

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: March 16, 2022

CITIZENS' POST-HEARING BRIEF

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2021-0323-PCO-SU, issued August 25, 2021, hereby submit this Post-Hearing Brief.

STATEMENT OF BASIC POSITION

The burden of proof is “**always** on a utility seeking a rate change.” *Florida Power Corp. v. Cresse*, 413 So. 2d 1187, 1191 (Fla. 1982) (emphasis added). In this case, Environmental Utilities, LLC (“EU” or “the Utility”) has failed to carry its burden to demonstrate that the proposed rates underlying the determination of certification are accurately projected and as such they cannot be deemed to represent fair, just and reasonable rates for purposes of this docket.

The company failed to provide a basis for many of their calculations underlying the projection of their rates and admits to not using actual cost data for the area or adjusting for recent inflation. The costs included in projected rates are likely to be severely underestimated and are based on material miscalculations and the Commission cannot, at this time, make a reasonable judgment on whether or not the rates are accurately projected and thus appropriate. The Commission should have complete and accurate evidence that supports the proposed rates in its’ consideration of the application for certificate to provide wastewater service. Such evidence has not been provided here.

Given the Office of Public Counsel’s limited role in this proceeding, this brief addresses only those issues which were addressed in the Citizens’ prehearing statement. For any issue not addressed herein, the Office of Public Counsel stands by the position stated in the prehearing statement.

POSITIONS AND ARGUMENT ON DISPUTED ISSUES

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

POSITION: *The precise, appropriate rate structures and rates for the wastewater system for Environmental Utilities cannot be known at this time. The initial projected rates filed by the company were understated and may still be, impeding the Commission's ability to fully evaluate the public interest.*

ARGUMENT: As discussed below, there are several elements of the revenue requirement and rate projections that are calculated based on incomplete data, fail to account for the present economy or are miscalculated.

Accumulated Deferred Income Taxes

Any calculation of rates for the purposes of this docket should be based on a revenue requirement that includes the appropriate calculation of Accumulated Deferred Income Taxes (ADIT) as a component of the capital structure related to the tax timing differences between book and tax depreciation.

In Exhibit 39 the utility shows a projected ADIT calculation of \$3,040,210 in 2033 based on Witness Swain's incorrect assumption that the taxation of CIAC created ADIT. Witness Swain acknowledged that CIAC is no longer taxable, and that the inclusion of this amount was in error. TR. 293. By correcting this error, the Company assumed that this projected ADIT would be eliminated. However, Witness Swain further acknowledges that a tax timing difference for depreciation is one way in which ADIT can be created. TR. 145, Exhibit 27. Common sense and decades of utility regulation create an irrefutable presumption that ADIT *will* be created by the addition of the plant proposed in this case. The utility's response to OPC Interrogatory 21 provided in Exhibit 38 indicates that the exclusion of erroneously projected CIAC-related ADIT alone will

cause the estimated bill to increase to \$333.43 for 6,000 gallons of usage. TR. 300. This one understated element would raise the projected monthly bill over 14% or \$40. When customers are already facing several hundred dollars for a single utility bill, an additional \$40 is certainly material. However, the projected ADIT errors do not end here.

The utility has refused to include a calculation of ADIT related to tax timing differences related to the projected plant in the proposed rates as it is their opinion that it is not required in an application for a new certificate. TR. 145 - 46. The utility acknowledges that in any other rate case they would be required to calculate and include ADIT in rate base including the next time that the company comes in for a rate case. TR. 146. Despite this acknowledgment, Environmental Utilities has fashioned their own phantom rule to say that ADIT is not required when estimating rate impacts and an application for a new certificate are occurring at the same time. However, applications for true original certificates are somewhat rare and many of those receive bifurcation so the pool of precedent in true original certificate applications is limited. (Jan. 5, 2021 Agenda Transcript, p. 25). Simply saying that one could not find a true original certificate in which ADIT was required is not a sufficient basis on which to argue that it should not be. The circumstances where a change in the taxability of CIAC intersects with the consideration of a new certificate likely doesn't exist, so the putative lack of precedent is irrelevant, the important aspect of this issue is that the Commission and customers (current and future) should be on notice of the true cost of service in the proposed certificated territory. The failure to include ADIT resulting from the tax timing difference is one of the many ways in which the rates presented in this case do not present a complete or accurate picture of what the rates imposed on customers could be.

