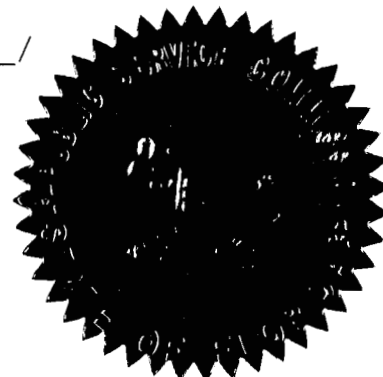


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109-WS

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: PORT CHARLOTTE SERVICE HEARINGS

BEFORE: COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Wednesday, January 16, 2008

TIME: 10:00 a.m. and 6:00 p.m.

PLACE: Cultural Center of Charlotte County
Conference Room C
2280 Aaron Street
Port Charlotte, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

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7 Florida 33948-1094, representing Charlotte County Attorney's
8 Office.

9 MARTIN S. FRIEDMAN, ESQUIRE and ROBERT C. BRANNAN,
10 ESQUIRE, Rose Law Firm, 2548 Blairstone Pines Dr., Tallahassee,
11 Florida 32301, representing Sun River Utilities, Inc.

12 RALPH JAEGER, ESQUIRE, FPSC General Counsel's Office,
13 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
14 appearing on behalf of the Commission Staff, Mary Anne Helton,
15 advisor to the Commission.

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I N D E X

WITNESSES

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NAME :

PAGE NO.

ADAM CUMMINGS

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PEGGY BEIDEL

52

EXHIBITS

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1 Comprehensive Exhibit List

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P R O C E E D I N G S

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2 COMMISSIONER McMURRIAN: Call this hearing to order.

3 I want to first thank you all for joining us on this
4 beautiful day here in Charlotte County today.

5 I'll go through a few preliminary matters before
6 continuing with the public testimony. Upon conclusion of any
7 public testimony, we will then move directly into the technical
8 portion of the hearing. And also I want to note that there
9 will be a time for additional public testimony this evening at
10 6:00 p.m. That has been noticed as well to hear from the
11 public. So in between the 10:00 a.m. service hearing and the
12 6:00 p.m. service hearing we will be conducting our technical
13 service hearing.

14 I guess first I will have staff read the notice.

15 MR. JAEGER: Yes, Commissioner.

16 Pursuant to notice dated December 19th, 2007, this
17 time and place has been scheduled for a hearing in Docket
18 Number 070109-WS, objection by Charlotte County to the
19 amendment application of Sun River Utilities, formerly known at
20 MSM Utilities, LLC.

21 COMMISSIONER McMURRIAN: Thank you.

22 And I didn't introduce myself. I'm Commissioner
23 McMurrian, with the Florida Public Service Commission. And to
24 my right is Commissioner Nancy Argenziano; to my left is
25 Commissioner Nathan Skop. And we will move into taking

1 appearances at this point.

2 MR. FRIEDMAN: Yes. This is Martin Friedman of the
3 law firm of Rose Sundstrom & Bentley. We represent Sun River
4 Utilities. And also with me is Mr. Robert Brannan, same firm.

5 MR. ENGELHARDT: Good morning. I'm Todd Engelhardt
6 with the law firm of Akerman Senterfitt, we represent Charlotte
7 County. And with me as well is Harold McLean. Also, the
8 county attorney, Marty Burton is with us, as well.

9 COMMISSIONER McMURRIAN: Thank you, Mr. Engelhardt.

10 MR. JAEGER: Commissioner McMurrian, Ralph Jaeger on
11 behalf of the Commission.

12 MS. HELTON: Mary Anne Helton, advisor to the
13 Commission.

14 COMMISSIONER McMURRIAN: Again, thank you all for
15 being here with us today. Also, we have a court reporter to my
16 right, Ms. Jane Faurot, and there are several other staff
17 members with us here today that will be happy to help out with
18 any questions that come up, or -- they are definitely here to
19 help us. And if everyone could wave, just from the PSC staff,
20 and let everyone know that if you need -- if any customers are
21 here that need to speak with them, Mr. Dick Durbin and Ms.
22 Sandy Simmons are in the back, and they can help you with any
23 questions and with the sign-up sheet, et cetera.

24 At this time we will take up any preliminary matters.

25 MR. JAEGER: Yes, Commissioner. There are

1 three stipulations which the Commission should vote on. Staff
2 is recommending that these stipulations be taken up after the
3 public testimony at the beginning of the technical portion of
4 the hearing this morning. So we would defer that until after
5 we go into the public testimony.

6 COMMISSIONER McMURRIAN: Okay. Thank you.

7 MR. JAEGER: Also, we have stipulated exhibits. I
8 previously passed that out to everyone. Everybody should have
9 a copy in front of them. Staff has prepared a comprehensive
10 exhibit list that includes all exhibits prefiled with the
11 parties' and staff's testimony. Staff asked that the exhibit
12 list itself be marked as Exhibit 1, and all other exhibits be
13 marked as identified on the list, that is for the prefiled
14 exhibits. Staff will then ask that the Comprehensive Exhibit
15 List be admitted into the record.

16 COMMISSIONER McMURRIAN: Okay. So we will mark it as
17 Exhibit 1 at this time, and move it in the record at the end.

18 MR. JAEGER: We can do that right now. It's just a
19 preliminary matter, so if we have exhibits from the customer
20 testimony that we will be able to start and have that in front
21 of us.

22 COMMISSIONER McMURRIAN: Okay. Any objections?

23 MR. ENGELHARDT: None.

24 MR. FRIEDMAN: None.

25 COMMISSIONER McMURRIAN: Okay. So moved.

1 (Exhibit Number 1 marked for identification and
2 admitted into the record.)

3 MR. JAEGER: Also, Commissioner, the parties have
4 agreed to the use of a demonstrative exhibit. It has been
5 passed out previously to you. It's that colored 11 by 14.
6 It's also on the easel over there so you can visualize and
7 picture what is going on here today. It shows the urban
8 service area, the four areas that the utilities say they have
9 gotten letters on and the utility's requested territory and its
10 current territory.

11 I think also the utility has a blowup of Exhibit C to
12 Mr. Reeves' AAR-2, that is in your testimony. They are going
13 to -- I think they are going to modify that exhibit. We can
14 put that on the easel, if need be. It has been blown up, also.
15 They will be giving out a revised exhibit when Mr. Reeves
16 testifies.

17 COMMISSIONER McMURRIAN: I think we have that before
18 us, Mr. Jaeger. I think that has been passed out. Is that
19 correct?

20 MR. FRIEDMAN: Yes.

21 MR. JAEGER: Other than that, I know of no other
22 preliminary matters to the service hearing.

23 COMMISSIONER McMURRIAN: Okay. Thank you. I guess
24 with that -- any other preliminary matters from the parties?

25 MR. ENGELHARDT: No, Madam Chairman.

1 COMMISSIONER McMURRIAN: Okay. With that we will
2 move into the service hearing portion.

3 Again, good morning. I want to thank everyone for
4 coming. Again, I have introduced myself and the Commissioners
5 to my right and left. We are all glad to be here with you
6 today.

7 We are here because there has been an application
8 filed by Sun River Utilities to amend its service territory,
9 and Charlotte County has filed a protest to that application.
10 The purpose of the service hearing is to take testimony on Sun
11 River's application. It's important to note that the rates and
12 charges of the current utility customers are not at issue in
13 this proceeding and will not be changed as a result of this
14 proceeding.

15 This is an official hearing that will be transcribed
16 and will become part of our official record. As such, any
17 members of the public testifying today will need to be sworn in
18 before -- will need to be sworn in before presenting your
19 comments, and will also be subject to cross-examination. And
20 that is simply that some of the attorneys may want to ask you a
21 couple of questions. And, of course, don't be nervous about
22 that.

23 If you plan to speak, we ask that you sign up on the
24 speaker sign-up forms in the back, and I have introduced
25 Mr. Dick Durbin in the back. If anyone needs to see him about

1 speaking, we would appreciate it if you would sign up. We will
2 then ask our staff attorney to call each of you who signed up
3 to speak one at a time to present your comments. And where
4 will we have them --

5 MR. JAEGER: The witness chair is right there beside
6 the court reporter.

7 COMMISSIONER McMURRIAN: Okay. And come up one at a
8 time here. If you do not wish to provide verbal comments at
9 this time, we have green sheets -- if someone could hold --
10 Mr. Jaeger, do you have one of the green sheets? I don't have
11 one here.

