

1 BEFORE THE
2 FLORIDA PUBLIC SERVICE COMMISSION

3 In the Matter of:

4 DOCKET NO. 20200226-SU

5 Application for certificate to
6 provide wastewater service in
7 Charlotte County, by
Environmental Utilities, LLC.

/

8 VOLUME 2

9 PAGES 121 - 314

10 PROCEEDINGS: HEARING

11 COMMISSIONERS
12 PARTICIPATING: COMMISSIONER GARY CLARK
COMMISSIONER MIKE LA ROSA
13 COMMISSIONER GABRIELLA PASSIDOMO

14 DATE: Tuesday, February 8, 2022

15 TIME: Commenced: 10:00 a.m.
Concluded: 4:37 p.m.

16 PLACE: Robert L. Anderson
Administrative Center
Commission Chamber,
18 4000 South Tamiami Trail
Venice, Florida

19 REPORTED BY: DEBRA R. KRICK
20 Court Reporter

21 APPEARANCES: (As heretofore noted.)

22

23 PREMIER REPORTING
112 W. 5TH AVENUE
24 TALLAHASSEE, FLORIDA
(850) 894-0828

25

1	I N D E X	
2	WITNESSES	
3	NAME :	PAGE
4	DEBORAH D. SWAIN	
5	Examination by Mr. Friedman	125
	Examination by Ms. Pirrello	127
6	Examination by Mr. Kelsky	147
	Examination by Ms. Cotherman	152
7		
8	MERYL SCHAFFER	
	Examination by Mr. Kelsky	155
9	Prefiled Direct Testimony inserted	160
	Examination by Mr. Friedman	163
10		
11	ELLEN HARDGROVE	
	Examination by Mr. Kelsky	167
12	Prefiled Direct Testimony inserted	172
	Examination by Mr. Wharton	175
13	Further Examination by Mr. Kelsky	190
14		
15	ROBERT H. WEISBERG	
	Examination by Mr. Kelsky	196
16	Prefiled Direct Testimony inserted	200
	Examination by Mr. Wharton	203
	Further Examination by Mr. Kelsky	215
17		
18	SHERI SCHULTZ	
	Prefiled Direct Testimony inserted	217
19		
20	STEPHEN J. SUGGS	
	Prefiled Direct Testimony inserted	224
21		
22	LINDA COTHERMAN	
	Testimony by Ms. Cotherman	228
23	Prefiled Direct Testimony inserted	231
	Examination by Mr. Friedman	235
24		
25		

I N D E X
(Continued)

WITNESSES

	PAGE
3 NAME:	
4 JOHN R. BOYER	
5 Examination by Mr. Friedman	245
Prefiled Rebuttal Testimony inserted	247
6 Examination by Ms. Pirrello	252
Examination by Mr. Kelsky	253
7 Examination by Ms. Cotherman	254
Examination by Mr. Sandy	255
8 Further Examination by Mr. Friedman	263
9 JONATHAN H. COLE	
10 Examination by Mr. Wharton	266
Prefiled Rebuttal Testimony inserted	269
11 Examination by Mr. Kelsky	284
Examination by Ms. Cotherman	289
12 Further Examination by Mr. Wharton	291
13 DEBORAH D. SWAIN	
14 Examination by Mr. Friedman	292
Prefiled Rebuttal Testimony inserted	295
15 Examination by Ms. Pirrello	300
Examination by Ms. Cotherman	301
16 Examination by Mr. Sandy	302
17	
18	
19	
20	
21	
22	
23	
24	
25	

1

EXHIBITS

2

NUMBER:

ID

ADMITTED

3

7 As identified in the CEL

153

4

8-11 As identified in the CEL

195

5

12 As identified in the CEL

215

6

13 As identified in the CEL

220

7

14 As identified in the CEL

227

8

15-18 As identified in the CEL

239

9

19-20 As identified in the CEL

265

10

21 As identified in the CEL

291

11

22-23 As identified in the CEL

312

12

45 Greene Easement

135

13

46 Tatum Easement

137

14

47 CPI December 2021 Inflation
Jumped at Fastest Pace Since
1982 - The New York Times

142

16

17

18

19

20

21

22

23

24

25

1 PROCEEDINGS

(Transcript follows in sequence from Volume

3 1.)

4 COMMISSIONER CLARK: All right. Did everybody
5 make it back?

6 All right. We will proceed with the next
7 witness.

8 MR. FRIEDMAN: Environmental Utilities calls
9 Deborah Swain

10 Whereupon.

DEBORAH D. SWATN

12 was called as a witness, having been previously duly
13 sworn to speak the truth, the whole truth, and nothing
14 but the truth. was examined and testified as follows:

15 EXAMINATION

16 BY MR FRIEDMAN:

17 Q Ms. Swain, would you please state your -- you
18 were previously sworn, were you not?

19 A Yes. I was

20 Q Would you please state your name and business
21 address?

22 A Yes. I am Deborah Swain, 2025 Southwest 32nd
23 Avenue, Miami, Florida

24 Q And, Ms. Swain, did you profile direct
25 testimony in this case?

1 A Yes, I did.

2 Q **And if I were to ask you the questions that I**
3 **asked you in your -- in the prefilled testimony, would**
4 **the answers remain the same?**

5 A Yes, they would.

6 Q **Do you have any changes or corrections to your**
7 **testimony?**

8 A Not to my testimony. I do have corrections to
9 my exhibit --

10 Q **Okay.**

11 A -- which I presented in my rebuttal testimony.

12 Q **Would you please provide a summary of your**
13 **testimony?**

14 A Yes.

15 The purpose of my direct testimony is to
16 present the financial information for the determination
17 of the initial rates portion of the original certificate
18 application. These schedules were prepared by me
19 consistent with Commission rules and practices, and
20 based on information provided by the utility.

21 Construction costs were derived from the evaluation
22 report prepared and presented by John Cole.

23 The estimates included in this application are
24 the best estimates available at the time they were
25 prepared. This is an application process. It's not a

1 rate case, where records are audited. There are checks
2 and balances to prevent overearning and underearning
3 through the annual report process. They -- which are
4 reviewed by the Commission staff.

5 I included \$214,000 to pump out and remove the
6 sludge from the tanks. This is an operating expense.
7 There is \$1,500 in Little Gasparilla per tank, and \$700
8 per tank in Don Pedro and Knight Island. That's on page
9 26 of 28 of DDS-1.

10 Finally, in this case we are trying to keep
11 the monthly user fees down by maximizing CIAC, and also
12 to provide funding as quickly as possible for the large
13 capital expenditure that's required in the onset of the
14 project. The fee we requested is 75 percent of the
15 initial cost of the collection system.

16 As I mentioned, I do have corrections to
17 DDS-1, but those I presented in my rebuttal testimony.

18 MR. FRIEDMAN: Tender Ms. Swain for
19 cross-examination.

20 COMMISSIONER CLARK: All right. OPC.

21 MS. PIRRELLO: Thank you.

22 EXAMINATION

23 BY MS. PIRRELLO:

24 Q Good morning, Ms. Swain -- or afternoon, Ms.
25 Swain.

1 If you could look at CEL 7, which is your
2 responses to staff's interrogatories. It should be on
3 the top of that stack that's there.

4 A The one on top is a deposition. Is that what
5 you referred me to?

6 Q Oh, the next packet with the clip on it.

7 A Okay.

8 Q Okay. If you could look at your response to
9 Interrogatory 15AIII. It's on page seven.

10 A 15AIII, okay.

11 Q You show barge expense as being \$12,000 a
12 year, right?

13 A Correct.

14 Q But in your response to staff's POD 8, which
15 is CEL 25, it should be right behind that one, you
16 produced a chart showing that transit rates and
17 calculated a yearly cost of \$870, right?

18 A I recall that.

19 Q Okay. And in your Exhibit DDS-1, which is CEL
20 7, on line 18, page six of 28.

21 A Okay.

22 Q So on line 18 of that exhibit, you list
23 transportation expense at just over \$19,000, correct?

24 A That's correct.

25 Q Isn't it true that your testimony in discovery

1 **responses do not rectify these three numbers?**

2 A Yeah. They are not exactly the same number.

3 One thing is that the -- we were doing all the estimates
4 based on then today dollars, but this is presented for
5 the year 2033. So right off the bat, we have 10 years
6 of two percent inflation added to all the numbers.

7 The other is, as more discovery was requested,
8 and we were providing documentation and backup, those
9 numbers changed. So these were best estimates at the
10 time that they were provided, and then in doing further
11 research, they may have changed slightly.

12 **Q Okay. Are you familiar with the deposition
13 that Mr. Boyer gave as corporate representative?**

14 A I was on that -- or I heard most of that,
15 yeah.

16 **Q Okay. He testified that Environmental
17 Utilities is planning to enter into a contract for
18 barging at a flat monthly rate, right?**

19 A I heard that, yes.

20 **Q And that rate is expected to be \$1,000 a
21 month?**

22 A That's what I heard.

23 **Q But the company hasn't signed any contract for
24 barging fees, right?**

25 A I am not aware that they have.

1 Q Okay. And that proposal was with Palm Island
2 Transit, correct?

3 A I am sorry, what?

4 Q That proposed contract would be with Palm
5 Island Transit, is that right?

6 A I don't recall, but -- who the barge provider
7 is.

8 Q Would you agree that there are two barges that
9 would have to be used to get materials to both ends of
10 the island?

11 A I am not aware of how many barges are involved
12 in different parts of the island. I know that there is
13 different -- there is differences.

14 Q Did you include costs for two different barges
15 or just the one?

16 A In my -- no. I only have the \$1,000 a month
17 for barging in that transmission line, and then fuel of
18 \$300 a month. So I don't have -- I only have that one
19 cost in there --

20 Q Okay.

21 A -- for barging.

22 Q Isn't it true that your testimony does not
23 reflect the number of trips that EU will be required to
24 take during the construction process for barge trips?

25 A To my knowledge, the construction cost

1 includes the barge trips. I did not separately include
2 it.

3 Q If you could turn to page six of your Exhibit
4 DDS-1.

5 A Okay.

6 Q So you show a salaries and wages expense of
7 \$164,808 a year, correct?

8 A Correct.

9 Q But in response to staff's question seven on
10 CEL 25, you provided the numbers 70, 52, 41.6 and 41.6
11 thousand, correct?

12 A Yes, and the difference between the sum of
13 those numbers and my number is two percent inflation for
14 10 years.

15 Q You also provided the pay ranges for each of
16 the positions in Englewood Water District pay ranges?

17 A Right.

18 Q Would you agree, looking at the responses,
19 that all of the salaries you estimated are below the
20 bottom of the average range that you provided?

21 A Yes. I recall that, without looking at it, I
22 recall that we were at the low end.

23 Q Below the low end, correct?

24 A I don't remember if it was below the low end,
25 but I know it was at the low end at least.

1 Q Did you hear the conversation during Mr.
2 Boyer's deposition as corporate representative about
3 these salaries being below the ranges that you provided
4 for the locality?

5 A I don't recall that.

6 Q Okay. Subject to check, would you agree that
7 the salary you provide for your operations manager is
8 about \$5,000 below the bottom of the range you provided?

9 A I am not going to disagree or say that you are
10 not stating the truth. I just don't recall it.

11 Q All right. We will move on.

12 Is it fair to say that you have heard that
13 Americans are quitting their jobs at record levels?

14 A I have heard that. I also think the new
15 employment numbers were pretty good the last I heard
16 reported.

17 Q Is it fair to say that you have heard that
18 even professional industries have had difficulties
19 struggling in finding staff?

20 A I have heard that. I don't know how that has
21 anything to do with Mr. Boyer and his outreach to
22 potential employees, who he's talked to, what kind of
23 efforts he's made already to identify potential staff.
24 It doesn't necessarily fit with what this situation is.

25 Q Isn't it true that Mr. Boyer has not hired

1 **staff at the rates you have estimated?**

2 A He can't hire staff until we get a certificate
3 and a utility in place. And, correct, he has not hired
4 them, but he did research before providing these numbers
5 that were based upon his speaking to other people. So I
6 don't know what the current situation necessarily has
7 anything to do with who he has spoken to.

8 Q **Okay. Well, the salary that you have provided**
9 **for a bookkeeper is about \$19,000 below the range that**
10 **you provided for the county, is that right, or the**
11 **Englewood Water District?**

12 A Yes. I believe all those salaries were
13 Englewood Water District, and we gave a range -- if you
14 looked at what I provided, what I recall is that the
15 titles didn't exactly match, and so we tried to identify
16 their staff that best matched the title to identify what
17 those might be, and that's what I did.

18 It could be that the titles are not apples to
19 apples, so I did the best I could with the descriptions,
20 and the job descriptions, and what I thought that staff
21 was going to be doing for Jack versus the Englewood
22 Water District, when I tried to give an estimate of what
23 those ranges are in Englewood Water District.

24 Q **Okay. If you could go to page 14 of your**
25 **Exhibit DDS-1.**

1 A Okay.

2 Q You show a cost of \$250,000 under the label
3 **Easements-Legal Surveying, right?**

4 A Yes.

5 Q And that 250 includes both the cost of
6 **surveying and the cost of purchasing any necessary**
7 **easements, correct?**

8 A That's what -- yes, that's what's intended to
9 include.

10 MS. PIRRELLO: Okay. I would like to identify
11 OPC Cross Exhibit 1. That will be behind those
12 first two documents. It's titled Greene Easement.
13 If we could mark this as Exhibit 45.

14 COMMISSIONER CLARK: Ms. Pirrello, let me make
15 certain we are on the same page, which one is it?

16 MS. PIRRELLO: The third document in your
17 stack that was clipped.

18 COMMISSIONER CLARK: Oh, they are clipped as
19 separate documents. I got you.

20 MS. PIRRELLO: And the description says,
21 Greene Easement.

22 COMMISSIONER CLARK: Titled Greene Easement?

23 MS. PIRRELLO: Yes, sir.

24 COMMISSIONER CLARK: All right. This desk
25 isn't near as big as our other one. Hang on let me

1 find -- if somebody wants to tell me what the next
2 number is.

3 MS. CRAWFORD: 45.

4 COMMISSIONER CLARK: 45, we will mark Greene
5 exhibit as Exhibit 45.

6 (Whereupon, Exhibit No. 45 was marked for
7 identification.)

8 BY MS. PIRRELLO:

9 Q **Mr. Boyer already acknowledged these easements**
10 **when he was questioned earlier, but for the sake of the**
11 **record, could you turn to the Bates-stamped page five?**
12 **It says Attachment B at the top.**

13 A Okay.

14 Q **And it says that the Little Gasparilla water**
15 **utility paid \$7,000 for this easement, correct?**

16 A I have never seen this document before so I am
17 not sure what it's referring to, who's paying it, why
18 it's being paid.

19 Q All right. We'll back up then.

20 If you look at the first page of the document,
21 **it's titled, Grant of Non-exclusive Utility Easement.**

22 A Okay.

23 Q **Do you agree with that?**

24 A Yes.

25 Q **And it says that it's entered into between a**

1 **Deborah Greene and Little Gasparilla Water Utility,**
2 **right?**

3 A Yes.

4 Q And can we agree that LGWU is Little
5 **Gasparilla Water Utility?**

6 A Okay. I will accept that.

7 Q And you would agree that LGWU operates in a
8 **similar service territory to the one that's being**
9 **requested by Environmental Utilities?**

10 A Yes, I believe it does.

11 Q So in the fourth paragraph of this document,
12 **it describes the easement as being six feet by 100 feet,**
13 **correct?**

14 A Yes, I read that.

15 Q Okay. And then if we turn back to page five,
16 **it says that it's \$7,000 for the easement, correct?**

17 A Yes, that's what this document says. Of
18 course, again, I haven't ever seen it before.

19 MS. PIRRELLO: Okay. I would like to identify
20 OPC Cross Exhibit 2, and label it as Exhibit 46.

21 COMMISSIONER CLARK: You are going to have to
22 be more specific with me, Ms. Pirrello.

23 MS. PIRRELLO: Description Tatum Easement
24 should be the next one in your packet.

25 COMMISSIONER CLARK: Tatum Easement?

1 MS. PIRRELLO: Yes.

2 COMMISSIONER CLARK: Mark it as Exhibit No.

3 46.

4 (Whereupon, Exhibit No. 46 was marked for
5 identification.).

6 BY MS. PIRRELLO:

7 Q Ms. Swain, this document is titled, Easement
8 for Water Utility, correct?

9 A Yes. Yes, I see that. Again, I haven't ever
10 seen this before either.

11 Q But --

12 A I am not familiar with it.

13 Q Okay. It says that it's being entered into
14 between a William and Dian Tatum and the Little
15 Gasparilla Water Utility, correct?

16 A Yes, I see that.

17 Q And the easement is described as being five
18 feet by 100 feet, right?

19 A I am sorry, say that again.

20 Q The easement is described as being five feet
21 by 100 feet. It's toward the bottom of the first page
22 there.

23 A Yes, I see that.

24 Q And if you look back to the top, it says that
25 the --

1 MR. FRIEDMAN: Chairman Clark, I am going to
2 interject an objection to this line of questioning.
3 All she's basically doing is asking the witness to
4 read something. The witness has said, I have never
5 seen this document. She said she had never seen
6 the prior document. And all she's asking this
7 witness to do is read from a document that she's
8 never -- that the witness has never seen. Well, I
9 don't understand the relevance of that.

10 COMMISSIONER CLARK: That's kind of the same
11 question I had is, is these exhibits, how are they
12 relevant to -- this is a water, I guess a water
13 easement as opposed to a sewer easement. Are these
14 companies -- are you alleging that these companies
15 that are owned by Mr. Boyer, is that the --

16 MS. PIRRELLO: Yes, the Little Gasparilla
17 Water Utility is owned by Mr. Boyer.

18 COMMISSIONER CLARK: And Ms. Swain, as a
19 consultant, having never seen these documents, I
20 mean, what are you wanting -- what are you trying
21 to get out of her from this?

22 MS. PIRRELLO: The point to be made is that
23 they operate in a similar service territory, and
24 that these could serve as a reference point for
25 what the easements that Mr. Boyer may have to

1 purchase for Environmental Utilities could cost.

2 COMMISSIONER CLARK: Ms. Helton, could you
3 help me out here? Who sponsored these documents?

4 I mean, I don't understand what witness is
5 verifying the authenticity of the documents, number
6 one. Am I off base?

7 MS. HELTON: No, sir.

8 How do we know these are true and correct
9 copies of the exhibits? I mean, by -- if she
10 cannot authenticate them, how are they to be
11 authenticated, and how are they to be admissible?

12 MS. PIRRELLO: They are obtained from the
13 County records websites. They are public record.

14 COMMISSIONER CLARK: But her knowledge of them
15 as being authentic, I mean, would this be a better
16 question for Mr. Boyer, who is the -- as the owner
17 of the company, he could authenticate the document,
18 I would assume; is that right, Ms. Helton?

19 MS. HELTON: I think you are on the right
20 track, Mr. Chairman.

21 COMMISSIONER CLARK: Could you redirect those
22 questions to Mr. Boyer? Would that be more
23 appropriate?

24 MS. PIRRELLO: Sure.

25 COMMISSIONER CLARK: Thank you.

1 BY MS. PIRRELLO:

2 Q Isn't it true that in conversations with a
3 surveying company, they've quoted the company about
4 \$10,000 per linear mile for surveying?

5 A I don't know that. I don't know the
6 conversations with the surveyor or any specifics about
7 it.

8 Q Isn't it true that your testimony doesn't
9 include a specific cost for surveying?

10 A It includes an overhead cost. It includes --
11 which includes the engineering, the mobilization and
12 other overhead costs, which would also be surveying and
13 other professional services. And that's about
14 29-and-a-half percent that we added on top of the
15 construction costs.

16 Q Okay. Isn't it true that you have not
17 reflected anywhere in the filing whether the easement
18 budget includes funds for recording fees?

19 A Other than the specific costs we have in land
20 for easements, which is the legal, and the surveying for
21 the easements, and I didn't develop that number, but
22 that, I presume, is all inclusive.

23 Q Okay. But you have not provided a breakdown
24 of the allocations within the category surveying and
25 easements, correct?

1 A Correct.

2 Q So we've talked a little bit today already
3 about the inflation over the last year. And the prices
4 that you used to calculate costs are based on the
5 Giffels-Webster report, which is CEL 4, correct?

6 A I am sorry, based it on what?

7 Q The CEL No. 4, which was the report that Mr.
8 Cole sponsored?

9 A Oh, yes. Correct.

10 Q Okay. And he said that the bids are about
11 three to five years old with a two-percent increase
12 added on to those?

13 A I heard him say that they were based upon
14 estimates that are on projects three to five years old,
15 and that he did some add-ons to accommodate the passage
16 of time.

17 Q Okay. Isn't it true that there is a
18 developing consensus that the Federal Reserve intends to
19 raise interest rates?

20 A And lower them.

21 Q Well -- all right.

22 MS. PIRRELLO: I would identify the next
23 exhibit in the packet CPI December 2021 Inflation
24 Jumped at Fastest Pace Since 1982, by the New York
25 Times.

1 COMMISSIONER CLARK: That will be Exhibit No.
2 47.

3 MS. PIRRELLO: Yes.

4 (Whereupon, Exhibit No. 47 was marked for
5 identification.)

6 BY MS. PIRRELLO:

7 **Q If you turn to Bates page seven.**

8 MR. FRIEDMAN: Commissioners, I am going to
9 interpose an objection on any questions regarding
10 future inflation. The PSC rules tell us how to do
11 this. And they use the best estimate they have at
12 the time they do their documentation, which is what
13 Ms. Swain testified she did.

14 We could go on ad nauseam, as you have heard
15 about rising costs of A and B and C, or at least
16 people who think A and B and C are going to rise,
17 and that's irrelevant to the process the Commission
18 has put in place.

19 You can't -- you have got to have a time and
20 place that you say this is when it is. And that's
21 what we've done. We filed that application based
22 upon what this commission requires in an original
23 certificate case. And for people to come back
24 later and start taking potshots at it is
25 irrelevant.

1 COMMISSIONER CLARK: Ms. Pirrello?

2 MS. PIRRELLO: I think it's relevant to the
3 accuracy of the costs that will be imposed on the
4 ratepayers, which should be taken into account when
5 deciding if this certificate should be granted.

6 COMMISSIONER CLARK: Well, I agree with both
7 of you, and -- but I am going to kind of put some
8 parameters around the discussion of inflation.

9 You can ask Ms. Swain if she is aware of
10 current inflation rates. You can phrase some
11 questions related specifically to what she knows.

12 Ms. Swain, our rule at the Commission is
13 simply answer the question yes or no. If it
14 requires a follow-up explanation, let that be
15 brief, but if you don't know the answer to the
16 question, don't speculate. Just say, I don't know.
17 I am not aware of. I can read an article and tell
18 you, yeah, that's what it says. I don't know it to
19 be a fact.

20 So if we can kind of box ourselves in here and
21 keep under those parameters, I think it will move
22 along a lot quicker.

23 Ms. Pirrello.

24 BY MS. PIRRELLO:

25 Q All right. Let's skip ahead a little bit just

1 **to say isn't it true that your testimony does not**
2 **account for inflation since the preparation of the GW**
3 **report?**

4 A Correct, as it pertains to construction costs.

5 Q Okay. If you could turn now to page 28 of
6 **your Exhibit DDS-1.**

7 A Okay.

8 Q **What does this schedule represent?**

9 A This is the projected capital structure when
10 the utility reaches 80 percent capacity.

11 Q Okay. And on line eight of this schedule you
12 show accumulated deferred income taxes of 3,040,210, is
13 that correct?

14 A Correct.

15 Q **What does that number represent?**

16 A That is a -- that was the taxes associated
17 with the gross-up of CIAC, and is one of the corrections
18 I have in my rebuttal testimony for DDS-2, to delete
19 that.

20 Q **Yes. And in your deposition, you stated that**
21 **that number was shown incorrectly.**

22 A Yes. That's right. And the other thing that
23 makes it irrelevant, aside from the fact it's incorrect,
24 the -- what's irrelevant also is there is no longer
25 gross-up needed on CIAC because it's no longer taxable,

1 so it's irrelevant for that reason.

