

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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DOCKET NO. 20240032-SU

ENVIRONMENTAL UTILITIES, LLC.'S  
RESPONSE TO MOTION TO DISMISS

Environmental Utilities, LLC. (“EU”), by and through its undersigned attorneys and pursuant to Rule 28-106.204(1), Florida Administrative Code, files this response to the Motion to Dismiss filed by Guy L. Hurst [Document #02569-2024], and states:

This Commission has long recognized that the function of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action. *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The applicable standard for disposing of a motion to dismiss is whether, with all factual allegations in the petition taken to be true, the petition states a cause of action upon which relief may be granted. *Id.* In making this determination, all reasonable inferences drawn from the petition must be made in favor of the petitioner. *Id.* Consideration of a motion to dismiss “may not properly go beyond the four corners of the complaint in testing the legal sufficiency of the allegations set forth therein.” *Stubbs v. Plantation Gen. Hosp. Ltd. P’ship*, 988 So. 2d 683, 684 (Fla. 4th DCA 2008) (internal quotation omitted). All of the elements of a cause of action must be properly alleged in a pleading to seek affirmative relief. If the elements are not properly alleged, the pleading should be dismissed. *Kislak v. Kreedian*, 95 So. 2d 510 (Fla. 1957).

1. Movant’s first complaint is the assertion is that the Notices were mailed to addresses on Little Gasparilla Island, and that no residents receive mail on LGI. This is not a proper matter to

address in a Motion to Dismiss. Further, the statement is inaccurate. The notices were mailed to property owners at the mailing addresses as reflected on the records of the Charlotte County Property Appraiser (presumably that is the same address that the real estate tax bills are sent). In fact, many of the notices were mailed to out of state addresses, and a number were mailed out of country. The Property Appraiser lists a mailing address for Mr. Hurst as 7153 Regina Drive, Englewood, Florida 34224, which is presumably where his property tax bills are sent. If that address is not accurate, it is incumbent upon Mr. Hurst to correct it with the Property Appraiser's office, as it is reasonable for EU to rely on it as being Mr. Hurst's correct mailing address. To assert that the notices would have to be personally served (presumably in the same manner as a lawsuit) is beyond that requirements of Commission Rules and due process does not require such personal service.

2. Movant's next complaint is the assertion that the Notices were sent as "junk mail". Because of the number of notices to be mailed, EU had them sent by a third-party mailing company who sent them as first class bulk mail. There is no prohibition against sending notices in this manner. Notices were mailed to property owners, entities on the list provided by the Commission staff, and publish, and Affidavits of such noticing has been filed in this Docket.

3. Movant's further complaints interspersed within his Motion are the assertion that the form of the Notice is inadequate. The notice was prepared in accordance with the requirements of Rule 25-30.030, F.A.C. and was approved by Commission Staff as required by Rule 25-30.030(4), F.A.C. It is beyond reasonable comprehension to believe that island property owners are unaware of the septic to sewer project. Septic to sewer conversion is a high profile topic that many island property owners have already expressed an opinion through the numerous filings in the Docket, as well as three formal requests for an administrative hearing. If Mr. Hurst does not believe

that the requirements of Rule 25-30.030, F.A.C. provide him with due process of law then his remedy is to file a Rule challenge pursuant to Section 120.56, Florida Statutes.

4. This Commission has previously addressed these same assertions by Mr. Hurst and rejected them in denying his Motion to Dismiss in a prior Docket. Order No. PSC-2021-0405-PCO-SU.

WHEREFORE, Environmental Utilities, LLC., requests that this Commission enter an Order denying the Motion to Dismiss filed by Guy Hurst.

Respectfully submitted this 6<sup>th</sup> day of May, 2024, by:

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*/s/Martin S. Friedman*  
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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 6<sup>th</sup> day of May, 2024:

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