BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include certain land in Charlotte County by Sun River Utilities, Inc. (f/k/a MSM Utilities, LLC).	DOCKET NO. 070109-WS ORDER NO. PSC-08-0243-FOF-WS ISSUED: April 16, 2008

The following Commissioners participated in the disposition of this matter:

KATRINA J. McMURRIAN
NANCY ARGENZIANO
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APPEARANCES:

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FINAL ORDER APPROVING AMENDMENT OF CERTIFICATES

BY THE COMMISSION:

I. Background

On February 8, 2007, Sun River Utilities, Inc., f/k/a MSM Utilities, LLC (Sun River, utility, or applicant) filed its application for amendment of Certificates 611-W and 527-S to extend its water and wastewater service areas to include certain land in Charlotte County. On March 16, 2007, the Board of County Commissioners of Charlotte County (County) filed an objection to the amendment application. A formal evidentiary hearing was held in Charlotte County on January 16, 2008.

On September 25, 2007, the County adopted Resolution No. 2007-143, rescinding our jurisdiction over privately-owned water and wastewater utilities in the County. This action was acknowledged by Order No. PSC-07-0984-FOF-WS, issued December 10, 2007, in Docket No. 070643-WS, In Re: Resolution No. 2007-143 by Charlotte County Board of Commissioners, in accordance with Section 367.171, F.S. rescinding Florida Public Service Commission jurisdiction over private water and wastewater systems in Charlotte County. Pursuant to Section 367.171(5), Florida Statutes (F.S.), we retain jurisdiction over the certificate amendment application until disposed of in accordance with law.

On October 9, 2007, the County filed a Motion for Summary Final Order or Relinquishment of Jurisdiction (Motion), where it argued that there were no disputed issues of material fact because the utility could not show its planned activities are consistent with Charlotte County's Comprehensive Plan (Comprehensive Plan). In the alternative, the County argued that it would be more expedient for us not to exercise our jurisdiction. The utility filed a Response in Opposition to the County's Motion on October 19, 2007. The Motion was denied by Order No. PSC-07-0972-PCO-WS, issued December 5, 2007.

We held two service hearings starting at 10:00 a.m. and 6:00 p.m., respectively, in Port Charlotte on January 16, 2008. The technical hearing was held between the two service hearings. A county commissioner spoke as a representative of the public at the first service hearing. One customer spoke at the second service hearing. Both the utility and the County timely filed briefs on February 7, 2008.

In determining whether to approve a utility's request to amend a certificate, we are governed by several statutory provisions. Section 367.011(3), F.S., provides that regulation of 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, and the provisions of Chapter 367, F.S., are to be liberally construed for accomplishment of this purpose. Section 367.045(2)(b), F.S., authorizes us to require each applicant for an amended certificate to provide all information required by our rules or orders, which may include a detailed inquiry into the ability of the applicant to provide service, the need for service in the area involved, the existence or nonexistence of service from other sources within geographical proximity, and a description of the area sought to be added. To implement the above statute, Rule 25-30.036(3), Florida Administrative Code (F.A.C.),

requires, among other things, a statement showing the financial and technical ability of the applicant to provide service and the need for service in the area requested.

The dispute centers around three parcels of land for which the utility received letters from the owners or the entity that controlled the parcels. The letters all stated that they were interested in receiving water and sewer service and requested that the parcels be included in the certificated territory of Sun River. The letters were signed by Robert Scott Keenan (hereinafter Keenan property), Martin G. Berger, as Managing Member of Hudson Sun River, LLC (Hudson), which had a contract for the purchase of the Hudson Ranch property (Hudson Ranch property), and Eugene Schwartz (Schwartz property). The Keenan property is west of Highway 17 and in the Urban Service Boundary, and the Hudson Ranch property and Schwartz property are east of Highway 17, and in the Rural Service Boundary.

II. Stipulations

At the hearing, we approved, as reasonable, three stipulations as set forth below:

1. The applicant has the financial ability to serve the proposed territory.

2. The applicant has the technical ability to serve the proposed territory.

3. The applicant has demonstrated that it either has sufficient plant capacity to serve the requested territory, or will construct the plant when it is needed.

Charlotte County took no position on the approved stipulations.

III. Jurisdiction

We have jurisdiction pursuant to Sections 367.011(3), 367.045, and 367.171(5), F.S.

IV. Amendment Application

A. Need for Service

Section 367.045(2)(b), F.S., provides that we may require an examination of the need for service in the requested area. Rule 25-30.036(3)(b), F.A.C., requires the applicant to provide a statement showing the need for service in the requested area.

