HOPPING GREEN SAMS & SMITH
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS
123 SOUTH CALHOUN STREET
POST OFFICE BOX 6526
TALLAHASSEE, FLORIDA 32314
(850) 222-7500
FAX (850) 224-8551
FAX (850) 425-3415

Writer's Direct Dial No.
(850) 425-2313

JAMES S. ALVES
BRIAN H. BIBEAU
RICHARD S. BRIGHTMAN
KEVIN B. COVINGTON
PETER C. CUNNINGHAM
RALPH A. DEMEO
WILLIAM H. GREEN
WADE L. HOPPING
GARY K. HUNTER, JR.
JONATHAN T. JOHNSON
LEIGH H. KELLETT
ROBERT A. MANNING
FRANK E. MATTHEWS
RICHARD D. MELSON
ANGELA R. MORRISON
SHANNON L. NOVEY
ERIC T. OLSEN

GARY V. PERKO
MICHAEL P. PETROVICH
DAVID L. POWELL
WILLIAM D. PRESTON
CAROLYN S. RAEPPLE
DOUGLAS S. ROBERTS
D. KENT SAFRIET
GARY P. SAMS
TIMOTHY G. SCHOENWALDER
ROBERT P. SMITH
DAN R. STENGLE
CHERYL G. STUART
W. STEVE SYKES

OF COUNSEL
ELIZABETH C. BOWMAN

June 6, 2000

ORIGINAL

RECEIVED-FPSC
00 JUN -6 PM 4:48
RECORDS AND REPORTING

BY HAND DELIVERY

Blanca L. Bayó
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

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

Dear Ms. Bayó:

Enclosed for filing on behalf of Nocatee Utility Corporation are the original and fifteen copies of its Response In Opposition To Motions To Intervene And Motions To Dismiss.

By copy of this letter, these documents have been furnished to the parties on the service list. If you have any questions regarding this filing, please call.

Very truly yours,

Richard D. Melson

RDM/mee

Enclosures
cc: Mr. O'Steen
Mr. Skelton
Mr. Miller

APP
CAF
CMP
COM 5
CTR
ECR
LEG 2
OPC
PAI
RGO
SEC 1
SER
OTH

129473.1

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
06906 JUN-6 00
FPSC-RECORDS/REPORTING

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 water and wastewater utility in Duval and St. Johns Counties by Intercoastal Utilities, Inc.	)	Docket No. 992040-WS Filed: June 6, 2000

NOCATEE UTILITY CORPORATION'S RESPONSE IN OPPOSITION TO MOTIONS TO INTERVENE AND MOTIONS TO DISMISS

Nocatee Utility Corporation ("NUC"), pursuant to Order No. PSC-00-0980-PCO-TP, *Order Establishing Filing Dates for Special Agenda Conference*, files this Response in Opposition to:

(i) the three separate Petitions for Intervention filed by Collier County and Citrus County, Hillsborough County, and Sarasota County (collectively, the "Other Counties"),

(ii) the three separate Motions to Dismiss filed by the Other Counties[1], and

(iii) the Alternative Petitions for Declaratory Statement, for Initiation of Rulemaking, and for Permission to File Amicus Curiae Motion on Jurisdiction filed by Collier County and Citrus County.

[1] NUC is not responding directly to the earlier Motion to Dismiss Intercoastal's application filed by St. Johns County since St. Johns County has filed no similar motion directed at NUC. Nevertheless, much of the analysis relating to the proper construction of Section 367.171(7), Florida Statutes, is equally applicable to St. Johns County's motion.

SUMMARY

1. The Petitions to Intervene filed by the Other Counties should be denied for lack of standing. None of the Other Counties has alleged sufficient facts to show that it is entitled to intervene in these dockets under the standards established by the Administrative Procedure Act, the Uniform Rules, and applicable judicial and Commission precedents.

2. The Motions to Dismiss for lack of jurisdiction filed by the Other Counties should be denied. Procedurally, these Motions to Dismiss should be stricken and/or denied on the grounds that they were filed by entities that do not have standing to participate in these cases. Substantively, they should be denied on the grounds that Chapter 367, and particularly Section 367.171(7), plainly and unambiguously gives the Commission exclusive subject matter jurisdiction over multi-county utilities, including the right to grant original certificates to new multi-county utilities.

3. The Collier/Citrus County Alternative Petition for Permission to Submit Amicus Curiae Motion on Jurisdiction should be denied. Even if the Commission permits the Other Counties to participate as amicus to support St. Johns County's Motion to Dismiss, an amicus is not a party and is not entitled to file its own motion on jurisdiction.

