BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of
SUN RIVER UTILITIES, INC.
formerly known as MSM UTILITIES, LLC,
for Amendment of Certificates 611-W and
527-S to Extend Water and Wastewater
Service Areas to Include Certain Land
in Charlotte County, Florida.
_____/

Docket No. 070109-WS

POST HEARING STATEMENT OF ISSUES AND POSITIONS OF SUN RIVER UTILITIES, INC.

SUN RIVER UTILITIES, INC., by and through its undersigned attorneys and pursuant to Commission Order No. PSC-08-0029-PHO-WS, files this Post-Hearing Statement of Issues and Positions:

CASE BACKGROUND

SUN RIVER UTILTIES, INC. is a private provider of water and wastewater service in Charlotte County. It is presently operating within a specified service area according to certificates issued by the Public Service Commission. On February 28, 2007, MSM Utilities, LLC, n/k/a Sun River Utilities, Inc. ("Sun River" or the "Utility"), filed its Application for Amendment of Certificates 611-W and 527-S to extend its water and wastewater service areas to include certain additional land in Charlotte County ("Application"). On March 16, 2007, the Board of County Commissioners of Charlotte County (the "County") filed an objection to the Application. The matter proceeded to hearing before Commissioners Katrina J. McMurrian, Nancy Argenziano and Nathan A.

Skop in Charlotte County, Florida on January 16, 2008, with the active participation of Sun River, the Commission Staff, and Charlotte County.

ISSUES AND POSITIONS

ISSUE 1: Is there a need for service in the proposed territory, and, if so, when will service be required?

Yes. The need for service in the area is established by the record evidence.

A. The need for service has been established by local property owners that have requested service from Sun River.

The evidence fully supports the conclusion that there is a need for service in the proposed territory and an immediate need for the Utility's Certificates to be amended so that property owners may move forward with development plans. The Utility submitted several letters from property owners requesting service and to be included in the Utility's proposed service territory (Exhibits 4 and 7). The requests for service come from the owners of the land included in the requested territory. The Vice-President and Utility Director of the Utility, Mr. A. A. Reeves, testified that the need is immediate even though much of the proposed service territory has yet to be developed. That need is expected within the next five (5) years (Ex. 20).

The evidence also indicates that significant growth is anticipated in the proposed territory. The planning expert from the Department of Community Affairs ("DCA"), in the May 1, 2007, Memorandum, stated that, "it is anticipated that the need for the utilities will be generated from the increased commercial, residential and industrial

development that will accompany the roadway [US Hwy 17] improvements generating infill to this area" (DCA May 1, 2007 Memorandum).

The need for service expressed by these landowners is immediate because the property in the proposed service territory west of Highway 17 is already zoned for residential development. Additionally, the property owners need enforceable agreements for service as a prerequisite to amending the Charlotte County Comprehensive Plan (the "Comp Plan") according to the procedures set forth in the Comp Plan (Tr. 33). Though the issue of amending the Comp Plan will be discussed more fully below, at Issue 5, it should be noted that a comprehensive plan can be amended up to thirty five (35) times in two years, and this particular Comp Plan has been amended numerous times and under similar conditions (Tr. 174, 175).

B. The County has implied that there is no need for service in the proposed service territory by distorting facts and ignoring the realities of development.

The County, in its cross-examination of Mr. Reeves, implies that the letters requesting service do not establish a need for service because they do not demand a specific number of ERCs, or provide detailed development plans. Florida law does not require such specificity (see, Section 367.045 (2)(b), Florida Statutes, and Rule 25-30.036 (3)(m), F.A.C.) and suggesting that need be established down to the exact gallonage required is an attempt to distract the Commission from the fundamental fact that the owners of the land in the proposed service territory and owners of adjacent land have expressed a desire for service. Sun River is seeking the certificate extension in part for long-range planning purposes to allow it to be prepared to provide service as and when needed to any residential, commercial or industrial demand that the requesting

landowners may develop subsequent to their successful completion of the entitlement process. In addition, the Utility's wastewater treatment plant will need to be moved from its current location adjacent to the Peace River to a location east of Highway 17, so it is logical to provide wastewater service to the property in proximity to the plant and lines (Tr. 33).

