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-07-0972-PCO-WS ISSUED: December 5, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER DENYING MOTION FOR SUMMARY FINAL ORDER OR RELINQUISHMENT OF JURISDICTION

BY THE COMMISSION:

Background

On February 28, 2007, MSM Utilities, LLC, n/k/a Sun River Utilities, Inc. (Sun River or utility) filed its application for amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include certain land in Charlotte County. On March 16, 2007, the Board of County Commissioners of Charlotte County filed an objection to the amendment application.

By Order No. PSC-07-0452-PCO-WS (Order Establishing Procedure), issued May 29, 2007, the objection of Charlotte County (County) to the amendment application of Sun River was scheduled for formal hearing to be held on November 1 and 2, 2007, with a Prehearing Conference scheduled for October 15, 2007. By Order No. PSC-07-0662-PCO-WS, issued on August 16, 2007, the utility's Motion for Continuance was granted, and the Prehearing Conference was rescheduled for January 3, 2008, and the hearing was rescheduled for January 16 and 17, 2008.

On September 25, 2007, the Charlotte County Board of County Commissioners adopted Resolution No. 2007-143. This resolution rescinded Resolution 94-195 which had previously granted jurisdiction over utilities in that County to this Commission, and stated that Charlotte County took back jurisdiction effective immediately.

On October 9, 2007, the County filed its Motion for Summary Final Order or Relinquishment of Jurisdiction (Motion), with affidavits attached. The County also timely filed a Request for Oral Argument in accordance with Rule 25-22.0022, Florida Administrative Code

(F.A.C.). The utility filed its Response in Opposition to the County's Motion on October 19, 2007 (Response).

This Order addresses the County's Request for Oral Argument, its Motion for Summary Final Order, and Alternative Motion for Relinquishment of Jurisdiction. We have jurisdiction pursuant to Sections 367.045(2) and 367.171(5), Florida Statutes (F.S.).

Oral Argument

The County sought oral argument on its Motion for Summary Final Order or Relinquishment of Jurisdiction (Motion). In support of its Request for Oral Argument, the County states:

> Oral argument would aid the Commission in its determination of this dispositive motion because it would allow the parties to address in more detail the Commission's jurisdiction, and to discuss the Commission's role when a petition is brought which is inconsistent with the DCA-approved local comprehensive plan. The impacts of the Commission's decisions are substantial, not only for the parties involved, but for future litigants facing the same or similar situations. Oral argument would promote a full and open discussion of the matter.

Rule 25-22.0022, F.A.C., provides that we, at our discretion, may grant a request for oral argument. Finding that oral argument would aid us in understanding the underlying motion, we allowed oral argument for ten minutes per party.

Charlotte County's Motion for Summary Final Order

As stated above, the County filed its Motion for Summary Final Order on October 9, 2007, and the utility filed its response on October 19, 2007.

County's Motion for Summary Final Order

The crux of the County's Motion for Summary Final Order is that there is no dispute of material fact, and that the County is entitled to a Summary Final Order as a matter of law. The County states that because Sun River cannot show that its planned activities are consistent with the Charlotte County Comprehensive Plan (Comp Plan), and, therefore, with the public interests of the citizens of the County, that "there is no genuine issue of material fact." Therefore, the County "requests that we grant a Summary Final Order in its favor." The County specifically notes that the County conducted 115 public meetings for the purpose of rewriting its Comp Plan, and that the Comp Plan as rewritten was found by the Department of Community Affairs (DCA) to be "in compliance" on May 16, 2000,[1] as evidence that the Comp Plan must be in the public interest.

[1] The County also notes that it had to obtain the approval of a whole "laundry list of state and regional planning and regulatory entities prior to implementation of the plan."

The County argues that the Comp Plan was designed to direct growth in an orderly and efficient manner, and that the Plan's policy was to reduce urban sprawl and efficiently control urban growth – again, all in the public interest. The County claims that the following are undisputed facts:

1. The Comp Plan contains planning directives which use the location and timing of infrastructure and services 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.[2]

2. Page 4-36 of the Comp Plan describes "Rural Service Areas" as those locations "in which central potable water and sanitary sewer service should not be extended during the planning time period."

