ultimate interest of the future customers who will live in the areas to be developed. In fact, in this case the interest of the land owners and the interests of those customers who will ultimately receive service may be diametrically opposed. (Forrester)

JEA: With respect to the Nocatee development, the developer of the property has sought bulk service arrangements with JEA as the best and most efficient way to ensure that its environmental goals are met while providing service on a timely basis with the capacity required to meet the needs

of the development. The Commission should give significant weight to this landowner preference. (Kelly)

COUNTY: With respect to NUC, the County has no position. With respect to the developers of Walden Chase and St. Johns County School District, the landowners' preference is that the County, not Intercoastal, provide water and wastewater services. Letters of intent and contracts for service have been entered into by the County and these entities. The County, in conjunction with JEA, is constructing the facilities necessary to these entities at this time. The fact that Intercoastal has not been requested to serve any developments/existing customers in their proposed service territory should be given significant weight by the Commission.

SAWGRASS: No position.

STAFF: Intercoastal's proposal to construct water and wastewater facilities on property currently owned by DDI raises a concern as to Intercoastal's ability to provide service. Also, pursuant to Storey v. Mayo, 217 So. 2d 304 (Fla. 1968), customers cannot choose their utility.

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?

POSITIONS

NUC: No. The certification of NUC will not result in creation of a utility that will be in competition with, or duplication of, any other system. There is no existing utility in the area proposed for certification by NUC. Intercoastal's system is located entirely on the east side of the Intracoastal Waterway. Intercoastal's proposed service to Nocatee would require the construction of new facilities on the west side of the Intracoastal Waterway. Thus there is no duplication of or competition with any existing system. (Miller)

IU: Approval of NUC's application will result in the certification of a utility which will be in competition with, and in duplication of, Intercoastal's extended and

existing system. Intercoastal's system as existing and proposed is adequate to meet the reasonable needs of the public in Intercoastal's current and proposed service area and Intercoastal is ready, willing, and able to provide that service. (Forrester, James, Miller, Burton)

JEA: JEA adopts NUC's position.

COUNTY: Intercoastal's current service territory is located entirely to the east of the Intracoastal Waterway and contains neither the water nor wastewater capacity to serve NUC's proposed service territory. That being the case, it is impossible for certification of NUC to duplicate Intercoastal's system.

SAWGRASS: No position.

STAFF: Since there is no other existing utility in the proposed Nocatee development, there will not be a duplication of a system. Staff has no position pending further development of the record as to whether the granting of certificates to NUC will result in a system which is in competition another system.

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?

POSITIONS

NUC: No. Section 367.045(5)(a) does not apply. First, NUC's wastewater system will not be a Class C system as defined by the Commission rules. Second, Nocatee cannot be served by the modification or extension of an existing system. Intercoastal does not propose to modify or extend its current system to serve Nocatee, but instead proposes to build a new system west of the Intracoastal Waterway. (Miller, Swain)

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IU: Yes, the Commission should deny the application of NUC based upon the fact that the new wastewater system to be created by NUC will be a Class C wastewater system as defined by Commission Rule and the public can adequately be served by modifying or extending the current wastewater system of Intercoastal. (Forrester, James, Miller, Bowen, Burton)

JEA: JEA adopts NUC's position.

COUNTY: No.

SAWGRASS: No position.

STAFF: 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 Intercoastal has not proposed to modify or extend its current wastewater system.

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?

POSITIONS

NUC: Yes. (Skelton, Miller, Swain)

IU: No. (Forrester, Miller, Burton, James, Bowen)

JEA: Yes. (Kelly, Perkins)

COUNTY: No position.

SAWGRASS: No position.

STAFF: No position pending further development of the record.

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?

