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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200226-SU

Application for certificate to
provide wastewater service in
Charlotte County, by
Environmental Utilities, LLC.

VOLUME 1

PAGES 1 - 120

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: COMMISSIONER GARY CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, February 8, 2022

TIME: Commenced: 10:00 a.m.
Concluded: 4:37 p.m.

PLACE: Robert L. Anderson
Administrative Center
Commission Chamber,
4000 South Tamiami Trail
Venice, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter

PREMIER REPORTING
112 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 APPEARANCES:

2 MARTIN S. FRIEDMAN, ESQUIRE, Dean Mead &
3 Dunbar, 5300 S. Atlantic Avenue, Apt. 12605, New Smyrna
4 Beach, Florida 32169; JOHN L. WHARTON and JORDANE WONG,
5 ESQUIRES, Dean Mead Law Firm, 106 E. College Avenue,
6 Suite 1200, Tallahassee, Florida 32301, appearing on
7 behalf of Environmental Utilities, LLC (EU).

8 RICHARD GENTRY, PUBLIC COUNSEL; ANASTACIA
9 PIRRELLO, ESQUIRE, OFFICE OF PUBLIC COUNSEL, c/o The
10 Florida Legislature, 111 West Madison Street, Room 812,
11 Tallahassee, Florida 32399-1400, appearing on behalf of
12 the Citizens of the State of Florida (OPC).

13 BRAD E. KELSKY, ESQUIRE, Kelsky Law Firm, 150
14 S. Pine Island Road, Suite 300, Plantation, Florida
15 33324, appearing on behalf of Palm Island Estates
16 Association, Inc. (PIE).

17 LINDA COTHERMAN, Post Office Box 881, Placida,
18 Florida 33946, Pro Se.

19 JENNIFER CRAWFORD and RYAN SANDY, ESQUIRES,
20 FPSC General Counsel's Office, 2540 Shumard Oak
21 Boulevard, Tallahassee, Florida 32399-0850, appearing on
22 behalf of the Florida Public Service Commission (Staff).

23

24

25

1 APPEARANCES (CONTINUED):

2 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE
3 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service
4 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
5 Florida 32399-0850, Advisor to the Florida Public
6 Service Commission.

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1 P R O C E E D I N G S

2 COMMISSIONER CLARK: All right. It is,
3 according to the clock on the back wall, 11
4 o'clock. The one on my commuter says 9:57. That
5 one says 10:01. So we are going to split the
6 difference and get started. How about that.

7 If it's good to see everyone this morning. I
8 want to thanking you all for being here today.
9 Just a couple of reminders before we begin this
10 morning.

11 If you have your cell phone, take it out,
12 double check it and make certain that it is on
13 silent or vibrate. We do not want to hear ringing
14 during the meeting. I am double checking mine
15 also. Mine will be the first one to ring. All
16 right. We are all off.

17 Let me introduce to you this morning the
18 fellow Commissioners on this panel. Myself, Gary
19 Clark, Commissioner La Rosa, Commissioner
20 Passidomo. We are the panel that will be hearing
21 this particular technical hearing this morning.

22 I would call the hearing to order, and I am
23 going to ask staff, if they would, to please read
24 the notice.

25 MR. SANDY: Pursuant to this time and place

1 has been set a hearing in Docket No. 20200226-SU
2 regarding the application for an original
3 certificate and rates for providing wastewater
4 services in Charlotte County through Environmental
5 Utilities, LLC. The purpose of this hearing is set
6 out more fully in the hearing notice.

7 COMMISSIONER CLARK: All right. Thank you
8 very much, Mr. Sandy.

9 We will now take appearances. We will begin
10 with Environmental Utilities.

11 MR. WHARTON: John Wharton and Marty Friedman,
12 with Dean Mead, Environmental Utilities.

13 COMMISSIONER CLARK: Thank you.

14 OPC.

15 MS. PIRRELLO: Anastacia Pirrello for the
16 Office of Public Counsel.

17 And, Commissioner, I would like to note that I
18 have been alerted that the broadcast is not
19 working.

20 COMMISSIONER CLARK: Okay.

21 THE CLERK: We are working on that.

22 COMMISSIONER CLARK: All right. Well, let's
23 take a couple of moments recess until we get -- we
24 are required by law to be broadcasting, so we will
25 make certain that that is fixed and up and running.

1 (Brief recess.)

2 COMMISSIONER CLARK: Just to advise everyone,
3 if we can't get the video running within the next
4 couple of minutes, we are going to go ahead and
5 proceed. We are not going to wait very long.

6 We do have the -- we are recording the
7 session, and we made every attempt possible to do a
8 broadcast. So my opinion, and the advice of
9 General Counsel, is that we have met our obligation
10 by attempting to do so, so we are not going to
11 delay very long this morning.

12 I would also just say, I realize there is a
13 lot of customers that are here today in the room as
14 well. Just a reminder for every one of the format
15 that we are going to be going through.

16 Most of today is dedicated to the technical
17 service hearing. That is where the parties that
18 are representing you, the customers and the
19 utilities, are going to be presenting the technical
20 evidence in the case to the Commission.

21 We have time reserved this afternoon
22 beginning, I believe, at 6:00 p.m. this evening and
23 9:30 tomorrow for customer testimony. I hope that
24 if you are planning to speak, or would like to
25 address the Commission, that you have signed up to

1 do so. I believe they -- you -- sign-up
2 opportunities see Kelly down front, she was raising
3 her hand, if you would like to address the
4 Commission either this evening at 6:00 or tomorrow
5 morning, please make sure that you have signed up
6 and registered to do so. We certainly want to hear
7 from everyone who has an interest in the case.

8 I don't think we had a whole lot of customers
9 signed up as of -- as of yesterday five, I believe.
10 So if you would like to address the Commission,
11 please sign up and plan to be here either tonight
12 at 6:00 p.m. or tomorrow at 9:30 a.m.

13 How were we looking, guys? Prognosis?

14 THE CLERK: We are not there yet.

15 COMMISSIONER CLARK: 50-50? Last shot. All
16 right, we will give you one shot at it.

17 (Discussion off the record.)

18 COMMISSIONER CLARK: All right. Thank you
19 very much. We are going to go ahead and roll.

20 Let's continue with taking appearances. Did
21 we get OPC? Did we get you, Anastacia?

22 MS. PIRRELLO: Yes, Mr. Chairman, but the
23 Office of Public Counsel would object to proceeding
24 without the live stream. The statute says that
25 each meeting shall be live-streamed on the

1 internet, so we would note that for the record.

2 COMMISSIONER CLARK: All right. We are
3 certainly giving it our best effort. Thank you
4 very much. Objection is noted.

5 All right. Palm Island Estates Association.

6 MR. KELSKY: Brad Kelsky on behalf of Kelsky
7 Law.

8 COMMISSIONER CLARK: All right. And Linda
9 Cotherman.

10 MS. COTHERMAN: Linda Cotherman, pro se.

11 COMMISSIONER CLARK: Thank you.

12 Staff.

13 MR. SANDY: My name is Ryan Sandy. And here
14 this morning with me is Ms. Jennifer Crawford.

15 COMMISSIONER CLARK: All right.

16 MS. HELTON: And Mary Anne Helton is here as
17 your Advisor. I would also like to enter an
18 appearance for your General Counsel, Keith Hetrick.

19 COMMISSIONER CLARK: All right. Did we cover
20 everyone?

21 All right. Let's move to preliminary matters.

22 MR. WHARTON: Mr. Chairman, hearing none, I
23 have one.

24 COMMISSIONER CLARK: We do have a couple.

25 Hang on one second, Mr. Wharton.

1 MR. WHARTON: Okay.

2 MR. SANDY: Mr. Commissioner, we note that Palm
3 Island witness Sheri Schultz has been stipulated to,
4 and she has been excused from these proceedings as
5 no Commissioners requested that she appear for
6 cross-examination. We recommend that her prefiled
7 testimony and exhibits are entered the record at the
8 scheduled moment when she would have appeared for
9 cross-examination.

10 COMMISSIONER CLARK: All right. Very good.

11 Mr. Wharton.

12 MR. FRIEDMAN: Mr. Chairman, if I might make
13 one comment. Our agreement to stipulate to that
14 testimony was conditioned upon an acknowledgment
15 that that witness had no expertise in utility
16 regulatory accounting. And my understanding is
17 that there is an agreement that there would be a
18 stipulation to that when her testimony is brought
19 in.

20 COMMISSIONER CLARK: Okay.

21 MR. KELSKY: That is correct.

22 COMMISSIONER CLARK: Okay. All parties are in
23 agreement. All right. Very good.

24 Is that all, Mr. Wharton?

25 MR. WHARTON: Mr. Chairman, there was a

1 deposition taken by PIE on many December 7th by
2 subpoena, and once those transcripts came out, we
3 noticed our intent to use that deposition. There
4 initially was an objection, or a lack of uniform
5 agreement; but ultimately we reached a point of
6 uniform agreement. That made its way into the
7 prehearing order, contemplated that that deposition
8 and the exhibits to that deposition could come into
9 the record. There is no objection.

10 I won't belabor its contents, but I will say
11 that this type of deposition, one that's done under
12 Rule 1.310(b)(6), is how you depose an entity. And
13 this was actually the deposition of Charlotte
14 County, and they could have put any body they
15 wanted in there.

16 So we are going to hand out these depositions
17 right now. I think there is no procedural reason
18 to wait until the end of our direct case. I,
19 myself, will be referring to them lightly in cross
20 a little bit.

21 COMMISSIONER CLARK: Okay.

22 MR. WHARTON: But Mr. Friedman is -- and I
23 have left one over here for the witness.

24 MS. CRAWFORD: And, Commissioner Clark,
25 perhaps for clarity of the record, if we could give

1 this deposition Exhibit No. 42 on the CEL.

2 MR. WHARTON: And we did one of the little
3 sheets on the front. It's just blank for what the
4 exhibit is.

5 COMMISSIONER CLARK: All right. We will mark
6 this as Exhibit No. 42 on the Comprehensive Exhibit
7 List.

8 (Whereupon, Exhibit No. 42 was marked for
9 identification.)

10 MS. CRAWFORD: And since the exhibit is
11 stipulated, I believe we could move it into the
12 record at this time if it's your desire to do so.

13 COMMISSIONER CLARK: Without, moved into the
14 record.

15 In light of OPC's earlier objection, I am
16 going to -- I have asked Ms. Helton to confer with
17 our General Counsel. I do want to get -- I want to
18 be on firm standing as to where we stand. I
19 understand the objection. I also understand we've
20 got a lot of folks that have put a lot of time and
21 effort to be here today, and I don't want to take
22 anything away from that.

23 So the importance of being transparent and
24 having a public hearing that is available for view
25 by the public is a very good thing, but I think the

1 general purpose of this function is best served by
2 the individuals that are here today. So I am going
3 to wait on this opinion for just a couple of
4 minutes and then I will get back to us in just a
5 minute. Thanks.

6 (Brief recess.)

7 COMMISSIONER CLARK: All right. Ms. Helton is
8 on her way back so we will go ahead and get
9 started.

10 Were there any other preliminary matters? No
11 other preliminary matters.

12 Okay. Let's move to exhibits.

13 Staff.

14 MR. SANDY: Yes, Mr. Commissioner. We have
15 compiled a Comprehensive Exhibit List, which
16 includes the prefiled exhibits attached to the
17 witnesses' testimony, which are Nos. 2 through 23,
18 as well as Staff's Exhibits Nos. 24 through 41.
19 The list has been provided to all the parties,
20 Commissioners, the court reporter.

21 We request that the Comprehensive Exhibit List
22 is marked for identification as Exhibit No. 1, and
23 that other exhibits are marked for identification
24 as set forth in the Comprehensive Exhibit List.

25 COMMISSIONER CLARK: All right. Without

1 objection, the exhibits are so marked.

2 (Whereupon, Exhibit Nos. 1 - 41 were marked
3 for identification.)

4 MR. SANDY: And at this time, we ask that the
5 Comprehensive Exhibit List, marked as Exhibit No.
6 1, is entered into the record.

7 COMMISSIONER CLARK: Exhibit No. 1 is entered.
8 (Whereupon, Exhibit No. 1 was received into
9 evidence.)

10 MR. SANDY: The prefiled exhibits will be
11 moved in at the conclusion of each witnesses'
12 cross-examination.

13 We would note, Mr. Commissioner, that the
14 parties have stipulated to the staff exhibits.
15 These are exhibit Nos. 24 through 41 on the
16 Comprehensive Exhibit List. We ask that Exhibits
17 24 through 41 are moved into the record as set
18 forth in the CEL.

19 COMMISSIONER CLARK: Do we want to modify that
20 to add number 42, or is that going to be entered
21 with a witness?

22 MS. CRAWFORD: 42 can go ahead and be added in
23 at this time as well.

24 COMMISSIONER CLARK: Will be added in now,
25 okay.

1 So we will modify that to include 24 through
2 42.

3 All parties had the opportunity to review the
4 exhibit list. Are there any objections?

5 Seeing no objections, Exhibits No. 24 through
6 42 are entered not record.

7 (Whereupon Exhibit Nos. 24-42 were received
8 into evidence.)

9 COMMISSIONER CLARK: All right. We will now
10 move on to opening statements.

11 Per the Prehearing Order, each of the parties
12 has agreed to five-minute limitation on your
13 opening statements. We've got a fairly short
14 hearing today. I am not going to set clocks and
15 beat you up too hard, but everybody stay within
16 your time constraints and I will stay happy all
17 day. How about that?

18 All right. Environmental Utilities, you may
19 begin.

20 MR. WHARTON: I have a map.

21 MS. PIRRELLO: Mr. Commissioner.

22 COMMISSIONER CLARK: Yes.

23 MS. PIRRELLO: I have been alerted that the
24 live stream is down again.

25 MS. CRAWFORD: Is this a demonstrative

1 exhibit, Mr. Wharton? Oh, it's from -- it's one of
2 the prefileds. Thank you.

3 MR. FRIEDMAN: That's correct. It's part
4 witness Cole's testimony.

5 MS. CRAWFORD: Thank you.

6 COMMISSIONER CLARK: Are we back up and
7 running still? Let's hold one second.

8 (Brief recess.)

9 COMMISSIONER CLARK: Ms. Helton. Do you have
10 -- I am going to ask for legal counsel's opinion
11 and probably operate off that.

