

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20240032-SU

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

VOLUME 1
PAGES 1 - 208

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER GABRIELLA PASSIDOMO SMITH

DATE: Tuesday, January 28, 2025

TIME: Commenced: 9:30 a.m.
Concluded: 5:02 p.m.

PLACE: Tringali Park Recreation Center
3460 North Access Road
Englewood, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter

PREMIER REPORTING
TALLAHASSEE, FLORIDA
(850) 894-0828

1 APPEARANCES:

2 MARTIN S. FRIEDMAN, ESQUIRE, Dean Law Firm,
3 420 S. Orange Avenue, Suite 700, Orlando, Florida;
4 appearing on behalf of Environmental Utilities, LLC
5 (EU).

6 BRAD E. KELSKY, ESQUIRE, Kelsky Law, P.A., 150
7 South Pine Island Road, Suite 300, Plantation, Florida
8 33324, appearing on behalf of Palm Island Estates
9 Association, Inc. (PIE).

10 ROBERT VOLPE and VALERIE CHARTIER-HOGANCAMP,
11 ESQUIRES, Holtzman Vogel, PLLC, 119 South Monroe Street,
12 Suite 500, Tallahassee, Florida 32301, appearing on
13 behalf of Little Gasparilla Island Preservation
14 Alliance, Inc. (LGIPA).

15 LINDA COTHERMAN, Post Office Box 881, Placida,
16 Florida 33946, Pro Se.

17 MAJOR THOMPSON and DANIEL DOSE, ESQUIRES, FPSC
18 General Counsel's Office, 2540 Shumard Oak Boulevard,
19 Tallahassee, Florida 32399-0850, appearing on behalf of
20 the Florida Public Service Commission (Staff).

21 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE
22 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service
23 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
24 Florida 32399-0850, Advisor to the Florida Public
25 Service Commission.

1	I N D E X	
2	WITNESS:	PAGE
3	DAVE WATSON	
4	Examination by Mr. Friedman	30
	Prefiled Direct Testimony inserted	32
5	Examination by Ms. Chartier-Hogancamp	34
	Examination by Mr. Kelsky	39
6	Examination by Ms. Cotherman	47
	Examination by Mr. Thompson	48
7	Further Examination by Mr. Friedman	51
8	BRIAN E. LAPOINTE, PH.D.	
9	Examination by Mr Friedman	54
	Prefiled Direct Testimony inserted	57
10	Examination by Mr. Kelsky	64
	Examination by Ms. Cotherman	66
11	Further Examination by Mr. Friedman	68
12	JONATHAN H. COLE, P.E.	
13	Examination by Mr. Friedman	70
	Prefiled Direct Testimony inserted	72
14	Examination by Ms. Chartier-Hogancamp	80
	Examination by Ms. Cotherman	89
15		
16	RANDY BELL	
	Examination by Mr. Friedman	93
17	Prefiled Direct Testimony inserted	95
	Examination by Ms. Cotherman	99
18		
19	DEBORAH D. SWAIN	
	Examination by Mr. Friedman	101
20	Prefiled Direct Testimony inserted	103
	Examination by Mr. Volpe	108
21	Examination by Mr. Dose	109
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X CONTINUED

WITNESS:	PAGE
JOHN R. BOYER	
Examination by Mr. Friedman	116
Prefiled Direct Testimony inserted	118
Examination by Mr. Volpe	124
Examination by Mr. Kelsky	133
Examination by Ms. Cotherman	141
Examination by Mr. Thompson	145
Further Examination by Mr. Friedman	146
AMY MCCULLY	
Examination by Mr. Kelsky	150
Prefiled Direct Testimony inserted	152
Examination by Mr. Friedman	154
Further Examination by Mr. Kelsky	158
ELLEN HARDGROVE	
Examination by Mr. Kelsky	159
Prefiled Direct Testimony inserted	163
Examination by Mr. Friedman	166
Further Examination by Mr. Kelsky	177
ROBERT J. ROBBINS	
Examination by Mr. Kelsky	181
Prefiled Direct Testimony inserted	183
Examination by Mr. Friedman	186

1	EXHIBITS			
2	NUMBER:		ID	ADMITTED
3	1	Comprehensive Exhibit List	12	12
4	2-73	As identified in the CEL	12	
5	2-16	As identified in the CEL		15
6	18-73	As identified in the CEL		15
7	17	As identified in the CEL		206
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

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

2 CHAIRMAN GRAHAM: Good morning, everyone. Let
3 the record show it is 9:31 on January 28th, and we
4 will call this hearing to order.

5 Staff, if I can get you to read the notice,
6 please.

7 MR. DOSE: By notice issued December 30th,
8 2024, this time and place has been set for the
9 technical hearing in Docket 20240032-SU. The
10 purpose of the hearing is set out more fully in the
11 notice.

12 CHAIRMAN GRAHAM: Okay. Let's take
13 appearances.

14 MR. FRIEDMAN: I am Martin Friedman, attorney
15 for the Environmental Utilities.

16 MR. VOLPE: Robert Volpe, attorney for Little
17 Gasparilla Island Preservation Alliance.

18 MS. CHARTIER-HOGANCAMP: Valerie
19 Charier-Hogancamp, co-counsel for Little Gasparilla
20 Preservation Alliance.

21 MR. KELSKY: Brad Kelsky on behalf of Palm
22 Island Estates Association, Inc.

23 MS. COTHERMAN: Linda Cotherman, Pro Se.

24 MR. DOSE: For Commission staff, Daniel Dose
25 and Major Thompson.

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

4 CHAIRMAN GRAHAM: Okay. Preliminary matters.
5 Staff, are there any preliminary matters -- any
6 preliminary matters we need to address?

7 MR. KELSKY: Staff has --

8 UNIDENDIFIED SPEAKER: We can't hear you.

9 CHAIRMAN GRAHAM: Preliminary matters -- let's
10 try it this way.

11 Staff, there is no preliminary matters,
12 correct?

13 MR. DOSE: Staff has none.

14 CHAIRMAN GRAHAM: Okay. Do any of the other
15 parties have any preliminary matters to address?

16 Mr. Friedman?

17 MR. FRIEDMAN: Yes. Thank you, Commissioner.

18 As I mentioned at the prehearing conference,
19 we wanted to maybe realign the order of witnesses
20 that we have to accommodate some schedules. And so
21 in our direct case, we would like to start with
22 Mr. Watson, who is an employee of -- he is the
23 Utility Director at Charlotte County, so we can get
24 him back doing what he does.

25 And then to address the logical flow of the

1 witnesses, we would suggest Dr. Lapointe as the
2 second; Jonathan Cole as third; Randy Bell four;
3 Deborah Swain five, and John R. Boyer six.

4 CHAIRMAN GRAHAM: Are there any concerns about
5 switching the order of the witnesses?

6 MR. FRIEDMAN: I do have one other issue.

7 CHAIRMAN GRAHAM: Sure.

8 MR. FRIEDMAN: On the Comprehensive Exhibit
9 List, I think everybody signed off on all these
10 exhibits, or do we need to go through them like we
11 do? I don't think there is any reason we have to
12 go through once we do the testimony of each witness
13 and go through that dog and pony show every time.

14 MR. THOMPSON: Good morning, Major Thompson on
15 behalf of staff.

16 We received stipulations from three parties to
17 all 73 exhibits on the CEL, but we did not get, I
18 believe, all four. So if we can go on the record
19 and all parties stipulate to the admission to 1
20 through 73, that could significantly ameliorate the
21 need for the evidentiary every single time, but
22 that is up to the parties.

23 CHAIRMAN GRAHAM: Parties?

24 MS. CHARTIER-HOGANCAMP: So Little Gasparilla;
25 objects to JHC-6 and DDS-2 only to the extent

1 necessary to preserve any rights for appeal on the
2 Commission's denial rather than just to strike, as
3 long as it's clear on the record that we preserve
4 that right, we don't have a problem with entering
5 into the record.

6 CHAIRMAN GRAHAM: Okay. Any of the other
7 parties?

8 MR. KELSKY: This is Brad Kelsky. I would
9 have the same point as Little Gasparilla.

10 CHAIRMAN GRAHAM: The same two exhibits?

11 MR. KELSKY: Yeah, for preservation purposes,
12 but if they are admitted based upon the prior
13 ruling, just note my objection and we would be
14 fine.

15 CHAIRMAN GRAHAM: Okay.

16 MS. COTHERMAN: I would make the same
17 comments, and defer to Little Gasparilla Island
18 Preservation Alliance and Palm Island Estates.

19 CHAIRMAN GRAHAM: Okay.

20 MR. FRIEDMAN: And like I said, one objection
21 that I had previously noted on the qualifications
22 of a particular witness, that would be Dr. Robbin.
23 So it would be -- on the CEL, it's No. 18. Until
24 we hear his testimony and know we are able to
25 decide whether he is qualified to make the

1 statements he made --

2 CHAIRMAN GRAHAM: Okay.

3 MR. FRIEDMAN: -- that's the purpose of
4 preserving that until his testimony.

5 CHAIRMAN GRAHAM: Sure.

6 MR. FRIEDMAN: Thank you.

7 MR. THOMPSON: Commissioner, if I may?

8 CHAIRMAN GRAHAM: Yes.

9 MR. THOMPSON: I just want to confirm the
10 exhibit numbers on the CEL that correlate with the
11 exhibits that Little Gasparilla is objecting to. I
12 believe that's Exhibit 33, which is Mr. Cole's
13 amendment to his technical report. As prefiled,
14 that was JHC-6, is that correct?

15 MS. CHARTIER-HOGANCAMP: Correct.

16 MR. THOMPSON: Exhibit 33, thank you. And
17 what was the second one?

18 MS. CHARTIER-HOGANCAMP: DDS-2.

19 MR. THOMPSON: DDS-2, that's Exhibit 39 on the
20 CEL?

21 MR. VOLPE: That is correct.

22 MR. THOMPSON: Okay. Thank you.

23 And then, Mr. Friedman, yours was Exhibit 18,
24 that was Mr. Robbins' CV?

25 MR. FRIEDMAN: Oh, I am sorry, it was No. 17.

1 MR. THOMPSON: 17.

2 MR. FRIEDMAN: Yes. I apologize.

3 MR. THOMPSON: All right. Is 18 included as
4 well or just 17?

5 MR. FRIEDMAN: No, I am okay with 18.

6 MR. THOMPSON: You are okay with 18, okay.

7 MR. FRIEDMAN: Just his report.

8 MR. THOMPSON: Okay. Thank you.

9 And then I think, as was mentioned in the
10 prehearing order, voir dire will just be taken up
11 as part of normal cross-examination.

12 Thank you, Commissioner.

13 CHAIRMAN GRAHAM: Sure.

14 Any other preliminary matters?

15 MR. KELSKY: Just a question. Are we going to
16 now move all the other exhibits into evidence ahead
17 of time, or are we going to do it as each witnesses
18 testify?

19 CHAIRMAN GRAHAM: Well, we are going to move
20 the witnesses' testimony in as when they testify.

21 MR. KELSKY: Okay.

22 CHAIRMAN GRAHAM: Everything else we will move
23 in in just a second.

24 Anything else?

25 MR. THOMPSON: Not from staff.

1 CHAIRMAN GRAHAM: Okay. Staff, exhibits?

2 MR. DOSE: Staff has compiled a Comprehensive
3 Exhibit List -- or CEL. Item 1 on the CEL is the
4 list itself. The CEL includes the exhibits
5 attached to each witness's prefiled testimony and
6 cross-examination exhibits identified by staff and
7 the parties. The CEL has been provided to the
8 parties, Commissioners and the court reporter.

9 Staff requests that the list itself be marked
10 as Exhibit No. 1 at this time, with all subsequent
11 exhibits marked as indicated on the list.

12 CHAIRMAN GRAHAM: Any other objections other
13 than the ones we already heard?

14 Okay. Let's mark the list as Exhibit 1.

15 (Whereupon, Exhibit Nos. 1-73 were marked for
16 identification.)

17 CHAIRMAN GRAHAM: We will -- Staff?

18 MR. DOSE: Staff requests that Exhibit No. 1
19 be entered into the record at this time.

20 CHAIRMAN GRAHAM: Seeing no further
21 objections, we will enter that into the record.

22 (Whereupon, Exhibit No. 1 was received into
23 evidence.)

24 CHAIRMAN GRAHAM: What else, staff?

25 MR. THOMPSON: So now that Exhibit 1, which is

1 the CEL, has been entered, staff's understanding is
2 that the parties have stipulated to many exhibits
3 on the CEL. If you can permit me, that's Exhibits
4 2 through 16, 18 through 32, 34 through 38 and then
5 40 through 73. The parties have stipulated to the
6 admission of all those exhibits into the record
7 and, therefore, staff requests that those exhibits,
8 as mentioned, be moved into the record at this
9 time.

10 CHAIRMAN GRAHAM: Mr. Friedman?

11 MR. FRIEDMAN: Yeah, I have got one. I think
12 that their objection they made in a motion that was
13 denied, so I think the exhibits come in subject to
14 their existing objection. So those exhibits would
15 come in with all the rest of them.

16 MR. THOMPSON: Okay. Mr. Volpe, Ms. Charier,
17 are you okay with that? Did you want to cross on
18 those exhibits as they come up?

19 MS. CHARTIER-HOGANCAMP: No. We understand
20 the rule of the Commission as it was set forth in
21 the order. We just want to ensure that by
22 stipulating to it, we don't waive any of our
23 rights.

24 MR. THOMPSON: Okay. Well, in that case, Mr.
25 Commissioner, the list would change from 1 to 16,

1 and then 18 to 73 would be the exhibits to enter
2 into the record at this time.

3 CHAIRMAN GRAHAM: Let the record indicate that
4 everybody is nodding their head okay, so we get
5 that into the record.

6 UNIDENDIFIED SPEAKER: Excuse me, sir. We are
7 really struggling to hear back here. Is there any
8 way to turn the sound up a little bit?

9 UNIDENDIFIED SPEAKER: I can't hear a thing.

10 UNIDENDIFIED SPEAKER: Just put the mic to
11 your mouth. Just turn --

12 UNIDENDIFIED SPEAKER: Thank you.

13 CHAIRMAN GRAHAM: All right. Staff, so did we
14 list all the things that are going into the record
15 on this exhibit?

16 MR. THOMPSON: Yes. Functionally, for
17 everyone in the audience, that's Exhibits 1 through
18 73 on the CEL, except for Exhibit 17, subject to
19 Mr. Friedman's objection. Exhibits 33 and 39 are
20 being -- are being admitted subject to the
21 objections that Little Gasparilla Island
22 Preservation Alliance has already made, so those
23 have already been ruled on by the Prehearing
24 Officers.

25 MR. KELSKY: We had joined in that objection

1 as well, just for the record.

2 MR. THOMPSON: Thank you for the
3 clarification.

4 CHAIRMAN GRAHAM: Okay. So all that is into
5 the record.

6 (Whereupon, Exhibit Nos. 2-16 & 18-73 were
7 received into evidence.)

8 CHAIRMAN GRAHAM: All right. We are all on
9 the same page.

10 Everybody back there can hear me, correct?

11 All right. Opening statements. We will limit
12 opening statements to five minutes each because
13 that was set by the Prehearing Officer. And I am
14 told that everybody has been explained to about the
15 light tree, so will you know it will turn yellow
16 when you have a minute left. It will turn left
17 when you have 30 seconds left, and it will start
18 blinking when your time is up.

19 Let's start off with EU, please.

20 MR. FRIEDMAN: Okay. I know it's it difficult
21 to see, but there is also, in the record, there is
22 smaller pictures of this.

23 In order to get give this matter perspective,
24 I think it's important to understand the service
25 area we are talking about. This first map shows

1 all the islands together. It's -- as you can see,
2 it's not only an island surrounded by water, but
3 also has many water bodies within the island
4 itself.

5 If we start in the north, this is a Palm
6 Island development up here. This development is
7 served by its own wastewater treatment plant, so
8 it's not included in the service area since they
9 already have a central system up there serving
10 them.

11 This next area we call Knight Island. Here's
12 a blowup better picture of that. And as you are
13 going north to south. You will see all the water
14 bodies within this almost every lot is adjacent to
15 a water body. And to show the density of that,
16 this is a blowup of one section of the area. And
17 you can see all of these houses along the beach,
18 their proximity to the beach, and how densely those
19 are developed.

20 And then as you move further south, you go
21 past -- there is a State park in the middle, we are
22 not serving obviously. But if you go south, this
23 is Little Gasparilla Island. And you can see the
24 density of the homes, plus the small size of the
25 lots as we go from the State park up here down to

1 the bottom.

2 There is a condominium complex here that
3 serves itself and one adjacent condo, and they have
4 their own central wastewater service, so they are
5 not in the service area either.

6 And I will point out that Knight Island up
7 here has got their own water system, central water
8 system. This development here is served by a PSC
9 certificated central water system, and Little
10 Gasparilla Island is also served by a public --
11 central public water system regulated by the PSC.

12 The -- as you will hear, the Charlotte County
13 Commission, at least since 2002, has taken the
14 position that a central sewer system is needed for
15 the islands now. And they said now as in 2002, not
16 now as in 2025. Most recently, the board adopted a
17 resolution to that effect. And they have also
18 authorized the Utility Director -- or asked the
19 Utility Director, Dave Watson, to appear in support
20 of the application by EU.

21 Dr. Lapointe, who is the foremost expert in
22 Florida on the environmental impacts of septic
23 tanks, will explain the adverse impacts of those
24 tanks on the environment, particularly in an
25 environment like this, which is completely

1 surrounded and has water in between it.

2 John Cole, a professional engineer, has
3 prepared preliminary engineering designs with cost
4 estimates. And keep in mind, because this is the
5 original certificate case before the system is
6 built, we have to use estimates on everything, and
7 he made estimates. He is local, and we think his
8 estimates are more compelling than the witness from
9 one of the other parties.

10 Mr. Bell will explain how this grinder system
11 works, and how it's used throughout the state of
12 Florida, United States, and around the world, as
13 being an acceptable process.

14 Ms. Swain has taken the estimated construction
15 costs, O&M costs, and developed rates and charges
16 consistent with the Commission's ratemaking
17 principles. And while there may be disagreement on
18 what those costs are, there really is no
19 disagreement on the application of those costs to
20 the ratemaking principles. No other ratemaking
21 expert testimony other than Ms. Swain.

22 Although consistent -- what does that yellow
23 light mean?

24 MR. KELSKY: One minute.

25 MR. FRIEDMAN: Oh, my gosh.

1 After this hearing is over, you will be
2 excelled to reach the same conclusion that the
3 Charlotte County Commission has reached, and that
4 is that septic tanks need to be eliminated to these
5 islands, and that Environmental Utilities'
6 application should be granted.

7 Thank you.

8 CHAIRMAN GRAHAM: Thank you, Mr. Friedman.
9 The next party.

10 MR. VOLPE: Good morning, Commissioners. And
11 can you hear me?

12 CHAIRMAN GRAHAM: Yes.

13 MR. VOLPE: Thank you.

14 I am here on behalf of the Little Gasparilla
15 Island Preservation Alliance, LGIPA.

16 LGIPA is an organization that's made up of
17 hundreds of residents, homeowners and friends of
18 Little Gasparilla Island, which is one of the
19 islands in the proposed service area. We are
20 dedicated to preserving the unique character and
21 environment of the island.

22 LGIPA opposes Environmental Utilities' sewer
23 certificate application again. EU's application
24 fails for meet the statutory and regulatory
25 requirements established under Chapter 367 and

1 Chapter 25-30 of the Florida Administrative Code.
2 The deficiencies in EU's current proposal mirror
3 those that were identified by this commission just
4 two years ago, when you denied the nearly identical
5 application. The superficial changes of the
6 current application do not address the fundamental
7 shortcomings of this system, and we urge you to
8 similarly deny this application.

9 First, there is no need for this project. The
10 statutes and the rules require that the applicants
11 demonstrate a need for the proposed service and EU
12 has not done so. EU's reliance on a handful of
13 solicited service requests does not satisfy the
14 requirement for need, especially when it's weighed
15 against the overwhelming objections of residents
16 and citizens and customers that would be in this
17 proposed service territory.

18 As to the feasibility of EU's proposal, civil
19 engineer Jadon Hull will demonstrate that EU's
20 design remains highly conceptual with significant
21 gaps in the technical details. He will testify
22 that the critical elements such as main connection
23 lines, pumping stations and easements have been
24 significantly underestimated, or omitted entirely
25 from the application.

1 Additionally, engineer John Shaw will testify
2 that the system's design fails to adequately
3 account for the complexities of constructing and
4 operating on a bridgeless barrier island, further
5 jeopardizing the project's feasibility. This
6 operation of a sewer system on a bridgeless barrier
7 island is much different than operating a water
8 system.

9 Mr. Hull will also testify that EU's financial
10 estimates are grossly underestimated. The true
11 cost of the project could exceed \$50 million, far
12 higher than EU's estimated 21 million. He will
13 testify that the costs, coupled with the logistical
14 challenges, such as transporting materials for
15 construction on a bridgeless island, will impose
16 excessive unreasonable financial burdens on
17 residents.

18 On an individual level, the estimated costs
19 per ERC could exceed \$40,000, an amount that is
20 neither fair nor justifiable for the impacted
21 homeowners.

22 Little Gasparilla Island and the other islands
23 that are in this service area were recently
24 devastated by Hurricane Helene and Milton, which
25 destroyed many of the homes, damaged many others,

1 and really strained the community's resources.
2 Adding the financial burden of an unnecessary
3 system and unwanted system to a community that's
4 already struggling to recover from two major
5 hurricanes would be unjust.

6 Charlotte County's comprehensive plan, the
7 sewer master plan, explicitly prohibit extending
8 centralized infrastructure to bridgeless barrier
9 islands such as the ones in the proposed service
10 area. 367, Florida Statutes, as you know, requires
11 that this commission consider the consistency of a
12 certificate with local comprehensive plans. In
13 2022, in fact, this PSC, the Public Service
14 Commission, found that the Environmental Utilities'
15 application was not consistent with Charlotte
16 County's comprehensive plan or master sewer plan.
17 The plans have not changed. EU's application has
18 not changed in any significant way related to the
19 comprehensive plan, therefore, the application
20 remains inconsistent with that plan.

21 Finally, the protection of public, health,
22 safety and welfare is the guiding principle for
23 utility regulation by this commission. EU's
24 current proposal, just as it was in 2022, is
25 contrary to that public interest, as demonstrated

1 by the overwhelming public opposition and lack of
2 demonstrated need.

3 The Commission has a duty to protect the
4 citizens of Florida by ensuring of that utility
5 projects are necessary, feasible and consistent
6 with state and local policies. EU's application
7 fails on all counts. It imposes excessive costs,
8 lacks community support and conflicts with the
9 established plans of the area. We respectfully
10 urge you to deny this application and uphold your
11 commitment to the fairness, prudence and good
12 stewardship of our state's precious resources.

13 Thank you for your consideration.

14 CHAIRMAN GRAHAM: Thank you, sir.

15 Next.

16 MR. KELSKY: Good morning. Can you hear me?

17 CHAIRMAN GRAHAM: Yes.

18 MR. KELSKY: My name is Brad Kelsky with the
19 law firm of Kelsky Law, P.A. We represent Palm
20 Island Estates Association, Inc. We usually refer
21 to them as PIE, just as we did three years ago when
22 Environmental Utilities sought the same
23 certification it now seeks from the Public Service
24 Commission.

25 On February 8th, 2022, again nearly three

1 years ago, the Public Service Commission held
2 hearings, heard testimony and evidence from
3 multiple witnesses, heard from multiple members of
4 the community, reviewed prefiled witness testimony
5 and exhibits, heard extensive cross-examination
6 from witness and considered the parties' prefiled
7 exhibits.

8 On July 8th of 2022, the Florida Public
9 Service Commission issued a final order denying
10 Environmental Utilities, LLC's, application for
11 original certificate to provide wastewater service
12 in Charlotte County.

13 Now, rather than repeat everything that Mr.
14 Volpe said, I am going to adopt it by reference and
15 just add a few things to speed this along so we
16 don't have to reiterate stuff.

17 But now, nearly three years later, this same
18 commission is having yet another hearing on the
19 certification. And in its final order from three
20 years ago, the Commission conducted an exhaustive
21 analysis determining whether Environmental
22 Utilities established a need for the sewer utility
23 in the proposed area, and it did not. And as Mr.
24 Volpe said, the application that exists today is
25 almost entirely identical to the application as it

1 was three years ago.

