

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Item No. 3.

3 **MR. LEWIS:** Good morning, Commissioners. I'm
4 Clayton Lewis with the Commission's engineering staff.
5 Item 3 is staff's recommendation addressing North
6 Peninsula Utilities Corporation's application to expand
7 its service territory. The utility provides wastewater
8 services in Volusia County.

9 The original application was filed in
10 August 2013 and has been modified on several occasions.
11 This item was deferred from the April 16th, 2015,
12 Commission Conference per the utility's request so the
13 representatives of the utility could meet with staff. A
14 notice and formal meeting was held on April 20th, 2015.

15 At that meeting the utility informed staff it
16 would withdraw its request for a main extension charge
17 and possibly modify its proposed phases to provide
18 service to the new areas.

19 Staff is recommending denial of the
20 application because the utility has failed to
21 demonstrate a need for service in the territory
22 requested. Also, the utility's plan to connect
23 customers would require customers to install equipment
24 that is normally the responsibility of the utility or
25 developer. Staff is available to answer your questions,

1 and the utility representative is here to address the
2 Commission as well.

3 **CHAIRMAN GRAHAM:** Thank you, staff.

4 North Peninsula, welcome.

5 **MR. WHARTON:** Thank you. Mr. Chairman, my
6 name is John Wharton, I represent the utility, of the
7 law firm of Dean, Mead & Dunbar. On my left is Mr. Bob
8 Hillman, who is one of the principals of the utility,
9 and on his left is Mr. Gerry Hartman. We appreciate the
10 opportunity to speak to you for a few minutes. I'm
11 going to try to be brief and basically set the stage in
12 regard to that I do not think that the Commission is in
13 a legal box with regard to this decision.

14 I won't get ahead of the details, and I know
15 you've read the recommendation, but basically you've got
16 a barrier island here with a small utility on it with
17 excess wastewater capacity. You've got wastewater
18 septic tanks in the areas in which the utility seeks to
19 extend. You've got a polluted river, the Halifax River,
20 which is adjacent to the Indian River Lagoon that you've
21 heard so much about. Everyone thinks getting rid of
22 these septic tanks eventually is a good idea, and staff
23 said that it's laudable in their recommendation.

24 But this is a very unusual application. It
25 doesn't fit in the box. It's not a cul-de-sac where the

1 developers are going to develop the houses and put in
2 the mains and put in the laterals and put the price in
3 the houses and donate them to the utility. And I think
4 that the fact that this is unique is something that you
5 can tell looking into staff's recommendation. They talk
6 about the fact that it is unique. That's their word.
7 Then they talk about that, well, this would require the
8 donation or installation or funding of equipment that is
9 not normally paid -- that is normally paid for by the
10 utility. Well, it's unique. It's true, what's normal
11 can't happen here. These are retrofitted neighborhoods
12 that have to be retrofitted over time.

13 Staff has said that there is no need, and yet
14 in the application they've talked about how that there
15 are 174 ERCs that at one point have requested service
16 and another 177 new septic tanks and repair of septic
17 tanks have occurred in the areas in which the utility
18 wants to extend just in 2014 alone.

19 Having said that, I want Mr. Hillman and
20 Mr. Hartman to discuss with you the details, but I want
21 to look at it from a legal perspective. Staff has said
22 that there is no need, and it would be easy to look at
23 the determination of no need and think if there is no
24 need, then as a matter of law that's one of the criteria
25 that must be satisfied and I can't approve this

1 application. But with all respect to the staff, and
2 I've been coming over here for more than 30 years, I
3 think staff had a little problem getting out of the box
4 here in terms of looking at need, is that developers
5 come in, they develop, they're building cul-de-sacs and
6 putting in facilities. Here certainly there is need.
7 There's people coming and saying they want central
8 service. There's a preference in Florida law and
9 certainly in science to central service over septic
10 tanks. The Halifax River is an ill river. The utility
11 does have extra capacity. And the -- you have a
12 statute, Chapter 367, that specifically says it should
13 be liberally construed and that it's for the health,
14 safety, and welfare.

15 And when you're talking about wastewater, need
16 necessarily means the environment in some form or
17 fashion. Staff has said here environmental criteria
18 can't be part of need, but it's certainly part of the
19 health, safety, and welfare. When a customer takes a
20 shower and it goes down the drain, he's fine with it.
21 That's where his need ends. But wastewater, central
22 wastewater over septic tanks is something that the
23 Commission should recognize and should encourage.

24 I think one of the problematic things that the
25 Commission might say about this application is, well, if

1 we extend these -- this territory into all of these
2 existing neighborhoods that folks are on septic tanks,
3 what if the fellow down there at the end of the
4 cul-de-sac says that he wants service? But I think the
5 statute is very, very clear about that too. The statute
6 specifically contemplates that the only duty to serve a
7 customer in existing territory is the Commission may
8 order a utility to provide service or delete that
9 territory if they determine the person is reasonably
10 entitled to service, if they determine it can
11 economically be rendered, and if they determine that
12 there's another utility available, those three things.

