

State of Florida



## Public Service Commission

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**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 25, 2022

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Division of Engineering (Phillips, Ellis, King) *TB*  
Division of Accounting and Finance (Norris, Thurmond) *ALM*  
Division of Economics (Bruce, Hudson) *JGH*  
Office of the General Counsel (Crawford, Sandy) *JSC*

**RE:** Docket No. 20200226-SU – Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.

**AGENDA:** 06/07/22 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

**COMMISSIONERS ASSIGNED:** Clark, Passidomo, La Rosa

**PREHEARING OFFICER:** La Rosa

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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## Case Background

Section 367.011(3), Florida Statutes (F.S.), provides that regulation of water and wastewater utilities is in the public interest as an exercise of the police power of the state for the protection of the public health, safety, and welfare. The provisions of Chapter 367, F.S., are to be liberally construed for accomplishment of this purpose. Section 367.031, F.S., gives the Florida Public Service Commission (Commission) the authority to issue a utility a certificate of authorization to serve a specific service area. Section 367.045(1)(b), F.S., authorizes the Commission to require each applicant for an initial certificate to provide all information required by rule or order of the Commission which may include a detailed inquiry into the ability of the applicant to provide service, the area and facilities involved, the need for service in the area involved, and the existence or nonexistence of service from other sources within geographical proximity.

On October 13, 2020, Environmental Utilities, LLC (EU or Utility) filed its application for an original wastewater certificate in Charlotte County (County). The Utility seeks to provide central sewer service to residents of the barrier islands of Little Gasparilla, Don Pedro, and Knight, which are currently served by septic tanks, with the exception of parts of Knight Island which is served by a central sewer system. The proposed service territory includes an estimated 860 existing equivalent residential connections (ERCs) and 388 potential future ERCs, for a total of 1,248 ERCs at buildout. The Utility seeks to begin serving customers by the end of 2023. With its application, EU filed a petition for temporary waiver of portions of Rule 25-30.033, Florida Administrative Code (F.A.C.), so that the Utility's initial rates and charges would be set at a date subsequent to the granting of the certificate of authorization. The Commission denied the petition for temporary rule waiver.<sup>1</sup>

Prior to the Commission addressing the application, timely objections were filed on behalf of Palm Island Estates Association, Inc. (PIE), Linda Cotherman (LC), and several other customers. The Office of Public Counsel (OPC) intervened on September 24, 2021.<sup>2</sup> At the January 26, 2022 Prehearing Conference one objecting party, Barb Dwyer, voluntarily withdrew and pro se parties Deric Flom, Joseph Bokar, Laurie Tremblay, Rhonda Olson, Richard Leydon, Roy Petteway, and Robert Lee Williams were dismissed as parties from this proceeding for failure to appear at the Prehearing Conference as required by the Order Establishing Procedure.<sup>3</sup>

On February 8, 2022, the Commission held an evidentiary hearing in Venice, Florida. This hearing was followed by two service hearings: one on February 8, 2022, and one the following morning on February 9, 2022. A total of 53 customers spoke at the service hearings and over 1,000 written customer comments were received.

EU, OPC, PIE, and LC filed post-hearing briefs on March 16, 2022. The Commission has jurisdiction pursuant to Sections 367.011, 367.031, 367.045, 367.081, and 367.101, F.S.

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<sup>1</sup> Order No. PSC-2021-0066-PAA-SU, issued February 2, 2021, in Docket No. 20200226-SU, *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.*

<sup>2</sup> Order No. PSC-2021-0376-PCO-SU, issued September 28, 2021, in Docket No. 20200226-SU, *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.*

<sup>3</sup> Order No. PSC-2022-0046-PCO-SU, issued January 28, 2022, in Docket No. 20200226-SU, *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.*

### Discussion of Issues

**Issue A:** Should Environmental Utilities' Motion to Reopen the Record be granted?

**Recommendation:** Yes. Granting the motion will complete the record in this proceeding. No party is prejudiced by reopening the record, and no party opposed reopening the record for the limited purpose of admitting witness Swain's prefiled direct testimony into the record. (Sandy, Crawford)

**Staff Analysis:** On February 23, 2022, the Utility submitted an unopposed motion requesting that the record be reopened for the limited purpose of admitting EU witness Swain's prefiled direct testimony. On February 8, 2022, the Commission held an evidentiary hearing in this docket. Witness Swain was one of several witnesses who testified before the Commission. Inadvertently, the Utility never moved to have witness Swain's prefiled direct testimony entered into the record during the hearing. Witness Swain was subject to cross-examination by all parties, staff, and Commissioners as if her testimony had been admitted. Further, the parties cited to witness Swain's testimony in their post-hearing briefs. Therefore, no party is prejudiced by including witness Swain's prefiled direct testimony into the record. Staff therefore recommends that the Utility's motion should be granted, and the record in this proceeding should be reopened for the limited purpose of admitting witness Swain's prefiled direct testimony

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

**Recommendation:** The Utility properly notified potential customers of its application and met the noticing requirements of Rule 25-30.030, F.A.C. However, EU's application erroneously identifies the proposed service territory's current land use designation as Compact Growth Mixed Use. Although the application as filed noted the incorrect land use designation, this error has no meaningful impact on whether or not EU's application should be granted. The application meets all other requirements of Rule 25-30.033, F.A.C. (Phillips)

### **Position of the Parties**

**EU:** Yes.

**OPC:** No position.

**PIE:** No position.

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

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **EU**

EU asserted that the Utility provided notice to all customers as required, for both the initial filing and the subsequent hearings. (EU BR 2) EU argued that the intervenors provided no evidence on this issue, and the Utility presented sufficient evidence that confirms that the noticing requirements were met. (EU BR 2)

### **LC**

LC argued that many residents did not receive the notice of EU's application in a timely manner. (LC BR 3) LC also contended that the newspaper notice was published in a non-local newspaper and held inaccurate information regarding the application. (LC BR 3)

## **ANALYSIS**

For original certificates, Rule 25-30.030, F.A.C., requires the utility to notice relevant local government authorities, nearby utility entities, and each owner of property within the proposed service territory. The notice must contain a description of the proposed service area, contact information, and instructions on how potential customers could file objections with the Commission. Witness Boyer testified that EU sent a written notice of its application to appropriate parties and potential customers in accordance with the noticing requirements identified in the rule. (TR 41) Staff reviewed EU's notice of application and determined it

contained the information required by Rule 25-30.030, F.A.C. (EXH 2 BSP 54) Staff notes that several potential customers, including PIE and Linda Cotherman, objected to the Utility's application for an original certificate after receiving this notice.<sup>4</sup> Based on staff's review of the record, it appears that EU has met the noticing requirements of Rule 25-30.030, F.A.C.

Rule 25-30.033(1), F.A.C., requires a utility to file with its application certain information, including a description of the proposed utility, technical and financial information, a description of the proposed service territory, need for service, and other documentation. On October 13, 2020, the Utility filed its application pursuant to the rule. (EXH 2) EU witness Boyer testified that several modifications were made subsequent to the filing of the initial application, including deleting Cape Haze, Hideaway Bay Beach Club (Hideaway Bay), and Placida Harbor from the proposed service territory. (TR 36, TR 40)

Rule 25-30.033(1)(k)(3), F.A.C., requires the applicant to provide the current land use designation as described in the local comprehensive plan; and, if a change in designation is required, to detail steps taken to facilitate that change. EU's application identifies the proposed service territory's current land use designation as Compact Growth Mixed Use. (EXH 2 BSP 16) However, PIE witness Hardgrove testified that the proposed service territory is located in the Bridgeless Barrier Island Overlay District (BIOD), and identified it as part of the County's designated Rural Service Area. (TR 169-170; EXH 8 BSP 190-192, EXH 9 BSP 199-200) LC witness Cotherman argues that the proper designation is Coastal Residential. (EXH 17 BSP 886) In cross-examination, EU witness Boyer was uncertain of the land use designation, but agreed that the land was in the Rural Service Area. (TR 45) The Charlotte County 2050 Comprehensive Plan (Comp Plan) Future Land Use (FLU) Map 3 and FLU Map 9 clearly indicate the proposed service territory is within the Rural Service Area and the BIOD, respectively. (EXH 43 BSP 1459, 1463) Although the application identifies the incorrect land use designation, this error has no meaningful impact on whether or not EU's application should be granted. Moreover, the application meets all other noticing requirements of Rule 25-30.033(1), F.A.C.

## **CONCLUSION**

Staff recommends that the Utility properly notified potential customers of its application and met the noticing requirements of Rule 25-30.030, F.A.C. EU's application erroneously identifies the proposed service territory's current land use designation as Compact Growth Mixed Use. Although the application as filed noted the incorrect land use designation, this error has no meaningful impact on whether or not EU's application should be granted. The application meets all other noticing requirements of Rule 25-30.033, F.A.C.

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<sup>4</sup> The objections included that a need for service had not been shown, the proposed service is not in the public interest, and a belief that EU does not have the financial or technical ability to provide wastewater service.

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

**Recommendation:** No. The evidence in the record does not contain any requests for service from existing property owners or potential developers. In addition, no evidence was presented to demonstrate that any state or local environmental regulator has mandated the installation of central wastewater service in the proposed service territory at this time or identified any immediate health concerns. Further, EU's application may be inconsistent with the Charlotte County Comprehensive Plan. (Phillips)

### **Position of the Parties**

**EU:** Yes. Central wastewater service is needed at this time and the Charlotte County Master Sewer Plan identifies the islands as a priority for central wastewater service by 2022. EU expects to have the wastewater system operational by the end of 2023.

**OPC:** No position.

**PIE:** No. EU has not established a need for service.

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

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **EU**

EU stated that the County has determined the septic to central sewer conversion is needed. (EU BR 2) Evidence of the County's support for the project is provided by its designated representative's testimony in response to PIE's subpoena, the letter in support, dated September 27, 2021, and the County's approval of the Bulk Sewer Treatment Agreement (Bulk Agreement). (EU BR 1-2, 4-5; EXH 2; EXH 42) EU argues that, based on the statement made by County deponent Rudy, it is the County's opinion that EU's application is consistent with the Comp Plan.<sup>5</sup> (EU BR 3) EU asserted that the 2017 Charlotte County Sewer Master Plan (Sewer Plan) identifies the proposed service territory as a priority for conversion from septic to central sewer. (EU BR 4) EU contended the County has performed numerous studies showing the positive impact of central sewer conversions. (EU BR 4) EU argued the County's connection ordinance and its implementation encourages septic to sewer conversions such as the Utility's and is consistent with local and statewide trends. (EU BR 5-6)

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<sup>5</sup> Charlotte County is not a party to the instant docket; but, its designated representative Mr. Craig Rudy provided testimony via a deposition resulting from a subpoena by PIE. Pursuant to the Prehearing Order, EU was permitted to utilize the deposition at hearing. (EXH 42)

Further, EU witness Boyer asserted that his personal experiences with older and/or failing septic systems demonstrates the need for central sewer. (EU BR 3) EU argued that not only is there a current need for service in the proposed service territory; but, there are undeveloped areas where service will be needed in the future. (EU BR 3)

EU further argued that PIE witness Weisberg had no expertise on the adverse impacts of septic tanks or the appropriateness of septic tanks versus central sewer in the proposed service territory. (EU BR 2-3) EU contended that the intervenors' interpretation of the Comp Plan fails to acknowledge other existing utilities on the island, including bulk water agreements by the County with at least three utilities and two other central wastewater facilities. (EU BR 3-4) EU also argued the intervenors misunderstand the Comp Plan, which prohibits public utilities, but does not prohibit private utility service. (EU BR 4)

### **PIE**

PIE asserted that its witness Hardgrove demonstrated that the proposed development was contrary to the Comp Plan, as part of the Rural Service Area, which FLU Policy 3.2.4 states will rely on septic systems. (PIE BR 6) PIE further noted that FLU Policy 3.2.4 allows exemptions only when the developer has "clearly and convincingly demonstrated" health problems for which there are no other feasible solutions, and that EU has not met this standard of evidence. (PIE BR 6-7) PIE argued that the County representative agrees that EU does not meet this standard based on their deposition, and that EU offered no testimony establishing a health problem, no testing, no evidence of failed systems, nor any witnesses from the County for the same. (PIE BR 7-8; EXH 42 BSP 1031)

PIE highlighted that the proposed service territory is within the BIOD per the Comp Plan, which states that the County "shall not" expand infrastructure, including wastewater service to the bridgeless barrier islands. (PIE BR 8; EXH 10 BSP 298) PIE argued that EU inappropriately took the position that the Bulk Agreement was evidence of consistency, when the County's representative testified that whether a comprehensive plan amendment was necessary had not yet been determined. (PIE BR 8-9)

PIE also highlighted Potable Water & Sanitary Sewer (WSW) Policy 3.2.4 which states that the County "shall discourage expansion of the service areas of utility companies regulated by the [Commission]." (PIE BR 9; EXH 10 BSP 329) Furthermore, PIE noted that FLU Policy 1.1.6 states that all county regulations must be subordinate to the Comp Plan and, given the above policies, EU has not demonstrated a need for service. (PIE BR 9-10)

PIE observed that during the service hearings, only one potential customer expressed a desire for the application's approval out of 53 speakers, and no elected officials, including County officials, spoke in support of the application.<sup>6</sup> (PIE BR 10) PIE contended that if the County felt there was a compelling need it would have been a participant in the service hearings instead of solely providing County deponent Rudy. (PIE BR 10)

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<sup>6</sup> A total of 53 potential customers spoke at the February 8, 2022, (21 speakers) and February 9, 2022, (32 speakers) service hearings.