2 EU has done nothing different to establish
3 need over the past three years since the last
4 hearing. In other words, the Public Service
5 Commission will take virtually the same testimony
6 and evidence it heard and rejected three years ago.
7 The conclusion of the second Environmental
8 Utilities application should result in denial, like
9 its predecessor application.

10 The Public Service Commission will hear that
11 there have been no changes to the Charlotte County
12 Comprehensive Plan in order to determine it was
13 inconsistent with Environmental Utilities'
14 application. There have been no changes to the
15 sewer master plan that was already determined to be
16 inconsistent. There has been no water quality
17 testing establishing any adverse water condition in
18 and around the barrier islands and the proposed
19 service area. And there has been no determination
20 by anyone that there is any health problem, let
21 alone on the order of magnitude constituting clear
22 and convincing evidence.

23 In other words, for the same reasons that this
24 commission already denied this application once
25 before, it should deny it again. Simply put, there

1 is nothing new here, and it's just a rehashing of
2 what has already been heard, considered and
3 rejected. We urge the Florida Public Service
4 Commission to deny the application, just as it did
5 three years ago.

6 Thank you.

7 CHAIRMAN GRAHAM: Thank you.

8 Ma'am.

9 MS. COTHERMAN: Okay. I am just going to
10 basically say I agree with what they have said, but
11 I go back farther. I go back to 2002, when the
12 same applicant, under a different name, came before
13 the Commission. It didn't proceed to hearing. It
14 was withdrawn. But the same concerns were there.
15 There was still -- there was no need proven. It
16 was the County attorney at that time said it was in
17 conflict with the comprehensive plan. That plan
18 has not been changed. The same plan from 2002
19 until today.

20 And I was looking at my testimony from 2022,
21 the most recent PSC hearings, and I can just copy
22 and paste everything that has been -- that I
23 brought up before because nothing has changed.
24 Everything is underestimated, costs, impact,
25 environment. And I don't really have anything new

1 to say than I did three years ago, so I am --
2 that's all.

3 CHAIRMAN GRAHAM: Ma'am, can you pronounce
4 your last name for me, please?

5 MS. COTHERMAN: Sure. Cotherman.

6 CHAIRMAN GRAHAM: Cotherman. Thank you very
7 much.

8 Okay. Before we swear in the witnesses, I
9 want to give everybody an overview of what to
10 expect today. We are going to go probably until
11 about one o'clock, and we will break for lunch at
12 1:00. Probably take about an hour, maybe an
13 hour-and-a-half break, and then we will go the
14 technical hearing until about 5:30. At 5:30, we
15 will probably take about a half-an-hour break
16 before we start the service hearing. And the
17 service hearing will go until -- I am not quite
18 sure when we have to evacuate this building.

19 MR. THOMPSON: What I am aware of the limiting
20 factor is the ferry service back to the island for
21 the residents.

22 CHAIRMAN GRAHAM: Okay.

23 MR. THOMPSON: And I am not exactly sure when
24 the last ferry is, but I am sure someone will be
25 willing to let me know.

1 CHAIRMAN GRAHAM: I thought I saw the last
2 ferry was 10 o'clock.

3 UNIDENTIFIED SPEAKER: It closes at 10
4 o'clock, so we have to be in line to make sure
5 everybody is can get across. They only take eight
6 at a time. So we have to -- I wouldn't want to be
7 I would probably want to be -- at least by 9:00.
8 Maybe Linda can give us a better update.

9 CHAIRMAN GRAHAM: Well, we will take the
10 witnesses that want to speak. We will give
11 everybody three minutes, and we go through as fast
12 as we can. And anybody that at the end of all the
13 witnesses that want to stay and have their say can
14 stay and finish whatever they want to do. We will
15 do three minutes so we can get through people as
16 quick as we possibly can.

17 And once again, we will be the service hearing
18 again in the morning, especially if anybody that
19 wasn't able to make this evening, or still has
20 something on your mind you want to get off, we can
21 do that as well.

22 And plus, you can also remember, as Prehearing
23 Officer likes to say all the time, you can always
24 give us your statements in writing. You can email
25 us. You can send us a hard letter. Each one is

1 fine.

2 That all being said, let's go ahead and swear
3 in the witnesses.

4 If you are one of the technical witnesses
5 today, I need you to stand up and raise your right
6 hand.

7 (Whereupon, Chairman Graham administered the
8 oath to witnesses for the technical hearing.)

9 (Chorus of yeses.)

10 CHAIRMAN GRAHAM: Thank you.

11 You will be given five minutes to summarize
12 your testimony. You don't necessarily feel like
13 you have to take the entire five minutes. The
14 Prehearing Order says it's five minutes, so --

15 MR. FRIEDMAN: Oh, I thought it was three.

16 CHAIRMAN GRAHAM: No. Trust me. I would go
17 to three if I could, but since it's already in the
18 Prehearing Order, I will give them five minutes.
19 Don't feel like you have to take the entire five
20 minutes because your testimony is clearly printed
21 in front of us.

22 So that being the case, staff, is there
23 anything else we need to cover before we start
24 taking witnesses?

25 MR. THOMPSON: Nothing else from staff.

1 CHAIRMAN GRAHAM: And when you are asked a
2 question, cross-examining question, please answer
3 it, to the best of your ability, yes or no, and
4 then you can feel free to elaborate upon that.

5 And with that all being said, I guess we can
6 all call the first witness.

7 MR. FRIEDMAN: Environmental Utilities calls
8 Mr. Dave Watson.

9 CHAIRMAN GRAHAM: Is the green light on top
10 on? Just underneath the switch there should be a
11 green light.

12 Whereupon,

13 DAVE WATSON
14 was called as a witness, having been previously duly
15 sworn to speak the truth, the whole truth, and nothing
16 but the truth, was examined and testified as follows:

17 THE WITNESS: Good morning. Emmett David
18 Watson. Public Utilities director for Charlotte
19 county.

20 EXAMINATION

21 BY MR. FRIEDMAN:

22 Q Let me ask you couple of questions first.
23 You were sworn in, were you not?

24 A I was.

25 Q Would you state your name and your business?

1 A Emmett David Watson. I AM THE Utilities
2 Director, Charlotte County Utilities, representing
3 Charlotte County Board of County Commissioners.

4 Q And, Mr. Watson, did you cause to be prefiled
5 testimony in this case?

6 A I have.

7 Q And if I asked you the questions in your
8 direct testimony, would your answers remain the same?

9 A Yes, they would.

10 Q No changes or corrections?

11 A No changes.

12 (Whereupon, prefiled direct testimony of Dave
13 Watson was inserted.)

14

15

16

17

18

19

20

21

22

23

24

25

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

DIRECT TESTIMONY

OF

Dave Watson, Charlotte County Utilities Director

on behalf of

Environmental Utilities, LLC

1 **Q. Please state your name and business address.**

2 A. Dave Watson

3 3100 Loveland Avenue, Port Charlotte, FL 33980

4 **Q. What is your position with Charlotte County?**

5 A. Utilities Director.

6 **Q. Does the Charlotte County Commission support a conversion of septic tanks to central
7 sewer on the barrier islands?**

8 A. Yes, the Board of County Commissioners adopted the Master Sewer Plan which identifies
9 the barrier islands as a critical location from which to remove septic tanks. Also, the Board
10 of County Commissioners unanimously adopted Resolution Number 2023-155 supporting
11 Environmental Utilities' Application to the Florida Public Service Commission.

12 **Q. Has the County taken any other action in support of Environmental Utilities' efforts to
13 rid the barrier islands of septic tanks?**

14 A. In order to facilitate the removal of septic tanks from the barrier islands the County entered
15 into a Bulk Sewer Treatment Agreement with Environmental Utilities in July 2020 whereby
16 the County agreed to treat the sewage from the barrier islands.

17 **Q. Does Charlotte County continue to support the conversion of septic tanks to central
18 sewers through Environmental Utilities' Application.**

19 A. Yes, it does.

20 **Q. Why doesn't the County undertake the septic-to-sewer conversion project itself?**

21 A. The County Comprehensive Plan does not allow the County to provide retail wastewater
22 service outside of the urban services district, but does not prohibit private entities from doing
23 so.

24 **Q. Will central sewers on the barrier islands increase density?**

25 A. No, the County has other land regulations that control the density on the barrier islands.

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

2 A. Yes, DW-1 is Resolution 2023-155 to which I have referred and which I understand has
3 been filed by Environmental Utilities, and DW -2 is the Bulk Sewer Treatment Agreement.

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

5 A. Yes, it does.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. FRIEDMAN:

2 Q Would you like to give a brief summary of your
3 testimony, please?

4 A Basically, the Board of County Commissioners
5 has issued a statement here with their resolution in
6 support of the public sewer for the barrier islands.
7 And I am here to answer questions regarding that, or
8 anything else that may be needed to be addressed by the
9 county commission.

10 That's my summary.

11 CHAIRMAN GRAHAM: Okay. Sounds good.

12 MR. FRIEDMAN: We tender the witness for
13 cross-examination.

14 CHAIRMAN GRAHAM: Okay. Let's see. We are
15 going to start with EU first -- I am sorry, with
16 Little Gasparilla.

17 EXAMINATION

18 BY MS. CHARTIER-HOGANCAMP:

19 Q Good morning, Mr. Watson.

20 You stated in your prefiled testimony that the
21 Charlotte County Board of County Commissioners supports
22 the conversion of septic to sewer on the bridgeless
23 barrier islands, is that correct?

24 A That is correct.

25 Q And in your prefiled testimony, you identify,

1 it looks like two documents as evidentiary support for
2 that, the master sewer plan and the County's Resolution
3 Number 2023-155, is that correct?

4 A That is correct.

5 Q And those are the only items you provided as
6 evidence of the County's support?

7 A Yes.

8 Q So in reference to County -- the County's
9 Resolution Number 2023-155 identified as Exhibit DW-1,
10 did you participate in the drafting of that resolution?

11 A I was not.

12 Q Do you know who drafted it?

13 A County Attorney, I believe.

14 Q Do you -- you believe that or you know it?

15 A I believe that. The County Attorney generally
16 drafts all resolutions.

17 Q Okay. Do you know if EU had any part in
18 drafting that resolution?

19 A Not that I am aware of.

20 Q And did you participate in any studies or
21 analysis in support of the conclusions reached in that
22 resolution?

23 A No, not that I am aware of.

24 Q Do you know if the County did any studies or
25 analysis as part of that resolution?

1 A As far as this particular one for EU, no, not
2 that I am aware of.

3 Q Okay. Do you know if the County prepared an
4 **economic impact report ahead of that resolution?**

5 A Not that I am aware of.

6 Q Okay. Do you think one would have been
7 **required for a resolution such as that?**

8 A Not that I -- as far as a resolution like this
9 for our utility, no, we do not.

10 Q Okay. And do you know what types of projects
11 **typically would require an economic impact report?**

12 A Nothing -- nothing that I am aware that would
13 be directly with the utility.

14 Q Okay. And were you involved in the County
15 **meeting wherein that resolution was adopted?**

16 A I was in the audience.

17 Q You were in the audience. So you were aware
18 **that it was adopted as a consent agenda item?**

19 A Yes.

20 Q And can you explain to me how a consent agenda
21 **item works at those meetings?**

22 A With a consent agenda item, there are
23 generally a number of items on the consent agenda. They
24 are generally approved en masse. If any of the board
25 members have a question, they will pull the item for

1 discussion.

2 Often, if there is a consent agenda item, and
3 residents have already gotten up to talk about it, then
4 the board will pull that item to further discussion
5 prior to voting on it. So if there is an agenda item
6 pulled, it will be voted on independently as opposed to
7 whatever remains within the agenda consent order.

8 **Q And was this agenda item pulled from the**
9 **consent agenda?**

10 A I don't recall.

11 **Q Do you know if there was any public comment on**
12 **this resolution?**

13 A I don't recall.

14 **Q Okay. So the second document you mentioned as**
15 **to the sewer master plan, it's my understanding that Mr.**
16 **Kelsky has some questions for you on that, so I am going**
17 **to defer to him to avoid any repetition, but I have just**
18 **a few more questions.**

19 **Do you know how much the County charges for**
20 **connection to a new LPS system?**

21 A So under -- under our sewer -- septic-to-sewer
22 program, the last time that we did this, the County was
23 currently charging, I believe it was \$11,500.

24 **Q And do you know if that's billed to customers**
25 **in a lump sum or over a period of time?**

1 A That is billed over a period of time through
2 septic-to-sewer.

3 **Q Do you know how long it's billed?**

4 A Currently, they are at 20 years.

5 **Q So forgive me for getting you to do some math**
6 **on the fly, but that comes out to 500 something dollars**
7 **a year?**

8 A In that ballpark, yes.

9 **Q Okay. And does the County consider that to be**
10 **a fair and reasonable amount to assess the customers for**
11 **of that conversion?**

12 A Yes. So when we do the septic-to-sewer, and
13 recently in January, the Board had an expert come in,
14 one of our consultants who handles financial discussion,
15 I guess is the best way to put it, for affordability
16 with utilities. They came up with a new calculation
17 based on the overall economic ability of the area, which
18 was taken as a county as a whole, not independent areas.

19 That new number -- originally, it was around
20 \$11,000 or \$12,000. The new number is around \$25,000
21 total, and that is what is before the Board now. They
22 have not voted on anything, but ultimately, there will
23 be a discussion on that somewhere down the road for
24 future septic-to-sewer areas.

25 **Q So just so I understand your testimony, the**

1 **current amount is 11,500?**

2 A That's correct. That was what was originally
3 approved for the Ackerman septic-to-sewer, which is
4 currently under construction.

5 MS. CHARTIER-HOGANCAMP: Okay. No further
6 questions for this witness.

7 EXAMINATION

8 BY MR. KELSKY:

9 Q Thank you. It worked this time. Okay.
10 Mr. Watson, you are not a comprehensive
11 planner, is that correct?

12 A That is correct.

13 Q In fact, Charlotte County has its own
14 comprehensive planners, correct?

15 A I believe so, yes, under Community
16 Development.

17 Q It's its own subdepartment, correct?

18 A Community Development.

19 Q Okay. So they are the people that actually
20 write the comprehensive plan, correct?

21 A That's correct.

22 Q And they are the people that interpret the
23 comprehensive plan for the County, correct?

24 A That is correct.

25 Q They are the people that make sure the plan is

1 consistent with other portions of plan, correct?

2 A Correct.

3 Q And they are the ones who undertake the
4 consistency analyses to make sure that everything works
5 together the way that it should, correct?

6 A Correct.

7 Q Okay. And to be clear, you are not the author
8 of the sewer master plan, correct?

9 A I am not.

10 Q And you are aware that Environmental
11 Utilities, LLC, previously submitted an application to
12 the PSC for the same certificate it seeks today,
13 correct?

14 A Yes, I am.

15 Q And you are aware that what application was
16 denied?

17 A Yes.

18 Q And are you aware that the Public Service
19 Commission, in its final order, found that the
20 application was inconsistent with the Charlotte County
21 Comprehensive Plan?

22 A Yes.

23 Q From -- you are also aware that the sewer
24 master plan was found to be inconsistent with the
25 application as well, correct?

1 A I am.

2 Q Okay. From the period of time that the last
3 Environmental Utilities, LLC, application was rejected
4 and noted to be inconsistent with the comprehensive plan
5 through today -- or I should say through today, there
6 have been no plan amendments that impact the
7 application, is that correct?

8 A That is correct.

9 Q Okay. And you understand that the County went
10 through an Evaluation and Appraisal Review cycle, an EAR
11 cycle, since the last application, correct?

12 A Can you explain that, please, EAR?

13 Q Yeah, periodically review the plan to make
14 necessary changes that -- to comport with existing
15 situations.

16 A So we are talking about the sewer master plan?

17 Q No. I am talking about the comprehensive
18 plan. If you don't know what the EAR is, then we can
19 move on.

20 A Okay.

21 Q You understand the County had the means and
22 the opportunity to address the issues that were raised
23 in the denial of the previous application by PSC,
24 correct?

25 A Yes.

1 Q And you understand that did not happen,
2 correct?

3 A I am unsure.

4 Q Okay. The only thing that did change from the
5 County's perspective was that there was a resolution
6 that you identified as 0155 from the Commissioners which
7 rely upon in your testimony, correct?

8 A Yes.

9 Q And that is was the one that was done via
10 consent agenda, correct?

11 A That's correct.

12 Q And in that resolution -- you are familiar
13 with that resolution, correct?

14 A (Witness nods head in the affirmative.)

15 Q Would you agree that that resolution does not
16 identify a single goal as referenced in Chapter 163 of
17 the Florida Statutes?

18 A I am not -- well, I don't have that statute in
19 front of me, so I don't want to put words in my mouth.

20 Q Well, you have seen the resolution, correct?

21 A I have the resolution in front of me, yes.

22 Q Okay. If you turn to page three of the
23 resolution, it identifies four items. It says:
24 Charlotte County verifies that the proposed EU project
25 is not inconsistent with the Charlotte County

1 Comprehensive Plan. That's what it says, correct?

2 A Yes.

3 Q It doesn't identify a single goal as stated in
4 the plan, correct?

5 A That's correct.

6 Q It doesn't state a single objective that's set
7 forth in the plan, is that correct?

8 A That's correct.

9 Q And it doesn't identify a single policy that
10 shows consistency with the plan, correct?

11 A That is correct.

12 Q It is just a statement that just says, we
13 think it's not inconsistent, correct?

14 A Correct.

15 Q And you know that there is no planner from
16 Charlotte County who is going to testify today about
17 what the plan means, how it's consistent or how it's
18 inconsistent?

19 A Correct.

20 Q And as Director for Charlotte County
21 Utilities, are you familiar with the comprehensive plan
22 as it relates to utilities in general?

23 A As it he relates to utilities in general?

24 Yes.

25 Q So you are familiar with coastal policy 3.2.7?

1 A I would need to have it in front of me.

2 Q That's the one that prohibits the installation
3 of a central wastewater system from the bridgeless
4 barrier islands. Are you familiar with that one?

5 A I am not.

6 Q Would you agree that the proposed certificated
7 area is outside the urban services area?

8 A I am not familiar. It is outside the
9 Charlotte County Utility service area.

10 Q Okay. Do you know -- would you agree that
11 there has been no water testing done around the
12 bridgeless barrier islands?

13 A There has been none done by Charlotte County
14 Utilities.

15 Q Okay. In fact, you are on record as late as
16 August 19 of 2024, while this application was pending,
17 in a Board of County Commissioners meeting, you are on
18 the record stating that testing would be ideal for a
19 year or two of water quality in and around the barrier
20 islands, isn't that true?

21 A That was specific to the Cape Haze area.

22 Q Are you sure?

23 A Yes, sir, because we -- as far as the SUS
24 program, the Cape Haze area at that time was in
25 development, I guess, and the residents there had

1 requested testing. We are actually in the process of
2 doing that now. I can't say that testing has begun, but
3 the program is being put together.

4 Q But you he know that at least in the last
5 three years since this application was originally
6 submitted and rejected and up through now, there has
7 been no water quality testing that has determined any
8 adverse health condition, is that correct?

9 A Not done directly by Charlotte County
10 Utilities.

11 Q Well, if you were aware of it, you would have
12 included it in your direct testimony, wouldn't you?

13 A If I was aware of it, yes.

14 Q And the 2017 sewer plan is the current sewer
15 plan that's in effect, correct?

16 A That is correct.

17 Q And that sewer plan, it has not been changed
18 as of yet by the County, correct?

19 A That's correct.

20 Q So the same inconsistency that existed in
21 2017, because it has not been amended, would be the same
22 inconsistency that exists now?

23 A If there was an inconsistency, yes, sir.

24 Q Okay. But it hasn't been changed, correct?

25 A No. The plan is being updated. It has not

1 been brought before the Board yet as a final plan. They
2 are still going through some final revisions to it,
3 expected to be brought before the Board probably by May.

4 Q Okay. I understand there is a new plan in the
5 works, but the old plan that this application relies
6 upon, this resolution refers to, has not been changed,
7 correct?

8 A That's correct.

9 Q Are you -- you talked a little bit about the
10 connection ordinance. That's 3-8-41, is that correct?

11 A Yes, sir.

12 Q And you -- are you familiar with the WSW
13 policies in the comprehensive plan, 3.12 and 3.13?

14 A Off the top of my head, no, sir.

15 Q Do you understand that the connection
16 ordinance requires connections within the urban service
17 area, or for property, or for new development, is that
18 correct?

19 A I believe so, yes, connection ordinance is
20 specific to if sewer is available.

21 Q In the urban service area?

22 A If sewer is available. I go by Charlotte
23 County Utilities requirements.

24 Q Well, you understand that the requirements are
25 subordinate to the code, correct?

1 A Yes, sir.

2 Q Okay. And just to wrap this up, you are not a
3 planner?

4 A No, sir.

5 MR. KELSKY: Okay. Thank you. I have no
6 further questions.

7 CHAIRMAN GRAHAM: Ms. Cotherman.

8 EXAMINATION

9 BY MS. COTHERMAN:

10 Q I think you said that the area that's being
11 asked to be certified by EU is outside of the Charlotte
12 County Utilities area?

13 A Yes, ma'am.

14 Q Why is it, then, when I -- is it not true that
15 on all of the maps on the County website, that this
16 area, all of the barrier islands shown on the map by Mr.
17 Friedman are designated in Charlotte County Utilities'
18 area?

19 A I can't say that I -- not that I am in
20 disagreement. I didn't see what he presented.

21 Q No, on the Charlotte County website.

22 A On the Charlotte County website, most likely
23 it's from our sewer master plan, which also did include
24 the areas outside CCU, essentially other utilities
25 within Charlotte County. Not specific to just CCU, as

1 far as identifying some of the areas.

2 Q Do you -- are you aware that in the sewer
3 master plan, it designates that any area that is not
4 already approved by the PSC, or certificated or, in
5 effect, falls under the Charlotte County Utilities'
6 certificated area?

7 A I was not aware of that, no.

8 Q Okay. Approximately maybe three years ago,
9 correct me if I am wrong on the years, the County hired
10 a water quality manager, Brandon Moody?

11 A Yes, ma'am.

12 Q And am I correct that he has not -- he is not
13 here today to testify about water area?

14 A No, ma'am.

15 CHAIRMAN GRAHAM: Okay.

16 MS. COTHERMAN: I think that's all I have.

17 Thank you.

18 CHAIRMAN GRAHAM: Redirect?

19 MR. THOMPSON: Commissioner, sorry, staff has
20 a few brief questions.

21 EXAMINATION

22 BY MR. THOMPSON:

23 Q Mr. Watson, I believe you testified just
24 briefly to this early, but you are familiar with the
25 County Comprehensive Plan?

1 A To the point of the utilities, yes.

2 Q Okay. Will that include any portions of the
3 future landuse within the County Comp Plan?

4 A No, sir.

5 Q Okay. Specifically would that -- and I
6 realize you just said no. The Florida Future Landuse
7 Policy, 3.2.4, you are not familiar with that?

8 A No, sir.

9 Q Are you familiar with Mr. Boyer's testimony in
10 this case?

11 A I have not gone through it, no. Only my
12 testimony.

13 Q You haven't read it and reviewed it at any
14 point?

15 A No.

16 Q Okay. Mr. Boyer claims, and subject to check,
17 if you would like, that the Future Landuse Policy
18 prohibits the County from providing central wastewater
19 service in the proposed service area. Do you agree with
20 that statement?

21 A Yes, based on the -- what I am aware of with
22 the map now, yes.

23 Q Okay. Why?

24 A It is outside of our certificated area, and
25 CCU and Charlotte County Utilities would not provide

1 sewer service outside of our certificated area.

2 Q Okay. But the policy, to your understanding,
3 does allow private business to do so?

4 A Yes, sir.

5 Q We have discussed County Resolution 223-155 a
6 lot. Has that been modified by the County, to your
7 knowledge?

8 A Not that I am aware of. I am not particularly
9 familiar with that.

10 Q Okay. And also the sewer master plan has been
11 referenced quite a lot. Do you know when that was
12 adopted in its current form?

