

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
ORDER NO. PSC-2025-0027-PHO-SU
ISSUED: January 24, 2025

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on January 14, 2025, in Tallahassee, Florida, before Commissioner Gabriella Passidomo Smith, as Prehearing Officer.

APPEARANCES:

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

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

ROBERT C. VOLPE and VALERIE L. CHARTIER-HOGANCAMP, ESQUIRES, Holtzman, Vogel, Baran, Torchinsky & Josefiak, PLLC, 119 South Monroe Street, Suite 500, Tallahassee, Florida 32301
On behalf of Little Gasparilla Island Preservation Alliance, Inc. (LGIPA).

MAJOR THOMPSON and DANIEL DOSE, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

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

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

I. CASE BACKGROUND

On February 12, 2024, pursuant to Sections 367.031 and 367.045, Florida Statutes (F.S.), and Rule 25-30.033, Florida Administrative Code (F.A.C.), Environmental Utilities, LLC, (EU or Utility) filed an application for an original wastewater certificate in Charlotte County. Pursuant to Rule 25-30.030, F.A.C., EU published notice in the proposed service area on March 28, 2024. Timely objections to EU's application have been filed with the Commission. This matter has been scheduled for a hearing on January 28 – 30, 2025.

II. CONDUCT OF PROCEEDINGS

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

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 367, F.S. This hearing will be governed by said Chapter and Chapter 120 and Rules 25-9, 25-30, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the

Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

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

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

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

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

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

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears

to be a friendly cross-examination of a witness should be prepared to indicate why that witness' direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Dave Watson	EU	2, 3, 9, 14
John R. Boyer	EU	1-9
Brian E. Lapointe, Ph.D.	EU	2, 9
Jonathan H. Cole, P.E.	EU	1, 9, 11, 14
Deborah D. Swain	EU	1, 10-14
Randy Bell	EU	9
Amy McCully	PIE	2, 9, 15
Ellen Hardgrove, AICP	PIE	2, 3, 9, 15
Robert J. Robbins, Ph.D.	PIE	2, 3, 6, 9, 15
Teresa T. Weibley	LGIPA	2, 9, 15
Jadon D. Hull, P.E.	LGIPA	1, 2, 5, 6, 8, 9, 15
John Shaw	LGIPA	1, 2, 5, 6, 8, 9, 15
Linda B. Cotherman	Cotherman	1-15
<u>Rebuttal</u>		
Dave Watson	EU	2, 3, 9
John R. Boyer	EU	1-9
Brian E. Lapointe, Ph.D.	EU	2, 9
Jonathan H. Cole, P.E.	EU	1, 9, 11, 14

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Deborah D. Swain	EU	1, 10-14
Randy Bell	EU	9

VII. BASIC POSITIONS

EU: The removal of septic tanks from the bridgeless barrier islands and diverting the wastewater flows to a central wastewater treatment plant on the mainland is a priority of Charlotte County as articulated by the County in the Bulk Wastewater Service Agreement entered into with EU, the Sewer Master Plan adopted by the County, Charlotte County Resolution 2023-155, and various State laws; and thus this septic-to-sewer project is in the public interest. EU has both the financial and technical ability to construct and operate the wastewater system and has otherwise met all Commission requirements for issuance of a wastewater certificate. The rates and charges proposed by EU are just, reasonable, compensatory and not unfairly discriminatory, and are in accordance with Commission practice.

PIE: PIE contends that there is a lack of demonstrable need for sewer services to the Charlotte County bridgeless barrier islands and that the imposition of such service would be contrary to Charlotte County's development scheme. PIE specifically adopts the positions of Linda B. Cotherman and LGIPA as it relates to their presentation of witnesses and exhibits on each issue not specifically identified above.

LGIPA: LGIPA contends that there is a lack of need for sewer services to the proposed service territory, which consists of bridgeless barrier islands in Charlotte County, and that the proposed system would be against the public interest. The Public Service Commission previously denied an application for Certificate of Authorization from the same applicant, for the same service territory, that was substantially similar to the application currently before the Commission. (*See* PSC Docket No. 20200226). Nothing has changed. EU has failed to demonstrate a need for service to the proposed service territory; EU has failed to demonstrate its financial and technical capability to provide the proposed system; EU has failed to demonstrate its right to the use of the land for the proposed system; the proposed system is against the public interest; and the cost burden to the customers and ratepayers will not be fair, just, or reasonable.

