

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide  
wastewater service in Charlotte County, by  
Environmental Utilities, LLC /

Docket No. 20240032-SU

**ENVIRONMENTAL UTILITIES, LLC'S  
POST HEARING STATEMENT OF ISSUES AND POSITIONS**

Environmental Utilities, LLC, (“EU”) through its undersigned attorneys and pursuant to Order No. PSC-2025-0027-PHO-SU, and Rule 28-106.215, F.A.C., files this Post Hearing Statement of Issues and Positions.

**Statement of EU’s Basic Position<sup>1</sup>**

The scientific evidence makes it clear that septic tanks on the bridgeless barrier islands in the proposed service area (jointly referred to herein as “Island”) have an adverse impact on the surrounding waters (Ex. 12, 34-38, 63-68). As a result, the removal of septic tanks from the bridgeless barrier islands and diverting the wastewater flows to a central wastewater treatment plant on the mainland is a priority of Charlotte County as articulated by the County in the Bulk Sewer Treatment Agreement entered into with EU (Ex. 15C2-64), the Sewer Master Plan adopted by the County (Ex. 5C2-75), and more recently the County Commission’s adoption of Resolution 2023-155 (Ex. 14). The proposed project is consistent with the Coastal Heartland National Estuary Program’s Comprehensive Conservation and Management Plan (“CCMP”) objective action to “reduce wastewater pollution” (Water Quality Improvement Action 4) specifically including actions to “support conversion of septic systems to centralized sanitary sewer systems”. For those reasons the granting of a wastewater certificate to EU is in the public interest. EU has both the financial and technical ability to construct and operate the wastewater collection system and has otherwise met all Commission requirements for issuance of a wastewater certificate (Ex. 5). The rates and charges proposed by EU are just, reasonable, compensatory and not unfairly discriminatory, and are in accordance with Commission ratemaking principles (Ex. 39).

**Introductory Statement**

As EU’s attorney made clear to the Charlotte County attorney, EU was not going to file this Application unless it had the strong support of the Charlotte County Board of County Commissioners (Ex. 79H34; SH2-143,144). Mr. Boyer was even more direct: “I wasn’t going to proceed forward if I didn’t have 100% of the County Commissioners’ support in this reapplication.” (Tr. 127). This was the purpose behind the County Commission’s adoption of Resolution No. 2023-155. In addition to its previous actions (Ex. 5 & 15), the County Commissioners showed that strong support by adopting Resolution No. 2023-155 (Ex. 14), and instructing its Utility Director, Dave Watson, to present testimony on behalf of the County Commissioners at the final hearing in support of EU’s Application (Tr. 33).

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<sup>1</sup> The references to testimony will be “Tr.” Followed by the page number. References to service hearing testimony will be (“SH”) followed by the service hearing number and page number. Exhibits are indicated with “Ex.” followed by the exhibit number, and page designation when applicable.

An important issue that came to light in the testimony of Mr. Schultz and Ms. Weibley<sup>2</sup> during property owner testimony late in the proceeding is that three of the objecting parties' purported experts testified without compensation (SH1-59; SH2-59). Although it may seem counter-intuitive, in the legal area an expert testifying for free lacks credibility because it raises concerns about potential bias or a motivation to support a specific side in the case which is obvious in this case, as the lack of financial compensation indicates they are not acting independently and may be more inclined to favor the party who called them to testify without the usual financial incentives to provide objective analysis. As an expert's role is to assist the finder of fact, independence is key. A free expert is seen as having a personal stake in the outcome of the case which undermines their credibility.<sup>3</sup> The opinions of Mr. Lapointe are consistent with his decades of research. LGIPA was newly formed in early May 2024, not coincidentally approximately a month after getting notice of EU's application (Ex. 22).

### **ISSUES AND POSITIONS**

**ISSUE 1**      Has Environmental Utilities met the filing and noticing requirements pursuant to Rules 25-30.030 and 25-30.033, Florida Administrative Code?

**Position:**      \*Yes. \*

**Argument:**    Ms. Cotherman titled an Exhibit "Analysis of Application" (Ex. 27) which largely addresses the merits of the application as she sees it and not any purported deficiencies in the actual filing requirements. There was no identification by any other of the protesting parties of any specific elements of the filing requirements that were not met after EU filed deficiency responses (Ex. 48E194-266). The initial notices the Affidavit of Mailing of the hearing notice to property owners, and the Affidavit of Publication of the hearing notice were provided as required and filed in the Docket (Ex. 48E268-278).

**ISSUE 2**      Is there a need for service in EU's proposed service territory?

**Position:**      \*Yes. Central wastewater service is needed at this time as set forth by expert witness Lapointe, the Sewer Master Plan and Resolution 2023-155, and it is a priority of Charlotte County \*

**Argument:**    Filed with the Application were requests from the owners of seventy-nine (79) properties requesting wastewater service and supporting EU's application (Tr. 147). In addition, with the residents who wrote letters in the docket in favor of central wastewater service, there are a total of approximately one hundred (100) properties requesting service (Tr. 147). Also, sixteen of those persons who filed objections in the docket did so because the septic-to-sewer project was being undertaken by a private utility instead of the County.

Environmental Utilities has clearly established, by record evidence, that the central wastewater collection system proposed in the Application, as well as the treatment of that

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<sup>2</sup> Little Gasparilla Island Preservation Alliance's ("LGIPA") president.

<sup>3</sup> More detail as to how this is applicable to witnesses Robbins, Shaw and Hull is discussed below.

wastewater by Charlotte County, is needed. There is a continuing need for service for undeveloped platted lots in the proposed certificated territory, as well as a present need for those properties within the proposed certificated territory which are currently served by septic tanks.