13 Here you've got none of those, no other
14 utilities that plan to serve this area and to retrofit
15 these neighborhoods is going to occur over time. There
16 is a degree of uncertainty there, although if the staff
17 recommendation is approved and the extension is denied,
18 you have absolute certainty. There's not going to be
19 central service at any time in the foreseeable future
20 for these neighborhoods. So I really believe that as a
21 policy matter, also based on the requests for service,
22 the fact that the central wastewater service is
23 preferred over septic tanks on a fragile barrier island,
24 which is what this is, and that the Halifax River, and
25 we've produced a lot of information in that regard, is

1 not a healthy water body, that really -- you may decide
2 not to do it and that might be a perfectly defensible
3 position, but I don't believe you are compelled to find
4 that there's no need in this case.

5 Having said that, I'd like to turn the matter
6 over to Mr. Hillman, who is going to be referring to a
7 map that we've also handed out to y'all in a pack.

8 **MR. HILLMAN:** Good morning. I'm Bob Hillman.
9 I appreciate you seeing us this morning. We have just a
10 little bit of a background. We've operated this
11 facility for 25 years, my partner and I. We've been in
12 business in Ormond Beach for 35 or 40 years in the whole
13 Volusia County area. Never had problems. We've always
14 operated effectively. Haven't had one customer in 25
15 years ever not receive good service from us.

16 We're the only utility serving this area. We
17 have extra capacity. We started getting requests from
18 many of the people, and if you look at the map, we
19 separated it. The green is what we serve now. The
20 orange area are areas that can be readily served by us
21 in a short period of time, you know, as customers ask
22 for it and that are pretty much on a line that's there
23 already or they can get to us pretty much.

24 There are -- many of them are single family on
25 the river, on the Halifax River, the orange along the

1 river there on either side of the force main. There are
2 many multi-unit condo units and other projects up there
3 who are having -- who have aging package plants and that
4 kind of thing. There's probably 350 plus or minus of
5 those that could be serviced in a relatively easy manner
6 in a relatively quick time.

7 We have many written requests for service from
8 these people. We have them -- this application has been
9 in for a long time. Every -- they call and they call
10 and they call and they say, you know, are you able to
11 serve me? And they're right on -- they're on John
12 Anderson especially or on -- I need to show -- on an
13 orange area that goes all the way across towards the
14 bottom that's called Capri Drive. Capri Drive has a
15 street -- the County of Volusia put a street and dry
16 lines in there. They did not hook up to anybody. These
17 people are now building homes on those lots they paid
18 \$20,000 impact fees for that road, and they're putting
19 in septic tanks to serve their houses and they have dry
20 lines out front. They're begging for service. There
21 are 35 or 40 of them.

22 We don't charge -- we have -- we're not
23 charging or requesting any kind of a hookup fee or a
24 charge for these people to come onto us. We've done
25 everything that we thought was necessary. We've sent

1 out -- we have sent out two mail-outs on this
2 application to every single, solitary customer up there.
3 We have had no, zero objections from the City of Ormond
4 Beach, we've had zero objection from Volusia County,
5 we've had no individuals that have objected to this.
6 They want -- they would like to have the option of
7 hooking up to central sewer service when possible. And
8 as a matter of fact, on those notices that we sent out,
9 it was suggested by your staff, and we did in big bold
10 letters put on there that connection to North Peninsula
11 Utilities is not required. That was on there and that's
12 the way we're approaching it.

13 We do understand there are some areas in
14 orange that are septic and they have been there, you
15 know, for some time and that we can't serve each one of
16 those at these times. But if we have to come back, if
17 we have -- if we have someone on John Anderson Drive
18 next to the river who has an aging septic tank and they
19 have to come back -- they have to put in a new one,
20 that's a \$20,000 cost alone there. They are anxious to
21 hook on. They have to mound their ground in front of it
22 because it's a low-lying area. It's on an
23 environmentally sensitive area. If we have to come to
24 the staff or to you all with an application for
25 individual hookups along here, it's not economically

1 feasible for us. It takes time and we, you know, we're
2 a small company. So our idea was to come in with the
3 recommendation and the agreement of the City of Ormond
4 and Volusia County, they even drew the demarcation line
5 at the bottom which is Beau Rivage. They said we're not
6 going to do anything up there. We do not have an
7 objection to you closing that area. Please do it. And
8 then we can serve those people that need the service.

9 People are waiting. We keep telling them,
10 well, we don't know yet. We can't service you at this
11 point in time. That's why we're here. We just feel
12 like it would really on this portion of the north
13 peninsula be a real plus for the whole area. Thank you.
14 I'd like to turn it over to Gerry Hartman.

15 **MR. HARTMAN:** Thank you very much, Chairman
16 and Commissioners. I'm Gerry Hartman. I'm a
17 professional engineer, board certified environmental
18 engineer, which is the highest wastewater, water
19 environmental certification you can get in the State of
20 Florida. I've practiced for 40 years here in the State
21 of Florida. I'm a professional engineer, as I
22 mentioned.

23 I just want to go over these four things very
24 quickly with you because it's a straightforward
25 application. Bob already mentioned -- he did flip flop,

1 the pink areas are the ones that are interior. It's the
2 orange areas that are -- can be served immediately.

3 This utility has expanded its service area, as
4 you see, in green five times successfully. No
5 complaints. You have found them technically competent
6 five times. You have found them financially capable
7 five times in a row. There has been no rate increase
8 for 25 years, not one rate case from this utility.
9 That's pretty impressive. And only a few pass-through
10 rates. There's no impact fees, no capital charges
11 versus thousands of dollars from Volusia County or
12 Ormond Beach. These customers save a tremendous amount
13 of money connecting because it's built. We have
14 65 percent of our capacity that is available now built
15 and in operation, treatment, transmission, and effluent
16 disposal. The only thing that's missing is connecting
17 to our lines, which is the smallest part of the cost of
18 a wastewater utility, as you all know.

