

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

IN RE: APPLICATION OF SKYLAND
UTILITIES, LLC, TO OPERATE A WATER
AND WASTEWATER UTILITY IN
HERNANDO AND PASCO COUNTIES,
FLORIDA

Case No.: 090478-WS

PASCO COUNTY'S PREHEARING STATEMENT

Pasco County ("Pasco"), pursuant to the *Order Establishing Procedure* dated February 24, 2010, hereby files and serves its Prehearing Statement in this matter. The Applicant, Skyland Utilities, LLC, shall be referred to as the "Applicant" or "Skyland" and the Florida Public Service Commission shall be referred to as the "FPSC".

(1) PASCO'S KNOWN WITNESSES

- a. Bruce Kennedy, Assistant County Administrator, Utilities Services

Subject matter of testimony: water and wastewater utility services provided by Pasco County; deficiencies in Skyland's application for certification of a water and wastewater utility.

- b. Richard Gehring, Planning and Growth Management Administrator

Subject matter of testimony: Skyland's application and its inconsistency with the Pasco County comprehensive plan.

(2) PASCO'S PREFILED EXHIBITS AND OTHER EXHIBITS

- a. BEK-1 (Bruce Kennedy Resume)
b. BEK-2 (2009 Engineering Report)
c. REG-1 (Richard Gehring Resume)
d. Pasco reserves the right to identify additional exhibits at the Prehearing Conference and at hearing for the purpose of cross examination.

(3) STATEMENT OF PASCO'S BASIC POSITION IN THIS PROCEEDING

Skyland’s application for certification of a water and wastewater utility in Pasco and Hernando County should be denied because the FPSC lacks subject matter jurisdiction, because the proposed utility is not consistent with the comprehensive plan of Pasco and Hernando, because there is no need for the proposed utility, because the proposed utility is duplicative of services provided by Pasco and Hernando, and for all the reasons stated by each intervenor in its respective Petition (or equivalent document) to intervene.

Pasco stands ready to serve any development in the territory sought to be certificated if and when that territory is approved for development at a density and/or intensity that makes central service cost effective.

(4) QUESTIONS OF FACT, QUESTIONS OF LAW AND QUESTIONS OF POLICY THAT ARE AT ISSUE AND HERNANDO’S POSITION ON EACH

Issue 1: Has Skyland presented evidence sufficient to invoke the Commission’s exclusive jurisdiction over Skyland’s application for original certificates for proposed water and wastewater systems?

A. Did Skyland provide evidence to support that it satisfies the definition of “utility” contained in Section 367.021(12), Florida Statutes?

Pasco’s position is that the record does not contain competent evidence sufficient to satisfy Skyland’s burden of proof on this issue.

B. Did Skyland provide evidence to support that the service proposed by Skyland transverses county boundaries pursuant to Section 367.171(7), Florida Statutes?

Section 367.171(7) states:

Notwithstanding anything in this section to the contrary, the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional, except for utility systems that are subject to, and remain subject to, interlocal utility agreements in effect as of January 1, 1991, that create a single governmental authority to regulate the utility systems whose service transverses county boundaries, provided that no such interlocal agreement shall divest commission jurisdiction over such systems, any portion of which provides service within a county that is subject to commission jurisdiction under this section.

Clearly, this provision raises the “chicken or the egg” issue. A utility is not a “utility” until it is so designated by the FPSC. For a new, want to be utility, it will not typically have constructed facilities until such time as it has obtained the “utility” designation so that it is

ensured that it can recover its costs. Thus, a proposed utility may intend to provide services that traverse county boundaries, and may apply for certification of such a utility, prior to actually constructing facilities that traverse county lines. On the other hand, a proposed utility may say that it will provide services that transverse county lines, without any real intent to actually do so, simply to invoke the FPSC's jurisdiction.

Pasco's position is that these competing interests must be balanced. Thus, the proposed utility must demonstrate (beyond mere words) a present intent to provide services that traverse county lines. This can easily be done where contiguous parcels (or a single parcel) traverse county lines. In the absence of such property (as is the case here for the phase 1 test model), the utility should be able to demonstrate affirmative steps taken in furtherance of providing utility services that traverse county lines. For example, actions that indicate more than "mere words," would include the negotiation of right of way easements, the performance of corridor studies, the acquisition of property for rights of way, the making of binding obligations for the purchase of materials or services, etc., used to interconnect parcels. These are the types of actions that demonstrate that a proposed utility is not merely gaming the system simply to invoke the FPSC's jurisdiction. As an alternative, the proposed utility could make a binding commitment to provide utility services that traverse county lines at a time certain in the near future – and the FPSC could condition any certificate granted to compliance with this commitment.

