ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Intercoastal Utilities, Inc. for Water and Wastewater Certificates in Duval and St. Johns Counties, Florida	)	Docket No. 992040-WS Filed: January 24, 2000

DDI, INC. AND NOCATEE UTILITY CORPORATION's JOINT MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO PRECLUDE RE-LITIGATION OF ISSUES

DDI, Inc. and Estuary Corporation (collectively, "DDI") and Nocatee Utility Corporation ("NUC"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby move to dismiss the certificate extension application filed by Intercoastal Utilities, Inc. ("Intercoastal") insofar as it relates to additional territory in St. Johns County on the grounds that such application is barred by the doctrines of res judicata and collateral estoppel. In the alternative, DDI and NUC move for entry of an order precluding the re-litigation of issues related to that portion of the requested territory. As grounds for their motion, DDI and NUC state:

BACKGROUND

1. DDI and NUC have become parties to this docket by their filing today of Objections and Requests for Hearing on Intercoastal's application.

2. Intercoastal currently operates as a single-county utility subject to the regulatory jurisdiction of St. Johns County. Intercoastal's current franchise territory lies totally in St. Johns County, east of the Intracoastal Waterway.

3. Pursuant to St. Johns County Ordinances and Regulations, Intercoastal is regulated by the St. Johns County Water and Sewer Authority ("Authority") and the Board of County Commissioners of St. Johns County ("Board").

4. On March 8, 1999, Intercoastal filed an application with the Authority for extension of its service area to include additional territory in St. Johns County located to the west of the Intracoastal Waterway. The bulk of the proposed expansion consisted of lands owned by DDI.

5. Intercoastal's application was opposed by DDI, the St. Johns County Utility Department, and JEA, each of which has its own plan to serve, directly or indirectly, a portion of the territory sought by Intercoastal.

6. Pursuant to local ordinances, the Authority in June 1999 held a six-day formal evidentiary hearing on Intercoastal's application and the objections thereto. On August 4, 1999, the Authority entered its Preliminary Order 99-00012 denying Intercoastal's application to extend its certificated territory. A copy of this Preliminary Order is attached as Exhibit A.

7. On September 7, 1999, the Board held a meeting to review the Authority's Preliminary Order and to hear argument from counsel for all parties. The Board at that time voted to adopt its Final Order Confirming the St. Johns County Water and Sewer Authority's Preliminary Order 99-00012. A copy of that Final Order, which was issued on September 7, 1999, and served on the parties on September 21, 1999, is attached as Exhibit B.

8. In October 1999, Intercoastal sought review of the Board's Final Order by filing a Petition for Certiorari ("Petition") in the Circuit Court for the Seventh Judicial Circuit ("Court"). The Petition challenged the Final Order on the sole grounds that St. Johns County's dual role as regulator of private utilities and owner of a governmental utility resulted in bias. As of today, the Court has neither dismissed the Petition nor issued an order to show cause which would trigger a requirement for the other parties to respond to the Petition. Also as of today, the Board's Final Order is unstayed and remains in effect.

9. On December 30, 1999, Intercoastal filed an application with the Commission for a multi-county certificate which includes (a) its current franchise territory east of the Intracoastal Waterway in St. Johns County (the "Current Territory"), (b) the same expansion territory west of the Intracoastal Waterway in St. Johns County which it has previously been denied by Final Order of the Board (the "St. Johns County Expansion Territory"), and (c) additional lands owned by DDI in Duval County (the "Duval County Expansion Territory").

10. DDI and NUC move to dismiss Intercoastal's application as to the St. Johns County Expansion Territory on the grounds that Intercoastal is barred by the doctrines of res judicata and collateral estoppel from re-litigating its application to serve that territory. In the alternative, DDI and NUC move for entry of an order precluding Intercoastal from re-litigating issues

related to that territory that were tried and resolved in the prior proceedings before the Authority and Board.

ARGUMENT

11. The doctrines of res judicata and collateral estoppel are closely related and the courts sometimes use the language of res judicata and collateral estoppel interchangeably. 32 Fla.Jur.2d, Judgments and Decrees, §135. The difference between the two is that under res judicata a final judgment precludes a subsequent suit on the same cause of action and is conclusive on all matters germane thereto that were or could have been raised in the first action. Collateral estoppel, or estoppel by judgment, applies where the two causes of action are different. In this situation, the adjudication in the first action only estops the parties from litigating issues or questions which are common to both causes of action and which were actually adjudicated in the first action. Trucking Employees of North Jersey Welfare Fund, Inc. v. Romano, 450 So.2d 843 (Fla. 1984); Gordon v. Gordon, 59 So.2d 40, 44 (Fla. 1952), cert. denied, 344 U.S. 878 (1952); 32 Fla.Jur.2d Judgments and Decrees, §135.

12. It is well settled that res judicata and collateral estoppel may be applied in administrative proceedings. Thomson v. Department of Environmental Regulation, 511 So.2d 989, 991 (Fla. 1987); Holiday Inns, Inc. v. City of Jacksonville, 678 So.2d 528, 529 (Fla. 1st DCA 1996); United Stated Fidelity & Guaranty Co. v. Odoms, 444 So.2d 78, 80 (Fla. 5th DCA 1984) ("Where an administrative agency is acting in a judicial capacity and

resolves disputed issues of fact properly before it, as to which the parties have had an adequate opportunity to litigate, the court will apply res judicata or collateral estoppel to enforce repose."); Hays v. State Dept. of Business Regulation, 418 So.2d 331 (Fla. 3d DCA, 1982).

13. The courts have recognized that the principles of res judicata and collateral estoppel do not always apply neatly to administrative proceedings. Thomson, supra. at 991. Nevertheless the doctrine applies to such proceedings unless there has been "a substantial change in circumstances relating to the subject matter with which the [earlier] ruling was concerned, sufficient to prompt a different or contrary determination." Miller v. Booth, 702 So.2d 290, 291 (Fla. 3d DCA 1997) quoting Metropolitan Dade County Board of County Commissioners v. Rockmatt Corp., 231 So.2d 41, 44 (Fla. 3d DCA 1970); see Thomson, supra. at 991 (res judicata will apply only if the second application is not supported by new facts, changed conditions, or additional submissions by the applicant).

14. A determination of whether a substantial change in circumstances has occurred lies primarily with the discretion of the administrative agency. Miller, supra. at 291; Coral Reef Nurseries, Inc. v. Babcock Company, 410 So.2d 648, 655 (Fla. 3d DCA 1982)("The determination of the applicability of the res judicata doctrine is primarily within the province of the administrative body considering the matter in question, and that

body's determination may only be overturned upon a showing of a complete absence of any justification therefor.")

