

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original certificates for proposed water and wastewater systems, in Hernando and Pasco Counties, and request for initial rates and charges, by Skyland Utilities, LLC.

DOCKET NO. 090478-WS  
ORDER NO. PSC-10-0422-PHO-WS  
ISSUED: July 1, 2010

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on June 28, 2010, in Tallahassee, Florida, before Commissioner Nathan A. Skop, as Prehearing Officer.

APPEARANCES:

F. MARSHALL DETERDING and JOHN L. WHARTON, ESQUIRES, Rose, Sundstorm & Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301

On behalf of Skyland Utilities, LLC (SKYLAND).

GEOFFREY T. KIRK, JON JOUBEN, and GARTH COLLER, ESQUIRES, 20 North Main Street, Suite 462, Brooksville, Florida 34601

On behalf of Hernando County, Hernando County Water and Sewer District and Hernando County Utility Regulatory Authority (collectively HERNANDO).

WILLIAM H. HOLLIMON, ESQUIRE, Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., 215 South Monroe Street, 2<sup>nd</sup> Floor, Tallahassee, Florida 32301

On behalf of Pasco County (PASCO).

DERRILL L. MCATEER, ESQUIRE, The Hogan Law Firm, 20 South Broad Street, Brooksville, Florida 34601

On behalf of City of Brooksville (BROOKSVILLE).

STEPHEN C. REILLY and CHARLES REHWINKEL, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399-1400

On behalf of Office of Public Counsel (OPC).

CAROLINE KLANCKE and LISA BENNETT, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (STAFF).

SAMANTHA CIBULA, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Advisor to the Florida Public Service Commission.

DOCUMENT NUMBER DATE

05431 JUL-1 2010

FPSC-COMMISSION CLERK

PREHEARING ORDER

I. CASE BACKGROUND

On October 16, 2009, Skyland Utilities, LLC, (Skyland or Utility) filed an application for original certificates to operate a water and wastewater utility in Hernando and Pasco Counties and for approval of initial rates and charges (Application). On November 13, 2009, Hernando County, Hernando County Water and Sewer District and Hernando County Utility Regulatory Authority (collectively Hernando), Pasco County, and the City of Brooksville each timely filed a protest to the Utility's application. On June 16, 2010, the Office of Public Counsel intervened in this case.<sup>1</sup>

By Order No. PSC-10-0105-PCO-WS (Order Establishing Procedure), issued February 24, 2010, the Application was scheduled for administrative hearing to be held on July 7 – 8, 2010, with a Prehearing Conference scheduled for June 28, 2010. This Prehearing Order sets forth the decisions reached by the Prehearing Officer for conduction of the formal hearing scheduled for July 7 – 8, 2010.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 367, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-22, 25-30, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 367.156, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section

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<sup>1</sup> See Order No. PSC-10-0387-PCO-WS, issued June 16, 2010, in Docket No. 090478-WS.

367.156 , F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the

exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Gerald C. Hartman	Skyland	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13
Daniel W. Evans <sup>2</sup>	Staff	3, 4 and 9
Joseph Stapf	Hernando	2, 5, 9, and 10
Ronald F. Pianta	Hernando	3 and 9
Paul L. Wiczorek	Hernando	3 and 9
Bruce E. Kennedy	Pasco	2, 5, 9, and 10
Richard E. Gehring	Pasco	4 and 9
City of Brooksville	Brooksville	
Paul M. Williams	Staff	9
<u>Rebuttal</u>		

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<sup>2</sup> Pursuant to a determination at the Prehearing Conference held on June 28, 2010, witness Daniel W. Evans will testify immediately following the testimony of Skyland's direct witness Gerald C. Hartman.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Gerald C. Hartman	Skyland	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13
Daniel B. DeLisi	Skyland	3 and 4
Ronald Edwards	Skyland	1, 2, 5, 6, 7, 8, and 9

## VII. BASIC POSITIONS

**SKYLAND:** There is a need for potable water, agricultural/irrigation water, wastewater services, and there is expected to be a need for bulk raw water services throughout the territory applied for by Skyland Utilities, LLC. The Applicant is ready, willing and able from both a technical and financial standpoint to provide those services currently needed and to meet additional needs as they arise. No other utility can provide service to the territory as economically or efficiently as Skyland Utilities, LLC. The proposed certification of Skyland Utilities, LLC is in the public interest and is not inconsistent with the Comprehensive Plans of any of the protestants or intervenors in this case developed pursuant to §163.3161-163.3211, Fla. Stat. In fact, the certification of Skyland Utilities, LLC will facilitate effective and orderly growth management and resource preservation and allocation within the proposed territory comprised of lands owned by Skyland Utilities, LLC's affiliated entities. If the Commission finds such an inconsistency exists under these facts and circumstances, it should grant the certificate to Skyland notwithstanding.