Here, Skyland has provided no evidence beyond mere words – i.e., the mere statement that it intends, at some unspecified time in the future, to provide utility services that traverse county lines. Thus, it is Pasco's position that this is not enough to invoke the FPSC's jurisdiction under the controlling case law and, moreover, that the record does not contain competent evidence sufficient to satisfy Skyland's burden of proof on this issue.

Issue 2: Is there a need for service in Skyland's proposed service territory and, if so, when will service be required?

Pasco's position is that the only "customer" that has requested service from Skyland is currently adequately served by the customer's existing well and on-site septic system. Skyland has not otherwise demonstrated impending development, or any other impending change to the use of the Evans Family property that would be served by the proposed utility. Again, Pasco's position is that more than mere words are necessary for the FPSC to grant a certificate to provide utility services. It is Pasco's position that service is neither required now, or at any time identified by Skyland in the future. Skyland's application could not be more vague or noncommittal regarding the timing of service provision (other than to say that sometime in the next five to six years it will serve 155 ERC's). Pasco stands ready to provide central services to the territory sought to be certificated as soon as there is development approved at a density that makes central service economically viable and efficient.

Furthermore, Pasco submits that Skyland is unable to meet the requirements contained in § 367.045(1)(b) & (5)(a), Fla. Stat., and Rule 25-30.033(1)(b), Fla. Admin. Code, as to this issue, and that the record does not contain competent evidence sufficient to meet Skyland's burden of proof on this issue.

Issue 3: Is Skyland's application inconsistent with Hernando County's comprehensive plan?

Pasco's position is that Skyland's Application is inconsistent with Hernando County's adopted Comprehensive Plan (pertinent provisions included as part of Skyland's Application). Pasco's position is supported by the Letter from the Florida Department of Community Affairs ("DCA") dated December 7, 2009 and filed with the PSC in this matter on even date (Hernando Exhibits, Bate Stamped Nos. 000639 thru 000640); Direct Testimony of Ronald Pianta, AICP; and Direct testimony of Dan Evans, DCA Planner as filed in this proceeding.

Furthermore, Pasco submits that Skyland is unable to meet the requirements contained in § 367.045(5), Fla. Stat., and Rule 25-30.033(1)(f), Fla. Admin. Code, as to this issue.

Issue 4: Is Skyland's application inconsistent with Pasco County's comprehensive plan?

Pasco's position is that Skyland's Application is inconsistent with Pasco County's adopted Comprehensive Plan (pertinent provisions included as part of Skyland's Application). Pasco's position is supported by the above-referenced Letter from DCA regarding its review of the Pasco County Comprehensive Plan in connection with Skyland's Application; Direct Testimony of Richard E. Gehring; and Direct testimony of Dan Evans.

Furthermore, Pasco submits that Skyland is unable to meet the requirements contained in § 367.045(5), Fla. Stat., and Rule 25-30.033(1)(f), Fla. Admin. Code, as to this issue.

Issue 5: Will the certification of Skyland result in the creation of a utility which will be in competition with, or duplication of, any other system pursuant to Section 367.045(5)(a), Florida Statutes?

Pasco's position is that Skyland's proposed utility will be in competition with, or duplication of, the public water and wastewater utilities of Hernando County's Water and Sewer District as within Hernando County, of Pasco County's water and wastewater utilities as within Pasco County, and of the City of Brooksville as within the City's right to serve area as applicable. Pasco relies, in part, on the Direct Testimony of Joseph Staph and its Water and Wastewater Master Plans as produced in this matter, as to Hernando County; and the Direct Testimony of Bruce Kennedy and Pasco's produced documents as to Pasco County.

Furthermore, Pasco submits that Skyland is unable to meet the requirements contained in § 367.045(1)(b) & (5)(a), Fla. Stat., and Rule 25-30.033, Fla. Admin. Code, as to this issue.

Issue 6: Does Skyland have the financial ability to serve the requested territory?

Pasco's position is that Skyland has failed to provide competent evidence in the record to demonstrate financial ability. Thus, Skyland cannot comply with the requirements of either section 367.045(1)(b), Florida Statutes or Rule 25-30.033(1)(e) & (r), Florida Administrative Code.

Issue 7: Does Skyland have the technical ability to serve the requested territory?