12 MS. HELTON: Well, first, before I give an
13 opinion, if I could ask Ms. -- the counsel for OPC,
14 what do you suggest? We are all down here. We
15 spent a lot of money coming down here.

16 MS. PIRRELLO: I understand. I don't want to
17 be here all week anymore than anyone else does, but
18 I do think we should follow the letter of the law.
19 There are a lot of people who are interested in
20 this case and may be trying to watch it on-line.

21 MS. HELTON: Well, Mr. Chairman, I have
22 conferred with the General Counsel, and he is also
23 of the opinion, the same opinion as me, that he
24 suggests that we go forward with the proceeding.

25 We have made -- first of all, I am at a loss

1 as to whose due process rights are being affected.
2 All of the parties are here. We have customers, or
3 potential customers in the audience. We are -- the
4 video camera is working. We are taking a video.
5 The court reporter is here and transcribing the
6 hearing. If we get it back up and running, it will
7 be up and running for those that can watch. We are
8 down in the service area. Folks can come to the
9 hearing. We are scheduled to hear from customers
10 tonight and in the morning.

11 I really don't know what else we can do except
12 for wait for maybe the system to come back up and
13 running. And we spent a lot of time, effort, money
14 and energy to get to this point.

15 COMMISSIONER CLARK: Thank you, Ms. Helton.

16 All right. Commissioners, any questions or
17 comments?

18 Commissioner La Rosa.

19 COMMISSIONER LA ROSA: Thank you, Chairman.

20 You know, the video is going to ultimately be
21 recorded, and I am assuming will be on our website
22 relatively quickly, with enough time that if there
23 is something needed to be said at a service hearing
24 later today or tomorrow, it could be done. I kind
25 of pose that question, how long it will take for

1 the video to be uploaded on our website?

2 THE CLERK: Well, we are showing that it's
3 recording. So we are assuming that's accurate. It
4 is recording. It will available a couple hours
5 after we complete, is that usually the upload time?

6 STAFF: Yes.

7 THE CLERK: Yes, I would say about two hours
8 or so after we finish, it will be available on the
9 website.

10 COMMISSIONER LA ROSA: And, you know, with
11 that said, being that it will be uploaded in case
12 you couldn't be heard, uploaded quickly on our
13 website, I am okay if you are comfortable with
14 proceeding.

15 COMMISSIONER PASSIDOMO: I am additional okay.

16 COMMISSIONER CLARK: All right. With that in
17 mind, we are going to proceed.

18 Any other comments from any of the parties
19 before we move? All right. Seeing no other
20 objections.

21 All right. Let's move to stipulated issues.
22 Mr. Sandy.

23 MR. SANDY: Yes, sir. Other than the --

24 COMMISSIONER CLARK: Oh, I am sorry. We
25 didn't do opening statements. Y'all want to skip

1 those or do y'all want to go back and do them? My
2 bad.

3 All right. Environmental Utilities, you are
4 recognized.

5 MR. FRIEDMAN: Let me jump to another issue
6 that I forgot to mention, that is we do have the
7 affidavits of mailing and affidavits of publication
8 of the Notice of Hearing. And I didn't know,
9 Jennifer, Ryan, how y'all wanted to handle that.
10 Do you want me to add it to Mr. Boyer's testimony?
11 Do you want to stipulate the exhibits? I got 20
12 copies here. What's your preference? I don't
13 remember what we did last time, frankly.

14 MS. CRAWFORD: We have also introduced those
15 at the time of the service hearing, since they
16 really do pertain to the presence of prospective
17 customers. Perhaps we could take it up as one of
18 the exhibits at the service hearing.

19 COMMISSIONER CLARK: All right.

20 MR. FRIEDMAN: Okay. Thank you.

21 COMMISSIONER CLARK: All right. Thanks.

22 MR. FRIEDMAN: Commissioners, to give some
23 perspective, I have handed out a map which is
24 exhibit to Mr. Cole's testimony. And if you will
25 look at the map, you will see that the proposed

1 service area, other than the area in the middle,
2 which is a state park, the rest of the islands are
3 already densely platted, and virtually all of the
4 lots are adjacent to a water body, or close
5 proximity.

6 There is testimony from the witnesses from one
7 of the protesting parties that the soils consist of
8 fine sands that are, seasonally, high water table
9 is only 20 to 30 inches below grade. Another
10 witness for one of the protesting parties states
11 that the sea levels are rising, which will give a
12 rise in the water table. And as amazing as it
13 sounds, under the state septic tank inspection
14 laws, a drain field can be located in the water
15 table and not be considered a system failure
16 requiring repairs.

17 In 2017, the County prepared a Master Sewer
18 Plan and identified the islands as a priority area
19 of conversion to septic -- to central sewer within
20 five years. The County commissioned multiple
21 studies demonstrated the positive impacts of septic
22 to sewer conversion on nutrient concentration in
23 groundwater as well as the rate and direction of
24 groundwater flow near septic tanks to surface water
25 bodies.

1 It is the County's position that extending
2 central sewer service to the islands is in keeping
3 with the County's goal of reducing the impact of
4 pollutants on the natural environment and
5 preserving groundwater quality.

6 However, the County's Comprehensive Plan
7 doesn't allow the County to provide central sewer
8 to the islands; but what the County is able to do
9 is enter into a bulk service agreement with a
10 private utility such as Environmental Utilities.
11 And the Board of County Commissioners, pursuant to
12 that, adopted a bulk service agreement identifying
13 the need for service on the islands.

14 The need for service -- central water service
15 on the islands is consistent with the Comprehensive
16 Plan and the Master Sewer Plan, and the County is
17 100 percent behind the project.

18 Environmental Utilities has made a prima facie
19 showing it has the financial resources to fund the
20 conversion from septic to sewer. Until the utility
21 is actually -- has a certificate, it's not able to
22 finalize funding options, as you might imagine.
23 And ultimately, it may be better to use -- right
24 now the application is based upon 100 percent
25 equity because that's all that we can assure that

1 we have at this point in time, is 100 percent
2 equity financing. The utility obviously will
3 consider other options that may be more favorable
4 to lower rates, such as borrowing money, grants,
5 low interest rate loans, but they can't do any of
6 that until they get a certificate.

7 The utility also has the technical ability to
8 operate this utility. Keep in mind that the
9 utility consists only of a collection system. The
10 wastewater is being treated on the mainland by
11 Charlotte County.

12 Mr. Boyer has operated a PSC regulated water
13 utility on the island since 1987. He was
14 originally certificated by this commission in 2001.
15 And in that order, the order -- that order granting
16 the certificate found that there had been no
17 material financial or operational problems in the
18 14 years that Mr. Boyer operated the utility.

19 When Charlotte County took back jurisdiction,
20 it also certificated that utility with Mr. Boyer as
21 the owner. And then again in 2013, when Charlotte
22 County gave the jurisdiction back to the Commission
23 again, this commission again granted a certificate
24 to that utility with Mr. Boyer as the owner. Thus,
25 it should be without question that Mr. Boyer has

1 got the financial ability -- I mean, the technical
2 ability to own and operate a utility company.
3 Obviously, he is not going to be the guy that goes
4 out there and operates the plant. You know, but he
5 knows how to run a utility company.

6 In summary, the evidence will show there is a
7 need for a central wastewater system on the
8 islands. Environmental Utilities' financial and
9 technical ability to meet that need is
10 unquestioned, leading to the inescapable conclusion
11 that it's in the public interest to grant the
12 certificate to Environmental Utilities.

13 Thank you.

14 COMMISSIONER CLARK: Thank you, Mr. Friedman.
15 Ms. Pirrello.

16 MS. PIRRELLO: Good morning, Commissioners.
17 Anastacia Pirrello representing the Office of
18 Public Counsel.

19 As you know, the purpose of our office is to
20 represent the interests of ratepayers by ensuring
21 that the rates set by this commission are fair,
22 just and reasonable. We are present today to ask
23 whether the Commission can reasonably know the
24 rates set will be fair, just or reasonable given
25 that the utility has failed to provide sufficient

1 evidence to support estimates, answered questions
2 about costs inconsistently and miscalculated
3 certain elements of the rates.

4 The Commission should make the decision of
5 whether to grant the certificate with an accurate
6 picture of the rates that will be put in place.
7 However, the utility's testimony and exhibits do
8 not provide that. At this point, it is not clear
9 to the Public Counsel that you are being presented
10 a complete or accurate picture, and we hope that
11 you will take that into account in your decision.

12 Thank you.

13 COMMISSIONER CLARK: Thank you, Ms. Pirrello.
14 Palm Island.

15 MR. KELSKY: Good morning. Brad Kelsky on
16 behalf of Palm Island Estates Association, Inc.

17 Thank you, Commissioners, for allowing Palm
18 Island Estates Association, Inc., the opportunity
19 to participate in these proceedings.

20 As the evidence and testimony will show, there
21 is a lack of competent, substantial evidence to
22 support the fining that Environmental Utilities,
23 LLC, has established a need for service, or the
24 financial wherewithal to construct the service and
25 the technical ability to maintain the proposed

1 utility service. Rule 25-30.033(1)(k) of the
2 Florida Administrative Code, which sets forth the
3 criteria to establish a need for service, has not
4 been satisfied by Environmental Utilities, LLC.

5 Per the expected testimony, Environmental
6 Utilities has zero request for service from
7 property owners or developers in areas not
8 currently served. The proposed service area will
9 most certainly require revision to the Charlotte
10 County Comprehensive Plan. The application is
11 silent on the steps taken, and to be taken, to
12 facilitate those changes, and ignores landuse
13 restrictions, including environmental restrictions
14 imposed by the governmental authorities. In other
15 words, neither the application nor the evidence and
16 testimony will meet the criteria for need of
17 service.

18 Per the testimony of Ellen Hardgrove, AICP, a
19 certified planner, she will establish that there is
20 a demonstrable lack of need for sewer service based
21 upon the Charlotte County Comprehensive Plan, which
22 specifically prohibits the installation of sewers
23 on the bridgeless barrier islands, where the
24 proposed certificated area is located.

25 She will also explain the interplay between

1 the other elements of the Comprehensive Plan, and
2 how the policies, goals and objectives of the plan
3 limit infrastructure on the bridgeless barrier
4 islands.

5 Dr. Robert Weisberg, an expert, will testify
6 that red tide and algae blooms -- will testify,
7 excuse me, that such conditions have more to do
8 with water dynamics than they do with any type of
9 chemical release claimed to exist by Environmental
10 Utilities, which, by the way, no testing has been
11 done, or caused to be done, in and around the
12 bridgeless barrier islands.

13 In addition to the fact that Environmental
14 Utilities has not shown the existence of any
15 noxious chemicals from the septic systems in the
16 proposed area, as the testimony will show,
17 Environmental Utilities extrapolated data from
18 other portions of the county to apply to the
19 bridgeless barrier islands, but has no independent
20 data to confirm any clear or convincing need for
21 sewer service in the proposed certificated area.

22 From the testimony of Shari Schultz, whose
23 testimony has been stipulated, she will establish
24 that Environmental Utilities lacks the financial
25 wherewithal to construct and operate the proposed

1 utility because Environmental Utilities will not be
2 able to service the debt associated with the
3 construction.

4 Stephen Suggs, a professional engineer, will
5 testify that the proposed wastewater systems
6 considered by Environmental Utilities do not take
7 into account significant costs that were omitted in
8 the analysis, and that the true cost of materials
9 have greatly increased over time, such that an
10 accurate representation of the project's
11 construction has not been fully quantified. This
12 is important because the proposed financing of the
13 project is lacking in so much detail that
14 Environmental Utilities has not and cannot
15 establish that it is capable of constructing this
16 project.

17 You heard some opening statements relative to
18 the sewer master plan. You will not hear any
19 testimony from anybody about the sewer master plan.
20 You will not hear any testimony from the County
21 about testing done in and around the proposed
22 certificated area. And this is a rehash of what
23 happened in 2002, when this same gentleman sought
24 to utility the certificated area, and it was
25 determined that a Comprehensive Plan was needed and

1 the application was withdrawn.

2 So in all, the application should be denied
3 and the docket should be closed.

4 Thank you.

5 COMMISSIONER CLARK: All right. Thank you
6 very much.

7 Ms. Cotherman.

8 MS. COTHERMAN: Good morning. My name is
9 Linda Cotherman. I have been around the island for
10 about 45 years. I am a pro se litigant in this
11 hearing. 20 years ago, I was also a pro se
12 litigant in a virtually identical proceeding before
13 the PSC. I believe now, as I did then, that this
14 proposal is an expensive solution to a problem that
15 doesn't exist.

16 In 2002, the owner/operator of the present
17 Environmental Utilities, EU, partnered with the
18 developers of Palm Island Resort and Useppa Island
19 Resort to incorporate a company called Island
20 Environmental Utilities.

21 They applied for certification of Don Pedro
22 and Knight Island for central sewer. After nearly
23 two years they withdrew their application. The
24 applicants had not provided evidence to
25 substantiate the basic PSC requirements of need for

1 service, technical expertise and financial ability.
2 And that can be found in the staff's original PSC
3 review of issues.

4 With today's application, the conditions
5 remain the name. The application by EU contains
6 very few details of supporting the need for
7 service. Instead, the applicant relies on the
8 Charlotte county sewer master plan. However, the
9 master plan is a flawed study which is now being
10 updated. It contains multiple discrepancies and
11 inaccuracies relative to the bridgeless barrier
12 islands.

13 For example, the sewer master plan contains
14 the incorrect identification of the names of these
15 islands and where they are located. The estimates
16 of the age of the septic systems on these islands
17 was based on data that is now very outdated.

18 The only areas that was contemplated for
19 connection to sewers on the bridgeless barrier
20 islands were the two private wastewater treatment
21 plants. They were proposed for central sewer
22 collection within the five-year portion the sewer
23 master plan, but only at the request of the
24 utility's owners. There has been no water quality
25 testing data provided specific to the proposed

1 service area to show pollution in the adjacent
2 waters.

3 The sewer master plan was initiated to protect
4 the waters of Charlotte Harbor, the Peace River and
5 the Mayaka River. None of these are adjacent to
6 the proposed service area. Furthermore, Charlotte
7 County continues to permit septic systems for new
8 construction on the islands.