19 Page 2, no mandatory connection. We're not
20 asking for mandatory connection. There is -- this is
21 private enterprise. If we can't provide service better
22 and more efficiently, then we shouldn't serve.

23 The expanded area is agreed to by all the
24 local providers, everyone. Bob mentioned about the two
25 aspects. There have only been letters of support.

1 There have been no letters against this application,
2 only letters of support. In 2013, the health department
3 said this is the worst area in Volusia County for septic
4 tanks, highest rate of septic tank failures, worst
5 environmental pollution in the county relative to that
6 issue. This is the report. Your staff has this report.
7 The lead author of that report supports this very, very
8 strongly. That's James McCray (phonetic). I have his
9 email, I have his phone number. Subject to check or
10 whatever, your staff can call him. I gave that to them.

11 It's been coordinated with Volusia County.
12 They have not served this area for 50 years. They've
13 deferred to NPUC for the last two years. We coordinated
14 with Ormond Beach. Ormond Beach, to give you the type
15 of coordination, Kingston Shores, we provided where our
16 pipes were, et cetera, such that Ormond Beach could get
17 their water up there and serve Kingston Shores. We only
18 serve sewer, no water. Okay? We coordinate with them
19 and they want us to go ahead and serve Kingston Shores.
20 I have letters in here, negotiations with Kingston
21 Shores, 110 units -- staff has it as part of the
22 170 that they mentioned -- that they want to connect.

23 You see on this map, all those black lines are
24 force mains. They go right by these customers. There's
25 570 individual customers. 35 percent of the capacity is

1 used, 85 [sic] percent of the capacity is available
2 documented by the FDEP records. I mean, 65 percent is
3 available documented by the DEP records.

4 The only things that are necessary are things
5 that customers always pay for. I paid for my connection
6 to the central sewer. New Smyrna Beach is one of my
7 clients, Utilities Commission. The customers always pay
8 for the connection. You know, it's amazing. Yeah,
9 sometimes the developer puts in the cost of the lot, but
10 the customer really pays for that connection in the lot.
11 So the customer always pays for the connection.

12 I've written utility standards for Orange
13 County. I've connected 10,000 customers in Orange
14 County as the Orange County sanitary engineer for eight
15 years. Customers always pay for the connection. The
16 utility does not. The utility pays for the disposal,
17 treatment, you know, treatment plant and the
18 transmission to get it there. They don't pay for the
19 connection.

20 Coordinated with the local office of DEP for
21 the past few years. They've made it very simple. It's
22 our policy for central sewer, and especially in this
23 area where septic tanks have the trifecta against them.
24 One, unsuitable soils. It's inappropriate for septic
25 tanks to be put there. Two, you've got the pollution of

1 the Halifax River. And there's a typo in here. It says
2 Indian River. It should be Halifax. And, three, you
3 have high density. These are 50-foot lots. These are
4 not acre lots. These are tight lots. They need central
5 sewer.

6 And then below I just sort of compared the
7 monthly rates. We are the lowest monthly rate in the
8 area. We're \$32.40, and that includes the indexing that
9 just went into place October 1st. Volusia County is at
10 \$45.88 for the same level of service. Ormond Beach is
11 at \$50.24. Lowest cost, capacity available, all you
12 have to do is connect. We -- the staff said there's 170
13 ERCs. It's really 200, pretty close, immediate type
14 connection. That is need.

15 If you have any questions -- also these are
16 the failed septic tanks in our area, and there's a lot
17 of them. Thank you very much.

18 **CHAIRMAN GRAHAM:** Thank you.

19 **MR. WHARTON:** Mr. Chairman, if I may, may I
20 just take about 30 seconds?

21 **CHAIRMAN GRAHAM:** Sure.

22 **MR. WHARTON:** You know, to me one of the ways
23 the Commission ought to evaluate this is what's the
24 harm? I think that these areas in the pink and in the
25 orange are not going to be served. They're not going to

1 be retrofitted if this is denied. If this extension is
2 granted, the utility is going to be able to go in, meet
3 with neighborhoods or homeowners associations saying
4 this is how much it would cost to run the main down your
5 street, et cetera. Also if it's denied, I've tried to
6 imagine if we still -- if we wanted to meet staff's
7 concerns in this recommendation about, well, we're not
8 real sure since people have working septic tanks how
9 you're going to get the economic critical mass to ever
10 make this happen, well, if this is denied, how would you
11 come back and fix that? Are we going to go to the bank
12 and get a loan to lay a main down a street that's not in
13 our service territory? Are we going to go sign
14 contracts with people in neighborhoods that aren't in --
15 it's impossible. It's just not going to happen.
16 Central service, the potential or the expansion of
17 central service in this area is going to be indefinitely
18 postponed based on today's decision. Thank you.

19 **CHAIRMAN GRAHAM:** Thank you.

