

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 1, 2007

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Clapp, Marsh, Walden)
Office of the General Counsel (Brown)

RE: Docket No. 060820-WS – Application for transfer of majority organizational control and Certificate Nos. 611-W and 527-S of MSM Utilities, LLC in Charlotte County to Sun River Utilities, Inc.
County: Charlotte

AGENDA: 02/13/07 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Pending

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060820.RCM.DOC

Case Background

MSM Utilities, LLC (MSM or utility) is a Class C utility providing water and wastewater service to approximately 54 residential and 2 general service customers in Charlotte County. The utility is in the Southern Water Use Caution Area of the Southwest Florida Water Management District. The utility's 2005 annual report shows a combined water and wastewater annual operating revenue of \$18,819 and a net operating loss of \$108,674.

The Commission granted the utility Certificate Nos. 611-W and 527-S in 1999.¹ Since then the Commission has approved a transfer and two amendments to the utility's service territory.²

On December 21, 2006, Sun River Utilities, Inc. (Sun River or buyer) submitted an application for the transfer of majority organizational control of the utility. MSM and Sun River are active corporations listed with the Florida Division of Corporations. On December 8, 2006, the utility and the buyer entered into an agreement which provides that the buyer will purchase all of the member interests of the utility. The actual closing on this agreement took place on January 5, 2007.

The purpose of this recommendation is to address the application for transfer of majority organizational control. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

¹ Order No. PSC-99-0756-FOF-WS, issued April 19, 1999, in Docket No. 980731-WS, In Re: Application for certificate to provide water and wastewater service in Charlotte County by Hunter Creek Utilities, LLC.

² Order No. PSC-05-0147-PAA-WS, issued February 7, 2005, in Docket No. 031042-WS, In re: Application for transfer of Certificate Nos. 611-W and 527-S in Charlotte County from Hunter Creek Utilities, LLC to MSM Utilities, LLC, in Charlotte County. Order No. PSC-06-0129-FOF-WS, issued February 16, 2006, in Docket No. 050820-WS, In re: Application for amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include territory in Charlotte County by MSM Utilities, LLC. Order No. PSC-06-1064-FOF-WS, issued December 26, 2006, in Docket No. 060628-WS, In re: Application for quick-take amendment of Certificates 611-W and 527-S for new territory in Charlotte County, by MSM Utilities, LLC.

Discussion of Issues

Issue 1: Should the transfer of majority organizational control be approved?

Recommendation: Yes, the transfer of majority organizational control of MSM Utilities, LLC to Sun River Utilities, Inc. is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the utility's water and wastewater certificates and should be retained by the utility. MSM should remain responsible for all regulatory assessment fees and annual reports for 2006 and the future. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (Clapp, Walden, Marsh, Brown)

Staff Analysis: Pursuant to Section 367.071, Florida Statutes, on December 21, 2006, the buyer applied for a transfer of majority organizational control of MSM as a result of the purchase of its members' interests. As stated in the case background, the agreement was executed on December 8, 2006. The closing occurred on January 5, 2007. Pursuant to the Purchase Agreement the transfer of majority organizational control was made contingent upon Commission approval.

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and Rule 25-30.037(3), Florida Administrative Code, pertaining to an application for transfer of majority organizational control. A description of the territory granted to Certificate Nos. 611-W and 527-S is appended to this memorandum as Attachment A.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to this application were received, and the time for the filing of such objections has expired.

Pursuant to Rule 25-30.037(3)(i), Florida Administrative Code, the application is to contain evidence that the utility has control of the land upon which the utility facilities are located. A copy of the recorded 99-year lease assignment to MSM Utilities, LLC, which was executed on December 15, 2004, was provided.

Staff has verified that the utility is current on filing its annual reports and regulatory assessment fees (RAFs) through 2005. The utility will continue to be responsible for filing annual reports and RAFs for 2006 and future years.

Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the application contained a statement that the buyers performed a reasonable investigation of the utility system. Staff has confirmed with the Florida Department of Environmental Protection (DEP) that the utility's water and wastewater systems are currently in environmental compliance with respect to DEP standards.

