

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** March 9, 2017

**TO:** Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

**FROM:** Jennifer Crawford, Attorney Supervisor, Office of General Counsel *JSC*

**RE:** Docket No. 160065-WU - Application for increase in water rates in Charlotte County by Bocilla Utilities, Inc.

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Please place the attached letter from Wayne Ratajack on behalf of Palm Island Estates Association in the above-referenced docket file.

**PALM ISLAND ESTATES ASSOCIATION, INC.**

**PO Box 3151**

**Placida, FL 33946-3151**

March 1, 2017

Reference: Bocilla Utilities, Inc. Rate Case – Docket # 160065-WU

To: OPC and PSC staff

Additional concerns and response to answers and documents supplied by Bocilla Utilities for PSC Staff's 4<sup>th</sup> data request:

3. A complete copy of the contract was not provided by BUI, only the first 2 pages and the last page of the contract. Contract sections after 4.2 and before 13.10 were excluded. We are not sure if PSC staff was privy to the entire contract and only posted an excerpt of it, but the relevance on the entire contract is vital to this rate case. Without the complete contract we are not sure what other payments, privileges, responsibilities, penalties or ownership are included and should be reviewed for applicability in the rate case. The portion of the contract released only creates these additional questions:

- a. Contract Section 4.1.1 states that "KIU shall pay EWD direct at the current rates charged by EWD pursuant to KIU's agreement with EWD". The second sentence states BUI will read the meter and provide a statement of the number of gallons used and the current EWD rate to KIU. BUI should only be providing a statement of the number of gallons as KIU has their own agreement with EWD. The 3<sup>rd</sup> sentence states "should BUI not receive payment [from KIU] ... and BUI pays such amount to EWD on its behalf ..." does not make sense if KIU is paying for their water directly to EWD. It appears that BUI is billing KIU and KIU is paying BUI who in turn pays EWD. This is so confusing **that a copy of the EWD and KIU agreement should be provided to verify the language in this contract. If KIU is not paying EWD direct, then the water purchased by KIU should be considered purchased as a customer of BUI (based on BUI rate structure) not as a pass through or a "piggyback" situation.**
- b. Contract Section 4.1.2 states that KIU will additionally pay BUI \$2.52 per thousand gallons with a minimum annual payment based on 21 million gallons. This has an escalator clause. **Nowhere in the excerpt of the agreement does it state what this payment is for, or how it was calculated. The entire agreement must be supplied to answer these questions.**

**OUR CONCERN** is that at \$2.52 per thousand gallons, for 21 million minimum gallons per year, BUI receives a minimum annual payment of \$52,920. The initial term of this contract is 30 years and a typical life span for this project would be 40+ years. During the initial 30 year term this extrapolates to \$1,587,600 as a minimum payment under this contract. This represents **150% of the entire cost of Zone 9 including the subaqueous crossings**. If there is no other reason for this payment (again, we need the complete contract), **then the entire cost of the Zone 9 plant addition, pumps, etc. should be removed from the rate case as it is being paid for by KIU**. If BUI refused to release the entire contract, then these additional payments from KIU need to be included in the rate case revenues for BUI, not as a below the line item. Likewise, the use of ERU's for allocation of the Zone 9 plant is inappropriate based on this payment alone. The use of below the line revenue is improper based on the relevance to the BUI normal utility activities. Water is water and plant is plant – so KIU is paying for their supposed usage of the plant to BUI and for the water to EWD. KIU is not paying BUI without a solid reason, purpose, and calculation. The complete agreement is the only approach to get these answers.

- c. Contract Section 2. The subject of ownership of the subaqueous project brings up the question of did KIU pay for their half or did BUI pay for it and if so, why would ownership be such a standalone issue in this contract?
- d. In BUI responses to Item 3, they state that the Zone 9 transmission system [EWD to the Panama Dr. subaqueous crossing] was designed and sized for BUI (715 ERU's) and fire flow. The transmission system was not upsized when KIU and BUI established their agreement. As stated by BUI, the KIU usage is currently a minimum of 22 million gallons compared to BUI's estimated 2015 usage of 26 million gallons. This represents a current usage of almost 100% of the engineered design capacity including fire flow, and leaves no available capacity for BUI growth beyond their current 400 ERU's. Based on this and the unknown from Item b. above, the use of the combined total ERU's (BUI 715 + KIU 400) for allocation of Zone 9 is NOT appropriate and needs to be reexamined and recalculated.
- e. The question of adequate pressure at homes on the island remains a concern. With the Zone 9 transmission system at full capacity, the loss of pressure when the hydrants are flushed, etc. becomes an even bigger problem and is further exacerbated as new homes are built.
- f. Fire flow continues to be a concern of the Island residents. If the system is reasonably assumed to be at capacity, then fire flow is an item that will become more critical as more homes are built. How many deaths do we need before something is done on routine fire flow pressure testing by Charlotte County Fire District at the multiple end-of-distribution line hydrants?