4. The Collier/Citrus County Alternative Petitions for Declaratory Statement and for Initiation of Rulemaking should be denied as improper subjects for consideration in this docket.

RESPONSE TO PETITIONS TO INTERVENE

5. When an entity's standing to participate in a proceeding is contested, the burden is on the petitioner to demonstrate that it does, in fact, have standing to participate in the case. Department of Health and Rehabilitative Services v. Alice P., 367 So.2d 1045, 1052 (Fla. 1st DCA 1979). As shown below, the Other Counties have totally failed to bear that burden.

6. Pursuant to Rule 25-22.039, Florida Administrative Code, petitions to intervene:

> . . .must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.

The Other Counties have not, and could not, allege any constitutional, statutory or rule provision which gives them a right to participate in this proceeding. The Other Counties must therefore meet the traditional test of standing; namely, will their substantial interests be affected by the proceeding within the meaning of Chapter 120, Florida Statutes.

7. Although "substantial interest" is not defined by statute, the Commission and the courts have consistently applied the two pronged test for standing first articulated in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981) rev. den. 415 So.2d 1359 (Fla. 1982). As the Florida Supreme Court recently stated in Ameristeel Corporation v. Clark, 691 So.2d 473, 477 (Fla. 1997):

> To demonstrate standing to intervene under Agrico, a petitioner must demonstrate:
>
> > 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect.
>
> 406 So.2d at 482 As the district court explained in that case, the first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

The Petitions to Intervene in this case fail to meet either prong of the Agrico test and must therefore be denied.

No Immediate Injury in Fact

8. To satisfy the first prong of the Agrico test, a person must show that he has more than a mere interest in the outcome of a proceeding. There must be a showing that the petitioner's rights and interests are immediately affected and thus in need of protection. Florida Society of Ophthalmology v. Board of Optometry, 532 So.2d 1279 (Fla. 1st DCA 1988). Furthermore, the alleged injury cannot be speculative or conjectural. Village Park Mobile Home Association v. Department of Business Regulation, 506 So.2d 426 (Fla. 1st DCA 1987) rev. den. 513 So.2d 1063 (Fla. 1987). While the Other Counties may be interested in Commission's interpretation of Section 367.171(7), Florida Statutes, that interest is not enough to satisfy either prong of the Agrico test.

9. The Petitions to Intervene do not allege that the Other Counties will suffer any immediate injury in fact as a result of any action the Commission may take in this proceeding. The only allegations of "injury" are that a Commission decision granting a certificate to either NUC or Intercoastal as a multi-county utility:

(a) would have precedential effect and far-reaching implications on future applications by multi-county utilities who provide wish to service within the boundaries of the Other Counties (Collier/Citrus Petition, ¶8; Sarasota Petition, ¶7);

(b) would impose no limitations on the scope of service territory the Commission could potentially grant a utility within the boundaries of a non-jurisdictional county (Collier/Citrus Petition, ¶7);

(c) would call into question the Other Counties' right to regulate investor-owned utilities within their jurisdictions, undermine their statutory authority, and allow investor-owned utilities to circumvent the regulations of the Other Counties (Hillsborough Petition, ¶4; Sarasota Petition, ¶9);

(d) would call into question the Other Counties' ability to exercise growth management decisions within their own jurisdiction (Hillsborough Petition, ¶5);

(e) would call into question the Other Counties' ability to honor contractual commitments to investor owned utilities within their jurisdictions (Hillsborough Petition, ¶6); and

(f) would allow private utilities to forum shop for a regulator (Sarasota Petition, ¶9).

With regard to standing, none of these allegations rises to the level of a present, actual "injury in fact" as required by Agrico. Each of these allegations is simply another way of stating that a decision by the Commission to grant a certificate to a utility whose proposed service territory transverses the boundary of a jurisdictional county with a non-jurisdictional county could have some precedential effect if and when similar applications are submitted in the future. In fact, as discussed in Paragraph 24 below, the Commission has already entered an order which has exactly the precedential effect the Other Counties now fear.

10. Importantly, if and when a utility ever applies for a multi-county certificate involving territory in one of the Other Counties, the affected county will have clearly have standing under Section 367.045(4) to object to that application and to raise any arguments it may have about forum shopping or about the impact of the application on the county's regulatory authority, its growth management decisions, or its ability to honor contractual commitments to other utilities. These are matters whose resolution can and must await a specific certificate application that exposes one of the Other Counties to the threat of an immediate and direct injury in fact.

