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(LICENSED IN TEXAS ONLY)

January 14, 2004

HAND DELIVERY

Ms. Blanca Bayo
Commission Clerk and Administrative Services Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

RECEIVED-FPS
JAN 14 PM 4:30
COMMISSION
CLERK

Re: Docket No. 020745-SU; Application of Island Environmental Utility, Inc., for Original Certificate
Our File No.: 37025.01

Dear Ms. Bayo:

Enclosed please find for filing in the above-referenced docket the original and fifteen (15) copies of the Rebuttal Testimony of John R. Boyer, along with a Notice of Filing same.

Very truly yours,

RECEIVED & FILED
Oh
FPSC-BUREAU OF RECORDS



MARTIN S. FRIEDMAN
For the Firm

MSF/dmp
Enclosures

AUS _____
CAF _____
CMP _____
COM 34 mg
CTR _____
ECR _____
GCL 1
OPC _____
MMS _____
SEC 1
OTH _____

cc: Rosanne Gervasi, Esquire (w/enclosures) (via hand delivery)
Jannette Knowlton, Esquire (w/enclosures)
Mrs. Linda Bamfield (w/enclosures)
Mr. Ronald Koenig (w/enclosures)
Mr. John R. Boyer (w/enclosures)
Mr. Dean Beckstead (w/enclosures)

DOCUMENT NUMBER-04
00603 JAN 14 3
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of ISLAND)
ENVIRONMENTAL UTILITY, INC., for)
original Water Certificate in Charlotte)
County, Florida.) DOCKET NO. 020745-SU
_____)

NOTICE OF FILING

Applicant, ISLAND ENVIRONMENTAL UTILITY, INC., hereby notices the filing in the above-referenced docket the Rebuttal Testimony of John R. Boyer.

Respectfully submitted on this
14th day of January, 2004, by:

ROSE, SUNDSTROM & BENTLEY, LLP
600 S. North Lake Boulevard
Suite 160
Altamonte Springs, Florida 32701
(407) 830-6331
(407) 830-8522 Fax

By: 
MARTIN S. FRIEDMAN

DOCUMENT NUMBER-DATE

00603 JAN 14 8

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
DOCKET NO. 020745-SU

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice and Rebuttal Testimony of John R. Boyer has been furnished by Hand Delivery on the 14th day of January, 2004, to:

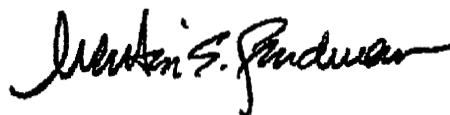
Rosanne Gervasi, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

and by U.S. Mail on the 14th day of January, 2004 to:

Jannette Knowlton, Esq.
Assistant County Attorney
18500 Murdock Circle
Port Charlotte, FL 33948

Mr. Ronald Koenig
8006 Lago Vista Drive
Tampa, FL 33614

Mrs. Linda Bamfield
P.O. Box 5063
Grove City, FL 34224



MARTIN S. FRIEDMAN

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for certificate to
provide wastewater service in
Charlotte County, Florida by
ISLAND ENVIRONMENTAL
UTILITY, INC.

Docket No. 020745-SU

REBUTTAL TESTIMONY OF

JOHN R. BOYER

FILED ON BEHALF

OF

ISLAND ENVIRONMENTAL UTILITY, INC.

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REBUTTAL TESTIMONY OF
JOHN R. BOYER
BEFORE THE PUBLIC SERVICE COMMISSION
REGARDING THE APPLICATION FOR CERTIFICATE TO PROVIDE
WASTEWATER SERVICE IN
CHARLOTTE COUNTY, FLORIDA BY
ISLAND ENVIRONMENTAL UTILITY, INC.

Docket No. 020745-SU

Q: WHAT IS YOUR NAME AND BUSINESS ADDRESS?

A.: My name is John R. Boyer. My business address is 7092 Placida Road, Cape Haze, Florida 33946.

Q. MR. BOYER, HAVE YOU PREVIOUSLY FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, I have, on behalf of the applicant, Island Environmental Utility, inc. ("IEU").