15. Applying these principles to the facts of this case, the Commission should dismiss Intercoastal's application as to the St. Johns County Expansion Territory. There has been no substantial change since June 1999 in the need for service in the St. Johns County Expansion Territory, in the landowner's service preference, or in Intercoastal's ability to serve the territory, all of which issues were fully and fairly litigated in the hearings held before the Authority in June 1999. Indeed, the only substantial change has been Intercoastal's addition of the proposed Duval County Expansion Territory. This addition is nothing more than an attempt at forum-shopping. Without the Duval County portion of the application, St. Johns County would continue to have exclusive jurisdiction to grant or deny Intercoastal's extension requests, and the doctrine of administrative res judicata would clearly apply to support denial of its renewed application. By including some lands in Duval County in its application, Intercoastal hopes to become a multi-county utility and trigger Commission jurisdiction, thereby side-stepping the unfavorable decision it previously received from St. Johns County.

16. In these circumstances, the Commission should apply the principle of res judicata to dismiss the application as to the St. Johns County Expansion Territory or, at a minimum, rule that Intercoastal is barred by the principle of collateral estoppel

from re-litigating any issues as to the St. Johns County Expansion Territory that were tried and decided in the prior proceedings before the Authority and Board.[1] Unless the Commission does so, it will force DDI and Nocatee to engage in expensive and time-consuming re-litigation of issues that have already been fully litigated and resolved and will (perhaps unintentionally) be sending a signal to Intercoastal and other utilities that forum-shopping will be tolerated.

17. By dismissing or precluding re-litigation of only the St. Johns County Expansion Territory, and allowing the case to go forward (if Intercoastal so chooses) only on the Duval County Expansion Territory, the Commission will fully discharge its obligation to consider the multi-county issues that have been added to the case since Intercoastal's original application to the Authority without depriving the other parties of the finality to which they are entitled.

WHEREFORE, DDI and NUC move the Commission to dismiss Intercoastal's application as it relates to the St. Johns County

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[1] In two cases, the First District Court of Appeal has held that collateral estoppel cannot be resolved on a motion to dismiss, but instead presents mixed issues of law and fact that must be resolved in an evidentiary hearing. Accordingly, it remanded the cases for further evidentiary hearings on the estoppel issue. University Hospital, Ltd. v. Agency for Health Care Administration, 697 So.2d 909 (Fla. 1st DCA 1997); University Community Hospital v. Dept. of Health and Rehabilitative Services, 610 So.2d 1342 (Fla. 1st DCA 1992). But in another case, the same court applied the principle of collateral estoppel and directed dismissal of an administrative complaint without requiring evidentiary hearings on the question. Brown v. Dept. of Professional Regulation, 602 So.2d 1337 (Fla. 1st DCA 1992).

Expansion Territory on the grounds that it is barred by the doctrine of res judicata. In the alternative DDI and NUC move the Commission to apply the principle of collateral estoppel to preclude Intercoastal from re-litigating issues as to that territory that were tried and resolved in the prior proceedings before the Authority and Board.

RESPECTFULLY SUBMITTED this 24th day of January, 2000.

HOPPING GREEN SAMS & SMITH, P.A.

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by Hand Delivery on the following this 24th day of January, 2000.

Samantha Cibula
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
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BEFORE THE ST. JOHNS COUNTY WATER AND SEWER AUTHORITY

DOCKET NO.: 99-0007-0002-0006
ORDER NO. 99-00012

In re: Application of Intercoastal Utilities, Inc. for Amendment of Certificate to Include Additional Territory

PRELIMINARY ORDER DENYING APPLICATION TO AMEND FRANCHISE CERTIFICATES 13 AND 14

This matter was heard on June 2, 4, 11, 18, 19 and 23, and August 4, 1999 in St. Augustine, Florida, before St. Johns County Water and Sewer Authority Chairman Kenneth Forrester, and Authority members Rita Friedman and William Webster.

APPEARANCES

For Intercoastal Utilities, Inc.:	John L. Wharton, Esq. 2548 Blairstone Pines Drive Tallahassee, Florida 32301
For DDI, Inc. and Estuary Corporation:	Richard D. Melson, Esq. 123 South Calhoun Street Tallahassee, Florida 32314
For St. Johns County Utility Department:	Suzanne Brownless, Esq. 1311 B Paul Russell Rd., Ste. 201 Tallahassee, Florida 32301
For JEA:	Kenneth A. Hoffman, Esq. 215 South Monroe Street, Ste. 420 Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue is whether Intercoastal Utilities, Inc.'s application for extension of Franchise Certificates Nos. 13 and 14 should be granted?

PRELIMINARY STATEMENT

This proceeding involves the application of Intercoastal Utilities, Inc. ("Intercoastal") for an expansion of its current certificated territory, all of which lies east of the Intercoastal Waterway, to include an additional 25,000 acres lying west of the waterway. On March 9,

1999 Intercoastal submitted its application for extension of Certificates Nos. 13 and 14 in order to provide water and sewer service to an area of approximately 25,000 acres located west and southwest of the Intercoastal Waterway. Pursuant to St. Johns County Water and Sewer Authority Rules 1.5(2) and 11.1 (Rules), DDI, Inc. and Estuary Corporation (DDI); JEA; St. Johns County Utility Department (Utility Department), United Water Florida, Inc. and Hines Interests Limited Partnership all filed timely objections to Intercoastal's application and requests for hearing on April 6, March 30, April 8 (United and county) and April 7, 1999, respectively. Each of the Intervenors is a participant in one or more alternative proposals to serve some portion of the proposed territory included in Intercoastal's application. Intercoastal has not challenged the standing of any of the Intervenors to participate as a party to this proceeding.

On April 7, 1999, the Authority requested that the Board grant an extension until May 5, 1999, to hold the evidentiary hearing on Intercoastal's application. The Authority subsequently revised this request for an extension until June 2, 1999. This revised request was granted by the board on April 14, 1999. Along with its April 8th Objection to and Request for Hearing, United also filed a Motion to Dismiss, or in the alternative, Motion for Stay or Abatement. Intercoastal filed its Response to the Motions to Dismiss and for Abatement or Stay on April 21, 1999.

On May 13, 1999, DDI filed an Emergency Motion for Discovery; Intercoastal filed its response to the Motion on May 20, 1999; and DDI filed its Reply on May 21, 1999. The Motion for Discovery was heard before the Authority on May 24, 1999, and was denied. On May 25, 1999, Intercoastal filed its Motion for Disqualification of the Authority and the Board of County Commissioners of St. Johns County (Board). The Utility Department filed its Response to the Motion for disqualification on May 27, 1999. This matter was heard by the Authority on the first day of the hearing, June 2, 1999, and denied as to the Authority. On June 1, 1999 United withdrew its Objection, Motion to Dismiss and Motion for Stay or Abaternent.

