

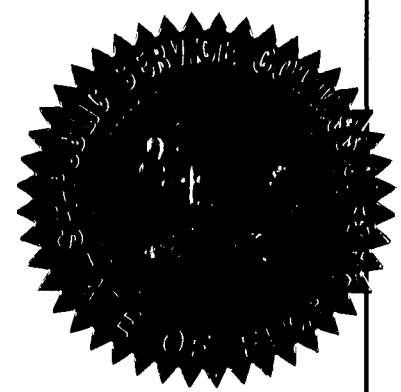
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109-WS

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In the Matter of:

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).



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER KATRINA J. McMURRIAN
 PREHEARING OFFICER

DATE: Thursday, January 3, 2008

TIME: Commenced at 9:30 a.m.
 Concluded at 9:43 a.m.

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
 Official Commission Reporter
 (850) 413-6734

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 MARTIN S. FRIEDMAN, ESQUIRE, and ROBERT C. BRANNAN,
3 ESQUIRE, Rose, Sundstrom & Bentley, LLP, 2548 Blainstone Pines
4 Drive, Tallahassee, Florida 32301, representing Sun River
5 Utilities, Inc.

6 HAROLD A. MCLEAN, ESQUIRE, and TODD D. ENGELHARDT,
7 ESQUIRE, Akerman Law Firm, 106 East College Avenue, Suite 1200,
8 Tallahassee, Florida 32302-1877, representing Charlotte County,
9 Florida.

10 RALPH R. JAEGER, ESQUIRE, FPSC General Counsel's
11 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
12 32399-0850, appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

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COMMISSIONER McMURRIAN: Let's call the prehearing to order. I hope -- first let me say I hope everyone had a good holiday season. And, staff, will you please read the notice?

MR. JAEGER: Yes, Commissioner.

Pursuant to notice dated December 11th, 2007, this time and place has been scheduled for a prehearing conference in Docket Number 070109-WS, the objection by Charlotte County to amendment application of Sun River Utilities, Incorporated, formerly known as MSM Utilities, LLC.

COMMISSIONER McMURRIAN: And now we'll take appearances. Mr. Friedman.

MR. FRIEDMAN: Yes. Martin Friedman of the law firm of Rose, Sundstrom & Bentley on behalf of Sun River Utilities. And also with me is Robert Brannan of the same firm.

COMMISSIONER McMURRIAN: Thank you.

Hi, Mr. Engelhardt.

MR. ENGELHARDT: Hi. Good morning. Todd Engelhardt from Akerman, Senterfitt. Also with me is Harold McLean.

MR. JAEGER: Ralph Jaeger on behalf of the Commission.

And did we have Ms. Burton listening in? Is that all she's doing? Has she called in to listen, or do you know?

MR. ENGELHARDT: Ms. Burton is going to call in and just listen. She's not going to actually appear at the

1 hearing.

2 COMMISSIONER McMURRIAN: Okay. Thank you, Mr.
3 Engelhardt.

4 Staff, are there any preliminary matters at this
5 time?

6 MR. JAEGER: Just this morning we've looked at a
7 demonstrative exhibit consisting of the maps, and the parties
8 have agreed to what's going to go on that. It's got some
9 finishing touches to be made. But, anyhow, we will have a
10 blow-up of the service area with the maps and showing
11 everything that's there all in one document to be used at
12 hearing. And they will make 11x14 copies to be passed out so
13 you can have them sitting at your seat also. And we have an
14 easel at the exhibit -- for the use of that exhibit.

15 COMMISSIONER McMURRIAN: Thank you.

16 Any other preliminary matters from the parties?

17 MR. FRIEDMAN: No.

18 COMMISSIONER McMURRIAN: Okay. I guess we'll proceed
19 through the draft Prehearing Order then. I'll go through it
20 fairly quickly, but please stop me if you've got some changes
21 or concerns that you want to raise.

22 Section I, case background.

23 Section II, the conduct of proceedings.

24 Section III, jurisdiction.

25 Section IV, procedure for handling confidential

1 information.

