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COUNTY OF CHARLOTTE

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RENÉE FRANCIS LEE  
COUNTY ATTORNEY

February 13, 2004

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

Via FedEx: 8400 2258 6926

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

Dear Ms. Bayo:

Enclosed please find for filing in the above-referenced docket the original and fifteen (15) copies of Charlotte County's Prehearing Statement.

Very truly yours,

Janette S. Knowlton  
Assistant County Attorney

JSK:sw

Enclosures

- cc: Island Environmental Utility, Inc. (w/enclosure)
- W. Kevin Russell, Esq. (w/enclosure)
- Gary Wilkins, Esq. (w/enclosure)
- Ms. Linda Bamfield (w/enclosure)
- Martin S. Friedman, Esq. (w/enclosure)
- Mr. Ronald A. Koenig (w/enclosure)
- Rosanne Gervasi, Esq. (w/enclosure)

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FPSC-COMMISSION CLERK

**STATE OF FLORIDA  
BEFORE THE PUBLIC SERVICE COMMISSION**

In re:     **APPLICATION FOR CERTIFICATE TO  
PROVIDE WASTEWATER SERVICE IN  
CHARLOTTE COUNTY**

Docket No. 020745-SU

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**CHARLOTTE COUNTY'S PREHEARING STATEMENT**

**I.     Witnesses and Testimony Subject Matter**

Charlotte County proposes to call the following witness to offer testimony on all issues in this docket:

- A.     Elliot Kampert, Charlotte County Natural Resources Manager for the Environmental Services Department

Charlotte County reserves the right to call additional witnesses to respond to Commission inquiries not addressed in direct or rebuttal testimony, and to address new issues that may be identified by the Prehearing Officer at the prehearing conference to be held on April 7, 2004.

**II.    Exhibits and Witnesses Sponsoring Each**

- A.     Map(s) [some may be composites] (Kampert)

1.     Map of barrier islands showing existing water and wastewater service areas.
2.     Map showing Charlotte County's Urban Service Area and Infill Areas.

- B.     Documents and Reports

1.     Policy 9.1.4 of the Infrastructure Element of Charlotte County's 1997 Comprehensive Plan. (EK-1)
2.     Kampert memo re: proposed amendments to Policy 9.1.4 and new Policy 9.1.8. (EK-2)
3.     Kampert memo re: proposed new Policy 9.1.9 of the Infrastructure Element of Charlotte County's 1997 Comprehensive Plan. (EK-3)
4.     "Soil Survey of Charlotte County, Florida " (USDA Soil Conservation Service). (EK-4)

5. "Comprehensive Shellfish Harvesting Area Survey of Lemon Bay, Charlotte and Sarasota Counties, Florida" (FDEP). (EK-5)
6. 1999 Technical Report entitled, "Diel Variability of Microbial Indicators of Fecal Pollution in a Tidally Influenced Canal: Charlotte Harbor, Florida" (Southwest Florida Water Management District's Charlotte Harbor Surface Water Improvement and Management Program). (EK-6)

Charlotte County reserves the right to file exhibits to any additional testimony that may be filed, and to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence or the Rules of this Commission.

III. Charlotte County's Basic Position

Due to the level of development that the bridgeless barrier islands have already sustained (46% buildout of the existing lots), central sewer service would be far preferable to the continued use of on-site treatment systems, particularly septic tanks. The County believes that the location of the wastewater facilities should be restricted to mainland locations and that density must not be increased despite the availability of central sewer services. As of this time, the provision of central wastewater services is not consistent with the current policies of the 1997 Comprehensive Plan, particularly Policy 9.1.4 of the Infrastructure Element, which limits utility services to areas within the Urban Services Area.

IV. Questions of Fact at Issue/Charlotte County's Position

ISSUE: Is there a need for service in Island Environmental Utility, Inc.'s (IEU or applicant) proposed service territory and, if so, when will service be required?

County: Yes. Due to the level of development which the islands have already sustained (46% buildout of the existing lots), central sewer service is needed now. Septic tanks are not generally suitable for use on the barrier islands due to the rapid permeability of the islands' sandy soils, high water table, proximity to tidal water, and vulnerability to storms.

ISSUE: Will the certification of IEU result in the creation of a utility which will be in competition with, or duplication of, any other system within geographical proximity to the proposed service area?

County: No.

