

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20240032-SU

LINDA B. COTHERMAN'S POST-HEARING BRIEF

Linda B. Cotherman, pro se litigant, pursuant to the January 24, 2025 Prehearing Order hereby submits this Post-Hearing Brief.

INTRODUCTION

References to the Comprehensive Exhibit List shall be “[CEL# (#)]. References to the hearing transcripts shall be “[TH Tr. pg.#, lines]” for the technical hearing, “[SH1 Tr. pg.#, lines]” and “[SH2 Tr., pg.# lines]” for the service hearings. For arguments not expressly included in the Issues below, Linda B. Cotherman adopts and incorporates herein the positions of Intervenor Palm Island Estates Association, Inc. (“PIE”) and Little Gasparilla Island Preservation Alliance (“LGIPA”).

FACTS AND PROCEDURAL HISTORY

On February 12, 2024, Environmental Utilities. LLC (“EU”) filed an “Application for Original Certificate of Authorization for a Proposed or Existing System Requesting Initial Rates and Charges” [CEL 5, (C2-19)] for a service area within Charlotte County.

On May 13, 2024, EU filed “EU’s Amendment to Requested Service Area” to delete from the proposed service area the two condominium complexes on Little Gasparilla Island referred to

as Hideaway Bay and Placida Beach Condominiums. These complexes are served by a central wastewater treatment plant.

At a conference call with the parties of record held on November 14, 2024, a list of issues was established relative to this rate case which included all of the items to be addressed as part of the evaluation of this application.

On January 28, 2025, the Public Service Commission (“PSC”) conducted the technical portion of the Administrative Hearing, followed by the Customer Service Hearings on January 28th and 29th, 2025.

The proposed service area consists of a bridgeless barrier island inclusive of the southern portion of Knight Island, and all of Don Pedro Island and Little Gasparilla Island. For regulatory purposes in Charlotte County, a distinction is made between barrier islands and bridgeless barrier islands. This distinction is identified in the Charlotte 2050 Comprehensive Plan, Section 4: Overlay Districts – Land Use Overlays, Barrier Island Overlay District (BIOD) which explicitly states: “Compared to the bridgeless barrier islands, bridged barrier islands have greater intensities and densities based on the added availability of public services and infrastructure. Bridgeless barrier islands do not contain convenient public services and infrastructure and it is not the County’s intent to expand the scope of service and infrastructure to these islands. The County shall not expand the scope of potable water or sanitary sewer service to the bridgeless barrier islands.” [*CEL 16 (C7-613)*]

STATEMENT OF BASIC POSITION

The purpose of Section 367.031 and Section 367.047 of the Florida Statutes is to ensure that a utility has financial and technical ability to provide service, that there is a need for service in the proposed area, and to determine the existence or non-existence of service from other sources

within geographical proximity to the proposed service area. In addition, the PSC reviews, assesses and approves the rates, tariffs and charges associated with the certification to ensure that they are fair and equitable.

It is the position of Intervenor and expert witness Linda B. Cotherman that the applicant EU has not demonstrated a need for service in the proposed service area, nor has it provided evidence or expert testimony supporting same. For its need for service arguments EU relied on testimony from an expert witness who provided “speculative assertions about Charlotte County's barrier islands, devoid of any empirical data.” [*CEL 17 (C9-637)*] The applicant has not illustrated with supporting documentation that the granting of certification to Environmental Utilities is in the public interest.

The proposal to install a wastewater system on these unique bridgeless barrier islands was ill conceived from the outset. The scope of abilities needed to assess, plan, permit, finance, construct and prepare for the impact of building and maintaining this complex project is beyond this applicant's proven capability. And the unintended consequences of a central sewer system in this rare environment could prove disastrous.

Since the application was submitted there have been changes and inconsistencies, many of which to date remain unresolved. The original application remains deficient and inaccurate. For these reasons and more, the docket should be closed.