2 Q Okay. Are you familiar with how ADIT is
3 calculated --

4 A Yes.

5 Q -- or created?

6 A Yes.

7 Q So isn't it true that the difference between
8 the tax depreciation and the Florida PSC book
9 depreciation is one example of how accumulated deferred
10 income taxes are created?

11 A Yes, that's one.

12 Q And would this result -- would the timing
13 difference result in a credit or debit deferred income
14 tax on the books of the company?

15 A It depends on whether the tax rate is higher
16 or lower than the book rate. Where the tax rate is
17 lower, it results in a credit, and where it's a longer
18 tax life than books, then it's the other way around.

19 Q Okay. Isn't it true that neither the Excel
20 file you produced in response to Citizens' POD 1, which
21 is CEL 39, or your Exhibit DDS-1, include a calculation
22 of credit deferred income taxes related to the tax
23 timing difference for depreciation?

24 A That's correct. And it's excluded for a
25 number of reasons, not the least of which is that there

1 is no way to know if the owner is going to take
2 advantage of a shorter tax life. It's optional to the
3 owner. So we don't know what his tax election is going
4 to be.

5 And then there are other reasons. For
6 example, it's never been done in an original certificate
7 initial rate application. It's not common to do that.
8 It's never been done. I shouldn't say it's common.
9 It's never been done.

10 **Q But in any other rate case application, you
11 would be required to calculate and provide the
12 accumulated deferred income taxes?**

13 A Yes, if the utility is going to elect to take
14 a different life for tax purposes, then we do calculate
15 the accumulated deferred income tax associated with that
16 timing difference for a rate case, for a full rate case.

17 **Q So it's not included here because it's your
18 opinion that it's not Commission practice to include
19 them in the original certificate?**

20 A It's -- yes, that's correct. And also that
21 it's at the election of the owner, and the owner at this
22 time has not determined that that's going to be his
23 election.

24 MS. PIRRELLO: I would like to move Exhibit 45
25 into the record, and that's all the questions that

1 I have for Ms. Swain.

2 MR. FRIEDMAN: Objection.

3 MS. CRAWFORD: And we will take up exhibits at
4 the end once redirect is concluded.

5 COMMISSIONER CLARK: I can't understand you.

6 Say that again.

7 MS. CRAWFORD: Normally we take up exhibits,
8 both the prefilled direct and the cross-examination,
9 once redirect is concluded; however, we can take
10 note of your objection.

11 COMMISSIONER CLARK: We are going to wait, and
12 we will take up everything at the end, like we
13 normally do.

14 Ms. Pirrello, anything else?

15 MS. PIRRELLO: No.

16 COMMISSIONER CLARK: All right. Palm Island.

17 MR. KELSKY: Thank you.

18 EXAMINATION

19 BY MR. KELSKY:

20 Q Ms. Swain, have you ever spoken to Centennial
21 Bank about the financing of this if project?

22 A No, I have not.

23 Q Do you know any of the terms of the proposed
24 financing?

25 A No, I do not. As far as I know, that's a

1 discussion with Mr. Boyer personally and the bank --

2 Q Have you reviewed --

3 A -- not the utility.

4 Q I apologize. I didn't mean to step on your
5 toes there.

6 Have you reviewed the personal financial
7 statements?

8 A No, I have not.

9 Q Did you see the letter from Freedom Holdings
10 Manatee?

11 A No, I have not.

12 Q Did you conduct an appraisal of the value of
13 the company?

14 A No, I have not. As far as I know, there is
15 really almost no company currently until the certificate
16 is authorized.

17 Q Do you know whether Freedom Holdings Manatee
18 has the capacity to fund the project on the order of
19 this magnitude?

20 A I don't know them. I don't -- I haven't had
21 any dealings with them, so, no, I don't know.

22 Q You stated in your deposition that there were
23 errors in your rate calculation on the --

24 MR. FRIEDMAN: That's not the proper way to
25 use a deposition in the examination.

1 MR. KELSKY: I can rephrase.

2 COMMISSIONER CLARK: Rephrase.

3 BY MR. KELSKY:

4 Q **So do you -- let me do it this way: In the**
5 **calculations that you made, did you incur a 14-percent**
6 **change in the rates from your original calculations?**

7 A I do recall that there was -- there was a
8 reduction. I have my revised exhibit as part of my
9 rebuttal, but the biggest change was the elimination of
10 gross-up on CIAC, and eliminating that accumulated
11 deferred income tax.

12 Q **Do you believe that 14-percent change in the**
13 **rate to be immaterial?**

14 A I don't believe that it is in the order of
15 magnitude to be considered material.

16 Q **What does constitute material?**

17 A I do a lot of water and sewer utility rates,
18 and it's often we have variances of up to 15 percent
19 without considering that material, so it's getting
20 close.

21 Q **It's close to material but not quite material?**

22 A It's in the eyes of the beholder.

23 Q **What is the source of funds that will be used**
24 **to fund the utility plant in service and accumulated**
25 **depreciation accounted for in your rate base**

1 **calculation?**

2 A The primary source of funding is the equity of
3 the owner. There is a small amount that we anticipate
4 from customer deposits that also goes on the capital
5 structure, but until there is a certificate and the
6 owner can go determine if there is financing available
7 to the utility, we assume it to be all equity.

8 Q **And do you know whether the Boyers or EU has
9 the equity to fund the project independent of financing?**

10 A I know that based upon my initial rate
11 calculations that the utility is going to be in a
12 financial position to fully fund its construction and
13 its operations through the duration of my planning
14 period, the planning period which was through -- into
15 the 2040s.

16 Q **But that's using CIAC, correct?**

17 A Well, yes. Yes. Absolutely.

18 Q **You stated that Environmental Utilities
19 intends to use a provision of the Infrastructure
20 Investment and Jobs Act in order to treat CIAC as
21 nontaxable income, is that correct?**

22 A Yes, that is the -- that is the law now, so
23 CIAC is no longer taxable.

24 Q **And that's Section 80601 of the Infrastructure
25 Investment and Jobs Act?**

1 A Correct.

2 Q **Can you explain the impact of the use of that**
3 **section on your rate calculation?**

4 A Yes.

5 First of all, the customer will no longer have
6 to pay the grossed up portion, because initially we
7 asked that it be grossed up.

8 Secondly, the -- any associated deferred
9 income taxes are eliminated. So that is the other
10 impact.

11 Q **Would you consider the impact of Section 80601**
12 **on your rate calculation to be a material change?**

13 A That is the reason for the change. So we can
14 get into the discussion again about whether 15 percent
15 or less is he material or immaterial, but that is, by
16 and large, the reason for the change from my first
17 exhibit and my revised exhibit.

18 Q **Would you consider the impact of removing**
19 **CIAC, accumulated amortization of CIAC, and the portions**
20 **of utility plant in service and accumulated depreciation**
21 **funded by the CIAC to be a material change to your**
22 **calculation?**

23 A You are going to have to run that by me again.

24 Q **That's a lot of acronyms so I will try to slow**
25 **it down a little bit.**

1 Would you consider the impact of removing
2 CIAC, accumulated amortization of CIAC, and the portions
3 of utility plant in service and accumulated depreciation
4 funded by the CIAC to be a material change to your
5 calculation?

6 A I guess what I am missing is why that would --
7 what's -- what's changing, and why would that result in
8 a change to my calculations? Why would I remove it?

9 Q Well, either way, we are still at the
10 15-percent issue, correct?

11 A Are you -- well, if you are talking about the
12 grossed up portion of CIAC, that was part of what was
13 removed that resulted in the lowering of the rates.

14 MR. KELSKY: Okay. Thank you. I don't have
15 any other questions.

16 COMMISSIONER CLARK: Okay.

17 Ms. Cotherman.

18 EXAMINATION

19 BY MS. COTHERMAN:

20 Q I think I just have one question.

21 Who developed the numbers that you were given
22 to start with?

23 A As I stated in my testimony, the construction
24 costs came from John Cole, and the operating and the
25 maintenance expenses, other information, came directly

1 from the utility, from Mr. Boyer.

2 MS. COTHERMAN: Thank you. That's all.

3 COMMISSIONER CLARK: Thank you.

4 Staff?

5 MR. SANDY: No cross at this time, Mr.

6 Chairman.

7 COMMISSIONER CLARK: Commissioners?

8 Redirect?

9 MR. FRIEDMAN: No redirect.

10 I would like to move Ms. Swain's exhibit.

11 It's on the CEL as No. 7.

12 COMMISSIONER CLARK: Okay. So moved.

13 (Whereupon, Exhibit No. 7 was received into
14 evidence.)

15 COMMISSIONER CLARK: Any of the other parties?

16 All right. Then would you like your witness
17 excused?

18 MR. FRIEDMAN: I would, sir.

19 COMMISSIONER CLARK: You are excused. Thank
20 you.

21 (Witness excused.)

22 COMMISSIONER CLARK: All right. We got to get
23 a bigger desk.

24 MR. FRIEDMAN: Mr. Chairman, that concludes --

25 COMMISSIONER CLARK: I thought so. That's

1 what I was getting to.

2 MR. FRIEDMAN: That concludes our direct case.

3 COMMISSIONER CLARK: All right. So we are
4 going to move on to Palm Island's exhibits. My
5 problem is, one of my sheets, I noticed earlier,
6 has a witness out of order, or off-line, if I can
7 find it. I am showing Ellen Hardgrove is the first
8 witness. What do y'all show?

9 MS. HELTON: I show the same thing.

10 COMMISSIONER CLARK: Because there is one
11 that's missing. Is it the next one?

12 MR. FRIEDMAN: The order of witnesses in the
13 preorder --

14 COMMISSIONER CLARK: That's what I am looking
15 at. I saw one of that said Schaffer and one what
16 said --

17 MS. CRAWFORD: Our apologies. That's a
18 mistake on our part.

19 COMMISSIONER CLARK: All right. Who's up
20 then?

21 MS. CRAWFORD: Well, I would -- it's really
22 Palm Island's case. Ms. Schaffer is listed first
23 in the prehearing order, so --

24 MR. KELSKY: Yes, she --

25 MS. CRAWFORD: If that's your intention, let's

1 go ahead.

2 MR. KELSKY: Yes. We are going to call Meryl
3 Schaffer, please.

4 COMMISSIONER CLARK: Who did we agree on?

5 MR. KELSKY: Meryl Schaffer.

6 COMMISSIONER CLARK: Ms. Schaffer, all right.

7 Whereupon,

8 MERYL SCHAFFER

9 was called as a witness, having been previously duly
10 sworn to speak the truth, the whole truth, and nothing
11 but the truth, was examined and testified as follows:

12 EXAMINATION

13 BY MR. KELSKY:

14 Q **Have you been sworn?**

15 A Yes, I have.

16 Q **Okay. Can you please state your name and home
17 address?**

18 A My name is Meryl Schaffer. My home address is
19 141 Kettle Harbor Drive on Don Pedro Island.

20 Q **What is your relation to Palm Island Estates
21 Association?**

22 A I am the President of the Palm Island Estates
23 Association.

24 Q **Was your testimony prefiled in this case?**

25 A Yes.

1 Q **Would your testimony be the same today as your**
2 **testimony that you prefiled?**

3 A Yes.

4 Q **Can you summarize your testimony, please?**

5 A Thank you.

6 Good afternoon, Commissioners. My name is
7 Meryl Schaffer, and I have been a resident of Don Pedro
8 Island for 20 years. I have been a member of Palm
9 Island Estates Association, we call it PIE, since I
10 moved to the island. And I have served on the Board for
11 roughly 10 or 12 years as the corresponding Secretary,
12 Vice-President and now President. I also served for
13 three years on a community planning advisory committee
14 for Knight and Don Pedro Islands, the Planning Advisory
15 Committee to Charlotte County.

16 First I would like to say that there is no
17 Palm Island. There is going -- north to south, we have
18 Thornton Key, Knight Island and then Don Pedro Island.
19 Now, there is a Palm Island Resort that's on Knight
20 Island, and a Knight Island Utility of that service Palm
21 Island Resort on Knight Island. There is also a Palm
22 Island Estates Division, which is on both Knight Island
23 and Don Pedro Island. So if you have heard everyone
24 talking about these islands, you can see how things get
25 very confusing. To the south of us is Little Gasparilla

1 Island.

2 To hear these islands referred to as one
3 island is really misleading. Some of the islands are
4 accessible only by boat, like Little Gasparilla Island,
5 Thornton Key. Our island has a vehicle ferry that runs
6 fairly regularly. Little Gasparilla Island has a
7 vehicle ferry, or truck ferry, or -- we are not really
8 sure what it is. That being said, the way these islands
9 work are rather different.

10 Now, Palm Island Estates Association is a
11 civic organization. We are a representative voice in
12 civic and community affairs. We are a nonprofit
13 voluntary homeowners' association. We have
14 approximately 240 members, and we have 71 full-time
15 members, 139 part-time or seasonal members, and about 25
16 vacant lot owners, and that's fairly proportional for
17 our islands.

18 The reason why I stress voluntary is because
19 our membership, it's not like a mandatory HOA, it's a
20 minimal annual fee. We keep everyone up to date. We
21 are a civic and social organization. But what's
22 important is our membership guides us with their votes
23 and their wallets. We rarely take a position in issues
24 that could be considered controversial, because if we
25 take the wrong position, we will lose a substantial

1 amount of our membership.

2 On January -- in January of 2021 our
3 membership voted, nearly unanimously, to retain an
4 attorney and expert witnesses to oppose this proposal
5 for certification for our service area. We are a very
6 low density area. We are approximately 63 percent
7 build-out, and there are 751 properties there on Knight
8 and Don Pedro Islands.

9 Our association is the single largest all
10 island voluntary HOA on Knight Island and Don Pedro
11 Island and Thornton Key. We also take membership from
12 the Palm Island Resort. So essentially, we are a very
13 representative body, and I can say with confidence that
14 the vast, vast majority of our membership opposes this
15 proposal.

16 My purpose here is to provide testimony on
17 behalf of PIE to attest that, to the best of my
18 knowledge, no member has requested central sewer; and to
19 attest that nobody from or for Charlotte County has done
20 water quality testing on our islands that found elevated
21 nitrates or any pollution associated with sewage.

22 Thank you for allowing me to present my
23 testimony.

24 COMMISSIONER CLARK: Thank you very much.

25 MR. KELSKY: Move the direct testimony into

1 the record, please.

2 COMMISSIONER CLARK: So ordered.

3 (Whereupon, prefilled direct testimony of Meryl
4 Schaffer was inserted.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

/

DIRECT TESTIMONY

OF

MERYL SCHAFFER

on behalf of

Palm Island Estates Association, Inc.

1 **Q. Please state your name, position and address.**

2 A. My name is Meryl Schaffer. I am the current president of Palm Island Estates
3 Association, Inc., a Florida not-for-profit corporation. My physical address is
4 141 Kettle Harbor Drive, Don Pedro Island. My mailing address is P.O. Box
5 804, Placida, FL 33946.

6 **Q. State briefly your relationship to Palm Island Estates Association, Inc.**

7 A. I have lived on Don Pedro Island since 2000 and have been active in the
8 community as a member of Palm Island Estates Association, Inc. for the past
9 20 years. I have also served on the Board of Directors for several terms as
10 Director, Corresponding Secretary, Vice President and now President.

11 **Q. What is Palm Island Estates Association, Inc.?**

12 A. Palm Island Estates Association, Inc., is a Florida not-for-profit corporation,
13 made up of property owners from Don Pedro Island, Knight Island and
14 Thornton Key (bridgeless barrier islands) in Charlotte County for the purpose
15 of promoting the collective interests of the homeowners who reside and own
16 property on the islands. Its current membership is 240 households comprising
17 416 individuals. The organization, in part, monitors local governmental affairs
18 to determine how prospective action/inaction might impact the property owners
19 who are members of Palm Island Estates Association, Inc. This includes the
20 prospect of Environmental Utilities, LLC seeking to obtain approval from the
21 Public Service Commission to obtain a Certificate of Authorization to provide
22 sewer service to the membership of Palm Island Estates Association, Inc.

23 When the information became public that Environmental Utilities, LLC, would
24 be seeking the certificate, Palm Island Estates Association, Inc., consistent with
25 its bylaws and at the behest of its membership, formed an action committee to

1 challenge the certificate application which included the retention of counsel and
2 experts to rebut the claimed need for sewers as well as the financial wherewithal
3 of Environmental Utilities, LLC to operate and develop the sewage utility.

4 **Q. Are you providing testimony on behalf of Palm Island Estates Association,
5 Inc.?**

6 A. Yes.

7 **Q. What is the purpose of your direct testimony?**

8 A. The purpose of my direct testimony is to discuss that, in addition to describing
9 what Palm Island Estates Association, Inc. does as an organization, to the best
10 of my knowledge no participant in the organization has requested sewers and
11 nobody by or on behalf of Charlotte County has conducted water quality testing
12 on Don Pedro Island, Knight Island or Thornton Key that has found elevated
13 nitrates or other noxious chemicals associated with sewage.

14 **Q. Does that conclude your direct testimony?**

15 A. Yes, it does.

1 MR. KELSKY: And ready for cross.

2 COMMISSIONER CLARK: All right. Environmental
3 Utilities?

4 MR. FRIEDMAN: Thank you, Mr. Chairman.

5 EXAMINATION

6 BY MR. FRIEDMAN:

7 Q You stated a minute ago that the islands
8 weren't densely developed, is that correct?

9 A No. I said we are a low density area. The
10 plats -- when Palm Island Estates was developed in the
11 mid-'50s, it was considered luxury lots. They were
12 large, oversized properties. An upscale development.
13 Roughly 80 by 100, 120. I think it's 80 by 100 on the
14 beach and 80 by 120 elsewhere. So the residential area
15 south of the resort are rather spacious.

16 Q So you don't believe that the island is
17 densely platted?

18 A Parts of it are densely platted up on Thornton
19 Key. There are small railroad lots up there and such.
20 I am not an expert on platting or landuse. I just know
21 my neighborhood.

22 Q Okay. And I believe you stated that nobody on
23 behalf of Charlotte County has conducted water quality
24 testing on Don Pedro Island, Knight Island or Thornton
25 Key that has found elevated nitrates or the noxious

1 **chemicals associated with sewage, do you recall that**
2 **statement?**

3 A Yes, that is correct. I -- to the best of my
4 knowledge.

5 Q **Do you know if anybody on behalf of anybody**
6 **else has conducted water quality testing on Don Pedro**
7 **Island, Knight Island or Thornton Key that has not found**
8 **elevated nitrates?**

9 A Yes.

10 Q **And did you present that evidence?**

11 A We have summaries of that that we were going
12 to make available tomorrow at public comment.

13 Q **So you have information about water quality**
14 **that you are going to wait and let customers present?**

15 A Let me explain.

16 In 2011, our organization did some fecal
17 coliform testing essentially to match what was being
18 done by the State on the beaches. The tests came up
19 clean every year. We've got the information posted on
20 our website. It's public and available.

21 Q **Okay. And it's folk fecal coliform, not**
22 **nutrients?**

23 A Correct. Correct.

24 Q **Okay. Thank you.**

25 MR. FRIEDMAN: I have no further questions.

1 COMMISSIONER CLARK: All right. OPC?

2 I am assuming everyone is aware we don't allow
3 friendly cross. I am not sure how we are lining up
4 here, but y'all are aware?

5 MS. PIRRELLO: No questions.

6 COMMISSIONER CLARK: Okay. Ms. Cotherman?

7 MS. COTHERMAN: No questions.

8 COMMISSIONER CLARK: Staff?

9 MR. SANDY: None.

10 COMMISSIONER CLARK: Commissioners?

11 I would just ask one question.

12 You mentioned that this -- in relation to how
13 the island is -- how the island lays out, I am
14 still confused. Y'all have given way too many
15 names for me to be totally sure of exactly how the
16 islands lay out. This -- you keep mentioning there
17 is multiple islands. This is one contiguous body
18 of land, am I correct?

19 THE WITNESS: It is joined at the beach. You
20 can walk from Stump Pass at the north end of the
21 Palm Island Resort all the way down to the end of
22 Little Gasparilla Island.

23 COMMISSIONER CLARK: So the contiguous body of
24 land, I can start on one end and I can walk all the
25 way, that's a contiguous body of land, right?

1 THE WITNESS: Correct.

2 COMMISSIONER CLARK: Okay.

3 THE WITNESS: You can't take a car from one --

4 COMMISSIONER CLARK: Right, but it doesn't
5 change the fact that it is one piece of land?

6 THE WITNESS: Yes. Yes.

7 COMMISSIONER CLARK: Okay. That helps me a
8 whole bunch.

9 Any other questions, Commissioners?

10 All right.

11 MR. KELSKY: No redirect we.

12 COMMISSIONER CLARK: No redirect. All right.

13 MR. KELSKY: Excuse the witness.

14 COMMISSIONER CLARK: Do you want to move your
15 exhibits?

16 MS. CRAWFORD: She has no exhibits. No
17 exhibits for this witness.

18 COMMISSIONER CLARK: There are no exhibits,
19 okay.

20 All right. The witness is excused.

21 (Witness excused.)

22 COMMISSIONER CLARK: Next is -- next witness.

23 MR. KELSKY: Yes, Ellen Hardgrove.

24 Whereupon,

25 ELLEN HARDGROVE

1 was called as a witness, having been previously duly
2 sworn to speak the truth, the whole truth, and nothing
3 but the truth, was examined and testified as follows:

4 COMMISSIONER CLARK: It your witness, sir.

5 MR. KELSKY: Thank you, sir.

6 EXAMINATION

7 BY MR. KELSKY:

8 Q **Can you state your name and professional
9 address for the record, please?**

10 A Yes, my name -- am I on?

11 COMMISSIONER CLARK: Yes, ma'am.

12 THE WITNESS: Sorry.

13 My name is Ellen Hardgrove, and my office at
14 315 Ivanhoe Boulevard, Orlando, Florida.

15 BY MR. KELSKY:

16 Q **Have you been sworn?**

17 A I have.

18 Q **Okay. What is your profession?**

19 A I am a Land Planner.

20 Q **Was your testimony prefiled in this case?**

21 A Yes.

22 Q **Did you prepare any exhibits?**

23 A Yes.

24 Q **What exhibits did you prepare?**

25 A I have the Charlotte County Comprehensive

1 Plan, the Capital Improvements Program for the County.

2 Q **Do you have your affidavit?**

3 A I have an affidavit.

4 Q **And do you have your letter in response to**
5 **Charlotte County's September 2021 --**

6 A Yes.

7 Q **Okay. Do you have any other exhibits?**

8 A No.

9 Q **Okay. Did you prepare prefilled testimony in**
10 **this case?**

11 A I did.

12 Q **Would your testimony be the same today as it**
13 **was back at the time it was prefilled?**

14 A Yes.

15 Q **Are there any additions, or changes, or edits**
16 **that need to be made?**

17 A No.

18 Q **Can you please summarize your testimony?**

19 A Yes.

20 Let me just start by saying good afternoon and
21 give you a background.

22 I have a Bachelor's degree in Economics. I
23 have a Master's degree in Urban Regional Planning. I
24 have 40 years of land planning experience, including 28
25 years being responsible for comprehensive planning.

1 My purpose today is to discuss the threshold
2 use issue in this proceeding, specifically whether there
3 is a need for the proposed service. The Charlotte
4 County Comprehensive Plan demonstrates there is no need
5 for this service. In fact, the proposed service is
6 contrary to the County's growth strategy.

7 I submitted an affidavit along with the other
8 exhibits just mentioned, which detail that
9 inconsistency, but most important is that EU's proposed
10 sewer area is in the County's rural service area, and
11 there is an explicit policy in the Comprehensive Plan
12 that states that expansion of sewer utilities into the
13 rural service area is prohibited unless there is clear
14 and convincing evidence that a health problem exists.
15 That evidence has not been demonstrated.

16 The proposal is also inconsistent with the
17 policy targets specifically for the bridgeless barrier
18 islands, where EU is proposing service. The policy
19 specifically discourages development in population
20 concentrations on the bridgeless barrier islands due to,
21 among other things, difficulty in providing fire and
22 emergency management services. We heard about the
23 velocity zone. And there is an extreme difficulty for
24 hurricane preparedness and evacuations from this
25 bridgeless barrier island.

1 The tools to meet this policy are not only
2 density caps, but also incentivizing transferring
3 development rights off this island, as well as land
4 acquisition.

