

BEFORE THE PUBLIC SERVICE COMMISSION

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

Docket No. 20200226-SU

ENVIRONMENTAL UTILITIES, LLCS
POST HEARING STATEMENT OF ISSUES AND POSITIONS

Environmental Utilities, LLC, (“EU”) through its undersigned attorneys and pursuant to Order No. PSC-2022-0046-PHO-SU, and Rule 28-106.215, F.A.C., files this Post Hearing Statement of Issues and Positions.

Statement of EU’s Basic Position

The removal of septic tanks from the bridgeless barrier islands and diverting the wastewater flows to a central wastewater treatment plant on the mainland is a priority of Charlotte County as articulated by the County in the Bulk Sewer Treatment Agreement entered into with EU, the Sewer Master Plan adopted by the County, and of the State of Florida through various laws, and thus is in the public interest. EU has both the financial and technical ability to construct and operate the wastewater system and has otherwise met all Commission requirements for issuance of a wastewater certificate. The rates and charges proposed by EU and just, reasonable, compensatory and not unfairly discriminatory, and are in accordance with Commission practice. Charlotte County is 100% behind EU’s application (Ex. 42, P. 53).

Introductory Statement

PIE served a Subpoena Duces Tecum for Deposition on Bill Truex as Chairman of the Board of County Commissioners for the County to designate a person to testify on behalf of the County as to the matters enumerated in the Subpoena (Ex. 42, Ex. 1). The County designated Craig Rudy, who although he was the utility director, was not testifying as utility director but as the County’s designated representative (Ex. 42, P. 7-8). That is a significant distinction.

Consistent with the questions from PIE’s counsel below, Rule 1.310(b)(6), Fla.R.Civ.P., provides that “(i)n the notice a party may name as the deponent a public or private corporation, a partnership or association, or a governmental agency, and designate with reasonable particularity the matters on which examination is requested. The organization so named must designate one or more officers, directors, or managing agents, or other persons who consent to do so, to testify on its behalf ...” (emphasis added). Moreover, the person(s) designated to testify represents the collective knowledge of the corporation, not of the individual deponents. As the corporation’s “voice” **the witness does “not simply testify about matters within his or her personal knowledge, but rather is ‘speaking for the corporation.’**” (emphasis added, citations omitted). *Carriage Hills Condominium, Inc. v. JBH Roofing*, 109 So. 2nd 329 (4th DCA 2013). Rule 1.310(b)(6), Fla.R.Civ.P., fully applies to administrative proceedings, see Rule 28-106.206, F. A. C. It became clear that Intervenor’s witnesses did not understand this legal concept (Tr. 178, 188).

This was made clear by questioning from PIE’s attorney (Ex. 42, P. 10):

Q. Do you understand that you are here today as the mouthpiece of Charlotte County?

A. Yes.

Q. You understand that your testimony is designed to bind the County to a position in this proceeding?

A. Yes.

Thus, Mr. Rudy’s testimony unquestionably articulates the position of Charlotte County in this proceeding of 100% support of EU’s application.

ISSUES AND POSITIONS¹

ISSUE 1 Has Environmental Utilities met the filing and noticing requirements pursuant to Rules 25-30.030 and 25-30.033, Florida Administrative Code?

Position: *Yes. *

Argument: The initial notices were provided as required (Tr. 41). At the hearing, the Affidavit of Mailing of the hearing notice to property owners, and the Affidavit of Publication of the hearing notice were admitted into evidence (Ex. 48 & 49). Ms. Cotherman was the only Intervenor to dispute that EU met these requirements and her complaint was the language of the initial Notice. She did not express concerns with the Notice of Hearing. The language of the initial Notice was approved by Staff as is required by Rule 25-30.030 (4), F.A.C. The Intervenors solicited no evidence at the hearing directed towards these requirements and the *prima facie* evidence presented by EU confirms that all noticing requirements have been met.

ISSUE 2 Is there a need for service in Environmental Utilities’ proposed service territory and, if so, when will service be required?

