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 FILED: February 28, 2025

LITTLE GASPARILLA ISLAND PRESERVATION ALLIANCE, INC.'S POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS

Little Gasparilla Island Preservation Alliance, Inc. ("LGIPA"), through undersigned counsel and pursuant to Rule 28-106.215, Florida Administrative Code ("F.A.C."), and Section XIII of the Prehearing Order, files this Post-Hearing Brief.

I. INTRODUCTION

On February 12, 2024, Environmental Utilities, LLC ("EU") filed its Application for Original Certificate of Authorization ("Application"), requesting a certificate from the Public Service Commission ("PSC") for a new wastewater system and service on Little Gasparilla Island, Don Pedro Island, and Knight Island (collectively, "Bridgeless Barrier Islands") in Charlotte County, Florida. [Doc. No. 00672-2024; CEL 5].[1] EU's current Application is, in all material respects, the same as EU's application for a wastewater certificate filed with the PSC in 2020 ("2020 Application"), which was denied by the PSC by Final Order in 2022. *See* PSC Docket No. 20200226, Doc. No. 11170-2020 (EU's 2020 Application); *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC*, Docket No. 20200226-SU, 2022 FLA. PUC LEXIS 246 (Fla. PSC July 8, 2022) (PSC's Final Order Denying EU's Application).

[1] Exhibits from the Comprehensive Exhibit List are cited as [CEL ##]. The hearing transcripts are cited as follows: Technical Hearing [TH Tr. at page:line], January 28, 2025 Service Hearing [SH1 Tr. at page:line], and January 29, 2025 Service Hearing [SH2 Tr. at page:line].

The PSC held a Technical Hearing on EU's Application on January 28, 2025, in Englewood, Charlotte County, Florida. The PSC also held Service Hearings on January 28 and 29, 2025, in the same location. LGIPA appeared at the Technical Hearing, presented witnesses, and fully participated in the hearing, represented by counsel. LGIPA also appeared at the Service Hearings, represented by counsel, and many of LGIPA's members testified at the Service Hearings.

II. STATEMENT OF LGIPA'S BASIC POSITION

LGIPA's basic position, as supported by the record and argument herein, is that EU's current Application should be denied for the same reasons set forth in the PSC's Final Order denying EU's 2020 Application. *See generally In re: Environmental Utilities*, 2022 FLA. PUC LEXIS 246.

EU has not met the filing or noticing requirements because EU has not satisfied all of the requirements set forth in Rule 25-30.033, F.A.C., and the grinder sewer system proposed in EU's rebuttal case was not noticed in EU's original Application. EU's Application deficiencies include the following issues that EU has not sufficiently addressed. EU has not established a need for service in the proposed service territory, either through requests for service or demonstrating an environmental or public health and safety need. EU's Application is inconsistent with Charlotte County's Comprehensive Plan ("Comprehensive Plan") and Charlotte County's Sewer Master Plan. EU has not demonstrated the financial or technical ability to serve the requested territory, significantly underestimating the cost of the proposed system and failing to fully account for the technical requirements, especially the challenging logistics of working on a bridgeless barrier island. EU has not provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located, failing to account for the significant easements that will

be required for the proposed system. And finally, because of all of these factors, it is not in the public interest for EU to be granted a wastewater certificate for the proposed territory.

III. STATEMENT OF ISSUES AND POSITIONS[2] AND INCORPORATED ARGUMENT

Issue 1: Has Environmental Utilities met the filing and noticing requirements pursuant to Rules 25-30.030 and 25-30.033, F.A.C.?

Position: * No, EU has not met the filing requirements because EU has not satisfied all of the requirements set forth in Rule 25-30.033, F.A.C., including a need for service, consistency with the Comprehensive Plan and Sewer Master Plan, financial and technical ability, and continued use of the land, i.e., easements. Additionally, EU has not satisfied the noticing requirements because the grinder sewer system proposed in its rebuttal case was not noticed with EU's original Application. *

Argument

Rule 25-30.033(1), F.A.C., requires a utility to file with its application certain information, including a description of the proposed utility, technical and financial information, a description of the proposed service territory, need for service, and other documentation. As set forth below, LGIPA contends that EU has not established a need for service, either through requests for service or an environmental or public health and safety need. EU's Application is inconsistent with the Charlotte County Comprehensive Plan and Charlotte County Sewer Master Plan ("Sewer Master Plan"). EU has not demonstrated the financial or technical ability to serve to the requested territory. EU has failed to provide evidence that it has continued use of the land upon which the utility

[2] For the remaining issues not expressly addressed herein, including Issues 4, 7, and 10–14, LGIPA adopts and incorporates herein by reference the positions of Intervenors Palm Island Estates Association, Inc. ("PIE") and Ms. Linda B. Cotherman.

treatment facilities will be located. Finally, for all of these reasons, EU's Application is not in the public interest. Therefore, EU has not met the filing requirements because EU has not satisfied all of the requirements set forth in Rule 25-30.033, F.A.C.

Rule 25-30.033(1)(b), F.A.C., requires proof of noticing consistent with Rule 25-30.030, F.A.C. LGIPA contends that EU has not satisfied the noticing requirements because EU's notice of its original Application did not include notice of the grinder sewer system, which EU first introduced in its rebuttal case and for which EU now requests a certificate from the PSC. LGIPA preserves—and does not waive—the legal issues set forth in the Joint Motion to Strike Rebuttal Testimony, filed January 6, 2025, which is incorporated by reference herein. [*See* Doc. No. 00082-2025]. The PSC denied this Motion. [*See* Doc. No. 00317-2025, Order No. PSC-2025-0026-PCO-SU]. However, LGIPA preserved this issue for appeal at the Technical Hearing and again preserves the issue in this Post-Hearing Brief.

Issue 2: Is there a need for service in EU's proposed service territory?