5 Another significant tool used to direct
6 development from the bridgeless barrier islands, which
7 is mentioned several times in the Comprehensive Plan, is
8 prohibiting sewer expansion in this area unless there is
9 a public health need.

10 As stated in the water and sewer subelement of
11 the plan -- I'm going to -- this is in quotes -- the
12 provision of centralized water or sewer lines, whether
13 by a public agency or a private company, can be one of
14 the strongest indicators of development potential. As
15 stated in Future Landuse Policy 3.2.4, the County will
16 continue to primarily rely upon the individual septic
17 systems as the method of wastewater disposal in the
18 rural service area.

19 The proposal is also inconsistent with the
20 County's sewer master plan. This project is not in the
21 master plan. The only two projects on the bridgeless
22 barrier island listed in the master plan are the
23 connection of the existing private utilities using
24 existing sewer infrastructure, not the creation of a new
25 utility. That master plan also includes 12 sewer --

1 septic to sewer projects. This island is not included
2 in those -- in any of those 12.

3 So in conclusion, there is no need for the
4 proposed service as demonstrated by the Sewer Master
5 Plan and the County's Comprehensive Plan. The proposal
6 violates many policies, most importantly Future Landuse
7 Policy 3.2.4, and the County's strategy to discourage
8 development on the bridgeless barrier islands.

9 MR. KELSKY: Move the direct testimony into
10 the record.

11 COMMISSIONER CLARK: So ordered.

12 (Whereupon, prefilled direct testimony of Ellen
13 Hardgrove was inserted.)

14

15

16

17

18

19

20

21

22

23

24

25

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

/

DIRECT TESTIMONY

OF

ELLEN HARDGROVE, AICP

on behalf of

Palm Island Estates Association, Inc.

- 1 **Q.** **Please state your name, profession and address.**
- 2 A. My name is Ellen Hardgrove. I am a certified planner and my professional address
3 is 315 Ivanhoe Blvd. NW, Orlando, FL 32804.
- 4 **Q.** **State briefly your educational background and experience.**
- 5 A. I have a Bachelor of Arts degree in Economics from Clemson University and a
6 Master's degree in Urban and Regional Planning from Florida State University. I
7 have extensive, direct and practical knowledge of land planning, including
8 understanding comprehensive planning, land development regulations, approval
9 processes and the people/entities involved with same.
- 10 **Q.** **Have you previously appeared and presented testimony before any regulatory
11 bodies?**
- 12 A. Yes, I've testified as a city planner for City of Edgewood and have given testimony
13 for FDOT, Central Florida Expressway Authority, and Sanford Airport Authority.
- 14 **Q.** **Are you providing testimony on behalf of Palm Island Estates Association,
15 Inc.?**
- 16 A. Yes.
- 17 **Q.** **What is the purpose of your direct testimony?**
- 18 A. The purpose of my direct testimony is to discuss how provision of central sewer
19 service in the proposed service area is inconsistent with Charlotte County's
20 Comprehensive Plan and shows a lack of need for sewer service in the proposed
21 service area.
- 22 **Q.** **Are you sponsoring any exhibits?**
- 23 A. Yes, I am sponsoring four exhibits. Exhibit EH-1 is my affidavit dated August 23,
24 2021 (with exhibits). Exhibit EH-2 is my rebuttal letter to the Charlotte County

1 Utilities to the Florida Public Service Commission dated October 5, 2021, Exhibit
2 3 is the relevant sections of Charlotte County's Comprehensive Plan and Exhibit
3 3(a) is Charlotte County's Capital Improvement Schedule.

4 **Q. Do these exhibits set forth your opinions with respect to the Environmental
5 Utilities' application?**

6 A. Yes.

7 **Q. Were these Exhibits prepared by you?**

8 A. Yes, they were.

9 **Q. Does that conclude your direct testimony?**

10 A. Yes, it does.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 MR. KELSKY: And subject to cross.

2 COMMISSIONER CLARK: All right. Environmental
3 Utilities?

4 EXAMINATION

5 BY MR. WHARTON:

6 Q Good afternoon, Ms. Hardgrove. I am John
7 Wharton. I represent Environmental Utilities. I think
8 the Commission will be relieved to know I am not going
9 to go through your 350-page exhibit and debate what the
10 Comp Plan does or doesn't say, but I do want to ask you
11 questions for context.

12 A Sure.

13 Q Now, you have read the original letter that
14 the County put in the PSC's file supporting EU's project
15 because, in fact, you wrote a letter rebutting that, in
16 your own mind, to Mr. Kelsky, correct?

17 A That's the correct reading of the letter.

18 Q And have you read the deposition of Charlotte
19 County?

20 A I believe I did.

21 Q That was Mr. Rudy was the witness?

22 A I did, yes.

23 Q And are you familiar with the bulk service
24 agreement?

25 A I am.

1 Q Okay. Well, then let's talk for a second.

2 A Let me come back a second. I know that there
3 is one. I am not familiar with the details of it.

4 Q Okay. It is also an attachment to that
5 deposition, and I am going to ask you a couple of
6 questions about it. That's already come into evidence,
7 but I am not going to ask you anything substantive.

8 A Sure.

9 Q First of all, let's take a look at that
10 letter, which is attached to the deposition, which is
11 Exhibit 42, and the letter is Exhibit 2 to the
12 deposition. And let me know -- and I put a copy right
13 beside you.

14 A That's -- I have it in my file. Is that dated
15 September 27th?

16 Q Take a look one, two, three, four, five, six
17 lines down, and it says: These efforts indicate.

18 A Let me just make sure that I'm -- yes, I have
19 got it here.

20 Q These efforts indicate that negative
21 environmental impacts of septic tanks to coastal
22 Charlotte County are quantifiable. The County has,
23 thus, been working to promote sewer expansion keeping
24 with the approved sewer water -- Sewer Master Plan.

25 First of all, is it your understanding that

1 **the County actually has a program where it is attempting**
2 **to replace septic tanks with central sewer?**

3 A I am familiar with the master plan that has
4 those 12 items in it that do not include this island.

5 Q But would you agree that this letter manifest,
6 **to the extent this letter represents a letter from**
7 **Charlotte County, it says that this -- the County has**
8 **been working to promote sewer expansion and the sewer**
9 **ing of the barrier islands as in keeping with the Sewer**
10 **Master Plan -- I understand that you disagree with it,**
11 **but does it appear that that is the County's intent and**
12 **purpose?**

13 A Where does it say in this letter that it's on
14 the barrier islands?

15 Q The very next sentence. The County has, thus,
16 **been working to promote sewer expansion.**

17 A Sewer expansion through legislation, planning
18 and budgeting. It doesn't say anything about expanding
19 into the barrier island.

20 Q Yeah. The County's support of sewerering its
21 **barrier islands is in keeping with the approved Sewer**
22 **and Water Master Plan?**

23 A That is his opinion. I don't agree with that.

24 Q **You don't agree with that?**

25 A That is correct, I do not.

1 Q Okay. So just to set -- just to use that to
2 set the stage, let's take a look at the deposition of
3 the representative of Charlotte County on page 53, and
4 let's start at line 19.

5 A Wait a second. It's page 53 of what?

6 Q Page 53 of the deposition. And I do have a
7 copy right beside you. That deposition transcript.
8 Page 53. Let's do line 22.

9 A 53.

10 Q So let me ask you: Is it your opinion that
11 the Environmental Utilities' application is inconsistent
12 with the Comprehensive Plan?

13 A Yes.

14 Q The County does not agree with you, does it?

15 A The -- Mr. Rudy does not agree with me.

16 Q Well, we'll work that out. Do you -- are you
17 unaware, as we sit here today, what type of deposition
18 this was, and what the representative responsibility of
19 this particular person testifying was?

20 A No.

21 Q Okay. Well, then I don't need to bother you
22 with that. But, in fact, this is the deposition of
23 Charlotte County because a particular process was used,
24 but I'm not asking to you agree with that.

25 Okay. So if you turn over to the next page,

1 **in your opinion, the Environmental Utilities application**
2 **is inconsistent with Charlotte County's Sewer Master**
3 **Plan; is that right?**

4 A I am sorry, I wasn't listening. I was
5 looking.

6 Q **In your opinion, the application of**
7 **Environmental Utilities is inconsistent with Charlotte**
8 **County's Sewer Master Plan?**

9 A Yes.

10 Q **But according to this, the County does not**
11 **agree with you?**

12 A I did not find this project in the Sewer
13 Master Plan.

14 Q **But are you aware -- do you agree with me that**
15 **according to this, the County does not agree with your**
16 **position?**

17 A That is what his deposition says.

18 Q All right. So having said that, let me ask
19 you something in context.

20 Doesn't a normal comprehensive plan, or a
21 typical comprehensive plan challenge occur when a
22 developer wants to do something, somebody wants to build
23 something, they go in to get a permit, and the County
24 says, no, this is not consistent with the Comp Plan?

25 A It happens, yes.

1 Q All right. But if Environmental Utilities
2 gets this certification from the PSC and the project
3 begins, and someone wants to oppose that as being
4 inconsistent with the Comp Plan, they are going to have
5 to file for an administrative litigation, aren't they?
6 And they are going to have to name Charlotte County as
7 the defendant, if Charlotte County says it is
8 consistent?

9 A I don't know how that challenge would work. I
10 am not familiar with that challenge.

11 Q Okay. If Charlotte County believes that this
12 -- that the project that is proposed by EU's application
13 is consistent with the Comprehensive Plan, you don't
14 know how would you challenge that ultimately?

15 A I don't know the process on that.

16 Q All right. If Charlotte County came out and
17 said, this is our interpretation of the plan, and that
18 is that it is, this project is consistent with the
19 Comprehensive Plan and the Sewer Master Plan, would you
20 just give up at that point? Would that be endgame?

21 A No. I am sure that there is a challenge. I
22 am just not familiar with the process.

23 Q All right. So let me ask you a few questions
24 about your testimony, and I guess I will follow along in
25 case I have gotten the paragraphs wrong.

1 **In paragraph 15, you talk about how --**

2 A Is this on my affidavit?

3 Q **No. This is your prefilled testimony.**

4 A Oh..

5 Q **Paragraph 15, on page three. And if you need**
6 **to glance at that for a second to get the gist.**

7 A You are talking about my affidavit. I have
8 two. I have a direct testimony, is that what you are
9 talking about, or my affidavit?

10 Q **Well -- oh, I am sorry. This is your**
11 **affidavit. The way you did your testimony is a little**
12 **different than what we usually do at the PSC, but it's**
13 **fine. Paragraph 15 of your affidavit, which is Exhibit**
14 **A to your prefilled testimony.**

15 A Give me a second to read through it.

16 Q **Okay. It's not a very detailed question.**

17 A Okay. Let's hear your question.

18 Q **So you basically say here that the County has**
19 **adopted policies to ensure that on-site sewage systems**
20 **are working well, and that they are held up to some**
21 **minimum standard, right?**

22 A That's the policies, yes.

23 Q **And yet the County also has a mandatory**
24 **connection ordinance, doesn't it, that says when central**
25 **sewer comes down the street, you have to connect within**

1 **a year?**

2 A Well, I don't agree with that. There is a
3 policy in the plan that specifically says -- let me read
4 it to you.

5 Q **Well, let me ask you, when you say you don't**
6 **agree with it?**

7 MR. KELSKY: Can you let the witness finish
8 the question?

9 MR. WHARTON: I will --

10 THE WITNESS: So wastewater, water and -- WSW
11 it's the infrastructure policy, WSW 3.12,
12 connection of developed property. In the urban
13 service area, whenever centralized potable water or
14 sanitary sewer is made available to any developed
15 property, the constructing utility shall require
16 the landowner to connect the utility upon written
17 notification of the utility provider that service
18 is available for the property.

19 Again, the policy specifically says in the
20 urban service area.

21 BY MR. WHARTON:

22 Q **So what are you looking at?**

23 A Wastewater Policy 3.1.2.

24 Q **So you are not looking at the mandatory**
25 **connection ordinance that I asked you about?**

1 A Well, I will tell --

2 Q The Charlotte County ordinance -- let me ask a
3 new question.

4 Are you familiar with the Charlotte County
5 ordinance on mandatory connection?

6 A I know that --

7 Q Not the Comp Plan, not the Master Sewer Plan.
8 I am sorry to interrupt you.

9 A I know that there are regulations in the Land
10 Development Code; however, there is a Future Landuse
11 Policy 1.1.6, which states: All County regulations are
12 subordinate to the plan.

13 Q Are you familiar that Charlotte County has an
14 ordinance that requires mandatory connection when
15 central sewer -- just yes or no, please, ma'am? If you
16 are not, that's fine.

17 A I believe that I answered the question that I
18 am aware that there are septic tank to sewer regulations
19 in the Land Development Code, however, they could
20 pertain specifically when it's septic to sewer in the
21 urban service area, according to this land -- to this
22 policy.

23 Q Do you know if Charlotte County's
24 interpretation agrees with yours?

25 A I do not know that.

1 Q In paragraph 17 of your affidavit you talk
2 again about the strict regulations, but -- and you --
3 you quote a report in here, one that's 27 years old and
4 another one from 2012, but let me -- let me ask you:
5 Isn't it true that, as I sit here today -- as we sit
6 here today, you could not describe for me the difference
7 between a septic tank that is in compliance with the
8 regulations and one that is out of compliance with the
9 regulations?

10 A I would agree with you that I am not an expert
11 on that.

12 Q Yeah. It seemed a little bit out of your lane
13 to me, but I understand you are saying you read
14 something, and that's fine.

15 So you are not intending to render an opinion
16 that all of the septic tanks out there are just fine,
17 and that there is no adverse environmental impacts
18 resulting from any of them?

19 A The only thing that I am going to render an
20 opinion on is that I have not seen any water testing to
21 demonstrate that there is a public health issue.

22 Q Is water testing really in your bailiwick?

23 A No, but I am it just saying that I haven't
24 seen anything that documents that.

25 Q In 26 of your affidavit you talk about that

1 with the approval of the EU proposal, public monies will
2 be redirected from stated priorities. Are you able to
3 quantify that for me in any way, shape or form? Do you
4 know what public projects almost lose monies if this
5 application is approved; when that will happen; how much
6 money?

7 A All I know is that there will be public
8 monies, and public money is a finite pile, right? So if
9 it's going to go to one project, it's going to be taken
10 a way from something else.

11 Q And Charlotte County probably makes decisions
12 every day about how to spend the funds that it has?

13 A Yes, and it has a comprehensive plan that
14 guides in helping to direct how public monies are spent.

15 Q Now, you talk, on paragraph 27 and 28 of your
16 affidavit, about archaeological resources and about
17 imperiled species. Do you know what regulations are out
18 there and what regulatory oversight there is for a
19 project like that, that will look at those particular
20 things?

21 A That was just one thing that needs to be taken
22 into consideration.

23 Q You say that mandatory connection appears to
24 violate private property rights, don't you --

25 A I don't --

1 Q -- in paragraph 31. Forcing the connection
2 appears to violate private property owner rights?

3 A It could.

4 Q Well, do you have any extent -- do you have
5 any of idea about the extent of mandatory connection in
6 Florida, the history of these types of mandatory
7 connection ordinances?

8 A I think I testified earlier that I was -- that
9 my testimony here has to do with consistency with
10 Charlotte County's Comprehensive Plan. And as stated in
11 the policy that I read earlier, that that mandatory
12 connection is when it's in the urban service area. This
13 property is -- or the whole island is in the rural
14 service area.

15 Q Well, if you don't believe there is any
16 scenario for mandatory connection, why are you
17 addressing it in the first sentence of number 31, saying
18 that it violates property rights?

19 A Well, my task was to see if this project was
20 consistent with the Comprehensive Plan, and so I looked
21 through all the policies in the plan to see what it
22 could or could not be consistent with.

23 Q Let me just get to my point, and that is, are
24 you aware of any administrative, or judicial, or
25 quasi-judicial decision in the state of Florida or

1 elsewhere that said that that type of a mandatory
2 connection ordinance violates property rights or is
3 illegal for any reason?

4 A No.

5 Q In paragraph 36, you say: When the County
6 adopted the bulk service agreement, it appears to have
7 considered the Comprehensive Plan. That's just totally
8 speculation on your part, isn't it?

9 A Well, I will tell you that when the bulk sewer
10 agreement was in front of the County Commission, it was
11 on the consent agenda, and there was no discussion
12 whether it was consistent with the Comprehensive Plan or
13 not.

14 Q But it was approved by the entire Board of
15 County Commissioners?

16 A It was on the consent agenda, so yes.

17 Q Similarly, is it your opinion that when the
18 County wrote the letter to the PSC and said it supported
19 the project, that they appeared not to have considered
20 the Comprehensive Plan in that either?

21 A I thought it was interesting that it didn't
22 come from the Planning Department who was in charge of
23 the Comprehensive Plan. So it was an interpretation
24 from the Public Works Director, I think is what Mr.
25 Rudy's position is. And whether he has the expertise to

1 make a consistency determination or not, I have --

2 Q So when you see something from county
3 government, you don't believe it unless it's signed by
4 the Chairman of the Board?

5 A Not necessarily, but I would think a
6 consistency determination would come at least from the
7 Planning Department.

8 Q How about in the deposition of the County that
9 we talked about earlier, that is sitting beside you, and
10 which has been admitted into evidence, and in which the
11 County said they are 100 percent behind this project.
12 They don't believe that it violates the Comprehensive
13 Plan or the Sewer Master Plan, again, you think they are
14 ignoring the Comprehensive Plan in that?

15 A I think that was an interpretation from, or an
16 opinion from the Public Works Director and not from the
17 overall county.

18 Q But you have --

19 A Especially not from the department that has
20 the expertise in making a consistency determination.

21 Q And we will address the nature of that
22 brief -- in the brief, so I don't need to bother you
23 with it. So let me look for a few things here.

24 MR. WHARTON: That's all I have.

25 COMMISSIONER CLARK: Before we move on, we do

1 have a telephone alternative to be able to
2 broadcast what we are doing. We need about a three
3 or four minutes to get that set up, so we are going
4 to take a very short break, then we will come back
5 with the cross.

6 (Brief recess.)

7 COMMISSIONER CLARK: We have established a
8 one-way phone connection, and we have folks that
9 you can actually call into this phone number, and
10 in doing so, you can listen to the entire hearing.
11 This number is being posted on our website where
12 you would normally watch the streaming episode. It
13 should be being posted across the bottom of it, and
14 as we speak, I am looking for the phone number to
15 give out. I promise -- there it is. Thank you.

16 The phone number is 1-888-585-9008, and then
17 you enter the code 416925719. Again, the phone
18 number is 888-585-9008. The entry code is
19 416925719.

20 Again, we apologize for having to do it this
21 way. We are trying to make every arrangement
22 necessary so folks can participate in the hearing
23 today.

24 All right. Let's continue where we left off.
25 I believe we are on cross-examination.

1 OPC?

2 MS. PIRRELLO: No questions.

3 COMMISSIONER CLARK: Ms. Cotherman?

4 Staff?

5 MR. SANDY: No cross-examination questions.

6 COMMISSIONER CLARK: Okay. Commissioners?

7 COMMISSIONER LA ROSA: None for me.

8 COMMISSIONER CLARK: No questions.

9 All right. Redirect?

10 MR. KELSKY: Yes. Thank you.

11 FURTHER EXAMINATION

12 BY MR. KELSKY:

13 Q Am I on? Yes. Okay, good.

14 You were asked questions about County Code
15 Section 3-8-41 that talks about the connection to --
16 mandatory connection to sewer. Can you explain why that
17 mandatory connection is only required in the urban
18 service area?

19 A The only thing I can think of is -- I mean,
20 are you looking because of the policy? There is a
21 specific policy that says that.

22 Q Yeah.

23 A And so in the state of Florida, the
24 comprehensive plan supersedes the land development
25 regulation. So if there is an inconsistency there, then

1 the comprehensive plan takes precedent. And I think
2 it's even more evident in Charlotte County's, where they
3 have a specific policy that says that, 1.1.6 in the
4 Future Landuse Element.

5 MR. WHARTON: I move to strike. I think
6 that's an opinion about something trumping
7 something --

8 MR. KELSKY: I believe that --

9 MR. WHARTON: -- the policy trumps the land
10 development.

11 THE WITNESS: That's why --

12 COMMISSIONER CLARK: The comprehensive plan
13 trumps the land development code is what she said.

14 THE WITNESS: That's correct.

15 MR. KELSKY: She quoted the policy.

16 COMMISSIONER CLARK: Yes.

17 MR. KELSKY: Okay.

18 COMMISSIONER CLARK: All right. Continue.

19 MR. KELSKY: Thank you.

20 BY MR. KELSKY:

21 Q **Does the fact that the bridgeless barrier**
22 **islands are in the Coastal High Hazard Area have any**
23 **impact on consistency with the plan, and development of**
24 **sewers in the bridgeless barrier islands?**

25 MR. WHARTON: Object, outside the scope of --

1 COMMISSIONER CLARK: Speak up, John.

2 MR. WHARTON: Outside the scope of cross,
3 objection.

4 MR. KELSKY: They asked questions about
5 consistency. I am asking follow-up questions on
6 consistency.

7 MR. WHARTON: Consistency covers everything.

8 COMMISSIONER CLARK: Is this relative to her
9 expertise in the Comprehensive Plan?

10 MR. KELSKY: Yes.

11 COMMISSIONER CLARK: Proceed.

12 THE WITNESS: The bridgeless barrier island is
13 in the Coastal High Hazard Area, as Mr. Kelsky just
14 explained, and inside of that Coastal High Hazard
15 Area is an overlay district known as the Barrier
16 Island Overlay District that is -- there is
17 specific language in the Comprehensive Plan that
18 says that they will not expand service.

19 So the County is aware that there are two
20 water treat -- wastewater treatment facilities on
21 the island. And because it's bridgeless, because
22 it's right in the target of the hurricanes, the
23 strategy, the growth management strategy is not to
24 support more development out there. It's the
25 opposite. It's to discourage the development from

1 going out there.

2 And so you have -- you have the BIOD, as it's
3 referred to, Barrier Island Overlay District, which
4 specifically says that they will -- the County will
5 not expand the scope of potable water or sanitary
6 sewer to the bridgeless barrier islands. It is a
7 growth management tool in order to not encourage
8 development, whether it's provided by the County,
9 by the public service, Charlotte County Public
10 Utilities, or a private utility. The strategy is
11 to not to encourage development.

12 And as it says in the Comprehensive Plan, that
13 when you put sewer on anywhere, that's going to
14 encourage development, and that's where the whole
15 policy of the BIOD comes from.

16 BY MR. KELSKY:

17 Q **Do you know, is Craig Rudy a planner?**

18 A He is not.

19 Q **Okay. You mentioned the capital improvement**
20 **element and the capital improvement portion of the plan**
21 **that, if I understood your testimony correctly, money is**
22 **finite, and if it's going to be directed to somewhere**
23 **else, it has to come from another place, correct --**

24 A That is correct, yes.

25 Q **-- did I understand you correctly?**

1 A Yes.

2 Q Okay. Is this development, the proposed
3 certificated area, in the Capital Improvement Plan?

4 A It is not.

5 Q Okay. And what is the significance of that?

6 MR. WHARTON: That is a separate is -- that is
7 a bootstrap as far as the scope goes.

8 COMMISSIONER CLARK: I tend to agree. The
9 whole line of questioning doesn't seem to make a
10 lot of sense to me. Everyone knows you can move
11 prongs around, you can move money around. Let's
12 move on.

13 MR. KELSKY: Okay. Those are all the
14 questions I have.

15 COMMISSIONER CLARK: All right.

16 MR. KELSKY: We move the exhibits into the
17 record.

18 COMMISSIONER CLARK: All right. Those are
19 Exhibits No. 2, 3, 8, 9 and 14 without objection?
20 They are so moved.

21 Would you like to dismiss your witness?

22 MR. KELSKY: Yes.

23 THE WITNESS: Does this stay here? The
24 exhibits, do I need to bring them somewhere?

25 COMMISSIONER CLARK: You can take them with

1 you. I have no idea where they end up.