Position: *Yes. Central wastewater service is needed at this time and the Charlotte County Master Sewer Plan identifies the islands as a priority for central wastewater service by 2022. EU expects to have the wastewater system operational by the end of 2023.*

Argument: Environmental Utilities has clearly established, by record evidence, that the central wastewater collection proposed by the application, as well as the treatment of that wastewater by Charlotte County, is needed. There is a continuing need for service for undeveloped platted lots in the proposed certificated territory, as well as a present need for those properties within the proposed certificated territory which are currently served by septic tanks.

As discussed further below, Charlotte County has determined that this specific septic to central wastewater conversion is appropriate, is needed, and is consistent with state and local law and is a statewide trend. Notably, PIE’s witness on water quality admitted that he had no

¹ Citations to the testimony at the technical hearing will be “Tr.” followed by the page number and citations to the testimony at the service hearings will be “SH1.” and “SH2.” followed by the page number.

expertise in the adverse impacts of septic tanks and no opinion as to whether septic tanks were favorable over central sewers (Tr. 203-204, 205-206), and had no opinion as to whether septic tanks were appropriate on this bridgeless barrier island (Tr. 211). As to the existing septic tanks which are on the islands, Mr. Boyer testified that as an individual with significant experience in wastewater treatment including the type of environment that exists on the barrier islands, he has seen the effects of aging septic tanks as well as septic tanks that are failing in the proposed certificated territory (Tr. 249-50). Many homes have septic tanks that are totally under water during high tide and even more during the king tides experienced on the islands (Tr. 250). He testified that the home he himself purchased had an original septic tank, 50 feet from the water, that the entire system was underwater 60% of the year, and no inspection was required to purchase the home. His neighbor's house is in the same condition and is a popular rental, and the septic tank noticeably smells. The home behind his has a 55 gallon drum as its "septic tank" (Tr. 250). It was Mr. Boyer's opinion that the County's mandatory connection ordinance and the County's willingness to enter into an agreement with Environmental Utilities for central wastewater treatment (each discussed in more detail below) will benefit the environment and will provide a consistent and reliable method of wastewater treatment in the proposed service territory on a going forward basis (Tr. 250).

Not only is there a present need for central service which will replace the septic tanks on these fragile, bridgeless barrier islands, the islands themselves are not built out. There are undeveloped lots remaining on the islands and development continues (See, e.g., Tr. 36 and Tr. 57).

Converting septic tanks to central sewer by EU is consistent with the Charlotte County Comprehensive Plan

Pursuant to Section 367.045(5)(b), F.S., since some of the Intervenors questioned whether central sewer service on the bridgeless barrier islands was consistent with the Charlotte County Comprehensive Plan, the Commission is required to consider, but is not bound by, the Comprehensive Plan. This Commission has previously determined that controlling growth can be accomplished through means other than controlling wastewater service (Order No. PSC-1996-1281-FOF-SU). For instance, there is a building height restriction of 36' on the islands (SH2. 111; Sec. 3-9-52, Charlotte County Code). PIE's land planning witness noted there are tools for controlling growth such as density caps, transferring development credits off the island, as well as land acquisition (Tr. 170). In the instant case central wastewater service is consistent with the Comprehensive Plan as verified by Charlotte County itself. Even if the project was not consistent with the Comprehensive Plan, it would be in the public interest to grant EU a wastewater certificate.

At the deposition of the County, the County's opinion regarding consistency with the Comprehensive Plan was made clear and simple:

Q. And does the County believe that Environmental Utilities' application is consistent with the County's Comprehensive Plan?

A. Yes, Sir
(Ex. 42, P. 53)

Intervenor's strained interpretation of the Comprehensive Plan that central water and wastewater service are prohibited on the bridgeless barrier islands, even by a PSC regulated

utility, is contrary to precedence. This is not the first instance when central water and wastewater service is proposed on the bridgeless barrier islands. Similar to the instant case, Charlotte County is currently providing bulk water to Little Gasparilla Utility Company (Order No. PSC-2014-0626-PAA-WU) on the south side of the islands, and Englewood Water District is currently providing bulk water to Bocilla Utilities on the north part of the island (Order No. PSC-2017-0209-PAA-WU) on the north side of the islands (Tr. 42, 80). If Charlotte County believed that the Comprehensive Plan prohibited central water service on the islands it would not have entered into that bulk water service agreement with Little Gasparilla Water Utility nor allowed Bocilla Utilities to obtain bulk water service from Englewood Water District. There are also two central wastewater facilities already on the islands, which was acknowledged by PIE (Tr. 80; 156, 193).