3. Policy 9.1.4 of the Comp Plan limits the ability to expand certified areas with solely a few exceptions. Certified areas cannot be extended or expanded for potable water or sanitary sewer service outside of Infill Area boundaries. Exceptions to this rule are to be made in the case of New Communities or Developments of Regional Impact in West County, Mid County, or South County or Rural Communities in East County as designated by the Comp Plan; or in the case of where a utility(s) shall provide both central potable water and sanitary sewer service in a tandem manner within the Urban Service Area Overlay District.

4. Policy 1.1.10 of the Comp Plan lists the criteria for amending the Urban Service Area boundary. Paragraph "e" of this Policy requires that any proposed expansion does not constitute urban sprawl or promote the expansion of urban sprawl in surrounding areas.

5. The Comp Plan notes that lands designated primarily for agricultural activities are located primarily within the Rural Service Area. Policy 2.2.22 of the Comp Plan requires that conversions of agricultural land to more intensive urban uses must occur in accordance with the Urban Service Area strategy Rural Community or New Community concepts, or Development of Regional Impact. Such conversion may only occur when a demonstrated need has been established and it is determined by the County that it does not constitute urban sprawl or promote urban sprawl in surrounding areas.

6. On February 8, 2007, Sun River filed an Application for Amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include certain land in Charlotte County.

[2] Comp Plan Objective 1.3, Policy 2.2.22 (attached to Affidavit of Jeffrey C. Ruggieri).

7. The land within the boundary of Charlotte County described by Sun River's Application is located in a Rural Service Area, and not within the Urban Service Area.

8. The proposal by Sun River violates the Comp Plan.

9. Sun River's proposal encourages urban sprawl in violation of Objective 1.3 and Policy 2.2.22.

10. Sun River's proposal violates the directive on page 4-36 to not extend potable water and sanitary sewer service during the operation of the current Comp Plan.

11. Sun River's proposal violates Policy 9.1.4's limits on the serviceable areas within the County.

12. On May 10, 2007, the DCA filed a Memorandum in which it evaluated Sun River's Application and determined that Sun River's proposed extension of utility services is inconsistent with the Comp Plan.

Citing Order No. PSC-05-0702-FOF-TP,[3] p. 12, and Order No. PSC-03-1469-FOF-TL,[4] the County states that the "purpose of a summary final order is to avoid the expense and delay of trial when no dispute exists as to the material facts." Citing Order No. PSC-03-0528-FOF-TP, Order No. PSC-01-1427-FOF-TP,[5] and Rule 28-106.204(4), F.A.C., the County argues that when a party establishes that there is no dispute or genuine issue of material fact, and a party is entitled to judgment as a matter of law, "then the burden shifts to the opponent to demonstrate the falsity of the showing." It further asserts that, if the opponent fails to demonstrate there are disputed or genuine issues of material fact, then summary final judgment is proper.

The County states that, in the utility's application, Sun River admits that its plan to provide utility service in a Rural Service Area may not comport with the Comp Plan. The County states that, according to the plan, a Rural Service Area is one "in which central potable water and sanitary sewer service should not be extended during the planning time period." The County states that the utility's proposal violates both the premise of the Comp Plan, which is to use location and timing of infrastructure and services to direct growth in an orderly and efficient manner, and the goals of the Comp Plan, which is to discourage urban sprawl.

---

[3] Order issued on June 29, 2005, in Docket No. 040732-TP, In re: Complaint against BellSouth Telecommunications, Inc. seeking resolution of monetary dispute regarding alleged overbilling under interconnection agreement, and requesting stay to prohibit any discontinuance of service pending resolution of the matter, by Saturn Telecommunications Services, Inc. d/b/a STS Telecom.

[4] Order issued on December 24, 2003, in Dockets Nos. 030867-TL, 030868-TL, 030869-TL, and 030961-TL.

[5] Order No. PSC-03-0528-FOF-TP, issued April 21, 2003, in Docket No. 020919-TP, In re: Request for arbitration concerning complaint of AT&T Communications of the Southern States, LLC, Teleport Communications Group, Inc., and TCG South Florida for enforcement of interconnection agreements with Bellsouth Telecommunications, Inc., p. 8; and Order No. PSC-01-1427-FOF-TP, issued July 3, 2001, in Docket No. 001810-TP, In re: Request for arbitration concerning complaint of TCG South Florida and Teleport Communications Group against BellSouth Telecommunications, Inc., for breach of terms of interconnection agreement, p. 13.