**HERNANDO:** Specifically, Skyland's application for certification should be **DENIED** by the PSC because: (i) the PSC lacks subject matter jurisdiction; (ii) Skyland has failed to demonstrate that there is a need for the proposed water and wastewater utility in Southeastern Hernando County and Northern Pasco County; (iii) the proposed utility is duplicative of services provided by and/or is available upon demand by Hernando County and Pasco County, respectively; (iv) the proposed utility is not in the public interest and, conversely, the public interest would not be served if the PSC approves the instant request for certifications; (v) the proposed utility is not consistent with the adopted Comprehensive Plan of Hernando County; (vi) the proposed utility is not consistent with the adopted Comprehensive Plan for Pasco County, and for all the reasons stated in the *Objections* (Petitions) filed by Hernando on November 13, 2009 in this proceeding, the *Motion to Dismiss* filed by Hernando on November 13, 2009 in this proceeding; the *Objection* (Petition) filed by Pasco County on November 13, 2009 in this proceeding (the foregoing filings are incorporated herein by reference and made a part hereof), and set forth below, without limitation.

**PASCO:** 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. Skyland has failed to meet its burden of proof and has failed to include competent, substantial evidence in the record that is necessary for the Commission to grant the requested certificate.

**BROOKSVILLE:** Skyland's application contemplates services which could be in direct competition with areas which could be served by the City of Brooksville. The awardance of a certificate to Skyland would not be in the best interests of the residents of the City of Brooksville or Hernando County. Skyland's intention to sell bulk water, as specifically noted in its Certificate Application, is not in the best interest of the City of Brooksville or Hernando County and endangers the City of Brooksville's Water Supply. Skyland has not shown the requisite expertise to operate a utility system. Skyland has also failed to show there is any need for its proposed service in the areas described in the certificate application. (In an abundance of caution, the City reiterates all positions stated or adopted in its Amended Objection to Skyland's petition.)

**OPC:** The decision to grant or deny granting original water and wastewater certificates to Skyland Utilities, LLC., will substantially affect the interests of future unrelated third party customers ("future customers") that will live and work in the proposed certificated territories. OPC seeks a decision that best serves the interests of those future customers, by providing quality service at the least possible cost. OPC intends to participate in the formal evidentiary hearing to assist in developing the record evidence that will help resolve this question. After all of the evidence is presented, pursuant to Section 350.0611(1) and Section 367.045(4), Florida Statutes, OPC will make a recommendation to the Commission whether granting the proposed certificates are or are not in the public interest.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

**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?

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

**POSITIONS**

**SKYLAND:** Yes, Skyland has presented all evidence sufficient to invoke such exclusive jurisdiction and the Commission has exclusive jurisdiction under the provisions of Chapter 367, Florida Statutes and any attempts by local government to assert jurisdiction over those issues, is contrary to law and ineffectual. (Hartman, Edwards)

**HERNANDO:** Hernando's response to Subparagraphs A and B below are incorporated herein by reference.

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

Hernando's position is that Skyland does not satisfy the definition of a "utility" as contained in § 367.021(12), Fla. Stat., to wit: that it will be serving the "public" for compensation" inasmuch as the only thing that Skyland has established is that it will be providing service to Evans Properties, Inc., its parent company (Skyland is a wholly owned subsidiary of Skyland Utilities, Inc., which is wholly owned by Evans Properties, Inc.). Here, the entity/person requesting the utility service is the same entity which owns the proposed utility, is the same entity proposing to lease the land to Skyland and is the same entity that has proposed to fund Skyland. Chapter 367 defines 'Utility' to mean "a water or wastewater utility . . . who is providing, or proposes to provide, water or wastewater service to the public for compensation." § 367.021, Fla. Stat. (emphasis added). The term "for compensation" also begs the question as to who is paying whom when one examines the inter-relationships between Evans Properties, Inc., Evans Utilities, Inc. and Skyland Utilities, LLC. Accordingly, it is Hernando's position that the term "the public" envisions a broader base than oneself (or a closely related/affiliated entity or, in essence, an *alter ego* of oneself) and "for

compensation” envisions something more than shifting balance sheets among related/affiliated entities/alter egos.