11. The potential precedential effect of a Commission decision is not sufficient to confer standing on a person who may be affected by that precedent. In re: Complaint and/or Petition for arbitration by Global NAPS, 99 F.P.S.C. 12:483, Order No. PSC-99-2526-PCO-TP (December 23, 1999) (denying petition to intervene filed by a party having a contract similar or identical to the one to be construed by the Commission). There is a sound basis for the principle

that the potential precedential effect of a Commission decision does not confer standing. If the rule were otherwise, intervention in a case would be available to any person who might, in the future, have a claim involving application of the same statute. This potential future effect is precisely the type of speculative, indirect interest that Agrico holds is insufficient to permit a party to participate in an administrative proceeding.

Outside Zone of Interest

12. The Other Counties have also failed to meet the second prong of the Agrico test because the interests claimed in the Petitions to Intervene do not fall within the "zone of interest" which this proceeding is designed to protect.

13. This is a certificate proceeding under Section 367.045, Florida Statutes. It is designed to protect the interest of the applicant utility and the public by granting or denying an a utility's application for a service territory -- in this case in Duval and St. Johns Counties. The statute specifically gives a right to participate to the Public Counsel and to governmental authorities, utilities and consumers who would be substantially affected by the requested certification. The Other Counties have no regulatory authority in Duval or St. Johns Counties, are not potential competing providers of utility service in this area, and are not existing or potential customers of either utility. They therefore have no legally cognizable interest in whether Nocatee, Intercoastal, or neither, are awarded their requested service territory. The Other Counties' general interest in how the Commission interprets the limits of its regulatory jurisdiction is not within the "zone of interests" protected by this proceeding.

Cases Cited by Other Counties Do Not Support Intervention

14. Hillsborough County's reliance on Florida Wildlife Federation, Inc. v. Florida Trustees of the Internal Improvement, etc., 707 So.2d 841 (Fla. 5th DCA 1998) and Union

Central Life Insurance Co. vs. Carlisle, 593 So.2d 505 (Fla. 1992) as support for its standing to intervene is misplaced.

15. First, both cases deal with intervention under Rule 1.230, Fla.R.Civ.Pro., which permits intervention by "anyone claiming an interest in pending litigation." This civil litigation standard is different than the standard that applies to intervention in administrative proceedings, which permits intervention only by those whose interests are "substantially affected."

16. Second, the Petitions to Intervene would fail even under the Rule 1.230 standard. In Union Central, the Florida Supreme Court, quoting its earlier decision in Morgareidge v. Howey, 75 Fla. 234, 238-239, 78 So. 14, 15 (1918), said:

> [T]he interest which will entitle a person to intervene...must be in the matter in litigation, and *of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.* In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of litigation.

Union Central at 507 (emphasis added). The Other Counties will gain or lose nothing by the direct operation and effect of a Commission decision granting a certificate to NUC (or Intercoastal) to provide service in Duval and St. Johns Counties. Thus intervention would fail under the standard in Rule 1.230, even if that standard were applied by analogy.

WHEREFORE, NUC respectfully urges that the Motions to Intervene filed by the Other Counties be denied.

RESPONSE TO MOTIONS TO DISMISS

17. If the Commission denies the Other Counties' Petitions to Intervene in this proceeding, then their Motions to Dismiss must likewise be stricken and/or denied for lack of standing.

18. Even if the Other Counties' Motions to Dismiss are not denied or stricken on procedural grounds, those motions must be denied because Chapter 367 clearly and unambiguously gives the Commission exclusive jurisdiction to consider and grant or deny applications (i) for original certificates for new multi-county utilities, and (ii) certificate extensions for existing multi-county utilities.

The Statute

19. Section 367.011(2), Florida Statutes, gives the Commission "exclusive jurisdiction over each utility with respect to its *authority*, service and rates." (Emphasis added.) For purposes Chapter 367, a utility is defined in Section 367.021(12) as follows:

> (12) "Utility" means a water or wastewater utility and. . .includes every person. . .owning, operating, managing or controlling a system, *or proposing construction of a system*, who is providing, *or proposes to provide*, water or wastewater service to the public for compensation.
>
> (Emphasis added.)

The term "system" in turn is defined in Section 367.021(11) as follows:

> (11) "System" means facilities and land used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and land.