## **LC**

LC argued the application is inconsistent with the Comp Plan as the service territory is within the Rural Service Area and the BIOD, both of which are restricted from wastewater infrastructure development. (LC BR 5) LC noted that FLU Policy 3.2.4 has specific exemptions to allow the construction of sewer infrastructure in the event of health problems, but that the County deponent Rudy was unaware of any health problems that would justify sewer infrastructure; and, EU witness Boyer was unaware of any water quality testing that would serve as evidence of a public health issue. (LC BR 7) LC contended that EU's claim of environmental need, based on red tide, is rebutted by PIE witness Weisberg's statements regarding the lack of supporting evidence that the barrier islands' septic systems are responsible. (LC BR 7-8) LC asserted that as EU witness Cole acknowledged, new septic systems are designed to meet current standards and any issue with individual septic tanks is one of code enforcement. (LC BR 8)

LC highlighted that EU did not provide any requests for service in its application and that PIE witness Schaffer testified that none of PIE's members have requested service by EU. (LC BR 9) Furthermore, LC observed that the written correspondence to the docket and participants in the service hearings were generally in opposition. (LC BR 9)

## **ANALYSIS**

### **Need for Service**

#### ***Requests for Service***

Section 367.045(1)(b), F.S., requires an examination of the need for service in the proposed service territory. Pursuant to Rule 25-30.033, F.A.C., an applicant for original certificate must provide a statement showing the need for service in the proposed territory. Specifically, Rule 25-30.033(1)(k)(2), F.A.C., requires a utility provide all requests for service made by property owners or developers in the proposed service territory. EU's application did not include any requests for service from current property owners or developers. (EXH 2 BSP 16)

PIE witness Schaffer testified that no member of PIE, a voluntary homeowners' association, had requested service from the Utility and LC witness Cotherman testified that EU has not provided evidence of requests for service. (TR 158, 162, 229) Of the 53 customers that testified at the service hearings, only 1 indicated support for EU's application based on difficulties with the maintenance of their septic system. (2/8 S-TR 23-24) Multiple customers testified that their current septic systems are working and that they do not need or want central sewer. (2/8 S-TR 28, 33-34, 39, 42, 49, 54; 2/9 S-TR 34-35, 47-48) The written comments submitted in the docket were largely in opposition to EU's application, with a small minority in support.

Since there have not been any requests for service provided, the record does not support a need for service based upon property owners or developer requests. As discussed below, the need for service is not specifically defined in either statute or rule and therefore may also be based on compliance with environmental or health requirements.

#### ***Environmental Need***

EU states that there is a need for service due to failing septic tanks in the proposed service territory contributing to red tide and water quality degradation of Lemon Bay and the Gulf of

Mexico. EU also cited the Governor as making the environmental remediation of the area a priority. (EXH 2 BSP 26) However, during cross-examination EU witness Boyer testified that no state agency, including the Department of Environmental Protection, nor the County are requiring or mandating the installation of a central sewer system in the proposed service territory. (TR 71) Moreover, the witness acknowledged that Charlotte County continues to issue permits for new septic systems. (TR 71)

PIE witnesses Hardgrove and Schaffer agree that the Utility provided no water quality testing in the proposed service territory demonstrating elevated pollution, or that there is a public health issue. (TR 158, 184) In deposition, County deponent Rudy stated that the County was unaware of any water quality testing in the proposed service area and there was no evidence of a health problem to justify sewer infrastructure. (EXH 42 BSP 1023) Regarding contribution to red tide, PIE witness Weisberg testified that there is no evidence that septic tanks located in the proposed service territory contribute to red tide or reduced water quality, and the residents of bridgeless barrier islands are better off with septic tanks than they would be with central sewer. (TR 198; TR 206; EXH 12 BSP 760)

EU witness Boyer testified that the need for sewer expansion into the proposed service territory is based in part on an environmental need identified by the County and enacted through the Sewer Plan. (TR 42, 52; EXH 2 BSP 30) EU states in its application that the Sewer Plan recommends the conversion of all areas within a certain environmental impact score range be converted from septic to sewer within five years, including the proposed service territory.<sup>7</sup> (EXH 2 BSP 26) However, based upon staff's review, the Sewer Plan does not require conversion of all similar scored areas within five years.<sup>8</sup> (EXH 44 BSP 2951-2952) Furthermore, while witness Boyer characterizes the Sewer Plan as a recommendation, it appears to staff to instead be an acknowledgement of potential connections in the proposed service territory. As PIE witness Hardgrove attests, the Sewer Plan only included conversion of two existing private wastewater treatment plants, not conversion of septic tanks to central sewer. (EXH 8 BSP 184) The Sewer Plan prioritizes connection to private utilities based on the desire of the utility owner and the County Utility Department to connect and not necessarily any environmental characteristics. (EXH 44 BSP 2933)

On rebuttal, EU witness Boyer testified to personal observations of failing septic tanks including the smell of waste, pipes disconnected from the drain field resulting in waste on the ground, and that many of the existing septic tanks are under water during high tide. (TR 249-250) In cross-examination, witness Boyer stated that he has not provided photos or evidence to support his observations, and stated that he has not reported any of his observations to state or county environmental regulators. (TR 253, TR 256)

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<sup>7</sup> The Sewer Plan used an environmental impact level scoring criteria to identify project areas as part of its methodology to prioritize areas for future capital improvement plans, which also considered infrastructure sequencing, utility input, cost considerations, and other factors. The environmental impact level score is an average of three factors which are each given a score between 1 and 5. Those factors are: (1) proximity to surface waters; (2) age of septic tanks; and (3) nitrogen loading. The impact scores of the areas addressed in this docket are those that range from 4 to 5. (EXH 44 BSP 2938-2944)

<sup>8</sup> The Sewer Plan recommends conversion for areas with an average impact score of 4 to 5 during the 5-year, 10-year, 15-year plans, or in the case of at least six areas, no conversion at all. (EXH 44 BSP 2944, 2957)

No evidence was presented to demonstrate that any state or local environmental regulator has mandated the installation of central sewer wastewater service in the proposed service territory at this time or identified any immediate health concerns. Therefore, staff recommends that EU has not demonstrated a need for service in the proposed service territory based on compliance with environmental or health requirements.

### ***Review of Local Comprehensive Plan***

Section 367.045(5)(b), F.S., provides that, if an objection is made to the issuance of a certificate on the basis of inconsistency with the local comprehensive plan, the Commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality.<sup>9</sup> A separate issue was not identified specifically addressing the Charlotte County Comp Plan; however, pursuant to the requirements of the statute, staff recommends that consideration of the Charlotte County Comp plan is appropriate, and the parties address the consistency of EU's proposal with the Charlotte County Comp Plan in this Issue.

EU witness Boyer's testimony repeatedly relied upon the County's approval of the Bulk Agreement or inferring that the County's position that the proposed central sewer system was consistent with the Comp Plan. (TR 40, 53-54, 65-66) Witness Boyer stated that since the County has entered into the Bulk Sewer Treatment Agreement with EU then the County recognizes the need for service in the proposed territory. (TR 77) However, PIE witness Hardgrove testified that the proposed central sewer system was contrary to the Comp Plan because it is located within the bridgeless Barrier Island Overlay District and the Rural Service Area, which both prohibit expansion of central sewer infrastructure through numerous policies in the Comp Plan. (TR 169-171) Witness Hardgrove further asserted that while the Bulk Agreement may have received approval by the County Commission, there was no discussion of consistency with the Comp Plan. (TR 187) While LC witness Cotherman also argues that EU's proposal is inconsistent and not allowed under the Comp Plan, they did not outline any policies that demonstrate this. (TR 228-229, 232)

The Comp Plan designates the proposed service territory as part of the Barrier Island Overlay District and the Rural Service Area, which have separate zoning requirements. (EXH 43) While PIE witness Hardgrove references Coastal Element CST 3.2.7 as prohibiting infrastructure in the proposed service territory by the County or other developers, staff notes the referenced policy, CST 3.2.7, applies to offshore islands and not the proposed service territory. (EXH 8 BSP 200; EXH 43 BSP 1286) However, in FLU Appendix I for the Barrier Island Overlay District, the Comp Plan states it is not the County's intent to expand wastewater service to the bridgeless barrier islands, and they shall not expand the scope of central sewer service to them. (EXH 43 BSP 1446) Witness Boyer argues that the Comp Plan limitations on expanding infrastructure only applies to the County, not private utilities such as EU. (TR 46). Staff agrees with witness Boyer that the Barrier Island Overlay District language appears to restrict County development, not a private utility regulated by the Commission.

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<sup>9</sup> *City of Oviedo v. Clark*, 699 So. 2d 316, 318 (Fla. 1st DCA 1997) ("The plain language of the statute only requires the Commission to consider the comprehensive plan. The Commission is expressly granted discretion in the decision of whether to defer to the plan.")

However, the Rural Service Area designation has multiple elements that explicitly reference Commission regulated utilities and does not appear to support the construction of central sewer systems. WSW Policy 3.2.4 states “The County shall discourage expansion of service areas of utility companies regulated by the [Commission] to any areas outside of the Urban Service area . . .” (EXH 43 BSP 2314) PIE witness Hardgrove highlights FLU Policy 3.2.4 which states that the Rural Service Area shall “continue to rely primarily upon individual on-site septic systems as the method of disposal of wastewater.” (EXH 8 BSP 180; EXH 43 BSP 1379) The same policy further bans new developments in the Rural Service Area from being constructed with central sewer systems, but does allow an exemption if it is “clearly and convincingly demonstrated by the proponents of the system expansion that a health problem exists in a built but unserved area for which there is no other feasible solution.” (EXH 43 BSP 1379) The term used in FLU Policy 3.2.4 includes private utilities “granted a certificate to serve a delineated area by the [Commission]” as well as those approved by the County. (EXH 43 BSP 1478) In discovery EU stated that the Master Sewer Plan constitutes evidence of a public health problem. (EXH 40) However, the Sewer Plan does not address a public health issue in the service territory, and instead only recognizes the expectation of two private utilities connecting to the County’s system. (EXH 44) Staff agrees with witness Hardgrove that these policies appear to be inconsistent with the proposed utility.

In deposition, County deponent Rudy stated that the County believed EU’s application to be consistent with the Comp Plan. (EXH 42 BSP 1067) Although he appeared on behalf of the County in this matter, deponent Rudy’s testimony does not resolve with specificity any of the disagreements presented by the parties regarding the Comp Plan. No County representatives were present at the hearing to opine on any contradictory interpretations of the Comp Plan.

The Commission is only required to consider the Comp Plan and is not bound by it; as such, the Commission is granted discretion in deciding whether to defer the Comp Plan. Based on the land designation and policies contained within the Comp Plan, staff believes EU’s application may be inconsistent with the Charlotte County’s local comprehensive plan. While the Commission is not bound by the local comprehensive plan, the Commission may find that inconsistency with the Comp Plan supports staff’s recommendation in Issue 9 the granting EU’s application is not in the public interest.

## **CONCLUSION**

The evidence in this docket does not contain any requests for service from existing property owners or potential developers. In addition, no evidence was presented to demonstrate that any state or local environmental regulator has mandated the installation of central sewer wastewater service in the proposed service territory at this time or identified any immediate health concerns. Based on the record, and especially noting the level of opposition to EU’s proposal by its prospective customers, staff believes that customers are highly unlikely to voluntarily connect to EU’s system. Therefore, staff recommends that EU has not demonstrated that there is a need for service in the proposed service territory. Further, staff recommends that EU’s application may be inconsistent with the Charlotte County Comp Plan.

**Issue 3:** Is Environmental Utilities' application consistent with Charlotte County's Sewer Master Plan?

**Recommendation:** EU's application does not appear to be consistent with Charlotte County's Sewer Master Plan. (Phillips)

### **Position of the Parties**

**EU:** Yes.

**OPC:** No position.

**PIE:** No. The application is inconsistent with Charlotte County's Sewer Master Plan.

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

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **EU**

EU stated that the Sewer Plan highlights issues with septic systems contributing nutrients to the groundwater. Further, EU argued PIE witnesses Suggs' and Weisberg's testimonies support that the soil conditions would make septic systems ineffective at removing nutrients. (EU BR 7) EU asserted that septic tank repairs are not occurring, and that regulatory limitations regarding older systems allow them to continue operation even when ineffective. (EU BR 7) Further, EU stated that the Sewer Plan scores the proposed service territory at an average impact level of greater than four out of five, which identifies it for septic to sewer conversion in five years. Also, Charlotte County's approval of the Bulk Agreement and deposition of the County's witness support the consistency of the application with the Sewer Plan. (EU BR 7)

### **PIE**

PIE asserted that EU's application is inconsistent with the Comp Plan; and therefore, is also inconsistent with the Sewer Plan. (PIE BR 10) PIE emphasized that, as explained by witness Hardgrove, the projects listed in the Sewer Plan are the connection of two existing wastewater utilities using existing central sewer infrastructure, not the proposed project. (PIE BR 11) PIE contended that since FLU Policy 1.1.6 states that all county regulations are subordinate to the Comp Plan, the application is inconsistent with the Comp Plan unless it is amended, and therefore, inconsistent with the Sewer Plan, as infrastructure development is not allowed on the bridgeless barrier islands. (PIE BR 11)

## LC

LC argued the Sewer Plan has several inconsistencies and inaccuracies regarding the bridgeless barrier islands, and therefore, the Sewer Plan is inadequate support for EU's application. (LC BR 9) LC contended that the priority ratings developed in the Sewer Plan are flawed because each of the three components contained inaccurate or incomplete assumptions. (LC BR 9-10) LC asserted that the proposed Utility is not identified within any of the multi-year plans within the Sewer Plan. LC further asserted that the only two utilities identified are Knight Island Utilities, Inc. (Knight Island Utilities) and Hideaway Bay, and that their inclusion is based on the desire of the owners of Knight Island Utilities and Hideaway Bay. (LC BR 11) LC noted the Sewer Plan project descriptions and maps are inconsistent and contain numerous errors regarding the two utilities to be connected. (LC BR 12) LC highlighted that, excluding County deponent Rudy, who served as the County representative, the County has not been involved in this proceeding, did not intervene, and submitted no documentation in support of EU. (LC BR 13) LC contended that EU's reliance upon the Bulk Agreement being approved by the County is erroneous, as no evidence of a proper review by the County of the Bulk Agreement regarding consistency with the Comp Plan was submitted. (LC BR 13) LC argued that the Sewer Plan was not meant to be an arbiter of septic to sewer conversions. (LC BR 14)

## ANALYSIS

There is no statutory or rule requirement that the Commission consider the Sewer Plan. Just as the Commission is not bound by a local comprehensive plan in a certificate proceeding, staff recommends that a document such as the Sewer Plan – which is not contemplated in Section 367.045, F.S., or Rule 25-30.033, F.A.C. – is not binding upon the Commission. However, consistency with the Sewer Plan was identified as an issue in this proceeding, and there was substantial evidence and discussion at the hearing regarding this issue. Therefore, staff recommends that a ruling on this issue is appropriate.