Utility witnesses testified that Sun River's proposed amendment to its authorized service territory includes a small area along the west side of Highway 17, adjacent to the utility's existing service territory, and an additional six square miles on the east side of Highway 17. The area on the west side of Highway 17 is included in the County's Urban Service Area. The need for service in that area was supported by a letter from the landowner, Mr. Keenan, requesting service from Sun River, and testimony that Mr. Keenan was awaiting the utility's certification so that he could go forward with building a shopping center. The two parcels on the east side of Highway 17, are outside of the County's Urban Service Area. One parcel is controlled by Hudson, an entity related to the utility (a minority ownership interest). The other parcel is owned

by Mr. Schwartz. The utility provided letters from Mr. Berger (on behalf of Hudson) and Mr. Schwartz requesting utility service.

Utility witness Feldman testified on behalf of Hudson regarding the nature of development anticipated in the area. Hudson intends to create a master planned development on its property either through extension of the Urban Service Area, a Development of Regional Impact (DRI), or rural community. Utility witness Feldman testified that he was working with the adjacent landowner, Mr. Schwartz, on studies and reports necessary for planning the development and making application for a comprehensive plan amendment. He further testified that although a deal with Florida Gold Coast University on locating a campus on the Hudson Ranch site had fallen through, there was other interest in the property. Based on the surrounding infrastructure, he stated the property owners are working on doing something collectively, and are poised to go ahead with development.

Utility witness Feldman testified that Hudson supports the utility's amendment of service territory because of Hudson's urgent and compelling need for water and wastewater service to its property. Without this service, Hudson is prevented from moving ahead with its plan to be annexed into the county's Urban Service Area. He further stated that a commitment for such service is an initial step in the development process. It was utility witness Feldman's understanding that the County would provide a developer with only a non-binding letter of availability during the entitlement process, and only after the comprehensive plan amendment was approved would the County utilities department negotiate costs and timeframes for water and wastewater service. He further stated that the comprehensive plan requires a binding commitment for water and wastewater service, and the Department of Community Affairs (DCA) will require that same commitment in order to approve a comprehensive plan amendment. Being included in the Sun River territory will provide the commitment needed.

Utility witnesses Reeves and Hartman also testified about recent development in the surrounding area and the impact that the widening of Highway 17 would have on future development in the area. Utility witness Hartman also testified that there were several requests for service along Highway 17 north and south of the service area. The utility witnesses specifically noted that there was development or planned development to the north, south, and west of the Hudson Ranch and Schwartz properties, including an existing major industrial site and one of the large distribution centers for Wal-Mart immediately to the north. A letter was also provided by Dr. Zachariah requesting utility service. Dr. Zachariah's property is just south of, but not included in, the utility's proposed service area.

In its brief, Charlotte County argues that Sun River failed to sufficiently establish that a need exists, when the need must be fulfilled, and how much service is needed as required by Section 367.045, F.S. In support of its argument that mere speculation as to what development may be allowed or may take place does not establish a need for service, the County relied on two of our orders, Order Nos. 14487 (Lake Monroe Order)[1] and 22847 (Conrock Order),[2] to

[1] Issued June 19, 1985, in Docket No. 840371-WS, In re: Objection of City of Sanford to Expansion of water and sewer service in Seminole County by Lake Monroe Utility Corporation and application for expansion by Lake Monroe Utility Corporation.

demonstrate that Commission precedent has established that when a utility applies for an extension of its service area, it must show details of what development already exists in the area and what development is proposed. The County argues that a failure to provide details of what the development might consist of, or evidence of any ability to supply the unknown amount of needed service, is fatal to a utility's application and this required showing was not made by Sun River.

County witness Ruggieri testified that one of his biggest concerns was that there had been no request to meet and discuss a proposal for changes in land use for the territory involved in this amendment application. County witness Pearson, Utilities Director for the County, echoed Ruggieri's comments that no contact had been made by any land owners or developers addressing the territory for which application had been made, and that he thought this would be a first step. He stated that if a need was shown to the County, he was certain that necessary arrangements could be made with Peace River Manasota Regional Water Supply Authority (Authority) for water (some 2-3,000 feet away) and the City of Punta Gorda for wastewater service, located several miles away. Witness Pearson testified that there has to be a need for service established and it would have to be consistent with the Comprehensive Plan for service to be provided.

Utility witness Reeves admitted that he did not know what the development plans were for the Schwartz and Hudson Ranch properties, which comprise the area requested east of Highway 17. He also did not know how many equivalent residential connections (ERCs) would be required, when the plans would take effect, and how many units might be built east of Highway 17 because development was still in the planning stages. However, utility witness Hartman testified that developers must obtain commitments for utility service before completing master plans or requesting changes to the County's comprehensive plan. Testimony was also provided to show that development of one unit per ten acres is allowed under the current comprehensive plan. The utility believes that service will be needed within the next five years as landowners finalize plans and submit those plans for approval.

We are not persuaded by the County's argument that a failure to provide details of what a development might consist is fatal to a utility's application. The County relied on two orders, the Lake Monroe and Conrock Orders, to support its claims. There are significant differences in those cases from the case at hand.