2 MR. FRIEDMAN: Commissioner Clark, what did
3 you -- which exhibits did you say?

4 COMMISSIONER CLARK: I am sorry, 2, 3, 8, 9
5 and 14.

6 MS. HELTON: I think you might be reading from
7 the wrong column, Mr. Chairman, it's 8, 9, 10 and
8 11.

9 COMMISSIONER CLARK: The issues. The issues.

10 MR. FRIEDMAN: I did the same thing.

11 COMMISSIONER CLARK: 8, 9, 10 and 11. Thank
12 you very much. 8, 9, 10 and 11 without objections,
13 all right, so moved.

14 (Whereupon, Exhibit Nos. 8--11 were received
15 into evidence.)

16 COMMISSIONER CLARK: Pay more attention.

17 Call your next witness, Mr. Kelsky.

18 MR. KELSKY: Dr. Robert Weisberg.

19 Whereupon,

20 ROBERT H. WEISBERG

21 was called as a witness, having been previously duly
22 sworn to speak the truth, the whole truth, and nothing
23 but the truth, was examined and testified as follows:

24 EXAMINATION

25 BY MR. KELSKY:

1 **Q State your full name and of professional**
2 **address.**

3 **A My name is Robert H. Weisberg, and I am**
4 **employed at the University of South Florida College of**
5 **Marine Science, 140 7th Avenue South, St. Petersburg**
6 **Florida, 33701.**

7 **Q What is your profession?**

8 **A So I am a Professor of Physical Oceanography,**
9 **which is the study of the ocean circulation. And my**
10 **official title at USF is Distinguished University**
11 **Professor.**

12 **Q And was your testimony prefilled in this case?**

13 **A Yes, sir.**

14 **Q Did you prepare any exhibits?**

15 **A Yes, I did.**

16 **Q And would your testimony be the same today as**
17 **is in your prefilled testimony and the exhibit you**
18 **prepared?**

19 **A Yes.**

20 **Q Can you please summarize your testimony?**

21 **A So I was asked to respond to certain**
22 **statements about the effect of septic tanks on red tide,**
23 **and also to look into the idea that testing, previous**
24 **testing had given the region the worst marks, and how**
25 **that may impact water quality.**

1 I was also asked to look at certain other
2 environmental factors, such as sea level rise and
3 hurricane storm surge.

4 So in my affidavit, I kind of summarize what I
5 did in those regards, but basically red tide is a
6 natural phenomena. It's been with us for as long as we
7 have written record. DeSoto encountered it in the 16th
8 Century. And there is anecdotal evidence well
9 documented from late the 19th Century on for the west
10 coast of Florida.

11 In essence, it comes from offshore. It
12 manifests as a nuisance once it gets to the shoreline,
13 so we experience it, and we have a lot of displeasure
14 with it, but its origin is really offshore. And so what
15 hey being happening at any location, such as the
16 bridgeless barrier islands is really irrelevant to the
17 origination of this phenomenon.

18 Another aspect of this red tide phenomenon is
19 that, through its toxins, it kills fish. And as he
20 those efficient decay, it generates a nutrient supply
21 for the red tide. So the real insidious nature of this
22 creature called Karenia brevis is that we don't need to
23 feed it nutrients. It takes care of itself.

24 So it's of an offshore origin by killing fish.
25 It sustains itself. That's why it stays around so long.

1 And, therefore, what's happening in the immediate
2 vicinity of the bridgeless barrier islands is actually
3 irrelevant to that phenomena. So we could remove all
4 the people that live on the bridgeless barrier islands
5 and it wouldn't do anything regarding red tide.

6 I also, in looking at the literature, I found
7 no written evidence suggesting that what goes on the
8 bridgeless barrier islands impacts red tide, nor did I
9 find any published evidence that water quality has been
10 impeded by the residential community of the bridgeless
11 barrier islands.

12 So then I also talked about the fact that we
13 do have hurricanes here. We are very fortunate that we
14 don't get hit too often, but if you recall Hurricane
15 Charley cut a new inlet across north Captiva Island.
16 Fortunately where it did that there weren't residences,
17 but that's only two islands south of where we are
18 talking about today.

19 And so it's perfectly reasonable to expect
20 sometime in the future that we may have such issues on
21 the bridgeless barrier islands. And if we were to cut
22 an inlet across, of course whatever was laying
23 underneath, such as new pipes, would be destroyed.

24 So in keeping with the concept that increased
25 residential usage on the bridgeless barrier islands

1 might be detrimental and dangerous. Certainly, the fact
2 that the sea level is slowly rising, and the fact that
3 we do have these catastrophic events now and then, i.e.,
4 hurricanes, suggests to me that adding sewer lines might
5 not be the best approach.

6 COMMISSIONER CLARK: Thank you, Mr. Weisberg.

7 MR. KELSKY: I would like to move Dr.

8 Weisberg's testimony -- direct testimony into the
9 record.

10 COMMISSIONER CLARK: So moved.

11 (Whereupon, prefilled direct testimony of
12 Robert H. Weisberg was inserted.)

13

14

15

16

17

18

19

20

21

22

23

24

25

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

/

DIRECT TESTIMONY

OF

ROBERT WEISBERG, PH.D.

on behalf of

Palm Island Estates Association, Inc.

- 1 **Q.** **Please state your name, profession and address.**
- 2 A. My name is Robert H. Weisberg, Ph.D. I am a Distinguished University Professor
3 in the College of Marine Science at the University of South Florida, 140 Seventh
4 Avenue South, St. Petersburg, FL 33701.
- 5 **Q.** **State briefly your educational background and experience.**
- 6 A. I have a Bachelor of Science degree in Material Science & Engineering from
7 Cornell University, a Master of Science degree in Physical Oceanography from
8 University of Rhode Island and a Philosophical Doctorate degree in Physical
9 Oceanography from University of Rhode Island. I have extensive experience in the
10 study of the ocean circulation and its impacts on red tides and algae blooms.
- 11 **Q.** **Have you previously appeared and presented testimony before any regulatory
12 bodies?**
- 13 A. Yes. I have provided testimony before the United States House of Representatives.
- 14 **Q.** **Are you providing testimony on behalf of Palm Island Estates Association,
15 Inc.?**
- 16 A. Yes.
- 17 **Q.** **What is the purpose of your direct testimony?**
- 18 A. The purpose of my direct testimony is to discuss a lack of need for sewer service
19 on the basis that there is no scientific support for the proposition that on-site septic
20 tanks exacerbate red tides and algae outbreaks in the barrier island region of
21 concern.
- 22 **Q.** **Are you sponsoring any exhibits?**
- 23 A. Yes, I am sponsoring an exhibit. Exhibit RW-1 is my affidavit dated August 26,
24 2021 (with exhibits).
- 25

1 **Q.** **Does the exhibit set forth your opinions with respect to the Environmental**
2 **Utilities' application?**

3 A. Yes.

4 **Q.** **Were these Exhibits prepared by you?**

5 A. Yes, they were.

6 **Q.** **Does that conclude your direct testimony?**

7 A. Yes, it does.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. KELSKY: Ready for cross exam.

2 COMMISSIONER CLARK: All right. Mr. Wharton?

3 EXAMINATION

4 BY MR. WHARTON:

5 Q Dr. Weisberg, I am John Wharton. I represent
6 Environmental Utilities.

7 So apropos to what I said at the beginning of
8 the last witness, I am not about to debate science with
9 someone who has a 113-page resume, but I do have
10 several. First of all your -- red tide is your
11 specialty, right?

12 A It's one of them. I am actually an Ocean
13 Physicist. Red tide ecology is a combination of the
14 organism biology and the circulation of physics, which
15 determines the conditions in which the organism lives.
16 So those conditions can be either conducive or not
17 conducive to the appearance of red tide, and the
18 sustenance of red tide.

19 Q Do you hold yourself out to be some sort of an
20 expert in terms of the potential adverse environmental
21 effects of septic tanks in Florida waters?

22 A No, sir.

23 Q Do you hold yourself out to be an expert in
24 determining whether a central sewer is a better
25 alternative than on-site systems with regard to adverse

1 **environmental effects?**

2 A As an expert, no, sir, I am not a civil
3 engineer.

4 Q All right. You said that you had looked at --
5 first of all, as I understand your testimony, it's
6 basically two things. One is you said Environmental
7 Utilities didn't provide any data to back up their
8 statement that there were adverse environmental effects,
9 is that a fair statement?

10 A Yes.

11 Q And then you said and I don't find, going out
12 and looking for it myself, that there is any data to
13 support that need is generated on that basis?

14 A I am not aware of anything in a refereed
15 professional literature suggestive that residential uses
16 of the bridgeless barrier islands has an adverse impact
17 on the environment.

18 Q But as we sit here today, it is not your
19 opinion, is it, that they don't, it is merely that you
20 did not find any data or literature that made you
21 conclude they do?

22 A With regard to red tide, I will disagree with
23 you.

24 Q I really mean the adverse -- I want to get
25 away from red tide for the purpose of my question, so

1 let me ask you the question again.

2 As we sit here today, am I correct that you
3 are not testifying that septic tanks on these bridgeless
4 barrier islands do not result in adverse environmental
5 effects, but merely that you have seen no data saying
6 they do?

7 A You know, that's a relative question --

8 Q It is.

9 A -- and I am not going to counter what you
10 said. However, everything is a matter of scale.

11 If we look at Charlotte County and we look at
12 the number of residences on the bridgeless barrier
13 islands and the number of septic tanks relative to
14 everything I have read about septic issues for Charlotte
15 County, you know, we are talking about a minuscule
16 number relative to what's going on in Charlotte County
17 and what I read in the documents regarding the master
18 plan. And so, yeah, I mean, I can't say it has no
19 impact. I wouldn't say that. But in a relative sense,
20 I am not concerned about it at all.

21 Q Am I right that you are not intending to
22 render any opinions here today about whether on-site
23 treatment with a septic tank is superior or inferior to
24 central sewer collection and treatment?

25 A Again, I am not a civil engineer so I am

1 really not expert in making such a determination. All I
2 can give you is my common sense viewpoint on it. And as
3 I said earlier, we have had instances when hurricanes
4 have cut new inlets up and down the entire west coast of
5 Florida. And so the last thing I want to do is make
6 more infrastructure that could be destroyed during a
7 hurricane, especially since we have such occurrence of a
8 new inlet being cut just a little bit further south from
9 where the bridgeless barrier islands are.

10 So yeah, I am trying to be careful. I am not
11 expert so I can't make an expert determination based on
12 your question; but as an environmental scientist, it
13 stands to reason, to me at least, that we are better off
14 with septic tanks than we are with a sewer system on the
15 bridgeless barrier islands.

16 Q **Do you think that's true of all of Florida's**
17 **barrier islands? Are you just a pro septic tank guy, is**
18 **that what I am hearing here?**

19 A Well, the bridgeless -- the bridgeless ones
20 have their own additional issues with them, and they
21 are, at the present time, not developed to full
22 capacity, which I think is a good thing. And so this is
23 just, again, my personal view. There is no expert
24 opinion backing it up, but I don't think we should be
25 increasing the population density out there.

1 Q Well, you have mentioned that a couple of
2 times, so let me talk about that and then --

3 A Okay.

4 Q -- I will go back to the point I am pursuing
5 now.

6 A All right.

7 Q Are you able to quantify -- you testified that
8 you believe that the availability of central sewer on
9 the bridgeless barrier islands might cause population
10 density to increase, right? You had that in your
11 affidavit, or your report, or whatever it was. Is that
12 true? Something to that effect.

13 A Yeah, okay.

14 Q Yeah. Are you able to quantify, as we sit
15 here today, in any way, shape or form, how that would
16 actually happen? When it would happen? Whether, if you
17 put central sewer out on these islands, you would have
18 five percent growth, seven, 11, versus if you didn't?

19 A No, that's not my area --

20 Q It's just speculative, isn't it?

21 A -- that's not area of expertise.

22 Q So intuitively you believe that's what would
23 happen?

24 A Yes.

25 Q Did you know that those islands are already

1 **fully platted?**

2 A I am very familiar with Don Pedro Island. I
3 have a good friend that owned a house out there, so I
4 spent a lot of time out there. It may be fully platted,
5 but it's very lightly populated relative to what's --

6 Q **There are several lots now that aren't -- that**
7 **don't have -- that don't have residences on them?**

8 A Yeah, my understanding is it's about half
9 built out.

10 Q **So you said that you did an investigation.**
11 **Are you aware of the letter that Charlotte County wrote**
12 **on September 27th to the PSC saying they supported this**
13 **project?**

14 A No.

15 Q Okay. In there, they refer to a 2016 Harbor
16 Branch Oceanographic Institute study that they
17 commissioned in Charlotte County as one of the things
18 they rely on in believing that septic tanks should be
19 removed. Is that one of the things you looked at?

20 A Yes, sir.

21 Q Okay. And didn't Harbor Branch conclude that,
22 in fact, in the areas that they were studying, that
23 septic tanks were a problem?

24 A Well, but before I answer that question, I
25 have to tell you where that study was conducted. It

1 wasn't conducted anywhere near the bridgeless barrier
2 islands. It was conducted pretty far up north in the
3 Charlotte Harbor Estuary. Most of the data was taken
4 from a, if I remember correctly, a yacht club, which is
5 pretty close to Route 75, the bridge that goes over
6 that, totally different land mass, totally different
7 substrate. And so, yes, they did conclude that septic
8 tanks in that area were detrimental, but I don't believe
9 that you can then extrapolate that result to the
10 bridgeless barrier islands.

11 **Q So to the extent that Charlotte County has**
12 **done exactly that, and passed an ordinance saying that**
13 **when central sewer becomes available, septic tanks**
14 **should connect within a year, you think that was a**
15 **mistake on the part of Charlotte County?**

16 **A I didn't say that. I listened to the**
17 **testimony of the previous witness but, and what she said**
18 **made a lot of sense to me. That's not my area of**
19 **expertise so I don't expand upon that, but I certainly**
20 **found her testimony to be quite compelling.**

21 **Q I have up here two cross exhibits for you.**
22 **One was the --**

23 MR. WHARTON: I am not going to use them,
24 Marty?

25 MR. FRIEDMAN: Oh, you are not?

1 MR. WHARTON: I'm not going to use them. I
2 think that the doctor will just say the same.

3 BY MR. WHARTON:

4 Q One of them is from the Marine Point Bulletin,
5 which is something that I think you have either been
6 published in or you are waiting to be published in, you
7 are waiting to be peer-reviewed I read, or maybe that
8 was the Harbor Branch.

9 A That must be the Harbor Branch.

10 Q Okay. Well, the Marine Point Bulletin I think
11 is one I found that you had.

12 A Okay.

13 Q But the point is that their -- that was an
14 Indian River Lagoon study. There are quite a bit --
15 quite a few academic and scientific studies out there
16 right now that focus specifically on Florida waters that
17 are attributing adverse environmental effects to septic
18 tanks, isn't that a fair statement?

19 A I think that's a very fair statement. Let
20 me -- let me build upon that a little bit, however.

21 There have been a lot of studies done in the
22 Florida Keys. And in the Florida Keys, you are
23 basically putting something right on top of very porous
24 limestone. And so studies have shown definitively
25 through putting dye in the, you know, literally flushing

1 die down the toilet, that that dye will show up over the
2 reef track because it goes right through the porous
3 limestone.

4 My point is that the substrate is extremely
5 important with regard to what happens to effluent, and
6 so a study over here does not necessarily apply to
7 someplace over there. So we have to be careful how we
8 draw interpretations based upon studies done in
9 different regions.

10 Q Just so we are clear, though, you have engaged
11 in no study or analysis to decide that septic tanks are
12 particularly appropriate for these bridgeless barrier
13 islands, have you?

14 A That's correct. I have not.

15 Q Yeah.

16 Now, you talked also in your testimony about,
17 and in your summary, I believe, about the possibility
18 that, to some extent, failure of the County's -- the
19 possibility of failure of the County system might be
20 increased if they took on this extra wastewater?

21 A I did mention that, yes.

22 Q But that's not something you were able to
23 quantify. You don't know now what load they are taking
24 on, how much would be added, or anything like that, do
25 you?

1 A That's true. But I have been asked where I
2 live, in Pinellas County, to look into what happens when
3 there is a sewage spill. And they happen very
4 frequently. In fact, they happen up and down the entire
5 west coast of Florida.

6 And so what has been found in older
7 communities is that the pipes themselves have cracks and
8 holes in them, and when you get a very large rainfall,
9 the amount of fluid -- so it could be groundwater along
10 with whatever is being flushed, but the amount of fluid
11 that has to be passed to the -- through the sewer system
12 to be processed just completely overwhelms the existing
13 sewer system. And as we build out more and more, which
14 we are obviously doing everywhere on the west coast of
15 Florida, these sewer systems become ever more overtaxed.

16 And so I have no immediate knowledge of
17 exactly what's going on here, as you said. I agree with
18 you. But we do know that this is a problem facing
19 Florida. And with more and more people moving into
20 Florida every day, it's an ever increasing problem. And
21 if we don't deal with that, we are going to have to deal
22 with it somehow or another.

23 Q **Aren't you extrapolating from one locale to**
24 **another, like you just advised me not to do in terms of**
25 **this Pinellas County even?**

1 A Well, I know we are sitting here in Sarasota
2 County, and my colleagues at Mote Marine Lab tell me
3 about sewage spills into Sarasota Bay.

4 In 2016, when St. Petersburg was forced to
5 dump partially treated fluid, there are also reports of
6 that being done throughout the west coast of Florida.
7 It was a very -- it didn't just rain in St. Petersburg.
8 And so, yeah, some of what I am saying clearly is
9 speculatory. I am not going to back that up, but there
10 have been enough reports that it's happening, and this
11 is a problem that Florida is facing. Not just -- not
12 just one county.

13 Q **We are getting a little far afield here?**

14 A Yeah, we are.

15 Q **Did you know this is a sub-acquiesce crossing,**
16 **do you know what a sub-acquiesce crossing is?**

17 A No.

18 Q **It means the pipe will be -- it will be**
19 **underground under the water?**

20 A Okay.

21 Q **Let me ask you questions, though.**

22 **You haven't analyzed the capacity of the**
23 **Charlotte County system?**

24 A No, sir.

25 Q **You haven't analyzed whether Charlotte**

1 **County's commitment to accept this wastewater could be a**
2 **violation of any of its current permits?**

3 A No, sir.

4 Q **You haven't analyzed whether this commitment**
5 **would somehow be a net detriment to the environment as**
6 **opposed to the continued operation of these septic**
7 **tanks?**

8 A Not in any quantitative way. Again, just
9 opinion. So the answer is no.

10 Q **So you said you had a friend on the island,**
11 **that's one of the islands, right?**

12 A Sure.

13 Q **Is he a member of PIE?**

14 A I don't know. He actually sold his home. He
15 may have been.

16 Q **Is that how you got involved in this case --**

17 A No --

18 Q **-- he contacted you?**

19 A -- no. It's just coincidental.

20 Q **Fair enough.**

21 **You haven't studied the effects of whether**
22 **there would be adverse environmental results from septic**
23 **tanks if, in fact, all those plotted lots out on the**
24 **island did sell and develop, have you?**

25 A No.

1 Q **That might change your testimony?**

2 A I don't think so.

3 MR. WHARTON: That's all we have, Mr.
4 Chairman.

5 COMMISSIONER CLARK: OPC?

6 MR. SANDY: No questions.

7 COMMISSIONER CLARK: Commissioners?

8 All right. I'm sorry. My bad.

9 FURTHER EXAMINATION

10 BY MR. KELSKY:

11 Q **I just have two questions.**

12 **Have you seen any evidence of any testing of
13 the water quality in and around the bridgeless barrier
14 islands?**

15 A I have not.

16 Q **Okay. I only had one question.**

17 MR. KELSKY: Thank you. That's it.

18 COMMISSIONER CLARK: All right.

19 MR. KELSKY: We move the exhibit into
20 evidence.

21 COMMISSIONER CLARK: Exhibit No. 12 without
22 objection. So moved.

23 (Whereupon, Exhibit No. 12 was received into
24 evidence.)

25 MR. KELSKY: And excuse the witness.

1 COMMISSIONER CLARK: All right. Witness is
2 excused.

3 THE WITNESS: Thank you.

4 COMMISSIONER CLARK: Thank you, sir.

5 (Witness excused.)

6 COMMISSIONER CLARK: Mr. Kelsky, call your
7 next witness.

8 MR. KELSKY: Stephen Suggs, PE.

9 COMMISSIONER CLARK: Before we do that, I have
10 Sheri Schultz on the list next. That is our
11 stipulated witness. You want to go ahead and move
12 their testimony into the record?

13 MR. KELSKY: Yes, please.

14 COMMISSIONER CLARK: All right. So ordered.

15 (Whereupon, prefilled direct testimony of Sheri
16 Schultz was inserted.)

17

18

19

20

21

22

23

24

25

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

/

DIRECT TESTIMONY
OF
SHERI FISKE SCHULTZ, CPA, ABV, CFF
on behalf of
Palm Island Estates Association, Inc.

1 Q. Please state your name, position and professional address.

2 A. My name is Sheri Fiske Schultz. I am the managing partner of Fiske &
3 Company. I am a certified public account, accredited business valuator and am
4 certified in financial forensics. My professional address is 1250 S. Pine Island
5 Road, Suite 300, Plantation, FL 33324.

6 Q. State briefly your educational background and experience.

7 A. I have a Bachelor of Science degree in accounting from the University of
8 Florida. I have a Master's Degree in Accounting from the University of Florida.
9 I have extensive experience in business valuation, including experience in
10 financial statement reporting. I have been qualified as an expert at the state
11 court and federal court levels.

12 Q. Are you providing testimony on behalf of Palm Island Estates Association,
13 Inc?

14 A. Yes.

15 Q. What is the purpose of your direct testimony?

16 A. The purpose of my direct testimony was to review the Environmental Utilities,
17 LLC financial statements, the personal financial statements of the Boyers, the
18 pre-filed testimony of Jonathan Cole (cost estimates for work proposed under
19 the original application) and the pre-filed testimony of Deborah D. Swain as it
20 relates to the cost of construction for the proposed utility. I assimilated this data
21 and concluded that neither Environmental Utilities, LLC nor the Boyers have
22 the financial ability to undertake the construction of a wastewater system in the
23 proposed service area as, based upon the data provided, neither the company
24 nor its principals could service the debt associated with the cost of construction.

1 **Q.** Have you previously appeared and presented testimony before any
2 **regulatory bodies?**

3 **A.** No.

4 **Q.** **Are you sponsoring any exhibits?**

5 **A.** Yes, I am sponsoring SFS-1, the November 19, 2021 Memorandum.

6 **Q.** **Does the report identified as SFS-1 accurately reflect your opinions?**

7 **A.** It does.

8 **Q.** **Was this exhibit prepared by you?**

9 **A.** Yes, it was.

10 **Q.** **Does that conclude your direct testimony?**

11 **A.** Yes, it does.

1 COMMISSIONER CLARK: Along with their exhibit?

2 MR. KELSKY: Yes, please.

3 COMMISSIONER CLARK: No objection?

4 MR. FRIEDMAN: Along with the stipulation, Mr.
5 Chairman, that she admits that she has no
6 experience in utility regulatory accounting.

7 COMMISSIONER CLARK: That's what we went
8 through this morning, correct?

9 MR. KELSKY: Correct.

10 COMMISSIONER CLARK: We are all in agreement?
11 (Whereupon, Exhibit No. 13 was received into
12 evidence.)

13 COMMISSIONER CLARK: All right. Then Mr.
14 Suqqs. Your witness.

15 MR. KELSKY: Thank you.

16 Whereupon,

17 STEPHEN J. SUGGS

18 was called as a witness, having been previously duly
19 sworn to speak the truth, the whole truth, and nothing
20 but the truth, was examined and testified as follows:

21 BY MR. KELSKY:

22 Q State your name and professional address,
23 please.

24 A Stephen Suggs, Professional Engineer, 6805
25 Overseas Highway, Marathon, Florida.

1 Q **And what do you do as a professional engineer?**

2 A I mainly specialize in wastewater engineering
3 from collection systems to wastewater treatment plant
4 design. I also do structural engineering and mechanical
5 engineering, specifically utility stuff, but also resort
6 stuff as well.