In further support of its argument, the County cites to Chapter 163, F.S., and Section 163.3161(3), F.S. Section 163.3161(3), F.S., provides, in pertinent part, as follows:

> It is the intent of this act that [comprehensive plan] adoption is necessary so that local governments can . . . encourage the most appropriate use of land, water, and resources, consistent with the public interest . . . . Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, . . . and general welfare; prevent the overcrowding of land and avoid undue concentration of population; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve . . . and protect natural resources within their jurisdictions.

The County admits that we are not "bound by the specific language and directives listed in Chapter 163," but asserts that we should be bound by "the impetus behind the statutes." The County acknowledges that Section 367.011, F.S., makes our "regulatory powers superior to the provisions in other statutes covering the same subject matter," but argues that Chapter 367, F.S., repeatedly refers to acting in the public interest, and that the Florida Supreme Court views the public interest as "the ultimate measuring stick to guide" us in our decisions.[6]

The County further notes that when there is an objection by the County to an amendment application, we are not required to "defer" to the Comp Plan, but must consider it.[7] The County argues that, because the Comp Plan was developed to promote the public interest, any violation of the plan must necessarily be against the public interest. The County concludes that an amendment application which goes against the stated planning goals of the citizens of the County cannot by definition be in the public interest. Therefore, the County asserts we "must deny the application as a matter of law."

Sun River's Response

The utility lists two main arguments why a summary final order is not warranted. These arguments are: (1) the county's comp plan is not dispositive with respect to water and wastewater certificate issues; and (2) material issues of fact are in dispute regarding the comp plan and other growth management issues. These arguments are discussed below.

(1) The County's Comp Plan Is Not Dispositive With Respect To Water And Wastewater Certificate Issues

The utility cites to Section 367.045(5)(b), F.S., which states that "the commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality." The utility further argues that the Legislature could have required us to defer to a properly adopted comprehensive plan, but did not do so. The utility states that our discretion to defer to a

[6] See Gulf Coast Electric Cooperative, Inc. v. Johnson, 727 So. 2d 259, 264 (Fla. 1999).
[7] See Section 367.045(5)(b), F.S.

comprehensive plan was expressly acknowledged by the Court in City of Oviedo v. Clark, 699 So. 2d 316 (Fla. 1st DCA 1997).

The utility further states that when we grant a certificate of service, it does not state what type of development will occur in that area. The utility argues that the we have "recognized many times that a local municipality retains control over development through zoning and construction permitting."[8]

In regard to the County's discussion of Chapter 163, F.S., the utility states that it is well settled law that Chapter 163 does not apply to this Commission.[9] The utility notes that the County admits this on page nine of its motion.

Finally, the utility argues that "a determination of how best to serve the public interest can be made only after a full and fair hearing on the disputed facts and issues." The utility cites Section 367.011(2), F.S., which states, in pertinent part, that: "[t]he . . . Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates," and argues that we cannot abrogate our authority over service area amendments to the County. The utility concludes that the public interest will be served by allowing us, the expert in the area of regulation of water and wastewater service territories, to make the decision on the amendment application, and should leave to the County or the Department of Community Affairs, the experts in planning or development, to make the judgments about development, zoning, and construction permits.

(2) Material Issues of Fact Are In Dispute Regarding The Comp Plan And Other Growth Management Issues

The utility disputes the County's statement that "there is no question that Sun River's proposal violates the Comp Plan." The utility notes that it has prefiled testimony wherein a witness testifies that a portion of the territory at issue in the amendment application is outside the urban service territory and may not comport with the Comp Plan as it exists today, and that this is different from "does not comport" with the Comp Plan.

The utility points out that in the County's Motion, the County argues that the area at issue is in the County's Water and Sewer District No. 2. The utility states that it is incongruous for the County to state that granting the amendment application would be in violation of the Comp Plan, but then turn around and argue that this area is in the County's service territory.[10] The utility

---

[8] The utility cites to 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 ("The Counties' hands are not tied when it comes to enforcement of their own comprehensive plans if and when rezoning is needed. Our certification does not deprive the counties of any authority they have to control urban sprawl."); and Order No. PSC-04-1256-PAA-WU, issued December 20, 2004, in Docket No. 041040-WU, In re: Application for certificate to operate water utility in Baker and Union Counties by B & C Water Resources, L.L.C. ("[T]he counties ultimately retain control over any future development through mechanisms such as zoning and construction permits.")