COTHERMAN: Linda B. Cotherman's position is that the application for certification of the service area should be denied. The applicant has not demonstrated a need for service, nor has he provided evidence of same. The applicant has shown neither financial nor technical ability to construct, operate and maintain a project of this

scope, and the rates and charges provided in the application may be grossly inaccurate. The original submission is incomplete, inaccurate and is not significantly changed from the proposal that the PSC denied on September 27th, 2024. [Docket #2020-0226] Furthermore, the information brought forth during the testimony, discovery and rebuttal process is now materially different from what was presented during the initial application. Therefore, the application should be denied and the docket closed.

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

VIII. ISSUES AND POSITIONS

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

EU: Yes.

PIE: PIE's position is that the application is non-compliant as, through the discovery process (as opposed to the amendment process), EU has materially altered the engineering, accounting, location of where the system traverses, the methodology of disposal and the means in which it intends to obtain easements such that these are material changes that would require an amendment to the application. PIE further contends that these material changes, without an amendment, denied PIE due process to address new opinions offered as "rebuttal" thereby precluding PIE an opportunity to address these new opinions to the point that the "rebuttal" is, in fact, an alteration of the original application. Therefore, the application and the testimony is inconsistent and requires amendment.

LGIPA: LGIPA's position is that EU has not met the filing requirements because EU has not satisfied all of the requirements set forth in Rule 25-30.033, Florida Administrative Code. Jadon Hull and John Shaw are expected to testify as to this issue, and their testimony has been prefiled along with exhibits. LGIPA additionally adopts the position of Linda B. Cotherman on this issue.

COTHERMAN: No. Regarding Rule 25-30.030, prospective ratepayers rely on public notice to direct them to critical information in the application including future potential rates. The application material, including the scope and legal description of the proposed service area, estimated rates and tariffs, type and layout of sewer system and number of existing hook-ups, has changed multiple times. Notification of these significant changes was not provided to the property owners in the service area. A The filing requirements in Rule 25-30.033 which call for a complete and

accurate application have not been met. The significant changes mentioned above, some of which have been made recently in rebuttal testimony, nullifies the initial application. Linda B. Cotherman additionally adopts the position taken by Palm Island Estates Association, Inc. [PIE] and Little Gasparilla Island Preservation Alliance, Inc. [LGIPA] regarding this topic.

STAFF: Staff has no position at this time.

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

EU: Yes. Central wastewater service is needed at this time and the Charlotte County Master Sewer Plan identifies the islands as a priority for central wastewater service by 2022. EU expects to have the wastewater system operational by the end of 2026. (Boyer, Lapointe, Watson)

PIE: PIE's position on this issue is that the applicant has not established a need for service on the bridgeless barrier islands of Charlotte County. Ellen Hardgrove, AICP is expected to testify on this issue and has set forth, in her pre-filed testimony and exhibits, that there is a lack of need (per the Comprehensive Plan and a lack of scientific data) to justify Environmental Utilities, LLC's receipt of a Certificate of Authorization. It is expected that Ms. Hardgrove will also testify that a comprehensive plan amendment will be needed to effectuate the Certificate of Authorization if approved. Additionally, it is expected that Robert Robbins, Ph.D., will testify that there is no need and that the Sewer Master Plan, and other submissions, are incorrect. This testimony will be elicited through his pre-filed testimony and exhibits.

LGIPA: LGIPA's position is that EU has not established a need for service in the proposed service territory, which consists of three bridgeless barrier islands in Charlotte County, sufficient for a Certificate of Authorization. Teresa Weibley is expected to testify to LGIPA as an organization, the lack of need for service, and public interest. Her testimony has been prefiled along with exhibits. Jadon Hull and John Shaw are also expected to testify as to this issue, and their testimony has been prefiled along with exhibits. LGIPA additionally adopts the positions of PIE and Linda B. Cotherman on this issue.

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

1. To date there has been no scientific, protocols-based water quality testing within the proposed service territory. All of the data previously provided by the applicant has been extrapolated from general studies conducted in areas as far afield as Key West, Florida.