In the Lake Monroe Order, where we denied the extension of certificate application, we noted that the applicant had applied for a large amount of territory, and that the only testimony offered related to a small portion of the requested territory and did not give any details of the projected development. In the instant case, all the acreage requested to be included in Sun River's amendment application is supported by letters requesting service, as well as witness Feldman's testimony related to the Hudson Ranch and Schwartz properties, and Reeves and Hartman's testimony concerning the Keenan property.

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[2] Issued April 23, 1990, in Docket No. 890459-WU, In re: Objection to notice of Conrock Utility Company of intent to apply for a water certificate in Hernando County.

In the Conrock Order, an original certificate application, we denied the application for many reasons, only one of which was the failure of the proposed utility to demonstrate a need for service in the proposed area. We found that either the City of Brooksville (City) or Hernando County were already providing service for what little need there was, and there was "no showing that existing customers are not presently being provided adequate service." Therefore, we agreed with the hearing officer that not only was there no need for additional service from the applicant, but that any provision of service by the applicant would be in competition and duplicative of the service provided by the City and Hernando County. Further, we found that the applicant had not demonstrated that it had either the financial ability to provide service or the technical ability, and, because it had failed to demonstrate financial ability, we found that it would not be able to hire the technical ability.

We have approved several original certificate and amendment applications in which the need for service was not clearly documented because the land owner needed a commitment for utility services prior to finalizing development plans and seeking other related approvals, including changes to comprehensive plans. For example, in Docket No. 980876-WS, In re: Application for certificates to operate a water and wastewater utility in Marion County by Ocala Springs Utilities, Inc., we approved Ocala Springs' request for original water and wastewater certificates, even though development plans had not been finalized and the number of ERCs was not yet known.[3] In Docket No. 980075-WS, In re: Application for amendment of Certificates Nos. 580-W and 500-S in Marion and Sumter Counties by Little Sumter Utility Company, we approved Little Sumter's amendment application even though only preliminary meetings had been held with the Department of Community Affairs (DCA) to change the land use designation from rural/agricultural to urban. We found that a need for service was suggested because the area is rapidly urbanizing and there has been significant recent development. Further, we found that it was not appropriate to defer our decision pending the developer's receipt of a change in the land use designation because the change in land use designation would require specification of the utility service provider and a Commission-regulated utility cannot present itself as an available service provider to areas outside of its existing certificated area.[4]

Based on the evidence presented at hearing, we find that the utility has sufficiently demonstrated a need for service pursuant to Section 367.045(2)(b), F.S., and Rule 25-30.036(3)(b), F.A.C. The Keenan property on the west side of Highway 17 is in the County's Urban Service Area, and there is testimony that Mr. Keenan is awaiting certification so that he can go forward with building a shopping center. The need for service in the six square mile area requested on the east side of Highway 17 was demonstrated by the two letters from the controllers or owners of that property requesting service from Sun River, by the demonstration that there is active development surrounding that area, and by the testimony related to the potential development resulting from the widening of Highway 17.

Regarding the County's argument that the application is premature, it appears that obtaining a binding commitment for the provision of water and wastewater service is one of the

[3] See Order No. PSC-98-1644-FOF-WS, issued December 7, 1998, p. 5.
[4] See Order No. PSC-98-1093-FOF-WS issued August 12, 1998.

prior requirements for extension of the Urban Service Area and approval of a development plan. Therefore, while the exact nature of the future development has not been shown, we find that the utility has adequately demonstrated a need for service for the requested territory as required by Section 367.045(2)(b), F.S. It appears that service may be needed within the next five years.

B. Charlotte County Comprehensive Plan

Section 367.045(4), F.S., provides that, notwithstanding the ability to object on any other ground, a county or municipality has standing to object to a certificate amendment application on the ground that the issuance of a certificate violates established local comprehensive plans developed pursuant to Chapter 163, F.S. Section 367.045(5)(b), F.S., provides that, if an objection is made, we shall consider, but are not bound by, the local comprehensive plan of the county or municipality.

Sun River argues that approving the amendment would not, in and of itself, violate the Comprehensive Plan or result in urban sprawl. The Comprehensive Plan is a tool to manage development and the inclusion of the proposed property in Sun River's service territory does not constitute development as defined by Section 380.04, F.S., nor does it change zoning or land use in any way. Moreover, the utility argues that the County witnesses admitted that the County would retain its ability to regulate growth even if the amendment application was granted.

The utility also argued that the Comprehensive Plan does not prohibit providing service to the proposed area on the east side of Highway 17 at the current approved densities (one residence per 10 acres). Also, the utility argues that the Comprehensive Plan is a dynamic, constantly changing document, and in order to effect a change there must be an enforceable agreement to obtain water and wastewater service before it submits any request for change to the plan. Further, a nonbinding Letter of Availability from the County would not be enforceable.