12 MR. JAEGER: Mr. Durbin --

13 COMMISSIONER McMURRIAN: Mr. Durbin is holding one in
14 the back. And at the very back of the green sheet there is a
15 place to submit comments. It's preaddressed with the
16 Commission's address, put a stamp on it and send it in the
17 mail. So if you have any comments that you don't wish to make
18 verbally at this time, and you would like to send in some
19 comments, then you are perfectly welcome to, and we encourage
20 you to. So please pick up those green sheets. And if there
21 are any other people that you know that weren't able to be here
22 and you would like to take one to them, feel free. Please take
23 one to them. Those written comments will be placed in the
24 docket file.

25 We will be swearing all of you in at the same time,

1 so at this time I will ask all members of the public who intend
2 to provide testimony today to please stand and raise your right
3 hand with me.

4 (Witnesses sworn.)

5 COMMISSIONER McMURRIAN: Okay. As you come to the
6 microphone, we will ask that you state your name and address
7 for the record and also to spell your name for the court
8 reporter. And please speak into the microphone. We have been
9 reminded about that, and perhaps I'm not doing as good a job as
10 I should. Is everyone able to hear me okay? Thank you.

11 I guess with that, Mr. Jaeger, we'll call our first
12 witness.

13 MR. JAEGER: Yes, Commissioner. Only one person has
14 signed up prior to speak. It's Adam Cummings from the
15 Charlotte County Commission. At this time he is the only one,
16 but there may be other customers who decide -- there are a few
17 here, I believe.

18 COMMISSIONER McMURRIAN: Okay. Thank you.

19 Mr. Cummings.

20 MR. FRIEDMAN: Commissioner McMurrian, I would object
21 to this witness testifying. The purpose of this is customer
22 testimony to hear from what the customers have to say about
23 this application. This gentleman is a member of the Board of
24 County Commission, which means that he is, in fact, a party to
25 this case. The County is the party in this case. And allowing

1 them to bring in a witness would be like me leaving out Mr.
2 Reeves and having him come in and testify without having an
3 opportunity to have seen his prefiled testimony and take his
4 deposition if we needed to do so.

5 So it is highly inappropriate to have a party bring
6 another witness in without having notice, and I think it
7 violates our due process rights. He's a party to the case as a
8 county commissioner.

9 COMMISSIONER McMURRIAN: Mr. Engelhardt.

10 MR. McLEAN: Madam Chairman, I'll handle the issue.
11 I have appeared in Commission hearings for about 30 years.
12 Some of that time I have represented the public directly, and I
13 know of not a single instance in which a commissioner of the
14 county did not testify, and in many of those cases the county
15 was a party. I might add that the collegial body, the Board of
16 County Commissioners is the party, not this individual
17 commissioner.

18 I think it is absolutely essential that you folks
19 hear from this commissioner and what his attitude is about the
20 Comp Plan and so forth. I think his testimony will be very
21 general, and I can tell you that I know of no instance in which
22 the Public Service Commission excluded the testimony of a
23 county commissioner irrespective of what the issues or parties
24 were before the Commission.

25 MR. FRIEDMAN: I have had different experience. In a

1 case down in Fort Myers, I had a -- it wasn't a county
2 commissioner, but it was a city council member that was
3 excluded from testifying in the customer part of a territory
4 amendment application. So I have had the other experience, and
5 I think that just like counsel said, he's going to get up here
6 and he's going to talk about the comp plan. He is going to
7 talk about the amendment. He is going to get up there and talk
8 about the central issues of this case, and I haven't had an
9 opportunity to hear what he has got to say like everybody else
10 did. Everybody else has opened up their witnesses and
11 presented prefiled testimony for their witnesses. And this is
12 not a customer.

13 It is different from customers. I understand, I have
14 been doing this as long as counsel has, and customers are
15 freely given an opportunity to talk. But in a territory
16 amendment case where the County is a party to a territory
17 amendment -- this isn't a rate case. This is a territory
18 amendment. When the County is a party and then presents a
19 county commissioner to talk about the exact issues without us
20 having prior notice, I think, violates our rights to have a
21 fair proceeding.

22 MR. McLEAN: Madam Chairman, if I might be heard on
23 the issue.

24 COMMISSIONER McMURRIAN: Absolutely since I gave him
25 time to respond again. And then I want to hear from staff and

1 Commissioners if they have any questions.

2 MR. McLEAN: Counsel may be right about the
3 individual instance. There may have been one. There should be
4 no more. Moreover, with respect to due process, we have not
5 spoken with this witness except casually out in the hall. The
6 utility will have adequate opportunity to cross-examine the
7 witness on any topic they choose to or any topic to which he
8 speaks.

9 COMMISSIONER McMURRIAN: Commissioners, I will hear
10 from Mr. Jaeger and Ms. Helton first, or would you all like to
11 ask questions first?

12 COMMISSIONER SKOP: I have a question.

13 COMMISSIONER McMURRIAN: Okay. Commissioner Skop.

14 COMMISSIONER SKOP: Thank you, Commissioner
15 McMurrian.

16 I just would like to ask the potential witness
17 whether he would be testifying in his individual capacity as a
18 customer or whether it would be in his capacity as a
19 commissioner.

20 MR. CUMMINGS: Well, I guess since I don't know what
21 your definition is in terms of a customer, it's hard for me to
22 say. I can tell you that the board -- I do not have the
23 authority of the Board of County Commissioners to be here.
24 They have not voted to send me here as a representative of the
25 Board, so I don't have the authority to speak on their behalf.

1 I can only speak as an individual.

2 COMMISSIONER SKOP: Okay. I guess this is a
3 follow-up of what I was trying to seek. Are you currently a
4 customer of Sun River Utilities?

5 MR. CUMMINGS: I am not a customer personally of Sun
6 River Utilities.

7 COMMISSIONER SKOP: Thank you.

8 COMMISSIONER McMURRIAN: Mr. Jaeger, Ms. Helton, I
9 know that we might want to get some clarification, too, about
10 how the customer hearing was noticed. Was it noticed as a
11 hearing to hear from the public, or was it specific that it
12 needed to be customers of the utility?

13 MR. JAEGER: It was not noticed as a customer. It
14 was a public service hearing. And I think what the
15 Commissioner said was important, that he is not here on behalf
16 the County Commission, it is in his own personal. And I think
17 with that restriction that he would be allowed to testify, and
18 that would be the restriction that he was doing it on his own,
19 as a person, an individual, and not as a county commissioner.

20 MR. FRIEDMAN: The notice says notice of customer
21 service hearing. So I take exception with what Mr. Jaeger
22 said.

23 COMMISSIONER McMURRIAN: Mr. Friedman, give us just a
24 couple of minutes, because I reviewed that, as well, and there
25 are a few different places in there that seems to suggest that

1 it is more broad.

2 MR. FRIEDMAN: It talks about service hearing. And
3 if you are just a politician that has a position contrary to
4 the utility, that's not what a service hearing is intended to
5 do.

6 COMMISSIONER McMURRIAN: Mr. Friedman, let's hear
7 from staff one more time. And I think at this point we're
8 going to -- let's hear from staff, and then I will make a
9 ruling and we will move forward.

10 MR. JAEGER: Mr. Friedman is correct. It does say
11 notice of customer service hearing and in the body customers
12 who wish. But in the past during the service hearing portion,
13 we have always allowed -- except in that one instance that I'm
14 aware of, we have always allowed commissioners to speak on
15 their own behalf.

16 MR. McLEAN: Madam Chairman, I would like to respond
17 to Mr. Friedman when the time is right.

18 COMMISSIONER McMURRIAN: Ms. Helton, do you want to
19 go ahead now and then allow Mr. McLean, or would you like to
20 hear from Mr. McLean? I do think it's fair that he gets
21 another response.

22 MS. HELTON: I'm not disagreeing with that at all,
23 Chairman. It's your pleasure.

24 COMMISSIONER McMURRIAN: Mr. McLean, feel free to go
25 ahead.

1 MR. McLEAN: Sure. You are being asked to adopt an
2 absurdity. Because if all of the Commissioner's constituents
3 came here, you would have to swear in every one and see what
4 they have to say irrespective of whether they are customers or
5 otherwise. This gentleman has a representative capacity. He
6 is elected by the people of this county and he is concerned, I
7 would assume, like everyone else is on our side of the table
8 about how many resources went into the Comp Plan. I don't know
9 if he is going to speak about that or not, but I do know that
10 every one of his constituents could come up here and take that
11 microphone. It seems a total absurdity to me to prevent him
12 from doing what they could do.

