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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200226-SU

Application for certificate to
provide wastewater service in
Charlotte County, by Environmental
Utilities, LLC.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 11

COMMISSIONERS
PARTICIPATING: CHAIRMAN ANDREW GILES FAY
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, June 7, 2022

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
112 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

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P R O C E E D I N G S

CHAIRMAN FAY: With that, Commissioners, I will transition the gavel over to Commissioner Clark to take up Item No. 11, that is a panel for Commissioner Passidomo, Commissioner La Rosa and Commissioner Clark.

COMMISSIONER CLARK: Thank you, Mr. Chairman. Item No. 11 is the application for a certificate to provide wastewater service in Charlotte County by Environmental Utilities, LLC. Mr. Phillips will introduce the item.

Mr. Phillips.

MR. PHILLIPS: Yes. Thank you, Commissioner. Item 11 is staff's recommendation addressing Environmental Utilities' application for an original certificate to provide wastewater services in Charlotte County. The proposed service territory include the barrier islands of Little Gasparilla, Don Pedro and Knight Island, and would consist of an estimated 860 existing equivalent residential connections, or ERCs, and 388 potential future ERCs.

Timely objections to the application were filed on behalf of Palm Island Estates Association, Linda Cotherman and several other customers. The

1 Office of Public Counsel also intervened.

2 An evidentiary hearing was held on February
3 8th, 2022, which was followed by two service
4 hearings held on February 8th, 2022, and February
5 9th, 2022.

6 Based on the record, EU has not demonstrated a
7 need for service exists. Therefore, staff
8 recommends that its request for certification is
9 not in the public interest and should be denied.

10 Staff further recommends you vote on Issues 1
11 through 9 first. If you approve staff's
12 recommendation for Issue 9, Issues 10 through 13
13 will then be moot and not require a vote.

14 Staff is available for any questions you may
15 have.

16 COMMISSIONER CLARK: Thank you very much, Mr.
17 Phillips.

18 That -- you answered my big question. We need
19 to break these down. If the Commission accepts
20 staff recommendation, we should vote on 1 through
21 9, and 10 through 13 are moot at that point.
22 Commissioners, is that clear to everybody?

23 Okay, discussion, questions, Commissioners.

24 Commissioner La Rosa.

25 COMMISSIONER LA ROSA: Thank you, Chairman.

1 So, you know, obviously we went down and heard
2 from any many of the residents that are down there
3 in that area that are going to be affected by the
4 decision today and what's being requested. You
5 know, a few things that certainly popped up in my
6 mind, and staff did a great job of walking me
7 through where we are, and where kind of our
8 threshold should be, and so forth. You know, there
9 were some elements that certainly stuck out.

10 One was, you know, was there a request from
11 the residents that were there? And there was no
12 overwhelming request from the residents. There was
13 no developer that was requesting, like maybe we've
14 seen in past dockets and requests here at the PSC
15 recently.

16 I see these barrier islands as very unique.
17 This is certainly an educational process for me,
18 knowing Florida geography and being a Florida
19 native, maybe I didn't realize how unique some of
20 these islands are. And these, you know, these
21 decisions probably need to be considered on what
22 exactly that island looks like in comparison to
23 maybe another barrier island.

24 So, you know, there is a situation where there
25 is septic, and there is sewer that wants to come

1 in. But at the end of the day, I did not see any
2 overwhelming evidence to say that, hey, there is an
3 environmental issue that's going on here with the
4 septic that's currently being used.

5 And also we had some discussion about how the
6 comp plan was -- needed to be interpreted. And
7 frankly, I don't believe that the County really
8 spoke up, and maybe, you know, could have had an
9 opportunity. Where I come from, in my previous
10 legislative services, you know, I heard from
11 counties and cities all the time on lots of
12 different issues. I thought this was unique
13 because. This was specific to what was happening
14 there in Little Gasparilla and the surrounding
15 islands. But yet the County was kind of silent
16 when there could have been some clarification.

17 So those are my thoughts. Those are some of
18 the things that certainly stuck out to me. I agree
19 with what staff has laid out, and intend to approve
20 Issues 1 through 9 when it comes to a vote.