20 Staff, would you like to comment on the
21 utility?

22 **MR. LEWIS:** Yes, Chairman. One of the main
23 concerns that we had was the actual function and process
24 of how these collection lines are the extension of the
25 force mains that were requested. The proposal that the

1 utility has provided was very vague in the
2 responsibilities of who would install, repair, design
3 the system, and also how would an individual customer at
4 the end of the street, middle of the street would
5 actually gain access to the service. It alluded to it
6 could be variable cost from one end of the service
7 territory to the other based upon whatever the
8 particular geographic additions were. So that was one
9 of our main concerns.

10 **MS. KING:** Good morning, Commissioners. This
11 is Laura King with Commission staff. I just wanted to
12 touch on a couple of points made by the utility. We
13 agree failing septic tanks is an issue. We agree they
14 provide good customer service. They have no complaints.
15 We've approved territory amendments for them in the
16 past. That's not the issue here. The issue truly is
17 the need for service and how do customers get served.

18 Mr. Wharton himself said that, you know, this
19 would be retrofitted over time. Well, if a customer has
20 a failing septic tank, they can't -- and they call NPUC
21 and they say, well, there's not sufficient requests in
22 your neighborhood, well, they're going to have to go to
23 the County and get a permit and replace their septic
24 tank.

25 Those dry lines that they alluded to on Capri

1 Drive, we've asked several questions about that, and
2 these are responses to data requests that are in the
3 docket file. When we asked who owns the collection
4 lines on Capri Drive if not NPUC, will they be
5 contributed to the utility? We believe it was donated
6 to the County. The County has asked NPUC to provide
7 service. All that is needed is a pump.

8 Well, we're not even sure who owns those lines
9 and if they will be donated to that utility. I don't
10 know that that's been finalized with the County. I just
11 don't know. Who will maintain the collection lines on
12 Capri Drive? In the case of Capri, probably NPUC. The
13 County will probably, probably request that. There's a
14 lot of very vague -- the information is very vague, so
15 we are looking at it not only if there was a need and
16 this territory was approved, then how are these
17 customers going to be served? And if a customer calls
18 us and says, my septic tank is failing and this utility
19 is telling me they won't be down my block for five
20 years, what do I do, Commission, we have no choice but
21 to tell them go to your County, get a permit, repair or
22 replace your septic tank. And even Mr. Hartman had said
23 what a high failure rate there are for these septic
24 tanks. So it's just a very difficult situation. We
25 don't dispute the fact that there are environmental

1 concerns here. We just are very concerned about if
2 these customers call and request service, when and how
3 will it be provided, and is there truly a need when the
4 County is still permitting septic tank repair and
5 replacement.

6 You know, customers may do cost-benefit
7 analysis and realize that they can't afford to run the
8 lines down the road or they don't want to get with their
9 homeowners association and take months. And also,
10 again, if there were mandatory interconnection, that
11 would be a different story, but that doesn't seem to be
12 the case here. Thank you.

13 **MR. WHARTON:** Mr. Chairman, just two points.

14 **CHAIRMAN GRAHAM:** No.

15 **MR. WHARTON:** Okay.

16 **CHAIRMAN GRAHAM:** First of all, I applaud
17 North Peninsula's efforts for wanting to go down this
18 path, seeing the need to go down this path. I can tell
19 you, and I'm sure my colleagues and people in the
20 audience can tell you, the reason I've given you as much
21 time as I have so far is because I think what it is
22 you're trying to do is the right thing and it's a good
23 thing.

24 I can tell you from coming from local
25 government, we've actually systematically changed out

1 every single septic tank in our city and put everybody
2 on water and sewer, but that is something that has to be
3 done with the authority that comes with local
4 government. And so they need to be at the table and
5 they need to be -- if you can read their ordinance where
6 they only force you to hook to county- and city-owned
7 utilities and they don't necessarily force or
8 incentivize hooking up to privately owned utilities, and
9 this is where -- the pitfall that I see in your
10 application.

11 I'm looking at the staff recommendation here,
12 and the 170 residents that you sent fliers out to or
13 mailed out to, you only had 11 that came back saying
14 they were interested. I'm just going off of what I have
15 here.

16 Another concern that I have is the local
17 municipality has approved 176 repairs to -- repairs or
18 new installation of septic tanks since 2010. I mean, so
19 they're still in the mindset that septic tanks aren't a
20 problem. And so -- and I appreciate the fact that there
21 are failing septic tanks. There's always failing septic
22 tanks. But I'm seeing a bit of an uphill struggle here.
23 And I'm not saying that this is a dead issue. I'm just
24 saying that all the dots and lines -- all the dots
25 aren't connected right now. And if there is things -- I

1 can tell you even me personally, because I live not too
2 far from here and I'm very familiar with this area, if
3 there's things that we can do, that I can do -- I mean,
4 if you need for me to go with you down and talk on a
5 local municipal area, I'm willing to do that and be
6 happy to do that. But as it is right now, and I can't
7 speak for the rest of my colleagues, I can't see that we
8 can move forward with this right now. Yes, sir.

9 **MR. HARTMAN:** Chairman, there were 11 requests
10 that the staff documented that included 170 ERCs.
11 That's -- to just make that clear, and so it's
12 100 percent on those requests that want to have service.

13 **Secondarily,** you probably know the Utilities
14 Commission of New Smyrna Beach, I've served them for,
15 you know, a long time and signed and sealed all their
16 revenue bond issues and helped them in their area
17 participation programs. Until you have the right for
18 service to the area, you can't do what you're talking
19 about.