Finally, the utility argues that, pursuant to Section 367.045(5)(b), F.S., we must only consider the Comprehensive Plan, but are not bound by it in determining what is in the public interest. To support this argument, the utility cites four of our orders, where, notwithstanding non-compliance with the Comprehensive Plan, we found that it was in the public interest to grant a service area amendment.[5]

Citing Section 163.3161(5), F.S., the County argues that development of any kind, whether public or private, which is not in conformity with an approved comprehensive plan violates state law. The County argues that its Comprehensive Plan contains planning directives which use the location and timing of infrastructure and service to direct growth in an orderly and efficient manner. The plan's policy is generally aimed at reducing urban sprawl and controlling urban growth efficiently. To achieve these goals, the plan demarks an Urban Service Boundary, which separates geographical areas within the county into groups that will receive higher levels of publicly funded infrastructure and services, including roads, potable water, and sanitary sewer.

[5] Order Nos. PSC-92-0104-FOF-WU, PSC-96-1281-FOF-SU, PSC-04-0980-FOF-WU, and PSC-07-0717-FOF-WS.

The County argues that Utility witness Reeves testified that the overwhelming majority of the requested territory lies outside the Urban Service Boundary, and that Reeves admitted that the portion of the proposed territory lying outside the Urban Service Area may not comport with the County's Comprehensive Plan. The County further argues that expansion of the utility's service area with this proposed amendment would be in conflict with maximizing existing and future public services and promote urban sprawl.

At the first service hearing, public witness Adam Cummings, a County Commissioner, testified that giving a utility certificated territory in a rural area was the first step in creating urban sprawl. He argued that one of the key elements of the Comprehensive Plan was the Urban Service Area strategy to make use of existing infrastructure, and to allow this amendment would harm that strategy at a cost of tens of millions of dollars. He further argued that the community made a conscious decision that there are some services that will be used as incentives for development where it is appropriate, and that sewer expansion was being attempted in the Urban Service Area. Therefore, he maintained that wastewater service becomes an enticement, and if a DRI were sought, water and sewer service would be some of the services that would be needed.

We are not persuaded by the County's arguments. Policy 9.2.3 of the Comprehensive Plan states that "water and sewer availability will not necessarily provide justification for development approval." Further, County witness Ruggieri stated that providing water and wastewater service to the property requested at its current density would not violate the comprehensive plan.

Staff witness Lex testified that the proposed territory was lacking infrastructure and would require expansion of services outside the designated service area, causing the territory amendment to be inconsistent with the County's Comprehensive Plan. However, staff witness Lex added that while utilities were encouraged to expand water and wastewater services within the Infill Areas, but not to extend certified areas beyond the Infill Areas, there are exceptions. Exceptions would include new communities and DRIs, or a change in the Urban Service Boundary, and she admitted on cross examination that including the territory amendment in Sun River's certificate would not violate the Comprehensive Plan.

We also note that provision of water and sewer service to rural areas is not prohibited by the Comprehensive Plan. According to Objective 1.1, water and sewer service is a low priority to rural areas. While this is an infrastructure issue, it also relates to density and intensity of development. Similarly, Policy 9.1.1, the potable water and sanitary sewer element, does not prohibit utility services outside the Urban Service Boundary.

Based on the above, we find that the granting of the requested territory is not inconsistent with the Comprehensive Plan. The proposed area on the west side of Highway 17 is within the Urban Service Boundary. Although the area east of Highway 17 is outside the Urban Service Boundary, development is currently allowed at densities of one residence per 10 acres. Development beyond the currently allowed density would require an amendment to the Comprehensive Plan. Thus, the County has the opportunity to control urban sprawl through its control over amendments to the Comprehensive Plan. As noted by the utility, this is consistent with our prior decisions.

Even if the granting of the amendment application could be considered to be inconsistent with the Comprehensive Plan, we note that pursuant to Section 367.045(5)(b), F.S., "the commission shall consider, but is not bound by, the local comprehensive plan . . . ." See City of Oviedo v. Clark, 699 So. 2d 316, 318 (Fla. 1st DCA 1997), where the court said:

> We hold that the PSC correctly applied the requirements of section 367.045(5)(b). The plain language of the statute only requires the PSC to consider the comprehensive plan. The PSC is expressly granted discretion in the decision of whether to defer to the plan.

Further, in the Conrock Order cited by the County, we directly addressed the weight to be given to a comprehensive plan when an application was in apparent violation of the plan. Although we approved the hearing officer's recommendation in the Conrock Order to deny the application, we specifically rejected the hearing officer's conclusion of law that:

> . . . the consistency of the proposed utility service with the provisions of the approved comprehensive plan involved is an important consideration and should be persuasive in making the decision to grant or deny.

Conrock Order, p. 20.