EU states in its application that according to the Sewer Plan all areas within a certain environmental impact score range should be converted from septic to sewer within five years, including the proposed service territory.<sup>10</sup> (EXH 2 BSP 26) However, based upon staff's review, the Sewer Plan does not require conversion of all similarly scored areas within five years.<sup>11</sup> (EXH 44 BSP 2951-2952) Furthermore, while EU witness Boyer characterizes the Sewer Plan as a recommendation, it appears to staff to instead be an acknowledgement of potential connections in the proposed service territory. As PIE witness Hardgrove attests, the Sewer Plan only included conversion of two existing private wastewater treatment plants, not conversion of septic tanks to central sewer. (EXH 8 BSP 184) The Sewer Plan's 5-year improvement plan identified 12 project areas for conversion, then states: "In addition, two private utilities are expected to connect to the County system during the 5-year plan . . ." (EXH 44 BSP 2951) The two utilities

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<sup>10</sup> The Sewer Plan used an environmental impact level scoring criteria to identify project areas as part of its methodology to prioritize areas for future capital improvement plans, which also considered infrastructure sequencing, utility input, cost considerations, and other factors. The environmental impact level score is an average of three factors which are each given a score between 1 and 5. Those factors are: (1) proximity to surface waters; (2) age of septic tanks; and (3) nitrogen loading. The impact scores of the areas addressed in this docket are those that range from 4 to 5. (EXH 44 BSP 2938-2944)

<sup>11</sup> The Sewer Plan prioritizes conversion for areas with an average impact score of 4 to 5 during the 5-year, 10-year, 15-year plans, or in the case of at least six areas, no conversion at all. (EXH 44 BSP 2944, 2957)

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are identified as Hideaway Bay and Don Pedro Utility, and involve use of existing collection systems and conversion of existing wastewater treatment plants to pump stations connecting to the County through two separate transmission pipes in five and seven years, respectively. (EXH 44 BSP 3046; EXH 44 BSP 3103-3104) This arrangement is not the one proposed by EU, and in fact, EU removed Hideaway Bay from its proposed service territory. (TR 36) Based on its evaluation, staff believes that EU's application does not appear to be consistent with the Sewer Plan.

### **CONCLUSION**

EU's application does not appear to be consistent with Charlotte County's Sewer Master Plan.

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

**Recommendation:** Yes. A portion of EU's proposed service territory is currently receiving wastewater service from Knight Island Utilities. If the Commission grants EU's request for certification, the Utility should be required to file an amended territory description and map within 30 days of the issuance of the Commission's order, and this docket should remain open for the parties and Commission to address the amended territory description and map. (Phillips)

### **Position of the Parties**

**EU:** No.

**OPC:** No position.

**PIE:** No position on this issue.

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

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **EU**

EU stated that since the proposed service territory is being served by septic tanks, the proposed sewer system will not be a duplication or in competition with another system. (EU BR 8) EU argued that LC witness Cotheman's claim of competition with the County is inaccurate since the County has entered into a Bulk Agreement with EU. EU further asserted that any purported rights the County has to serve the proposed service territory were transferred to EU due to the Bulk Agreement, and therefore, they are not in competition. (EU BR 8)

### **LC**

LC asserted that the proposed service territory is already designated as part of the Charlotte County Utilities' service area, except for Knight Island Utilities and Hideaway Bay. (LC BR 14) LC highlighted that per the Utility's map and EU witness Boyer's testimony, some Knight Island Utilities customers would have to disconnect service then connect to EU's service at additional cost. (LC BR 14) LC further noted that the Utility's maps and territorial description were not properly updated to reflect the removal of Hideaway Bay. (LC BR 14-15)

## **ANALYSIS**

Pursuant to Section 367.045(5)(a), F.S., the Commission may not grant a certificate of authorization for a proposed system that will be in competition with, or duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof



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is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service. Section 367.021(11), F.S., defines “system” as facilities and land used or useful in providing service.

EU witness Boyer testified that two exempt utilities with package plants provide wastewater service to parts of the bridgeless barrier islands, including Knight Island Utilities. (TR 80) LC witness Cotherman attested that a segment of the northern portion of the service territory is already being served by Knight Island Utilities. (EXH 17 BSP 886) At the hearing, EU witness Boyer agreed that a portion of EU’s proposed service territory is already served by Knight Island Utilities, and that the Utility planned to disconnect customers from Knight Island Utilities’ collection system and attach them to EU’s collection system. (TR 69) EU did not provide a statement or evidence that Knight Island Utilities’ system is inadequate to meet the reasonable needs of the public or is unable, refusing, or neglecting the provision of reasonably adequate service. As part of the proposed service territory is already being served by an existing wastewater utility, the certification of EU would result, in part, in the creation of a utility which will be in competition with, or duplication of, another system. Staff therefore recommends that if EU’s application is approved, the territory granted should exclude from EU’s request, that area which is already being served by any existing wastewater system. There is currently no record evidence demonstrating what the appropriate amended territory should be. If the Commission grants EU’s application, the Utility should be required to file an amended territory description and map within 30 days of the issuance of the Commission’s order, and this docket should remain open for the parties and Commission to address the amended territory description and map.

### **CONCLUSION**

A portion of EU’s proposed service territory is currently receiving wastewater service from Knight Island Utilities; therefore, certification of EU would result, in part, in the creation of a utility which will be in competition with, or duplication of, another system. If the Commission grants EU’s request for certification, the Utility should be required to file an amended territory description and map within 30 days of the issuance of the Commission’s order, and this docket should remain open for the parties and Commission to address the amended territory description and map.

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

**Recommendation:** Yes. The Utility has the financial ability to serve the requested territory. (Thurmond)

### **Position of the Parties**

**EU:** Yes.

**OPC:** No position.

**PIE:** No, Environmental Utilities does not have the financial wherewithal to serve the requested territory.

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

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **EU**

In its brief, EU asserted that the owners have the ability to raise the money necessary to invest in EU. (EU BR 8; EXH 20) EU further stated that while the Utility does not currently have any loan commitments, it has a party interested in funding the project subject to certification and ratemaking treatment. (EU BR 8; EXH 2 BSP 25) EU also stated that, due to PIE witness Schultz's lack of utility regulatory accounting experience, she is incorrect in her assessment that EU does not have the financial ability to fund the Utility. (EU BR 8; TR 220) Lastly, EU stated that EU witness Swain addressed each error in PIE witness Schultz's testimony and opined that EU is going to be in the position to fully fund the construction and operation of the Utility. (EU BR 8; TR 297-298; TR 150)

### **PIE**

In its brief, PIE stated that EU does not have the financial wherewithal to serve the proposed service area. (PIE BR 11; TR 218) Witness Schultz stated that the letters from Centennial Bank and Freedom Holdings Manatee, LLC are not proof of the financial ability of EU for several reasons. (PIE BR 12; EXH 2 BSP 25; EXH 20) Regarding the Centennial Bank letter, PIE emphasized that the letter specifically stated that, "this letter is not a commitment to lend." (PIE BR 12; EXH 2 BSP 25) Regarding the Freedom Holdings Manatee, LLC's letter, PIE argued that there were several unknowns such as the loan terms, the lack of an appraisal of the system due to EU not being certificated, and the ability of Freedom Holdings Manatee, LLC to fund a project for which costs have not been fully determined. (PIE BR 12; EXH 20; TR 48-50; TR 148)

## **LC**

In its brief, LC stated that based on the testimony of PIE witness Shultz, who stated that EU and the Boyers will be unable to fulfill their debt obligations, EU has not met its burden to demonstrate the necessary financial ability to provide service to the proposed service area pursuant to Rule 25-30.033, F.A.C. (LC BR 15; EXH 13) LC also stated that EU has not demonstrated that it has the financial resources to hire, staff, and handle the business management of a public utility on the order of magnitude of that which would be governed by the certificate of authorization. (LC BR 16)

## **ANALYSIS**

The Utility provided both the financial statements of the Utility and the personal financial statements of EU's owners. (EXH 2 BSP 22; EXH 41) EU also provided letters from Centennial Bank and Freedom Holdings Manatee, LLC, both of whom showed interest in providing loans to the Boyers pending Commission approval of the wastewater certificate. (EXH 2 BSP 25; EXH 20) While staff agrees that these letters do not signify a guaranteed contract between EU and the lender, staff believes they do demonstrate EU's potential ability to raise the necessary capital. In response to discovery, the Utility stated that it would like to be funded with a combination of debt and equity, but until the certificate is granted, it is premature to bring in an investor or obtain a loan; thus the owner is prepared to fund the Utility with an infusion of equity through personal loans. (EXH 22 BSP 930; EXH 27 BSP 955)

In response to PIE witness Schultz's opinion that EU would be unable to fulfill its debt obligations, EU witness Swain made two corrections she believes are necessary to witness Schultz's calculations. (EXH 13 BSP 875; TR 297-298) First, witness Schultz only included contributions in aid of construction (CIAC) charges based on ERCs at year one, without including additional connections that the Utility is anticipating. (EXH 13 BSP 872; TR 297-298) Second, witness Schultz failed to include extra cash the Utility would have on hand due to depreciation and amortization expenses being non-cash expenses. (EXH 13 BSP 873; TR 297-298)

## **CONCLUSION**

Staff recommends that, based on its analysis of the financial documents provided by the Utility and the owners, EU has met its burden of demonstrating the financial ability necessary to fund the Utility. Therefore, staff recommends that EU has the financial ability to serve the requested territory.

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

**Recommendation:** Yes. EU demonstrated that, with the retention of outside professionals for the construction and operation of its systems, it has the technical ability to serve the requested territory. (Phillips)

### **Position of the Parties**

**EU:** Yes.

**OPC:** No position.

**PIE:** No. Environmental Utilities does not have the technical ability to serve the requested territory.

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

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **EU**

EU noted that one of the Utility's owners, Jack Boyer, has operated a regulated water system in the proposed service territory since 1987. Mr. Boyer also has wastewater experience from previous involvement with Knight Island Utilities and Hideaway Bay, and has shown the ability to retain the necessary professionals to operate the Utility. (EU BR 9)

### **PIE**

PIE highlighted that Mr. Boyer is not licensed as a wastewater utility operator and that Mr. Boyer himself described his knowledge of statutes and rules for wastewater utilities as that of a "lay person," which demonstrates EU's lack of technical ability. (PIE BR 13-4)

### **LC**

LC argued that EU has not provided proof of Mr. Boyer's previous employment at other utilities. (LC BR 16) LC further contended that running a water utility and a wastewater utility are different due to the severity of the consequences of a malfunction. (LC BR 17) LC asserted that Mr. Boyer's military experience does not translate well to experience with wastewater, as he had no responsibilities related to system operation, maintenance, and repair. (LC BR 17)

## **ANALYSIS**

Section 367.045(1)(b), F.S., and Rule 25-30.033(1)(i), F.A.C., require a utility applying for an original certificate to provide information showing that it has the technical ability to provide service in the territory requested. EU witness Boyer testified that he has owned and operated Little Gasparilla Water Utility, Inc. (Little Gasparilla) for over 30 years. (TR 249) Witness Boyer

stated that EU will employ technical professionals to operate the wastewater system. (TR 44) LC witness Cotherman testified that the EU has not shown the technical ability to undertake a project of this scope. (TR 229) At the service hearings, several customers testified that based on the water service provided by Little Gasparilla, they do not have confidence in EU's technical ability to operate a wastewater utility. (2/8 S-TR 29, 37-38, 48) Witness Boyer stated that he would not personally be the project manager or operator of the system; but instead, he would hire competent professionals for the technical operation of the system. Staff believes EU has met the requirements of the rule demonstrating that with the retention of outside professionals for the construction and operation of its system, EU has the technical ability to serve the requested service territory.

### **CONCLUSION**

EU has met the requirements of the rule demonstrating that, with the retention of outside professionals for the construction and operation of its systems, it has the technical ability to serve the requested territory.

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

**Recommendation:** Yes. The Bulk Agreement with the County reserves adequate capacity to serve the proposed service territory and demonstrates that EU has properly planned for the estimated needs of the proposed service area. (Phillips)

**Position of the Parties**

**EU:** Yes. By virtue of the Bulk Sewer Treatment Agreement entered into with Charlotte County.

**OPC:** No position.

**PIE:** No position.

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

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**EU**

EU stated that it has entered in to a Bulk Agreement with the County that will allow EU to transmit the sewage to the County's treatment facilities on the mainland. EU argued that since it has reserved that capacity for 2,200 ERCs, and only anticipates 1,248 ERCs at full capacity, that the Utility will have sufficient capacity to serve the proposed territory. (EU BR 10)

**LC**

LC asserted that since the number of ERCs to be treated has changed multiple times and there is inconsistency in the gallons-per-day of usage assumptions, it is unknown if EU has sufficient capacity. (LC BR 18) LC further argued that the closest County wastewater treatment facility is recommended for decommissioning in the Sewer Plan. (LC BR 18)

**ANALYSIS**

In order to provide wastewater service to the proposed service territory, EU entered into a Bulk Agreement with the County on July 14, 2020. (EXH 2 BSP 30-37) Under the terms of the Bulk Agreement, EU would deliver wastewater to a lift station on the mainland and the wastewater would then be treated in the County's treatment facilities. (TR 251; EXH 2 BSP 30) The Bulk Agreement reserves capacity for up to 2,200 ERCs. (EXH 2 BSP 32) The Bulk Agreement has a 30-year term, where the County would send a monthly invoice to EU for wastewater treatment based upon the sewer flow meter readings taken at the connection point between EU and the County. (EXH 2 BSP 34) No other witness addressed this issue during the evidentiary hearing. Staff agrees with witness Boyer that the Bulk Agreement appears to provide sufficient plant capacity to serve the requested territory.