Pursuant to Rule 25-30.037(3)(f), Florida Administrative Code, the application contained a statement of how the transfer is in the public interest. The utility is owned by several individuals and a trust, which no longer have any interest in the continued ownership or development of the utility. The buyer is a wholly-owned subsidiary of North Fort Myers Utility, Inc., (NFMU) a regulated water and wastewater utility with approximately 29 years experience

providing wastewater service to approximately 17,500 equivalent residential connections in North Fort Myers, Florida. In addition, the buyer provided a statement of intent to fulfill the commitments, obligations, and representations of the seller with regard to utility matters.

According to the application, the purchase of the utility was financed with equity from the buyer's corporate grandparent, Old Bridge Park Corporation. The application includes statements that the buyer has the regulatory experience and financial wherewithal through its parent, NFMU, to ensure consistent compliance with environmental regulations. NFMU's experience, through Sun River, in operating water and wastewater utilities will be helpful to the MSM customers on both a day-to-day basis as well as during emergencies.

MSM's rates and charges were established pursuant to Order No. PSC-06-0684-PAA-WS.³ Rule 25-9.044(1), Florida Administrative Code, provides that in the case of change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by the Commission. The new owner has not requested a change; therefore, the existing rates and charges shown on Attachment B should continue in effect.

Based on the above, staff recommends that the application for transfer of majority organizational control of MSM Utilities, LLC to Sun River Utilities, Inc. is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the utility's water and wastewater certificates and should be retained by the utility. MSM should remain responsible for all regulatory assessment fees and annual reports for 2006 and the future. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

³ Order No. PSC-06-0684-PAA-WS, issued August 8, 2006, in Docket No. 050587-WS, In re: Application for Staff-assisted rate case in Charlotte County by MSM Utilities, LLC.

Docket No. 060820-WS

Date: February 1, 2007

Issue 2: Should this docket be closed?

Recommendation: Yes, because no further action is necessary, this docket should be closed.
(Brown)

Staff Analysis: Because no further action is necessary, this docket should be closed.

**WATER AND WASTEWATER SERVICE TERRITORY
MSM UTILITIES, LLC
CHARLOTTE COUNTY**

RIVERS EDGE COMMUNITY

Per Order No. PSC-99-0756-FOF-WS
Township 40 South, Range 23 East
Section 12

The NE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4, of Section 12, Township 40 South, Range 23 East.

The SE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4, of Section 12, Township 40 South, Range 23 East.

The NW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East.

That portion of Government Lot 2, Section 12, Township 40 South, Range 23 East, lying South of Lee Branch Creek.

The Westerly 30 feet of the SW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East.

Township 40 South, Range 23 East
Section 11

All of Government Lot 5, lying South of Lee Branch Creek in Section 11, Township 40, South, Range 23 East.

The NE 1/4 of the SE 1/4 of Section 11, Township 40 South, Range 23 East, lying East of Hunter's Creek.

Per Order No. PSC-06-0129-FOF-WS
Extension of Service Territory

The North 1/4 of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of the Seaboard Coastline Railroad and North of Turbak Road.

A portion of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida, being more specifically described as follows:

Beginning at the Southeast corner of said Section 12, thence West along the South line of said Section 12, a distance of 2577.55 feet, thence North, a distance of 385.34 feet; thence West, a distance of 531.75 feet, thence North, a distance of 897.20 feet thence West, a distance of 511.21

feet, thence North, a distance of 438.40 feet, thence East a distance of 511.21 feet, thence North, a distance of 178.65 feet; thence East, a distance of 606.14 feet, thence South a distance of 600 feet more or less, thence east, a distance of 2860 feet more or less to the East line of said Section 12, thence South along the East line of said Section 12 to the point of beginning.

The South $\frac{1}{4}$ of Section 1, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of Seaboard Coastline Railroad.

The South $\frac{1}{4}$ of Section 11, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of Hunters Creek.