At the final hearing, Intercoastal presented the testimony of the following witnesses:

(1) Sumner Waitz (direct and rebuttal), who was accepted as an expert in water and wastewater engineering and regulatory compliance;

(2) Michael Burton (direct and rebuttal), who was accepted as an expert inutility rates and ratemaking;

(3) M. L. Forrester (direct and rebuttal), who was accepted as an expert in utility operations, utility planning, utility management, and rate setting matters;

(4) Andrew Campbell (direct and rebuttal), who was accepted as an expert in the St. Johns County Comprehensive Plan;

(5) H.R. James (direct and rebuttal), who was accepted as an expert in utility operations;

(6) Andrew Hogshead (direct), who was accepted as an expert in banking;

(7) Hughie James (rebuttal); and

(8) Marshall Deterding (rebuttal).

DDI presented the testimony of the following witnesses:

(1) Roger M. O'Steen, who was accepted as an expert in land development, particularly as it relates to utility matters; and

(2) Douglas C. Miller, who was accepted as an expert in water and sewer utility master planning.

The Utility Department presented the testimony of the following witnesses:

(1) Donald E. Maurer, who was accepted as an expert in water and sewer utility system design engineering and planning and the water and sewer infrastructure elements of the St. Johns County Comprehensive Plan; and

(2) William G. Young, who was accepted as an expert in utility operations, utility management, and utility planning for the St. Johns County Utility.

JEA presented the testimony of the following witnesses:

(1) Scott Kelly, who was accepted as an expert in water and wastewater systems design, construction, operations and engineering.

(2) Tim Perkins, who was accepted as an expert in water and wastewater environmental permitting and water resource regulation.

The Authority took testimony from the engineering consultant to its staff, Gerald C. Hartman. The Authority also took public testimony from the following persons who were not interveners in the case: Michael Korn, Richard Olson, Edward Cordova and Gail Warnerberg. Mr. Korn's testimony was given on behalf of the Sawgrass Association. The Authority accepted into evidence the following exhibits:

(1) Intercoastal Exhibit Nos. 1-16;

(2) DDI Exhibit Nos. 1-6;

(3) JEA Exhibit Nos. 1-7;

(4) Utility Department Exhibit Nos. 1-11;

(5) Staff Exhibit No. 1; and

(6) Sawgrass Association Exhibits Nos. 1-3.

During the course of the proceeding, the Authority heard substantial amounts of both expert and non-expert testimony. It also heard substantial amounts of testimony that was based on speculation and hearsay. In making the following findings of fact, the Authority has judged the credibility and expertise of the various witnesses and has given the testimony and other evidence the weight which it deems appropriate. The following findings of fact are based on the greater weight of the credible evidence of record, and the inferences that the Authority has reasonably drawn from that evidence.

By agreement of the parties, the time for filing Proposed Preliminary Orders was extended to July 19, 1999. The same were filed by all parties, and they have been considered in the preparation of this Preliminary Order.

FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

A. The Parties

1. The Applicant, Intercoastal Utilities, Inc., is an investor-owned water and wastewater utility regulated by the St. Johns Water and Sewer Authority whose current

service territory is bounded on the west by the Intercoastal Waterway and encompasses approximately 4,500 acres. Intercoastal's operating agent is Jax Utilities Management, Inc. (JUM), a 25-year old consulting firm, whose "lead owner" is Mr. H. R. James, a shareholder in Intercoastal. Intercoastal purchased the utility facilities of the developer of the Sawgrass development in approximately 1983. Intercoastal currently provides water and wastewater service to approximately 3,400 water customers and 3,000 sewer customers in northeast St. Johns County pursuant to Water Franchise Certificate No. 13 and Wastewater Franchise Certificate No. 14 issued by the county. Intercoastal's existing customer base is primarily single-family and condo/apartment communities, with limited non-residential areas.

2. JEA is a municipal utility regulated by a governing board providing water and sewer utility services in Duval and Clay Counties to approximately 180,000 water and 135,000 sewer accounts. JEA serves these customers through an interconnected grid which unites 34 water plants and 5 wastewater plants in a regionalized-type system.

3. The St. Johns County Utility Department provides water and/or wastewater services to approximately 35,000 residents within St. Johns County which equates to approximately 18,000 ERCs for water and 12,000 ERCs for sewer. St. Johns County has four water plants and five wastewater plants currently operating within the County.

4. DDI is a private corporation controlled by the Davis family which owns and is developing Nocatee. DDI has filed an application with the Florida Public Service Commission (FPSC) to establish the Nocatee Utility Company. The Nocatee Utility Company would provide water and sewer utility services through a wholesale agreement with JEA. The Nocatee subdivision is located in two counties, Duval and St. Johns, and consists of approximately 15,000 acres with all but 2,200 acres located in St. Johns County. Nocatee will have about 14,000 residential units and several million square feet of commercial properties.

B. Requested Territory

5. During the course of this proceeding, three developments were identified in the Territory Expansion Area as potentially needing service within the near future. These developments are: (1) Marsh Harbor; (2) Walden Chase; and (3) Nocatee. Of the three, only Walden Chase and Nocatee appear to be moving forward and both of them have made concrete plans for long-term, environmentally safe service without Intercoastal's involvement.

(1) Marsh Harbor.

6. The proposed Marsh Harbor Development includes only 65 single family residences.

7. The developer of Marsh Harbor apparently contacted Intercoastal in 1996 to inquire about the possibility of obtaining service. After Intercoaastal provided information to the developer regarding the cost of providing service, Marsh Harbor did not pursue an agreement. There is no evidence that there is a current need for service.

8. St. Johns County has enacted an ordinance, Ordinance Number 99-36, which designates and reserves certain portions of the Territory Expansion Area as part of the County's "exclusive service area." The ordinance designates two types of service areas: Exclusive Service Areas for the Utility Department (areas that are currently served or anticipated to be served by the County and which the County has an obligation to serve) and designated service areas (areas where the county reserves the ability to designate others to serve). Marsh Harbor is included within the County's exclusive service area. Because Marsh Harbor has been identified as an exclusive service area, the County is obligated to provide service to that development.

9. The Utility Department has had some discussions with the developer of Marsh Harbor, but at this time there is no request for service pending.

(2) Walden Chase.

10. The Walden Chase subdivision is located at the northeast portion of the intersection of U.S. 1 and CR 210. It is likely that Walden Chase will be the first development in the requested territory to need service.

11. Walden Chase is part of the Exclusive Service Area designated by the County Ordinance. The developer of this subdivision has entered into an agreement with the County for water and wastewater service.

12. The County intends to meet its obligations to Walden Chase through a wholesale agreement with JEA (the "County/JEA Agreement") pursuant to which JEA will provide both water and wastewater service to certain portions of northern St. Johns County specifically including Walden Chase.