ISSUES AND ARGUMENTS

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

POSITION: *No.*

ARGUMENT

A. The filing requirements have not been met due to deficiencies and inaccuracies in the application.

1. The land use designated on the application is incorrect. On the application, the land use designation is identified as “Compact Growth Mixed Use”. However, the correct land use designation is “Coastal Residential” with a “Bridgeless Barrier Island” (BBI) zoning designation. [CEL 27 (C13-844)]
2. The applicant stated “None” with respect to land use restrictions, when in fact there are numerous land use restrictions and environmental restrictions in the Charlotte County Comprehensive Plan and Charlotte County Zoning ordinances. Examples include the Barrier Island Overlay District and the Rural Service Area designation. The Comprehensive Plan would require amendments to accomplish this project. [CEL 27 (C13-844)] Other restrictions that require approvals and/or permits include the Environmental Protection Agency (EPA), multiple permits from the Department of Environmental Protection, the West Coast Inland Navigation District (WCIND), the Coastal Construction Control Line, the Florida State Submerged Land Board of Trustees of the Internal Improvement Trust Fund, multiple permits from Charlotte County, and the South West Florida Water Management District (SWFWMD).
3. The estimated gallonage per day and Equivalent Residential Connections are cited with different values in different parts of the application. (See **Issue #7. A** in this document:

“There is no consistent data related to the GPD flow and the ERCs within the prospective service area”)

4. There has been no production of documents proving the availability of all necessary easements for the installation of central sewer. (See **Issue #8. A** in this document: *“Proof of rights to continued use of land has not been provided by EU.”*)

B. There have been multiple changes to the original application that were not noticed to the stakeholders.

1. Regarding Rule 25-30.030, prospective ratepayers rely on public notice to direct them to critical information in the application including future potential rates. The application contents, including the scope and legal description of the proposed service area, estimated rates and tariffs, type and layout of the sewer system and number of existing hook-ups, have changed multiple times. Notification of these material changes was not provided to the property owners in the service area.

ISSUE 2: Is there a need for service in EU’s proposed service territory?

POSITION: *No.*

ARGUMENT

A. There has been no water quality testing within the proposed service area that proves a need for service.

1. No scientific, protocols-based water quality testing has been conducted in the proposed service territory. The applicant's argument for need is extrapolated from general studies

in distant areas like Key West, Florida. The lack of water testing in the proposed service area was referenced several times in testimony given during the technical portion of the Administrative Hearing. Dave Watson testified that Charlotte County Utilities has done no water testing in the area [*TH Tr. pg. 45 lines 11-14*].

2. Ellen Hardgrove testified that the standard for a health problem would be “water testing that would be done around the island, and there has not been.” [*TH Tr. pg. 176 lines 23-25 and pg. 177 lines 1-4*] Brian Lapointe, when questioned about his report, conceded that there were no samples or measurements taken of the water quality of the barrier islands where the proposed service area is located and further stated that he had not collected evidence of a health problem within the service area. [*TH Tr. pg. 54 lines 17-25 and pg. 65 lines 1-3*]
3. Even Jack Boyer, owner of the utility, testified that despite having 3 years since the last application, the utility had conducted no water testing in the prospective service area and had not been prevented from doing so. [*TH Tr. pg. 135 lines 23-25 and pg. 136 lines 1-5*]

B. Water quality standards have been met in the waters surrounding the proposed service area.

1. The Florida Department of Environmental Protection's “2023 Statewide Annual Report”, based on two years of testing, concludes that Lower Lemon Bay, the water body adjacent to the proposed service area, meets water quality standards. [*CEL 26 (C13-824)*]
2. Coastal and Heartland National Estuary Partnership (CHNEP) maintains a Water Quality Dashboard with testing results taken from Lower Lemon Bay. It should be

noted that the test results show no degradation of water quality that could be attributed to septic tanks. [*CEL 27 (C13-846) and CEL 27 (C13-847)*]

3. The Charlotte County Health Department conducts routine water sampling of beach waters adjacent to the proposed service area for the purpose of public health and safety. These tests look for the presence of high concentrations of fecal coliform and/or enterococci bacteria. The applicant has not shown impairment of these waters despite ongoing monitoring of beach water quality and attendant reporting.

C. Septic systems are acceptable as individualized wastewater treatment alternatives on the bridgeless barrier islands.

1. According to the Comprehensive Plan, septic tanks are the preferred method of wastewater management in the Rural Service Area. [*TH Tr. pg. 160, lines 23-25 and pg. 161, lines 1-4*] EU's own water quality witness, Brian Lapointe, stated that individual on-site systems such as the Siemens system (Distributed Wastewater Treatment) "can achieve levels of 90 percent nitrogen removal and above for nitrogen and other contaminants as well". [*TH Tr. pg. 67, lines 16-19*] These advanced technology systems provide a feasible solution and alternative to central sewer.
2. During the Technical Hearing, Commissioner Clark queried Dave Watson regarding the issuance of new septic permits in Charlotte County. Mr. Watson stated that he was not aware of any planned moratoriums on septic permits, and that Charlotte County continues to issue new construction septic permits. [*TH Tr. pg. 54, lines 1-14*] As per Charlotte County Health Department records, during the time frame 2021-2024 new construction permits for on-site septic systems were 6,622. In contrast, septic to sewer conversions averaged 300 per year, with low-pressure system conversions totaling 96.

