

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
ORDER NO. PSC-2025-0159-FOF-SU
ISSUED: May 12, 2025

The following Commissioners participated in the disposition of this matter:

ART GRAHAM
GARY F. CLARK
GABRIELLA PASSIDOMO SMITH

FINAL ORDER DENYING APPLICATION FOR AN ORIGINAL CERTIFICATE
TO PROVIDE WASTEWATER SERVICE IN CHARLOTTE COUNTY
BY ENVIRONMENTAL UTILITIES, LLC

APPEARANCES:

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On behalf of Little Gasparilla Island Preservation Alliance (LGIPA)

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On behalf of Palm Island Estates Association, Inc. (PIE)

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BACKGROUND

Section 367.011(3), Florida Statutes (F.S.), provides that regulation of water and wastewater utilities is in the public interest as an exercise of the police power of the state for the protection of the public health, safety, and welfare. The provisions of Chapter 367, F.S., are to be liberally construed for accomplishment of this purpose. Section 367.031, F.S., gives us the authority to issue a utility a certificate of authorization to serve a specific service area. Section 367.045(1)(b), F.S., authorizes us to require each applicant for an initial certificate to provide all information required by our rules or orders, which includes a detailed inquiry into the ability of the applicant to provide service, the area and facilities involved, the need for service in the area involved, the existence or nonexistence of service from other sources within geographical proximity, and an analysis of the public interest.

On February 12, 2024, Environmental Utilities, LLC (EU or Utility) filed its Application for an Original Certificate to Provide Wastewater Service in Charlotte County pursuant to Section 367.031, F.S., and Rule 25-30.033, Florida Administrative Code (F.A.C.). The Utility seeks to provide central sewer service to certain residents of the barrier islands of Little Gasparilla, Don Pedro, and Knight Islands, which are currently served by septic tanks. The proposed service territory includes an estimated 964 existing equivalent residential connections (ERCs) and 284 potential future ERCs, for a total of 1,248 ERCs at buildout. The Utility seeks to begin serving customers in 2026.

EU previously filed an application to provide central sewer service to the same geographic area in Docket No. 20200226-SU (2020 Docket). We denied the Utility's request because EU did not demonstrate a need for service, and therefore, its request for certification was found not to be in the public interest.¹

Timely objections to EU's application in this docket were filed on behalf of Palm Island Estates Association, Inc. (PIE), Linda Cotheman (LC), and Little Gasparilla Island Preservation Alliance (LGIPA) (collectively, the Intervenors). The Intervenors raised a number of issues in their filings, some of which are relevant and some of which are not relevant to a proceeding for approval of an original certificate and initial rates and charges. The issues which were established in this case are guided by the requirements in Sections 367.031 and 367.045, F.S., and the administrative rules implementing those sections. We will only address the issues for which we have been given jurisdiction. Therefore, we will not address the approval of the system design, environmental concerns, or legal issues concerning easements, as these issues are within the purview of other regulatory bodies.

On January 28, 2025, we held an evidentiary hearing in Englewood, Florida. The technical portion of the hearing was followed by two service hearings: one on January 28, 2025, and one the following morning on January 29, 2025. A total of 104 people spoke at the service hearings and over 440 written comments were received in the docket file during the pendency of the proceedings.

¹ Order No. PSC-2022-0267-FOF-SU, dated July 8, 2022, in Docket No. 20200226-SU, *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.*

EU, PIE, LGIPA and LC filed post-hearing briefs on February 28, 2025. We have jurisdiction pursuant to Sections 367.011, 367.031, 367.045, 367.081, and 367.101, F.S.

DECISION

As discussed in more detail below, we find no need for service exists and that the application is not in the public interest. Consequently, we deny the application.

I. Filing and Noticing Requirements

For original certificates, Rule 25-30.030, F.A.C., requires a utility to notice relevant local government authorities, nearby utility entities, and each owner of property within the proposed service territory. The notice must contain a description of the proposed service area, contact information, and instructions on how potential customers could file objections with us. The Utility provided affidavits of noticing as required by Rule 25-30.030(5), F.A.C. Several potential customers, including PIE, LGIPA, and LC, timely objected to EU's application for an original certificate after receiving this notice. Based on our review of the record, it appears that the Utility has met the noticing requirements of Rule 25-30.030, F.A.C.