The intersection of these two material, bi-directional errors in the projection of ADIT shine a bright light on the unreliability of the company's calculations on this material aspect of rate projection. The Commission should be hesitant to consider rate projections to be valid for this reason alone. Still, there are many other projection deficiencies in the company's filing.

Barging

The company has produced no evidence to corroborate the accuracy of barging fees included in projected rates. Witness Boyer claims to have discussed a proposal for a flat rate transport fee with Palm Island Transit. TR. 129. However, Witness Swain admits that she has not seen an executed contract to support this discussion nor has the utility provided any documentary

evidence to support the claim that such a preliminary discussion has occurred. TR. 130. Any quotes or proposals that Witness Boyer received during discussions are inadmissible hearsay under §120.57(1)(c), F.S. as they are not being used to supplement or explain other evidence but are the sole evidence presented to support these quotes. The estimates for transportation expenses provided in Witness Swain's testimony differ materially from the responses the utility gave in discovery which varies from question to question. See Exhibits 22, 27, 34. Witness Swain dismisses this as the data changing over time, however the discovery response reflecting the pricing Witness Boyer claims to have negotiated was served on December 23, 2021 while the response based on the transit rates listed on Palm Island Transit's website were served on December 30, 2021. TR. 129. Exhibits 22, 27. If anything this conflict in the information supports the idea that there is no contract for a flat monthly rate; otherwise, the question arises: why would the company provide discovery responses that clearly do not rely on the contract and are more than the supposed contract subsequent to the discovery response that does rely on that flat monthly rate?

Witness Swain admitted that she only included the \$1,000 per month barging fee in her calculation which does not account for the barging to Little Gasparilla Island. TR. 130, 252-53. At the hearing Witness Boyer claimed that pump out fees on Little Gasparilla Island also covered the barging fees for access to the island. TR. 253. It is not clear if he means that the pump out fees include only the cost of transporting the septic tanks off of the island or if the utility has also included barging fees for access to Little Gasparilla Island throughout the construction process and future operation. Regardless, there is yet again a lack of corroborating evidence or pre-filed testimony to support this claim. These ambiguities should be resolved against the company meeting its burden to provide accurate and reasonable estimates of future rates.

Surveying and Easements

The rate-setting element of surveying and easement costs is yet another area where the estimated costs seem to be more pure guesses than based on any reasonable method of estimation. Witness Boyer again refers to conversations he has had with individuals about surveying costs with no corroborating evidence and the other witnesses who are responsible for these calculations claim to have no knowledge of the quotes obtained through Witness Boyer's conversations. TR. 140. Any quotes or proposals that Witness Boyer received during discussions are inadmissible hearsay under §120.57(1)(c), F.S. as they are not being used to supplement or explain other

evidence but are the sole evidence presented to support these quotes. The company witnesses are not even consistent among themselves about whether the \$250,000 allotment does or does not include both the cost of surveying and easements. Witness Boyer stated that the \$250,000 included only the cost of easements and not surveying, while Witness Swain claimed that both expenses were covered by that line item. TR. 65, 134. There is evidentiary discord among these key witnesses about how they came up with that budget and how they can confidently say that it is a reasonable estimate. If the witnesses are not even able to agree on what expenses a line item is supposed to cover, the commission cannot reasonably rely on this element of cost.

Witness Boyer acknowledged having paid between \$1,000 and \$7,000 for easements in the same general area for his water company and stated that the cost of an eminent domain process for a single easement for that company was about \$500. TR. 63-64. Nevertheless, statements at hearing and the company's tariff sheets suggest that they expect homeowners to donate all easements. TR. 64; Exhibit 3. This further suggests that the potential cost of easements has not been properly accounted for in base rates.