In rejecting this conclusion of law, we stated:

> Adopting this conclusion of law would be inconsistent with Sections 367.041(1) and .051(3)(b),[6] Florida Statutes. In determining whether it is in the public interest to grant a certificate, the Commission looks primarily to the applicant's availability of service from other providers, and need for service, as set forth in Section 367.041, Florida Statutes, and Rule 25-30.035, Florida Administrative Code. The Commission also considers the local comprehensive plan when a county or city objects to the certification of the applicant, pursuant to Section 367.051(3)(b), Florida Statutes. As interpreted by the Hearing Officer, the approved comprehensive plan, would be persuasive in determining the need for service in the location where the certificate was requested.
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> The Commission is not bound, however, to enforce a locality's comprehensive plan. Section 367.051(3)(b), Florida Statutes. Further, the authority given to local governments in Chapter 163, cited by the Hearing Officer, does not override the Commission's exclusive jurisdiction as set forth in Sections 367.011(2) and (4), Florida Statutes, as there is no express override of Chapter 367 in Chapter 163. The Commission has no authority to administer or enforce Chapter 163. Accordingly, this conclusion, that the comprehensive plan should be persuasive, cannot be accepted. However, the Hearing Officer's ultimate conclusion, that the

[6] The language found in Sections 367.041(1) and .051(3)(b), F.S. (1987), has since been renumbered and is now basically repeated in Sections 367.045(2)(b) and .045(5)(b), F.S. (2007).

> application should be denied, is adopted. The objections to the notice of intent are thereby upheld.

Conrock Order, pp. 20-21.

Therefore, while we reject the County's argument that the proposed amendment is inconsistent with the Charlotte County Comprehensive Plan, even if it was inconsistent with the Comprehensive Plan, we find that it would not be dispositive of the amendment application, and would not rise to the level that would cause us to deny the utility's application. Based on the above, we find that we should proceed to determine whether the granting of the application is in the public interest.

C. Competition With or Duplication of Services

Section 367.045(5)(a), F.S., provides in pertinent part:

> The commission may not grant . . . an amendment to a certificate . . . which will be in competition with, or a duplication of, any other system . . . unless it first determines that such other system . . . is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service.

The utility argues that there is currently no existing water or wastewater infrastructure in the proposed territory. The utility further argues that whether the County had the ability to serve was not made an issue in this proceeding. Finally, when Highway 17 was being expanded, utility witness Hartman noted that the County and the Authority rejected the suggestion that they build utility infrastructure through the corridor.

Utility witness Feldman stated that he was acutely aware that the County did not plan to provide water and wastewater service to the Hudson property. He noted that other developers had told him about other ventures where the County had promised service, but then was unable to provide service after the entitlement process was completed. It was his observation that the County will only provide a developer with a non-binding letter of availability during the entitlement process.

The County argues that the proposed amendment is in Utility District Number Two, and would duplicate and compete with its service. The County further argues that the utility has no infrastructure within the proposed area, and would also have to build new facilities.

The County argued that while there is no duplication of facilities, the question is who would be better placed to serve the area. County witness Pearson testified that the County already has a 20-inch water line near the Wal-Mart Distribution Center, which is 2,000 to 3,000 feet away from the requested territory for amendment. This water line is owned by the Authority, and has about 2.9 million gallons per day on average of excess water capacity. The Authority has indicated if a need were shown for service that did not violate the Comprehensive Plan, the Authority would work with Charlotte County to provide capacity.

The nearest wastewater main is about four miles away as the crow flies, west of and across the Peace River. As an alternative, the County envisions that the utility could obtain wastewater service from the City of Punta Gorda, which is about four miles away to the south on Highway 17. While no specific costs were discussed to connect to the County's systems, it is obvious that a significant amount of water and wastewater lines would have to be installed at considerable expense to tie into the water system some 2,000 to 3,000 feet away and Punta Gorda's wastewater system four miles to the south.

While the area requested is within the County's Water and Sewer District Number Two, we find that the County has admitted that it has no wastewater facilities which could serve this area, and the County only surmised that the City of Punta Gorda whose nearest line is four miles away, could provide wastewater service. Also, the nearest water line is 2,000 to 3,000 feet away. Based upon the above, we find that there is no duplication or competition with any water or wastewater system in proximity to the requested amendment territory. This is consistent with our prior decisions that we cannot determine whether a proposed system will be in competition with or duplication of another system when such other system does not exist. Section 367.045(5)(a), F.S., does not require us to hypothesize which of two proposed systems might be in place first and, thus, which would compete with or duplicate the other. Engaging in such speculation would be of little use.[7]

The County argues the later-applying utility must show that the prior certificate holder does not have the present ability to promptly and effectively meet its obligation to serve. The County argues that it has both excess water and wastewater capacity that it could use to serve any need that might arrive.

We reject this argument of the County. While the County has designated that this area is in the County Water and Sewer District Number Two, the only County facilities that could be considered as competitive are at least 2,000 feet away for water, and four miles for wastewater, as discussed above. Therefore, we find there is no competition or duplication of service.

