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Sent: Friday, December 10, 2010 10:07 AM
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Cc: Bronwyn Revell; Caroline Klancke; Lisa Bennett; Derrill McAteer; Michael Minton; Joe Richards; John Wharton; Geoffrey Kirk
Subject: Pasco County's Motion to Strike
Attachments: Pasco response to emergency motion and motion to strike II.pdf; ATT00001.htm; PastedGraphic-2.pdf; ATT00002.htm

a. The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:

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b. The docket number and title if filed in an existing docket:

090478-WS, Skyland Utilities, LLC

c. The name of the party on whose behalf the document is filed:

Pasco County

d. The total number of pages in each attached document: 4 pages

e. A brief but complete description of each attached document: Pasco's Response and

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

12/10/2010

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Skyland Utilities, LLC
to operate a water and wastewater utility in
Hernando and Pasco County, Florida
Nuclear cost recovery clause.

DOCKET NO. 090478-WS

**PASCO COUNTY'S
RESPONSE TO SKYLAND UTILITIES, LLC'S
EMERGENCY MOTION TO DEFER
and PASCO COUNTY'S MOTION TO STRIKE**

Pasco County ("Pasco"), by and through its undersigned counsel, hereby responds to Skyland Utilities, LLC's ("Skyland") Emergency Motion to Defer ("Motion") and moves to strike the Motion.

1. Typically, a motion to defer is based upon the occurrence of some event, outside the control of the party seeking the deferral, which would make it unfair to proceed. An "emergency" motion would be proper where this occurrence became known very soon before the scheduled proceeding. A party seeking a deferral is obligated to request the deferral as soon as possible after discovering circumstances warranting a deferral. Notably, Skyland's Motion does not address these issues.

2. Instead, Skyland's Motion is nothing less than a full-frontal assault on the procedures and processes adopted by the Commission in this proceeding and a vehicle for Skyland to insert improper argument and rebuttal into the record. The genesis of this assault appears to be the Staff Recommendation entered into the record on December 2, 2010. Apparently, Skyland was perfectly satisfied with the process established by the Order Establishing Procedure (Order No. PSC 10-0105-PCO-WS) and the Prehearing Order (Order No. PSC 10-0422-PHO-WS) – until Skyland was faced with an unfavorable Staff Recommendation.

At that point, this case became exceptional. Skyland had every opportunity to seek revisions to the process established; instead, it chose to wait until five days before the scheduled agenda conference to assert this “emergency.”

3. While styled as an Emergency Motion to Defer, the actual purposes of the Motion are to: a) improperly reargue issues raised by Skyland in its brief; b) improperly rebut the Staff Recommendation; c) make an untimely request to modify the OEP; and d) engage in the administrative equivalent of judge (fact finder) shopping.

4. Skyland’s Motion is not subtle. In fact, Skyland has lifted arguments, verbatim, from its Brief and pasted them directly into the Motion (Motion, ¶¶ 3 and 4; Brief, pp. 15-16).

5. Notwithstanding the undisputed fact that the OEP does not provide any opportunity for the parties to rebut the Staff Recommendation – Skyland does just that. In fact, Skyland itself characterizes “the opportunity to address the Commission prior to any vote on the Staff Recommendation” as an “extraordinary remedy.” (Motion, p. 6). So, even though Skyland admits that it does not have the right to “address the Commission” regarding the Staff Recommendation absent some “extraordinary” action by the Commission, Skyland nonetheless has filed a motion containing multiple pages of argument and rebuttal related to the Staff Recommendation. Having made its arguments, Skyland then has the temerity to request the opportunity to make these arguments again, in person, before the Commission. The only appropriate place for Skyland’s argument is in an appeal, if the Commission vote is not in favor of certification.

6. One effect of the requested delay is clear. Commissioner Skop – one of only two Commissioners that participated in this docket from its inception - will no longer be on the Commission.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished,
by email, to the following, this 10th day of December, 2010:

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