## **CONCLUSION**

The Bulk Agreement with the County reserves adequate capacity to serve the proposed service territory and demonstrates that EU has properly planned for the estimated needs of the proposed service area.

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

**Recommendation:** Wastewater treatment will occur pursuant to a Bulk Service Agreement. As such, EU does not own or operate the treatment facilities and evidence of continued use of the land is not required or applicable in this instance. (Phillips)

### **Position of the Parties**

**EU:** This requirement is effectively satisfied through the Bulk Sewer Treatment Agreement entered into between EU and Charlotte County.

**OPC:** No position.

**PIE:** No. The applicant does not have continued use of the land upon which the utility treatment facilities are or will be located.

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

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **EU**

EU stated that it will only have treatment facilities through the Bulk Agreement. (EU BR 10) EU noted that Rule 25-30.033(1)(m), F.A.C., only applies to land where treatment facilities are located and not to land associated with the collection system, such as easements and pump stations. EU argued that since it only operates a collection system and does not own treatment facilities the rule is either inapplicable or deemed satisfied through the Bulk Agreement. (EU BR 10)

### **PIE**

PIE argued EU has insufficiently budgeted for the purchase of easements for its wastewater collection system, which are necessary for its operation. (PIE BR 14) PIE asserted that the budgeted value of \$250,000 is arbitrary, as other utilities on the island have paid up to \$7,000 per easement and/or had to go through eminent domain. (PIE BR 14) PIE noted that part of the Bulk Agreement requires EU to obtain easements through Don Pedro Park, and that EU did not provide testimony or evidence on this being completed. (PIE BR 14-15)

### **LC**

LC contended that EU had not provided evidence to show that they would have continued use of the land where the County's treatment facilities are located. (LC BR 18) LC argued that EU has not provided any evidence of their access to the easements and rights of way, including through Don Pedro Island State Park. (LC BR-18-19) LC also argued that the wastewater tariff contained in the application requires customers to grant easements without cost to the Utility, and that this



represents potential violations of private property rights. (LC BR 19) LC asserted that the acquisition of easements will be met with resistance and will require costly eminent domain procedures. (LC BR 19)

### **ANALYSIS**

Section 367.1213, F.S., and Rule 25-30.033(1)(m), F.A.C., requires evidence that a utility has the right to access and the continued use of the land upon which the utility treatment facilities are or will be located. As discussed in Issue 7, EU will utilize the County's treatment facilities through the Bulk Agreement. (TR 249; EXH 2 BSP 26) The Bulk Agreement, which has a term of 30 years, grants EU the ability to send wastewater to the County's treatment facilities located on the mainland. (EXH 2 BSP 30).

EU witness Cole described the proposed system as a Septic Tank Effluent Pumping system where a septic tank and effluent pump would be located on a customer's private property. (TR 98) The effluent waste would be pumped out while the remaining sludge is stored in the tank. (TR 115) The Utility would need access to customer's private property to remove existing septic tanks, as well as connect a new septic tank and effluent pump. EU witness Cole testified that the pumps would need to be connected to the customer's electric service in order to operate. (TR 99) The Utility would then need continued periodic access to the customer's property in order to empty the tanks. EU witness Cole testified that in his experience a typical easement runs between 15 and 20 feet wide on private property. During the service hearing, a resident testified that EU does not have the needed easements and doubts EU's ability to obtain them. (2/9 S-TR 30) EU witness Boyer acknowledged the possibility that the Utility would need to claim eminent domain and compensate property owners for use of land. (TR 64) Witness Boyer testified that EU has set aside \$250,000 for eminent domain cases. (TR 65) Staff notes the issue regarding the granting of easements is not before the Commission at this time. However, since easements are not yet secure and residents have expressed no desire for service, if the Commission grants the application, the provision of service could be substantially delayed as EU acquires the legal rights to access customer property.

### **CONCLUSION**

The Utility's proposal of siting a septic tank and effluent pump on each customers' private property appears to be a novel arrangement. Based on the record evidence, staff has concerns regarding the efficacy of such an arrangement that, (1) presumes easements will be obtainable for all customers; (2) depends on connection with and continued operation of a customer's electric service, at the customer's cost; and (3) requires routine and continued access to the customer's property in order to properly maintain the system. Staff acknowledges that approval of the system design is under the purview of the DEP.

Notwithstanding these concerns, wastewater treatment will occur pursuant to a Bulk Service Agreement. As such, EU does not own or operate the treatment facilities; therefore, staff recommends that evidence of continued use of the land upon is not required or applicable in this instance.

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

**Recommendation:** No. Based on staff's recommendation in Issue 2, EU has not demonstrated a need for service exists; therefore, its request for certification is not in the public interest and should be denied. However, if the Commission believes the application should be granted, the Utility should be required to file an amended territory description and map within 30 days of the issuance of the Commission's order, and this docket should remain open for the parties and Commission to address the amended territory description and map, as discussed in Issue 4. (Phillips)

### **Position of the Parties**

**EU:** Yes. The County has identified these islands as a priority for the removal of septic tanks which the Charlotte County Master Sewer Plan identifies as a major contributor to the degradation of water quality in the waters adjacent to the County.

**OPC:** No position.

**PIE:** No. The public interest will not be served if a wastewater certificate for the territory proposed is issued to Environmental Utilities.

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

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **EU**

EU argued that the County has established that converting the proposed service territory from septic to sewer is a priority and in the public interest, and the Commission should defer to the County. (EU BR 10) EU asserted that public interest is not determined by the opinions of property owners as expressed by number of letters or vote of property owners. (EU BR 10-11) EU also stated that the County has considered the broader public interest and has articulated its support by signing the Bulk Agreement and the statements of its designated witness, County deponent Rudy, testifying that the County is "100% behind" the project. (EU BR 11; EXH 42 BSP 1067)

### **PIE**

PIE asserted that EU has not demonstrated a need, with no testimony provided showing water quality issues, no expert witnesses establishing a need, and its application being inconsistent with the Comp Plan. (PIE BR 15) PIE further argued that EU has failed to provide proof of financial ability to support the Utility. (PIE BR 15)

## LC

LC emphasized that as FLU Policy 3.2.4 prohibits sewer infrastructure in the Rural Service Area, the County cannot extend central sewer service to the bridgeless barrier islands, or allow EU to do so, without an amendment to the Comp Plan. LC further argues an amendment to the Comp Plan to allow such would not be in the public interest due to increased development that would follow. (LC BR 19) LC asserted that the rates and charges for the proposed service fail to take into account additional expenses with the installation and that EU has made no provision for alternative payments to address these. (LC BR 20) LC noted that a central sewer system may result in environmental damage in the event of a spill, and environmental damage may occur to wildlife habitat during installation. (LC BR 20-21) LC also argued that additional concerns, such as tariff terms that appear burdensome, a failure to address how the system would be serviced in a storm, a lack of consideration for property owners with new septic systems, and disruption of traffic caused by construction. (LC BR 21-22)

## ANALYSIS

Sections 367.021 and 367.031, F.S., give the Commission the authority to issue a utility a certificate of authorization to serve a specific service area. To implement these statutes, Rule 25-30.033(1)(h), (i), and (k), F.A.C., require statements showing the financial and technical ability of the applicant to provide service, the need for service in the proposed service area, the identity of any other utilities within the proposed service area that could potentially provide service, and the steps the applicant took to ascertain whether such other service is available.

Section 367.045(5)(a), F.S., provides that the Commission may grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest, or it may deny a certificate of authorization or an amendment to a certificate of authorization, if in the public interest. In prior proceedings, the Commission has made its determination regarding the public interest based upon whether a utility's application demonstrates there is a need for service, that the application is not in competition with or duplication of another system, that the utility has the financial and technical ability to provide service, and the utility has sufficient plant capacity or will construct the plant when needed.<sup>12</sup>

In Issues 2 and 3, staff recommends that EU's application may be inconsistent with the Charlotte County Comp Plan, and is inconsistent with the provisions of the Sewer Plan. As previously discussed, the Commission is not bound by the provisions of either document. Staff does not believe that, in isolation, the perceived inconsistencies should cause the Commission to deny EU's application. As discussed in Issue 4, a portion of EU's proposed service territory would be in competition with or in duplication of another system currently providing wastewater service. If the Commission were to grant EU's certificate, staff recommends that it be granted only for

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<sup>12</sup> See Order No. PSC-08-0243-FOF-WS, issued April 16, 2008, in Docket No. 20070109-WS, *In re: Application for amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include certain land in Charlotte County by Sun River Utilities, Inc. (f/k/a MSM Utilities, LLC)*, pp. 11-13; Order No. PSC-04-0980-FOF-WU, issued October 8, 2004, in Docket No. 20021256-WU, *In re: Application for certificate to provide water service in Volusia and Brevard Counties by Farnton Water Resources LLC*, p. 26; Order No. PSC-92-0104-FOF-WU, issued March 27, 1992, in Docket No. 19910114-WU, *In re: Application for water certificate in Brevard, Orange and Osceola Counties by East Central Florida Services, Inc.*, pp. 33-34.

the territory not currently served by another utility. In Issues 5 and 6, staff recommends that EU has demonstrated that it has the financial and technical ability to serve the proposed service area. In Issue 7, staff recommends that EU's application proposes sufficient plant capacity to serve the requested territory. As discussed in Issue 8, due to the unique system configuration proposed by EU, evidence of continued use of the land on which the utility treatment facilities are or will be located is not applicable.

As discussed in Issue 2, staff recommends that the Utility has not demonstrated a need for service in the proposed service territory. Staff believes that this is of significant concern. The Utility has not provided any request for service from existing residents of the proposed service territory, and written correspondence has indicated that the existing residence are largely opposed to EU's application. EU has not provided evidence that any environmental regulator mandated the conversion of septic systems to central sewer, and no evidence has been provided substantiating EU's claim of an environmental or health related need. Nor were any County leaders present during the hearing to clarify the needs of the County. Finally, although customer preference is not an appropriate basis for granting or denying a certificate application, in terms of demonstrating a need for the service, the overwhelming majority of prospective customers who testified before the Commission stated they were in opposition to the application.

Since EU has not demonstrated a need for service, staff believes that EU's financial and technical capability is irrelevant. Since no need for service exists, and the existing residents are largely opposed to EU's application, staff believes the Utility's application is not in the public interest. Therefore, staff recommends that EU's application for a wastewater certificate should be denied. However, as discussed in Issue 4, if the Commission grants EU's application, the Utility should be required to file an amended territory description and map within 30 days of the issuance of the Commission's order, and this docket should remain open for the parties and Commission to address the amended territory description and map.

## CONCLUSION

Based on staff's recommendation in Issue 2, EU has not demonstrated a need for service exists; therefore, its request for certification is not in the public interest and should be denied. This is consistent with prior Commission precedent where the Commission denied a portion of territory where the need for service was not demonstrated.<sup>13</sup> However, as discussed in Issue 4, if the Commission grants EU's request for certification, the Utility should be required to file an amended territory description and map within 30 days of the issuance of the Commission's order, and this docket should remain open for the parties and Commission to address the amended territory description and map.

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<sup>13</sup> See Order No. 14536, issued July 3, 1985, in Docket Nos. 19840387-WS and 19850072-WS, *In re: Application of Gulf Utility Company for Amendment of Water Certificate No. 72-W and Sewer Certificate No. 64-S in Lee County, Florida* (Utility failed to demonstrate a clear need for service in presenting the testimony of only one witness who demonstrated a need for service within a portion of the area in contention. Accordingly, the application was approved only with respect to the area where a clear need for service had been demonstrated.); Order No. 22847, issued April 23, 1990, in Docket No. 19890459-WU, *In re: Objection to notice of Conrock Utility Company of intent to apply for a wastewater certificate in Hernando County* (Certification denied where, among other things, the applicant failed to demonstrate the need for the proposed utility).

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

**Recommendation:** If the Commission approves staff's recommendation in Issue 9, Issues 10 through 13 are moot. However, staff's recommended wastewater rates, shown on Schedule No. 4, should be approved if the Commission grants the Utility's certificate. The Utility's proposal to include a repression adjustment should be denied; therefore, the staff-recommended rates shown on Schedule No. 4 do not include a repression adjustment. The rates should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved rates until authorized to change them by the Commission in a subsequent proceeding. A return on equity of 7.85 percent, with a range of plus or minus 100 basis points, should also be approved. (Thurmond, Ellis, Bruce)

**Position of the Parties**

**EU:** Base Facility Charge: 5/8" x 3/4" .....\$ 112.78  
[all other meter sizes to be increased pursuant to Rule 25-30.055(1)(b), F.A.C.]  
Residential Gallonage Charge (10,000 cap) .....\$ 35.97  
General Service Gallonage Charge .....\$ 43.16

**OPC:** The precise, appropriate rate structures and rates for the wastewater system for Environmental Utilities cannot be known at this time. The initial projected rates filed by the company were understated and may still be, impeding the Commission's ability to fully evaluate the public interest.