Position: * No, EU has not established a need for service in the proposed service territory, either through requests for service or an environmental or public health and safety need. *

Argument

Requests for Service

Section 367.045(1)(b), Fla. Stat., requires an examination of the need for service in the proposed service territory. Pursuant to Rule 25-30.033, F.A.C., an applicant for an original certificate must provide a statement showing the need for service in the proposed territory. Specifically, Rule 25-30.033(1)(k)(2), F.A.C., requires a utility to provide all requests for service made by property owners or developers in the proposed service territory.

While EU provided a limited number of requests for service, when viewed in light of the voluminous and strong opposition from residents in the proposed service territory who are opposed to the Application, EU's evidence is insufficient to establish a need for service. EU's witness, Mr. Boyer, testified that "[c]lose to 100 residential lots, 79 in writing" requested service and that these service requests were submitted with the Application. [TH Tr. 125:16–126:9]. However, Mr. Boyer's testimony is not supported by the record. The Application references "numerous requests for service which are attached." [CEL 5 at 14]. The "numerous requests" consist of only nine letters and emails requesting service, one general letter of support from an organization, and a copy of Charlotte County Resolution No. 2023-155.[3] [CEL 5 at 32–45]. Three of the nine letters attached to the Application are from the same individual. [CEL 5 at 37–39].

LGIPA's representative, Ms. Weibley, testified that 229 of LGIPA's 241 members oppose EU's Application. And, importantly, *none* of LGIPA's 241 members support EU's Application (the remaining twelve members were not asked the question when they joined LGIPA or were neutral on the issue). [TH Tr. 218:19–24]. The Service Hearings also demonstrated a strong and voluminous opposition to EU's Application. A total of 104 individuals testified at the Service Hearings.[4] Ninety-three of the individuals testified in opposition to EU's Application, while only nine testified in support, and two stated neutral positions. Those individuals in opposition to EU's Application included members of LGIPA and PIE as well as individuals with no association with

[3] The deficiencies of the County Resolution will be addressed below in the section discussing the County's Comprehensive Plan and Sewer Master Plan.

[4] One individual, Ms. Flatau, testified twice at the Service Hearings, [SH2 Tr. 132:9–12]; therefore, the total number of public comments was 105, with 104 different individuals testifying. During Ms. Flatau's second comment, she purported to have "proxy" for other homeowners on the Bridgeless Barrier Islands, including John and Gail McNair. [SH2 Tr. at 132:16–19, 133:10–11]. However, Ms. Flatau did not enter any written proxy into the record, and the McNairs have since made clear on the record that they never gave any such proxy to Ms. Flatau and do not support EU's Application. [Doc. No. 00638-2025].

either organization. Of the nine individuals in support of EU's Application, three of them were family members of the applicant.

EU's counsel argued that the individuals at the Service Hearings in opposition to EU's Application represented a "vocal minority," [SH1 Tr. at 12:1], but a review of the written correspondence on the docket demonstrates a similar strong opposition to EU's Application. The docket contains letters or emails from over 300 individuals in opposition to EU's Application, with fewer than thirty such letters and emails in support. EU, during cross examination of PIE's representative, suggested that the docket represents duplicate letters from individuals sent to the PSC Clerk and each of the PSC Commissioners. [TH Tr. 154:13–156:6]. This assertion is not true. The over 300 letters and emails on the docket represent *unique* entries, not duplicate letters.[5]

A review of the entire record—including the over 300 letters and emails on the docket and the nearly 100 individuals who testified at the Service Hearings in opposition to EU's Application—demonstrates that the record does not support a need for service based upon requests by property owners. Indeed, the *vast majority* of property owners on the Bridgeless Barrier Islands strongly oppose EU's Application.

Environmental Need

As previously recognized by the PSC, "the need for service is not specifically defined in either statute or rule and therefore may also be based on compliance with environmental or health requirements." *In re: Environmental Utilities*, 2022 FLA. PUC LEXIS 246, at *14.

In denying EU's 2020 Application, the PSC held that:

> No evidence was presented to demonstrate that any state or local environmental regulator has mandated the installation of central sewer wastewater service in the proposed service territory at this time or identified any immediate health concerns. Therefore, we find

[5] If a letter or email was duplicated on the docket, LGIPA did not include it in this count.

> that EU has not demonstrated a need for service in the proposed service territory based on compliance with environmental or health requirements.

Id. at *17.

Importantly, this issue remains unchanged with the current Application. [TH Tr. 134:6–24]. EU did not present any evidence that any state or local environmental regulator has mandated the installation of central sewer wastewater service in the proposed service territory. Moreover, the state continues to issue permits for new septic systems. [TH Tr. 134:25–135:16]. Nor did EU present evidence of any immediate health or safety concerns. [TH Tr. 136:7–139:24, 64:25–65:3]. These findings alone are sufficient reason for the PSC to conclude that EU has failed to establish an environmental need.

EU's purported evidence regarding environmental concerns does not change this conclusion. EU's witness, Dr. LaPointe, testified regarding environmental concerns premised entirely upon purported water quality issues. Dr. LaPointe's report, [CEL 12], and his testimony suffer from a fatal flaw. Dr. LaPointe conceded that his report was not based upon water quality testing adjacent to the Bridgeless Barrier Islands, which is the proposed service territory. [TH Tr. 64:18–24, 65:14–66:6; CEL 12 at 9 (noting that "previous research" upon which the report is based "did not include sampling on the barrier islands")]. That is because Dr. LaPointe has "not collect[ed] on-site water quality data . . . on the . . . barrier islands." [TH Tr. 290:18–19]. EU has also not conducted any water quality testing in the waters surrounding the Bridgeless Barrier Islands. [TH Tr. 135:23–136:6]. Nor has the County conducted any such water quality testing. [TH Tr. 46:4–13]. Instead, Dr. LaPointe's report relies on speculation and manipulated non-peer-reviewed information. [*See* CEL 17 at 1–5]. Therefore, Dr. LaPointe's report and any extrapolation should be disregarded by the PSC.