13 COMMISSIONER McMURRIAN: Ms. Helton.

14 MS. HELTON: I just wanted to clarify a little bit
15 about what the notice said. Our notice says that the purpose
16 and procedure of this hearing is for the members of the public
17 who wish to present testimony are urged to appear promptly at
18 each scheduled hearing time. So I think from that someone
19 could read that any member of the public can appear. And I
20 note, too, that the notice that the utility sent out said that
21 all persons who wish to present testimony are urged to come to
22 the hearing in a timely manner. I believe that the witness has
23 stated that he is here in his individual capacity, and I
24 believe that you have the discretion to hear his testimony this
25 morning.

1 COMMISSIONER McMURRIAN: Commissioners, do either of
2 you have anything to add before I make a ruling?

3 COMMISSIONER ARGENZIANO: Well, I find it a little
4 sticky, and it gives me a little bit of angst because of the
5 fact that the County is part of this whole proceeding.
6 However, if our staff feels that it was published as members of
7 the public, and being that the Commissioner was not sent by the
8 Commission and may be representing his constituents who are
9 customers of the utility, maybe that gives me a little relief,
10 but I still feel it's a little bit of a sticky situation that
11 we are in.

12 COMMISSIONER McMURRIAN: Thank you.

13 Commissioner Skop.

14 COMMISSIONER SKOP: Thank you, Commissioner
15 McMurrian.

16 Like I say, certainly I think it's within your
17 discretion based on legal staff's analysis whether to allow
18 this or not. If it is allowed, I think that given the fact
19 that there wasn't prefiled testimony or any opportunity for
20 them to cross-examine the witness, that they would be afforded
21 appropriate time to ask questions they would like to ask if
22 this witness comes in.

23 COMMISSIONER McMURRIAN: Absolutely. And it is my
24 understanding that the utility would be available to
25 cross-examine Mr. Cummings at the conclusion of his testimony.

1 Mr. Friedman, I'm inclined to allow it, because I do
2 think the notice was more broad than just customers of the
3 utility. And, quite frankly, in the hearings I have been
4 involved in we have allowed commissioners.

5 It does make it more sticky, as Commissioner
6 Argenziano said, with the County being a party in this case.
7 That's not necessarily the norm, but I do think the notice was
8 broad enough. We do note your objection for the record, and we
9 are going to allow Commissioner Cummings to give his public
10 testimony, and then you will be allowed to cross-examine him at
11 the conclusion of that consistent with any other customer that
12 comes forward to testify, as well. I believe that that is your
13 right and all parties' right.

14 COMMISSIONER ARGENZIANO: Madam Chair.

15 COMMISSIONER McMURRIAN: Sure.

16 COMMISSIONER ARGENZIANO: Would that mean the
17 Commissioner needs to stick to maybe his constituents' concerns
18 rather than the County Commission's concerns?

19 COMMISSIONER McMURRIAN: Mr. Jaeger, do you have
20 any -- I guess it's my understanding that he can give his
21 opinion, you know, as a member of the public and it could be --

22 MR. JAEGER: I believe it could address all eight
23 issues that are listed in the prehearing order, the eight
24 issues, even the stipulated issues.

25 COMMISSIONER McMURRIAN: But it would need to be

1 relevant, but other than that there is -- at least in the past
2 we haven't put limits on the scope of the testimony, other than
3 it needs to be relevant to the proceeding before us.

4 MR. JAEGER: That's correct.

5 COMMISSIONER McMURRIAN: Okay. I think with that we
6 will go ahead and hear from Commissioner Cummings. Thank you.

7 ADAM CUMMINGS

8 appeared as a witness and, swearing to tell the truth,
9 testified as follows:

10 DIRECT STATEMENT

11 MR. CUMMINGS: First, let me thank you all for
12 allowing me to speak, and to apologize. This is the first time
13 I have spoken at a Public Service Commission hearing and wasn't
14 really aware that interjecting myself this late in the process
15 was going to cause a problem, and I apologize for that.

16 Just part my background, I don't know how to speak as
17 an individual and not involve at least some of what I have
18 learned as a County Commissioner over time. I'm somewhat, you
19 might almost say bipolar, in that I'm the snot-nose kid and the
20 old man of the board at the same time.

21 I live in a retirement community. I'm 41 years old,
22 and I have been a County Commissioner since 1994, 13 years. So
23 I'm the longest sitting commissioner we have. In that time I
24 have -- all but about four or five months of that, I have been
25 the county representative on the Peace River Manasota Regional

1 Water Supply Authority, and all but one year of that I have
2 been the County's representative on the Southwest Florida
3 Regional Planning Council. I mention that only to show that as
4 part of my education in growth management and utilities that
5 I'm familiar with the subject matter at hand.

6 I think that when we look at growth in our community,
7 we have all of the paper that goes on, and all of the
8 Comprehensive Plan infrastructure elements. Of those, of the
9 things that actually happen on the ground that cause growth to
10 occur the most, the most important elements are roads, sewer,
11 and water. If those elements go in, everything else, police,
12 fire protection, all of those kinds of things, you are simply
13 playing catch-up ball. The houses will show up if those three
14 elements are there. And that has actually been something that
15 has gotten Charlotte County into a considerable amount of
16 trouble.

17 The example I would have to show where the sewer and
18 water matters, that it causes houses, is if you look at
19 Charlotte County in our urban service area, we have literally
20 hundreds of thousands of vacant platted lots. When I first
21 came on the Board, we went in and sewerred one section of lots.
22 Within that area -- I think it was a matter of maybe -- and a
23 section would easily have a couple of thousand platted lots.
24 It was very few homes in there at all. Within two to three
25 years it was almost completely built out. It was one of the

1 fastest developing parts of our community.

2 And I think that if you extrapolate that out to how
3 big of an issue are we talking about Charlotte County, if you
4 don't already know, we are one of the places where they had the
5 if you want to buy some swampland in Florida, that was us. We
6 are sitting on top of, right now, in excess of 150,000 vacant
7 platted lots. Our build-out potential, if we add no new
8 development potential is depending on demographic shifts
9 between 750,000 and a million people. You are talking about a
10 city the size of Tampa of what has already been approved. And
11 this is an area where 163,000 people live right now, today.

12 When I first came on the Board, the County had gotten
13 in trouble with the Department of Community Affairs because we
14 were allowing a proliferation of septic tanks on these vacant
15 platted lots. And the Department of Community Affairs said we
16 were going to need to start -- if we weren't going to deal with
17 the platted lots problem, we had to begin sewerage the area.

18 We spent about \$16 million on right-of-way -- or, you
19 know, property acquisition and design and engineering only to
20 find out that you couldn't get from here to there. The problem
21 was there was such a broad area that needed to be sewerage and
22 that had already been approved for development that as the
23 houses began to pop up around the hinterlands, it was at such a
24 low density where the development actually occurred that even
25 if you could find the money to build it, which we clearly

1 didn't have, it was -- the first three years it was going to
2 cost us \$300 million of a 25-year plan. But the other problem
3 we ran into was that the densities that you are talking about,
4 you couldn't -- there wouldn't be enough effluent in the line
5 to push the effluent through to the treatment plant before it
6 went anaerobic and you ran into pumping problems and problems
7 that are going to cause your treatment system to crash and
8 things like that. You couldn't get from here to there at that
9 density.

10 I mention that only because the property in the rural
11 service area would have that same issue. You can't make a
12 sewer system work at one unit per ten acres just based on what
13 I have been told over the years. I don't pretend to be an
14 engineer, but that's what I have been told repeatedly.

15 What we finally ended up doing was we wrote off most
16 of that \$16 million as a bad investment, and rather than
17 throwing more good money after bad, we started over. How did
18 we do that? Because we had a consent order from the Department
19 of Community Affairs saying we were going to have to sewer this
20 urban service area.

21 So what we did was we went into an intensive public
22 outreach effort. We spent three years of public hearings. And
23 it was not only just your typical public hearings, it was all
24 kinds of exchanges with the communities, different type --
25 trying to make sure the public understood the issues before

1 they gave us the input so that this would be something that
2 really reflected the vision of the community.