POSITIONS

- NUC:** Yes. Intercoastal fully litigated an application to serve the St. Johns County portion of its proposed territory before the County, which denied its application. The Commission should honor that decision, and apply the doctrines of res judicata and/or collateral estoppel to bar Intercoastal from re-litigating its right to serve the St. Johns County portion of its proposed territory expansion (Miller)
- IU:** No. Intercoastal's application in this case is not the same application which was filed before St. Johns County. The law to be applied in this case is not the law which was applied in the proceeding before St. Johns County. The territory applied for in this case is not the same territory applied for in St. Johns County. The circumstances under which Intercoastal's application was filed are not the circumstances under which Intercoastal's application was filed before St. Johns County. The Commission should also consider the fact that in the "hearing" before St. Johns County, the County itself opposed Intercoastal's application by filing a petition requesting that the application be denied; the County presented witnesses adverse to Intercoastal's application who testified that the County intended to compete with Intercoastal in terms of serving some of the areas for which Intercoastal had applied; the County engaged in cross examination of Intercoastal's witnesses; and the County engaged in legal and factual arguments adverse to Intercoastal's application. Despite all of this, the County saw no problem with the fact the County also sat in the position of "judge" in the case, and two motions to recuse the County (or its alter ego, the Authority) and to allow a neutral hearing officer to try the case were denied. (Forrester)
- JEA:** Yes. Intercoastal has previously sought approval from the St. Johns County Water and Sewer Authority to serve the same additional territory in St. Johns County requested by Intercoastal in this docket. After an extensive evidentiary hearing, the St. Johns County Water and Sewer Authority denied Intercoastal's request and that decision was affirmed by the St. Johns County Board of County Commissioners. Among other things, the

Authority and the Board concluded that adequate arrangements had already been made for service to those portions of the requested territory in St. Johns County. Intercoastal has appealed the Board's decision. The Commission should honor those determinations and apply the doctrines of res judicata and/or collateral estoppel to bar Intercoastal from re-litigating its second request to serve the additional territory in St. Johns County. (Kelly)

COUNTY: Yes.

SAWGRASS: Yes.

STAFF: No position pending further development of the record.

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

POSITIONS

NUC: There is a need for service beginning in 2001 in the portion of Intercoastal's proposed territory comprising the Nocatee development. There is no need for service to the DDI lands outside Nocatee that have been included in Intercoastal's application. NUC understands that service is required in 2000 to the Walden Chase development included in Intercoastal's application and that the Walden Chase developer has arranged to receive service from St. Johns County under a bulk service arrangement between the County and JEA. Thus, there is no need that will not be satisfied either by NUC's proposal or by facilities that are under construction by JEA. (Skelton, Miller)

IU: As our basic position, there is a need for service in the territory proposed by Intercoastal's application. That area which comprises the Nocatee development will experience demand for service at a time to be established by the evidence in this proceeding. Certificating the remainder of the territory requested by Intercoastal will allow the orderly planning for, and provision of, service

by Intercoastal to these areas in the most effective and efficient manner. (Forrester)

JEA: Pursuant to an agreement between St. Johns County and JEA, JEA has been appointed the exclusive provider of wholesale water and wastewater services in the service area identified in that agreement which includes portions of the territory sought by Intercoastal in this consolidated docket. The landowners of much of the additional territory in St. Johns County sought by Intercoastal have entered into agreements with St. Johns County, which will be providing service under a bulk service arrangement with JEA. There is no need for service from Intercoastal for the Walden Chase development in St. Johns County. Intercoastal has included this development in its application even though the Walden Chase developer has arranged to receive service from St. Johns County under a bulk service arrangement between the County and JEA. JEA has completed construction of the lines necessary to provide service to Walden Chase. With respect to the Nocatee development which is also included in the territory requested by Intercoastal, there will be a need for service in accordance with the landowners' development plan. JEA has been working closely with the developer to meet that need for service. There are additional lands outside of Nocatee owned by the developer of that project which have been included in Intercoastal's application. To JEA's knowledge, there is no need for service in those areas. (Kelly)

COUNTY: To the extent that Intercoastal is requesting the same service territory as that requested by NUC, the County takes no position. With regard to the service territory which Intercoastal already serves, the County has previously determined the need for service in that area. With regard to the service territory being requested by Intercoastal which does not include the NUC area and its current service territory, there is no need for service either because there are no plans for development or because the area is located in the County's Exclusive Territory and is being served by the County.

SAWGRASS: Based upon the Prefiled Direct Testimony in this cause, and documents produced in connection therewith, it would

appear that the territory comprising the Nocatee development will need water and wastewater service, both in the near term and during Nocatee's projected long-range development. The Association has no basis to determine when service would be required by Nocatee's developers.