7 Q **Was your testimony prefiled testimonied in
8 this case?**

9 A Yes.

10 Q **Did you prepare any exhibits?**

11 A Yes, a response -- or a memorandum analyzing
12 the Giffels-Webster technical memorandum.

13 Q **Are there any edits or changes to your
14 testimony?**

15 A No.

16 Q **Would your testimony be the same today as it
17 was when you prefiled it?**

18 A Yes.

19 Q **Can you please simple summarize your
20 testimony?**

21 A Sure.

22 So I was tasked with reviewing the
23 Giffels-Webster technical memorandum, which analyzed two
24 collection systems, and just reviewing their methodology
25 as well as their general report, you know, for any

1 inconsistencies or any omissions.

2 Based on that analysis, they reviewed two
3 types of systems. They -- a low pressure system, which
4 is actually a step system. Its terminology is kind of
5 referred to a grinder system in the report, but also low
6 pressure, and Mr. Cole had addressed that earlier. But
7 it's actually a step system, which it pumps the
8 effluent, and then a vacuum sewer system.

9 In my review of the technical memorandum, we
10 -- I noticed that there was a lack of information
11 related to the O&M cost for the low pressure system,
12 specifically with the pump-outs, as well as the pump
13 replacements. They had noted a seven-year replacement
14 -- or a seven-year rebuild instead of any replacement of
15 any pumps in the O&M breakdown, which is a significant
16 cost difference. And when you compare those on the
17 present growth analysis, it significantly changes what
18 the recommendation would be from a financial standpoint
19 between the two systems.

20 Additionally, no other systems were analyzed,
21 such as a gravity combination system, which could have
22 potential cost savings, so...

23 **Q Thank you.**

24 MR. KELSKY: And we move the direct testimony
25 into the record.

1 COMMISSIONER CLARK: So ordered.
2 (Whereupon, prefiled direct testimony of
3 Stephen J. Suggs was inserted.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

/

DIRECT TESTIMONY

OF

STEPHEN J. SUGGS, P.E.

on behalf of

Palm Island Estates Association, Inc.

1 Q. Please state your name, position and professional address.

2 A. My name is Stephen J. Suggs, P.E. I am a professional engineer with the firm
3 of Weiler Engineering Corporation. My professional address is 6805 Overseas
4 Highway, Marathon, FL 33050.

5 Q. State briefly your educational background and experience.

6 A. I have a Bachelor of Science degree in Civil Engineer and a second Bachelor of
7 Science degree in Environmental Engineering from Florida Gulf Coast
8 University. I am a licensed professional engineer (# 85237). I have extensive
9 experience in wastewater treatment plant design, wastewater collection system
10 design, mechanical piping design and structural design, along with project
11 management during design and construction.

12 Q. Are you providing testimony on behalf of Palm Island Estates Association,
13 Inc?

14 A. Yes.

15 Q. What is the purpose of your direct testimony?

16 A. The purpose of my direct testimony is to review the Giffels-Webster technical
17 memorandum entitled "Evaluation of Wastewater Collection Technologies"
18 dated April 2, 2021 and to provide opinions on the recommendations and costs
19 as stated in the memorandum.

20 Q. Have you previously appeared and presented testimony before any
21 regulatory bodies?

22 A. No.

23 Q. Are you sponsoring any exhibits?

24 A. Yes, I am sponsoring SS-1, Sewer Connection Memorandum, based upon my
25 review of the Giffels-Webster technical memorandum.

1 **Q.** Does the report identified as SS-1 accurately reflect your opinions?

2 A. It does.

3 **Q.** Was this exhibit prepared by you?

4 A. Yes, it was.

5 **Q.** Does that conclude your direct testimony?

6 A. Yes, it does.

1 MR. KELSKY: And subject to cross exam.

2 COMMISSIONER CLARK: Mr. Wharton?

3 MR. WHARTON: No questions.

4 COMMISSIONER CLARK: All right. OPC?

5 MS. PIRRELLO: No questions.

6 COMMISSIONER CLARK: Ms. Cotherman?

7 Staff?

8 MR. SANDY: No questions.

9 COMMISSIONER CLARK: Commissioners?

10 You got off easy.

11 MR. KELSKY: Move the exhibit into evidence.

12 COMMISSIONER CLARK: All right. Exhibit No.

13 14 is moved into the record without objection.

14 Seeing none, so ordered.

15 (Whereupon, Exhibit No. 13 was received into
16 evidence.)

17 MR. KELSKY: Can the witness be excused?

18 COMMISSIONER CLARK: The witness is excused.

19 (Witness excused.)

20 COMMISSIONER CLARK: All right. Next on
21 direct testimony, Ms. Cotherman.

22 I may be a little confused as to how this is
23 going to work, so I will kind of -- we will kind of
24 work this along.

25 Just a reminder, you have been sworn in. If

1 you would like to give a summary of your testimony,
2 then we will move it no into the record it that's
3 your desire.

4 MS. COTHERMAN: Okay.

5 Whereupon,

6 LINDA COTHERMAN

7 was called as a witness, having been previously duly
8 sworn to speak the truth, the whole truth, and nothing
9 but the truth, was examined and testified as follows:

10 TESTIMONY

MS. COTHERMAN: My name is Linda Cotherman. I
am a 45-year resident, not 45 years old but living
on the island for 45 years. I reside at 50
Gasparilla Way, Don Pedro Island. I am a state
certified general contract, land development and
environmental permitting specialist, and I have had
extensive on-site septic and sewer experience. I
have analyzed the Comprehensive Plan, the zoning
regulations and landuse restrictions, including
environmental as and part of doing feasibility
studies for land development for projects. I have
worked with both Giffels-Webster and Weiler
Engineering over my years, both are providing
evidence today. I presently do some private
consulting in construction. While at Bowie Urban

1 Planners AICP, I conducted feasibility studies
2 statewide pertaining to eminent domain.

3 My direct testimony supports my position that
4 the application for certification of the service
5 area should be denied. The applicant has not
6 demonstrated the need for service, nor has he
7 provided evidence of same. The proposed central
8 sewer is not consistent with Charlotte County's
9 Comprehensive Plan. The applicant has not shown
10 the financial or technical ability to construct,
11 operate --

12 COMMISSIONER CLARK: Hold on one minute, Ms.
13 Cotherman. Someone is calling.

14 Is this our phone here that's ringing? This
15 could only happen in one of my hearings, right?

16 (Discussion off the record.)

17 COMMISSIONER CLARK: All right. Ms.
18 Cotherman, my apologies.

19 MS. COTHERMAN: That's fine.

20 The applicant has not shown the financial or
21 technical ability to construct, operate and
22 maintain a project of this scope. Since all the
23 costs have not yet been established by the
24 applicant, the estimates of rates and charges
25 associated with the project may be grossly

1 inaccurate. And I have exhibits that go with my
2 testimony.

3 COMMISSIONER CLARK: All right. We will move
4 your testimony into the record, and we will tender
5 you for cross now.

6 (Whereupon, prefilled direct testimony of Linda
7 Cotherman was inserted.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

/

DIRECT TESTIMONY

OF

LINDA COTHERMAN

Pro Se Intervenor

1 **Q.** **Please state your name, position and address.**

2 A. My name is Linda Cotherman and I reside at 50 Gasparilla Way, Don Pedro Island. My
3 mailing address is P.O. Box 881, Placida, FL 33946.

4 **Q.** **Are you representing yourself in this Administrative Hearing?**

5 A. Yes.

6 **Q.** **Are you providing expert testimony?**

7 A. Yes, under Fla. Stat. 90.702 of the Florida statutes. Linda B. Cotherman possesses the
8 unique quality of having approximately 45 years of professional and business
9 experience that is germane to this project and the applicant. (See Exhibit LBC-1”CV
10 of Linda B. Cotherman” and Exhibit LBC-2 “Witness Reports and Testimony”)

11 **Q.** **Have you found any discrepancies, inaccuracies or missing information in the**
12 **original application for certification by EU?**

13 A. Yes. (See Exhibit LBC-3 “List of Discrepancies, Inaccuracies and Missing Information
14 in the Application for Original Certificate by Environmental Utilities, LLC”).

15 **Q.** **Have any of the owners of Environmental Utilities, LLC (John R. Boyer and Diane**
16 **Kay Boyer) made a similar application to the Florida Public Service Commission**
17 **in the past?**

18 A. Yes, in July of 2003. (See docket number 20020745-SU)

19 **Q.** **Have any of the issues associated with the prior application changed materially**
20 **since the Applicant withdrew the previous application in 2004?**

21 A. No. The same issues remain, which are:

22 a. The proposed service area is not in compliance with the Charlotte County
23 Comprehensive Plan.

24 b. Neither the applicant nor its principals have experience in wastewater system
25 installation and management.

- 1 c. The management of an active water utility by Environmental Utilities' principals has
2 incurred violations with DEP and Charlotte County since 2004.
3 d. The financial ability of the applicant has not been provided to indicate the applicant
4 can successfully construct and maintain a project of this magnitude.

5 **Q. Is there a need for service?**

- 6 A. There is no demonstrable need for service shown by the applicant. (See Exhibit LBC-
7 3 "List of Discrepancies, Inaccuracies and Missing Information in the Application for
8 Original Certificate by Environmental Utilities, LLC")

9 **Q. Has the applicant shown technical ability?**

- 10 A. No. The owner of the utility had the opportunity to gain experience since the initial
11 application in 2003 but did not use the time to accomplish this.

12 **Q. Are there any other utilities in proximity to the proposed service area that could
13 provide central sewer?**

- 14 A. Yes. (See Exhibit LBC-4 "List of Other Issues and Concerns Regarding the Application
15 for Original Certificate by Environmental Utilities, LLC")

16 **Q. Are the proposed rates and tariffs fair and equitable?**

- 17 A. That has yet to be determined. The figures submitted were pro forma without any
18 substantiating documents. The rates and charges that were submitted do not account
19 for the full range of costs associated with a project of this scope. (See Exhibit LBC-4
20 "List of Other Issues and Concerns Regarding the Application for Original Certificate
21 by Environmental Utilities, LLC")

22 **Q. Are there any other issues or concerns you wish to address?**

- 23 A. Yes. (See Exhibit LBC-4 "List of Other Issues and Concerns Regarding the
24 Application for Original Certificate by Environmental Utilities, LLC")

25 **Q. Have the exhibits LBC-1 through LBC-4 been prepared by you?**

1 A. Yes.

2 Q. **Do these exhibits accurately support and express your opinions in this matter?**

3 A. Yes.

4 Q. **Does this conclude your direct testimony?**

5 A. Yes, it does.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COMMISSIONER CLARK: Mr. Wharton? Mr.

2 Friedman?

3 EXAMINATION

4 BY MR. FRIEDMAN:

5 Q Ms. Cotherman, since it's your position that
6 if the Boyers don't have the financial resources to
7 construct this project, what do you believe will happen
8 if they get the certificate and they are not able to
9 financially build the system?

10 A Are you asking me my personal opinion?

11 Q Yeah. What happens? What do you understand
12 happens in this process if ultimately they can't build
13 it?

14 A That they would be able to sell their
15 certificate to someone else.

16 Q So it's just it won't get built by
17 Environmental Utilities?

18 A I think that's a definite possibility, yes.

19 Q Now, you are questioning, I understand it, the
20 certainty of the costs?

21 A Yes.

22 Q Now, when Environmental Utilities tried to
23 bifurcate the certificate from the rate-making function,
24 didn't you lead a rally to get residents to write
25 letters to the Commission to deny the bifurcation?

1 A I won't say I led a rally. I am on the PIE
2 board, and my position is Island Watch. And anything
3 that pertains to the island, I can pass around to the
4 community and they do what they want.

5 Q **And didn't you speak against that, the
6 bifurcation, at the PSC?**

7 A Yes, I did.

8 Q **And if the case would have been bifurcated,
9 wouldn't you agree that we would be able to have more
10 current financial information?**

11 A No, I don't.

12 Q **Why is that?**

13 A Because it would be -- I don't know what
14 difference it would make if you would do it now or
15 later. But if you are saying you want do it, you won't
16 know the cost until after construction is complete, that
17 would, I guess, be true.

18 Q **Do you understand the Commission process for
19 getting a certificate?**

20 A I guess. I mean, yes. That's why we are here
21 at the hearing to present evidence why the certificate
22 should be approved or not.

23 Q **And if the certificate had been approved and
24 then they went forward with design, permitting and
25 construction of the project and then got rates set,**

1 **don't you think that that would alleviate your concern**
2 **about not having certainty in the rates?**

3 A Yes, it would, but at that point, it would be
4 too late, because if it was \$25,000 or \$50,000 after
5 everything was done and permitted, then there would be
6 no time to -- that's what -- the rates would be based on
7 the construction cost, of the actual construction cost,
8 so that leaves that wide open if he didn't do it. It
9 could be \$50,000 a connection.

10 Q Or 100?

11 A Or 100.

12 Q **You state that Environmental Utilities'**
13 **proposed service area is within the certificated area of**
14 **Charlotte County, and that Charlotte County has already**
15 **established as the wastewater provider?**

16 A Yes. They have maps, yes, they've established
17 it.

18 Q **So it's your understanding that Charlotte**
19 **County could be providing wastewater service to the**
20 **islands?**

21 A It's in their service area, yes. And as far
22 as service area, there is connections that are in the
23 proposed service area that are already connected to
24 Knight Island Utilities, so there is overlapping areas.

25 Q **And that's the water system in the southside**

1 of the islands?

2 A The water -- no, sewer.

3 Q All right.

4 A Do you want me to expound on that?

5 Q No. Let me ask you this question another
6 question. I didn't understand where you were going with
7 that.

8 Now, you stated that Charlotte County had the
9 right to serve sewer on the island?

10 A Yes.

11 Q So if Charlotte County has the right to serve
12 sewer on the island, doesn't it also have the right to
13 delegate that responsibility to somebody else?

14 A I don't know.

15 MR. FRIEDMAN: That's all I have.

16 COMMISSIONER CLARK: Any other questions?

17 MR. KELSKY: No questions.

18 COMMISSIONER CLARK: All right. Ms.

19 Cotherman, would you like your exhibits entered?

20 MS. COTHERMAN: Yes, please.

21 COMMISSIONER CLARK: All right. So ordered
22 without objection.

23 My bad, I forgot. Let me go to staff,
24 questions.

25 MR. SANDY: No, sir.

1 COMMISSIONER CLARK: Commissioners? No
2 questions.

3 And redirect?

4 We'll will skip redirect.

5 MS. COTHERMAN: Okay.

6 COMMISSIONER CLARK: If you can tell tee tell
7 me how you can do that, we will try it.

8 All right. Moving in Exhibits 15, 16, 17 and
9 18.

10 (Whereupon, Exhibit Nos. 15-18 were received
11 into evidence.)

12 MS. COTHERMAN: Am I excused?

13 COMMISSIONER CLARK: You may be excused.

14 All right. Next witness on rebuttal, we are
15 moving back to Environmental Utilities. Call your
16 witness.

17 MR. FRIEDMAN: Commissioners, can I just
18 discuss something for a second?

19 COMMISSIONER CLARK: Sure.

20 MR. FRIEDMAN: And that is that Mr. Boyer is
21 our next witness.

22 COMMISSIONER CLARK: Yes, sir.

23 MR. FRIEDMAN: Tonight we are going to have
24 customer testimony, or not customer testimony, but
25 property owner testimony. Tomorrow morning we are

1 going to have property owner testimony. And it
2 seems to me that having Mr. Boyer available, either
3 do his rebuttal tomorrow after that, or allow him
4 to come back and do some rebuttal; otherwise, you
5 have got prospective people making comments with no
6 opportunity to rebut them. So I would ask the
7 Commission's indulgence to allow him to do
8 rebuttal, additional rebuttal tomorrow after the
9 customers.

10 COMMISSIONER CLARK: I would like to go ahead
11 -- I would like to proceed on with the rest of this
12 hearing. I think we are going to be able to wrap
13 the hearing up. If you are saying could we allow
14 Mr. Boyer some time tomorrow at the conclusion of
15 the customer service hearing for some comments, I
16 don't see any reason -- staff, any reason we can't
17 do that, Ms. Helton?

18 MS. HELTON: That would be highly irregular
19 from anything that I have ever seen before when --
20 in a hearing where we've had customer testimony.
21 Maybe if we could go ahead and take Mr. Boyer, and
22 if something comes up during the course of the
23 customer testimony, and then if Mr. Friedman wants
24 to renew his request, we can take it up then when
25 we are not taking things maybe out of context,

1 because we don't know.

2 MR. FRIEDMAN: That's satisfactory.

3 COMMISSIONER CLARK: That will work for you?

4 Okay. I think I can live with that as well. Okay.

5 MR. KELSKY: All right. I have an objection
6 to that. We are in the technical hearing now.

7 COMMISSIONER CLARK: Correct.

8 MR. KELSKY: The technical hearing is the
9 technical hearing. This is their opportunity to do
10 rebuttal, and he is asking for an opportunity to do
11 rebuttal and then a surrebuttal.

12 COMMISSIONER CLARK: I think the point being
13 is that what you are rebutting -- what might need
14 to be rebutted are some things that come up that he
15 is not going to be privy to hearing. So there is
16 nothing to rebut at this particular point. We are
17 just kind of keeping the door open here -- Ms.
18 Helton, help me out if I'm wading in deep water
19 here. We are just keeping the door open here to
20 say if there is something that is, you know,
21 incorrect, or something that is substantially
22 inconclusive, that we would have the opportunity --
23 that he would have the opportunity to say --

24 MS. HELTON: I don't think your ruling, Mr.

25 Chairman, as I understand it, is yes or no to Mr.

1 Boyer being able to --

2 COMMISSIONER CLARK: We'll see tomorrow

3 morning --

4 MS. HELTON: -- do that. I think, you know,
5 we hear the testimony. If there is something that
6 Mr. Friedman feels like that he needs to ask Mr.
7 Boyer, then he can ask leave to do that, and
8 everyone could provide their objections if they
9 object and we can go forward with how you rule.

10 COMMISSIONER CLARK: And we may not allow it.
11 There -- I mean, that's a possibility we are going
12 to look at tomorrow.

13 MS. COTHERMAN: Could I?

14 COMMISSIONER CLARK: Yes, Ms. Cotherman.

15 MS. COTHERMAN: Okay. I thought that that was
16 the purpose of doing prefiled testimony, so that
17 you could not change and add new things, and
18 anything in rebuttal would be added to the brief
19 that's due in March.

20 COMMISSIONER CLARK: And you will have an
21 opportunity to brief that. I think we are talking
22 about a very potentially limited issue here that
23 may come up, and they are asking could they have an
24 opportunity to address that. I am saying I am open
25 to hearing it. Not that they are going to get it.

1 I am open to hearing it.

2 MR. FRIEDMAN: Yeah. I mean, I would just
3 point out that this is kind of unique, because in
4 all the hearings I have done, I have never been in
5 one where we finished the technical hearing --

6 COMMISSIONER CLARK: The technical hearing
7 prior to the customer service --

8 MR. FRIEDMAN: -- before we did the service
9 hearing and that --

10 COMMISSIONER CLARK: That is the unusual part.

11 MR. FRIEDMAN: That's what creates the dilemma
12 that we are in.

13 COMMISSIONER CLARK: Yeah. That is a very
14 unusual part. I was kind of thinking the same
15 thing. Normally we've had customer service
16 hearings prior to this, so some of the
17 insinuations, accusations, things that are said,
18 you have already heard and those can be addressed.
19 This is a little bit unique if we finish up today
20 prior to the hearings.

21 MS. CRAWFORD: And, Commissioner --

22 COMMISSIONER CLARK: Ms. Pirrello.

23 MS. CRAWFORD: I'm sorry.

24 COMMISSIONER CLARK: One second, Ms. Crawford.

25 I am sorry.

1 MS. PIRRELLO: I would note that the utility
2 is permitted to cross-examine the customers after
3 they speak tomorrow --

4 COMMISSIONER CLARK: Correct.

5 MS. PIRRELLO: -- so to the extent --

6 COMMISSIONER CLARK: I understand.

7 MS. PIRRELLO: -- that there are
8 inconsistencies, they can clarify that during the
9 hearing.

10 COMMISSIONER CLARK: Understood.

11 Ms. Crawford.

12 MS. CRAWFORD: Ms. Pirrello had my comment.

13 Thank you, sir.

14 COMMISSIONER CLARK: We are all in sync.

15 MR. WHARTON: We will cross this bridge when
16 we come to it.

17 COMMISSIONER CLARK: Yeah, I think that's
18 where we will probably end up anyway.

19 All right. Let's move on.

20 MR. FRIEDMAN: Environmental Utilities would
21 call Mr. John Bover.

22 Whereupon,

23 JOHN R. BOYER

24 was recalled as a witness, having been previously duly
25 sworn to speak the truth, the whole truth, and nothing

1 but the truth, was examined and testified as follows:

EXAMINATION

3 BY MR. FRIEDMAN:

4 Q Mr. Boyer, would you please state your name
5 again, please, sir?

6 A Jack Boyer, sir.

7 Q And, Mr. Boyer, did you profile rebuttal
8 testimony in this case?

9 A Yes, sir, I did.

10 Q And if I were to ask you the questions in your
11 rebuttal testimony, would the answers in your rebuttal
12 testimony be the same?

13 A Everything but one thing, and it is on page
14 three, number nine. And it says am, but it should say I
15 was. And that was I was the operator of wastewater and
16 water facilities.

17 Q Okay. And other than that, you have no other
18 changes?

19 A No, sir.

20 Q Would you like to provide a summary of your
21 rebuttal?

22 A I truthfully hadn't thought about that. I
23 apologize. No, sir, other than addressing, you know,
24 some things that have been brought up here.

25 O Well, it's got to be limited to -- just

1 **summarize your rebuttal testimony.**

2 A Everything stands the same, you know, you --
3 when you go to my experience, it started when I went in
4 the U.S. Navy. I have served on nuclear subs, and in
5 one of the things in order to get your Dolphins was to
6 understand every system on that sub, and what valve to
7 close. And so I learned the water and wastewater when I
8 was 19 and 20. Then I served on city government in a
9 little town called Alvin, Texas, and I served for two
10 terms, six years. And, of course, we ran water and
11 wastewater, and we set budgets every year. I didn't
12 become an expert, believe me. It was listening to staff
13 and making logical decisions.

14 After that, then we moved to the island about
15 35 years ago, and I became a licensed water plant
16 operator and started running the circuit on five
17 different utilities.

18 MR. FRIEDMAN: I would like to ask that Mr.
19 Boyer's testimony be inserted into the record as
20 though read.

21 COMMISSIONER CLARK: So ordered.

22 (Whereupon, prefilled rebuttal testimony of
23 John R. Boyer was inserted.)

24

25

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket N0. 20200226-SU

REBUTTAL TESTIMONY

OF

JOHN R. BOYER

on behalf of

Environmental Utilities, LLC

- 1 **Q.** **Please state your, name profession and address.**
- 2 **A.** My legal name is John R. Boyer, but I generally am known as Jack Boyer. I am the president
3 of Environmental Utilities, Inc. My business address is 7025 Placida Rd, Placida FL 34224.
- 4 **Q.** **Have you previously filed direct testimony in this proceeding?**
- 5 **A.** Yes.
- 6 **Q.** **What is the purpose of your rebuttal testimony?**
- 7 **A.** I will be addressing certain comments by witnesses for the intervenors.
- 8 **Q.** **Are you sponsoring any exhibits in connection with your rebuttal testimony?**
- 9 **A.** Yes, I am sponsoring Exhibit JRB-3 which shows all real estate taxes have been paid and
10 JB-4 which is a letter from Freedom Holding Manatee LLC.
- 11 **Q.** **Do you have any comments on Ms. Cotherman's assertion of unpaid real estate taxes?**
- 12 **A.** Yes. The property taxes for 9370 Little Gasparilla Island are for 2021 and are not yet due. As
13 to 9562 Privateer Road, the address for the Property taxes was an old address, therefore we
14 have never received tax notices. The Charlotte County Appraiser's office has been contacted
15 to update the mailing address. These are nominal amounts and certainly would have been
16 paid if we had received the bill. All outstanding amounts have been paid (see Exhibit JRB-
17 3).
- 18 **Q.** **Do you have any comments to the testimony asserting that you do not have the financial
19 ability to construct and operate the wastewater system?**
- 20 **A.** Yes. Exhibit JRB-4 is a letter from Freedom Holdings Manatee LLC, the principals of which
21 I have had financial relationships for decades. Due to those relationships, they have
22 confidence in my ability to undertake converting septic tanks on the island to central
23 wastewater system and are willing to loan me the funds as set forth in the commitment.
24 Without the Certificate having been granted, conventional lending, government grants and
25 government low-interest loans are not available.