3 This is not a Board of County Commissioners'
4 Comprehensive Plan; this is the community's vision. And was it
5 good? You bet it was. The citizens, after we had finished
6 this, the Thousand Friends of Florida gave us for the work we
7 had been doing in growth management an award as the community
8 that was doing the most to protect the quality of life of its
9 citizens. We also had members of the staff of the Department
10 of Community Affairs that was taking our preliminary drafts of
11 our Comprehensive Plan over to the large east coast counties
12 saying, this is an example, this is how you do it right.

13 And it was after that, actually, I became the first
14 person in 14 years in Charlotte County to get re-elected. And
15 so I think that it really is reflective of the community
16 vision. There is no question.

17 And when Hurricane Charley rolled through here and
18 FEMA came down and they had their community visioning
19 processes, lo and behold, when they went out and checked with
20 the public again, what they found was that that visioning
21 process -- what they came back with, oh, gee, here is your
22 vision of how to rebuild, it matched what we had already said
23 it should be. The community was still there years later. This
24 was 2004 when this Comp Plan was done in 1998. And the
25 community has bought into this. They have worked very hard on

1 it.

2 And I think that one of the key elements of that
3 Comprehensive Plan was our urban service area strategy. And
4 it's good common sense. Make use of your existing
5 infrastructure first. And that's why they call it urban
6 service area, it's urban services. And we have an area called
7 rural service area, rural services. I can't think of any
8 instance where sewer is included as a part of rural services.

9 Does it make a difference when we approve a
10 certificated area in a rural service area? Absolutely it does.
11 We have an example of that, as well. I was on the Board of
12 County Commissioners when representatives from the Babcock
13 family came forward to the Charlotte County Commission. We
14 were considering -- they had requested a certificated area for
15 Babcock Ranch. I think there's roughly 89,000 acres in eastern
16 Charlotte County. And the Board of County -- we were debating
17 whether or not to challenge it.

18 I raised the concerns that this was -- the term
19 was -- and it wasn't mine, but I thought it just sounded good.
20 But the term was this was a stalking horse for a development of
21 regional impact. And I said at the time, what we are going to
22 see is three to five years from now these folks are going to
23 come back with a request for a development of regional impact.
24 They are going to try to put a city out in the middle of
25 nowhere. My board poo-pooed me. I lost that vote on a 4-to-1.

1 And 18 months later representatives of the family showed up,
2 and they had a request to, lo and behold, put a city on Babcock
3 Ranch.

4 I was one of the guys that started the effort to do
5 the preservation for Babcock Ranch. I can assure you in those
6 conversations it was not warm and fuzzy, let's go save a cute
7 critter. It was hard-nosed dollars and cents. And we knew
8 that there was going to be a very real cost to our community if
9 they put a city out in the middle of nowhere. And the effort
10 was at trying to keep it the way that it was. We didn't have a
11 problem with the operations that were going on the land. The
12 family had been doing a great job of managing that property for
13 many years. It wasn't until the effort came up to try to put a
14 city out there that there was an issue. And the goal was to
15 prevent them from putting a city out there.

16 I was not happy with the outcome of the ultimate
17 resolution, because it included putting a city out there, which
18 was what we were trying to prevent. But I don't think there is
19 any denying that that project has cost the taxpayers of
20 Charlotte -- the state of Florida, I will spit it out, in
21 excess of \$350 million.

22 COMMISSIONER ARGENZIANO: Excuse me. Which project
23 are you referring to?

24 MR. CUMMINGS: The preservation. They acquired
25 three-quarters of the ranch and agreed to put a city -- a city

1 of about 45,000 people on the remaining quarter.

2 COMMISSIONER ARGENZIANO: Are you talking about the
3 state's purchase of the Babcock Ranch?

4 MR. CUMMINGS: Yes, ma'am. If my memory serves me
5 correctly, it was around \$350 million.

6 COMMISSIONER ARGENZIANO: That wasn't Charlotte
7 County's purchase?

8 MR. CUMMINGS: It was not Charlotte County's, no,
9 ma'am.

10 I believe that it will, in spite of our best efforts,
11 I personally believe that we are going, as a community,
12 Charlotte County taxpayers will end up subsidizing the city out
13 there to the tune of tens of millions of dollars. I hope that
14 time proves me wrong.

15 But my point is the first step down that path that we
16 know for sure is it costs the taxpayers of Florida at least
17 \$350 million was the granting of a certificated area in the
18 rural service area. That was the first step. I even raised it
19 with the attorney that brought back the application to put a
20 city out there. I said I thought you told me this -- because
21 they said, we are not going to use this for development; we are
22 only going to use it for conservation purposes. He came back
23 18 months later, and I said, I thought you told me this was
24 only for conservation. Well, it turned into a city in spite of
25 their intentions. They say it all came up after the fact.

1 But I think that what this comes down to is, is that
2 granting that certificated area in a rural service area is the
3 first step in promoting urban sprawl that cost the taxpayers of
4 the state and of the political subdivision, Charlotte County in
5 specific, a lot of money. And I think that there is a right
6 time and a right place to put in infrastructure. That right
7 time and right place has been identified by the citizens of
8 Charlotte County as our urban service area, and I would hope
9 that this board would help us stay consistent with state law,
10 local law, and the Department of Community Affairs'
11 implementation of such by upholding our urban service area.

12 By the way, I have no objection if they want to
13 expand within the urban service area, and I have also promoted
14 the City of Punta Gorda expanding the provision of services
15 beyond their city boundaries into our urban service area. I
16 believe that whoever is best positioned to most
17 cost-effectively provide services and infrastructure to the
18 citizens should be the person doing it. But we should do it
19 where it is appropriate and consistent with the law, and that
20 is within the urban service area.

21 Thank you.

22 COMMISSIONER McMURRIAN: Thank you, Commissioner
23 Cummings.

24 Commissioners, do you have any questions?

25 Go ahead, Commissioner Argenziano.

1 COMMISSIONER ARGENZIANO: Just a couple. First, I
2 want to make clear something about the Babcock Ranch, since I
3 was involved in that when I was in the State Senate, that the
4 Babcock Ranch purchase was an incredible purchase by the state.
5 And the reason the state decided to purchase Babcock was for
6 conservation purposes, because it could have been developed to
7 a much greater extent than what is allowed today. So the
8 negotiations that took place at the state level were to allow
9 these landowners who had the right to expand to a much larger
10 city as you are saying, restrict them to a much smaller
11 portion. So the negotiations by state legislators and the
12 state departments that were involved were very good ones, and
13 it has been hailed as one of the best preservation projects and
14 purchases that the state has made, and I am grateful for that.

15 But just a couple of questions in regards to the
16 current use of the urban areas. If you have citizens who own
17 property in the urban areas now, and they come to, well, we
18 want to build a house, are you granting septic, or ATUs, or
19 how does the county deal with it now?

20 MR. CUMMINGS: All of the above. It depends on where
21 in the urban service area they are. We have septic systems,
22 anaerobic treatment systems, and sewer systems, depending on
23 where they are located.

24 And just as another comment, please understand, I was
25 not trying to say that it was not a good thing. I was only

1 making the point that had the potential development not been
2 increased you wouldn't have been forced into that conversation
3 as whether or not it needed to be preserved because it would
4 have been by default.

5 COMMISSIONER ARGENZIANO: Well, I won't belabor that.
6 My point just mentioning that was the fact that it could have
7 been a much bigger development than it wound up being, and we
8 managed to preserve, thank goodness, a lot of land.

9 MR. CUMMINGS: I'm not trying to debate that.

10 COMMISSIONER ARGENZIANO: But, if I may, on the ATUs,
11 didn't Charlotte County a number of years ago, maybe in '98,
12 mandate that all homes that are on finger canals -- and this is
13 just something from my recollection -- that were on ATUs would
14 be -- would have to have ATUs? And I guess what I'm trying to
15 figure out is how you are dealing with the growth in the urban
16 areas now. Are they all going to septic? Is that the way of
17 the county now?

18 MR. CUMMINGS: We have had 12 mini-expansions. And,
19 in addition to that, we have had -- gee, I'm trying to recall.
20 I think there is at least two or three large subdivisions that
21 we have had municipal service benefits units and assessments
22 established to expand that urban service area. So we are
23 growing our utility as shown by our additional consumption from
24 the Peace River Manasota Regional Water Supply Authority.

25 At the same time, the aerobic treatment units when

1 they were implemented, there was two purposes to that: Number
2 one, was in waterfront areas to provide a higher level of
3 treatment in the intervening time frame before we could get
4 there with sewers. Number two, and probably the bigger
5 element, was actually the non-waterfront properties. At the
6 time, you could buy a lot in Charlotte County for less than
7 \$2,000.

