

State of Florida



Public Service Commission

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

DATE: January 8, 2025

TO: Adam Teitzman, Commission Clerk

FROM: Daniel Dose, Senior Attorney, Office of the General Counsel *DD*

RE: 20240032-SU - Application for certificate to provide wastewater service in Charlotte County by Environmental Utilities, LLC.

Please file the attached Prehearing Statement from Linda Cotherman in the above referenced docket file.

Thank you.

DD

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20240032-SU

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PRE-HEARING STATEMENT OF LINDA B. COTHERMAN

1. All Known Witnesses:

Witness	Subject Matter	Issue #
Direct		
Linda B. Cotherman	All	1-15
Rebuttal		
Linda B. Cotherman	All	1-15

2. All Known Exhibits:

Witness	Proffered By	Exhibit No.	Description	Issue #
Direct				
Linda B. Cotherman	Linda B. Cotherman	LBC-3	List of Discrepancies, Inaccuracies and Missing Information in the application by EU, LLC	1-6, 9
Linda B. Cotherman	Linda B. Cotherman	LBC-4	List of Other Issues and Concerns Regarding the Application by EU, LLC	2, 4-9

Linda B. Cotherman	Linda B. Cotherman	Charlotte 2050 Comprehensive Plan Charlotte County, FL (charlottecountyfl.gov)	Charlotte County Comprehensive Plan
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Linda B. Cotherman	Linda B. Cotherman	https://www.charlottecountyfl.gov/core/fileparse.php/523/urlt/charlotte-county-sewer-master-plan.pdf	Charlotte County Sewer Master Plan
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Linda B. Cotherman may use other documents at the time of hearing which cannot be precisely identified at this time.

3. Statement of the party's basic position in the proceeding: Linda B. Cotherman’s position is that the application for certification of the service area should be denied. The applicant has not demonstrated a need for service, nor has he provided evidence of same. The applicant has shown neither financial nor technical ability to construct, operate and maintain a project of this scope, and the rates and charges provided in the application may be grossly inaccurate. The original submission is incomplete, inaccurate and is not significantly changed from the proposal that the PSC denied on September 27th, 2024. [Docket #2020-0226] Furthermore, the information brought forth during the testimony, discovery and rebuttal process is now materially different from what was presented during the initial application. Therefore, the application should be denied and the docket closed.

4. Statement of each question of fact, question of law, and policy question that the party considers at issue, along with the party's position on each issue:

A. **ISSUE 1:** *Has EU met the filing and noticing requirements pursuant to Rules 25-30.030 and 25-30.033, Florida Administrative Code?* No. Regarding Rule 25-30.030, prospective ratepayers rely on public notice to direct them to critical information in the application including future potential rates. The application material, including the scope and legal description of the proposed service area, estimated rates and tariffs, type and layout of sewer system and number of existing hook-ups, has changed multiple times. Notification of these significant changes was not provided to the property owners in the service area. A The filing requirements in Rule 25-30.033 which call for a complete and accurate application have not been met. The significant changes mentioned above, some of which have been made recently in rebuttal testimony, nullifies the initial application. Linda B.

Cotherman additionally adopts the position taken by Palm Island Estates Association, Inc. [PIE] and Little Gasparilla Island Preservation Alliance, Inc. [LGIPA] regarding this topic.

B. **ISSUE 2:** *Is there a need for service in EU' proposed service territory?* No. Linda B. Cotherman's position is that there is no need for service in the proposed service territory, based in part on the following:

