

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
Filed: February 16, 2004

**JOINT PETITION FOR LEAVE TO INTERVENE
OF JAMES W. WADE AND THE PRESERVE OF
DON PEDRO OWNERS ASSOCIATION**

James Wade ("Wade") and The Preserve of Don Pedro Owners Association ("Association") (collectively "Intervenors") respectfully request leave to intervene as parties in this proceeding. Intervention is sought pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039, 28-106.201 and 28-106.205, Florida Administrative Code.

Intervenor Information

1. Wade is a resident of the State of Florida and owns a home on Don Pedro Island in Charlotte County, Florida. His full name and mailing address are:

James W. Wade
P.O. Box 950666
Lake Mary Florida 32795-0666

2. The Association is a not-for-profit corporation whose full name and principal business address are:

The Preserve of Don Pedro Owners Association
P.O. Box 454
Placida, Florida 33946

3. Copies of all pleadings, notices, and orders in this docket should be provided to:

DOCUMENT NUMBER-DATE
02144 FEB 16 3
FPSC-COMMISSION CLERK

D. Bruce May, Jr.
Lawrence E. Sellers
Holland & Knight LLP
P.O. Drawer 810
Tallahassee, FL 32301
(850) 224-7000

and

James W. Wade
P.O. Box 950666
Lake Mary Florida 32795-0666

Affected Agency

4. The affected agency is the Florida Public Service Commission (the "Commission"), 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

Substantial Interests

5. Island Environmental Utility, Inc. ("IEU") has applied to the Commission for an original certificate to operate a monopoly wastewater utility to serve Don Pedro Island, Knight Island, Little Gasparilla Island, and Thornton Key, four unbridged islands in Charlotte County, Florida. Wade is a resident of the State of Florida and owns a home on Don Pedro Island. The Association is the property owners' association comprised of approximately 35 members who own homes and property on Don Pedro Island. Wade and the members of the Association all own real property within the proposed service territory of IEU, and would be

substantially affected by the granting of a certificate to IEU to operate the proposed wastewater utility.¹

6. Wade and the Association all have standing to intervene as parties in this proceeding. Intervention in a Commission proceeding is granted to those entities whose substantial interests are subject to determination or will be affected through the proceeding. Fla. Admin. Code R. 25-22.039.

7. Wade owns a home on Don Pedro Island that is located within the proposed monopoly wastewater service area of IEU. Wade thus has a direct and substantial interest in seeing that wastewater services and infrastructure on the island are reliable, safe, cost-effective, and compliant with federal, state and local environmental, land use, and zoning requirements. Wade's substantial interests clearly will be affected by the granting of a certificate to IEU -- an applicant that has not demonstrated that it can or will comply with the requirements of an original certificate under Chapter 367, Florida Statutes and Chapter 25-30, Florida Administrative Code.

8. The Association meets the test for associational standing set forth in Friends of the Everglades, Inc. v. Board of Trustees of the Internal Improvement Trust Fund, 595 So. 2d 186 (Fla. 1st DCA 1992), and thus should be allowed to participate as a party in this proceeding. The members of the Association all own

¹ Wade and the Association received notice of IEU's initial application and thereafter filed written requests for intervenor status in the proceeding. Wade filed a written request for intervenor status on behalf of himself and the Association by letter dated November 13, 2003. By letter dated November 25, 2003, Commission counsel advised Wade that his request was under consideration and, if granted, would only permit him to represent himself and not the Association "unless you are an attorney or a qualified representative in accordance with Rule 28-106.106, Florida Administrative Code. The Association may wish to hire an attorney to represent it in this matter." To the knowledge of the undersigned, the requests by Wade and the Association have not yet been determined by the Commission.

homes or other real property within the proposed monopoly service territory of IEU. Those members' substantial interests would be directly affected by the granting of a certificate to an applicant like IEU that has not demonstrated that it can or will comply with applicable legal and regulatory requirements for the issuance of an original wastewater certificate. Thus, the proposed construction and operation of the wastewater utility by IEU will substantially affect a substantial number of Association members.

