

FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No.: 20240032-SU

**PALM ISLAND ESTATES ASSOCIATION, INC.'S RESPONSE TO ENVIRONMENTAL
UTILITIES, LLC'S MOTION FOR RECONSIDERATION OF ORDER NO. PSC-2024-
032-PCO-SU**

Party of Record, PALM ISLAND ESTATES ASSOCIATION, INC., requests the Public Service Commission to deny ENVIRONMENTAL UTILITIES, LLC's Motion for Reconsideration of Order No. PSC-2024-032-PCO-SU, and states as follows:

1. ENVIRONMENTAL UTILITIES, LLC ("EU"), sought reconsideration of Order No. PSC-2024-032-PCO-SU as it relates to the pre-filing of cross-examination, impeachment, or demonstrative exhibits. More specifically, ENVIRONMENTAL UTILITIES, LLC, argues "[t]his requirement would negate the effectiveness of cross-examination by eliminating any element of surprise, and affording the witness and opportunity to consult with his/her counsel and others."

2. EU conflates this argument by indicating that it would be denied "due process" if it had to pre-file its cross-examination material.

3. This contention is belied by prevailing case law which specifically identifies that a dispositive hearing is not to be conducted as a trial by ambush. "Thus, the general rule in Florida is that there be 'complete disclosure'." *Montero v. Corzo*, 320 So. 3d 976, 979 (Fla. 3d DCA 2021). Complete disclosure *includes* disclosure of impeachment or rebuttal witnesses. *See, e.g., Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981)(Supreme Court expressly approved of disclosure to "eliminate surprise and avoid trial by 'ambush.'" The argument that the possibility of being ambushed by an unlisted impeachment witness encourages truthful testimony reflects an outdated methodology for ascertaining the truth at trial." (Emphasis added)).

4. This sentiment concerning witness testimony disclosure also applies to the disclosure of exhibits. *Northup v. Acken*, 865 So. 2d 1267 (Fla. 2004)(“Thus, in accordance with *Surf Dogs* and *Dodson*, we reiterate our dedication to the principle that in Florida, when a party reasonably expects or intends to utilize an item before the court at trial, for impeachment or otherwise, the video recording, document, exhibit, or other piece of evidence is fully discoverable and is not privileged work product”).

5. Thus, EU’s position asserted in its motion contradicts established precedent and supports the outdated contention that it is okay for a trial by ambush to occur. That is clearly not the case.

6. As a result, EU’s motion does not accurately reflect the law in Florida and should be denied.

WHEREFORE, PALM ISLAND ESTATES ASSOCIATION, INC., requests the Court to deny EU’s motion and to grant PALM ISLAND ESTATE ASSOCIATION, INC., any other relief the Court deems just, equitable and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served and filed

this 26th day of August 2024 to:

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