20 **And,** Chairman, I agree with you that local
21 government has the legislative authority for mandatory
22 connection even though the Florida Department of Health
23 in their septic tank rules and regulations says one year
24 in arrears after you have a line in front of your house
25 you're supposed to connect. You're supposed to connect.

1 It's not enforced very often. But those -- all those
2 things show that you should try.

3 The 170 units will connect. That's need,
4 immediate need. We see -- we have 200, in fact, that
5 will immediately -- well, not immediately, within, you
6 know, a reasonable period of time to do the connection.
7 But those want to connect now, so it's hard -- and we
8 have the capacity. What we're talking about about the
9 septic tanks in this area, there's 1,800 units total.
10 The septic tanks are 300 units. We're talking about
11 20 percent. And for 20 percent of this service area,
12 you're going to throw the whole thing out when 80
13 percent is looking for service. I don't think that's
14 right. I'm just saying that. I'm sorry.

15 **CHAIRMAN GRAHAM:** Staff?

16 **MS. KING:** Yes, sir. I just did want to point
17 out that it is 11 letters that totaled approximately,
18 our count, there were some duplicates in the packet we
19 got, about 170 interconnections. 110 of those are one
20 condominium.

21 But putting that aside, some of these letters,
22 in my opinion, I'm not sure they are a specific request
23 saying I want service today, I'll write you a check.
24 Some of them say, you know, we're interested, we'd like
25 the option. Vague words. So I'm not sure that all

1 100 of these 70 or 200 customers will be connecting
2 immediately. When asked about how they're going to get
3 service up to the Ormond Beach Plaza, that area, north
4 Kingston Shores, again, we get that is to be negotiated.
5 That's typical with all customer service requests. So
6 if negotiations fail, that's 110 ERCs that won't
7 materialize, I guess. I mean, I'm not sure of the --
8 that all these 200 customers are -- have filed an
9 application for service and are committed to taking
10 service today.

11 **CHAIRMAN GRAHAM:** Mr. Lewis.

12 **MR. LEWIS:** Yes, sir. I just wanted to add on
13 to that, that particular majority of, excuse me, ERCs
14 will require a force main extension. So we're not even
15 talking about collection lines. We're talking about a
16 force main extension that runs significantly past the
17 county-owned system.

18 **CHAIRMAN GRAHAM:** Yes, sir.

19 **MR. WHARTON:** Well, a couple of points. I've
20 heard several references to customers who will be
21 exactly where they are now if this is denied, if we
22 can't get the service to them on the day they want it.
23 They won't be worse off.

24 And just in terms of the County putting the
25 force main down the street and whether or not we secure

1 the right -- we don't have the right to serve the
2 territory. We don't have a seat at the table. So I
3 think a lot of these things -- you know, there's no
4 doubt about it, this is a neighborhood that has to be
5 retrofitted. It doesn't fit into the normal way that
6 utilities grow and develop. There's going to have to be
7 the application of ingenuity. There's going to have to
8 be organization. Maybe there's Amendment 1 money that
9 will be made available for central service along
10 polluted bodies, et cetera, but we don't have a seat at
11 the table if the application is denied, the status quo
12 is maintained.

13 **CHAIRMAN GRAHAM:** Commissioner Patronis.

14 **COMMISSIONER PATRONIS:** Thank you,
15 Mr. Chairman.

16 You know, I'll take -- there's something that
17 I get sensitive to when there's maybe a little
18 misdirection here. You can pull Google Earth, just now
19 that's what I did, I went to a street view. Your
20 pollution problem is fertilizer runoff from those lawns.
21 You've got heavy density, you've got all these lush
22 green lawns, you go walking out, there's -- so, I mean,
23 I'm not going to totally attribute your concerns with
24 the health of the Halifax River to failing septic tanks
25 as much as just people that aren't landscape specialists

1 dumping way too much fertilizer because they want green
2 lawns. So I'm looking at it. It doesn't take much to
3 look at what you're looking at here is part of -- is the
4 fertilizer and nutrient runoff.

5 So, but I applaud what you're doing, I applaud
6 the rates you've got. You know, I hear what you're
7 doing. I'm really sensitive. I think the Chairman
8 nailed it. Without, you know, the legislative oversight
9 that we give a municipality or a county in order to help
10 encourage something they don't enforce in the first
11 place, it's just -- it's a challenge.

12 **CHAIRMAN GRAHAM:** You guys have worked hard to
13 get to the point where you are right now. I am telling
14 you that we're not there yet. We may be able to talk
15 offline to see what we can do, both the staff and
16 myself, and maybe my colleagues will want to get
17 involved to help you move this thing forward. But your
18 application as it sits right now in front of us, it's
19 going to be pretty much what the staff recommendation
20 is. And I haven't heard from the rest of my colleagues,
21 so let me not jump to that position yet, but there is a
22 lot of gaps there that need to be connected before I
23 feel comfortable giving you what it is that you're
24 asking for. And I don't know from a legal standpoint if
25 it's best to maybe pull this, if it's best to --

1 Ms. Crawford.

2 **MR. CRAWFORD:** At this point I would recommend
3 that you go forward with the application, either an up
4 vote or a down vote, and then allow the docket to be
5 closed. And if there is further refinement that's
6 possible, as you've discussed, let's move forward in a
7 fresh, open approach to that.