Stephen J. Feldman, co-managing member of Hudson Sun River, LLC, one of the entities that requested to have property added to Sun River's service territory, testified as to the need in the proposed service territory. Mr. Feldman testified that his group had done significant due diligence and research into the actual and potential growth in the Highway 17 corridor near the border of Charlotte and DeSoto Counties (Tr. 204, ln. 7-12). Mr. Feldman described the area surrounding much of the proposed territory as containing: a Wal-Mart distribution center, Enterprise Zone, and heavy industrial zoning to the North (Tr. 204, ln. 13-20; Tr. 214, ln. 11-15); urban services area abutting the western boundary (Tr. 204; ln. 21-22); and urban services area just south of a portion of the proposed territory (Tr. 204, ln. 22-23). There are platted lots south of the proposed service area, which are evident from Exhibit 19. In other words, three sides of the proposed service area contain substantial development. Mr. Feldman testified that his group intends to create a master planned development on the Hudson Ranch property "either through the extension of the urban services area, a DRI, or a rural community" (Tr. 205, ln. 1-3). Mr. Feldman characterized his group's proposed sustainable community as a "mixed use, job producing, complete village community utilizing contemporary, cutting-edge, ecologically sound planning and development techniques." (Tr. 197, ln. 7-10) In order to accomplish this goal, Mr. Feldman testified that his group

intends to file for a Comp Plan Amendment (Tr. 205, ln. 3-5; Tr. 197, ln. 14-16), and that a binding commitment for water and wastewater services from Sun River is necessary for the amendment to be approved by the County and the DCA (Tr. 205, ln. 16- 22).

As further evidence of need in the area, Mr. Feldman testified that in the course of his duties he has had extensive discussions with neighboring landowners (Tr. 216, ln. 13-15). Mr. Feldman testified that he had been informed that Mr. Schwartz, owner of approximately 1,800 acres of the proposed territory east of Highway 17, had directed his attorney "to hire the appropriate consultants and make application for a comprehensive plan amendment . . . ." (Tr. 216, ln. 19-24). According to Mr. Feldman, he has had similar discussions with Dr. Zachariah, another neighboring landowner who desires his property to be included in the Utility's service area (Tr. 217, ln. 22-25 through Tr. 218, ln. 1-3). In each case, these landowners have asked to be added to Sun River's service territory to secure a commitment for water and wastewater services as part of their development planning prior to investing the time and money necessary to produce viable Comprehensive Plan amendments (Tr. 195, ln. 1-12). Mr. Hartman, the consultant to the previous owner of the Utility, testified that when the worked for the Utility he was aware of several requests for service along Highway 17, both north and south of the existing service area (Tr. 66, ln. 20-24).

The County also claims that there is no need in the area because no property owners have contacted Charlotte County Utilities ("CCU") for a non-binding Letter of Availability (See Tr. 143, 146). It should be noted that the DCA requires an enforceable agreement for water and wastewater service, prior to approving a Comp Plan

amendment that results in increased density, not a non-binding availability letter. (Tr. 179, ln. 8-22) As such, a property owner who desires to change the entitlement of his or her property is forced to seek a utility provider other than CCU, since CCU can only offer "a nonbinding statement as to whether or not [the County] can serve the utility or the area sought to be developed" (Tr. 146, ln. 23-25). Indeed, Mr. Feldman and the other landowner did not approach the County for water and wastewater service precisely because the County could not issue a binding commitment for such services (Tr. 200, ln. 5-24). It is no surprise that landowners would avoid dealings with the County. For example, Mr. Craig Dearden testified that his company, Realmark Development LLC, has "received very little cooperation from CCU" and that relying upon CCU's non-binding Letter of Availability cost Realmark an estimated $48 million since CCU has not provided water and wastewater service in accordance with the Letter of Availability. In light of this reality, it would be imprudent for any developer to rely on a Letter of Availability from CCU (Tr. 221-223).

Finally, the County claims that there is no need in the area, yet its own actions belie its statements on this issue. Despite its claims that there is no need in the area, the County has attempted to reserve the territory for CCU by placing it in its own service territory, District Number Two (Tr. 147). It is unclear why the County claims there is no need while claiming the area as its own. Moreover, the County's claims that there is no anticipated need are negated by CCU's admission that it has had discussions with the Peace River Authority regarding providing service to the area (Tr. 150, ln. 6-9).

ISSUE 2: Does the applicant have the financial ability to serve the proposed territory?

Yes. The parties have stipulated that Sun River has the financial ability to serve the proposed territory. Staff recommended approval of the stipulation and the Commission has approved this stipulation. (Tr. 7, ln. 15-20).