Rule 25-30.033(1), F.A.C., requires a utility to file with its application certain information, including a description of the proposed utility, technical and financial information, a description of the proposed service territory, a demonstration of the need for service, and other documentation. On February 27, 2024, EU filed its application pursuant to the rule. On May 13, 2024, the Utility filed a service territory modification deleting Hideaway Bay Beach Club from the proposed service territory. PIE and LC contend in their briefs that deleting the Hideaway Bay Beach Club from the proposed service territory results in a material change to the information required by Rule 25-30.033(1), F.A.C., and even though the changes were provided through discovery and rebuttal testimony, the application required amendment. We disagree. If the requested change had been to add territory, EU would have been required to issue a second round of notices. However, the requested change was a deletion so no additional notices were required.

LGIPA also contends that EU did not satisfy the noticing requirements because EU did not include notice of the grinder sewer system in its original application. As such, the Intervenor argue that the application EU filed does not meet the filing requirements of Rule 25-30.033, F.A.C. However, we do not agree. Our rules do not require an applicant to file an amendment to its application when information is supplemented, updated, or clarified during the certification process. This would not only be inefficient but also could be an additional cost to a utility and potentially its customers. Section 367.031, F.S., clearly contemplates that obtaining a certificate of authorization is only a first step towards the construction and operation of a utility.² Docket

² "...A utility must obtain a certificate of authorization from the commission prior to being issued a permit by the Department of Environmental Protection for the construction of a new water or wastewater facility or prior to being issued a consumptive use or drilling permit by a water management district." Section 367.031, F.S.

No. 160220-WS provides a relevant example.³ In that docket, an applicant for original water and wastewater certificates filed information required to set the rates after its certificates had already been granted, which demonstrated that the method to provide wastewater service had changed from building and operating a treatment plant to purchasing bulk wastewater treatment. We did not require an amendment to the application, but determined the rates based on the information provided.

In this case, the Utility provided the information required by Rules 25-30.030 and 25-30.033, F.A.C., in its written testimony and exhibits, and provided supplemental information needed for its application through discovery. This information not only meets the requirements of the rules, but also allowed the Intervenors the opportunity to review and vet this information during the pendency of the hearing process. Therefore, we find that the Utility properly notified potential customers of its application and met the noticing requirements of Rule 25-30.030, F.A.C.

II. Need for Service

Section 367.045(1)(b), F.S., requires an examination of the need for service in the proposed service territory. Pursuant to Rule 25-30.033(1), F.A.C., an applicant for an original certificate must, among other things, provide certain information to demonstrate a need for service in the proposed territory.

EU argues in its brief that the combination of requests for service and witness Lapointe's report on the adverse environmental impacts of septic tanks demonstrates a need for service. EU additionally cites to the Charlotte County Resolution 2023-155 (Resolution) as an expression of support from the county that there exists a need for service in the proposed territory. The Intervenors, however, argue that there was no water quality testing in the bridgeless barrier islands in the proposed service territory to show that septic systems caused pollution or health and safety problems. LC argues that water quality standards are already met in the waters surrounding the proposed service area. PIE and LGIPA contend that EU only raised hypothetical environmental concerns without demonstrating that any actual environmental damage has occurred. The Intervenors all argue that there was a lack of substantial local support for service from potential customers. LC and LGIPA additionally claim that there was little evidence of County support for EU's application.

In the 2020 Docket, the Utility did not provide any requests for service. In this docket, EU's application included 29 requests for service from current property owners and developers. However, as in the 2020 Docket, there continues to be a high level of opposition to EU's proposal by its prospective customers. PIE witness McCully testified that the overwhelming majority of the members of PIE – a voluntary homeowner's association representing 240 households and over 390 individuals – opposed the notion of septic-to-sewer conversion and preferred to remain on septic systems. Similarly, LGIPA witness Weibley testified that no

³ Order No. PSC-17-0059-PAA-WS, issued February 24, 2017, in Docket No. 160220-WS, *In re: Application for original water and wastewater certificates in Sumter County, by South Sumter Utility Company, LLC.*

member of LGIPA had expressed support for EU's application. Witness Weibley stated that its 241 members were polled on the issue and 229 stated that they were opposed to the application, five were neutral, and seven did not respond. None expressed support. The written comments submitted in the docket were largely in opposition to the Utility's application, with a small minority in support.

