

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original certificates to operate a 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-01-0542-PCO-WS
ISSUED: March 7, 2001

ORDER GRANTING ST. JOHNS COUNTY, JEA AND
NOCATEE UTILITY CORPORATION'S JOINT MOTION FOR CONTINUANCE,
AND CHANGING CONTROLLING DATES

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) timely filed a protest to NUC's application and requested a formal hearing. By Order No. PSC-99-1764-PCO-WS (Order Establishing Procedure), issued September 9, 1999, controlling dates were established in this docket. On November 23, 1999, NUC and Intercoastal filed a Joint Motion to Revise Schedule and Hearing Dates. That motion was granted by Order No. PSC-99-2428-PCO-WS, issued December 13, 1999, and the controlling dates were changed accordingly.

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 (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. By Order No. PSC-00-0210-PCO-WS, issued February 2, 2000,

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FPSC-RECORDS/REPORTING

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Dockets Nos. 990696-WS and 992040-WS were consolidated. The County was granted intervention by Order No. PSC-00-0336-PCO-WS, issued February 17, 2000. JEA was granted intervention by Order No. PSC-00-0393-PCO-WS, issued February 23, 2000. The prehearing conference was scheduled for July 12, 2000, and an administrative hearing was scheduled for August 16, 17, and 18, 2000.

The Prehearing Conference was held on July 12, 2000. On July 21 and July 26, 2000, respectively, Intercoastal filed a Motion for Continuance and Supplemental Motion for Continuance, and on July 26, 2000, the County filed its Motion for Continuance. By Order No. PSC-00-1462-PCO-WS (Order Denying Oral Argument, Granting Motions for Continuance, and Order on Prehearing Conference), issued August 11, 2000, the prehearing conference and hearing dates were again rescheduled for March 28, 2001, and April 4 through 6, 2001, respectively.

On February 23, 2001, the County, JEA, and NUC filed a Joint Motion for Continuance. In support of their motion, the movants state that at the February 20, 2001, meeting of the St. John's County Board of County Commissioners (Board), JEA presented to the Board a proposal which would allow JEA to provide retail water and wastewater service to the northeast section of St. Johns County, including the Nocatee development. The movants state that the Board did not vote on the proposal, but scheduled the proposal for consideration at a subsequent Board meeting.

The movants further state that the Board instructed its utility department to present to the Board for its consideration at the Board's next meeting on March 6, 2001, a revised proposal for the acquisition of Intercoastal by St. Johns County. The movants state that because of the events at the Board's February 20, 2001, meeting, "the Board reached a unanimous consensus that the County Utility Department should be instructed to request that the hearing in this docket be continued until May 1, 2001, or the first available date thereafter, in order to give the Board time to act on the acquisition of [Intercoastal] and on JEA's proposal."

The movants also state that there are 14 depositions currently scheduled in these dockets in Jacksonville from March 5 through 15, 2001. They assert that "all parties will have to expend considerable time and effort in preparing for and attending these

depositions, which could be unnecessary depending on the actions of the Board on March 6th." The movants further assert that the "positions of the parties in this case, and the parties themselves, could also be radically changed if either the JEA proposal or the acquisitions of [Intercoastal] is approved by the Board on March 6th."

The movants state that a continuance of the hearing dates will benefit the Commission and the affected citizens in St. Johns and Duval Counties. Further, they assert that "if all the substantially affected governmental and private parties are able to reach a mutually satisfactory resolution concerning the provision of water and wastewater services to this large intercounty development, the need for any further expenditures in this case, and possibly even the need for an administrative hearing before the Commission at all can be avoided." The movants state that the County has contacted counsel for Sawgrass, and that Sawgrass has no objection to a continuance.

On February 27, 2001, Intercoastal timely filed its Response in Opposition to Joint Motion for Continuance. In its response, Intercoastal states that no continuance is appropriate or necessary, and that a continuance would cause great detriment to Intercoastal. Intercoastal states that a continuance would prevent the utility from moving forward with its plans to serve the area proposed in its application; however, JEA and the County have the "regulatory freedom" to move forward with their plans to the detriment of Intercoastal. Intercoastal further asserts that a continuance of the hearing dates will

deny Intercoastal its right to proceed to hearing in an expeditious and efficient matter; will shut Intercoastal out of the ever-changing plans of JEA and/or St. Johns County; will benefit Intercoastal's opponents in this docket to the detriment of Intercoastal itself; and will remove whatever incentive this proceeding provides to these two governmental entities (JEA & St. Johns County) to move forward with whatever determinations they need to make such that Intercoastal's application may finally be acted upon by the Commission.

Intercoastal states that the JEA proposal which the Board will be considering at its March 6, 2001 meeting has no affect on Intercoastal's application, as it "in no way deprives Intercoastal of its right or ability to obtain a certificate to serve those portions of St. Johns and Duval Counties for which it has applied." Intercoastal states that if it were granted a certificate by the Commission, then the ultimate determination of whether JEA or the certificated utility should serve the area at issue in these dockets "will be settled in another forum on another day." Thus, Intercoastal requests that the motion for continuance be denied.

Upon consideration of the foregoing, it appears that the St. Johns County Board of County Commissioners' meeting scheduled for March 6, 2000, has a potential impact on these proceedings that justifies a change in the hearing dates. Accordingly, the County, JEA, and Nocatee's Joint Motion for Continuance is reasonable and is hereby granted. The following revised dates shall govern this case.

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|--------------------------|----------------|
| 1) Prehearing Conference | April 16, 2001 |
| 2) Discovery Cutoff | April 30, 2001 |
| 3) Hearing | May 7-9, 2001 |
| 4) Briefs | June 6, 2001 |

Except as modified herein, all other provisions of Orders Nos. PSC-99-1764-PCO-WS, and PSC-00-1462-PCO-WS shall remain in effect. Furthermore, in order to prevent additional delay in this matter, the parties are advised that unless good cause can be shown, no further continuances will be granted in this matter.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

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Based on the foregoing, it is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that St. Johns County, JEA, and Nocatee Utility Corporation's Joint Motion for Continuance is granted. It is further

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

ORDERED that except as modified herein, all other provisions of Orders Nos. PSC-99-1764-PCO-WS, issued September 9, 1999, and PSC-00-1462-PCO-WS, issued August 11, 2000, shall remain in effect.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 7th day of March, 2001.



J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

LAE

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

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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) 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.