ISSUE 3: Does the applicant have the technical ability to serve the proposed territory?

Yes. The parties have stipulated that Sun River has the technical ability to serve the proposed territory. The Staff agreed with the stipulation and the Commission approved this stipulation. (Tr. 7, ln. 22-25, through Tr. 8, ln 1-3).

ISSUE 4: Does the applicant have sufficient plant capacity to serve the requested territory?

Yes. The parties have stipulated the Sun River has sufficient plant capacity to serve the area currently and with plant additions as the number of connections grows. The Staff agreed with the stipulation and recommended its approval. The Commission approved this stipulation. (Tr. 8, ln. 5-12).

ISSUE 5: Is the proposed amendment inconsistent with the Charlotte County Comprehensive Plan?

No. The DCA and County witnesses admitted that amending Sun River's Certificates to include the proposed area would not violate the Comp Plan. The Comp Plan constantly changes, and it envisions developers obtaining a binding commitment for water and wastewater service prior to seeking an amendment. Granting the amendment is consistent with the Comp Plan's procedure for such an amendment.

A. The Amendment of Sun River's Certificate does not violate Charlotte County's Comprehensive Plan.

This issue was laid to rest by the testimony of Suzanne Lex of the Florida Department of Community Affairs in the following colloquy:

Q. [By Mr. Friedman]: Now, having the property within the service area of Sun River Utilities in and of itself doesn't violate the Comprehensive Plan, does it?
A. [By Ms. Lex]: No, I would not say it violates it.

(Tr. 183, ln. 20-23)

Although that testimony is compelling and conclusive on the issue, there was additional evidence to support the Utility's position.

The County's Comprehensive Plan is a tool to manage, not prohibit, growth and development. The County's Comprehensive Plan sets forth rules on how a landowner or developer can develop land and even amend the Comprehensive Plan itself. This development process includes a number of approvals that are necessary to meet the requirements of a particular development and, in many cases, having a central water and sewer system is a prerequisite to meeting those requirements. The filing of the Application by Sun River at the request of the landowners is the correct first step in the process.

The inclusion of the proposed property into Sun River's service territory does not constitute development. The definition of development pursuant to Section 380.04, Florida Statutes, does not define a PSC service territory as development. On the contrary, Section 380.04(3), Florida Statutes, specifically exempts the activities of a utility from said definition. Chapter 163, Florida Statutes, incorporates the definition of development set forth in Section 380.04. Accordingly, the amendment of the Utility's

Certificates does not itself constitute development, change zoning, or change land use in any way. Consequently, the amendment of Sun River's Certificates to add the proposed territory east of Highway 17 does not, in and of itself, constitute a violation of Charlotte County's Comprehensive Plan. This is further supported by the fact that the property in question is within the County's Water and Wastewater District No. 2 (Tr. 147). If having the property in question within the County's Water and Wastewater District does not violate the Comp Plan, then having it within Sun River's service area does not violate the Comp Plan.

The County claims that extension of the Utility's service territory into the proposed properties would allow for a level of development which is not in harmony with the land use element of the Comprehensive Plan. The evidence does not support this claim. In spite of their assertions, the County failed to present specific evidence as to development densities proposed by developers, and it is uncontested that, as a factual or legal matter, allowing Sun River to expand its service area in and of itself would not permit development of any kind, even though a residential development appears compatible with the surrounding property (Tr. 111, ln. 14-17, Ex. 9). The evidence clearly shows that the County's control over development is not reduced with the approval of the Application. The County's witness repeatedly testified that the County would retain its ability to regulate growth in the area even if the Commission were to grant this Application (Tr. 117, ln. 10-17; Tr. 128, ln. 5-9; Tr. 129, ln. 4-10; Tr. 130; ln. 17-21). Moreover, Policy 9.2.3 of the Charlotte County Comprehensive Plan states that "water and sewer availability will not necessarily provide justification for development approval." (Tr. 132, ln. 15-16). Thus, the County's hands are not tied when it comes to

enforcement of its own Comprehensive Plan when the landowners apply for amendments and/or rezoning. The Commission's approval of the Application does not deprive Charlotte County of any authority it has to control urban sprawl in the proposed service territory. To the extent that the development plans of the owners of the subject property conflict with provisions of the County's Comprehensive Plan, or the County's zoning ordinances, the County maintains its authority to control development through its zoning powers. Nothing in Chapter 367, Florida Statutes, takes that authority away from the County. Consequently, and contrary to the assertions of the County, the approval of the Application by the Commission neither violates the Comprehensive Plan nor results in urban sprawl.