(New) ISSUE: What are the practical ramifications, if any, should it be determined that IEU's Application is inconsistent with the County's Comp Plan?

County: All development within Charlotte County must be consistent with the County's Comprehensive Plan. If a utility began installing a wastewater collection system in a manner inconsistent with the Comprehensive Plan, the County would issue a Stop Work Order advising that any activities undertaken in violation of the Comprehensive Plan must cease immediately and be remedied within a reasonable period of time (the nature of the remedy and the exact period of time would be determined based on the type and extent of the activity). If the violations are not corrected within the specified period of time, the County would initiate a code enforcement action against the offender which could result in financial penalties. The amount of penalties would be set by the Code Enforcement Board as authorized by the Florida Statutes. Issuance of a Stop Work Order as well as subsequent action by the Code Enforcement Board would effectively preclude the installation and operation of a utility.

In addition to the effect on local (i.e., County) permitting programs, inconsistency with the Comprehensive Plan could impact the utility's ability to obtain the state and federal approvals necessary to install the wastewater collection system. The Florida Coastal Management Program (FCMP) consists of 23 Florida Statutes against which any agency action (e.g., issuance of an environmental resource or Army Corps of Engineers permit, granting of a sovereignty submerged lands lease or easement, etc) must be assessed and found consistent. Part II of Chapter 163, (also known as the "Local Government Comprehensive Planning and Land Development Regulation Act") which mandates the development of local Comprehensive Plans and provides the mandatory requirements of local comprehensive Plans is included in the FCMP. Therefore, any agency action must be consistent with the local comprehensive plans adopted pursuant to, and found consistent with, Part II of Chapter 163. The Charlotte County Comprehensive Plan currently in force and effect was adopted and found consistent with all applicable rules and statutes in 1997. Through the FCMP, inconsistency with the Charlotte County Comprehensive Plan could negatively impact IEU's ability to obtain State and Federal permits.

V. Questions of Law at Issue/Charlotte County's Position

ISSUE: Is IEU's application inconsistent with Charlotte County's comprehensive plans?

County: Yes. The provision of central wastewater services is not consistent with the current policies of the 1997 Comprehensive Plan, particularly Policy 9.1.4 of the Infrastructure Element, which limits utility services to areas within the Urban Services Area. The proposed Comp Plan revisions (which would render IEU's application consistent with the Comp Plan) were put on hold indefinitely by the Board of County Commissioners of Charlotte County pending further review and study.

VI. Policy Questions at Issue/Charlotte County's Position

ISSUE: Can the public be adequately served by modifying or extending a current wastewater system?

County: No position on this issue.

ISSUE: Does IEU have the financial ability to serve the requested territory?

County: No position on this issue.

ISSUE: Does IEU have the technical ability to serve the requested territory?

County: No position on this issue.

ISSUE: Has IEU contracted for sufficient wastewater plant capacity to serve the requested territory?

County: No position on this issue.

ISSUE: Is it in the public interest for IEU to be granted a wastewater certificate for the territory proposed in its application?

County: No position on this issue.

ISSUE: What is the appropriate return on equity for IEU?

County: No position on this issue.

ISSUE: What are the appropriate wastewater rates and charges for IEU?

County: No position on this issue.

ISSUE: What are the appropriate service availability charges for IEU?

County: No position on this issue.

ISSUE: What is the appropriate allowance for funds used during construction (AFUDC) rate for IEU?

County: No position on this issue.

VII. Stipulated Issues

Charlotte County is not aware of any stipulations.

VIII. Pending Motions or Other Matters

Charlotte County is not aware of any pending motions or other matters.

IX. Pending Requests or Claims for Confidentiality

Charlotte County is not aware of any requests or claims for confidentiality.

X. Requirements that cannot be complied with, and reasons therefore

Charlotte County is not aware of any requirement set forth in any prehearing order with which it cannot comply.

XI. Any objections to a witness' qualifications as an expert.

Charlotte County has no objection to any expert witness' qualifications.

Respectfully submitted this 13<sup>th</sup> day of February, 2004.



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February 13, 2004

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 020745-SU**

I hereby certify that a true and correct copy of Charlotte County's Prehearing Statement for Docket No. 020745-SU has been furnished by U. S. Mail to the following parties on this 13<sup>th</sup> day of February, 2004:

Island Environmental Utility, Inc.  
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