Of the 104 people who testified at the service hearings, only 10 indicated support for EU's application, and one speaker was neutral. Ninety-three people testified against the application, and multiple prospective customers testified that they have their septic systems inspected and serviced regularly, that their septic systems are working, and that they do not need or want central wastewater service. Several more prospective customers testified that their septic systems work fine, even after the impacts from storms caused power outages and other damage.

"Need for service" is not specifically defined in either statute or rule and, as such, may be based on environmental or health requirements.⁴ No evidence was presented to demonstrate that any state or local environmental regulator has mandated the installation of central sewer wastewater service in the proposed service territory at this time or identified any immediate health concerns. In contrast to the 2020 Docket, where no requests for service were provided, EU did provide some requests for service in this docket. However, we find the overwhelming opposition to the application to be much more persuasive as to the issue of need for service. Therefore, we find that EU has not demonstrated a need for service in the proposed service territory.

III. Charlotte County Comprehensive Plan and Sewer Master Plan

Under Section 367.045(5)(b), F.S., when granting or amending a certificate of authorization, we shall consider, but are not bound by, the local comprehensive plan of the county if a timely objection is made. At hearing, significant discussion was dedicated to the Charlotte County 2050 Comprehensive Plan (Comp Plan).

EU argues that its application is consistent with the Comp Plan which is demonstrated by Charlotte County's actions and testimony. Specifically, EU notes that the Resolution approved by the Charlotte County Board of County Commissioners (Charlotte County BOCC) explicitly states that the Comp Plan is consistent with central wastewater service and argues that the Bulk Sewer Treatment Agreement demonstrates the county's *de facto* partnership with EU. The Intervenor, however, allege that this application is materially identical to the 2020 Docket wherein we found that the application was inconsistent with the Comp Plan, which has not changed in any way since the prior docket.

One of the components of the Comp Plan relates to Future Land Use (FLU). FLU Policy 3.2.4 provides:

⁴ See Order No. PSC-2022-0267-FOF-SU, issued July 8, 2022, in Docket No. 20200226-SU, *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC*, p. 7.

FLU Policy 3.2.4: Limitation on the Extension of Urban Infrastructure
Infrastructure such as water and sewer utilities and stormwater facilities within the Rural Service Area shall reflect a rural level of service and shall not be modified to the point that it allows for urban development. The County shall prohibit the provision of water and sewer infrastructure within the Rural Service Area....

Per the Comp Plan, the proposed service area is entirely within the “Rural Service Area” as referenced by FLU Policy 3.2.4. In the 2020 Docket, we found that EU’s application appeared to be inconsistent with the Comp Plan, and no change has been made to the relevant portion of the Comp Plan since that time.⁵ However, in its Resolution, the Charlotte County BOCC stated its position that granting the Utility’s application to provide wastewater service in the proposed service territory is consistent with the Comp Plan. Despite the Resolution, the language of the Comp Plan cannot be read in any way to be consistent with the system proposed in this docket because the proposed system directly contradicts FLU Policy 3.2.4.

The Utility stated in its application that, according to the Charlotte County Sewer Master Plan (SMP), all areas within a certain environmental impact score range – which includes the proposed service territory – should be converted from septic to sewer. In response, the Intervenor argued that the SMP only contemplated two projects for connecting existing wastewater utilities to County infrastructure and that the proposed EU project was not included in the 5-Year, 10-Year, or 15-Year Improvement Plans. In the 2020 Docket, we agreed with these arguments and found the application to be inconsistent with the SMP. However, upon further analysis, the two projects included in the SMP are only those that the County intends to use public funds to implement. As this project would not use County funds, it is not included in the SMP but it is not necessarily inconsistent with it. With this in mind, we find that the system is consistent with the SMP as the proposed service territory is identified by the SMP as one with a high priority that would benefit from septic-to-sewer conversion. As with the Comp Plan, however, we are not bound by the SMP.