B. The Comp Plan does not prohibit providing service to the service territory.

Based on the current Comp Plan, the portion of the requested service territory east of Highway 17 is entitled to develop at a density of one residence per 10 acres. The County's own Planning Services Manager, Jeff Ruggieri, the Charlotte County Utilities Director, Jeff Pearson, and the DCA's planning expert all testified that providing water and wastewater service to the area at its current density would comport with the Comp Plan (Tr. 127, ln. 7-14; Tr. 127, ln. 20-23; Tr. 159, ln. 20-25; Tr. 174, ln. 12-16).

The Future Land Use Element of the Comp Plan addresses the provision of infrastructure to land outside of the urban service area. It does not prohibit the extension of Sun River's service territory. Policy 1.1.1 states that provision of infrastructure and services to the rural service area will be a low priority *for the County*. It does not prohibit service to the area and says nothing about the priorities of privately funded utilities. Nothing in Objective 1.1 or in attendant Policies prohibits a private

company from providing water and/or wastewater service in the rural service areas. Policy 1.3.1 further states that provision of infrastructure and services will be a low priority, but not prohibited, outside the urban service areas. Policy 1.3.2 states that the County may provide higher levels of infrastructure and services notwithstanding its priorities "at the request and capital outlay of citizens within the area." As the record reflects, several citizens of the area have requested such service and intend to invest in the properties within the proposed territory. (See response to Issue 1 B. above). According to the Charlotte County Utilities Director, these property owners "certainly have the right to a centralized water and sewer facility." (Tr. 159, ln. 25 through Tr. 160, ln. 2.)

C. The Comp Plan is a dynamic, constantly changing document

The Charlotte County Comp Plan, as with any Comprehensive Plan, is a constantly evolving document (Tr. 112, Ln. 8-10). The Comp Plan is scheduled to be overhauled in 2010, and is able to be amended up to 35 times in two years (Tr. 174-175). The County has amended its Comp Plan numerous times with respect to large tracts of land similar to those located within the requested service territory. The County has even amended the Comp Plan to change the allowed density of lands *within* Sun River's existing service territory (Tr. 113, ln. 20-23). According to Jeff Ruggieri, the County has initiated plans to study the Highway 17 corridor as part of its rewriting of its Comprehensive Plan. (Tr. 112, ln. 11-19).

A developer who seeks a revision or amendment to the Comp Plan would be required to prove that there is an enforceable agreement to obtain water and wastewater service (Tr. 177-179). For example, in order to obtain an amendment to the Urban

Service Area Territory boundary, a property owner would have to show, among other criteria, that "an enforceable agreement exists for the extension of central potable water and sanitary sewer service into the proposed expansion area" (Comp Plan Policy 1.1.10(c); Tr. 124, ln. 1-5). A nonbinding Letter of Availability from the County would not be enforceable (nor sufficiently reliable for business purposes, as discussed in Issue 1). Moreover, the land in the proposed service territory, on its face, appears to meet the criteria listed in Policy 1.1.10.

The Comp Plan envisions constant updating and revision, and the provision of water and wastewater services is a requirement for any proposed revision or large-scale amendment to the Comp Plan. Claiming that this certificate amendment must be denied because it is against the Comp Plan renders the portions of the Comp Plan that require central water and wastewater service as a condition to obtaining an amendment of the Comp Plan meaningless. Moreover, the County actions, in establishing the requirements for amendment on the one hand, and then thwarting the landowner's ability to comply with those very requirements on the other hand, present serious, and potentially compensable, property rights issues.