3. Without an upgrade to “Advanced Wastewater Treatment”, Charlotte County’s wastewater treatment plants offer no environmental benefit beyond what a properly functioning septic system provides. According to witness Rob Robbins, PhD, “By circumventing the existing nitrogen removal by properly maintained onsite treatment systems, connecting to a non-advanced treatment municipal wastewater system increases the total amount of nitrogen introduced into coastal surface waters. Charlotte County is years away from having even one advanced wastewater capable facility.”
[CEL 17 (C9-640)]

D. There is no evidence of significant local support for this application.

1. The initial application item [CEL 5 (C2-23)] asks the applicant to provide documentation of the need for service in the form of “(a) copy of all requests for service from property owners or developers in areas not currently served.” Submitted with the application were 9 letters as requests for service, corresponding to 29 owned properties or 58 ERCs. 21 of the 29 properties are owned by one developer through his investment companies, and he provided 3 letters representing 50 ERCs. Another developer owns 3 properties/3 ERCs. The remaining 5 letters come from individuals with single properties/ERCs. [CEL 5 (C2-19)] Ultimately, the support for this proposal came from 4.6% of the total available ERCs.
2. Representative organizations from within the prospective service area oppose the application. The President of Palm Island Estates Association Inc., Amy McCully, provided testimony that “there is an overwhelming support to reject the notion that sewer should replace septic systems” among their 240 member households. [TH Tr. pg. 151 lines 10-12] Teresa Weibley testified on behalf of the Little Gasparilla Island

Preservation Alliance that 91% of their membership is affirmatively opposed to EU's application. [*TH Tr. pg. 217, lines 5-9*]

3. According to the record, the applicant has produced few letters of support from stakeholders in the proposed service area compared to the hundreds of opposition letters from prospective ratepayers.
4. Of the 105 members of the community who testified at the Customer Service Hearings, 95 spoke in opposition to the proposal whereas 10 expressed support. The volume of speakers elaborating with a variety of reasons for their opposition indicated both a well-informed community of prospective ratepayers and the high level of resistance to the proposed central sewer.

E. There is little evidence of substantial County support for this application.

1. EU cites the Bulk Wastewater Treatment Agreement as support from Charlotte County, but the agreement is a standard contract available to any developer or utility. In fact, Knight Island Utilities, Inc. has an identical contract issued in 2017 from Charlotte County against future need.
2. EU cites Charlotte County Resolution 2023-155 as support from the County, but the Resolution simply reaffirms the general policy of promoting septic-to-sewer conversions without specifically addressing this component of the EU proposal.
3. According to Dave Watson, Charlotte County Resolution 2023-155 was approved in a consent agenda. He was unable to identify a single goal, objective or policy that shows the application is consistent with the Comprehensive Plan. [*TH Tr. pg. 43 lines 4-25, pg. 44 lines 1-25 and pg. 45 lines 1-9*]

4. Expert land use witness Ellen Hardgrove stated her concerns about the Resolution being passed as part of Charlotte County's consent agenda. These concerns included the lack of supporting information for the statement that the proposal was consistent with the Comprehensive Plan, and the absence of a staff report from the Planning Department providing said documentation. [*TH Tr. pg. 171 line 25 and pg. 172 lines 1-15*]
5. It was revealed in testimony that Janette Knowlton, County Attorney, signed off on Resolution 2023-155 as a legal form, notated "as to form and legal sufficiency" only. [*TH Tr. pg. 141 lines 12-20*] indicating no review of the contents of the Resolution for factual accuracy of the contents.
6. On three separate occasions, Chairman Graham called for any elected officials present to speak, once at 5:31 PM on January 28th, once again at 6:00 PM and the next morning at the start of the service hearing. [*SH1 Tr. pg. 15 lines 4-5, pg. 27 lines 17-19 and SH2 Tr. pg. 11 lines 7-12*] Not one of the County Commissioners appeared to support the application.

ISSUE 3: Is EU's application consistent with Charlotte County's Comprehensive Plan and/or Sewer Master Plan?