Dr. Lapointe has been studying the impacts of septic tanks since the early 1980s. He is without doubt the foremost authority on the subject, having published 139 papers, and with 12,559 citations to his papers. His research has led to water policy decisions to improve wastewater infrastructure in Florida, including the installation of a central wastewater system in the Keys (Tr. 58). Several fishermen property owners noted the remarkable result experienced in the Keys as a result of that septic to sewer conversion (SH1-21,22, 122). Dr. Lapointe prepared an in-depth and comprehensive Report of the adverse environmental impacts of septic tanks on the Island which do not need to be set forth herein in its entirety (Ex. 12). He provided numerous professional Reports in rebuttal addressing the negative impacts of septic tanks on coastal environments (Ex. 34-38). In summary, conventional septic systems are not designed to remove nutrient pollutants such as nitrogen and phosphorus (or many other contaminants) from their effluent and studies have documented how they contaminate groundwaters and adjacent surface waters. The nutrient pollution, especially nitrogen, results in eutrophication, harmful algal blooms, reduced dissolved oxygen (hypoxia) and seagrass loss. Conventional septic systems also do not provide disinfection of pathogens in the wastewater effluent. The public health and environmental problems posed by the aging high-density septic systems on these islands is exacerbated by the low elevation, sandy soils, high groundwater levels, and proximity to surface waters. The nitrogen loading from these septic systems is estimated to contribute 29,266 lbs of nitrogen per year to groundwaters on the Island that discharges into surrounding coastal waters. Nutrient loadings from septic systems are also known to support proliferation of jellyfish in subtropical coastal waters, as well as red tides, and macroalgae (seaweeds) blooms that over time lead to hypoxia (low dissolved oxygen) and seagrass loss. Based on the scientific evidence in Dr. Lapointe's Report, a sewer upgrade project is justified and will benefit residents on the island and throughout the County who depend on good water quality to support their home values, local economy and quality of life (Tr. 59).

The best PIE could come up with was Dr. Robbins, and although he obtained a PhD in 2005, it was in a discipline completely unrelated to the impacts of septic tanks (Tr. 186-187). His only co-published study was on swordfish over 25 years ago (Tr. 187), and he has no peer-reviewed papers (Tr. 189, 290). He does not work in the scientific profession but is a consultant in the broadcast industry (Tr. 187). He is building a house in Cape Haze, which is the subject of a septic to sewer debate within Charlotte County (Tr. 189). This broadcast consultant witness has no more expertise in evaluating the adverse impacts of septic tanks in a coastal environment than anyone else who can read. His prejudice is readily apparent when one considers that he is fighting a septic to sewer project in Cape Haze where he is building a house. And the fact that he testified for free makes it abundantly clear that his testimony is unreliable. Dr. Lapointe eviscerated Dr. Robbins' analysis (Tr. 290-300, 302-305) which does not need to be reiterated herein in detail.

Although Charlotte County's wastewater treatment plants are not yet operating at advanced wastewater treatment levels, they do remove about 50% of the nitrogen (Tr. 66-67). The Utility Director pointed out that the County has begun conversion to AWT and will continue to do so throughout the County to meet the State 2034 mandate (Tr. 278). As Dr. Lapointe points out, based upon his decades of experience, septic tank testing around the Island is not necessary to

demonstrate what so many studies throughout Florida have shown (Tr. 68). Further, understanding the porous soils on the Island (Ex. 40E39-42, 56) and the narrow shape of the Island with canals throughout (Ex. 69) make it easy for even a novice to deduce that septic tanks have adverse environmental consequences to surrounding waters. Water quality monitoring has been conducted by the CHNEP and its partners in the surrounding “Outstanding Florida Waters (“OFW”),” which are worthy of protection because of their natural attributes. This special designation is applied to certain waters and is intended to protect existing water quality. Currently, the Cape Haze Aquatic Preserve, Gasparilla-Sound Charlotte Harbor Aquatic Preserve, Gasparilla Island State Recreation Area, and Lemon Bay are OFWs that are verified as impaired for nutrients, bacteria, or metals and therefore in need of greater protection. Even one of Ms. Cotherman’s exhibits (Ex. 27C13-846) shows nutrients in Lemon Bay are barely within limits. A proactive approach is needed.

Contamination from septic systems is well-documented and a proactive effort like the septic to sewer project proposed by EU is necessary (SH2-17,18).

Human waste contamination from onsite sewage treatment and disposal systems, commonly called “septic systems,” can be a significant source of nutrient and microbial pollution to groundwater and surface water (Griffin et al., 1999; Lipp et al., 2001; Cahoon et al., 2006; Withers et al., 2011; Withers et al., 2014). As such, surface water contamination from septic system effluent has been observed in the coastal zone of all developed continents (Tuholske et al., 2021). In the United States, the state of Florida has ~2.67 million homes (~33%) serviced by septic systems for domestic waste management (Yang et al., 2016). Florida's coastal regions are particularly vulnerable to pollution from septic systems because of shallow water tables and porous soils that allow for rapid transport of contaminants to groundwater (Meeroff et al., 2008). Despite these poor conditions, Florida's coastal communities often contain high densities of septic systems (Flanagan et al., 2020) that can account for >50% of domestic waste disposal (Herren et al., 2021). As such, evidence of nutrient and bacterial pollution from septic system effluent contamination has been observed throughout the state (Lapointe et al., 1990; Lapointe and Krupa, 1995; Paul et al., 1995; Arnade, 1999; Corbett et al., 2000; Lipp et al., 2001; Bacchus and Barile, 2005; Lapointe and Bedford, 2007; Meeroff et al., 2008; Lapointe et al., 2015; Lapointe et al., 2017; Barile, 2018; Herren et al., 2021). Thus, source identification of nutrient and microbial pollution in Florida's coastal areas is necessary to determine the associated human health and environmental risks, as well as for the development of mitigation strategies.

(Ex. 34D145)

The science clearly concludes that septic tanks on a barrier island, such as the Island cause adverse environmental impacts (Ex. 34-38, 63-65, 67, and 68).