[9] The utility cites to Order No. PSC-04-0980-FOF-WU ("the planning process . . . does not supersede our authority pursuant to section 367.011, Florida Statutes.")

[10] See Paragraph 4.b. of the County's Objection filed on March 16, 2007.

argues that this shows the real intent of the County, which is to reduce or keep competing utilities' certificated service territories small.

The utility further disputes the County's "unfounded claim that water and/or wastewater certificates 'encourage urban sprawl.'" The utility states that we can only make that determination after hearing the conflicting evidence from the witnesses and that a summary conclusion would be inconsistent with our prior orders.[11] The utility argues that because urban sprawl is defined as "[u]rban development," and the Florida Statutes do not define service territory extensions as development, then "this alleged fact is unsupported." Moreover, the utility states that "there is not a shred of evidence showing that the Application will encourage sprawl," and asserts that "[d]evelopment is more likely spurred by the forces of supply and demand as viewed through the experience of a developer."

The utility also takes issue with the County's statement that "[n]o immediate need for utilities exists," and notes that it has received several letters from property owners in the area requesting service. The utility argues that Policy 2.7.4 of the Comp Plan requires the residential portion of development to be clustered, and that Policy 2.7.7 requires utilization of infrastructure such as central wastewater facilities. The utility asserts that its application to serve these property owners is actually necessary under the Comp Plan.

Finally, the utility notes that while the current Comp Plan may limit development in the area requested, the Comp Plan can be and is regularly amended. Based on all the above, the utility states that the Motion for Summary Final Order should be denied.

Analysis and Conclusion

Section 120.57(1)(h), F.S., provides that a summary final order shall be granted if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that: (1) no genuine issue as to any material fact exists, and (2) that the moving party is entitled as a matter of law to the entry of a final summary order. Rule 28-106.204(4), F.A.C., states that "[a]ny party may move for summary final order whenever there is no genuine issue as to any material fact."

"The party moving for summary judgment is required to conclusively demonstrate the nonexistence of an issue of material fact," and every possible inference must be drawn in favor of the party against whom a summary judgment is sought.[12] The burden is on the movant to demonstrate that the opposing party cannot prevail.[13] "A summary judgment should not be

---

[11] The utility cites to Order No. PSC-01-0360-PAA-WS, issued February 9, 2001, in Docket No. 000277-WS, In re: Application for transfer of facilities and Certificates Nos. 353-W and 309-S in Lee County from MHC Systems, Inc. d/b/a FFEC-Six to North Fort Myers Utility, Inc., holder of Certificate No. 247-S; amendment of Certificate No. 247-S; and cancellation of Certificate No. 309-S ("If the record reflects the existence of any issue of material fact, possibility of an issue, or even raises the slightest doubt that an issue might exist, summary judgment is improper.")

[12] Green v. CSX Transportation, Inc., 626 So. 2d 974 (Fla. 1st DCA 1993).

[13] Christian v. Overstreet Paving Co., 679 So. 2d 839 (Fla. 2nd DCA 1996).

granted unless the facts are so crystallized that nothing remains but questions of law."[14] "Even where the facts are undisputed, issues as to the interpretation of such facts may be such as to preclude the award of summary judgment."[15] If the record reflects the existence of any issue of material fact, possibility of an issue, or even raises the slightest doubt that an issue might exist, summary judgment is improper.[16] However, once a movant has tendered competent evidence to support his or her motion, the opposing party must produce counter-evidence sufficient to show a genuine issue because it is not enough to merely assert that an issue exists.[17]

Historically, we have recognized that policy considerations should be taken into account in ruling on a motion for summary final order. By Order No. PSC-98-1538-PCO-WS,[18] we stated:

> We are also aware that a decision on a motion for summary judgment is also necessarily imbued with certain policy considerations, which are even more pronounced when the decision also must take into account the public interest. Because of this Commission's duty to regulate in the public interest, the rights of not only the parties must be considered, but also the rights of the Citizens of the State of Florida are necessarily implicated, and the decision cannot be made in a vacuum. Indeed, even without the interests of the Citizens involved, the courts have recognized that
>
> > [t]he granting of a summary judgment, in most instances, brings a sudden and drastic conclusion to a lawsuit, thus foreclosing the litigant from the benefit of and right to a trial on the merits of his or her claim. . . . It is for this very reason that caution must be exercised in the granting of summary judgment, and the procedural strictures inherent in the Florida Rules of Civil Procedure governing summary judgment must be observed. . . . The procedural strictures are designed to protect the constitutional right of the litigant to a trial on the merits of his or her claim. They are not merely procedural niceties nor technicalities.

As stated above, there is a two-prong test for whether issuance of a summary final order is appropriate. The two prong test is: (1) if it is determined that no genuine issue as to any material fact exists; and (2) that the moving party is entitled as a matter of law to the entry of a

---

[14] Moore v. Morris, 475 So. 2d 666, 668 (Fla. 1985). See also McCraney v. Barberi, 677 So. 2d 355 (Fla. 1st DCA 1996) (finding that summary judgment should be cautiously granted, and that if the evidence will permit different reasonable inferences, it should be submitted to the jury as a question of fact).

[15] Franklin County v. Leisure Properties, Ltd., 430 So. 2d 475, 479 (Fla. 1st DCA 1983).

[16] Albelo v. Southern Bell, 682 So. 2d 1126 (Fla. 4th DCA 1996).

[17] Golden Hills Golf & Turf Club, Inc. v. Spitzer, 475 So. 2d 254, 254-255 (Fla. 5th DCA 1985).

[18] Issued November 20, 1998, in Docket Nos. 970657-WS and 980261-WS, In Re: Application for Certificates to Operate a Water and Wastewater Utility in Charlotte and Desoto Counties by Lake Suzy Utilities, Inc., and In Re: Application for Amendment of Certificates Nos. 570-W and 496-S to add Territory in Charlotte County by Florida Water Services Corporation, respectively.

final summary order, then such order should be issued. We find that the County has failed both prongs of the test.

First, the County has not carried its burden to conclusively demonstrate the nonexistence of an issue of material fact. The utility has shown that there are disputes of material fact as to whether its application is in the public interest and whether the application violates the Comp Plan.

However, even if there was no genuine issue as to any material fact, we find that the County fails the second prong of the test in that it has also not carried its burden to show that it is entitled, as a matter of law, to the entry of a summary final order. Section 367.045(5)(b), F.S., specifically states that when there is a timely objection by the County, "the commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality." Thus, we have the discretion to amend a utility's water and wastewater certificates even if the granting of the amendment application would be contrary to the County's Comp Plan.

As stated in Order No. PSC-98-1538-PCO-WS, "caution must be exercised in the granting of summary judgment, and the procedural strictures inherent in the Florida Rules of Civil Procedure governing summary judgment must be observed. . . . The procedural strictures are designed to protect the constitutional right of the litigant to a trial on the merits of his or her claim." Based on the foregoing, the County's Motion for Summary Final Order is denied.

County's Alternative Motion for Relinquishment of Jurisdiction

As in its Motion for Summary Final order, the County argues in its Alternative Motion for Relinquishment of Jurisdiction that the "development sought by Sun River" runs counter to the Comp Plan, and that the area sought "is not currently zoned for the types of activity Sun River seeks to encourage." The County admits that Section 367.171(5), F.S., gives us continuing jurisdiction over the utility's amendment application "until disposed of in accordance with the law in effect on the day such case was filed," but argues that the "exercise of such jurisdiction would constitute a colossal waste of the parties', and the Commission's, time, energy, and resources." The County notes that it retains control of zoning and permitting decisions, and that Sun River would still have to apply to the County to implement its servicing of the area. The County points out that the resolution rescinding jurisdiction was dated September 25, 2007, was effective immediately, and specifically recited that "it is in the best interest of the citizens and residents of Charlotte County that private for-profit water and wastewater systems within Charlotte County be regulated by Charlotte County."