13 A 2017, I believe.

14 Q Okay. Were you involved in the planning,
15 commissioning, preparation at all?

16 A Only in reviewing it.

17 Q Do you know what the County's goal was in
18 developing that plan?

19 A To ultimately service high density areas with
20 public sewer.

21 Q Okay. Why is septic-to-sewer important to the
22 County?

23 A To improve water quality. It's part of the
24 County's One Charlotte, One Water program, where we have
25 got older areas in town that have septic that have

1 previously been identified, close to water bodies or
2 high density that can significantly impact water
3 quality. Primarily, we have been focusing on the harbor
4 area, but we have done a couple in Myakka River and,
5 again, we were looking at the Cape Haze area because of
6 proximity to water and density of homes.

7 MR. THOMPSON: Thank you. No further
8 questions, Mr. Chair.

9 CHAIRMAN GRAHAM: Now, Mr. Friedman, redirect?

10 FURTHER EXAMINATION

11 BY MR. FRIEDMAN:

12 Q Mr. Watson, you stated that the County
13 development staff develops the comprehensive plan. Is
14 that what you testified to?

15 A Yes, sir.

16 Q Isn't the comprehensive plan adopted by the
17 County Commission, though?

18 A Yes, it is.

19 Q So you would assume, would you not, that the
20 County Commission understood what it was adopting when
21 it adopted that plan?

22 A I would expect, yes.

23 Q And its interpretation of that plan as
24 articulated in that resolution would be accurate?

25 A Yes, sir.

1 MR. FRIEDMAN: No further questionings.

2 CHAIRMAN GRAHAM: Okay. Exhibits for this
3 witness?

4 MR. THOMPSON: Exhibits 1 through 73.

5 MR. FRIEDMAN: We have done them all.

6 MS. HELTON: They've already been admitted.

7 MR. THOMPSON: Mr. Chair, Mr. Watson's
8 testimony has not been officially inserted in the
9 record, so I would ask Mr. Friedman to do so, and
10 if you would do so prior to the witness summary.

11 MR. FRIEDMAN: You are absolutely right. I
12 would ask that his testimony be admitted --
13 inserted into the record back -- back in the
14 beginning.

15 CHAIRMAN GRAHAM: We can insert it into the
16 record as though read.

17 MR. THOMPSON: Thank you.

18 Nothing else from staff.

19 MR. FRIEDMAN: Thank you, Mr. Watson.

20 CHAIRMAN GRAHAM: Thank you. You are
21 excused -- hold on a second. We have a question
22 from one of the Commissioners. Mr. Friedman may
23 still want to redirect afterwards.

24 COMMISSIONER CLARK: Thank you, Mr. Chairman.
25 Just one quick question.

1 Does Charlotte County have any plans to impose
2 a moratorium against development on the island if
3 there is not a central system put in place?

4 THE WITNESS: Not that I am aware of. No.

5 COMMISSIONER CLARK: So if individuals -- if
6 this is a priority -- if removing the septic tanks
7 is a priority, if a septic tank goes out, they are
8 still going to issue a permit to reinstall a new
9 septic tank or new construction, they are still
10 giving permits, new construction permits?

11 THE WITNESS: Yes, and that's outside the
12 scope of Charlotte County Utilities, so that would
13 be under the Community Development or the Health
14 Department.

15 COMMISSIONER CLARK: And we don't have anyone
16 -- do we have anyone who plans to address the
17 comprehensive plan from the County here, Mr.
18 Friedman?

19 MR. FRIEDMAN: In our cross-examination of
20 their witnesses, we do.

21 COMMISSIONER CLARK: Okay. Thank you.
22 Thank you, Mr. Watson.

23 THE WITNESS: Thank you.

24 CHAIRMAN GRAHAM: Thank you, sir.

25 MR. FRIEDMAN: Can I ask one more question to

1 follow up on that?

2 CHAIRMAN GRAHAM: Sure.

3 FURTHER EXAMINATION

4 BY MR. FRIEDMAN:

5 Q Mr. Watson, one more question to see if you
6 know. If there is a platted lot, will the County be
7 required to create a building permit to build on that
8 platted lot even if was nonconforming today?

9 A As long as the lot met the County requirement
10 -- current County requirements, yes.

11 Q What if it met the County requirements at the
12 time it was platted, would it be grandfathered?

13 A I don't want to answer that one because I am
14 not sure.

15 Q Okay. Thank you.

16 CHAIRMAN GRAHAM: Thank you, Mr. Watson.

17 Mr. Friedman, your next witness, please.

18 Whereupon,

19 BRIAN E. LAPOINTE

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

23 EXAMINATION

24 Q Would you please state your name and business
25 address?

1 A Yes, my name is Brian Lapointe, and my address
2 is 3754 Pine Street, Big Pine Key, Florida.

3 **Q And, Dr. Lapointe, did you cause to be filed**
4 **prefiled testimony in this case?**

5 A Excuse me?

6 **Q Did you prefile testimony in this case?**

7 A Yes, I did.

8 **Q And if I were to ask you the questions in your**
9 **prefiled testimony, would your answer remain the same?**

10 A Yes, they would.

11 MR. FRIEDMAN: I would like to ask that his
12 testimony be admitted into the record as though
13 read.

14 CHAIRMAN GRAHAM: We will place Dr. Lapointe's
15 prefiled direct testimony into the record as though
16 read.

17 MR. FRIEDMAN: Thank you.

18 (Whereupon, prefiled direct testimony of Brian
19 E. Lapointe was inserted.)

20

21

22

23

24

25

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

DIRECT TESTIMONY

OF

BRIAN E. LAPOINTE, Ph.D.

on behalf of

Environmental Utilities, LLC

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

2 A. Brian Edward Lapointe, environmental science, 313 Matthew Quay Way, Fort Pierce, FL
3 34946

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

5 A. Following graduation from Palm Beach High School in 1969, I received a B.A. degree in
6 Biology from Boston University (1973), a M.S. degree in Environmental Science from the
7 University of Florida (1979), and a Ph.D. in Biology from the University of South Florida
8 (1982). Following a short postdoc with the University of Florida in 1982, I became employed
9 with the Harbor Branch Oceanographic Institute (HBOI) in Fort Pierce, FL, in January 1983
10 but was based on Big Pine Key where I performed field studies involving growth of macroalgae
11 (seaweeds) and nutrient dosing experiments. That research in the early 1980s led to my first
12 septic tank study sponsored by Monroe County in the Florida Keys. I became a research
13 professor in 2007 when HBOI became part of Florida Atlantic University (FAU). During my
14 42-year professional career, I have been the lead investigator of numerous studies of nutrient
15 pollution and harmful algal blooms in south Florida and various locations around the wider
16 Caribbean region. I currently have 139 publications (Research Gate), 12,559 citations to my
17 papers, and an h-index of 58 (Google Scholar). My past research, along with other water quality
18 studies, have led to water policy decisions to improve wastewater infrastructure in Florida,
19 including construction of a municipal sewer system and advanced wastewater treatment in the
20 Florida Keys.

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

22 A. Yes, I have provided testimony in Florida Division of Administrative Hearings involving the
23 need for a wastewater infrastructure upgrade in the Florida Keys and establishment of nutrient
24 criteria in south Florida.

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

1 A. The purpose of my direct testimony is to present the Report I prepared titled “Science
2 Supports a Septic-to-Sewer Conversion on the Barrier Islands of Charlotte County, Florida”
3 and to address other environmental issues that may arise.

4 **Q. Please summarize the major points in your Report.**

5 A. My report provides an overview of peer-reviewed research, technical reports, and other
6 relevant information that collectively support a science-based decision to sewer Knight
7 Island, Don Pedro Island, and Little Gasparilla Island in Charlotte County, FL. These islands
8 are estimated to have had 273 septic systems installed between 1920 and 1979, 792 from
9 1980 to 2000, and 230 between 2000 and 2016, for a total of 1,295 units. Conventional septic
10 systems are not designed to remove nutrient pollutants such as nitrogen and phosphorus (or
11 many other contaminants) from their effluent and studies have documented how they
12 contaminate groundwaters and adjacent surface waters. The nutrient pollution, especially
13 nitrogen, results in eutrophication, harmful algal blooms, reduced dissolved oxygen
14 (hypoxia) and seagrass loss. Conventional septic systems also do not provide disinfection of
15 pathogens in the wastewater effluent. The public health and environmental problems posed
16 by the aging high-density septic systems on these islands is exacerbated by the low elevation
17 sandy soils, high groundwater levels, and proximity to surface waters. The nitrogen loading
18 from these septic systems is estimated to contribute 34,425 lbs of nitrogen to groundwaters
19 on the barrier islands that discharge into surrounding coastal waters. Nutrient loadings from
20 septic systems are also known to support proliferation of jellyfish in subtropical coastal
21 waters, as well as red tides, and macroalgae (seaweeds) blooms that over time lead to hypoxia
22 (low dissolved oxygen) and seagrass loss. Based on the scientific evidence in my report, a
23 sewer upgrade project is justified and will benefit residents on the island who depend on good
24 water quality to support their home values, local economy and quality of life.

25

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

2 A. Yes, I am sponsoring one exhibit. Exhibit BEL-1 which is the aforementioned Report which
3 was Exhibit D-1 in the Application.

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

5 A. Yes, it does.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. FRIEDMAN:

2 Q And do you have a summary of your testimony,
3 Dr. Lapointe?

4 A I do.

5 Q Would you please provide it?

6 A Sure.

7 I would like to start with my educational
8 background. I did my research on septic systems.

9 I graduated from Palm Beach High School and
10 went on to Boston University four years of gap education
11 with an oceanographic institution, but came back to
12 Florida for a Master's degree at the University of
13 Florida in Environmental Sciences, and a Ph.D. at the
14 University of South Florida.

15 I began working with Harbor Branch in 1983.
16 We are now part of Florida Atlantic University, where I
17 am a research professor. And that work in the 1980s
18 involved growing fast-growing seaweeds, these red drift
19 algae that had been forming blooms in Southwest Florida
20 in Tampa Bay, in part, from wastewater nutrients. And
21 we noticed during the research in Florida Keys that
22 during times of the year, these algae cultures would
23 grow very fast, and that was typically during the wet
24 season when we had a lot of rain, and the nitrogen
25 concentrations in the water were quite high. We started

1 looking around. We realized there were thousands of
2 septic tanks surrounding this water body in Pine
3 Channel. That led to my first septic tank study that
4 was funded by the State of Florida, Coastal Zone
5 Management Program, coming through Monroe County,
6 Florida.

7 We did that study, and it pretty much
8 confirmed our suspicion that septics were a major
9 nitrogen source to those coastal waters. We followed
10 that with a number of studies on the mainland, Palm
11 Beach County with the Loxahatchee River Environmental
12 Control District; Martin County Utilities; St. Lucie
13 County Utilities; Indian River County work, as well as
14 up and down the Indian River Lagoon, which I think many
15 of you probably know has suffered catastrophic seagrass
16 loss due to harmful algal blooms.

17 All these studies I have done, including
18 studies in Charlotte County with the Charlotte County
19 Utilities department, and most recently Lee County, all
20 these studies have really shown that septic tanks do not
21 treat wastewater flowing through them adequately, and
22 are not protective of our coastal waters.

23 We really, from that point, went on to look at
24 broader scientific literature. I had an opportunity to
25 present this research at the invitation of Senator

1 Debbie Mayfield to a -- her subcommittee in the Senate,
2 that led to the Clean Waterways Act, Senate Bill 712.

3 All these studies show that high density
4 septic systems, particularly old aging systems, high
5 groundwater tables, sandy soils, and proximity to
6 surface waters are the factors that exacerbate the
7 problems we are seeing in our coastal waters. Further
8 exacerbated by extreme rainfall from tropical storms and
9 hurricanes that cause surges in this wastewater into our
10 coastal systems.

11 The sewer master plan in Charlotte County
12 considered a lot of these factors, and concluded that
13 the barrier islands are a high priority area for
14 sewerage. That decision is supported by my many decades
15 of research, including a lot of research right here in
16 the Charlotte Harbor system, particularly Lee County and
17 also Charlotte County.

18 We estimate -- or I do, I estimate that the
19 sewer project will remove many tons of nitrogen, the key
20 driver of the algal blooms that we are seeing in Lemon
21 Bay and Gasparilla Bay as well. You see the green in
22 the green waters, these green turbid waters in places
23 like the Indian River Lagoon that led to catastrophic
24 seagrass loss and the loss of our diversity in
25 fisheries.

1 **was any clear and convincing evidence of any health**
2 **problem on the barrier islands, correct?**

3 A No data that I have collected. I am not sure
4 what other data are out there, other than peer-reviewed
5 papers in the greater Charlotte Harbor area to do show
6 these surges in so-called flesh eating bacteria
7 following these major hurricanes and storms.

8 **Q You are not presenting somebody else's paper,**
9 **are you?**

10 A Yeah. That is research done by other
11 scientists that I know.

12 **Q Not your own personal --**

13 A Not my own personal research.

14 **Q And you concede in your rebuttal testimony**
15 **that you did not collect on-site water quality data**
16 **regarding impacts of septic systems on Charlotte County**
17 **barrier islands, correct?**

18 MR. FRIEDMAN: I object to questions about his
19 rebuttal. We will deal with that when he gets to
20 his rebuttal testimony.

21 MR. KELSKY: I agree.

22 BY MR. KELSKY:

23 **Q You have done no actual testing, correct?**

24 A I have in the Charlotte Harbor area, not on
25 the barrier islands.

1 percent of the nitrogen.

2 Advanced waste treatment has gotten extremely
3 good in the state of Florida. You can take nitrogen
4 from about 70 milligrams per liter on average down to
5 one, like 90, 98 percent nitrogen removal.

6 **Q And that can be done on individual septic**
7 **systems on-site --**

8 A No.

9 **Q -- advanced wastewater treatment?**

10 A Conventional septic --

11 **Q No, not conventional. Advanced wastewater**
12 **treatment.**

13 A Advanced?

14 **Q Yes.**

15 A I am only familiar with the nitrogen removal
16 from a system called Distributed Wastewater Treatment,
17 the Siemens system, which can achieve levels of 90
18 percent nitrogen removal and above for nitrogen and
19 other contaminants as well.

20 **Q Thank you.**

21 **CHAIRMAN GRAHAM: Staff?**

22 MR. DOSE: Staff has no questions for this
23 witness.

24 CHAIRMAN GRAHAM: Commissioners?

25 Redirect.

1 MR. FRIEDMAN: Thank you.

2 FURTHER EXAMINATION

3 BY MR. FRIEDMAN:

4 Q Dr. Lapointe, do experts typically rely upon
5 studies of other professionals in rendering opinions?

6 A Yes.

7 Q Do you think that it would be required to have
8 actual testing on the islands in order to scientifically
9 opine as to whether septic tanks will have an impact on
10 the water quality?

11 A My personal experience is -- you know, goes
12 back decades. I am so familiar with the
13 underperformance of septic systems that, in my opinion,
14 I don't think we need another study on the barrier
15 islands to demonstrate what we have seen in so many
16 studies throughout Florida.

17 We are not living in a vacuum. We have a lot
18 of scientific evidence. A lot of this has led to
19 policies in Florida, the Clean Waterways Act, and I
20 believe it's House Bill -- what is it, it 1379 -- last
21 year that calls for local and county government, city
22 governments to begin looking for opportunities to get
23 communities off septic systems in a prioritized fashion.

24 Q Do I understand that to mean that, as a
25 scientist, you don't believe it's necessary to do

1 testing on every foot along the barrier island in order
2 to render an opinion that there is an adverse
3 environmental impact?

4 A That's correct. You know, the Florida Keys
5 put in a central sewer connecting the entirety of the
6 Florida Keys, all those islands from Key West to Key
7 Largo, and studies were not done on many of those
8 islands of the septic tanks. So, no, I think it's
9 unreasonable that we have to do a study of every
10 community where we are going to bring in a sewer.

11 MR. FRIEDMAN: I have nothing further.

12 CHAIRMAN GRAHAM: You are done with redirect?

13 MR. FRIEDMAN: I am trying to be done. This
14 microphone is done --

15 CHAIRMAN GRAHAM: Okay.

16 MR. FRIEDMAN: -- or my technology of
17 understanding how the microphone works.

18 CHAIRMAN GRAHAM: Dr. Lapointe, thank you for
19 your testimony.

20 THE WITNESS: Thank you.

21 CHAIRMAN GRAHAM: Mr. Friedman, your next
22 witness, please.

23 MR. FRIEDMAN: Our next witness is Jonathan
24 Cole.

25 Whereupon,

1 JONATHAN H. COLE

2 was called as a witness, having been previously duly
3 sworn to speak the truth, the whole truth, and nothing
4 but the truth, was examined and testified as follows:

5 EXAMINATION

6 BY MR. FRIEDMAN:

7 Q Would you please -- were you sworn in earlier?
8 Were you sworn in earlier?

9 A I was sworn in. Yes.

10 Q Would you please state your full name and
11 business address?

12 A Yes. My name is Jonathan Cole. My address at
13 the office is 900 Pine Street, Suite 225, Englewood,
14 Florida.

15 Q And, Mr. Cole, did you prefile testimony in
16 this matter?

17 A Yes, I did.

18 Q If I were to ask you the questions in your
19 prefiled testimony, would your responses remain the
20 same?

21 A Yes, they would.

22 Q No changes or corrections?

23 A No changes.

24 MR. FRIEDMAN: I would like to ask that Mr.
25 Cole's testimony be inserted into the record as

1 though read.

2 CHAIRMAN GRAHAM: We will insert Mr. Cole's
3 prefiled direct testimony into the record as though
4 read.

5 MR. FRIEDMAN: Thank you.

6 (Whereupon, prefiled direct testimony Jonathan
7 H. Cole was inserted.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

DIRECT TESTIMONY

OF

JONATHAN H. COLE, P.E.

on behalf of

Environmental Utilities, LLC

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

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

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

6 A. University of Connecticut B.S. Civil Engineering, 1979. I have been practicing Civil
7 Engineering since 1979, utilities, site design, structural, civil engineering primarily in Florida
8 for public and private clients.

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

10 A. Yes. Charlotte County Development Review Committee, Englewood Water District Board,
11 and the Florida Public Service Commission. Also provided Expert Witness Testimony for
12 some legal cases.

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

14 A. The purpose of my direct testimony is to present the Technical Memorandum dated April 2,
15 2021, addressing the proposed wastewater collection system in the service area and
16 interconnection with Charlotte County Utilities from Knight Island, Don Pedro Island and
17 Little Gasparilla Island prepared on behalf of EU, and to address other technical issues.

18 **Q. Can you identify any septic-to-sewer projects that you and your firm have been involved
19 in?**

20 A. Yes, I have been the engineer for 9 septic to sewer projects for the Englewood Water District,
21 septic to sewer projects in Martin County, Charlotte County, Sarasota County and currently
22 in Hillsborough County. I have been working on large scale septic to sewer projects serving
23 thousands of homes for over 30 years.

24 **Q. Can you compare the Charlotte County Utilities step system to the proposed grinder
25 pump system?**

1 A. Yes. The CCU system uses a Septic Tank Effluent Pump (STEP) that is inserted inside the
2 septic tank generally installed on private property. The septic tank holds the solids and only
3 the effluent is pumped off site into the collection system and eventually treated at the
4 treatment plant. From time to time the septic tank needs to be pumped of the solids.

5 The Ginder system is also a pressurized pump system, however there is no need for a septic
6 tank since the grinder pump sends both the effluent and the solids to the treatment plant
7 eliminating the need to periodically pump the septic tank.

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

9 A. Yes, I am sponsoring four exhibits. Exhibit JHC-1 which is the aforementioned Technical
10 Memorandum, Exhibit JHC-2 are the maps of the proposed service area and proposed
11 collection system, the system maps of which are an update of Exhibit E-4 to the Application,
12 Exhibit JHC-3 is the legal description of the proposed service area, which is Exhibit E-1 to
13 the Application. Exhibit JHC-4 are the line capacities which was Exhibit E-5 to the
14 Application.

15 **Q. Was this Exhibit prepared by you and your staff?**

16 A. The engineering reports (JHC -1 and JHC-4) were. The survey information (JHC-2 and JHC
17 -3) was prepared by DMK associates at my request.

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

19 A. Yes, it does.

20

21

22

23

24

25

Jonathan H. Cole, P.E.**POSITION:**

President/Principal-In-Charge

EDUCATION:

University of Connecticut

Storrs, CT

B.S., Civil Engineering (1979)

YEARS OF EXPERIENCE: 39**LICENSURE/CERTIFICATIONS:**

- ◆ P.E. #36384, Florida
- ◆ P.E. #0013198, Connecticut
- ◆ P.E. #06872, New Hampshire
- ◆ P.E. #E-17024, Nebraska
- ◆ P.E. #27320, Kansas
- ◆ FL Advanced Traffic Control
- ◆ FDEP Stormwater Erosion and Sediment Inspector

GWE
Giffels-Webster
Engineers, Inc.

900 Pine Street, Suite 225
Englewood, FL 34223
Phone: 941-475-7981
Email: jcole@gwefl.com

Mr. Cole is a Professional Engineer registered in the States of Florida, Connecticut, New Hampshire, Nebraska and Kansas. He is President of Giffels-Webster Engineers, Inc., a Florida corporation and was formerly the County Engineer of Charlotte County, FL.

He has 39 years of experience in various types of civil engineering and construction projects, 30 of which were conducted in the Charlotte/Sarasota County area. He offers specialized knowledge, experience and proven ability in:

- Contract administration & construction services
- Entire utility infrastructure design/FDOT utility JPA plans for utility replacement/relocation in conjunction with major road widening projects
- Engineering design/permitting of water distribution systems; sewer collection, transmission, treatment; reclaimed water distribution systems; and package plants for private and municipal projects
- Expert Witness testimony for private or municipal civil, utility system, and construction projects
- Sub-surface utility locates using ground penetrating radar

Mr. Cole has also been the Principal-in-Charge/Engineer for over two dozen large utility projects in highly developed areas for Charlotte County Utilities, the East/West Spring Lake Wastewater Expansion Project; Englewood Water District, Sewer Collection System; Sarasota County's Phillippi Creek Septic System Replacement Program and the Martin County Sewer Expansion Program.

Mr. Cole is also certified by AIRVAC/Aqseptence, Inc., to design vacuum sewer systems. A few of these projects are listed below:

Englewood Water District:

- Nine Large Sewer Collection System areas (V-1 through V-9) and water distribution projects

City of Punta Gorda:

- Burnt Store Road Phase I Utility Relocation
- Piper Road Improvements – including 16" pressure mains

Sarasota County:

- Phillippi Creek Septic System Replacement Program, Area E; Area F; Area C; Area K, East & West; Area N, Phases I & II; Area M-West; Area I & J; Area O & P
- Phillippi Creek Septic System Replacement Program, Area N-3

Martin County Utilities:

- Seagate Harbor/Lighthouse Point Sewer Expansion area
- North River Shores, Phase 1 and 2 Sewer Expansion area

1 BY MR. FRIEDMAN:

2 Q Mr. Cole, would you provide a brief summary of
3 your testimony?

4 A Yes, I will.

5 The purpose of my direct testimony is to
6 present the preliminary engineering for the proposed
7 central sewer system on the islands. I personally have
8 been designing large-scale septic-to-sewer program
9 systems through Florida for over 35 years, including
10 many large systems right here for the Englewood Water
11 District, for Charlotte County, Sarasota County and over
12 in Martin County, currently working in Hillsborough.

13 The system types that we design through the
14 decades don't include conventional gravity systems,
15 vacuum systems, we do a lot of vacuum systems, and we
16 also do pressure systems. Each of those systems has
17 advantages and disadvantages, depending upon where those
18 systems are installed. So one of the first things that
19 we do when we look at an area is to determine which type
20 of collection system is appropriate for the specific
21 area.

22 Now, the preliminary engineering report that
23 we did in April of 2021 was used as a basis for this
24 direct testimony. That report provided a comparative
25 analysis between -- for the types of central sewer

1 systems.

2 Now, for new developments, many times
3 conventional gravity systems are installed before there
4 is -- I lost you -- before there is any other
5 infrastructure. So a new development, a lot of times,
6 will get a gravity system, but there is no other
7 infrastructure, no roads or anything else that has been
8 installed.

9 For developed areas, like the many that we
10 have done, gravity sewers can be problematic because
11 there are costs, disruption to the road system, and the
12 difficulty installing deep gravity sewers with high
13 groundwater on these islands.

14 For these reasons, we focused in our analysis
15 on comparing a vacuum system and a pressure type system,
16 because both those systems eliminate the need for
17 multiple pump stations that you would need with a
18 gravity system, and eliminates the need of a very deep
19 excavation for putting in the gravity sewer. So those
20 are the two that we focused on.