Mandatory Connection Ordinance

EU's witness, Mr. Watson, testified regarding Charlotte County's Mandatory Connection Ordinance. [TH Tr. 279:16–21]. In the PSC's Final Order denying EU's 2020 Application, the PSC "did not consider the existence of the mandatory connection ordinance dispositive of the issue of need for service," and instead looked to the other need factors discussed herein. *In re: Environmental Utilities*, 2022 FLA. PUC LEXIS 246, at *18. The Charlotte County ordinances have not changed. None of the other factors have changed since the PSC's previous decision. Therefore, as it did before, the PSC should not give any weight to the Mandatory Connection Ordinance.

Conclusion

Based on the record, EU has failed to demonstrate that there is a need for service in the proposed service territory.

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

Position: * EU's Application is inconsistent with Charlotte County's Comprehensive Plan and Charlotte County's Sewer Master Plan. *

Argument

Charlotte County Comprehensive Plan

Section 367.045(5)(b), Fla. Stat., provides that if an objection is made to the issuance of a certificate on the basis of inconsistency with the local comprehensive plan, the PSC shall consider, but is not bound by, the local comprehensive plan of the county or municipality. *City of Oviedo v. Clark*, 699 So. 2d 316, 318 (Fla. 1st DCA 1997) ("The plain language of the statute only requires the Commission to consider the comprehensive plan. The Commission is expressly granted

discretion in the decision of whether to defer to the plan."). The PSC previously found it appropriate to consider consistency with the comprehensive as an element of the issue regarding need. *In re: Environmental Utilities*, 2022 FLA. PUC LEXIS 246, at *19.

In denying EU's 2020 Application, the PSC found the application to be inconsistent with the Charlotte County Comprehensive Plan:

> Based on the land designation and policies contained within the Comp[rehensive] Plan, we find EU's application is inconsistent with the Charlotte County's local comprehensive plan. Additionally, while we are not bound by the local comprehensive plan, we find that inconsistency with the Comp[rehensive] Plan supports our finding that granting EU's application is not in the public interest, as set out later in this Order.

Id. at *22. EU's Application is materially the same as the 2020 Application. There have been no amendments to the Comprehensive Plan that impact the Application, despite the County having the opportunity to make such changes during the Evaluation and Appraisal Review cycle of the Comprehensive Plan since EU's 2020 Application. [TH Tr. 42:2–43:3]. This evidence alone is sufficient reason for the PSC to reach the same conclusion regarding inconsistency with the Comprehensive Plan.

EU presented Mr. Watson, the Charlotte County Utilities Director, to testify regarding the issue of consistency with the Comprehensive Plan. Mr. Watson sponsored Charlotte County Resolution No. 2023-155 ("County Resolution") as an exhibit. [CEL 14]. The County Resolution states—summarily and without any factual support—that: "Charlotte County verifies that the proposed EU Project is not inconsistent with the Charlotte County Comprehensive Plan." [CEL 14 at 3; TH Tr. 43:22–44:19]. On cross-examination, Mr. Watson admitted that he did not participate in drafting the County Resolution and had no knowledge of any studies or analysis done in support of the County Resolution. [TH Tr. 36:8–37:5]. Additionally, Mr. Watson was generally

unknowledgeable about whether EU's Application is consistent with various elements of the Comprehensive Plan, as a planner would be. [TH Tr. 44:20–45:9, 48:2–4].

Indeed, during the Service Hearing, evidence was introduced demonstrating that *EU's counsel* was the one who drafted the County Resolution, not the County Attorney. [CEL 79]. The County Attorney approved the County Resolution "as to form and legal sufficiency" only. [CEL 14 at 4]. The County Resolution was then adopted by the County as a consent agenda item without any public comment or input. [TH Tr. 37:14–38:13, 43:4–11]. And notably, none of the County Commissioners appeared at the Technical or Service Hearings, despite express requests from EU to do so. [TH Tr. at 128:3–5]. For these reasons, the PSC should give little—if any—weight to the County Resolution in terms of determining whether EU's Application is consistent with the Comprehensive Plan.

PIE's witness, Ms. Hardgrove, is "a certified planner" with "extensive, direct and practical knowledge of land planning, including understanding comprehensive planning, land development regulations, approval processes and the people/entities involved with same." [TH Tr. 164:2–9]. Ms. Hardgrove provided an extensive analysis on the Comprehensive Plan, concluding "that the application is inconsistent with the comprehensive plan." [TH Tr. 160:6–7; CEL 16]. LGIPA adopts and incorporates by reference PIE's argument on this issue.

In denying EU's 2020 Application, the PSC held that EU's project was inconsistent with the Comprehensive Plan. The Comprehensive Plan has not been amended on these issues. Nor has EU's Application materially changed. Therefore, the PSC must reach the same conclusion it previously did—EU's Application is inconsistent with the Comprehensive Plan.

Charlotte County Sewer Master Plan

There is no statutory or rule requirement that the PSC consider the Charlotte County Sewer Master Plan, but it was identified as an issue in the Prehearing Order and it was addressed in testimony at the Technical Hearing. Just as the PSC is not bound by a local comprehensive plan in a certificate proceeding, the Sewer Master Plan is not binding upon the PSC either. *In re: Environmental Utilities*, 2022 FLA. PUC LEXIS 246, at *24.

In denying the 2020 Application, the PSC concluded that "EU's application does not appear to be consistent with Charlotte County's [2017] Sewer Master Plan." *Id.* at *27. As explained above, EU's current Application is materially similar to the 2020 Application. The Sewer Master Plan has not been amended since the PSC's previous decision. [TH Tr. 41:23–42:1, 46:17–47:8]. For this reason alone, the PSC should reach the same decision as it did previously—EU's Application is inconsistent with the Sewer Master Plan.

