

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide
wastewater service in Charlotte County, by
Environmental Utilities, LLC

DOCKET NO. 20200226-SU

FILED: July 29, 2022

**CITIZENS' RESPONSE TO ENVIRONMENTAL UTILITIES LLC'S
MOTION FOR RECONSIDERATION**

The Florida Office of Public Counsel (“OPC”) files this response to Environmental Utilities, LLC’s (“EU” or “Utility”) Motion for Reconsideration of Order No. PSC-2022-0267-FOF-SU (“Motion”). In support the OPC states as follows:

1. The OPC files this response solely for purposes of protecting the record in this case and for preservation of the principles of fairness in Florida Public Service Commission (“FPSC” or “Commission”) proceedings now pending, as well as those to be filed in the future.

2. EU has filed a motion that is unauthorized since it relies on a letter mailed to the Commission on June 28, 2022 by Charlotte County Board of County Commissioners (“County”), months after the record closed in February and weeks after the Commission took final agency action on June 7, 2022. As such it should be denied. The Utility’s motion is predicated primarily – if not entirely -- on information that is blatantly outside the record.

3. The letter from the County is not evidence within the record of the case and cannot form the basis for reconsideration or agency action. In fact, the letter is an *ex parte* communication¹ that appears to be offered on behalf of one party and has been touted by that party in the Motion as a basis for reconsideration. No party to the case was given the opportunity to conduct discovery on the letter, depose the author(s) or conduct cross-examination on the assertions contained within the letter as required by section 120.57(1)(b), Florida Statutes.²

¹ *Ex parte* means “done or made at the instance of and for the benefit of one party only ... without ... contestation by, any person adversely interested. Black’s Law Dictionary (Eleventh Edition (online)).

² Placement of the County’s letter “on the record” pursuant to section 350.42, Florida Statutes, does not convert information that has not been subject to the process due pursuant to section

4. The OPC observes that if the Commission allows this maneuver to succeed, there will be no meaning to the notion of closing the record. The administrative hearing process will be subject to abuse by parties having surrogates file extra-record information after the close of the record and after the conclusion of a hearing depriving affected parties of the opportunity to cross-examine, challenge, or rebut evidence. Such information could also be submitted after staff recommendations, but before Commission vote. Like here, information could even be submitted after the Commission vote for attempted use in seeking reconsideration. This will turn the due process protections of the Florida Administrative Procedures Act (chapter 120, Florida Statutes) (“APA”) into a farce.

5. The only way to prevent such a circumvention of the APA is to deny the Motion and make it clear that this process violates the APA.

6. The OPC has attached its June 30, 2022 letter objecting to the Commission relying in any way on the County’s letter.

WHEREFOR, based on the reasons set out above, including contained in the OPC’s attached letter, the OPC requests that the EU Motion be denied.

Respectfully submitted,

Richard Gentry
Public Counsel

/s/Charles J. Rehwinkel
Charles J. Rehwinkel
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Rm 812
Tallahassee, FL 32399-1400

Attorneys for the Citizens
Of the State of Florida

120.57(1)(b), Florida Statutes, into competent substantial evidence or otherwise make it part of the evidentiary record upon which the Commission can base a decision or reconsider a prior vote.

CERTIFICATE OF SERVICE

Docket No. 20200226-SU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 29th day of July 2022, to the following:

Dean Mead Law Firm
Martin S. Friedman
420 S. Orange Ave., Suite 700
Orlando FL 32801
mfriedman@deanmead.com
Represents: Environmental
Utilities, LLC

Dean Mead Law Firm
John L. Wharton
215 South Monroe Street, Suite 815
Tallahassee FL 32301
hschack@deanmead.com
jwharton@deanmead.com
Represents: Environmental
Utilities, LLC

Environmental Utilities, LLC
P.O. Box 7
Placida FL 33946
(941) 626-8294
lgwu777@yahoo.com
Represented By: Dean Mead Law
Firm

Linda Cotherman
PO Box 881
Placida FL 33946
lcotherman@yahoo.com

Kelsky Law Firm
Brad E. Kelsky
150 S. Pine Island Road, Suite 300
Plantation FL 33324
bradkelsky@kelskylaw.com
barbarallinas@kelskylaw.com
Represents: Palm Island Estates
Association, Inc./Cape Haze Property
Owners Association, Inc.