STAFF: From a land use planning standpoint, there is no need for the expansion of central water and wastewater service into the rural area of the proposed Nocatee development at the present time. However, the determination of need will change if the proposed Nocatee DRI and the associated comprehensive plan amendments for Duval and St. Johns Counties are approved by the local governments and the DCA. Provided these plans are approved, the land use designations will change and allow development at an urban density and intensity. (Gauthier)

Non-testifying staff has no position pending further development of the record as to when service will be required for the Nocatee development. There is a need for service in Intercoastal's existing service area. There is no need for service in the area north of the Nocatee and Walden Chase developments. Staff has no position pending further development of the record as to whether there is a need for service in the remaining territory proposed in Intercoastal's application and when service will be required in these areas.

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

POSITIONS

NUC: Intercoastal's financial statements and financial projections raise grave concerns about its ability to provide adequate service to the requested territory over the long term. (Swain)

IU: Yes. (Forrester, James, Burton, Bowen)

JEA: JEA adopts NUC's position.

COUNTY: Based on the materials produced in this proceeding, Intercoastal does not appear to have the financial ability to serve the requested service territory.

SAWGRASS: Based upon the testimony previously set forth in proceedings before the St. Johns County Water and Sewer Authority in June 1999, and based on the Prefiled Direct Testimony submitted in these dockets, it would appear that Intercoastal may have the financial ability to serve the requested expansion territory, based on the financial strength of Intercoastal's owners and investors. However, any such service would have to take into account the Association's objections to any increase in its water or wastewater rates based on any requested expansion into the requested territory.

STAFF: Intercoastal appears to have the financial ability to serve the territory requested in its application.

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

POSITIONS

NUC: No. Intercoastal's plan of service is not technically feasible in light of the conditions that are expected to be placed on the Nocatee development by its DRI development order. For example, Intercoastal's plan of service includes on-site treatment facilities, use of groundwater to supplement reuse for irrigation purposes, and wet weather discharges to the Intracoastal Waterway, all of which are inconsistent with the Application for Development Approval for Nocatee. (Miller).

IU: Yes, Intercoastal's experience clearly demonstrates it has the technical ability to effectuate the proposals in its application. (Forrester, James, Miller, Bowen, Burton)

JEA: JEA adopts NUC's position. Only JEA can provide service to Nocatee in accordance with the conditions that are expected to be placed on the development through its DRI development order. (Kelly, Perkins)

COUNTY: Based on the materials produced in this proceeding, Intercoastal does not appear to have a technically and economically feasible plan to serve the requested service territory.

SAWGRASS: It is the Association's position that Intercoastal does not have the technical ability to serve the requested territory. Over 1,500 property owners in Sawgrass community (who comprise the Association), as well as others, have been subjected to regular noxious odor from Intercoastal's only wastewater treatment plant, located immediately adjacent to the Sawgrass community. This is even after Intercoastal changed its wastewater processing method, which Intercoastal said would eliminate or significantly reduce the odor. As indicated in the Prefiled Testimony, there is also significant concern about Intercoastal's technical capacity to serve any expanded territory when it appears to be having problems serving its current territory.

STAFF: Intercoastal has the technical ability to serve the requested territory. (Trigg)

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

POSITIONS

NUC: No. Intercoastal's plan of service requires the construction of new water, wastewater and reuse facilities on the west side of the Intracoastal Waterway. (Miller)

IU: Intercoastal will have sufficient plant capacity to provide service to all of the requested territory in a timely fashion as the need for service arises. (Forrester, Miller, James, Burton)

JEA: No. Intercoastal would have to construct new water, wastewater and reuse facilities on the west side of the Intracoastal Waterway in order to provide service to the requested territory. (Kelly, Perkins)

COUNTY: Intercoastal does not have sufficient current plant capacity to provide for service needs NUC has identified nor does their proposed plan of service provide future plant capacity that is technically or economically feasible to provide service to Nocatee or the other developments within the proposed service territory.

SAWGRASS: It is the Association's position that Intercoastal's only current wastewater treatment facility, located immediately adjacent to the Sawgrass community, does not have the requisite plant capacity to serve the requested territory. Intercoastal has affirmatively represented in these dockets that no wastewater generated from the Nocatee development (in the requested territory) will be transported to or processed at the Sawgrass Wastewater Treatment Facility. Intercoastal now states it plans to construct and operate new plants at or in the Nocatee development, should it be granted any expanded territory. The Association has no way of evaluating the technical, financial or operational, capacity of Intercoastal's proposed new plants, other than based on its past performance.