Just as with the Comprehensive Plan, EU relies on the County Resolution to argue that EU's Application is consistent with the Sewer Master Plan. Despite being Charlotte County's Utility Director, Mr. Watson provided no independent testimony regarding consistency of EU's Application with the Sewer Master Plan, relying solely on the County Resolution. [TH Tr. at 35:20–36:7]. The County Resolution states—again, summarily and without any factual support—that "Charlotte County verifies that the proposed EU Project is not inconsistent with the 2017 Charlotte County Sewer Master Plan." [CEL 14 at 3]. For the same reasons discussed above regarding the Comprehensive Plan, the County Resolution should not be given any weight in determining whether EU's Application is consistent with the Sewer Master Plan.

As explained in Ms. Hardgrove's testimony, "[n]ot 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 . . . .” [CEL 16 at 3]. LGIPA adopts and incorporates by reference PIE’s argument on this issue.

In denying EU’s 2020 Application, the PSC held that EU’s project was inconsistent with the 2017 Sewer Master Plan. The Sewer Master Plan has not been amended. Nor has EU’s Application materially changed. Therefore, the PSC must reach the same conclusion it previously did—EU’s Application is inconsistent with the Sewer Master Plan.

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

Position: * No, EU has not demonstrated the financial ability to serve the requested territory. EU’s proposed system and cost analysis, both in the original application and modified by rebuttal testimony, significantly underestimate the cost of the proposed system. Therefore, EU has not demonstrated the financial ability to construct the proposed system and serve the requested territory. *

Argument

Rule 25-30.033(1)(d)2.(h) requires an applicant for a certificate to provide: (1) “[a] detailed financial statement . . . which shows all assets and liabilities of every kind and character” and (2) [a] list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility and an explanation of the manner and amount of such funding.”

While EU submitted financial statements and a letter regarding potential financing, those statements must be viewed in light of the cost of the proposed system. EU’s witness, Ms. Swain, provided cost estimates for the two systems proposed by EU—the low pressure sewer system proposed in EU’s Application and the grinder pump system proposed in EU’s rebuttal testimony. Ms. Swain testified that all of the cost inputs for her cost estimate (except adjustments for inflation)

came from EU and the engineering estimates for the system. [TH Tr. 364:11–365:13]. As a result, Ms. Swain's cost estimate is only as reliable as the inputs provided to her. [TH Tr. 365:14–366:11]. Therefore, EU's and Mr. Cole's estimates must be scrutinized prior to considering Ms. Swain's cost opinion.

LGIPA's witness, Mr. Hull, testified that Mr. Cole's opinion vastly underestimates the costs of EU's proposed system. [TH Tr. 229:12–14]. Mr. Cole estimated the construction cost of the original system at $17,363,148, [CEL 8 at 27], and the construction cost of the proposed grinder system at $16,573,000, [CEL 33 at 59]. On the other hand, LGIPA's witness, Mr. Hull, testified that his cost opinion for the original system is $51,244,204.57, [TH Tr. 229:12–14], and the cost of the revised system would be greater given the change from "a single force[] main crossing . . . to two separate directional drills crossing the intercoastal," [TH Tr. 222:24–223:7].

EU requests that the PSC approve a certificate for the grinder system, so LGIPA will address the deficiencies in the cost estimate for that system. First, it is notable that EU's cost estimate from the original system to the revised system decreased despite the addition of a second force main crossing. This is because Mr. Cole did not include the cost of the second force main directional drill or infrastructure in his rebuttal cost opinion; he was told by EU not to include that cost. [TH Tr. 318:14–319:5; CEL 33 at 6 (noting "mainland transmission funded by others")]. Mr. Boyer, the applicant, contends that the County will be responsible for the construction cost of the second directional drill because the Bulk Sewer Agreement includes a provision that may eventually reimburse EU for the construction cost via TAP fee credits. [TH Tr. 379:25–384:15; *see* CEL 15 at 5]. Regardless of whether the County may eventually reimburse some or all of the construction cost of the second directional drill, it must be included as a cost in EU's estimate, as EU will have to carry that cost for a year or more. [TH Tr. 383:7–384:15]. Mr. Boyer estimated

that cost to be $1.4 million, which was not included in EU's cost estimate. [TH Tr. 383:2–3]. EU's failure to properly account for this cost in its Application causes EU to be noncompliant with the second prong of Rule 25-30.033(1)(d)2.(h), which requires EU to disclose "[a] list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility and an explanation of the manner and amount of such funding." If the County is funding a portion of EU's project, that must be fully and accurately disclosed and accounted for.

Second, Mr. Cole grossly underestimates the cost of doing work on the Bridgeless Barrier Islands, including only a ten percent markup in his rebuttal cost opinion. [TH Tr. 310:20–21]. Notably, Mr. Cole has never done work on a bridgeless barrier island, [TH Tr. 80:8–19], and his markup of ten percent is "[b]ased upon input from [EU]," [TH Tr. 310:20–21]. LGIPA's engineer, Mr. Hull, estimates a markup of fifty percent for work on a bridgeless barrier island. [TH Tr. 232:1–5; CEL 20 at 1]. Mr. Hull has owned property on Little Gasparilla Island for twenty years. [TH Tr. 236:1–7]. Mr. Hull's residence on the island was destroyed during Hurricane Ian two years ago, and he has been slowly rebuilding it since that time, giving him a "good understanding of the markup to work on the island." [TH Tr. 236:8–16]. Mr. Hull's markup of fifty percent is much closer to the reality of doing work on a bridgeless barrier island, although still conservative. [TH Tr. 232:1–5]. LGIPA's witness, Mr. Shaw, corroborated this markup as "conservative and critically realistic." [Tr. 248:25–249:4, 252:12–253:24]. A number of individuals at the Service Hearing testified to experiencing a similar markup compared to construction costs on the mainland. [SH1 Tr. at 86:7–17, 148:11–17 (testifying that the resident paid "over $100,000" in barge fees alone for construction of an 1,850 square foot home on the islands)]. This change alone—from a ten percent markup to a fifty percent markup—would increase EU's cost estimate for the logistics markup from $466,264, [CEL at 59], to $2,331,320, a difference of $1,865,056.