Moreover, Skyland has not adequately demonstrated that it will be serving the “public” “for compensation” and, therefore, constitute a utility by definition.

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

Hernando’s position is that Skyland has no infrastructure in the ground at this time – either in Hernando County or Pasco County – and that Skyland currently does not have a single physical pipe or any other infrastructure which transverse the Hernando/Pasco boundary. *See* Skyland’s Application *and see* Direct Testimony of Gerald C. Hartman, P.E. (Direct Testimony offered by Skyland).

Accordingly, based upon the facts specific to Skyland’s Application, it is Hernando’s continued position that the PSC does not have subject matter jurisdiction pursuant to § 367.171(7), Fla. Stat., and *Hernando County v. Florida Public Service Commission*, 685 So.2d 48, 50 (Fla. 1st DCA 1996) (the only reported appellate decisional law interpreting said provision). *Compare* Hernando’s *Objection* filed on November 13, 2009 *and* Hernando’s *Motion to Dismiss* filed on November 13, 2009 *with* the PSC’s Order filed on March 1, 2010 *and* *Amendatory Order* filed on March 12, 2010 in this proceeding (the foregoing filings are incorporated herein by reference and made a part hereof).<sup>3</sup>

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

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 transverse 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 transverse 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.

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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.

**BROOKSVILLE:** Brooksville adopts and concurs with the position of Hernando County.

**OPC:** In Order No. PSC-10-0123A-PCO-WS, the Commission determined that it has jurisdiction over this matter. On May 4, 2010, the Commission’s Order on Jurisdiction and Denying Hernando County’s Motion to Dismiss was per curiam affirmed by the First District Court of Appeals. OPC does not intend to pursue this issue at the hearing.

**STAFF:** In Order No. PSC-10-0123A-PCO-WS, the Commission determined that from the face of the application the Commission has jurisdiction over this matter. On May 4, 2010, the Commission's Order on Jurisdiction and Denying Hernando County's Motion to Dismiss was per curium affirmed by the First District Court of Appeals. Accordingly, the Commission should not reconsider its legal determination regarding jurisdiction but only whether the application has met its factual burden of proof that it is within the Commission's jurisdiction.

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

**POSITIONS**

**SKYLAND:** Yes, there is an immediate need for potable water and wastewater services throughout the proposed service territory and additional needs are anticipated in the near future. (Hartman, Edwards)

**HERNANDO:** Hernando's position is that there is **no** need (public demand) for public water and wastewater service in the areas that it is proposing to locate within Hernando and Pasco Counties. *See* Direct Testimony of Joseph Stapf; and Direct Testimony of Bruce Kennedy as filed in this matter; *see also* Water and Wastewater Master Plans of Hernando County (Hernando Exhibits, Bate Stamped Nos. 000704 thru 001035; 001036 thru 1353) and corresponding documents produced by Pasco.

Furthermore, Hernando 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.

**PASCO:** 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 on 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.

**BROOKSVILLE:** Brooksville adopts and concurs with the position of Hernando County.

**OPC:** OPC has a public interest concern regarding whether there is a current need or when a need for service will be required in the service territories, but at this time the untested record on this issue is not clear in the testimonies and other materials presented by all of the parties.

**STAFF:** No position at this time.

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

**POSITIONS**

**SKYLAND:** No, certification of Skyland Utilities, LLC in the area applied for in its application is consistent with the Comprehensive Plan of Hernando County. If the Commission finds such an inconsistency exists under these facts and circumstances, it should grant the certificate to Skyland notwithstanding. (DeLisi, Hartman)

**HERNANDO:** Hernando'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). Hernando'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, Hernando 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.

**PASCO:** 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.

**BROOKSVILLE:** No position at this time.

**OPC:** OPC believes that prefiled testimonies and other materials submitted so far by all of the parties are inconclusive regarding Skyland's application's consistency with Hernando County's comprehensive plan.

**STAFF:** No position at this time.

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

**POSITIONS**

**SKYLAND:** No, certification of Skyland Utilities, LLC in the area applied for in its application is consistent with the Comprehensive Plan of Pasco County. If the Commission finds such an inconsistency exists under these facts and circumstances, it should grant the certificate to Skyland notwithstanding. (DeLisi, Hartman)

**HERNANDO:** Hernando'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). Hernando's position is supported by a 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, Hernando 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.

**PASCO:** 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). Hernando's position is supported by a 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.

**BROOKSVILLE:** No position at this time.

**OPC:** OPC believes that prefiled testimonies and other materials submitted so far by all of the parties are inconclusive regarding Skyland's application's consistency with Pasco County's comprehensive plan.

