

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

LINDA COTHERMAN'S POST-HEARING BRIEF

Linda Cotherman, pro se litigant, pursuant to the Order Establishing Procedure, Order No. PSC 2021-0323-PCO-SU, issued August 25, 2021, hereby submits this Post-Hearing Brief.

FACTS AND PROCEDURAL HISTORY

On October 13th, 2020, Environmental Utilities, LLC (sometimes "EU") filed an "*Application for Original Certificate of Authorization for a Proposed or Existing System Requesting Initial Rates and Charges*" for a service area within Charlotte County. The next day EU submitted a Motion to Bifurcate and for Temporary Rule Waiver asking to split from the application the portion addressing the initial rates and charges for wastewater services.

This Motion was denied by the Commission on January 5th, 2021.

On March 8th, 2021, EU filed an amendment to its application to delete from the proposed service area the portion on the mainland referred to as Cape Haze, leaving only the bridgeless barrier islands as the proposed service area.

On August 9th, 2021, EU filed a Motion for Partial Summary Final Order, requesting an acknowledgment that the PSC will accept and follow Charlotte County's Sewer Master Plan (sometimes "SMP") in determining the need for central wastewater service on the bridgeless barrier islands.

This Motion was denied by the Commission on October 12th, 2021.

At a conference call with the parties of record held on November 10th, 2021, a list of issues was established relative to this rate case. PSC staff provided the parties of record with an updated list of issues on December 2, 2021. This final list of issues included all of the items to be addressed as part of the evaluation of this application.

On February 8th, 2022, the PSC conducted the technical portion of the Administrative Hearing, followed by the Customer Service Hearings on February 8th and 9th, 2022.

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 substantial 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;”

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 the geographical proximity to the proposed service area. In addition, the Public Service Commission [PSC] reviews, assesses and approves the rates and charges associated with the certification to ensure that they are fair and equitable.

It is the position of Intervenor and expert witness Linda Cotherman that the applicant EU has not demonstrated a need for service in the proposed service area, nor have they provided evidence or expert testimony supporting same. EU relied on testimony from a former employee of Charlotte County who was not knowledgeable in the elements presented in their “need for service” arguments. The applicant has not shown the financial or technical ability to construct, operate and maintain a project of this scope. Nor has the applicant illustrated with supporting documentation that the granting of certification to Environmental Utilities is in the public interest.

To have a “new original” utility with no documented experience in wastewater service propose the installation of a wastewater system on this unique bridgeless barrier island is a situation without precedence. The scope of abilities needed to assess, plan, permit, finance, construct and prepare for the impacts of building and maintaining this project is beyond the applicant’s proven capability. A feasibility study conforming to industry standards – which would include all costs, environmental impacts, fees and time frames for permitting and construction, order of procedures and critical flow path – has not been presented for this project to date.

In the year and five months since the application was submitted there have been corrections, amendments, re-calculations of rates and tariffs, updated ERC counts and all manner of changes and inconsistencies many of which to date remain unresolved. The original application remains deficient and inaccurate. It is not an overstatement to say that assessing this proposal has been like shooting at a moving target. In short, the applicant does not appear to know what they need to

know to go forward with this proposal and its associated costs. For these reasons and more, the docket should be closed.

ISSUES

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

POSITION: No. Notice was required for both the application submission and the Customer Service Hearings. Although formal notice was published in a weekly newspaper, on both occasions the timing of the publication and the applicant's actions taken to notify the community were misleading and incorrect.

ARGUMENT:

The two formal notices required to be sent to the prospective stakeholders in these proceedings were handled inappropriately.

1.1 Poor handling of the formal notice for the Application submission.

The initial Notice of Filing Affidavit of Mailing dated December 18th, 2020 stated that formal notice had been sent via USPS to the potential ratepayers alerting them that a central sewer application had been submitted to the Public Service Commission. However, the timing of this mailing – during a peak period of Covid complications as well as holiday mail and mail forwarding delays – produced late receipt of the notice for many and resulted in a lack of awareness of this application.

The notice of application and initial rates and charges for wastewater service that was published in the newspaper (which was not a local publication) on December 18th, 2020, stated that the rates and tariffs were included in the application and how to access them. However, they were not included and not accessible nor even available to the potential ratepayers until June 18th, 2020.

1.2 Poor handling of the formal notice for the Customer Service Hearings.

Formal notice for the Customer Service Hearings taking place on February 8th and 9th, 2022, were sent via USPS on January 13th, 2022. Given the slender time frame between the mailing and the required date of arrival, some stakeholders received the notice with inadequate time to make arrangements to attend. Some stakeholders received the notice after the Hearings had taken place, and two property owners did not receive it at all.

To add to the confusion, on January 20, 2022 Environmental Utilities sent an email at 10:53 AM subject titled “Notice of Prehearing and Hearing” that stated:

Dear Interested Party/ Island Resident:

Attached is a Notice of Public Hearing in reference to the Environmental Utilities Wastewater Service Application. The hearing will take place on Tuesday & Wednesday, February 8th & 9th, starting at 10:30 a.m.

This hearing is open to all interested persons and will allow the opportunity for people to voice their opinions. Please review the attached document to see the various ways you may register to speak at the hearing.

A hard mailing has also been sent out so we may make as many people aware of the hearing as possible.

Thank you,

Jack

Please note that the start times stated in the email are incorrect. As a result, the following email was sent on January 20, 2022 at 12:26 PM subject titled “Charlotte County Inspection & Ordinances” which attempted to correct the error in the first email.

Dear Interested Party/ Island Resident:

Attached are 2 documents that will help address a couple of issues brought up by individuals and may be a concern of others.

The first attachment is from Charlotte County Utilities and is a letter that addresses the establishment of existing systems on the island. This should answer the questions on the 55 Gal. drums or comparable.

The second attachment is the Charlotte County Code of Ordinances on Bridgeless Barrier Islands. This addresses further development of the islands, i.e. high rises or increasing density, which won't happen due to waste water collection.

Lastly, it was brought to our attention that the previous email sent regarding the Notice of Prehearing had mentioned a different time than what was on the attached document. The correct time is 10:00 a.m, as stated on the document. Please remember, if you plan to speak at the hearing, you must register in one of the ways suggested on the Notice of Prehearing.

Thank you!

Jack

Once again, the start time for the Customer Service Hearing was correct for February 9th, but incorrect for February 8th. These emails and notifications indicate an approach to the process that is at best, unprofessional.

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

POSITION: No. Environmental Utilities has provided no compelling evidence or documentation indicating a need for service in this area. In addition, Environmental Utilities’ proposal is inconsistent with the Charlotte 2050 Comprehensive Plan making the execution of the project untenable without first amending the Comprehensive Plan.

ARGUMENT:

Florida Executive Order 81-105 from former Governor Bob Graham recognized the need to preserve the natural resources of coastal barriers, including barrier islands, and to mitigate their “extensive vulnerability to natural hazards, particularly hurricanes.” The order directed local governments to apply “appropriate growth management so that population and property in coastal barrier areas are consistent with evacuation capabilities and hazard mitigation standards.” This document provided the framework for the Objectives, Goals and Policies of the Charlotte 2050 Comprehensive Plan.

