

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
ORDER NO. PSC-2022-0046-PHO-SU
ISSUED: January 28, 2022

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on January 26, 2022, in Tallahassee, Florida, before Commissioner Mike LaRosa, as Prehearing Officer.

APPEARANCES:

MARTIN S. FRIEDMAN, ESQUIRE, Dean Mead Law Firm, 420 S. Orange Avenue, Suite 700, Orlando, Florida 32801
On behalf of Environmental Utilities, LLC (EU)

JOHN L. WHARTON, ESQUIRE, Dean Mead Law Firm, 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301
On behalf of Environmental Utilities, LLC (EU)

RICHARD GENTRY and ANASTACIA PIRRELLO, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC)

BRAD E. KELSKY, ESQUIRE, Kelsky Law Firm, 150 S. Pine Island Road, Suite 300, Plantation, Florida 33324
On behalf of Palm Island Estates Association, Inc. (PIE)

LINDA COTHERMAN, Post Office Box 881, Placida, Florida 33946
Pro Se

JENNIFER S. CRAWFORD and RYAN SANDY, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff)

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Advisor to the Florida Public Service Commission

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Florida Public Service Commission General Counsel

I. CASE BACKGROUND

On October 13, 2020, pursuant to Sections 367.031 and 367.045, Florida Statutes (F.S.), and Rule 25-30.033, F.A.C., Environmental Utilities, LLC. (EU or Utility) filed an application for an original wastewater certificate in Charlotte County. With its application, EU filed a petition for temporary waiver of portions of Rule 25-30.033, F.A.C., so that the Utility's initial rates and charges might be set at a date subsequent to the granting of the certificate of authorization. This petition for temporary rule waiver was denied.¹ Pursuant to Rule 25-30.030, F.A.C., EU published notice in the proposed service area, and provided notice by mail to property owners in the service area EU proposes to serve. Timely objections to EU's application have been filed with the Commission, and intervention by the Office of Public Counsel (OPC) has been acknowledged. This matter is set for hearing on February 8-9, 2022.

At the January 26, 2022, Prehearing Conference, after making an initial appearance and after discussion on the record regarding the scope of her participation, Ms. Barb Dwyer voluntarily withdrew as a party from this proceeding.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 367, F.S. This hearing will be governed by said Chapter and Chapters 25-30, 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 367.156, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S.,

¹ Order No. PSC-2021-0066-PAA-SU, issued February 2, 2021, in Docket No. 20200226-SU, *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.*

pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 367.156, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her

testimony at the time he or she takes the stand. Summaries of testimony shall be limited to three minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
John R. Boyer	EU	1 – 9
Jonathan H. Cole	EU	2, and 11
Deborah D. Swain	EU	10 – 13
Meryl Schaffer	PIE	2, 3, 9 and 14
Ellen Hardgrove	PIE	2, 3, 8, 9 and 14
Robert Weisberg	PIE	2, 3, 9, and 14
Sheri Schultz	PIE	5, 9 and 14
Stephen J. Suggs	PIE	6, 7, 9 and 14
Linda Cotherman	LC	1 – 14

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Rebuttal</u>		
John R. Boyer	EU	1-9
Jonathan H. Cole	EU	2, and 11
Deborah D. Swain	EU	10 – 13

VII. BASIC POSITIONS

EU: 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 Wastewater Service Agreement entered into with EU, the Sewer Master Plan adopted by the County, and of the State of Florida, 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.

PIE: PIE contends that there is a lack of demonstrable need for sewer services to the Charlotte County bridgeless barrier islands and that the imposition of such service would be contrary to Charlotte County’s development scheme. PIE further contends that the applicant, Environmental Utilities, LLC, lacks the financial wherewithal and technical ability to be able to operate the utility in accordance with the Florida Statutes and Florida Administrative Code.

OPC: In considering whether to grant the certificate to provide wastewater service, the Commission should be provided an accurate understanding of the rates and charges that will be imposed. If the certificate is granted, rates imposed for wastewater service should be compensatory, supported by accurate estimates and calculations, and meet the Commission standards of being fair, just and reasonable.

COTHERMAN: Linda Cotherman’s position is that the application for certification of the service area should be denied. The applicant has not demonstrated a need for service, nor has he provided evidence of same. The applicant has not shown the financial or technical ability to construct, operate and maintain a project of this scope. Since all costs have not yet been established by the applicant, the estimates of rates and charges associated with the project may be grossly inaccurate.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein..