Q. MR. BOYER HAVE YOU REVIEWED THE DIRECT TESTIMONY OF THE WITNESSES TESTIFYING ON BEHALF OF THE STAFF OF THE FLORIDA PUBLIC SERVICE COMMISSION ("COMMISSION") AND THE TESTIMONY OF MR. ELLIOTT KAMPERT, TESTIFYING ON BEHALF OF CHARLOTTE COUNTY, FLORIDA, MS. LINDA BAMFIELD AND MR. RONALD KOENIG, PARTIES WHO HAVE INTERVENED IN THIS PROCEEDING ("INTERVENORS"), AND THE TESTIMONY OF MR. CRAIG REITZ, TESTIFYING ON BEHALF OF LITTLE

1 **GASPARILLA PROPERTY OWNERS ASSOCIATION (THE "ASSOCIATION")**
2 **FILED IN THIS PROCEEDING?**

3 A. Yes, I have.

4 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

5 A. To respond to the testimony of the witnesses of the Commission Staff and the
6 Intervenors, and, subject to the Commission's ruling on the pending Petitions
7 for Leave to Intervene and IEU's Response thereto, to the testimony of Mr.
8 Reitz on behalf of the Association.

9 **Q: WAS THE APPLICATION TO PROVIDE WASTEWATER SERVICE TO THE**
10 **PROPOSED AREA PREPARED AND FILED BY YOU OR UNDER YOUR**
11 **SUPERVISION AND DIRECTION?**

12 A: Yes, it was. Exhibit ____ (JRB-4) is a copy of the Application, as amended.

13 **Q: IS THERE A NEED FOR CENTRALIZED WASTEWATER SERVICE IN THE**
14 **PROPOSED SERVICE AREA?**

15 A: Yes, there is. As Mr. Tomasko, of the Southwest Florida Water
16 Management District ("SFWMD"), stated in his testimony on behalf of the
17 Commission Staff, the 1999 Technical Report of the SFWMD, and the latest
18 study of the area, the classification of Lemon Bay and the comments on the
19 lab report of Sanders Laboratories, Inc., shows that there is a clear need for
20 centralized wastewater service, rather than the use of individual septic tanks
21 which is the predominant method of wastewater disposal in the Proposed
22 Area. These studies and reports show that there is a link between

1 contaminated surficial groundwater in areas of high septic tank densities and
2 that the contamination was more likely from human sources.

3 **Q: HAVE ANY OF THE RESIDENTS OF THE PROPOSED SERVICE AREA**
4 **REQUESTED CENTRALIZED WASTEWATER SERVICE?**

5 A: I am personally aware that there is a demand for this service also from a
6 number of island residents. Many of these residents have written to the
7 Commission concerning IEU's application. These letters are on file in this
8 docket. Approximately 50% of the responses from property owners on file
9 are in favor of centralized wastewater service. Approximately 1850 property
10 owners already are, or soon will be, receiving centralized water service. They
11 represent about 95% of the total number of potential customers in the
12 proposed service area.

13 **Q: IS THERE A SOLUTION TO THE ENVIRONMENTAL AND HEALTH ISSUES**
14 **PRESENTED BY THE CONTINUED USE OF SEPTIC SYSTEMS IN THE PROPOSED**
15 **AREA?**

16 A: Yes. The testimony of Dr. Abdul Ahmadi, of the Florida Department of
17 Environmental Protection ("FDEP"), on behalf of the Commission Staff,
18 shows that the answer to the issues reported by these studies and tests from
19 an environmental standpoint is a centralized wastewater system, which would
20 remove the wastewater from the proposed area, so long as there is no
21 additional growth and development of the barrier islands.

22

1 **Q: WILL CENTRALIZED WASTEWATER SERVICE TO THE ISLANDS PROVIDE ANY**
2 **SIGNIFICANT FINANCIAL BENEFITS TO THE PROPERTY OWNERS?**

3 **A:** Absolutely. The proposed service area is about 46% built out, and these
4 property owners have some form of septic tank installed. New State
5 regulations will require the inspection of all existing septic tanks. I
6 understand that there will be a large percentage of septic tanks that will
7 require costly improvements and , in some cases, total replacement. The cost
8 of a new septic tank is generally between \$10,000 and \$15,000. On Little
9 Gasparilla Island, the cost runs about \$16,000. On Knight Island/Don Pedro
10 Island, the cost is between \$6,000 to \$8,000. IEU has estimated that the
11 connection fee per home will be less than \$5,000, although the actual cost
12 will depend on a number of variables and cannot be determined with
13 precision at this time. Certainly, the undeveloped lots, and most probably the
14 developed lots, affected by the new regulations will receive a positive benefit
15 from centralized wastewater service. Many of the lots in the proposed service
16 area are too small to develop because regulations prohibit the drilling of wells
17 that are closer than 75 feet from a drainfield. Shallow wells are normally
18 drilled to access fresh water. Fresh water floats on top of the salt water that
19 leaches through the sands. Each property owner would be required to have
20 his own well to supply his home or obtain water from a cistern. Drilling a
21 water well closer than 75 feet from a drainage field will produce water
22 contaminated by human and other waste. For example, if the owner of an 80'