8 **CHAIRMAN GRAHAM:** Commissioner Edgar.

9 **MR. CRAWFORD:** I'm sorry to interrupt. I will
10 say, though, however, there are no statutory deadlines
11 on this type of application. So if the Commission's
12 will was to defer it, it certainly does have that
13 discretion.

14 **CHAIRMAN GRAHAM:** Commissioner Edgar.

15 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
16 Whatever our ultimate decision and path forward on this
17 is here this morning, I do have a couple of concerns.

18 Ms. King, I have tremendous respect for the
19 work that you've done on this and all items, but it --
20 when I look at the item, it says staff does not believe
21 that NPUC has demonstrated there is a need for service,
22 and you've stated that. But it's not clear to me what
23 the standard or the practice is to demonstrate a need
24 for service. So that's one thing that I think we should
25 be -- I would appreciate being clearer on.

1 And then the second item is in this -- it says
2 that the staff did not do an analysis of the second
3 prong, which is the financial and technical ability,
4 because there was a decision or a recommendation that
5 there wasn't a need for service. Yet in your response
6 you describe concerns about an area on Capri Drive, and
7 it sounded to me like those concerns were about
8 technical ability, but yet in the item it says that an
9 analysis of technical ability was not done. And if I
10 misunderstood, I'd just appreciate the clarification.

11 **MS. KING:** Okay. Let me start with the lines
12 on Capri Drive first. It's not an issue of technical
13 ability. It's an issue of ownership. Those lines were
14 put in by the County is my understanding, and we asked
15 the utility -- and, you know, the homeowners paid for
16 those. And we asked the utility who owns the collection
17 lines on Capri Drive, and if it's not NPUC, will those
18 lines be contributed to the utility? The utility
19 responded that they believe the County donated those
20 lines and NPUC would be possibly maintaining those
21 lines. So it was just unclear to us. There's -- these
22 dry lines have been installed on Capri Drive and we
23 weren't sure who owned those lines at this point. Is it
24 the homeowners, is it the County? Is the County going
25 to turn over ownership to NPUC? Are the homeowners

1 going to sign over those lines to NPUC and donate them
2 to the utility? So it wasn't a technical as much as a
3 clarification of ownership if they do get that
4 territory. So there -- just because some of these --
5 some of their plans have been a little bit vague, and
6 that's one of them. So if a homeowner wanted to sign up
7 for service with NPUC on Capri Drive, we wanted to make
8 sure who would own those lines, who would be responsible
9 for maintaining those lines because those lines are
10 currently in the ground. So that was that issue.

11 And as far as need for service, it is not, and
12 I'll double-check with legal staff here, but it's not a
13 specific standard. It's not, you know, there's a
14 30 percent ask or a 20 percent ask, it's not like that.
15 It's individual cases have to be evaluated. And in this
16 case, we -- the letters that I read, as I said, they --
17 some of them seem very strong, yes, I want service, but
18 then some of them said, I'm interested, you know, let's
19 talk about it. So that to me is not a firm commitment
20 and ask for service. But I think Jennifer has some
21 further information.

22 **MR. CRAWFORD:** In anticipation this might be a
23 question, we did look at what discussion has there been
24 about need and has that been quantified in some way by
25 the Commission. It's not defined in statute, it's not

1 defined by rule. There are a handful of cases where an
2 examination of need was made. Unfortunately there's
3 nothing that's terribly black and white.

4 What we do know is where it has not been fatal
5 to an application for a large request for territory when
6 that territory was owned, for instance, by a single
7 developer and there's just the one request for service,
8 that's been okay. The Commission has approved things
9 like that a couple of times. We don't have that here in
10 this case, of course. It has not been fatal to
11 applications. Well, let me put it this way. The
12 Commission has said it is helpful to have specific
13 requests for service, that that would help bolster an
14 application. The word used was bolster.

15 But certainly where there is vagueness, where
16 there's been a lack of concrete plans on how service
17 would be provided, those have all also been factored
18 into whether need has been demonstrated.

19 And if I could just add, I don't think that we
20 are trying to put the Commission in a box. We're
21 certainly not saying that the need that has been shown
22 in this case somehow is legally prescriptive of you
23 approving the application. We just don't think it's
24 been properly supported. There is a vagueness to this
25 application. There is a lack of concrete description of

1 how service will be provided to certain customers.
2 Certainly we have some additional concerns about a
3 proposal that would require customers to be the ones to
4 engineer and install and pay for the interconnection
5 with the utility. Customers do always pay for the
6 interconnection, but in my experience it's not common
7 for customers to actually be the ones responsible for
8 engineering and installing the intertie with the
9 utility.

10 So I think there is flexibility. If you want
11 to find what we've presented to you does constitute
12 need, I think you've got the latitude to do so. I think
13 I would agree, based on my review of the cases, I would
14 be more comfortable if there were specific requests for
15 service rather than a general interest in having service
16 and, oh, by the way, what's it going to cost us to do
17 so?

18 **COMMISSIONER EDGAR:** Thank you. I appreciate
19 the responses from both Ms. King and Ms. Crawford. And
20 I would just say that, again, from the information that
21 we had in the item it was not clear to me what would be
22 required in order to correct the deficit of information,
23 for lack of a better term. And I do think that it is
24 generally our responsibility that for applicants to be
25 clear on what it is that is required in order for the

1 request to be met.