2. The Florida Department of Environmental Protection, which sets water quality standards and tests for compliance at various sites throughout the state, recently released the “2023 Statewide Annual Report” [[Statewide Annual Report | Florida Department of Environmental Protection](#)]. This report is based on data accumulated over two years of testing. The report concludes that the water body closest to the proposed service area, Lower Lemon Bay, currently attains water quality standards.
3. The applicant’s reference to need for service relies solely upon selective items from the Sewer Master Plan [SMP] which are outdated, incorrect and misinterpreted. EU also relies on the Bulk Sewer Treatment Agreement and Charlotte County Resolution 2023-155 to indicate support from Charlotte County, when in fact the Bulk Sewer Treatment Agreement is a standard contract issued to any developer or utility that requests it. The Resolution is essentially a reaffirmation of their general policy of promoting septic-to-sewer conversions where applicable, without reference to the specific proposal beyond mentioning EU.
4. The applicant has produced very few letters of request for service from property owners or developers in the proposed service area, as compared with the hundreds of letters of opposition submitted by prospective ratepayers.
5. The application is inconsistent with several government regulations, including the Charlotte County SMP, the Charlotte County Comprehensive Plan and Executive Order 81-105.
6. Contrary to applicant’s statement that there are no land restrictions, there are in fact numerous land restrictions such as environmental, zoning, land use, archaeological impacts, threatened species, etc. imposed by governmental authorities currently in place. None of these have been addressed.

Linda B. Cotherman additionally adopts the position taken by PIE and LGIPA regarding this topic.

STAFF: Staff has no position at this time.

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

EU: Yes. (Boyer, Watson)

PIE: PIE’s position on this issue is that the proposed utility service application is inconsistent with the Sewer Master Plan and Comprehensive Plan and, separately, that the Sewer Master Plan is likewise inconsistent (itself) with the Charlotte County Comprehensive Plan. This testimony is expected to be confirmed by Ellen Hardgrove, AICP, and Robert Robbins, Ph.D., as per their pre-filed testimony and exhibits.

LGIPA: LGIPA's position is that EU's application is inconsistent with Charlotte County's Comprehensive Plan and that EU's application is inconsistent with Charlotte County's Sewer Master Plan based upon the testimony of PIE's and Linda B. Cotherman's witnesses. Therefore, LGIPA adopts the positions of PIE and Linda B. Cotherman on this issue.

COTHERMAN: No. Linda B. Cotherman's position is that the application is inconsistent with both Charlotte County's Comprehensive Plan and Charlotte County's SMP based in part on the following:

1. Inconsistency with Charlotte County's Comprehensive Plan

- a. Executive Order 81-105 establishes the foundation for the County's Comprehensive Plan regulations for the bridgeless barrier islands. Specifically, the document lays out a strategy for discouraging development on coastal barriers. Hence the designation of Charlotte County's bridgeless barrier islands as being in the Rural Service Area. The Comprehensive Plan is a state-approved governance document that the County is required to file and adhere to, unlike the SMP which is not mandatory.
- b. In Charlotte County's Prehearing Statement from Docket No. 20020745-SU dated 02.16.2004, Janette Knowlton, presently County Attorney for Charlotte County, addressed the issue "Is [IEU]'s application inconsistent with Charlotte County's comprehensive plans?" Ms. Knowlton answered "Yes. The provision of central wastewater services is not consistent with the current policies of the 1997 Comprehensive Plan [ed. note: the most current Comp Plan at that time] particularly Policy 9.1.4 of the Infrastructure Element, which limits services to areas within the Urban Services Area." The language of the Comprehensive Plan remains unchanged on this issue.
- c. Ms. Knowlton addressed the issue "What are the practical ramifications, if any, should it be determined that [IEU]'s Application is inconsistent with the County's Comp Plan?" Her answer was as follows: "If a utility began installing a wastewater collection system in a manner inconsistent with the Comprehensive Plan, the County would issue a Stop Work Order advising that any activities undertaken in violation of the Comprehensive Plan must cease immediately and be remedied within a reasonable period of time." She also stated that "inconsistency with the Comprehensive Plan could impact the utility's ability to obtain the state and federal approvals necessary to install the wastewater collection system."