**STAFF:** No position at this time.

**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?

**POSITIONS**

**SKYLAND:** No, there are no other existing utility systems other than those operated by Skyland within the proposed territory or immediately adjacent thereto. (Hartman, Edwards)

**HERNANDO:** Hernando'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. Hernando 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, Hernando 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.

**PASCO:** 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. Hernando 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.

**BROOKSVILLE:** Brooksville adopts and concurs with the position of Hernando County.

**OPC:** OPC has a public interest concern whether duplication or competition exists, or will exist, in the requested service territories, but at this time the untested record on this issue is not clear in the testimonies and other materials presented by any of the parties.

**STAFF:** No position at this time.

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

**POSITIONS**

**SKYLAND:** Yes, Skyland has demonstrated the financial ability to serve the requested territory. (Hartman, Edwards)

**HERNANDO:** Hernando's position is that Skyland is required to establish that it has the financial ability to operate its proposed utility as one the prerequisite elements it must prove under § 367.045(1)(b), Fla. Stat., and Rule 25-30.033(1)(e) & ( r), Fla. Admin. Code, and that this is a viable issue. However, Hernando will be unable to determine if Skyland has met these requirements until such time as the formal hearing is concluded and the record is closed in this matter. At such time, Hernando will either argue this issue in its brief or stipulate to this issue, as may be appropriate.

**PASCO:** 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.

**BROOKSVILLE:** Brooksville adopts and concurs with the position of Hernando County.

**OPC:** Prefiled testimonies and other materials submitted so far by all the parties indicates that, at the present time, and as currently configured, the applicant may

have the financial ability and the near term commitment to serve the requested territories.

**STAFF:** No position at this time.

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

**POSITIONS**

**SKYLAND:** Yes, Skyland has the necessary technical ability. Skyland is currently operating the water systems within the proposed territory and has retained and will employ or retain additionally qualified individuals and/or entities to assist in the operation of the Utility as additional needs arise. (Hartman, Edwards)

**HERNANDO:** Hernando's position is that Skyland is required to establish that it has the technical ability to serve the requested territory as one of the requisite elements it must prove pursuant to § 367.045(1)(b), Fla. Stat., and Rule 25-30.033(1)(e), Fla. Admin. Code, and Skyland has failed to adequately demonstrate that it can satisfy this requirement.

**PASCO:** 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.

**BROOKSVILLE:** Brooksville adopts and concurs with the position of Hernando County.

**OPC:** Prefiled testimonies and other materials submitted so far by all the parties indicates that, at the present time, and as currently configured, the applicant appears to have the resources and near term commitment to employ qualified individuals and entities to assist in providing water and wastewater services in the proposed territories.

**STAFF:** No position at this time.

**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?

**POSITIONS**

**SKYLAND:** Yes, Skyland has provided a lease between the Utility and the landowner, which has been executed by the Utility and the landowner. That lease will allow Skyland the use of lands throughout the proposed territory as and when needed on a long term basis for Utility treatment facilities. The landowner is fully committed to the utility's operation and will continue to work with Skyland as to the utility's need for the continued use of the land. (Hartman, Edwards)

**HERNANDO:** Hernando's position is that Skyland is required to establish that it has the continued use of the land upon which the utility facilities will be located as one of the prerequisite elements it must prove pursuant to § 367.045(1)(b), Fla. Stat., and Rule 25-30.033(1)(j), Fla. Admin. Code, and that Skyland has failed to adequately demonstrate that it can satisfy this requirement.

**PASCO:** 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.

**BROOKSVILLE:** Brooksville adopts and concurs with the position of Hernando County.

**OPC:** Prefiled testimonies and other materials submitted so far by all the parties indicates that, at the present time, and as currently configured, the landowner appears to have the ability to provide continued use of the land in the requested service territories that the applicant proposes to serve.

**STAFF:** No position at this time.

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

### **POSITIONS**

**SKYLAND:** Yes, there is a need for service and Skyland is in the best position to provide such service. No other entity has facilities in place which will allow it to provide the service efficiently and effectively. Skyland is in the best position to properly provide the services needed and to operate those facilities in an efficient manner which will best utilize and preserve available resources for all of the customers within the proposed territory now and in the future. (Hartman, Edwards)

**HERNANDO:** Hernando's position is that it is **not in the public interest** to grant Skyland water and wastewater certificates in connection with its proposed operations in



Hernando and Pasco Counties. *See, e.g.*, Direct Testimony of Ronald Pianta, AICP; Direct Testimony of Joseph Staph; Direct Testimony of Richard E. Gehring; Direct Testimony of Bruce Kennedy; and Direct Testimony of Dan Evans as filed in this matter together with the prefiled exhibits supporting such testimony.