D. The PSC is not bound by the Comp Plan.

Florida Statutes dictate that the Public Service Commission need only consider whether the issuance or amendment of a certificate of authorization is inconsistent with the Comprehensive Plan when a timely objection to the application has been made. Section 367.045 (5) (b), Florida Statutes. In such cases, the Commission shall consider, but is not bound by the Comp Plan. *Id.* It need only consider the Comp Plan in its determination of the issues including whether the amendment is within the public

interest. The "public interest" includes the potential customers in the proposed territory, property owners, the citizens of neighboring DeSoto County, and the citizens of State of Florida. Charlotte County relies too heavily on a document that changes constantly, both as a matter of course every 10 years and up to 35 times every two years in the amendment process. The Commission has, on numerous occasions, determined that it was in the public interest to grant a service area amendment or new certificates notwithstanding non-compliance with the local Comprehensive Plan. Order Nos. PSC-92-0104-FOF-WU (March 27, 1992), PSC-96-1281-FOF-SU (October 15, 1996), PSC-04-0980-FOF-WU (October 8, 2004) and PSC-07-0717-FOF-WS (September 4, 2007). The Commission's right to do so has been upheld on appeal. City of Oviedo v. Clark, 699 So. 2d 316 (Fla. 1st DCA 1997).

ISSUE 6: **Will the proposed amendment to the applicant's territory duplicate or compete with any other system?**

No. It is uncontested that there is currently no existing water or wastewater infrastructure in the proposed service territory.

Counsel for the County concedes that the County has no facilities in the proposed territory (Tr. 80, ln. 15-18). In this part of Charlotte County, it is uncontested that Sun River is the only water and/or wastewater utilities provider in the area (Tr. 74, ln. 15-17). It is well settled that while the County's witnesses speculated that they could serve the area (Tr. 147, ln. 18), or that it has a right to provide service due to the property being within its own service territory, its speculative statements of intent are not sufficient to demonstrate that Sun River's Application would be in competition with, or duplication of the County's system. (In Re: Application of East Central Florida Services,

Inc., for an original certificate in Brevard, Orange, and Osceola Counties, Order No. PSC-92-0104-FOF-WU, March 27, 1992). Further, whether or not the County had the ability to serve the area was not identified as an issue by the County, nor included as an issue in the Prehearing Order, Order No. PSC-08-0029-PHO-WS (January 7, 2008)[1]. Sun River raised a timely objection (Tr. 83). Because the County has not demonstrated that it has existing facilities in place to serve the proposed territory, and has no plans to extend water or wastewater infrastructure into the area, the proposed amendment would not duplicate or compete with any other system.

The County has made two separate and conflicting arguments with respect to whether Sun River's requested service territory would duplicate or compete with its system. On one hand, the County claims the territory as its own, stating that the requested service territory is within its own District Number Two (Tr. 147). At the same time, the County claims that the area cannot be in Sun River's service territory because there is no need, it is contrary to the Comp Plan and it is not in the public interest. This is logically impossible.

If having a utility service territory cover the area for the County is in the public interest, there is no reason that having the area within Sun River's service territory would be against the public interest. The County wants it both ways for the simple reason that it wishes to reserve the territory for its own economic exploitation in the future.

[1] Contrast with Order No. PSC-96-0674-PHO-SU (May 22, 1996) where in a similar type dispute the issue was specifically raised.

Although the County's ability to serve the proposed service area is not an issue in the proceeding, even if it was an issue, it would not result in a denial of the Application. The simple fact is that the County has admitted that it has no plans, present or anticipated, to provide any water infrastructure or service to the proposed territory, while at the same time claiming that it has had discussions with the Peace River Manasota Regional Water Authority to provide service to the area. According to the Charlotte County Utilities Director, however, the facilities in question are neither located in Charlotte County nor do they belong to Charlotte County; they are located in DeSoto County and belong to the Peace River Manasota Regional Water Authority. (Tr. 94, ln. 11-19; Tr. 149, ln. 11-22; *see* Tr. 149; ln. 3-9) Even if the County could provide any type of service from these facilities it would need to get the approval of all of the Authority members, and enter into an interlocal agreement with DeSoto County. (Tr. 150, ln. 2-5; Tr. 152, ln 20-25 through Tr. 153, ln. 1-2). To date, Charlotte County has not received the approval of the Authority members nor entered into an interlocal agreement with DeSoto County. (Tr. 148, ln. 7-8; Tr. 150, ln. 2-11; Tr. 152; ln. 20-25). Moreover, past history indicates that such agreements would not come easily (Tr. 82, ln. 9-19; Tr. 90, ln. 3-10). Even assuming that the County could gain the necessary approvals, the County admits that the line it alleges it could use to serve the proposed service territory is actually designed as a transmission line to bring water from the Shell Creek facility northward to DeSoto County, not as a distribution line to serve anyone in the territory (Tr. 158, ln. 20-24; Tr. 159, ln. 11-14). Finally, when Highway 17 was being widened to a four-lane divided highway, it was proposed that the Authority water

line be extended as part of the ongoing construction, but Charlotte County rejected the proposal (Tr. 74, ln. 18-25).