*Charlotte County is unequivocally on the record in support of the Application, and in its position that the proposed utility service is needed.*

In 2004, Charlotte County took the position in a Public Service Commission proceeding that “due to the level of development which the islands have already sustained (46%<sup>4</sup> buildout of existing lots), central sewer service is needed now. Septic tanks are not suitable for use on the barrier islands due to the rapid permeability of the islands’ sandy soils, high water table, proximity to tidal water, and vulnerability to storms.” In 2017, Charlotte County prepared a Master Sewer Plan and identified the Island which comprises the proposed certificated territory as a priority area for conversion from septic to central wastewater treatment within five years.<sup>5</sup>

The County Commission’s Resolution No. 2023-155 is an unequivocal expression of its position in support of this Application, and this Application would not have been filed without that support. But it is by no means the only such expression in the record. The protesting parties seem to think that the Resolution lacks validity since it was on the County Commission consent agenda yet, have provided no legal authority supporting that belief. This Commission (as do other collegial bodies) often handles routine matters through its consent agenda process. To the Charlotte County Commissioners this was a routine matter that merely reaffirms the prior actions it had taken in entering into the Bulk Sewer Service Agreement and adopting the Sewer Master Plan, and thus no Commissioner chose to remove this item from the consent agenda (Tr. 38). PIE admits that residents could have come to the Commission meeting and spoken (Tr. 174). Otherwise, PIE seems to think that since the Resolution contained conclusory statements that it lacks some credibility (Tr. 173). However, even if such detail was required, the Resolution includes reliance upon other documents that contain the type of detail PIE believes is missing, and thus the detail is incorporated by reference.

### *The Bulk Sewer Treatment Agreement*

This project is the perfect representation of a cooperative *de facto* partnership between local government and a potentially PSC certificated utility to introduce improved and centralized wastewater collection and treatment in a fragile coastal environment. In July 2020, the County in support of EU’s anticipated Application, entered into the Bulk Sewer Treatment Agreement with Environmental Utilities (Ex. 15, Tr. 33). The Agreement, approved by the Charlotte County Board of County Commissioners, recognized the need for the central collection and treatment of wastewater in the area proposed to be certificated and sets forth the following:

- based on environmental scoring criteria utilized by the County Sewer Master Plan, based on three fractures: proximity to surface waters, age of septic tanks, and nitrogen loading, the islands proposed certificated territory scored in the highest impact level of 4.0 to 5.0
- under the Sewer Master Plan areas with an average impact score 4.0 to 5.0 are recommended for conversion from septic to sewer

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<sup>4</sup> That amount is now approximately 65% built out (Ex. 42E117).

<sup>5</sup> The Sewer Master Plan is discussed in more detail in Issue 3.

- the Charlotte County wastewater treatment plant that would provide treatment for the wastewater collected in the proposed certificated area has sufficient capacity to do so and in the Agreement the County reserves and commits to provide such service
- the certification of Environmental Utilities is a necessary prerequisite for the accomplishment of the conversion of this area from septic to sewer

*The state and local trend in Florida in favor of central wastewater treatment, and the Charlotte County mandatory connection ordinance*

Charlotte County’s commitment of wastewater treatment capacity as set forth in the Bulk Sewer Treatment Agreement; its direction that its Utility Director file testimony in support of EU’s application (Ex. F3-34); the adoption of Resolution No. 2023-155; its interpretation of its own Comprehensive Plan and its own Sewer Master Plan; and by its implementation of Ordinance 3-8-41 (Ex. 5, the “mandatory connection ordinance”) all demonstrate not only the County’s support for EU’s Application but its tangible commitment to render its support and assistance to meet the need for the availability of central wastewater service on these barrier islands.

The mandatory connection ordinance was put into place by the County to facilitate and encourage the connection to central public or private wastewater systems when they become available (Tr. 279). This is exactly what Environmental Utilities (with the assistance of Charlotte County) proposes to do in this instance: to make such a central system available in the proposed certificated territory to eliminate the adverse impacts of septic tanks.

The mandatory connection ordinance is explicit in its scope and application, and in fact is entitled “Connection to available sewer system required” (Ex. 5). The ordinance provides that properties “must connect to an available public or private sewer system within one year after written notification by the public or private sewer system that the system is available for connection”. The Ordinance is enforced through the County’s Code Enforcement Department (Ex. 40, E20-33; F3-30,31; Tr. 279-280). This is the same process that EU will use, and which a private water utility on the Island has previously used (Ex. 47E185; 73F3-47,48).

Illustratively, Section 381.0065, F. S. provides that it is the intent of the legislature that DEP may permit the construction, installation, or repair of the septic tank “only if a publicly owned or investor-owned sewage system is not available”. The Florida Clean Waterways Act signed by Governor DeSantis in 2020, likewise reflects the legislature’s increasing concerns about on-site septic systems and requires local governments to identify on-site sewage treatment and disposal systems that would be eliminated through connection to existing or future central wastewater treatment. More recently, House Bill 1379 adopted in 2023<sup>6</sup> reinforces the State’s mandate to reduce nutrient loading from septic tanks. Once certificated EU may be eligible for grants or loans pursuant to Section 12. That these enactments represent a state and local policy trend intended to protect Florida’s fragile coastal environment seems incontrovertible. Certainly, the suggestion that any state or local law is supportive of the septic tank status quo in a coastal environment are erroneous. Septic tank permits contain the requirement that when a central wastewater system becomes available the property owner will connect (Ex. 5, Tr. 137). The fact

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<sup>6</sup> Chapter 2023-169, Laws of Florida



that the State of Florida health department, not Charlotte County, must continue to issue septic tank permits does not conflict with the goal of removing septic tanks from the Island, since to do so would subject the County to condemnation action (Tr. 147).

The record is clear that the central collection service proposed by Environmental Utilities, and that wastewater treatment proposed by Charlotte County, is needed now and in the future, and thus is in the public interest.