21 Now, unlike a pressure system, a vacuum system
22 would require two large vacuum pump stations. One would
23 be in the northern area for Knight Island, and the other
24 would be in the Little Gasparilla Island area.

25 Vacuum stations --

1 UNIDENTIFIED SPEAKER: Excuse me, could you
2 speak up? We just can't hear you.

3 THE WITNESS: Oh, I am sorry. I will try to
4 lean in more.

5 Vacuum stations are a building, they got to
6 meet today's building codes. So that means they
7 must be elevated above the FEMA flood elevations.
8 Those things have to be elevated above, and
9 actually a couple feet above whatever the base
10 flood elevation is.

11 So the higher elevation of that structure, as
12 well as a need on these barriers islands, there are
13 some bridges out there, at least two have to cross,
14 makes the viability of vacuum hydraulics
15 questionable.

16 Now, vacuum systems also normally need a
17 relatively large customer base in order to help
18 offset the cost of that expensive vacuum station
19 building. They are relatively complex to maintain,
20 as compared to a simplified pressure system. There
21 is some valves and valve in the vacuum station.
22 Nevertheless, we decided to price both the vacuum
23 system and the pressure collection system for
24 comparison as a comparative analysis for the
25 island.

1 Now, at that time, when we did this, when we
2 first filed this, we assumed that there would be a
3 single forced main crossing that would be in the
4 center portion of the island on Don Pedro, cross
5 through the State park and go over and tie into
6 that Cape Haze area that was discussed earlier, and
7 Charlotte County would build a master pump station
8 that would accept the flow from the island.

9 Again, that was supposed to be built as part
10 of the Cape Haze project, but that project has been
11 postponed, and everything is put on hold as far as
12 the Cape Haze project.

13 Operation and maintenance costs were also
14 developed for the two types of systems and what's
15 called present worth analysis was conducted. And
16 the original construction cost estimates from the
17 2021 report that we did were updated based upon a
18 percentage, I believe it was 10 percent, to reflect
19 increases in the general inflation costs.

20 Other costs were added after my analysis, the
21 comparative analysis, in the economic analysis.
22 And bottom line for this island, it was determined
23 that a pressure type sewer collection system would
24 be most advantageous for this particular area.

25 CHAIRMAN GRAHAM: Thank you, sir.

1 Mr. Friedman, do you tender your witness?

2 MR. FRIEDMAN: Yes.

3 CHAIRMAN GRAHAM: Little Gasparilla.

4 EXAMINATION

5 BY MS. CHARTIER-HOGANCAMP:

6 Q Good morning, Mr. Cole.

7 A Good morning.

8 Q Have you ever done work on a bridgeless
9 barrier island before?

10 A On a bridgeless barrier, let's see, our firm
11 -- no, we did Manasota Key, which is not bridgeless. I
12 think the answer to your question is I don't recall if
13 we have ever done --

14 MR. THOMPSON: Please use the mic.

15 BY MS. CHARTIER-HOGANCAMP:

16 Q So is it safe to presume that you have not
17 done work on Little Gasparilla Island before?

18 A That is safe to assume. There is no sewer
19 except in the north end.

20 Q So are the logistics of constructing a system
21 like this on a bridgeless barrier island more
22 complicated than constructing a sewer system on the
23 mainland?

24 A I think as far as getting the material over
25 there, obviously, we have a barge we have to cross, so

1 when they built that system in the northern area,
2 obviously they had to barge that system over there in
3 the northern part, the existing, and of course the
4 treatment plant.

5 So the answer to your question is, yes, it is
6 slightly more expensive to get the material over there.
7 But once the material and the machinery is there, it's
8 virtually the same.

9 **Q So you would have to barge over all of the**
10 **materials and equipment, correct?**

11 A Correct.

12 **Q And all of the personnel for daily labor that**
13 **don't live on the island would have to be barged or**
14 **boated over?**

15 A Correct, if they don't live there.

16 **Q Okay. And are there other factors that**
17 **complicate logistics for the barge, such as weather,**
18 **tide delays, does all of that have to be timed**
19 **carefully?**

20 A Well, I am not sure what is the tidal range
21 there, a-foot-and-a-half, something like that. There
22 may be. I am not sure with the barging aspects as far
23 as when it comes to tidal.

24 **Q So you said it might be -- I don't remember**
25 **your exact words -- a little more expensive.**

1 **In terms of percentages, how much more**
2 **expensive would you expect it to be given the logistics**
3 **of working on a bridgeless barrier island?**

4 A I think I had -- I can give you a number that
5 we have in there. I think we have another \$400,000 or
6 \$5,000,000 on top of our base cost.

7 **Q And as a percentage of your cost, of total**
8 **project costs?**

9 A It may have been five percent to 10 percent.
10 I am guessing here.

11 **Q Okay. Now, in your prefiled direct testimony**
12 **Exhibit JHC-1, page 20.**

13 A Okay.

14 MR. THOMPSON: JHC-1 -- Ms. Charier-Hogancamp,
15 can you use the CEL numbers? Can we please use the
16 exhibit list numbers if possible, for clarity of
17 the record? JHC is the prefiled exhibit number
18 that we have used. My apologies.

19 MS. CHARTIER-HOGANCAMP: So just a question,
20 for communicating with the witness, I had used
21 JHC-6 because it looked like the binders up there
22 were marked with the original ones, so it may be
23 easier to find.

24 MR. THOMPSON: Certainly, but if we could do
25 that for the record, I think that would be --

1 MS. CHARTIER-HOGANCAMP: Okay. So that one is
2 Exhibit 8 for the record.

3 THE WITNESS: I want to make sure I am on the
4 right page. What's on the top of the page?

5 BY MS. CHARTIER-HOGANCAMP:

6 Q Page 20.

7 A And what's -- I just want to make sure I have
8 the right one. That's on the original report --

9 Q Correct.

10 A -- on the top, it says, 6.2, Vacuum Sewer
11 Collection Unit Prices?

12 Q It's Section 6.1 of the report.

13 A Okay. I am with you. Yeah, I have it as page
14 19. That's fine. I am with you.

15 Q In that paragraph on the bottom, can you read
16 that paragraph for me?

17 A Yes. It begins with, the actual costs.

18 The actual costs for the on-lot costs may vary
19 from the proposed engineers season estimate. The
20 typical costs for Charlotte County Utilities to furnish
21 and install LPS tank packages range from \$4,800 to
22 \$5,800 dollars. However, since most of this area is on
23 a barrier island, it the costs for transporting the
24 materials and labor will likely be higher, so an
25 estimate of 10,500 was used for the LPS package, septic

1 abandonment, and the on-site lateral connections.

2 Q So in terms of comparing apples to apples,
3 that 10,500, does that include the same items as
4 Charlotte County's estimate of 4,800 to 5,800?

5 A Yes. The intent there was to increase the
6 cost, recognizing they had to get it over on the island
7 for the septic tanks and the low pressure pumps.

8 Q Okay. I just want to make sure we are
9 comparing apples to apples.

10 A Yes.

11 Q So that would be a markup of 80 to 100 percent
12 more expensive?

13 A For that particular item. I didn't do it for
14 the pipe and everything else. So the pipeworks and
15 everything, the road system, I didn't do it to for that.
16 So just for the LPS tank.

17 Q So what is your explanation for why it would
18 be so much more expensive to get the LPS tank and the
19 package over to the island and installed, and you
20 wouldn't encounter those same challenges for other
21 equipment and materials?

22 A Because I think it's an order of magnitude. I
23 can imagine that -- I can envision they are going to be
24 bringing over large bundles of pipe, and the unit
25 increase to bring it over there will be much, much less.

1 In other words, when you have a large volume,
2 the increase in cost per volume should be less. Put
3 another way, if you have to bring one stick of pipe
4 across that barge, there is a fixed price for the barge.
5 On that same barge you can bring over, say, a thousand
6 sticks of pipe. So the unit cost per pipe is a lot
7 less. I'm talking about bundles of pipes.

8 In other words, when you have -- it's the same
9 fixed cost to get across on the barge, so if you have a
10 one piece going across, or 100 pieces, it's the exact
11 same fixed cost, so your price increase per unit is
12 less.

13 **Q** Okay. So you have quite a few LPS tank system
14 **packages that you would be bringing across in a barge,**
15 **right?**

16 A Yes.

17 **Q** So you would have the same economies of scale
18 **for those as you have for things like the piping?**

19 A You could.

20 **Q** So here, the markup is looking at 80 to 100
21 **percent markup?**

22 A Yeah, I think I was very conservative. Very
23 conservative.

24 **Q** Okay. And that sort of markup wasn't applied
25 **to other pieces of your estimate?**

1 A I -- no, but I did use some. I think I
2 rounded up on some unit prices.

3 And remember that this -- this analysis I did
4 is a comparative analysis between vacuum and low
5 pressure. Like I said, that's the first thing we have
6 to figure out. What's the best system for the island?
7 So whatever the markup was for vacuum pipe would be the
8 same markup for barge costs for the low pressure system.
9 So as far as apples and apples, it doesn't matter,
10 because I am trying to solve what's the best system for
11 the island out there.

12 **Q I understand. So it's your testimony that you**
13 **built the markup into the costs without actually calling**
14 **it out?**

15 A I didn't build -- it's my testimony that the
16 differential between vacuum pipe and low pressure pipe,
17 it's a wash. It doesn't matter. For the purpose of
18 determining the type of the system to put in out there,
19 it's irrelevant.

20 **Q Okay.**

21 A It would only be relevant for the low pressure
22 tanks, because that's not in a vacuum system. That's
23 the difference.

24 **Q So the estimates of things like piping and**
25 **components for both systems that you looked at in here,**

1 **did most of those estimates come from bids from the**
2 **mainland? Were they your own experience?**

3 A Yeah. Yeah. They came from bids from the
4 mainland from other similar prices. So we looked at
5 those unit prices and we may bump, you know, we looked
6 at average unit prices for actual bids at that time, and
7 so we -- we tend to round up a little bit, because an
8 engineer, you want to hopefully kind of be in the
9 midrange, or a little bit high, because it's kind of
10 embarrassing to be low and the price comes in and the
11 price is much higher.

12 So the answer to your question is, yes, we
13 looked at other bids that were available at the time of
14 putting this report together to come up with those unit
15 prices.

16 **Q And those bids came from mainland projects?**

17 A They did come from mainland projects.

18 **Q And did you include a markup when you put them**
19 **in this report for the fact that this project is on a**
20 **bridgeless barrier island?**

21 A I think we rounded them up a little bit. We
22 rounded up some unit prices, yes, but I don't know the
23 exact -- I don't know the exact. And again, it's
24 irrelevant whether it's vacuum pipe or low pressure
25 pipe, it doesn't make any differential. The spread

1 between low pressure and vacuum is going to be the same.

2 Q Well, I am not asking you about the comparison
3 of low pressure and vacuum. I am asking about bids that
4 came from the mainland that are going to be applied to
5 the island.

6 So I think you answered my question. Again, I
7 just want to make sure I understand your testimony, that
8 you said you did consider the fact that the bids were on
9 the mainland, this work is on a bridgeless barrier
10 island, and you sort of built it in by bumping up some
11 of the prices?

12 A Correct. However, I mostly focused on the low
13 pressure tanks, because they are not with a vacuum
14 system.

15 Q Is it your contention that more markups should
16 be added to this depending on which one is then picked?

17 A No, not depending upon which one should be
18 picked, no.

19 Q So your testimony is that this was conceptual.
20 Your point of this was to compare the cost of the two
21 systems, so it didn't matter if you were comparing the
22 cost of two systems as installed on the mainland or
23 installed on the island. So this if this was comparing
24 the cost of the two systems based on bids on the
25 mainland, once you pick your system, you would then need

1 to apply a multiplier of some sort to account for a
2 project --

3 A Of some sort, correct.

4 Q Okay. Thank you.

5 MS. CHARTIER-HOGANCAMP: No further questions.
6 Thank you.

7 CHAIRMAN GRAHAM: Palm Island?

8 MR. KELSKY: We have no questions. Thank you.

9 CHAIRMAN GRAHAM: Ms. Cotherman?

10 EXAMINATION

11 BY MS. COTHERMAN:

12 Q I guess I just want to clarify that this was a
13 memorandum to just compare the two systems, which might
14 be a better system?

15 A That was the primary purpose of the
16 memorandum.

17 Q Okay. You also mentioned that if it was a
18 vacuum system, that all of the pumps that are required
19 would have to be built above the flood zone?

20 A The building itself, the station itself, would
21 have to be built -- the lowest structural member, as you
22 know, whether it's an A Zone or B Zone or Coastal AB
23 Zone, the lowest structural member of that building
24 would have to be above the base flow.

25 Now, again, in the building itself, though,

1 there is a basement on a vacuum system with big heavy
2 walls. There are sets of pumps below -- technically
3 below base flood. However, we flood proof those in
4 accordance with the FEMA rules, so we are good. We
5 still meet the FEMA rules.

6 **Q But all of the grinder pumps at each**
7 **individual house will be at grade and below the flood**
8 **zone?**

9 A That is correct. That is correct. And same
10 with the valve that's in a vacuum system, which is
11 allowed, you can have those below base flood, but the
12 main structure has to get a building department permit.

13 **Q And you mentioned the Cape Haze project, which**
14 **you were involved in, I think?**

15 A Yeah.

16 **Q And that was postponed?**

17 A That was postponed.

18 **Q And that originally was an area that was a**
19 **supposed concern in the sewer master plan, but it's been**
20 **proposed -- it's been postponed for five to 10 years**
21 **now?**

22 A Yeah, my understanding is they have postponed
23 it. There was an issue about the paving of the roads.
24 They really didn't want us to go in there and tear up
25 their brand new paved roads, and I guess they had to

1 spend the money for the new roads, because they have an
2 MSBU out there, I believe, don't quote me on this, and
3 so they postponed the utility's installation because of
4 the road paving issue.

5 Q And the commissioners also, I think it was
6 testified to earlier, is now going to do testing in that
7 specific area to see if there is a need?

8 A I believe that's what was testified earlier,
9 yeah. I am not an environmental guy.

10 Q Okay. Thank you. Oh, one more -- I am sorry,
11 one more question.

12 You had said that you provided some expenses,
13 and then in the final reports there was other expenses.
14 Did you supply all of the expenses, like buildings, lot
15 prices, or did you mostly your prices that you gave were
16 mostly on the engineering side, pipe, and pumps, and
17 things like that?

18 A Yeah. Okay, so the prices that we gave are
19 mostly what I call hard costs, the engineering and the
20 construction costs. I did have -- I did have in there
21 some lot prices. And the reason I had that in there was
22 if we had to do -- if it was a vacuum system, and a lot
23 of -- we have done a lot of vacuum. So the question is
24 always going to be, hey, how come you are not doing
25 vacuum out there? Well, there is some very, very good

1 reasons.

2 But we did include some lot costs in that
3 report. Again, there are some lot costs. And the
4 purpose of those lot costs were potential areas that we
5 would have to -- where we could build a vacuum station.
6 So there were lot -- there was some soft costs in there,
7 but it was primarily -- primarily hard costs.

8 Q Okay. I have I guess just one more question.

9 In your latest engineering layout, which is
10 different from the original, you do not go through the
11 State park any more with the mainline, but there is
12 still a connection to the building in the State park,
13 what Mr. Friedman had. So is that in the certificated
14 area that he was asking for anymore, as Mr. Friedman
15 said, and has the legal description of that area been
16 revised?

17 A I was not aware that there was a connection to
18 the State park building in that. I didn't think that
19 was in my layout. I think I isolated the State park,
20 and that's on the next -- the next go round on this. I
21 didn't see it, though.

22 Q Okay. Thank you.

23 CHAIRMAN GRAHAM: Staff?

24 MR. DOSE: Staff has no questions for this
25 witness.

1 CHAIRMAN GRAHAM: Commissioners?

2 Redirect?

3 MR. FRIEDMAN: No redirect.

4 CHAIRMAN GRAHAM: Okay. Thank you for your
5 testimony.

6 THE WITNESS: Thank you.

7 MR. FRIEDMAN: The next witness is Randy Bell.
8 Whereupon,

9 RANDY BELL

10 was called as a witness, having been previously duly
11 sworn to speak the truth, the whole truth, and nothing
12 but the truth, was examined and testified as follows:

13 EXAMINATION

14 BY MR. FRIEDMAN:

15 Q Will you please state your name and your
16 business address?

17 A Randy Bell, 2200 NW 150th Avenue, Ocala,
18 Florida.

19 Q Mr. Bell, did you prefile testimony in this
20 case?

21 A Yes, sir.

22 Q And if I were to ask you the questions in your
23 prefiled testimony, would your answers remain the same?

24 A The only difference is the name of the company
25 I work for. I am now it's Wascon Sales and Service.

1 There was a change for manufacturer and distribution,
2 and Wascon is the new distributor in Florida.

3 **Q Other than that, do you have any changes?**

4 A No.

5 MR. FRIEDMAN: I would like to insert his
6 testimony into the record as though read.

7 CHAIRMAN GRAHAM: We will insert Mr. Bell's
8 prefiled testimony direct testimony into the record
9 as though read.

10 (Whereupon, prefiled direct testimony of Randy
11 Bell was inserted.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

DIRECT TESTIMONY

OF

RANDY BELL

on behalf of

Environmental Utilities, LLC

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

2 A. Randy Bell, Pressure Sewer Sales Representative for FJ Nugent & Associates. 2200 NW 150th
3 Ave, Ocala, FL

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

5 A. 36 years experience in the design, application, construction, operation and maintenance of
6 pressure systems across the country.

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

8 A. The purpose of my direct testimony is to explain the proposed wastewater collection system
9 that Environmental Utilities proposes to install in the service area.

10 **Q. Have you and the company you work for installed any low pressure systems?**

11 A. FJ Nugent is the distributor for EONE Pressure Sewers. *

12 **Q. Please explain what happens when there is a short-term or prolonged power outage.**

13 A. The standard basin is designed to flows during an outage for 2-3 days. The alarm panel also
14 has a generator receptacle with an auto transfer switch which allows the station to be pumped
15 down with a portable generator. I would point out that during power outages the main sources
16 of flow do not work, washers and dishwashers.

17 **Q. Are you aware of the comparison of the pros and cons of a low pressure system versus
18 a septic tank.**

19 A. Yes, pressure sewers are an actual wastewater collection systems. They take the sewage from
20 the home, grinder it into a fine slurry and transport it ultimately to a treatment plant. Whereas,
21 septic systems are onsite, which consist of a large holding tank and a lateral field. The tank
22 should be pumped out and the solids removed every 3-5 years. The effluent leaves the tank
23 and enters the laterals lines. Depending on what part of the country the effluent then either
24 evaporates or filters through down through the soil back into the ground water. The onsite
25 system will fail whether is it due to the homeowners not maintaining the system, the existing

1 soil conditions not being conducive evaporation or absorption, high ground water, etc.

2 **Q. Please describe the low pressure system pumps, and how the system works.**

3 A. The electrical power is typically provided by the home (average less than \$1.00 per month),
4 The grinder pump station is installed near the home, a 4” gravity line is run from the home to
5 the basin. A 1 ¼” service line runs from the station to the pressure main near the street. When
6 the wastewater comes from the home into the basin it reaches a designated on level, the pump
7 turns on, grinds and pumps the sewage out into the collection system. The mains in the
8 pressure collection system are sized so that the system cleans itself everyday. It is self
9 maintaining.

10 **Q. Do you have a schematic that shows this low pressure system grinder pump system.**

11 A. Yes, one was done in connection with the septic-to-sewer conversion in Martin County, and
12 I have attached a copy as an exhibit.

13 **Q. Are you aware of other location in Florida where this type of system has been installed?**

14 A. Florida Keys – 4,000+ residential and commercial stations in service. Martin County Utilities
15 – 1,000 stations in service 5,000 at buildout, Fort Pierce Utility Authority – 100 stations in
16 service 1,500 at buildout, Seminole Tribe of Florida -600 stations in service add 50 -100
17 annually, Port St Lucie – 40,000 stations in service (EONE is retrofitting another
18 manufacturer’s stations and all new construction is EONE, 4,000 installed to date), Indian
19 Creek Village, Miami 42 stations.

20 **A. What is your experience with the maintenance of this type of system?**

21 A. Once installed FJ Nugent inspects and starts up every station to insure proper installation,
22 electrical power and operation of the pump. The average Mean Time Between Service Calls
23 is 8-10 years. The average time between pump overhaul/replacement is 5-20 years. As for
24 regular servicing, the utility will pull the pump and install a spare. FJ Nugent picks up the
25 pump, repairs it and returns it to the utility. The EONE pumps and panels have a 5 year

1 Factory Warranty.

2 **Q. What happens if the pump station becomes covered with water?**

3 A. The cover is flood proof and should the station go underwater, the check vent on top closes
4 and won't allow water intrusion.

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

6 A. Yes, Exhibit RB-1 is the schematic I reference. Exhibit RB-2 are photographs from a Martin
7 County newspaper of the installation of the low pressure system which accurately show the
8 grinder pump station. Exhibit RB-3 are two photos of the top of the pump station after
9 installation.

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

11 A. Yes, it does.

12

13

14

15

16

17

18

19

20

21

22

23

24

1 BY MR. FRIEDMAN:

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

4 A I was asked to explain low pressure sewers and
5 the application. A little bit about myself. I have
6 been doing this for 36 years. Actually, this is
7 starting my 37th year dealing with low pressure sewers,
8 environmental and grinder pumps. I have worked in all
9 50 states, several countries. I have worked in all
10 sorts of climates and all sorts of applications. The
11 latest big one was I spent about 10 years working in the
12 Keys. We are working with multiple utilities and
13 counties and municipalities throughout the state of
14 Florida right now.

15 MR. FRIEDMAN: I tender for cross-examination.

16 CHAIRMAN GRAHAM: Okay. Little Gasparilla?

17 MS. CHARTIER-HOGANCAMP: No questions for this
18 witness.

19 CHAIRMAN GRAHAM: Palm Island?

20 MR. KELSKY: No questions for this witness.

21 CHAIRMAN GRAHAM: Ms. Cotherman?

22 EXAMINATION

23 BY MS. COTHERMAN:

24 Q Are you familiar that in Hillsborough County,
25 that the County is replacing all of their --

1 **COURT REPORTER: I can't hear you.**

2 BY MS. COTHERMAN:

3 **Q Are you aware that in Hillsborough County,**
4 **that they are replacing all of the low pressure sewer**
5 **systems now?**

6 A They are replacing their step systems. There
7 is two types of pressure sewers. There is step, the
8 effluent pump systems, and then grinder pump, low
9 pressure sewers. So, yes, they are replacing their step
10 systems because of the failing septic tanks.

11 **Q But those don't have drain fields and that's**
12 **on a septic system?**

13 A They have failing septic tanks.

14 **Q Tanks, the tank itself?**

15 A Yes, the concrete tanks, yes.

16 **Q Okay. Thank you.**

17 **CHAIRMAN GRAHAM: Staff?**

18 MR. DOSE: Staff has no questions.

19 CHAIRMAN GRAHAM: Commissioners?

20 Redirect?

21 MR. FRIEDMAN: Nothing to redirect on. Thank
22 you.

23 CHAIRMAN GRAHAM: Okay. All right. I think
24 it's about time for our court reporter to rest her
25 little fingers, so we are going to take a -- it's

1 11 o'clock on my clock. We are going to take a
2 10-minute break, and we will reconvene at 11:10.

3 (Brief recess.)

4 CHAIRMAN GRAHAM: Mr. Friedman, your next
5 witness, please.

6 MR. FRIEDMAN: We call Deborah D. Swain.

7 Whereupon,

8 DEBORAH D. SWAIN

9 was called as a witness, having been previously duly
10 sworn to speak the truth, the whole truth, and nothing
11 but the truth, was examined and testified as follows:

12 EXAMINATION

13 BY MR. FRIEDMAN:

14 Q Ms. Swain, you have been sworn?

15 A Yes, I have.

16 Q Would you please state your name and your
17 business address?

18 A My name is Deborah Swain. 2025 SW 32nd
19 Avenue, Miami, Florida.

20 MR. KELSKY: I am sorry, could we just wait
21 for Ms. Cotherman to return? She's coming from the
22 bathroom.

23 CHAIRMAN GRAHAM: She's fine.

24 Please continue.

25 MR. FRIEDMAN: Thank you.

1 BY MR. FRIEDMAN:

2 Q Ms. Swain, did you prefile testimony in this
3 case?

4 A I did.

5 Q And if I were to ask the questions in your
6 prefiled testimony, would your answers remain the same?

7 A Yes, they would.

8 MR. FRIEDMAN: I would like Ms. Swain's
9 testimony be inserted into the record as though
10 read.

11 CHAIRMAN GRAHAM: We will insert Ms. Swain's
12 prefiled direct testimony into the record as though
13 read.

14 (Whereupon, prefiled direct testimony of
15 Deborah D. Swain was inserted.)