1 **Q:** **Have you read the prefiled testimony of the Petitioners?**

2 A: I have, and I have reviewed the voluminous attachments to that testimony also.

3 **Q:** **Please touch upon your experience with water and wastewater systems.**

4 A: Certainly. Early in my professional life I worked on nuclear subs, which required me to
5 know , understand and operate all systems including the water and wastewater system
6 of the sub. Later, I served two terms (6 years)on City Council in Texas, where one of
7 the primary duties of my job was the oversight and responsibility for the managerial
8 operation of the various municipalities of the city, which obviously included its Water
9 and Wastewater systems. I am also the operator of the Wastewater and Water facilities
10 on Palm Island and Little Gasparilla Island beginning in 1987, as well as a licensed
11 Operator. I purchased Little Gasparilla Island Water Utility and have owned and
12 operated that system for 30 years. Little Gasparilla Island Water Utility was the first
13 straight desalination plant in the US for a public utility.

14 **Q:** **Did any of the testimony you have reviewed particularly concerned with regard to
15 existing septic tanks in the proposed certificated territory?**

16 A: Yes. Some of this testimony was obviously drafted and being presented to create the
17 impression that the continued use of septic tanks on the island, apparently indefinitely,
18 is just as well or better than would be the availability of central wastewater collection
19 on the island and transmission for treatment on the mainland. As a utility owner, as an
20 individual with significant experience in water and wastewater treatment including but
21 not limited to the type of environment that exists on these barrier islands, and operator
22 on Little Gasparilla Island for 34 years. I have seen the effects of aging septic tanks as
23 well as septic tanks that are failing. When driving around the island, you can smell the
24 waste on many of the homes that are failing. While installing new water lines, I have

1 personally seen the waste on the ground where the pipe to the drain field was no longer
2 attached. During peek season, which is all year except for a few months in fall, the
3 problem escalates, as renters fill the homes. Many homes have septic tanks that are
4 totally under water during high tides and even more are under during the king tides we
5 have. During tropical storms, you can visually see the waste floating. An example
6 would be a home we purchased on the bay. The home was built in 1964 and had the
7 original septic. The entire system was under water 60 % of the year, yet no inspection
8 was required when we purchased the home. Our system is approximately 50ft from the
9 water. In fact, the system is considered to be functional unless someone complains of
10 the smell. We put in a new system. Our neighbors house is in the same condition and is
11 a popular rental. The house has three bedrooms, one bedroom has four bunks in it and
12 has one bathroom. It wrecks most of the time. The home behind ours has a 55 gallon
13 drum for their waste. This is the reality on the ground. It remains my firm opinion that
14 the County's ordinance, and the County's willingness to provide treatment capacity for
15 this wastewater, in support of our proposal to certificate this wastewater territory, is in
16 the public interest, will benefit the environment, and will provide a consistent and
17 reliable method of wastewater treatment in the proposed territory on a going forward
18 basis. It is a project I'm proud to be associated with.

19 **Q:** **In the course of the preparation for this litigation, have you continued to review
20 the information that has been produced by the various parties?**

21 A: Yes, I participated in our responses to discovery, I have listened to depositions –
22 including that of the representative of Charlotte County – I have reviewed the testimony
23 of our witnesses and I have reviewed the testimony of the Petitioner's witnesses. On top
24 of that there is other documentation that I have reviewed related to our proposed project

1 and other people I have discussed the project with.

2 **Q:** Does anything you have seen or read in that regard caused you to be concerned
3 about your commitment to the project or your ability to effectuate the proposal in
4 your application?

5 A: Absolutely not. I remain fully committed to this project, and I continue to believe that in
6 Environmental Utilities has demonstrated that it has the financial, managerial, and
7 operational resources to create and operate the proposed utility and perhaps, most
8 importantly, that the utility is needed. The environmental benefit of transitioning to
9 central wastewater collection on a fragile barrier island, particularly in this case, since
10 wastewater treatment will actually occur on the mainland, is self- apparent and in the
11 public interest. Charlotte County is committed to the project and supportive. The
12 County obviously understood the scope of its own mandatory connection ordinance
13 when it entered into the contract. The County's support certainly contradicts
14 intervenors' claim that the proposed project is inconsistent with the County's own
15 comprehensive plan. The wastewater treatment capacity is pre-existing and reserved.
16 Obviously, it is not easy or painless to transition to available central wastewater
17 collection and treatment for customers who are used to their septic tanks, but that is the
18 trend in Florida, it is a trend that will continue, and it is a trend that is proactive and
19 preventative.

20 **Q.** Does that conclude your direct testimony?

21 A. Yes, it does.

1 BY MR. FRIEDMAN:

2 Q And, Mr. Boyer, you had exhibits with your
3 testimony as well?

4 A Yes, sir.

5 Q Okay.

6 MR. FRIEDMAN: Tender for cross-examination.

7 COMMISSIONER CLARK: OPC?

8 EXAMINATION

9 BY MS. PIRRELLO:

10 Q Mr. Boyer, you stated that you have operated
11 utilities on the island since about 1987, correct?

12 A Yes, ma'am.

13 Q So you are familiar with the structure of
14 these islands and the different parts?

15 A Very much so. Probably better than most
16 people out there.

17 Q Okay. Isn't it correct that Palm Island
18 Transit only provides access to Knight Island and Don
19 Pedro?

20 A That's correct.

21 Q So in order to get materials to Little
22 Gasparilla, you would need to use a separate barge,
23 right?

24 A It's done by barge. And with your question
25 earlier, it was the \$1,000 transportation went for the

1 barge, okay, on the north end of Palm Island. On Little
2 Gasparilla Island, we use a separate barge, and each one
3 of those pump-out fees, the \$1,500 included barge
4 traffic, okay. And then in our construction, we also
5 included that in our construction cost. And then the
6 actual transportation to and from is by boat only, and
7 we have the boat and the storage facilities for that as
8 well.

9 Q All right. Thank you.

10 MS. PIRRELLO: That's all I have.

11 COMMISSIONER CLARK: Palm Island?

12 MR. KELSKY: Thanks.

13 EXAMINATION

14 BY MR. KELSKY:

15 Q Just a few questions, Mr. Boyer.

16 In your rebuttal testimony, you make reference
17 of having seen the effects of aging septic tanks, as
18 well as septic tanks that are failing. You have not
19 offered any photographs of these failing septic tanks as
20 part of your exhibits, have you?

21 A No, sir. I told you we could get those from
22 the County on the last rebuttal.

23 Q But they haven't -- you are not offering them,
24 correct?

25 A I did not present them. No, sir. I was going

1 to let the County provide those to you.

2 MR. KELSKY: Thank you. I have no further
3 questions.

4 COMMISSIONER CLARK: Ms. Cotherman?

5 EXAMINATION

6 BY MS. COTHERMAN:

7 Q Earlier you stated that in the 2002 to 2004
8 case that the County was for the project -- or against
9 the project and now they are for the project?

10 A Yes, ma'am.

11 Q Okay. And in the Craig Rudy letter, when he
12 talks about the extension -- I couldn't find it in front
13 of me with all these papers -- when he talks about the
14 extension of service to the barrier islands?

15 A What are you saying. I am not sure I
16 understand.

17 Q Does he say bridgeless barrier islands or has
18 he included the barrier islands, which include Manasota
19 Key and bridged islands?

20 A As you know, Manasota Key already has
21 wastewater on the south tip of it. And the island to
22 the south of us, Boca Grande, also has wastewater with
23 an island in the middle without wastewater.

24 Q Right. But do you know that in the
25 Comprehensive Plan and in letters, there is a difference

1 **between barrier islands and bridgeless barrier islands?**

2 A Yes, ma'am. I am familiar with the BBI, yes.

3 Q Okay. And the barrier islands that Mr. Rudy
4 referred to in his letter, he does not say bridgeless,
5 he just says barrier?

6 A He might have skipped a word. I apologize for
7 Mr. Rudy, I guess.

8 MS. COTHERMAN: That's all.

9 COMMISSIONER CLARK: Staff?

10 MR. SANDY: Yes, sir.

11 EXAMINATION

12 BY MR. SANDY:

13 Q Mr. Boyer, I believe we hit on a moment ago
14 that in your rebuttal, you describe your observations of
15 some septic systems in the proposed service area, is
16 that right?

17 A Yes, sir.

18 Q And ultimately, your observations are that
19 the -- that there is waste on the ground, and I believe
20 I can quote you as saying the smell, quote, reeks, is
21 that accurate?

22 A It has many a time. Yes, sir.

23 Q Okay. You would agree with me that that's
24 evidence of a septic system not operating as it is
25 supposed to, right?

1 A Yes, sir.

2 Q So in other words, if the septic system is
3 operating the way it's supposed to, generally speaking
4 you are not going to have the smell and the waste in the
5 ground and things that generally you observed there on
6 the island?

7 A Well, I think you might also be confusing a
8 septic system with a package plant. A package plant
9 that's operating properly, you are not going to smell
10 that, but if you have a septic system with a vent, you
11 can definitely smell it.

12 Q Okay. Here's my question for you, these
13 observations you made, did you ever make a report of any
14 kind to any regulators of these issues?

15 A Myself, no, sir.

16 Q Okay. So never to Charlotte County, or the
17 Department of Health, or anybody of that nature?

18 A In Craig Rudy's letter, you will recall he
19 took an inspection of the island. He and Brandon --
20 what is Brandon's last name? Mr. Brandon, I guess,
21 okay, who is a water quality expert for Charlotte
22 County. And they came out and did a whole day tour.
23 Took many a pictures, which I thought you would end up
24 with, and I would assume they would do the reporting.

25 I live out there, I am already hated enough,

1 okay, I am the only utility. And when you go through
2 mandatory water, it's -- I have never turned anybody in
3 in my life.

4 Q Okay. Ultimately, if I understand what you
5 are saying, you didn't want to create any bad blood in
6 between you and your neighbors, is that fair to say?

7 A I didn't want to get shot.

8 Q That's fair too.

9 You are aware, though, that pursuant to
10 Florida law and Charlotte County ordinances, there are
11 requirements that septic systems are inspected, maybe
12 not every year, but certainly, say, every five years?

13 A I am, but are you familiar that that policy
14 has never been enforced on the bridgeless barrier
15 islands, and every septic tank built before 1986 is
16 grandfathered in, no inspection at all.

17 MR. KELSKY: I would like to move to strike
18 that comment. It lacks foundation.

19 MR. WHARTON: It's responsive --

20 THE WITNESS: I can elaborate further and
21 explain why that's the law in the case. The County
22 does not -- in their policy that they came back to,
23 the State of Florida, okay, they set up a policy
24 that took care of the mainland. They never set up
25 a policy to inspect the septic systems on the

1 island. The Department of Health has never come
2 out there randomly. The only ones they do is the
3 ATUs that have a annual permit. There is a serious
4 problem out there, and this is the little envelope
5 that the island has fallen through, leave us alone.
6 I have got people that have written letters up
7 there that have basically stated, we've had our
8 septic system for 37 years and never had to do a
9 thing.

10 MR. KELSKY: Objection, he is now -- now we
11 are talking hearsay, so it lacks foundation and
12 it's hearsay.

13 COMMISSIONER CLARK: I think he is speaking
14 also as a resident of the island too, isn't that --

15 THE WITNESS: Yes, sir --

16 COMMISSIONER CLARK: He is an owner and a --

17 THE WITNESS: -- but also these letters are
18 submitted to the Public Service Commission on their
19 website right now.

20 COMMISSIONER CLARK: Let's move on.

21 THE WITNESS: Okay. I am sorry. I am just --
22 that one it should be, if the law was followed, but
23 it's never been implemented.

24 COMMISSIONER CLARK: Moving on.

25 BY MR. SANDY:

1 Q So you raised an issue of enforcement. You
2 would agree with me, generally speaking, that there are
3 some folks in the proposed service area who are not
4 interested in hooking up to any kind of a central sewer
5 system?

6 A Yes, sir.

7 Q Okay. So I guess what I am wondering is this,
8 in the event that you received your certification from
9 the Public Service Commission and there were folks in
10 the proposed service area who didn't want to hook up,
11 what's the plan?

12 A I am going to follow the law.

13 Q And if I can elaborate on that, how would you
14 seek for those folks to hook up into your central sewer
15 system?

16 A I can give you an answer. It's relatively
17 lengthy, and I learned it the hard way with the
18 mandatory water connection. When I went through a
19 staff-assisted rate case first with Charlotte County,
20 they stated I was not doing my customers a fair job by
21 not forcing everybody that has a water line in front of
22 them in sharing the cost, okay.

23 So we got -- the DEP required us to expand our
24 manufacturing plant. We were the very first
25 desalination plant in the United States that used a

1 public utility, okay. Expensive process. And for us to
2 expand it according to the DEP requirement, that we had
3 250 gallons per ERC, whether they were connected or not,
4 we still had to provide that service, it became less
5 expensive for us to connect to Charlotte County.

6 So when we entered into a bulk water agreement
7 with Charlotte County, they required, in that contract,
8 that I follow the laws of Charlotte County and enforce
9 the mandatory water connection, which would be the same
10 thing with -- in our agreement on bulk service, which
11 says we have to follow the laws of the State of Florida
12 as well as Charlotte County. And that would be
13 mandatory connection one year after service is
14 available.

15 **Q So if I hear what you are saying correctly,**
16 **you would request that the County enforce hooking up**
17 **into the central sewer system, is that right?**

18 A No, sir. What I am saying is I have got to
19 abide by the contracting agreement that Environmental
20 Utilities has signed with Charlotte County, and that is
21 to follow the existing law. Charlotte County does the
22 enforcing. They go through code enforcement, is their
23 process.

24 **Q Okay. Out of curiosity, have you had any**
25 **numbers worked up that would reflect your rates and rate**

1 **structure if fewer individuals, or fewer ERCs hooked up**
2 **into the system than you anticipate? If that question**
3 **doesn't make sense, please let me know.**

4 A No, sir, it would be pretty easy to do. All
5 you would have do is take a multiplier of your general
6 overhead and divide it by the percentage of people that
7 you do connect. So that would be a number, but, of
8 course, you are going to have to have a break-even
9 number there as well.

10 Q **Okay. And I guess my question is, have you**
11 **had those numbers worked up to this point?**

12 A No, sir. I am -- my business plan is to
13 follow the law and those projected cash flow will go off
14 the rates if accepted by the Public Service Commission.

15 Q **Okay. In the event over the next few years**
16 **you have fewer ERCs hook up into the central sewer**
17 **system, you would anticipate approaching the Public**
18 **Service Commission for a rate increase of any kind if**
19 **you weren't earning compensatory rates under the**
20 **information you provided now?**

21 A What I understand the Public Service
22 Commission to do is, one, to protect the customers,
23 okay, that the utility is not abusing them. But they
24 also are responsible that the utility is financially
25 viable, okay. So if for some reason 50 percent of the

1 people chose to violate the law, okay, and go to code
2 enforcement, then that would be up to code enforcement.

3 Now, I also believe there is a speculation in
4 the law that utilities can have the right to lien the
5 property from the time that they are supposed to
6 mandate, okay, or supposed to be connected. So then it
7 would be a matter of cash flow issues. Does that make
8 sense?

9 Q Yes, it does.

10 If I may, I didn't hear a yes or no there.

11 May I ask one more time with yes or no in mind? In the
12 event you weren't earning compensatory rates because
13 there were fewer ERCs hooking up into the system in
14 question, would you be considering a rate increase in
15 the future, or the near future?

16 A I would do whatever was the financial
17 responsibility of the utility. In other words, if I had
18 to come back before the Public Service Commission
19 because of some unforeseen hurricane that came
20 through --

21 Q Sure.

22 A -- okay, and half the houses are wiped out,
23 that would probably be the only example, like Mexico
24 Beach what happened up there, yes, I would come back and
25 say, hey, here's the situation. How do I resolve it?

1 MR. SANDY: No further questions, sir.

2 COMMISSIONER CLARK: All right.

3 Commissioners? No questions.

4 All right. Mr. Friedman?

5 MR. FRIEDMAN: Thank you.

6 FURTHER EXAMINATION

7 BY MR. FRIEDMAN:

8 Q Mr. Boyer, counsel just asked you about
9 whether you analyzed the scenario when less than every
10 property connected, do you recall that question?

11 A Yes, sir.

12 Q All right. And you stated you did not do such
13 analysis, is that correct?

14 A Yes, sir.

15 Q And did you not do that analysis because the
16 County does have a mandatory connection ordinance?

17 A Yes, sir.

18 Q And based upon that mandatory connection
19 ordinance, do you expect ultimately every property owner
20 to connect?

21 A Yes, sir.

22 Q And counsel asked you about enforcement. Is
23 enforcement of the mandatory connection -- wastewater
24 connection ordinance the same as the connection to the
25 water?

1 A Yes, sir.

2 Q All right.

3 A 38-41.

4 Q And do you have experience with the mandatory
5 connection to water?

6 A Yes, sir.

7 Q And could you explain what that -- what you
8 did down there, what that process is?

9 A Yes, sir. The process is we have to send a
10 letter out to the potential customers 180 days prior to
11 service -- when service is available. If they do not
12 connect, then we are required to give that list of
13 customers to the County, which the County sends them
14 information in a letter, and 99 percent of the people
15 connect, but those that don't end up at the code
16 enforcement.

17 Q And counsel also asked you about septic tank
18 inspections. Do you remember those questions?

19 A Yes, sir.

20 Q And are you relatively -- I am not going to
21 ask if you know every term of it, but are you relatively
22 familiar with the 381.00651 regarding periodic
23 evaluation?

24 A I have reviewed it. Yes, sir.

25 Q And is it your understanding that repairs are

1 **required if a system is in failure?**

2 A Yes, sir.

3 Q **And is it your understanding that a system is**
4 **not in failure, even though the drain field itself is**
5 **located in a water table?**

6 A I own one. I bought this house, and my drain
7 field is literally under water, and my septic tank went
8 under water at high tide. I did permit it and change
9 it, but it was legal. It was built before 1986 and did
10 not have to be inspected, and I could have lived there
11 like that.

12 Q **So under the statute as it exists today, your**
13 **drain field would not be out of compliance and required**
14 **to be repaired, is that correct?**

15 A No, sir.

16 MR. FRIEDMAN: No further questions.

17 COMMISSIONER CLARK: Mr. Friedman.

18 MR. FRIEDMAN: I would like to move Exhibits
19 19 and 20.

20 COMMISSIONER CLARK: Without objection, so
21 ordered.

22 (Whereupon, Exhibit Nos. 19-20 were received
23 into evidence.)

24 MR. FRIEDMAN: And ask that Mr. Boyer be
25 excused.

1 COMMISSIONER CLARK: The witness is excused.

2 (Witness excused.)

3 COMMISSIONER CLARK: All right. You may call
4 your next witness.

5 MR. WHARTON: We call Jonathan Cole.

6 COMMISSIONER CLARK: Mr. Wharton, check your
7 microphone. Make sure it's turned on.

8 Whereupon,

JONATHAN H. COLE

10 was recalled as a witness, having been previously duly
11 sworn to speak the truth, the whole truth, and nothing
12 but the truth, was examined and testified as follows:

EXAMINATION

14 BY MR. WHARTON:

15 O sir, you will state your name for the record?

16 A My name is Jonathan Cole.

17 Q And have you prefiled rebuttal testimony in
18 this docket on behalf of Environmental Utilities?

19 A Yes. I have

20 Q And did you have any exhibits along with that?

21 A Yes I did

22 Q If I asked you those same questions today,
23 would your answers be the same?

24 A Yes, they would.

25 O Do you have any modifications or corrections

1 **to your testimony?**

2 A There is one modification on a statute on page
3 13, line one, I reference a statute, 180.01. It should
4 say 180, not the -- it's the entire section.

5 Q **All right. Have you prepared a brief summary
6 of your prefiled rebuttal testimony?**

7 A Yes, I have.

8 Q **Why don't you go ahead and give that summary?**

9 A Okay. The purpose of my rebuttal testimony
10 was to clarify and respond to some issues outlined in
11 the Weiler Engineering memo dated November 18th, 2021,
12 and offer some general opinion with regard to septic
13 tank use.

14 Some clarifications of my April 2nd, 2021,
15 technical memo was filed as a part of my direct
16 testimony, including the fact that mainland lift
17 station -- a mainland lift station is assumed to be
18 constructed by Charlotte County utilities to receive
19 flows from the island.

20 Pipe hydraulics were based upon the EPA
21 manual. The low pressure system was based upon
22 Charlotte County standards. The flood zone issues
23 specifically relating to velocity zones and
24 constructability problems with building in a vacuum
25 station building on the island. And I also touched on

1 and expressed my opinion with regard to septic systems
2 and their use, including septic systems perfectly viable
3 on from large lots away from tidal or surface waters,
4 but septic systems can be problematic in areas with high
5 seasonal groundwater tables, small lots, relatively
6 small lots or dense development, close proximity to
7 tidal or surface waters and with very porous sands.

8 My opinion is that in general, the state
9 statutes tend to favor the installation of central sewer
10 over septic systems in areas where those above concerns
11 I just mentioned exist.

12 Finally, I touched upon I am aware of statutes
13 that do require the connection of a septic system within
14 a certain timeframe after central sewer is available.

15 Q Does that conclude your summary?

16 A Yes, sir.

17 MR. WHARTON: We would ask that Mr. Cole's
18 prefilled rebuttal testimony be inserted into the
19 record as though read.

20 COMMISSIONER CLARK: So ordered.

21 (Whereupon, prefilled rebuttal testimony of
22 Jonathan H. Cole was inserted.)

23

24

25

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

REBUTTAL TESTIMONY

OF

JONATHAN H. COLE, P.E.

on behalf of

Environmental Utilities, LLC

- 1 **Q.** **Please state your, name profession and address.**
- 2 A. My name is Jonathan H. Cole, P.E. I am a professional engineer and President of Giffels-
- 3 Webster Engineers, Inc. My business address is 900 Pine Street, Suite 225, Englewood,
- 4 Florida 34223.
- 5 **Q.** **Have you previously filed direct testimony in this proceeding?**
- 6 A. Yes.
- 7 **Q.** **What is the purpose of your rebuttal testimony?**
- 8 A. To respond to some statements made in the WEC memo dated November 18, 2021, and
- 9 offer input regarding septic systems.
- 10 **Q.** **What issues are you addressing in your testimony?**
- 11 A. Several relating to the viability and recommendation of Low pressure sewer rather than
- 12 vacuum sewer.
- 13 **Q.** **Have you reviewed the Weiler Engineering Corporation (WEC) memo dated**
- 14 **November 18, 2021 regarding the GWE “Evaluation of Wastewater Collection**
- 15 **Technologies” technical memo dated April 2, 2021?**
- 16 A. Yes.
- 17 **Q.** **Do you have any comments on that WED memo?**
- 18 A. I do, as follows:
- 19 Two systems were evaluated. There was an initial comment by WEC regarding the
- 20 definition of low pressure system that “*system technically does not operate at low*
- 21 *pressure since the pumps are high head*”
- 22 The proposed system was evaluated using the CCU approved standard septic tank pump
- 23 system which was mandated as the fundamental basis for the evaluation and not grinder
- 24 pumps. The CCU details are in the appendix and they call their details “LPS” even though

1 it technically may be a Septic Tank Effluent System (“STEP”) system. The effluent
2 pumps normally do not operate at a very high head (like a grinder pump). We used the
3 term “LPS” for consistency with the County STEP system details. Regardless, I believe
4 the precise definition of LPS is inconsequential to the evaluation.

5 WEC further stated: *“It is worth noting that in both systems a master pump station would*
6 *need to be incorporated A detailed cost of that station was not provided and assumed*
7 *would be installed by Charlotte County.”* WEC is correct. The analysis assumes a CCU
8 built lift station in Cape Haze to receive flow from the collection system. Since that cost
9 is the same regardless of collection system type it has no bearing on the comparative
10 analysis or our recommendation.