With respect to wastewater, the County witness testified that its nearest wastewater treatment facility is more than four miles away on the other side of the Peace River (Tr. 150, ln. 12-19). Thus, the County has no wastewater facilities east of the Peace River in or near the proposed territory (Tr. 151, ln. 1-5). Alternatively, the County has speculated that they could serve the area through its relationship with the City of Punta Gorda (Tr. 147, ln. 3-7). Once again, the County is unilaterally volunteering service utilizing facilities that are neither owned by the County, nor the subject of an interlocal agreement to serve the proposed territory. As with water, CCU has expressed its position that it has no plans to construct wastewater infrastructure in the area or attempt to obtain DEP permitting to cross the Peace River with wastewater lines. Comp Plan Policy 9.1.3 requires water and wastewater service to be extended concurrently, and Sun River is the only utility with the ability to do so.

Sun River is the only water and wastewater service provider with facilities located in the subject area of Charlotte County. Even if the County wanted to serve the proposed territory it has no facilities that it could reasonably use to serve the area. At best, the County speculates that it could provide service at some unidentified point in the future by hopefully entering into agreements with other governmental bodies to use their facilities located outside the proposed service territory. Clearly, the proposed amendment of Sun River's service territory will not result in competition with, or a duplication of another system.

ISSUE 7: If the proposed amendment would result in an extension of a system which would be in competition with, or a duplication of another system, is that other system inadequate to meet the reasonable needs of the public or is the owner of the system unable, unwilling, or neglecting to provide reasonably adequate service to the proposed territory?

There are no competing systems, current or anticipated, in the proposed territory.

This issue is moot because the County has stated that it has no facilities in the proposed service territory and that it has no intention to construct any infrastructure in the foreseeable future. However, despite these proclamations from the County, it insists that it is in competition with Sun River because the County holds the rights to hydraulic capacity in a line owned by Peace River Manasota Regional Water Authority to the north of the proposed service territory (Tr. 147). To utilize such capacity, the County would need to construct an interconnection and several miles of lines that it admits it has no plans to build, and such lines would pass through the requested service territory (Tr. 1). The County would also have to obtain the rights to build the infrastructure through the property of the landowners who have expressed their unequivocal desire to deal with Sun River, and not deal with the County. The County witness testified that it has neither a specific agreement with the Authority on the allocation of water nor any plans to enter into formal negotiations because of the County's position that there is no need in the area (Tr. 150).

Moreover, the County's claims that it could potentially compete with Sun River at some unidentified point in the distant future are irrelevant for purposes of Section 367.045(5)(a), Florida Statutes. That statute seeks to avoid the duplication of systems and waste of capital resources. In addition to having no infrastructure in the territory to

compete with Sun River, the County admits that it refuses to extend service to the area because of its Comp Plan concerns (Tr. 143). Additionally, the County's claim that it could compete with Sun River is belied by its own Comp Plan which demands that publicly funded water and wastewater infrastructure be extended to areas concurrently. Even if the potential to receive water from the Peace River Authority were realized and pipes were laid, the County would still have to account for the concurrent provision of wastewater infrastructure and service. As noted above, the County does not have any wastewater infrastructure it plans to build that could reasonably serve the proposed territory. The County's nearest wastewater facility could not serve the area given its location and the logistical and permitting improbability of crossing over the Peace River (Tr. 150-151). Given the County's refusal to consider building any infrastructure and lack of any evidence indicating its financial ability to construct such infrastructure, the Commission should conclude that the County is not in competition with Sun River, and will not be in competition in the future because the County does not have any infrastructure in the area and no intention of building any within the foreseeable future.

ISSUE 8: Is it in the public interest for the applicant to be granted an amendment to Certificates Nos. 611-W and 527-S for the territory proposed in its application?

Yes. The proposed amendment is in the public interest for the reasons stated above. Further, the County's ability to direct development as it sees fit is in no way infringed.