To comply with the Executive Order, the Comprehensive Plan segments the County into two service areas – the Urban Service Area where development is encouraged by the provision of urban infrastructure, and the Rural Service Area where development is to be discouraged unless there is clear and convincing evidence of a public health or safety issue.

2.1 The application is inconsistent with the Charlotte 2050 Comprehensive Plan.

The bridgeless barrier islands fall within the Rural Service Area, which is consistent with the Executive Order. “The County shall prohibit the provision of water and sewer infrastructure within the Rural Service Area and shall 2. Continue to rely primarily upon individual on-site septic systems as the method of disposal of wastewater” [*FLU Policy 3.2.4: Limitation on the Extension of Urban Infrastructure*].

In addition, the County added an extra layer of protection – the Barrier Island Overlay District (BIOD) – which includes more restrictive language regarding the bridgeless barrier islands as follows: “The County shall not expand the scope of potable water or sanitary sewer service to the bridgeless barrier islands”. According to the Florida State Constitution Article VIII Section 1(a) and F.S. Title XII Chapter 165 Definition 165.031 “The County” refers to the governing body of Charlotte County. “The County” is responsible for the enforcement of all regulations related to local governance, inclusive of a subsidiary division like Charlotte County Utilities Department and also private utilities operating within their boundaries.

According to FLU Policy 1.1.6: Consistency with Comprehensive Plan: “The County shall issue all development orders or permits to be consistent with the Future Land Use Map (FLUM) Series and Charlotte 2050 Comprehensive Plan as specified in Chapter 163.3194, F.S.” This policy states unequivocally that all permitting required for the execution of this proposed will need to be in compliance with the Comprehensive Plan. This was affirmed by land use expert Ellen Hardgrove in her pre-filed testimony [*Direct Testimony of Ellen Hardgrove AICP, Exhibit EH-1 Page 2 Item 6*]. “Provision of central sewer as proposed by Environmental Utilities is inconsistent with the Charlotte County Comprehensive Plan.” An amendment to the Charlotte 2050 Comprehensive Plan would require the approval of the Charlotte County Board of Commissioners as well as the state agency responsible for development oversight.

The issue of inconsistency with the Comprehensive Plan relative to the extension of sewer to the bridgeless barrier islands by a private utility was previously addressed in a comparable application submitted in 2002, PSC Docket # 020745-SU *Application by Island Environmental Utilities, Inc., for an Original Wastewater Certificate in Charlotte County*. The applicants at the time included John R. Boyer, currently owner of EU.

In the 2002 PSC docket, the County’s interests in supporting the central sewer proposal were represented by a Pre-Hearing Statement provided by Jeanette Knowlton, then Assistant County Attorney [*Exhibit 51 Charlotte County’s Pre-Hearing Statement*] Her statement made clear that, although the utility proposing central sewer was privately owned, that the application was **not** consistent with the language of the Comprehensive Plan and should the project move forward without amending the Comprehensive Plan then the County would be obligated to shut the project down. This would have been the case despite the fact that the project was being executed by a private utility and not by the County.

Ms. Knowlton is presently the Charlotte County Attorney. Neither her office nor the Community Planning Department have provided testimony or evidence in this application addressing the continuing inconsistency of extending central sewer on the bridgeless barrier islands with the Comprehensive Plan. In fact, in September of 2019 the County began the process of updating the Charlotte 2050 Comprehensive Plan. The completed proposed revisions were presented to the Community Planning and Natural Resources Departments on February 14th, 2022 and on March 22nd, 2022 it will be presented to the Board of County Commissioners for the transmittal hearing. No changes have been included in the revisions relative to allowing central sewer to be extended to the bridgeless barrier islands.

It should be noted that the Charlotte County 2050 update has language directing the Health Department to conduct 5-year inspections of septic systems in the County.

2.2 No water quality testing with attendant documentation has been provided to support a need for service.

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* [emphasis added] for which there is no other feasible solutions.”

When asked about FLU Policy 3.2.4, Mr. Craig Rudy could not provide any evidence of a health problem in the prospective service area. [*Remote VTC Deposition of Craig Rudy (12.07.2021) Page 17 line 1*]

- 1 **Q. All right. So, with that understanding what**
2 **clear and convincing evidence exists of a health problem**
3 **in the bridgeless barrier Islands to justify sewer**
4 **infrastructure?**
5 A. None that I know of.

When asked about water quality testing which would serve as evidence of a public health or safety issue, Environmental Utilities stated as follows: [*Technical Hearing Transcript Volume I, page 55 John R. Boyer*]

- 13 **Q. So there has been no water quality testing on**
14 **Don Pedro Island, true?**
15 A. Not that I know of, sir, other than the --
16 **Q. And there has been no water quality testing on**
17 **Knight Island, correct?**
18 A. No, sir, that I know of.
19 **Q. There has been no water quality testing on**
20 **Thornton Key, correct?**
21 A. No, sir.
22 **Q. You don't even know the last time the water**
23 **quality was tested, correct?**
24 A. No, sir.

In the absence of water testing, there is nothing left but anecdotal evidence of alleged pollution.

2.3 No proof of environmental pollution caused by septic systems on the bridgeless barrier islands with attendant documentation to support a need for service.

Regarding EU's claim of septic systems causing red tide, in his direct testimony environmental expert Dr. Robert Weisberg states that “the EU assertion in paragraph 4 that

“the exacerbation of red tides and algae outbreaks are well documented” is unsubstantiated conjecture, and not based on scientific evidence.” [Direct Testimony of Robert Weisberg, Ph.D on behalf of Palm Island Estates Association, Inc. Exhibit RW-1, page 2 of 113, Item 8]

And subsequently, Dr. Weisberg’s testimony offers “no evidence is provided in support of the statement that septic tanks, as located within the referenced areas, adversely affects Lemon Bay and Gulf of Mexico water quality. Additionally, there is no reasonable scientific support, nor am I aware of evidence presented by Charlotte County, which would support the need to convert on-site septic tanks to public sewer in these areas. Thus, the exacerbation of red tides and algae outbreaks, as claimed in the EU application, is undocumented.” [Direct Testimony of Robert Weisberg, Ph.D on behalf of Palm Island Estates Association, Inc. Exhibit RW-1, page 1 of 113, Item 4]

In conclusion, Dr. Weisberg submitted in his direct testimony that “EU’s application cites no scientific or other data which would amount to a “Need for Service” on any environmental basis as I have explained above.” [Direct Testimony of Robert Weisberg, Ph.D on behalf of Palm Island Estates Association, Inc. Exhibit RW-1, page 4 of 113, Item 15] No expert testimony was provided by Environmental Utilities to rebut this position.

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

According to the Florida Department of Health in Charlotte County website, “Properly designed, constructed, and maintained systems protect Florida’s ground water which provides 90 percent of Florida’s drinking water.” For the applicant simply to say “Septic bad, sewer good” based on the principal of “common sense” is a dramatic oversimplification of the issue. Each system has its advantages in different circumstances.