D. Public Interest

As discussed previously, Section 367.011(3), F.S., provides that regulation of 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 367.045(2)(b), F.S., authorizes us to require each applicant for an amended certificate to provide all information required by rule or order of the Commission, which may include a detailed inquiry into the ability of the applicant to provide service, the need for service in the area involved, the existence or nonexistence of service from other sources within geographical proximity, and a description of the area sought to be added. To implement the above statute, Rule 25-30.036(3), F.A.C., requires among other

[7] See Order No. PSC-01-1916-FOF-WS, issued September 24, 2001, in Docket No. 990696-WS, In re: Application for original certificates to operate a water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corporation; and Order No. PSC-92-0104-FOF-WU, issued March 27, 1992, in Docket No. 910114-WU, In re: Application of East Central Florida Services, Inc., for an original certificate in Brevard, Orange, and Osceola Counties.

things, a statement showing the financial and technical ability of the applicant to provide service and the need for service in the requested area.

Sun River believes that the territory amendment is in the public interest because it is a benefit to the community to construct new water and wastewater plants east of Highway 17, and building the facilities large enough to be a regional facility. The owners of North Ft. Myers Utility had these discussions with owners of the Hudson property before the utility (Sun River, formerly MSM) was purchased by the current owners.

Public Witness Cummings explained that a significant amount of public input was sought in formulating the County's Comprehensive Plan, including months of public meetings. The County notes that the Florida Supreme Court in Gulf Coast Electric Cooperative, Inc. v. Johnson,[8] views the public interest as "the ultimate measuring stick to guide the PSC in its decisions." Further, the County believes that the comprehensive plan is the boldest statement of public interest, and should be controlling.

As discussed above, although there was no specificity when service would be required, the utility's application does comply with Section 367.045(2)(b), F.S., with regard to the need for service in the requested area. We have found there is a need for service, because there are property owners ready for development of the property they own or control. Through the development process, the County has tools available to ensure that growth is properly controlled. Provision of water and wastewater service to a property with current zoning is not a violation of the Comprehensive Plan, and if a private utility provides that service, there is still no violation.

With regards to the financial and technical ability to serve, we have approved stipulations that the utility has both the financial and technical ability to provide service. Further, we have approved the stipulation that the utility has demonstrated that it either has sufficient plant capacity to serve the requested territory or will construct the plant when it is needed.

We have also found that the application is consistent with the Comprehensive Plan, pursuant to Section 367.045(5)(b), F.S., and the issuance of an amended certificate of authorization by us would not reduce the County's ability to enforce its Comprehensive Plan to control development, limit urban sprawl, and protect its environment.

Finally, we have found that the utility will not be in competition with, or duplication of, any other system. While the area requested is in Charlotte County's Water and Sewer District No. 2, the County does not have any water facilities within 2,000-3,000 feet, and no wastewater facilities within several miles. The evidence presented by the County is insufficient to demonstrate that Sun River's proposal would be in competition with, or duplicate, those systems. This finding is consistent with our holdings in the East Central and Farmton Orders,[9] that competition and duplication pursuant to Section 367.045(5)(a), F.S., cannot be determined where

[8] 727 So. 2d 259, 264 (Fla. 1999).

[9] See Order No. PSC-92-0104-FOF-WU; and Order No. PSC-04-0980-FOF-WU, issued October 8, 2004, in Docket No. 021256-WU, In re: Application for certificate to provide water service in Volusia and Brevard Counties by Farmton Water Resources, LLC.

another entity has not demonstrated it has existing facilities in place to serve the proposed service area.

In summary, we find that Sun River has demonstrated: 1) that there is a need for service; 2) that the application will not be in competition with, or duplication of, any other system; 3) that the utility has the financial and technical ability to provide service; and 4) that it has sufficient plant capacity or will construct the plant when needed. In addition, approving the amendment application will not deprive the County of its ability to control development under its Comprehensive Plan or ordinances. As such, we find that Sun River has demonstrated that its application is in the public interest. Therefore, the utility's application to amend Certificates Nos. 611-W and 527-S to include that territory described in Attachment A is approved. This order shall serve as Sun River's amended certificate and shall be retained by the utility. Sun River shall charge the customers in the territory added herein the rates and charges contained in its tariffs until authorized to change by this Commission in a subsequent proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of Sun River Utilities, Inc. to amend its Certificates Nos. 611-W and 527-S to include that territory described in Attachment A is approved. It is further

ORDERED that this order shall serve as Sun River's amended certificate and shall be retained by the utility. It is further

ORDERED that Sun River Utilities, Inc. shall charge the customers in the territory added herein the rates and charges contained in its tariffs until authorized to change in a subsequent proceeding. It is further

ORDERED that upon expiration of the appeal period, if no party timely appeals the order, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 16th day of April, 2008.

ANN COLE
Commission Clerk

(SEAL)

RRJ

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.