13. Walden Chase includes 585 proposed single family units. Walden Chase includes commercial customers as well. Thus, there will be a need to meet commercial fire flow requirements in order to serve Walden Chase. The County/JEA Agreement will enable the Utility Department to meet these requirements.

14. The developer of Walden Chase has indicated that it may need service as early as October 1999.

(3) Nocatee.

15. DDI is the owner of approximately 25,000 acres of land in St. Johns County and approximately 25,000 acres of land in Duval County. Approximately 90% of the requested territory consists of land owned by DDI or its affiliates.

16 Intercoastal's Application for expansion of its water and wastewater franchise includes substantially all of the 25,000 acres owned by DDI in St. Johns County. DDI has never requested service from Intercoastal for any portion of its property. Indeed, DDI's representative specifically requested Intercoastal to not proceed with the Application.

17. DDI is planning a multi-use development of 15,000 acres consisting of 12,800 acres in St. Johns County and 2,200 acres in Duval County. This development, known as "Nocatee," is planned to be built in five phases with each phase taking an estimated 5 years with total anticipated build-out time of 25 years.

18. DDI has no plans to develop the 12,000 plus acres of property it owns in St. Johns County which is not part of Nocatee. Thus, there is currently no need for service in this vast portion of the requested territory.

19. Due to its size, Nocatee will be reviewed and permitted as a Development of Regional Impact ("DRI"). As a DRI, Nocatee will be required to comply with the applicable provisions of the local comprehensive plans.

20. Nocatee spans the St. Johns/Duval County Line. Approximately 12,800 acres in St. Johns County.

21. Nocatee will be developed in five phases, with each phase lasting about five years, for a total development horizon of about 25 years. Based on current permitting plans, development within Phase I will require water, wastewater and reuse service in 2002.

22. The entire approximately 2,200 acre Duval County portion of Nocatee is included in Phase I of the development.

C. Intercoastal's Plan of Service

23. Beginning with its application and throughout the course of the hearing, Intercoastal proposed a plan for service to the entire requested service area, not for a portion thereof.

24. Intercoastal's existing service area is entirely on the east side of the Intercoastal Waterway. The proposed territory to be served is entirely west of the waterway. Intercoastal has two water treatment facilities with an average daily flow

capacity of 2.67 mgd and one wastewater treatment facility with a capacity of 0.80 mgd. The flows at Intercoastal's wastewater treatment plant exceed its current capacity.

25. In preparing its plan of service for the Territory Expansion Area, Intercoastal was not responding to any requests for service and did not obtain any information regarding the needs of the owners of the specific properties or developments in the area.

26. At the hearing, there was confusion as to exactly how Intercoastal intended to serve the new territory. Indeed, as discussed below, Intercoastal's plan has changed several times.

27. On April 22, 1999, Intercoastal submitted prefiled testimony before the FPSC in opposition to the territory expansion request of United Water Florida, Inc. for portions of the proposed new territory. In that testimony, Intercoastal indicated that its initial service to the disputed area would be provided through a wholesale/partnership with JEA. Intercoastal's plan to enter into a wholesale arrangement with JEA was abandoned after JEA signed agreements with the county and with DDI. At this time, Intercoastal is not pursuing any further negotiations with JEA.

28. As part of its application to the Authority, Intercoastal proposed to construct water and wastewater transmission and distribution lines across the Intercoastal Waterway to the eastern edge of the Walden Chase development at a cost of $1.4 million dollars. This plan was a 10 inch, two-pipe plan and did not include a reuse line. The cost of both the 10-inch water and sewer mains was estimated at $1.4 million dollars.

29. Intercoastal's Application references its intent to "employ a separate non-potable water transmission and distribution system to supply the irrigation and fire protection needs of future customers in the requested territory." In the Summary Report submitted by Intercoastal's consulting engineer, Mr. Waitz, in support of the Application, the plan of service is described as including a three pipe delivery system. Under a subheading entitled "Type and Location of Facilities," the consultant stated:

> A new unique feature of Intercoastal Utilities' Water and Wastewater Plants is the construction of a master stormwater management system to augment reuse particularly during the initial stages when adequate reuse water may not be available from a wastewater treatment plant and also to provide for a source of fire fighting water that will be incorporated into the proposed three (3) pipe delivery system. [emphasis added]

30. At the hearing, however, Intercoastal's expert indicated the "interim" service to the proposed new territory would be provided through a two pipe system that would be run from the terminus of Intercoastal's current 10 inch water and force mains on the east side of the Intercoastal Waterway. Mr. Waitz specifically denied that any reuse lines would be brought across the Intercoastal Waterway and stated that it would be four to five years before any reuse would be available in proposed new territory.

31. For the first few days of the hearing, Intercoastal's position appeared to be that reclaimed water for the proposed new territory would only come from the new areas west of the Intercoastal Waterway. Intercoastal did not anticipate any water, wastewater or reuse demand from Nocatee in the near future, and its engineer speculated that initial demands from Nocatee would begin in three to four years.

32. Beginning June 11, Intercoastal claimed that it would be able to address the immediate reuse needs of Nocatee by bringing reuse across the Intercoastal Waterway from its existing facilities. No cost estimate or time frame was provided as to what would be required to run a reuse line from the existing facilities to the connection point.

33. Intercoastal revised its plan of service again regarding the "interim" lines. Since Walden Chase will have commercial customers and, consequently, service to this area must meet commercial fire flow requirements, Intercoastal proposed oversizing to its water pipeline.

D JEA/St. Johns County Plan of Service.

34. In contrast to Intercoastal, JEA and the County propose water and sewer

service to the area via a "bulk" wholesale agreement, with JEA selling service in bulk to the County, and the County acting as retail provider.

35. JEA currently has 34 water plants and five major regional wastewater plants. JEA has an extremely reliable system that provides redundance through two interconnected water grids and a loop system. The capacity of several of JEA's existing water and wastewater treatment plants exceed current usage.

36. JEA's south grid currently consists of 14 interconnected water treatment plants with 54 water supply wells. The firm capacity of JEA's south grid was recently increased by 10.8 mgd in May to bring the total capacity to over 103 mgd. These capacity figures are conservatively stated. Just taking into account the south grid, JEA has sufficient capacity to provide service under the agreements with St. Johns County and DDI.

37. JEA's north grid consists of 9 interconnected water plants with 46 wells. There is currently excess water available in JEA's north grid that can potentially be used to meet water demands in the south grid. Plans are already underway to link the two water grids. When the linkage is completed, JEA will be able to further balance its withdrawals to protect against environmental damage.