At the hearing Witness Swain admitted to being unfamiliar with the costs of easements purchased by Witness Boyer. TR. 134-137. If the estimates for the cost of easements are not based on prior experience regarding land values in the area, it is unclear what, if anything, that calculation is based on. Again, these ambiguities should be resolved against the company meeting its burden to provide accurate and reasonable estimates of future rates.

Salaries & Wages

The salaries and wages expense included in the rate calculation is severely underestimated even based on the numbers that the company provided in response to discovery and is unrealistic given the comparative salaries in the area and the current job market. Exhibit 22 includes a salaries and wages expense of \$164,808; however in Exhibit 25 the company provided four specific salary offers which totaled \$205,200. Witness Swain did not update this number in her revised schedule to reflect the total provided in discovery and attempted to dismiss the discrepancy as being an adjustment to account for inflation. TR. 131. However, this justification is nonsensical as the number in Witness Swain's schedule is lower than the number provided in her discovery response. Exhibit 22, 25. The interrogatory asked for the positions and salaries as reflected in DDS-1. If one were adjusting rates to reflect the potential for inflation, common sense dictates that the number

in the schedule would be higher than the total of the current salary offerings, not the other way around. Additionally, the fact that the hourly rates used in the calculation of miscellaneous service charges are equivalent to the yearly salaries that were provided in Exhibit 25 further supports the fact that Witness Swain included the incorrect total for salaries and wages in her rate calculations. Exhibit 7.

Further, the salaries that the company proposes to offer are all below the comparison that the company provided to Englewood Water District. Exhibit 27. Significantly, the salary that Environmental Utilities proposes to offer their bookkeeper is nearly \$20,000 below the market salary in the area. At a time when even professional industries are having difficulty hiring staff, it is unrealistic to expect to hire someone for significantly less than other comparable industries in the area. Further, Witness Swain admits that no persons have actually agreed to accept these salaries and the assertion that Witness Boyer discussed these offers with persons already is hearsay and unsupported. TR. 131-33. Even bringing each of the proposed salaries up to the bottom of the comparative ranges provided would increase the salaries and wages expense about \$40,000.

Witness Swain admitted that her calculations do not account for inflation that has occurred since the preparation of Exhibit 4 which would include increases in pay for persons involved in the construction process. TR. 143-44. Overall, EU has included an inaccurate data point in the calculations of rates and charges and likely underestimated what salaries and rates of pay will be required by at least another \$40,000. Again, these ambiguities should be resolved against the company meeting its burden to provide accurate and reasonable estimates of future rates.

Inflation

As was discussed several times throughout this hearing, the United States is currently in a period of rapid inflation. Witness Boyer acknowledged that cost of petroleum and high-density polypropylene pipe have gone up “considerably.” TR. 76. Witness Cole says that he added a “bump up” of 2.5-15% to account for the fact that the bids he relied on in forming his cost estimates for the construction were 3-5 years old. TR. 105. However, he later admitted that that same “bump up” is intended to cover all of the costs that were not specifically itemized such as Gopher Tortoise relocation. TR. 114. There is no direct evidence that the “bump up” was intended to or will sufficiently cover inflation. This is more in the nature of a contingency and not an accurate estimate of a measurable cost element like inflation. A 2.5-15% increase in the cost calculation cannot

reasonably be expected to cover the cost of inflation on bids that are now 4-6 years old, along with all of the miscellaneous expenses that were not itemized. Additionally, Witness Swain admits that her calculations do not account for inflation since April 2021. TR. 143-44.

While the OPC understands that the company cannot continually update their estimates through the hearing date, the exceptionally high rate of inflation over the last year casts further doubt on the utility's ability to do the project for the amount the utility has proposed here. When the average residential bill is already over \$200 and costs will be spread amongst such a small pool of customers, every reasonably identifiable cost element counts and should be taken into consideration in making this decision.