POSITION: *No.*

ARGUMENT

A. EU's application is inconsistent with the Charlotte 2050 Comprehensive Plan.

1. The Comprehensive Plan is very specific regarding the limitation on the extension of urban infrastructure into land designated as Rural Service Areas. FLU Policy 3.2.4: “Limitation on the extension of urban infrastructure” specifically states that sanitary sewer services may not be extended with the exception of where it has been “*clearly and convincingly demonstrated by the proponents of the system expansion that a health problem exists in a built but unserved area for which there is no other feasible solution.*” [emphasis added] The applicant has not provided clear and convincing evidence that a health problem exists in the proposed service area.
2. Witness Ellen Hardgrove stated that the County is explicitly prohibited from extending central sewer into the Barrier Island Overlay District (BIOD) as stated in Future Land Use Element Appendix I: “The County shall not expand the scope of potable water or sanitary sewer service to the Bridgeless Barrier Islands”. FLUM Series Map #9 [CEL 16 (C7-622)], shows the BIOD consists of Charlotte County's barrier islands including the Bridgeless Barrier Island chain, where EU proposes service. [CEL 16 (C7-613, C7-615)]
3. In the 2002 PSC docket #20020745-WU, the County’s interests in supporting an identical central sewer proposal were represented in a Pre-Hearing Statement provided by Janette Knowlton, then Assistant County Attorney. Her statement made clear that, although the utility proposing central sewer was privately owned, the application was not consistent with the language of the Comprehensive Plan and should the project move forward without amending the Plan then the County would be obligated to shut the project down. [CEL 27 (C13-833)]

B. EU’s application is inconsistent with Charlotte County’s 2017 Sewer Master Plan.

1. In the Introduction to the Charlotte County Sewer Master Plan (2017) the authors specifically reference the water quality in “Charlotte Harbor, the Peace River and the Myakka River” as having “significant impact on our community”. [*CEL 5 (C2-94)*]
None of these water bodies are adjacent to the proposed service area.
2. The Sewer Master Plan only addresses the two existing wastewater treatment plants located within the proposed service area. According to expert witness Ellen Hardgrove, “A simple review of the County Sewer Master Plan will show the only listed projects related to the Bridgeless Barrier Islands in the Master Plan’s 5-Year Improvement Plan are the conversions of existing private wastewater treatment plants on Knight and Little Gasparilla Islands to pump stations and conveyance to an existing system: Knight Island Utilities (W2) and Hideaway Bay Beach Club (W5). Neither of these are in the proposed EU project.” [*CEL 16 (C7-612)*]
3. The bridgeless barrier islands are not in the 5- 10- or 15-Year Plan as developed in the Sewer Master Plan. According to Ellen Hardgrove, “Not only does the 2017 Charlotte County Sewer Master Plan not indicate EU’s proposed system within the 5-Year Improvement Plan, the conversion of septic tanks to sewer on the Bridgeless Barrier Island is not even included in the 10-Year or 15-Year (Build-out) Improvement Plans as listed in Tables 4-5, 4-6, and 4-7, and Figure 4-10 of the master plan.” [*CEL 16 (C7-612)*]

C. Conclusion.

In the “Final Order Denying Application for an Original Certificate to provide Wastewater Service in Charlotte County by Environmental Utilities, LLC” issued on July 8, 2022 (Docket #20200226), staff concluded that EU’s application was not consistent with the

Charlotte 2050 Comprehensive Plan nor was it consistent with the Sewer Master Plan. Neither the Comprehensive Plan nor the Sewer Master Plan has been revised or amended in a way relevant to this application since the last adjudication.

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

POSITION: *Yes.*

ARGUMENT

A. The territory area indicated to be served by EU is already in the Charlotte County Utilities certificated area.

The Comprehensive Plan identifies sanitary sewer service as provided by 10 individual providers. “The public providers have established service areas, while the remaining private providers have certificated service areas, with any land not specifically included in another utility’s service area included within the County’s.” [From Charlotte 2050, Infrastructure – Data and Analysis, Potable Water and Sanitary Sewer, pg. 1]

B. Map #86: Certificated Sanitary Sewer Utility Areas in the Sewer Master Plan shows the prospective service area as part of CCU’s certificated area. Also, a part of the northern portion of the proposed area, including Lemon Bay Lane on Knight Island, is already being served by Knight Island Utilities, Inc. [CEL 27 (C13-845)]

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

POSITION: *No.*

ARGUMENT

A. The evidence of financial resources for this project primarily consists of a non-binding letter issued by a prospective lender.