38. The County/JEA Agreement sets forth the conditions for JEA to provide wholesale water and sewer services to St. Johns County and also provides for the construction of facilities to interconnect with JEA's system in Duval County in order to permit the County to provide retail service in northern St. Johns County. In this Agreement with the County, JEA has committed to utilize its economies of scale and install large lines that will be capable of handling future developments in the area thereby minimizing the prospects of having to later go back and upgrade the facilities.

39. JEA is already in the process of expanding its existing system in southern Duval County to provide regional service. This expansion is going forward irrespective of the results of Intercoastal's territory expansion request. JEA is installing a system that will provide a backbone for regional service. It will enable the establishment of a

comprehensive, economically sized system to serve throughout the surrounding area including northern St. Johns County.

40. JEA is bringing a 24 inch water line from the existing terminus of its facilities at Bayard south to Racetrack Road. From the county line, the current plan calls for a 20 inch water line extension south along U.S. 1. From Nease High School, JEA will run a 16 inch water main and a 12 inch force main north to Walden Chase. The routes selected were chosen to accommodate the regional needs of the area and to provide the most efficient service to the customers in need of immediate service.

41. From the terminus of JEA's new lines in Duval County, it is only approximately two miles to the corner of Walden Chase. To ensure reliability and provide redundancy, JEA will provide a 500,000 water reservoir located near Nease High School and will install high service pumps, a standby generator and a rechlorination facility. JEA will also provide a master wastewater pumping facility which will facilitate regional service.

42. JEA will bear the cost of the water extensions in Duval County. The County will reimburse JEA through customer connection fees for the pro rata costs of up-sizing the sewer lines in Duval County and the cost of the water and sewer lines in St. Johns County.

43. JEA is in the process of implementing a major reuse plan. JEA's reuse master plan includes a 24 inch reuse main that is extended east from Mandarin. This line is already in the planning stages and will be implemented shortly. The services provided in St. Johns County will be hooked up to this network.

E. DDI Plan of Service.

44. DDI has taken several steps toward the provision of water, wastewater and reuse service for the Nocatee development. These steps, which include the following, demonstrate DDI's desire to provide utility service to its development:

(1) DDI has formed a wholly-owned subsidiary called Nocatee Utility Corporation.

(2) Nocatee Utility Corporation has applied to the Florida Public Service Commission for a multi-county water and wastewater certificate to serve the entire Nocatee development, including both the Duval County and St. Johns County portions of the development.

(3) DDI has entered into a Letter of Intent with JEA under which JEA will provide bulk water, wastewater and reuse service to Nocatee Utility Corporation. JEA has facilities planned or in place that are sufficient to meet the needs of the Nocatee development in a timely fashion. The viability of bulk service by JEA is further evidenced by the fact that a bulk agreement with JEA was Intercoastal's first choice for the means of providing service to the proposed expansion territory.

(4) DDI intends to provide reuse throughout its development, either via JEA/St. Johns County or through its own reuse facilities.

(5) DDI has entered into an agreement with Nocatee Utility Corporation under which DDI will provide the financial resources required for Nocatee Utility Corporation to provide retail service to the Nocatee development.

(6) DDI has caused its consultants to prepare a comprehensive, peer-reviewed Groundwater Resources Development Plan. That plan analyzes the water requirements and water resources on DDI's property, and demonstrates that such needs can be met by DDI or its affiliates with no adverse impact on the aquifer or other water users. Under the DDI/JEA

Letter of Intent, DDI will make well sites available to JEA to the extent necessary to provide service to Nocatee.

(7) DDI has developed a planning approach known as Nocatee Environmental and Water Resource Area Plan ("NEWRAP"). NEWRAP represents an integrated approach to all water use and environmental issues. According to DDI, it would be difficult or impossible for DDI to implement NEWRAP if retail water, wastewater and reuse service were provided to the development by an unrelated third party such as Intercoastal.

F. Applicant's Ability to Serve.

45. There is significant doubt as to whether the Applicant has the ability to provide service to the requested area.

46. As discussed in more detail below, there are significant unanswered questions as to whether Intercoastal has sufficient operating capacity to serve the requested territory. Intercoastal has a contractual obligation to provide a specified level of reuse to Sawgrass. Taking into account this commitment and the limited size of Intercoastal's wastewater facility, even including the full amount of the current expansion, it does not appear that there will be sufficient capacity to enable Intercoastal to meet the reuse needs of Nocatee

47. As previously noted, the Applicant's plan of service changed throughout this proceeding. Under all those plans, however, Intercoastal's current wastewater treatment plant capacity is inadequate to provide service for any part of the requested territory until after completion of a proposed expansion.

48. Intercoastal will not be able to provide water and sewer service to Walden Chase by October 1, 1999. In fact, Intercoastal may not be able to meet the needs of Walden Chase for approximately two years.

49. Delays in the provision of service to the developer of Walden Chase could result in significant additional development costs and might jeopardize the project.

50. Intercoastal has had no discussions with the developer of Walden Chase and has not been requested to serve that area. As discussed below, Intercoastal's plan of service would necessarily result in huge costs to the developer of Walden Chase. It is unclear whether the developer will be willing to pay the massive costs that Intercoastal seeks to impose. Costs placed on a developer by a utility can affect the feasibility of a development. While the developer of Walden Chase has apparently indicated an intent to proceed based upon his agreement with the County, it cannot be presumed that the development will go forward under Intercoastal's plan of service. Indeed, Mr. James admitted that a similar delay in development has occurred with respect to Marsh Harbor after the land owner was informed of Intercoastal's projected costs.

51. Furthermore, Intercoastal's initial plan of service failed to address the commercial fire flow needs of Walden Chase as part of its interim plan.

52. Intercoastal's consultant has never been involved in a stormwater reuse project. Mixing stormwater with reclaimed water causes a number of environmental concerns. If the stormwater is to be mixed with reclaimed water and utilized in a residential system, a treatment system should be implemented to treat the stormwater to the level of the reclaimed water. The Florida Department of Environmental Protection is in the process of finalizing rules that will require such treatment. It is also important to note that the proper implementation of a system that mixes stormwater with reclaimed water can require extensive pumping distribution facilities. Intercoastal has totally ignored these costs.

53. Intercoastal's plan for service to Nocatee was predicated upon projected water demand that is approximately 1.7 million gallons per day short of what the developer is projecting. The total long-term demand anticipated from Nocatee is 5 to 6 mgd. Intercoastal has still not provided a coherent explanation as to how it will meet this demand. The cost of adding just .5 mgd of additional water and wastewater capacity could be as much as $2.75 million.