9 Most importantly, the proposed service area is
10 not in compliance with the Charlotte County
11 Comprehensive Plan. Back in 2004, the Charlotte
12 County then Assistant Attorney Janette Nolton, who
13 is the Attorney now in Charlotte County, said in
14 her prehearing statement, the provisions of central
15 wastewater services is not consistent with the
16 current Comprehensive Plan, which limits utility
17 services to areas within the urban service area.
18 Today, the proposed service area remains outside of
19 the urban service area, just as it did 20 years
20 ago, and remains in the rural service area.

21 In my experience, it appears that the
22 estimated connection fees do not reflect all of the
23 expenses for this project. And if it's -- if the
24 certificate is approved and the applicant does go
25 ahead with the project, the applicant would need to

1 return to the Commissioners for a rate increase.
2 And there are numerous expenses to the prospective
3 ratepayers above and beyond the connection costs.

4 In summary, EU has not provided sufficient
5 evidence showing need for service in the proposed
6 area, or evidence that the existing septic tanks
7 are not providing adequate service. The rates and
8 tariffs estimates do not adequately reflect the
9 real world cost of completing this project.
10 Neither the applicant, nor its principals, have the
11 technical experience or experience in wastewater
12 system installation and management. No feasibility
13 study has been submitted, which would conform to
14 industry standards for the development of a project
15 over this scope. And reports to the DEP reveal
16 sewer spills occurring daily throughout the state.

17 In conclusion, implementing this expensive
18 central sewer system with its potential negative
19 impact carries greater risk than the speculative
20 pollution cautioned by on-site existing septic
21 systems.

22 Thank you.

23 COMMISSIONER CLARK: All right. Thank you
24 very much.

25 Next item is stipulated issues. Mr. Sandy.

1 MS. CRAWFORD: Actually, I will be covering
2 this one, sir.

3 COMMISSIONER CLARK: Oh.

4 MS. CRAWFORD: Sorry.

5 We note that we've already talked about the
6 stipulation of Palm Island witness Schultz. We've
7 entered Exhibit 42, which is the deposition
8 transcript that everybody was willing to stipulate
9 to.

10 Staff also notes that the two other items that
11 all parties have agreed to stipulate to, they are
12 sizable. They are double-sided. One is the Master
13 Sewer Plan, which is here double-sided. The other
14 is the County Comp Plan, again double-sided.

15 Rather than require parties to bring 20 full
16 copies of this, what we would propose is have these
17 marked, the Comp Plan as item 43 on the exhibit
18 list, Charlotte County Comp Plan. Master Sewer
19 Plan would be 44, unless I am off.

20 COMMISSIONER CLARK: Correct.

21 (Whereupon, Exhibit Nos. 43-44 were marked for
22 identification.)

23 MS. CRAWFORD: And we would propose that the
24 complete copies that the staff has made be entered
25 into the record as those exhibits. We are happy to

1 provide the court reporter the complete copies if
2 they needs them at the end of the hearing. They
3 will be available to any party to look at if they
4 want to review the full and complete copy.
5 However, I suspect a number of us will have
6 excerpts from these items, and I thought it better
7 to go ahead and have the full copies in the record,
8 and then people can use excerpts. And if we need
9 to identify them, we can, but I think it's just
10 simply to refer to these as the complete exhibit
11 when we are doing briefs and post-hearing rec.

12 COMMISSIONER CLARK: Agreed. Are all parties
13 in agreement? Ms. Pirrello.

14 MS. PIRRELLO: No objection to the exhibits,
15 but the Office of Public Counsel would request a
16 recess to allow staff to work on the live stream.

17 COMMISSIONER CLARK: Do we have hopes of
18 getting it fixed?

19 THE CLERK: They are working on it now. They
20 are doing everything they can.

21 COMMISSIONER CLARK: Yeah, we are going to
22 keep proceeding.

23 Any objections? All right. So entered.

24 (Whereupon, Exhibit Nos. 43-44 were received
25 into evidence.)

1 MS. CRAWFORD: Thank you, sir.

2 COMMISSIONER CLARK: All right. Next up we
3 are going to begin witness testimony. I would like
4 to swear all the witnesses in before we begin.

5 If you are going to be testifying today, would
6 you please stand and raise your right hand and
7 repeat after me?

8 (Whereupon, witnesses were sworn by
9 Commissioner Clark.)

10 COMMISSIONER CLARK: Thank you. Consider
11 yourself sworn.

12 All right. I believe Mr. Friedman, you are
13 up.

14 MR. FRIEDMAN: Thank you, Commissioner.

15 Environmental Utilities would first call John
16 Boyer.

17 Whereupon,

18 JOHN R. BOYER

19 was called as a witness, having been first duly sworn to
20 speak the truth, the whole truth, and nothing but the
21 truth, was examined and testified as follows:

22 EXAMINATION

23 BY MR. FRIEDMAN:

24 Q Mr. Boyer, you were sworn, were you not?

25 A Yes, sir.

1 Q And, Mr. Boyer, did you cause to be prepared
2 prefiled testimony in this case, and Exhibits 1 through
3 9?

4 A Yes, sir.

5 Q And if I asked you the questions in your
6 prefiled exhibit would your answers be the same?

7 A Yes, sir.

8 Q I mean your prefiled testimony. I am sorry.
9 Do you have any changes or corrections to your
10 prefiled testimony?

11 A The only one was the number, Marty, on the 930
12 where we subtracted --

13 Q Would you explain that to the Commission?

14 A Yes, sir. The original deal we have 1,245
15 potential ERCs, and we had included Hideaway Beach Club
16 in that number, and we had to subtract Hideaway Beach
17 Club and Placida Harbor, which were on a package
18 treatment facility as not being in the service area. So
19 that was minus 138, which took us down to the 810 plus
20 16 per year, and the growth took us up to our original
21 860 ERCs when we are ready to connect.

22 MR. FRIEDMAN: I would like to ask that Mr.
23 Boyer's testimony be inserted into the record as
24 though read.

25 COMMISSIONER CLARK: So ordered.

1 (Whereupon, prefiled direct testimony of John
2 R. Boyer was inserted.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket NO. 20200226-SU

DIRECT TESTIMONY

OF

JOHN R. BOYER

on behalf of

Environmental Utilities, LLC

1 **Q. Please state your, name profession and address.**

2 A. My legal name is John R. Boyer, but I generally am known as Jack Boyer. I am the president
3 of Environmental Utilities, Inc. My business address is 7025 Placida Rd, Placida Fl 34224.

4 **Q. State briefly your educational background and experience.**

5 A. I have two years of college at McNeese State University before joining the U.S. Navy. I
6 served in the Navy in nuclear submarines with an honorable discharge. I served my community
7 in Texas as a city councilman for 6 years overseeing the municipal utilities. I owned and
8 operated two service stations for 10 years before becoming a licensed water plant operator.

9 I have operated and managed three water utilities and then purchased one of those utilities,
10 Little Gasparilla Water Utility, and have owned and operated the utility for the past 33 years.

11 **Q. Have you previously appeared and presented testimony before any regulatory bodies?**

12 A. Not in a formal proceeding. I have appeared before the Commission and the Charlotte County
13 Commission in connection with staff assisted rate cases.

14 **Q. On whose behalf are you presenting this testimony?**

15 A. I am presenting this testimony and appearing on behalf of Environmental Utilities, LLC (EU),
16 the applicant for a wastewater certificate in the present docket.

17 **Q. What is the purpose of your direct testimony?**

18 A. The purpose of my direct testimony is to present the Application and Exhibits to it.

19 **Q. Are you sponsoring any exhibits?**

20 A. Yes, I am sponsoring two exhibits. Exhibit JRB-1 which is the Application, and Exhibit JRB-
21 2 is the Tariff.

22 **Q. Was these Exhibits prepared by you or under your supervision and control?**

23 A. Yes they were.

24 **Q. Is the information in Part I true and correct?**

25 A. Yes, although I would point out that although the Utility is a limited liability company it is

1 taxed as a corporation.

2 **Q. Is the information in Part II A) true and correct?**

3 A. Yes, it is.

4 **Q. Is the information in Part II B) true and correct?**

5 A. Yes, it is.

6 **Q. Is the information in Part II C) true and correct?**

7 A. Yes, it is.

8 **Q. Is the information in Part II D) true and correct?**

9 A. Yes, except with the deletion of the Cape Haze area from the Application the total potential
10 ERC's are 1,248 and the existing ERC's are 950. I would also point out that in the Bulk
11 Sewer Treatment Agreement which is Exhibit E to the Application the Charlotte County
12 Commissioners recognize the environmental importance of removing septic tanks from the
13 barrier islands. I am aware of the argument of one of the objecting parties that removing
14 septic tanks from the barrier islands is contrary to the Charlotte County Comprehensive Plan.
15 If the Charlotte County Commission believed that to be so then it would not have entered into
16 the Bulk Sewer Treatment Agreement. The County Commissioners obviously believe that
17 the environmental concerns expressed in the Sewer Master Plan, which was adopted
18 subsequent to the Comprehensive Plan, are of primary importance. Also, with the objections
19 delaying the granting of a Certificate, the Utility would anticipate beginning service around
20 the last quarter of 2023.

21 **Q. Is the information in Part II E) true and correct?**

22 A. Yes, except that the legal description and maps include the Cape Haze development on the
23 mainland which the Utility has removed from its requested service area. The technical parts
24 of the response were provide by Giffels-Webster Engineers, Inc. in its Technical
25 Memorandum that is being sponsored by Mr. Cole of that engineering firm.

1 **Q. Is the information in Part II F) true and correct?**

2 A. Since the filing of the Application, the Utility has prepared a Tariff which utilizes the
3 approved Tariff form and incorporating the rates and charges as determined by Ms. Swain.

4 **Q. Is the information in Part II G) true and correct?**

5 A. Since the Commission denied the Utility's request to bifurcate the ratemaking function, the
6 Utility has prepared the accounting information which is being sponsored by Ms. Swain.

7 **Q. Is the information in Part II H) true and correct?**

8 A. Yes, the Utility has provided the notices in accordance with the requirements and filed proof
9 of such notices in the Docket.

10 **Q. Does that conclude your direct testimony?**

11 A. Yes, it does.

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1 BY MR. FRIEDMAN:

2 Q Mr. Boyer, do you have a summary, brief
3 summary of your testimony?

4 A Yes, sir. I did that about four o'clock this
5 morning when the dog woke me up.

6 Commissioners, you already know who I am and
7 why I am here, and our county has stepped out many times
8 in moving forward. They have reserved water capacity
9 for the county to grow. They have constructed the
10 sewer. The Commissioners have been very forward on
11 that. And they have also stepped out in an
12 environmental aspect to protect our number one resource,
13 and that being Charlotte Harbor and our fishing
14 community that we have there. The septic to sewer
15 conversion is part of it. It's part of what they have
16 done as far as the Master Sewer Plan.

17 In their camp plan, we've had water from
18 Charlotte County for many years, okay; which if it were
19 an issue, it would have been brought up at that time.
20 And we have water running two different ways to the
21 island, Bocilla Utilities and Little Gasparilla, one
22 with Englewood Water District, which is to the north,
23 and then Charlotte County, which is the primary feared
24 field err out there.

25 The need -- I have lived on the island not

1 quite as long as Linda. We have been out there about 35
2 years. We left for about five years when my mom got
3 sick, and my mother-in-law, but we've seen the
4 transformation, the change and the growth. When we were
5 first living there, there weren't 15 families. We were
6 blessed to raise our family out there, but we have
7 definitely seen the change over the many years.

8 We moved back to Little Gasparilla Island, the
9 south end of island. The island has many different
10 names, but it's still just one island and it's all
11 connected. We moved to Little Gasparilla about seven
12 years ago to work on this interconnect project and
13 expand the rest of the water lines down there and go to
14 remote read meters versus the older outdated meters that
15 we had had.

16 And down there, it started out as fishing
17 camps. It was the center of the lake -- Lakeland area,
18 Winter Park, and that was their fishing camps. And, you
19 know, it's grown from the fishing camps to the -- to a
20 resort, basically, to a high rental area. 65 percent of
21 the homes on Little Gasparilla are rentals, okay. And I
22 can't tell you out there, there is a little over 100 or
23 on the north end on Palm Island, not including Palm
24 Island Resort. So it's time to get this under control
25 and move forward.

1 A Yes, sir.

2 Q And in that application, you identified the
3 use as compact growth mixed use, didn't you?

4 A The one -- I didn't follow that. I apologize.

5 Q I said: At the time you filled out that
6 application, you identified the certificate -- proposed
7 certificated area as compact growth mixed use, is that
8 correct?

9 A If that's the term. I just located the
10 geographic location.

11 Q In fact, isn't the correct use the coastal
12 residential and preservation?

13 A That's your words. Not mine. I am not
14 following you there. I located the geographic location
15 as the island, and the need.

16 Q All right. Would you agree the islands are
17 within the rural service area?

18 A They are outside the urban service area. They
19 are in the rural. Yes, sir.

20 Q Okay. And do you agree that the Comp Plan,
21 specifically the Coastal Element 3.2.7, and the Future
22 Landuse Appendix 1, prohibits expanding the scope of
23 sanitary sewer service to the bridgeless barrier
24 islands?

25 A No, sir. It stops the County from doing it,

1 but in the Master Sewer Plan, it very well spills out --
2 or spells out that private utilities will be the ones
3 responsible, with the exception of Knight Island
4 Utilities and potentially Hideaway Beach.

5 Q Have you heard of the BIOD, the Barrier Island
6 Overlay District?

7 A Yes, sir.

8 Q And you are familiar with what it is?

9 A Not really.

10 Q Do you understand that within the FLU
11 appendix, it states, quote, "the County shall not expand
12 the scope of potable water or sanitary service sewer
13 service to the bridgeless barrier islands"?

14 A I have heard that repeatedly, yes, sir.

15 Q Okay. And isn't it true that the Sewer Master
16 Plan in which you relied upon does not include the
17 conversion of the septic tanks in the bridgeless barrier
18 islands in the list of five-, 10- or 15-year priorities?

19 A Please repeat that.

20 Q Sure. Isn't it true that the Sewer Master
21 Plan does not include the conversion of the septic tanks
22 on the bridgeless barrier islands in the list of five-,
23 10- or 15-year priorities?

