

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide
wastewater service in Charlotte County by
Island Environmental Utility, Inc.

DOCKET NO. 020745-SU
ORDER NO. PSC-04-0124-PCO-SU
ISSUED: February 6, 2004

ORDER GRANTING INTERVENTION, DENYING REQUEST TO STRIKE
PREFILED TESTIMONY, AND DIRECTING THE REILING OF TESTIMONY TO
CONFORM TO FORMATTING REQUIREMENTS

By letter filed November 14, 2003, the Little Gasparilla Property Owners Association (LGPOA) requested leave to intervene in this proceeding. In support of its request, LGPOA states that the granting of a certificate to Island Environmental Utility, Inc. (IEU) would directly effect LGPOA's interests, as all of its members are property owners in the proposed service territory. LGPOA objects to the issuance of a certificate to IEU, arguing that such certification would violate an established local comprehensive plan policy, Infrastructure Policy 9.1.4, developed pursuant to Sections 163.3161-163.3211, Florida Statutes. According to LGPOA, this policy prohibits the expansion of sanitary sewer service outside of Charlotte County's Infill Area boundaries.

It is noted that LGPOA failed to serve a copy of its request to intervene upon IEU. Nevertheless, IEU filed a response in opposition to LGPOA's request to intervene on December 10, 2003, upon receiving actual notice thereof from Commission staff.¹ In its response, IEU argues that LGPOA's request does not conform to Rule 28-106.201(2), Florida Administrative Code, in that it fails to: 1) provide the name, address, and telephone number of the Petitioner; 2) state when and how the Petitioner received notice of the Commission's decision; and 3) state the relief sought by the Petitioner, stating precisely the action the Petitioner wishes the Commission to take. Moreover, IEU argues that the testimony filed by LGPOA should be stricken as being filed late and without the legal standing to file.

Having reviewed LGPOA's request, it appears that LGPOA has substantially complied with Rule 28-106.201(2), Florida Administrative Code, and that its substantial interests may be affected by this proceeding. Therefore, the request to intervene shall be granted. LGPOA filed intervenor testimony in this docket on November 14, 2003, which was the due date established for the filing of such testimony. The testimony was timely filed in anticipation of the granting of LGPOA's request to intervene. Therefore, IEU's request to strike the prefiled testimony of Mr. Craig Reitz, on behalf of LGPOA, is denied. Nevertheless, LGPOA's prefiled testimony does not conform to

¹IEU's response also addresses the requests for leave to intervene filed by Mr. Dan Kett, Mr. Andrew N. Nichols, The Preserve of Don Pedro Owners Association, and Palm Island Estates Association, Inc. Those requests will be the subjects of a separate Order.

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the formatting requirements set forth in Order No. PSC-02-1611-PCO-SU, issued November 20, 2002 (Order Establishing Procedure). LGPOA is directed to refile the same testimony in the correct format by March 1, 2004. Pursuant to Rule 25-22.039, Florida Administrative Code, LGPOA takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that LGPOA's request to intervene in this proceeding is granted. It is further

ORDERED that IEU's request to strike LGPOA's intervenor testimony is denied. LGPOA is directed to refile the same intervenor testimony in the correct format, as set forth in Order No. PSC-02-1611-PCO-SU, by March 1, 2004. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents that are hereinafter filed in this proceeding to W. Kevin Russell, Esquire, Wilkins, Frohlich, Jones, Hevia, Russell, Hanaoka & Mizell, P.A., 14295 South Tamiami Trail, North Port, Florida 34287.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 6th day of February, 2004.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.