20. Under Section 367.171, Florida Statutes, the exclusive jurisdiction granted to the Commission by Section 367.011(2) extends both to utilities in "jurisdictional counties" and (with an exception not relevant here) to all utility systems whose service transverses county boundaries:

> (7) Notwithstanding anything in this section to the contrary, the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional. . . .

21. The legal question presented by the Motions to Dismiss (insofar as it affects NUC's application) is whether, under these provisions in Chapter 367, the Commission has exclusive

jurisdiction to grant certificates of authorization to new utilities who propose to provide service in two adjacent counties (one of which is nonjurisdictional) through a single interconnected system that, from the time the utility first provides service, will physically cross the county boundary.

22. Under a plain reading of these statutes, the Commission has exclusive jurisdiction over a utility that provides, or proposes to provide, service that transverses county boundaries. Because "utility" is defined to include both existing and proposed utilities, the determination of whether the utility's service transverses county boundaries so as to bring it within the Commission's jurisdiction must likewise consider the extent and nature of both existing and proposed service. In the case of NUC's application, that service will be provided through water, wastewater and reuse transmission and distribution systems, each of which will physically transverse the Duval/St. Johns County boundary. There is thus no question of whether the Duval and St. Johns County facilities constitute a single system -- they clearly do. The only question is whether Commission jurisdiction attaches when the cross-boundary service is proposed, or only when water (or wastewater) begins to flow across the county boundary. If the statute is to serve its purpose of eliminating duplicative, wasteful and possibly inconsistent regulation, Commission jurisdiction must attach at the "proposed utility" stage, just as it does for single-county utilities.

The Cases

23. There is nothing in prior Commission or court decisions which holds that Commission jurisdiction over a proposed multi-county utility does not attach until water or water begins to flow. Sarasota County reliance in this regard on the Commission's decision in In re Application of Lake Suzy Utilities, Inc., 00 PSC 3:450, Order No. PSC-00-0575-PAA-WS (March 22, 2000) is misplaced. Sarasota County cites Lake Suzy for the proposition that Commission is "vested with jurisdiction at the time of [the] connection", i.e. when service actually

"transverses county boundaries." (Sarasota Motion, ¶8, 9) That assertion is based on an isolated quotation from Lake Suzy, and ignores the factual circumstances the Commission was faced with in that case.

24. In Lake Suzy, an existing single-county utility operating in DeSoto County (and regulated by DeSoto County) proposed to extend its service into neighboring Charlotte County. The utility's application for a multi-county certificate was filed with the Commission on September 11, 1997. On August 26, 1998, the utility began serving one connection in Charlotte County without prior Commission approval. (Lake Suzy, at 12) It was in this context that the Commission stated that it "was vested with jurisdiction at the time of the connection."[2] (Id. at 13) As a result, the Commission considered whether to initiate show cause proceedings against the utility for beginning to provide service without *prior Commission approval*. There would have been no basis for the Commission to consider a show cause proceeding unless, as a result of the prior approval requirement, the Commission believed that jurisdiction had attached at the stage when the cross-county service was proposed.

24. Sarasota County's reading of Lake Suzy would mean that lines must be physically extended across a county boundary before Commission jurisdiction is triggered; however those lines could not be used to provide service unless and until the Commission subsequently granted a multi-county certificate. This interpretation would require a utility to extend lines, at the risk of never being permitted to serve, just in order to be able to apply for a certificate. The statute should not be construed to produce such an absurd result. The more logical result, and the one

[2] Sarasota County reads this to mean that jurisdiction "attached" only at the time of connection. What NUC believes the Commission actually meant is that jurisdiction "was vested" (i.e. already existed) at the time of connection.

supported by Lake Suzy, is that jurisdiction to consider (and grant or deny) a certificate application attaches as soon as a utility proposes to extend its facilities across county boundaries.

25. Each of the Other Counties cites Hernando County v. Florida Public Service Commission, 685 So.2d 48 (Fla. 1st DCA 1996) for the proposition that service must actually transverse a county boundary before Commission jurisdiction attaches. (Collier/Citrus Motion, ¶8, Hillsborough Motion, ¶12; Sarasota Motion, ¶9) While Hernando did establish this as one of the tests for determining whether the Commission has jurisdiction over an existing utility with facilities in multiple counties, that case did not involve a proposed utility that will, from the outset, provide physical service across a county boundary. The Hernando decision is distinguishable on its facts, and therefore does not control the question of how Section 367.171(7) applies to a *proposed* multi-county utility such NUC.