8 And the objective was -- the aerobic treatment units
9 in that case, that some people don't recognize, they were
10 supposed to be a pain in the neck. They were a deterrent. We
11 didn't want people to actually put in aerobic treatment units.
12 What we wanted was for them to acquire the lot next door and
13 have a bigger yard, and the lot next door was cheaper than the
14 incremental additional cost of the aerobic treatment unit, and
15 it would reduce the densities to such a level that the
16 Department of Community Affairs was allowing them to remain on
17 septic was the objective.

18 Now, since the market has changed, that is not
19 working anymore, and so now we are going back and revisiting
20 the plan. What I have been suggesting is that right now our
21 urban service area is in two zones. One is infill where you
22 are trying to concentrate the development, the other is
23 suburban. And I have been suggesting that we can split it into
24 four, and that we would have infill where you would want to
25 concentrate it. That would all be sewer. Suburban, which

1 would be an area that is developed enough that you are probably
2 not going to significantly change the density, but you may be
3 able to allow at least some of them to remain on septic.
4 Transition, which is the areas where we would be trying to put
5 new developments, like Burnt Store Road where you have a parcel
6 that already has development potential, but you are trying to
7 plat it into a more modern development and fully infrastructure
8 it. And then reserve areas would be the hinterlands where we
9 still have all these 80 by 120 lots, and we are trying to
10 reduce the density to such a level that it could permanently
11 stay with septic.

12 So you would have different strategies, because what
13 we found is that state law says that septic tanks are
14 acceptable at quarter acre -- for 3.5 units per acre. But what
15 we know is that when there was 200,000 of those, the Department
16 of Community Affairs said that is too many, and they took us to
17 court and won and proved it. So what we know is the first lot
18 it is okay at a quarter acre. At 200,000 it is not at a
19 quarter acre. We need to find the number in between where it
20 is still okay and where it is not. And that is why I suggest
21 you split it into more areas and you can more clearly identify
22 what would remain septic.

23 But in the end there is a whole host of tools that we
24 use. The problem is is that when we expand that urban service
25 area into new areas we are just compounding the problem before

1 we have had a chance to deal with the existing one.

2 COMMISSIONER ARGENZIANO: And just one last question,
3 sir, and let me ask you this: Is the county planning on, I
4 guess, curbing the expansion of the urban area out to the rural
5 hinterlands in a way of limiting size per home? I mean, what
6 are you doing in the county now to limit what you obviously
7 don't want to occur if the utility were to expand?

8 MR. CUMMINGS: Well, right now we actually have
9 incentives for people to transfer their development potential
10 out of the rural service area and into the urban service area.
11 In fact, as far as I know, Charlotte County is one of the few
12 communities in the state that has had some success in doing
13 that. And we have that in part because one of the elements in
14 our Comprehensive Plan said we were going to reduce that
15 development, actually the platted lots, but it has been
16 implemented as reducing the development potential by one
17 percent per year.

18 And what that did was, was when somebody wanted to do
19 a more intense development in an area, part of the process that
20 they had to go through was they had to go through to these less
21 appropriate areas like the rural service area, transfer those
22 densities out. And I believe that -- I think that there has
23 been somewhere around five or 6,000 units already not
24 transferred on to new property, but that development potential
25 has been severed from the existing property to create these

1 certificates that they could use on those other areas. They
2 haven't used them yet, to the best of my recollection.

3 But that would be one of the bigger things that we
4 have done to show the effort that we are trying to hold that
5 urban service area line and transfer development potential out
6 and still grant the landowners -- it actually gave value to
7 their development rights that they would not have been able to
8 recognize for at least the next 30 or 40 years. And in some of
9 those instances they were very happy with that, because they
10 had a product that they could sell that they couldn't sell
11 before, and it avoided a long-term problem, growth management
12 problem in the community.

13 COMMISSIONER McMURRIAN: Thank you.

14 Commissioner Skop, any questions?

15 COMMISSIONER SKOP: Yes. Thank you, Commissioner
16 McMurrian. And also I would like to thank Commissioner
17 Cummings for appearing this morning and stating his comments.

18 Some of his testimony I think has been interesting
19 and enlightening in a couple of different regards. And I think
20 I will just take up with something that he said. Again, it's a
21 question that has been pressing for me, and I think that we can
22 try and draw some analogies on both sides. I think that you
23 stated that granting an amended certificate, in your own words,
24 is the first step in the urban sprawl process, if you will, or
25 it leads to urban sprawl. And I guess I'm just wondering --

1 and I guess you used the Babcock Ranch example where you were
2 misled by what had happened under the auspices of conservation
3 or existing use and it turned into a much larger scale
4 development.

5 But, notwithstanding that, I guess the way you were
6 presenting it is that the certificate is the first step in the
7 problem that makes a problem. But doesn't the county have
8 additional mechanisms for limiting growth to some extent? And
9 I'm getting to where I am going with this, but I'm just trying
10 to understand the county's process being duly respectful to the
11 Comprehensive Plan. But I think it's my understanding that
12 there are various mechanisms over and above whatever
13 certificate is granted for checking that growth. Apparently
14 for some reason, maybe you can elaborate on that, that
15 ultimately didn't work at the Babcock Ranch, notwithstanding
16 you being misled. I'm just trying to flesh that out a little
17 bit for my own personal understanding.

18 MR. CUMMINGS: Thank you. Okay. And I should
19 probably clarify that I don't think it would be fair to
20 characterize it as it is the first step as in it is the only
21 way to do it. I think that when you grant it to an area that
22 does not have development rights sufficient to allow
23 development in a density that could support a sewer system,
24 that that can be one of the things that creates a momentum when
25 we go in. And the way that it happens is when they show up

1 with a development of regional impact, there is a bunch of
2 boxes that they check off. And when they get to the Regional
3 Planning Council and when they come before the County
4 Commission, one of those boxes that they check off is is water
5 and sewer utilities available.

6 And it isn't something that magically, walla, now the
7 development rights are there. But what it does do is it
8 creates each of these steps in putting together the pieces of
9 what a new development or community would need, adds that much
10 additional momentum, and sometimes it can be hard to overcome.

11 Now, if you strictly follow the letter of the law and
12 everybody dots their i's and crosses their t's, then there are
13 still other ways to deal with it. But, actually, I will go
14 back to Babcock Ranch again. If we had strictly followed the
15 letter of the law on that, it was contrary to local law and it
16 was contrary to state law. And the point being that the other
17 side of the argument is, and at the risk of getting into
18 legalese that I'm not trained to understand, the term that I
19 keep hearing is estoppel.

20 As the property owners keep making additional
21 incremental steps and spending money, it makes it that much
22 more difficult for the decision-makers to say no to that
23 development. And I think that we need to understand the
24 difference between allowing people to exercise property rights
25 that they have that we have a duty to protect and allow it to

1 be utilized and creating development rights that don't
2 currently exist. And one of the little weights that goes on
3 the other side of the scale is whether or not there is a
4 certificated area. It doesn't completely resolve the issue one
5 way or another, it just makes it harder to hold the line.

6 COMMISSIONER SKOP: Thank you. And as a follow-up to
7 that, because I think you led into my other question when you
8 mentioned density to support sewer system. And, again, I'm an
9 engineer, but I'm not qualified really to speak to the
10 hydrology of sewer and wastewater systems. Probably you said,
11 you know, what you heard was just based on what you heard from
12 others. But what I would like to do is compare and contrast
13 that density to support a sewer system versus a customer's
14 right to be served, even if it may be a pretext for something
15 else, noting that there may be other mechanisms to check
16 development.

17 And I don't know in this instance whether this has
18 happened, and, again, I am looking at the rural and not the
19 urban portion here. But, just in a hypothetical, if a
20 customer, or two customers, or whatever the current density is
21 now, contacted the utility, or the county, or whoever was their
22 provider, and requested connection to avoid septic or whatever,
23 just to have, you know, potable water and wastewater, whatever
24 it may be, it is certainly part of our function as the
25 Commission is to look out for the consumer. And I think that

1 the right to be served and tempering that versus maybe, you
2 know, some technical limitations on the density and support,
3 and I think you separate those because one is a technical
4 issue, technical feasibility issue, and the other one is a
5 service-based issue, can I have access to service.