1. The letter from Freedom Holdings Manatee, LLC is not a formal contract, nor does it contain adequate detail to qualify as evidence of financial ability. It is a “confirmation” of “a personal loan of up to 75% of the pro forma appraised value of the wastewater system for you to invest in Environmental Utilities, LLC, secured by your and your wife’s membership interests in Environmental Utilities, LLC”. [*CEL 5 (C2-31)*]
2. There was neither testimony nor evidence provided about the financial strength, reputation or wherewithal of Freedom Holdings Manatee, LLC, to fund a project whose costs have not been fully determined.
3. EU supplied no formal loan contract from Freedom Holdings Manatee, LLC indicating a specific interest rate and repayment schedule. The loan is secured by the Boyers' 50% each membership interest in the company, risking utility ownership transfer to an unqualified lender in a default, requiring PSC authorization.
4. This loan offer is contingent upon PSC approval of the service area certificate and “an acceptable pro forma appraisal” of the wastewater system. The letter was procured on January 24th, 2024, well before the initial rates and tariffs had to be adjusted upwards from the original \$17 million to \$21 million. There is no evidence that the updated

budget projections will yield a “pro forma appraisal” that will be considered “acceptable” by the lender. [CEL 5 (C2-31)]

B. Significant construction costs were omitted from the total construction cost of the sewer project.

1. Expert witness John Shaw, PE testified that “there are omissions in EU’s calculations.

There are several costs associated with the project, both capital and on-going that were not obviously included in the work or were included but are not currently accurate.”

[*TH Tr. pg. 248 lines 10-21, pg. 249 lines 13-14*] These errors of omission or inaccuracy resulted in substantially differing cost opinions between EU and expert witness Jadon Hull, P.E. [*TH Tr. pg. 229 lines 12-14*] Mr. Hull identified the differences as follows: “EU’s Base Cost Estimate was \$17,363,148, (EU’s Response, Doc. No. 01161-14 2024, at p. 37). My cost opinion is \$51,244,204.57.”

2. Obviously, the greater the cost of construction, the greater the debt service would be on the utility. If the utility cannot repay the debt service associated with the debt, then adding to the debt only increases the likelihood of default.

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

POSITION: *No.*

ARGUMENT

- A. There is no documentation of EU’s claim to have experience in wastewater management.**

1. While the applicant purports to have the technical ability to provide wastewater services, the preponderance of his self-reported experience is with water utilities, with no detailed description of duties and no verification from former employers. While water and wastewater are both utilities, the ramifications of mismanagement of a wastewater facility are far more catastrophic. Mr. Boyer's cavalier attitude towards his lack of expertise was evidenced in his testimony. When asked what experience he had with the grinder pump system that's proposed in this application, his response was "Pumps are pumps. I mean, they are really not that difficult." [See TH Tr. pg. 126 lines 12-15]
2. **EU provides no guarantee it can maintain the system and respond to malfunctions.**
 1. EU's ability to respond to extended power outages has not been addressed. EU's solution involves each homeowner assuming responsibility for the unexpected, including Mr. Cole's recommendation that "[d]uring power outages each pump should have a backup generator." [CEL 8 (C3-487)] No emergency plan for spill prevention or cleanup has been proffered, although Mr. Cole's memorandum states "The utility rather than the customer, will be responsible for having a FDEP approved plan for power outages and emergency operations." [CEL 8 (C3-487)]

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

POSITION: *Not necessarily.*

ARGUMENT

A. There is no consistent data related to the GPD flow and the ERCs within the prospective service area.

1. There are discrepancies in the various submittals from EU pertaining to the GPD (gallons per day) flow and the number, locations, and classifications of ERCs (equivalent residential connections) within the proposed service area. In the application, there are 1248 ERCs estimated at 90 GPDs. Bulk wastewater allows 2200 ERCs at 190 GPD. Mr. Cole's memorandum uses 1251 ERCs. Without firm data, it is impossible to ascertain exactly what plant capacity will be required to serve the requested territory.

B. Charlotte County requires a deposit of TAP fees to reserve plant capacity.

1. On April 14, 2020, the Charlotte County Board of County Commissioners adopted Ordinance No. 2020-014 which states "Payment of the TAP [defined as "Transmission, Accrued Guaranteed Revenue Fee and Plant"] fee is required to reserve capacity in the County's Utility System." [Section 3-8-55 (a)] EU was granted a Bulk Wastewater Treatment Agreement from Charlotte County in July of 2020 after the ordinance was adopted.
2. As the Bulk Wastewater Treatment Agreement is subject to the ordinance, EU cannot guarantee future plant capacity until the TAP fees are paid in advance to reserve that capacity. While the convoluted arrangements made in the Agreement for the TAP fee credits [*CEL 5 (C2-68)*] may relate to the construction costs, these TAP fees are not being applied to reserving capacity. The ordinance is clear that the TAP fees need to be paid in advance, which is the regulatory protocol for all other developers.