54. Intercoastal's contention that its plan of service is somehow superior to other alternatives because of Intercoastal's special commitment to reuse is simply erroneous. Intercoastal's witnesses are under a mistaken impression that reuse can be imposed upon a developer. Intercoastal has completely overlooked the existing legal precedent governing reuse. Contrary to Intercoastal's's contention, Walden Chase cannot be forced to implement a residential reuse system. There is no current ordinance in place in St. Johns County that would require the Developer of Walden Chase or any other subdivision to implement a residential reuse system.

55. While we believe that Intercoastal possesses the managerial, operational and technical ability to provide service to the requested territory, and can probably initially finance a project, we have questions concerning its financial operations. However, Intercoastal admitted that they are getting a fair rate of return on their investment.

G. Existence of Service from Others.

56. As previously discussed, service does exist from other providers to the requested territory. JEA currently has excess water and sewer capacity in geographic proximity to the requested territory. Furthermore, the Utility Department and DDI have entered into written, binding agreements to obtain "bulk" service from JEA. The Utility Department has likewise executed an agreement with the developer of Walden Chase.

H. Comprehensive Plan.

57. We find that Intercoastal's plan of service is not inconsistent with the St. John's County Comprehensive Plan, but neither are the plans of service of JEA, the Utilities Department, and DDI. Consistency with the St. Johns County Comprehensive Plan is but one factor that the Authority may consider in this proceeding, and does not automatically bind the Authority to approve the application.

I. Landowner/Customer Preference.

58. Two of the landowners in this proceeding have expressed a preference for receiving service from a provider other than Intercoastal.

59. First, the owner of the Walden Chase development has expressed an interest in receiving retail service from the Utility Department. This preference has been manifested in writing via letter and contract.

60. DDI, the owner of Nocatee, has expressed a preference for service from JEA via contract. DDI has not requested service from Intercoastal.

61. DDI does not desire utility service from Intercoastal. DDI's reasons for not desiring such utility service include the following:

(1) Intercoastal could not provide service to the Duval County portion of Nocatee under its proposed certificate expansion. This would result in the untenable situation where service to Phase I of the development would be provided by two different utilities.

(2) Intercoastal does not have the ability to provide sufficient reuse service to Phase I of Nocatee at the outset of development.

(3) DDI desires to retain control over the provision of water, wastewater and utility service to Nocatee to ensure that such service is available as and when required to meet the needs of the development. DDI does not want water, wastewater and reuse service to Nocatee to be subject to potential changes in the financial situation and business plans of a third party.

(4) The provision of retail service to Nocatee by any third party utility would adversely impact DDI's ability to implement its water resource plans and to develop its property in the most environmentally sensitive manner. Intercoastal's conceptual plan for providing reuse service west of the Intercoastal Waterway would require DDI to plan and operate its stormwater system in coordination with Intercoastal. This involvement by a third party utility -- whose utility-related goals would conflict with some of the developers' environmental goals -- would interfere with the implementation of DDI's integrated water resource plan.

(5) DDI believes that Intercoastal does not have the necessary facilities in place today to provide service to Nocatee and does not have anything more than conceptual plans as to how such service will be provided.

(6) Intercoastal has underestimated the utility needs of Nocatee. Intercoastal's projections for utility needs on the west side of the Intercoastal Waterway are based on simplistic growth rate projections. At the time Intercoastal's certificate expansion application was filed, the Nocatee project had not been announced and Intercoastal had no knowledge of the location or scope of that development. Intercoastal has made no subsequent attempt to take the actual development plans for Nocatee into account in any of its engineering or financial analysis.

(7) Intercoastal has not shown that it would be the lowest cost, most efficient provider of service, nor has it provided anything more than speculation as to what the impact of the certificate expansion would be on the rates to its current customers.

(8) If service were provided by Intercoastal, DDI would be required to contribute substantial assets to Intercoastal which would create value for Intercoastal's stockholders when Intercoastal's system is eventually sold. If service is provided by DDI or its affiliate, the value of those assets would be retained directly or indirectly by DDI.

62. Finally, Intercoastal's existing customers have vocally opposed the application for the proposed territory. The Sawgrass Association which represents approximately 1,600 residential customers currently served by Intercoastal, has expressed concern over Intercoastal's apparent plan to provide service, at least temporarily, to the new territory via Intercoastal's existing facilities.

CONCLUSIONS OF LAW

1. Pursuant to Sections $17^3/_4$-203(a)(1) and $17^3/_4$-206 of the St. Johns County Utility Ordinance ("Ordinance"), the Authority has jurisdiction to issue a Preliminary Order regarding Intercoastal's certificate extension application.

2. Pursuant to Section $17^3/_4$-202(n) of the Ordinance, any person having an identifiable interest in the proceeding can participate as a party in a proceeding before the Authority. Each of the Intervenors has an identifiable interest in the proceeding as a proposed alternative provider of service to a portion of the proposed expansion territory. In addition, DDI has an identifiable interest in the proceeding as the owner of the vast majority of the land covered by the expansion application. Each of the Intervenors therefore has standing to participate as a party in this proceeding.

3. As the applicant in this proceeding, Intercoastal bears the burden of demonstrating its entitlement to the territory extension it seeks. See, Department of Transportation v. JWC Corporation, Inc., 396 So.2d 778 (Fla. 1st DCA 1981).

4. Section 17-3/4-206 of the St. Johns County Utility ordinance provides that the proposed extension of service by a utility cannot be commenced until the utility obtains an amended franchise certificate for the proposed extension. Section 17-3/4-204(B) of the Ordinance provides the Authority with the power to issue a Preliminary Order on the territory extension request. These criteria expressly apply to certificate extension applications governed by 17 3/4 - 206, such as the one before the Authority in this case. See Section 17 3/4 - 204 (C)(h). The Authority will exercise its discretion to apply the original certificate criteria to this certificate extension case; however, it will also consider other factors that the Authority has determined bear on the public interest.

5. Subsection (e) of Section 17$^3/_4$-204.C of the Ordinance contemplates an inquiry into the need for service in the territory involved in the application. Intercoastal has failed to demonstrate a need for service to the portion of the proposed expansion area owned by DDI which is outside the boundaries of the planned Nocatee development. The Authority concludes that it is not in the public interest to grant a certificate expansion for a large area which has no foreseeable need for utility service. Intercoastal's certificate expansion application for this portion of the requested territory should therefore be denied. For purposes of further analysis, we assume, but do not decide, that Intercoastal has adequately demonstrated a need for service to the balance of the requested territory.

6. Subsection (e) of Section 17$^3/_4$-204.C of the Ordinance permits an inquiry into the ability of the applicant to provide service to the territory applied for. Intercoastal has failed to demonstrate that it can commence service to the Walden Chase development in a time frame that meets the needs of the developer. Intercoastal has also failed to demonstrate that it can commence reuse service to Nocatee in a time frame and quantity that meets the needs of the developer. Due to the multi-county nature of Phase I of Nocatee, Intercoastal cannot provide service under its application to the entire area that has one of the most immediate needs for service.