24 A No, sir. It had it on a five-year plan. And
25 I will refer back to Mr. Rudy's testimony, where it was

1 always planned for private utilities to do that, and
2 they wanted to get it done as quick as possible.

3 **Q Doesn't the Sewer Master Plan refer to the**
4 **protection of the Mayaka River, the Charlotte Harbor and**
5 **the Peace River?**

6 A That is one section of it that it refers to,
7 yes, sir.

8 **Q And it doesn't mention Lemon Bay, does it?**

9 A It shows the diagrams in the pictures, and it
10 does refer to it when it redlined all the islands and
11 put it on the 4.5- to 5.0-year scope that it was part of
12 the study.

13 **Q Let's change topics for a little bit.**

14 **In the application, you attached a letter from**
15 **Centennial Bank indicating that possibly they would make**
16 **loans to you if EU is issued a certificate of**
17 **authorization, correct?**

18 A Correct, sir.

19 **Q Have you abandoned the prospect of seeking**
20 **financing from Centennial Bank?**

21 A No, sir.

22 **Q The reason I ask is that you subsequently**
23 **attached a financing letter from Freedom Holdings**
24 **Manatee, LLC, is that correct?**

25 A Yes, sir.

1 Q And per the letter that you attached, they
2 indicated they would lend up to 75 percent of the
3 proforma appraised value of the utility, true?

4 A Yes, sir.

5 Q Nobody has appraised the value of the utility,
6 correct?

7 A No, sir.

8 Q That's not correct?

9 A I have not appraised the value. We have not
10 had an appraised value of the utility. No, sir.

11 Q Okay. Freedom Holdings Manatee, LLC, has not
12 provided you with any indication about what the
13 appraised value of the utility would be, true?

14 A No, sir.

15 Q So as you sit here today, it's a pure guess as
16 to what financing EU could secure in order to complete
17 construction, correct?

18 A No, sir. You get a pretty good probability
19 when you have been in the utility business for 35 years,
20 and we've done many expansions, so you have a pretty
21 good guess as to the cost. I have done business with
22 this holding company before.

23 Q Your membership interest in EU has not been
24 appraised, correct?

25 A No, sir.

1 **Q You have received no loan terms as of yet from**
2 **Freedom Holdings Manatee, LLC, correct?**

3 A I have not received anything for Environmental
4 Utilities. No, sir.

5 **Q You don't know the interest rate that will be**
6 **charged, do you?**

7 A No, sir.

8 **Q You don't know the estimated cost of debt**
9 **servicing that will be incurred by EU on a monthly**
10 **basis, do you?**

11 A Yes, we have a pretty good estimation of what
12 it will be, and that's all in part of our financials,
13 which Ms. Swain will address.

14 **Q Because EU has not received a certificate of**
15 **authorization, it is not grant eligible, correct?**

16 A We are not eligible until we get a
17 certificated service area. Everything else is on the
18 sideline.

19 **Q And it has not secured financing, true?**

20 A No, sir. It's a proposal from an investment
21 company saying that we would like to do your project.

22 **Q If the undetermined sum of funds from Freedom**
23 **Holdings Manatee, LLC, and any potential grants do not**
24 **meet the capital requirements for construction, EU will**
25 **be unable to meet the cost of construction, correct?**

1 A No, sir. That's your words. I am saying that
2 our team has put together the financial projections of
3 what it will take to put the utility up and running, and
4 if the rates are granted, I believe we can do it.

5 Q Any money loaned to you by Freedom Holdings
6 Manatee, LLC, will be secured by you and your wife's
7 membership interest in the utility, correct?

8 A Yes, sir.

9 Q And it's fair to say that you and your wife
10 are the sole 50 percent owners of the company, correct?

11 A Yes, sir.

12 Q And would you agree that this loan structure
13 creates a personal money security interest under Article
14 9 of the Uniform Commercial Code?

15 A I apologize, I don't know what that is.

16 Q Well, in other words, if you default on the
17 security interest, then Freedom Holdings Manatee could
18 wind up taking over your interest, correct?

19 A I think that's what collateral means.

20 Q And that would mean that the utility could
21 wind up being owned by somebody not in the utility
22 business, correct?

23 A That could happen with a bank as well, or the
24 State of Florida, if you go through the Revolving Fund.

25 Q You have made loans to the business, correct?

1 A Yes, sir.

2 Q There is no agreement about how EU is going to
3 repay those loans, are there?

4 A No, sir, not presently.

5 Q You may have to bring in an equity partner,
6 correct?

7 A Anything is possible. At this point in time,
8 no, sir.

9 Q Did you talk with Mr. Cole about the source of
10 his pricing for the conduits, the pipes, that is?

11 A Yes, sir.

12 Q You know he took that data from other
13 projects, don't you?

14 A Yes, sir.

15 Q Do you know when those bids for projects were
16 made?

17 A No, sir.

18 Q You would agree with me that the cost of
19 construction has increased significantly over even the
20 past year, right?

21 A I would -- I rely on my team, on John Cole,
22 and, yes, petroleum products have gone up, but I still
23 feel comfortable with where the numbers are.

24 Q And obviously, the greater to cost of
25 construction, the more you are going to have to borrow,

1 correct?

2 A Not necessarily.

3 Q How is that not necessary -- not necessarily?

4 A It just depends on the time and the way it's
5 developed out.

6 Q Is it fair to say that EU's basis for the need
7 of service arises out of the Sewer Master Plan created
8 by Charlotte County?

9 A Yes, sir, and obvious observations.

10 Q And no one on behalf of EU is going to call as
11 a witness the author of the Sewer Master Plan, correct?

12 A Nobody is going -- one more time.

13 Q Sure. I apologize if I asked it poorly. But
14 no one on your side is going to testify about the Sewer
15 Master Plan as an author, correct?

16 A No, sir.

17 Q To justify the need for service, you wrote in
18 your application that algae blooms and red tides were
19 conclusively established as a byproduct of the use of at
20 the septic tanks, is that correct?

21 A Yes, sir.

22 Q Are you aware right now that the Charlotte
23 County Sewer Master Plan Study is under review?

24 A This morning I heard that.

25 Q So you are not a comprehensive planner, are

1 **you?**

2 A No, sir.

3 **Q You don't hold yourself out as an expert on**
4 **planning, do you?**

5 A No, sir.

6 **Q Now, you are a resident of the bridgeless**
7 **barrier islands, correct?**

8 A Yes, sir.

9 **Q And when we talk about those island, we are**
10 **talking about Don Pedro, Knight Island and Thornton Key,**
11 **correct?**

12 A And Little Gasparilla.

13 **Q There is no such thing as Palm Island, is**
14 **there?**

15 A Palm and Knight are the same thing.

16 **Q As part of the application process, you had to**
17 **determine whether a Comprehensive Plan amendment would**
18 **be necessary, correct?**

19 A No, sir.

20 **Q I am not correct?**

21 A No, sir.

22 **Q How am I incorrect?**

23 A I didn't have to determine that. The County
24 entered into a bulk sewer agreement after they entered
25 into a bulk water agreement, and I am assuming that

1 their attorneys advised them.

2 Q In 2003, you sought a certificate of
3 authorization from the Public Service Commission,
4 correct?

5 A Yes, sir.

6 Q At that time, you were advised by the
7 Department of Communities Affairs that a comp plan
8 amendment was needed, correct?

9 A I don't recall that. Marty might recall that,
10 but I don't recall that. We withdrew our application
11 later on for other reasons.

12 Q What policies in the comp plan have changed
13 since 2002 that would cause you to have the opinion that
14 no comp plan amendment was needed?

15 A I can't say that, other than listening to the
16 testimony of Craig Rudy, which I listened in on, and he
17 said it was all clean and rosy, and nothing needed to be
18 changed.

19 Q Are you familiar with the Future Landuse
20 policy 3.2.4, which prohibits the provision of sewer
21 infrastructure outside the urban service area?

22 A I believe what you are saying, sir.

23 Q Okay. Do you believe that the exception to
24 this is when there is clear and convincing evidence that
25 a health problem exists in a built but unserved area for

1 **which there is no other feasible solution?**

2 A I hear you reading the statement. I don't
3 understand the question.

4 **Q Okay.**

5 A Do I believe that?

6 **Q Do you know what exceptions exist to the FLU**
7 **policy 3.2.4 regarding when there can be a sewer -- a**
8 **septic to sewer conversion in the --**

9 A Yes, sir. I believe there should be, as far
10 as the Master Sewer Plan. And I believe being proactive
11 instead of waiting until it is an emergency that you are
12 better off.

13 **Q So there has been no water quality testing on**
14 **Don Pedro Island, true?**

15 A Not that I know of, sir, other than the --

16 **Q And there has been no water quality testing on**
17 **Knight Island, correct?**

18 A No, sir, that I know of.

19 **Q There has been no water quality testing on**
20 **Thornton Key, correct?**

21 A No, sir.

22 **Q You don't even know the last time the water**
23 **quality was tested, correct?**

24 A No, sir.

25 **Q You have no data to support the proposition**

1 **that there is any degraded water quality on the**
2 **bridgeless barrier islands, do you?**

3 A The Master Sewer Plan is what I go with, and
4 the studies that took place in the Keys, the St. Johns
5 Rivers, the after testing, Charlotte County has even had
6 very positive results on their testing where they've
7 gone from septic to sewer.

8 Q **So you are extrapolating data from other areas**
9 **to apply to the bridgeless barrier islands.**

10 A If you don't include the whole state of
11 Florida, it's sort of common sense to include at least
12 Charlotte County.

13 Q **Right. But you are taking areas way outside**
14 **of Charlotte County and saying that they are applicable**
15 **to the bridgeless barrier islands, true?**

16 A No, sir. What I am saying is I started
17 attending DEP and Florida Rural Water Association's
18 meetings looking into grants, and it was very aware that
19 they were moving forward with the septic to sewer
20 conversion throughout the state of Florida, and that
21 they have been very successful, and the test results
22 have been showing so.

23 Q **And none of these people that you are**
24 **referring to are testifying today, are they?**

25 A No, sir.

1 **Q And no one from Charlotte County's utilities**
2 **is testing today, correct?**

3 A No, sir, not to my knowledge.

4 **Q Now, in terms of the total number of ERCs, did**
5 **I hear you correctly that there are 860?**

6 A That's after the three years of growth, when
7 the customer will be notified that service is available
8 to are 12 months prior.

9 **Q And how many of those ERCs are vacant lots?**

10 A That's not -- that's 100 percent of the lots
11 that are built on. There is 1,245 potential ERCs upon
12 build-out, so the 810 existing homes -- and these
13 numbers were of course 12 months ago, and I think we've
14 already had the 16 growth this year on the two islands,
15 so that's where we are. So the projection is to tie
16 together with Ms. Swain's numbers.

17 **Q And how many of those homes are occupied on a**
18 **year-round basis?**

19 A Probably not 30 of them. They generally turn
20 into rentals, especially on the south end.

21 **Q And how many weeks of the year are those**
22 **rentals occupied?**

23 A It's gotten more and more. We can go to the
24 bulk water purchases for Bocilla Utilities and Little
25 Gasparilla Island, and they have increased rapidly every

1 year. Little Gasparilla used to be off just for fishing
2 season, but it's got to where we are around except for
3 probably November and December.

4 **Q And you are not offering any evidence or**
5 **documents that show any increase in water usage,**
6 **correct?**

7 A I have not offered anything, but our numbers
8 are based off of actual usages, but I have not shown the
9 three or four years of progression. You could go to the
10 hotel/motel tax and it breaks it down on geographic
11 location from West County, and I think we're at the
12 highest percentage of around 18 percent.

13 **Q And your giving me those numbers for Little**
14 **Gasparilla Island, correct?**

15 A The numbers for Little Gasparilla in the
16 hotel/motel tax are combined with the very north end of
17 Boca Grande because it's part of Charlotte County, but
18 they are substantial numbers.

19 **Q But that doesn't include Don Pedro and Knight**
20 **Island, correct?**

21 A They are broke out separate by themselves, so
22 you can see that actual number. I do not have that
23 information with me.

24 **Q And it's your position it is irrelevant what**
25 **the Comp Plan says because you entered into the bulk**

1 **wastewater treatment agreement with Environmental**
2 **Utilities?**

3 A Again, I am relying on the County Attorney and
4 the Commissioners that signed the agreement, and the
5 support that they've shown in moving forward with
6 Environmental Utilities.

7 Q **And none of them are testifying today,**
8 **correct?**

9 A No, sir, not to my knowledge; other than the
10 testimony that you allowed to go with Craig Rudy for
11 Charlotte County.

12 Q **Thank you, sir. Those are the questions I**
13 **have.**

14 A Thank you, sir.

15 COMMISSIONER CLARK: Ms. Cotherman.

16 EXAMINATION

17 BY MS. COTHERMAN:

18 Q **Hello, Mr. Boyer.**

19 A Hello, Ms. Linda.

20 Q **Yes. I was wondering what kind of system are**
21 **you going -- are you proposing to use?**

22 A Well, we -- what you have seen, the
23 preliminary engineering report and the engineering
24 financial, it goes to a low pressure system.

25 Q **And what kind of a low pressure system?**

1 A That is still to be permitted, and I will let
2 John answer those questions.

3 **Q So without knowing what kind of the system --**
4 **would you agree that there is two kinds of low pressure**
5 **system?**

6 A Yes, ma'am. There is one to grinder that
7 takes everything, and there is another one that takes
8 just the effluent --

9 **Q Correct.**

10 A -- and we are sort of going with the Charlotte
11 County contract that we have so that we are abiding by
12 the same type of construction that they do.

13 **Q So if you say you are sort of going with the**
14 **effluent one but you haven't decided between the**
15 **effluent and the grinder system, how can you accurately**
16 **determine the costs of those systems?**

17 A We have, and we are going with the effluent
18 system because would your contract with Charlotte County
19 Utilities specifically says that they have approval of
20 our design. So if eventually the County were to ever
21 come in and buy out the utilities, we would have the
22 same type of equipment and facilities that they have.

23 **Q So there is a possibility that if something**
24 **happens, Charlotte County would have to come back in and**
25 **buy your utilities --**

1 A One more time.

2 Q -- some circumstance?

3 A I am sorry.

4 Q Did you just say that if Charlotte County had
5 to come back and buy up the utility, that's why you were
6 using the evidence effluent system?