6 But throwing the technical issue aside for a second
7 and just looking at the right to be served, if a customer came
8 forth under the existing Comp Plan and was in a rural area and
9 wanted to be interconnected with a provider and was willing to
10 pay the appropriate service availability charge, whatever that
11 may be, and maybe they want to oversize the system or maybe
12 they want to size it more appropriately to what a single person
13 would use, but, again, that gets into personal interest and
14 stuff that is kind of beyond the question I think ultimately is
15 the right to be served, should they be able to have access to
16 those services even if it is a pretext maybe for something
17 else, to the extent that there are other appropriate mechanisms
18 for limiting and checking that growth? Because ultimately if
19 it is a rural low density area, that's going to require
20 rezoning potentially. So I guess what I am looking at is I am
21 tempering everything that you said and duly respectful of the
22 existing Comprehensive Plan and the need to, as you allege, to
23 maintain control of urban sprawl.

24 But I am looking at it, also, from different angles,
25 the customer's perspective. If you had a customer that wanted

1 to be connected, should they not be allowed to connect out of
2 some overarching fear that this may lead to something else?
3 It's kind of a cart before the horse type of analogy, but,
4 again, if you could kind of flesh that out, because I think in
5 your testimony you stated that there are mechanisms over and
6 above the certificate grant that would provide adequate
7 protection to the County, if you will, to prevent maybe some of
8 the parade of horrors that have been experienced in the past.
9 So if you could just briefly elaborate on that.

10 MR. CUMMINGS: My understanding of the question is
11 does the customer have the right to receive the service if they
12 are in the rural service area. Is that an accurate
13 understanding?

14 COMMISSIONER SKOP: Yes. If they have requested
15 service, should they be denied service out of fear that their
16 request for service may ultimately provide them with a
17 mechanism to move forward with some yet to be determined large
18 scale development?

19 MR. CUMMINGS: Okay. And that may be a good question
20 for Mr. Ruggieri, because he is certainly an expert, and I'm
21 not a professional planner. I think I'm a darn good amateur
22 enthusiast. I have been studying it for 14 years -- 13 years.
23 But to the best of my recollection, when we say an urban
24 service area and a rural service area, by definition that is a
25 listing of the services that a person can expect to receive if

1 they develop that property. That is why they have that
2 definition. And we have a listing of what services are
3 available at what level.

4 To the best of my recollection, they do not have the
5 right to be served in a rural service area. That's one of the
6 things that is reserved -- that is listed as a service that
7 they have a right to for the urban service area. And over time
8 the state has set these growth management laws because they
9 found that it is in the best interest of the public to use your
10 infrastructure as cost-effectively as possible. And that one
11 of the biggest tools you have to make sure that happens is what
12 services are allowed. And when a person goes and buys a
13 property, they should understand what they are allowed to do
14 under the zoning code and under the growth management code.

15 And, in essence, I would associate it with as if it
16 were a type of development right. A person that lives far out
17 in a rural service area does not have a right to receive an
18 ambulance response time of less than four minutes, but a person
19 who is in the middle of the city does. That's the expectation
20 when they bought the property, and it is clearly codified in
21 both local -- in our Local Comprehensive Plan. So I think that
22 if a person has done their due diligence they know what those
23 rights are that are associated with that property, and
24 receiving sewer system, to the best of my recollection, is not
25 one of them.

1 COMMISSIONER SKOP: One more follow-up. And thank
2 you for that. Again, my line of questioning is simply to try
3 and educate myself a little bit and dig down into what governs,
4 so I am not treading on any existing body of law, or local
5 policies or, you know, county policies. So I'm trying to get a
6 feel for, you know, balancing the interests, if you will.

7 But let me take that a step further. I guess you had
8 stated in the rural area that an owner would not have a
9 reasonable expectation of being able to connect to a wastewater
10 system because they live out in the hinterlands, as you said.
11 Would that also apply to they wouldn't have a reasonable
12 expectation of connecting to electrical service because, again,
13 that electrical service is something where if you want to pay
14 and the cost could be extraordinary to run a line out to your
15 house, you are able to get those types of services. So, again,
16 I'm trying to distinguish between electrical service versus the
17 statement you said and how the wastewater service is.

18 It seems like one -- maybe I'm wrong. Maybe if you
19 pay for it, but the other being the sewer system, you don't
20 have an inherent right. So if you could just flesh that out
21 just a little bit more. I promise that's my last question.

22 MR. CUMMINGS: Sure. And I think part of the
23 differentiation -- first off, there again, the question for the
24 electrical service may be better answered by Jeff, because off
25 the top of my head -- Mr. Ruggieri, sorry. Off the top of my

1 head, I can't recall if electrical service is one of the
2 elements that we mention. For example, broadband cable is
3 clearly now an infrastructure item. I don't recall it being
4 listed as a service that we do or don't provide for. I think
5 that if you can go to the Comprehensive Plan, and it's
6 specifically listed as something that you have a right to
7 receive, that is when you have a right to receive it. If it's
8 not listed, then it would appear to me to be an open question.

9 COMMISSIONER SKOP: And just one more follow-up, and
10 I apologize for this. Again, this is enlightening to me. So I
11 think it is part of my education process in understanding the
12 issues. Is what you are saying when you are defining things,
13 is that something at the local or county level in terms of
14 expectation of services? Because I know at the national level
15 under the universal service fund with things like carrier of
16 last resort, there are mechanisms for bringing utility service
17 and broadband services to even remote areas of our country that
18 we live in.

19 So it seems to me like -- and, again, I am looking at
20 sensitivity of preemption, or what have you, but I find it
21 somewhat puzzling that the County can specify what any given
22 landowner might be able to receive in terms of utility service
23 or something like that, when I have heard in the past or seen
24 instances where if you want to pay, you can bring it for your
25 personal use, at least electric, broadband cable, maybe not

1 sewer, I don't know. But, again, those are issues I'm trying
2 to break out in my mind. I think my colleague, Commissioner
3 Argenziano, has hopefully something to add there.

4 COMMISSIONER ARGENZIANO: Well, I just think that
5 from my recollection of electric everybody has a right to
6 receive electric. And I think in every Comprehensive Plan, I'm
7 pretty sure there is a mention. I don't even know if it has to
8 be, but it is just a given. The difference between receiving
9 wastewater, a simple wastewater system, is only -- there would
10 be a concern if the county said you are prohibited from using a
11 septic. And then, of course, they are obligated then to figure
12 out how they are going to get that landowner a way of removing
13 the waste. And that's done at the county level of saying,
14 okay, if we -- many counties are just the opposite of what
15 Charlotte County is doing right now. Many counties are saying
16 we want wastewater lines in. And, of course, the state has
17 been funding that at a very rapid pace.

18 But I wanted to make one mention, because
19 Commissioner Skop had mentioned we didn't want to trump any
20 county or local law. The statute does say that the Commission
21 shall consider a Comprehensive Plan, but we are not bound by
22 those Comprehensive Plans.

23 MR. CUMMINGS: But I guess to me the salient point is
24 if it is specifically listed as a service that you have a right
25 to in one area and specifically not listed in another, that

1 would imply that the community has made this a conscious
2 decision that these are some of the services that we are going
3 to use to incentivize development over here where it's
4 appropriate. And we are trying to expand sewer within the
5 urban service area.

6 COMMISSIONER SKOP: Thank you. And Commissioner
7 Argenziano has a follow-up, and I'm fine with that. Hopefully,
8 some of the issues that I brought up will be fleshed out more
9 by the other witnesses who are going to be providing testimony.
10 So, again, I will stop here and just defer to Commissioner
11 Argenziano.

12 COMMISSIONER ARGENZIANO: I think maybe some of the
13 issues you may be getting into are more property rights. And
14 if the county is going to take away somebody's property rights,
15 then they are going to have to suffer the consequences that
16 they may find in taking away -- you are talking about offering
17 incentives, and that may be the way of -- you know, I don't
18 know if you are devaluing somebody's property or actually
19 giving them, in some cases maybe the ability to grow where they
20 couldn't grow before, but maybe at a less, you know, less
21 density or, you know, much smaller than they had maybe thought
22 they could. But in some cases you are actually taking
23 somebody's property value and changing it drastically, and I
24 think that is more of a property rights issue. I'm not sure if
25 that is where you were going.