2 **MR. HILLMAN:** Excuse me. Can I make a
3 comment?

4 **CHAIRMAN GRAHAM:** Yes, sir.

5 **MR. HILLMAN:** Again, I want to reiterate that
6 we've owned this company for 25 years. I live in the
7 general area up there on the Halifax River, not in our
8 tariff area at all. But I do business in Ormond Beach,
9 I do business with Volusia County, I do business with
10 the City of Ormond Beach, the City of New Smyrna Beach,
11 and have for 35 years in the business that I'm in other
12 than North Peninsula Utilities and the utility business.

13 We -- Kingston Shores could not be specific in
14 their request. They just spent approximately \$350,000
15 bringing the City water up to Kingston Shores. They've
16 been on an osmosis system since they built this thing in
17 the '60s and '70s. They want -- they have an aging
18 plant. They want to hook up to us. They couldn't be
19 specific, but they did want to have it available. I
20 talk to people all day long who can't be specific, but
21 if we have it available, especially in these orange
22 areas, they are -- that are close to our main lines and
23 those kinds of things, they will want to hook up.

24 **CHAIRMAN GRAHAM:** Mr. Hillman, I --

25 **MR. HILLMAN:** Now it's very difficult to get

1 specific on many of these things.

2 **CHAIRMAN GRAHAM:** I understand where you're
3 coming from. And, once again, I do applaud the fact
4 that you're willing to put your capital into this
5 because most of these things, the burden is on the
6 municipality to do it or, as we said before, the
7 developer to do it when they initially do it. You know,
8 the fact that you're willing to put your capital in on
9 this, I applaud that. It's something that I think needs
10 to happen, you know, and you have a lot of facts out
11 there that prove that it's something that needs to
12 happen.

13 The local government, in my opinion, is
14 sending a poor message or a bad message when you're
15 talking about all these permits for repair and new
16 installation of septic tanks. What I'm seeing here is
17 there is not a local direction to get away from septic
18 tanks.

19 **MR. HARTMAN:** Chairman, it's because there's
20 no alternative, and that's brought up by the Volusia
21 County Board of County Commissioners all the time.
22 They're not supporting septic tanks in this area. In
23 fact, the county commission and commissioners have
24 voiced themselves several times and there are articles
25 that we have provided to staff about their concern about

1 septic tanks in this area. They have a lot of concern
2 about septic tanks, but until we get a certificate, we
3 don't have the right to serve.

4 **CHAIRMAN GRAHAM:** You know what would make me
5 feel a lot better? If you went back to their ordinance
6 and where it says, "plumbing into county-owned or
7 operated sewer systems, when available," if it said,
8 "all sewer systems when available," then I think you're
9 moving yourself nine steps forward in this entire
10 process. You'll make my staff feel a lot more
11 comfortable in all this and I'm sure you'll make my
12 colleagues feel a lot more comfortable in all this.

13 So if there is a -- if they're serious about
14 this and not what you think and you believe and what
15 you've heard, you know, you get there -- what, is there
16 five county commissioners?

17 **MR. HILLMAN:** Yes.

18 **CHAIRMAN GRAHAM:** If you get three of them to
19 say we need to do that, then come back here and I'll be
20 the first one pushing this thing through.

21 **MR. HARTMAN:** Chairman, I agree with you, and
22 that applies to all the pink areas. The orange areas in
23 contrast, most -- the ones over here, you're looking at
24 over 300 that are condos, they're not septic tanks, that
25 want service, and two of the three want service now.

1 We've -- you know, our standard developer's
2 agreement with all the specifics for service to Kingston
3 Shores was provided. This is a copy of it. Here are
4 the maps.

5 **CHAIRMAN GRAHAM:** Well, I appreciate where
6 you're coming from. If you want to refile another
7 application specifically for those condos and if you
8 have the details that staff needs, then let's have that
9 conversation.

10 **MR. HARTMAN:** Well, that would take care of
11 the oranges. What we're talking -- it was focusing in
12 on the septic tanks which are in the pinks. If we could
13 leave here today with the orange areas, then come back
14 with the modified Volusia County ordinance as you have
15 suggested, Chairman, which I think is a great idea, for
16 the pink areas and then come back with that, I think
17 that would get us there. But I think that the orange
18 areas are areas that, you know, it's clear that there is
19 need.

20 **CHAIRMAN GRAHAM:** I understand where you are.
21 I understand the things that you're saying. We're not
22 going to sit here today and subdivide your application
23 and start splitting your application up.

24 **MR. HARTMAN:** Okay.

25 **CHAIRMAN GRAHAM:** Now what I would be willing

1 to do, if you want to defer this --

2 **MR. WHARTON:** Yes.

3 **CHAIRMAN GRAHAM:** -- and do that with staff.

4 **MR. WHARTON:** We would request a deferral,
5 Mr. Chairman. The Commission actually does have an
6 established history of extension, of allowing some to be
7 pulled out of that often to settle with parties who said
8 if you take that out, I'll go away. We would request
9 this matter be deferred so that we can regroup with
10 regard to whether to approach staff about what
11 information would be necessary with regard to the areas
12 that are marked in orange on this map.

13 **CHAIRMAN GRAHAM:** I mean, I don't want to send
14 you guys away from here discouraged and say, you know,
15 forget it, I have better things I could be doing.

16 **MR. WHARTON:** Well, that's a tough one.