IV. Public Interest

Section 367.045(5)(a), F.S., provides that we may grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest, or it may deny a certificate of authorization or an amendment to a certificate of authorization, if in the public interest. Here, we find that this application is not in the public interest.

EU argues that the opposition against the application is greatly exaggerated and that the County has established that the conversion from septic-to-sewer is in the public interest to ensure and sustain the quality of natural water resources. LC argued that the proposed system is not in

⁵ Order No. PSC-2022-0267-FOF-SU, issued July 8, 2022, in Docket No. 20200226-SU, *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC*. By Order No. PSC-2022-0033-FOF-SU, issued September 27, 2022, we denied EU’s Motion for Reconsideration, finding that EU failed to demonstrate that we erred in finding EU’s application to be inconsistent with the County Comp Plan and that the Sewer Master Plan was not compelling evidence towards the demonstration of need.

the public interest because of the cost burden it will place on the prospective customers. Additionally, LC argued that the proposed system would have significant environmental impacts. PIE argued that the Utility's application should be denied because it demonstrated a dearth of need, there was no evidence that the water quality in and around the bridgeless barrier islands was degraded, and that it was inconsistent with the Comp Plan. LGIPA argued that the elements that we consider in determining public interest weigh in favor of us denying the application. LGIPA further argues that the cost of the system to the prospective customers, coupled with the financial burdens imposed by damage from hurricanes and with the frequency and duration of power outages supports its position that EU's application is not in the public interest.

The service hearings in this case showcased the overwhelming opposition to this application. EU argues that "[t]he public interest standard does not involve a vote of how many property owners are for and how many are against EU's application." We agree. However, as stated by the Florida Supreme Court:

[W]e have said the public interest determination "is not a pure finding of fact that we are able to review by searching for competent, substantial evidence in the record. Instead, as suggested by the qualitative words with which it is described, the Commission's decision . . . rests on both facts in the record and policy judgments guided by its 'specialized knowledge and expertise in this area.'"

Citizens cf State v. Fay, 396 So. 3d 549, 554-55 (Fla. 2024) (alterations in original) (internal citations omitted). Here, we rely on both the facts in the record (the documented overwhelming opposition) and our policy judgments to determine that this application is not in the public interest.

More specifically, we were not persuaded by the County Resolution or the county witness. His testimony supporting the Resolution was not credible when responding to questions regarding its meaning. Consequently, we find Charlotte County's Resolution supporting the application unpersuasive and that the Comp Plan remains inconsistent with the application. Although the Resolution also alleges that Charlotte County's Sewer Master Plan is consistent with the application, we find that it alone is not enough to override the opposition. Based on the record evidence, together with the discretion afforded to us by Section 367.045(5)(a), F.S., and affirmed by the Florida Supreme Court in *Citizens v. Fay*, we hereby find that this application is not in the public interest.

V. Remaining Issues

Under Section 367.045(1)(b), F.S., when a utility applies for an initial certificate of authorization from this Commission, it shall provide all information required by our rules and orders, including a detailed inquiry into the ability of the applicant to provide service, the area and facilities involved, the need for service in the area involved, and the existence or nonexistence of service from other sources within geographical proximity to the area in which the applicant seeks to provide service. To implement these statutes, Rule 25-30.033(1)(h), (i), and (k), F.A.C., require statements showing the financial and technical ability of the applicant to

provide service, the identity of any other utilities within the proposed service area that could potentially provide service, and the steps the applicant took to ascertain whether such other service is available. Further, commensurate with our approval of a certificate of authorization, we also establish the utility's initial rates and charges.

In light of our findings and decision above, the remaining issues pending in this docket are moot. Consequently, we make no ruling regarding the remainder of the issues in the application, including on issues such as duplication of service, financial and technical ability, or rates.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Environmental Utilities, LLC's application to provide wastewater service in Charlotte County is hereby denied for the reasons set forth in this order. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 12th day of May, 2025.



ADAM J. TEITZMAN
Commission Clerk
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MRT/DJMD

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.