VIII. ISSUES AND POSITIONS

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

EU: Yes.

PIE: PIE has no position on this issue of compliance with F.A.C. 25-30.030 but believes the application is not in compliance with Section 25-30.033, Florida Administrative Code, as the application lacks mandatory information (e.g., no tariffs and rates included in the application). It is expected that Jack Boyer and/or the Corporate Representative of Environmental Utilities, LLC will testify on this topic area.

OPC: No position.

COTHERMAN: No. Linda Cotherman's position is that EU has not met the filing and noticing requirements based in part on the following:

- A. The notice of application and initial rates and charges for wastewater service that was published in the newspaper on December 18th, 2020, stated that the tariffs and rates were included in the application. However, they were not included and not available to the potential ratepayers until June 18th, 2020.

STAFF: Staff has no position at this time.

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

EU: 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.

PIE: PIE's position on this issue is that the applicant has not established a need for service on the bridgeless barrier islands of Charlotte County. Ellen Hardgrove, AICP and Robert H. Weisberg, Ph.D., are expected to testify on this issue and

have set forth, in their prefiled testimony and exhibits, that there is a lack of need (per the comprehensive plan and a lack of scientific data) to justify Environmental Utilities, LLC's receipt of a Certificate of Authorization. It is expected that Ms. Hardgrove will also testify that a comprehensive plan amendment will be needed to effectuate the Certificate of Authorization if approved. PIE's position is that the proposed utility service is inconsistent with the Charlotte County Comprehensive Plan and that the Sewer Master Plan has been extrapolated to apply to the bridgeless barrier islands based upon inapplicable data. Ellen Hardgrove, AICP and Robert Weisberg, Ph.D., are expected to testify on this issue. It is expected that Ms. Hardgrove will also testify that a comprehensive plan amendment will be needed to effectuate the Certificate of Authorization if approved.

OPC: No position.

COTHERMAN: No. Linda Cotherman's position is that there is no need for service in the proposed service territory, based in part on the following:

- A. The applicant's reference to need for service relies solely upon selective items from the Sewer Master Plan which are outdated, incorrect and misinterpreted.
- B. The number of customers proposed to be served by customer class and meter size, including the types of customers needed to be served, has not been provided in the application as required.
- C. No letters of request for service from property owners or developers in the proposed service area have been produced.
- D. The application is inconsistent with several government regulations, including the Charlotte County Comprehensive Plan and Executive Order 81-105. In addition, the application is inconsistent with Charlotte County's Sewer Master Plan.
- E. Contrary to applicant's statement that there are no land restrictions, there are in fact numerous land restrictions such as, environmental zoning, land use, archaeological impacts, threatened species, etc. imposed by governmental authorities currently in place. None of these have been addressed.

STAFF: Staff has no position at this time.

ISSUE 3: **Is Environmental Utilities' application consistent with Charlotte County's Sewer Master Plan?**

EU: Yes.

PIE: PIE's position on this issue is that the proposed utility service application is inconsistent with the Sewer Master Plan, that the Sewer Master Plan is inconsistent with the Charlotte County Comprehensive Plan and that, therefore, the Sewer Master Plan is not controlling and does not establish a need for service. Ellen Hardgrove, AICP and Robert H. Weisberg, Ph.D., are expected to testify on this issue and their testimony has been prefiled along with the exhibits they intend to use.

OPC: No position.

COTHERMAN: No. Linda Cotherman's position is that the application is not consistent with Charlotte County's Sewer Master Plan [SMP] based in part on the following:

- A. The SMP did not address the bulk of the proposed service area, only the two existing wastewater treatment plants for whom compliance was voluntary.
- B. The applicant cherry-picked items from the SMP as the basis for need for service, specifically three criteria that were used to categorize high-priority areas for septic to sewer conversion. While there is no denying proximity to water, the other two criteria were inaccurate in relation to the proposed service area. Specifically:
 1. the "age of septics" criterion was addressed only by estimates based on the age of homes. No consideration was given to replacements and repairs that have been done by homeowners in the proposed service area, nor to new home construction utilizing state-of-the-art septic systems.
 2. The "nitrogen loading" rating was extracted from general estimates of averages from other areas in the County and beyond. No water quality testing was done in proximity to the proposed service area.
- C. The priority rating for the proposed service area designated in the SMP is just part of a large overall study of the County, and a small consideration of the general need for service in Charlotte County. Charlotte County has created their own priority list subsequent to the SMP, and the proposed service area is not included in the 5- 10- or 15-year plan.