The Public Policy Underlying the Statute

26. In a declaratory statement issued soon after the multi-county provisions of Section 367.171(7) were enacted, the Commission concluded that the purpose of that section was to eliminate the regulatory problems that exist when utilities that provide service across political boundaries are subject to regulation by two or more regulatory agencies:

> We do not believe that the Legislature intended . . . to perpetuate a situation where a utility would be subject to several regulators. On the contrary, we believe that the Legislature intended to eliminate the regulatory problems that exist when utility systems provide service across political boundaries and are subject to regulation by two or more regulatory agencies. . . . This duplicative economic regulation is inefficient and results in potential inconsistency in the treatment of similarly situated customers. Inefficiency stems from the need for multiple rate filings and multiple rate hearings. It also stems from the need to perform jurisdictional cost studies to attempt to allocate the costs of a single system across multiple jurisdictions. These inefficiencies could result in unnecessary and wasteful effort which would translate into higher rate case expense and higher rates to customers. Inconsistency can occur when

> regulators apply different ratemaking principles to the same system or make inconsistent determinations on the same issue.
>
> The Legislature chose to promote efficient, economic regulation of multi-county systems by giving the Commission exclusive jurisdiction over all utilities whose service crosses county boundaries. . . . By concentrating exclusive jurisdiction over these systems in the Commission, the Legislature has corrected the problem of redundant, wasteful, and potentially inconsistent regulation.
>
> In re: Petition of General Development Utilities for Declaratory Statement, 90 F.P.S.C. 1:396, 399, Order No. 22459 (January 24, 1990).

27. The result of the Other Counties' position that the Commission lacks jurisdiction to grant a multi-county certificate to a new utility would result in just the type of redundant, wasteful and potentially inconsistent regulation that Section 367.171(7) was designed to prevent. For example:

(a) When a proposed utility applies for an original certificate, the Commission ordinarily sets initial rates as part of the application process. If NUC were required to file for original certificates with the Commission (for Duval County) and with St. Johns County (for St. Johns County), it would have to prepare just the type of cost allocation study for initial ratemaking purposes that the Commission has said the statute was designed to prevent. And if either regulatory body made adjustments to NUC's rate filing, it would result in the inconsistent treatment of similarly situated customers.

(b) Even if initial rates were not set as part of the certification process, NUC would be still be required to submit (and to litigate) its certificate application case twice. If one regulatory body granted the certificate and the other denied it, NUC would be unable to proceed with its single, integrated system and would suffer exactly the type of inconsistent result the statute was designed to prevent.

(c) Citrus/Collier Counties even go so far as to assert that after the Commission has jurisdiction of an existing multi-county utility, any extension of the utility's territory in the non-jurisdictional county must go to the County, not the Commission, for approval. (Citrus/Collier Motion, ¶12) This assertion flies in the face of the statute. Section 367.171(7) gives the Commission *exclusive jurisdiction* over multi-county systems; not some lesser degree of *shared* jurisdiction in which certificate extensions require approval by the local government.

28. Citrus/Collier Counties also argue that "in the instant case, approving either the Nocatee or Intercoastal applications will trample on the earlier and inconsistent territorial decision made by St. Johns County." (Citrus/Collier Motion, ¶11) This argument overlooks the fact that in its earlier decision denying Intercoastal's extension of its system within St. Johns County, the St. Johns County Water and Sewer Authority entered a specific conclusion of law holding that:

> The Legislature has granted the Florida Public Service Commission such [ratemaking] 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.

See Conclusion of Law No. 11 in the Preliminary Order attached as an Exhibit to St. Johns County's Motion to Dismiss. While the grant of a certificate to Intercoastal to serve the same territory it requested and was denied by St. Johns County would be inconsistent with the prior action of St. Johns County -- and therefore should be barred by the doctrines of res judicata and/or collateral estoppel -- the consideration and granting by the Commission of NUC's application for a multi-county utility is fully consistent with St. Johns County's prior actions which recognized that NUC's proposed multi-county system would be subject to the Commission's regulatory jurisdiction..

29. In summary, the Other Counties' reading of Section 37.171(7) fails to give proper effect to the Legislature's decision that the Commission is to have exclusive jurisdiction over systems that provide service across county boundaries, and is inconsistent with the public policy in favor of efficient regulation of multi-county systems. Their strained reading should be rejected, and their Motions to Dismiss should be denied.