**PIE:** PIE has no position on this issue.

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

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**EU**

In its brief, EU stated that pursuant to Rule 25-30.033(1)(p), F.A.C., the applicant for an original certificate is required to support its proposed rates and charges with projected financial information, especially when the process is not bifurcated to allow more time for accurate financial information once the construction process has started. (EU BR 11) EU argued that it was hypocritical of interveners to object to the accuracy of its projections given the objections to bifurcation. (OPC BR 11; TR 236) EU also emphasized the testimony of EU witness Swain, who stated that the original certificate application process is based on best available estimates, as opposed to a rate case where records can be audited. (EU BR 12; TR 127) Lastly, the Utility highlighted that the projected costs were vetted through discovery and the fact that none of the interveners offered testimony proposing alternative costs. (OPC BR 12; EXH 23-29, 32-45, and 37-39)

## **OPC**

### ***Accumulated Deferred Income Taxes***

In its brief, OPC stated that while it agrees the taxation of CIAC does not create accumulated deferred income taxes (ADITs), ADITs associated with the tax timing differences should still be included in the Utility's capital structure. (OPC BR 2; TR 145-146) OPC cited witness Swain's testimony that EU is not required to calculate and include ADITs in rate base. (OPC BR 3; TR 145-146) OPC argued that the fact that one could not find a true original certificate docket in which ADITs were required is not a sufficient basis on which to argue that they should not be included. (OPC BR 3)

### ***Barging***

In its brief, OPC stated that EU has produced no evidence to corroborate the accuracy of bargaining fees included in projected rates. (OPC BR 3) EU witness Boyer claims to have discussed a proposal for a flat rate transport fee with Palm Island Transit. (OPC BR 3; TR 129) However, because EU witness Boyer brought forward no proof that this discussion has occurred, OPC stated that such quotes and proposals are inadmissible hearsay under Section 120.57(1)(c), F.S., as they are not being used to supplement or explain other evidence. (OPC BR 3-4; TR 130) OPC also pointed out the inconsistent responses EU has given in discovery when asked about transportation costs. (OPC BR 4; EXH 22; EXH 27; EXH 34)

### ***Surveying and Easements***

In its brief, OPC stated that EU's estimated costs were not based on any corroborating evidence and testimony. (OPC BR 4) OPC contends that EU witness Boyer's conversations with other parties used to support the estimates should be inadmissible under Section 120.57(1)(c), F.S., as they are relied upon as the sole support for the costs. (OPC BR 4-5) OPC asserts that EU's witnesses are inconsistent even with regard to the estimated \$250,000 amount, with EU witness Boyer stating the amount includes only easements, while EU witness Swain claims the amount addresses both surveying and easement expenses. (OPC BR 5) OPC argues that while EU witness Boyer acknowledged having to pay for easements, either directly or through eminent domain, in the same area in the past,<sup>14</sup> the Utility's filings assume all easements will be donated. (OPC BR 5)

### ***Salaries & Wages***

In its brief, OPC stated that EU's estimates regarding salaries and wages are understated. (OPC BR 5; EXH 22) OPC asserted that the salary levels included in the Utility's schedules and its responses to discovery were inconsistent. (OPC BR 5-6; EXH 25) OPC also stated that the estimated expense for salary is severely underestimated, as it is comprised of salaries significantly lower than comparable salaries of Englewood Water District, which were provided by EU in response to discovery. (OPC BR 6; EXH 27)

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<sup>14</sup> The easements referenced here are in relation to Mr. Boyer's ownership and operation of Little Gasparilla Water Utility, Inc., in Charlotte County.

### ***Inflation***

In its brief, OPC argued that EU's estimated costs do not sufficiently account for the impact of inflation. (OPC BR 6) OPC stated that while EU witness Cole says that he added a "bump up" to account for inflation, he also stated that the same "bump up" is intended to cover all the costs that were not specifically itemized such as gopher tortoise relocation. (OPC BR 6; TR 105; TR 114) OPC also stated that there is no direct evidence that this "bump up" was intended to or will sufficiently cover inflation. (OPC BR 6) Lastly, OPC stated that while it understands that EU cannot continually update its estimates through the hearing date, the exceptionally high rate of inflation over the last year casts further doubt on the Utility's ability to do the project for the amount the Utility has proposed here. (OPC BR 6)

OPC attested that the Commission has never applied a repression adjustment to a wastewater only utility. OPC contends that a repression adjustment for a wastewater only utility would be contrary to decades of Commission precedent. In addition, the demographics of the service area is 65 percent rental properties. As a result, there would be no incentives to restrict usage based on cost because the short-term renters are not paying the utility bill. (OPC BR 7)

### **LC**

In her brief, LC stated that while the mathematical calculations used for rates and charges may be correct, they pre-suppose that the underlying estimates given were accurate and she believes that these estimates are not necessarily accurate nor comprehensive. (LC BR 23) She further stated that there is no way to know if the budget category contains all the relevant elements and their associated costs. (LC BR 23) LC emphasized that the construction estimates given by Giffels-Webster Engineering stated that the costs presented "cannot and should not be taken as a total project cost." (LC BR 23; EXH 4 BSP 101) LC further stated that permitting costs, environmental impact fees, and other factors were not adequately considered. (LC BR 23) LC went into detail regarding the cost of gopher tortoise removal, a cost that EU witness Boyer did not include in his projected operation and maintenance (O&M) costs. (LC BR 24; TR 67-68) LC also noted that EU has failed to include costs for a water resource caution area reuse feasibility study, which is required on the island per the Florida Department of Environmental Protection. (LC BR 24-25; EXH 18 BSP 892-893) LC further stated that easement costs were left out of cost estimates made by EU. (LC BR 25) LC stated that it is impossible to know whether the following expenses were included in cost estimates: tap fees, barging fees, cost to fill abandonment of septic tanks, maintenance for sewer pump out, mitigation costs for environmental issues, installation of the main pump station, and permitting fees. (LC BR 25-26) Additionally, LC stated that the "final cost analysis" that was to be provided by EU witness Cole if any items were missing from his memo has not been filed. (LC BR 26; TR 108) Lastly, LC stated that should these expense estimates be approved, which she believes to be neither accurate nor comprehensive, the Commission would likely be forced to address the funding gap for this project in the future, thus increasing rates. (LC BR 26; TR 261)

## ANALYSIS

In setting initial rates and charges for a new utility, Commission practice has been to set rates so that the utility will have an opportunity to earn a fair return on its investment when approximately 80 percent of its projected customers are being served.<sup>15</sup> Typically, in the early years of development, the customer base of a utility is not sufficient to allow the utility to recover its O&M expenses and earn a fair return on its investment. However, as growth reaches 80 percent of a utility's projected design capacity, the initial rates should become compensatory.<sup>16</sup>

Within its application, the Utility provided the appropriate information pursuant to Rule 25-30.033(1)(p), F.A.C., to support its proposed rates and charges. In this case, the Utility is not yet built so the rate base, cost of capital, and net operating income provided by the Utility in its application are based on estimates used to set initial rates. (EXH 7) Below are staff's recommended adjustments to these figures, should the Commission approve the Utility's request for a wastewater certificate.

### Projected Rate Base

Consistent with Commission practice in applications for original certificates, rate base is identified only as a tool to aid in setting initial rates and is not intended to formally establish rate base.<sup>17</sup> The Utility's proposed wastewater rate base calculations, as well as staff adjustments, are described below.

The Utility proposed a plant-in-service balance of \$21,958,148 in its filing. (EXH 7) Included in this balance is \$800,000 for land. Land is separate from plant-in-service and should be included as a separate line item. Thus, staff is recommending an adjustment to decrease plant-in-service by \$800,000 and increase land by \$800,000.

In addition, the Utility estimated \$522,000 of organization costs in EU's plant-in-service. Included in this amount is an estimate for engineering costs. In response to discovery, the Utility provided documentation of updated actual costs and estimates to completion that totaled \$41,862. (EXH 34) Based on the updated information provided by the Utility, staff recommends an adjustment to decrease organization costs by \$88,138 to reflect the actual and updated estimates to complete. (EXH 34)

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<sup>15</sup> Order No. PSC-2018-0271-PAA-WS, issued May 30, 2018, in Docket No. 20160220-WS, *In re: Application for original water and wastewater certificates in Sumter County, by South Sumter Utility Company, LLC.*; Order No. PSC-17-0113-PAA-WS, issued March 28, 2017, in Docket No. 20130105-WS, *In re: Application for certificates to provide water and wastewater service and Hendry and Collier Counties, by Consolidated Services of Hendry & Collier, LLC.*, p. 3.

<sup>16</sup> Order No. PSC-12-0353-PAA-WU, issued July 9, 2012, in Docket No. 20110022-WU, *In re: Application for certificate to operate water utility in Pasco County by HV Utility Systems, L.L.C.*, p. 5.

<sup>17</sup> Order No. PSC-2020-0059-PAA-WS, issued February 24, 2020, in Docket No. 20190147-WS, *In re: Application for certificates to provide water and wastewater service in Brevard County by River Grove Utilities, Inc.*, p. 4; Order No. PSC-17-0113-PAA-WS, issued March 28, 2017, in Docket No. 20130105-WS, *In re: Application for certificates to provide water and wastewater service and Hendry and Collier Counties, by Consolidated Services of Hendry & Collier, LLC.*, p. 3.



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In response to discovery, EU stated that \$14,781,130 of the amount originally included in Account 354 – Pumping Structures was included in that account in error and belonged in Account 371 – Pumping Equipment. (EXH 26 BSP 950) Staff recommends removing \$14,781,130 from Account 354 – Pumping Structures. However, as discussed below, staff is recommending adjustments to the amount reclassified in Account 371 – Pumping Equipment.

The Utility assumed that 998 septic tanks would need to be crushed and filled to install service. (EXH 29) However, only houses with existing septic tanks at the time of the connection to EU will need the tanks removed since the County will no longer issue permits for septic tanks once central sewer is available. (EXH 30) Since only an estimated 860 customers will have septic tanks in the proposed service territory at the time EU would be created, staff recommends that \$1,290,000 (860 ERC x \$1,500/ERC) is the correct value for crush and fill septic tanks in Account 371 – Pumping Equipment.

EU accounted for 1,251 LPS tank installations in Account 371 – Pumping Equipment; however, the Utility reaches 80 percent capacity in year 10, with an ERC count of 1,013 by end of year, therefore, 1,013 LPS tanks should be used instead. (EXH 29) Staff recommends that \$8,104,000 (1,013 ERCs x \$8,000/ERC) be added into Account 371 – Pumping Equipment for the LPS tank installations.

Due to staff modifications, EU's proposed allocation method should be adjusted to reflect the new values. Staff recommends that \$76,748 be removed from Account 371 – Pumping Equipment and \$7,180 from Account 360 – Force Main. Staff recommends that subsequently a total of \$83,928 be added in to Account 361 – Gravity Main to correct the improper allocation. (EXH 25; 34)

Based on the above, staff recommends a reduction to EU's projected plant in service of \$2,864,138 and an increase in land of \$800,000. As such, staff recommends an adjusted projected plant in service, inclusive of land, of \$19,894,010.

In its filing, the Utility proposed an accumulated depreciation balance of \$6,731,961. (EXH 7) Based on updated information provided by the Utility regarding average service life and corresponding adjustments to reflect adjustments to plant-in-service, as described above, an adjustment to accumulated depreciation is necessary. (EXH 26 BSP 949) Staff recommends an increase to accumulated depreciation of \$1,946,766. As such, staff recommends an accumulated depreciation balance of \$8,678,727.

In its filing, the Utility proposed CIAC and accumulated amortization of CIAC balances of \$13,079,845 and \$4,124,751, respectively. (EXH 7) Based on the revised service availability charges recommended in Issue 11, staff recommends corresponding adjustments to increase CIAC and accumulated amortization of CIAC by \$162,263 and \$51,170, respectively. This results in recommended CIAC and accumulated amortization of CIAC balances of \$13,242,108 and \$4,175,921, respectively.

In its filing, the Utility proposed a working capital balance of \$174,443. (EXH 7) O&M expense was one factor used by the Utility in computing the working capital balance. (EXH 39) As such,

based on adjustments to O&M expense, as discussed below, staff recommends an increase to working capital of \$5,026. As a result, staff recommends a working capital balance of \$179,469. In total, EU proposed a rate base of \$6,445,536. (EXH 7) Based on the adjustments discussed above, staff recommends that the rate base be decreased by \$4,117,820. Consequently, staff recommends an adjusted rate base of \$2,328,564. Wastewater rate base calculations are shown on Schedule No. 1-A. Staff's adjustments to rate base are shown on Schedule No. 1-B.

### **Projected Cost of Capital**

The Utility's application contained a schedule of the Utility's capital structure with projected common equity of \$3,399,206, customer deposits of \$6,420, and ADITs of \$3,040,210. (EXH 7) Staff recommends adjustments to accumulated deferred income taxes, as described below.

In response to staff discovery, the Utility stated the computation of the ADIT balance it projected was "no longer relevant as the 'Infrastructure Investment and Jobs Act' is in effect, and CIAC is no longer taxable." (EXH 27) OPC did not contest the removal of the ADITs associated with the taxation of CIAC. However, OPC argued in its brief that, based on EU witness Swain's testimony that ADITs are created from a timing difference in tax depreciation and Commission book depreciation, they should be included in the calculation of rates, as they will be created from the additions of plant requested in this case. (OPC BR 2-3; TR 145-146) Witness Swain explained two specific reasons why she did not include ADITs associated with plant additions in the calculation of rates: (1) there is no way of knowing if the owner will elect to take advantage of a shorter tax life at this point in time; and (2) it has never been included in an original certificate application approved by the Commission. (TR 145-146) She further stated that in a full rate case, the addition of ADITs would be mandatory assuming a difference in asset life for tax purposes based on the Utility's election. (TR 146) Staff agrees with witness Swain's justification for the exclusion of the ADITs related to plant additions. Thus, staff recommends an adjustment to decrease deferred income taxes by \$3,040,210 bringing the balance of deferred income taxes to \$0. Cost of Capital calculations are shown on Schedule No. 2.

