

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application For An Amendment)
Of Certificate For An Extension of)
Territory And For an Original Water)
And Wastewater Certificate (for a)
utility in existence and charging)
for service))

) Docket No. 992040-WS

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

) Docket No. 990696-WS

Motion For Continuance

Intercoastal Utilities, by and through undersigned counsel and pursuant to Rule 28-106.210, Fla. Admin. Code, hereby file this Motion For Continuance and would state and allege as follows:

1. Rule 28-106.304, Fla. Admin. Code, provides that the Presiding Officer may grant a continuance of a hearing for good cause shown. Except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the hearing. In this case, Intercoastal will show good cause for continuance of this matter. This continuance is not requested later than five days prior to the date noticed for the hearing (currently scheduled for August 16 & 17, 2000).

2. Intercoastal is one of two applicants in these consolidated dockets who propose by their applications to serve large areas of St. Johns County with water and wastewater service.

St. Johns County is a party to this proceeding and it is the governmental entity which regulates jurisdictional private utilities in St. Johns County and which operates a water and wastewater system in St. Johns County.

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3. All of the prefiled testimony and exhibits which may be presented by the parties in this consolidated proceeding have been filed. The Prehearing Conference has already occurred and the issues which will be included in the Prehearing Order have already been determined. Subsequent to these events, a substantial change in circumstances has occurred which can only be brought to the full attention of the Commission (and ultimately included in the record in this proceeding) by a continuance of this matter.

4. On or around August 15, 2000, the County Commission of St. Johns County is expected to consider the acquisition of Intercoastal by St. Johns County. The acquisition of Intercoastal by St. Johns County would substantially alter not only the utility "landscape" in St. Johns County, but would also substantially affect the issues in this proceeding, the pertinent facts and circumstances which the Commission should consider in making its determination in this proceeding, and possibly the very position of certain parties to this proceeding. To proceed to hearing as scheduled as if this possible acquisition did not exist would be to hear this case, and to make the determination in this case, based on a unreal set of facts and circumstances. If Intercoastal is acquired by St. Johns County, many of the matters touched upon in the prefiled testimony and the exhibits appended thereto are now moot. And in that case, unless this request for a continuance is granted, other issues which are of paramount importance (in light of that acquisition) will be unaddressed. It is not in the public interest for the Commission to proceed to hearing under a set of fictionalized facts and circumstances.

5. A continuance of this matter will accomplish many purposes which would benefit both the public, the Commission, and its staff.

Initially, there is currently scheduled a substantial number of expensive and time consuming activities in this case including but not limited to depositions, which are currently scheduled for July 25, 26, and 31 and August 2, 3, and 4). Additionally, the normal preparation for hearing which would occur in the three weeks proceeding trial in this matter is intense and expensive to all parties concerned. To proceed in a vacuum with all currently scheduled activities as if this acquisition may not occur would not be in the interest of the public, the parties, the Commission or its staff. A continuance of this matter will allow the parties to engage in only such discovery as is necessary given present reality, to bring such pertinent facts and issues before the Commission as this substantial change in circumstances dictates, and to allow the parties and the Commission the opportunity to assess this substantial change in circumstances and how it affects the facts and issues which are pertinent to this proceeding. To proceed to hearing as scheduled (with the same parties offering the same testimony and exhibits as they tendered prior to this substantial change of circumstances) would be to proceed to hearing on this case pretending that present reality did not exist. This cannot possibly be in the interest of the affected public.

6. The judicial economy and common sense benefits of a continuance of this matter, given the substantial change of circumstances, are apparent. Conversely Intercoastal submits that such a continuance would not prejudice any party. On November 23, 1999, Nocatee Utility Corporation filed a Joint Motion for Revised Schedule and Hearing Dates. In that Joint Motion, NUC stated that it was beneficial to all parties to reschedule future activities in there dockets including the hearing dates, and acknowledged that it

understood that "the next available hearing dates would be in August or September 2000". Accordingly, as early as November 23, 1999, NUC understood that by its own request that this case might proceed to hearing (pursuant to a continuance which it requested) as much as six weeks later than those dates for which the hearing is currently scheduled. Additionally, as recently as March 31, 2000, an individual representing the Nocatee developer has been quoted in the media as saying that it will be about two years before any building begins in the Nocatee development (see prefiled rebuttal testimony of M. L. Forester, page 12, line 7.) It cannot possibly be in the interest of the present and future customers in the areas in St. Johns County for which these two entities have applied to proceed to hearing on an antiquated set of facts. It is also apparent that a delay of this matter will not prejudice either applicant in the case.

7. Intercoastal has not been remiss in any way, shape, or form in bringing this matter to the attention of the Commission. This substantial change in circumstances was brought to the attention of the Commission literally on the day on which such matter became sufficiently finalized such that the filing of this Motion was appropriate. This substantial change of circumstances represents exactly the type of reasonable basis necessary for continuing a proceeding such as this. The issue in this case is the future of utility service in large portions of northern St. Johns County. This continuance is requested because of a substantial change in circumstances which may occur in the next three weeks and which is relevant to the very heart and essence of that exact issue.

8. Intercoastal respectfully request that this matter be

continued for a period of at least sixty days. A continuance of this matter will allow testimony and evidence reflecting present reality to be heard by the Commission rather than a set of facts and circumstances which no longer reflect or address the substantial change of circumstances referenced herein above. It can only benefit the parties, the Commission and its staff, and the citizens of St. Johns County for this case to be heard and determined based on all pertinent facts and circumstances. Additionally, this substantial change in circumstances may result in an alteration of the current posture or position of certain parties.

9. St. Johns County does not object to this Motion.

WHEREFORE, and consideration of the above, Intercoastal respectfully requests this matter be continued for a period of at least sixty days. Intercoastal requests expedited treatment of this Motion by the Commission in order to promote judicial economy and for all the reason set forth hereinabove. It is respectfully requested the Prehearing Officer set up oral argument on this Motion so that other parties in this case may make their positions known with regard to this motion orally at such a hearing, rather than by the filing of written responses. It is in the interest of all parties concerned to settle the issues raised by this Motion as quickly as possible.

DATED this 21ST day of July, 2000.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by the method indicated below to the following on this 21ST day of July, 2000:

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