**ISSUE 3** Is EU's application consistent with Charlotte County's Comprehensive Plan and/or Sewer Master Plan?

**Position:** \*Yes as to both.\*

**Argument:**

*Converting septic tanks to central sewer by EU is consistent with the Charlotte County Comprehensive Plan*

Pursuant to Section 367.045(5)(b), F.S., since some of the protesting parties questioned whether central sewer service on the bridgeless barrier islands was consistent with the Charlotte County Comprehensive Plan, this Commission is required to consider, but is not bound by, the Comprehensive Plan. This Commission has often disregarded the Comprehensive Plan in certificate proceedings. For instance, see, *City of Oviedo v. Clark*, 699 So. 2d 316 (Fla. 1<sup>st</sup> DCA 1997) (Commission decision granting a territorial amendment was upheld in spite of the Commission's conclusion that the proposed amendment would be inconsistent with the City of Oviedo's comprehensive plan; the statute only required that the Commission consider the plan and expressly granted the Commission discretion in deciding whether to defer to the plan), and PSC Order No. 2022-0193-FOF-WS (First Coast Regional Utilities). Amazingly, PIE's witness on the Comprehensive Plan has never visited the Island (Tr. 167). She acknowledged that the purpose of the Comprehensive Plan was to discourage development (Tr. 162) and then admitted that the Island was already developed (Tr. 167). As is obvious from reviewing that platting and development that has already taken place on the Island it is hard-pressed to make the argument that converting septic tanks to central sewer will increase an already densely platted and developed Island (Ex. 69). Central wastewater service will not spur development any more than the availability of electric power (Tr. 168-169). This Commission has previously determined that controlling growth can be accomplished through means other than controlling wastewater service (Order No. PSC-1996-1281-FOF-SU). For instance, there is a building height restriction of 36' on the islands (Sec. 3-9-52, Charlotte County Code). PIE's land planning witness admitted under cross-examination that her reference to the County Commission requesting water quality testing was related to the proposed Cape Haze project and not to the Sewer Master Plan or wastewater service to the Island (Tr. 170-171). Protesting parties did not believe that EU's septic to sewer project addressed "health, safety and welfare" dangers. However, that provision does not apply to

PSC regulated utilities (Ex. 53E740). In the instant case central wastewater service is consistent with the Comprehensive Plan as verified by Charlotte County itself through numerous actions (Ex. 5, 14, 15).

The protesting parties' strained interpretation of the Comprehensive Plan that central water and wastewater service are prohibited on the bridgeless barrier islands, even by a PSC regulated utility, is contrary to precedence. It is also contrary to Charlotte County's interpretation, and one would expect that the entity adopting the plan would know its meaning; however, PIE's witness erroneously thinks she is better able to interpret the Comprehensive Plan than the County Commissioners that adopted it (Tr. 177). This is not the first instance when central water and wastewater service is proposed on the bridgeless barrier islands Ex. 72F3-25, 26). Knight Island Utilities has a central wastewater system serving the development at the north end of the proposed service area, and 102-unit Hideaway Bay Condominiums has a central wastewater system serving itself and the adjacent 30-unit Placida Beach condominium (Tr. 174; SH2-23). Similar to the instant case, Charlotte County is currently providing bulk water to Little Gasparilla Water Utility Company (Order No. PSC-2014-0626-PAA-WU) on the south end of the Island, and Englewood Water District is currently providing bulk water to Bocilla Utilities on the north part of the Island (Order No. PSC-2017-0209-PAA-WU) (Tr. 174-175). If Charlotte County believed that the Comprehensive Plan prohibited central water service on the islands it would not have entered into that bulk water service agreement with Little Gasparilla Water Utility nor allowed Bocilla Utilities to obtain bulk water service from Englewood Water District.

The protesting parties apparently do not understand that while the Comprehensive Plan may prohibit the County from expending public funds to provide central water or wastewater service to the bridgeless barrier islands it does not prohibit such service by private utilities (Tr. 279).

Even if the septic to sewer project was not consistent with the Comprehensive Plan, it would be in the public interest to grant EU a wastewater certificate.

*Converting septic tanks to central sewer by EU is consistent with the Charlotte County Sewer Master Plan*

The goal of the Sewer Master Plan was to provide high density areas with central sewer in order to approve water quality (Tr. 51). Charlotte County commissioned a Sewer Master Plan which identifies the barrier Islands as a critical location from which to remove septic tanks (Tr. 33). That Plan pointed out that all septic system release nutrients and phosphorus from the drain field and rely upon a deep layer of soil to treat the effluent before entering the groundwater (Ex. 5), and concluded:



The soil type and separation depth relative to the groundwater table play significant roles in the septic systems' treatment effectiveness. High-porosity soils found in many coastal regions of Florida are saturated due to seasonal high groundwater and are typically unsuitable for providing the necessary treatment time since the effluent travels too quickly through the soil to neutralize bacteria and pollutants in the sewage.

Protesting parties' arguments, and comments from property owners that septic tank inspections would result in ineffective systems being repaired sounds good but is not happening in practice and the law limits consequences of the inspection (SH1-69). There were numerous failed inspections on septic tanks on the Island (Ex. 31). Even one of the protesting parties' witness acknowledged that septic tank inspection laws are not routinely enforced (Tr. 201). In order for a government to require the repair of a septic system pursuant to Section 381.00651(6)(c), F.S., the evaluation must identify a "system failure". And as incredulous as it sounds, a septic system drain field is not a "system failure" even if it does not have any separation from the water table. So even though a septic system relies upon the effluent percolating through soil to remove nutrients and phosphorus before reaching groundwater, a septic tank inspection cannot require a repair even though there is no separation between the drain field and the water table (Ex. 62; Tr. 271-272).

The Sewer Master Plan established a scoring system from 1 to 5, with 5 being the worst based upon (1) proximity to surface water, which the islands scored a 5 (Ex. 5), (2), average age of septic tanks, which the islands scored a 4 (Ex. 5), and the nitrogen loading, which the islands scored a 4 and 5 (Ex. 5). The resulting average impact score was 4.0 – 5.0 (Ex. 5). The islands are identified as being in the 5-year Improvement Plan, only excluding the State Park (Ex. 5C2-166).