Next, Mr. Cole greatly underestimates the cost of acquiring easements for the proposed system. EU's and LGIPA's expert witnesses appear to be in agreement regarding use of the Sherwood Valuation Matrix to determine easement valuation. [CEL 20 at 4; CEL 33 at 60–64; TH Tr. 322:14–18]. However, the parties disagree as to the level of disturbance, and corresponding impact on property value, caused by a sewer line easement. EU's witness, Mr. Cole, testified that the sewer easements required on private property for EU's proposal would only cause a five percent reduction in market value to that area encumbered by the easement, despite the Sherwood Valuation Matrix noting that sewer easements can fall anywhere between an eleven percent to fifty percent reduction in market value. [TH Tr. 322:14–372:15; CEL 33 at 64]. LGIPA's witness, Mr. Hull, estimated conservatively that a sewer line easement will cause at least a twenty-five percent reduction in market value of the easement area. [CEL 20 at 4]. Again, this undervaluation by EU results in an impact to their cost estimate of hundreds of thousands of dollars. [TH Tr. 327:16–328:14]. Mr. Cole estimated only $115,000 to obtain all of the necessary easements, using five percent of the market value for the easements. [CEL 33 at 59]. Increasing that easement cost to even a conservative twenty-five percent results in a cost increase of $460,000.[6] As further evidence of EU's gross underestimation, EU incorrectly asserts that they do not have to acquire easements across many private properties, contending that those properties have existing easements across them. As discussed further below with regard to the continued use of the land for treatment facilities, EU is mistaken as to at least some of these easements, as demonstrated by the record evidence.

The glaring errors in just these three items result in EU's cost estimate being underestimated by millions of dollars. LGIPA requests that the PSC closely scrutinize the

[6] $115,000 x 5 = $575,000 (an increase of $460,000).

remainder of the errors and omissions in EU's cost estimates, many of which are explained in the testimony of EU's witness, Mr. Shaw. [TH Tr. 242:14–245:12]. Ms. Swain's cost opinion does not cure these errors, as she testified that her cost opinion "flow[s]" from the inputs provided by Mr. Cole and EU. [TH Tr. 365:14–366:4].

As demonstrated above, EU's cost opinions are underestimated by millions of dollars. Without an accurate estimate of the costs of the proposed system, the PSC cannot possibly determine whether EU has the financial ability to serve the requested territory. Therefore, EU's Application must be denied on this basis.

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

Position: * No, EU has not demonstrated the technical ability to serve the requested territory. EU's proposed system, which has been significantly modified several times throughout the discovery process in this proceeding, does not fully account for the technical requirements of serving the requested territory. Therefore, EU has not demonstrated the technical ability to construct the proposed system and serve the requested territory. *

Argument

Section 367.045(1)(b), Fla. Stat., and Rule 25-30.033(1)(i), F.A.C., require a utility applying for an original certificate to provide information showing that it has the technical ability to provide service in the territory requested. In the PSC's Final Order denying EU's 2020 Application, the PSC determined that EU had "met the requirements of the rule demonstrating that, with the retention of outside professionals for the construction and operation of its systems, it has the technical ability to serve the requested territory." *In re: Environmental Utilities*, 2022 FLA. PUC LEXIS 246, at *35. LGIPA strongly encourages the PSC to reconsider this position

given issues that were raised at the Technical and Service Hearings regarding both the skill and expertise of the professionals that EU has retained to construct the system, as well as the complaints from residents regarding Mr. Boyer's water company.

LGIPA's witness, Mr. Hull, testified that EU's proposed system in the original Application was "highly conceptual," making it difficult to even estimate associated costs of the system. [TH Tr. 227:5–14]. On cross-examination, Mr. Cole conceded that the report submitted with EU's Application was conceptual, designed only to compare two types of systems rather than providing an accurate representation of the system that was proposed for the Bridgeless Barrier Islands. [TH Tr. 83:12–89:3].

The conceptual nature of the system proposed in the original Application is highlighted by the *significant* engineering design modifications proposed in EU's rebuttal testimony. These modifications include, but are not limited to, the following major system design modifications: (1) a different system type; (2) a new force main routing consisting of two new directional drills along new routes; (3) a drastically altered pipe sizing analysis; and (4) a different pump type, horsepower, and electrical connection on each homeowner's property. [TH Tr. 222:10–223:7; CEL 33 at 1–10].

However, as described above in the analysis of financial feasibility, the cost of the system proposed in EU's rebuttal testimony is still highly underestimated, calling into question EU's technical ability to actually construct the system. This point is particularly relevant in light of EU's misunderstanding of the challenging logistics of doing work on a bridgeless barrier island. As noted above, Mr. Cole has never done work on a bridgeless barrier island, [TH Tr. 80:8–19], and his markup of ten percent is "[b]ased upon input from [EU]," [TH Tr. 310:20–21], with no independent knowledge, experience, or analysis of the difficulty and costs associated with work on a bridgeless barrier island. Simply put, EU's retained professionals for this project are not well

qualified to handle the challenging logistics of constructing an entirely new sewer system on the Bridgeless Barrier Islands.

Even if EU's retained professionals are independently qualified, EU did not in fact rely on its retained professionals for several important issues in the Application. Both Mr. Cole's and Ms. Swain's cost opinion testimony highlight this deficiency. Mr. Boyer simply directed Mr. Cole and Ms. Swain to include certain estimates without an explanation. For example, Mr. Cole "was told not to include" the cost of the second force main in his analysis. [TH Tr. 318:24–319:5]. Similarly, Ms. Swain obtained some of her numbers directly from EU. [TH Tr. 364:22–365:13]. As an example, Ms. Swain expressly testified that she did "not know what Charlotte County's TAP fees are" and that they are not part of her cost opinion, explaining that Mr. Boyer should be asked about those costs. [TH Tr. 367:3–20]. However, as Commissioner Clark pointed out, the Charlotte County impact fee was included in Ms. Swain's cost spreadsheet. [TH Tr. 369:1–371:10]. When Commissioner Clark noted that "it doesn't appear to be a cost calculation . . . [i]t just appears to be a random number that's just kind of popped in a spreadsheet," Ms. Swain deferred to Mr. Boyer regarding questions related to the impact fee. [TH Tr. 370:11–371:11]. EU should not be allowed to defer to the expertise of its professionals to satisfy the rule regarding technical ability when EU itself did not actually rely on professional expertise for important portions of its Application.

