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SARASOTA COUNTY GOVERNMENT

Office of the County Attorney

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Jorge L. Fernández
County Attorney

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VIA FEDERAL EXPRESS

Ms. Blanca Bayo, Director
Division of Records and Reporting
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket Nos. 990696-WS and 992040-WS

Dear Ms. Bayo:

Enclosed is the original and fifteen(15) copies of Sarasota County's Motion to Dismiss the above-referenced proceedings.

Please indicate receipt of this filing on the enclosed copy of this letter and return to the undersigned in the enclosed stamped envelope. Thank you for your attention to this matter.

Sincerely,

Kathleen F. Schneider
Assistant County Attorney

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Consolidated Dockets:

**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

MOTION TO DISMISS

COMES NOW, Sarasota County, Florida (the "County"), a political subdivision of the State of Florida, by and through its undersigned attorney, and moves the Florida Public Service Commission (the "FPSC") to dismiss the above-referenced proceedings on the ground that, pursuant to section 367.171(7), Florida Statutes, the FPSC lacks subject matter jurisdiction to grant certificates of service to water and wastewater utilities that desire to provide service within the geographic boundaries of counties which have not relinquished their statutory authority to regulate utilities to the FPSC. In support of its Motion, the County states as follows:

1. The Florida legislature has expressly recognized that "every county varies from every other county"; therefore, the "functions, duties and responsibilities required of County officers" similarly varies. Section 361.171(3), Florida Statutes.
2. In recognition of the unique characteristics of the individual counties, the legislature specifically exempted certain counties from the provisions of Chapter 367, Florida Statutes, and granted them the right to regulate utilities that provide service within their own counties "until such time as the board of county commissioners of any such county" adopts a resolution "declaring that such county is subject to the provisions of the chapter." Section 367.171(1) and (3), Florida Statutes.
3. The various counties which choose to regulate water and wastewater utilities providing service within their geographical boundaries are called "non-jurisdictional counties" because the FPSC does not have jurisdiction to regulate utilities which provide service within the boundaries of those counties. Conversely, counties which elect to divest

themselves of jurisdiction and to confer jurisdiction on the FPSC are called “jurisdictional counties” because the FPSC has jurisdiction to regulate utilities providing service in those counties. Hernando County v. The Florida Public Service Commission, 685 So.2d 48, 50 (Fla. 1st DCA 1996).

4. The FPSC’s power, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State. Citrus County v. Southern States Utilities, 656 So.2d 1307, 1311 (Fla. 1st DCA 1995). Any reasonable doubt as to the existence of the FPSC’s jurisdictional authority must be resolved against the exercise of that authority. City of Cape Coral v. GAC Utilities, Inc., 281 So.2d 493, 496 (Fla. 1973).
5. St. John’s County, like Sarasota County, Hillsborough County, Citrus County, Collier County, and others, are non-jurisdictional counties. Accordingly, as held by the Hernando County court, the FPSC does not have jurisdiction to regulate utilities that provide service within their respective geographic boundaries.
6. In the present consolidated proceeding, Intercoastal Utilities, Inc. and Nocatee Utility Corporation each submitted an application to the FPSC for original certificates of service for proposed systems to serve both Duval County and St. Johns County.¹ Duval County is jurisdictional; St. Johns is non-jurisdictional. Neither Intercoastal nor Nocatee currently has a system which provides water and/or wastewater service across county boundaries. In its application to the FPSC, Intercoastal even admits that its system in St. Johns County is not currently jurisdictional to the FPSC. Intercoastal Appl., pg. 19. Yet, incredibly, it attempts to invoke the FPSC’s jurisdiction in St. Johns County with its application. This is completely contrary to the requirements of section 367.031, Florida Statutes, which provides that an original certificate can be granted only to a utility which is “subject to the jurisdiction of the Commission.” By its own admission, Intercoastal is not.
7. In the present proceeding, Nocatee and Intercoastal are essentially asking the FPSC for authorization to provide water and wastewater service in a non-jurisdictional county. The FPSC has no statutory authority to consider those requests. Hernando County at 50 (the FPSC does not have jurisdiction to regulate utilities within the boundaries of a non-jurisdictional county).
8. The only exception to the FPSC’s lack of jurisdiction in non-jurisdictional counties can be found in section 361.171(7), Florida Statutes which provides that the FPSC shall have exclusive jurisdiction “over all utility systems whose service transverses county boundaries.” The issue in this proceeding is when does that jurisdiction vest. The Commission answered that question in In re: Lake Suzy Utilities, 2000 WL 485067 (Fla. P.S.C.), where it held that the Commission is “vested with jurisdiction [under section 367.171(7)] at the time of connection”, i.e. when service actually “transverses county boundaries”.

¹ Intercoastal also submitted an application with the FPSC to amend an existing certificate of service originally granted by St. Johns County.

9. Thus, contrary to the position taken by Intercoastal and Nocatee, section 367.171(7) jurisdiction is not triggered by the mere filing of a certificate of authorization to provide service. Instead, as held by the Hernando County court, “the relevant inquiry when determining the existence of jurisdiction under section 367.171(7) is the actual inter-relationship of two or more facilities providing utility services in a particular geographic area comparable to the ‘service area’ defined in section 367.021(10) over which the PSC ordinarily has jurisdiction.” The court further stated that the requirements of section 367.171(7) “can only be satisfied by evidence that the facilities forming the asserted system exist in contiguous counties across which the service exists.” Thus, the facilities must be actual and must exist before the FPSC divests a non-jurisdictional county of regulatory authority. See also, In Re: Lake Suzy Facilities.
10. Sarasota County does not disagree that once a utility system actually provides service which crosses county boundaries, jurisdiction rests with the FPSC under section 367.171(7). However, it is solely within the non-jurisdictional county’s regulatory authority to make the threshold decision as to whether to grant a utility the right to either commence serving within its geographic boundaries or to expand its current service area with that county’s boundaries.
11. An interpretation of section 367.171(7) which would allow a utility to avoid a county’s regulatory jurisdiction by a unilateral business decision to include some territory from a jurisdictional county in its expansion plans flagrantly undermines the authority of a non-jurisdictional county to regulate utilities within its geographic boundaries and allows the utility the unfettered opportunity to forum shop for its own regulator.

WHEREFORE, Sarasota County requests that the FPSC dismiss the application of Intercoastal Utilities, Inc. for an original certificate and extension of service area in St. Johns County, Florida and to also dismiss the application of Nocatee Utility Corporation for an original certificate to provide service in St. Johns County on the ground that the FPSC lacks subject matter jurisdiction.

Respectfully submitted this 2nd day of May, 2000.

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By Kathleen F. Schneider

Kathleen F. Schneider
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Florida Bar No. 0873306
(Direct all subsequent filings in this matter to
Attorney Schneider)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished by regular U.S. Mail on this 2nd day of May, 2000, to the following persons:

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