2. Inconsistency with the Sewer Master Plan.

- a. In response to the Clean Water Act of 1972, Charlotte County commissioned the 2017 SMP to address the water quality in Charlotte Harbor, Myakka River and Peace River. None of these waters adjoin the bridgeless barrier islands within the proposed service area. It did not

include the Gulf of Mexico and lower Lemon Bay, the two bodies of water that surround Knight Island, Don Pedro Island and Little Gasparilla Island, and there is no evidence of impaired waters adjacent to the proposed service area.

- b. The SMP did not address the bulk of the proposed service area, only the two existing wastewater treatment plants for whom compliance was voluntary.
- c. The applicant cherry-picked items from the SMP as the basis for need for service, specifically three criteria that were used to categorize high-priority areas for septic to sewer conversion. While there is no denying proximity to water, the other two criteria were inaccurate in relation to the proposed service area. Specifically:
 1. The “age of septic” criterion was established only by data from the Charlotte County Property Appraiser’s office, which was based on the age of homes. No consideration was given to replacements and repairs that have been made in the proposed service area, nor to new home construction utilizing state-of-the-art septic systems. More accurate information can be accessed through the Charlotte County Health Department, and the Charlotte County Board of County Commissioners recently asked for current data on the age of septic from the Health Department records.
 2. The “nitrogen loading” rating was extracted from general estimates of averages from other areas in the County and beyond. No water quality testing has been done in the proposed service area.
 3. While the SMP laid out 5-, 10- and 15-year target areas, Charlotte County subsequently created their own prioritized list of projects. The proposed service area is currently not included in the 5-, 10- or 15-year plan. No areas were considered for connection in the County’s priorities for septic-to-sewer conversion beyond the two wastewater treatment plants located on the islands. At an informal meeting with island stakeholders, Commissioner Bill Truex stated “the most prominent polluters have been identified and prioritized for the next 10 years by Charlotte County. [This] area is not in this group.”

Linda B. Cotherman additionally adopts the position taken by PIE and LGIPA regarding this topic.

STAFF: Staff has no position at this time.

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

EU: No. (Boyer, Watson)

PIE: PIE specifically adopts the position taken by Linda B. Cotherman regarding this topic.

LGIPA: LGIPA adopts the position of Linda B. Cotherman on this issue.

COTHERMAN: Yes. According to Charlotte County Utility's [CCU] utility availability website, CCU is the utility designated to provide wastewater service on these bridgeless barrier islands. The exception on Knight Island is the wastewater provider "Knight Island Utilities Inc." [KIU] which serves the Palm Island Resort and the Rum Cove and Sabal Palm Point developments. KIU also serves properties on Lemon Bay Lane that are located in the proposed service area. CCU is also authorized to provide wastewater service on Little Gasparilla Island, according to the same website.

STAFF: Staff has no position at this time.

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

EU: Yes. (Boyer)

PIE: PIE specifically adopts the position taken by LGIPA and Linda B. Cotherman regarding this topic.

LGIPA: LGIPA's position is that 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 significantly 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. Jadon Hull and John Shaw are expected to testify to the cost and feasibility of the proposed system, and their testimony has been prefiled along with exhibits. LGIPA additionally adopts the position of Linda B. Cotherman on this issue.

COTHERMAN: No. Linda B. Cotherman's position is that the applicant has not demonstrated or substantiated their financial ability to serve the requested territory. The application lacks evidence such as loan documents, grant approvals, partnership agreements or other indications of solid financial support. Linda B. Cotherman additionally adopts the position taken by LGIPA regarding this topic.

STAFF: Staff has no position at this time.

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

EU: Yes. (Boyer)

PIE: PIE specifically adopts the position taken by LGIPA and Linda B. Cotherman regarding this topic.

LGIPA: LGIPA's position is that 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. Jadon Hull and John Shaw are expected to testify to the feasibility of the proposed system, and their testimony has been prefiled along with exhibits. LGIPA additionally adopts the position of Linda B. Cotherman on this issue.

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

1. EU has never substantiated its claim to have experience with installing and maintaining a wastewater utility.
2. The applicant does not have the proven experience or knowledge base to assess, hire and manage a "construction manager at risk" or the contractors that would be required to successfully complete this project in a timely and cost-effective manner.
3. The applicant has no ability to guarantee it can maintain its facilities and respond in a timely manner to malfunctions on a bridgeless barrier island. These islands are served by privately-owned boats and a privately-owned car ferry service which also carries equipment from the mainland. The car ferry has limited hours and service limitations based on weather, tides, staffing and mechanical issues. EU has not produced documentation explaining how the facilities can be serviced in the event of a breakdown, nor have they produced an emergency response plan for a sewer spill.
4. There is no evidence of the due diligence required to identify and contact all permitting agencies that will be involved to ascertain their process, fees, requirements, concerns and time frame for approval.