The County argues that the case is at an early stage and that it would be more expedient for us to relinquish jurisdiction. It further asserts that, if the utility's claim has merit, the utility could seek to have the Comp Plan amended during the development of the new Comp Plan scheduled for 2010, and the utility would not be harmed by the relinquishment of jurisdiction.

Sun River's Response

The utility cites Section 367.171(5), F.S., which states in pertinent part as follows:

> When a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the commission, or in any court by appeal from any order of the commission, shall remain within the jurisdiction of the commission or court until disposed of in accordance with the law in effect on the day such case was filed by any party with the commission . . . .

The utility argues that there is no language giving us the discretion to relinquish jurisdiction in selected cases, and that we traditionally maintain jurisdiction. The utility cites five orders[19] where we maintained jurisdiction, and states that it has been unable to find a single case where we relinquished jurisdiction. The utility argues that even if the parties agreed upon a transfer of this matter to the County, there is no provision for such a transfer in Chapter 367.

The utility disagrees with the County's statement that to continue would be a waste of time and resources. It argues that the time and effort already expended by the utility and parties would be wasted if they were to have to re-litigate the entire matter. The utility surmises that the reason the County wants this matter to come before its own county commission is so that it "can eliminate competition and reserve service territory exclusivity for itself."

Analysis and Conclusion

In the past, when the County has taken back jurisdiction, we maintained jurisdiction to conclude pending cases.[20] In Order No. PSC-04-1155-PCO-WS, issued November 22, 2004,[21] we denied the Office of Public Counsel's (OPC) Motion to Relinquish Jurisdiction when Bay County rescinded jurisdiction and the rate proceeding was pending.

More recently, at the October 9, 2007 Agenda Conference, we considered the rate application of Utilities, Inc. of Sandalhaven (Sandalhaven).[22] In that case, our staff was recommending that a two-phase rate increase be implemented with the second phase possibly not taking place for two or three years. OPC argued that we should just control the first phase of the

---

[19] Order Nos. PSC-04-1155-PCO-WS, issued November 22, 2004, in Docket No. 030444-WS, In re: Application for rate increase in Bay County by Bayside Utility Services, Inc.; PSC-97-0552-FOF-WS, issued May 14, 1997, in Docket No. 920199-WS, In re: Application for a rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by Southern States Utilities, Inc.; Collier County by Marco Shores Utilities (Deltona); Hernando County by Spring Hill Utilities (Deltona); and Volusia County by Deltona Lakes Utilities; PSC-00-1879-AS-WS, issued October 16, 2000, in Docket No. 951056-WS, In re; Application for a rate increase in Flagler County by Palm Coast Utility Corporation; PSC-94-1050-FOF-WU, issued August 29, 1994, in Docket No. 940087-WU, In re: Application for a staff-assisted rate case in Hernando County by Rolling Hills Water, Inc.; and PSC-98-0507-FOF-WS, issued April 13, 1998, in Docket No. 980182-WS, In re: Disposition of contributions-in-aid-of-construction gross-up funds in Flagler County by Palm Coast Utility Corporation.

[20] See Orders Nos. PSC-97-0552-FOF-WS, PSC-00-1879-AS-WS, PSC-94-1050-FOF-WU, and PSC-98-0507-FOF-WS.

[21] Order issued in Docket No. 030444-WS, In re: Application for rate increase in Bay County by Bayside Utility Services, Inc.

[22] In Docket No. 060285-SU, In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven. Charlotte County took back jurisdiction just two days prior to staff filing its recommendation on Sandalhaven.

rate increase and not address the second phase as it would occur long after the County took over regulation of Sandalhaven. We rejected this argument, and approved the two-phase increase.

Section 367.171(5), F.S., specifically states that this Commission is to maintain jurisdiction over all pending cases and dispose of the cases in accordance with the law in effect on the day the case was filed. We find that closing Sun River's pending case before it is completed would be contrary to the Legislature's directive in Section 367.171(5), F.S. Thus, the County's Alternative Motion to Relinquish Jurisdiction is denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Charlotte County's Motion for Summary Final Order or Relinquishment of Jurisdiction is denied. It is further

ORDERED that this docket shall remain open for the processing of the protested amendment application.

By ORDER of the Florida Public Service Commission this 5th day of December, 2007.

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.