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

POSITION: *No.*

ARGUMENT

A. Proof of rights to continued use of land has not been provided by EU.

1. Access to each individual property will require easements from property owners, which may not be forthcoming without legal action. When asked about being forced to use eminent domain to obtain the necessary easement, EU owner Jack Boyer replied “ I believe the islanders will come together and present the most cost-effective fashion for getting this accomplished.” [*TH Tr. pg. 132, lines 19-22*] This seems unlikely given the level of opposition to EU’s central sewer proposal.
2. Eminent domain statutes currently in place indicate that the initiator of the action, in this instance, EU, will have to pay all legal fees. Ultimately, EU will have to return to the PSC for a rate change in order to charge these fees charged back to the ratepayers in the certificated area.

B. The size and scope of the easements required exceed normal standards and encumber the property.

1. Testimony during the technical hearing revealed that the easement required for the installation is 15’ wide to accommodate EU’s wastewater treatment components. In Jonathan Cole’s Amendment #1 to Original Technical Memorandum, he states “A 15-foot wide easement is a reasonable width for the installation of a single small diameter line and that easement can be shared with other utilities or access.” [*CEL 33 (D3-75)*]

This easement is 3 times the size of a standard platted utility easement on the side property line, and this proposal requires the 15' easement from the house to the road wherever the tank can be installed. The easement requirement is an undue burden to the property owner and violates private property rights.

2. The sweeping language of the Wastewater Tarriff "14.0 RIGHT-OF-WAY OR EASEMENTS - The Customer shall grant or cause to be granted to the Company, and without cost to the Company, all rights, easements, permits, and privileges which are necessary for the rendering of wastewater service" [*CEL 48 (E2-93)*] is far too broad. The language implies customer responsibility for all of the itemized needs of the project.

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

POSITION: *No.*

ARGUMENT

A. The burdens to the stakeholders far outweigh any potential benefit.

1. There are multiple expensive owner provisions not included in the proposed connection, such as an emergency generator to avert system failure in a power outage, additional plumbing costs to connect the house plumbing to the grinder pump chamber, installing an EU-provided electrical subpanel and then hooking up the subpanel to the pump (which requires trenching), electric service upgrades for stakeholders that can't

accommodate the new subpanel, reparations for landscaping and hardscaping removed or damaged during construction, and other incidental “extras”.

2. There is a likelihood of cost overruns causing further financial impact to the stakeholders. In his testimony, witness Jadon Hull stated that the cost estimates that he provided are real-time engineering estimates and he identified these figures as “conservative” [*TH Tr. pg. 231, lines 18-21*]. The cost of materials is most likely to rise between the time of approval and the construction start time. Given the current service availability charges are neither accurate nor comprehensive, as costs increase the PSC will likely be forced to address the funding gap for this project in the future.
3. Ratepayers will be unduly burdened compared with Charlotte County Utility customers on the mainland. In the absence of a pay-over-time plan, some residents will be forced to take on a loan and pay attendant interest. There will be no available subsidies to offset the connection fees and no grandfathering of existing equipment regardless of age. There is no single point of oversight for the project or performance bond provided.
4. This project will generate years of traffic congestion. Recent experience with post-hurricane recovery has exposed the vulnerability of our ferry transportation. Depending upon weather, tides, wind, traffic volume, limited operational hours and other restrictions can cause unreasonable delays, particularly for large truck shipments and heavy equipment. Witness John Shaw testified that “I left the island yesterday afternoon at 3:20. I departed the barge on the other side at 4:15. That's not insignificant.” [*TH Tr. pg. 252, lines 22-25, pg. 253, lines 1-3*] In addition to the effects on daily island life, Mr. Shaw contends that the resulting loss of labor and efficiency will impact the project rates and tariffs.