WHEREFORE, NUC urges that the Motions to Dismiss filed by the Other Counties be denied on the procedural and substantive grounds set forth above.

RESPONSE TO PETITION FOR PERMISSION TO SUBMIT AMICUS CURIAE MOTION ON JURISDICTION

30. In the event their Petition to Intervene is denied, Collier/Citrus Counties ask in the alternative that the Commission permit them to participate as amicus curiae for the purpose, among others things, of filing motions to dismiss the NUC and Intercoastal petitions. (Collier/Citrus Petition, ¶18-21)

31. By permitting the Other Counties to file Motions to Dismiss prior to ruling on their Petitions to Intervene, and by scheduling oral arguments on the motions and petitions at the same time, the Commission has de facto granted the Other Counties amicus curiae status for the purpose of providing their views on the jurisdictional issues raised by St. Johns County's pending Motion to Dismiss Intercoastal's application.

32. Absent a grant of intervention, however, the Other Counties cannot properly file their own motions to dismiss even if they are permitted to participate as amicus curiae. Acton v. Ft. Lauderdale Hospital, 418 So.2d 1099, 1101 (Fla. 1st DCA 1982) approved on other grounds 440 So.2d 1282 (Fla. 1983) (amici may not inject issues not raised by the parties); Health Facilities Research, Inc. v. Bureau of Community Medical Facilities, 340 So.2d 125 (Fla. 1st DCA 1976) (an amicus curiae does not have standing to move to dismiss a petition); Keating v. State,

157 So.2d 567, 569 (Fla 1st DCA 1963) (amicus is not at liberty to inject new issues in a proceeding, but can argue other theories in support of an existing issue).

WHEREFORE, NUC urges that the Citrus/Collier Counties request to be permitted to file motions to dismiss as amicus be denied.

RESPONSE TO ALTERNATIVE PETITIONS FOR DECLARATORY STATEMENT AND FOR INITIATION OF RULEMAKING

33. Citrus/Collier Counties' alternative petitions for declaratory statement and for initiation of rulemaking are not proper subjects for inclusion in NUC's certificate application docket and should therefore be denied without prejudice to their being refiled in appropriate, separate dockets.

34. The Citrus/Collier County request for a declaratory statement asks no question that bears on NUC's ability to seek a multi-county certificate in Duval and St. Johns County. It is thus not an appropriate matter for consideration in this docket, and should be denied without prejudice.

35. Similarly, the petition for initiation of rulemaking is not an appropriate subject for consideration in a proceeding under Section 120.57(1). It too should be denied without prejudice to the counties' right to file a similar petition in an appropriate docket. In any event, there is no requirement for the Commission to initiate rulemaking prior to making a case-specific determination of the extent of its jurisdiction, and the Citrus/Collier County suggestion that this case should be suspended while rulemaking proceeds is without merit and should be rejected.

WHEREFORE, NUC urges that the alternative petitions for a declaratory statement and for rulemaking should be denied on the grounds that they are not proper subjects for consideration in this docket.

RESPECTFULLY SUBMITTED this 6th day of June, 2000.

HOPPING GREEN SAMS & SMITH, P.A.

By: _____

Richard D. Melson
P.O. Box 6526
Tallahassee, FL 32314-6526
(850) 425-2313
(850) 224-8551 (fax)

Attorneys for
Nocatee Utility Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following persons by Hand Delivery(*) or U. S. Mail this 6th day of June, 2000.

John L. Wharton
F. Marshall Deterding
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

*Samantha Cibula
FL Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Kenneth Hoffman
J. Stephen Menton
Rutledge, Ecenia, Purnell
& Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302

Suzanne Brownless
1311-B Paul Russell Road
Suite 201
Tallahassee, FL 32301

Michael B. Wedner
St. James Building, Suite 480
117 West Duval Street
Jacksonville, FL 32202

Michael J. Korn
Korn & Zehmer
6620 Southpoint Drive South
Suite 200
Jacksonville, FL 32216

Michael B. Twomey
Counsel Citrus/Collier Co.
P.O. Box 5256
Tallahassee, FL 32314-5256

Donald R. Odom
Chief Assistant County Atty
Hillsborough County, Florida
P.O. Box 1110
Tampa. FL 33601

Kathleen F. Schneider
Assistant County Attorney
1660 Ringling Blvd., 2nd FL
Sarasota, FL 34236

James G. Sisco
St. Johns County
P.O. Box 1533
St. Augustine, FL 32085

Attorney