EU proposed a cost rate for common equity of 7.09 percent. (EXH 7) However, based on the adjustments to capital structure made above, staff recommends a cost rate for common equity of 7.85 percent based on the current leverage formula.<sup>18</sup>

Based on the adjustments above, staff recommends an overall cost of capital of 7.84 percent. The appropriate return on equity for EU is 7.85 percent, with a range of plus or minus 100 basis points, as shown on Schedule No. 2.

### **Projected Net Operating Income**

EU requested net operating income (NOI) of \$241,078, based on the projected rate base and a projected overall cost of capital of 3.74 percent. (EXH 7) Staff's recommended NOI of \$182,532 reflects the full return on investment resulting from recommended projections of rate base and overall cost of capital. The projected NOI is shown in Schedule No. 3-A. Staff's adjustments are shown on Schedule No. 3-B.

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<sup>18</sup> Order No. PSC-2021-0244-PAA-WS, issued July 6, 2021, in Docket No. 20210006-WS, *In re; Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

### **Projected Revenue Requirement**

The Utility proposed a revenue requirement of \$2,142,157. (EXH 7) Staff recommends an adjusted revenue requirement of \$2,279,478. The Utility's projected revenue requirement includes O&M expenses, depreciation and amortization expense, taxes other than income, income taxes, as well as a return on investment. The recommended revenue requirements will allow the Utility the opportunity to recover its expenses and earn a 7.85 percent return on its investment in rate base.

### **Projected Operation and Maintenance Expense**

EU proposed total O&M expense of \$1,236,731. (EXH 7) Staff believes adjustments are necessary and are explained below.

#### ***Projected Salaries and Wages***

In its filing, the Utility projected salaries and wages – employees expense of \$164,808 and salaries and wages – other of \$85,330. (EXH 7) OPC highlighted inconsistencies in salaries and wages expense in its brief. The inconsistencies are due to the inflation factor added by the Utility, along with the incorrect identification of total salaries and wages expense. (OPC BR) The total expense in the Utility's application included \$164,808 booked in Account 701 - Salaries and Wages – Employees and \$85,330 in Account 703 -Salaries and Wages – Other, for a total of \$250,138. (EXH 22 BSP 913) OPC cited and compared expense amounts that were adjusted for inflation to those that were not adjusted. (OPC BR 5-6) In response to discovery requesting a breakdown of the amounts included in the total expense, EU provided the base salary for each position, which did not include the inflation factor it included in the total expense it requested. (EXH 25 BSP 944) The breakdown and inclusion of this factor is further confirmed in the Utility's work papers provided in response to OPC's discovery. (EXH 39)

OPC additionally argued that the salary levels proposed by EU were too low in comparison to the support documentation provided by the Utility. (OPC BR 6) To support its request, the Utility cited pay ranges of positions with the Englewood Water District that it identified as being similar to those included in EU's salaries and wages expense. (EXH 27 BSP 957) Staff believes the ranges provided by the Utility are appropriate to support the requested expense. The salary expense included in rates reflect an inflationary factor for 10 years out. (EXH 39) OPC did not provide any testimony to propose a specific adjustment.

Staff believes one adjustment is necessary to remove duplicative expenses. In response to discovery, EU stated that holiday and vacation pay was incorrectly included in both salaries and wages – employees and employee pensions and benefits. (EXH 29 BSP 970) To remove this duplication of the employee benefit expense, staff recommends an adjustment to decrease salaries and wages expense by \$29,824. This results in a total salaries and wages expense of \$220,314.

#### ***Projected Employee Pensions and Benefits***

In its filing, the Utility projected employee pensions and benefits expense of \$86,215. (EXH 7) To estimate this expense, the Utility used a percentage of salaries and wages – employees expense. (EXH 39) Staff agrees with this methodology but recommends a decrease to employee pensions and benefits expense of \$1,818 due to the corresponding adjustment to salaries and

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wages expense discussed above. This results in an employee pensions and benefits balance of \$84,397.

### ***Projected Transportation Expense***

In its filing, the Utility projected transportation expense of \$19,016. (EXH 7) OPC's concerns over the inconsistencies regarding this projection can be largely explained through inflation. (EXH 7; EXH 22 BSP 929; EXH 27 BSP 956) In her original filing, EU witness Swain projected \$19,016 of transportation expense, which included an inflation factor. (EXH 22 BSP 929) In response to discovery, EU witness Swain provided calculations for the base expense that did not include inflation. (EXH 27 BSP 956) Staff recommends no adjustments to transportation expense.

### ***Projected Insurance – Workman's Compensation***

In its filing, the Utility projected insurance – workman's compensation expense of \$22,489. (EXH 7) To estimate this expense, the Utility used a percentage of salaries and wages – employees expense. (EXH 39) Staff agrees with this methodology but recommends a decrease of \$3,269 due to the corresponding adjustment to salaries and wages expense discussed above. This results in an insurance – workman's compensation expense of \$19,220.

### ***Projected Sludge Removal Expense***

The Utility only accounted for the cost of 810 ERCs for sludge removal expenses in Account 711 – Sludge Removal Expense. Using the Utility's updated analysis at 80 percent capacity, which is 998.4 ERCs (1248 ERC x 80 percent = 998.4), staff recommends that an additional \$68,751 be added to Account 711 – Sludge Removal Expense to account for sludge removal. (EXH 29 BSP 969)

### ***Projected Purchased Power Expense***

EU accounted for the purchased power cost of 1,251 ERCs in Account 715 – Purchased Power. Using the Utility's updated analysis at 80 percent capacity, or 998 ERCs, staff recommends that \$3,686 be removed from Account 715 – Purchased Power to account for the reduction of purchased power cost. (EXH 29 BSP 972)

### ***Cost Projection***

Both OPC and LC have raised concerns over what they characterize as general inaccuracies or inconsistencies in cost projections. (OPC BR 6-7; LC BR 23-26) OPC raised concerns about maintenance on the vacuum station, inflation, engineering costs, and depreciation life. (TR 286; EXH 4; TR 303-304) LC raised concerns over tap fees, barging fees, septic tank abandonment costs, maintenance of the sewer tank pump, mitigation costs for environmental issues, cost responsibility for the main pump station, and permitting fees. (LC BR 23-26) As stated above, the Utility is not built yet, so it must rely on estimates and projections for costs. It is staff's position that, apart from the adjustments listed above, the Utility has met its burden of responsibility in providing the most accurate information it has in estimating O&M costs.

### ***Projected O&M Expense Summary***

Based on the above adjustments, staff recommends projected O&M expense be increased by \$30,155 (-\$29,824 - \$1,818 - \$3,269 + \$65,065). This results in total O&M expense of \$1,266,886.

### **Projected Depreciation Expense**

The Utility reflected depreciation expense of \$232,177. (EXH 7) Staff has reviewed depreciation expense and determined adjustments were needed. First, based on staff's review of the Utility's work papers, staff recommends \$17,217 of amortization expense associated with plant costs be reclassified as depreciation expense. (EXH 39) This adjustment increases depreciation expense by \$17,217. Second, based on staff's adjustments to rate base, corresponding adjustments should be made to increase depreciation expense by \$224,050 (-\$2,203 - \$5,535 + \$231,788). Based on staff's adjustments, this results in depreciation expense of \$473,444.

### **Projected Amortization**

The Utility reflected an amortization expense of \$17,217. (EXH 7) Based on the adjustment to reclassify a portion of amortization expense to depreciation expense discussed above, staff recommends an adjustment to decrease amortization by \$17,217. This results in amortization expense of \$0.

### **Projected Taxes Other Than Income**

In its filing, EU included taxes other than income (TOTI) expense of \$333,110. (EXH 7) Based on a corresponding adjustment to salaries and wages expense made above, staff is recommending a decrease to TOTI of \$5,719. In response to discovery, the Utility provided updated millage rates for calculating property tax expense. (EXH 33 BSP 988) To reflect updated property tax expense, staff is recommending a decrease to TOTI of \$38,922. Also, staff made a corresponding adjustment to increase regulatory assessment fees by \$6,179 to reflect the fallout from staff's recommended revenue requirement. This results in a recommended decrease to TOTI of \$38,462 and a TOTI balance of \$294,648.

### **Income Taxes**

EU proposed income taxes of \$81,844. (EXH 7) Based on staff's adjustments to NOI, including the revenue increase, staff recommends decreasing income taxes by \$19,875 (-\$53,113 + \$39,417). Therefore, staff recommends income taxes of \$61,969. The projected NOI is shown in Schedule No. 3-A. Staff's adjustments are shown on Schedule No. 3-B.

### **Projected Rates and Rate Structure**

The Utility structured its proposed wastewater rates in accordance with Rule 25-30.033(2), F.A.C., which requires that a base facility and usage rate structure, as defined in Rule 25-30.437(5), F.A.C., be used for metered service. EU's proposed rate structure consists of a base facility charge (BFC) and gallonage charge for its residential and general service customers. In addition, the Utility proposed a 10,000 gallon cap for residential usage. (EXH 7 BSP 160) EU's proposed rates were designed to generate the Utility's requested revenue requirement of \$2,412,842 for its wastewater system. (EXH 22 BSP 929)

The Utility's proposed wastewater rates recover 56 percent of wastewater revenues through the BFC. (EXH 22 BSP 929) It is Commission practice to recover 50 percent, or greater, of the revenue through the BFC for the purpose of recognizing the capital intensive nature of wastewater plants.<sup>19</sup> Therefore, staff believes the Utility's proposed allocation is reasonable.

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<sup>19</sup> Order No. PSC-2020-0118-PAA-WS, issued April 20, 2020, in Docket No. 20190071-WS, *In re: Application for staff-assisted rate case in Polk County by Deer Creek RV Golf & Country Club, Inc.*

EU is a wastewater only utility. Wastewater is billed based on water usage. The water providers to the potential customers of EU are Bocilla Utilities and Little Gasparilla Utility. Since the Utility is not the water service provider, in response to staff's interrogatories, witness Swain provided the method used to determine billable gallons. (EXH 28,BSP 963) The billable gallons are based on water gallons sold from the annual reports of Bocilla and Little Gasparilla. Based on this information, witness Swain determined that average gallons per day per equivalent residential connection (ERC) is 90 gallons. The anticipated number of ERCs at design capacity for the Utility is 1,248. Rates in this proceeding are based on 80 percent of the design capacity of the system, which is 998 ERCs. Witness Swain estimated billable gallons by multiplying 998.4 x 90 x 365, which results in 32,797,440 gallons. (EXH 28 BSP 963). Staff agrees with witness Swain's calculation of proposed billable gallons.

Witness Swain also proposed a 10 percent repression adjustment to reduce the proposed billable gallons to reflect the customers' response to now having to pay for wastewater. (EXH 7 BSP 177; EXH 22 BSP 929; EXH 28 BSP 963) Witness Swain explained that a repression adjustment is recognized when there is a significant increase in the gallonage bill which has an impact on the water use. (TR 305) Witness Swain stated that repression adjustments are routinely done for water and should also flow through to wastewater if the utility is both water and wastewater. (TR 305) In some instances, the Commission, as a result of an increase in the price of water, has applied a corresponding wastewater repression adjustment when the water and wastewater provider are the same utility.<sup>20</sup> Even in the cases with a water and wastewater utility provider, there still has been no recognition of an adjustment due to an increase in the price of wastewater, but only the recognition of the effect of an increase in the price of water on customer demand. It is Commission practice that an increase in the price of water is the catalyst for whether or not there is a repression adjustment which would ultimately flow through to wastewater.

As mentioned previously, EU is not the water provider to its potential customers. The potential customers are served by two separate water utilities, which are Bocilla and Little Gasparilla. There would have to be an increase in the price of water provided by those two entities in order to determine whether there should be a repression adjustment to the billable gallons for wastewater. There is nothing in the record to evaluate price increases in water for Bocilla and Little Gasparilla.

Historically, the Commission has not calculated a repression adjustment for a wastewater only utility. In its brief, OPC also stated that a repression adjustment in this case is unusual because the Commission has never applied a repression adjustment for wastewater-only cases, and doing so would be contrary to years of precedent. (OPC BR 7) In addition to a lack of precedent for a wastewater repression adjustment, there is no incentive to restrict usage because the demographics of the area is 65 percent rental properties. The renters are not paying the utility bill which provides no incentive to restrict usage based on cost. (OPC BR 7) Based on the above, staff does not believe a repression adjustment is appropriate for the Utility.

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<sup>20</sup> Order No. PSC-2017-0459-PAA-WS, issued November 30, 2017, in Docket No. 20160176-WS, *In re: Application for staff-assisted rate case in Polk County by Four Lakes Golf Club, Ltd.*

Witness Swain reduced the proposed billable gallons by 20 percent to reflect that not all water returns to the wastewater system. (EXH 22 BSP 929) This proposed reduction is consistent with Commission practice. Lastly, the Utility proposed a residential wastewater cap of 10,000 gallons for its wastewater rates. (EXH 7 BSP 160) The wastewater cap is to recognize that not all water consumption is returned to the wastewater system.<sup>21</sup> Staff believes the proposed cap of 10,000 gallons is reasonable for that recognition.

### **CONCLUSION**

If the Commission approves staff's recommendation in Issue 9, Issues 10 through 13 are moot. However, if the Commission approves EU's application, in accordance with staff's recommended revenue requirement, the appropriate rate structures and wastewater rates shown on Schedule No. 4 should be approved. The Utility's proposal to include a repression adjustment should be denied; therefore, the staff-recommended rates shown on Schedule No. 4 do not include a repression adjustment. The rates should be effective for services rendered on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, F.A.C. EU should be required to charge the approved rates until authorized to change them by the Commission in a subsequent proceeding. A return on equity of 7.85 percent, with a range of plus or minus 100 basis points, should also be approved.