1. To date there has been no scientific, protocols-based water quality testing within the proposed service territory. All of the data previously provided by the applicant has been extrapolated from general studies conducted in areas as far afield as Key West, Florida.
2. The Florida Department of Environmental Protection, which sets water quality standards and tests for compliance at various sites throughout the state, recently released the "2023 Statewide Annual Report" [[Statewide Annual Report | Florida Department of Environmental Protection](#)]. This report is based on data accumulated over two years of testing. The report concludes that the water body closest to the proposed service area, Lower Lemon Bay, currently attains water quality standards.
3. The applicant's reference to need for service relies solely upon selective items from the Sewer Master Plan [SMP] which are outdated, incorrect and misinterpreted. EU also relies on the Bulk Sewer Treatment Agreement and Charlotte County Resolution 2023-155 to indicate support from Charlotte County, when in fact the Bulk Sewer Treatment Agreement is a standard contract issued to any developer or utility that requests it. The Resolution is essentially a reaffirmation of their general policy of promoting septic-to-sewer conversions where applicable, without reference to the specific proposal beyond mentioning EU.
4. The applicant has produced very few letters of request for service from property owners or developers in the proposed service area, as compared with the hundreds of letters of opposition submitted by prospective ratepayers.
5. The application is inconsistent with several government regulations, including the Charlotte County SMP, the Charlotte County Comprehensive Plan and Executive Order 81-105.

6. Contrary to applicant's statement that there are no land restrictions, there are in fact numerous land restrictions such as environmental, zoning, land use, archaeological impacts, threatened species, etc. imposed by governmental authorities currently in place. None of these have been addressed.

Linda B. Cotherman additionally adopts the position taken by PIE and LGIPA regarding this topic.

C. **ISSUE 3:** *Is EU's application consistent with Charlotte County's Comprehensive Plan and/or Sewer Master Plan?* No. Linda B. Cotherman's position is that the application is inconsistent with both Charlotte County's Comprehensive Plan and Charlotte County's SMP based in part on the following:

1. Inconsistency with Charlotte County's Comprehensive Plan

- a. Executive Order 81-105 establishes the foundation for the County's Comprehensive Plan regulations for the bridgeless barrier islands. Specifically, the document lays out a strategy for discouraging development on coastal barriers. Hence the designation of Charlotte County's bridgeless barrier islands as being in the Rural Service Area. The Comprehensive Plan is a state-approved governance document that the County is required to file and adhere to, unlike the SMP which is not mandatory.
- b. In Charlotte County's Prehearing Statement from Docket No. 20020745-SU dated 02.16.2004, Janette Knowlton, presently County Attorney for Charlotte County, addressed the issue "Is [IEU]'s application inconsistent with Charlotte County's comprehensive plans?" Ms. Knowlton answered "Yes. The provision of central wastewater services is not consistent with the current policies of the 1997 Comprehensive Plan [ed. note: the most current Comp Plan at that time] particularly Policy 9.1.4 of the Infrastructure Element, which limits services to areas within the Urban Services Area." The language of the Comprehensive Plan remains unchanged on this issue.

- c. Ms. Knowlton addressed the issue “What are the practical ramifications, if any, should it be determined that [IEU]’s Application is inconsistent with the County’s Comp Plan?” Her answer was as follows: “If a utility began installing a wastewater collection system in a manner inconsistent with the Comprehensive Plan, the County would issue a Stop Work Order advising that any activities undertaken in violation of the Comprehensive Plan must cease immediately and be remedied within a reasonable period of time.” She also stated that “inconsistency with the Comprehensive Plan could impact the utility’s ability to obtain the state and federal approvals necessary to install the wastewater collection system.”

2. Inconsistency with the Sewer Master Plan.

- a. In response to the Clean Water Act of 1972, Charlotte County commissioned the 2017 SMP to address the water quality in Charlotte Harbor, Myakka River and Peace River. None of these waters adjoin the bridgeless barrier islands within the proposed service area. It did not include the Gulf of Mexico and lower Lemon Bay, the two bodies of water that surround Knight Island, Don Pedro Island and Little Gasparilla Island, and there is no evidence of impaired waters adjacent to the proposed service area.
- b. The SMP did not address the bulk of the proposed service area, only the two existing wastewater treatment plants for whom compliance was voluntary.
- c. The applicant cherry-picked items from the SMP as the basis for need for service, specifically three criteria that were used to categorize high-priority areas for septic to sewer conversion. While there is no denying proximity to water, the other two criteria were inaccurate in relation to the proposed service area. Specifically:
 1. The “age of septics” criterion was established only by data from the Charlotte County Property Appraiser’s office, which was based on the age of homes. No consideration was given to replacements and repairs that have been made in the proposed service area, nor to new home construction utilizing state-of-the-art septic systems. More accurate information can be accessed through the Charlotte County Health Department, and the

Charlotte County Board of County Commissioners recently asked for current data on the age of septics from the Health Department records.