The Intervenors apparently do not understand that while the Comprehensive Plan may prohibit the County from expending public funds to provide central water or wastewater service to the bridgeless barrier islands it does not prohibit such service by private utilities (Tr. 45-46; Ex. 43)

Charlotte County is unequivocally on the record in support of the application, and in its position that the proposed utility service is needed.

In 2017, Charlotte County prepared a Master Sewer Plan and identified the islands which comprise the proposed certificated territory as a priority area for conversion from septic to central wastewater treatment within five years. (Ex. 44, P. 4-11) The County commissioned multiple studies which demonstrated the positive impacts of septic to central conversion on nutrient concentrations in groundwater as well as the direction of groundwater flow from septic tanks to surface water bodies. (Ex. 42, Ex. 1).

On September 27, 2021, Charlotte County advised the Commission by letter that it was supportive of the project, that expansion of wastewater services as proposed in the application are consistent with the County's work to "promote sewer expansion through legislation, planning, and budgeting", and that the provision of wastewater to the County's barrier islands "can ultimately be consequential to long-term protection of the surrounding waters" (Ex. 42, Ex. 2)

The County's letter of support expresses concern about residential septic tanks and drainfield within the proposed certificated territory and notes that "extending sewer coverage to the islands eliminates those concerns".

The County's letter of support is an unequivocal expression of its position in support of this application, but it is by no means the only such expression in the record. On December 7, 2021, PIE, pursuant to a subpoena issued by PIE and duly served upon Charlotte County, compelled the County to produce a representative to speak on its behalf at a deposition conducted by counsel for PIE. (Ex. 42, Ex. 1). That this was a deposition of Charlotte County, not a deposition the County's designated representative in his individual capacity is without question as is made clear in the Introductory Statement above.

During the deposition of Charlotte County, the County's representative was clear that "the letter was written to advise the PSC on Charlotte County's position on the sewer expansion to the islands" (Ex. 42, P. 31). The deposition testimony clearly and repeatedly also stated several times that it was Charlotte County's contention and position that there was a need

for sewer service in the proposed certificated territory (Ex. 42, P. 24, 25, 37, and 53), as simply stated in the deposition of the County:

Q. Does the County believe there's a need for central sewer on the Bridgeless Barrier Islands?

A. Very Much so. Yes, sir.
(Ex. 42, P. 53)

The Bulk Sewer Treatment Agreement

This project is for all practical purposes a joint venture between Environmental Utilities and Charlotte County. In July 2020, the County entered into the Bulk Sewer Treatment Agreement with Environmental Utilities (Ex. 2, P. 19). The Agreement, approved by the Charlotte County Board of County Commissioners, recognized the need for the central collection and treatment of wastewater in the area proposed to be certificated and sets forth the following:

- based on environmental scoring criteria utilized by the County Sewer Master Plan, based on three fractures: proximity to surface waters, age of septic tanks, and nitrogen loading, the islands proposed certificated territory scored in the highest impact level of 4.0 to 5.0
- under the Sewer Master Plan areas with an average impact score 4.0 to 5.0 are recommended for conversion from septic to sewer
- the Charlotte County wastewater treatment plant that would provide treatment for the wastewater collected in the proposed certificated area has sufficient capacity to do so and in the Agreement the County reserves and commits to provide such service
- the certification of Environmental Utilities is a necessary prerequisite for the accomplishment of the conversion of this area from septic to sewer

The County attorney's office was involved in the drafting of the Bulk Sewer Treatment Agreement (Tr. 79) leading to the inescapable conclusion that doing so was consistent with the Comprehensive Plan and Sewer Master Plan. The Agreement, and Environmental Utilities' proposed certification consistent with the Agreement, is the perfect representation of a cooperative *de facto* partnership between local government and a PSC certificated utility to introduce improved and centralized wastewater collection and treatment in a fragile coastal environment.