B. There are significant environmental impacts associated with the installation of the proposed sewer system.

1. Multiple speakers at the Customer Service Hearings expressed concern about the potential destruction of habitat and interference with native species. Melissa Stead testified that “The construction of a central sewer system on LGI would disrupt critical and natural habitats in the wetlands. These areas are vital for water filtration and serve as nurseries for marine life.” [SH2 Tr. pg. 55, lines 22-25, pg. 56 lines 1-9] Kjell Plotkin, a Florida Fish and Wildlife certified gopher tortoise agent with the State, spoke at length about the impacts to the islands’ gopher tortoise population. [SH2 Tr. pg. 79-81]
2. Representatives from two local environmental organizations appeared at the customer service hearings to speak against the proposed central sewer. Lisa Haney, current President of the Bocilla Islands Conservancy, Inc., re-affirmed the opposition position taken by the Board. [SH2 Tr. pg. 13 lines 18-21] The Lemon Bay Conservancy, which participates in water quality initiatives in Lemon Bay, Gasparilla Sound and the surrounding watershed, sent Board member Malcolm Collingwood to take the position that “the assumption that a centralized sewer system will significantly reduce nitrogen loading to Lemon Bay is unfounded.” [SH2 Tr. pg. 46 lines 6-14]
3. The risk of a potential sewer spill is much greater with a low-pressure sewer system than any other wastewater system. Kathy Stokes from LGI testified that “Charlotte County has reported 51 percent of the spills that have happened were from low pressure systems, despite being only 25 percent of the county systems.” [SH2 Tr. pg. 98 lines 17-20] Jeff Provost, a mechanical and structural engineer with experience in

the municipal and commercial sewer disposal and pump-out systems for marinas, stated “I have never seen a pressurized system used over an environmentally sensitive area.” [SH2 Tr. pg. 84 lines 15-18]

4. The ability to address an emergency is directly related to the limitations of available transportation and the absence of roads in certain areas. While offering a “generator truck” as a solution in an emergency, EU fails to address how the truck would get to the location. A potential sewer spill cleanup requires a vacuum truck, lime to treat remainders, materials and manpower to fix the problem in a timely manner. Even regular system maintenance will be challenged by the existing transportation issues.

C. The proposed central sewer service is not in the public interest.

1. There is a definitive absence of a need for service, as discussed in Issue 2 above.
2. The proposal is not consistent with the Comprehensive Plan nor the Sewer Master Plan, as discussed in Issue 3 above.
3. The community strongly opposes the proposed central sewer service, as discussed in Issue 2 above.

ISSUE 10: What is the appropriate return on equity for EU?

POSITION: *Not Applicable.*

ARGUMENT

1. Linda B. Cotherman’s position is that the installation of critical infrastructure should be implemented by either a governmental entity or a not-for-profit corporation.

ISSUE 11: What are the appropriate rates and rate structures for EU? [LINDA]

POSITION: *Not Applicable.*

ARGUMENT

A. The estimated residential billing is neither a fair nor equitable rate.

1. In chapter “8.1 AFFORDABILITY” of the Sewer Master Plan, Charlotte County establishes a formula for determining equitable monthly billing for utility customers. This affordability estimate identifies monthly payments of approximately \$113 for the sewer component of the bill as a reasonable ceiling. EU’s base charge for sewer, regardless of usage, is \$109 per month. This approaches the maximum affordability level without any actual use.
2. The Bulk Sewer Treatment Agreement caps wastewater acceptance per household at 190 gallons per day. Using that figure, Charlotte County Utilities currently charges \$77.64 per month on the mainland for wastewater service. EU’s proposal for the same gallonage is \$242.35 per month.

ISSUE 12: What are the appropriate initial customer deposits for EU?

POSITION: *Not Applicable.*

ARGUMENT

1. The appropriate initial customer deposits for EU cannot be accurately analyzed due to unsubstantiated construction and installation costs. The discrepancy between EU's

estimated project costs and those provided by expert witness engineers makes it impossible to calculate appropriate rates and charges for this proposal.

ISSUE 13: What are the appropriate miscellaneous service charges for EU?

POSITION: *Not Applicable.*

ARGUMENT

1. The appropriate miscellaneous service charges cannot be accurately analyzed due to unsubstantiated construction and installation costs. The discrepancy between EU's estimated project costs and those provided by expert witness engineers makes it impossible to calculate appropriate rates and charges for this proposal.

ISSUE 14: What are the appropriate service availability charges for EU?

POSITION: *Not Applicable.*

ARGUMENT

A. The underlying estimates used to prepare the service availability charges were not accurate.

1. According to witness Jonathan Cole, the primary purpose of his memorandum was simply to compare a vacuum system and a low-pressure system to make a recommendation on which system would be preferable on the bridgeless barrier islands.