1 by 120' lot sandwiched between two other improved 80' by 120' lots wishes
2 to build, he may not be permitted to do so because he cannot obtain a permit
3 to drill a water well to supply his home. It will be too close to the drainage
4 field used by the two other owners. Charlotte County has its own building
5 codes and enforces them. While I am unaware of any instances where
6 Charlotte County has denied building permits because of separation
7 requirements, it certainly has restricted the size of the house on a lot because
8 it is too close to a potential source of contamination. With centralized
9 wastewater, this problem is eliminated. Centralized wastewater systems are
10 closed systems that eliminate the need for drainfields and the contamination
11 they cause. Property owners will be able to maximize the value of their
12 property. Therefore, there are obvious health and safety benefits in
13 eliminating this potential source of contamination of water. In addition,
14 there are positive benefits to taking wastewater off the islands. There are
15 more than 1000 buildable lots on Little Gasparilla Island, half of which are
16 already developed. The environmental impact of the drainfields necessary to
17 operate separate septic systems for each of these lots alone will be enormous.

18 **Q: IS IEU'S ESTIMATED COSTS OF CONNECTION ACCURATE?**

19 A: IEU has provided an estimate of its connection fee of \$4,806 per ERC. This
20 is an estimate based on the best information we possess at this time. We
21 won't know what the exact fee will be until after the permitting stage, when
22 construction plans are finalized.

1 **Q: WILL PROPERTY OWNERS IN THE PROPOSED SERVICE AREA BE REQUIRED**
2 **TO CONNECT TO IEU’S WASTEWATER SYSTEM?**

3 A: It is my understanding that while property owners may not be required to
4 connect to a centralized water system, they are required to connect to a
5 centralized wastewater system. However, this is a requirement of the
6 applicable State and County laws and regulations, not the utility’s rules and
7 regulations.

8 **Q: ARE THERE OBSTACLES TO IMPLEMENTING A PLAN FOR CENTRALIZED**
9 **WASTEWATER REMOVAL?**

10 A: Yes. As Mr. Tumminia, of the Florida Department of Community Affairs
11 (“DCA”) testified on behalf of Commission Staff, providing wastewater
12 service to the barrier islands is currently inconsistent with the Charlotte
13 County Comprehensive Plan. Charlotte County has proposed amendments
14 to its Comprehensive Plan to allow the provision of centralized wastewater
15 service to the barrier islands in the areas where there is already centralized
16 water service. This area is consistent with the area described in IEU’s
17 application as the proposed service area.

18 **Q: HAS CHARLOTTE COUNTY ADOPTED THESE AMENDMENTS?**

19 A: No, not at this time, although the DCA had no objections to the proposed
20 amendments. Further, according to Mr. Elliot Kampert, the Natural
21 Resources Manager of Charlotte County, testifying on behalf of the
22 Commission Staff, the DCA “has expressed an opinion that, due to the level

1 of development which the islands have already sustained (46% buildout of
2 the existing lots) central sewer service would be preferable to the use of on
3 site treatment systems.” The problem the County is experiencing seems to
4 be two-fold: (1) the County wants to limit development and population
5 densities on the barrier islands, and (2) the County wishes to maintain its
6 existing land use designations which are intended to direct and prioritize the
7 provision of public infrastructure and services. The barrier islands are not
8 designated as areas intended to receive urban services and infrastructure at
9 this time.

10 **Q: HAS CHARLOTTE COUNTY PROPOSED A SOLUTION TO THE**
11 **INCONSISTENCIES BETWEEN ITS COMPREHENSIVE PLAN AND IEU’S**
12 **APPLICATION?**

13 **A:** Yes. Mr. Kampert testified that Charlotte County has proposed two
14 amendments to its Comprehensive Plan which will address these issues. One
15 amends the applicable land use designation to permit certification of utilities
16 and the other addresses concerns relative to limiting development on the
17 barrier islands. Various governmental agencies have found the proposed
18 amendments consistent with other relevant governmental policies and
19 objectives.

20 **Q: WHY HASN’T CHARLOTTE COUNTY ADOPTED THE PROPOSED**
21 **AMENDMENTS?**

1 A: According to Mr. Kampert, the DCA identified a potential inconsistency
2 between one of the proposed amendments and the State Comprehensive Plan.
3 The DCA has asked Charlotte County to additional data and analysis to
4 support the amendment. In addition, Charlotte County has postponed
5 adoption of the other amendment until the concerns of the barrier islands
6 residents over the potential impact of the availability of centralized
7 wastewater service to the islands are satisfactorily addressed.