16

17

18

19

20

21

22

23

24

25

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

DIRECT TESTIMONY

OF

DEBORAH D. SWAIN

on behalf of

Environmental Utilities, LLC

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

2 A. My name is Deborah D. Swain. I am Vice President of Milian, Swain & Associates, Inc. and
3 head up the firm's finance, accounting and management team. My business address is 2025
4 SW 32nd Ave., Suite 110, Miami, Florida 33145.

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

6 A. I have a Bachelor of Science degree in Accounting from Florida State University. I have over
7 35 years of experience in utility management, accounting, finance, rate regulation, rate design
8 and system development. I have prepared and supervised cost of service studies for over 300
9 water and wastewater systems, calculated revenue deficiencies and revenue requirements,
10 and designed rates.

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

12 A. I have prepared and presented expert testimony in the areas of regulatory accounting, rate
13 regulation and utilities in general, before various federal, state, county, courts and regulatory
14 agencies, including the Florida Public Service Commission, Collier, Hillsborough, St. Johns
15 and Washington Counties, the Circuit Court in Palm Beach County, the Town of Jupiter, the
16 City of Miami, and the US Bankruptcy Court.

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

18 A. The purpose of my direct testimony is to present information supporting the financial basis
19 for Environmental Utilities' requested initial rates and charges as presented in the financial
20 schedules filed in this Docket.

21 **Q. Are there any changes to the financial schedules? Please explain.**

22 A. Yes, I made the following changes to Exhibit G filed with the Application:

23 (1) Corrected the amount included in pumping equipment.

24 (2) Corrected the asset life for pumping equipment (accumulated depreciation and
25 depreciation expense)

- 1 (3) Increased all capital construction costs by 5% annual inflation for the first two years,
2 then 2% per year for subsequent years, as was initially filed.
- 3 (4) Increased the cost of sewer laterals to reflect the correct number of ERCs.
- 4 (5) Revised the LPS system to correct ERCs and cost per ERC.
- 5 (6) The overhead was not increased for inflation; however it was allocated to the
6 construction accounts proportionately based upon the revisions above.
- 7 (7) Corrected salary/benefits cost to remove duplicate costs
- 8 (8) Revised expenses for purchased power to reflect cost per corrected number of ERCs
- 9 (9) Removes all costs associated with sludge hauling.
- 10 (10) Increased all operating expenses by 5% annual inflation for the first two years, then 2%
11 per year for subsequent years, as was initially filed.
- 12 (11) Excluded CIAC from taxable income, removing gross up on impact fees and removing
13 associated deferred taxes from the capital structure
- 14 (12) Adjusted the impact fees to reflect the removal of gross up and adjustments to
15 construction.
- 16 (13) Increased the cost of equity so that it is consistent with the Commission's leverage
17 formula adopted in Order No. PSC-2024-0165-PAA-WS.

18 **Q. Can you provide a summary of the impact that would have on the rates and charges EU is**
19 **proposing?**

20 A. The overall impact is that is the revenue requirement has decreased due primarily to reduced
21 expenses, and increased CIAC.

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

23 A. Yes, I am sponsoring one exhibit. Exhibit DDS-1 contains the financial schedules which
24 includes the adjustments I detailed above, and would supersede Exhibit G filed with the
25 Application.

1 **Q. Was this Exhibit prepared by you and your staff?**

2 A. Yes it was. As is customary, it was prepared from financial information provided to
3 my staff and me by EU.

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

5 A. Yes, it does.

6

7

8

9

10

11

12

13

1 BY MR. FRIEDMAN:

2 Q Ms. Swain, do you have a brief summary of your
3 testimony?

4 A I do.

5 Q Thank you.

6 A The purpose of my direct testimony is to
7 present the financial information for the determination
8 of the initial rates and charges portion of the original
9 certificate application. These schedules were prepared
10 by me based on information provided by the utility. The
11 base construction costs were derived from the evaluation
12 report prepared and presented by Mr. John Cole.

13 I made revision to the financial schedules
14 that I had filed in a prior case in my Exhibit DDS-1,
15 and then made additional revisions, which I will
16 describe in my rebuttal testimony.

17 The revisions from the schedules in the prior
18 case that I made in my DDS-1 include certain
19 corrections, including corrections to depreciable lives
20 and to remove duplicate salary and benefits costs,
21 increase construction costs and operating costs to
22 reflect inflation. And I removed all the costs
23 associated with sludge hauling.

24 The overall impact is that the monthly rate is
25 lower than the prior case, and the CIAC, or impact fee,

1 is slightly higher.

2 That concludes my summary.

3 MR. FRIEDMAN: We tender the witness for
4 cross-examination.

5 CHAIRMAN GRAHAM: Okay. Little Gasparilla?

6 EXAMINATION

7 BY MR. VOLPE:

8 Q Good morning, Ms. Swain. I just have a few
9 questions for you.

10 In referring to your Exhibit DDS-1, which is
11 CEL-13, I don't think you actually have to refer to
12 this. Where did you obtain the pricing estimates?

13 A All the pricing estimates for the plant
14 components were from Mr. Cole's report, and --

15 Q You said Mr. Cole's report? I am sorry.

16 A Correct. And the organizational costs were
17 estimates that I obtained from our consulting team. And
18 the structure costs came from Mr. Boyer.

19 Q When you say your consulting team, you mean
20 internally to your organization?

21 A No, the team -- the EU consulting team. So
22 all the costs associated with putting together an
23 original certificate application, the initial
24 organization itself, is all a capitalized item, and that
25 I derived from numerous sources.

1 **Q** Okay. So aside from EU and the GWE, or Mr.
2 **Cole, were there any other sources of cost estimates?**

3 A Just Mr. Friedman for his legal fees to go
4 into the organization costs.

5 **Q** Did you independently prepare any cost
6 **estimates, or research any of cost estimates?**

7 A No, I didn't. What I do when I put together a
8 package is to provide the utility with the list of
9 financial information that I am going to need, and make
10 sure that all that information is gathered, that I
11 understand it. We have a lot of meetings and
12 discussions about how to interpret it, but I have no
13 other sources.

14 MR. VOLPE: Okay. Thank you. I have no other
15 questions.

16 CHAIRMAN GRAHAM: Palm Island?

17 MR. KELSKY: No questions.

18 CHAIRMAN GRAHAM: Ms. Cotherman?

19 MS. COTHERMAN: No questions.

20 CHAIRMAN GRAHAM: Staff?

21 EXAMINATION

22 BY MR. DOSE:

23 **Q** **Ms. Swain, are you aware that the Commission**
24 **historically has not done repression adjustments on**
25 **wastewater only utilities?**

1 A I do, and I don't agree with it.

2 **Q And wastewater is billed on water usage?**

3 A That's correct.

4 **Q And customers would typically cut back on**
5 **their water usage in response to an increase in price**
6 **water?**

7 A Yes, they do. If this was a water and sewer
8 utility, repression typically -- I mean, this is an
9 original certificate, so it's a little bit different,
10 but there is recognition that there is a reduction in
11 water use for water customers and wastewater customers.
12 And in the case where it's only a wastewater utility,
13 the Commission does not typically do a repression,
14 however, I believe it should be done.

15 **Q Okay. So by your repression adjustment, are**
16 **you saying that customers will cut back on their water**
17 **usage because they now have to pay for wastewater?**

18 A Yes, I do.

19 **Q And in your response to staff's Interrogatory**
20 **No. 3, you said that 90 -- you said that customers use**
21 **about 90 gallons per day?**

22 A For -- no. That's how much water would be
23 billed to sewer customers. It's not how much sewage is
24 used.

25 **Q Okay. So 90 gallons by about 30 days, that**

1 would be about 2,700 gallons a month?

2 A Right.

3 Q And that number being less than 3,000 is low?

4 A It is, but it's also seasonal. So I would
5 think that sometimes of the year it's much, much higher,
6 and other times it's lower. But, yeah, on average, it's
7 considered fairly low, but not unreasonably low.

8 Q But still low?

9 A It is -- it is low, but I see that a lot more.
10 For example, The Villages, for example, uses very low
11 consumption for their billing rates.

12 Q And you made an adjustment as well to water
13 usage to recognize that not all water returns to the
14 wastewater system?

15 A Right.

16 Q So with an already low average consumption,
17 and the recognition that not all water returns to the
18 wastewater system, would you agree that there is
19 probably not much discretionary usage for this customer
20 base to reduce their water usage?

21 A No, that's correct. That's correct.

22 Q And in your response to staff's 3rd
23 Interrogatory No. 34, you stated that seven percent of
24 the residents are full-time, while 93 percent are second
25 homes?

1 A I did not respond to that one. I think Mr.
2 Boyer responded to that one.

3 **Q Okay. Would you still that usage for this**
4 **utility would be low due to the small full-time resident**
5 **customer base?**

6 A Yes. On average it is low. Individual -- I
7 don't have the individual use numbers for per customer
8 when they are on the island. I only have the average
9 for the year.

10 **Q Are rental properties considered vacation**
11 **rentals?**

12 A Are rental properties considered vacation
13 rentals? Is that a philosophical question?

14 **Q Just in your opinion for your analysis, did**
15 **you consider rental properties on the island to be**
16 **vacation rentals?**

17 A That was irrelevant in my analysis.

18 **Q Would you agree that based on the average**
19 **usage and seasonality of the customer base, that not**
20 **many customers would have discretionary amount of usage**
21 **to cut back on for a repression adjustment?**

22 A Not necessarily. As I said, if the -- if such
23 a large number of the residents are not on the island
24 typically, then when they are on the island, they may
25 have a lot higher use and, therefore, a lot of that is

1 nondiscretionary -- or a lot of that is discretionary.
2 Excuse me. So I can't tell, because like I said, I
3 don't have an analysis of the individual water use.
4 Only the average for the year.

5 **Q So based on that average of under 3,000**
6 **gallons a month, there is not much discretionary usage**
7 **at that level?**

8 A If every customer uses the average, that's
9 correct. But if some customers use 100,000 in one
10 month, and that's all for the entire year, then there is
11 a lot of discretionary use.

12 **Q And the utility is proposing a 10-percent**
13 **repression adjustment to wastewater gallons?**

14 A Correct.

15 **Q But the utility doesn't provide water?**

16 A That's correct.

17 **Q So since Environmental won't be the water**
18 **provider, how will they obtain the water usage to bill**
19 **wastewater based on its proposed base facility and**
20 **gallage charge rate structure?**

21 A That will come from the water utilities.

22 **Q Is there any cost that's included in that?**

23 A Yes. I had a very modest cost. I think it
24 was \$2 per bill per month for water billing, for
25 providing that billing service. We were hoping that the

1 water utility would be able to just add the sewer bill
2 onto the water bill and keep the costs low.

3 **Q Okay. And again, wastewater is billed on**
4 **water usage?**

5 A Correct.

6 **Q And the utility believes the customers will**
7 **reduce their water usage now that they have to pay for**
8 **wastewater?**

9 A It's my opinion that they will reduce their
10 water usage if they have a bill that we are proposing
11 for the sewer.

12 **Q Why was 10 percent selected as the repression**
13 **adjustment amount?**

14 A It's difficult to come up with a repression
15 percentage when you are creating a bill that is
16 currently not in existence. So for a typical case for
17 repression, we have a starting point for the gallonage
18 rate and an ending point for the gallonage rate. We can
19 see what the percentage increase is and apply repression
20 based upon the increase. The answer is infinite when it
21 is what going from zero to \$30 a thousand. So I just
22 selected a very modest 10 percent based upon my
23 professional opinion.

24 **Q And why is 10 percent considered conservative**
25 **for a repression adjustment?**

1 A If this was a 100-percent increase, I would be
2 recommending somewhere between two percent and four
3 percent repression for every 10-percent increase. So it
4 would be somewhere on the order of 20 percent to 40
5 percent. Going from zero to \$30 a thousand, again, it's
6 infinite. So it's conservative because it's lower than
7 if I assumed it was 100 percent increase. So 10 percent
8 is indicate a bit less.

9 **Q And what's your basis that a repression**
10 **adjustment to wastewater is prudent in this case?**

11 A It's my opinion, based upon many years of
12 experience with the impact of rate increases on
13 customers, and the imposition of rates on customers,
14 that the sewer customers who are currently water
15 customers will reduce their water consumption by the
16 imposition of a \$30 per thousand gallon bill.

17 MR. DOSE: All right. No further questions.

18 Thank you.

19 CHAIRMAN GRAHAM: Thank you.

20 Staff?

21 Commissioners?

22 Redirect?

23 MR. FRIEDMAN: No redirect.

24 CHAIRMAN GRAHAM: Okay. Ms. Swain, thank you
25 very much for your testimony.

1 MR. FRIEDMAN: The next witness is John R.
2 Boyer.

3 Whereupon,

4 JOHN R. BOYER

5 was called as a witness, having been previously duly
6 sworn to speak the truth, the whole truth, and nothing
7 but the truth, was examined and testified as follows:

8 EXAMINATION

9 BY MR. FRIEDMAN:

10 **Q Mr. Boyer, were you previously sworn?**

11 A Yes, sir.

12 **Q Would you please state your name and your
13 business address?**

14 A John R. Jack Boyer.

15 **Q And your business address?**

16 A 7025 Placida Road, Suite B.

17 **Q In Englewood?**

18 A In Englewood, yes, sir. Placida. Yes, sir,
19 Englewood.

20 **Q Did you prefile testimony in this case?**

21 A Yes, sir, I did.

22 **Q If I were to ask you the questions in your
23 prefiled testimony, would your answers remain the same?**

24 A There were only two, when I should have picked
25 up zeros where it said hurricane --

1 **Q Could you tell us the page -- go to the page**
2 **number and the line number?**

3 A Yes, sir. Page two, instead of Debby, put
4 Hurricane Milton and Helene under No. 21. And then the
5 other change was on 18, same thing from Debby to
6 Hurricane Milton. And I believe that's it.

7 **Q All right. So other than those changes, you**
8 **don't have any other changes to your testimony?**

9 A No, sir.

10 MR. FRIEDMAN: I would like to ask that
11 Mr. Boyer's testimony be inserted into the record
12 as though read.

13 CHAIRMAN GRAHAM: We will insert Mr. Boyer's
14 prefiled direct testimony into the record as though
15 read including those two corrections.

16 MR. FRIEDMAN: Thank you.

17 (Whereupon, prefiled direct testimony of John
18 R. Boyer was inserted.)

19

20

21

22

23

24

25

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

DIRECT TESTIMONY

OF

JOHN R. BOYER

on behalf of

Environmental Utilities, LLC

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

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

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

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

9 I have operated and managed three water utilities and then purchased one of those utilities,
10 Little Gasparilla Water Utility, and have owned and operated the utility for the past 35 years.

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

12 A. Yes, I have appeared in a formal hearing before the Florida Public Service Commission and
13 I have appeared before the Charlotte County Commission in connection with staff assisted
14 rate cases when the County regulated water utilities within the County.

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

16 A. The purpose of my direct testimony is to present the Application and Exhibits to it, and to
17 address other matters regarding the need for central wastewater service on the barrier islands.

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

19 A. Yes, I am sponsoring three exhibits. Exhibit JRB-1 which is the Application, Exhibit JRB-2
20 which are the changes to the Tariff to reflect the changes addressed in Ms. Swain's prefiled
21 direct testimony, and JRB-3 which are photos of the aftermath of Hurricane ~~Debbie~~ **Milton & Helene**.

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

23 A. Yes they were.

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

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

1 taxed as a corporation.

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

3 A. Yes, it is.

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

5 A. Yes, it is.

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

7 A. Yes, it is.

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

9 A. Yes. I would also point out that in the Bulk Sewer Treatment Agreement which is included
10 in Exhibit D-1 to the Application the Charlotte County Commissioners recognize the
11 environmental importance of removing septic tanks from the barrier islands. The County
12 Commissioners obviously believe that the environmental concerns expressed in the Sewer
13 Master Plan are of primary importance as it has reiterated in adopting Resolution Number
14 2023-155, which is included in Exhibit D-1 to the Application.

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

16 A. Yes, except that the technical parts of the information were provide by Giffels-Webster
17 Engineers, Inc. in its Technical Memorandum that is being sponsored by Mr. Cole of that
18 engineering firm.

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

20 A. Yes, the Utility has prepared a Tariff which utilizes the approved Tariff form and
21 incorporating the rates and charges as determined by Ms. Swain. As stated above, the rates
22 and charges have changed and those changes are reflected in Exhibit JRB-2.

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

24 A. Ms. Swain has prepared and is sponsoring the required accounting information.

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

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

3 **Q. Please describe the type of low pressure system Environmental Utilities proposes to**
4 **install.**

5 A. The Utility will be installing a grinder pump system that removes solids from the wastewater,
6 instead of the step system which only removed the liquid. Charlotte County has approved the
7 use of the grinder pump system so long as it is approved by DEP.

8 **Q. Does this type of low pressure system eliminate the necessity for periodic sludge**
9 **hauling?**

10 A. Yes, it does, which reduces the estimated operating expenses by \$282,796 annually, and Ms.
11 Swain addresses the impact of this reduction in her testimony and Exhibits.

12 **Q. Are you aware of support from any environmental groups for removing septic tanks**
13 **from the barrier islands.**

14 A. Yes. In addition to support from property owners on the islands, The Coastal & Heartland
15 National Estuary Partnership has written a letter of support for the need for central wastewater
16 collection on the barrier islands which was included as Exhibit D-1 to the Application. Also
17 Heal Our Harbour a not-for-profit organization which has sent a letter to the Commission.

18 **Q. Were there any impacts on the islands as a result of Hurricane ^{Milton}Debbie?**

19 A. Yes, as was the case with Hurricane Ian, and Tropical Storm Idelia, there was lots of flooding
20 with standing water over septic tanks and drain fields. I have attached an Exhibit of photos
21 showing the impacts from Tropical Storm Debbie.

22 **Q. How would the low pressure system that EU proposes to install be affected by such a**
23 **condition?**

24 A. Randy Bell can discuss this in more detail, but the proposed pumps are sealed and would not
25 discharge any wastewater.

1 **Q. Was there a loss of power on the island as the result of Hurricane Debbie?**

2 A. Mostly not, although some parts of the island may have experienced a power outage of short
3 duration.

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

5 A. Yes, it does.

6

7

8

9

10

11

12

13

14

15

16

17

18

1 BY MR. FRIEDMAN:

2 Q Mr. Boyer, would you give a brief summary of
3 your testimony?

4 A Gentlemen, Commissioners, I have been living
5 on that island for close to 40 years, 38 years. At one
6 point, I maintained and managed every wastewater and
7 water treatment plant on the island. I worked under the
8 supervision of two on the wastewater, I have raised my
9 family out there. I have lived dearly in these islands.
10 I will continue to do what it does to set it forth for
11 my grandchildren.

12 We talk about is science there? Science is
13 there. It's been proven through the Coastal Heartland
14 National Estuary program, which is the EPA program.
15 When they talk about the 1,100 acres that have
16 disappeared just out of Gasparilla Sound, that's been
17 since 2018, okay. The same thing with the Northern Bay,
18 the science is there.

19 Mr. Clark, we talked about the County setting
20 records or stopping growth for the septic tanks being
21 able to permit. They are not going to condemn property,
22 but every septic permit that they issue, it states that
23 when centralized sewer is available, you will connect,
24 and you sign that. So the precedence is set that they
25 do want a centralized collection system.

1 Q If you could, let me finish the questions.

2 A Oh, I'm sorry.

3 Q Thank you, just for the court reporter's
4 benefit.

5 When did you apply previously?

6 A When did not apply recently?

7 Q Previously.

8 A I think it was 2005, maybe, the first time.

9 And that was in conjunction with Bocilla Utilities and
10 Knight Island Utilities.

11 Q And when was the most recent application?

12 A The one that we were denied in 2021 or --

13 Q 2022 --

14 A There you.

15 Q -- I believe it was. Okay. Thank you.

16 And I have some questions for you about the
17 service area. How many people have requested service in
18 the proposed service area?

19 A Close to 100 residential lots, 79 in writing.
20 Then every letter that's been presented are people that
21 supported the half houses, so most likely with those
22 letters, they are accepting service, or requesting
23 service.

24 Q Did you provide those letters with your --

25 A Yes, sir, I did.

1 Q If you would please let me finish the
2 **questions before you answer.**

3 A I apologize.

4 Q It makes it very difficult for the court
5 **reporter.**

6 A I apologize.

7 Q Did you provide those letters with your
8 **application?**

9 A Yes, sir, I did.

10 Q **Just a few questions about your technical**
11 **background.**

12 What experience do you have with the grinder
13 **pump system that's proposed in this application?**

14 A Pumps are pumps. I mean, they are really not
15 that difficult. I used to work with piston pumps in the
16 reverse osmosis manufacturing, and they are oil filled
17 pumps. So the operation of pumps are not that
18 difficult, okay. Yes, I have got -- I have had 40 years
19 of experience in pumps.

20 Q Do you have any experience with a grinder pump
21 **system as proposed in this --**

22 A I have used grinder pumps, yes, sir.

23 Q Okay. Thank you.

24 I have a couple questions for you about
25 **Resolution 2023-155 that Mr. Watson testified about.**

1 **Did you participate in drafting of that resolution?**

2 A I am not sure I participated in it. I
3 definitely reviewed it.

4 **Q Did you review a draft before it went to the**
5 **County?**

6 A I can't say that I did, but I am sure that in
7 that -- I would have to say, yes, I have looked at it.
8 I am sure that I am the one that solicited the
9 Commissioners to write it. I wasn't going to proceed
10 forward if I didn't have 100 percent of the County
11 Commissioners' support in this reapplication.

12 **Q Did your attorney draft that resolution?**

13 A Not to my knowledge. No, sir. I think the
14 County Attorney drafted that.

15 **Q All right. Okay. Do you know if your**
16 **attorney -- do you know if you are attorney drafted that**
17 **resolution?**

18 A My attorney did not draft it. I am pretty
19 sure of that Jeannette Knowlton, the County Attorney,
20 did.

21 **Q Did you or your attorney have discussions**
22 **about that resolution with the County Attorney prior to**
23 **the County seeing that resolution?**

24 A No, but I remember wanting to, because after
25 they voted on it -- or when the resolution was put on

1 the agenda, I wish I would have had input. So I do
2 recall not having input, yes, sir.

3 **Q Did you ask any County Commissioners to**
4 **testify here today?**

5 A Yes, sir.

6 **Q Okay. And I know you don't have public**
7 **records in front of you, but if I were to tell you that**
8 **your attorney did draft that resolution and send it to**
9 **the County Commission, and that is verified in public**
10 **records, would you have any -- would you be able to**
11 **verify that?**

12 MR. FRIEDMAN: I object to the question. He
13 is testifying. If he wanted to use that document,
14 he could have done so in the process that we have
15 for using cross-examination exhibits, and they
16 chose not to do so, so I don't think there is --

17 MR. VOLPE: Let me withdraw the question.

18 BY MR. VOLPE:

19 **Q And what was -- what responses did you receive**
20 **from the Commissioners to your request to testify today?**

21 A The two that I personally contacted was one
22 that, Jack, we have already given you Resolution
23 2023-155 to show our unanimous support. He goes, we
24 have meetings this afternoon and tomorrow that were tied
25 to their schedule. The other one said, I am going to do

1 my best to be there.

