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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200226-SU

Application for certificate to
provide wastewater service in
Charlotte County, by Environmental
Utilities, LLC.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 8

COMMISSIONERS
PARTICIPATING: CHAIRMAN ANDREW GILES FAY
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Thursday, September 8, 2022

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

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P R O C E E D I N G S

COMMISSIONER CLARK: All right. If everyone would gather their seats, we will go ahead and reconvene.

Item No. 8 is the application for certificate to provide wastewater service in Charlotte County by Environmental Utilities, LLC. This is a panel item, and Mr. Ryan Sandy will introduce the item for us.

MR. SANDY: Good morning once more, Commissioners.

Item 8 is addressing whether the Commission should grant Environmental Utilities' request for oral argument in its motion for reconsideration.

We recommend that neither request is granted. The pleadings are sufficient on their for the Commission to evaluate and decide EU's motion for reconsideration, and the motion itself does not sufficiently raise a statement of law or fact. However, if the Commission wishes to grant oral argument, we would recommend that it is limited to no more than 10 minutes for each side.

I would note that Mr. Friedman is here this morning. We also have pro se litigant Linda Cotherman on the line available, along with Brad

1 Kelsky, Esquire, should you have any questions for
2 them.

3 COMMISSIONER CLARK: All right. Thank you,
4 Mr. Sandy.

5 In light of the items that we have talked
6 about, and items I have talked to my staff about
7 specifically, I am inclined to hear oral argument
8 unless there is any objection from other
9 Commissioners. No objection?

10 All right. with no objection, we are going to
11 hear the oral argument, and then we will make a
12 decision.

13 Instead of 10 minutes, though, it's going to
14 be seven. How about that? We will make it a
15 little punitive there. And we will begin that with
16 Mr. Friedman.

17 Mr. Friedman, you are recognized.

18 MR. FRIEDMAN: Thank you, Commissioner. Marty
19 Friedman on behalf Environmental Utilities, and I
20 will be brief and succinct.

21 There are three points that were overlooked by
22 this commission when they decided there was not a
23 need for central wastewater service on these
24 islands. And when you hear these three facts that
25 were -- none of them which were addressed in the

1 staff recommendation, I think you will be compelled
2 to agree that there is a need for service.

3 The first, although comprehensive plan is not
4 something you are required to follow, the staff has
5 said that it was inconsistent with the
6 comprehensive plan. What the staff didn't address
7 was a point I made in my motion for
8 reconsideration, is that there are already -- there
9 are already --

10 COMMISSIONER CLARK: We have a couple of folks
11 that have joined us by phone. Would you please
12 make sure your phone is on mute at this time?

13 MR. FRIEDMAN: There are already five central
14 water and wastewater systems on the island, two of
15 which were certificated by this commission. So it
16 raises the question of how can wastewater service
17 and water service be inconsistent to the islands
18 when the whole island has water and wastewater
19 service except for the part that we are seeking to
20 certificate?

21 Staff didn't address that. You look at their
22 recommendation, they haven't said it. And that's
23 not a rhetorical question. I would like to know
24 how, if there is already five water and wastewater
25 systems on the island, it can be considered

1 inconsistent with the comprehensive plan? I think
2 the staff ought to give us an answer on that.

3 The second issue that is really clear, and
4 this is the main support for need is the sewer
5 master plan. The County adopted, if you will
6 recall, this sewer master plan, and it identified
7 certain parts of the county that have water quality
8 issues that are priorities for the County --
9 priorities for the County in converting septic to
10 central sewer. The staff has taken a very
11 constrained view of that. And it's -- their view
12 is inconsistent with the report itself.

13 And a simple answer to that is the report
14 included some figures. And I attached this figure
15 to my motion for reconsideration and you should
16 look at it. It's figure 4.7. And it shows the --
17 parts of the western part of the county that are on
18 this five-year plan, five-year improvement plan.
19 If you look at this map -- and this map says a
20 thousand words -- this whole island is in red.
21 Except for the middle part in the middle, which is
22 state park. It doesn't count. The whole island is
23 in red. Not just where the two private sewer
24 plants are, but the whole island is in red. And it
25 says, five-year improvement plan.

1 How anybody can interpret that to be anything
2 other than it's a priority of the County to central
3 sewer those islands is beyond the realm of
4 possibility. That's that simple.

5 The third point that I am going to make is
6 that apparently there was some perplexion by the
7 Commission why the County wasn't more vocal in this
8 case.

9 What the County has -- what the staff has
10 overlooked, and you apparently overlooked when you
11 issued your order, was that the association took
12 what's called a (b)(6) deposition. And I am not
13 going to get too legal about that. But what that
14 basically says is that the entity is going to
15 appoint somebody to speak on behalf of the entity.
16 And the County Commission was served with the
17 subpoena. The County Commission designated Mr.
18 Rudy, who happened to be the Utility Director, to
19 testify on behalf of the County, and that testimony
20 was 100 percent in support of this application.
21 And I think what's overlooked is that that -- that
22 wasn't Mr. Rudy's opinion. That's the opinion of
23 the Board of County Commissioners.