The state and local trend in Florida in favor of central wastewater treatment, and the Charlotte County mandatory connection ordinance

Charlotte County's commitment of capacity as set forth in the Agreement; its submission of the letter of support to the PSC; its clear testimony in the deposition of the County conducted by PIE; and its interpretation of its own Comprehensive Plan and its own Sewer Master Plan; and by its implementation of Ordinance 3-8-41 (Ex. 36, the "mandatory connection ordinance") all demonstrate not only the County's support for the application but its tangible commitment to render its support and assistance to meet the need for the availability of central wastewater service on these barrier islands. There was property owner support for central wastewater collection at the service hearings (SH1. 24, 25, 29, 97, 102-103). From other service hearing testimony it becomes evident that central wastewater collection would be acceptable if provided by the County rather than a private utility (SH1. 17-18, 40; SH2. 21, 28, 35-36, 54, 65, 68, 104).

That the mandatory connection ordinance was put into place by the County to facilitate and encourage the connection to central public or private wastewater systems when they become available. This is exactly what Environmental Utilities (with the assistance of Charlotte County) proposes to do in this instance: to make such a central system available in the proposed certificated territory. (Tr 281). Notably, Mr. Cole, testifying on behalf of Environmental Utilities, noted that his firm had designed and installed many septic to sewer areas connecting thousands of homes for Charlotte County due to the County's concern about relatively small lots with septic systems that are installed close to the seasonal high groundwater table (Tr. 281).

The mandatory connection ordinance is explicit in its scope and application, and in fact is entitled "Connection to available sewer system required" (Ex. 31). The ordinance provides that properties "must connect to an available public or private sewer system within one year after written notification by the public or private sewer system that the system is available for connection". The Ordinance is enforced through the County's Code Enforcement Department (Ex. 31; Tr. 259-260, 263-264).

In fact, as Mr. Cole testified, the mandatory connection ordinance is consistent with similar mandatory connection requirements being increasingly implemented at the state and local level which require connection to central service when available (Tr. 278-281). Illustratively, Section 381.0065, F. S. provides that it is the intent of the legislature that DEP may permit the construction, installation, or repair of the septic tank "only if a publicly owned or investor-owned sewage system is not available". The Florida Clean Waterways Act likewise reflects the legislature's increasing concerns about on-site septic systems and requires local governments to identify on-site sewage treatment and disposal systems that would be eliminated through connection to existing or future central wastewater treatment systems (Tr. 279). That these enactments represent a state and local policy trend intended to protect Florida's fragile coastal environment seems incontrovertible. Certainly, the suggestion that any state or local law is supportive of the septic tank status quo, or would provide circumstances under which a conversion from central service to septic tanks would be preferred or mandated, seems absurd and wholly counterintuitive.

Further, Mr. Boyer testified that based on his knowledge and attendance DEP and Florida Rural Water Association meetings, the septic to sewer conversions that are occurring throughout Florida have been very successful, and the positive result has been supported by data (Tr. 56). Mr. Cole specified that for small densely spaced lots or areas where the groundwater table is high or in areas with a very high percolation rate and where the effluent does not get treated, there are multiple studies that demonstrate that septic systems do not function well and central sewer service is preferred (Tr. 278). State and local governments are being proactive on the issue and doing what they can to remove septic systems off-line when central service is available (Tr. 278). He has personally been involved with many septic to sewer projects across Florida over the last 25 years, where the goal was to eliminate septic systems especially on older smaller lots that are built close to the groundwater table, because of pollution concerns (Tr. 278).

The record is clear that the central collection service proposed by Environmental Utilities, and that wastewater treatment proposed by Charlotte County, is needed now and in the future, and thus is in the public interest.

ISSUE 3 Is Environmental Utilities’ application consistent with Charlotte County’s Sewer Master Plan?

Position: *Yes.*

Argument: Charlotte County commissioned a Sewer Master Plan (Ex. 44). That Plan pointed out that all septic system release nutrients and phosphorus from the drainfield and rely upon a deep layer of soil to treat the effluent before entering the groundwater (Ex. 44, P. 1-4), and concluded:

The soil type and separation depth relative to the groundwater table play significant roles in the septic systems’ treatment effectiveness. High-porosity soils found in many coastal regions of Florida are saturated due to seasonal high groundwater and are typically unsuitable for providing the necessary treatment time since the effluent travels too quickly through the soil to neutralize bacteria and pollutants in the sewage.