7 A No, ma'am. In our contract, it basically says
8 that we are going to build to Charlotte County
9 standards. And the DEP standards, of course, supersede
10 everything. We have to meet those obligations, okay?

11 But when we did it, we are going with the
12 similar system that they put in El Jobean, which is an
13 evidence effluent system.

14 Q Okay.

15 A It just makes sense that if you are going to
16 be in the same county, if I need to go borrow a part, or
17 if it's not in our facility, there you go.

18 Q But if Charlotte County had to come and buy
19 out the utility in the future, as they have done for
20 other private profit utilities in the county, then the
21 customers would be paying double?

22 A No, ma'am. I -- again, I don't know how to
23 answer that. You know, it's -- yes, I would love to see
24 the County come buy out every utility out there and
25 combine them all, but that's not obviously going to

1 happen.

2 Q Okay. You mentioned rentals in Palm Island
3 Resort?

4 A Not necessarily Palm Island Resort. I am
5 talking about the rentals outside homes that are rent
6 that are seasonal homes, okay, or weekend homes, and
7 there is quite a few of them.

8 Q On which islands are you speaking?

9 A Knight Island and Don Pedro Island.

10 Q So just to be clear, when you talk about Palm
11 Island, what island -- what area are you talking about?

12 A Well, from the colony all the way up to the
13 resort, there as variety of rentals. You know that.

14 Q No, the term Palm Island.

15 A Is Knight Island. I am not talking Palm
16 Island Resort. They are not even in the applied for the
17 can he service area.

18 Q Okay. In your tariff, it you talked about
19 easements that were necessary because the equipment you
20 are going to be using will be installed near the
21 existing septic tanks, and so they will be -- the
22 facilities you are installing will be on customers'
23 property, and you will be required to have an easement
24 from the pump or chamber, including the line to the road
25 right-of-ways where road right-of-ways exist?

1 A Yes, ma'am, just like Charlotte County.

2 **Q But these are new easements that you have to**
3 **create, is that correct?**

4 A Yes, sir.

5 **Q And will you be compensating the customers for**
6 **these easements and encumbering -- that encumber their**
7 **property?**

8 A That's yet -- I don't know that that's -- I
9 don't know the answer to that.

10 **Q Okay. Have you compensated people on Little**
11 **Gasparilla when you needed easements across their**
12 **property?**

13 A Yes, ma'am.

14 **Q And what were some of the costs of those**
15 **easements that you paid to people?**

16 A The majority of people donated them, okay, so
17 that their neighbor could get water, but there are
18 probably five that I had to pay for, and one and that we
19 had to go toward an eminent domain. We had an
20 appraisal, and the actual property came out to about
21 \$500 for a 10-foot strip 100 feet long, the only one
22 that we took the full legal route.

23 **Q Okay. One that you paid \$7,000 for?**

24 A One. Yes, ma'am.

25 **Q And there is one you paid \$5,000 for?**

1 A I don't know that one.

2 Q **And there is one you paid \$1,000 for?**

3 A Yes, ma'am.

4 Q **Okay. So are those -- any of those prices**
5 **considered if you have to pay for easements again --**

6 A No, ma'am --

7 Q **-- for wastewater?**

8 A -- those are a different type of easement,
9 Linda. Those are the ones that were north/south, where
10 we only had access -- we had to have that access to go
11 through to go through to our mainlines, okay.

12 Here, the law, from what I understand, in 381
13 and also the County ordinances says once the property
14 is -- once it is adjacent to your property, okay, then
15 you have to connect. Now, how do we get to have to
16 connect after that is -- are we going to work together?
17 Are you really going to try to drive the prices up on
18 860 customers and pay them \$1,000 each, so now we want
19 to raise it another \$800,000 to \$1 million?

20 Q **But that could happen?**

21 A No, ma'am. If it did, it would have -- then
22 it would have to go back to each customer would have to
23 pay that. And why would you want to do that?

24 Q **I am saying, you don't -- okay, I will just**
25 **stop that question -- well --**

1 **So you don't plan -- you haven't planned the**
2 **costs of any eminent domain cases, or paying any of the**
3 **800 and some people for an easement on their private**
4 **property?**

5 A Yes, ma'am. We put \$250,000 in the easement
6 category, okay.

7 **Q Is it -- is that -- it also included the**
8 **survey that's necessary for each of those easements?**

9 A No, ma'am. The surveying is totally separate.

10 **Q And what line item -- do you know where that**
11 **is, line item?**

12 A I would have to ask Ms. Debbie.

13 **Q Okay.**

14 A But it's in there. And then the engineering,
15 I think, is approximately 10 percent of the overall
16 budget cost.

17 **Q So you said you relied on Craig Rudy for**
18 **guidance when you were doing the bulk water agreement?**

19 A He was one of the many that reviewed
20 agreements. Yes, ma'am.

21 **Q Okay.**

22 A He was the -- he picked it up after his
23 previous, or his predecessor was there.

24 **Q And you are relying on him as not going**
25 **against the Comp Plan, that everything is fine with the**

1 **Comp Plan?**

2 A Yes, ma'am. And he was sitting with the
3 County Attorney there in the deposition, so I have no
4 reason to question him.

5 Q Okay. When you say the County Attorney, that
6 was just during the deposition when he was questioned?

7 A Yes, ma'am.

8 Q Okay. So do you remember in his deposition
9 that he had said, prior to coming to Charlotte County he
10 had no wastewater experience?

11 A No, ma'am. He was Navel Intelligence, and
12 basically did systems. And there is not much difference
13 in the system that -- the way electricity is
14 transmitted, or water is transmitted, or wastewater is
15 collected, he was very good at what he did.

16 Q But he had no wastewater utility experience?

17 A He was not a wastewater licensed person. He
18 was a manager.

19 Q Okay. And then did he -- in the deposition,
20 did he say he had only looked at the Comprehensive Plan
21 and the Master Sewer Plan for a couple of hours in
22 preparation for the deposition?

23 A Linda, I would have to have his deposition in
24 front of me to recall exactly what he said, but --

25 Q Okay. And is it true that you stated you

1 would not know the total cost of the project until it
2 was completed?

3 A Repeat, please.

4 Q Is it true that you have said you would not
5 know -- in a deposition -- that you would not know the
6 entire cost of the project until it was completed?

7 A No, ma'am. We are very confident that the
8 rate structure that we are asking for, that we have
9 applied for, that we can operate and install on those
10 projected numbers.

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

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

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

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

1 Q Okay. Do you realize that FPL was out on Don
2 Pedro Island recently and could not do --

3 MR. FRIEDMAN: Objection. She's testifying to
4 something that's not in the record.

5 MS. COTHERMAN: I am sorry.

6 COMMISSIONER CLARK: Just phrase it in the
7 form of a question, Ms. Cotherman.

8 MS. COTHERMAN: Okay.

9 BY MS. COTHERMAN:

10 Q Are you familiar that FPL was out to Don Pedro
11 Island recently?

12 A No, ma'am.

13 Q Okay. Were you aware that -- were you aware
14 that when FPL was out there, that they could not
15 directional bore the --

16 COMMISSIONER CLARK: Ms. Cotherman, he has
17 answered the question. He is not familiar with FPL
18 being on-site.

19 MS. COTHERMAN: Okay. I'm sorry. Okay.

20 BY MS. COTHERMAN:

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

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

24 Q Okay. I think that's all I have. Thank you.

25 Oh, I have -- I am sorry, I have one more question.

1 **In your service area, you have Yacht Basin**
2 **Drive and Lemon Bay Lane?**

3 A Yes, ma'am.

4 **Q And do you know how the houses there are**
5 **presently -- what kind of a system are they on?**

6 A They are on a low pressure system down Lemon
7 Bay Lane, which is part of the application -- the area
8 that we've applied for, and they will be disconnected
9 from Knight Island Utilities and connected to
10 Environmental Utilities.

11 **Q And will they pay the same connection fees?**

12 A Again, yet to be determined, but yes, ma'am.

13 MS. COTHERMAN: Okay. And that's all. Thank
14 you.

15 COMMISSIONER CLARK: All right. Thank you,
16 Ms. Cotherman.

17 Staff?

18 MR. SANDY: Yes, sir.

19 EXAMINATION

20 BY MR. SANDY:

21 **Q Mr. Boyer, you said earlier that you have**
22 **operated a wastewater utility for 32 years, is that**
23 **correct?**

24 A No, sir. I operated water utilities, okay. I
25 have owned Little Gasparilla. I was -- I am a licensed

1 operator, and I operated Bocilla Utilities, Knight
2 Island Utilities and Little Gasparilla Utilities.

3 Now, at Knight Island Utilities, it had a
4 wastewater treatment facility, and the same thing with
5 Hideaway Beach Club when I was a participant or owner
6 down there, and I worked underneath another gentleman as
7 a journeyman --

8 Q Okay.

9 A -- that did the day-to-day operations, that
10 made a one-day-a-week appearance.

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

16 A Somewhat, yes, sir.

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

19 A Very lay person.

20 Q Okay.

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

23 Q Understood.

24 Are you familiar with any Florida laws or
25 rules that mandate construction and installation of a

1 central sewer system in the proposed service area that
2 we are having a conversation about this morning?

3 A No, sir, I do not.

4 Q Okay. Are you familiar with any state
5 agencies, like the Department of Environmental
6 Protection or the Public Service Commission, that are
7 mandating installation of a central sewer system in the
8 proposed service area through order or through some
9 other means?

10 A No, sir, I do not.

11 Q Okay. Has Charlotte County, themselves,
12 required or mandated construction and installation of a
13 central sewer system in the proposed service area?

14 A No, sir.

15 Q Okay. Is it accurate to say that they are
16 still certifying and allowing septic systems on the
17 island in the proposed service area?

18 A Yes, sir, they are.

19 Q There was some conversation earlier on the
20 Comprehensive Plan, the Sewer Master Plan and a bulk
21 service agreement, and I just want to clarify a few
22 things for the record if I can.

23 You would agree with me that the Charlotte
24 County 2050 Comprehensive Plan is not the same thing as
25 the Sewer Master Plan as laid out in the exhibit list,

1 correct?

2 A Yes, sir.

3 Q Okay. They don't exactly contain all the same
4 information, isn't that accurate?

5 A I agree, sir.

6 Q Okay. And the bulk sewer treatment agreement
7 that you have entered into with Charlotte County is not
8 a part of either the Comprehensive Plan or the Sewer
9 Master Plan, is it?

10 A It's -- no, sir, it's an independent contract.

11 Q Okay. So it's not handled the same way as
12 either of those plans, is it?

13 A Well, yes, sir, it is, because the attorney
14 that sits on staff with the Commissioners as they make
15 this decision to enter into it, they make sure, just
16 like this lady right here, makes sure that they are
17 within their legal means. And so I would assume the
18 County Attorney would make sure that they are in
19 cooperation with the 2050 and the Master Sewer Plan.

20 Q Let me rephrase my question.

21 Is the bulk sewer treatment agreement that you
22 have entered into with Charlotte County located anywhere
23 in the Comprehensive Plan?

24 A It would not have been part of it, but I would
25 assume that it addresses that they have the ability to.

1 No, sir. Again, that's probably over my paygrade.

2 Q Okay. And I will clarify a little bit more on
3 my next question.

4 If I were to look in the exhibit that Ms.
5 Crawford referenced earlier this morning, is it located
6 anywhere in the Sewer Master Plan?

7 A You mean that they can enter into bulk sewer
8 agreements with any private utility?

9 Q I am asking if it is an appendix or, in any
10 way, a part of the Sewer Master Plan, or is it its own
11 item?

12 A It is in the Sewer Master Plan. It states
13 that the development of wastewater for utilities on the
14 bridgeless barrier islands will be done by private
15 utilities, with the exception of Knight Island Utilities
16 and Hideaway Beach Club.

17 Q Okay. I will move on.

18 Is it fair to say that, if certified, EU will
19 not be providing its own water that will be used in the
20 sewer system in question?

21 A It will be a contiguous system. Yes, sir.

22 Q Okay.

23 A And, no, we will not be a dual utility. We
24 will not be providing water and wastewater.

25 Q Okay. Is it accurate that the water that will

1 **be used in the system will be coming from Charlotte**
2 **County?**

3 A Well, it will be coming from two utilities,
4 Englewood Water District, which takes care of Bocilla
5 Utilities, which feeds Knight Island, Don Pedro and also
6 Palm Island, as a matter of fact, but it's -- then
7 Little Gasparilla is provided by Charlotte County
8 Utilities.

9 Q Okay. You would agree with me that wastewater
10 is billed according to usage, isn't it?

11 A Yes, sir.

12 Q Okay. My question, then, is what mechanisms
13 have you got in play -- what mechanisms would you
14 propose for calculating water usage among all the ERCs
15 in question in the proposed service area?

16 A As many utilities do, they contract with the
17 existing water utility, and I think we have budgeted \$2
18 per ERC per month in billing, so that they would
19 actually do the billing for us, and that's -- if we have
20 do it ourself that's possible too, but it's more
21 expensive. This is a cost savings that goes on to the
22 customer.

23 Q Now, will there be any costs associated with
24 receiving that information?

25 A I am sorry, I didn't follow you, Mr. Sandy.

1 **Q Are there any costs or extraneous fees**
2 **associated with your working relationship with them for**
3 **accessing that information?**

4 A Again, I have relied on Ms. Swain, our expert
5 in this area. And this is done on a regular basis, and
6 it's generally done for the \$2 or less per ERC.

7 MR. SANDY: Okay. No further questions at
8 this time, Mr. Commissioner.

9 COMMISSIONER CLARK: All right.
10 Commissioners, questions?

11 Commissioner La Rosa.

12 COMMISSIONER LA ROSA: Thank you, Chairman.

13 Mr. Boyer, you mentioned withdrawing your
14 previous application. Can you clarify, is there
15 any issues that, for the purpose of why you
16 withdrew previously, that would affect your
17 application currently?

18 THE WITNESS: No, sir. We had withdrawn that
19 application. It was -- really, it was three
20 different utilities. It was Bocilla Utilities,
21 Knight Island Utilities and Little Gasparilla that
22 had made that application with the intention
23 pursuing wastewater. We were hoping that the
24 County would step up and buy us out at that time,
25 and when the County chose not to support us in that

1 action, we knew it was a -- wouldn't work.

2 COMMISSIONER LA ROSA: Okay. You have also
3 made reference to estimating costs. Have you
4 reconsidered any costs, let's say, in the last 18
5 to 24 months?

