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MARTIN S. FRIEDMAN, P.A.  
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(LICENSED IN TEXAS ONLY)

February 17, 2004

HAND DELIVERY

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

RECEIVED-FFSC  
FEB 17 PM 12:05  
COMMISSION  
CLERK

Re: Docket No. 020745-SU; Application of Island Environmental Utility, Inc., for an Original Wastewater Certificate in Charlotte County, Florida  
Our File No.: 37025.01

Dear Ms. Bayo:

Enclosed please find for filing in the above-referenced docket the original and five (5) copies of Island Environmental Utility, Inc.'s Motion in Opposition to Request for Extension of Time to File Direct Testimony and Exhibits.

Very truly yours,



MARTIN S. FRIEDMAN  
For the Firm

AUS \_\_\_\_\_ MSF/mp  
CAF \_\_\_\_\_ Enclosures  
CMP \_\_\_\_\_  
COM 3  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
DPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC 1  
OTH \_\_\_\_\_

- cc: Rosanne Gervasi, Esquire (w/enclosure) (via hand delivery)  
Jannette S. Knowlton, Esquire (w/enclosure)  
W. Kevin Russell, Esquire (w/enclosure)  
Mr. Ronald Koenig (w/enclosure)  
Mrs. Linda Bamfield (w/enclosure)  
Mr. John R. Boyer (w/enclosure)  
Mr. Dean Beckstead (w/enclosure)  
Gary L. Wilkins, Esquire (w/enclosure)

DOCUMENT NUMBER-DATE

02197 FEB 17 3

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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Docket No. 020745-SU

**MOTION IN OPPOSITION TO REQUEST FOR EXTENSION OF  
TIME TO FILE DIRECT TESTIMONY AND EXHIBITS**

Island Environmental Utility, Inc., (*Island Environmental*), by and through its undersigned attorneys, requests that the Florida Public Service Commission (*Commission*), deny the request of Palm Island Estates Association, Inc. (*Palm Island*) for an extension of time to file direct testimony and exhibits set out in its Amended Motion to Intervene, and in support shows:

1. At the outset, Island Environmental is not contesting Palm Island's Amended Motion to Intervene, however, it strongly objects to Palm Island's request for an extension of time to file direct testimony and exhibits.

2. Island Environmental filed its original application in July, 2002. Palm Island was aware of Island Environmental's proposal to provide centralized wastewater service for at least 18 months, yet it failed to take any action whatsoever on the original application until November, 2003. The essential nature of Island Environmental's application has not changed.

3. This Commission, in Order No. PSC-03-1025-PCO-SU, for the second time, established new controlling dates for the orderly management of this docket, primarily for the benefits of the parties who had already identified themselves as intervenors and potential intervenors. Pursuant to the Order, the Commission extended the time within which all Intervenor were to file their direct testimony and exhibits from September 15, 2003 to November 14, 2003. The Commission reasoned in this Order that there was ample time within the schedule to permit the

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FPSC-COMMISSION CLERK

extension and still maintain the hearing date in April, 2004.

4. Both Charlotte County and Little Gasparilla Property Owners Association, Intervenors in this docket, timely filed their direct testimony in accordance with the Order, even though neither had been granted intervenor status by this Commission. All other authorized Intervenors also timely complied with the Order.

5. Palm Island attempted to request intervenor status on November 24, 2003. The attempted request was legally deficient and Island Environmental objected timely. Palm Island did not reapply for or otherwise contact the Commission to request intervenor status until February 12, 2004. In fact, in its Amended Motion to Intervene, its attorneys stated that they were not retained until February 8, 2004.

6. Palm Island has not to this date provided any explanation of why it failed to conform its purported application to the requirements of law and the rules of this Commission until February, 2004, although it had been served with a copy of Island Environmental's Motion to Strike, which enumerated each and every ground for the deficiency of its purported request to intervene. It has had ample time to either follow the examples of Charlotte County and Little Gasparilla Property Owners Association and file its direct testimony in anticipation of being granted intervenor status, or to reapply for intervenor status within an appropriate and non-prejudicial period of time.

7. One of the reasons why Palm Island asserts that it should have an extension of time to file direct testimony is that Island Environmental only recently filed responses to alleged deficiencies in its original Application. Island Environmental responded to Commission Staff's request for information within a timely fashion, in accordance with the time frame specified by Staff. The responses to Commission Staff's request for information was, in greatest part, motivated by the amendments to the original Application which were necessitated when Knight Island Utility decided

not to transfer its wastewater territory to Island Environmental. These amendments have been on file with this Commission since early last year. Island Environmental should not be prejudiced by an action requested by which Commission Staff.

8. At the request of Commission Staff, Island Environmental filed its Restated Application to incorporate the various amendments into one application. Island Environmental has not changed the essential nature of its proposal. Palm Island's objections would have been the same had Island Environmental not filed the Restated Application. There is no "substantial change to the filings", as asserted by Palm Island. Palm Island has been aware of Island Environmental's proposal to provide centralized wastewater service for some time, and has never given any justification for its delay in failing to attempt to request intervention status until November, 2003, or properly requesting such status in accordance with law and the rules of this Commission until February 12, 2004.

9. In its Amended Motion to Intervene, Palm Island asserts that Island Environmental will not be prejudiced by the extension of time to file direct testimony. This is untrue. Island Environmental will be prejudiced because it will not be afforded time to adequately investigate and respond to Palm Island's direct testimony before the hearing in April, 2004. Island Environmental will not be afforded time to conduct any necessary discovery and receive answers prior to the hearing date. Other parties may also be prejudiced by Palm Island's delay. The "ample time" found by this Commission in September, 2003, in Order No. PSC-03-1025-PCO-SU, is no longer there.

10. Palm Island also asserts that the interests of justice will be served by allowing the extension of time to file direct testimony. This is also untrue. Palm Island's purported goal of seeking to ensure that the interests of its constituents will be adequately represented can be met (and prejudice to Island Environmental and other parties and the delay that granting the extension of time

will cause be avoided) by attendance at the customer service hearings and through cross-examination. If Palm Island had really been intent on ensuring that the interests of its constituents were represented, it should have requested intervention status earlier and timely filed its direct testimony with the other Intervenors in this docket.


11. The interests of Palm Island and Little Gasparilla Property Owners Association coincide or are identical. Both groups are represented by the same counsel. Palm Island has not shown that the issues would not be adequately addressed, or that its interests would not be adequately represented, by Little Gasparilla Property Owners Association or any other Intervenor.

12. If this Commission grants Palm Island's request for an extension of time, these proceedings will be delayed for a third time, prejudicing Island Environmental.

WHEREFORE, Island Environmental Utility, Inc., respectfully requests that this Commission deny the request for extension of time to file direct testimony and exhibits by Palm Island Estates Association, Inc.

Respectfully submitted on this 17<sup>th</sup> day of February, 2004.

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Martin S. Friedman, Esquire  
For the Firm

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

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion in Opposition to Extension of Time to File Direct Testimony and Exhibits has been furnished by U.S. Mail to the following parties on this 17<sup>th</sup> day of February, 2004:

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