Linda B. Cotherman additionally adopts the position taken by LGIPA regarding this topic.

STAFF: Staff has no position at this time.

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

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

PIE: PIE specifically adopts the position taken by Linda B. Cotherman regarding this topic.

LGIPA: LGIPA adopts the position of Linda B. Cotherman on this issue.

COTHERMAN: Linda B. Cotherman's position is that sufficiency of plant capacity cannot be guaranteed by EU at this time, based on the following:

1. On April 14, 2020, the Charlotte County Board of County Commissioners adopted Ordinance No. 2020-014 which states "Payment of the TAP [defined as "Transmission, Accrued Guaranteed Revenue Fee and Plant"] Fee is required to reserve capacity in County's Utility System." [Section 3-8-55 (a)] EU was granted a Bulk Sewer Treatment Agreement from Charlotte County in July of 2020 *after* the ordinance was adopted. As the Agreement is subject to the ordinance, EU cannot guarantee future plant capacity until the TAP fees are paid in advance to reserve that capacity.
2. There are discrepancies in the submittals from EU pertaining to the GPD (gallons per day) flow and the number, locations and classifications of Equivalent Residential Connections within the proposed service area. Without firm data, it is impossible to ascertain exactly what plant capacity will be required to serve the requested territory.

STAFF: Staff has no position at this time.

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?

EU: N/A. This requirement is effectively satisfied through the Bulk Sewer Treatment Agreement entered into between EU and Charlotte County. (Boyer, Watson)

PIE: PIE specifically adopts the position taken by LGIPA and Linda B. Cotherman regarding this topic.

LGIPA: LGIPA's position is that 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. Jadon Hull and John Shaw are expected to testify to the operations of the proposed treatment facilities, and

their testimony has been prefiled along with exhibits. LGIPA additionally adopts the positions of PIE and Linda B. Cotherman on this issue.

COTHERMAN: No. Linda B. Cotherman’s position is that the applicant has not provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located in part on the following:

1. The definition provided by Florida Administrative Code 62-600.200 “Definitions” (82) “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.” The wastewater facility in this proposal includes chambers, pumps, valves, piping and all other components of the sewer system owned by EU.
2. While the wastewater treatment plant is located on the mainland owned by Charlotte County, no agreements or documents have been provided as evidence that EU has the guaranteed continued use of land where its tanks, lines and pumping stations will be located. This would include rights-of-way, privately owned lands and easements and approval from WCIND, the Army Corps of Engineers and the Board of Trustees of Submerged Land for the subaqueous crossing required for this project.
3. Access to each individual property will require easements from property owners which may not be forthcoming without legal action. Eminent domain statutes currently in place indicate that the initiator of the action [in this instance, EU] will have to pay all legal fees, which will be charged back to the ratepayers in the certificated area. The rates and tariffs will once again need adjustment to accommodate the change.

Linda B. Cotherman additionally adopts the position taken by LGIPA regarding this topic.

STAFF: Staff has no position at this time.

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

EU: Yes. The County has identified these islands as a priority for the removal of septic tanks which the Charlotte County Master Sewer Plan and environmental studies identify as a major contributor to the degradation of water quality in the waters adjacent to the County. (Boyer, Lapointe, Cole, Watson, Bell)

PIE: PIE’s position is that it is not in the public interest for EU to be granted a wastewater certificate. See 4.1-3 above.

LGIPA: LGIPA's position is that it is not in the public interest for EU to be granted a wastewater certificate for the proposed territory. The vast majority of property owners and potential customers in the proposed service territory object to the proposed system. EU has not provided evidence of public benefit, and the proposed system and costs will not be fair and just to the potential customers. Teresa Weibley is expected to testify as to LGIPA's members' opposition to EU's proposed system and the lack of public interest. Teresa Weibley is expected to testify to LGIPA as an organization, the lack of need for service and public interest. Her testimony has been prefiled along with exhibits. Jadon Hull and John Shaw are expected to testify to the feasibility of the proposed system, and their testimony has been prefiled along with exhibits. LGIPA additionally adopts the positions of PIE and Linda B. Cotherman on this issue.