Jonathan Cole, engineer, acknowledged in his testimony that when individual septic tanks are designed as part of new home construction, they are customized to the soil and other conditions that exist on each individual property. [Technical Hearing Transcript Volume II page 290, lines 11-24] As a result, they are permitted, constructed and inspected to function properly on that specific individual property. On-site wastewater treatment systems are recognized as appropriate for public health, safety and water quality by South West Florida Water Management District, Department of Environmental Protection, the state of Florida Health Department in Charlotte County, Environmental Protection Agency and Charlotte County. Any issues that may arise with individual septic systems are the responsibility of the County, the state of Florida Health Department in Charlotte County or the Department of Environmental Protection. Therefore, it is a matter of code enforcement. The fact that Charlotte County is still installing septic systems on the bridgeless barrier islands in new construction is a testament to their suitability and efficacy.

2.5 The applicant did not provide any requests for service from property owners in the proposed service area.

The initial application item D) NEED FOR SERVICE asks the applicant to provide documentation of the need for service in the form of [item 1(b)] “A copy of all requests for service from property owners or developers in areas not currently served” should be attached. The applicant provided no such requests to support the need for service in the proposed service area.

The President of Palm Island Estates Association Inc., Meryl Schaffer, provided testimony that to the best of her knowledge, no member has requested central sewer. The volume of letters emailed to the Clerk of the Commission have been overwhelmingly opposed to the applicant’s proposal. Since the Customer Service Hearings where more facts in the case became clear to the property owners, well over 200 additional emails and letters were sent asking to deny the certification. The volume of communications elaborating on a variety of reasons for their opposition, indicates a well-informed community of prospective ratepayers and the level of resistance.

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

POSITION: No. Environmental Utilities’ reliance on the Sewer Master Plan was an inadequate attempt to provide a substantive foundation for their need for service argument.

ARGUMENT:

The Sewer Master Plan commissioned by Charlotte County was a prescriptive study to address the water quality in Charlotte Harbor and the Myakka and Peace Rivers. It also served to provide the groundwork for future septic to sewer conversions in the whole of Charlotte County.

The Sewer Master Plan has several internal inconsistencies and inaccuracies relative to the bridgeless barrier islands, which makes it inadequate support as justification for the application. It merits exploring what the Sewer Master Plan actually says.

Considering the totality of the Sewer Master Plan, it is evident that only the two existing wastewater treatment plants located on the bridgeless barrier islands were identified for connection to central sewer. No other areas were specifically included in the Plan, and these two plants were to be connected only at the request of the owners.

3.1 The specific criteria used for the priority ratings in the Sewer Master Plan are not directly relatable to the proposed service area.

EU relied upon the Sewer Master Plan and its scoring and priority system for the “need for service” argument in the application. In the Sewer Master Plan section 4. Sewer Improvement and Infill on Page 60, the Overview states “Environmental scoring criteria were developed to identify project areas that maximize environmental benefits and provide long-term reductions in nutrient loading to Charlotte Harbor.” However, these criteria are not applicable in these circumstances for the following reasons:

- A. Proximity to water:** The proximity to water criteria used in the Plan did not take into account tidal flow. Because of coastal tidal flow, our adjoining waters do not influence Charlotte Harbor nor the Peace and Myakka Rivers, which are the upstream waters stated as the focus of the Sewer Master Plan. In reality, the degraded waters prioritized by the Plan would be flowing from Charlotte Harbor to Gasparilla Sound and then directly into Lemon Bay or the Gulf of Mexico (depending upon the tides). These are our adjacent waters. Clearly their waters would be impacting us, not the other way around.
- B. Age of septic:** In the Sewer Master Plan, this data was extrapolated from the age of the houses not the actual age of the septic systems, many of which have been replaced or repaired over the years. Construction after 1983 followed new guidelines for on-site wastewater treatment systems. These guidelines included increased distances from wells and surface water, increased separation from the water table, and a requirement that the system be designed by an engineer with a soil boring on each individual property. Soil boring was introduced to analyze the soil composition on each individual site to ensure that the variance in soils will not impact the function of the septic system. There are approximately 30 developed properties on Knight and Don Pedro Islands that were built prior to 1983, as observed by Linda Cotherman, island resident since 1979. Only a fraction of these homes have not replaced their septic systems and/or drain fields since the homes were built, and these few remaining homes were vacant for stretches of time measured in years.
- C. Nitrogen rating:** This data was extracted from general estimates of averages from other areas in Florida and the County. According to the testimony of Jack Boyer [*Technical Hearing Transcript Volume 1 page 55, lines 13-24*] there has been no water quality testing done by Charlotte County in proximity to the proposed service area. There have been no expert witnesses nor any documentation to attest to the existence of data specific to the Islands, in support of EU’s claim that septic systems are failing.

3.2 The bridgeless barrier islands are not in the 5- 10- or 15-Year Plan as developed in the Sewer Master Plan.

On page 49, item 3. Connections to Public and Community Utilities it states “This chapter reviews the existing public and community wastewater utilities independent of the County’s existing service areas and identifies which utilities could be connected to the CCUD wastewater systems. The intent is to work cooperatively with the utilities and generally provide sewer service through bulk service agreements. The rationalization options for each potential connection are also presented including potential connection routes and cost estimates for each connection.”

Page 49 3.2 Overview of Existing Utilities. “Charlotte County has identified 15 community wastewater utility systems and 9 public wastewater utility systems within the CCUD certificated area.” These 24 wastewater utility systems are distributed throughout 3 general geographic areas throughout the County and are list in Table 3-1.” Table 3-1 shows Knight Island Utilities, Inc. as a public system in West County and Hideaway Bay Beach Club as a community system in West County. Under 3.3 Service Agreement Considerations “The public systems presented in the list below are not being considered to receive sewer from CCUD *with the exception of Knight Island Utilities.*” [emphasis added]. Four community utilities could be considered for connection to the CCUD system” Hideaway Bay Beach Club appears on the list as one of the four community utilities to be considered for connection. Furthermore, in Figure 3-1, which is map of wastewater utility systems within Charlotte County, both Knight Island Utilities and Hideaway Bay Beach Club, are designated potential future connections. No other property within the proposed service area is included in this element in the Sewer Master Plan.

In the Sewer Master Plan portion entitled 3.4.2 WEST COUNTY, item number 3.4.2.1 is Hideaway Bay Beach Club [HBBC]. This item discusses Hideaway Bay Beach Club and indicates the potential connection to CCUD wastewater treatment via subaqueous crossing directly from HBBC to Placida Road on the mainland, at a cost of \$739,000.00. Item 3.4.2.3 Knight ISLAND UTLITIES describes the wastewater treatment plant primarily serving the Palm Island Resort at the north end of Knight Island. On the map provided, the connection to the mainland for this utility follows North Gulf Blvd. to the ferry landing at the southeast end of Knight Island, and then continues with a subaqueous crossing directly to the westernmost end of Panama Blvd. on the mainland and on to the Rotonda Water Reclamation Facility. At the time of the preparation of the Sewer Master Plan, the cost for this project was \$3.2 million. Section 3.5 of the Sewer Master Plan is titled PRIORITIZATIONS. There it is stated that “The priority and sequencing of connecting utilities to the CCUD sewer systems depend on *the desire of the utility owner* and the CCUD to connect their systems and the cost associated with connecting the system.” [emphasis added] Table 3-8 *Summary of Connection Options* lists the priority order of connecting these utilities and shows Knight Island Utilities, Inc. number 3 of 5 and HBBC number 4 of 5.