7. In the exercise of its discretion, the Authority concludes that Intercoastal's informational submissions to the St. Johns River Water Management District (SJRWMD) as part of the 2020 Water Planning process do not confer any particular rights on Intercoastal in this certificate extension proceeding. The 2020 Water Plan currently exists only in draft form and final action on the plan is not anticipated before

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late 1999. Further, correspondence from the SJRWMD makes it clear that Intercoastal's information submission does not grant Intercoastal any preferred status with respect to future required permitting activities. In fact, the issuance of a certificate to serve the territory is a prerequisite to the SJRWMD's review of any consumptive use permit application.

8. We have found no controlling authority on the weight that this Authority should give to landowner preference in cases involving certification of water and wastewater utilities.

(1) In an early case involving the Commission's approval of a territorial service agreement between two electric utilities, the Florida Supreme Court stated that "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself." Storey v. Mayo, 217 So.2d 304 (Fla. 1968). In that case, the two utilities had *agreed* on a territorial boundary, and the Commission had approved that agreement as being in the public interest.

(2) In a more recent case involving a *dispute* between two electric utilities, the Court held that it was reversible error for the Commission to disregard customer preference in a situation where each utility was capable of serving the territory in dispute. Gulf Coast Electric Co-op, Inc. v. Clark, 674 So.2d 120 (Fla. 1996). the Supreme court has likewise recognized this preference as a factor in FPSC certificate cases. See Davie Utilities, Inc. v. Yarborough, 263 So.2d 215 (Fla. 1972).

(3) In a case involving a contested water and sewer certificate application, the District Court of Appeal upheld a Florida Public Service Commission order which gave weight to the importance of having an overall plan for orderly development of a large scale land development project and the unique

ability of a developer-related utility to perform such planning. St. Johns North Utility Corp. v. Florida Public Service Commission, 549 So.2d 1066 (Fla. 1st DCA 1989).

9. Based on these precedents, the Authority concludes that in a *disputed* certificate extension case, it is entitled to consider both landowner preference and the unique ability of a developer-related utility to integrate utility planning with overall planning for the development in making its public interest determination. We have further concluded that, in the particular circumstances of this case, we should give great weight to these factors. These circumstances include the following:

(1) The vast majority of the portion of the proposed expansion area planned for development (i.e. Nocatee) is owned by a single party (i.e. DDI). The first phase of Nocatee crosses a county line and could not be served in an integrated fashion by Intercoastal under the certificate extension applied for in this case.

(2) As part of its overall development plans for Nocatee, DDI is proposing to provide retail water, wastewater and reuse service to Nocatee through an affiliated, multi-county utility company that plans to obtain bulk utility service from JEA. DDI has taken substantial steps with regard to water resource planning generally and with respect to utility planning in particular, including the conduct of a detailed Groundwater Resource Development Plan of a type that Intercoastal has testified it will not undertake unless and until it is granted a certificate extension. DDI appears to have the capability of carrying out its development plan. While this Authority does not have the jurisdiction to grant or deny an application for multi-county service such as that filed by Nocatee Utility Corporation with the Florida Public Service Commission, we do have the discretion to consider the pendency of such an application in making our determination on the single-county application before us.

(3) The remainder of the proposed expansion area is owned by a small number of parties, including the developers of the proposed Walden Chase and Marsh Harbor developments.

(4) The record shows that neither the developer of Nocatee nor the developer of Walden Chase desire service from Intercoastal. The record shows that Marsh Harbor requested an estimate of the cost of providing service from Intercoastal in 1996, but did not pursue the matter further following receipt of that estimate. In any event, we conclude that service to Marsh Harbor would be feasible only if we also granted a certificate to serve substantial additional territory on the West side of the Intercoastal Waterway.

10. Intercoastal contends that unless its certificate expansion application is approved, it will not have the opportunity to continue to expand and to take advantages of the economies of scale typically associated with a larger utility system. We give little weight to this factor in making our public interest determination, given the absence of any credible projections of the cost of providing service to the expansion territory or the impact that such service would have on the rates paid by existing customers of Intercoastal. We also note that none of the public witnesses representing customers of Intercoastal favored the proposed certificate expansion. We do not believe Intercoastal's financial position will be imperilled by a denial of the requested territory.

11. Intercoastal contends that unless its certificate expansion application is granted, the rates for service to the proposed territory will not be subject to control by this Authority and by the Board of County Commissioners. While this may be true, it is not a factor that we believe warrants consideration in our public interest determination. The Legislature has granted the Board of County Commissioners rate making authority over private utilities, such as Intercoastal, who provide service wholly within St. Johns County. The Legislature has granted the Florida Public Service Commission such authority over private multi-county systems, such as that proposed by DDI and Nocatee Utility Corporation. It is not our role to second-guess the wisdom of this regulatory

scheme, but only to determine whether granting Intercoastal a certificate expansion is in the public interest.

12. After the date this application was filed, but prior to this hearing, the St. Johns County Board of County Commissioners adopted Ordinance No. 99-36, the St. Johns County Water and Wastewater Service Area Ordinance. This Ordinance claims the Walden Chase and Marsh Harbor territory as the "Exclusive Service Area" of the County. We note in passing that Section 12 of that Ordinance provides that nothing in the Ordinance affects the powers of the Authority to process and conduct certification proceedings for new utilities or for extensions of territories outside the County's Exclusive Service Area. Regardless of the Ordinance's intent, which is ultimately a question for the Board of County Commissioners or the courts, we find that we can reach a decision without application of the Ordinance.

13. Based on all the factors discussed above, we determine that it is not in the public interest to grant any portion of Intercoastal's requested certificate extension.

Based on the foregoing, it is ORDERED as follows:

1. Intercoastal's application to amend Franchise Certificates Nos. 13 and 14 is and should be DENIED in its entirety.

2. This Order shall not take effect unless and until it is confirmed by the Board of Commissioners.

ORDERED at St. Johns County, Florida, this 4th day of August, 1999.

ST. JOHNS COUNTY WATER AND SEWER AUTHORITY

BY: _____
Its Chairman

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I HEREBY CERTIFY that conformed copies here of have been furnished by mail to the following on the 6th day of August, 1999.

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Secretary to Executive Director

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ORDER OF THE BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

RE: APPLICATION OF INTERCOASTAL UTILITIES, INC. FOR EXTENSION OF WATER AND WASTEWATER SERVICE TERRITORIES.