2. The “nitrogen loading” rating was extracted from general estimates of averages from other areas in the County and beyond. No water quality testing has been done in the proposed service area.
3. While the SMP laid out 5-, 10- and 15-year target areas, Charlotte County subsequently created their own prioritized list of projects. The proposed service area is currently not included in the 5-, 10- or 15-year plan. No areas were considered for connection in the County’s priorities for septic-to-sewer conversion beyond the two wastewater treatment plants located on the islands. At an informal meeting with island stakeholders, Commissioner Bill Truex stated “the most prominent polluters have been identified and prioritized for the next 10 years by Charlotte County. [This] area is not in this group.”

Linda B. Cotherman additionally adopts the position taken by PIE and LGIPA regarding this topic.

D. **ISSUE 4:** *Will the certification of EU result in the creation of a utility which will be in competition with, or duplication of, any other system?* Yes. According to Charlotte County Utility’s [CCU] utility availability website, CCU is the utility designated to provide wastewater service on these bridgeless barrier islands. The exception on Knight Island is the wastewater provider “Knight Island Utilities Inc.” [KIU] which serves the Palm Island Resort and the Rum Cove and Sabal Palm Point developments. KIU also serves properties on Lemon Bay Lane that are located in the proposed service area. CCU is also authorized to provide wastewater service on Little Gasparilla Island, according to the same website.

E. **ISSUE 5:** *Does EU have the financial ability to serve the requested*

territory? No. Linda B. Cotherman's position is that the applicant has not demonstrated or substantiated their financial ability to serve the requested territory. The application lacks evidence such as loan documents, grant approvals, partnership agreements or other indications of solid financial support. Linda B. Cotherman additionally adopts the position taken by LGIPA regarding this topic.

F. **ISSUE 6:** *Does EU have the technical ability to serve the requested territory?* No. Linda B. Cotherman's position is that the applicant has not demonstrated any technical ability nor any experience with wastewater utilities based in part on the following:

1. EU has never substantiated its claim to have experience with installing and maintaining a wastewater utility.
2. The applicant does not have the proven experience or knowledge base to assess, hire and manage a "construction manager at risk" or the contractors that would be required to successfully complete this project in a timely and cost-effective manner.
3. The applicant has no ability to guarantee it can maintain its facilities and respond in a timely manner to malfunctions on a bridgeless barrier island. These islands are served by privately-owned boats and a privately-owned car ferry service which also carries equipment from the mainland. The car ferry has limited hours and service limitations based on weather, tides, staffing and mechanical issues. EU has not produced documentation explaining how the facilities can be serviced in the event of a breakdown, nor have they produced an emergency response plan for a sewer spill.
4. There is no evidence of the due diligence required to identify and contact all permitting agencies that will be involved to ascertain their process, fees, requirements, concerns and time frame for approval.

Linda B. Cotherman additionally adopts the position taken by LGIPA regarding this topic.

G. **ISSUE 7:** *Will EU have sufficient plant capacity to serve the requested territory?* Linda B. Cotherman's position is that sufficiency of plant capacity cannot be guaranteed by EU at this time, based on the following:

1. On April 14, 2020, the Charlotte County Board of County Commissioners adopted Ordinance No. 2020-014 which states “Payment of the TAP [defined as “Transmission, Accrued Guaranteed Revenue Fee and Plant”) Fee is required to reserve capacity in County’s Utility System.” [Section 3-8-55 (a)] EU was granted a Bulk Sewer Treatment Agreement from Charlotte County in July of 2020 *after* the ordinance was adopted. As the Agreement is subject to the ordinance, EU cannot guarantee future plant capacity until the TAP fees are paid in advance to reserve that capacity.
2. There are discrepancies in the submittals from EU pertaining to the GPD (gallons per day) flow and the number, locations and classifications of Equivalent Residential Connections within the proposed service area. Without firm data, it is impossible to ascertain exactly what plant capacity will be required to serve the requested territory.

