

In Re: Application by Nocatee)
Utility Corporation for Original)
Certificates for Water & Wastewater)
Service in Duval and St. Johns)
Counties, Florida)
_____)

Docket No. 990696-WS

**INTERCOASTAL'S RESPONSE TO NOCATEE'S
SECOND MOTION FOR PROTECTIVE ORDER**

Intercoastal Utilities, Inc. ("Intercoastal") hereby files this Intercoastal's Response To Nocatee's Second Motion For Protective Order and in support thereof would state and allege as follows:

1. NUC's Second Motion For Protective Order personifies the type of eleventh hour discovery dispute that the Commission's standard Order Establishing Procedure is designed to avoid. The Order Establishing Procedure in this case, as it does in almost every PSC litigation, provides that,

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery requests. This procedure is intended to reduce delay in resolving discovery disputes.

This established Commission procedure is notable not only for the fact that Nocatee waited until September 14, 1999 to file for a protective order for a Request For Production Of Documents hand-delivered to Nocatee's counsel on August 18, 1999, but also for Nocatee's stated intention to make objections "if and when document production goes forward." At a minimum, Nocatee should not have waited

until the end of the thirty day response time to file its Motion For Protective Order nor should it defer objections until some nebulous future date.¹

2. Nocatee's Motion To Dismiss, which is the foundation for its Second Motion For Protective Order, is not timely and is not well-made given Intercoastal's continuing status as an applicant for an extension to its certificate in St. Johns County and in light of Intercoastal's stated intention to file a PSC application for the same area for which NUC has applied, as set forth in more detail in Intercoastal's Response To Motion To Dismiss Intercoastal's Objection, which is hereby incorporated by this reference as if fully set forth herein. Intercoastal attempted to notice depositions on August 12, 1999. Nocatee objected. Intercoastal has attempted to gain document production through duly served Requests For Production Of Documents but NUC has also objected (through the vehicle of a request for a protective order) to that. NUC apparently is unwilling to expose the facts and circumstances of its application to the light of day provided by the Commission's ordinary and routine procedural rules regarding how discovery is conducted.

3. Intercoastal is prejudiced by any further delay in moving forward with discovery on this case. It is Intercoastal, and not NUC, who will determine the timing with regard to its pretrial discovery in this case. Intercoastal is already in the untenable and prejudicial position of having no opportunity to review a substantial portion of

¹While Nocatee may respond that the Order Establishing Procedure in this case was not issued until September 9, 1999, at a minimum any objection to the discovery should have been made within ten days of the issuance of that Order. In this case, no such timely objections were made.

NUC's application until NUC submits that portion of its application when it files its prefiled testimony.²

4. Intercoastal intends to vigorously pursue discovery in this case and intends to go forward with depositions, interrogatories, and document production. NUC has not only successfully delayed document production and depositions to this point, but also requests, rather astonishingly, that it now be given *ten additional days* after the Commission rules on its Motion For Protective Order to respond or object. All Intercoastal is attempting to do is engage in discovery, which it has every right to do, under the Commission's existing Administrative Code Rules. Nothing Intercoastal has requested has been extraordinary, untimely, nor subject to any legitimate objection by NUC (and, in fact, no such substantive objections have been made).

5. NUC's Motion To Dismiss is not a basis for the delay of NUC's responses to Intercoastal's discovery until some unknown and nebulous future date. Nor should the filing of NUC's Second Motion For Protective Order, at the eleventh hour, delay resolution of these issues until some unknown future date. Intercoastal is a full party to this proceeding who desires to engage in discovery, who has the right to engage in such discovery under the Commission's Administrative Code Rules, and who has properly served a request for such discovery. NUC should proceed, forthwith, with responding to that discovery in a proper and timely manner.

²Intercoastal understands, on information and belief, that this is when NUC will complete its application. NUC apparently chose this date unilaterally. This will be the first time that either Intercoastal or the Commission or its staff has reviewed the substantial portion of NUC's application which was omitted in NUC's original filing.

6. Contrary to NUC's assertions, postponing discovery in this case will impair Intercoastal's ability to prepare for the hearing in this case. While the hearing may be scheduled for May, 2000, Intercoastal's testimony is due on November 10, 1999. Intercoastal is already under duress as to its ability to file direct testimony and exhibits on that date due to the incomplete filing of NUC's application and NUC's unilateral decision not to file such supplemental information as may be required by the PSC's Administrative Code Rules until the due date for its direct testimony (October 11, 1999). NUC's refusal to cooperate with the discovery process is exacerbating this prejudice to Intercoastal.

WHEREFORE, and in consideration of the above, Intercoastal respectfully requests that NUC's Second Motion For Protective Order be denied in its entirety.

DATED this 21st day of September, 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 21ST day of September, 1999.

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