

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20240032-SU
Filed on: 8/26/2024

**LITTLE GASPARILLA ISLAND PRESERVATION ALLIANCE, INC.’S
RESPONSE IN OPPOSITION TO ENVIRONMENTAL UTILITIES, LLC’S
MOTION FOR RECONSIDERATION**

Petitioner Little Gasparilla Island Preservation Alliance, Inc. (“LGIPA”), through undersigned counsel and pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Response in Opposition (“Response”) to Environmental Utilities, LLC’s Motion for Reconsideration of Order No. PSC-0324-PCO-SU (“Motion for Reconsideration”) (Doc. No. 08529-2024).

I. Background

On February 12, 2024, Environmental Utilities, LLC (“EU”) filed an Application for Original Wastewater Certificate in Charlotte County (“Application”) (Doc. No. 00672-2024). Pursuant to Rule 25-30.030, Florida Administrative Code, EU published Notice (Doc. Nos. 01343-2024, 01627-2024, 01699-2024, 01878-2024) of the Application in the newspaper and mailed a copy of the Notice to all property owners in the proposed service area.¹ The Public Service Commission (“PSC”) received timely objections to the Notice, including an Objection filed by LGIPA (Doc. No. 02798-2024), requesting a formal administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes.

On August 12, 2024, the PSC issued its Order Establishing Procedure (“Order”) (Doc. No. 08379-2024; Order No. PSC-2024-0324-PCO-SU). The Order sets forth deadlines and procedures

¹ LGIPA preserves its right to contest whether the Notice was legally sufficient and accepts this procedural history only for the purposes of this Response.

for a formal administrative hearing in this matter pursuant to sections 120.569 and 120.57, Florida Statutes. The Order indicates that “[a]ny party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may,” *inter alia*, “request . . . reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code.” EU filed the Motion for Reconsideration.

II. Argument

Among the procedures set forth in the Order is a requirement that all parties prefile exhibits to be used at the final hearing for cross-examination, impeachment, or demonstrative purposes. EU requests reconsideration of the requirement to prefile exhibits that it intends to use for cross-examination or impeachment purposes.

EU first argues that “[t]his requirement would negate the effectiveness of cross-examination by eliminating any element of surprise.” This is not a basis for the Hearing Officer to reconsider this requirement. The “chief purpose” of Florida’s discovery rules is “to assist the truth-finding function of our justice system and to avoid trial by ambush or surprise.” *Scipio v. State*, 928 So. 2d 1138, 1144 (Fla. 2006). The Florida Supreme Court has emphasized that the “search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal.” *Binger v. King 10 Pest Control*, 401 So. 2d 1310, 1313 (Fla. 1981) (citation omitted). “Those relevant facts should be the determining factor rather than gamesmanship, surprise, or superior trial tactics.” *Id.* (citation omitted).

EU next argues that this requirement presents a “clear question of a violation of due process.” But EU does not cite any legal authority in support of this argument or elaborate as to how the requirement to prefile cross-examination and impeachment exhibits violates its due process rights.

III. Conclusion

Wherefore, LGIPA requests that the PSC deny Environmental Utilities, LLC's Motion for Reconsideration of Order No. PSC-0324-PCO-SU.

Dated: August 26, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on 26th day of August 2024, a true and correct copy of the foregoing has been furnished by electronic mail to the following:

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