H. **ISSUE 8:** *Has EU provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located?* No. Linda B. Cotherman’s position is that the applicant has not provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located in part on the following:

1. The definition provided by Florida Administrative Code 62-600.200 “Definitions” (82) ““Wastewater facility” or “facility” means any facility which discharges wastes into waters of the State or which can reasonably be expected to be a source of water pollution and includes any or all of the following: the *collection and transmission* system, the wastewater treatment works, the reuse or disposal system, and the biosolids management facility.” The wastewater facility in this proposal includes chambers, pumps, valves, piping and all other components of the sewer system owned by EU.
2. While the wastewater treatment plant is located on the mainland owned by Charlotte County, no agreements or documents have been provided as evidence that EU has the guaranteed continued use of land where its tanks, lines and pumping stations will be located. This would include rights-of-way, privately owned lands and easements and approval from WCIND, the Army Corps of Engineers and the Board of Trustees of Submerged Land for the subaqueous crossing required for this project.

3. Access to each individual property will require easements from property owners which may not be forthcoming without legal action. Eminent domain statutes currently in place indicate that the initiator of the action [in this instance, EU] will have to pay all legal fees, which will be charged back to the ratepayers in the certificated area. The rates and tariffs will once again need adjustment to accommodate the change.

Linda B. Cotherman additionally adopts the position taken by LGIPA regarding this topic.

- I. **ISSUE 9:** *Is it in the public interest for EU to be granted a wastewater certificate for the territory proposed in its application?* No. Linda B. Cotherman's position is that there is no demonstrable benefit to the granting of this certification, and the burdens to the stakeholders far outweigh any potential benefit for the following reasons:

1. There is no evidence of the attention to detail required to provide accurate cost estimates for a project of this scope, inclusive of subaqueous crossings, which indicates likely cost overruns.
2. There are unique challenges of building a centralized sewage collection system on a bridgeless barrier island in a hurricane-prone flood zone which will generate "soft costs" related to environmental and other issues (i.e wetlands crossing, gopher tortoise identification and relocation costs) ultimately increasing the cost to the stakeholders.
3. The applicant has not addressed the potential impact to stakeholders if the construction costs are substantially higher than the estimated costs.
4. There are additional expenses that will fall to the homeowner that are not included in the connection charges, such as the installation of a discreet electric panel for the system, routing plumbing pipes and back-up generators in the event of a power outage, which are frequent on these islands.
5. There is no pay-over-time provision available to the homeowners relative to the connection fee. While the applicant suggests that there is a 2-year window for payment, this does not compare with Charlotte County Utilities' 20-year payment plan.
6. The existing transportation for Knight and Don Pedro Islands cannot accommodate what is being proposed. All vehicle traffic filters through a 6-8 passenger car ferry. The applicant hasn't considered the logistics of moving the construction equipment and

- materials and the disruption to local traffic caused by lengthy ongoing construction to complete this project. Both of these factors may impact the final costs.
7. If the utility fails in the installation or operation of its proposed facility the County or another entity would have to assume the expense and responsibility for the service, the cost of which will be borne by the property owners.
 8. The applicant hasn't addressed the potential consequences, and how they would be addressed, of a hurricane or other adverse conditions that could impact the equipment and facilities such as power outages, line ruptures, etc. of the wastewater system as proposed by EU.
 9. A central sewer spill would be catastrophic in the prospective service area due to the islands' proximity to water.
 10. The proposed utility is not in the public interest because it is in conflict with the County's Comprehensive Plan, which directs growth to areas that are desirable for development, and to limit it in areas that are not.
 11. Installing central sewer in a sensitive ecosystem prone to hurricane and flood risks, is inviting a future environmental disaster.
 12. In the absence of the need for service, it is not in the public interest to grant this certification.