3.3 Several of the maps, tables, figures and descriptions in the latter portion of the Sewer Master Plan are inconsistent with the maps, tables, figures and descriptions in the first

part of the Sewer Master Plan, beginning with and subsequent to Section 4. Sewer Improvement and Infill.

In the Sewer Master Plan Figure 4-7, 5-Year Improvement Plan, an asterisk follows the two items “W-2 *” and “W-5*”. These items are identified by name in Table 4-5. In the first three Chapters of the Plan, “W-2” is specifically identified as Knight Island Utilities, Inc. [KIU] and “W-5” is consistently identified as Hideaway Bay Beach Club [HBBC]. However, at this point “W-2*” is identified as “Don Pedro” and “W-5*” is identified as “L.G.I.” (Little Gasparilla Island)

4.7.4 Buildout Improvement Plan begins with a narrative stating Figure 4-11 (Ed. Note: which is mislabeled and should have been Figure 4-10) identifies the project areas *that remain after completing the 15-year improvement plan.* [emphasis added] In this figure, all of the property exclusive of KIU and HBBC are identified as areas remaining after the completion of all of the proposed projects.

Following the discussion of connection options, inclusive of KIU and Hideaway Bay Beach Club, the Sewer Master Plan moves on to sewer improvement and infill. [*Sewer Master Plan, Page 60, Section 4. Sewer Improvement and Infill*] On page 60 Figure 4.2 Charlotte County Existing Sewer Sheds and Project Areas for Future Sewer Sheds, the proposed potential future sewer sheds are highlighted in blue. It is here that the mapping becomes inconsistent with all of the prior language and maps related to the two wastewater treatment plants on the bridgeless barrier islands. Before this point, the preceding maps, tables, figures and descriptions were correct. They showed the potential target for connection Knight Island Utilities located on the north half of Knight Island. They also located Hideaway Bay Beach Club correctly on the southern portion of Little Gasparilla. But from this point forward, things go awry.

On the map labeled Figure 4.2, there are two blue project areas illustrated which are intended to represent KIU and HBBC. However, one area indicates only the northern portion of Don Pedro Island, whereas KIU is located on the northern portion of Knight Island. Thus, the map is incorrect. The other area comprises the entire land mass of Little Gasparilla Island, while HBBC is actually located only at the southern portion of Little Gasparilla Island. This is also incorrect.

In addition, in the Capital Improvements Project Information Sheet, Project Name: W-2 Don Pedro the description refers to an existing wastewater treatment plant, which is identified as W-2 Knight Island Utilities in the first three chapters of the SMP, which is not located on Don Pedro Island. The map not only mislabels the project name, but also misidentifies the boundaries of Don Pedro Island in the map. The map places the Knight Island Utility plant on Don Pedro Island, which is incorrect. Also, the description does not mention any removal or replacement of individual septic tanks as all of the other capital improvement projects in the SMP clearly state as part of the septic-to-sewer conversion process. Instead, it refers to the conversion of the existing wastewater treatment plant to a

pump station. [*Sewer Master Plan, Appendix C, Capital Improvement Project Details, Project Name: W2 – Don Pedro*]

It should be noted that Mr. Rudy attached this inaccurate map to his letter as justification of the need for service on the bridgeless barrier islands and the County's support for same, and that all of the maps included in Appendix C were supplied by the Charlotte County Utilities Department.

3.4 There is no evidence that substantiates County support for this application beyond the involvement of the former Director of the Charlotte County Utilities Department.

Mr. Craig Rudy (former Director of CCU) who served as Charlotte County's representative and EU's primary witness in support of the need for sewer in this service area, said that the County was "100% behind this project by Environmental Utilities". [*Remote VTC Deposition Transcript of Craig Rudy December 7, 2021, page 52 line 16*] However, there is no other indication that this generalization is accurate, as illustrated by the lack of involvement of anyone else at the County. Charlotte County is not a party of record in these proceedings and there has been no documentation submitted as proof of support at the Commission level or the County Attorney's office.

Mr. Rudy is no longer employed at Charlotte County. He admitted that he had no wastewater experience prior to his employment there, he had no expertise in community development policy, no knowledge Barrier Island Overlay District, and he only spent a few hours familiarizing himself with the Comprehensive Plan and the Sewer Master Plan in preparation for the deposition on December 7, 2021. [*Remote VTC Deposition of Craig Rudy December 7, 2021, page 14 line 15*]

EU assumed that the County Attorney would make sure that the approval of the Bulk Wastewater Treatment Agreement complied with the Charlotte 2050 Comprehensive Plan. [*Technical Hearing Transcript Volume 1 page 53 line 16*] However, it was approved on the consent agenda of a Charlotte County Commission meeting. There was no reference material for preliminary review by other County departments such as Community Planning or Natural Resources to assess the agreement for compliance with applicable regulations that might inhibit its implementation. The relevant Comprehensive Plan policy states: "The County shall review all proposed new certificated utility areas, or the proposed expansion of an existing certificated utility area, to ensure that any such new or expanded certificated area is consistent with and advances the Goals, Objectives and Policies of this Plan." [*Charlotte 2050 Comprehensive Plan, WSW Policy 3.2.1: County Review of and Action on Certificated Areas.*] To date this review has not been produced. Had this review been accomplished, the applicant would have been advised that it conflicted with the Comprehensive Plan.

3.5 Conclusion

The Sewer Master Plan is an “implementation plan” and a stand-alone document. It is not a mandatory, state-approved governance document like the Comprehensive Plan which states that the County is required to adhere to “All County regulations, including the Zoning Code, Subdivision Regulations and Zoning Atlas, are subordinate to the Plan and to the FLUM Series.” [*Charlotte 2050 Comprehensive Plan, FLU Policy 1.1.6 Consistency with Comprehensive Plan*]

It becomes apparent on analysis that the Sewer Master Plan was never intended to be final arbiter of septic-to-sewer conversion within the context of an administrative hearing, and to withstand the scrutiny of a judicial proceeding. An in-depth review of the Master Plan reveals a variety of flaws and inadequacies specifically related to the bridgeless barrier Islands. And at this time, 5 years later, Charlotte County is poised to award a contract to one of two engineering firms to revise and update the Sewer Master Plan.

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

POSITION: Yes. The certification will result in the creation of a utility that will be in competition with, or duplication of, an existing system in that the proposed service area is already in the Charlotte County Utilities’ certificated area. Furthermore, part of the proposed area is already being served by Knight Island Utilities, Inc.