6 THE WITNESS: No, sir, not from our original
7 budget numbers. And those are right at less than a
8 year. I believe they are about a year old.

9 COMMISSIONER LA ROSA: Okay. In your opinion,
10 have costs increased at all -- I am sorry, I am
11 referring to construction costs for infrastructure.
12 Have construction costs increased, in your opinion,
13 in the last 12 months?

14 THE WITNESS: It would -- that's a good guess,
15 but, yes, sir, they go up and they go down.
16 Petroleum prices right now have definitely gone up,
17 and high density polypropylene pipe, I am sure, has
18 gone up considerably, but I still feel comfortable
19 with the numbers that we have budgeted.

20 COMMISSIONER LA ROSA: Okay. Excellent.

21 Thank you, I am good, Mr. Chairman.

22 COMMISSIONER CLARK: Commissioner, anything?

23 All right. That concludes the Commissioners'
24 requests.

25 Environmental Utilities.

1 MR. FRIEDMAN: Yes. Thank you, Mr. Chairman.

2 FURTHER EXAMINATION

3 BY MR. FRIEDMAN:

4 Q Commissioner La Rosa asked you a question
5 about the difference between 2002 application and this
6 one. In the 2002 application, was the -- did the County
7 support the application?

8 A No, sir.

9 Q All right. And does the County support the
10 current application?

11 A Yes, sir.

12 Q Someone asked you about whether they were
13 still -- I think it was Mr. Sandy asked you whether the
14 County was still granting septic tank permits; do you
15 recall that?

16 A Yes, sir.

17 Q And are you familiar with that process out
18 there?

19 A Somewhat. Yes, sir.

20 Q All right. Did you, in fact, yourself, get a
21 septic tank permit?

22 A Yes, sir, just recently we bought a house that
23 we were going to do, flip it on. We ended up moving in
24 it. And the house had a septic tank that was under
25 water at high tide and we didn't have to change it, but

1 we did, we went and got a permit and put a new one in.

2 Q And do you recall whether that permit had any
3 specific language in it about having to connect to
4 central sewer once it became available?

5 A Yes, sir, and I did research on that. Every
6 permit that's been done in the last 20 years refers to
7 Section 38-381, and it says, once wastewater is
8 available, that it is mandatory that you connect, and
9 that's a statewide.

10 Q You were also asked about the process of
11 negotiating the bulk service agreement, and I believe
12 that the comment was that you did that with Mr. Rudy --

13 A Yes, sir. He was one, and the County
14 Attorney --

15 Q -- do you remember that question?

16 A -- yes, sir.

17 Q And at the time of negotiating that, you did
18 state that there was a County Attorney that was
19 involved?

20 A Yes, sir.

21 Q And do you recall Marilyn Miller?

22 A Oh, yes, sir.

23 Q And was she a County Attorney that handled
24 utilities at that time?

25 A Yes, sir. A good lady.

1 Q Did that bulk service agreement go before the
2 County Commission itself to be adopted?

3 A Yes, sir. The bulk -- that was the bulk water
4 agreement, Marty, that Marty Burton did, and then it was
5 the bulk sewer agreement that went through with Craig
6 Rudy and them, I believe. I don't think she had
7 anything to do with --

8 Q I didn't say Burton. I said Marilyn Miller.

9 A Yes, Marilyn Miller. I apologize.

10 Q You are going too far back.

11 A I'm too far back. I apologize.

12 Q So am I correct that it's your testimony that
13 it wasn't just Mr. Rudy that made a determination as to
14 whether the bulk service agreement was consistent with
15 the Comp Plan?

16 A Yes, sir.

17 Q You were asked about the overlay, the island
18 overlay. Do you recall those questions?

19 A Yes, sir.

20 Q And counsel said that it prohibited central
21 wastewater on the islands?

22 A Yes, sir.

23 Q All right. And did the overlay also prohibit
24 central water on the island?

25 A Yes, sir.

1 **Q And to your knowledge, are there any central**
2 **water systems on the island?**

3 A Yes, sir, two, which we both get our water
4 from. One from Englewood Water District, Bocilla, and
5 Little Gasparilla Water gets it from Charlotte County.

6 **Q And, in fact, are there any other wastewater**
7 **utilities on the island?**

8 A Only the two package plants, which is Knight
9 Island Utilities and Hideaway Beach Club, which also
10 includes Placida Harbor.

11 **Q So there is already two wastewater utilities**
12 **on the island?**

13 A Yes, sir.

14 **Q They are just not regulated by this**
15 **commission, is that true, is that your understanding?**

16 A Yes, sir.

17 **Q Now, counsel asked you a lot of questions**
18 **about financing. Are you able to secure a firm**
19 **commitment for financing without a PSC certificate?**

20 A No, sir.

21 **Q Has the County indicated to you that it**
22 **believes that EU providing central sewer to the islands**
23 **is consistent with the Comprehensive Plan?**

24 A Yes, sir.

25 **Q Is it your under -- some questions were asked**

1 of you about the cost of the project and the operating
2 expenses. Do you recall those questions?

3 A Yes, sir.

4 Q Is it your understanding that the PSC
5 certification process requires that you make your best
6 estimate based upon professional advice as to what those
7 charges and rates are going to be?

8 A Absolutely. Yes, sir.

9 Q But you do acknowledge that you don't know
10 exactly what they are going to be until after it's
11 constructed, is that correct?

12 A Yes, sir.

13 MR. FRIEDMAN: Nothing further.

14 COMMISSIONER CLARK: All right. Would you
15 like to move your exhibits?

16 MR. FRIEDMAN: Okay. Exhibits 1 through 9, I
17 believe. No, Exhibits 1 and -- on the exhibit
18 list, they are Exhibits 2 and 3 are his direct. I
19 move those into the record.

20 COMMISSIONER CLARK: Without objection so
21 ordered.

22 (Whereupon, Exhibit Nos. 2-3 were received
23 into evidence.)

24 COMMISSIONER CLARK: All right. Would you
25 like to excuse your witness?

1 MR. FRIEDMAN: You beat me to it. Yes,
2 please, excuse this witness.

3 COMMISSIONER CLARK: All right. The witness
4 is excused.

5 (Witness excused.)

6 COMMISSIONER CLARK: All right. Before we
7 call the next witness, we are going to take a
8 five-minute recess.

9 My plan is to break for lunch at 12:30. We
10 will take about a one-hour break at 12:30 for
11 lunch, but we will take a five-minute recess.

12 (Brief recess.)

13 COMMISSIONER CLARK: For the record. We are
14 back up and running with live stream. It is -- we
15 are having some -- the problem has been some
16 connection issues with the County system. Just for
17 everyone to understand, our staff came down over
18 two months ago, installed our system, worked on it
19 and made sure that everything worked properly. It
20 did, and so we were confident when we got here
21 today everything he would work perfect. They came
22 in yesterday and got everything hooked up. So
23 we -- apparently there has been some changes in
24 settings that the County has done that has probably
25 prohibited us from being on-line.

1 Our staff has been on-line with the vendor who
2 provides software trying to make certain that they
3 understand what is going on. We are making every
4 effort possible to get this resolved. It is
5 currently resolved, so I hope we are going to be
6 able to be on-line for the rest of the day and for
7 the customer service hearings tonight.

8 Just an added note. We are going to stop at
9 5:30 this evening. We are going to give ourselves
10 about a -- if we are still proceeding, maybe you
11 guys want to stipulate everything and will be done
12 in 30 minutes. Assuming that doesn't happen, we
13 are going to run until about 5:30. We are going to
14 take a 30-minute break to give staff time to change
15 over and set up for the customer service hearings
16 that begin at 6:00.

17 So if we have to continue into tomorrow for
18 technical service hearings, those will end up
19 immediately behind the 9:30 customer service
20 hearings in the morning. So I just want to make
21 sure everybody knows where we stand.

22 We are going try to get through this witness,
23 this next witness if it takes a little past 12:30,
24 that's fine. I am not hard set on a 12:30 stop
25 time. My stomach is on central time, so I have got

1 a little bit longer than you guys do, but by about
2 1:00 I am going to be ready to eat something.

3 So we will conclude with those remarks and you
4 may call your next witness, Mr. Friedman.

5 MR. WHARTON: We would call Jonathan Cole to
6 the stand.

7 COMMISSIONER CLARK: Y'all keep switching on
8 me.

9 MR. FRIEDMAN: We are going to keep you
10 guessing.

11 Whereupon,

12 JONATHAN H. COLE
13 was called as a witness, having been previously duly
14 sworn to speak the truth, the whole truth, and nothing
15 but the truth, was examined and testified as follows:

16 EXAMINATION

17 BY MR. WHARTON:

18 Q Sir, would you state your name and
19 professional address for the record?

20 A My name is Jonathan Cole. And may work
21 address is 900 Pine Street, Englewood, Florida.

22 Q Have you prepared direct prefiled testimony in
23 this proceeding?

24 A Yes, I have.

25 Q And attached to that prefiled direct

1 testimony, did you have exhibits originally listed as
2 JHC-1, 2 and 3, and now staff Exhibits 4, 5 and 6?

3 A Yes, I did.

4 Q If I asked you those same questions today,
5 would your answers be the same?

6 A Yes, this they would.

7 Q Do you have any corrections or modifications
8 to your direct testimony?

9 A Not to my direct.

10 Q All right. Have you prepared a summary of
11 your testimony?

12 A Yes, I have.

13 Q Go ahead and present your summary.

14 A Okay. Again, my name is Jonathan Cole. I am
15 a Registered Professional Engineer in the state of
16 Florida.

17 In April of 2021 I prepared a technical
18 memorandum for Environmental Utilities. The purpose of
19 that memo was to evaluate two types of central sewer
20 collection systems serving the project area, which goes
21 under multiple names, but I will just call it project
22 area.

23 We evaluated a system that we've used quite a
24 bit throughout the area called a vacuum collection
25 system, and we also evaluated a low pressure type system

1 that Charlotte County uses. And we evaluated those
2 systems based upon the Charlotte County standards and
3 other standards in the industry.

4 Part of that study we provided a conceptual --
5 as part of the study, we had to provide a conceptual
6 layout for the entire project area of the mainlines, and
7 we also described the advantages and disadvantages of
8 each type of system. Then we estimated the quantities
9 based upon those layouts of the key components. And
10 then we also developed some average unit cost based upon
11 the best available information that we had, which was
12 prior bids of each type of system. Then we prepared a
13 cost estimate for each type of system based upon those
14 estimated quantities that we took off our concept plans
15 and the estimated unit cost, or the average of unit cost
16 from prior bids.

17 We also factored in what's called long-term
18 operation and maintenance costs for each type of system,
19 and then we prepared a present worth analysis to
20 determine what we thought would be the best system for
21 the area.

22 The conclusion that we recommended was a low
23 pressure type system would be better than a vacuum
24 collection system for this project area. That report
25 was the fundamental basis for my initial direct

1 testimony.

2 MR. WHARTON: We would move Mr. Cole's
3 prefiled direct testimony into the railroaded as
4 though read and also move staff Exhibits 4, 5 and 6
5 if right now is the right time.

6 COMMISSIONER CLARK: We will do those at the
7 end. We will enter the testimony.

8 (Whereupon, prefiled direct testimony of
9 Jonathan H. Cole was inserted.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket NO. 20200226-SU

DIRECT TESTIMONY

OF

JONATHAN H. COLE, P.E.

on behalf of

Environmental Utilities, LLC

1 **Q. Please state your, name profession and address.**

2 A. My name is Jonathan H. Cole, P.E. I am a professional engineer and am the President of
3 Giffels-Webster Engineers, Inc. My business address is 900 Pine Street, Suite 225,
4 Englewood, Florida 34223.

5 **Q. State briefly your educational background and experience.**

6 A. University of Connecticut B.S. Civil Engineering, 1979

7 I have been practicing Civil Engineering since 1979, utilities, site design, structural, civil
8 engineering in Connecticut and Florida for public and private clients.

9 **Q. Have you previously appeared and presented testimony before any regulatory bodies?**

10 A. Yes. Charlotte County Development Review Committee, Englewood Water District Board.
11 Also provided Expert Witness Testimony for some legal cases.

12 **Q. On whose behalf are you presenting this testimony?**

13 A. I am presenting this testimony and appearing on behalf of Environmental Utilities, LLC (EU),
14 the applicant for a wastewater certificate in the present docket.

15 **Q. What is the purpose of your direct testimony?**

16 A. The purpose of my direct testimony is to present the Technical Memorandum dated April 2,
17 2021, addressing the proposed wastewater collection system in the service area and
18 interconnection with Charlotte County Utilities from Knight Island, Don Pedro Island and
19 Little Gasparilla Island prepared on behalf of EU, and to address other technical issues.

20 **Q. Are you sponsoring any exhibits?**

21 A. Yes, I am sponsoring three exhibits. Exhibit JHC-1 which is the aforementioned Technical
22 Memorandum, Exhibit JHC-2 are the maps of the proposed service area. Exhibit JHC-3 is the
23 legal description of the proposed service area.

24

25 **Q. Were these Exhibits prepared by you and your staff?**

1 A. Yes they were.

2 **Q. Does that conclude your direct testimony?**

3 A. Yes, it does.

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1 COMMISSIONER CLARK: And you are submitting
2 him for --

3 MR. WHARTON: Tender him for cross.

4 COMMISSIONER CLARK: -- tender him for cross.
5 Thank you.

6 OPC.

7 MS. PIRRELLO: Thank you, Mr. Commissioner.

8 EXAMINATION

9 BY MS. PIRRELLO:

10 Q Mr. Cole, you are sponsoring CEL 4, which is
11 the Giffels-Webster report, is that right?

12 A Yes.

13 Q And that report is dated April of 2021, right?

14 A April 2nd, 2021.

15 Q Isn't it true that this report does not
16 identify when the bids that it relies on were made?

17 A Could you repeat that question?

18 Q So earlier, Mr. Boyer acknowledged that the
19 report relies on bids that were made for other projects;
20 is that correct?

21 A Yes. Report relies on unit prices from other
22 projects, from prior projects prior to 2021.

23 Q Okay. And isn't it correct that this report
24 does not identify the dates that those bids were made?

25 A I don't know if it does identify the dates. I

1 can get that information. It's the latest ones we could
2 find.