STAFF: Staff has no position at this time.

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?

EU: No.

PIE: No position.

OPC: No position.

COTHERMAN: Yes. Linda Cotherman's position is that the proposed service area falls within the Charlotte County Utilities' [CCU] certificated area for water and wastewater services based in part on the following:

- A. According to the CCU's utility availability website, Bocilla Utility, Inc. provides water to Knight/Don Pedro Islands and CCU is the utility designated to provide wastewater service. The exception on Knight Island is the wastewater provider "Knight Island Utilities Inc." [KIU] which serves the Palm Island Resort and the Rum Cove and Sabal Palm Point developments. KIU is also currently serving residents on Lemon Bay Lane that are designated properties in the proposed service area. On Little Gasparilla Island, according to the same website, the water provider is designated as Little Gasparilla Water Utility and CCU is designated to provide wastewater service.

STAFF: Staff has no position at this time.

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

EU: Yes.

PIE: PIE's position on this issue is that, no, Environmental Utilities does not have the financial wherewithal to ably serve the requested territory. Sheri Schultz, CPA/ABV/CFF is expected to testify as to this issue and has submitted prefiled testimony and a memorandum in support of this position.

OPC: No position.

COTHERMAN: No. Linda Cotherman's position is that the applicant has not demonstrated or substantiated their financial ability to serve the requested territory.

STAFF: Staff has no position at this time.

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

EU: Yes.

PIE: PIE's position on this issue is that the applicant does not have the technical ability to serve the requested territory. It is expected that Stephen Suggs, P.E., will testify on this issue.

OPC: No position.

COTHERMAN: No. Linda Cotherman's position is that the applicant has not demonstrated any technical ability nor any experience with wastewater utilities based in part on the following:

- A. The applicant has never substantiated his claim to have experience with installing and maintaining a wastewater utility.
- B. The applicant has no ability to guarantee it can maintain its facilities and respond in a timely manner to malfunctions on a bridgeless barrier island. EU has not produced documentation of how the facilities can be serviced in the event of a breakdown.
- C. There is no evidence of the due diligence involved with identifying and contacting all permitting agencies that will be involved to ascertain their process, fees, requirements, concerns and time frame for approval if required.
- D. In the past Little Gasparilla Water Utility has had many DEP violations, some of which took up to 3 years to rectify. The owner was arrested for redirecting water from Don Pedro State Park to Little Gasparilla Island. The owner was fined and cited by Charlotte County for doing water connections without a permit. The owner was fined and cited by Charlotte County for doing plumbing without a permit or license as part of the same water connections incident. In the past, the owner collected money for water hook-ups without paying the TAP fees that the County requires as each hook-up was done.

STAFF: Staff has no position at this time.

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

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

PIE: PIE's position is that Environmental Utilities does not have sufficient plant capacity to serve the requested territory. It is anticipated that Stephen Suggs, P.E., will testify as to this issue.

OPC: No position.

COTHERMAN: Linda Cotherman's position is that this is not known at this time because there are discrepancies in the submittals from EU pertaining to the GPD flow and the number, locations and classifications of ERCs within the proposed service area.

STAFF: Staff has no position at this time.

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?

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

PIE: PIE's position is that the applicant does not have continued use of the land upon which the utility treatment facilities are or will be located. For example, the applicant does not have or maintain the necessary easements to allow for construction. Jack Boyer and/or the Corporate Representative of Environmental Utilities, LLC, are expected to give testimony on this issue.

OPC: No position.

COTHERMAN: No. Linda Cotherman's position is that there is no evidence of continued use of the land for the facilities, based in part on the following:

- A. While the wastewater treatment plant is located on the mainland, owned by Charlotte County, there has been no agreement or documents that EU has the guaranteed continued use of land where the tanks, lines and pumping stations will be located. This would include rights-of-way, privately owned lands, Don Pedro Island State Park lands and easements and approval from WCIND, the Army Corps of Engineers and the Board of Trustees of Submerged Land for the subaqueous crossing required for this project.

STAFF: Staff has no position at this time.

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

EU: 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.