Finally, public comments from residents on the islands regarding Mr. Boyer's water company should be taken into consideration. Several residents testified that Mr. Boyer's water company provided poor service, with the highest water utility rates in the state. [SH1 Tr. at 119:7–10, 132:15–17]. The residents on the Bridgeless Barrier Islands should not be saddled with yet another utility system run by the same individual.

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, EU has not provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located. EU has not provided evidence of easements or other real property rights necessary for the installation and operation of the proposed system. *

Argument

Section 367.1213, Fla. Stat., and Rule 25-30.033(1)(m), F.A.C., require an applicant to provide "[d]ocumentation of the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located." Rule 25-30.033(1)(m), F.A.C. Chapter 25-30 of the Florida Administrative Code does not contain a definition for the term "utility treatment facilities." However, the chapter of the Florida Administrative Code applicable "to domestic wastewater treatment, reuse, and disposal facilities" provides definitions for both "treatment" and "wastewater facility" that are relevant to the discussion of whether EU has satisfied Rule 25-30.033(1)(m). Rule 62-600.200 defines these terms as follows:

> "Treatment" means any method, technique, or process which changes the physical, chemical, or biological character or composition of wastewater and thereby reduces its potential for polluting waters of the state.
>
> "Wastewater facility" or "facility" means any facility which discharges wastes into waters of the State or which can reasonably be expected to be a source of water pollution and includes any or all of the following: the collection and transmission system, the wastewater treatment works, the reuse or disposal system, and the biosolids management facility.

Rule 62-600.200(74), (82), F.A.C.

The record evidence in this matter demonstrates that significant easements will be required for EU's proposed system. LGIPA's witness, Mr. Hull, calculated that EU's system will require over 21,000 linear feet of easements on Little Gasparilla Island alone, "which currently has little to no existing right-of-way." [CEL 20 at 2–3]. EU's witness, Mr. Cole, estimates this number to be smaller but still significant, with over 13,000 linear feet of easements being required for EU's proposed system.[7] [CEL 33 at 11]. And notably, both of these calculations include only the easements for pipelines and do not include easements on each private property that will be required for the grinder system itself, which would require an excavation disturbing an approximately "15 by 15" area adjacent to each home. [TH Tr. at 334:1–335:8]. As discussed above, LGIPA urges the PSC to strongly consider the experience of each of these witnesses in the context of work on a bridgeless barrier island.

EU's easement estimates are further undermined by testimony from the Service Hearings regarding whether easements currently exist across private properties on the islands. EU's witness, Mr. Cole, testified that EU will be primarily placing sewer lines within existing easements. [TH Tr. 324:19–325:9]. Mr. Cole also provided a schematic showing the purported existing right-of-way easements. [CEL 33 at 10]. However, some residents testified at the Service Hearing that the purported easements on their private property either do not exist or do not provide EU the right to use their property for a wastewater utility, presenting deeds and title work as evidence supporting their testimony. [Tr. at 38:6–22; CEL 74].

The Service Hearings also raised concerns about an easement required across Hideaway Bay. Mr. Boyer testified that a mainline crossing is proposed across Hideaway Bay. [TH Tr. at

[7] As discussed below, based on testimony at the Service Hearings, Mr. Cole's estimate is inaccurately low because at least some of the easements he presumed to exist either do not exist or do not allow EU to place a sewer line in those easements.

130:24–131:1]. However, EU previously assured residents of Hideaway Bay and their attorney "that Hideaway Bay was excluded from the scope of this project." [SH2 Tr. at 22:20–23; *see* CEL 48]. Hideaway Bay is technically not part of the service area for EU's proposed system, [CEL 48], i.e., Hideaway Bay will not have grinder pumps installed, and their sewage will not be processed by EU. However, it is clear that residents of Hideaway Bay (and their counsel) were misled into believing that they would have nothing to do with EU's proposed project. Now, a significant mainline connection and easement is proposed across their property, and Hideaway Bay residents were denied the right to fully participate in this proceeding. [SH2 Tr. at 22:11–24:21; *see* CEL 33 at 7].

Throughout discovery in this proceeding, EU has ignored or downplayed the significant undertaking that would be required to obtain these easements, especially in light of the opposition to the project from residents on the islands. On March 13, 2024, the PSC found that EU's application was deficient because EU did not provide evidence of the right to access or continued use of the land for its utility treatment facilities. In a Deficiency Letter to EU, the PSC listed the following as a "specific deficienc[y]":

> **Right to Land.** Rule 25-30.033(1)(m), F.A.C., requires documentation of the utility's right to access and continued use of the land upon which the utility treatment facilities are located. Documentation of continued use shall be in the form of a recorded warranty deed, recorded quit claim deed accompanied by title insurance, recorded lease such as a 99-year lease, or recorded easement. The applicant may submit an unrecorded copy of the instrument granting the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located, provided that the applicant files a recorded copy within the time required in the order granting the transfer. While EU has not proposed to build a wastewater treatment facility to provide wastewater treatment services to its customers, the Utility provided information in its application that indicates it may require an easement for specialized equipment to be installed and maintained on each customer's premises. Please explain the size and nature of

> easement access EU will require, what actions EU has taken to ensure that it will be able to obtain these easements, and what actions EU has taken to ensure that it will continue to be able to obtain easements from future owners should the residence be sold. Please be advised that this item will remain deficient until the Utility has provided satisfactory documentation that it will have continued access to the customers' property as is necessary to provide service.

[Doc. No. 01154-2024 at 3]. EU dismissed this request from the PSC, contending that "[t]his is not a deficiency" because "[t]he Utility will provide wastewater collection only." [Doc. No. 01161-2024 at 4]. EU did not satisfy the identified deficiency; it remains at issue.