PIE witness Suggs testified that soil types on the islands are fine sand and only 20” to 30” below grade (Ex. 14, P. 1), which PIE witness Weisberg suggests that septic systems on the islands are ineffective in removing nutrients and phosphorus in such substrata (Tr. 210-211). Intervenor’s arguments and comments from property owners that septic tank inspections would result in ineffective systems being repaired sounds good but is not happening in practice and the law limits consequences of the inspection. In order for a government to require the repair of a septic system pursuant to Section 381.00651(6)(c), F.S., the evaluation must identify a “system failure”. And as incredulous as it sounds, a septic system drainfield is not a “system failure” even if it does not have any separation from the water table. So even though a septic system relies upon the effluent percolating through soil to remove nutrients and phosphorus before reaching groundwater, a septic tank inspection cannot require a repair even though there is no separation. The septic tank permit for newly installed new septic tanks include the disclosure that connection to a central sewer system will be required (Tr. 78; SH2. 69-70).

The Sewer Master Plan established a scoring system from 1 to 5, with 5 being the worst based upon (1) proximity to surface water, which the islands scored a 5 (Ex. 44, P. 4-8), (2), average age of septic tanks, which the islands scored a 4 (Ex. 44, P 4-9), and the nitrogen loading, which the islands scored a 4 and 5 (Ex. 44, P. 4-10). The resulting average impact score was 4.0 – 5.0 (Ex. 44, P. 4-11). The islands are identified as being in the 5-year Improvement Plan (Ex. 44, P. 4-19 & P. 5-9). Since the Comprehensive Plan does not allow the County to provide central water and wastewater services to the islands, the Board of County Commissioners approved a Bulk Sewer Treatment Agreement with EU (Ex. 42, P. 19). That Agreement specifically states that it is based upon, and therefor is consistent with the Sewer Master Plan (Tr. 73). Further, the County’s witness could not have been more clear when he testified that that EU’s application was consistent with the Sewer Master Plan (Ex. 42, P. 54).

Q. And does the County believe that the Environmental Utilities application is consistent with Charlotte County’s Sewer Master Plan?

A. Yes, sir.
(Ex. 42, P. 54)

ISSUE 4 Will the certification of Environmental Utilities result in the creation of a utility which will be in competition with, or duplication of, any other system?

Position: *No.*

Argument: As evidenced by the fact wastewater in the proposed service area is currently being served by septic tanks it should be without question that EU's wastewater system will not be in competition with, or duplication of another wastewater system. However, Cotherman claimed there was competition with, or duplication of another system based upon a map in the Sewer Master Plan that purports to include the island as being in Charlotte County Utilities' service area (Tr. 237). Including an area in the purported service area of another utility does not, as a matter of law, create an "other system." Even if the proposed EU service area was within the Charlotte County Utilities service area, the Comprehensive Plan does not allow it to be served by Charlotte County (Tr. 229). Further, any purported rights of Charlotte County to provide wastewater service to the islands were transferred by the County to EU by virtue of the Bulk Sewer Treatment Agreement. Further, the County's witness made it clear that that EU's application does not result in a system in competition with or duplication of any County system:

Q. Will the certification of Environmental Utilities result in creation of a utility that will be in competition or duplication of any system that the County has?

A. No, sir.

(Ex. 42, P. 54).

ISSUE 5 Does Environmental Utilities have the financial ability to serve the requested territory?

Position: *Yes.*

Argument: We start with the admission that the Boyers do not have \$22,000,000 in their bank account with which to fund the construction of the utility system (Confidential Ex. 2, P. 11-12), nor is that the requirement. Very few people do. What the Boyers do have is the ability to raise that money personally and invest it in EU and have such a commitment (Ex. 20). Ultimately, it may be best to fund the Utility with a combination of debt and equity; however, until EU is granted a certificate, no institutional lender will make a loan commitment to EU, nor are government grants and low interest loans available until the certificate is granted (Tr. 49, 80, 248; Ex. 27, Bates 00023, 00027). For instance, Centennial Bank has expressed an interest in funding the project subject to certification and ratemaking (Ex. 2, P. 14). It was stipulated that PIE's financial witness has no experience in utility regulatory accounting (Tr. 220), which accounts for her failure in correctly analyzing the financial schedules prepared by Ms. Swain. Ms. Swain addressed each error in PIE witnesses' analysis (Tr. 297-298) and opined that based upon her initial rate calculation and CIAC to be received, EU is going to be in the position to fully fund the construction and its operations (Tr. 150).