COTHERMAN:No. Linda B. Cotherman's position is that there is no demonstrable benefit to the granting of this certification, and the burdens to the stakeholders far outweigh any potential benefit for the following reasons:

1. There is no evidence of the attention to detail required to provide accurate cost estimates for a project of this scope, inclusive of subaqueous crossings, which indicates likely cost overruns.
2. There are unique challenges of building a centralized sewage collection system on a bridgeless barrier island in a hurricane-prone flood zone which will generate "soft costs" related to environmental and other issues (i.e wetlands crossing, gopher tortoise identification and relocation costs) ultimately increasing the cost to the stakeholders.
3. The applicant has not addressed the potential impact to stakeholders if the construction costs are substantially higher than the estimated costs.
4. There are additional expenses that will fall to the homeowner that are not included in the connection charges, such as the installation of a discreet electric panel for the system, routing plumbing pipes and back-up generators in the event of a power outage, which are frequent on these islands.
5. There is no pay-over-time provision available to the homeowners relative to the connection fee. While the applicant suggests that there is a 2-year window for payment, this does not compare with Charlotte County Utilities' 20-year payment plan.
6. The existing transportation for Knight and Don Pedro Islands cannot accommodate what is being proposed. All vehicle traffic filters through a 6-8 passenger car ferry. The applicant hasn't considered the logistics of moving the construction equipment and materials and the disruption to local traffic caused by lengthy ongoing construction to complete this project. Both of these factors may impact the final costs.
7. If the utility fails in the installation or operation of its proposed facility the County or another entity would have to assume the expense and responsibility for the service, the cost of which will be borne by the property owners.

8. The applicant hasn't addressed the potential consequences, and how they would be addressed, of a hurricane or other adverse conditions that could impact the equipment and facilities such as power outages, line ruptures, etc. of the wastewater system as proposed by EU.
9. A central sewer spill would be catastrophic in the prospective service area due to the islands' proximity to water.
10. The proposed utility is not in the public interest because it is in conflict with the County's Comprehensive Plan, which directs growth to areas that are desirable for development, and to limit it in areas that are not.
11. Installing central sewer in a sensitive ecosystem prone to hurricane and flood risks, is inviting a future environmental disaster.
12. In the absence of the need for service, it is not in the public interest to grant this certification.

Linda B. Cotherman additionally adopts the position taken by LGIPA regarding this topic.

STAFF: Staff has no position at this time.

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

EU: 8.67%, which is based upon Order No. 2024-0165-PAA-WS (Swain)

PIE: PIE specifically adopts the position taken by Linda B. Cotherman regarding this topic.

LGIPA: LGIPA adopts the position of Linda B. Cotherman on this issue.

COTHERMAN: As a prospective ratepayer, Linda B. Cotherman's position is that the installation of critical infrastructure should be implemented by either a governmental entity or a not-for-profit corporation. Therefore, there is no appropriate return on equity.

STAFF: Staff has no position at this time.

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

EU: Base Facility Charge: 5/8" x 3/4" \$109.29
[all other meter sizes to be increased pursuant to Rule 25-30.055(1)(b), F.A.C.]
Residential Gallonage Charge (10,000 cap) \$18.82
General Service Gallonage Charge \$22.59
(Swain)

PIE: PIE specifically adopts the position taken Linda B. Cotherman regarding this topic.

LGIPA: LGIPA adopts the position of Linda B. Cotherman on this issue.

COTHERMAN: Linda B. Cotherman's position is that the rate structures and rates cannot be analyzed accurately based in part on the following:

1. All of the costs related to the construction and installation have not yet been provided and documented. Knight and Don Pedro Islands are served by a private water utility, and neither the owner nor EU have provided documentation of any agreement relative to rates and charges for water use in the sewer proposal.
2. In chapter "8.1 AFFORDABILITY" of the SMP, Charlotte County establishes a formula for determining equitable monthly billing for utility customers. This affordability estimate identifies monthly payments of approximately \$113 for the sewer component of the bill as a reasonable ceiling. EU's base charge for sewer, regardless of usage, is \$109 per month. This approaches the maximum affordability level without any actual use.
3. The Bulk Sewer Treatment Agreement caps waste acceptance per household at 190 gallons per day. Charlotte County currently charges \$80.12 per month for 190 gallons per day. EU's proposal for the same gallonage is \$238.05. This is nearly double the average monthly combined water and sewer charges billed by CCU to residents directly across the water on the mainland in Rotonda West.

