

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for certificate to provide DOCKET NO. 20200226-SU
Wastewater service in Charlotte County, by
Environmental Utilities, LLC /

**LINDA COTHERMAN’S RESPONSE TO ENVIRONMENTAL UTILITIES, LLC’S
MOTION FOR RECONSIDERATION OF ORDER NO. PSC 2022-0267-FOF-SU**

Linda Cotherman, Party of Record, hereby files this response to the Motion for Reconsideration of Order No. PSC 2022-0267-FOF-SU filed by Environmental Utilities, LLC (EU) on July 22nd, 2022 and respectfully requests denial of said Motion. In support, Linda Cotherman states:

The standard of review for reconsideration of a Commission Order has not been met by the Motion for Reconsideration submitted by EU, as no point of fact or law was “overlooked or failed to be considered” in rendering the Order. In fact, extensive input was considered and analyzed by the PSC staff that was beyond what was specifically itemized in the four criteria for approval.

EU appears to be testifying after the fact, using words like “intent”, “obviously”, “apparent” and “tantamount to” – language frequently employed in the absence of evidence. While EU states that reconsideration should be based on “specific factual matters set forth *in the record* (emphasis added) and susceptible to review”, the Motion introduces elements that were *not* part of the record and were delivered after the Order was posted. And while EU points out that “it is not appropriate to reargue matters that have already been considered”, much of the Motion consists of re-litigating points that were previously made and reviewed.

Requests for Service

In the original application submission and in the year and a half since, there have been no requests for service filed with the Public Service Commission. EU appears to be equating “letters of support” to “requests for service”. Letters written in support or opposed to a proposal are *comments* and *correspondence* – they have no other significance and do not qualify as testimony, evidence or requests for service. A comment addressed to the PSC does not constitute a request for sewer service.

Environmental Need

EU contends that the Commission “clearly misapplied or ignored the law when gauging the County’s support of septic to sewer conversion on the islands.” The County’s support is irrelevant and exclusive to the establishment of environmental need. Environmental need was not supported by any evidence provided by EU or the County. The argument that the County supports EU’s application does not create the foundation for environmental need. That would be provided by testing and physical evidence of need. Simply because the County may wish to have septic to sewer conversion on the Island, particularly if they do not have to pay for it, does not necessarily mean that there is an environmental need for service.

EU provides no legal basis for their premise that “it would be an unconstitutional “taking” for the County to deny a septic tank permit.” If there was a proven urgent and consequential environmental issue Charlotte County could place a temporary moratorium on septic tank permitting, as has been done in other Florida counties, This would give the County time to explore and implement a solution to any suspected environmental degradation. Potential options might include alternative on-site wastewater systems. Examples of temporary moratoriums can be found in the state of Florida and elsewhere in the country.

EU asks “since the testimony of septic tank failures is un rebutted why would that testimony be ignored without supporting photos? “. This assumption that the testimony of septic tank failures was ignored by the Commission is unsubstantiated. Had the utility

provided even one photograph, one code compliance complaint, one report to the Health Department to support any of their contentions regarding septic tank smells, sewage on the ground and septic tanks being under water it would have provided more substantive evidence to accompany the testimony. Mr. Rudy and Mr. Boyer made cursory observations on a “tour” of Little Gasparilla Island (LGI) and further testified that no inspections of properties or observations were conducted on Knight Island or Don Pedro Island. Furthermore, the observations made on LGI were just that – no written report was made, no photographs were submitted, no testing of ground water was conducted – and Mr. Rudy admitted that his visit there was not treated as an official inspection. These minimal observations were then generalized to encompass the entire prospective service area, inclusive of Knight and Don Pedro Islands which were not included in the informal tour.

Mandatory Connection Ordinance

EU cites the State policy as set forth in Section 381.0065, “On-site Sewerage Treatment and Disposal Systems; Regulation” Florida Statutes, as “to eliminate septic tank systems whenever possible”. No language appears to substantiate the interpretation of this statute in this way. The statute simply states the parameters for installation and maintenance of on-site septic systems.

Charlotte County’s Mandatory Connection Ordinance only takes effect, as EU stated in their Motion, “*when the wastewater system is installed.*” (emphasis added) It cannot be implemented until all of the components of the sewer system are in place, including those elements situated on private property.

Even if Charlotte County or the State had an official, clearly articulated policy to eliminate septic tank systems whenever possible, the Mandatory Sewer Connection ordinance does not specifically correlate with environmental or health needs that would constitute need for service. In addition, there was no evidence provided in the record

indicating that either the state or local government is implementing a goal of eliminating septic tanks.