Specifically, Hernando asserts the following sub-issues/sub-positions:

A. First, just based on the four corners of Skyland's Application, the proposed utility cannot be cost effective or efficient by providing centralized utility service to houses with a density of no less than one unit per ten (10) acres and to non-contiguous parcels. Of the 791 acres in Hernando owned by Evans, Skyland proposes only approximately 155 connections in the first five or six years of operations. *See* Skyland's Application. Public interest is promoted by cost effective and efficient utility systems. Public interest is not served if persons residing in a certain geographic area of the county, *i.e.* southeastern Hernando County, who are subjected to the future jurisdiction of the proposed Utility must pay higher water and wastewater rates due to lack of cost effectiveness, inefficiency, lack of economies of scale and/or the inexperience of the owner.

B. Second, the geographic area within Hernando County that Skyland is proposing to serve is within the Hernando County Water and Sewer District's service area and the Pasco County utilities' service area, as to within each county's respective borders. Accordingly, it is not in the public interest to duplicate or overlap utility service providers.

C. Third, it is not in the public interest to violate the goals, objectives and policies of the county's (Hernando's and Pasco's, respectively) adopted comprehensive plan.

D. Fourth, it is not in the public interest to promote "urban sprawl" by encouraging new development and growth to occur prematurely in an area that is presently rural and largely undeveloped and without proper planning and infrastructure in place including roads, utility network, urbanized services and adequate electric power, without limitation. The presence of centralized water and sewer would encourage other development to occur in a leap frog and unplanned manner.

E. Fifth, it is not in the public interest to delete or reduce the service territory of the Hernando County Water and Sewer District if the geographic area being deleted was contemplated as being served in connection with present and/or

future bonds and the potential impact to the such bondholders resulting from the diminution of secured interests.

F. Sixth, the public is currently served by an elected group of public officials who oversee the Hernando County Water and Sewer District and the Pasco County utility system, respectfully, so that the public has local input into rates and regulations. It is not in the public interest to reassign rural geographic segment of Hernando County and Pasco County to a private utility – with no known utility experience – to provide service. Especially since there has been no public outcry for such service in either Hernando County or Pasco County.

G. Lastly, adequate potable water supply is an important and valuable commodity to Hernando County and its residents and Pasco County and its residents. The possibility of this commodity being sold in bulk and pumped out of Hernando County elsewhere or pumped out of Pasco County elsewhere is not in the public interests of Hernando and Pasco counties and its residents and also violates the water management policy of “*local sources first*.”.

**PASCO:** 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.

**BROOKSVILLE:** Brooksville adopts and concurs with the positions contained in items “A” and “G” of Hernando County’s response to Issue 9.

**OPC:** No position at this time, pending further development of the record.

**STAFF:** No position at this time.

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

**POSITIONS**

**SKYLAND:** The appropriate return on equity for Skyland is the return on equity yielded by the most current leverage formula order in effect at the time the Commission issues its Final Order in this proceeding. (Hartman)

**HERNANDO:** It is Hernando’s position that the Skyland should not be certificated by the PSC and, therefore, the PSC should not need to decide issues related to rate making and rates.

Furthermore, it is Hernando's position that Skyland's proposed utility cannot be efficient, in part, due to its small number of anticipated customers over the Skyland's submitted planning horizon and based on principles of economies of scale. *See* Direct Testimony of Joseph Staph and Direct Testimony of Bruce Kennedy as filed in this matter.

**PASCO:** 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.

**BROOKSVILLE:** No position at this time.

**OPC:** Agree with Skyland.

**STAFF:** No position at this time.

**ISSUE 11:** **If the certificates for the proposed water and wastewater systems are granted, what are the appropriate potable water and wastewater rates for Skyland?**

**POSITIONS**

**SKYLAND:** The appropriate potable water and wastewater rates are those proposed by Skyland in its application. (Hartman)

**HERNANDO:** Hernando reiterates its position as stated under Issue 10 above.

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

**BROOKSVILLE:** No position at this time.

**OPC:** No position at this time, pending further development of the record.

**STAFF:** No position at this time.

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

**POSITIONS**

**SKYLAND:** The appropriate service availability charges for Skyland are those as proposed by Skyland in its application. (Hartman)

**HERNANDO:** Hernando reiterates its position as stated under Issue 10 above.

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

**BROOKSVILLE:** No position at this time.

**OPC:** Service availability charges should be designed in accordance with Commission policy and based upon realistic and verifiable assumptions about the most cost effective and economic provision of services in the requested territories.