STAFF: Staff has no position at this time.

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

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

PIE: PIE specifically adopts the position taken Linda B. Cotherman regarding this topic.

LGIPA: LGIPA adopts the position of Linda B. Cotherman on this issue.

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

STAFF: Staff has no position at this time.

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

EU: Premises Visit \$30.00
Violation Reconnection Charge Actual Cost
Late Payment Fee \$7.50
Bad Check Charge Pursuant to §68.065, F. S.
(Swain)

PIE: PIE specifically adopts the position taken by Linda B. Cotherman regarding this topic.

LGIPA: LGIPA adopts the position of Linda B. Cotherman on this issue.

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

STAFF: Staff has no position at this time.

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

EU: Main Capacity Charge
Residential per ERC \$15,587.00
All others per gallon \$72.16
Sewer Lateral Installation Fee \$1,414.25
(Swain)

PIE: PIE specifically adopts the position taken by Linda B. Cotherman regarding this topic.

LGIPA: LGIPA adopts the position of Linda B. Cotherman on this issue.

COTHERMAN: Linda B. Cotherman’s position is that the service availability charges cannot be analyzed accurately because all of the estimates related to the construction and installation have not been consistent nor documented. The applicant’s service availability charges are presently materially different from the service availability charges provided in the initial application. The appropriate service availability charges should be identical to those charged by CCU to county residents on the mainland.

STAFF: Staff has no position at this time.

ISSUE 15: Should this docket be closed?

EU: Yes.

PIE: PIE's position on this issue is that, yes, the docket should be closed as Environmental Utilities has not established a need for service or that it is financially capable of and/or possesses the technical ability to operate the utility. It is expected that Ellen Hardgrove, AICP, Robert Robbins, Ph.D., and Amy McCully will give testimony on this topic. PIE specifically adopts the position taken by LGIPA and Linda B. Cotherman regarding this topic.

LGIPA: LGIPA's position is that the application should be denied and the docket should be closed. Teresa Weibley, Jadon Hull, and John Shaw are expected to testify regarding reasons why the application should be denied. Their testimony has been prefiled along with exhibits.

COTHERMAN: Yes. Linda B. Cotherman's position is that this docket should be closed based in part by the following:

1. It is not in the best interests of the potential ratepayers within the proposed service territory to be served by a private, for-profit new original wastewater utility company.
2. The ability to evaluate and challenge the application's content has been severely compromised by the continuing changes that have come forward since the submission. Many items are now materially different from the initial proposal, which remains deficient and inconsistent.
3. The estimated construction costs that the proposed rates and charges are based on have not been substantiated and are not inclusive of all of the potential costs of this proposal.
4. The application conflicts with Charlotte County's Comprehensive Plan, which would require a revision to accomplish this project. This would be a time-consuming process with no guarantee of approval.
5. The Florida Public Service Commission has previously ruled to deny certification of this service area to this applicant in Docket #2022-0032 SU, partially based on a lack of need for service and inconsistency with both the Charlotte County Comprehensive Plan and SMP. Nothing substantial has changed since that decision was made.

Linda B. Cotherman additionally adopts the position taken by PIE and LGIPA regarding this topic.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Dave Watson	EU	DW-1	County Resolution 2023-155 supporting Application
Dave Watson	EU	DW-2	Bulk Sewer Treatment Agreement
John R. Boyer	EU	JRB-1	Application and Exhibits
John R. Boyer	EU	JRB-2	Tariff Changes
John R. Boyer	EU	JRB-3	Aftermath of Hurricane Debbie Photos
Brian E. Lapointe, Ph.D.	EU	BEL-1	Environmental Report
Jonathan H. Cole, P.E.	EU	JHC-1	Technical Memorandum
Jonathan H. Cole, P.E.	EU	JHC-2	System Maps
Jonathan H. Cole, P.E.	EU	JHC-3	Legal Description
Jonathan H. Cole, P.E.	EU	JHC-4	Line Capacities
Deborah D. Swain	EU	DDS-1	Financial Schedules
Randy Bell	EU	RB-1	Schematic of Grinder Pump Installation
Randy Bell	EU	RB-2	Photos of Grinder Pump Installation
Randy Bell	EU	RB-3	Photos of Grinder Pumps After Installation
Ellen Hardgrove, AICP	PIE	EH-1	October 30, 2024 correspondence/opinion, with supporting exhibits as set forth in pre-filed testimony

