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February 27, 2004

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VIA HAND DELIVERY

Blanca S. Bayo
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED FPSC
04 FEB 27 PM 3:26
COMMISSION
CLERK

Re: In re: Application for certificate to provide wastewater service in
Charlotte County by Island Environmental Utility, Inc., Docket No.
020745-SU

Dear Ms. Bayo:

Enclosed for filing are the original and seven (7) copies of James W. Wade's and The Preserve Of Don Pedro Owners Association's Memorandum in Opposition to Island Environmental Utility, Inc.'s Response to Joint Petition for Leave to Intervene.

For our records, please acknowledge your receipt of this filing on the enclosed copy of this letter. Thank you for your consideration.

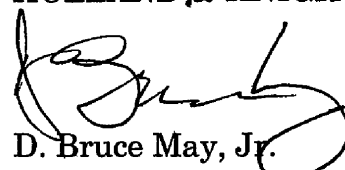
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Sincerely,

HOLLAND & KNIGHT LLP


D. Bruce May, Jr.

DBM:kjg
Enclosures

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February 27, 2004
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cc: Rosanne Gervasi
Parties of Record

ORIGINAL

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 27, 2004

**JAMES W. WADE'S AND THE PRESERVE OF DON PEDRO OWNERS
ASSOCIATION'S MEMORANDUM IN OPPOSITION TO
ISLAND ENVIRONMENTAL UTILITY, INC.'S
RESPONSE TO JOINT PETITION FOR LEAVE TO INTERVENE**

Island Environmental Utility, Inc. ("IEU") has filed a response in opposition to the Joint Petition for Leave to Intervene ("Joint Petition") filed by James W. Wade ("Wade") and The Preserve of Don Pedro Owners Association ("Association") (collectively, "Joint Intervenors"). IEU does not refute assertions by Joint Intervenors that their interests will be substantially affected in this original wastewater certification proceeding. Instead, IEU makes unsupported claims that it will somehow be prejudiced by the intervention and thus moves the Commission to dismiss the Joint Petition. Joint Intervenors submit this memorandum in opposition to IEU's motion to dismiss.

The Commission's rules allow a person that has a substantial interest in a proceeding to intervene and participate as a party, provided that the request for intervention is filed at least five (5) days before final hearing and conforms with the Rule 28-106.201(2), Florida Administrative Code. See Rule 25-22.039, Fla. Admin. Code. The Joint Petition clearly contains all information required by Rule 28-106.201(2), and demonstrates that Joint Intervenors' substantial interests will be affected by the proceeding. Furthermore, the Joint Petition was filed at least five

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(5) days prior to the currently scheduled hearing date. IEU makes no effort to refute these facts; indeed, IEU cannot refute these facts. Instead, IEU makes very general claims that intervention by Wade and the Association in this proceeding will somehow cause it “prejudice.” Mere allegations of prejudice are not sufficient grounds for denial of intervention under Rule 25-22.039.

Joint Intervenors acknowledge that intervenors take the case as they find it. Here, they find a licensing case that is still in a very early and formative state. Commission staff has issued at least four formal notices of deficiencies to IEU concerning its application. On February 10, 2004, IEU filed a new wastewater certificate application. At the Pre-Prehearing Conference on February 24, 2004, Commission staff stated that the new application continues to be deficient in a number of materials respects. Indeed, IEU ignores the fact that it has yet to submit a complete application and there has not been an official date of filing in this proceeding as contemplated by Rule 25-30.032(3), Florida Administrative Code. By all accounts, this proceeding is in its infancy. Thus, it is simply wrong for IEU to state that the requested intervention comes so late in the process as to cause it prejudice.

CONCLUSION

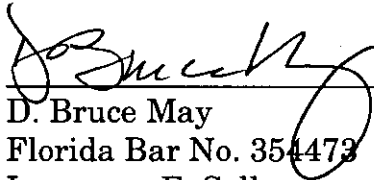
Joint Intervenors clearly meet the test for standing under Florida law and should be allowed to intervene, to prefile testimony and to otherwise fully participate as parties in this proceeding. See Agrico Chem. Co. v. Dep’t of Env’tl. Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981); Fla. Homebuilders Ass’n, Inc. v.

Dep't of Labor, 412 So. 2d 351 (Fla. 1982). Therefore, IEU's motion to dismiss Joint Intervenors from this proceeding must be denied.

WHEREFORE, Joint Intervenors respectfully request that the Commission:

- (a) deny IEU's motion to dismiss;
- (b) grant their Joint Petition for Leave to Intervene; and
- (c) grant such other relief as the Commission deems appropriate.

Respectfully submitted this 27th day of February, 2004 by:



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**Counsel for James W. Wade and The
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Association**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY and a true and correct copy of the foregoing was hand delivered this 27th day of February, 2004 to: Rosanne Gervasi, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 and provided via U.S. Mail to:

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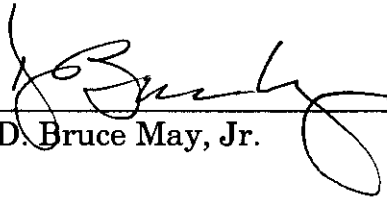
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