

**Marguerite Lockard**

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**From:** Trina Collins [TCollins@RSBattorneys.com]  
**Sent:** Friday, December 14, 2007 12:54 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Ralph Jaeger; Martin Friedman; Christian W. Marcelli; Trina Collins  
**Subject:** Filing in Docket No. 070109-WS; Application for Amendment of Certificates 611-W and 527-S to Extend Water and Wastewater Service Area to include Certain Land in Charlotte County  
**Importance:** High  
**Attachments:** PSC Clerk 05.ltr. (Prehearing Statement) 12-14-2007.pdf

- a. Martin S. Friedman, Esq.  
Rose, Sundstrom & Bentley, LLP  
Sanlando Center  
2180 W. State Road 434, Suite 2118  
Longwood, FL 32779  
PHONE: (407) 830-6331  
[mfriedman@rsbattorneys.com](mailto:mfriedman@rsbattorneys.com)
- b. Docket No. 070109-WS; Application for Amendment of Certificates 611-W and 527-S to Extend Water and Wastewater Service Area to include certain land in Charlotte County – filing Prehearing Statement.
- c. Sun River Utilities, Inc.
- d. 11 pages.
- e. Letter to Commission Clerk – 1 page; Notice of Filing – 2 pages; Prehearing Statement – 8 pages.

12/14/2007

DOCUMENT NUMBER-DATE

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LAW OFFICES  
ROSE, SUNDBSTROM & BENTLEY, LLP  
2548 BLAIRSTONE PINES DRIVE  
TALLAHASSEE, FLORIDA 32301

FREDERICK L. ASCHAUER, JR.  
CHRIS H. BENTLEY, P.A.  
ROBERT C. BRANNAN  
F. MARSHALL DETERDING  
JOHN R. JENKINS, P.A.  
KYLE L. KEMPER  
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DAREN L. SHIPPY  
WILLIAM E. SUNDBSTROM, P.A.  
DIANE D. TREMOR, P.A.  
JOHN L. WJARTON  
ROBERT M. C. ROSE (1924-2006)

(850) 877-6555  
FAX (850) 656-1029  
www.rsballoorneys.com

REPLY TO CENTRAL FLORIDA OFFICE

CENTRAL FLORIDA OFFICE  
SANLANDO CENTER  
2180 W. STATE ROAD 434, SUITE 2118  
LONGWOOD, FLORIDA 32779  
(407) 830-6331  
FAX (407) 830-8522

MARTIN S. FRIEDMAN, P.A.  
VALERIE L. LORD  
BRIAN J. STREET

December 14, 2007

E-FILING

Ann Cole, Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

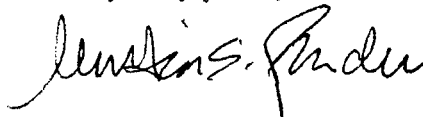
RE: Docket No.: 070109-WS, Application for Amendment of Certificates 611-W and 527-S to Extend Water and Wastewater Service Area to Include Certain Land in Charlotte County  
Our File No.: 41069.03

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket is Sun River Utilities, Inc.'s Prehearing Statement.

Should you have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours,



MARTIN S. FRIEDMAN  
For the Firm

MSF/tlc  
Enclosure

cc: A. A. Reeves, Vice President (w/enclosure)  
Robert C. Brannon, Esquire (w/enclosure)  
Todd D. Engelhardt, Esquire (w/enclosure)  
Ralph Jaeger, Esquire (w/enclosure)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of  
Certificates 611-W and 527-S to extend  
water and wastewater service areas to  
include certain land in Charlotte County,  
Florida by Sun River Utilities, Inc. (f/k/a  
MSM Utilities, LLC)

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Docket No.: 070109-WS

NOTICE OF FILING

Applicant, Sun River Utilities, Inc. (f/k/a MSM UTILITIES, LLC), by and through its undersigned attorneys, hereby gives notice of filing in the above-referenced docket the Prehearing Statement on behalf of Sun River Utilities, Inc.