Pasco's position is that Skyland has failed to provide competent evidence in the record to demonstrate technical ability. Thus, Skyland cannot comply with the requirements of either section 367.045(1)(b), Florida Statutes or Rule 25-30.033(1)(e), Florida Administrative Code.

Issue 8: Has Skyland provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located?

Pasco's position is that Skyland has failed to provide competent evidence in the record to demonstrate continued use of the land upon which the utility treatment facilities are or will be located. Thus, Skyland cannot comply with the requirements of either section 367.045(1)(b), Florida Statutes or Rule 25-30.033(1)(j), Florida Administrative Code.

Issue 9: Is it in the public interest for Skyland to be granted water and wastewater certificates for the territory proposed in its application?

No. It is Pasco's position that the requested utility does not serve the public interest for the reasons identified in its prefiled testimony, as well as for the reasons identified in the testimony filed by the other non-Skyland witnesses.

Issue 10: If the certificates for the proposed water and wastewater system are granted, what is the appropriate return on equity for Skyland?

It is Pasco's position that the Skyland should not be certificated by the FPSC and, therefore, the PSC should not need to decide issues related to rate making and rates. If the FPSC determines that certification is appropriate, the issue of rates should be bifurcated for additional evidentiary development.

Issue 11: If the certificates for the proposed water and wastewater system are granted, what are the appropriate potable water and wastewater rates for Skyland?

Pasco reiterates its position as stated under Issue 10 above and adds that the rates proposed by Skyland are excessive.

Issue 12: If the certificates for the proposed water and wastewater system are granted, what are the appropriate service availability charges for Skyland?

Pasco reiterates its position as stated under Issue 10 above and adds that the charges proposed are excessive.

Issue 13: If the certificates for the proposed water and wastewater system are granted, what is the appropriate Allowance for Funds Used During Construction (AFUDC) rate for Skyland?

Pasco reiterates its position as stated under Issue 10 above.

Issue 14: Should this docket be closed?

After the request for certification is denied, this docket should be closed.

(5) STATEMENT OF ISSUES THAT PASCO HAS STIPULATED TO (AT THIS TIME)

None.

(6) PENDING MOTIONS AND OTHER MATTERS THAT PASCO SEEKS ACTION UPON

Pasco County's and Hernando County's Motion to Strike Rebuttal Testimony of Ronald Edwards and Gerald Hartman (as filed on June 14, 2010 in this matter).

(7) STATEMENT IDENTIFYING PASCO'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY

None.

(8) OBJECTIONS TO OTHER PARTY'S EXPERTS

As stated in Pasco and Hernando's Motion to Strike. Further, Pasco generally objects to expert testimony offered by a witness not qualified to provide such expert testimony.

(9) STATEMENT AS TO ANY REQUIREMENT IN THE ORDER ESTABLISHING PROCEDURE THAT PASCO CANNOT COMPLY WITH

None. However, Pasco reserves the right to object to Staff deviating from the briefing deadline contained therein.

Submitted this 14th day of June, 2010.

/s/ William H. Hollimon
WILLIAM H. HOLLIMON
Florida Bar No. 0104868
PENNINGTON MOORE WILKINSON
BELL & DUNBAR, P.A.
215 South Monroe Street, 2nd Floor (32301)
Post Office Box 10095
Tallahassee, Florida 32302-2095
Telephone: (850) 222-3533
Facsimile: (850) 222-2126
bhollimon@penningtonlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 14, 2010, a copy of the foregoing Motion to Strike was served, via e-mail and U.S. Mail, to the following:

Caroline Klancke, Esquire
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Darrill Lee McAteer, Esquire
City Attorney
20 South Broad Street
Brooksville, Florida 34601

Geoffrey Kirk, Esquire
Jon Jouben, Esquire
Garth Coller, Esquire
20 North Main Street, Suite 462
Brooksville, Florida 34601

Ronald Edwards, Manager
660 Beachland Boulevard, Suite 301
Vero Beach, Florida 32963-1708

John L. Wharton, Esquire
Rose Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

Frederick T. Reeves, Esquire
Frederick T. Reeves, P.A.
5709 Tidalwave Drive
New Port Richey, Florida 34652

Michael Minton, Esquire
1903 South 25th Street, Suite 200
Fort Pierce, Florida 34947

Joseph Richards, Esquire
West Pasco County Government Center
7530 Little Road, Suite 34
New Port Richey, Florida 34654

/s/ William H. Hollimon