STAFF: Intercoastal may have the water capacity to serve the requested territory in the future. Intercoastal does not have the wastewater or reuse capacity to serve the requested territory at this time. (Trigg, Cordova)

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

POSITIONS

NUC: Intercoastal appears to be requesting that its existing water and wastewater rates and charges be applied to the expansion territory. However, its financial projections show that the rates are insufficient to produce a reasonable return on its investment and that they produce insufficient net operating income to pay interest on its existing and projected debt. Intercoastal has not asked the Commission to establish specific reuse rates and charges, therefore the appropriate rates are unknown. (Swain)

IU: The appropriate rates and charges for Intercoastal are those to be established by the testimony and should be those for which Intercoastal is currently authorized to charge until further appropriate action by the Commission. Intercoastal is willing to work with the staff of the Commission to develop an appropriate reuse rate at the appropriate time. (Miller, Forrester, Burton)

JEA: No position.

COUNTY: No position.

SAWGRASS: The Association takes the position that any Intercoastal rates and charges must be considered in conjunction with the pending rate case which is still ongoing before the St. Johns County Water and Sewer Authority. In any event, any action taken by the Commission should not operate in any respect to increase the water and wastewater rates for existing Intercoastal customers. Intercoastal is obligated under the terms of the aforementioned Utility Service Agreement to provide all reuse water needed by the Sawgrass County Club at no charge until 2013. The Association has no other position with respect to the issue of reuse rates and charges.

STAFF: No position pending further development of the record.

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

POSITIONS

NUC: No position at this time.

IU: The appropriate rates and charges for Intercoastal are those to be established by the testimony and should be those for which Intercoastal is currently authorized to charge until further appropriate action by the Commission. (Forrester, Burton)

JEA: No position.

COUNTY: No position.

SAWGRASS: No position at this time.

STAFF: No position pending further development of the record.

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?

POSITIONS

NUC: Intercoastal's existing customers have expressed concerns regarding the quality of service received from Intercoastal and appear to oppose the extension of its service territory. The Commission should consider this customer preference in making its ultimate decision in this proceeding.

IU: The testimony in this case does not establish whether Intercoastal's "existing customers" support or do not support the proposed extension of its service territory. The Commission should give weight to any expressed preference by any customer or group of customers, only as appropriate considering the fact that granting Intercoastal's application may benefit those same customers in the long run. (Forrester, Burton)

JEA: It appears that Intercoastal's existing customers are concerned about the continued adverse service implications if Intercoastal's application is approved. These concerns were voiced before the St. Johns County Water and Sewer Authority during the proceeding on Intercoastal's prior application to serve the additional territory in St. Johns County. The Commission should consider the concerns raised by the customers in reaching its decision in these consolidated dockets.

COUNTY: Intercoastal's existing customers do not support the extension of Intercoastal's service territory based on the poor performance of Intercoastal in its current service territory. These concerns are long standing and should be given weight in the Commission's consideration of Intercoastal's request.

SAWGRASS: Intercoastal's existing customers do not support the proposed extension of its service territory, based on Intercoastal's past performance, and the Commission should consider this position and give it all due and appropriate weight.

STAFF: Sawgrass Association does not support Intercoastal's application. The Commission should consider the customers' concerns as to Intercoastal's financial and technical ability to serve and the utility's rates and charges. However, customers cannot choose their utility.

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?

POSITIONS

NUC: No. (Skelton, Miller, Swain)

IU: Yes, it is in the public interest for Intercoastal's application to be approved. The approval of Intercoastal's application will provide for the orderly growth of an existing utility and will provide benefits to Intercoastal's existing and future customers in its presently certificated territory in St. Johns County, as well as the future customers which Intercoastal will serve in the extension areas. Certification of Intercoastal will allow the Commission to retain oversight and regulatory jurisdiction over Intercoastal in the public interest. (All witnesses)

JEA: No. (Kelly, Perkins)

COUNTY: No.

SAWGRASS: For the reasons set forth above, the Association does not believe it would be in the public interest for Intercoastal to be granted a water certificate or wastewater certificate for the proposed territory.

