

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20200226-WS

**LINDA COTHERMAN'S MOTION TO DENY ENVIRONMENTAL UTILITIES, LLC'S
MOTION FOR PARTIAL SUMMARY FINAL ORDER DATED AUGUST 9th, 2021**

Linda Cotherman, Party of Record, hereby files this response to and Motion to Deny the Motion for Partial Summary Final Order filed by Environmental Utilities, LLC (EU) on August 9th, 2021 and in support states:

FACTS AND PROCEDURAL HISTORY

On October 13, 2020, EU filed an Application for a Wastewater Certificate for certain portions of Charlotte County. On March 8, 2021, EU filed an amendment to its Application to delete from the proposed service area the portion on the mainland, referred to as Cape Haze, leaving only the barrier islands as the proposed service area. On August 9th, 2021 EU filed a Motion for Partial Summary Final Order, requesting an acknowledgment that the PSC will accept and follow Charlotte County's Sewer Master Plan in determining the need for central wastewater service on the barrier islands.

Environmental Utilities, LLC's Motion for Partial Summary Final Order states "The threshold issue in a Certificate proceeding is need for service." However, per the Florida Administrative Code, there are several threshold issues for the Florida Public Service Commission to consider in a certificate proceeding.

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

ARGUMENT

Environmental Utilities, LLC (EU) makes the claim that the Charlotte County Sewer Master Plan (the Plan) contains certain evaluations and assertions that support EU's conclusion that the Plan states that septic systems in their proposed certificate area are having significant adverse environmental impacts and that the Plan recommends that they be connected to central

sewer by 2022. This interpretation by EU of the Sewer Master Plan is *not* “so crystallized that nothing remains but question of law”, and in fact requires careful and accurate study of the contents of the Plan.

The Plan was developed using the assumption that all septic systems in Charlotte County (the County) would be converted to central sewer, according to the Charlotte County Request For Proposal (RFP). The final Plan delivered to the county established an arbitrary rating system to justify and prioritize areas for the septic systems to central sewer conversion. The firm contracted for the report did none of their own testing or determinations if these areas were polluting the local waters. Instead, they based their findings on outdated data, sourced from outside organizations whose criteria cannot be verified.

In fact, the County continues to issue permits for septic systems in the proposed EU area.

The Plan analyzed project areas and rated them for environmental impact by using three criteria. The three criteria are as follows: 1. Proximity to water 2. Age of septic systems, and 3. Nitrogen loading. No data was provided to substantiate items 2 and 3.

Item 1. **Proximity to water:** Not in dispute.

Item 2. **Age of Septic Systems:** The Plan depicts the Barrier Islands as having an average age of septic tanks as between 26 and 40 years old. This was based on now outdated information. County records show that in fact many of the older, existing septic systems have been replaced or upgraded within the past 6 years. In addition, there has been new construction on these Islands which incorporate state of the art septic systems at great expense to the homeowners.

Item 3. **Nitrogen Loading:** What was provided in the Plan was an arbitrary rating system, which had neither testing data nor the attendant documentation from any location near the proposed service area. In the Plan, reference is made to data coming from other agencies, and “Researchers estimate” of nitrogen effluent loads were used.

There were 270 areas analyzed in the County. Of those, approximately 40 had the highest scores, making them a recommended priority for connection to central sewer. Using the rating system implementing the criteria cited above, the bridgeless barrier islands only had the highest priority score in one of the three items, that being proximity to water. (See Figures 4-3, 4-4, 4-5 in the Plan). Since an average was used, Figure 4-6 shows the barrier islands with the highest score. If Knight/Don Pedro Islands were not averaged with Little Gasparilla Islands as to age of tanks, and pertinent testing had been done, then this outcome would be quite different.

In addition, the sewer connection recommendations were specific **only to the two existing wastewater treatment plants** – Knight Island Utilities, Inc., referred to as “W2*” in the Plan, and Hideaway Bay Beach Club Condo (located on Little Gasparilla Island) wastewater treatment plant, referred to as “W5*” in the Plan – and did not reference any other sewer connections outside of these. (See connection route map Section 3.4.2.3, Figure 3-5, Knight Island Utilities (KIU) and Figure 3-3, Hideaway Bay Beach Club in the Plan). Figure 3-1 in the same section indicates “Potential Future Connections” as KIU and Hideaway Bay Beach Club wastewater treatment plants **and does not reference any individual connections**.

The remainder of the properties on the bridgeless barrier islands that are not serviced by these two wastewater treatment plants are already in Charlotte County Utilities' certificated area. (See Figure 2-1, and 6-2 in the Plan).

In the "Prioritization" section 3.5 of the Plan, Table 3-8 "Summary of Connection Options", Knight Island Utilities and Hideaway Bay Beach Club are both listed as priorities in the sequence of connection. The Plan also states that "The priority and sequencing of connecting utilities to the CCUD sewer systems *depend on the desire of the utility owner*[italics per editor] and the CCUD to connect their systems *and the cost associated* with connecting the systems" indicating that even these conversions are only for consideration, not mandatory.

Section 3.3.1 REGULATORY ISSUES states that "Table 3-2 summarizes the FDEP permits and the status of the utility systems considered for consolidation" and goes on to indicate that "All of the WWTP operating permits are active except for Knight Island Utilities WWTP. Knight Island Utilities WWTP is currently in negotiations over a bulk sewer service agreement with CCUD." Table 3-2 in this section again lists only Knight Island Utilities and Hideaway Bay Beach Club WWTPs. Knight Island Utilities has since been issued a bulk sewer service agreement with the County. Knight Island Utilities is also presently serving individual properties outside of their area, within the CCUD area and in the proposed EU area.

Based on the foregoing, there is a material dispute of fact and much to be considered beyond what EU has indicated in the Motion for Partial Summary Final Order. In sum, the Plan refers only to connecting the two existing wastewater treatment plants to CCUD. This connection was recommended to be considered within a 5-year time frame, but then only when the owners of those plants request connection to CCUD. The fact that EU's proposed service area is already in the CCUD certificated area should render the entire EU application void. (See Figure 2-1 and 6-2 of the Plan).

WHEREFORE, based on the facts and arguments set forth herein, for this and all of the reasons indicated above the PSC should deny the Motion for Partial Summary Order.

Respectfully submitted this 16th day of August, 2021, by:

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/s/ *Linda Cotherman*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail to the following parties this 16th day of August, 2021:

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