3 **Q And the purpose of that report is to support**
4 **the construction costs that are being included in the**
5 **initial rates, right?**

6 A Right. It's to elim-- to estimate the
7 preliminary construction costs based upon concept plans
8 for each type of system.

9 **Q And you are also sponsoring the service area**
10 **maps which are CEL5, correct?**

11 A Yeah, that was in my report. It was just a
12 generalized map of the different areas on the island.

13 **Q Okay. And those maps show the proposed**
14 **locations of the sewer lines, right?**

15 A They show conceptual plans. Pretty small
16 scale conceptual plans of the line sizes along streets
17 and rights-of-ways.

18 **Q So as you have suggested, it's difficult to**
19 **kind of give a definitive count based on these maps, but**
20 **the lines appear to cross through quite a few different**
21 **plots of land, would you agree with that?**

22 A They generally try to follow the
23 rights-of-ways that are out there, and they generally
24 try to follow the fronts of the homes that are out
25 there.

1 **Q So by rights-of-way, you mean they run along**
2 **the street, right?**

3 A Along the street, correct. And there is other
4 areas that we have to cross, like in the State park
5 that's not platted.

6 **Q So and isn't it true that the company would**
7 **have to pay for the easements for placements of the**
8 **lines that run along or through the street?**

9 A There will be easements required, but in the
10 streets themselves, if they are platted rights-of-ways,
11 I am not if convinced that they need to be -- I think
12 utilities are allowed in those plats.

13 **Q Isn't it true that some of the roads on the**
14 **islands are privately owned?**

15 A Could be true.

16 **Q And isn't it true that in at least some cases,**
17 **the company would have to obtain an easement from owner**
18 **of each of the plots that the lines are proposed to run**
19 **through?**

20 A That could be true, yes.

21 **Q And the entire service territory will need to**
22 **be surveyed, is that right?**

23 A Not the entire area. For example, when you go
24 through the State park, you really only need to -- you
25 only need to survey where you are going to be putting

1 the lines, so you don't need to do everybody's houses
2 and areas where you are not installing lines. So I
3 wouldn't say the -- I would say there would be survey in
4 the entire project area, but not the entire project area
5 has to be topoed or boundary surveyed on it, no. There
6 is a little bit of a difference.

7 **Q So isn't it true that your testimony does not**
8 **quantify the number of linear miles to be surveyed?**

9 A Well, we -- it's quantified in the amount of
10 linear footage of proposed pipe, which we do have in
11 there. So the survey would basically follow the same
12 linear footage of sur-- of pipe that we have in our
13 propo-- in our report.

14 **Q And isn't it true that you have not quantified**
15 **the number of plots through which easements must be**
16 **obtained?**

17 A That might be true.

18 **Q And you have not identified the quantity of**
19 **plots that the sewer lines will cross, right?**

20 A Is that basically the same question? Well, it
21 crosses all the fronts of all the homes that are out
22 there, so we have the -- again, we have the linear
23 footage of it -- of all the pipes, and that is
24 quantified.

25 **Q Okay. Isn't it true that your testimony does**

1 not estimate the size of the easements that the company
2 will need to obtain?

3 A I don't know if we specifically stip -- said
4 in the report. I can tell you now that the size of
5 easements generally run from 15 to 20 feet wide. That's
6 typical. I have done hundreds of miles of septic to
7 sewer projects in the area, and that's typical of what
8 we've done.

9 Q Okay. Are you familiar with Section 361.07
10 Florida Statutes which provides eminent domain powers to
11 wastewater utilities?

12 A I am not intimately familiar with it, no.

13 Q Okay. If you would look over on the side
14 there, we've got OPC Cross Exhibit 1. It's just a copy
15 of the statute.

16 A Okay.

17 Q So under this statute and eminent domain, if
18 the customer is unwilling to grant the company an
19 easement, the company can take the land and pay due
20 compensation, correct?

21 A Okay. I will agree with you.

22 Q But the first step usually is just to ask
23 people to grant the easement?

24 A That's been my experiment -- experience with
25 all the other sewer projects I have done for other

1 entities. You normally go to the people and ask them
2 first if they would be willing to donate an easement;
3 and then if they won't, then it kind of escalates from
4 there. So I would imagine it follows the state
5 statutes.

6 **Q Okay. So based on the backlash that this**
7 **project has received, would you agree that people are**
8 **likely to request a significant amount for their**
9 **easements?**

10 A I can -- I don't know. I can tell you that
11 septic to sewer projects are never popular. I mean,
12 like I said, I have been through dozens of them in the
13 area, and they are never popular. So obviously the
14 person may want to get as much as they can for it. I am
15 just speculating on this one.

16 **Q Okay. And it's possible that people could**
17 **hold out all together and require the use of eminent**
18 **domain, correct?**

19 A Anything could be possible.

20 MS. PIRRELLO: No further questions.

21 COMMISSIONER CLARK: All right. Palm Island.

22 MR. KELSKY: Yes. Thank you.

23 EXAMINATION

24 BY MR. KELSKY:

25 **Q Good afternoon -- good morning.**

1 **On page eight of your 63-page report, in**
2 **Section 4.1, you state that an evaluation of vacuum and**
3 **low pressure systems were considered to determine the**
4 **most cost-effective option but gave no justification for**
5 **why other types of systems were not considered. Are**
6 **there any other systems that are viable, such as a**
7 **combination gravity system with master lift stations?**

8 A That's -- the gravity system is the third type
9 of system you could look at. It's been found that when
10 you are doing what I call a retrofit area, in other
11 words, you already have a lot of homes out there, that
12 gravity systems are generally cost-prohibitive. They
13 are not cost-prohibitive when you are doing a brand new
14 subdivision, where you can dig down deep and go anywhere
15 from as shallow as three feet down to say 15 to 20 feet
16 deep and put in a master pump station. With undeveloped
17 properties, you can go down that deep.

18 It's been problematic with a lot of retrofit
19 sewer systems, which is why they went to vacuum and low
20 pressure, because of the depths of the installation. So
21 it was not -- it was just by experience that it was not
22 part of a study to do a gravity system.

23 **Q Isn't it likely a cheaper option?**

24 A Probably not.

25 **Q Did you purposely exclude this type of**

1 **exclusion from the evaluation?**

2 A The evaluation was just between the two -- the
3 two ultimate systems. I guess you could say it was
4 purposely excluded because of just from our experience
5 with them.

6 Q On page nine of 63, in Section 4.2.1, the
7 schematic layout of the system shows the grinder pumps
8 on private property and not in the right-of-way. Do you
9 agree this can cause additional restoration to be needed
10 on a case-by-case basis on each lot?

11 A Yes. The -- the -- it's not really a grinder
12 pump. It's close enough. It's a low pressure, what's
13 called a step system. It's a septic tank that's
14 installed on the private property with an effluent pump
15 on private property. So, yes, there will be some
16 restoration that has to be done on private property.

17 Q Was this additional on-site restoration
18 included in the cost analysis of the LPS system?

19 A Yes.

20 Q Where is that in your report?

21 A It's in the -- it's in the cost estimate for
22 the actual LPS system itself. I think we used \$8,000
23 for the on-site collection. So if you look at the
24 spreadsheets, it will be a cost of \$8,000, which is
25 basically everything on-site, the lateral coming from

1 the house, the fiberglass tank, the pump, and the
2 two-inch line going out to the street and then the
3 restoration.

4 Q Is that per ERC?

5 A That's per -- yes, these per ERC.

6 Q Was it intended that the electrical
7 connections for the pump stations to be made to the
8 property owner's electrical grid?

9 A Yes.

10 Q Did the analysis of the low pressure system
11 consider that some of the private electrical grids may
12 not be adequate and would require improvements in order
13 to connect the pump stations?

14 A Yeah -- no, it didn't consider that. I have
15 never heard that being a problem. It's just a little
16 half horsepower pump. It's usually tied into the
17 electrical panel, maybe a 20-amp breaker, unless you
18 have a service less than, you know, 50 amps out there.

19 Q Would vacuum sewer have this additional
20 consideration?

21 A No, because vacuum sewer doesn't rely on the
22 house electrical.

23 Q Is it intended that the property owners bear
24 the direct electrical cost of the pump station on their
25 property?

1 A Yes. Well, I came up with a cost of it. If
2 it ties into their panel, then, yes, they would be
3 paying for it.

4 **Q Does vacuum sewer have any additional**
5 **increases to the property owner's other utility bills?**

6 A No, I don't think so.

7 **Q Is that because there is one central station?**

8 A Correct. There is one central station with a
9 vacuum sewer.

10 **Q The LPS system, this is on page 10 of 63 in**
11 **Section 4.2.2 of your report. The LPS system, this**
12 **refers to a step system in which solids are settled out**
13 **of the waste stream into a holding tank with liquid**
14 **being pumped into the collection system. How are the**
15 **solids collected in the tank removed?**

16 A The tank would be like any normal septic tank.
17 Occasionally, it depends upon the occupancy of the
18 house, maybe five years, 10 years, 15 years, that tank,
19 just like an ordinary tank that would have to be pumped
20 out.

21 **Q Isn't it true that the EPA recommends that**
22 **septic tanks be pumped out of three to five years?**

23 A That may be true.

24 **Q And what is the cost of pumping out the solids**
25 **in the holding tanks?**

1 A I don't know. I think it's around \$300 to
2 \$500. I don't know. I am guessing.

3 **Q Would you agree that pump-out maintenance is a**
4 **crucial part of keeping the system operational once the**
5 **tank is full of solids?**

6 A It is part of a maintenance cost for a low
7 pressure system. I would agree to that. Yes.

8 **Q Is that included in your analysis?**

9 A The pump-out was not included in my analysis,
10 and I address that in my follow-up.

11 **Q An average pump cost 375 per holding tank, the**
12 **cost of pumping out all 1,251 proposed units one time is**
13 **around \$470,000. Assuming this is done every five years**
14 **as recommended by the EPA, the cost would exceed**
15 **3,760,000 over 40 years. Considering this cost is**
16 **almost as much as the entire 40-year projected O&M cost**
17 **for this system, why was it not included in the**
18 **analysis?**

19 A We didn't include that cost. We also didn't
20 include some cost of the vacuum station. We didn't
21 think the magnitude of the pump-outs, whether it's five
22 years or 15 years, on an annual basis was significant --
23 was that significant.

24 **Q Are you saying that \$3,760,000 is not**
25 **significant?**

1 A No, I am not saying that. Obviously \$3
2 million is \$3 million.

3 **Q In the analysis of the cost -- this is page 10**
4 **of 63, Section 4.2.4. In the analysis of the cost of**
5 **the system, the master pump station cost was neglected**
6 **and assumed to be provided by Charlotte County. What**
7 **assurance is there that the County would not require the**
8 **cost of this lift station to be assumed by the residents**
9 **in full or in part?**

10 A I don't know. The basis of my design was that
11 Charlotte County would be providing a master pump
12 station to receive the flow on the mainland. So I don't
13 know what the assurances are, but that was the
14 assumption that I was going by.

15 **Q And what is the basis of what assumption?**

16 A Basis of that assumption was input, I believe
17 from Charlotte County.

18 **Q And who at Charlotte County did you speak**
19 **with?**

20 A Bruise Bullert.

21 **Q Bruise who?**

22 A Bullert, B-U-L-L-E-R-T, I believe.

23 **Q And it's your testimony that Mr. Bullert told**
24 **you that Charlotte County would be providing the master**
25 **pump station?**

1 A Yes.

2 **Q On page 11 of 63 Section 4.2.5, you say that**
3 **one of the disadvantages the LPS system requires**
4 **installation of a pump system on each parcel. Is it**
5 **possible to configure the LPS system so that multiple**
6 **parcels connect to a single pump system?**

7 A It is possible, but that's not the direction
8 we were given by Charlotte County. They wanted each
9 individual pump, one pump per parcel. That's the
10 direction we were given.

11 **Q If you use gravity laterals, how many house**
12 **ERC connections can you do?**

13 A What's the diameter the lateral?

14 **Q Well, what would the lateral have to be to**
15 **connect to more than one house?**

16 A We normally go with a four-inch lateral up to
17 about -- when we are doing our vacuum system, which is
18 very similar as far as a lateral is concerned as far as
19 flow, we usually go up to, I think, three homes for a
20 four-inch. And once we go beyond that, or if we have a
21 commercial flow, we will bump it up to a six-inch
22 lateral.

23 **Q Will this configuration decrease system cost?**

24 A Which configuration?

25 **Q The multiple laterals.**

1 A Would multiple laterals decrease the system
2 cost? Right now we have one lateral for each home,
3 four-inch diameter lateral that ties to the home that
4 goes into the low pressure tank. So just one lateral,
5 not multiple laterals per home.

6 **Q No, if you were able to do multiple laterals,**
7 **would it decrease the cost?**

8 A Maybe I can rephrase the question. In other
9 words, if we were to put more than one home on a
10 lateral, so if we had several homes on one lateral,
11 would it decrease the lateral cost? Would it decrease
12 the cost? Yes, I think it would decrease the cost
13 somewhat, but it would not be in accordance with the
14 Charlotte County design standards that we were given.

15 **Q Is it your testimony that the design standards**
16 **are one lateral per ERC?**

17 A Correct.

18 **Q In Section 4.3.6 of your exhibit, there was**
19 **concern related to bridge crossings. Are you aware of**
20 **designs that include bridge crossings in vacuum systems?**

21 A Yes.

22 **Q Have you ever designed a bridge crossing in a**
23 **vacuum system?**

24 A Yes.

25 **Q Are you aware of other methods to accomplish**

1 the bridge crossings, such as mini vacuum stations that
2 share vacuum pumps with a main station and/or vacuum
3 booster pump system?

4 A We've done a vacuum booster pump system. Yes,
5 there are other methods. You can have an air intake
6 valve. There is other things you can do to help get up
7 and over those bridges, but it is an additional expense
8 that you would have to put in. So, yes, I am aware of
9 them, to answer your question.

10 Q You were asked questions by OPC regarding the
11 estimates that you obtained from other projects. What
12 years were those other projects that you obtained the
13 estimates from?

14 A Yeah, you know, I don't have that information,
15 but I do know one of them was about three years ago. I
16 think it was area D in Charlotte County, we had some low
17 pressure system. It was the latest information I could
18 get based on bids that were out there. So I don't have
19 the exact years for you.