Respectfully submitted this 14<sup>th</sup> day of  
December, 2007, by:

ROSE, SUNDSTROM & BENTLEY, LLP  
Sanlando Center  
2180 W. State Road 434  
Suite 2118  
Longwood, Florida 32779  
(407) 830-6331 Telephone  
(407) 830-8522 Facsimile  
Email: [mfriedman@rsbatttoneys.com](mailto:mfriedman@rsbatttoneys.com)

By:   
MARTIN S. FRIEDMAN

DOCUMENT NUMBER-DATE

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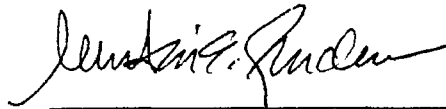
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CERTIFICATE OF SERVICE  
DOCKET NO. 070109-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished  
by U. S. Mail this 14<sup>th</sup> day of December, 2007, to the following:

Todd D. Englehardt, Esquire  
Harold A. McLean, Esquire  
Akerman, Senterfitt  
106 E. College Avenue, Suite 1200  
Post Office Box 1877  
Tallahassee, FL 32302-1877

Ralph Jaeger, Esquire  
OFFICE OF GENERAL COUNSEL  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850



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MARTIN S. FRIEDMAN  
For the Firm

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of  
SUN RIVER UTILITIES, INC.  
formerly known as MSM UTILITIES, LLC,  
for Amendment of Certificates 611-W and  
527-S to Extend Water and Wastewater  
Service Areas to Include Certain Land  
in Charlotte County, Florida.

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Docket No. 070109-WS

PREHEARING STATEMENT

Pursuant to Order No. PSC-07-0452-PCO-WS, issued May 29, 2007, and affirmed in Order No. PSC-07-0662-PCO-WS, issued August 16, 2007 and Order No. PSC-07-0807-PCO-WS, issued October 4, 2007, Sun River Utilities, Inc. ("Sun River" or the "Utility"), by and through its undersigned counsel, files its Prehearing Statement as follows:

A. All Known Witnesses

Sun River intends to call the following witnesses:

Witness Name	Title	Subject
A.A. Reeves III	Vice President and Utility Director of Sun River Utilities, Inc.	Application for amendment of certificates; need for service; technical ability; financial ability
Gerald C. Hartman	Vice President of Hartman Consulting & Design, GAI Inc.	Need for service, technical ability; service territory; cross county issues
Allen B. Fisher	Senior Vice President of SunTrust Banks, Inc.	Financial ability

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Stephen J. Feldman	Managing Member of Hudson Sun River LLC	Need for service
Craig Dearden	CFO and COO of Realmark Group	Need for service, lack of Charlotte County's ability to provide service

Sun River reserves the right to call additional witnesses to respond to Commission inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated but that may be designated by the Prehearing Officer at the prehearing conference on January 3, 2008.

B. All Known Exhibits

Sun River has identified and intends to sponsor the following exhibits:

Exhibit No.	Description	Person Sponsoring	Cross-Reference
	Summary of Experience	A.A. Reeves	AAR-1
	Application for Amendment to Certificates	A.A. Reeves	AAR-2
	Requests for service in the requested service territory	A.A. Reeves	AAR-3
	Summary of Experience	Gerald C. Hartman	GCH-1
	Letter of Engagement	Gerald C. Hartman	GCH-2
	Requests for service in the requested service territory	Gerald C. Hartman	GCH-3
	Map of Present Service Territory	Gerald C. Hartman	GCH-4
	Resume of Stephen J. Feldman	Stephen J. Feldman	Rebuttal SJF-1

	Additional Map of Present Service Territory	Gerald C. Hartman	Rebuttal GCH-1
	Map of Charlotte County and general service areas	Gerald C. Hartman	Rebuttal GCH-2
	Charlotte County Utilities Map of Proposed Territory Extension	Gerald C. Hartman	Rebuttal GCH-3
	Desoto County Existing Land Use Map	Gerald C. Hartman	Rebuttal GCH-4
	Desoto County Future Land Use Map	Gerald C. Hartman	Rebuttal GCH-5

Sun River may utilize other documents as exhibits at the time of hearing, either during cross-examination or as further impeachment or rebuttal exhibits and the precise identification of such documents cannot be determined at this time.

C. Statement of Sun River's Basic Position

Sun River is entitled to the requested amendment to its certificates of authorization because it has satisfied all statutorily required and Commission requested evidence demonstrating that there is a need for service and that it has the financial and technical ability to serve the requested service territory and that granting such amendments is in the public interest.

D. Sun River's Position On The Issues, Facts And Law

ISSUE 1: Is there a need service in the proposed territory, and if so, when will service be required?

Yes, the need for service in the area is established in by the submitted evidence, including Exhibits AAR-3, GCH-3 and the testimony of Stephen

Feldman. Neither the Florida Statutes nor any Charlotte County ordinance requires that a developer seek a service commitment from Charlotte County Utilities (“CCU”). There can, therefore, be no negative inference drawn from the fact that nobody approached CCU requesting service to the proposed territory. In fact, it is more likely that nobody approached CCU because it is widely known that CCU does not have the ability or desire to serve the territory and that it has issued a meaningless Letter of Availability in the past (See Testimony of Craig Dearden).