Figure 4-6 Current Priority Map - Average Impact Score

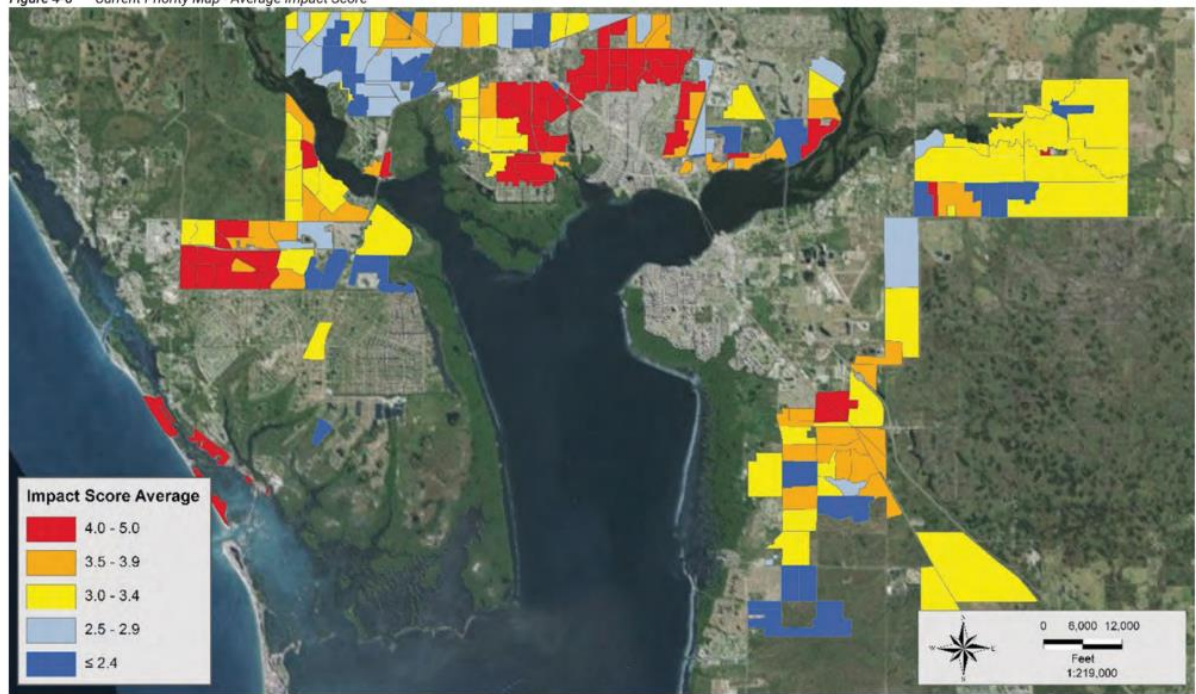


Figure 4-6 displays the average impact score for each project area in Charlotte County. Sixty-one project areas had average impact scores above 4. The majority of the project areas with the worst impact scores were in the middle region of Mid County or in non-sewered coastal areas such as Cape Haze and El Jobean.

Since the Comprehensive Plan does not allow the County to provide central wastewater services to the Island, the Board of County Commissioners approved a Bulk Sewer Treatment Agreement with EU (Ex. 15). That Agreement specifically states that it is based upon, and therefore is consistent with, the Sewer Master Plan. Further, the County's witness could not have been more clear when he testified that that EU's application was consistent with the Sewer Master Plan (Tr. 278).

**ISSUE 4** Will the certification of EU result in the creation of a utility which will be in competition with, or duplication of, any other system?

**Position:** \*No.\*

**Argument:** As evidenced by the fact wastewater in the proposed service area is currently being served by septic tanks it should be without question that EU's wastewater system will not be in competition with, or duplication of another wastewater system. Charlotte County admitted this back in 2004 (Ex. 66) and nothing has changed in that respect. However, Cotherman claimed there was competition with, or duplication of another system based upon the Sewer Master Plan that includes maps that purport to include the Island as being in Charlotte County Utilities' service area (Tr. 48). Even if it was the case, which it is not, merely including an area in the purported service area of another utility does not, as a matter of law, create an "other system." Even if the proposed EU service area was within the Charlotte County Utilities service area, the Charlotte County Utility Director made clear that the Comprehensive Plan does not allow the Island to be served by Charlotte County (Tr. 33), further stating that the Island was outside of the Charlotte County Utility service area (Tr. 45, 48). Further, any purported rights of Charlotte County to provide wastewater service to the islands were transferred by the County to EU by virtue of the Bulk Sewer Treatment Agreement. The Islands being outside of the Charlotte County Service area, and not serviced by another utility makes clear that there is no duplication of service.<sup>7</sup>

**ISSUE 5** Does EU have the financial ability to serve the requested territory?

**Position:** \*Yes.\*

**Argument:** There was no evidence by the protesting parties challenging EU's financial ability to fund this project. Centennial Bank has expressed an interest in funding the project subject to certification and ratemaking (Ex. 5). There also may be low interest loans and grants that will be available once EU obtains a wastewater certificate and Mr. Boyer has met with a local legislator to lay the groundwork for doing so (Tr. 379).

Section 3-8-41 of the Charlotte County Code mandates that property owners connect within 365 days after written notification that a central wastewater system is available (Tr. 279) and mandatory connection is enforced by the County through its Code Enforcement process

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<sup>7</sup> The other two central sewer systems/plants on the Island are not included in EU's proposed service area.

(Tr. 279-280). This is the process that EU will use once it obtains a wastewater certificate (Ex. 40, E4, E6).

**ISSUE 6** Does EU have the technical ability to serve the requested territory?

**Position:** \*Yes.\*

**Argument:** Rule 25-30.033(1)(i), F.A.C., sets forth the documentation that an applicant must provide in order for EU to show its technical ability to provide wastewater service as applied for. The only documentation applicable where the system is not currently in operations is a statement of the applicant's experience in the water or wastewater industry. Obviously, EU is a newly created utility and itself has no experience in the utility business. However, Jack Boyer, one of the principals of EU has operated a PSC and Charlotte County regulated water system on Little Gasparilla Island since 1987, having been certificated by this Commission twice. In addressing that utility's technical ability, this Commission, in Order No. PSC-2001-0992-PAA-WU found that the utility operated by Mr. Boyer "has been operating for 14 years, and there have been no material financial or operational problems." at page 9. To hear the complaint of Cotherman, and echoed by some property owners, one would think that the Commission requires Mr. Boyer to personally have the technical ability to design, permit and construct the wastewater collection system, and to personally handle the financial regulatory and legal matters. Mr Boyer, having operated a PSC regulated utility for over 34 years, has shown to have the ability on behalf of EU to retain the professionals necessary to construct and operate the proposed wastewater system which is what he intends to do (SH1-18). For instance, on behalf of EU, he has retained a professional engineering firm which is experienced in septic to sewer projects and the most PSC experienced financial and legal professionals in the state with regard to wastewater regulation before DEP and this Commission, and will hire such other professions as needed to meet all regulatory requirements (Tr. 146). LGIPA witness Hull even complemented Mr. Boyer's negotiating ability (Tr. 234). The Commission has accepted the testimony that a utility would retain professionals for the construction and operations of the utility system as meeting this requirement. See, for example, Order No. PSC-2022-0193-FOF-WS at p. 16 (First Coast Regional Utilities).