**STAFF:** No position at this time.

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

**POSITIONS**

**SKYLAND:** The appropriate Allowance for Funds Used During Construction (AFUDC) rate for Skyland is that yielded by use of the leverage formula in effect at the time the Commission issues its Final Order in this proceeding and the cost of debt as outlined in the application of Skyland. (Hartman)

**HERNANDO:** Hernando reiterates its position as stated under Issue 10 above.

**PASCO:** Pasco reiterates its position as stated under Issue 10 above.

**BROOKSVILLE:** No position at this time.

**OPC:** Agree with Skyland subject to verification of the appropriateness of the cost of debt.

**STAFF:** No position at this time.

**ISSUE 14:** **Should this docket be closed?**

**POSITIONS**

**SKYLAND:** Upon issuance of the certificates requested, this docket should be closed.

**HERNANDO:** Although Hernando remains steadfast in its position that the PSC lacks subject matter jurisdiction in this matter regarding the specific facts applicable to Skyland's Application in this matter; the current posture of the PSC appears to be to keep the instant docket open until such time as the PSC issues its Final Order in this cause.

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

**BROOKSVILLE:** No position at this time.

**OPC:** No. The Docket should remain open to conduct a formal evidentiary hearing to complete a record that can support a decision of whether granting the proposed certificates is in the public interest.

**STAFF:** No position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Gerald C. Hartman	Skyland	GCH-1	Application for Original Water Certificate in Pasco and Hernando Counties
Gerald C. Hartman	Skyland	GCH-2	Order No. PSC-08-0846-FOF-WS and Order No. PSC-09-0430-PAA-WS
Gerald C. Hartman	Skyland	GCH-3	Resume of Gerald C. Hartman
Joseph Stapf	Hernando	JS-1	Resume of Joseph Stapf
Ronald F. Pianta	Hernando	RFP-1	Resume of Ronald F. Pianta
Ronald F. Pianta	Hernando	RFP-2	12/7/09 letter from Florida Department of Community Affairs re: Docket No. 090478-WU
Paul L. Wiczorek	Hernando	PLW-1	Resume of Paul L. Wiczorek

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Paul L. Wieczorek	Hernando	PLW-2	Direct testimony of Ronald F. Pianta, filed 4/30/10, and prefiled exhibits RFP-1 and RFP-2
Bruce E. Kennedy	Pasco	BEK-1	Resume of Bruce E. Kennedy
Bruce E. Kennedy	Pasco	BEK-2	August 2009 Engineering Report, Pasco County Utilities
Richard E. Gehring	Pasco	REG-1	Resume of Richard E. Gehring
City of Brooksville	Brooksville	Document No. 00561, filed 1/25/10	The City of Brooksville's Amended Objection, including Exhibits A, B, & C
Daniel Evans	Staff	DWE-1	12/7/09 letter from Florida Department of Community Affairs re: Docket No. 090478-WU
Paul M. Williams	Staff	PMW-1	Resume of Paul M. Williams
Paul M. Williams	Staff	PMW-2	Map of Evans Properties Water Use Permits
Paul M. Williams	Staff	PMW-3	Table of Water Use Comparisons
<u>Rebuttal</u>			
Gerald C. Hartman	Skyland	GCH-4	Florida Statutes 373.016 and 403.021
Gerald C. Hartman	Skyland	GCH-5	Map of final development phases of Skyland Utilities
Daniel B. DeLisi	Skyland	DBD-1	Resume of Daniel B. DeLisi
Ronald Edwards	Skyland	RE-1	Letter from Sun Trust dated June 7, 2010

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

Pasco County's Motion to Strike filed on June 14, 2010.

Hernando's request for an order establishing post-hearing procedures as set forth in its Prehearing Statement filed on June 14, 2010.

Pasco County's Motion to Strike filed on June 25, 2010.

Pasco County's Motion to Compel filed on June 25, 2010.

Hernando County's Motion to Withdraw Paul Wieczorek as Witness, filed June 25, 2010.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

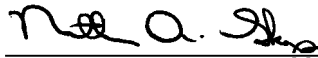
XIV. RULINGS

Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 1st day of July, 2010.



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NATHAN A. SKOP  
Commissioner and Prehearing Officer

( S E A L )

CMK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.