1 COMMISSIONER SKOP: No. I guess I was just saying is
2 to me it was a bold assertion that a change in the certificate
3 is analogous to the first step in what would create urban
4 sprawl. But, again, I was ultimately trying to flesh out based
5 on the examples of the Babcock Ranch and some others that, you
6 know, there are other mechanisms to check or limit that growth.
7 The certificate isn't like an avalanche that starts the process
8 necessarily.

9 COMMISSIONER ARGENZIANO: I think you are 100 percent
10 correct. If we were to grant a certificate, that does not mean
11 the county or the utility can just carte blanche, that is
12 100 percent correct. And I think it is probably a very good
13 statement to make, but that is not what automatically happens
14 if that certificate is granted.

15 MR. CUMMINGS: I think the difference is, is that at
16 the density -- for the property rights that any of the property
17 in the rural service area in Charlotte County, the property
18 rights that exist on any property in Charlotte County in the
19 rural service area, those development rights can be exercised
20 without sewer at the densities that they are at.

21 The only way that you would need sewer in order to
22 exercise the property rights, to the best of my understanding,
23 the only way you would need sewer to exercise the development
24 rights -- the only way you would need sewer was if you were
25 going to grant more development rights than what currently

1 exists on the property. And I think that's why it becomes an
2 enticement. The density for the state of Florida when
3 Charlotte County first implemented its Comprehensive Plan of
4 all of Charlotte County, that all of the property outside of
5 the urban service area that is zoned agriculture will be at one
6 unit per ten acres.

7 COMMISSIONER ARGENZIANO: Madam Chair, if I may. And
8 some people, forgive me, but some people -- and you're right,
9 it could be an incentive in some ways, and in some ways it
10 could be coercion if you think about it from the developer's
11 perspective, also, saying, you know, we have to do this in
12 order to get this. And sometimes, I guess, that is the
13 county's stick, so to speak.

14 MR. CUMMINGS: If they desire to do a development,
15 all they need to do is buy property that has the development
16 rights already associated with it.

17 COMMISSIONER McMURRIAN: Any other questions? Okay.
18 Mr. Friedman?

19 MR. FRIEDMAN: I don't have any.

20 COMMISSIONER McMURRIAN: More questions?

21 MR. McLEAN: One question, if I may. Two, a couple
22 of questions.

23 Are you -- it is not our witness, right.

24 MR. JAEGER: It is not your witness.

25 MR. McLEAN: You are generally familiar with the Comp

1 Plan of Charlotte County, are you, sir?

2 MR. CUMMINGS: Yes, sir. I was involved in the
3 creation of it from start to finish.

4 MR. McLEAN: Are you generally familiar with the
5 application in this proceeding that the Commission has --

6 MR. CUMMINGS: Generally, yes, sir.

7 MR. McLEAN: Do you believe that the Commission -- if
8 the Commission grants this application, that it would present a
9 result that is consistent or inconsistent with the Comp Plan?

10 MR. CUMMINGS: I believe --

11 MR. FRIEDMAN: I object to the question, because I
12 think it leads to a legal conclusion that this Commission has
13 got to make, and that he is not competent to make it. And we
14 have got -- they have got their own witness who is going to
15 talk about their Comp Plan. This is a public citizen who
16 doesn't purport to be an expert, and I don't think that he can
17 give an opinion as to whether the application violates the Comp
18 Plan. That is a decision that you all are supposed to make.

19 COMMISSIONER ARGENZIANO: Madam Chair?

20 I don't know that that matters. And the reason I
21 don't think it matters is because we are not bound to be
22 consistent by the local Comp Plan.

23 MR. McLEAN: I agree. May I, Madam Chairman, address
24 that one?

25 COMMISSIONER McMURRIAN: You certainly may..

1 MR. McLEAN: It is our thesis not that you are bound
2 or that you must, but that you ought to honor the Comp Plan.
3 It would be valuable for you to, whether this witness believes
4 it consistent or inconsistent, but I bet we can all hazard a
5 guess, and I'll leave it at that.

6 Thank you. No further questions.

7 COMMISSIONER McMURRIAN: Commissioner Skop, do you
8 have a question? Yes, I intend to hear from staff. So, Ms.
9 Helton, or, Mr. Jaeger, if you would.

10 Mr. McLean, was that all of your questions?

11 MR. McLEAN: Yes, I'm sorry.

12 MR. JAEGER: There are provisions for revisions to
13 the urban service area, is that correct?

14 MR. CUMMINGS: The County has the discretion to
15 change the boundaries of the urban service area, yes.

16 MR. JAEGER: And one of those is through a DRI?

17 MR. CUMMINGS: A development of regional impact would
18 be a part of that process if the development was sufficiently
19 large to require it.

20 MR. JAEGER: And they have to check off all of those
21 blocks when they apply for a DRI when you are looking to
22 approve it, and they have all these blocks to be checked off,
23 and water and wastewater is one of those boxes?

24 MR. CUMMINGS: One of the things taken into
25 consideration, yes.

1 MR. JAEGER: And would you say it was pretty
2 stringent to get a DRI approved?

3 MR. CUMMINGS: If the development is at a sufficient
4 density that it would require sewer, then whether or not sewer
5 or water was available would certainly be an important
6 consideration.

7 COMMISSIONER McMURRIAN: Mr. Friedman, do you have
8 any questions for the witness?

9 MR. FRIEDMAN: No. I was actually thinking about
10 Mr. Jaeger's question.

11 MR. JAEGER: I was saying are there other -- are the
12 other requirements -- would you consider those stringent
13 requirements for the approval of a DRI?

14 MR. CUMMINGS: Maybe I'm not understanding the
15 question, but I think that it is -- that, yes, it is very
16 important to have water and sewer available if you are going to
17 approve a development for it. Maybe I'm misunderstanding.

18 MR. JAEGER: I am talking about all the others.
19 Would you say there are still many steps they have to go
20 through that they would have to comply with?

21 MR. CUMMINGS: Oh, yes. Like, you know,
22 transportation infrastructure and things like that. Certainly,
23 the other issues would need to be addressed, yes.

24 MR. JAEGER: No further questions.

25 COMMISSIONER McMURRIAN: Okay. Thank you,

1 Commissioner Cummings, for joining us. I believe that is all
2 the questions we have.

3 At this time I'm going to ask if any other members of
4 the public are here to testify before us? Do we have anyone
5 else that has signed up or anyone that is with us that has now
6 decided they want to give public testimony? Seeing none, I
7 think we can begin our technical hearing at this time.

8 Again, thank you all for coming and sharing your
9 thoughts with us today.

10 * * * * *

11 COMMISSIONER McMURRIAN: We will call this hearing
12 back to order and reconvene our public testimony portion of
13 today's hearing.

14 And let me just thank everyone for coming this
15 evening. I am Commissioner Katrina McMurrian. To my right is
16 Commissioner Nancy Argenziano. To my left is Commissioner
17 Nathan Skop, and we are glad that you could be with us this
18 evening.

19 We are here this evening on an application filed by
20 Sun River Utilities to amend its service territory and because
21 Charlotte County has filed a protest to Sun River's
22 application. The purpose of the hearing is to take testimony
23 on Sun River's application. It's important to note that the
24 rates and charges of the current utility customers are not at
25 issue in this proceeding and will not be changed as a result of

1 this proceeding.

2 This is an official hearing that will be transcribed
3 and will become part of our official record. As such, any
4 members of the public testifying today will need to be sworn in
5 before presenting comments and will also be subject to
6 cross-examination, which just means that you may be asked
7 questions by one of the parties to the case, one of the
8 attorneys before us here, or by one of the Commissioners.

9 If you plan to speak, we ask that you sign up on the
10 speaker sign-in forms provided by staff. I think someone here
11 already has, and if you need to, you can see Ms. Daniel in the
12 back or Mr. Durbin outside. And we will then ask our staff
13 attorney to call each of you who wish to speak one at a time to
14 present your comments.

15 If you don't wish to provide verbal comments at this
16 time, we also have green sheets in the back. I keep forgetting
17 to grab one. There is a green sheet that is preaddressed to
18 the Commission that if someone wouldn't want to make verbal
19 comments this evening, you could mail it in, or if you know
20 someone who might want to -- thank you very much,
21 Commissioner -- it's preaddressed to the Commission on the
22 back, and you can fill in your comments and mail it to the
23 Commission, and so we encourage those. If you know someone who
24 can't be here, or you don't want to make verbal comments,
25 please make use of this, and those will be placed in the docket

1 file.