24 The same is true of a letter that was admitted
25 into evidence that happened to be written by Mr.

1 Rudy and the water quality expert. And apparently
2 it has been overlooked that that was not their
3 individual opinions. That's the opinion of the
4 Board of County Commissioners at the highest point.
5 And the County -- the Board of County Commissioners
6 has evidenced that by they entered into a bulk
7 service agreement. To implement the sewer plan,
8 they entered into bulk service agreement with
9 Environmental Utilities that -- that says that at
10 the beginning of it. We are doing this to
11 implement the sewer master plan.

12 Now, there is no doubt that the County is 100
13 percent behind this deal. And you don't have to
14 follow the County. If the County thinks there is
15 an environmental need, you can just blow the County
16 off if you want. I mean, that's your discretion.
17 But I don't think that you should overlook the fact
18 that the County is 100 percent behind this. The
19 County believes it's needed for the people of
20 Charlotte County.

21 And if you think about those three facts --
22 and I have got a whole bunch more of them, but if
23 you think about those three facts, it becomes clear
24 that there is a need for central wastewaters
25 system. Septic to sewer plans are going all over

1 this state, and particularly on a barrier island,
2 where the soils are not conducive to septic tanks,
3 it needs central sewer.

4 Thank you. And I will reserve my -- whatever
5 time I got left, I will reserve that to comment on
6 other parties' comments. Thank you.

7 COMMISSIONER CLARK: Thank you, Mr. Friedman.
8 Mr. Rehwinkel.

9 MR. REHWINKEL: Thank you, Mr. Chairman. And
10 I just have a few seconds of remarks.

11 Public Counsel is only in this matter because
12 we seek to make the single point that the June 2022
13 letter that was attached to the motion for
14 reconsideration is unauthorized and can, and
15 should, play no role in your decision or in even
16 informing your decision. We ask you to make a
17 strong statement to let it be known to the world
18 that you -- such ex parte filings are prohibited
19 and are unwelcome.

20 Thank you.

21 MR. FRIEDMAN: Commissioner, could I make a
22 brief --

23 COMMISSIONER CLARK: Thank you, Mr. Rehwinkel.

24 Let me go through the list. We will come back
25 to you, Mr. Friedman.

1 Mr. Kelsky, are you on the line?

2 MR. KELSKY: I am on the line. Thank you.

3 COMMISSIONER CLARK: All right. You are
4 recognized, sir.

5 MR. KELSKY: Nothing that you heard from Mr.
6 Friedman is any different than what was argued at
7 the hearing. There is no point of law or fact that
8 is new, that was overlooked or that wasn't already
9 argued and decided.

10 The standard for upholding the Commission's
11 ruling is was there substantial competent --
12 substance competent evidence in the record? And
13 there clearly was based upon numerous factors.

14 No. 1, there was no comprehensive planner
15 offered by the applicant to talk about the
16 comprehensive plan. The comprehensive plan
17 specifically states that barrier islands is a rural
18 service area, is designed to hold septic, not
19 designed to hold sewer. That is clearly the
20 evidence that was un rebutted.

21 No. 2, there was no need established at the
22 hearing. Mr. Rudy, who they are relying upon is
23 the County's representative, specifically testified
24 that there was no evidence of any type of
25 chemicals, or waste, or anything that would

1 negatively impact the water quality. That was
2 unrebutted.

3 No. 3, Mr. Rudy, who also testified, had no
4 idea whether or not the proposed -- proposed
5 application was inconsistent with the comprehensive
6 plan. And the County had the opportunity to
7 participate in the proceeding and chose not to.

8 What Environmental Utilities is trying to do
9 is expand the record to give extra weight to that
10 which didn't occur at the hearing. Why didn't they
11 participate is a decision that Environmental
12 Utilities made, and Environmental Utilities is
13 stuck with the record, and that record is full of
14 substantial competent evidence denying the
15 application.

16 The third point that I would make is that,
17 again, we are rehashing that which has already been
18 decided. There is nothing new here other than
19 rehashing arguments, and for that reason, the
20 motion for reconsideration should be denied.

21 COMMISSIONER CLARK: Thank you, Mr. Kelsky.

22 Ms. Cotherman. Ms. Linda Cotherman, are you
23 on the line?

24 All right. Mr. Friedman, I will give you one
25 minute to respond.

1 MS. COTHERMAN: Can you hear me?

2 COMMISSIONER CLARK: I'm sorry, Ms. Cotherman,
3 is that you?

4 MS. COTHERMAN: Yes. Can you hear me now? I
5 am sorry. I am having technical difficulties.

6 COMMISSIONER CLARK: Yes, ma'am. You are
7 recognized.

8 MS. COTHERMAN: Okay. Thank you.

9 I think everything was rehashed and
10 everything, you know, prior to this. Mr.
11 Friedman's comments about the soils not being
12 correct is a technical issue, and I think that was
13 addressed at the hearing. And also from a
14 technical point of view, each soil under each
15 septic tank is analyzed. If it's not adequate, new
16 types of soil that filter are placed under the
17 septic system.