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<sup>21</sup> Order No. PSC-2017-0459-PAA-WS, issued November 30, 2017, in Docket No. 20160176-WS, *In re: Application for staff-assisted rate case in Polk County by Four Lakes Golf Club, Ltd.*

**Issue 11:** What are the appropriate service availability charges?

**Recommendation:** If the Commission approves staff’s recommendation in Issue 9, Issues 10 through 13 are moot. However, if the Commission approves EU’s application, the appropriate service availability charges are shown on Schedule No. 5 and should be approved. In addition, the Utility’s proposed service availability policy should be approved. The approved charges and policy should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. EU should be required to collect its approved service availability charges until authorized to change them by the Commission in a subsequent proceeding. (Bruce)

**Position of the Parties**

**EU: Main Capacity Charge**

Residential per ERC .....	\$ 11,928.00
All others per gallon .....	\$ 55.22
<u>Sewer Lateral Installation Fee</u> .....	\$ 1,292.85

**OPC:** Service availability charges should be designed in accordance with Rule 25-30.580, F.A.C.

**PIE:** PIE has no position on this issue.

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

**Staff Analysis:**

**PARTIES’ ARGUMENTS**

**EU**

EU asserted that the service availability charges are based on projected financial information because it was not allowed to bifurcate the certification process due to objections by intervenors. (EU BR 12) As a result, the Utility had to provide projected construction costs by a professional engineer with expertise in the conversion of septic to sewer projects. (TR 86) EU contended that no intervenors offered alternatives to the Utility’s construction cost but only cast doubt on the soundness of the Utility’s projected construction cost. EU further emphasized that the validity of its projected construction cost was adequately supported. (TR 94-96, 98, 105-107, 113-114, 140-141,145-146) The Utility argued that its connection charge is within reason of Charlotte County’s charge of \$10,000 as attested to by a property owner. (SH2. 92) EU’s initial proposed service availability charges included a sewer lateral charge and were revised due to a calculation error. Based on these initial proposed service availability charges, the Utility claimed that the resulting CIAC level, although slightly above the guidelines in accordance with Rule 25.30.580, F.A.C., produce lower monthly rates. (EU BR 12)



### **OPC**

OPC agreed with witness Swain's revised calculation for the sewer lateral cost. At the hearing, witness Swain indicated she miscalculated the sewer lateral cost because the calculation was based on the incorrect number of ERCs. (TR 310) Witness Swain's revised calculation results in a lateral cost of \$1,613,476.80. (TR 311) OPC contended that the main extension charge should be \$11,696.32 based on the lateral cost offered by witness Swain. (OPR BR 8)

### **LC**

LC contended that due to the lack of substantiation of construction costs the service availability charges cannot be analyzed appropriately. (LC BR 27) LC argued that the connection fee has varied from \$10,000 to \$20,000 per ERC with the EU actual proposal being \$11,927.85. (LC BR 27) LC asserts that a feasibility study and more effort on EU's part would provide the best estimate of the construction cost of the proposed project. (LC BR 27)

## **ANALYSIS**

Pursuant to Rule 25-30.580(1), F.A.C., the maximum amount of CIAC, net of amortization, should not exceed 75 percent of the total original cost, net of depreciation, of the Utility's facilities and plant when the facilities and plant are at their designed capacity. Rule 25-30.580(2), F.A.C., provides that the minimum amount of CIAC should not be less than the percentage of such facilities and plant that is represented by water transmission and distribution and sewage collection systems. Service availability charges are one-time charges applicable to new connections, which allow customers to pay their pro rata share of the facilities and plant costs.

EU proposed a main capacity (or main extension) charge of \$11,928 to recover a portion of the cost of the Utility's collection system from future customers. (EXH 22 BSP 914) In addition, the Utility proposed a sewer lateral installation charge to recover the cost of piping used to connect customers to mains. Witness Swain in her rebuttal testimony provided a corrected sewer lateral charge of \$1,292.85, as the charge included in direct testimony was based on the incorrect number of ERCs. (EXH 22 BSP 915) The Utility states that its proposed service availability charges result in a contribution level of 83.56 percent at design capacity. (EXH 22 BSP 914)

Staff made adjustments to Utility plant-in-service which included an adjustment to lateral cost. As a result, staff recommends a main extension charge of \$11,782 (\$14,703,761/1,248) and a sewer lateral installation charge of \$1,290.17 (\$1,610,133/1,248). Staff's recommended charges result in a contribution level of 96.36 percent at design capacity. Staff recognizes that the contribution level is greater than the 75 percent maximum pursuant to the rule. However, pursuant to Rule 25-30.580, F.A.C., the minimum amount of CIAC should not be less than the percentage of such facilities and plant that is represented by water transmission and distribution and sewage collection systems. In this case, EU's wastewater system in its entirety is a collection system, which represents 96.39 percent of total Utility plant-in-service. Staff's recommended contribution level is higher than EU's because the Utility only included the main extension charge in its contribution level calculation and not the sewer lateral charge. Based on the above, staff's recommended service availability charges are appropriate based on projected costs and result in contribution levels that are consistent with Rule 25-30.580, F.A.C., and should be

approved. It should be noted that the recommended charges are not grossed up consistent with the recent tax law changes.

The Utility's proposed service availability policy states that the sewer lateral and low-pressure system tank for each residence will be installed by the company. The customer will be responsible for the plumbing and electrical to connect from the residence to the tank. Furthermore, according to the Utility's proposed service availability policy, the customers will be required to pay the Commission's recommended service availability charges as well as existing charges imposed by Charlotte County. (EXH 35, 13)

### **CONCLUSION**

If the Commission approves staff's recommendation in Issue 9, Issues 10 through 13 are moot. However, if the Commission approves EU's application, based on the above, the appropriate service availability charges are shown on Schedule No. 5 and should be approved. In addition, the Utility's proposed service availability policy should be approved. The approved charges and policy should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. EU should be required to collect its approved service availability charges until authorized to change them by the Commission in a subsequent proceeding.

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

**Recommendation:** If the Commission approves staff's recommendation in Issue 9, Issues 10 through 13 are moot. However, if the Commission approves EU's application, the appropriate miscellaneous service charges are shown on Schedule No. 5 and should be approved. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective for services rendered on or after the stamped approval date on the tariff sheet provided customers have received notice pursuant to Rule 25-30.475(1), F.A.C. The Utility should provide proof of noticing within 10 days of rendering the approved notice. (Bruce)

### Position of the Parties

**EU:**

*Initial Connection Charge	\$30.00
Normal Reconnection Charge	\$30.00
Violation Reconnection Charge	Actual Cost
Premise Visit (in lieu of disconnection)	\$30.00
Late Payment Fee	\$7.50
Bad Check Charge	Pursuant to §68.065(2), Fla. Statutes*

**OPC:** The appropriate miscellaneous service charges cannot be known at this time but are likely to be higher than those provided by the company given EU's use of incorrect salary and wage data and likely underestimation of salaries and wages.

**PIE:** PIE has no position on this issue.

**LC:** Undetermined.

**Staff Analysis:**

### PARTIES' ARGUMENTS

**EU**

EU indicated intervenor Cotherman's position is that miscellaneous service charges cannot be determined because of her belief that cost of construction had not been documented. (EU BR 13) EU asserted that it provided cost justification in support of its proposed charges and the charges are not based on the cost of construction. (EU BR 13) The Utility pointed out that intervenor Cotherman offered no evidence to address the validity of the Utility's proposed miscellaneous service charges. (EU BR 13)

**OPC**

OPC attested that the calculation of miscellaneous service charges provided in Exhibit 7, Schedule 6 do not appear to be unreasonable at face value. (OPC BR 9) However, OPC argued that EU underestimated the employee salaries and thus, the proposed charges are underestimated. (OPC BR 9) OPC contended that miscellaneous service charges should be based on the actual labor expense. (OPC BR 9)

**LC**

Since costs related to the construction and installation of the facilities have not yet been provided and documented, LC argued that miscellaneous service charge cannot be accurately analyzed.

**ANALYSIS**

In witness Swain’s testimony, shown on Schedule 6, the Utility proposed miscellaneous charges consisting of initial connection, normal reconnection, and premises visit charges of \$30 during normal business hours, and EU requested that its violation reconnection charge for its wastewater system be actual cost. The Utility proposed a late payment charge of \$7.50 and Non-Sufficient Funds (NSF) charges. (EXH 7 BSP 159) EU’s proposed miscellaneous charges were accompanied by a cost justification as required by Section 367.091(6), F.S.

The purpose of these charges is to place the burden for requesting or causing these services on the cost-causer rather than the general body of ratepayers. The Utility requested the recovery of \$26.60 of field and supervisory labor associated with processing miscellaneous services based on an hourly salary of \$20 and the time it takes to perform all job functions, which is estimated to be 1.33 hours. Additionally, the Utility requested recovery of vehicle mileage of \$3.48 based on a mileage rate of \$0.58 per mile for six miles. (EXH 7 BSP 159) The Utility’s cost justification for its requested miscellaneous service charges is shown in Table 12-1.

**Table 12-1  
Miscellaneous Service Charges Cost Justification**

Labor (\$20 x 1.33)	\$26.60
Vehicle (\$0.58 x 6)	\$3.48
Total	\$30.08

Source: Utility’s Cost Justification

OPC has concerns that miscellaneous service charges are underestimated due to severely underestimated salaries and wages. As discussed in Issue 10, staff made no adjustments to EU’s proposed salaries and wages. Therefore, the labor component for the miscellaneous service charges are in line with the overall staff recommended salary expense. Intervenor Cotherman believes that the cost of construction has not been documented; therefore, the miscellaneous service charges cannot be established. (LC BR 28) However, the components used to determine miscellaneous service charges are not related to construction cost but rather to operating expenses. Intervenor Cotherman did not provide any evidence to support her position.

Staff believes the Utility's cost justification is reasonable for the proposed miscellaneous services. However, Rule 25-30.460, F.A.C., was recently amended to remove initial connection and normal reconnection charges. Pursuant to Rule 25-30.460, F.A.C., the definitions for initial connection charges and normal reconnection charges were incorporated in the definition of the premises visit charge. It should be noted that EU's request for initial connection and normal reconnection charges are obsolete and do not conform with the miscellaneous service charges rule. As a result, staff recommends that the Utility's requested initial connection and normal reconnection charges should not be approved; the Utility's requested premises visit charge of \$30 and violation reconnection charge at actual cost should be approved pursuant to Rule 25-30.460, F.A.C.

The Utility's requested late payment charge of \$7.50 is to recover the cost of supplies and labor associated with processing late payment notices. Within its cost justification, EU included \$5.00 for clerical labor associated with processing late payments based on the clerical employee who is paid \$20 per hour and the amount of time it takes the employee to process a single late payment charge of 15 minutes. (EXH 7 BSP 159) This is consistent with Commission practice, in which the Commission has found that 10 to 15 minutes is an appropriate amount of time for a billing employee to process a single late payment.<sup>22</sup> Furthermore, EU requested to recover supervisory labor of \$2.00 based on the supervisor's hourly salary of \$25 per hour and the time it takes the supervisor to review a late payment charge of eight minutes, which is consistent with recently approved cases. The Utility is also requesting recovery of \$0.10 for supplies and \$0.50 for postage. (EXH 7 BSP 159) EU's cost justification totals to \$7.60. The Utility rounded down its requested late payment charge to \$7.50. The Commission recently approved a late payment charge of \$7.50.<sup>23</sup> Staff believes the Utility's requested late payment charge is reasonable and should be approved. The Utility's cost justification for its requested miscellaneous service charges is shown in Table 12-2.

**Table 12-2**  
**Late Payment Charge Cost Justification**

Clerical Labor (\$20 x 0.25)	\$5.00
Supervisor Labor (\$25 x 0.08)	\$2.00
Printing Supplies and Postage	\$0.60
Total	\$7.60

Source: Utility's Cost Justification

Staff recommends that EU should be authorized to collect NSF charges consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:

- 1) \$25, if the face value does not exceed \$50,
- 2) \$30, if the face value exceeds \$50 but does not exceed \$300,

<sup>22</sup> Order No. PSC-2020-0059-PAA-WS, issued February 24, 2020, in Docket No. 20190147-WS, *In re: Application for certificates to provide water and wastewater service in Brevard County by River Grove Utilities, Inc.*

<sup>23</sup> *Id.*

- 3) \$40, if the face value exceeds \$300,
- 4) or 5 percent of the face amount of the check, whichever is greater.

### **CONCLUSION**

If the Commission approves staff's recommendation in Issue 9, Issues 10 through 13 are moot. However, if the Commission approves EU's application, based on the above, the appropriate miscellaneous service charges are shown on Schedule No. 5 and should be approved. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective for services rendered on or after the stamped approval date on the tariff sheet provided customers have received notice pursuant to Rule 25-30.475(1), F.A.C. The Utility should provide proof of noticing within 10 days of rendering the approved notice.

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

**Recommendation:** If the Commission approves staff's recommendation in Issue 9, Issues 10 through 13 are moot. However, if the Commission approves EU's application, the appropriate initial customer deposit is \$380 for wastewater for the residential 5/8 inch x 3/4 inch meter size. The initial customer deposits for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding. (Bruce)

### **Position of the Parties**

**EU:** The customer deposit should be equal to the estimated average charge for wastewater service for two months pursuant to Rule 25-30.311(7), F.A.C, based upon the approved final rates.

**OPC:** The appropriate initial customer deposit is equal to two months of the average residential bill.

**PIE:** PIE has no position on this issue.

**LC:** Undetermined.

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **EU**

EU contends that its proposed customer deposit is pursuant to Rule 25-30.311(7), F.A.C. The Utility proclaimed that the customer deposit of \$380 is a fall-out of its final rates and is based on the average customer bill of \$178.78. (EU BR 13; EXH 3 BSP 72; EXH 7 BSP 160)

### **OPC**

OPC asserted that if the certificate is granted the customer deposits should be up to twice the average monthly bill as calculated by the Utility which is accordance with Commission precedent. (EXH 22; OPC BR 9)

### **LC**

Intervenor Cotherman argued, due to the undocumented costs of the construction and installation of the proposed project, the initial customer deposit cannot be accurately analyzed. (LC BR 28)

## ANALYSIS

EU requested customer deposits of \$180 for its wastewater system. Rule 25-30.311, F.A.C., contains criteria for collecting, administering, and refunding customer deposits. Rule 25-30.311(1), F.A.C., requires that each company's tariff contain its specific criteria for determining the amount of initial deposits. Customer deposits are designed to minimize the exposure of bad debt expense for the Utility and, ultimately, the general body of ratepayers. In addition, collection of customer deposits is consistent with one of the fundamental principles of ratemaking, ensuring that the cost of providing service is recovered from the cost-causer.