The County asserts that there can be no need in the area because the current zoning and comprehensive plan do not permit development in the area. However, all agree that provisions for water and sewer service are necessary before any applications for zoning variances, Comprehensive Plan (“Comp Plan”) amendments and construction permits can be considered.

ISSUE 2: Does Sun River have the financial ability to serve the requested territory?

Yes, no party disputes Sun River’s financial ability to serve the requested territory and there has been no evidence suggesting that Sun River lacks the financial ability to serve the requested territory. Further, the prefiled testimony of Allen B. Fisher demonstrates that Sun River, with the backing of its corporate parent North Fort Myers Utilities, and its corporate grandparent, Old Bridge Corporation, will have sufficient capital to provide service to the proposed territory.



ISSUE 3: Does Sun River have the technical ability to serve the requested territory?

Yes, no party disputes Sun River's technical ability to serve the requested territory. Sun River is managed by A.A. Reeves, III, who has 35 years of experience in operating water and wastewater utilities, including the highly successful North Fort Myers Utilities.

ISSUE 4: Does Sun River have sufficient plant capacity to serve the requested territory? If not, will it have sufficient capacity when needed?

Yes, Sun River will initially serve the area with its current water and wastewater plants. As the actual service connections grow, Sun River will expand its plants to suit the area's growth.

ISSUE 5: Is the proposed amendment consistent with the Charlotte County Comp Plan?

Yes, the proposed amendment is consistent with the Charlotte County Comprehensive Plan. Even if it is assumed that the proposed Amendment is inconsistent with the present language of the Comp Plan, it is still in the public interest and should be granted notwithstanding the Comp Plan.

ISSUE 6: Will the proposed amendment to Sun River's territory duplicate or compete with any other system?

No, there is currently no water or wastewater infrastructure in the proposed service territory. CCU does not have any plans to construct such infrastructure. As such, there is no current or planned system in competition with Sun River in the proposed service territory.

ISSUE 7: If the proposed amendment would result in an extension of a system which would be in competition with, or a duplication of another system, is that system inadequate to meet the reasonable needs of the public or is the owner of the system unable, unwilling or neglecting to provide reasonably adequate service to the proposed territory?

As stated in the response to Issue 6, there is no other system in competition with the Sun River system currently or within the proposed service territory. As such, this issue is not applicable. If, for argument's sake, one assumes that CCU is in competition with Sun River, it should be noted that CCU is unwilling and unable to provide any service to the proposed service territory.

ISSUE 8: Is it in the public interest for Sun River to be granted an amendment to Certificates Nos. 611-W and 527-S for the territory proposed in its application?

Yes, the proposed amendment is in the public interest for the reasons noted above.

E. Stipulated Issues

1. Sun River has the financial ability to serve the area.
2. Sun River has the technical ability to serve the area.
3. Sun River has or will have sufficient plant capacity to serve the area.
4. Granting the amendment will not duplicate or compete with any other system.
5. The issue of whether a competing utility is inadequate or unwilling to serve the area is moot because there are no competing utilities. Even if CCU could be considered a competing utility, it has proclaimed that it has no plans or desire to serve the proposed territory.

F. Pending Motions And Other Open Matters

None known at this time.

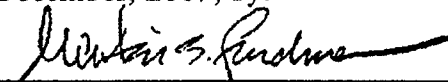
G. Objections To Witness' Qualifications As An Expert

None.

H. Reasons For Non-Compliance With Order (if any)

None.

Respectfully submitted on this 14<sup>th</sup> day  
of December, 2007, by:



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MARTIN S. FRIEDMAN

For the Firm

ROSE, SUNDSTROM & BENTLEY, LLP

2180 W. State Road 434, Suite 2118

Longwood, FL 32779

PHONE: (407) 830-6331

FACSIMILE: (407) 830-8522

ROBERT C. BRANNAN

ROSE, SUNDSTROM & BENTLEY, LLP

2548 Blairstone Pines Drive

Tallahassee, FL 32301

PHONE: (850) 877-6555

FACSIMILE: (850) 656-4029


CERTIFICATE OF SERVICE  
DOCKET NO.: 070109-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement has been furnished by U.S. Mail this 14th day of December, 2007, to:

Todd D. Engelhardt, Esquire  
AKERMAN SENTERFITT  
Suite 1200  
106 East College Avenue  
Tallahassee, FL 32301

Ralph Jaeger, Esquire  
OFFICE OF GENERAL COUNSEL  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

BY:

  
MARTIN S. FRIEDMAN  
For the Firm