Local Comprehensive Plan

While the PSC is not bound to consider the Comprehensive Plan or the Sewer Master Plan, both documents were referenced in the original application submitted by EU as proof of need for service. For this reason, the PSC staff conducted in-depth reviews of the arguments pertaining to those documents and presented their conclusions to the Commission. In addition, oral arguments and testimony relative to the Comprehensive Plan and the Sewer Master Plan were presented before the Commission at the public Administrative Hearing in February 2022.

Much of EU's arguments revolve around the letter and testimony of former Director of Charlotte County Utilities Craig Rudy, designated as "the mouthpiece of Charlotte County." However, Mr. Rudy clearly fell short in his knowledge of compliance with the CC Comprehensive Plan. From the December 07, 2021 Remote VTC Deposition of Craig Rudy (accepted as testimony):

19 Q. Do you hold yourself out as a planner?

20 A. No.

Charlotte County could have sent a representative with expertise in comprehensive planning, or EU could have deposed an expert planner to refute the testimony provided by land use expert witness Ellen Hardgrove. Ample time was available to secure a witness with the experience and knowledge of comprehensive planning, as PIE did.

EU tries to make the argument that "compliance with the Comprehensive Plan is obvious from the fact that central utility services are already being provided." This ignores the fact that the initial installation of water utilities was done prior to the establishment of the Rural Service Area relative to the bridgeless barrier islands.

Land use expert witness Ellen Hardgrove clearly established that the Future Land Use policy 3.2.4 prohibits the provision of sewer infrastructure outside the urban service area unless there is clear and convincing evidence that a health problem exists in a built but unserved area for which there is no other feasible solution. Mr. Rudy concurred:

- 24 Q. In terms of the Comprehensive Plan, can we
25 agree that the Bridgeless Barrier Islands of Knight
1 Island, Don Pedro Island, Thornton Key, and Little
2 Gasparilla Island are not in the urban service area?
3 A. Yes.

Further, Mr. Rudy admitted that the proposal was not consistent with the requirements of Future Land Use policy 3.2.4:

- 1 Q. All right. So with that understanding, what
2 clear and convincing evidence exists of a health problem
3 in the Bridgeless Barrier Islands to justify sewer
4 infrastructure?
5 A. None that I know of.

Finally, Mr. Rudy admitted that the need for an amendment to the Comprehensive Plan had not yet even been considered:

- 1 Q. So if the certificate of authorization is
3 granted to Environmental Utilities, is the Comprehensive
4 Plan's amendment going to be required?
5 A. Not to my knowledge.
6 Q. Why not?
7 A. That hasn't been investigated yet.

While the Comprehensive Plan was scrutinized as part of the application review, ultimately it was not foundational to the denial of the application. It was observed in the PSC staff recommendations that the application “may be inconsistent with Charlotte County’s local comprehensive plan.”

Sewer Master Plan

EU states that “there is no competent substantial evidence supporting the assertion that EU’s application is inconsistent with the Sewer Master Plan”, however painstaking examination of language and visual content of the Sewer Master Plan revealed that the

conversion of septic tanks to central sewer only applies to the two package plants on the north and south Islands. This detailed review was conducted by multiple participants in the Hearing, including an expert witness in wastewater project management and engineering (Linda Cotherman), a land use expert (Ellen Hardgrove) and the staff of the Public Service Commission. Each of these participants arrived at the same conclusion. And while EU can make assertions regarding the “intent” of the Sewer Master Plan, EU provided no expert testimony to rebut the analysis of the Sewer Master Plan.

Bulk Sewer Treatment Agreement

EU relies on the Bulk Sewer Treatment Agreement with Charlotte County to provide its basis for “need for service”. However, it is an extrapolation to say that this stand-alone document – which can be issued to any wastewater utility upon request – represents a need for service. It is strictly a business arrangement which reserves capacity for wastewater treatment, should the utility successfully execute its proposed central sewer. Although the Agreement was approved by the County Commissioners, it was not reviewed in advance by the Community Development department to ascertain whether the agreement was compliant with the Comprehensive Plan prior to approval.

Public Interest

While EU opines that the PSC exercised “flawed reasoning as to whether there is need” in this case, EU has not demonstrated otherwise. There was no evidence of environmental degradation, no proven immediate health and safety issue that would necessitate the installation of central sewer, no requests for service and no foundation for need for service beyond the “support” of Charlotte County.

WHEREFORE, based on the facts and arguments set forth herein, for this and all of the reasons indicated above the PSC should deny Environmental Utilities, LLC’S Motion for Reconsideration of Order No. PSC 2022-0267-FOF-SU.

Respectfully submitted this 28th day of July, 2022, by:

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/s/ Linda Cotherman
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail to the following parties this 28th day of July, 2022:

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