- [*TH Tr. pg. 89 lines 12-16*] As budget considerations were for comparison purposes only, the estimated costs provided in the memorandum were based on mainland bid pricing, using a markup to adjust for barrier island construction. Mr. Cole referred to the process as, “I think we rounded them up a little bit.” [*TH Tr. pg. 87, line 21*]
2. According to Deborah Swain, “All the pricing estimates for the plant components were from Mr. Cole's report, and ... the organizational costs were estimates that I obtained from our consulting team. (clarified as “the EU consulting team”). And the structure costs came from Mr. Boyer.” [*TH Tr. pg. 108, lines 13-21*] This indicates that the remaining soft-cost estimates beyond the plant components were provided to Deborah Swain by EU's owner, Jack Boyer. There is no documentation available for review that supports the accuracy of these cost estimates from the owner.

B. The underlying estimates used to prepare the service availability charges were not comprehensive.

1. While Jonathan Cole's memorandum provided limited cost estimates for comparison purposes, witnesses Jadon Hull and John Shaw testified with cost estimates that were prepared according to industry standards for project budget formulation. According to Mr. Shaw, “[T]here are omissions in EU's calculations. There are several costs associated with the project, both capital and on-going that were not obviously included in the work or were included but are not currently accurate.” [*TH Tr. pg. 242, lines 14-18*]
2. In his “Technical Memorandum Addendum No.1” [*CEL 33 (D3-67)*] filed with his rebuttal testimony, Jonathan Cole introduced new engineering layouts involving two

intracoastal crossings at different locations from the original submission. These were the latest omissions in the cost estimates.

3. In the final analysis, the “rounded up” estimated budget provided with the original application put the project budget at \$21,000,000.00. By contrast, Jadon Hull provides more realistic total project cost of \$51,244,204.57. [*CEL 20 (C10-770)*] Mr. Hull contends that “All of these assumptions result in a cost opinion that is conservative. That is, any of these costs not included would result in a higher total cost” [*TH Tr. pg. 231, lines 18-21*]
4. The difference between EU’s proposed project costs and those provided by Mr. Hull translates to a difference between a suggested service availability charge of \$17,000.00 vs. \$40,962.59 per ERC. (*Ed. Note: both connection fees include the lateral connection fee but not the TAP fees.*)

C. Over time, the underlying estimates used to prepare the service availability charges changed substantially.

1. The multiple material changes to the engineering and project costs, generated during the course of this action, severely compromised the parties’ ability to assess this proposal. If given an indefinite timeframe, one wonders if there would ever be a completed submission.

D. There is no documentation of the availability of local, state or federal funding to offset the burden of cost to the homeowner.

1. The availability of state or federal grants is unlikely for a private utility installing central sewer on a bridgeless barrier island. Executive Order Number #81-105 indicates that state and federal grants should not be available for infrastructure on a barrier island.

“Such funds shall not be used to subsidize growth or post-disaster redevelopment in hazardous coastal barrier areas.” [CEL 26 (C13-807)]

2. In his rebuttal to the restriction of state and federal grants, EU replies “Environmental Utilities is working with local legislators to secure funding from the Legislature. However, nothing can be solidified until a Certificate is granted.” [CEL 29 (D2-12)]
No letters of intent, nor even documented interest, from local or state governments were entered into the record at any point in the proceedings.

E. If the proposal is executed, fair and equitable service availability charges should be identical to those charged by Charlotte County Utilities to residents on the mainland.

1. The initial connection fee submitted with the application was \$12,000.00, which was updated to \$15,587.00 by the time of the hearing. Ms. Swain testified that the utility expects the homeowner to bear the additional cost of the TAP fee (\$2,251.00), the lateral connection fee (\$1,414.00). [TH Tr. pg. 366, lines 13-15, pg. 367 and pg. 268, lines 1-18] This brings EU’s estimated connection fee to \$19,252.00. Charlotte County currently charges \$11,500.00 per hook-up, inclusive of the TAP fee and the lateral connection fee.

ISSUE 15: Should this docket be closed?

POSITION: *Yes.*

ARGUMENT

The applicant has not provided adequate nor accurate information with supporting documentation to warrant the granting of certification for the proposed service area. EU has

not demonstrated the need for service required for certification, nor the financial and technical abilities to accomplish the project. It is not in the public interest to grant certification for this proposal. There have been no significant changes to the initial application since the previous application was denied. For the reasons outlined above, and for all of the reasons specified in the Final Order Denying Application for an Original Certificate to provide Wastewater Service in Charlotte County by Environmental Utilities, LLC” issued on July 8, 2022 (Docket #20200226), we respectfully request that this docket be closed.

Dated: February 28, 2025

/s/

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CERTIFICATE OF SERVICE

I certify that on February 28, 2025, a true and correct copy of the foregoing has been furnished by electronic mail to the following:

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