Even if EU's assertion above applied to its original Application for a low pressure sewer system, this statement is certainly not true for EU's grinder system proposed in its rebuttal testimony. EU's witness, Mr. Bell, testified that the processing of raw sewage into a fine slurry occurs "before it leaves the basin." [TH Tr. 350:14–351:8]. The process that Mr. Bell described is "treatment" of wastewater, as defined in Rule 62-600,200(74), F.A.C., as set forth above, which expressly includes "*any* method, technique, or process which changes the physical, chemical, or biological character or composition of wastewater . . ." (emphasis added). Mr. Bell's description of the proposed grinder system also falls well within the definition of "wastewater facility" in Rule 62-600.200(82), F.A.C., which clearly delineates that a wastewater facility "includes any or all of the following: *the collection and transmission system*, [and] the wastewater treatment works . . ." (emphasis added). Notably, the definition of a "wastewater facility" is distinct from the definition for a "treatment plant," which is defined as "any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes." Rule 62-600.200(75), F.A.C.; Fla. Stat. § 403.866. Rule 25-30.033(1)(m), F.A.C., the rule applicable to this proceeding, expressly uses the term "treatment facilities," *not* treatment plant. Therefore, to comply with Rule 25-30.033(1)(m),

F.A.C., EU must demonstrate a right to use the land upon which the grinder systems will be located, i.e., on each private property, because the grinder systems are "treatment facilities."

As the PSC noted in its Final Order denying EU's 2020 Application, this could pose significant challenges to EU: "[S]ince easements are not yet secure and residents have expressed no desire for service, if we granted the application, the provision of service could be substantially delayed as EU acquires the legal rights to access customer property." *In re: Environmental Utilities*, 2022 FLA. PUC LEXIS 246, at *39–40. Despite the PSC's prior comments on this issue, EU has not made any efforts to discuss the easement issue with property owners, especially on Little Gasparilla Island, where existing right-of-way easements are not present in most locations. [*See* CEL 54 at 4–5 (indicating that EU has not made any efforts to contact property owners regarding easements)]. Instead, Mr. Boyer indicated that he will be pursuing eminent domain proceedings to obtain the necessary easements if property owners do not willingly cooperate, [TH Tr. 129:3–132:22], and it is clear from the voluminous testimony at the Service Hearings and on the docket that many property owners will not willingly grant easements on their private property, [SH1 Tr. at 38:6–22 ("I strongly oppose any attempt to appropriate my land for this system, as it would not only infringe upon my property rights, but also set a troubling precedent for the property owners island wide."); SH2 Tr. at 73:7–20]. This would be a time-consuming and costly process, which EU has not accounted for in its estimates.

Accordingly, EU has not provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located. The PSC should deny EU's Application on this basis.

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, it is not in the public interest for EU to be granted a wastewater certificate for the proposed territory. The vast majority of residents in the proposed service territory object to the proposed system, and EU has not provided evidence of an environmental or public health and safety need. Nor has EU has provided evidence of public benefit, and the proposed fees and rates will not be just and reasonable. *

Argument

Section 367.045(5)(a), Fla. Stat., as relevant here, provides that the PSC may deny a certificate of authorization if it is in the public interest to do so. As the PSC explained in its Final Order denying EU's 2020 Application, "[i]n prior proceedings, [the PSC] ha[s] made determinations regarding the public interest based upon whether a utility's application demonstrates there is a need for service, that the application is not in competition with or duplication of another system, that the utility has the financial and technical ability to provide service, and the utility has sufficient plant capacity or will construct the plant when needed." *In re: Environmental Utilities*, 2022 FLA. PUC LEXIS 246, at *43 (footnote omitted).

For all of the reasons discussed above, these factors weigh in favor of the PSC denying EU's Application. Additionally, the PSC is charged with fixing rates that are just and reasonable. Fla. Stat. § 367.081(2)(a)1. Accordingly, the cost of the proposed system to residents in the service territory should also be weighed by the PSC in determining whether to grant EU's Application for a certificate. Ms. Swain testified that "the connection fee would be $15,587," and the lateral fee would be $1,414. [TH Tr. 366:13–20; CEL 39 at 7–8]. Each homeowner would also be responsible for TAP/impact fees paid to Charlotte County, the cost of the four-inch sewer service lateral line that runs from each residence, and the cost of the electrical connection from the panel on each residence to the grinder pump. [TH Tr. 366:25–368:18, 369:1–371:10; CEL 39 at 7–8, 16].

Connection Fee	$ 15,587
Lateral Fee	$ 1,414
Four-inch Sewer Service Lateral Cost	$ Unknown
Electrical Connection Cost	$ Unknown[8]
Charlotte County TAP/Impact Fee	$ 2,251
Total Cost to Each Resident	**$19,252+**

Thus, even using EU's grossly underestimated costs, each resident would be required to pay over twenty thousand dollars just for the initial connection to EU's system, not including the loss of value to property caused by the required easements across each individual's property, as discussed above.

Mr. Watson, Charlotte County's Utility Director, testified that the County charges $11,500 per connection under its septic-to-sewer program, a cost which is billed to the customer over a twenty-year period at a cost of approximately $500 per year. [TH Tr. 38:19–39:8]. Mr. Watson further testified that the County considers this amount to be fair and reasonable. [TH Tr. 39:9–40:4]. It cannot possibly be in the public interest for the PSC to allow a private for-profit utility to charge residents nearly *double*—or more—than the County considers fair and reasonable for connection to a new sewer system and to require residents to pay that amount in a lump sum.