2 **Q Okay. Thank you.**

3 **Let's move on to some questions about the**
4 **easements that are otherwise referred to the rules as**
5 **continued use of the land.**

6 **In 2022, the Public Service Commission**
7 **determined that since EU had not obtained and secured**
8 **the necessary easements and since the residents had**
9 **expressed no desire for service, the provision of**
10 **service could be substantially delayed as EU acquires**
11 **the legal rights to access customer property.**

12 **Has EU acquired the necessary easements for**
13 **the proposed system in the current application?**

14 **A Well, we are not going to start spending more**
15 **money until we receive a certificated service area. We**
16 **could spend millions of dollars just in the preliminary**
17 **engineering that it's going to take for our application.**
18 **So we have been requested to provide our best faith**
19 **effort on what we feel the true costs are going to be,**
20 **and we have spent thousands upon thousands of dollars to**
21 **come up with those analysis. So until there is a**
22 **certificated service area, we are not going to take that**
23 **next step.**

24 **Q Have you calculated a timeline for acquiring**
25 **the necessary easements?**

1 A Yes, sir.

2 **Q And how long would that -- do you believe that**
3 **would take?**

4 A There is a quicker way of doing it with a -- I
5 forget the actual legal term, okay, but if it's
6 depending upon holding the whole project up. With the
7 change that we have done, having to run two directions
8 off of the island, the easement issue is not as
9 pressing.

10 **Q And why is that?**

11 A Because we don't have to extend the line all
12 the way to the north until we get the main
13 infrastructure done. It's sort of like we did the water
14 utility. Once it became there for the next door
15 neighbor, they wanted it. And it went on and it
16 leapfrogged. And it took us a few years to get through
17 the easements to the north, okay. The easements to the
18 north, basically cost us less than \$25,000 to \$30,000,
19 and every homeowner signed off on it.

20 **Q Just for clarification, when you say to the**
21 **north, where --**

22 A It Marsh Street north on Little Gasparilla, on
23 Palm Island, Knight Island, no problem.

24 **Q So north from where the crossing is proposed**
25 **to be located?**

1 A The crossing is proposed at Hideaway.

2 Q Okay. Understood.

3 A Yes, sir.

4 Q Thank you.

5 You mentioned that there was a process. Is
6 that the quick take method that you referenced in
7 response to one of the interrogatories?

8 A It -- I have never had to use it. I have
9 threatened to use it one time. Our attorney started
10 trading letters. It came to a agreement that it was
11 going to happen, and Mr. Prieto granted us that
12 easement. That's the only time I have ever had to use
13 it. Most people would rather have the money in their
14 pocket instead of what the appraised value ends up
15 being, and that goes toward a credit toward the
16 connection for the connection fee.

17 Q And you are referring to the water utility?

18 A Water, yes, sir.

19 Q Okay. But when you mentioned the wastewater,
20 there was a quicker way, I believe is how you phrased
21 it. Do you have knowledge of the process --

22 A I know the rule. It is Chapter 73 -- statute.

23 Q Okay. I believe -- and I can point you to the
24 interrogatory answer, but I believe it was Chapter 74
25 that you referred to in here.

1 A Okay. I got it as 73, but I agree with you,
2 you are the lawyer.

3 Q I want to make sure that we are talking about
4 the same --

5 A Yes, sir.

6 Q -- the same process.

7 And what is your understanding of that process
8 as opposed to the normal eminent domain process?

9 A I will hire an attorney to start setting our
10 easements in the path that the engineer determines
11 necessary.

12 Q Understood. But you -- do you know the quick
13 take method in Chapter 74 is part of the eminent domain
14 process?

15 A Yes, sir, I do know that. Yes, sir.

16 Q Okay. So do you believe that you will need to
17 use eminent domain proceedings to obtain the necessary
18 easements?

19 A Only as a last resort. I believe that if we
20 are granted a certificated service area, I believe the
21 islanders will come together and present the most
22 cost-effective fashion for getting this accomplished.

23 Q Have you estimated a cost of acquiring the
24 necessary easements --

25 A Yes, sir.

1 Q -- for your system?

2 A Yes.

3 Q Do you know what that cost is?

4 A We have a little over 500,000 total, I
5 believe.

6 Q Okay. And how did you come to that estimate?

7 A There is a formula that our engineer and I
8 used, and then with the previous experience on the
9 occasions I have had.

10 Q Do you have any specific support for that cost
11 estimate in the application?

12 A Other than what we have done in the past,
13 checks I wrote to attorneys and the appraisal fees that
14 took place, which is a special appraiser for that
15 process.

16 Q So that was a general estimate?

17 A Yes, sir. Yes, sir.

18 Q Okay.

19 A A budgetary item, you know, I want to make
20 sure I got plenty in there.

21 MR. VOLPE: Thank you. I have no further
22 questions.

23 CHAIRMAN GRAHAM: Palm Island?

24 MR. KELSKY: Thank you.

25 EXAMINATION

1 BY MR. KELSKY:

2 Q Good morning, Mr. Boyer. Can you hear me
3 okay?

4 A Yes, sir.

5 Q Thank you.

6 Your application that went to final hearing in
7 2022 was rejected, is that correct?

8 A Yes, sir, it was.

9 Q And you understand that one of the reasons for
10 rejection was the absence of demonstrable need in the
11 proposed service area for a sewer system as found by the
12 PSC, correct?

13 A Yes, sir.

14 Q And you understand that in 2022, there was a
15 specific finding by the PSC that there was a lack of
16 need for service, correct?

17 A Yes, sir.

18 Q And at that time, you conceded that no state
19 agency, including DEP or Charlotte County, mandated the
20 installation of central sewer in the proposed service
21 areas, correct?

22 A Yes, sir.

23 Q That's still true today, isn't it?

24 A Yes, sir.

25 Q In fact, you know that Charlotte County

1 continues to issue permits for new septic systems,
2 correct?

3 A No, sir, they don't. The Health Department
4 does, and that's the State of Florida.

5 Q Okay.

6 A And they issue the permits, and the DEP are
7 now supposed to be the ones enforcing it, and there is a
8 great shortfall right now. And it's embarrassing with
9 what we have going on right now on the island, septic
10 tanks, people out hand digging them and dumping raw
11 sewage right onto the ground and the DEP has not been
12 out there to inspect it. It's sad.

13 Q Those permits are still being issued, correct?
14 It's a yes or no question, sir.

15 A Oh, yes, sir. Yes, sir. For new
16 construction, yes, sir.

17 Q All right. And just to be clear, in your
18 response to Interrogatory No. 34 by staff, exactly,
19 according to you, seven percent of the population are
20 full-time residents out there, correct?

21 A Or less. Yes, sir.

22 Q Or less. Okay, good.

23 You have had more than three years from your
24 last application to this current application, and your
25 proposed utility still has conducted no water testing

1 showing any degradation of water quality in the waters
2 around the bridgeless barrier islands, is that correct?

3 A The utility has not.

4 Q Okay. Nothing prevented you from conducting
5 that water testing, did it?

6 A No, sir.

7 Q And there has been no finding by anyone that a
8 health problem exists on the bridgeless barrier islands,
9 correct?

10 A No, sir, not true.

11 Q Well, in your prefiled testimony, did you
12 identify any health concerns that were deemed to be of,
13 by clear and convincing evidence, to exist?

14 A The start with your question at the beginning,
15 I believe you stated, is there any environmental impact
16 and health questions. Okay, the environmental impact --

17 Q I never mentioned environmental impact.

18 A Okay. So environmental impact is not what you
19 asked. Only health. Then I would go to the scientific
20 report of Brian Lapointe that basically states the 17
21 people that died after Hurricane Ian and the 87 that
22 were infected that were substantially done with septic.
23 This were a big large part of that.

24 Q And that was not in Charlotte County, correct?

25 A That was south, Lee County, I believe.

1 **Q Not Charlotte?**

2 A It was part of -- it was in the same water
3 bodies.

4 **Q Not in the proposed service area, is it?**

5 A Not in the proposed service area. No, sir.

6 **Q And you understand that back in '22, the**
7 **Commission said, and I will quote from the order: No**
8 **evidence was presented to demonstrate that any state or**
9 **local regulator has mandated the installation of central**
10 **wastewater service in the proposed service territory at**
11 **this time, or identified any immediate health concerns.**
12 **You remember that, right?**

13 A Yes, sir. And I remember that, and that's
14 where I would also follow up with that answer, that on
15 every septic -- here test, written right here: Septic
16 tanks shall be -- multiple chambers shall be placed
17 requiring effective capacity in tanks in a Department
18 approved outlet connected to a central sewer system
19 mandatory after written notification. And that is -- we
20 are issuing in this permit until wastewater is
21 available.

22 **Q That is in the urban service area, correct?**

23 A No, sir, this is a permit on Little Gasparilla
24 Island, and every septic that has been since 1986 has
25 had to sign this same form.

1 Q Do you understand the comp plan?

2 A As well as any citizen, I guess.

3 Q Do you know the difference between the urban
4 service area and the rural service area?

5 A Very much, yes, sir.

6 Q And do you know what the code -- the
7 comprehensive plan says about sewer in the rural service
8 area?

9 A Yes, sir, to be done by individual utilities,
10 because I tried forever to get Charlotte County to come
11 out and put the wastewater system in. And then I asked
12 the homeowners to help do it so we could form a
13 not-for-profit utility district like Boca Grande has,
14 like Englewood Water District, and PIE did nothing but
15 snuff it out when we got volunteers like we did down in
16 the Keys, a steering commit.

17 Q Do you know who -- WSW policies and goals and
18 objectives for the comprehensive plan that established
19 to the criteria for installation of sewer on the
20 bridgeless barrier islands?

21 A Apologies, WTS.

22 Q WSW?

23 A What's that stand for?

24 Q Do you know?

25 A WSW? Wastewater system -- please tell me.

1 Q I will have an expert talk about it.

2 A Okay.

3 Q All right. You were recognized that in 2022,
4 the final order said: However, the sewer plan does not
5 address a public health in the service territory, and
6 instead only recognizes the expectation of two private
7 utilities connecting to the County's system, correct?

8 A I -- please, I have lost you there for --

9 Q Sure, I will be happy to repeat it. No
10 problem.

11 A Thank you.

12 Q You remember an order denying EU's
13 application --

14 A The Public Service Commission denying my
15 application, okay.

16 Q Right. And they found, do you remember this:
17 However, the sewer plan does not address a public health
18 issue in the service territory, and instead only
19 recognizes the expectation of two private utilities
20 connecting to the County's system. Do you recall that?

21 A No, sir, I don't.

22 Q You would agree that the sewer master plan has
23 not been amended since 2017, correct?

24 A Yes, sir.

25 Q And you are also aware that the same

1 provisions of the comprehensive plan that were found
2 inconsistent with your application in 2022 -- or
3 actually earlier, in 2020, that was heard in 2022 --
4 have not changed either, correct?

5 A I didn't know that they were found not to
6 agree with it. I thought that was just your expert
7 witness, not the County, because the county attorney and
8 the county administrators and the commissioners signed
9 off on this agreement of the bulk sewer agreement, and
10 they also signed off on Resolution 2023-155, that
11 basically says the comp plan is in compliance.

12 Q Does the comp -- does that resolution cite so
13 anything in the comp plan?

14 A I think they wouldn't sign it if they thought
15 they were violating it.

16 Q They are not here testifying, are they?

17 A No, sir, but there is a county representative,
18 but I would not think that a commissioner, under their
19 legal staff, would sign something that wouldn't be
20 applicable to their policies. It just wouldn't make
21 sense.

22 Q And just so we are clear, you asked two
23 commissioners to appear here today and they did not,
24 correct?

25 A No, sir, that's not true.

1 Q Are they here?

2 A They are not supposed to be here until six
3 o'clock, right?

4 Q Okay. All right, sir --

5 A One said no for sure.

6 Q All right. I don't have any further questions
7 for you. Thank you.

8 A Yes, sir.

9 CHAIRMAN GRAHAM: Ms. Cotherman?

10 EXAMINATION

11 BY MS. COTHERMAN:

12 Q On the -- I have been asked to speak up.

13 On the resolution, where the county attorney,
14 Jeanette Knowlton, had signed off, are you familiar
15 where she signed off as to form only?

16 A To what only?

17 Q To form only, as a legal form, and that she
18 did not sign off saying that everything that the
19 commissioners cited was correct?

20 A That's foreign language to me. I -- the
21 commissioners signed the resolution, and I was -- that
22 gave me the desire to move forward, knowing that I had
23 100 percent of support of Charlotte County.

24 Q Okay. On the easement issue, water on the Don
25 Pedro and Knight Island side, and possibly down on

1 Little Gasparilla, isn't it true that most utilities for
2 water and sewer connection are along the property lines,
3 either in the front along the road, or the side property
4 lines?

5 A Existing water lines?

6 Q No, existing easements for utilities in most
7 areas, the utility easements are created on the side lot
8 lines, or in the front, along the road right-of-ways?

9 A Yes, ma'am.

10 Q Okay. Is it true, though, that your system is
11 proposing to create new easements, possibly some in the
12 middle of the property or wherever the new tanks have to
13 be relocated because they are not brand new lots and
14 they have to be retrofitted, so each individual
15 homeowner needs to give up an easement for access to
16 machinery to install the equipment that will be owned by
17 EU, and then to maintain it?

18 A It's no different than what we do with water,
19 Linda. We have a connection at the street, and then we
20 usually hang the meter on the house. So the meter is
21 sitting on the house. We don't have a special easement
22 for that.

23 In our tariff, it mentions exactly that we
24 have the right to go to our equipment, and the equipment
25 that is going to be sitting there is no different. We

1 will have a box with a check valve and a shutoff valve
2 off of our main, and then we will run a
3 inch-and-a-quarter line up to the house where we will
4 set a tank, okay. And that tank has the grinder pump.
5 And then the homeowner will be responsible for
6 connecting the electricity and their four-inch pipe
7 through permitting with Charlotte County.

8 **Q Do you know how much the electric connection**
9 **will be per house?**

10 A No, I do not.

11 **Q Would it surprise you to know it's -- on my**
12 **house, it's \$1,800 --**

13 MR. FRIEDMAN: I object to questions -- she's
14 testifying, and she will have an opportunity to
15 testify. She's a party.

16 BY MS. COTHERMAN:

17 **Q So when you allow 500,000 for easements, did**
18 **that include the survey for the easements, and legal**
19 **eminent domain cases, and the payment to people for**
20 **taking the easements, or what did that \$500,000 include?**

21 A No. There is an additional \$300 for the
22 easements that's added in there as well. And under our
23 tariff -- I don't have it right in front of me, but I
24 believe it's 14, right-of-ways or easements, the
25 customers shall grant or cause to be granted to the

1 company all rights, easements, permits, privileges
2 necessary for us to go in and install it at no cost.

3 **Q So you are saying that -- you are assuming**
4 **that everyone is going to give you an easement at no**
5 **cost, and get all the permits for everything that's**
6 **necessary to install your equipment on their personal**
7 **property?**

8 A No, ma'am. It's a homeowner's responsibility
9 to permit through Charlotte County. The utility cannot
10 do the electric or the plumbing connection.

11 **Q What about gopher tortuous removal, tree**
12 **removal --**

13 A We have that in our budget. It's part of
14 standard engineering and construction, Linda. This
15 isn't the first utility on the island. Florida Power &
16 Light has been up and down that island 100 times, so has
17 three other water utilities been up and down that line,
18 and we have dealt with turtles for years. It's -- and,
19 you know, the Turlington, right now, are sort of
20 hurting.

21 **Q How do you deal with them?**

22 A Do what?

23 **Q How do you deal with the gopher tortoises?**

24 A We will hire a professional in our engineering
25 aspect, and there is a process that you go through, and

1 you are very familiar with that process.

2 Q Thank you.

3 CHAIRMAN GRAHAM: Staff?

4 MR. THOMPSON: Thank you, Mr. Chair.

5 EXAMINATION

6 BY MR. THOMPSON:

7 Q Mr. Boyer, you own, operate and run other
8 utilities?

9 A Yes, sir.

10 Q How many?

11 A One.

12 Q One. What type of utility is that?

13 A Water utility.

14 Q Okay. Is that under the PSC's jurisdiction?

15 A Yes, sir.

16 Q All right. Are you familiar with Chapter
17 25-30 of the Florida Administrative Code?

18 A You will have to refresh my memory.

19 Q Specifically what I am getting to is
20 25-30.033. It requires the applicant to have the
21 financial technical ability to run --

22 A Yes, sir.

23 Q With your other utilities, how do you
24 guarantee the technical -- or how do you guarantee that
25 the utility is run by competent and trained personnel?

1 A Well, we have been doing it for the last -- I
2 think we became regulated in 2000. So we have been
3 doing that with the Public Service Commission for the
4 last 25 years.

5 It was a learning aspect, you know, feeling
6 out how the Public Service Commission does their numbers
7 in their rules. It's pretty simple. I have got to
8 follow the DEP rules, I follow the Public Service
9 Commission rules, I follow the Charlotte County rules,
10 there is not much play in between.

11 **Q Okay. How will you guarantee that EU is**
12 **operated by competent and technically sound personnel?**

13 A We will be hiring professionals to do that.

14 MR. THOMPSON: No further questions, Mr.
15 Chair.

16 CHAIRMAN GRAHAM: Commissioners?
17 Redirect?

18 FURTHER EXAMINATION

19 BY MR. FRIEDMAN:

20 **Q Mr. Boyer, you were asked about the letters of**
21 **support that were filed with the initial application.**
22 **Do you remember how many properties those letters**
23 **represented?**

24 A In the original report, it was 79 letters
25 requesting service, 79 units, ERCs, requesting service.

1 **Q And since that time, are you aware of any**
2 **other letters to the PSC in support of your application**
3 **that would be tantamount to a request of service?**

4 A Yes, sir. We have close to 100 that are
5 requesting service. Some homes under construction,
6 other properties owners to come. I think you will hear
7 from a few speaking at six o'clock that are other
8 properties that desire the service, that already have
9 existing systems, but want to do what's right.

10 **Q Do you know whether Environmental Utilities**
11 **would have the statutory right to condemn easements**
12 **prior to being a certificated utility?**

13 A I am sorry, Marty, you said who would have
14 that right?

15 **Q Do you know whether EU would have the**
16 **statutory ability to condemn property until they have a**
17 **certificate as a utility?**

18 A No, sir. I wouldn't think a utility would
19 have that right at all.

20 **Q Do you know whether the County can deny**
21 **construction permits on platted lots without condemning**
22 **the property?**

23 A No, sir. They would have to condemn the
24 property.

25 **Q All right. Instead of -- well, counsel**

1 mentioned questions about you haven't done water testing
2 since the last case, correct?

3 A That's -- we haven't, but we have found people
4 that have.

5 Q All right. So instead of -- in lieu of doing
6 the water testing, did EU engage scientific experts to
7 give you an opinion of the impacts of those septic tanks
8 on those water bodies adjacent to the islands?

9 A I did. Once we were denied, I felt like I
10 hadn't done my job on the previous application, and I
11 started researching scientists, and Dr. Lapointe is the
12 top in the state. He did the startup down in the Keys.
13 He recommended to the state legislators. His tests have
14 been renowned, and then he introduced me to the
15 Charlotte Harbor Estuary -- National Estuary program of
16 that is an EPA U.S. deal done with the State of Florida,
17 Charlotte County, and its citizens. And they are the
18 ones that conducted the studies in 2018 that showed the
19 1,117 acres in Gasparilla Sound of grass flats that
20 disintegrated. They are the ones that did the study
21 that shows that the 684 acres in northern Lemon Bay have
22 deteriorated.

23 The scientific facts are there. It's like
24 everybody here is ready for a hurricane, but they look
25 at the radar that's down in Ft. Myers, the radar that's

1 in Miami, the radar in Tampa, and common sense says,
2 hey, it looks like it's headed for us. We need to board
3 up the house and move the patio furniture. And that's
4 where we are right now.

5 We have got all the science. Our state
6 legislators have done it. They stated, wherever there
7 are 50 septic tanks or more on one acre or less, okay,
8 those are the areas that they want to distribute of that
9 \$100 million, okay. The map that he showed you, right
10 there in the red, okay, that's 6.47 septic tanks per
11 acre. That's the Colony Don Pedro. They are getting
12 reissued a permit right now under, not new construction,
13 but under repair.

14 And the water base that's on there, when you
15 take the hydraulic pumping that's taken place just off
16 of tidal pumping, we are destroying our area. And I
17 can't believe that the neighbors out here will continue
18 to let this happen.

19 **Q All right. As part of this filing, did you**
20 **and the other experts include photographs of septic**
21 **tanks after the hurricanes?**

22 A Yes, sir. And it's, of course, hurricane
23 damage, but the septic tanks are all over the beach.

24 MR. FRIEDMAN: That's all I have.

25 CHAIRMAN GRAHAM: Okay. Thank you, sir, for

1 your testimony.

2 MR. FRIEDMAN: That's our final witness on
3 direct.

4 CHAIRMAN GRAHAM: Okay. So witnesses for Palm
5 Island will be next up, and to just remind
6 everybody about friendly cross, there will be no
7 friendly cross.

8 MR. KELSKY: Thank you. Is this working?
9 Okay. Our first witness is Amy McCully.
10 May I begin?

11 CHAIRMAN GRAHAM: Sure, please.

12 Whereupon,

13 AMY McCULLY

14 was called as a witness, having been previously duly
15 sworn to speak the truth, the whole truth, and nothing
16 but the truth, was examined and testified as follows:

17 EXAMINATION

18 BY MR. KELSKY:

19 Q Ms. McCully, can you please state your full
20 name and address for the record?

21 A Yes, my name is Amy McCully, and I live at 61
22 Kettle Harbor Drive in Placida, Florida, on Don Pedro
23 Island.

24 Q Have you previously been sworn to give
25 testimony today?

1 A I have.

2 Q **And did you file prefiled testimony in this**
3 **matter?**

4 A I did.

5 Q **Can you please briefly summarize that prefiled**
6 **testimony?**

7 A Sure.

8 The purpose of my testimony is to discuss that
9 in our organization, amounting to 240 households,
10 representing at least 390 individuals, to the best of my
11 knowledge, there is an overwhelming support to reject
12 the notion that sewer should replace septic systems.

13 The organization's members have expressed a
14 desire to continue with septic systems, and that nobody
15 by or on behalf of Charlotte County has conducted water
16 quality testing on Knight Island or Don Pedro Island
17 that's confirmed elevated nitrates or other pollutants
18 associated with sewage.

19 MR. KELSKY: I would like to move Ms.
20 McCully's prefiled testimony into the record.

21 CHAIRMAN GRAHAM: We will place Ms. McCully's
22 prefiled direct testimony into the record as though
23 read.

24 (Whereupon, prefiled direct testimony of Amy
25 McCully was inserted.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No.: 2024-0032-SU

DIRECT TESTIMONY

OF

AMY MCCULLY

on behalf of

Palm Island Estates Association, Inc.

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

2 A. My name is Amy McCully. I am a board member for
3 Palm Island Estates Association, Inc., a Florida not-for-profit corporation. My
4 address is 61 Kettle Harbor Drive, Placida, FL 33946.

5 **Q. State briefly your relationship to Palm Island Estates Association, Inc.**

6 A. I have lived on Palm Island since November 2021, and I am on the board
7 and previously served as the Recording Secretary for the Board.

8 **Q. Are you providing testimony on behalf of Palm Island Estates Association
9 Inc.?**

10 A. Yes.

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

12 A. The purpose of my direct testimony is to discuss that, in our organization,
13 amounting to 240 households representing at least 390 individuals, to the best
14 of my knowledge, there is overwhelming support to reject the notion that
15 sewers should replace septic systems; the organization's members have
16 expressed a desire to continue with septic systems; and that nobody by or on
17 behalf of Charlotte County has conducted water quality testing and Knight
18 Island and/or on Don Pedro Island that has confirmed elevated nitrate or other
19 pollutants/contaminants associated with sewage.

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

21 A. Yes, it does.

22

23

24

25

1 MR. KELSKY: I have nothing else. Thank you.

2 CHAIRMAN GRAHAM: Did you give your summary of
3 your testimony?

4 THE WITNESS: Uh-huh. Yes.

5 CHAIRMAN GRAHAM: Okay. You are subject --
6 you submit your witness for cross-examination?

7 MR. KELSKY: Yes, please.

8 CHAIRMAN GRAHAM: Okay. Utility, Mr.
9 Friedman.

10 MR. FRIEDMAN: Thank you very much.

11 EXAMINATION

12 BY MR. FRIEDMAN:

13 Q Ms. McCully, isn't it true that PIE has
14 suggested that its membership each write letters
15 objecting to EU's application?

16 A We have suggested that if they opposed it, to
17 have their voices heard. Yes.

18 Q And in doing so, isn't it true that you have
19 suggested that they send this objection letter, not only
20 to the PSC docket, but to each of the five
21 Commissioners?