Linda B. Cotherman additionally adopts the position taken by LGIPA regarding this topic.

J. **ISSUE 10:** *What is the appropriate return on equity for EU?* As a prospective ratepayer, Linda B. Cotherman's position is that the installation of critical infrastructure should be implemented by either a governmental entity or a not-for-profit corporation. Therefore, there is no appropriate return on equity.

K. **ISSUE 11:** *What are the appropriate rate structures and rates for the wastewater system for EU?* Linda B. Cotherman's position is that the rate structures and rates cannot be analyzed accurately based in part on the following:

1. All of the costs related to the construction and installation have not yet been provided and documented. Knight and Don Pedro Islands are served by a private water utility, and neither the owner nor EU have provided documentation of any agreement relative to rates and charges for water use in the sewer proposal.
2. In chapter “8.1 AFFORDABILITY” of the SMP, Charlotte County establishes a formula for determining equitable monthly billing for utility customers. This affordability estimate identifies monthly payments of approximately \$113 for the sewer component of the bill as a reasonable ceiling. EU’s base charge for sewer, regardless of usage, is \$109 per month. This approaches the maximum affordability level without any actual use.
3. The Bulk Sewer Treatment Agreement caps waste acceptance per household at 190 gallons per day. Charlotte County currently charges \$80.12 per month for 190 gallons per day. EU’s proposal for the same gallonage is \$238.05. This is nearly double the average monthly combined water and sewer charges billed by CCU to residents directly across the water on the mainland in Rotonda West.

L. **ISSUE 12:** *What are the appropriate initial customer deposits for EU?* Linda B. Cotherman’s position is that the initial customer deposits cannot be analyzed accurately because all of the costs related to the construction and installation have not yet been provided and documented.

M. **ISSUE 13:** *What are the appropriate miscellaneous service charges for EU?* Linda B. Cotherman’s position is that the miscellaneous service charges cannot be analyzed accurately because all of the costs related to the construction and installation have not yet been provided and documented.

N. **ISSUE 14:** *What are the appropriate service availability charges for EU?* Linda B. Cotherman’s position is that the service availability charges cannot be analyzed accurately

because all of the estimates related to the construction and installation have not been consistent nor documented. The applicant's service availability charges are presently materially different from the service availability charges provided in the initial application. The appropriate service availability charges should be identical to those charged by CCU to county residents on the mainland.

O. **ISSUE 15:** *Should this docket be closed?* Yes. Linda B. Cotherman's position is that this docket should be closed based in part by the following:

1. It is not in the best interests of the potential ratepayers within the proposed service territory to be served by a private, for-profit new original wastewater utility company.
2. The ability to evaluate and challenge the application's content has been severely compromised by the continuing changes that have come forward since the submission. Many items are now materially different from the initial proposal, which remains deficient and inconsistent.
3. The estimated construction costs that the proposed rates and charges are based on have not been substantiated and are not inclusive of all of the potential costs of this proposal.
4. The application conflicts with Charlotte County's Comprehensive Plan, which would require a revision to accomplish this project. This would be a time-consuming process with no guarantee of approval.
5. The Florida Public Service Commission has previously ruled to deny certification of this service area to this applicant in Docket #2022-0032 SU, partially based on a lack of need for service and inconsistency with both the Charlotte County Comprehensive Plan and SMP. Nothing substantial has changed since that decision was made.

Linda B. Cotherman additionally adopts the position taken by PIE and LGIPA regarding this topic.

5. Stipulations: None at this time.
6. Statement of all pending motions or other matters the party seeks action upon: None at this time.
7. Requests for confidentiality: None at this time.
8. Objections to a witness' qualification as an expert: None at this time.
9. Request for sequestration: None at this time.
10. Statement as to any requirement of the Order Establishing Procedures that cannot be complied with: None at this time.

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/s/ Linda B. Cotherman
LINDA B. COTHERMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email to the following parties this 7th day of January, 2025:

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