ARGUMENT:

According to Charlotte County Utilities’ utility availability website, CCU is the utility designated to provide wastewater service to the proposed service area. The exception is the wastewater provider “Knight Island Utilities Inc.” [KIU] which serves the Palm Island Resort and the Rum Cove and Sabal Palm Point developments. On Little Gasparilla Island, according to the same website, CCU is designated to provide wastewater service with the exception of Hideaway Bay Beach Club, which has its own package plant.

Residents on Lemon Bay Lane within the Palm Island Estates development are currently being served by KIU. They are also designated properties in EU’s proposed service area. In Mr. Boyer’s testimony, he stated that owners on Lemon Bay Lane would be required to disconnect from their previous provider and connect to EU’s service. [*Technical Hearing Transcript Volume 1, page 69, lines 1-12*] These owners would be forced to pay a second, more substantial connection fee to retain sewer service. In his testimony at the technical hearing [citation], Mr. Boyer stated that Hideaway Bay Beach Club on Little Gasparilla Island is not included in the ERC calculations for the proposed wastewater service. However, the Giffels-Webster Engineering maps and legal

description [*Direct Testimony of Jonathan H. Cole P.E., Exhibit JHC-1, JHC-2 [page 1 of 5 “Maps” and JHC-3, page 1 of 3, “Legal Descriptions”]*] do not support that statement, as Hideaway Bay Beach Club is included in those elements as part of the proposed service area.

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

POSITION: No. Environmental Utilities has limited financial history and is currently in debt. No funding sources have been identified or documented to date outside of the suggestion of equity financing based on personal finances. Expert testimony has established that Environmental Utilities will be unable to service the construction debt based on the rates and charges provided.

ARGUMENT:

Pursuant to 25-30.033, F.A.C., Environmental Utilities, bears the burden of demonstrating: “(h) [T]he necessary financial ability of the applicant to provide service to the proposed service area”. This has not been established.

5.1 Environmental Utilities has not demonstrated that it possesses sufficient financial resources to be able to capitalize the project.

The financial health of Environmental Utilities as well as that of sole owners Jack and Diane Boyer, is central to the determination of whether it can satisfy the requirements necessary to obtain a Certificate of Authorization. Martin Friedman, counsel for EU, indicated in his opening statements that EU is not able to finalize funding options, and is therefore using 100% equity financing. [*Technical Hearing Transcript Volume 1, page 22, lines 20-25, page 23 lines 1-2*] However, the testimony of forensic accountant Sheri Schultz (which was admitted by stipulation) states clearly “From our review of the Boyers’ personal Financial Statement, along with the EU pro forma income financial statements, EU and the Boyers will be unable to fulfill their debt obligations.” [*Direct Testimony of Sheri Schultz, CPA/ABV/CFE page 8*] Ms. Schultz indicates that as a new, original utility Environmental Utilities has limited financial history to assess and is presently in debt. [*Direct Testimony of Sheri Schultz, CPA/ABV/CFE page 7, table 2*] This is substantiated again by a balance sheet provided during discovery by Environmental Utilities showing a substantial negative balance. [*PIE POD 1, Response 5, Exhibit 41*]

In a letter of agreement dated February 3, 2021 supplied by Environmental Utilities, [*Citizens POD 1 Response 4 Grant Funding Assistance*], Giffels-Webster Engineers offers to “provide “preliminary research for possible grant funding” with respect to grant funding for EU. The signed agreement for a fee amount of \$1500.00 for the research, yielded no

resulting report indicating the availability of grant funding for this project. If the report had been submitted, it would follow that the funding would be integrated into the budgetary considerations. The owner/operator initially cited available funding for the project but provided no substantiation of this claim.

5.2 Environmental Utilities has not demonstrated that it has the financial resources to hire, staff and handle the business management of a public utility on the order of magnitude to that which would be governed by the Certificate of Authorization.

Even with the assumption that the base estimates provided for the rates and charges by Giffels-Webster Engineering and Environmental Utilities were accurate and inclusive, the parties do not have the requisite economic resources to undertake and complete the proposed project. Forensic accountant Sheri Schultz testified that “I assimilated this data and concluded that neither Environmental Utilities, LLC nor the Boyers have the financial ability to undertake the construction of a wastewater system in the proposed service area as, based upon the data provided, neither the company nor its principals could service the debt associated with the cost of construction.” [*Direct Testimony of Sheri Schultz, CPA/ABV/CFE page 3*]

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

POSITION: No. Environmental Utilities has not provided any evidence that the owners of the proposed utility have the technical expertise needed to install and operate a central sewer system on the bridgeless barrier islands.

ARGUMENT:

In his Rebuttal Testimony dated January 3rd, 2022, Mr. Boyer referred to himself as “an individual with significant experience in water and wastewater treatment” [Page 3, line 19-20] when discussing his expertise based on experience with a variety of utilities, including Bocilla Utilities, (which is a water-only utility) Inc. and Knight Island Utilities. But Mr. Boyer has not provided any documentation pertaining to that employment, not even a letter from his former employers. Mr. Boyer also affirmed in his testimony that he has limited familiarity with regulations applicable to wastewater utilities.

11 **Q. Based on your professional experience, it**
12 **would be fair to say you are familiar, then, with the**
13 **Florida laws and rules and generally the regulations**
14 **that would apply for something like a wastewater**
15 **utility, is that right?**

16 **A Somewhat, yes, sir.**

17 **Q Okay. Not at a legal standard, a lay person's**
18 **standard, though, as an operator?**

19 A Very lay person.

20 **Q Okay.**

21 A And I am not a licensed wastewater treatment
22 guy. Only water.

23 **Q Understood.**

[*Technical Hearing Transcript Volume 1, page 70*]

Experience running a water utility operation differs in the severity of the consequences of a malfunction. In the event of a water line break, the released contents do not impact the environment. However, with a sewer spill, the escaping effluent pollutes the environment and results in a public health concern.

It can be noted that Mr. Boyer corrected himself in his rebuttal testimony, indicating that he “was” a licensed water and wastewater operator, as his water operator license had expired in April 2021. [*Technical Hearing Transcript Volume II, page 245, line 13*]

Mr. Boyer held up his experience on a nuclear submarine as proof of his expertise, underscoring his unsubstantiated claim of achieving “dolphins”, which is a uniform insignia indicating they are qualified in submarines. However, Mr. Boyer also testified that he was the “driver of the submarine” – technically called the helmsman – which doesn’t relate to systems operation, maintenance and repair. Actual hands-on experience with the water and wastewater systems are the responsibility of the machinist mates, the systems specialists. In fact, I am familiar with these functions because my late husband – who qualified for his dolphins – was a machinist mate on a nuclear submarine, experienced and well-versed in all system operations including wastewater repair, maintenance and management.

Only Hideaway Bay Beach Club and Knight Island Utilities, Inc. were originally included in the Sewer Master Plan, identified as W-2 and W-5 in the study as wastewater treatment plants. However, according to the testimony of Mr. Boyer, the ERCs from Hideaway Bay Beach Club were subtracted in the projected sewer area. [*Technical Hearing Transcript Volume 1, page 36, lines 14-21*] But according to the Giffels-Webster Engineering memo and Mr. Boyer’s pre-filed testimony, the survey and maps supplied with those two documents, Hideaway Bay Beach Club is indeed a part of the certificated area. This brings uncertainty to the number of ERCs and therefore the construction costs and connection fees attached to this project. It is just another example of a lack of attention to detail in the approach to this project.