22 A I believe we listed people to send it to.

23 Q And also had suggested reasons for denying it,
24 is that correct, or objecting to it?

25 A Yes. We gave summaries. Most of the people

1 came up with their own as well.

2 Q All right. And are you aware of some of these
3 letters that people -- that the members of PIE have been
4 filing?

5 A Yes, and I wrote my own.

6 Q Okay. And isn't it true that oftentimes, the
7 husband and wife would both write the letter -- write
8 separate letters objecting?

9 A Yes, I wrote one and so did my husband.

10 Q Okay. And you sent it to each of the five
11 Commissioners?

12 A Yes.

13 Q And you also filed it in the docket?

14 A Yes.

15 Q Okay. So in your household, which is probably
16 not abnormal in the island, there -- the docket -- the
17 PSC docket is going to reflect 12 objections, is that
18 right?

19 A I don't understand your question.

20 Q Okay. You filed an objection and sent it to
21 five Commissioners and the Clerk, correct?

22 A Yes.

23 Q Okay. And so if those five Commissioners
24 forwarded that objection to the docket, as they are
25 supposed to do, the docket will reflect that your single

1 complaint really is in that docket six times, correct?

2 A Correct.

3 Q And if you and your husband both did it, then
4 your property really has, if I look on the docket, there
5 are 12 objections for one piece of property, correct?

6 A Apparently so.

7 Q Doesn't PIE agree that there are environmental
8 benefits of eliminating septic tanks from the island?

9 A Not that I am aware of.

10 Q Doesn't PIE also agree that it would not
11 object to eliminating septic tanks if the project was
12 being done by the County instead of a private utility?

13 A Not necessarily.

14 Q Could I show you -- this is CEL-57. And this
15 is from PIE's website. Do you see what I have
16 highlighted there?

17 A You would like me to read it?

18 Q Would you, please?

19 A We don't wish to engage in the debate over the
20 environmental benefits of central sewer versus on-site
21 septic systems. Our opposition is and always has been
22 that our membership opposes the installation of central
23 sewer by a privately owned for-profit utility.

24 Q And the next sentence?

25 A You may have already received a letter in the

1 mail, which is the notice of application. Do you want
2 me to continue?

3 **Q You left this sentence out.**

4 A Oh. Charlotte County is abdicating its
5 responsibility to a private operator who has never owned
6 a wastewater utility company before.

7 **Q And when somebody else reads that, that sounds**
8 **to me like you are saying Charlotte County should be**
9 **doing this instead of a private utility, correct?**

10 A I did not write that email, so I can't speak
11 on behalf of --

12 **Q But you are the President of the association?**

13 A As of three weeks ago, yes.

14 **Q Okay. Well, this was probably before then.**

15 **But this would have gone out -- it goes out**
16 **under the official letterhead of the association, so it**
17 **espouses the position of the association, I presume,**
18 **doesn't it?**

19 A What did you just ask?

20 **Q This goes -- this email, or whatever it was,**
21 **went out under the headlines of the association?**

22 A Correct. PIE -- the president at the time
23 sent it out to our membership.

24 **Q All right. So you presume, then, that at**
25 **least at that point in time, that was the position of**

1 **PIE?**

2 A Correct, just like last time.

3 MR. FRIEDMAN: I have no further questions.

4 CHAIRMAN GRAHAM: Any other cross-examination
5 from the parties?

6 Staff?

7 MR. THOMPSON: None from staff.

8 CHAIRMAN GRAHAM: Commissioners?

9 Palm Island, redirect?

10 FURTHER EXAMINATION

11 BY MR. KELSKY:

12 Q Ms. McCully, I have one question for you.

13 Would PIE defer to the experts as to whether Charlotte
14 County has the capacity to install sewer in the proposed
15 service area?

16 A Absolutely.

17 Q And is PIE taking a position of whether
18 Charlotte County should do that?

19 A I am not sure.

20 MR. KELSKY: Okay. Thank you. Nothing
21 further.

22 CHAIRMAN GRAHAM: Sure.

23 THE WITNESS: Thank you.

24 CHAIRMAN GRAHAM: Thank you for your
25 testimony.

1 Next witness.

2 MR. KELSKY: Ellen Hardgrove, AICP.

3 CHAIRMAN GRAHAM: Welcome, Ms. Hardgrove.

4 THE WITNESS: Good afternoon.

5 Whereupon,

6 ELLEN HARDGROVE

7 was called as a witness, having been previously duly
8 sworn to speak the truth, the whole truth, and nothing
9 but the truth, was examined and testified as follows:

10 EXAMINATION

11 BY MR. KELSKY:

12 Q Can you place state your -- have you
13 previously been sworn?

14 A Yes.

15 Q Okay. Can you please state your name and
16 professional address?

17 A My name is Ellen Hardgrove. Address at 315 NW
18 Ivanhoe Boulevard, Orlando, Florida.

19 Q Have you submitted prefiled testimony in this
20 case?

21 A I have.

22 Q Can you please briefly summarize that
23 testimony?

24 A The task was to review the application, and
25 whether it was consistent with the comprehensive plan

1 for Charlotte County.

2 Q All right. Can you elaborate to --

3 A I am sorry.

4 Q -- can you elaborate on that a little bit,
5 please?

6 A Yes. So the conclusion is that the
7 application is inconsistent with the comprehensive plan.
8 The -- let me just give you an overview for the
9 comprehensive plan.

10 The service area is in -- all the bridgeless
11 barrier island is in the coastal high hazard area. It
12 is designated as a barrier, as a barrier island overlay
13 district. It is -- has a future landuse designation of
14 coastal residential, and it is in the rural service
15 area. That means it's outside the urban service area,
16 which is one of Charlotte County's chief growth
17 management tools that they use in the comprehensive
18 plan.

19 The most significant policy -- I have a lot of
20 policies in my prefiled testimony, but the one that is
21 -- and I have a cold, so bear with me on that -- the one
22 that's most significant is Future Landuse Policy 3.2.4.
23 And just to summarize, but I am going to quote it. It
24 says: The County shall prohibit the provision of water
25 and sewer infrastructure within the rural service area

1 -- and as I said, this is in the rural service area --
2 and shall continue to rely primarily upon individual
3 on-site septic systems as the method of disposal of
4 wastewater. Require that new development shall not be
5 designed nor constructed with centralized potable water
6 or sanitary sewers with the following exceptions. The
7 one that is significant here is it is clearly and
8 convincingly demonstrated by the proponents of the
9 system expansion that a health problem exists in a built
10 but unserved area for which there is no other feasible
11 solution.

12 And furthermore, that not -- the policy goes
13 on to say, not require developments to connect to any
14 central potable water or sanitary sewers if these
15 services are extended in the area except for those
16 health reasons.

17 So it is obvious -- and there is policies that
18 back this one up as well, but it's obvious that the
19 proposed service area is inconsistent with the Charlotte
20 County Comprehensive Plan. It's inconsistent with our
21 entire growth management strategy, which is to direct
22 growth to the most appropriate locations.

23 And here you have a bridgeless barrier island,
24 you have already heard about getting things to and from
25 there, including public services and facilities, not,

1 you know, notwithstanding the central sewer.

2 But in addition to discouraging development on
3 the island, they are also encouraging. They have
4 incentivized transferring density off of the island. So
5 you take your rights and you sell them to somebody on
6 the mainland, and so in doing that, you are cutting down
7 on development in that coastal area.

8 From a hurricane perspective, this -- you want
9 your growth not on the barrier islands, specifically the
10 bridgeless barrier islands.

11 MR. KELSKY: Okay. I would like to move the
12 prefiled testimony into the record and tender the
13 witness for cross-examination.

14 CHAIRMAN GRAHAM: We will enter Mrs.
15 Hardgrove's prefiled direct testimony into the
16 record as though read.

17 (Whereupon, prefiled direct testimony of Ellen
18 Hardgrove was inserted.)

19

20

21

22

23

24

25

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

DIRECT TESTIMONY

OF

ELLEN HARDGROVE, AICP

on behalf of

Palm Island Estates Association, Inc.

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

2 A. My name is Ellen Hardgrove. I am a certified planner and my professional address is 315
3 Ivanhoe Blvd. NW, Orlando, FL 32804.

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

5 A. I have a Bachelor of Arts degree in Economics from Clemson University and a Master's
6 degree in Urban and Regional Planning from Florida State University. I have extensive,
7 direct and practical knowledge of land planning, including understanding comprehensive
8 planning, land development regulations, approval processes and the people/entities
9 involved with same.

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

12 A. Yes, I've testified as a city planner for the City of Edgewood and have given testimony for
13 FDOT, Central Florida Expressway Authority, PSC and Sanford Airport Authority.

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

15 A. The purpose of my direct testimony is to discuss how provision of central sewer service in
16 the proposed service area is inconsistent with Charlotte County's Comprehensive Plan and
17 shows a lack of need for sewer service in the proposed service area.

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

19 A. Yes, I am sponsoring one exhibit. Exhibit EH-1 is my affidavit dated October 30, 2024
20 (with exhibits).

21 **Q. Does this exhibit set forth your opinions with respect to the Environmental Utilities'
22 application.**

23 A. Yes.

1 **Q. Was this Exhibit prepared by you?**

2 A. Yes, it was.

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

4 A. Yes, it does.

1 CHAIRMAN GRAHAM: And, Mr. Friedman.

2 MR. FRIEDMAN: Thank you.

3 EXAMINATION

4 BY MR. FRIEDMAN:

5 Q Ms. Hardgrove, I will start at the end, since
6 that peaked my interest.

7 You said that that provision of the comp plan
8 that you referenced was to direct growth to urban areas?

9 A I am sorry?

10 Q Did you say that the purpose of that was to
11 direct growth to urban areas?

12 A To the most appropriate locations for urban
13 development.

14 Q Okay. What if the growth has already
15 occurred?

16 A Well, you don't want to be encouraging more of
17 it. And so the policy specifically is, for the
18 bridgeless barrier island, to not encourage development.

19 Q All right. And you testified that there
20 shouldn't be central sewer, that new development
21 shouldn't have central sewer unless it was shown to be a
22 health problem?

23 A That is correct.

24 Q All right. This is not new development, is
25 it, the islands?

1 A I am sorry?

2 Q If you look at these islands -- and I am sure
3 you have been out there, haven't you?

4 A No, I have not.

5 Q You have never been on the island?

6 A I have not.

7 Q Have you ever looked at any on a photograph?

8 A Absolutely.

9 Q All right. And you don't think this is --
10 this is already developed, all of this stuff is already
11 developed?

12 A True.

13 Q So if but for the fact that you say it's in
14 the urban service area, if this were -- if this much
15 density was anywhere else in the county, you wouldn't
16 consider it a rural area, would you?

17 A It could be.

18 Q With how many houses here per acre, six? How
19 many houses were it in here.

20 MR. BOYER: 6.7 units per acre.

21 BY MR. FRIEDMAN:

22 Q Yeah, like, 6.7 units an acre would be -- is
23 as urban, as urban you can get, isn't it?

24 A Not as urban as we can get. However, you need
25 to understand that the -- most of the development that

1 has occurred on the bridgeless barrier island occurred
2 prior to comprehensive planning, and so you don't want
3 to encourage it to continue, which is the reason why
4 they have established the transfer development rights
5 off of the island.

6 **Q And don't the -- doesn't the County have ways**
7 **to control development? I mean, everything is platted,**
8 **except for the State park in the middle, everything is**
9 **platted?**

10 A They do have a way to control development, and
11 that's their comprehensive plan, and that's why you have
12 policies that have strengthened over time. Since 1988,
13 you have -- the policies have strengthened to
14 specifically for the bridgeless barrier island.

15 **Q All right. And what about other utility**
16 **services?**

17 A What about them?

18 **Q Like electric utility, doesn't the fact that**
19 **there is FPL out there, that it will -- it will expand**
20 **growth, make it easier to build?**

21 A No.

22 **Q So they could build whether they have power or**
23 **not?**

24 A Whether they --

25 **Q Whether Florida Power was there or not, they**

1 **could still build?**

2 A I would expect that you would want to have
3 electricity in your house.

4 Q All right. In your Exhibit EH-1, which is
5 CEL-16. At the bottom of the page, you questioned
6 whether the bulk service agreement is valid since you
7 say that -- you note a provision referencing an easement
8 through the State park, which you say they can't get, is
9 that correct? Do you recall that?

10 A I believe when it comes to the bulk serve, my
11 comment was that there is additional -- that bulk serve
12 -- the bulk sewer agreement may not be valid because
13 there is an additional step that has to be gone through,
14 which is to have DEP sign off on it.

15 Q Did you happen to look at the report that's
16 referenced in there that was done, that was the basis of
17 that statement you just made, that it was going to have
18 one crossing?

19 A I knew that there was the -- I guess I am not
20 following what you are asking me.

21 Q Doesn't the bulk service agreement, in fact,
22 contemplate that there may be two crossings instead of
23 one?

24 A I don't know that for a fact.

25 Q So you don't know yes or no?

1 A That's correct. I don't know yes or no.

2 Q On page two, you reference a comment that was
3 made at one of those quarterly meetings that they have
4 -- I forget which one you listened to, but I listened to
5 it as well -- where you talked about needing water
6 quality testing. Do you remember -- do you recall that
7 statement?

8 A Yes.

9 Q All right. And isn't it true that the
10 statement was made in the context of Cape Haze?

11 A The subject matter was the Cape Haze
12 septic-to-sewer. However, it was -- the comment that
13 was made by the commissioner was: We do not want to be
14 basing the decisions to force people to connect from
15 septic to sewer on an assumption. We want hard facts.
16 We -- and which goes with the policy of that there needs
17 to be a demonstrated need for that connection.

18 Q And that was one particular commissioner's
19 opinion, or comment, not the -- actually the whole
20 board?

21 A That was from Commissioner Tiseo, and that the
22 -- somebody else agreed to it as well.

23 Q But it wasn't formalized and taken by the
24 Board. It was just comments made by two other
25 commissioners, correct?

1 A At that meeting, it was. But the direction to
2 their consultants -- this was a meeting from -- it was
3 the quarterly utility meeting, and there was a
4 discussion of the septic-to-sewer system, and --

5 **Q In Cape Haze?**

6 A That was -- that was what the subject matter
7 was at the time, but this is an update to their sewer
8 plan. And what they were saying is there is a lot of
9 priorities in the urban service area that they want to
10 direct it to, and they want to -- before they
11 established what those priorities are, they want it to
12 be facts.

13 **Q And that's the point. Wasn't much of the**
14 **discussion at that meeting, when they were talking about**
15 **Cape Haze, regarding the priorities for spending the**
16 **County's money, and the County decided we need to spend**
17 **money on compliance rather than expanding service?**

18 A I don't know if that's true, whether what -- I
19 think it was just one aspect of the sewer master plan
20 update.

21 **Q Okay. But wasn't there a lot of discussion**
22 **about where the County is going to spend money? Isn't**
23 **that what the discussion was really about?**

24 A Yes.

25 **Q In your testimony, you denigrate the County**

1 **Commission's resolution that supports this application**
2 **because it was on a consent agenda, is that right?**

3 A Yes.

4 Q So do you think action taken by a board, like
5 this commission, in a consent agenda doesn't have the
6 same weight as any other resolution they may pass?

7 A My concern was that there was no supporting
8 documentation. When the resolution was sent to the
9 County Commission agenda, there was no support
10 information with it. All it was was a mere statement
11 that said this proposal was consistent with the
12 comprehensive plan. It wasn't written by the Planning
13 Department. It wasn't -- there was no supporting staff
14 report from the Planning Department. There was nothing
15 in the resolution that said why it was consistent. And
16 when you look at the comprehensive plan, it is obvious
17 that what is -- that the direction is we do not want to
18 encourage development on the bridgeless barrier island.
19 We do not -- it's been there since, I think 1990, the
20 bridgeless barrier island overlay district, and -- I
21 lost my train of thought.

22 Q Yeah, that's what I thought.

23 Isn't it true that the commissioners
24 apparently disagree with you and took action to say
25 that, in that resolution, that it's their belief,

1 whether there is backup documentation, you can complain
2 all day long about that --

3 A It didn't --

4 Q -- but isn't it true there is formal action on
5 behalf of the Commission that says this is not contrary
6 to the comp plan?

7 A It did not even come up. There was no
8 discussion from the Commission. It was, here's your
9 consent agenda. Approve or deny it. And what the
10 request was, was for the Commission Chairman to sign it.
11 But, again, there was nothing that supported it. And
12 there was no opportunity for the public even to debate
13 it being on the consent agenda. That was my point.

14 Q And so you are not aware that members of the
15 public knew that this -- members of PIE knew that this
16 was coming up?

17 A They didn't even have an opportunity to speak
18 even if they did.

19 Q Have you ever been to a County Commission
20 meeting?

21 A Absolutely.

22 Q Isn't there a time for people to show up and
23 talk?

24 A It was already -- it's -- it was on the
25 consent agenda, which was towards the beginning of the

1 meeting. It was over, it was done with. So it didn't
2 even make a difference even if they would have come at
3 the end for public input.

4 And as far as what the notification is, I am
5 not aware of that. So I don't know who got notified
6 that it was going to be on the consent agenda.

7 **Q Did you hear Mr. Watson's testimony this**
8 **morning?**

9 A I did.

10 **Q And if I recall correctly, didn't he say that**
11 **customers who show up and talk, that if a commissioner**
12 **decided there is something compelling, he will pull**
13 **something -- he or she will pull something from the**
14 **consent agenda?**

15 A Yes. That's true.

16 **Q And you are aware, are you not, that there is**
17 **already three central water systems on the island?**

18 A That were built prior to the comprehensive
19 plan.

20 **Q And at least two wastewater plants?**

21 A Same thing, prior to the comprehensive plan.

22 **Q And are you aware that the central water**
23 **system, matter of fact, both on the north and south, are**
24 **interconnected with utilities on the mainland?**

25 A I am sure they are, just because I know how

1 they work.

2 Q And that would have occurred after the comp
3 plan was changed, would they not?

4 A I don't know when they were connected to it.
5 But regardless, they were -- they were there before the
6 policy was established on whether or not extending
7 services to the barrier -- sewer service to the
8 bridgeless barrier island prior to that.

9 Q These barrier -- this barrier island is in the
10 coastal residential category, is that correct?

11 A Yes.

12 Q All right. And doesn't the comprehensive plan
13 take into consideration that some plans in the rural
14 service area designation categories are shown as being
15 permitted only within the urban service area?

16 A I am sorry, say that again.

17 Q In other words, there are lands in the rural
18 service area that are being developed as if they are in
19 the urban service area?

20 A No.

21 Q All right. So I guess on the -- as to the
22 existing utilities, you say they were grandfathered in?

23 A They were built prior to the comprehensive
24 plan.

25 Q All right. Well, what about the bulk water

1 **agreement that was entered into? That was entered into**
2 **after the comp plan that you talked about, wasn't it?**

3 A I am not sure of the date. However, I don't
4 think there was any analysis on that one, just like with
5 the resolution, that there was consistency with the
6 comprehensive plan.

7 **Q So you just don't like the conclusion?**

8 A My -- okay, so the question is: Is the
9 application consistent with the comprehensive plan? The
10 answer is no.

11 **Q Do you understand that the County**
12 **Commissioners disagree with your interpretation?**

13 A I am wondering whether the County
14 Commissioners have --

15 **Q I asked you -- there is a resolution. Does**
16 **that resolution articulate the formal position of the**
17 **County Commission --**

18 A There is a resolution that says --

19 **Q -- whether you like it or not?**

20 A There is a resolution that says that there is
21 a -- that the application is consistent with the
22 comprehensive plan, but there is nothing in that
23 resolution that backs that up, nor any staff report from
24 the Planning Department, which would be the
25 professionals who should be making that determination,

1 to advise the County Commission of whether it is
2 consistent or not.

3 Q All right. So you are saying the County
4 Commission was ill-advised?

5 A Yes.

6 Q Oh. I hope they show up today and you can
7 tell them that in person.

8 So you believe that -- I guess, in conclusion,
9 you believe that you are better able to interpret the
10 comprehensive plan, the sewer management plan, than the
11 County Commission that adopted both those plans?

12 A Yes.

13 MR. FRIEDMAN: No further questions.

14 CHAIRMAN GRAHAM: Any other cross-examination
15 from the parties?

16 Staff?

17 MR. THOMPSON: Not from staff.

18 CHAIRMAN GRAHAM: Commissioners?

19 Redirect?

20 MR. KELSKY: Yeah, just some redirect.

21 FURTHER EXAMINATION

22 BY MR. KELSKY:

23 Q It came up where you referenced, health
24 problem, okay, it was stated if there was a health
25 problem. What is the standard for health problem?

1 A I guess I don't know what you are asking me --

2 Q Sure.

3 A -- there would be water testing that would be
4 done around the island, and there has not been.

5 Q Okay. And what about the concept that clear
6 and convincing evidence, that was omitted from the
7 question. I want to make sure that I understood what
8 the standard was for connection to sewer?

9 A It would be scientific --

10 MR. FRIEDMAN: I object. I think it's a legal
11 opinion as to what clear and convincing evidence
12 is. It's evidentiary matter.

13 MR. KELSKY: No, she's repeating what the comp
14 plan says, which was specifically omitted by Mr.
15 Friedman when he asked the question, so I just
16 wanted to be clear.

17 CHAIRMAN GRAHAM: I will allow the question.

18 BY MR. KELSKY:

19 Q Do you understand the question?

20 A The -- it would be a scientific analysis of
21 testing the water to see whether it's been contaminated
22 by the sewage from the septic tanks.

23 And at the meeting that Mr. Friedman had
24 referenced with the quarterly update, they specifically
25 directed Mr. Watson to do that water testing. And his

1 response was, okay, we can do that. It will take at
2 least one or two years, because it's done over time. I
3 am not an expert on environmental analysis, but that was
4 my understanding.

5 **Q Okay. And just so we are clear, is the**
6 **proposed certificated area in the rural service area or**
7 **in the urban service area?**

8 A It's in the rural service area.

9 **Q Okay. Now, do you serve on boards that have**
10 **meetings where there are consent agendas?**

11 A I am the planner for a local government, and
12 I -- in my past, I -- I have 44 years experience in
13 planning I think I admitted in my credentials, but -- so
14 over that part of time working for Orange County that we
15 had consent agendas, but currently, in the last 26
16 years, I worked for a municipality in the central
17 Florida area, and we have a consent agenda. I am
18 familiar with it.

19 **Q And in terms of the consent agenda, did you**
20 **describe already that these types of items are just**
21 **ruled upon unless pulled?**

22 A That's correct.

23 **Q Okay. So is there input from anybody on a**
24 **consent agenda?**

25 A Not at all.

1 was called as a witness, having been previously duly
2 sworn to speak the truth, the whole truth, and nothing
3 but the truth, was examined and testified as follows:

4 EXAMINATION

5 BY MR. KELSKY:

6 Q Welcome, Dr. Robbins?

7 A Hello.

8 Q Dr. Robbins, have you been sworn?

9 A Yes, I have.

10 Q Okay. Can you please provide your full name
11 and residential address?

12 A Sure. My full name is Robert J. Robbins, and
13 I reside at 8235 Parkside Drive in Englewood, Florida.

14 Q And have you submitted prefiled testimony in
15 this matter?

16 A Yes.

17 Q Can you please summarize that testimony for
18 us?

19 A Sure.

20 I disagree with the assertion that science
21 supports a septic-to-sewer conversion on the barrier
22 islands of Charlotte County, Florida. I have not seen
23 quantifiable empirical evidence, samples or data
24 collected from the barrier islands that could validate
25 the hypothesis that septic systems in the area are

1 significantly impacting water quality.

2 The fundamental foundation of science is the
3 scientific method, which requires observing, forming a
4 hypothesis, and then collecting appropriate data to
5 reach a conclusion with a certain level of confidence.
6 The supporting information that I have reviewed,
7 including the Jones Edmunds 2017 Sewer Master Plan, and
8 its prior supporting background studies and reports
9 commissioned by Charlotte County are scientifically
10 flawed, have biased experimental sampling assigned,
11 flawed methodologies, careless mistakes,
12 misrepresentations of descriptive data, and arrive at
13 conclusions that are not reasonably supported by the
14 data.

15 MR. KELSKY: Okay. I would like to, at this
16 point in time, move the prefiled testimony and
17 exhibits into the record.