8 **Q: WILL THE PROVISION OF CENTRALIZED WASTEWATER TO THE PROPOSED**
9 **SERVICE AREA NECESSARILY INCREASE DEVELOPMENT?**

10 A: No. Development is a function of Charlotte County's Comprehensive Plan.
11 So long as Charlotte County is enforcing its own building and development
12 restrictions, development will be limited. The primary goal of IEU's
13 application is to provide centralized wastewater service to existing residents.
14 This service will increase the value of the property in the proposed service
15 area and also provide additional benefits by way of addressing environmental
16 issues identified by the Commission Staff's witnesses in this proceeding as
17 being caused by the pollution from septic tanks on the islands.

18 **Q: WHAT IS THE POTENTIAL ENVIRONMENTAL IMPACT OF A HURRICANE ON**
19 **THE LINES AND FACILITIES OF THE WASTEWATER SYSTEM AS PROPOSED BY**
20 **IEU?**

21 A: The impact would be negligible, and certainly far less than the impact on
22 open drainfields. The wastewater plan proposed by IEU is a closed system

1 that will employ a low pressure or vacuum system incorporating check valves
2 that will prevent inflow and infiltration to and from the environment. The
3 wastewater collected by IEU's system will be transported and collected for
4 treatment on the mainland, away from the focus of any risk from high water
5 or a hurricane. This is not the case with septic tanks and drainfields.

6 **Q: ARE THE ROADS AND OTHER TRANSPORTATION SYSTEMS ADEQUATE TO**
7 **GET NECESSARY MATERIALS AND EQUIPMENT TO THE PROPOSED SERVICE**
8 **AREA?**

9 A: Yes. Little Gasparilla Utility, Inc. just completed the installation of
10 centralized water service to provide water to most of the proposed service
11 area. It did not experience any problems. There is no reason to expect that
12 IEU will either.

13 **Q: DO YOU ANTICIPATE ANY PROBLEMS IN OBTAINING THE NECESSARY**
14 **PERMITS AND EASEMENTS?**

15 A: No, I do not. It is premature to apply for these permits, and no one can
16 anticipate all of the issues which may be raised. Utilities usually do not enter
17 into the permit stage until after the franchise or certificate has been granted.
18 Engineering designs and specifications are then made and filed as an adjunct
19 to the permit applications. Utilities then work in good faith with the various
20 permitting agencies to arrive at final plans and specifications that will achieve
21 the desired benefits of the project. Although engineering plans and
22 specifications may change due to various permitting agencies' requirements

1 for a particular area, they are generally not rejected once the Commission or
2 the relevant county has determined that there is a need for the construction
3 and issued the certificate or franchise.

4 **Q: HAS ANY OTHER WASTEWATER UTILITY EXPRESSED ANY INTEREST IN**
5 **PROVIDING SERVICE?**

6 A: No. Englewood Water District is not willing to provide centralized
7 wastewater service. It is willing, however, to treat and dispose of the
8 wastewater IEU sends to it. Hideaway Homeowners Association has
9 requested connection with IEU's proposed wastewater system and Knight
10 Island Utility may also express an interest in connecting.

11 **Q: HAS LITTLE GASPARILLA UTILITY, INC. COMPLETED THE PROVISION OF**
12 **CENTRALIZED WATER AS PROMISED?**

13 A: Yes. Water is available to most of the are IEU proposes to serve. Most of
14 the property owners who requested service and who could connect have been
15 connected. Only one property owner requested a refund and that is because
16 he sold his property before the connections were complete. I note for the
17 record that Mr. Reitz, who purports to represent the Little Gasparilla Property
18 Owners Association, never requested service and his house is up for sale.

19 **Q: MR. REITZ HAS TESTIFIED THAT WHEN LITTLE GASPARILLA WATER**
20 **UTILITY, INC. INSTALLED ITS WATER LINES, IT RAN SOME LINES THROUGH**
21 **LOTS WITHOUT THE PERMISSION OF THE OWNERS AND DAMAGED**

1 **TELEPHONE, ELECTRICAL AND WATER LINES, LEAVING THE OWNERS**
2 **WITHOUT TELEPHONE, WATER AND ELECTRICITY. IS THIS CORRECT?**

3 A: Little Gasparilla Utility had easements for all of its water lines from all
4 affected property owners. It used a licensed contractor which was certified
5 to install underground lines. This contractor carried all necessary insurance.
6 It is not always possible to predict what will happen when the soil is
7 excavated to install underground lines. Accidents occur even with the
8 exercise of the greatest care and caution. When they do, the affected property
9 owners are notified and steps are taken to restore service as soon as possible.