General Uncalculated Costs & Issues

The company admitted at hearing that there are "minor" costs not included in O&M. TR. 286. One of these "minor" costs as explained by Witness Cole is maintenance on the vacuum station. TR. 286. This may be a low-cost item for the company. However, maintenance is important enough that the company should be absolutely sure they have budgeted for it. Further, all of these small costs can quickly add up to create a material impact on customer rates, especially in a territory such as this where there are very few customers. Witness Cole's Exhibit 4 explicitly says "the costs presented *cannot and should not be taken as the total project cost.*" (Emphasis added.) The company knows that they have not accounted for all costs that they will impose on customers and that the bill estimates they've provided will not match reality.

Witness Swain admitted to using the incorrect depreciation life for pumping structures. TR. 303-304. Additionally, Witness Swain's application of a repression adjustment in this case is odd for several reasons. First, as staff pointed out, the Commission has never applied a repression adjustment in wastewater cases and to do so here would be contrary to decades of precedent. TR. 306. Wastewater usage is hardly discretionary and what we do consider discretionary water use (washing cars, watering lawns) is not charged to the customer's wastewater bill. It is also odd to apply a repression adjustment in a territory that the company asserts is 65 percent rental properties. TR. 43. Short term renters are not paying the utility bills, they have no idea what the rates are and would have no incentive to restrict usage based on cost. Applying a repression adjustment where one is not needed raises per gallon rates when the customers are likely to continue using the same amount, resulting in the customers overpaying for their usage. Correcting these errors would lower

customer rates from the company's projections which the OPC supports. However, it is yet another example of the inattention and lack of care put into these calculations. Not only are the proposed rates inaccurate because they omit costs, they are inaccurate because in several places they have been genuinely miscalculated.

ISSUE 11: What are the appropriate service availability charges?

POSITION: *Service availability charges should be designed in accordance with Rule 25-30.580, F.A.C.*

ARGUMENT: At hearing Witness Swain admitted to having miscalculated the sewer lateral cost because the calculation was based on the wrong number of ERCs. TR. 310. Witness Swain told staff she would provide a revised calculation, however, according to the calculation Witness Swain offered at hearing the total lateral cost is \$1,613,476.80. TR. 311.

The Main Capacity Charge also referred to as a connection fee or service availability charge should be \$11,696.32 based on the total lateral cost offered by Witness Swain at hearing. TR. 311.

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

POSITION: *The appropriate miscellaneous service charges cannot be known at this time but are likely to be higher than those provided by the company given EU's use of incorrect salary and wage data and likely underestimation of salaries and wages.*

ARGUMENT: While the calculation of miscellaneous service charges provided in Exhibit 7, Schedule 6 do not appear to be unreasonable on their face and are based on the actual salaries the company claims it will offer rather than a breakdown of the data included in Schedule 7, as previously discussed it is likely that the company has severely underestimated the salaries that it will have to pay to employees. Labor expenses make up the vast majority of the cost for miscellaneous service charges and since the company has likely underestimated salaries, these

charges are likewise underestimated. If the certificate is granted, the miscellaneous service charges should be based on actual labor expense. See Issue 10 “Salaries & Wages” for further discussion.

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

POSITION: *The appropriate initial customer deposit is equal to two months of the average residential bill.*

ARGUMENT: Commission precedent is to allow utilities to impose customer deposits of up to twice the average monthly bill. If the certificate is granted, the deposit should be twice the average residential bill as calculated by the company in Exhibit 22.

ISSUE 14: Should this docket be closed?

POSITION: *If the Commission denies the application for new certificate, the docket should be closed upon expiration of the 30-day appeal period. If the Commission grants the certificate, the docket should remain open until invoices supporting the collection system buildout are submitted.*

ARGUMENT: If the Commission denies the application for new certificate, the docket should be closed upon expiration of the deadline to appeal. If the Commission grants the certificate, the docket should remain open until invoices supporting the collection system buildout are submitted.

Dated this 16th day of March, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

Docket No. 20200226-SU

I **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's Post-Hearing Brief has been furnished by electronic mail on this 16th day of March 2022, to the following:

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