2 Section V, prefiled testimony and exhibits. And I'd
3 note here is where I usually remind folks that the summaries
4 are limited to five minutes, the witness summaries. Any
5 concerns?

6 MR. ENGELHARDT: I have a question in regard to that.

7 COMMISSIONER McMURRIAN: Sure.

8 MR. ENGELHARDT: In regard to witness summaries, are
9 witness summaries required?

10 COMMISSIONER McMURRIAN: Absolutely not. In fact,
11 brevity is appreciated, quite frankly.

12 MR. ENGELHARDT: Thank you.

13 MR. McLEAN: Commissioner, are the, are the summaries
14 on the record?

15 COMMISSIONER McMURRIAN: That's a question I have to
16 turn to Mr. Jaeger for. I believe they are.

17 MR. JAEGER: The summary is a part of his testimony.
18 And you can object if he starts going outside anything in his
19 testimony, I believe is the procedure. I've seen in a couple
20 of hearings where the summary was longer than the testimony,
21 and I'm sitting there saying, "What's going on?"

22 MR. McLEAN: Well, Commissioner, if they went outside
23 the testimony, then they would be barred by not having been
24 prefiled; correct? And if they're, and if they're just the
25 testimony, then they're cumulative; no? No objection.

1 COMMISSIONER McMURRIAN: Mr. McLean wants to make it
2 complicated, and that's okay.

3 MR. McLEAN: No objection. Just a pet peeve. That's
4 all.

5 MR. FRIEDMAN: Change what we've been doing for the
6 last 30 years.

7 MR. McLEAN: Yeah. It's about 30 years old.

8 COMMISSIONER McMURRIAN: Actually that's why I always
9 point out that the summaries be limited to five minutes because
10 I think if you can't summarize your testimony in five minutes,
11 there's a good chance you're going outside the scope of your
12 testimony. But thank you, Mr. McLean.

13 Section VI, order of witnesses. I understand that
14 the parties and staff have agreed that the testimony of
15 Allen B. Fisher can be inserted into the record as though read
16 and that the panel has agreed that the witness may be excused.

17 MR. FRIEDMAN: That's correct.

18 COMMISSIONER McMURRIAN: Okay. Seeing nodding of
19 heads, Mr. Fisher's testimony shall be inserted into the record
20 as though read and he may be excused from attending the
21 hearing.

22 And, Mr. Friedman, do I understand correctly that you
23 like direct and rebuttal testimony taken up separately?

24 MR. FRIEDMAN: That's correct.

25 COMMISSIONER McMURRIAN: Okay. Any concerns?

1 MR. ENGELHARDT: I do have a question. Is Gerald
2 Hartman going to be, going to be testifying twice?

3 MR. FRIEDMAN: That's correct.

4 MR. ENGELHARDT: Original once and rebuttal?

5 COMMISSIONER McMURRIAN: That's my understanding.
6 Generally we do sometimes lump the direct and rebuttal together
7 just for ease of hearing and just for brevity. But at the same
8 time it's usually my preference -- if one of the parties feels
9 strongly about doing it in the direct at once and then rebuttal
10 at once order, then that's, that's okay with me. But I just
11 wanted to check and see if anyone had any particular concerns
12 about that.

13 MR. ENGELHARDT: My concern would be my
14 cross-examination in the time that he's testifying in direct
15 testimony, his first time, would it be limited to his direct
16 testimony or could I address his rebuttal testimony if he goes
17 there?

18 COMMISSIONER McMURRIAN: I think it should be limited
19 to the direct testimony, but let me look toward Mr. Jaeger.

20 MR. JAEGER: That's correct. Direct testimony, cross
21 him on his direct. And on rebuttal, if you have cross on
22 rebuttal, cross him on the rebuttal.

23 MR. ENGELHARDT: And if he has contradicted himself
24 in his own rebuttal testimony compared to his direct testimony
25 --

1 MR. JAEGER: Then I think you could bring that up on
2 the rebuttal showing the contradiction.

3 MR. ENGELHARDT: All right. Thank you.

4 COMMISSIONER McMURRIAN: Thank you, Mr. Engelhardt.

5 So we'll take the direct and rebuttal up separately
6 and I think we're all on the same page.

7 Section VII, basic positions. Any changes?

8 MR. FRIEDMAN: On VI, on VI, I wanted to add under
9 Feldman's testimony, I think he's also going to address the
10 issue -- I think that his testimony also addresses the public
11 interest statement, so I think we need to add Issue 8 to
12 Mr. Feldman's rebuttal when we're listing the issues.