PIE witness Schultz questioned EU's financial ability based in part on the mistaken belief that property owners would not be required to connect to the central wastewater system (Ex.

13, P.). Section 3-8-41 of the Charlotte County Code mandates that property owners connect within 365 days after written notification that a central wastewater system is available (Ex. 36) and mandatory connection is enforced by the County through its Code Enforcement process (Ex. 31, Bates 00050-00051 and attachments).

It was clear from Cotherman's testimony that she believes that if EU cannot fund the septic to sewer project that EU would sell its certificate to someone else can (Tr. 235). So, her real concern is not with EU's financial ability to fund the septic to sewer project but with anyone undertaking the project, and she is using this issue as a means to thwarting the County's septic to sewer goals.

ISSUE 6 Does Environmental Utilities have the technical ability to serve the requested territory?

Position: *Yes.*

Argument: Rule 25-30.033(1)(i), F.A.C., sets forth the documentation that an applicant must provide in order for EU to show its technical ability to provide wastewater service as applied for. The only documentation applicable where the system is not currently in operations is a statement of the applicant's experience in the water or wastewater industry. Obviously, EU is a newly created utility and itself has no experience in the utility business. However, Jack Boyer, one of the principals of EU has operated a PSC and Charlotte County regulated water system on Little Gasparilla Island since 1987, having been certificated by this Commission twice. In addressing that utility's technical ability, this Commission, in Order No. PSC-2001-0992-PAA-WU found that the utility operated by Mr. Boyer "has been operating for 14 years, and there have been no material financial or operational problems." at page 9. To hear the complaint of Cotherman, and echoed by some property owners, one would think that the Commission requires Mr. Boyer to personally have the technical ability to design, permit and construct the wastewater collection system, and to personally handle the financial regulatory and legal matters. Mr. Boyer does have experience with running a wastewater system through his previous involvement with the wastewater systems at Knight Island Utilities and Hideaway Beach Club (Tr. 70). Mr Boyer, having operated a PSC regulated utility for over 32 years, has shown to have the ability on behalf of EU to retain the professionals necessary to construct and operate the proposed wastewater system which is what he intends to do (Tr. 44). For instance, on behalf of EU he has retained a professional engineering firm which is experienced in septic to sewer projects and the most PSC experienced financial and legal professionals in the state with regard to wastewater regulation.

ISSUE 7 Will Environmental Utilities have sufficient plant capacity to serve the requested territory?

Position: *Yes, by virtue of the Bulk Sewer Treatment Agreement entered into with Charlotte County.*

Argument: In lieu of constructing a wastewater treatment plant on the islands, and the environmental issues with doing so as addressed in the Sewer Master Plan, as well as being subject to hurricanes and rising sea levels, EU entered into a Bulk Sewer Treatment Agreement with Charlotte County to transmit sewage from the islands to the County's WWTP on the mainland (Ex. 2, P. 19). That Agreement provides that the County will accept and treat up to 2200 ERCs at 190 GPD (418,000 GPD). At 100% buildout, EU anticipates it will serve 1,248 ERC's (Ex. 22, P. 20). There was no evidence presented at the hearing by Intervenors on this issue. Since EU does not pay the County for capacity until needed, the fact that it has reserved substantially more capacity than needed has no adverse financial impact on customers. Thus, it is without question that EU has sufficient plant capacity to serve the proposed service area.

ISSUE 8 Has Environmental Utilities provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located?