10 **Q: HAS IEU DEMONSTRATED THAT IT HAS THE TECHNICAL ABILITY TO**
11 **PROVIDE CENTRALIZED WASTEWATER SERVICE TO THE PROPOSED SERVICE**
12 **AREA?**

13 A: IEU will utilize the combined experience and expertise of Mr. Garfield
14 Beckstead, Mr. Dean Beckstead and myself . Our track records with the
15 various regulatory bodies, including the DEP, speak for themselves. Further,
16 IEU will not treat the wastewater. IEU has proposed to enter into an
17 agreement with Englewood Water District to collect, treat and dispose of
18 wastewater from the proposed service area. According to Dr. Ahmadi,
19 Englewood Water District has the capacity to collect, treat and dispose of the
20 wastewater from the proposed service area. It has all appropriate current
21 permits from the DEP and is in compliance with them and with all other
22 regulations and requirements. Although the DEP has commenced

1 enforcement actions against Englewood Water District in the past due to
2 deficiencies identified by the DEP, the deficiencies were resolved
3 satisfactorily. Further, Dr. Ahmadi notes that it is not uncommon for mall
4 deficiencies (such as the ones identified by the DEP and discussed in Ms.
5 Bamfield's direct testimony) to occur from time to time at such facilities and
6 Englewood Water District is generally doing a good job of maintaining its
7 facilities. Dr. Ahmadi also discusses the quality of service provided by
8 Useppa Island Utility, Inc., of which Mr. Garfield Beckstead is an officer,
9 Knight Island Utilities, Inc., of which Mr. Dean Beckstead is an officer, and
10 Little Gasparilla Island Utility, Inc., of which I am an officer and director.
11 Dr. Ahmadi stated that these utilities have all appropriate current permits
12 from the DEP and were in compliance with them and with all other
13 regulations and requirements. He also was of the opinion that these utilities
14 are in compliance and are generally doing a good job of maintaining their
15 facilities.

16 **Q: DOES THE UTILITY HAVE THE FINANCIAL ABILITY TO SERVE THE**
17 **PROPOSED AREA?**

18 **A:** Yes. IEU is a start-up company and will not have any significant funding
19 unless and until the Commission grants it the necessary certificate. It would
20 not be practical to invest sufficient funds in IEU to complete its plans until
21 it is certain that it will be permitted to conduct operations. However, IEU is
22 currently negotiating with a number of financial institutions to supply funding

1 for its operations. It will provide evidence of financial support from these
2 financial institutions as soon as they are available.

3 **Q: DR. AHMADI STATES IN HIS DIRECT TESTIMONY THAT YOU INSTALLED**
4 **ABOUT ONE-HALF MILE OF ILLEGAL WATER PIPE TO CONNECT THE DON**
5 **PEDRO ISLAND STATE RECREATION AREA, AND WERE SUBSEQUENTLY**
6 **ARRESTED FOR CRIMINAL MISCHIEF AND TRESPASS/LARCENY. IS THIS**
7 **TRUE?**

8 A: Yes, it is. In 1996, I was indicted on charges of criminal mischief and
9 trespass/larceny in connection with the installation of a two-inch line for the
10 purpose of an emergency interconnect between Rotonda Utilities (now
11 Charlotte County Utilities) and Little Gasparilla Utilities, Inc. Prior to
12 commencing any work, Rotonda Utilities requested and received permission
13 from the Commission for Little Gasparilla Utilities, Inc. to install the
14 interconnect. Little Gasparilla Utilities, Inc. did not require permits from the
15 DEP because it was running less than 1,000 feet, two inch line or less, 11/4
16 meter, going to a single user. The only matter I overlooked was the condition
17 of the existing utility easement which Florida Power and Light had been
18 using for 40 years. This is something I still feel very strongly about. The
19 interconnect will benefit the customers of Little Gasparilla Utilities, Inc. in
20 emergency backup situations and in case of storms. I still have the right to
21 obtain an easement but have not pursued it. I have asked Charlotte County,
22 which now owns Rotonda Utilities and holds the franchise rights to the

1 Recreation Area, to assist Little Gasparilla Utilities, Inc. in acquiring the
2 easement for the interconnect

3 **Q: DOES THAT CONCLUDE YOUR TESTIMONY IN THIS DOCKET?**

4 **A: Yes, it does.**