13 COMMISSIONER McMURRIAN: Okay. So under rebuttal for
14 Witness Feldman you want to add eight behind one and five is
15 what you're saying.

16 MR. FRIEDMAN: Yes, please.

17 COMMISSIONER McMURRIAN: Any concerns?

18 MR. ENGELHARDT: Not about Mr. Feldman, no, in terms
19 of that.

20 COMMISSIONER McMURRIAN: Okay. Any other issues
21 about Section VI?

22 MR. ENGELHARDT: Yes, Commissioner. Our witness Jeff
23 Ruggieri has a personal family conflict as it turns out on the
24 dates of the hearing. He certainly will appear and would be
25 our first witness. But I wanted to sort of float out the idea

1 that perhaps when he's done, if there's no objections, if he
2 could be excused before the end of the day.

3 COMMISSIONER McMURRIAN: I don't think there's any
4 problem with that. Mr. Jaeger, will you help me?

5 MR. JAEGER: Just a second. Staff has no problem.

6 MR. FRIEDMAN: Yeah. I don't have any problem after
7 he testifies with, with letting him go.

8 COMMISSIONER McMURRIAN: Okay. And maybe just --

9 MR. FRIEDMAN: It's probably going to be the
10 afternoon before we get to him if we do him in the normal
11 course though.

12 MR. ENGELHARDT: As long as he's our first witness
13 and he can be excused when he's done, I think that'd be
14 acceptable.

15 COMMISSIONER McMURRIAN: Okay. Thank you, Mr.
16 Engelhardt.

17 MR. FRIEDMAN: Okay. We have no objection.

18 MR. ENGELHARDT: Thank you.

19 COMMISSIONER McMURRIAN: Thank you. I guess we'll
20 move on to the basic positions, Section VII.

21 Section VIII, issues and positions. I know we
22 have -- one thing I wanted to mention there, Mr. Engelhardt, I
23 understand that the County has taken no position on
24 Issues 2, 3 and 4, and I understand you wish to leave that as
25 your position and that you're aware that you're essentially

1 waiving those issues if you leave it as no position on those
2 three.

3 MR. ENGELHARDT: That's understood, Commissioner.
4 However, we feel that it would be inappropriate for us to take
5 a position since we're not a party with knowledge as to either
6 of those or any of those issues.

7 COMMISSIONER McMURRIAN: Okay. Thank you. I just
8 wanted to confirm.

9 MR. ENGELHARDT: Thank you.

10 COMMISSIONER McMURRIAN: Any other changes on the
11 issues and positions section? Hearing none, I guess that takes
12 us to the exhibit list section, Section IX.

13 MR. JAEGER: Commissioner, Ms. Zellner has prepared a
14 comprehensive stipulated exhibit list in draft form. She was
15 waiting to finalize it until we get through with the prehearing
16 conference. But if nothing changes, I can give that to the
17 parties. And basically it has Exhibit Number 1 will be the
18 Comprehensive Exhibit List, and then it'll list all the
19 prefiled Exhibits 2 through 18 is what it shows now. And I can
20 give them a copy of that at the end of the prehearing
21 conference. It's just rough right now.

22 COMMISSIONER McMURRIAN: Okay. Mr. Jaeger, I
23 understand also that we haven't yet received Mr. Pearson's
24 late-filed exhibit that's listed on Page 10 of the draft
25 Prehearing Order.

1 MR. JAEGER: That's correct. I talked to him about
2 that yesterday and this morning, and I think he says that they
3 can get it in within the next week or so.

4 MR. ENGELHARDT: Absolutely, Commissioner.

5 COMMISSIONER McMURRIAN: When you say next week or
6 so, perhaps by, maybe at least by the 14th.

7 MR. ENGELHARDT: Absolutely.

8 COMMISSIONER McMURRIAN: Okay. I think that'll give
9 time for everyone to make copies and get it ready for getting
10 on the road to Charlotte County the next day.