9. The Association is a not-for-profit association created for the purposes of safeguarding the property interests of members that reside or own property on Don Pedro Island. Like Wade, all of the members of the Association have direct and substantial interests in seeing that wastewater services and infrastructure on the barrier islands are reliable, safe, cost-effective, and compliant with federal, state and local environmental, land use, and zoning requirements. Participation in this proceeding clearly falls within the general scope of interests and activities of the Association. Moreover, the Commission has allowed another association, substantially similar to the Association, to intervene in this proceeding in opposition to the requested certificate. See Order No. PSC-04-0124-PCO-SU, Docket No. 020745-SU (February 6, 2004) (prehearing officer granted Little Gasparilla Property Owners Association's request to intervene for purposes of objecting to the issuance of a certificate to IEU.) Thus, intervention by the Association for purposes of opposing this utility certification is an appropriate relief for the Association to receive on behalf of its members.

10. To summarize, the Association satisfies the test for associational standing and should be allowed to intervene as a party in this proceeding. First, granting IEU a original wastewater certificate will substantially affect a substantial number of the Association members. Second, issues relative to preserving safe, reliable, cost-effective and lawful wastewater treatment on the barrier islands are issues that clearly fall within the general scope and interests of the Association. Third, prior orders in this docket show that intervention for the purpose of objecting to utility certification is relief appropriate for the Association to receive on behalf its members. See Friends of the Everglades, Inc., 595 So. 2d. at 188; Florida Homebuilders Ass'n v. Department of Labor, 412 So. 2d 351 (Fla. 1982).

Disputed Issues of Material Fact

11. The disputed issues of material fact of which the Association is aware at this time are:

Issue 1: Has IEU proved that there is a need for service in IEU's proposed service territory?

Issue 2: Has IEU proved that the service it proposes to provide is consistent with Charlotte County's comprehensive plan?

Issue 3: Has IEU proved that the proposed wastewater utility will not compete with, and will not duplicate, any other system within geographical proximity to the proposed service area?

Issue 4: Has IEU proved that it has the financial ability to serve the requested territory?

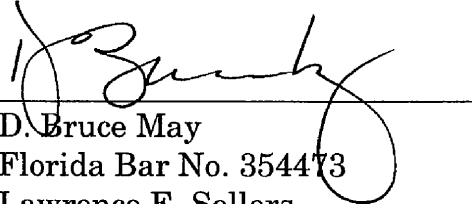
- Issue 5: Has IEU proved that it has the technical ability to serve the requested territory?
- Issue 6: Has IEU proved that it has contracted for sufficient wastewater plant capacity to serve the requested territory?
- Issue 7: Has IEU proved that it is in the public interest for IEU to be granted a wastewater certificate for the territory proposed in its application?
- Issue 8: Has IEU proved that it is entitled to a specific and appropriate return on equity?
- Issue 9: Has IEU proved that it is entitled to specific and appropriate rates and charges for wastewater services?
- Issue 10: Has IEU proved that it is entitled to specific and appropriate service availability charges?
- Issue 11: Has IEU proved that it is entitled to a specific and appropriate allowance for funds used during construction (“AFUDC”) rate?
- Issue 12: Has IEU given proper notice of its application for an original wastewater certificate?

Ultimate Facts Alleged and Relief Requested

IEU has failed to prove that it is entitled to an original certificate to operate a wastewater utility pursuant to Chapter 367, Florida Statutes, and Chapter 25-30, Florida Administrative Code, including Rules 25-30.030, 25-30.032 and 25-30.0331. Therefore, Intervenors request that the Commission deny IEU’s application in the proceeding.

WHEREFORE, the Intervenors respectfully request that the Commission issue an order granting their Joint Petition for Leave to Intervene and authorizing Wade and the Association to participate as parties in this proceeding.

Respectfully submitted this 16th day of February, 2004 by:

A handwritten signature in black ink, appearing to read "D. Bruce May", is written over a horizontal line. The signature is fluid and cursive.

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**Counsel for James W. Wade and The
Preserve of Don Pedro Owners
Association**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY and a true and correct copy of the foregoing was hand delivered this 16th day of February, 2004 to: Rosanne Gervasi, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 and provided via facsimile* or overnight delivery to:

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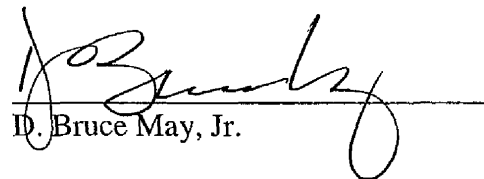
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