20 Q So is the earliest one three years or the
21 latest one three years?

22 A I know one of them is three years, because
23 that was one of my projects. The other ones may have
24 been -- can I speculate here? I am going to guess maybe
25 five -- within five years.

1 **Q So a three- to five-year estimate, how does**
2 **that translate into today's dollars?**

3 A Well, what I did is I took the bids, I took an
4 average cost. I did not take the low bid, because I
5 recognize that, obviously, when you are doing -- when
6 you are doing rough layouts on a preliminary basis, you
7 have got to use a little bit of horse sense, if you
8 will, and try to estimate about what the cost is going
9 to be.

10 So what I did is I took the average unit
11 prices -- not the low unit prices, the average unit
12 prices -- and came up with a cost per, most of it is
13 pipe, cost per linear foot for pipe. And then with
14 that, I rounded up. And then from there, I bumped it up
15 anywhere from two-and-a-half to 15 percent, and I used
16 those numbers, a bump-up of the average costs, to
17 extrapolate out with our quantities for this project
18 come up with a total price.

19 So, yeah, I did take that into consideration.
20 I also took the costs for the installation of the low
21 pressure system on each lot. I think I previously
22 mentioned that we used \$8,000. Charlotte County, my
23 understanding, uses, and I think it's in the report,
24 they use anywhere from 4,500 to 5,000. I bumped it to
25 8,000, recognizing that we are going to be building on

1 an island, and I don't know what future prices are going
2 to be. So I intentionally did bump it up some. That's
3 what I did.

4 **Q Did you bump it up enough?**

5 A Well, I don't know. I don't know what's going
6 to happen in the future. What's the cost of gas going
7 to be in the next year? It's a best engineering
8 estimate based upon the best information we have. I
9 don't know what's going to happen in the future.

10 **Q But that data is three to five years old?**

11 A Right, which is why I used the average and not
12 the low bid. I used the average unit cost, and then
13 from there I rounded up.

14 **Q With current supply chain issues, would you**
15 **expect unit prices to increase since the evaluation you**
16 **put together?**

17 A Again, I don't want to speculate what's going
18 to happen in the future. I mean, there is all kinds of
19 talk out there with supply chain, and trucker strikes,
20 and, you know, I don't know. It's not looking good, but
21 who knows? Again, when you are doing an engineering
22 report, you do it with the best information you have at
23 the time, which is what I tried to do.

24 **Q In Section 7.1 of your report, you state that**
25 **the report should not be taken to include all costs, but**

1 rather used as a comparison of a differential cost
2 between the two systems. Would you agree that a cost
3 differential is only accurate if all major contributing
4 costs such as O&M and construction costs is accounted
5 for?

6 A Yes, I did use O&M. I used O&M. I did an
7 O&M, a long-term analysis on this thing, and I brought
8 it back to what's called a present worth analysis.

9 So I used the construction cost estimate --
10 when I say that, what it doesn't include is it doesn't
11 include engineering design. It doesn't include
12 easements. Those will be addressed in the final cost
13 analysis. So I estimated the construction cost based on
14 the schematic layouts for both the low pressure and the
15 vacuum. Then I estimated operation and maintenance
16 costs for each system, and then I subtracted out salvage
17 value and other types of things that you do in a present
18 worth analysis to bring both items, both units, both
19 systems back to an apples and apples comparison. It's a
20 pretty standard way to do it.

21 So when I say it didn't include all costs,
22 what I was talking about was easement costs, you had
23 mentioned earlier, or that was mentioned earlier,
24 design, surveying. It's construction cost and all --
25 and the major key elements of each system that I

1 evaluated to come up with a recommendation.

2 Q In Section 9.3, you discuss how the shell
3 roads could pose a problem to the vacuum system, and you
4 further discussed the risk of washout during a storm
5 event; do you recall that?

6 A Yes.

7 Q It goes on to say that LPS is more resistant
8 because the tanks and lines are completely buried. Is
9 the vacuum pit also not completely buried with exception
10 to the lid, same as a grinder system?

11 A The vacuum -- yes, the vacuum system, the
12 lines are buried. The valve pit is buried, but the lid,
13 it's a cast iron rim and cover that goes on top of the
14 fiber -- normally it's a fiberglass valve pit, it could
15 be a plastic valve pit. That lid is exposed, and so
16 what I was driving at there is if you have a sandy road,
17 and you are driving down the road and hit that lid with
18 a golf cart, it could shift. If it's in a paved road,
19 it can't shift; or if it's in a sodded area, like what
20 we normally do, then it won't shift.

21 So what I was alluding to there is when you
22 have a -- when you have a very sandy road with golf
23 carts, and things going down there, and there is ruts
24 and everything, that if you have that exposed valve pit
25 lid, it can shift, and so you may have to put a concrete

1 collar around it, or other things that would be
2 expensive. So alls I was saying is that in a pressure
3 system, in the road itself, there is nothing exposed.
4 It's just a line three feet down.

5 **Q Would you say that an LPS system is more**
6 **hurricane resistant than a vacuum system?**

7 A In this area, because this is a barrier
8 island, as we all know, it has what's called a coastal
9 construction control line. It has two different zones,
10 FEMA zones. The majority of it is in a velocity zone,
11 okay. The minority of it, there are some pockets in an
12 A zone, which is not a velocity zone. If you try to
13 build a structure that a vacuum system requires, it
14 would be extremely difficult, and I know of none out
15 there that are built in the velocity zone.

16 So I don't think I answered your question. If
17 you want to repeat that question.

18 **Q Would you say that a low pressure system is**
19 **more hurricane resistant than a vacuum system?**

20 A Which one is more hurricane resistant? Well,
21 if you include the washouts that could happen on the
22 pits, I guess you could -- that's a toss-up. I am not
23 sure.

24 **Q Okay. After a storm event, if there is no**
25 **power, how would the system be kept operational so that**

1 **spills don't occur?**

2 A You would need generators to keep it
3 operational. You would need an alternate source of
4 power.

5 Q **And who's going to have -- who's going to
6 provide that power?**

7 A It would have to be -- it could either -- you
8 would either need generators, or you would need the
9 utility to come out and either pump the system down or
10 provide a local generator. So whether it's done by the
11 homes, or whether it's done by the utility, somehow it
12 has to get power, if you want to operate those pumps,
13 but you could also pump tanks down during a major, major
14 event.

15 Q **No pump-out of the system is shown, and the
16 grinder pumps are shown repair after seven years with
17 zero replacements accounted for. Is it realistic to
18 assume all pumps can be rebuilt in seven years with zero
19 replacements?**

20 A Are you talking about the low pressure pumps
21 that we had in there, in the analysis?

22 Q **Yes.**

23 A I think we had -- I would have to look at it,
24 the details, I think we had a rebuild every seven years.
25 That was an estimate. That was my assumption, yes.

1 **Q** **Can pump replacement cost almost double that**
2 **what a rebuild cost would be?**

3 **A** I don't know.

4 **Q** **Would that impact the O&M calculation?**

5 **A** If you are -- instead of rebuilding the pumps
6 -- I am sorry, instead of just replacing them rather
7 than rebuilding them, is that what you are question is?

8 **Q** **Yes.**

9 **A** If you are going to put all new in and not try
10 to repair what's out there, then I would think it would
11 be a little bit more expensive.

12 MR. KELSKY: Thank you. Those are all the
13 questions I have.

14 COMMISSIONER CLARK: Ms. Cotherman.

15 EXAMINATION

16 BY MS. COTHERMAN:

17 **Q** **Hello, Mr. Cole.**

18 **A** Hello, Linda.

19 COMMISSIONER CLARK: You are going to need to
20 pull your mic up, please.

21 MS. COTHERMAN: Thank you. Sorry about that.

22 BY MS. COTHERMAN:

23 **Q** **I just want to clarify that your engineering**
24 **memo was for comparison only, and did not include all**
25 **construction costs, or was it a -- I will just end with**

1 that question -- was it a comparison for -- to determine
2 which type of system, whether it's vacuum or low
3 pressure might be more cost-effective, is that correct?

4 A Yeah. It was a comparison, but I also did
5 come up with total construction costs for each one,
6 construction cost estimates, that was used as a basis
7 and built upon later. So it did include -- I do have
8 construction costs.

9 Q Okay. So in it those construction costs, did
10 it include the barging, the DEP permitting because of
11 the coastal construction control line, the removal of
12 gopher tortoises species, all of the -- did it include
13 permitting and applications with the WCIND? Did it
14 include the crush and fill permitting process for the
15 tanks, or were those to be left up after the system was
16 engineered?

17 MR. WHARTON: Objection. Compound question.
18 Several questions.

19 COMMISSIONER CLARK: It was a very lengthy
20 question. I think the witness gets the point. You
21 may proceed.

22 THE WITNESS: Yeah. So this is why, Linda --
23 this is why, Ms. Cotherman, this is why I bumped
24 the costs up on those tanks, to recognize that.
25 And we've run into gopher tortoises before by the

1 way, too, and we try not to relocate them, we skirt
2 around them, or drill, or do something.

3 So to answer your question, those items were
4 not specifically itemized. However, they were
5 taken into consideration by inflating -- not
6 inflating, but by bumping up the cost estimate for
7 the low pressure tanks, as well as the main lines,
8 which is why I rounded up, because I knew we had
9 those things to deal with. But, no, they were not
10 specifically itemized.

11 BY MS. COTHERMAN:

12 Q Talking about the pump-out, you had said it
13 was around \$350?

14 A I am guessing. I don't know. What do you --
15 350, yeah.

16 Q Would you be surprised to learn, on the island
17 where I am, it's 600 plus barging fees?

18 A I can't argue that.

19 Q Okay. Sometimes in the report it talked about
20 grinder pumps, but then you talk about the step system,
21 so can you clarify which system that you really have
22 zeroed in on?

23 A Yeah. So just for everybody's, I guess,
24 knowledge. A grinder pump takes everything from the
25 house, solids and liquids, it grinds it up and it pumps

1 it out. We were instructed to use what's called a step
2 system, or a septic tank effluent pump, which there is,
3 like, roughly maybe a thousand gallon tank, it's a new
4 fiberglass tank they put in, or plastic tank, and then
5 that just pumps out the effluent.

6 So I do use the terminology LPS in there,
7 because that's what Charlotte County uses. You can use,
8 kind of like the names for your island. You've got,
9 like, five different names for your island out there.
10 You can do the same thing, whether it's step, it's also
11 low pressure, LPS. But the grinder, as soon as you say
12 the word grinder, you are implying that you are pumping
13 out the solids, too; which, by the way, could be done on
14 the island here. It would be the same network. But we
15 used for this estimate hear the step system.

16 MS. COTHERMAN: Okay. That's all.

17 COMMISSIONER CLARK: All right.

18 MR. SANDY: We have no cross-examination
19 questions.

20 COMMISSIONER CLARK: All right.

21 Commissioners, you any questions?

22 All right. Redirect?

23 FURTHER EXAMINATION

24 BY MR. WHARTON:

25 Q Mr. Cole, you were asked about current supply

1 chain issues and their effect on prices. Based on your
2 knowledge of this type of development in these type of
3 projects, do you think it's possible that prices could
4 come down once those supply chain issues are resolved?

5 A They could. They could come down. We've had
6 that happen before. We were surprised.

7 Q If prices of materials go down, you would
8 expect that the project cost would go down?

9 A You would expect that.

10 Q If -- when this project is actually being
11 implemented, that is the County is doing whatever they
12 need to do up to the point of connection, and et cetera,
13 if less costly options or methods are determined to
14 exist, would you expect those to be employed?

15 A Yeah, absolutely. We tried to put these
16 numbers together based on current codes, and I am not
17 going to say worst code -- worst-case scenario, but
18 obviously, during the design, if we can come up with
19 other things we can do to save money, I mean, that's
20 what engineering is. We don't try to spend money. We
21 try to find the most efficient way to do them. So if
22 there are other things that can be done, which we don't
23 know now until we get into the design, yeah, we usually
24 implement those.

25 Q As you explained, you have used this method in

1 the past, but relying on prices from other projects, is
2 that, to your knowledge, a reasonable way to make a
3 projection given the status of this particular project?

4 A Yeah, it's really probably the best way to do
5 it. It's the only reasonable way to do it, because you
6 look at historical prices, recent bids, and you make
7 some judgment calls, and you base it on those recent
8 bids, which are real numbers, to come up with an
9 estimated unit cost.

10 Q Have you used this successfully before?

11 A Yes, we usually do this routinely.

12 Q Any time that you -- any time that on-site
13 systems like septic tanks are being converted to central
14 sewer, are you always going to have issues like easement
15 questions and location and point of connection?

16 A Yeah, point of connection, a lot of times, you
17 know, where is the tank on there? Where are we going to
18 connect, and so, yeah, these are very routine in the
19 septic to sewer realm.

20 Q You were asked quite a few questions about
21 eminent domain, and the possibility of condemnation of
22 easements, and et cetera. Is one thing that is
23 different about this project is that does the county
24 have in place a mandatory connection ordinance?

25 A You mean once the sewer is installed?

1 **Q Right.**

2 A Okay. After the sewer is installed, I think
3 the County has Section 3-8 dash something, which, I
4 think, kind of ties to State statutes, and it says you
5 must connect within a year, 365 days, I believe.

6 **Q And it would be up to the County to enforce**
7 **that, to your knowledge?**

8 A I guess so. To my knowledge.

9 **Q If you don't know, that's fine.**

10 A I don't know.

11 MR. WHARTON: That's all I have.

12 COMMISSIONER CLARK: All right.

13 MR. WHARTON: We would move the exhibits staff
14 4, 5 and 6.

15 COMMISSIONER CLARK: Without objection, so
16 ordered.

17 (Whereupon, Exhibit Nos. 4-6 were received
18 into evidence.)

19 COMMISSIONER CLARK: All right. Would you
20 like your witness excused?

21 MR. WHARTON: Yes, I would like the witness
22 excused.

23 COMMISSIONER CLARK: All right. The witness
24 is excused.

25 (Witness excused.)

1 COMMISSIONER CLARK: It is 12:18. I think
2 this is the appropriate break point. We will
3 resume at exactly 1:30.

4 All right. Stand adjourned.

5 (Lunch recess.)

6 (Transcript continues in sequence in Volume

7 2.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 22nd day of February, 2022.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024