SUN RIVER UTILITIES, INC.
Description of Water and Wastewater Service Territory to be Added
Charlotte County

A portion of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida, being more specifically described as follows:

Commence at the Southeast corner of said Section 13; thence South 87 degrees 21'06" West along the South line of said Section 13, a distance of 91.87 feet to the West right-of-way of State Road #35 (U.S. Highway #17) and the Point of Beginning; thence continue South 87 degrees 21'06" West a distance of 646.51 feet; thence North 01 degrees 58'09" West a distance of 2383.80 feet; thence North 88 degrees 27'53" East a distance of 337.71 feet; thence North 01 degrees 32'01" West a distance of 277.75 feet; thence North 30 degrees 58'39" West a distance of 125.00 feet; thence 69 degrees 19'18" West a distance of 312.50 feet; thence North 01 degree 32'07" West a distance of 80.00 feet; thence South 88 degrees 27'53" West a distance of 22.82 feet; thence North 01 degree 32'07" West a distance of 330.00 feet; thence North 02 degrees 46'04" West a distance of 1,700.17 feet; thence North 88 degrees 23'07" East a distance of 329.07 feet; thence North 02 degrees 47'31" West a distance of 635.34 feet to the South right-of-way of Palm Shores Boulevard; thence North 88 degrees 20'46" East a distance of 275.52 feet to the West right-of-way of State Road #35 (U.S. Highway #17); thence South 02 degrees 47'57" East along said right-of-way a distance of 2,006.62 feet; thence South 88 degrees 18'40" West along said right-of-way a distance of 5.28 feet to the point of curvature of a curve to the left having as elements a radius of 11,333.16 feet and a central angle of 03 degrees 02'06.1"; thence along arc of said curve a distance of 600.33 feet to the point of compound curvature of a curve to the left having as elements a radius of 11,585.16 feet and a central angle of 04 degrees 34'53.3"; thence along arc of said curve a distance of 926.37 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 23.40 feet; thence North 87 degrees 21'06" East along said right-of-way a distance of 36.00 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 300.00 feet; thence North 87 degrees 21'06" East along said right-of-way a distance of 10.00 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 1,439.06 feet to the Point of Beginning.

Contains 62.16 acres more or less.

And

Parcel 1

Section 4, Township 40 South, Range 24 East, Charlotte County, Florida.

Together with

Parcel 2

All of Section 5, Township 40 South, Range 24 East, Charlotte County, Florida, less and except a strip 100 ft wide running Northerly from the S line of the N ½ to the N line of the N ½ in the W ½ of the W ½ .

Together with

Parcel 3

Government Lot No. 2 in the Northeast ¼ of the Northeast ¼ of Section 6, Township 40 South, Range 24 East, Charlotte County, Florida.

Together with

Parcel 4

The Northeast ¼ of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida, less the South 815.85 feet.

Together with

Parcel 5

The South ½ and the Northeast ¼ of Section 8, Township 40 South, Range 24 East, Charlotte County, Florida, which parcel includes all of said Section 8, less and except a strip 100 ft wide running northerly from the S line of the S ½ to the N line of the S ½ in the E ½ of the W ½.

Together with

Parcel 6

All of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida, less and except the Northeast ¼ of said Section 9.

Plus

The South 815.85 feet of the NE ¼ of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida.

Together with

Parcel 7

The West ½ of Section 10, Township 40 South, Range 24 East, Charlotte County, Florida.

Together with

Parcel 8

The Southerly 150 feet of Sections 7 and 8, Township 40 South, Range 24 East, Charlotte County, Florida.

And

A parcel of land lying in Sections 5, 6, 7, and 8, Township 40 South, Range 24 East, Charlotte County, Florida, described as follows:

Begin at the NW corner of said Section 6, thence S 89°43'07" E, along N line of said Section 6, 1,786.20 feet to Point of Beginning; thence S 01°06'38" W along easterly line of Ann H. Ryals property as described in O.R. Book 1435, Pages 1513 and 1514, of the Public Records of Charlotte County, Florida, 1287.30 feet; thence S 73°2'33" E along said easterly line, 919.56 feet; thence S 00°41'16" E along said easterly line, 1,116.55 feet to SE corner of said Ryals property; thence N 89°41'03" W along S line of said Ryals property, 2,475.81 feet to the E right-of-way line of State Road 35 (U.S. Highway 17) as monumented; thence S 00°26'53" W along said E right-of-way line, 1,844.49 feet to N line of William E. Roe property as described in O.R. Book 855, Page 1941, Public Records of Charlotte County, Florida; thence S 89°45'11" E along said N line, 1,883.20 feet to NE corner of said Roe property; thence S 00°31'12" W along E line of said Roe property, 118.50 feet to SE corner of said Roe property; thence N 89°45'11" W along S line of said Roe property, 1,585.05 feet to E right-of-way of State Road 35 (U.S. Highway 17) as monumented; thence S 00°20'17" W along said E right-of-way line, 670.37 feet to a point on the S line of said Section 6; thence N 89°49'39"W along said S line and on said right-of-way line of State Road 35 (U.S. Highway 17), 298.00 feet; thence S 00°20'17" W along said E right-of-way line, 677.88 feet; thence S 00°24'44" W along said E right-of-way line, 652.61 feet to N line of Raymond Smith property as described in O.R. Book 963, Pages 2090 and 2091, Public Records of Charlotte County, Florida; thence S 89°32'33" E along N line of said Smith property as monumented by ABS & Associated, Inc., Registered Land Surveyors, 1,138.93 feet to an iron rod set by said registered surveyors for the NE corner of Lot 11 of FLORADONIA SUBDIVISION, as recorded in Plat Book 1, Page 44, Public Records of Charlotte County, Florida; thence S 00°27'48" W along E line of said Smith property and also E line of said Lot 11, 1,326.85 ft. to an iron rod set by said registered surveyors for the SE corner of said Lot 11 in centerline of Catalpa Avenue; thence S 89°08'19" E along said centerline of Catalpa Avenue and along S line of the N ½ of Section 7, 4,675.89 feet to the E 1/4 corner of said Section 7; thence S 88°40'35" E, along said centerline and along S line of N ½ of Section 8, 3,406.06 feet; thence N 5,380.44 feet to a point on the N line of the S ½ of Section 5; thence N 89°00'36" W along said N line, 2,545.405 feet; thence N 07°47'49" W along said W line, 988.17 feet; thence N 39°33'51" W, 1,397.205 feet.; thence N 46°23'45" W, 875.12 feet to N line of said Section 6; thence N 89°43'07" W along said N line, 3372.19 feet to Point of Beginning. LESS and except a 100 foot wide strip running northerly from the S line of N ½ of Section 8 to the N line

of the S ½ of Section 5.

And

The South ½ of Section 7, Township 40 South, Range 24 East, Charlotte County, Florida Less right-of-way to State Road No. 35 (U.S. Highway No. 17) along West side and less the South 150.00 feet and also less the South 1/8 of Northwest ¼ of Southwest ¼.

Also that part of the Southwest ¼ of Section 8, Township 40 South, Range 24 East, Charlotte County, Florida less the South 150.00 feet.

And

A part of Section 6, Township 40 South, Range 24 East described as follows:

Begin at the NW corner of Section 6, Township 40 South, Range 24 East, thence S 89°38'49" E along North line of said Section 6, 50 feet to East right of way of U.S. Highway 17; thence S 0°30'10" W along said East right of way, 50 feet to Point of Beginning; thence S 89°38'33" E, 1735.61 feet; thence S 1°10'26" W, 1237.08 feet; thence S 73°23'45" E, 919.56 feet; thence S 0°37'28" E, 1116.55 feet; thence N 89°37'15" W, 2626.59 feet to East right of way of U.S. Highway 17; thence N 0°30'10" E along said East right of way, 2,609.46 feet to Point of Beginning, all lying and being in Township 40 South, Range 24 East, Charlotte County, Florida.

LESS AND EXCEPT PARCEL 105

That portion of the Northwest quarter and the Southwest quarter of Section 6, Township 40 South, Range 24 East, Charlotte County, Florida, being described as follows:

Commence at the Northwest Corner of Section 6, Township 40 South, Range 24 East; thence along the north line of said Section 6, S 89°43' O7" E, 0.39 feet to the survey base line of State Road 35 (U.S. Highway No. 17); thence along said survey base line S 00°29'34" W, 50.00 feet; thence S 89°42'41" E, 49.85 feet for a Point of Beginning, said point lying on the easterly existing right of way line of State Road 35 (U.S. Highway 17) (per deed exception, Official Records Book 836, Page 595); thence continue S 89°42'41" E, 152.35 feet; thence S 00°29'34" W, 1,533.83 feet; thence S 00°26'93" W, 1,075.70 feet; thence N 59°41'03' W, 150.74 feet to said easterly existing right of way line; thence along said existing right of way line, N 00°21'54" E, 13.93 feet to the south line of the Northwest quarter of said Section 6; thence continue along said easterly existing right of way line, N 00°36'22" E, 2,595.52 feet to the Point of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

Sun River Utilities, Inc.
pursuant to
Certificate Number 611-W

to provide water service in Charlotte County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, canceled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
PSC-99-0756-FOF-WS	04/19/99	980731-WS	Grandfather
PSC-05-0147-PAA-WS	02/07/05	031042-WS	Transfer
PSC-08-0243-FOF-WS	04/16/08	070109-WS	Amendment

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

Sun River Utilities, Inc.
pursuant to
Certificate Number 527-S

to provide wastewater service in Charlotte County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, canceled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
PSC-99-0756-FOF-WS	04/19/99	980731-WS	Grandfather
PSC-05-0147-PAA-WS	02/07/05	031042-WS	Transfer
PSC-08-0243-FOF-WS	04/16/08	070109-WS	Amendment