2 We will be swearing in all of you at the same time,
3 so at this time I will ask all members of public who intend to
4 provide testimony tonight to please stand and raise your right
5 hand with me.

6 (Witness sworn.)

7 COMMISSIONER McMURRIAN: And, Mr. Jaeger, have I
8 forgotten anything before we --

9 MR. JAEGER: I don't think so. I was going to make
10 sure you swore her in. This customer is Peggy Beidel, 1620
11 Ibis Court, and she is actually here -- by the question, "Do
12 you wish to speak," she has a question mark by yes, and it's my
13 understanding she would like to ask some questions, but I think
14 we still have to swear her in and have her come up and take the
15 microphone.

16 COMMISSIONER McMURRIAN: We won't bite, I promise.
17 Please come join us over here. And as you come to the
18 microphone, I would ask that you state your name and address
19 for the record, and also spell it, if we need that.

20 PEGGY BEIDEL

21 appeared as a witness and, swearing to tell the truth,
22 testified as follows:

23 DIRECT STATEMENT

24 MS. BEIDEL: Peggy Beidel, B-E-I-D-E-L; address, 1620
25 Ibis Court, Punta Gorda, 33982.

1 COMMISSIONER McMURRIAN: Okay.

2 MS. BEIDEL: The concern that I have is this doesn't
3 exactly tell us where the expansion is going to be. I mean,
4 the notice I received does not indicate where the expansion is
5 going to be, what it involves. As a customer of, previously, a
6 utility company where I was paying \$17.35 for base a year and a
7 half ago, we went before the Commission at our own clubhouse,
8 and had a hearing there, and our rates were increased almost --
9 over 100 percent, almost, I would say around 130, roughly,
10 percent. So we went from 17.35 base to, roughly, 46-something,
11 base, okay.

12 We all protested indicating that, you know, could we
13 gradually raise the rates. We were told that MSM Utilities at
14 the time was planning an expansion program, and that when the
15 expansion program went into effect, our rates more than likely
16 would drop because there would be more customers. This
17 indicates that the rates are going to remain the same for
18 existing customers unless they go before the Commission to
19 change those rates. Well, that really still, again, doesn't
20 tell us anything. Everything in this does not explain to us
21 what is actually happening, doesn't say when it's possible to
22 take effect, doesn't say where it is going to take effect, and
23 doesn't exactly tell us how it's really going to effect us as
24 customers.

25 COMMISSIONER McMURRIAN: I think we can help you with

1 that. I'm just looking toward Mr. Jaeger to see how best to go
2 through that. I will say, as I said earlier, that this
3 proceeding, the outcome of it will not change the rates of
4 existing customers, like you said, but I think you mentioned --

5 MS. BEIDEL: We were told it was going to decrease,
6 and that was my concern at this point. It doesn't indicate,
7 you know, who is going to -- I know our existing plant when it
8 was put into effect was paid for by the State with the
9 exception of installation. I don't know if that still happens.
10 I'm here to find out -- I was hoping at this hearing I would
11 find out the answers to some of these questions, I have as far
12 as who is paying for the expansion, where is the expansion
13 going to be, et cetera. That is what I was hoping to find out.

14 COMMISSIONER McMURRIAN: I think we can help you with
15 that. Procedurally, how best should we do that, Mr. Jaeger or
16 Ms. Helton?

17 Give us just a minute.

18 MS. BEIDEL: Absolutely.

19 MS. HELTON: I'm wondering -- it sounds a little bit
20 to me like this is not necessarily relevant to the issue of
21 whether the amendment should be approved or not. I'm wondering
22 if we could do this, if we could take a short break and have
23 staff and maybe the utility talk to her and then see if that
24 answers your questions. And, if not, then we can figure out
25 from there how to go forward. Would that work?

1 MS. BEIDEL: It would work. That's fine.

2 COMMISSIONER McMURRIAN: If that works for you,
3 that's fine with us. And we can take a break and --

4 MR. FRIEDMAN: I will have Tony talk to her.

5 COMMISSIONER ARGENZIANO: Madam Chair, our staff will
6 indicate to us whether she has had her answers to her
7 questions --

8 MR. FRIEDMAN: Or if she has more questions.

9 COMMISSIONER ARGENZIANO: Or if she has more
10 questions. Okay.

11 COMMISSIONER McMURRIAN: We will be on recess. Has
12 anyone else joined us to speak? We will go on a short recess,
13 then.

14 (Brief recess.)

15 COMMISSIONER McMURRIAN: Okay. We will go back on
16 the record.

17 Ms. Beidel, before we went off the record you wanted
18 to get some questions answered about your service and about the
19 application that's before us. Are your questions fully
20 answered?

21 MS. BEIDEL: Yes, they are fully answered.

22 COMMISSIONER McMURRIAN: Thank you. Thank you so
23 much for joining us. And we have -- I think there is
24 information on the green sheet. If you ever have any more
25 questions or anything with regard to this utility, at least for

1 as long as we have proceedings before us with respect to this
2 utility, I think there's some information on here with the
3 Commission's 800 number. If you ever have any need for
4 assistance from the PSC, please call that. We also have a
5 website, and e-mail, and please get in touch with us. If you
6 have any questions, we will be glad to help you out.

7 MS. BEIDEL: Thank you very much.

8 COMMISSIONER McMURRIAN: Thank you.

9 Has any other member of the public joined us in the
10 last few minutes?

11 MR. DURBIN: Nobody else.

12 COMMISSIONER McMURRIAN: Thank you, Mr. Durbin.

13 Commissioners, would you like to wait a little while
14 longer? It's almost 6:20. Do you want to recess for about ten
15 more minutes to see if anyone else joins us?

16 COMMISSIONER ARGENZIANO: Just in case.

17 COMMISSIONER McMURRIAN: I think that's a good idea.
18 We are on recess until 6:30.

19 (Recess.)

20 COMMISSIONER McMURRIAN: Okay. We'll go back on the
21 record.

22 I don't think we have had any other members of the
23 public join us for public testimony. We have looked outside.
24 And it looks like we are going to adjourn that portion of the
25 hearing, and take up any additional matters that we need to

1 take up before we adjourn.

2 And before we do that, just let me say thanks to all
3 of our staff who have made this go smoothly today, and our AV
4 expert, LaShea (phonetic) in the back, thank you very much, and
5 all the great folk of Charlotte County who have helped us here
6 today, it's been a great facility. I think everybody has been
7 raving about it. We had a good lunch.

8 And thanks to all the witnesses for keeping your
9 summaries short. I very much appreciate that. And to the
10 parties for keeping attorney antics to a minimum, I always
11 appreciate that. But in all seriousness, thanks to everyone
12 for helping it go smoothly today. And I guess with that,
13 maybe, Mr. Jaeger, you might want to go over the critical dates
14 and any other matters that I may have forgotten.

15 MR. JAEGER: Yes, Commissioner.

16 The critical dates are hearing transcript on
17 January 24th. I have checked with Ms. Faurot, and she said
18 that can still be maintained and done, and then we usually have
19 briefs due two weeks after that. February 7th, 2008, is the
20 time for briefs. And then the staff will file its
21 recommendation on March 27th, for a post-hearing agenda of
22 April 8th. That's the schedule in the case.

23 COMMISSIONER McMURRIAN: Any concerns or comments
24 about the brief schedule?

25 MR. ENGELHARDT: If the transcript isn't ready, will

1 the dates be pushed back until the transcript is ready?

2 MR. JAEGER: We usually try to give them a full two
3 weeks for the transcript, but generally Jane is very good. If
4 anything, she does it early.

5 If you want to say if the transcripts are delayed
6 then it could be a day-for-day. I think there is a little bit
7 of slide. We have to basically get our recommendations done
8 about 12 days in advance, so March 15th, so that still gives us
9 time if it slides a few days from February 7th. So you could
10 just say for each day's slide a one day slide on the briefs.

11 COMMISSIONER McMURRIAN: I think that's appropriate,
12 if that is okay with everyone else.

13 Commissioners, would you like to say anything before
14 we adjourn?

15 Okay. Again, thank you all, and I appreciate
16 everyone sticking in there and finishing early.

17 We're adjourned.

18 (The hearing concluded at 6:35 p.m.)
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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services
5 Section, FPSC Division of Commission Clerk, do hereby certify
6 that the foregoing proceeding was heard at the time and place
7 herein stated.

7

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

10

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

13

DATED THIS 24th DAY OF JANUARY, 2008.

14



15

JANE FAUROT, RPR
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