The testimony of dozens of residents of the Bridgeless Barrier Islands confirms what a significant burden this cost would be. Many residents testified about the financial pressures of recently suffering property damages from two hurricanes in the span of a month, as well as additional major hurricanes in recent past years. [SH2 Tr. at 40:15–17 (testifying about impacts to Don Pedro Island from Hurricanes Irma, Idalia, Ian, Debby, Helene, and Milton), 66:17–21 ("My personal perspective is I have faced four hurricanes, four major hurricanes in two-and-a-half years,

[8] Just the cost of the electrical connection would be significant for many residents. Residents testified that they would have to upgrade their electrical panel to be able to accommodate the system proposed by EU. [SH1 Tr. at 26:23–27:8 (testifying that the resident was quoted $3,800 to upgrade their electrical panel for an additional circuit); SH2 Tr. 39:8–10, 75:22–76:2].

and my septic is fine. I had an estimated $350,000 of damage from Hurricane Ian. $900,000 later, I am still not done.")]. Residents spoke about exhausting all of their savings rebuilding their homes on the islands—including escalating building, material, and barge costs on a bridgeless barrier island—with many testifying that they simply could not afford the cost of EU's system and may have to sell their homes if EU's Application is approved by the PSC. [SH1 Tr. at 98:6–9 ("I am retired, and I am a recent widow, and I may have to sell my beloved home, which we built 26 years ago, if this comes to being."), 129:20–22 ("Those who can't afford, or aren't wanting to pay for central sewer will have no option but to sell.")].

Relatedly, residents also testified about their concerns regarding extended power outages on the islands, expressing concerns both about the cost of generators that would be required to keep grinders working and the cost of potential infrastructure repairs. Many residents testified that after the recent hurricanes, their septic systems were one of the only parts of their homes that remained undamaged and functioning, a welcome blessing with weeks of extended power outages. [SH1 Tr. at 143:13–23 (testifying that after the recent hurricanes, "[t]he only thing that is functional on my house today . . . is my septic"); SH2 Tr. at 16–19 ("Power outages. I just finished 94 days without power at my house on the island. That's kind of -- I don't have a generator, but the septic worked. That was a good thing."), 30:13–19 (testifying that after experiencing "six hurricanes" on Don Pedro Island, despite "severe damage to our house," "our septic system worked perfectly")].

One resident even testified that "Hurricane Milton destroyed all of our incoming and outgoing plumbing under the house[, b]ut once the plumbing was reinstalled, the septic system worked just fine and needed no repairs." [SH2 Tr. at 40:20–24]. The is just one example of the destruction that could occur to an entire network of pipelines if a central sewer system is installed on the islands. The potential for such a complete system failure was highlighted by a resident who

testified and provided evidence of an identical low pressure grinder sewer system failing in Indian River County:

> The Indian River County community of Rockridge was particularly hard hit. Located just 20 miles north of Fort Pierce, the city lost electrical service for two extended periods of time: 10 days after Hurricane Francis and 14 days after Jeanne. Without electricity, the community's low-pressure grinder pump sewer system was shut down. Sewage backed up into homes and contaminated the area's groundwater. Entire neighborhoods became giant bacteria-producing Petri dishes.
>
> . . .
>
> When it came time to rebuild Rockridge, the community turned to the federal and state governments for funding. Various agencies looked at Rockridge's low-pressure grinder pump sewers and declared the system condemned. They saw no need to repair a system so susceptible to power loss and prone to environmental nightmares such as the one that occurred in 2004.

[CEL 78 at 3]. The power outages experienced in Indian River County were much shorter term than those described by residents on the islands, who testified that they were without electricity for up to six weeks following the recent hurricanes. [SH1 Tr. at 77:8–19]. The costs—both financial and environmental—of such a similar failure on the Bridgeless Barrier Islands would be catastrophic.[9]

[9] Mr. Bell's testimony about the reliability of the grinder system during long-term power outages was unconvincing. As a primary point, Mr. Bell is a "Sales Representative" for the equipment that EU proposes to install as part of its system. [TH Tr. at 96:2]. Second, Mr. Bell's testimony was internally contradictory. He testified both that the grinder system works best when "fresh" sewage is flowing through the system and that the grinder pumps are "designed to operate" when they are not pumping for months at a time. [TH Tr. at 343:6–11 ("We want that extra capacity, but we want the pumps to run. We want them to turn on multiple times a day. . . . And for lack of a better description, it keeps the sewage fresh."), 347:3–17]. When cross-examined on this issue, Mr. Bell offered no credible explanation for the discrepancy in his testimony. [TH Tr. 347:3–348:17].

None of these costs or contingencies have been accounted for in EU's Application, and it is unclear whether the homeowners would be responsible for them. EU's Application is simply not in the public interest of the residents living on these islands.

Issue 15: Should this docket be closed?

Position: * Yes, EU's application should be denied and the docket should be closed. *

Argument

For all the reasons discussed above, EU's Application should be denied, and the docket should be closed.

Dated: February 28, 2025

/s/ Valerie L. Chartier-Hogancamp
Robert C. Volpe (FBN 117992)
rvolpe@holtzmanvogel.com
Valerie L. Chartier-Hogancamp
(FBN 1011269)
vhogancamp@holtzmanvogel.com
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIAK PLLC
119 South Monroe Street, Suite 500
Tallahassee, Florida 32301
(850) 270-5938

Counsel for Little Gasparilla Island Preservation Alliance, Inc.

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:

Palm Island Estates Association, Inc.
Brad E. Kelsky
c/o Kelsky Law Firm
Plantation FL 33324
(954) 449-1400
(954) 449-8986
bradkelsky@kelskylaw.com

Environmental Utilities, LLC
c/o Jack Boyer
PO Box 7
Placida, FL 33946
(941) 626-8294
Eu777offices@gmail.com

Linda Cotherman
PO Box 881
Placida FL 33946
(941) 276-1140
lcotherman@yahoo.com

Martin S. Friedman
Dean | Mead
420 S Orange Ave., Suite 700
Orlando, FL 32801
(407) 310-2077
(407) 423-1831
mfriedman@deanmead.com

Major Thompson
Daniel Dose
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
mthompso@psc.state.fl.us
ddose@psc.state.fl.us
discovery-gcl@psc.state.fl.us

/s/ Valerie L. Chartier-Hogancamp
Attorney