11 WEC addressed the methodology of evaluation economics and O&M. WEC made the
12 following comment:

13 *“..no hurricane or emergency operation cost were factored out*
14 *individually as opposed to a vacuum station which is central and*
15 *more resilient during storm events”*

16 *“Another ongoing maintenance concern that was not addressed is in*
17 *consideration of LPS is that the proposed tank systems allow for*
18 *settling of solids and only moves water. This will result in periodic*
19 *cleaning that will be need of the basin as opposed to a traditional*
20 *grinder pump system or vacuum system which processes solids to the*
21 *wastewater facility. The additional costs of cleaning the basins*
22 *should be factored into the O&M unless the burden falls on the*
23 *homeowner.”*

24 Some relatively minor costs for both system types were neglected. The cost for individual

1 occasional septic tank pump out at perhaps five to up to fifteen year intervals is
2 relatively low, when annualized. Similarly, the cost to paint the Vacuum station as well
3 as the annual cost for mulch bed replacement was also not included because as those costs
4 are also relatively low. The significant costs are the LPS pump rebuilding, replacement
5 and labor costs. Our conclusion is that the LPS system will have over twice the operation
6 and maintenance cost of a vacuum system or about \$200/yr./edu for LPS vs \$95/yr./edu
7 for vacuum. While some other costs for both systems could be added and our
8 assumptions for labor, electrical or pump repair could be adjusted for either system, we
9 don't believe it will significantly affect the relative maintenance costs, comparative
10 analysis or our final recommendation.

11 WEC also discusses the tech memo regarding advantages and disadvantages, bridge
12 connections, corrosion land acquisitions, and included the following comment:

13 *"However as can be seen in the calculation appendix table below
14 the velocities are less than 2 fps in several lines which is the
15 recommended minimum scouring velocity"*

16 *"Another concern is the proposed system pipe sizes is the low TDH
17 on several lines this will cause the pumps to operate efficiently and
18 possibly result in damage"*

19 The preliminary line sizes for the LPS system were based on the EPA Manual. Depending
20 on the assumed flow per home, the velocities may indeed be slightly below than the 2 fps
21 guideline in some lines because the EPA assumes a higher flow per home than Charlotte
22 County. However, the primary purpose of the preliminary hydraulics is to conservatively
23 estimate future mainline pipe diameters. The lines assumed are slightly larger which is
24 more conservative from a cost estimating standpoint which increases the total cost

1 estimate for the LPS system. Final line sizes will be determined and may be reduced in
2 the final design. If anything the final mains will be smaller than preliminary estimated
3 which, assuming unit prices hold, should correspond to a lower cost for the LPS.

4 It is the opinion of WEC “*based solely on the Technical Memo that connection via low-*
5 *pressure sewer is not required or necessarily the best system for the application as*
6 *presented.*”

7 The type of system recommended is not a requirement. It is an analysis as to which
8 collection system makes the most sense to install on these barrier islands taking cost as
9 well as several other important factors into consideration. It is unclear what type of system
10 WEC is recommending but it appears that they are recommending vacuum over LPS.
11 While we have designed more vacuum than any other engineer in Florida and have
12 recommended vacuum for many large areas, my opinion remains that for this barrier
13 island and its associated constraints a LPS system is preferable to a Vacuum system for
14 the reasons stated in the report including:

- 15 • Construction of a vacuum station is difficult and expensive on a barrier island subject to
16 wave action, or in a velocity (V) zone. While there are some pockets of AE flood zones
17 (as opposed to V zones) the majority of these islands are a velocity flood zone some of
18 which is seaward of the coastal construction control line (CCCL). Structures in a velocity
19 zone must have its lowest horizontal member elevated above the FEMA regulatory
20 velocity flood elevation. Moreover critical utility stations like this are typically elevated
21 two feet *above* the FEMA regulatory elevation. Vacuum stations have “basement” walls
22 and floors for the collection tank that are structural, and therefore those walls and floors
23 need to be elevated above the regulatory FEMA V zone elevation. This requirement
24 defeats the entire purpose of creating a vacuum station “basement” which is specifically

1 designed to lower the hydraulic (vacuum) losses making the viability of a vacuum
2 collection system most uncertain on these islands. We are not aware of any vacuum
3 station built anywhere in a FEMA V zone with similar constraints.

- 4 • Finding available vacuum station sites is difficult. If only the AE zones are viable due to
5 the aforementioned V zone structural issues, those areas are highly developed with
6 existing homes. Finding a lot available in these areas of developed homes will be difficult.
7 Not only should it be located so it will serve the area, but buffering, neighborhood
8 concerns with odor and noise must be addressed and a special exception process and
9 public meetings for approval is necessary. One of the significant advantages of a LPS
10 system is that it doesn't need a central station so none of this is necessary.

- 11 • We also have designed vacuum lines crossing bridges however those bridges were
12 relatively level. There is added difficulty in crossing up and over "humpback" bridges
13 with vacuum mains including the need to maintain clearance for boat traffic, bridge
14 connection structural details and perhaps most importantly the unknown hydraulic losses
15 at this conceptual level that will be encountered during the final design in order to climb
16 up and over the bridge. Those losses may be significant for the flow making vacuum not
17 viable and its recommendation risky at this preliminary stage. On the other hand,
18 directionally drilling a pressure line under the canals rather than attaching to a bridge is
19 all that is needed for a LPS system, and there are few if any hydraulic concerns with that
20 type of system.

- 21 • Valve pits are generally made of fiberglass or plastic with a cast iron manhole lid. It is
22 primarily designed for vertical (downward) loading on the MH cover from vehicle tires
23 but not designed for side impacts on the rim and cover or the valve pit. The valve pit is
24 normally installed in stabilized grass areas along the edge of a pave road or in the

1 pavement itself. However many roads on these islands are simply sand or shell that is
2 not stable. Erosion, wheel ruts and shifting sand requires ongoing maintenance to regrade,
3 and that regrading process in addition to tires from golf carts or vehicles could easily
4 cause impacts to the plastic sides or shift the rim and covers of vacuum valve pits, unless
5 special additional concrete is provided. This concern is eliminated with a LPS system
6 because there aren't any above ground structures needed in the road system with LPS.

7 In addition to the above concerns vacuum systems requires specialized operator training
8 with more technical capabilities to monitor the station, and maintain the lines and vacuum
9 valves. LPS is relatively straight forward to maintain only requiring basic pump
10 maintenance, and occasional tank pumping and line repairs.

11 WEC commented that we assumed that the costs are higher for vacuum design: "*these*
12 *costs seem disproportionately high*" *Much of the scope such as profiles and engineering*
13 *would be similar*"

14 I disagree. The vacuum design is *considerably* more effort to design and construct as it
15 requires detailed profiles, surveying, hydraulic modeling, and very accurate elevations
16 for vacuum lifts. The profiles would definitely *not be similar* since LPS is a pressure line
17 independent of minor elevation changes and vacuum is very specific and its success if
18 dependent on precise line elevations. In addition, the design of a vacuum station building
19 and site with its associated building plans and structural details, odor control, generator
20 access and site development, and special exception process is a significant cost. A LPS
21 design does not have a central station which avoids all these costs, and the main line
22 design is not as critical for the profile design, nor are the record drawing profiles as critical
23 for a LPS since it's a pressurized system.

24 It was WEC's position that environmental concerns were not taken into account.

1 It is our opinion that any Environmental issues with protected species will either be
2 equivalent or perhaps less with a LPS system. Environmental issues are normally
3 addressed in the design process and not at this level with the conceptual comparative
4 analysis. In the event there are protected species, the design and installation of a LPS
5 collection system is significantly easier than vacuum sewer because the mains can be
6 drilled perhaps avoiding any species, rather than open cut through an area of special
7 concern. Waterway crossings can also be drilled avoiding impacts at wetlands. For our
8 analysis, we assumed environmental costs are equivalent and will not significantly impact
9 the ultimate selection.

10 WEC explains how a valve pit and a vacuum system works.

11 GWE understands how a vacuum system works and understands its benefits over LPS.
12 We understand that the vacuum mains can at times cross bridges. We understand that it
13 has one generator at the station vs multiple generators at each home. We understand the
14 benefits of a vacuum system and recommend it for many areas. Yet even though we
15 almost always recommend vacuum over LPS for large developed areas in Florida, in this
16 special case we recommend LPS because of the additional concerns of these barrier
17 islands that are bifurcated with canals and have significant other constraints previously
18 outlined.

19 WEC suggests cost savings options such as multiple residents to a single LPS station
20 located in the ROW and reduced pipe sizes.

21 The purpose of this analysis is to develop comparative costs between conventional system
22 types using *CCU standard details and the EPA manual as the base design.* Any cost
23 savings that don't conform to these basic standards at this conceptual level are not
24 considered nor do we believe prudent at this time. Cost savings can be looked at during

1 the design phase but for the purpose of this tech memo the costs should be conservative
2 based on standards for comparative analysis.

3 WECs evaluation provides:

4 *“The purpose...of the technical memorandum ...was to compare two
5 methods of wastewater collection and to compare estimated cost
6 only. The technical memo does not state that the residents of PIE
7 most connect via low pressure sewer, nor does it give an absolute
8 estimate construction cost. Report has several design constraints
9 related to vacuum such as max line length and absolutes when they
10 are not. Report also shows some issues in scouring velocities and
11 heat pressures and down not address system benefits or drawbacks
12 related to hurricanes. Further evaluation is needed to ascertain
13 what other environmental permitting conditions might impact this
14 project such as Charlotte County comprehensive plan CCSMP,
15 State of Florida Land trust USACE SWFWMD etc....”*

16 We understand the purpose of the tech memo and its purpose does not include the legal
17 issues of PIE connecting. We use conservative design parameters for both LPS and use
18 vacuum guidelines based on AIRVAC standards. We understand that the guidelines and
19 standards are not necessarily absolute and could be modified during the design, however
20 the comparative study level is not the place to do it. We also understand the advantages
21 and disadvantages of each system including initial costs, long term maintenance and
22 emergency power issues and integrated these concerns into our final recommendation.

23 **Q. Have you reviewed the prefiled testimony of some of the Petitioner's witnesses
24 which argue that the existing on-site septic systems within the proposed**

1 **certificated territory are adequate now and in the future, and the proposal of**
2 **Charlotte County and Environmental Utilities ' not needed?**

3 A. I have.

4 **Q. Is there a policy in the state of Florida stating a preference for central wastewater**
5 **treatment over on-site septic systems?**

6 A. Not that I'm aware of, not directly. There are times when well designed septic systems
7 work quite well such as with large lots or areas where the distance from the bottom of
8 the leach field is well above the seasonal high water table. However, for small densely
9 spaced lots or areas where the ground water table is high or if in an area with a very
10 high percolation rate sand where the effluent does not get treated, there are many
11 studies that demonstrate that septic systems do not function well and central sewer is
12 much preferable. When one looks into all the septic to sewer projects across the state
13 over the last two decades, it's pretty clear that state and local governments often require
14 or facilitate the movement away from on-site septic systems in connection to central
15 wastewater treatment when available. I don't hold myself out to be an expert on this
16 particular question, nor have I done an exhaustive survey of every state and local
17 pronouncement on the issue however I have been involved with many septic to sewer
18 projects across the State of Florida over the last 25 years, where the goal was to
19 eliminate septic systems especially on older smaller lots that are built close to the
20 ground water table because of pollution concerns. To me it's clear that state and local
21 government are being proactive on the issue and doing what they can to remove septic
22 systems off-line when central services applicable. For instance:

- 23 • Chapter 381.0065 of the Florida statutes. In that statute, it is the self-described "intent
24 of the legislature" that the Department of Environmental Protection may permit the

1 construction, installation, abandonment, or repair of Onsite sewage treatment and
2 disposal systems *only if a publicly owned or investor-owned sewage system is not*
3 *available.* The word “available” is defined by that same statute to mean that the central
4 system is capable of being connected and has the capacity. The statute goes further to
5 express concern about the use of such on-site systems adversely affecting public health
6 or degrading groundwater or surface water. In my opinion, Chapter 381.0065 is a good
7 indication that the provision of central wastewater collection and treatment, when
8 available, is the preferred method under state policy. Moreover that the statutes
9 expressed concerns about the possibility of degradation of groundwater by on-site septic
10 systems should be particularly considered in the case of the fragile barrier bridge-less
11 islands.

- 12 • My understanding of the Florida Clean Waterways Act, which is 2020 legislation, is
13 that the legislature had increasing concerns about on-site septic systems and has
14 transferred jurisdiction over those types of systems to DEP from DOH and has required
15 local governments to identify onsite sewage treatment and disposal systems that would
16 be eliminated through connection to existing or future central wastewater treatment
17 systems. This legislation allows the continued use of on-site septic systems but a review
18 of the Act in my opinion clearly highlights the concern about wastewater treatment in
19 Florida and requires that wastewater treatment be accomplished in a way that is
20 consistent with maintaining public health and avoiding adverse effects on the
21 environment, which I think can best be accomplished with a connection to a central
22 wastewater system.
- 23 • Many communities in addition to Charlotte County such as in Marco Island, has
24 concluded that septic systems, new or old, are simply not designed or installed to

1 adequately protect waterways, and the City is therefore undertaking a program to
2 convert septic to central service. The City's website notes that Naples, Cape Coral, the
3 City of Sanibel, and Monroe County are all replacing or eliminating septic tanks. That
4 same website has two interesting quotes from the Department of Environmental
5 Protection and the Department of Health:

6 ***Florida Department of Environmental Protection:***

7 "Septic tanks, when properly designed, constructed and maintained, perform well in
8 sparsely populated rural areas where large tracts of lands are available for wastewater
9 disposal."

10 "In urban and coastal areas, septic tank and drain-field systems can have a significant
11 impact on resources, particularly in residential communities interspersed with tidal
12 canals."

13 ***Florida Department of Health:***

14 "When public sewer is available it is always the desired way to serve the urban
15 domestic waste needs of residents."

16 "The possible interaction with tidal areas, potential flooding and septic system failures
17 make the public sewer system a more desirable option to protect public health in your
18 island environment."

- 19 • There are statutes that require connection to a central sewer system within a certain
20 various time frames when available. For example Section 380.0555(10)(b) provides
21 that "Franklin County and the municipalities within it shall, within 60 days after a
22 sewerage system is available for use, notify all owners and users of onsite sewage
23 disposal systems of the availability of such a system and that connection is

1 required within 180 days of the notice. Failure to connect to an available system
2 within the time prescribed shall be a misdemeanor of the second degree....”

- 3 • Section 153.12, Fla. Stat. provides that counties may, upon construction of a sewage
4 disposal system and the financing of such a system by the issuance of sewer revenue
5 bonds, require that each abutting lot or parcel connect to such sewer
6 • Section 153.62 provides that county sewer districts authorized to regulate use of sewers
7 and prohibit use of septic tanks.
8 • Section 180.01 requires that cities may establish a utility service area and prescribe
9 reasonable regulations requiring all persons to connect with sewerage system.
10 • Likewise, Section 381.00655 declares that owner of on-site systems must connect to
11 publicly owned or investor owned system upon availability.

12 **Q:** Does Charlotte County have a similar provision in place?

13 **A:** Yes, it does. In fact we have designed and installed many septic to sewer areas
14 connecting thousands of homes for Charlotte County on the main land again due to the
15 aforementioned concerns of relatively small lots with septic systems that are installed
16 close to the seasonal high ground water table. Attached to my testimony as Exhibit
17 JHC-4 is Sec. 3-8-41 from the Charlotte County, Florida Code of Ordinances. That
18 ordinance, generally consistent with the other authorities I have cited, was put in place
19 by the County to facilitate and encourage the connection to central public or private
20 wastewater systems when they become available. That is exactly what Environmental
21 Utilities proposes in this case, in partnership with the County, to make such a system
22 available in the proposed certificated territory.

23 **Q:** Are these examples intended to represent everything out there in either statute or
24 ordinance across the state of Florida on the subject?

1 A: No, but I think they are representative of the concerns with septic systems on small lots,
2 areas with high ground water or sandy areas and are consistent and with the policies by
3 State and local governments in Florida that we should move to central wastewater in
4 areas such as this whenever possible and when available. This supports my own opinion
5 that same effect: there are various benefits moving away from on-site systems to central
6 wastewater collection and treatment when available for areas such as this It is important
7 to note that I am not aware of any state or local law, ordinance, policy, or administrative
8 code rule that supports the opposite conclusion: that on-site systems are somehow
9 preferred to central wastewater where there are small lots, sandy areas or high ground
10 water tables.

11 **Q:** **Are you aware of some who have studied the issue concluding that septic tanks
12 contribute to adverse environmental conditions such as red tide and algae blooms?**

13 A: I believe there are many studies about red tide, and again although not a red tide expert,
14 my understanding, is that red tide is certainly not helped by agricultural runoff,
15 untreated stormwater runoff or septic systems installed in sandy areas directly adjacent
16 to the Gulf waters. Anyone can search on Google and find there are substantial
17 scientific sources that are concerned about connections between on-site septic systems
18 and adverse environmental effects. What follows is just two examples, but they are
19 illustrative:

- 20 • "The question is not that they do or don't. The question is how big of an impact is it to
21 the algae bloom?"

22 -University of Florida professor Ed Phlips

- 1 • Amy Sherman: What role do septic tanks play in Florida's algae bloom? PolitiFact
2 Florida (2018) <https://www.politifact.com/florida/article/2018/aug/20/what-role-do-septic-tanks-play-algae-bloom-crisis/>
- 3

4 **Q.** **Does that conclude your direct testimony?**

5 A. Yes, it does.

1 MR. WHARTON: And we would tender the witness.

2 COMMISSIONER CLARK: OPC?

3 MS. PIRRELLO: No questions.

4 COMMISSIONER CLARK: Palm Island?

5 EXAMINATION

6 BY MR. KELSKY:

7 Q **Are you a planner?**

8 A I am not a planner.

9 Q **Aren't some of the costs like engineering,
10 mobilization, bonds and insurance routinely estimated
11 based on total construction cost?**

12 A Those costs, as far as engineering, that was
13 discussed I think earlier with the financial consultant.
14 What was the exact question again?

15 Q **Aren't tasks like engineering, mobilization,
16 bonds and insurance routinely estimated based on total
17 construction cost?**

18 A They can be a percentage of them. They can be
19 estimated.

20 Q **Did you include them in your analysis?**

21 A No, I excluded some of those issues, but they
22 were included in the ultimate analysis. I did the
23 construction cost estimate for the two different types
24 of systems based upon a high average of unit prices, but
25 I excluded some items that were picked up in the

1 financial analysis.

2 Q Was engineering, mobilization, bonds and
3 insurance picked up?

4 A Engineering was not picked up, that was
5 estimated as a percentage, I believe, of the overall
6 cost. The bonds -- for the contractor bonds are you
7 talking about?

8 Q Yes.

9 A Okay. Those would be -- sometimes those are
10 just built into the unit prices, and I did bump up the
11 unit prices that we estimated, but there was no specific
12 line item for bonds.

13 Q What about insurance?

14 A No specific line item for insurance either.
15 It's normally incidental, or can be incidental to what
16 we call placement of the pipe.

17 Q So you are including it in the per unit cost?

18 A I am including it in by bumping up the average
19 unit cost, correct.

20 Q Your rebuttal states that some of the
21 recurring O&M costs were not including in the analysis
22 because such costs are relatively minor on an annual
23 basis. When you consider O&M, shouldn't the relatively
24 minor costs be considered since O&M are recurring each
25 year?

1 A Yeah, I think this is getting back to the
2 pump-out issue. That was not included. I also did not
3 include some maintenance on a vacuum station, the mulch
4 bed, the turning of the mulch bed each year. So some
5 relatively minor costs were not included in the O&M,
6 that is true.

7 Q **Does your low pressure system O&M estimate
8 account for power consumption?**

9 A It does. Yes.

10 Q **Do you know what the power cost is per year?**

11 A I have got it in my report. If you give me
12 some time, I can look for it.

13 Q **Do you know approximately where in your report
14 it is?**

15 A Yeah. It's in the appendices. Let me see if
16 I can find it for you.

17 If you look on page 42, I have got a
18 spreadsheet, it's called, LGI Don Pedro and Knight
19 Island, annual O&M guestimate for future sewer for low
20 pressure system. And if you look down in the second,
21 the middle tabulation, it says, grinder pumps, which are
22 low pressure pumps, \$1 a month per EDU we estimated. So
23 that's 15 -- build-out, that would be a little over
24 \$15,000 per year for electrical to run the pumps.

25 Q **Okay. With respect to the O&M costs that you**

1 **eliminated from your analysis when you multiply those by**
2 **the useful life of the system, don't they become**
3 **significant?**

4 A Again, that was -- that was incorporated in
5 the financial consultant. She added those costs in.
6 The pump-out costs, she added those costs in.

7 Q **It appears on page five, lines 16 through 24**
8 **of your rebuttal testimony, that you contend that a**
9 **location for the vacuum pump station would necessarily**
10 **be in a velocity zone, is that correct?**

11 A That is not what I said. I said locating a
12 vacuum pump station, or anything that requires -- I
13 didn't use the word building permit -- but locating a
14 station in the velocity zone, not the entire island, not
15 the entire contiguous island is a velocity zone, but a
16 good portion of it is. Trying to build a structure in a
17 velocity zone has different design parameters.

18 For example, what's called the lowest
19 horizontal member of the structure must be above the
20 wave height. Well, a vacuum station, by necessity, has
21 a -- basically a basement that has to be built down into
22 the ground in order to maximize the potential for
23 vacuum. So that would be -- what the -- we have a
24 problem with the code here. If we build in a velocity
25 zone, that means the basement has to be located up high,

1 which completely defeats the purpose.

2 So in addition to the financial issues, the
3 differential -- and they are pretty close between low
4 pressure and vacuum -- there is a constructability issue
5 about trying to build a vacuum station, which is a
6 unique station, a unique building, in the velocity
7 zones. And I can go back and reread what it said there,
8 but that's what I am trying to say, is constructing a
9 vacuum station in any portion of that island that's in a
10 FEMA velocity zone, a V Zone rather than an A Zone, I
11 don't know if it's been done anywhere. And I just think
12 it would be extremely problematic. That's a
13 constructability issue.

14 **Q Is it your testimony that there are no
15 appropriate parcels anywhere outside of the velocity
16 zone where that can be built?**

17 A No, that's not my testimony. No. I said it
18 would likely have to be built in an A Zone. And there
19 is a map in the report kind of showing where the A zones
20 are, and it's basically extremely developed in the A
21 Zones. That's the only logical place, in my opinion, to
22 put a structure such as a vacuum station.

23 So what I was trying to say is that very much
24 limits where you can place a vacuum station. And for
25 this island, I think it would need two stations, which

1 makes it a very difficult prospect for the area.

2 Q Your reference to Section 180.01 in your
3 testimony, doesn't that have to deal with municipalities
4 as opposed to bridgeless barrier islands?

5 A Yes. And I think that's one I have corrected,
6 by the way, the 180.01, I just corrected that. It's
7 Section 180 in general. Yeah, I think it was touched
8 that the municipalities have a right to put in sewer. I
9 think that's what that was. It was a generalized
10 statement.

11 MR. KELSKY: Thank you. Those are all the
12 questions I have.

13 COMMISSIONER CLARK: Ms. Cotherman?

14 EXAMINATION

15 BY MS. COTHERMAN:

16 Q I just wanted to know if you were aware that
17 the draft FEMA maps are now available, which have taken
18 out most of the island out of the velocity zone?

19 A No, I was not aware of that.

20 Q Okay. And you had said something about the
21 sands, they are pretty porous on the barrier islands.
22 Isn't it true that for each on-site individual septic
23 system that's designed a soil boring is done so that the
24 system can be customized to the soils on that particular
25 property because of the variables in soils from property

1 **to property?**

2 A Yeah, soil borings are done. Yeah, the sands
3 on the island are Canaveral fine sands and St. Augustine
4 sands, which are found also in Charlotte County
5 elsewhere where there is septic systems. And so, yeah,
6 if you don't design them right and get them two feet
7 above the Seasonal High Water table, those sands,
8 whether they are on the island, or whether on the
9 mainland, obviously have certainly porosity and design
10 standards that have to be met, so, yes.