18 I just want to say that the map that he showed
19 where the five-year plan with the red on the
20 island, there is another document a few pages after
21 that which shows the -- what areas that were in red
22 still not in the priority to connect in 15 years.
23 And the barrier island is shown that even after 15
24 years, according to the sewer master plan, that
25 it's still not, you know, the priority to connect

1 it even though it is shown in red, which I take,
2 you know -- I think there are some technical issues
3 on how the red got there too. The sewer plan is
4 being updated, so maybe there will be new
5 information.

6 And as far as saying that we already have
7 sewer and water. The only sewer we have out here
8 are small package plants for wastewater -- for
9 wastewater, and that's a different animal again
10 having, you know, sewer out here, you know, for
11 everyone. And I think we have just gone over all
12 these things, and that's my comments.

13 COMMISSIONER CLARK: Thank you, Ms. Cotherman.
14 Mr. Friedman.

15 MR. FRIEDMAN: Thank you, Commissioner.

16 Briefly, the three issues that I mentioned
17 were comprehensive plan, the sewer master plan and
18 the importance of this project to the County were
19 overlooked by this commission before. They weren't
20 addressed in the staff recommendation, just like
21 they are not addressed in this one. None of the
22 issues that I raised, none of these salient points
23 are mentioned in the staff recommendation because
24 they are contrary to the position that whoever
25 wrote the staff rec has. And so it's clear that

1 did was overlooked.

2 And motion for consideration, there is a
3 reason for them. Nobody is perfect, and sometimes
4 we need to look at things twice, and that's exactly
5 the purpose of this. And they are very seldom
6 granted at this commission. I have been doing this
7 over 43 years, and specially in the water and sewer
8 industry, very, very few are granted, and this is
9 one of those situations where it should.

10 And just in very conclusion on OPC's point. I
11 find it a little inconsistent that OPC complained
12 about the County sending a letter to the
13 Commission, but they didn't complain about all of
14 the association members that are parties sending
15 letters to the Commissioners after the close of the
16 hearing.

17 If the County, as a third-party, contact with
18 the Commission is inappropriate, then all of those
19 letters from the representatives of a party are
20 even doubly inappropriate, and I would suggest to
21 you that we just let that issue lie.

22 And then I think that when you -- when you
23 review the facts that were overlooked by the staff,
24 I think you will be compelled to reach a conclusion
25 that there is a need for central wastewater service

1 to eliminate the septic tanks on that barrier
2 island.

3 Thank you.

4 COMMISSIONER CLARK: Thank you, Mr. Friedman.

5 All right. Staff, any -- any other comments?

6 Commissioners, questions? Concerns?

7 Comments?

8 Commissioner La Rosa.

9 COMMISSIONER LA ROSA: And I don't really have
10 any major comments other than, you know, my head is
11 still clear on this. It wasn't that long ago that
12 we traveled down there and deliberated. And of
13 course, voted on this earlier in the summer, so my
14 point still stands, and I agree with how staff has
15 written this recommendation.

16 COMMISSIONER CLARK: All right. Commissioner
17 Passidomo.

18 COMMISSIONER PASSIDOMO: Thanks, Chair.

19 I just want to say we need to look right now
20 again, you know, you are correct, Mr. Friedman, I
21 know that we don't grant motion for
22 reconsiderations that often because the standard
23 for doing so is whether we made a mistake of law or
24 fact.

25 To me, it's clear when we are looking at the

1 threshold issue of a need for service, Rule
2 25-30.033 lays out what we look at as, you know,
3 different determinants whether there is a need for
4 service.

5 I remember from the hearing, and going through
6 the record, I just still -- I felt compelled that
7 there really wasn't any demonstrative need, and so
8 my position as well has not changed.

9 COMMISSIONER CLARK: Thank you, Commissioner
10 Passidomo.

11 I would echo the same sentiment, that the
12 establishment of the need for the service is
13 probably the biggest driving factor in my decision.
14 And, you know, if think want to establish and
15 create a need, the County can put a moratorium on
16 development and building and construction there and
17 not permit new septic tanks, then I think they can
18 create a need and a demand pretty fast in that
19 regard.

20 So with that considered, I will consider -- I
21 will entertain a motion on the reconsideration.

22 COMMISSIONER LA ROSA: Mr. Chairman, I motion
23 to approve staff's recommendation on all issues.

24 COMMISSIONER PASSIDOMO: Second.

25 COMMISSIONER CLARK: I have a motion and a

1 second to approve staff recommendation on all
2 items, which is to deny the reconsideration.

3 Any discussion?

4 On the motion, all in favor say aye.

5 (Chorus of ayes.)

6 COMMISSIONER CLARK: Opposed?

7 (No response.)

8 COMMISSIONER CLARK: Motion carries.

9 Thank you.

10 This hearing is adjourned.

11 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 19th day of September, 2022.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024