21 Thank you, Chairman.

22 COMMISSIONER CLARK: Thank you, Commissioner
23 La Rosa.

24 Commissioner pass.

25 COMMISSIONER PASSIDOMO: Thank you, Mr.

1 Chairman.

2 I have a question for legal staff. Mr. Sandy,
3 so during the hearing, you mentioned Charlotte
4 County's mandatory connection ordinance as one of
5 the justifications for a need for service, which is
6 obviously the main factor we are looking at whether
7 to grant an application or not.

8 So really my question is, like, whether --
9 deciding whether there is a need for service
10 present in this proposed service area. Is the
11 existence of a mandatory connection dispositive of
12 the issue?

13 MR. SANDY: Good morning, Madam Commissioner,
14 good morning other Commissioners.

15 Each request for a wastewater certification is
16 scrutinized on a case-by-case basis because no two
17 proposed service areas are the same. There are
18 multiple factors that you may consider in weighing
19 out whether there is a need for service. Those
20 factors are laid out in Administrative Rule
21 25-30.003 -- I am sorry, .033. Those include
22 things such as the number and class of customers
23 that are living or will live in the proposed
24 service area; copies of requests for utility
25 service; current landuse designations as set out in

1 things like the comprehensive plan, and also
2 landuse restrictions and environmental regulations
3 which may impact that proposed service area.

4 Staff did not consider the existence of a
5 mandatory connection ordinance as dispositive of
6 the issue of need for service. And that's because
7 it does not go to the threshold question of whether
8 a central sewer system should exist in the proposed
9 service area in the first place. That really comes
10 into question only once the utility is certified
11 through the Commission.

12 In this particular case, there is ample
13 evidence, as Commissioner La Rosa laid out, that
14 there were virtually no residents who requested
15 service from EU.

16 Furthermore, their -- EU's application is in
17 conflict with the comprehensive plan as laid out in
18 Charlotte County. As an example of that, in the
19 future landuse section of the comp plan, it is
20 3.2.4, it states that a rural service area shall
21 not have a central sewer system. And later on in
22 the comp plan, the proposed service area in
23 question is laid out as a rural service area.

24 Additionally, there is no -- there is clear
25 evidence in the record that Charlotte County

1 continues to issue septic tank permits to the
2 residents of the proposed service area. And
3 ultimately, the utility did not present evidence of
4 an environmental need for the central sewer system
5 in question.

6 Ultimately, staff found that evidence more
7 compelling in weighing out the need for service
8 than the existence of a mandatory connection
9 ordinance. Certainly, staff acknowledges that
10 there was a discussion in the hearing and in the
11 post-hearing briefs about the mandatory connection
12 ordinance. We would be happy to address that in
13 any final order that's rendered through the
14 Commission if that is your preference.

15 COMMISSIONER PASSIDOMO: That would be -- I
16 think that would be incredibly helpful if the other
17 Commissioners are amenable to adding that into the
18 final order, that language that you just went over.

19 MR. SANDY: Yes, ma'am.

20 COMMISSIONER CLARK: All right. Other
21 questions or comments?

22 Staff, anything else?

23 MR. SANDY: If I may, Commissioner, there was
24 mention earlier about Issues 1 through 9. I would
25 include that the Commissioners should also vote on

1 Issue A, as to whether to reopen the record for
2 placing some evidence into the record as is laid
3 out in the recommendation, and 14 as well.

4 COMMISSIONER CLARK: Okay. Are we clear on
5 that, Commissioners, and staff?

6 All right, I will entertain a motion.

7 Commissioner Passidomo.

8 COMMISSIONER PASSIDOMO: All right. So, Mr.
9 Chair, I would move to approve staff's
10 recommendations on Issue A, and then Issues 1
11 through 9 and Issue 14, which would thereby make
12 Issues 10 through 13 moot.

13 In addition, I would move that the Commission
14 incorporate the language discussed with staff
15 regarding the mandatory connections as part of the
16 order.

17 COMMISSIONER LA ROSA: Second.

18 COMMISSIONER CLARK: I have a motion and a
19 second.

20 Any further discussion?

21 On the motion, all in favor say aye.

22 (Chorus of ayes.)

23 CHAIRMAN FAY: Opposed?

24 (No response.)

25 COMMISSIONER CLARK: Motion carries.

1 Thank you very much, staff.

2 That concludes our business today. Anything
3 else to come before the Commission? If not, we
4 stand adjourned.

5 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

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

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

DATED this 20th day of June, 2022.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024