STAFF: No position pending further development of the record.

ISSUES OF LAW

ISSUE 21: Can the Commission grant Intercoastal an original certificate which will be in competition with, or a duplication of, the County's water and wastewater system?

POSITIONS

NUC: No.

IU: Granting Intercoastal's application will not create competition with, or duplication of, the County's water and wastewater system. Intercoastal's proposal can be granted and its proposed territory certificated in harmony with the County's system. (Forrester)

JEA: No, JEA has already completed construction of a substantial portion of the facilities necessary to provide bulk service to St. Johns County in accordance with the agreement between JEA and St. Johns County. Accordingly, the Commission should not grant Intercoastal's application which will duplicate those facilities.

COUNTY: No, to the extent that Intercoastal has requested service territory located in the Exclusive Service Territory of the County which the County is currently constructing facilities to serve, Section 367.045(5)(a), Florida Statutes, prohibits such action.

SAWGRASS: No position at this time.

STAFF: Pursuant to Section 367.045(5)(a), Florida Statutes, 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, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service. Staff has no position pending further development of the record as to whether granting Intercoastal an original

certificate will result in a system which will be in competition with or a duplication of the County's water and wastewater system.

VIII. EXHIBIT LIST

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|-------------------|-------------------------|---|---|
| H. Jay Skelton | NUC | Composite Exhibit | NUC Application and Exhibits H, I, J, M, N |
| | NUC | HJS-1 | DDI, Inc. Consolidated Financial Statements |
| | NUC | HJS-2 | Master Service Agreement |
| | NUC | HJS-3 | Intercoastal Proposed Territory vs. DDI/Estuary Land Holdings |
| Douglas C. Miller | NUC | Composite Exhibit | NUC Application Exhibits A-G and K-L and Supplemental Exhibit Q |
| | NUC | DCM-1 | Vitae |
| | NUC | DCM-2 | NUC Phase I Map |
| | NUC | DCM-3 | Summary of Water, Wastewater and Reuse Demand by Phase |
| | NUC | DCM-4 | Letter of Intent between DDI, Inc. and JEA |
| NUC | DCM-5 | JEA Service Availability Letter and Request | |

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| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|-------------------|-------------------------|-----------------|---|
| Douglas C. Miller | NUC | DCM-6 | Nocatee Master Water, Wastewater and Reuse Plans - Phase I |
| | NUC | DCM-7 | Nocatee Master Water, Wastewater and Reuse Plans - Buildout |
| | NUC | DCM-8 | Water, Wastewater and Reuse Facility Cost Estimates - Phase I |
| | NUC | DCM-9 | St. Johns County Water and Sewer Authority Preliminary Order denying Intercoastal's Certificate Amendment Application |
| | NUC | DCM-10 | St. Johns County Board of County Commissioners' Final Order Confirming the Water and Sewer Authority's Preliminary Order |
| | NUC | DCM-11 | Excerpts from Nocatee's Application for Development Approval |
| | NUC | DCM-12 | Utility Service Agreement Between Walden Chase and St. Johns County |

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| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|-------------------|-------------------------|-------------------|--|
| Douglas C. Miller | NUC | DCM-13 | Letter re Interim Service to Walden Chase |
| Deborah D. Swain | NUC | Composite Exhibit | NUC Application Supplemental Exhibits O-P and R-U |
| | NUC | DDS-1 | Qualifications |
| | NUC | DDS-2 | NUC Schedule of Rates and Charges |
| | NUC | DDS-3 | NUC Schedules Supporting Calculation of Wastewater Rates and Charges |
| | NUC | DDS-4 | NUC Schedules Supporting Calculation of Wastewater Rates and Charges |
| | NUC | DDS-5 | NUC Schedules Supporting Calculation of reuse Rates and Charges |
| | NUC | DDS-6 | Intercoastal Utilities Financial Report dated 8/31/98 |
| | NUC | DDS-7 | Excerpts from Intercoastal Utilities, Inc. Annual Report for 1998 |