- g. BUI states that the \$1,000 per month payment for operator time is a verbal agreement and can be cancelled at any time. As is true of many statements made by BUI for this rate case, we cannot believe them or take their statement at face value. Without the complete contract we do not know if this is included in the contract or not.

4. The commercial agreement with Palm Island Transit is also called a contractors agreement. Per Palm Island Transit, this is a standard annual agreement available to any business or contractor offering reduced commercial rates instead of having to pay full retail to work on the Island. If the BUI agreement is something special, or not available to the average commercial business, please explain the difference, including rate structure, compared to the Contractors standard agreement. If BUI has the standard contractor's agreement, this ferry pass is and has been available on an annual basis, for years, to any contractor and is not special to BUI, nor does it need memorializing. Support for this type of contractors pass requires each trip to be documented with a ferry transit trip record showing date, time, vehicle, company if different, etc.

5. Staff is adequately requesting the proper documentation.

6. All references to Zone 9 costs supplied as public record have been per unit estimates and not the actual paid invoices. Final paid invoices will have the exact units installed, etc.

6, 7 & 19. The excessive billing of Englewood Management, LLC (Mr. Flischel) is inappropriate. BUI has purposefully not furnished the proper documentation, made misleading or inaccurate statements, failed to promptly furnish adequate 3<sup>rd</sup> party support, failed to disclose related parties and transactions, and not fully answered questions for PSC staff. BUI is padding the billing of Mr. Fleischel and also Mr. Freidman. **BUI's approach is to make the customer pay – one way or another – either in water rates or rate case expenses.**

- Mr. Flischel current billing is in excess of \$50,000, when he originally estimated \$22,500 to prepare the MFR's, data requests, recommendations review and audit facilitation – even \$22,500 seems excessive for such a small utility. **Remember, he has been a director and also a 'volunteer' accountant** (see staff's recommendation on additional contract accounting expense and directors fees) **in charge of the company's books since inception** (answered in response to 19g by BUI).
- As a former CPA (retired professional license in 2014), Mr. Flischel is professionally knowledgeable of accounting, IRS rules on expense reimbursements, record keeping, time management, and record retention – all the things that BUI has failed to properly do for years and now has become apparent in BUI's first rate case (that he prepared) before the PSC.
- Next, he wants to be termed a rate consultant. He even wants to bill his Tallahassee trip to the Commissioners meeting (at \$150 per hour consultant rate) as a learning

experience. Mr. Flischel needs to pay for his own training or schooling and not charge the customers of BUI.

- We feel Mr. Flischel's fees are excessive, and were created by his poor management of the company's records (since inception). His fees should be limited to no more than his initial informed estimate, or should be limited even further to a reasonable amount as compared to other small utility rate cases. Remember, Englewood Management, LLC is not registered with the Florida Dept of Corporations, but is operating in Florida.  
**If Mr. Flischel, Mr. Friedman, and BUI would have properly prepared this rate case with adequate documentation, disclosure, proper support, and answered staff and customer's questions straight forward with transparency, we would not be looking at excessive rate case expenses.**
- This Rate Case brings into question honesty, prudent business practice, and poor decision making. Too much time and money has been wasted and could have been avoided if the case was prepared and presented by an independent professional entity. Englewood Management, LLC and Ray Flischel are considered related parties. **It is within the staff's and Commissioner's authority to limit the individuals as well as total rate case expenses to a reasonable and comparable level for purposes of recovery from customers.**

8. As has been the case from the beginning, the number of meters, the capitalized labor, hours worked, etc. for test year 2015 do not reconcile with the accounting records and the BUI answers. Staff is adequately investigating these issues.