**ISSUE 7** Will EU have sufficient plant capacity to serve the requested territory?

**Position:** \*Yes, by virtue of the Bulk Sewer Treatment Agreement entered into with Charlotte County.\*

**Argument:** In lieu of constructing a wastewater treatment plant on the islands, and the environmental issues with doing so as addressed in the Sewer Master Plan, as well as being subject to hurricanes and rising sea levels, EU entered into a Bulk Sewer Treatment Agreement with Charlotte County to transmit sewage from the islands to the County's WWTP on the mainland (Ex. 15). No pretreatment of the sewage from EU will be required (Ex. 72F3-27,28). That

Agreement provides that the County will accept and treat up to 2200 ERCs at 190 GPD (418,000 GPD). At 100% buildout, EU anticipates it will serve 1,248 ERC's (Ex. 39; Ex. 43E133; Tr. 106). There was no evidence presented at the hearing by Intervenors on this issue. Since EU does not pay the County for capacity until needed, the fact that it has reserved substantially more capacity than needed has no adverse financial impact on customers (Ex. 43E136). Thus, it is without question that EU has sufficient plant capacity to serve the proposed service area.

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

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

**Argument:** Pursuant to Rule 25-30.033(1)(m), F.A.C., a utility must provide documentation of its access and continued use of the land upon which its treatment facilities are located. PIE and Cotherman seem to interpret this requirement to not only apply to the treatment facilities, but also to easements and property where pump stations and other non-treatment facilities are located. Intervenors produced no evidence at the hearing that the Bulk Sewer Treatment Agreement was not a surrogate for this requirement. The individual grinder pumps do not treat sewage, so this requirement does not apply to them (Ex. 43E137). Since the Rule applies only to treatment facilities, and EU will only have a collection system (Ex. 73F43) with treatment by Charlotte County through the Bulk Sewer Treatment Agreement, this requirement is inapplicable or is deemed satisfied.

**ISSUE 9** Is it in the public interest for EU to be granted a wastewater certificate for the territory proposed in its application?

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

**Argument:** PIE has attempted to mislead this Commission into believing that a majority of the property owners do not want central wastewater service. They have done so through a concerted emailing scheme where property owners (husband and wife separately) email objections to each of the five Commissioners and to the Clerk (Tr. 154). Since emails directly to the Commissioners end up in the docket the number of actual property owner objections are greatly exaggerated. For instance, PIE's president admitted that both she and her husband sent objections to the Clerk and each of the five Commissions and that the result is that the docket reflects fourteen objections from one property (Tr. 155-156). Another property owner admitted to emailing numerous objections to each Commissioner and the Clerk (SH1-56). In fact, PIE posted on its website that its opposition is to central sewer being provided by a privately-owned for-profit utility, and that Charlotte County

was abdicating its responsibility to a private utility, to which property owners agreed (Ex. 57F1-5; Tr. 156-157; SH1-62; SH2-94, 95). The former president of PIE admitted that she was the reason that the Commissioners were getting “spammed by our membership emails” (SH2-90,91). The County has made it a priority to convert the septic tanks on the islands to protect and preserve the coastal waters, in furtherance of the County’s strategy to ensure and sustain the quality of natural water resources (Tr. 51-52). The County has established that it is in the public interest to remove septic tanks from the islands and this Commission should defer to local government on this issue. Public interest does not involve a count of how many letters the Commission received for and against EU’s septic to sewer project. It is human nature to comment when someone does not agree with certain action, while people supporting that same action are less likely to comment. However, there are numerous letters to the Commission that support EU’s application.

The public interest standard does not involve a vote of how many property owners are for and how many are against EU’s application. In fact, an analysis of the letters in the Docket disclosed that only 167 properties of the 1,248 total properties affected objected, and 16 were not opposed to a central wastewater system if it was being done by the County, and 86 property owners were in favor – 73 properties having requested service (SH2-147,148). Customer preference (only 13% of emails and 3% of those testifying opposed - not close to a majority of the 1248 properties) may be considered by the Commission, but the Commission is not bound by it. *Storey v. Mayo*, 217 So. 2d 304 (Fla 1968). As was clear from those that opposed the application, they just don’t want to pay for central wastewater service, with one property owner candidly stating “The only thing that’s important to us here in the audience is how much it’s going to come out of my pocket” (SH1-53, 123;SH2-20), especially to a private utility (Ex. 57, 74, 86), some of which only live there six months of the year (2-15). This is a selfish, but easy concept to understand (SH1-33). However, there were some residents who recognized the need for central wastewater service (SH1-19,20), one even going so far as to say it was negligent not to do so (SH2-28, 29, 30). Another property owner who fought connection to the central water system, in retrospect admitted it turned out positive, and he believes central wastewater service will be positive as well (SH1-68). If septic to sewer projects around the state required a majority vote of those persons affected there would be no such projects. The County has considered the broader public interest in protecting the environment and as has articulated its support of EU’s application not only in entering into the Bulk Sewer Treatment Agreement, but in directing the Utility Director to testify on behalf of EU in this Application.

Two environmental organization have expressed support for EU’s septic-to-sewer conversion. The Coastal & Heartland National Estuary Partnership concluded: “we encourage implementation of this important initiative as a vital action necessary for restoring water quality and seagrasses, which are the baser of the aquatic food chain.” Heal Our Harbour sent a letter of support to the Commission.

The hurricanes and tropical storms in recent years should make it abundantly clear that septic tanks need to be eliminated from the Island. The Island was completely covered by water, and septic tanks were destroyed releasing their contents into the surrounding water (Ex. 7, 30, 40E36, 40E38).