11 MR. ENGELHARDT: You may need that map to get to
12 Charlotte County from Tallahassee.

13 COMMISSIONER McMURRIAN: We probably do. Thank you,
14 Mr. Engelhardt.

15 Anything else on the exhibit list?

16 Okay. Section X, proposed stipulations. I guess
17 we've already discussed Issues 2, 3 and 4, and the County takes
18 no position. And I understand that staff is in agreement with
19 the utility's position on those issues. So, Mr. Jaeger, just
20 help me, but I think we can show those as stipulations at least
21 as to staff and the utility.

22 MR. JAEGER: Yes, Commissioner. What we'll -- that
23 language, "The following are proposed stipulations on which Sun
24 River and staff are in agreement and on which the County takes
25 no position," and it would be the 1, 2 and 3 stipulations

1 there. And that would get rid of Issues 2, 3 and 4. That
2 would be stipulated to.

3 COMMISSIONER McMURRIAN: Well, we would talk -- it
4 wouldn't really get rid of them yet. It would be -- we would
5 talk about possibly voting on those issues at the hearing, but
6 we need to probably --

7 MR. JAEGER: That's correct. The panel would vote at
8 the hearing to accept those, whether to accept those three
9 stipulations.

10 COMMISSIONER McMURRIAN: Are there any concerns about
11 that? Because we will have to do, I think, some homework here
12 to see if Commissioners are comfortable doing that. But at the
13 same time, are there any concerns from the parties with taking
14 those issues up and possibly voting on those at the hearing?

15 MR. ENGELHARDT: No. We have, we have no issue on
16 that.

17 COMMISSIONER McMURRIAN: Okay. Okay. Any other
18 concerns or issues with respect to Section X?

19 Section XI, pending motions. I understand there are
20 none, but please correct me if I'm wrong.

21 Pending confidentiality matters on Section XII. I
22 understand there are none.

23 And the ruling section, this, this is where I usually
24 point out that we need to talk about opening statements, if
25 any, and the length of time. Staff has suggested to me that

1 they shouldn't exceed ten minutes per side, and that with
2 respect to Charlotte County in particular, that we could leave
3 it up to you on how to split up that time; since you have more
4 than one attorney on the case, if you want to the split that
5 time up, but it would still be ten minutes per side. Does that
6 suit everyone?

7 MR. ENGELHARDT: That's acceptable. At what point
8 would you need to know if we are, if we were to split opening
9 statements just --

10 COMMISSIONER McMURRIAN: I'm not sure if we need to
11 know.

12 MR. ENGELHARDT: Okay.

13 MR. JAEGER: I think at the prehearing (sic.) itself
14 they can just say I'd like to take the first five minutes and
15 reserve the other five minutes for Ms. Burton or whoever else
16 would be doing it, or Harold.

17 COMMISSIONER McMURRIAN: At the hearing?

18 MR. JAEGER: Yes. I'm sure they can do that at the
19 hearing.

20 MR. ENGELHARDT: Thank you.

21 COMMISSIONER McMURRIAN: Thank you.

22 MR. JAEGER: Just we'd know there's going to be ten
23 minutes of opening statements.

24 COMMISSIONER McMURRIAN: Okay. And we'll reflect
25 that in that ruling section.

1 I believe that gets us through the draft Prehearing
2 Order. And staff will make any changes that need to be made
3 and get this out pretty quickly, I believe.

4 Any other matters before we adjourn?

5 MR. FRIEDMAN: None from the utility.

6 MR. ENGELHARDT: None. Thank you.

7 MR. JAEGER: None from staff.

8 COMMISSIONER McMURRIAN: Okay. Well, this prehearing
9 conference is adjourned. Thank you all.

10 (Prehearing Conference adjourned at 9:43 a.m.)

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1 STATE OF FLORIDA)
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 2 COUNTY OF LEON) CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 4th day of January, 2008.

Linda Boles
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 FPSC Official Commission Reporter
 (850) 413-6734