PIE: PIE's position on this issue is that the public interest will not be served if Environmental Utilities is granted a wastewater certificate for the territory proposed in the application. It is expected that Ellen Hardgrove, AICP, Robert H. Weisberg, Ph.D., Sheri Schultz, CPA/ABV/CFF and Meryl Schaffer will give testimony on this topic to establish that the proposed application is inconsistent with the comprehensive plan, that there is no scientific evidence to establish degraded water quality on the bridgeless barrier islands, that the applicant lacks the financial and technical wherewithal to operate the utility and that service has not been requested by the residents on the bridgeless barrier islands.

OPC: No position.

COTHERMAN: No. Linda Cotherman's position is that it is not in the public interest for EU to be granted a wastewater certificate for the proposed service area based in part on the following:

- A. There is no demonstrable benefit to the granting of this certification, and the burdens to the stakeholders far outweigh any potential benefit.
 1. We see no evidence of the due diligence required to provide accurate cost estimates for a project of this scope inclusive of a subaqueous crossing, which indicates likely cost overruns.
 2. There are unique challenges of building a centralized sewage collection system on a bridgeless barrier island in a hurricane-prone flood zone which will incur "soft costs" related to environmental and other issues (i.e. wetlands crossing, gopher tortoise identification and relocation costs) ultimately increasing the cost to the stakeholders.
 3. The applicant has not addressed the potential impact to stakeholders if the construction costs are substantially higher than the estimated costs.
 4. There are additional expenses that will fall to the homeowner that are not included in the connection charges, such as the installation of a discreet electric panel for the system, clearing of trees, landscaping

and hardscaping, and back-up generators in the event of a power outage, which are frequent on these islands.

5. There is no pay-over-time provision available to the homeowners relative to the connection fee.
- B. Vehicle traffic to these islands is served by privately-owned boats and a privately-owned 6-8 passenger car ferry service which also carries equipment from the mainland. The car ferry has limited hours and service limitations based on weather, tides, staffing and mechanical issues. The applicant has not provided a plan for the logistics of working with an unpredictable ferry service, its impact on cost-effective scheduling and mitigating the disruption to local traffic. These factors may impact the final costs.
- C. If the utility fails in the installation or operation of its proposed facility the County or another entity would assume the expense and responsibility for the service, the cost of which will be borne by the property owners.
- D. The applicant hasn't addressed the potential consequences, and how they would be addressed, of a hurricane or other adverse conditions that could impact the maintenance of the system, such as power outages, line ruptures, etc.
- E. EU has not produced an emergency response plan for a sewer spill, which would take on great significance due to the islands' proximity to water.
- F. The proposed utility is in conflict with the County's Comprehensive Plan, which is put in place to direct growth to areas that are desirable for development, and to limit it in areas that are not.
- G. The introduction of central sewer to an environmentally sensitive area in a hurricane and flood zone will open the door to more intense development and excessive density and greater safety concerns.

STAFF: Staff has no position at this time.

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

EU: 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

PIE: No position.

OPC: Any calculation of rates should be based on a revenue requirement that includes the appropriate calculation of Accumulated Deferred Income Taxes as a component of the capital structure related to the tax timing differences between book and tax depreciation. At this time, it appears that the proposed rates do not reflect known and measurable costs.

COTHERMAN: Linda Cotherman's position is that the rate structures and rates cannot be analyzed accurately because all of the costs related to the construction and installation have not yet been provided and documented. Knight and Don Pedro Islands are served by a private water utility, and the owner has not yet explained how EU is going to bill the rates and charges once established. In addition, the \$178.78 in estimated monthly billing is nearly double the average monthly *combined* water and sewer charges billed by CCUD (the County) to residents directly across the water on the mainland in Rotonda West.

STAFF: Staff has no position at this time.

ISSUE 11: What are the appropriate service availability charges?

EU: Main Capacity Charge
Residential per ERC \$ 11,928.00
All others per gallon \$ 55.22
Sewer Lateral Installation Fee \$ 1,292.85

PIE: No position.

OPC: Any calculation of rates should be based on a revenue requirement that includes the appropriate calculation of Accumulated Deferred Income Taxes as a component of the capital structure related to the tax timing differences between book and tax depreciation. At this time, it appears that the proposed rates do not reflect known and measurable costs.

COTHERMAN: Linda Cotherman's position is that the service availability charges cannot be analyzed accurately because all of the costs related to the construction and installation have not yet been provided and documented.

STAFF: Staff has no position at this time.

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

EU: 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

PIE: No position.

OPC: No position.

COTHERMAN: Linda Cotherman’s position is that the miscellaneous service charges cannot be analyzed accurately because all of the costs related to the construction and installation have not yet been provided and documented. by CCUD (the County).