(Ex. 7C2-470)

Ms. Cotherman noted several instances where the covers were blown off septic tanks which then filled with sand (Tr. 265). Grinder pumps do not suffer that same fate (Tr. 349). The recent storms decimated the Island and gopher tortoises and rabbits are no-where to be seen (SH2-14). As the Island rebuilds, and as one property owner acknowledged, this is the perfect time to install the wastewater collection system, which is being installed by someone who knows the Island (SH2-133,134). Most roads are sand so the expense of dealing with asphalt roads is eliminated (SH1-53). Customers who testified that their septic tanks worked after the hurricanes, one even admitting that the septic tank was under water and still worked (SH1-94, 102; SH2-40, 72), missed the point that the Island was inundated with water, so although the toilets flushed, the drain field provided no treatment before the sewage entered the water table and surrounding waters (Tr. 198; SH1-20). As one property owner pointed out, it is not unusual for the Island to be under water “often”, not just during hurricanes (SH1-29). As the owner of Martin Septic Service pointed out in supporting EU’s application, aerobic septic systems cost up to \$40,000 and afterwards the owner still has ongoing permitting and maintenance costs (SH1-19; SH2-42, 43, 44).

Some property owners expressed concern about what happens when there is a power outage. Mr. Bell explained that the pump basins are designed to handle 2-3 days of flows during power outages (Tr. 96). He also pointed out that in times of power outages the main sources of water flow such as dishwashers and clothes washers will not work anyway (Tr. 96). The pumps have generator connections and it only takes 5-10 minutes to connect to a generator and for the

grinder pump to empty the contents so a portable generator on a golf cart can easily handle this issue (Tr. 352-353). The same property owners also complained about having to pay the electric cost of the power for the pumps. Mr. Bell pointed out that the average cost was less than \$1.00 per month (Tr.97). If the utility paid this cost it would flow into the revenue requirement so it would be paid by all customers. The pump stations are designed so that they can be covered by water and the check valve would prevent water from entering or leaving the pump (Tr. 98).

Although the State of Florida health department must continue to permit septic tanks on the Island or be subject to condemnation actions, each septic tank permit contains the requirements to connect to a central wastewater system when one becomes available (Ex. 5, Tr. 123).

The protesting parties also questioned the ability of EU to obtain the necessary easements, which fall into two categories. The easements for the collection system lines that are not located in rights of way<sup>8</sup> will be negotiated with the property owner, and as a last resort, once EU has been certificated, it will have the statutory right of condemnation (Tr. 132, 147). To the extent EU does not place the grinder pump in a public right of way, it will be entitled to an easement on the customers' property as is the case with central water service (Ex. 5, 61, 62).

**ISSUE 10** What is the appropriate return on equity for EU?

**Position.** \*8.62%\*

**Argument.** None of the protesting parties offered any evidence at the hearing that addressed the return on equity requested by EU, which was calculated based upon the leverage formula adopted in Order No. PSC-2024-0165-PAA-WS. (Ex. 39, D5-286).

**ISSUE 11** What are the appropriate rates and rate structures for EU?

**Position:** \*Base Facility Charge: 5/8" x 3/4" ..... \$ 109.29  
[all other meter sizes to be increased pursuant to Rule 25-30.055(1)(b), F.A.C.]  
Residential Gallonage Charge (10,000 cap) ..... \$ 18.82  
General Service Gallonage Charge ..... \$ 22.59\*

**Argument:** This is an application for a wastewater certificate for a proposed system and the Commission Rules require that the applicant support its proposed rates and charges with "projected" financial information. Rule 25.30-033(1)(p), F.A.C. It is necessary to utilize projected information since Section 367.031, F.S. requires a utility to obtain a PSC certificate prior to DEP issuing a construction permit.

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<sup>8</sup> There are approximately four miles of County roads on the Island which abut most septic tanks, and installation of lines in these rights of way would not need easements (SH2-100, 101, 103)



EU's financial expert provided the required financial schedules in accordance with Commission requirements sufficient to establish rates and charges which were updated to reflect changes in estimated construction costs which resulted in a slight decrease in the monthly rate (Ex. 39). She reminds us that this is an application process based upon best available estimates (Tr. 357). None of the protesting parties offered any evidence of alternative rates but merely sought to cast doubt on those projected by EU. As is customary, the Staff vetted EU's projected construction costs, and operating and maintenance expenses through discovery. Further, Ms. Swain addressed the changes in operating expenses when the system reaches 80% capacity and the additional inflation (Tr. 361). An average bill would be \$155.65 (Tr. 366).

Ms. Cotherman "can't find fault" with Ms. Swain's calculations (Tr. 256). The LGIPA witness only questioned costs and not how those costs result in rates and charges. The only question related to the rates was that of the staff regarding EU's inclusion of a repression adjustment (Tr. 109). Even though customers receive water service from another utility Ms. Swain opined that water usage would decline when water customers began paying for wastewater service based upon water usage (Ex. 42E123; Tr. 110, 114, 115).

**ISSUE 12** What are the appropriate initial customer deposits for EU?

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

**Argument:** None of the protesting parties presented any evidence on the amount of the customer deposit, which is basically a fall-out issue based upon the final rates. Pursuant to Rule 25-30.311(7), F.A.C, EU proposed a \$320.00 residential customer deposit (Ex. 39, D5-286) which was based upon the average customer bill of \$155.65 (Ex 39, D5-286).

**ISSUE 13** What are the appropriate miscellaneous service charges for Environmental Utilities?

**Position:** \*Premises Visit ..... \$30.00  
 Violation Reconnection Charge ..... Actual Cost  
 Late Payment Fee .....\$ 7.50  
 Bad Check Charge .....Pursuant to §68.065(2), Fla. Statutes\*

**Argument:** None of the protesting parties offered any evidence at the hearing that addressed the specific charges requested by EU, which were supported by the required cost justification (Ex. 39, D5-275). Further, these charges are in line with miscellaneous service charges the Commission has approved for other utilities.<sup>9</sup>

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<sup>9</sup> For instance: PSC Order Nos. 2017-0092-PAA-WS, 2020-0059-PAA-WS and 2020-0267-PAA-WS.