11 Q I think my question was: Do you recognize
12 there are other soil conditions when a soil boring is
13 done such as maybe an organic layer that needs to be
14 removed and other sands that need to be brought in --

15 A Correct.

16 Q -- so that each system is individualized for
17 the soil conditions on that particular property?

18 A Correct. You may have a dig-out for example,
19 and if you hit a layer of organics that comes out.

20 Q Okay.

21 A But again, generally it's a Canaveral and St.
22 Augustine sand out there. So, yeah, no doubt. And that
23 would be for a new system, but obviously the old systems
24 may or may not have that.

25 Q Okay. Thank you.

1 MS. COTHERMAN: That's all.

2 COMMISSIONER CLARK: Staff?

3 MR. SANDY: No questions.

4 COMMISSIONER CLARK: Commissioners?

5 Redirect?

6 MR. WHARTON: Only one.

7 FURTHER EXAMINATION

8 BY MR. WHARTON:

9 Q You referred a couple of times when you were
10 being asked about costs, and whether they were included,
11 that they had been picked up by the financial
12 consultant. You are referring to the analysis that was
13 done by Ms. Swain?

14 A Yes, sir.

15 MR. WHARTON: Okay. That's all I have.

16 We want to move the exhibit which is Staff 21.

17 COMMISSIONER CLARK: Without objection, so
18 ordered.

19 (Whereupon, Exhibit No. 21 was received into
20 evidence.)

21 MR. WHARTON: And I would like the witness to
22 be excused.

23 COMMISSIONER CLARK: The witness is excused.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 COMMISSIONER CLARK: Call your next witness,
2 please.

3 MR. FRIEDMAN: Deborah Swain.

4 Whereupon,

5 DEBORAH D. SWAIN

6 was recalled as a witness, having been previously duly
7 sworn to speak the truth, the whole truth, and nothing
8 but the truth, was examined and testified as follows:

9 EXAMINATION

10 BY MR. FRIEDMAN:

11 Q **Would you please state your name?**

12 A Deborah Swain.

13 Q **And, Ms. Swain, did you cause prefilled
14 rebuttal testimony to be filed in this case?**

15 A Yes, I did.

16 Q **And if I asked you the questions in your
17 rebuttal testimony, would the answers remain the same?**

18 A Yes, they would.

19 Q **Do you have any changes or corrections?**

20 A No.

21 Q **Would you provide us a summary of your
22 rebuttal testimony?**

23 A Yes.

24 The purpose of my rebuttal testimony is to
25 present information to refute certain calculations and

1 conclusions by Palm Island Estates witness Schultz. In
2 her exhibit, SFS-1, she presents a calculation of a
3 supposed shortfall in working capital upon which the EU
4 owners would rely on to fund the utility; however, she
5 didn't include all the sources of cash in her analysis.

6 She didn't include adding back depreciation,
7 which is a noncash expense, nor CIAC coming in from
8 future customers. If she had, she would have seen that
9 there will be adequate cash to fund the utility.
10 Perhaps her incorrect calculations are due to her
11 unfamiliarity with utility accounting.

12 It's our goal to have rates and charges
13 established in this proceeding which will allow the
14 utility to generate adequate income to fully fund the
15 utility and provide a fair rate of return to the owners.

16 In addition, I did attach to my testimony the
17 revisions to which I referred in my direct testimony.
18 These are -- Exhibit DDS-2 is the -- consist of all of
19 the revised pages to my original initial rates financial
20 information. As a result of the corrections, the
21 corrections are the depreciation rate from gravity
22 mains, I used the incorrect life. It should have been
23 38 years instead of 45.

24 CIAC is no longer taxable. I took out
25 anything related to the taxability of the CIAC. And I

1 also updated the lateral fee. I had the correct dollar
2 amount, but I used the wrong denominator in the number
3 of ERCs, so my original calculation was incorrect, and
4 that's all my corrections.

5 MR. FRIEDMAN: I would like to ask that Ms.
6 Swain's prefiled rebuttal testimony be inserted
7 into the record as though read.

8 COMMISSIONER CLARK: So ordered.

9 (Whereupon, prefiled rebuttal testimony of
10 Deborah D. Swain was inserted.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

REBUTTAL TESTIMONY

OF

DEBORAH D. SWAIN

on behalf of

Environmental Utilities, LLC

1 **Q.** **Please state your, name profession and address.**

2 A. My name is Deborah D. Swain. I am Vice President of Milian, Swain & Associates, Inc. and
3 head up the firm's finance, accounting and management team. My business address is 2025
4 SW 32nd Ave., Suite 110, Miami, Florida 33145.

5 **Q.** **Have you previously filed direct testimony in this proceeding?**

6 A. Yes

7 **Q.** **Do you have any changes to your direct testimony or exhibits?**

8 A. Yes, I have three changes to my Exhibit DDS-1.

9 1) When responding to discovery, it was determined that I had used the incorrect asset
10 life in the calculation of depreciation expense associated with gravity mains. In the
11 original exhibit, I had used 38 years instead of 45. I have corrected the original exhibit
12 to use 45 years.

13 2) As a result of the Infrastructure and Jobs Act, CIAC is no longer taxable when
14 collected. I have corrected the original exhibit to remove any tax impact associated
15 with the collection of CIAC.

16 3) During discovery, I was asked to explain the calculation of laterals in my exhibit, and
17 why the amount was different than that used in Exhibit JC-1, and I discovered that I
18 had used the incorrect per unit cost in the calculation of the lateral fee on Schedule 5
19 (Exhibit DDS-1, page8 of 28)

20 **Q.** **Where do you show those changes?**

21 A. I have attached revised pages to Exhibit DDS-1, and indicated in the title of the pages that
22 they are revised. These revised pages are my Exhibit DDS-2.

23 **Q.** **What is the purpose of your rebuttal testimony?**

24 A. My rebuttal testimony addresses issues brought up in intervenor direct testimony in this case.

25 **Q.** **What issues are you addressing in your testimony?**

1 A. Specifically I am addressing certain issues brought up by Sheri Schultz with respect to her
2 “analysis” of financial information included in my Exhibit DDS-1, and her misunderstanding
3 and therefore her misuse of that financial information which resulted in an incorrect conclusion
4 that the income statement demonstrates that the Utility is unable to service debt from its
5 income. It is that issue that I will address.

6 **Q. Please explain Witness Schultz' analysis as you understand it.**

7 A. In Table 3 of SFS-1 performs a calculation to determine what Witness Schultz titles “Working
8 Capital Surplus (Deficit)” of \$(4,021,595). She then goes on to use this as the estimated
9 amount that would be needed by Mr. John Boyer to finance the construction. She explains that
10 if loaned \$4,025,000 over a 10-year term at 3%, the annual payments would be \$402,500.
11 Witness Schultz goes on to state that because the utility is only showing an annual net income
12 of \$241,077, there is not adequate income to cover the debt service. As a result of this
13 calculated shortfall and her review of the Boyer’s personal financial statements, she concludes
14 that “the parties do not have the requisite economic resources to undertake and complete the
15 proposed infrastructure project.”

16 **Q. Please explain why you find that conclusion to be incorrect.**

17 A. First, let me state that I have not reviewed the Boyers’ personal financial statement, and am
18 making no characterizations of their financial situation. I am looking only at the utility
19 financial schedules I prepared and presented in Exhibit DDS-1.
20 Witness Schultz’ indicates that the utility shows that it will generate net income of \$241,077,
21 the only source of utility funds which would be available to the Boyers to pay the debt they
22 incurred. The flaw in this presumption is that net income does not constitute the entirety of the
23 cash generated by the utility that is available to the owners.

24 CIAC

1 Witness Schultz only includes the CIAC generated from collection from only the first 860
2 connections that are expected to be connected by 2024, or a total of \$11,257,951. However,
3 the CIAC fees will continue to be collected from connections after those first 860, and the
4 utility estimates that there will be 17 new connections each year. Using the utility's requested
5 fee of \$11,927.85, this would generate \$202,790 per year that is available to the Boyer's to
6 pay down their loan. Added to the net income of \$241,077 this would provide \$443,867 to
7 cover debt service of \$402,500, using Witness Schwartz' number.

8 Depreciation and Amortization

9 The annual depreciation expense shown on the utility's income statement is a reduction to net
10 income but is not a cash expense. In other words, when one is analyzing cash available for
11 debt service by looking at net income, they should add back depreciation expense. On the
12 utility's income statement (DDS-1 p 26 of 28), the depreciation expense net of amortization
13 of CIAC is \$232,177 and amortization expense is \$17,217. This means that in addition to the
14 net income of \$241,077 and the CIAC of \$202,790, with the depreciation expense, the
15 estimated cash available to the Boyers from the utility for debt service is \$693,261 annually.

16 **Q. What is your conclusion from this analysis?**

17 A. Of course, income and expense components will change each year as more customers connect,
18 and the available cash amount will obviously change. However, using basic principles, it can
19 be seen that the utility is well-positioned to generate adequate cash to provide funds to the
20 utility owners to pay off their debt, if needed.

21 **Q. Are you sponsoring any exhibits in connection with your rebuttal testimony?**

22 A. Yes, I am. I have attached Exhibit DDS-2, which are the revised pages to which I refer in
23 the beginning of my testimony which primarily corrects errors found during discovery.
24 I have also attached exhibit DDS-3, which is my response to Staff's Fourth Interrogatories,
25 Number 12.b. in which I explain why the calculation of accumulated deferred taxes for the

1 determination of initial rates in an Original Certificate application is not appropriate or
2 warranted.

3 **Q. Does that conclude your rebuttal testimony?**

4 A. Yes, it does.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. FRIEDMAN: And tender her for
2 cross-examination.

3 COMMISSIONER CLARK: OPC?

4 MS. PIRRELLO: Thank you.

5 EXAMINATION

6 BY MS. PIRRELLO:

7 Q **Could you turn to page seven of your rebuttal**
8 **testimony exhibit?**

9 A Okay.

10 Q **And on line six, you show the average**
11 **residential bill as being \$201.40, correct?**

12 A Yes.

13 Q **Based on your response to OPC's Interrogatory**
14 **21, the bill estimate for 6,000 gallons of usage would**
15 **be 333.43 per month, correct?**

16 A I don't have that interrogatory in front of
17 me.

18 Q **Do you recall being asked that question in**
19 **your deposition?**

20 A No, I don't. I am sorry, I don't recall that.
21 So the question is related to 6,000 gallons?

22 Q **Yes.**

23 A Yes, that's correct. Your calculation, the
24 300 something dollars was the right number.

25 MS. PIRRELLO: Okay. That's all I have.

1 Thank you.

2 COMMISSIONER CLARK: I am sorry. You are
3 done. Okay. All right.

4 MR. KELSKY: I have no questions.

5 COMMISSIONER CLARK: No questions.

6 Ms. Cotherman?

7 MS. COTHERMAN: I do have one.

8 EXAMINATION

9 BY MS. COTHERMAN:

10 Q Maybe it was in the rebuttal, but could you
11 clarify on one of the schedules, it was number 354, and
12 it talks about the amount for grinder pumps question,
13 filled septic tanks. can you explain that label? P?

14 A You are asking me about grinder pump stations
15 being in account 354?

16 Q Yes it was in account 354 --

17 A Yes

18 Q -- and the label was grinder pumps, I believe
19 comma or present these question filled septic tanks?

20 A Okay. And what is -- what did you want to --

21 Q I wanted to clarify what that label meant

22 A What that what? I am sorry, I am having a
23 hard time hearing you.

24 Q I wanted to clarify what that title meant, the
25 label meant - grinder tank -- grinder pumps. question.

1 filled septic tank?

2 A That's a better question for Mr. Cole, but
3 what I understand is that is the old septic tanks are
4 going to be removed and ground down.

5 O Are the grinder pumps included in that?

6 A I don't know.

7 MS. COTHERMAN: Okay. Thank you.

8 COMMISSIONER CLARK: Staff?

9 MR. SANDY: Yes, sir.

10 EXAMINATION

11 BY MR. SANDY:

12 Q Ms. Swain, I have got some clarification
13 questions for you.

14 I would ask that you look at your prior
15 testimony. This is on the Comprehensive Exhibit List
16 Exhibit No. 7, Exhibit DDS-1, page 11 of 28, if you have
17 that available. If not, I can provide you a copy.

18 MR. FRIEDMAN: Is this her direct testimony?

19 MR. SANDY: Yes. This ultimately relates as
20 to an issue that's listed in the exhibit, and I
21 just would like clarification about it. I figured
22 this question would come up. It has to do with
23 rebuttal

24 COMMISSIONER CLARK: It's in the rebuttal?

25 MR. SANDY: It's -- well, ultimately, my

1 question is why what looks like an error was not
2 corrected in rebuttal, and I would like to have her
3 provide an explanation if she can.

4 COMMISSIONER CLARK: Okay.

5 THE WITNESS: I have my original exhibit and
6 my new exhibit.

7 BY MR. SANDY:

8 Q Okay. Is it fair to say that you are familiar
9 with the NARUC Uniform System of Accounts, also known as
10 the USOA?

11 A Yes.

12 Q Okay. I figured as much.

13 And along the left-hand side of that exhibit
14 is referenced page 11 of 28, DDS-1. Are you utilizing
15 the NARUC USOA?

16 A Yes, I am.

17 Q Okay. You see there in account number 354
18 entitled Structure and Improvements, about the middle of
19 the page?

20 A Yes.

21 Q Okay. Would you go one underneath that, that
22 also says 354 pumping structures?

23 A Yes, I see that.

24 Q Is that a typographical error?

25 A Yes, it is. The total line, which says total

1 371 pumping equipment, it was actually equipment. There
2 is a small amount, from what I understand from Mr. Cole,
3 that's associated with structure, but it's all these big
4 numbers. But by far, most of it is considered
5 equipment, and it should have been -- and the
6 distinction for those that don't know is for structure,
7 the depreciation life is 32 years, and for equipment
8 it's 18 years. It should have been 18 years. I didn't
9 -- I didn't catch that by the time I did my revisions.
10 It should have been revised.

11 **Q Which I believe goes to Mr. Friedman's**
12 **concern, and that was ultimately my question, if I could**
13 **just clarify.**

14 **Presuming an asset life of 18 years as set out**
15 **NARUC USOA 371, would that have an impact on the**
16 **depreciation amounts year-over-year as compared to NARUC**
17 **USOA account 354, ultimately the 18 years versus 32?**

18 **A Yes, it would.**

19 **Q Okay. In essence, it would grant, say, almost**
20 **twice the depreciation year-over-year, is that right?**

21 **A Yes, it would. But on the other hand, it**
22 **would be nearly fully depreciated by the time the system**
23 **was reaching build-out, so the accumulated depreciation**
24 **would be quite a bit higher, and that would reduce rate**
25 **base.**

1 Q Okay. I would like to change gears a little
2 bit and now of direct your attention to an exhibit in
3 your rebuttal testimony. It is page 20 of 21. This is
4 revised Schedule 7 as set out in the Comprehensive
5 Exhibit List. I believe this is Exhibit 22. Please let
6 me know when you have eyes on that exhibit.

7 A Okay. And since I don't have the Commission's
8 exhibit list, could you give me a common name for it?

9 Q **Yes, ma'am. This is Schedule 7 revised --**

10 A Okay.

11 Q **-- if that's helpful.**

12 A All right. Okay.

13 Q Okay. If you will look at lines 67 through 70
14 at the end of that schedule, it looks as if you are
15 using a repression adjustment in your calculations, is
16 that accurate?

17 A Yes, I am, a 10 percent repression.

18 Q Okay. In laymen's terms, can you describe for
19 us what a repression adjustment is?

20 A Yes. We really see that when there is a
21 significant increase in an existing utility, gallonage
22 bill or now a new utility, that it has an impact on the
23 water use, and these bills are going to be based upon
24 water use. It's obviously not metered sewer. So we
25 anticipate a very, very moderate impact on customers'

1 usage, to the tune of about 10 percent. So we lowered
2 the billable gallons by 10 percent so there is that much
3 fewer gallons expected over which the costs have to be
4 spread.

5 Q Would you agree -- would you agree with me
6 that wastewater usage, all things equal, is not
7 discretionary in the same way as, say, water,
8 discretionary water usage?

9 A Well, that's correct, but the bill for
10 wastewater is going to be on all water, whether it was
11 discretionary water or necessary water.

12 Q Okay. Are you aware in your work and your
13 work experience that the Public Service Commission has
14 never applied a repression adjustment on wastewater
15 usage?

16 Let me rephrase that. Are you aware of an
17 instance where the Commission has applied a repression
18 adjustment on wastewater usage?

19 A You know, I am not certain. I know that we do
20 it routinely for water, and I would think for a water
21 and sewer utility you would also do it for the sewer
22 side as well, reduce your -- reduce your billable
23 gallons since the sewer bill is based upon water use.

24 Q Why you did choose a 10-percent repression
25 adjustment as opposed to some other level?

1 A Well, I generally use a 10-percent for nearly
2 every water increase that's going to be over 25 percent.
3 There is a lot of good history about the impact of water
4 -- utility rate increases on water use, and this
5 utility's average water bill, their water use is not
6 that high, but I think a moderate reduction of 10
7 percent is -- I find it to be very conservative and
8 moderate.

9 Q **Is that percentage in line with any recognized**
10 **authorities of any kind, or is that ultimately the value**
11 **that you place on this sort of thing?**

12 A Since this is a little bit different, like you
13 said, it is a sewer utility, and I haven't seen
14 documentation from publications on the impact on a sewer
15 only -- the water use for a sewer only, so -- but I --
16 there were plenty for the waterside.

17 Q **Okay. If I do the math correctly in Schedule**
18 **7 there on lines 67 through 70, it looks as if you apply**
19 **the 10-percent repression adjustment and then ultimately**
20 **adjust another 20 percent for water usage. It looks as**
21 **if in recognition of not all water will return in the**
22 **system, is that correct?**

23 A Correct.

24 Q **So with that in mind, acknowledging as I**
25 **believe you acknowledged a moment ago, that there is not**

1 really a lot of wastewater usage in the proposed service
2 area in the first place, why you were reducing
3 wastewater usage an extra 20 percent after the initial
4 repression analysis?

5 A I really believe that it was a conversation
6 early on with the utility. I don't recall exactly.

7 Q That's fair.

8 You would agree with me that ultimately, to
9 the extent that there is an average household in the
10 proposed service area, they use something less than
11 three kGals a month in wastewater usage, is that an
12 accurate estimate? I am sorry, I said water usage?

13 A Right. Correct. Yes. In water usage.

14 Q Okay. On the issue of water usage, were you
15 hear earlier, I guess this morning, when Mr. Boyer
16 referenced he would be getting water from other
17 utilities?

18 A Yes.

19 Q Okay. Did you hear him when he said that --
20 if I heard him correctly, and I may not have -- that
21 every bill issued there would be a \$2 surcharge for
22 receiving that water?

23 A What he was referring to was the billing cost.
24 So rather than the utility hiring a meter reader to go
25 read the water meters, and then hire a staff to send out

1 a bill just from a sewer utility, what we estimated, and
2 this is a pretty fair going rate, \$2 per bill for the
3 waters utility to perform the entire billing for them,
4 for EU. So they would read the meters, they would add a
5 line for the sewer bill on their water bill. They would
6 collect the money. They would remit it to Environmental
7 Utilities.

8 Q Okay. And are those costs reflected in
9 Schedule 7, the same one that we've been having a
10 conversation about for the past few minutes?

11 A Yes. It's included in the contract services
12 billing.

13 Q That would be line 16 --

14 A I believe so.

15 Q -- of the exhibit?

16 A Right.

17 Q Okay. I would now like to draw your attention
18 to what is Schedule 5, revised in your rebuttal
19 testimony for all the parties involved. This is on the
20 CEL as Exhibit 22, if it's helpful for you, six of 21,
21 as it's listed on my page.

22 A Okay. Yes.

23 Q Okay. And you see there mention made of the
24 sewer lateral cost and the future customers connected?

25 A Right.

1 Q Okay. If I can ask, it looks as if everywhere
2 else in your analysis you assumed 1,248 ERCs?

3 A That's correct.

4 Q Why was the assumption here of 950 ERCs?

5 A There are a couple of places in the capital
6 cost estimate from Mr. Cole that were based upon the
7 number of customers, and in one of those costs was the
8 laterals, and at the time that we first started putting
9 the schedules together we were using the number 950 and
10 it was never corrected in the construction cost. It
11 really should have been for 1,248.

12 But the laterals are going to be fully paid
13 for, based upon our request, by the customer. So rather
14 than correct the construction cost, run it through the
15 rate base, et cetera, what I did is I just corrected the
16 lateral fee to be exactly the per unit cost. So I am
17 using the same dollar amount that I have in the
18 construction cost and I am dividing it by the same
19 number of ERCs that dollar cost was based on, 950.
20 Although it's an incorrect number, the per unit cost
21 comes out the same, the correct number.

22 Q Okay. Ultimately, the lateral cost would be,
23 if I understand it correctly, will be spread over all of
24 the ERCs that eventually materialize?

25 A Yes. Yes.

1 Q **Okay.**

2 A That's right.

3 MR. SANDY: If I may have a moment, Mr.
4 Chairman.

5 BY MR. SANDY:

6 Q **Based on your testimony a moment ago, would
7 you be willing to provide a, I guess what would be
8 revised revised analysis of the lateral cost versus ERCs
9 that reflects the 1,248, or --**

10 A Yes. It would require, of course, a
11 corresponding increase in the capital cost for the
12 1,248. It would be a very simple mathematical
13 calculation. You would take the 1,228,205 that I have
14 divided by 950 to get 1,292.85, and then multiply that
15 number by 1,248.

16 Q **Okay.**

17 A And that would be the total amount for
18 laterals.

19 MR. SANDY: Okay. I have no further questions
20 at this time.

21 COMMISSIONER CLARK: All right.

22 Commissioners? No questions.

23 Redirect?

24 MR. FRIEDMAN: No redirect. And I would like
25 to ask that exhibits on the CEL No. 22 be admitted.

1 COMMISSIONER CLARK: Just 22?

2 MR. FRIEDMAN: Oh --

3 MR. WHARTON: Oh, and 23.

4 MR. FRIEDMAN: And 23.

5 COMMISSIONER CLARK: 22 and 23. Without
6 objection, so ordered.

7 (Whereupon, Exhibit Nos. 22-23 were received
8 into evidence.)

9 MR. FRIEDMAN: And ask that the witness be
10 excused.

11 COMMISSIONER CLARK: The witness may be
12 excused.

13 (Witness excused.)

14 MR. FRIEDMAN: And that conclude our rebuttal
15 testimony.

16 COMMISSIONER CLARK: All right. I believe we
17 have covered everybody, every witness and
18 everything here today. We've covered a lot of
19 ground.

20 I just want to say thank you to all of the
21 parties for the way that you have conducted this
22 hearing. This has been a good process, and you
23 guys conducted yourselves accordingly. It's
24 greatly appreciated the way that you treated the
25 witnesses and the way you respected each other,

1 that goes a long way with us. I want to thank
2 everybody for being a part of this.

3 We are going to have the customer service
4 hearings beginning at six o'clock.

5 I assume you guys want to file briefs. You
6 want a bench decision or do you want to file a
7 brief?

8 MR. FRIEDMAN: A bench decision?

9 COMMISSIONER CLARK: All right. I am assuming
10 we are all filing briefs, right? Right, I
11 believe --

12 MR. WHARTON: After the transcript.

13 MR. SANDY: Yes. I would note that there are
14 due on March 16th, length no later than -- no more
15 than 40 pages.

16 COMMISSIONER CLARK: March 16th. That gives
17 you a little over a month.

18 MR. FRIEDMAN: Plenty of time.

19 COMMISSIONER CLARK: That's plenty of time,
20 okay. March 16th, not to exceed 40 pages.

21 Parties, are there any additional matters that
22 need to be brought before the Commission?

23 Seeing none, thank you all. We stand
24 adjourned.

25 (Proceedings concluded.)

1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)
3 COUNTY OF LEON)

4

5 I, DEBRA KRICK, Court Reporter, do hereby
6 certify that the foregoing proceeding was heard at the
7 time and place herein stated.8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED this 24th day of February, 2022.

19

20

21

22

23

24

25



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024