ST. JOHNS WATER AND SEWER AUTHORITY
DOCKET NO. 99-0007-0002-0009
ORDER NO. 99-00015

FINAL ORDER CONFIRMING THE ST. JOHNS COUNTY WATER AND SEWER AUTHORITY'S PRELIMINARY ORDER 99-00012

This matter was heard on September 7, 1999, at a special meeting of the Board of County Commissioners of St. Johns County, Florida ("Board") before Board Chairman Marc A. Jacalone, and Commissioners Pal W. Howell, John J. Reardon, Dr. Mary Kohnke and James E. Bryant.

APPEARANCES

For Intercoastal Utilities, Inc.:	John L. Wharton, Esq. 2548 Blairstone Pines Drive Tallahassee, Florida 32301
For DDI, Inc. and Estuary Corporation:	Richard D. Melson, Esq. 123 South Calhoun Street Tallahassee, Florida 32314
For St. Johns County Utility Department:	Suzanne Brownless, Esq. 1311-B Paul Russell Road Suite 201 Tallahassee, Florida 32301
For JEA:	Kenneth A. Hoffman, Esq. J. Stephen Menton, Esq. 215 South Monroe Street Suite 420 Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

At issue is whether the St. Johns County Water and Sewer Authority's ("Authority") Preliminary Order 99-00012 Denying

Application of Intercoastal Utilities, Inc. to Amend Franchise Certificates Nos. 13 and 14 issued on August 6, 1999, should be confirmed, modified or reversed.

PRELIMINARY STATEMENT

On March 9, 1999, Intercoastal Utilities, Inc. (Intercoastal) submitted its application for extension of Certificates Nos. 13 and 14 in order to provide water and sewer service to an area of approximately 25,000 acres located west and southwest of the Intercoastal Waterway. Pursuant to St. Johns County Water and Sewer Authority Rules 1.5(2) and 11.1 (Rules), DDI, Inc. and Estuary Corporation (DDI); JEA; St. Johns County Utility Department (Utility Department), United Water Florida, Inc. and Hines Interests Limited Partnership all filed timely objections to Intercoastal's application and requests for hearing on April 6, March 30, April 8 (United and County) and April 7, 1999, respectively.

On April 7, 1999, the Authority requested that the Board grant an extension until May 5, 1999, to hold the evidentiary hearing on Intercoastal's application. The Authority subsequently revised this request for an extension until June 2, 1999. This revised request was granted by the Board on April 14, 1999. Along with its April 8th Objection to and Request for Hearing, United also filed a Motion to Dismiss, or in the alternative, Motion for Stay or Abatement. Intercoastal filed its Response to the Motions to Dismiss and for Abatement or Stay on April 21, 1999.

On May 13, 1999, DDI filed an Emergency Motion for Discovery;

Intercoastal filed its response to the Motion on May 20, 1999; and DDI filed its Reply on May 21, 1999. The Motion for Discovery was heard before the Authority on May 24, 1999, and was denied. On May 25, 1999 Intercoastal filed its Motion for Disqualification of the Authority and the Board of County Commissioners of St. Johns County (Board). The Utility Department filed its Response to the Motion for Disqualification on May 27, 1999. This matter was heard by the Authority on the first day of the hearing, June 2, 1999, and denied as to the Authority. On June 1, 1999 United withdrew its Objection, Motion to Dismiss and Motion for Stay or Abatement.

The Authority conducted evidentiary hearings in this docket on June 2, 4, 11, 18, 19 and 23, 1999. At these hearings the Authority heard the testimony of 19 witnesses and admitted 44 exhibits into evidence. Proposed Preliminary Orders were timely filed by the Utility Department and JEA; Proposed Findings of Fact, Conclusions of Law and Preliminary Order was timely filed by DDI; and Proposed Recommended Order was timely filed by Intercoastal on July 19, 1999, and are part of the record. On August 4, 1999, the Authority met at a properly noticed public meeting and voted to deny Intercoastal's request for extension of its certificated water and sewer service territories. The Authority's Preliminary Order 99-00012, issued on August 6, 1999, now before us memorializes that vote.

Based upon a review of the record and legal argument of the parties the Board hereby finds and determines the following:

FINDINGS OF FACT

1. All preliminary orders of the Authority must be confirmed by the Board prior to becoming effective. County Code §173/4-223(a).

2. The Authority and the Board, in reviewing applications for certificate extensions must consider: ability of the applicant to provide service; the nature of the service territory and facilities necessary to serve the requested territory; the need for service in the requested territory; and the existence, or nonexistence, of service from other utility providers to the requested service territory. County Code §§173/4-204C.(e), 173/4-223(f). The Authority and the Board are also able to consider any other factors, which in their discretion, are deemed relevant, e.g., landowner/developer preference, ability to permit certain types of facilities, the date service will be available, compliance with the County Comprehensive Plan and environmental impacts of proposed facilities. Finally, both the Authority and the Board are generally charged with acting in the public interest when considering certificate expansion requests.

3. The Authority and this Board must base their decisions with regard to the criteria stated above on competent substantial evidence of record adduced at a hearing which complies with the essential requirements of law. County Code §173/4-223(e)(3). Further, the Board may rely on the factual findings of the Authority unless it finds, after a full review of the record, that either there is no competent substantial evidence to support

specific findings or the proceeding did not comport with the essential requirements of the law. County Code §17-3/4-223(e)(3).

CONCLUSIONS OF LAW

4. Upon a review of the extensive record before us we find that the decision of the Authority with regard to the criteria stated in County Code §§17-3/4-204C.(e) are supported by competent substantial evidence of record as is extensively documented in the Proposed Preliminary Orders submitted by the parties.

5. We further find that the hearing before the Authority did comport with the essential requirements of the law in that all parties were given an opportunity to present and cross examine witnesses, give opening and closing statements, introduce evidence into the record and file proposed preliminary orders.

6. With regard to the arguments presented by Intercoastal in its Notice of Objection to Confirmation of Order, we note that Intercoastal has merely reargued its case without identifying any instances in which the Authority failed to base its findings on competent substantial evidence of record or misinterpreted Authority rules or applicable County Code sections. Additionally, Intercoastal did not complain that its procedural rights were infringed by the conduct of the hearing before the Authority.

IN CONSIDERATION OF THE ABOVE, IT IS ORDERED THIS 7th DAY OF September 1999, THAT PRELIMINARY ORDER 99-00012, ISSUED BY THE ST. JOHNS COUNTY WATER AND SEWER AUTHORITY ON AUGUST 6, 1999, IS HEREBY CONFIRMED.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Marc A. Jacalone
Marc A. Jacalone, Chairman

ATTEST: CHERYL STRICKLAND, CLERK

By: Patricia DeGrande
Deputy Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that conformed copies hereof have been furnished this 21st day of September, 1999 by U.S. Mail, postage prepaid, to each of the persons listed on the following Service List.

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Cheryl Strickland, Clerk

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