10. Again we question the employee time available. The pumps operation should be automatic. The current manual startup by the on-call person is time consuming and if there is a fire a loss of valuable time before adequate pressure is available to fight it. The Zone 9 pump station is new, should be automatically configured and should need minimal employee attention. This leaves the on island distribution system and we cannot imagine it would require a full time, part time and a contract person to maintain the system along with Mr. Noden, the full time officer. We feel there is excessive or un-capitalized labor cost in the 2015 test year. There is adequate employee time available from the full time employee to remove/replace meters, maintain hydrants, repair line breaks, flush the system and provide normal scheduled maintenance. The only need may be for the part time employee to read meters. **We continue to request that the Staff and Commissioners require BUI to maintain accurate daily time records for all employees, whether salaried or hourly.**

11. Many residents have complained but have not received a return call, or a response of any type, and generally have been told - it is what it is, get an in-house water filter system. A few customers have forced issues over the years (letters furnished with prior documentation), but without getting answers, results, or solutions, most customers just quit complaining and buy an in house water filter system.

12-13. Flushing – again we question the reasonableness of the numbers. BUI claims they flush 700,000 gallons per month or 9 million gallons per year. Their total usage in 2015 was approximately 26 million gallons purchased, so they are flushing 25% of the water they purchase? Does EWD or any other water utility flush that much water? Is there a problem with the on island system design or as installed by BUI? Remember this was a developer utility in the beginning only servicing Mr. Noden’s developments. BUI later started installing additional lines and through Charlotte County was able to force all residents to hook up to it.

14-15. Staff is adequately questioning the need for a new or used truck, costs, etc.

17. We continue to feel the officer’s salary is excessive, especially when he states he works clerical or administrative 70% of time. Staff was reasonable to reduce/offset his pay as they approved additional administrative hours. Comparing BUI to EWD for salary levels is inappropriate for other than clerical or laborer. The President or top manager of EWD has a much greater responsibility than the officer of a small utility with only one full time employee. The staff’s recommendations reduced officer to a more reasonable level, even though we feel they are still overstated.

18. The lack of workers comp for the officer amounts to a minimal annual savings, probably less than \$200.

19. Staff is adequately investigating the related party issues.

#### Officer and Operator Salaries:

- We feel the final recommendations of Staff reducing the salaries is appropriate, but still feel they are excessive. When doing comparisons, BUI needs to take into consideration the total compensation package and not just the salary portion charged to BUI for the rate case.
- The harsh environment on the Bocilla islands, that Mr. Noden has chosen, and must live in, **is not unique**. This same environment exists for persons and utilities on Little Gasparilla Island, Manasota Key, Boca Grande, and all the other west coast barrier islands from north of Tampa to Marco Island, south of Naples. The east coast of Florida as well as the Keys likewise have a similar environment.
- A value for on call pay is as comparable as a wage study. On call pay is usually a small fixed amount with regular pay for call out on a problem. It is a similar pay structure used by many other industries. Comparing Mr. Noden or his full time employee to a fireman is absurd. The fireman on island are first responders and must be available in minutes for life or death situations. The on call person gets a phone call from the pumps and then he decides if he manually wants to turn them on or leave them off – not much more.

Additional item:

Another matter that should be discussed is that the DEP currently shows BUI as a “non-classed” utility (not a Class 4 utility) because of their change from processing water operating a water plant, to only being a distributor of processed water. As such it is our understanding that BUI is not required to have a certified operator and cannot add chemicals to the processed water without permission from DEP. **We request clarification of this and if true, an additional reduction to rate case salary cost based on the fact that BUI has ‘chosen’ to use a certified operator, but is not required to. A certified operator carries a higher salary requirement. We also request a copy of the written permission from DEP to start adding chemicals, which is supposed to start in early March, per BUI.**

**IN SUMMARY**, there are still many unanswered questions created by BUI and without a complete copy of the BUI and KIU contract, it is impossible to evaluate the proper plant, revenues, or expenses to be used for rate making purposes.

Respectfully submitted on behalf of the members of the Palm Island Estates Association, Inc.

A handwritten signature in blue ink, appearing to read "WR", with a stylized flourish extending from the end.

Wayne Ratajack

President

Palm Island Estates Association, Inc.