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Robert J. Robbins, Ph.D.	PIE	RR-1	Analysis: “Science Does Not Support a Septic-to-Sewer Conversion on the Barrier Islands of Charlotte County, Florida” with attachments
Robert J. Robbins, Ph.D	PIE	RR-2	CV of Robert J. Robbins
Teresa T. Weibley	LGIPA	TTW-1	Little Gasparilla Island Preservation Alliance, Inc.’s Articles of Incorporation
Teresa T. Weibley	LGIPA	TTW-2	Bylaws of Little Gasparilla Island Preservation Alliance, Inc.
Jadon D. Hall, P.E.	LGIPA	JDH-1	Jadon D. Hull’s Resume
Jadon D. Hall, P.E.	LGIPA	JDH-2	Environmental Utilities Septic to LPS Sewer — Opinion of Probable Cost for September 2024 (spreadsheets and costing backup)
John Shaw	LGIPA	JS-1	John Shaw’s Curriculum Vitae
Linda B. Cotherman	Cotherman	LBC-1	Resume of Linda B. Cotherman
Linda B. Cotherman	Cotherman	LBC-2	History of Testimony of Linda B. Cotherman
Linda B. Cotherman	Cotherman	LBC-3	List of Discrepancies, Inaccuracies and Missing Information in the application by EU, LLC
Linda B. Cotherman	Cotherman	LBC-4	List of Other Issues and Concerns Regarding the Application by EU, LLC

<u>Rebuttal</u>			
John R. Boyer	EU	JRB-4	Responses to Cotherman
John R. Boyer	EU	JRB-5	Aftermath of Hurricane Milton Photos
John R. Boyer	EU	JRB-6	Department of Health Septic Tank Inspection Report
Brian E. Lapointe, Ph.D.	EU	BEL-2	Brewton et al Research Paper: Septic System-groundwater-surface water couplings in waterfront communities contribute to harmful algal blooms in Southwest Florida
Brian E. Lapointe, Ph.D.	EU	BEL-3	Tyre et al Research Paper: Widespread human waste pollution in surface waters observed throughout the urbanized, coastal communities of Lee County, Florida, USA
Brian E. Lapointe, Ph.D.	EU	BEL-4	Lapointe et al Research Paper: Fertilizer restrictions are not sufficient to mitigate nutrient pollution and harmful algal blooms in the Indian River Lagoon, Florida
Brian E. Lapointe, Ph.D.	EU	BEL-5	University of Florida Fertilizer Report
Brian E. Lapointe, Ph.D.	EU	BEL-6	Cabaco et al Research Paper: Effects of nutrient enrichment on seagrass population dynamics
Jonathan H. Cole, P.E.	EU	JHC-5	Response to Cotherman
Jonathan H. Cole, P.E.	EU	JHC-6	Addendum to Technical Report
Deborah D. Swain	EU	DDS-2	Revised Financial Schedules
Randy Bell	EU	RB-4	EPA New Homebuyer's Guide to Septic Systems

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 75 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 75 words, it must be reduced to no more than 75 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

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

XIV. RULINGS

Opening statements, if any, shall not exceed 5 minutes per party.

In its prehearing statement, PIE requested witness sequestration at the technical hearing and provided oral argument during the prehearing conference to support its request. The Florida Supreme Court has held that sequestration is entirely within the Commission's discretion.¹ However, it is atypical within Commission proceedings to exclude witnesses as all testimony and exhibits are prefiled and witnesses testifying before the Commission are frequently experts in their field. No facts specific to this case support the exclusion of witnesses. Therefore, PIE's request for witness sequestration is denied.

¹ *Florida Industrial Power Users Group v. Graham*, 209, So. 3d 1142, 1146 (Fla. 2017).

It is therefore,

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

By ORDER of Commissioner Gabriella Passidomo Smith, as Prehearing Officer, this 24th day of January, 2025.



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

MRT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

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