**ISSUE 14** What are the appropriate service availability charges for EU?

**Position:** \*Main Capacity Charge

Residential per ERC .....	\$ 15,587.00
All others per gallon .....	\$ 72.16
<u>Sewer Lateral Installation Fee</u> .....	\$ 1,414.25*

**Argument:** The protesting parties raised questions about the validity of the construction costs upon which the service availability charges are based. As is the case with the expenses upon which the rates are based in Issue 11, EU was compelled to follow the PSC procedure of projecting construction costs (Tr. 311). Those projections were made by a professional engineer with over thirty-five years’ experience in designing large scale septic to sewer projects, having done nine for the Englewood Water District, and projects in Martin, Charlotte, Sarasota and Hillsborough Counties (Tr. 76). After analyzing the options for a central wastewater system on the Island, due to the location and topography the only system that would work economically and effectively was a low pressure system (Tr. 76-78). One of the property owners who happened to be an officer with the Gainesville Regional Utilities had objected to the installation of a STEP system and instead supported a grinder pump system as EU is now proposing (SH1-117, 118). This Commission has certificated a number of wastewater utilities in coastal areas that utilize grinder pumps<sup>10</sup>. Mr. Cole’s cost projections were based on an average of recent unit bid prices for a similar system in similar sands for Charlotte County and included a substantial markup due to the logistics of having to barge materials from the mainland (Tr. 84).

Protesting parties attempted to cast doubt on EU’s projections. Mr. Hull testified on behalf of LGIPA, and while he is a civil engineer he admits that his experience is not related to wastewater collection systems. He handles business development for an engineering firm and does not design or permit wastewater systems (Tr. 225). He has no experience with LPS sewer systems and certainly does not have the qualifications to critique the system proposed by Mr. Cole, who has designed and permitted many such systems. Mr. Hull testified for free, which compels one to be skeptical of his analysis. And to top that, he and his family have owned property on the Island since 2005 (Tr. 236), which totally negates the impartiality one would expect from a purported “expert” witness as he clearly has a vested interest in the outcome. All of the attempts to cast doubt on various costs, were adequately refuted. For instance, he was unaware that EU’s engineers were designing the system for a flat fee instead of a percentage of construction costs, so there is no incentive for Mr. Cole to inflate construction costs (Tr. 233). Mr. Hull apparently believes that the same geotechnical work is necessary for installing a small diameter shallow main LPS system in sands known to have no rock or hardpan at least to a depth 80” based on Soil Conservation Service documents as building a bridge with deep foundations with which he has familiarity (Tr. 234). That witness also included the astronomical cost estimate of \$14 million for the barge and associated mobilization costs just to move materials onto the Island (Tr. 235). LGIPA attempted

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<sup>10</sup> PSC Order Nos. 2002-0983-PAA-SU, 2004-0755-PAA-WS and 2016-0522-PAA-SU.

to overcome Mr. Hull's shortcomings with yet another witness, John Shaw, who questioned Mr. Cole's estimates. First, he erroneously believes that Charlotte County's recent rate study proposes a \$30,579 fee for connection to a septic to sewer project (Tr. 243), whereas, the Charlotte County Utility Director says it would be \$25,000 (Tr. 39). He also relies upon the flawed estimates of Mr. Hull (Tr. 249) including the astronomical \$14 million estimated barging costs (Tr. 250). And until it was pointed out in cross-examination, Mr. Shaw was unaware that Ms. Swain's rate calculations included the cost of purchasing treatment from the County (Tr. 251). Mr. Shaw clearly does not understand this Commission's ratemaking principles (Tr. 358-360).

Ms. Cotherman questioned the use of a low pressure system pointing out from the literature some disadvantages of such a system (Ex. 26, C13-813). Under cross-examination, she admitted that the same literature also pointed out substantial advantages of a low pressure system (Tr. 262-263). Mr. Cole refuted Ms. Cotherman's claims (Ex. 32). The Sewer Master Plan notes that the advantage of grinder pump low pressure systems: "Small-diameter pipe pressure mains can be laid along existing roadways with minimum disruption of streets, sidewalks, lawns, driveways and underground utilities. Surface restoration costs are similarly minimized" (Ex. 5C2-147).

Mr. Cole also addressed the inadequacies of Mr. Hull's cost estimates (Tr. 310-311). Mr. Cole updated his Report which addresses concerns expressed by the protesting parties as well as to update the system and pricing (Ex. 33; Tr. 312-316) which did increase. This updated information was provided to Ms. Swain for her analysis to the impact on rates and charges. The Service Availability Charges increased slightly (Ex. 39; Tr. 361).

Ms. Swain presented an analysis of the Service Availability Charge (Ex. 39D5-273), and of the Sewer Lateral Installation Fee (Ex. 39D5-274). The Service Availability Charge (SAC) was calculated by dividing the total cost of construction of the collection system by the total ERCs with the resulting total CIAC level potentially being higher than the 75% guideline (Ex. 39D5-273; Ex. 42E124). Ms. Swain's recommended SAC and Lateral Installation Fees will result in net CIAC at full capacity of 71.74% of net total plant. (Ex.39D5-273). Rule 25-30.580, F.A.C. sets forth *guidelines* for establishing service availability charges. Those guidelines do not always work. For instance, where the system is made up of entirely a collection system, the guideline that the minimum CIAC should not be less than the cost of the collection system results in a 100% CIAC, which is higher than the maximum guideline. EU's proposed CIAC level is reasonable. See, Order No. PSC-2007-0983-PAA-WS where the Commission approved a wastewater CIAC level of 80.40%.

Charlotte County's current septic-to-sewer project cost was around \$11,200 per connection (Ex. 40E49-50; Tr. 40), and the new amount is about \$25,000 (Tr. 39), so EU's calculated amount including the lateral fee is in the mid-range of those amounts.

Some property owners questioned why they had no pay over-time option. Section 381.00655(1)(a), F. S. provides the “option of prepaying the amortized value of required connection charges in equal monthly installments over a period not to exceed two years from the date of the initial notification of anticipated availability” (Ex. 43E141). Once EU obtains a wastewater certificate property owners can avail themselves of this option.

**ISSUE 15**      Should this docket be closed?

**Position.**      \*Yes\*

**Argument.**      Upon issuance of a Wastewater Certificate to EU there is no further action in this docket, and it should closed.

Respectfully submitted this 28<sup>th</sup> day of February,  
2025, by:

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to the following parties this 28<sup>th</sup> day of February, 2025:

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