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

POSITION: Undetermined. The lack of identification of the target wastewater treatment facility plus the changes to the ERC count and the per diem gallonage requirements for the system render it impractical to assess potential plant capacity.

ARGUMENT:

Environmental Utilities has proposed what is essentially a collection system, with wastewater being piped off the bridgeless barrier islands to be treated at a bulk sewer treatment facility on the mainland. At this time, the target treatment facility has not been identified, although the logical assumption would be the Rotonda Water Reclamation Facility.

According to the Agreement, the County “owns and operates a sewer system in Charlotte County and the sewer treatment plant that would provide service for this area has sufficient capacity to provide wholesale bulk sewer treatment service to EU”. [*Pre-filed direct testimony of John R. Boyer on behalf of Environmental Utilities, LLC., Exhibit JRB-1 page 19 Bulk Sewer Treatment Agreement*] However, since the ERC count has changed multiple times since the initial application was filed, and there are discrepancies between documents submitted to the docket regarding gallon-per-day sewerage, it cannot be established whether the unidentified wastewater treatment plant has sufficient capacity to serve the territory.

While the Rotonda Water Reclamation Facility owned by Charlotte County is assumed to be the proposed final destination for the islands’ wastewater, it should be noted that in the Sewer Master Plan, this wastewater treatment plant is recommended for decommissioning as follows: “expansion of the Rotonda WRF would be limited due to costly equipment improvements and limited land in the area. Therefore, the Rotonda WRF should be converted to a master pump station” with the wastewater diverted to West Port WRF. [*Sewer Master Plan, page 152, section 6.4.4 Rotonda WRF Flow Projections*]

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

POSITION: No. The applicant has not brought forth evidence of agreements or documents which indicate a guarantee of continued use of the required land, exclusive of the connection point to Charlotte County Utilities.

ARGUMENT:

Assuming Charlotte County owns the land where the treatment plant is to be located, Environmental Utilities has not provided any evidence of agreements or documents that guarantee their continued use of property where the tanks, lines and pumping stations will be located. This

would include rights-of-way, privately owned lands, Don Pedro Island State Park lands and easements and approval from WCIND, the Army Corps of Engineers, and the Board of Trustees of Internal Improvement Trust Fund.

In the Wastewater Tariff portion of the application (14.0 RIGHT-OF-WAY OR EASEMENTS) Environmental Utilities states “The Customer shall grant or cause to be granted to the Company, and without cost to the Company, all rights, *easements*, permits, and privileges (emphasis added) which are necessary for the rendering of wastewater service.” There exists the potential of gross violations of private property rights implied by this proposed contract clause. There are several smaller subdivisions on the Islands that have private roads, which would complicate the acquisition of easement rights. Among private property owners it is likely that the yielding of easements will meet with resistance. This could result in costly and time-consuming eminent domain procedures.

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

POSITION: No. Evidence has not been provided that this proposal for central sewer is in the public interest. No need for service has been established for this service area. the potential for negative environmental impacts is greater with the introduction of this central sewer system. The rates and charges are not fair and equitable, and the proposal places excessive burden on the homeowner at too great a cost.

ARGUMENT:

9.1 A change to the Charlotte 2050 Comprehensive Plan is not in the public interest.

Future Land Use policy 3.2.4 prohibits the provision of sewer infrastructure outside the urban service area [*FLU policy 3.2.4. p.54 line 19*] The bridgeless barrier islands are designated in the Comprehensive Plan as a rural service area. The other rural service area in Charlotte County is agricultural in nature and located far from the islands in the East County portion of Charlotte. This recognizes the uniqueness of the bridgeless barrier islands and the intent to serve the policy of discouraging development unless there is a public health issue, which has not been shown.

Although the former Director of Charlotte County’s utility department has supported this application, it has been proven indisputably that the County cannot extend sanitary sewer service into the bridgeless barrier islands nor allow a private utility to do this without an amendment to the Comprehensive Plan. Changing the Comp. Plan would be detrimental to the public interest as it would bring increased development and density, challenging safe hurricane evacuation capabilities and hazard mitigation efforts.

9.2 There are financial burdens associated with the installation of the proposed sewer system beyond the estimated connection fee.

The Rates and Tariffs portion of the application provides estimates for the connection fees to be levied on the prospective ratepayers but does not take into account many additional costs which will become necessary expenditures when the homeowners are forced to connect.

- Electric: the system pump requires a separate electric panel, installed by a licensed electrician at the expense of the owner.
- More electric: If the owner's main electric service is at full capacity with pool equipment or other large-draw items, the panel will need an expensive upgrade to accommodate the new panel.
- Generator: In the event of a power outage, the tank pump will be unable to function for long. Homeowners will need a generator to keep the system running to avoid sewage back-up.
- Tree removal: Landscaping and hardscaping around the septic area will need to be cleared at the expense of the homeowner to gain access to crush & fill the septic tank.

In addition, EU has made no provision for a pay-over-time plan for the ratepayers. This may force certain homeowners to take loans, which would add an interest expense to the cost of connection.

9.3 There are potential environmental impacts associated with the installation of the proposed sewer system.

The installation of a central sewer system with a subaqueous crossing brings the potential risk of a sewer spill. This would have a greater environmental impact than the failure of one or more individual on-site septic systems. It is not random language that we refer to a "sewer spill" and a "septic leak"; it is indicative of the scope of the risk at hand. When asked his professional opinion of the risk/reward of septic systems vs. central sewer, Dr. Robert Weisberg stated, "as an environmental scientist, it stands to reason, to me at least, that we are better off with septic tanks than we are with a sewer system on the bridgeless barrier islands." [*Technical Hearing Transcript February 8, 2022, Volume II, Page 206, lines 13-15*] Also, the applicant has not provided mitigation plans as required by the Department of Environmental Protection in preparation for a sewer spill should it occur.

In addition, this proposal brings the potential for the destruction of habitat and interference with native species such as gopher tortoises, bobcats, burrowing owls, great horned owls and eagles. Wildlife frequently involves environmental restrictions from agencies such as the Department of Environmental Protection, Florida Fish and Wildlife and Charlotte

County's Natural Resources Department. The cutting of mangroves and the crossing of wetlands are also subject to regulatory compliance with the attendant permits and fees.