Little Gasparilla Property Owners'
Association
R. Leydon/R. Olson/P.
Holmes/B.Dwyer/J. Bokar/R.
Petteway/D. Flom/L. Tremblay
P.O. Box 3643
Placida FL 33946
richardleydonjr@gmail.com
twrhonda@gmail.com
bdwyer31@yahoo.com
Joseph.bokar@case.edu
oranges@embarqmail.com
lgicarts@gmail.com
jltremblay@verizon.net

Jennifer Crawford
Ryan Sandy
Florida Public Service Commission
Office of General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
jennifer.crawfor@psc.state.fl.us
ryan.sandy@psc.state.fl.us

Palm Island Estates Association,
Inc.
Meryl Schaffer
P.O. Box 3151
Placida FL 33946
pie@palmislandestates.org
Represented By: Kelsky Law Firm

William Lee Roberts
2245 Stillwood Drive
Land O' Lakes FL 34639-4612
leerobertsdpt@gmail.com

/s/Charles J. Rehwinkel
Charles J. Rehwinkel
Deputy Public Counsel

State of Florida



CORRESPONDENCE
7/1/2022
DOCUMENT NO. 04427-2022


Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 1, 2022

TO: Docket File

FROM: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk 

RE: 20200226-SU - Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.

Please place the attached letter dated June 30, 2022, from Charles J. Rehwinkel, Deputy Public Counsel, in the correspondence file for the above-referenced docket.



WILTON SIMPSON
President of the Senate

STATE OF FLORIDA
OFFICE OF PUBLIC COUNSEL

c/o THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
850-488-9330

EMAIL: OPC_WEBSITE@LEG.STATE.FL.US
WWW.FLORIDAOPC.GOV



CHRIS SPROWLS
*Speaker of the House of
Representatives*

June 30, 2022

Keith Hetrick
General Counsel
Florida Public Service Commission
25340 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 20200226-SU; Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC

Dear Mr. Hetrick:

Our office has learned of a letter, dated June 28, 2022, from the Charlotte County Board of County Commissioners (Document Nos. 04335-2022, 04341-2022 and 0391-2022) that was forwarded by the office of the County Attorney and addressed to the Commissioners and intended for their consideration. We learned of the existence of the letter when customers of the affected proposed territory called the office upset and believing that the timing of the letter before the ministerial step of issuance of the final order in this matter was intended to influence the outcome of the case.

I write you because of a concern with the process and to protect the case from improper *ex parte* communications. Section 350.042, Florida Statutes, prohibits the making or receiving of such communications.¹ The record in this case closed at 4:37 p.m. on February 8, 2022. A communication outside the record to the Commissioners that is not made by an individual residential ratepayer representing himself or herself, without compensation, is prohibited.

I ask you to take whatever steps you deem necessary for the integrity of the Commission hearing process as a whole, and the record of this case specifically, to ensure that prohibited communications are not allowed to taint the case in the issuance of the order memorializing the agency action that was manifested in the final vote taken on June 7, 2022 – a full three weeks before the receipt of the Charlotte County letter. Likewise, I request that you take all steps

¹ It should be noted that the Commissioners have appropriately placed the letter in the docket file in compliance with Section 350.042(4).

June 30, 2022
Page 2

necessary to ensure that the letter is in no way considered in any post hearing matters such as reconsideration, if such is sought, or inclusion in the record of the case on appeal, if one is taken.

The Office of Public Counsel did not take a position for or against the granting of the certificate. We do take the position that it would be unlawful to consider the subject letter filed after the closure of the record.

Please do not hesitate to call with any questions.

Sincerely,

S/Charles J. Rehwinkel
Charles J. Rehwinkel
Deputy Public Counsel

CC: Parties of record

Adam Teitzman, Commission Clerk (Docket No. 20200226-SU)
Jean Stasio, Assistant County Attorney, Charlotte County