18 CHAIRMAN GRAHAM: We will move Dr. Robbins'
19 prefiled direct testimony into the record as though
20 read.

21 (Whereupon, prefiled direct testimony of
22 Robert J. Robbins was inserted.)

23

24

25

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

DIRECT TESTIMONY

OF

ROBERT J. ROBBINS, Ph.D.

on behalf of

Palm Island Estates Association, Inc.

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

2 A. My name is Robert J. Robbins, Ph.D. I am providing opinions on water quality
3 affecting the proposed service area and analysis of submitted data on the topic, and my
4 address is 8235 Parkside Drive, Englewood, FL 32442.

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

6 A. I have a Bachelor of Science degree in Marine Science and Biology from the University
7 of Miami, a Master of Science in Marine Biology and Fisheries degree from the
8 University of Miami, and a Doctor of Philosophy degree in Marine Biology and
9 Fisheries from the University of Miami. I have extensive, direct and practical
10 knowledge of salinity fluctuations on coastal ecosystems, marine biometrics,
11 environmental impacts of mangrove, beach, and estuary ecosystems, and reviewing and
12 editing peer-reviewed scientific journal articles.

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

15 A. No.

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

17 A. The purpose of my direct testimony is to provide analysis rejecting the concept of
18 converting septic to sewer in the proposed service area along with providing an analysis
19 concerning the flawed Sewer Master Plan and other submissions regarding same.

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

21 A. Yes, I am sponsoring two exhibits. Exhibit RR-1 is my Notes and Comments on
22 LaPointe's "Science Supports a Septic-to-Sewer Conversion on the Barrier Islands of
23 Charlotte County, Florida." Exhibit RR-2 is my Curriculum Vitae.

24

25

1 **Q. Do these exhibits set forth your opinions with respect to the Environmental**
2 **Utilities' application.**

3 A. Yes.

4 **Q. Were these Exhibits prepared by you?**

5 A. Yes, they were.

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

7 A. Yes, it does.

1 MR. KELSKY: And I would tender him for cross.

2 CHAIRMAN GRAHAM: Okay. Mr. Friedman?

3 MR. FRIEDMAN: This is the witness that I
4 questioned his qualifications, so I am going to do
5 some voir dire --

6 CHAIRMAN GRAHAM: Okay.

7 MR. FRIEDMAN: -- if you remember.

8 EXAMINATION

9 BY MR. FRIEDMAN:

10 Q What was the subject of your Ph.D.?

11 A The subject of my Ph.D. was the impacts of
12 salinity fluctuation on the productivity of mangrove
13 fish.

14 Q And when did you get that?

15 A I completed that in 2005.

16 CHAIRMAN GRAHAM: Dr. Robbins, if you are
17 going to face the questioner, grab the microphone
18 in your hand.

19 THE WITNESS: Yes. I completed that in 2005,
20 and it's with the University of Miami.

21 BY MR. FRIEDMAN:

22 Q Okay. And did any of your research involve
23 studying septic tank groundwater nutrient pollution and
24 seagrass nutrient ecology, or harmful algae bloom, such
25 as red tide?

1 A No, it do not.

2 **Q Have you published any papers or any**
3 **peer-reviewed papers?**

4 A Yes, I have been a co-author on a study on the
5 swordfish.

6 **Q And when was that?**

7 A That was, I believe, back before 2000.

8 **Q All right. And so you haven't published**
9 **anything since 2000?**

10 A That is correct.

11 **Q And you are a professor at University of**
12 **Miami?**

13 A No, I am not a professor at the University of
14 Miami.

15 **Q Oh, where are you employed now?**

16 A Currently, I work for myself as a consultant,
17 and I am also a manager of a nonprofit radio network.

18 And can I ask what do you mean by employed?
19 What is your definition of employed? Does that mean
20 work, or does that mean where you make income? Because
21 that's a big difference.

22 **Q Since you volunteer, where do you derive your**
23 **income?**

24 A I derive my income from consulting work in the
25 broadcast industry, and then also through management of

1 a nonprofit radio network.

2 **Q Okay. And when is the last time you had**
3 **anything to do with involving scientific evidence?**

4 A I am very active, if I could read some of my
5 qualifications.

6 After I earned the Ph.D. in Marine Biology, I
7 have been -- in the past, I have been a teaching
8 assistant in graduate level course in biometrics and
9 statistics, mangrove ecology, tropical marine biology
10 and marine population dynamics. I have experienced
11 formatting, editing and reviewing scientific
12 publications and have peer-reviewed marine biology
13 journal. I have experience in water quality sampling
14 and analysis for state and regulatory agencies. I
15 served on the boards of Lemon Bay Conservancy and the
16 Friends of Cape Haze to promote education and advocacy
17 on water quality issues locally.

18 I provided training to FWC research staff on
19 advanced applications of GIS for their coastal research
20 locally. I have assisted FWC staff in their research
21 during the soft fish mortality event recently. I have
22 participated volunteering on the Eyes on Seagrass for
23 the Florida Sea Grant. That's in Lemon Bay. I have
24 attended local meetings about water quality.

25 I help facilitate a University of Florida

1 reclaimed water study locally. I have extensive
2 experience assessing water quality issues for Charlotte
3 County Commissioners and administrative and staff, and
4 so I am pretty up-to-date on the science.

5 **Q But you haven't published anything that's**
6 **peer-reviewed by --**

7 A No, I have not.

8 **Q Okay. And you had a lot of talk today about**
9 **this Cape Haze --**

10 A I am very familiar with that.

11 **Q You live there, don't you?**

12 A I do not live there. I am building a house
13 there.

14 **Q And so you have -- you have a personal reason**
15 **for opposing the septic-to-sewer project because it**
16 **affects you personally, correct?**

17 A I don't have any real issue on opposing it.
18 What I am opposing is the justification. I believe that
19 people have a fair reason to be able to expect science
20 that's accurate and justification if there are being
21 expected to fork over a lot of money for something, they
22 need to have accurate information. And the government,
23 the County needs to go above board to make sure that
24 information is accurate and can be relied upon. That's
25 what I am --

1 **Q** And so you believe you are more qualified to
2 **determine the adverse impacts of septic tanks on the**
3 **environment than Dr. Lapointe, who has been studying it**
4 **for 40 years?**

5 **A** I can't make that determination. But what I
6 can say is that science in hasn't changed. Science
7 relies on hypothesis. It relies on data collection. It
8 relies on the use of statistics correctly. Those things
9 have not changed, and those are things that I am
10 knowledgeable about.

11 **Q** And that means that you don't have to do water
12 **quality testing in the exact location to know what the**
13 **adverse -- if it's going to have adverse impacts, do**
14 **you?**

15 **A** No, that's true. If you are going to look at
16 a location and you want to know what are the effects on
17 water quality in a certain area, you need to sample an
18 area that is part of this area, not someplace else. You
19 can't make an inference on something if you actually
20 don't sample the area that you are trying to make an
21 inference on.

22 **Q** So if there is an area that's located
23 **somewhere else that has the same environment, you can't**
24 **extrapolate that scientific evidence to another portion**
25 **of the county?**

1 A Most scientists would not do that. No, you
2 can't, because you have not sampled that specific area.
3 It's unique. It's got a unique latitude or longitude.
4 You put a maps of that area. You haven't put up maps of
5 other areas, and we are talking about this area right
6 here.

7 It's a unique area. You have to have some
8 level of confidence if you are going to extrapolate
9 information from one other area that you haven't even
10 sampled correctly to draw to another area. That hasn't
11 been done in this case.

12 **Q And you say, sampled correctly. That's your**
13 **opinion. Obviously, other people that rely upon that**
14 **sampling disagree with you, correct?**

15 A I don't know if they disagree with me. But I
16 can tell you that the sampling and the reports that I
17 have read are biased and improperly sampled.

18 **Q That's your opinion and not the opinion of the**
19 **profession itself? I mean, it's not well-known --**

20 A That is -- that is absolutely standard
21 protocol. When you sample something, you randomly
22 sample something if you are going to make an inference.
23 So in the case of, like, the Spring Lakes Study, which
24 is part of the record that I mentioned it, the County
25 hired a consultant, and they started off and said, we

1 are going to look at impacts of septic systems on water
2 quality in this area. And so they set up a grid, and
3 then they randomly, from within that grid, because they
4 couldn't sample every single location in that Spring
5 Lake area, they said, let's do a sample.

6 And so they set up the grid. They randomly
7 picked locations from that area. They sampled those
8 areas, and they found out that the results were
9 basically beyond the limits of detection, they were so
10 low they couldn't detect. And so they said, well, this
11 doesn't prove or establish that there is a significant
12 affect of septic on water quality.

13 So in this case, what the County did, and they
14 say it in the record this the Spring Lake Report, is
15 they consulted the Florida Department of Health. They
16 pulled out the 12 most recent violation records from the
17 Department of Health in cases where there were
18 foreclosed houses, where they were neglected, there was
19 sewage breaking out, ponding over septic tanks, and they
20 put new monitoring wells directly adjacent to those
21 locations.

22 And that is in the record. That is in the
23 study. They wrote that. And of course, they sampled
24 one time, and all of a sudden, they got significant
25 results. That is inappropriate.

1 If you are going to draw inferences from that,
2 all you could say is that basically locations that have
3 failed septics are going to be contributing to poor
4 water quality. That's the only assumption you can make.
5 You cannot extrapolate that. You cannot make an
6 inference that the other septics are part of that
7 problem. And you certainly cannot make an inference in
8 an area that you have not sampled.

9 **Q And that's your opinion, not the opinion of --**

10 A That is standard science. That is statistics
11 101.

12 **Q So nobody is going to -- no scientist is going**
13 **to disagree with what you just said?**

14 A I would like to see if they did, and I don't
15 think they can.

16 **Q Do you know the range of -- range and average**
17 **total nitrogen concentration in human wastewater?**

18 A In human wastewater, from what I have read in
19 the septic systems, it's somewhere around 60 to 70
20 milligrams per liter. That's from what I read in the
21 literature.

22 **Q In your testimony, you took issue with Dr.**
23 **Lapointe's white paper that stated, Gasparilla Sound has**
24 **some of the densest seagrass beds in the area, and**
25 **implied that that -- that Dr. Lapointe considered those**

1 **to be healthy; is that correct?**

2 A That's correct.

3 **Q That's not -- he didn't really say that,**
4 **though. You implied it. He didn't say healthy?**

5 A What he showed was a photo of seagrass which
6 didn't have a location, didn't have a date. He is
7 talking about Gasparilla Sound, which from what I
8 understand is actually south of the Boca Grande
9 Causeway, so it's not even in the study area.

10 We have talked about disappearing seagrass,
11 and now we are talking about seagrass that's so dense,
12 and somehow that's a problem. There was no
13 quantification of density. There was no light
14 measurements to know if there was shading underneath
15 that seagrass. It's a little bit difficult to tell that
16 from a photo.

17 In my opinion, that looked like healthy
18 seagrass. Like I said, I volunteered with the Eyes on
19 Seagrass, I have seen areas of healthy seagrass. I have
20 seen areas that are affected by reclaimed water in
21 outfalls from Charlotte County and from the golf
22 courses, and you can clearly see where the seagrass has
23 gone. So I know what healthy seagrass looks like.

24 **Q So you would disagree with this Coastal and**
25 **Heartland National Estuary Partnership's conclusions**

1 **that there is dramatic seagrass declines that indicate**
2 **the water quality degradation in the area?**

3 A No, I do not disagree with that. So that's
4 why I was surprised when I saw that photo, how you can,
5 in one place, make the case that seagrass is just
6 disappearing at 11,000 acres, or whatever the number
7 was, and then show a photo that, look how good this is,
8 this is horrible. It doesn't make sense.

9 Q **Doesn't seagrass go through a cycle where**
10 **nutrient is good for the seagrass in the beginning, but**
11 **then ultimately, it's degrading to the seagrass?**

12 A I don't understand your question.

13 Q **All right. Nutrients are favorable to**
14 **seagrass growth?**

15 A Right. They need nutrients to grow, correct.

16 Q **But too much nutrients degrades them, is that**
17 **correct?**

18 A Too much nutrients does not degrade seagrass;
19 although, an over-excess in nutrients that the seagrass
20 cannot assimilate could be used by algae, it could be
21 used by things that may grow and crud out some of the
22 seagrass. So sure, if there is too much nutrients, the
23 seagrass cannot assimilate it, and so that's part of the
24 problem where that create algae that's going to compete
25 for the seagrass for the light.

1 **Q** **So do you disagree that there is a degradation**
2 **in seagrass in the Charlotte Harbor area?**

3 **A** No, I don't disagree.

4 **Q** **Could you again tell me what is your**
5 **experience in the impact of septic tanks on the**
6 **environment? What expertise do you have on that**
7 **subject?**

8 **A** I have read a lot about it and done research
9 on it --

10 **Q** **So have you --**

11 **A** -- I mean, like you said, an expert -- a
12 researcher will rely on the research or literature of
13 other researchers, and that's what I have done.

14 **Q** **Are you aware of the -- well, I will -- don't**
15 **the nutrients from septic tanks exacerbate algae blooms,**
16 **like red tide?**

17 **A** Not necessarily. I mean, if you understand
18 the way that a septic system works, it's going to --
19 those nitrates and the ammonium is going to go through a
20 septic drain field. And then in that drain field, if
21 it's a properly sited septic tank, which has an area
22 that's not saturated, then that ammonium is going to be
23 changed into nitrate, and then hopefully there will be
24 denitrification that's going to occur, where that
25 nitrate turns back into a nitrogen gas once it hits an

1 anoxic layer. So not necessarily. Those nutrients can
2 be denitrified, or they can be even uptaken by plants,
3 depending on if they are in the root zone and it's
4 properly sited. So, no, it's not a given.

5 **Q The septic tank itself doesn't treat anything,**
6 **does it?**

7 A The septic tank itself breaks down the organic
8 nitrogen. The amino acids, the food matter and things
9 like that, it breaks it down into ammonium, so it does
10 do something. It also settles out some solids from the
11 wastewater. So it does --

12 **Q And then after the solids are settled out, it**
13 **goes to a drain field --**

14 A That's correct.

15 **Q -- of a punch a pipes in the ground?**

16 A That's correct. That's a properly working
17 septic system. The effluent will go into a drain field
18 and into the unsaturated layer in the soil.

19 **Q Okay. And you rely upon a certain amount of**
20 **soil and certain type of soil in order to actually treat**
21 **those nutrients?**

22 A That's correct. It has to be unsaturated,
23 which means that the spaces between the soil particle
24 layers have to have enough air where that ammonium can
25 be changed into nitrate with oxygen.

1 Q So the type of soil is important, is it not?

2 A It is a factor.

3 Q And the faster the liquid permeates, the less
4 treatment it gets, correct?

5 A It depends if the -- if the soil is saturated
6 or not. If the drain field is set too low and the
7 effluent goes straight into the groundwater, then, no,
8 there wouldn't be treatment.

9 Q Are you aware that the septic tank inspection
10 law says that a sep -- a drain field can be in the water
11 table and not be a failing system?

12 A I am not familiar with that law, but I do know
13 that when septic tanks are permitted, there has to be a
14 soil profile that's done. There has to be elevation
15 information. And that drain field has got to be at
16 least 24 inches above the seasonal high water table.

17 Q And that may change over time, might it, as
18 like the water goes up -- I don't want to say global
19 warming because that's a whole catch phrase, but as the
20 sea rises, then so does the water table, correct?

21 A It could. If the water table rose, then that
22 drain field is not -- there is no law that says that
23 drain field can't be dug out, fill brought in the proper
24 substrate and be raised up into a mound, and commonly
25 done. And if the people in the county would enforce

1 that, we could fix the problem just like that.

2 Q If they could enforce it, but they are not,
3 right?

4 A No.

5 Q Have you been on the island recently?

6 A Yes, I have.

7 Q When did you go, and which part did you go to?

8 A I was there as recently as Saturday.

9 Q Okay. What part of the island did you go to,
10 the whole island?

11 A I did not go to Little Gasparilla Island or to
12 the State park, but I saw the whole entire rest of the
13 island.

14 Q Okay. So you -- in conclusion, you believe
15 that septic tanks are appropriate in a densely populated
16 area adjacent to water bodies like this island?

17 A If the septic tanks are properly functioning
18 -- and again, there is different types of septic tanks.
19 You have got conventional septic tanks. You have got
20 advanced septic tanks that are aerobic that reduce
21 nitrogen even more. And then you have got even higher
22 functioning septic tanks, like there is a company called
23 Onsite that produces septic systems that produce over 90
24 percent nitrogen reduction.

25 So, yeah, you can have a situation where you

1 can have septic tanks that can perform well and protect the
2 environment, so it can be done.

3 **Q But it can be, but you don't know that most of**
4 **the septic tanks on -- in this area aren't that way, are**
5 **they? They don't remove nutrients, do they?**

6 A I have not done research on the septic tanks
7 in this area, and I don't know who has.

8 **Q Okay. Have you reviewed the Department of**
9 **Health records of their inspections?**

10 A I have seen some Department of Health
11 inspection records. Those are the ones that applied to
12 the sites that the County sampled.

13 **Q Okay. You didn't look at the ones that were**
14 **provided in response to discovery that we sent to the**
15 **Department of Health in this case?**

16 A No, I have not looked at those.

17 **Q Would you be surprised to learn that 30 out of**
18 **97 ATUs failed?**

19 A If there was a hurricane, sure. Those could
20 also be fixed.

21 **Q So if there wasn't a hurricane, you wouldn't**
22 **have that much failure?**

23 A You know, if people maintained them like they
24 are supposed to, and they have them inspected, they are
25 not going to fail.

1 Q Bingo.

2 A And if the County enforced it, we could solve
3 that problem.

4 Q But they don't, do they?

5 A No, they don't.

6 Q Okay. And people don't maintain them, do
7 they?

8 A I don't know what kind of question that is.
9 People -- I would maintain one if I had one.

10 Q All right. But if you have got a rental
11 property, you may not be as concerned about maintaining
12 it as much as if you lived in it, would you?

13 A That depends on the individual landlord.

14 MR. FRIEDMAN: Okay. I don't have any further
15 questions.

16 CHAIRMAN GRAHAM: Any other parties?

17 Staff?

18 MR. THOMPSON: One moment.

19 MS. HELTON: I think there is an open
20 question, Mr. Chairman, and I just want to make
21 sure I understand where we are.

22 Are you still challenging the expertise of
23 this witness, Mr. Friedman?

24 MR. FRIEDMAN: Yeah, I don't think that -- he
25 hasn't done anything. He has not done -- he

1 doesn't teach. He doesn't do anything scientific.
2 Now he has got a job doing something else. He
3 reads stuff. I mean, we all read scientific
4 journals. I don't think he has got any expertise
5 -- he may know great things about sawfish, but he
6 has got no expertise on the environmental impacts
7 of septic tanks.

8 MS. HELTON: Mr. Chairman, the rule that I
9 think at issue here is, rule -- it's from the
10 Florida Statutes, 90.702. And it says that a
11 witness can be qualified as an expert by knowledge,
12 skill, experience, training or education.

13 So I don't think you have to actually go to
14 school to on a particular subject to be deemed an
15 expert, and so I think it would be helpful to the
16 record to have counsel for the witness respond, and
17 let's get his perspective.

18 CHAIRMAN GRAHAM: So the counsel for the
19 witness is responding to the voir dire
20 specifically?

21 MS. HELTON: Yes.

22 MR. KELSKY: Yes, thank you.

23 The gentleman has a Ph.D. He listed a litany
24 of things that he has done in the scientific
25 community, whether it's teaching, whether it's peer

1 reviewing articles, whether it's writing articles,
2 you know, previously. I mean, I think that he
3 qualifies as an expert under the Daubert standard.
4 And the Commission is entitled to give it the
5 weight and credibility it desires at the time of
6 the final analysis.

7 But clearly, under the definition of 90.702,
8 which is the evidentiary threshold, he has
9 established that basis. They may not like his
10 opinion, but that doesn't make him not an expert.

11 CHAIRMAN GRAHAM: Just as you would say, give
12 it the weight it deserves.

13 MR. THOMPSON: Commissioner, if I may.

14 To Mr. Kelsky's point, unfortunately we are no
15 longer under the Daubert standard with the DeLile
16 case 2018, Florida does recognize the Frye
17 standard, which is --

18 MS. HELTON: No, that's not -- they retracted
19 from that.

20 MR. THOMPSON: I retract my retraction. I
21 have not read enough case law recently.

22 Regardless, the statutory requirement is
23 knowledge, skill, training experience or education.
24 I think your Advisor has indicated that those have
25 been met.

1 To the degree that Mr. Friedman does object to
2 it, I think that will go to the weight of the
3 admissibility.

4 CHAIRMAN GRAHAM: Mr. Friedman, he has done
5 his voir dire, and you have heard he cross examined
6 the witness as far as you are concerned, correct?

7 MR. FRIEDMAN: Yes.

8 CHAIRMAN GRAHAM: Yeah. So to staff, do you
9 want to cross-examine this witness?

10 MR. THOMPSON: Staff has no questions.

11 CHAIRMAN GRAHAM: Commissioners?
12 Any redirect?

13 MR. KELSKY: I have no redirect, but I want to
14 make sure that his testimony -- there is a ruling
15 on the admissibility of his testimony. And it's
16 our position that it's clearly admissible, and that
17 the Commission is to give it the weight --

18 CHAIRMAN GRAHAM: His testimony is sufficient.

19 MR. KELSKY: Thank you. I have no further
20 questions.

21 MR. FRIEDMAN: I shouldn't point this out, but
22 that means that you need to admit that one exhibit
23 that I objected to.

24 CHAIRMAN GRAHAM: Hold on a second.

25 MR. KELSKY: I agree that the Daubert standard

1 applies. It's been changed in 2018, I believe.

2 MS. HELTON: Mr. Chairman --

3 CHAIRMAN GRAHAM: Push that button on top
4 until the green light comes on.

5 MS. HELTON: Mr. Chairman, I agree with, I
6 think, what you said earlier. I think that we can
7 admit the testimony and give it the weight that
8 it's due.

9 CHAIRMAN GRAHAM: And Mr. Friedman had a
10 question about the exhibit, which exhibit?

11 MR. FRIEDMAN: I didn't have a question. I
12 just objected to it. And in all honesty, if you
13 are going to admit it, you need to admit the one
14 that I objected to as well.

15 MR. KELSKY: Right. I want to make sure that
16 that's admitted into the record.

17 MR. FRIEDMAN: Yeah, I was just trying to
18 clear that up as well.

19 MS. HELTON: I'm sorry, that was Exhibit --

20 CHAIRMAN GRAHAM: And that was Exhibit 33, or
21 -- I thought it was 17.

22 MR. THOMPSON: 17.

23 CHAIRMAN GRAHAM: That's Exhibit 17.

24 MS. HELTON: Well, I think it's -- let me make
25 sure.

1 MR. FRIEDMAN: No, he is right. It's 17.

2 MS. HELTON: Exhibit 17.

3 MR. FRIEDMAN: That's correct.

4 CHAIRMAN GRAHAM: Okay. So we will also enter
5 that that the record.

6 (Whereupon, Exhibit No. 17 was received into
7 evidence.)

8 MR. KELSKY: Thank you. That's our last
9 witness.

10 CHAIRMAN GRAHAM: And there was no
11 cross-examining for this witness from staff, and
12 there was no redirect?

13 MR. KELSKY: Correct.

14 CHAIRMAN GRAHAM: Okay. Dr. Robbins, you are
15 excused. Thank you very much for your testimony.

16 (Witness excused.)

17 CHAIRMAN GRAHAM: All right. On my end,
18 that's the end of Palm Island's witnesses, correct?

19 MR. KELSKY: Yes.

20 CHAIRMAN GRAHAM: On my watch, my clock, I
21 have 12:55 p.m. We are going to break for lunch at
22 this time. We will reconvene here at 1:20 -- I am
23 sorry, 1:25. That gives everybody 90 minutes,
24 because I know people have to go offsite, right?

25 MR. FRIEDMAN: That's 30 minutes.

1 CHAIRMAN GRAHAM: Two --

2 MR. FRIEDMAN: Just checking the math.

3 CHAIRMAN GRAHAM: 2:25. Again, Georgia State
4 Education, I can't win. 2:25 we will reconvene
5 here.

6 Thank you.

7 (Lunch recess.)

8 (Transcript continues in sequence in Volume

9 2.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

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

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

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

DATED this 10th day of February, 2025.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH575054
EXPIRES AUGUST 13, 2028