17 **CHAIRMAN GRAHAM:** I mean, I want for this to
18 work. I truly want for this to work. I think we truly
19 want for this to work. My staff wants for this to work.
20 I can tell you my briefing yesterday, the thing we spent
21 the most time on was this thing right here because
22 everybody in this building wants for this to work.
23 Right now what we have in front of us does not work.

24 **MR. WHARTON:** Well, you're from Jacksonville,
25 Mr. Chairman?

1 **CHAIRMAN GRAHAM:** Yes, sir.

2 **MR. WHARTON:** I really don't know of anywhere
3 except for Jacksonville and Key West where mandatory
4 connection was really enforced. And in Key West it went
5 to the point of a gun sometimes. That's the real
6 answer, but --

7 **CHAIRMAN GRAHAM:** I can tell you our old river
8 keeper from St. John Rivers is now down in Matanzas,
9 Neil Armingeon. And if you want to start pulling the
10 environmental cord, I know someone that we can get
11 onboard right away.

12 **MR. HILLMAN:** We do want to work with the
13 staff. We have worked with the staff, and we would like
14 to continue on and see what we can work out over the
15 next month or two.

16 **CHAIRMAN GRAHAM:** Okay. Do I need to defer?
17 Can I just defer or do I need to defer for a certain
18 time?

19 **MS. HELTON:** I think you can just defer.

20 **CHAIRMAN GRAHAM:** Okay. If -- Commissioner
21 Edgar.

22 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
23 Actually I think maybe you were going the same route. I
24 was going to request that we grant the applicant's
25 request for a deferral.

1 **CHAIRMAN GRAHAM:** Any -- Commissioner Brown, I
2 saw your light was on earlier.

3 **COMMISSIONER BROWN:** And that was the same
4 thinking. But I also want to reiterate we do want this
5 to happen, and central service is preferred over septic,
6 and we understand that. And please work with the
7 County, please work with our staff in making that
8 possible and coming back to us with an acceptable
9 application that fits the criteria that we've delineated
10 here, please. Thank you.

11 **CHAIRMAN GRAHAM:** Thank you very much, and we
12 will defer this item, Item No. 3.

13 (Agenda item concluded.)
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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 12th day of November, 2015.

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LINDA BOLES, CRR, RPR
FPSC Official Hearings Reporter
(850) 413-6734



NORTH PENINSULA
WASTEWATER TREATMENT

North Peninsula Utilities Company (NPUC) HISTORY

- Operation for over 25 years
- Successfully Expanded Certificated Area - Previous 5 Times
- FPSC found Technically Competent - 5 Times
- FPSC found as having Financial Capability - 5 Times
- No Rate Increases in 25 Years
- Only FPSC Annual Inflation Indexing Used on Occasion
- No Impact Fee Charged by NPUC
- FDEP Compliant
- No Service Complaints
- Proven Sound Utility Owner and Operator

North Peninsula Utilities Company Service Area Expansion Only

- No mandatory connection by NPUC – See Notices, etc
- Expanded Area agreed to by both Volusia County and Ormond Beach - (No other local providers)
- No Customer Objections, Noticed Expansion Area to Customers on two (2) occasions
- Letters of Support Only
- No Impact Fees or Capacity Fees charged by NPUC unlike Volusia or Ormond
- Volusia County - No Central Service ever in area (i.e. 50 years)
 - Deferred to NPUC for service the past 2 years
- Coordinated with Volusia County - No Objection to NPUC Request – No Plans for Service
- Ormond Beach Serves Water - Coordinated with Ormond sewer for 2 Years - No Objection to NPUC Request

North Peninsula Utilities Company
Service Area Expansion
CUSTOMER REQUESTS & IMMEDIATE AVAILABILITY

- Numerous phone call requests and a dozen written customer requests in proposed service area – Approximately 200 ERC's (Staff said 170 ERC's want service = Need)
 - Transmission, Treatment and Reclaimed Water Recharge of Aquifer Capacity available to serve at least 600 additional customers immediately, in place, in operation without expansion
 - Existing Force Mains pass by much of the areas proposed for service in this request
 - Currently 570 customers served using at 35% of Capacity (65% Available)
1. For vacant lots, all new construction the customer ties-in
 2. Only service connections in some instances are needed – Typical for customer to pay
 3. In the remainder of instances either:
 - (a.) a pump station and adjacent connection; or
 - (b.) collection system is needed for which funding will be pursued if sufficient number of customers want service

North Peninsula Utilities Company Service Area Expansion SUMMARY

- Coordinated with FDEP the Past 2 Years - Supportive of Central Sewer
- Volusia County Health Department Letter of Support
- Florida and Volusia County Health Department Septic Tank Study – Recommends Central Sewer Service
- Indian River Septic Tank Pollution Documented
- Numerous Septic Tank Failures or Retrofits Each Year – Approximately 40 per Year
- Service Area Comparative Rates at 6,000 gallons per month

| <u>Entity</u> | <u>Monthly Wastewater Cost</u> | <u>Comments</u> |
|------------------------|------------------------------------|-----------------|
| Volusia County FY 2015 | \$ 45.88 | Middle |
| Ormond Beach FY 2015 | \$ 50.24 | Highest |
| NPUC | \$ 32.40 | Lowest |

- NEED is strong – estimated 200 ERC’s near term and more later