Rule 25-30.311(7), F.A.C., authorizes utilities to collect new or additional deposits from existing customers not to exceed an amount equal to the average actual charge for water and/or wastewater service for two billing periods for the 12-month period immediately prior to the date of notice. The two billing periods reflect the lag time between the customer's usage and the Utility's collection of the revenues associated with that usage. It is Commission practice to set initial customer deposits equal to two months bills based on the average consumption for a 12-month period for each class of customers.<sup>24</sup> OPC agrees that it is Commission precedent that customer deposits are equal to two months average bills. (OPC BR 9) Intervenor Cotherman does not believe the rates are substantiated and thus, the initial customer deposit cannot be analyzed. (LC BR 28) Staff has reviewed the financial information provided. Based on the staff recommended wastewater rates and average residential demand of 2,737 gallons, the average residential monthly bill is \$190, with a resulting initial customer deposit of \$380 based on the 2-month period.

## CONCLUSION

If the Commission approves staff's recommendation in Issue 9, Issues 10 through 13 are moot. However, if the Commission approves EU's application, based on the above, the appropriate initial customer deposit is \$380 for wastewater for the residential 5/8 inch x 3/4 inch meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding.

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<sup>24</sup> Order No. PSC-2020-0059-PAA-WS, issued February 24, 2020, in Docket No. 20190147-WS, *In re: Application for certificates to provide water and wastewater service in Brevard County by River Grove Utilities, Inc.*



**Issue 14:** Should this docket be closed?

**Recommendation:** If staff's recommendation on Issue 9 is approved, this docket should be closed. If the Commission approves EU's request for certification, the Utility should be required to file an amended territory description and map within 30 days of the issuance of the Commission's order, and this docket should remain open for the parties and Commission to address the amended territory description and map. (Crawford, Sandy)

### **Position of the Parties**

**EU:** No post-hearing position was provided in its brief.

**OPC:** If the Commission denies the application for new certificate, the docket should be closed upon expiration of the 30-day appeal period. If the Commission grants the certificate, the docket should remain open until invoices supporting the collection system buildout are submitted.

**PIE:** Yes, the docket should be closed.

**LC:** Yes. The applicant has not provided adequate information with supporting documentation to warrant the granting of certification for the proposed service area. EU has not demonstrated the need for service required for certification, nor the financial and technical abilities to accomplish the project.

### **Staff Analysis:**

#### **PARTIES' ARGUMENTS**

##### **EU**

No post-hearing position was provided in its brief.

##### **OPC**

If the Commission denies the application for new certificate, the docket should be closed upon expiration of the deadline to appeal. If the Commission grants the certificate, the docket should remain open until invoices supporting the collection system buildout are submitted.

##### **LC**

The applicant has not provided adequate information with supporting documentation to warrant the granting of certification for the proposed service area. EU has not demonstrated the need for service required for certification, nor the financial and technical abilities to accomplish the project.

#### **ANALYSIS**

If staff's recommendation on Issue 9 is approved, this docket should be closed upon the issuance of the final order. If the Commission approves EU's request for certification, the Utility should be required to file an amended territory description and map within 30 days of the issuance of the Commission's order, and this docket should remain open for the parties and Commission to address the amended territory description and map.

<b>Environmental Utilities, LLC</b>		<b>Schedule No. 1-A</b>	
<b>Schedule of Wastewater Rate Base</b>		<b>DN 20200226-SU</b>	
<b>Projected at 80% Capacity</b>			
<b>Description</b>	<b>Test Year Per Utility</b>	<b>Staff Adjust- ments</b>	<b>Staff Adjusted Test Year</b>
1 Plant in Service	\$21,958,148	(\$2,864,138)	\$19,094,010
2 Land and Land Rights	0	800,000	800,000
5 Accumulated Depreciation	(6,731,961)	(1,946,766)	(8,678,727)
6 CIAC	(13,079,845)	(162,263)	(13,242,108)
7 Amortization of CIAC	4,124,751	51,170	4,175,921
10 Working Capital Allowance	<u>174,443</u>	<u>5,026</u>	<u>179,469</u>
11 <b>Rate Base</b>	<u>\$6,445,536</u>	<u>(\$4,117,820)</u>	<u>\$2,328,564</u>

<b>Environmental Utilities, LLC</b>		<b>Schedule No. 1-B</b>
<b>Adjustments to Rate Base</b>		<b>DN 20200226-SU</b>
<b>Projected at 80% Capacity</b>		
<b>Explanation</b>	<b>Wastewater</b>	
<b>Plant In Service</b>		
To reflect updated organization costs.	(\$88,138)	
To reflect the appropriate amount of pumping equipment.	(1,976,000)	
To reclassify land balance included in UPIS	<u>(800,000)</u>	
<b>Total</b>	<b><u>(\$2,864,138)</u></b>	
<b>Land</b>		
To reclassify land balance included in UPIS	<u>\$800,000</u>	
<b>Accumulated Depreciation</b>		
To reflect updated organization costs.	\$22,035	
To reflect appropriate asset life.	<u>(1,968,801)</u>	
<b>Total</b>	<b><u>(\$1,946,766)</u></b>	
<b>CIAC</b>		
To reflect 80% of CIAC.	<u>(\$162,263)</u>	
<b>Accumulated Amortization of CIAC</b>		
To reflect 80% of CIAC.	<u>\$51,170</u>	
<b>Working Capital</b>		
To reflect corresponding adjustment to O&M expense.	<u>\$5,026</u>	

<b>Environmental Utilities, LLC</b>							<b>Schedule No. 2</b>	
<b>Capital Structure</b>							<b>DN 20200226-SU</b>	
<b>Projected at 80% Capacity</b>								
<b>Description</b>	<b>Total Capital</b>	<b>Specific Adjustments</b>	<b>Subtotal Adjusted Capital</b>	<b>Pro rata Adjustments</b>	<b>Capital Reconciled to Rate Base</b>	<b>Ratio</b>	<b>Cost Rate</b>	<b>Weighted Cost</b>
<b>Per Utility</b>								
1 Long-Term Debt	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%	0.00%
2 Short-Term Debt	0	0	0	0	0	0.00%	0.00%	0.00%
3 Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
4 Common Equity	3,399,206	0	3,399,206	0	3,399,206	52.73%	7.09%	3.74%
5 Customer Deposits	6,420	0	6,420	0	6,420	0.10%	2.00%	0.00%
6 Tax Credits-Zero Cost	0	0	0	0	0	0.00%	0.00%	0.00%
7 Deferred Income Taxes	<u>3,040,210</u>	<u>0</u>	<u>3,040,210</u>	<u>0</u>	<u>3,040,210</u>	<u>47.17%</u>	0.00%	<u>0.00%</u>
8 <b>Total Capital</b>	<u>\$6,445,836</u>	<u>\$0</u>	<u>\$6,445,836</u>	<u>\$0</u>	<u>\$6,445,836</u>	<u>100.00%</u>		<u>3.74%</u>
<b>Per Staff</b>								
9 Long-Term Debt	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%	0.00%
10 Short-Term Debt	0	0	0	0	0	0.00%	0.00%	0.00%
11 Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
12 Common Equity	3,399,206	0	3,399,206	(1,077,062)	2,322,144	99.72%	7.85%	7.83%
13 Customer Deposits	6,420	0	6,420	0	6,420	0.28%	2.00%	0.01%
14 Tax Credits-Zero Cost	0	0	0	0	0	0.00%	0.00%	0.00%
15 Deferred Income Taxes	<u>3,040,210</u>	<u>(3,040,210)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00%</u>	0.00%	<u>0.00%</u>
16 <b>Total Capital</b>	<u>\$6,445,836</u>	<u>(\$3,040,210)</u>	<u>\$3,405,626</u>	<u>(\$1,077,062)</u>	<u>\$2,328,564</u>	<u>100.00%</u>		<u>7.84%</u>
						<b><u>LOW</u></b>	<b><u>HIGH</u></b>	
RETURN ON EQUITY						<u>6.85%</u>	<u>8.85%</u>	
OVERALL RATE OF RETURN						<u>6.84%</u>	<u>8.84%</u>	

<b>Environmental Utilities, LLC</b>				<b>Schedule No. 3-A</b>	
<b>Statement of Wastewater Operations</b>				<b>DN 20200226-SU</b>	
<b>80% of Design Capacity</b>					
<b>Description</b>	<b>Test Year Per Utility</b>	<b>Staff Adjustments</b>	<b>Staff Adjusted Test Year</b>	<b>Revenue Increase</b>	<b>Revenue Requirement</b>
1 <b>Operating Revenues:</b>	<u>\$2,142,157</u>	<u>\$0</u>	<u>\$2,142,157</u>	<u>\$137,321</u> 6.41%	<u>\$2,279,478</u>
<b>Operating Expenses</b>					
2 Operation & Maintenance	\$1,236,731	\$30,155	\$1,266,886		\$1,266,886
3 Depreciation	232,177	241,267	473,444		473,444
4 Amortization	17,217	(17,217)	0		0
5 Taxes Other Than Income	333,110	(44,642)	288,468	6,179	294,648
6 Income Taxes	<u>81,844</u>	<u>(53,113)</u>	<u>28,731</u>	<u>33,238</u>	<u>61,969</u>
7 <b>Total Operating Expense</b>	<u>1,901,079</u>	<u>156,450</u>	<u>2,057,529</u>	<u>39,417</u>	<u>2,096,946</u>
8 <b>Operating Income</b>	<u>\$241,078</u>	<u>(\$156,450)</u>	<u>\$84,628</u>	<u>\$97,904</u>	<u>\$182,532</u>
9 <b>Rate Base</b>	<u>\$6,445,536</u>		<u>\$2,328,564</u>		<u>\$2,328,564</u>
10 <b>Rate of Return</b>	<u>3.74%</u>		<u>3.63%</u>		<u>7.84%</u>

<b>Environmental Utilities, LLC</b>		<b>Schedule No. 3-B</b>
<b>Adjustments to Operating Income</b>		<b>DN 20200226-SU</b>
<b>80% of Design Capacity</b>		
<b>Explanation</b>	<b>Wastewater</b>	
<b>Operation and Maintenance Expense</b>		
To remove duplicative labor costs.	(\$34,910)	
To reflect correct number of ERCs.	<u>65,065</u>	
<b>Total</b>	<u>\$30,155</u>	
<b>Depreciation Expense</b>		
To reclassify depreciation expense.	\$17,217	
To reflect updated Organization costs.	(\$2,203)	
To reflect Main Extension Charge.	(5,535)	
To reflect appropriate asset life.	<u>231,788</u>	
<b>Total</b>	<u>\$241,267</u>	
<b>Amortization Expense</b>		
To reclassify depreciation expense	<u>(\$17,217)</u>	
<b>Taxes Other Than Income</b>		
To reflect a corresponding adjustment to Salaries and Wages.	(\$5,719)	

**Environmental Utilities, LLC  
 Monthly Wastewater Rates**

**Schedule No. 4  
 DN 20200226-SU**

	<b>UTILITY REQUESTED RATES</b>	<b>STAFF RECOMMENDED RATES</b>
<b><u>Residential Service</u></b>		
Base Facility Charge- All Meter Sizes	\$112.78	\$106.52
Charge per 1,000 gallons- Residential 10,000 gallon cap	\$35.97	\$30.58
<b><u>General Service</u></b>		
Base Facility Charge by Meter Size		
5/8" x 3/4"	\$112.78	\$106.52
3/4"	\$169.16	\$159.78
1"	\$281.94	\$266.30
1-1/2" Turbine	\$563.88	\$532.60
2" Turbine	\$902.20	\$852.16
3" Turbine	\$1,973.56	\$1,864.10
Charge per 1,000 gallons - General Service	\$43.16	\$36.69
<b><u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u></b>		
3,000 Gallons	\$220.69	\$198.26
6,000 Gallons	\$328.60	\$290.00
10,000 Gallons	\$472.48	\$412.32

**Initial Customer Deposits**

**Residential Service and General Service**

5/8" x 3/4"	\$380.00
All over 5/8" x 3/4"	2x Average Estimated Bill

**Environmental Utilities, LLC**

**Schedule No. 5  
 DN 20200226-SU**

**Service Availability Charges**

	<b>Utility Requested Rates</b>	<b>Staff Recommended Rates</b>
Main Capacity Charge		
Residential per ERC	\$11,928.00	\$11,782.00
All others per gallons	\$55.22	\$54.55
Sewer Lateral Installation Fee	\$1,292.85	\$1,290.17

**Utility Requested  
 Miscellaneous Service Charges**

	<u>Normal Hours</u>	<u>After Hours</u>
Initial Connection Charge	\$30.00	N/A
Normal Reconnection Charge	\$30.00	N/A
Violation Reconnection Charge	Actual Cost	Actual Cost
Premises Visit Charge	\$30.00	N/A
Late Payment Charge		\$7.50
NSF Check Charge		Pursuant to Section 68.065, F.S.

**Staff Recommended  
 Miscellaneous Service Charges**

	<u>Normal Hours</u>	<u>After Hours</u>
Premises Visit Charge	\$30.00	N/A
Violation Reconnection Charge	Actual Cost	Actual Cost
Late Payment Charge		\$7.50
NSF Charges		Pursuant to Section 68.065, F.S.