The requested service territory extension is in the public interest because it complies with all of the statutory requirements, does not constitute urban sprawl and does not limit the County's ability to control its growth. It will not adversely affect

current rate payers, and will provide the opportunity to construct a plant away from the environmentally sensitive Peace River that will be able to serve the capacity anticipated by the improvements along Highway 17 (Tr. 42, 50-51). The amendment will allow the property owners in the area to efficiently plan the use for their land, creating value for the County and region as a whole. In the event that the property owners are unable to alter the entitlement of their land, the certificate does not harm anyone's interests because the County retains full control over development.

The County has made the argument that the Comp Plan reflects the public interest *per se* (Tr. 20). If this was legally correct, then the legislature would not have given the Commission the discretion to disregard the local Comprehensive Plan. Section 367.045(5)(b), Florida Statutes. This is also incorrect because there are so many opportunities to amend and revise the Comp Plan, which indicates that the public interest changes depending on constantly changing circumstances (Tr. 174-175). A prerequisite to changing the Comp Plan is obtaining an enforceable agreement regarding the extension of water and wastewater service. Policy 1.1.10.c. The County has made several such amendments, including amendments to lands within Sun River's existing service territory, and they are presumably in the public interest.

More importantly, the County still has full control of its growth and development through a variety of zoning ordinances, regulations and permitting requirements (Tr. 117). A utility service territory is not "development" as defined by the Florida Statutes. In fact, its Comp Plan specifically allows the County to disregard the existence of water and wastewater infrastructure in making decisions about growth and development (Tr. 128; Comp Plan Policy 9.2.3). As such, the existence of a mere *service territory* can not

possibly force Charlotte County into any growth that it does not desire. It cannot, therefore, be against the public interest to grant this service territory extension because it does not alter in any way the County's ability to direct growth.

The County has attempted to mischaracterize the Utility's request for an amendment to its Certificates as the workings of outsiders negating the will of the people. On several occasions the County attempted to establish that Sun River (formerly MSM Utilities LLC) is the same entity as Hudson Sun River LLC. The County called them "siblings" and "cousins." This attempt to blur the line was clearly debunked by the testimony of Mr. Reeves and Mr. Feldman. While the owners of the Utility's corporate parent have a "very" minority interest in Hudson Sun River LLC (Tr. 58), it has been established that the management of the two entities are pursuing the interests of their own respective entities. The success of Sun River is in no way tied to the performance of Hudson Sun River LLC or vice versa.

CONCLUSION

Sun River Utilities, Inc.'s request for an amendment to its Certificates should be granted because it comports with Florida Statutes, PSC Regulations, Charlotte County's Comprehensive Plan and is in the public interest.

The testimony, evidence, stipulations and exhibits demonstrate that: (1) there is a need for water and wastewater service in the proposed area; (2) no alternative central sources of water or wastewater service is available within the proposed area; (3) the extension would not be inconsistent with the Charlotte County Comprehensive Plan; (4) no issue has been raised with respect to the quality of service provided by Sun River Utilities, Inc., and it is under no citations from any government agency; (5) it is has been

stipulated that Sun River Utilities, Inc., has the financial integrity, engineering capability, and plant capacity to provide service the proposed area as and when needed; and (6) the public interest will be serve by granting the service area amendment.

For all the reasons set forth in the testimony, evidence, stipulations and exhibits placed into the record at hearing, Sun River, Inc., respectfully requests the Commission grant Sun River Utilities, Inc., the amendments to Certificates 611-W and 527-S and other determinations requested by Sun River Utilities, Inc., herein.

Respectfully submitted this 7th day of February, 2008, by:

MARTIN S. FRIEDMAN, ESQUIRE
ROBERT C. BRANNAN, ESQUIRE
For the Firm

ROSE, SUNDSTROM & BENTLEY, LLP
2180 West State Road 434, Suite 2118
Longwood, FL 32779
Telephone: (407) 830-6331
Fax: (407) 830-8522

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 7th day of February 2008, to:

Todd D. Englehardt, Esquire
Harold A. McLean, Esquire
Akerman, Senterfitt
106 E. College Avenue, Suite 1200
Post Office Box 1877
Tallahassee, FL 32302-1877

Ralph Jaeger, Esquire (via e-mail)
OFFICE OF GENERAL COUNSEL
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

MARTIN S. FRIEDMAN, ESQUIRE
ROBERT C. BRANNAN, ESQUIRE
For the Firm

M:\1 ALTAMONTE\SUN RIVER UTILITIES (41069)\(.03) Territory Extension\Post Hearing Statement (rev 02-06-08).doc