Position: *This requirement is effectively satisfied through the Bulk Sewer Treatment Agreement entered into between EU and Charlotte County.*

Argument: Pursuant to Rule 25-30.033(1)(m), F.A.C., a utility must provide documentation of its access and continued use of the land upon which its treatment facilities are located. PIE and Cotherman seem to interpret this requirement to not only apply to the treatment facilities, but also to easements and property where pump stations and other non-treatment facilities are located. Intervenors produced no evidence at the hearing that the Bulk Sewer Treatment Agreement was not a surrogate for this requirement. Since the Rule applies only to treatment facilities, and EU will only have a collection system with treatment through the Bulk Sewer Treatment Agreement, this requirement is inapplicable, or is deemed satisfied.

ISSUE 9 Is it in the public interest for Environmental Utilities to be granted a wastewater certificate for the territory proposed in its application?

Position: *Yes. The County has identified these islands as a priority for the removal of septic tanks which the Charlotte County Master Sewer Plan identifies as a major contributor to the degradation of water quality in the waters adjacent to the County.*

Argument: The County has made it a priority to convert the septic tanks on the islands to protect and preserve the coastal waters, in furtherance of the County's strategy to ensure and sustain the quality of natural water resources (Ex. 44, P. 1-1, 1-10). The County has established that it is in the public interest to remove septic tanks from the islands and this Commission should defer to local government on this issue. Public interest does not involve a count of how many letters the Commission received for and against EU's septic to sewer project. It is human nature to comment when someone does not agree with certain action, while people supporting that same action are less likely to comment. However, there are numerous letters to the Commission that support EU's application. Some property owners questioned the operation of a low pressure system during

hurricanes in an island environment, but the experience in the Florida Keys says otherwise (SH2 95).

The public interest standard does not involve a vote of how many property owners are for and how many are against EU's application. As was clear from those that opposed the application, they just don't want to pay for central wastewater service, especially to a private utility. A selfish, but easy concept to understand. If septic to sewer projects around the state required a majority vote of those persons affected there would be no such projects. The County has considered the broader public interest in protecting the environment and as has articulated its support of EU's application not only in entering into the Bulk Sewer Treatment Agreement, but in testimony:

Q. Is the County 100% behind this project by Environmental Utilities:

A. Yes, sir, 100%

(Ex. 42, P. 53)

ISSUE 10 What are the appropriate rate structures and rates for the wastewater system for Environmental Utilities?

Position: *Base Facility Charge: 5/8" x 3/4" \$ 112.78
[all other meter sizes to be increased pursuant to Rule 25-30.055(1)(b), F.A.C.]
Residential Gallonage Charge (10,000 cap) \$ 35.97
General Service Gallonage Charge \$ 43.16*

Argument: PIE took no position on the rates and rate structure, whereas OPC and Cotherman questioned whether there was sufficient documentation for all of the construction and operating costs. This is an application for a wastewater certificate for a proposed system and the Commission Rules require that the applicant support its proposed rates and charges with "projected" financial information. Rule 25.30-033(1)(p), F.A.C. It is necessary to utilize projected information since Section 367.031, F.S. requires a utility to obtain a PSC certificate prior to DEP issuing a construction permit. Recognizing that more accurate financial information is available after permitting and construction, this Commission has routinely allowed a utility to bifurcate the certificate and ratemaking functions when service will not be provided for several years.² However, EU's request to bifurcate was denied due to the objections by PIE and Cotherman (Tr. 235-236). It is hypocritical for them to object to the ratemaking function being bifurcated, which would have resulted in more accurate construction cost projections (Tr. 236), and then complain about the accuracy of EU's projections.

² *Application for original certificate to operate water and wastewater utility in Sumter County by North Sumter Utility Company, L.L.C., Order No. PSC-2002-0179-FOF-WS (February 11, 2002), in In re: Application for certificates to provide water and wastewater service in Sumter County by Central Sumter Utility Company, L.L.C., Order No. PSC-2005-0844-PAA-WS (August 18, 2005), and in In re: Application for original water and wastewater certificates in Sumter County by South Sumter Utility Company, LLC, Order No. PSC-2017-0059-PAA-WS (February 24, 2017)*

EU's financial expert provided the required financial schedules (Ex. 7 & 22). She reminds us that this is a application process based upon best available estimates and not a rate case where records can be audited (Tr. 127). There are checks and balances to prevent overearning (Tr. 127). None of the Intervenors offered any evidence of alternative construction costs, or operating and maintenance expenses, but merely sought to cast doubt on those projected by EU. As is customary, the Staff vetted EU's projected construction costs, and operating and maintenance expenses through discovery (Ex. 23-29, 32-35, and 37-39). Further, Ms. Swain addressed operating expenses which were raised (Tr. 127-134) and explained that the expenses are in 2033 dollars (Tr. 129).