STAFF: Staff has no position at this time.

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

EU: The customer deposit should be equal to the average charge for wastewater service for two months, based upon the approved final rates.

PIE: No position.

OPC: No position.

COTHERMAN: Linda Cotherman’s position is that the initial customer deposits cannot be analyzed accurately because all of the costs related to the construction and installation have not yet been provided and documented.

STAFF: Staff has no position at this time.

ISSUE 14: Should this docket be closed?

EU: Yes.

PIE: PIE's position on this issue is that, yes, the docket should be closed as Environmental Utilities has not established a need for service or that it is financially capable of and/or possesses the technical ability to operate the utility. It is expected that Ellen Hardgrove, AICP, Robert H. Weisberg, Ph.D., Sheri Schultz, CPA/ABV/CFF, Stephen Suggs, P.E. and Meryl Schaffer will give testimony on this topic.

OPC: No, the docket should remain open until invoices supporting the collection system buildout are submitted.

COTHERMAN: Yes. Linda Cotherman has no position at this time.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
	<u>Direct</u>		
John R. Boyer	EU	JRB-1	Application
John R. Boyer	EU	JRB-2	Tariff
Jonathan H. Cole	EU	JHC-1	Technical Memorandum
Jonathan H. Cole	EU	JHC-2	Service Area Maps
Jonathan H. Cole	EU	JHC-3	Service Area Legal Description
Deborah D. Swain	EU	DDS-1	Financial Schedules
Ellen Hardgrove	PIE	EH-1	Affidavit of Ellen Hardgrove, with curriculum vitae

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Ellen Hardgrove	PIE	EH-2	Rebuttal to Charlotte County Utilities 9/27/2021 correspondence to PSC
Ellen Hardgrove	PIE	EH-3	Charlotte County Comprehensive Plan section
Ellen Hardgrove	PIE	EH-3(a)	5-year Capital Improvement Schedule for Charlotte County
Robert H. Weisberg	PIE	RW-1	Affidavit of Robert H. Weisberg, Ph.D., with curriculum vitae
Sheri Schultz	PIE	SFS-1	Memorandum dated 11/19/2021, with schedules
Stephen J. Suggs	PIE	SS-1	Sewer Connection Memo
Linda Cotherman	LC	LBC-1	Curriculum Vitae of Linda B. Cotherman.
Linda Cotherman	LC	LBC-2	Witness reports and testimony.
Linda Cotherman	LC	LBC-3	List of Discrepancies, Inaccuracies and Missing Information in the application by EU, LLC
Linda Cotherman	LC	LBC-4	List of Other Issues and Concerns Regarding the Application by EU, LLC
<u>Rebuttal</u>			
John R. Boyer	EU	JRB-3	Tax Payment Records
John R. Boyer	EU	JRB-4	Financing Commitment

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Jonathan H. Cole	EU	JHC-4	Mandatory Connection Ordinance
Deborah D. Swain	EU	DDS-2	Revised Financial Schedules
Deborah D. Swain	EU	DDS-3	Response to Staff Interrogatory #12b

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

1. The parties have stipulated to the entry of staff exhibits 24-41, as set out in the Comprehensive Exhibit List (CEL), into the hearing record.
2. The parties have stipulated to the entry of the Charlotte County Comprehensive Plan and Master Sewer Plan into the hearing record.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

1. Opening statements, if any, shall not exceed five minutes per party.
2. Hearing no objections from the parties to EU's Notice Intent to use Craig Rudy's deposition, EU is permitted to use the deposition at hearing for purposes other than impeachment.
3. Due to their failures to personally appear at the Prehearing Conference as required by Order Establishing Procedure PSC-2021-0323-PCO-SU, pro se parties Deric Flom, Joseph Bokar, Laurie Tremblay, Rhonda Olson, Richard Leydon, Roy Petteway, and Robert Lee Williams are dismissed as parties from this proceeding.² As non-parties, they have the option to testify at either of the customer service hearings.

It is therefore,

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

² Order No. PSC-2021-0323-PCO-SU, issued August 25, 2021, which provides, in pertinent part, that "Failure of a party (or that party's representative) to appear [at the Prehearing Conference] shall constitute waiver of that party's issues and positions, and that party may be dismissed from the proceeding." It is further noted that none of the dismissed parties prefiled testimony or exhibits, or filed a prehearing statement, in accordance with the order.

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 28th day of January, 2022.



Mike La Rosa
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

RPS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.