9.4 There are additional issues associated with the installation of the proposed sewer system.

- Excessive burdens on the homeowners: In the Wastewater Tariff portion of the application (14.0 RIGHT-OF-WAY OR EASEMENTS) EU “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.” The expectation of the applicant is that the prospective ratepayers will give, free of charge, all rights including utility easements on individuals’ private property. EU intends to claim ownership of a utility easement that will go from the sewer equipment located near the house to the connection in the road, without compensating the homeowner. In addition, the expectation of the applicant is that the prospective ratepayers will be individually responsible for unidentified permits and costs associated with this project and privileges including 24-hour access to the system on private property. This places an excessive burden on the customers.
- System maintenance and emergencies: The applicant has not addressed how the system will be serviced in the event of failure during a storm or other adverse conditions. This includes the consideration of the barge ceasing operations as a consequence of weather events and high tides.
- Mandatory Hook-up: Charlotte County regulations require all homes to connect to central water and wastewater within one year of availability. There is no consideration for property owners who have recently installed a new or repaired septic systems at great expense.
- No “contract” and no single point of general oversight: Each of the agencies involved with regulatory oversight of this project (i.e. Charlotte County, the DEP, the Army Corps, etc.) is responsible for supervising only their specific area where regulation and/or permitting is involved. There is no performance bond required and there is no single point of recourse in the event of cost overruns or project failure.

- Access to homes: Some properties have physical constraints that will complicate how the applicant gains access to the property without leaving the boundaries or damaging the grounds.
- Lifespan of the equipment: Salt air takes a heavy toll on mechanical and electrical equipment on the bridgeless barrier islands. Equipment will need replacing when it fails, possibly at 5-year intervals.
- Disruption of traffic: Vehicles have only one point of entry/egress -- the car ferry. With normal traffic, service and construction trucks, delays at the ferry line in season can be an hour or more. This project could result in years of traffic issues and increase costs of the project.

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

POSITION: Undetermined. The appropriate rate structures and rates cannot be established based on the information provided in this application and its attendant exhibits. The budget is deficient in providing realistic cost estimates for this proposal and is not inclusive of all prospective costs.

ARGUMENT:

Pro se litigant Linda Cotherman possesses the unique quality of having approximately 35 years of professional experience in land development, permitting, construction and utilities. As Project Manager for Giffels-Webster Engineering, she produced feasibility studies for developers and is intimately familiar with the procedural elements conforming to industry standards that are a necessity for accurate budgeting. She has direct knowledge and resources to apply in ascertaining whether or not the rates and charges provided by the applicant are inclusive and comprehensive, relative to this project.

10.1 The estimated residential billing is not a fair nor equitable rate.

The current monthly bill quoted in the Florida Public Service Commission Rate Case Overview is \$256.66 per 4,000 gal/month, which is roughly 2-3 times the cost to ratepayers in other portions of Charlotte County. Even the Sewer Master Plan addresses “affordability” and concludes that \$50.00 per month should be the standard for an

affordable rate in Charlotte County. [*Sewer Master Plan, Chapter 8. Financing and Funding Options, 8.1 Affordability page 182*]

10.2 The underlying estimates used to prepare the Rates and Tariffs were not necessarily accurate.

For the purpose of this application, the mathematical calculations prepared for the rates and charges that were submitted may be correct, but pre-supposes that the underlying estimates given were accurate. The cost estimates provided are not necessarily accurate nor comprehensive. According to the testimony of Deborah Swain, “the construction costs came from John Cole, and the operating and the maintenance expenses, other information, came directly from the utility, from Mr. Boyer.” [*Technical Hearing Transcript Volume II page 152, Line 23 through page 153, Line 1*]

As no industry standard feasibility study was prepared for this proposal, the resulting rates and charges portion contained lump sum estimates in general categories. A quality analysis would have required a pre-submission work product consisting of detailed, line-item breakdowns of each element of the project. This would allow for scrutiny of all of the elements that should be in that category to determine if the estimates were accurate and if the line items were comprehensive. This work product would then be converted into a “best estimate” summary budget for the purpose of the application. Without a work product, or a breakdown of the lump sum categories, there is no way to know if the budget category contains all of the relevant elements and their associated costs. When asked for the work product to substantiate the lump sum estimates, Deborah Swain was unable to provide it. [*Citizens POD I, Response 1 to work papers, Exhibit 39*]

Construction estimates were provided by Giffels-Webster Engineering, in which it was qualified that the figures provided were for the purpose of system comparison only and “the costs presented cannot and should not be taken as a total project cost.” [*Direct Testimony of Jonathan H. Cole P.E., Exhibit JHC-1, page 22*] However, Mr. Cole only provided the differentials between the two systems being analyzed. The remainder of the figures were provided by EU without documentation. For example, EU provided no contract with Bocilla Utilities, Inc. to the PSC to substantiate EU’s testimony that the water costs for billing will be \$2.00 per ERC.

10.3 The underlying estimates used to prepare the rates and charges were not necessarily comprehensive.

There are numerous deficiencies in the underlying estimates used to prepare the rates and charges portion of the application. Permitting costs, environmental impact fees and other factors were not adequately considered.

For example, the islands are home to a large number of gopher tortoises, a threatened species, and there are numerous laws, protocols and procedures to protect them. The

applicant has conducted no environmental impact studies to address this issue, which in turn may impact the cost of the project significantly.

According to the direct testimony of Linda Cotherman, the cost for a licensed individual to survey a single property 80' x 125' to identify tortoise activity is upwards of \$1500.00. [Exhibit LBC-4, page 1 of 13] At that point, if an active burrow or burrows are found, the tortoises must be relocated. These additional charges can be up to \$2,000.00 per tortoise relocation. Property owner Julie Imig testified that while investigating the prospects of burying power lines, she was quoted a rate of \$3,000.00 per tortoise relocation. [Customer Service Hearing February 9, 2020, Julie Imig, page 115 line 20]

Conversely, when asked at the Hearing of the cost impact of environmental concerns such as the gopher tortoise, John R. Boyer responded as follows:

[Technical Hearing Transcript, Volume 1, p.67]

11. **Q. Okay. Have you done any kind of estimate or**
12. **feasibility study on the impact to the environment,**
13. **including gopher tortoises?**

14 A. Gopher tortoises will be covered in the DEP
15 permitting, okay, as you know, okay. And utilities run
16 under different laws than if you are going in and doing
17 a 20-acre development, where you go through a plan
18 development and have to survey them. We have gone where
19 we go in and fence off the turtles, and we hand dug
20 through a few burrows, but that was it, in the 30 years
21 that we have done it.

22 **Q. So my question is: Have you included the cost**
23 **of those removal or relocation of gopher tortoises?**

24 A. With directional bore, it's going to be very
24 minor.

[Technical Hearing Transcript, Volume 1, p.68]

21 **Q. Are you familiar with the cost of relocating a**
22 **gopher tortoise just on an average residential property?**

23 A. Again, I don't see the necessity of it.

The “necessity” is adhering to state regulations pertaining to interfering with a protected species. Mr. Boyer presented no evidence of qualification to move gopher tortoises from their burrows and relocate them. This indicates a necessity to include cost estimates for potential tortoise relocations on various residential properties to be able to legally meet the regulatory requirements.

