

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of ISLAND
ENVIRONMENTAL UTILITY, INC., for
original Wastewater Certificate in
Charlotte County, Florida.

DOCKET NO. 020745-SU

RESPONSE TO PETITIONS FOR LEAVE TO INTERVENE

ISLAND ENVIRONMENTAL UTILITY, INC. ("Utility"), pursuant to Rule 28-106.204, F.A.C., files this Response to the Petitions for leave to intervene (collectively, "Petitions") of Mr. Dan Kett, Mr. Andrew N. Nichols, The Preserve of Don Pedro Owners Association, Palm Island Estates Association, Inc. and Little Gasparilla Property Owners Association (collectively, "Petitioners"), and states as follows:

Initial Statement

1. The Petitioners have asked this Commission for leave to intervene in the Utility's application for an original wastewater certificate.
2. None of the Petitioners served a copy of their Petitions on the Utility, as required by Rule 28-106.204(1), F.A.C.
3. Because the Petitioners did not serve the Utility with a copy of their Petitions, the Utility has no obligation to acknowledge them or respond to them.
4. However, at the special request of the Commission Staff, the Utility has agreed to respond to the Petitions as if they had been properly filed and served.
5. Commission Staff has advised the Petitioners that if they are granted intervenor status, they will have the same duties and responsibilities as any other party of record. Commission Staff has also advised the Petitioners they will have an adequate opportunity to be heard at the customer service portion of the hearing to be held in April, 2004. Commission Staff is waiting for the Petitioners'

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election to hire counsel and be considered a party of record, or attend the customer service portion of the hearing and make their comments there.

6. Without waiving any rights it may have as to the lack of service or any other defects, the Utility wishes to reserve its rights, to the extent that such rights exist, to respond to the Petitions once the true intent of the Petitioners has been determined.

7. Rule 28-106.205, F.A.C. , provides that any person who desires to become a party to a proceeding may petition the presiding officer for leave to intervene. The Rule also requires that the petition must conform to Rule 208-106.201(2), F.A.C. The Petitions do not conform to Rule 28-106.201(2), F.A.C., for the following reasons:

a. The letter dated November 12, 2003, purporting to be the Petition of Little Gasparilla Property Owners Association, does not provide the name, address and telephone number of the Petitioner;

b. Two of the Petitions do not specify a telephone number of the Petitioner (Palm Island Estates Association, Inc., and The Preserve of Don Pedro Owners Association);

c. All Petitions (except the letter purporting to be the Petition of the Little Gasparilla Property Owners Association), fail to provide the name, address and telephone number of the Petitioners' representative for service purposes;

d. All Petitions fail to state when and how the Petitioners received notice of the Commission's decision;

e. All Petitions (except the letter purporting to be the Petition of the Little Gasparilla Property Owners Association) fail to state the specific rules or statutes the Petitioners contend require reversal or modification of the Commission's proposed action; and

f. All Petitions fail to state the relief sought by the Petitioners, stating precisely the action the Petitioners wish the Commission to take with respect to the Commission's proposed action.

7. Rule 28-106.201(4), F.A.C., provides that a petition of this nature "shall be dismissed if it is not in substantial compliance" the Rule. The Petitions are not in substantial compliance with the Rule.

8. With the exception of the Petition purportedly filed by the Little Gasparilla Property Owners Association, the Petitioners are not represented by an attorney, nor are any of them Qualified Representatives, in accordance with Rule 28-106.106, F.A.C.

9. If the Commission grants leave to the Petitioners to intervene, the Utility will be forced to respond to multiple and unnecessarily repetitive discovery requests, motions, and testimony from a number of parties without the benefit of any legal training whose interests and dispute with the Utility are essentially identical.

10. If the Petitioners are granted intervenor status, they will be expected to file a prehearing statement, attend the pre-hearing and the technical hearing in Tallahassee, and file written briefs after the conclusion of the hearing. They will be permitted to cross-examine witnesses at the hearing.

11. With the exception of the Little Gasparilla Property Owners Association, none of the Petitioners have retained legal counsel, and none of them have any legal training. They will not be able (nor can they be expected) to comply with the Commission's established schedule for this matter, the Florida Rules of Procedure, the Rules of Evidence or this Commission's procedural rules. If permitted to intervene, the Utility will be exposed to unjust and unreasonable expense, and the resources of the Utility and the Commission Staff will be unduly burdened. Further, an efficient determination of this matter will be delayed, prejudicing the Utility.

12. With the exception of the Little Gasparilla Property Owners Association, none of the Petitioners have filed any testimony, therefore cannot produce any evidence at the hearing. The testimony filed by the Little Gasparilla Property Owners Association should be stricken as being filed late, and without the legal standing to file. At the hearing, the Petitioners may only cross-examine witnesses produced by parties of record who have filed testimony on a timely basis. However, the Petitioners will be able to fully address their comments and concerns at the customer service portion of the hearing.

13. The interests of the Petitioners can be adequately represented at the customer service hearings to be held by the Commission, where the Petitioners can represent themselves and address their comments and concerns to the Commission personally. The Commission will be able thereby to listen to the Petitioners, ask questions as they deem necessary, and take their comments into consideration on a direct basis.

14. For the forgoing reasons, the Utility respectfully requests that the Commission deny the Petitions, and strike the testimony of the Little Gasparilla Property Owners Association.

Respectfully submitted on this
10th day of December, 2003, by:
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By: 
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CERTIFICATE OF SERVICE
DOCKET NO. 020745-SU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S.

Mail to the following parties on this 10th day of December, 2003:

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