ISSUE 11 What are the appropriate service availability charges for the wastewater system for Environmental Utilities?

Position: *Main Capacity Charge

Residential per ERC	\$ 11,928.00
All others per gallon	\$ 55.22
<u>Sewer Lateral Installation Fee</u>	\$ 1,292.85*

Argument: Intervenors raised questions about the validity of the construction costs upon which the service availability charges are based. As is the case with the expenses upon which the rates are based in the preceding issue, since EU's request to bifurcate was denied because of Intervenor's objections, EU was compelled to follow the PSC procedure of projecting construction costs. Those projections were made by a professional engineer with experience in septic to sewer projects (Tr. 86). Intervenors did not offer alternative amounts, but attempted to cast doubt on EU's projections. All of the attempts to cast doubt on various costs, were adequately refuted (Tr. 94-96, 98, 105-107, 113-114, 140-141, 145-146). One property owner who testified noted that the proposed charge by EU was not much higher than the County's \$10,000 charge to connect to its low pressure system (SH2. 92) As Mr. Cole stated: "It's a best engineering estimate based upon the best information we have" (Tr. 106). Ms. Swain presented an analysis of the Service Availability Charge (Ex. 7, P. 7), and of the Sewer Lateral Installation Fee (Ex. 7, P. 8). During discovery Ms. Swain discovered an error in her Sewer Lateral Fee calculation and the amount was revised (Tr. 296, 310; Ex. 22, P. 6). The Service Availability Charge was calculated by dividing the total cost of construction of the collection mains by the total ERCs with the resulting CIAC level slightly exceeding 75% guideline, in order to lower the monthly rate (Ex. 28, Bates 00034). Ms. Swains recommendation was to set CIAC at 75% of the cost of the collection system (Tr. 127). Rule 25-30.580, F.A.C. sets forth *guidelines* for establishing service availability charges. Those guidelines do not always work. For instance, in this case, where the system is made up of entirely a collection system, the guideline that the minimum CIAC should not be less than the cost of the collection system results in a 100% CIAC, which is higher than the maximum guideline. EU's proposed CIAC level is reasonable. See, Order No. PSC-2007-0983-PAA-WS where the Commission approved a wastewater CIAC level of 80.40%.

ISSUE 12 What are the appropriate miscellaneous service charges for Environmental Utilities?

Position: *Initial Connection Charge \$30.00
Normal Reconnection Charge \$30.00
Violation Reconnection Charge Actual Cost
Premises Visit\$30.00
(in lieu of disconnection)
Late Payment Fee\$ 7.50
Bad Check ChargePursuant to §68.065(2), Fla. Statutes*

Argument: Cotherman’s position was that miscellaneous service charges cannot be determined because she believes the cost of construction has not been documented. These charges have nothing to do with construction costs. She did not offer any evidence at the hearing that addressed the specific charges requested by EU, which were supported by the required cost justification (Ex. 7, P. 9). Further, these charges are in line with miscellaneous service charges the Commission has approved for other utilities.³

ISSUE 13 What are the appropriate initial customer deposits for Environmental Utilities?

Position: *The customer deposit should be equal to the estimated average charge for wastewater service for two months pursuant to Rule 25-30.311(7), F.A.C, based upon the approved final rates.*

Argument: None of the Intervenors presented any evidence on the amount of the customer deposit, which is basically a fall-out issue based upon the final rates. Pursuant to Rule 25-30.311(7), F.A.C, EU proposed a \$380.00 residential customer deposit (Ex. 3, P. 18) which was based upon the average customer bill of \$178.78 (Ex 7, P. 10).

Respectfully submitted this 16th day of March, 2022,
by:

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³ For instance: Order Nos. 2017-0092-PAA-WS, 20200059-PAA-WS and 2020-0267-PAA-WS.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail to the following parties this 16th day of March, 2022:

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