Another example of a budget item not included in the proposed rates and charges is the Water Resource Caution Area reuse feasibility study. Per Florida Department of

Environmental Protection, “The Department uses the designation in wastewater facility permitting, wastewater facilities within, discharging into, or serving a population within a Water Resource Caution area are required to conduct a reuse feasibility study in order to obtain a permit.” (*Exhibit LBC-4. Page 4 of 13 “Florida Water Resource Caution Area” and LBC-4. Page 5 of 13 “Map of FL Water Resource Caution Area”*) The bridgeless barrier islands of Don Pedro, Knight and Little Gasparilla are within the water resource caution area. The applicant has not conducted a reuse feasibility study, which will add to the cost of the project’s overall budget and will potentially increase the connection charges.

Another deficiency of the proposal involves the payment of leases for easements and/or the cost of enforcing eminent domain. The latter would cause delays expanding the time frame of the project, which translates into a significant cost increase to the project overall. A utility easement will be required for each property served by Environmental Utilities, LLC. Other utilities’ equipment is usually located in a dedicated easement or road right-of-way, with the owner held responsible for connecting the home on the property to the equipment in the dedicated easement. This applicant is requiring new easements on each property containing the utility’s equipment (tank, pump and line) located near the house. The effluent line going from the tank to the right-of-way must cross the yard to make the connection. According to the tariffs submitted by EU, (see Direct Testimony of Linda Cotherman Exhibit LBC-4. Page 8 “Wastewater Tariff”) the customer shall grant the required easement without compensation. This easement will encumber each property and affect the private property rights of the owners with no compensation.

Due to the lack of itemized work product, it is impossible to determine whether the following items were included in the cost estimates provided to Deborah Swain to prepare the rates and costs portion of the application or whether the applicant expects the prospective ratepayers to absorb these expenses exclusive of the connection fee. These examples include:

- TAP fee to be paid by Environmental utilities to Charlotte County is unknown until construction is complete. [*Remote VTC Deposition of Craig Rudy page 43, line 25 through page 44, lines 1-4*]
- Barging fees for construction and materials were stated at \$1000.00 per month. But according to property owner Barbara Dwyer on Little Gasparilla Island the barging fees are presently \$1200-\$1200 per run. [*Customer Service Hearing Transcript, page 48, line 3*] A contract with Palm Island Transit was referenced, but no document has been provided.
- Cost of fill for abandonment of septic tanks.
- Maintenance cost of the sewer tank pump-out every 5 years.

- Mitigation costs for environmental issues.
- Determination of cost responsibility for the installation of the main pump station, for which the location has not yet been determined.
- Permit fees including septic tank abandonment, construction seaward of the Coast Construction Control line, wetland mitigation and mangrove trimming, tree removal and tortoise relocation.

In his testimony at the Technical Hearing, Jonathan Cole indicated that any items missing from his engineering memo would be addressed in the “final cost analysis”. [*Technical Hearing Transcript Volume 1, Page 108, line 12*] However, the “final cost analysis” referenced has not been submitted to date. In his testimony, Jonathan Cole refers frequently to using “bumped up” figures [*Technical Hearing Transcript Volume 1, page 114 lines 3-10*] extrapolated from past projects, to provide preliminary estimates for the Rates & Tariffs preparation. But this may not accurately reflect the cost factors that are associated with building a project in the unique environment of the bridgeless barrier islands.

In the Wastewater Tariff portion of the application (14.0 Right-of-Way or Easements) Environmental Utilities states “The Customer shall grant or cause to be granted to the Company, and without cost to the Company, all *rights, easements, permits, and privileges* (emphasis added) which are necessary for the rendering of wastewater service.” It is unclear at this point whether the items that may have been excluded from the rates and costs portion of the application were overlooked by the applicant or were expected to be borne individually by the property owners in the proposed service area.

10.4 If the estimated rates and charges are neither accurate nor comprehensive, the PSC will likely be forced to address the funding gap for this project in the future.

At the Technical Hearing on February 8, 2022, Mr. Boyer was asked if he would anticipate approaching the Public Service Commission for a rate increase of any kind if he wasn’t earning compensatory rates under the information he provided now. Mr. Boyer acknowledged that he would have to return to the Public Service Commission for a rate increase to keep Environmental Utilities solvent in the event of a financial shortfall. [*Technical Hearing Transcript, Volume II, page 261 lines 15-25 and page 262 lines 1-25*]

In discussions about bifurcating the application at the Commission Conference on January 5, 2021, Commissioner Clark identified a fundamental issue with this application: what happens if the estimated rates and charges are deficient. “Where is our obligation at that point if we have allowed this to move forward without having all the facts and information in front of us?” [*Commission Conference, January 5, 2021, page 21 line 18*] Environmental Utilities has not provided all of the facts and information to date to provide best estimates for the rates and charges. If the project moves forward based on the submitted rates and charges, which later prove to be grossly underestimated, the applicant will be forced to

return to the Public Service Commission to request a rate increase based on post-construction costs to keep the utility solvent.

ISSUE 11: What are the appropriate service availability charges?

POSITION: Undetermined. The service availability charges cannot be analyzed productively because all of the costs related to the construction and installation of the proposed project have not yet been provided with substantiating documentation.

ARGUMENT:

The service availability charges cannot be analyzed productively because all of the costs related to the construction and installation of the proposed project have not yet been provided with substantiating documentation.

When Environmental Utilities first presented to the Board of Directors of the Palm Island Estates Association, Inc., the connection fee was estimated at approximately \$20,000.00 per ERC. At the Commission Conference on January 5, 2021, Mr. Friedman, counsel for Environmental Utilities, told the Commission that “the numbers that are out there, 10,000 or 20,000, are really just guesses” until the certificate is granted. [*Commission Conference, January 5, 2021, page 14 line 19*] However, a feasibility study along with due diligence on behalf of the applicant would have provided a best estimate that would include all of the elements needed for the project and the costs associated with them. At that same Commission Conference, the applicant was cautioned that the Commission “is going to take a very, very hard look at the rates”. [*Commission Conference, January 5, 2021, page 22 line 16-17*] In June of that year, when the rates and charges were finally submitted by the applicant, the requested Service Availability Charge per ERC was reduced to \$11,927.85.

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

POSITION: Undetermined.

ARGUMENT:

The miscellaneous service charges cannot be analyzed accurately because all of the costs related to the construction and installation have not yet been provided and documented.

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

POSITION: Undetermined.

ARGUMENT:

The initial customer deposits cannot be analyzed accurately because all of the costs related to the construction and installation have not yet been provided and documented.

ISSUE 14: Should this docket be closed?

POSITION: Yes. The applicant has not provided adequate 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.

ARGUMENT:

Claims were made by Mr. Boyer there were not substantiated by any documents submitted in the docket, inclusive of the following:

- No wastewater experience of the applicant was documented.
- No expert testimony was supplied by Environmental Utilities supporting the contention that the central sewer proposal is compliant with either the Comprehensive Plan or the Master Sewer Plan.
- No evidence of committed financing was provided.
- No evidence of continuous use of land was provided.
- No emergency plan for failures or spills was provided.
- No contract for barging was provided.
- No cost for a pump station was included in the Rates and Tariffs, based on the assumption that Charlotte County will be paying for it. However, no documentation was provided to substantiate that assumption.

For these reasons along with the arguments provided above, the docket should be closed.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was emailed this 12th day of January 2022 to:

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