The North $\frac{1}{4}$ of Section 14, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of Hunters Creek.

Per Order No. PSC-06-1064-FOF-WS

Extension of Service Territory

The South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida.

The South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ and the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida.

The Northeast $\frac{1}{4}$, of the Northeast $\frac{1}{4}$, of the Northeast $\frac{1}{4}$, of the Northeast $\frac{1}{4}$, of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida. Less and except the Right-of-Way for a public highway along the East side of said land, and Less and except the Right-of-Way for a public road along the North line of said land, and Less and except the following: Commence at the Northeast corner of said Section 13; thence along the North boundary of said Section 13, North $88^{\circ}26'45''$ West, 45.15 feet, to the Westerly maintained Right-of-Way line of State Road 35 (US 17) for a point of beginning; thence along said Westerly maintained Right-of-Way line, South $00^{\circ}23'35''$ West, 330.28 feet; thence North $88^{\circ}24'16''$ West, 8.00 Feet; thence North $00^{\circ}23'35''$ East, 330.28 feet, to said North boundary of Section 13; thence along said North boundary, South $88^{\circ}26'45''$ East, 8.00 feet, to the point of beginning.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

MSM Utilities, LLC
pursuant to
Certificate Number 611-W

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

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-99-0756-FOF-WS	04/19/99	980731-WS	Original Certificate
PSC-05-0147-PAA-WS	02/07/05	031042-WS	Transfer
PSC-06-0129-FOF-WS	02/16/06	050820-WS	Amendment
PSC-06-1064-FOF-WS	12/26/06	060628-WS	Amendment
*	*	060820-WS	Transfer of Majority Organizational Control

***Order Number and date to be provided at time of issuance.**

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

MSM Utilities, LLC
pursuant to
Certificate Number 527-S

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

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-99-0756-FOF-WS	04/19/99	980731-WS	Original Certificate
PSC-05-0147-PAA-WS	02/07/05	031042-WS	Transfer
PSC-06-0129-FOF-WS	02/16/06	050820-WS	Amendment
PSC-06-1064-FOF-WS	12/26/06	060628-WS	Amendment
*	*	060820-WS	Transfer of Majority Organizational Control

***Order Number and date to be provided at time of issuance.**

MSM Utilities, LLC

Monthly Service Rates

Water Residential Service and General Service

Meter Size:	
5/8" x 3/4"	\$ 21.17
3/4"	31.76
1"	52.93
1 1/2"	105.85
2"	169.36
3"	338.72
4"	529.25
6"	1,058.50
Residential Gallonage Charge	
0-7,000 Gallons	\$7.38
7,001-14,000 Gallons	9.23
Over 14,000 Gallons	11.07
General Service Charge per	
1,000 Gallons	\$8.08

Wastewater

Residential Service

All Meter Sizes	\$25.68
Per 1,000 Gallons	\$4.39
(10,000 Gallon Cap)	

Meter Size:	General
5/8" x 3/4"	\$ 25.68
3/4"	38.52
1"	64.20
1 1/2"	128.40
2"	205.44
3"	410.88
4"	642.00
6"	1,284.00
Charge per 1,000 gallons	\$5.27

Customer Deposits

	Water	Wastewater
Residential 5/8" x 3/4"	\$113.70	\$85.70
General Service 5/8" x 3/4"	90.02	101.62

Miscellaneous Service Charges

	Water		Wastewater	
	Normal Hours	After Hours	Normal Hours	After Hours
Initial Connection Fee	\$20.00	N/A	\$20.00	N/A
Normal Reconnection Fee	20.00	\$40.00	20.00	\$40.00
Violation Reconnection Fee	20.00	40.00	Actual Cost	Actual Cost
Premises Visit Fee (in lieu of disconnection)	20.00	40.00	20.00	40.00

Service Availability Charges

	Water	Wastewater
Meter Installation Fee 5/8"x3/4"	\$180.00	N/A
Plant Capacity Charge		
Per ERC	\$638.10	\$1,762.40
Charge per gallon of capacity	\$2.55	\$8.81