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| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|------------------|-------------------------|-----------------|--|
| Deborah D. Swain | NUC | DDS-8 | Comparison of NUC Rates to Intercoastal Rates |
| | NUC | DDS-9 | Summary of Intercoastal's Projected Revenue Requirements |
| | NUC | DDS-10 | Schedule of Reuse Rates and Revenues Generated (Revised Reuse Rate Proposal) |
| | NUC | DDS-11 | NUC Schedules Supporting Calculation of Revised Reuse Rates and Charges |
| M.L. Forrester | IU | MLF-1 | Composite Exhibit Application of Intercoastal to the FL. PSC |
| | IU | MLF-2 | 4/26/00 Letter from George J. Ely to Mr. James |
| Jim Miller | IU | JM-1 | Intercoastal Conceptual Master Plan prepared by PBS&J 12/99 |
| | IU | JM-2 | Revised March 20000 Conceptual Master Plan by PBS&J |

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| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|----------------|-------------------------|-----------------|--|
| Mike Burton | IU | MB-1 | Proforma forecast of financial dynamics of Intercoastal's operations and the effect upon its rates |
| | IU | MB-2 | Revised Financial Analysis |
| | IU | MB-3 | Revised Financial Analysis, 2nd Revision |
| Jim Bowen | IU | JLB-1 | Intercoastal's Financial Report prepared by Smoak, Davis & Nixon, LLP on 8/31/99 |
| | IU | JLB-2 | Intercoastal's Pro-Forma Projections of Cash Flow Compiled from Burton Exhibit MB-1 |
| | IU | JLB-3 | 6/1/00 Letter from First Union Vice-President J. Andrew Hogshead to H.R. James of Intercoastal |
| Scott Kelly | JEA | SDK-1 | Resume |
| | JEA | SDK-2 | St. Johns County/JEA Agreement |

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| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|---------------------|-------------------------|-----------------|---|
| Scott Kelly | JEA | SKD-3 | 8/19/99 Letter from William G. Young, Utility Director for St. Johns County |
| Timothy Perkins | JEA | TEP-1 | Resume |
| A. Richard Olson | Sawgrass | ARO-1 | Sawgrass Country Club - Utility Service Agreement |
| | Sawgrass | ARO-2 | Sawgrass Country Club - Assignment of Developer's Rights |
| | Sawgrass | ARO-3 | Water Analysis |
| | Sawgrass | ARO-4 | Letter from Intercoastal |
| | Sawgrass | ARO-5 | North Gate Equipment |
| Patricia Arenas | Sawgrass | PA-1 | Ms. King's Letter to Ms. Arenas |
| Charles R. Gauthier | Staff | CRG-1 | Resume |
| | Staff | CRG-2 | DCA Letter-NUC Application |
| | Staff | CRG-3 | DCA Letter- Intercoastal Application |

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

IX. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

X. PENDING MOTIONS

There were no motions pending at the time of the Prehearing Conference.

XI. PENDING CONFIDENTIALITY MATTERS

There are none at this time.

XII. RULINGS

- A. All parties will be allowed to give a 10 minute opening statement at the hearing.
- B. All parties' proposed findings of fact, conclusions of law, if any, and statement of issues and positions, and brief, shall together total no more than 50 pages instead of the 40 pages stated in Order No. PSC-99-1764-PCO-WS (Order Establishing Procedure), issued September 9, 1999.
- C. St. Johns County's Request for Oral Argument, filed on July 6, 2000, was granted and heard at the Prehearing Conference.
- D. Intercoastal's Motion to Compel Deposition, filed on June 27, 2000, and amended on June 29, 2000, was granted at the Prehearing Conference.
- E. If Intercoastal chooses to file a motion to strike the rebuttal testimony of JEA, it shall do so within seven days of the date of this Prehearing Conference, and responses to such pleading shall be filed within seven days thereafter.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Intercoastal Utilities, Inc.'s and St. Johns County's Requests for Oral Argument are denied. It is further

ORDERED that Intercoastal Utilities, Inc.'s Motion for Continuance and Supplemental Motion for Continuance and St. Johns County's Motion for Continuance are hereby granted. It is further

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ORDERED that the dates for the prehearing conference and hearing are hereby changed as set forth in the body of this Order. It is further

ORDERED that the Order on Prehearing Conference shall govern the conduct of these proceedings as set forth above unless modified by the Commission or the Prehearing Officer.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 11th day of August, 2000.



J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1)

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reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.