

Ruth Nettles

090478-WS

From: Jon Jouben [JJouben@co.hernando.fl.us]
Sent: Friday, December 18, 2009 1:59 PM
To: Filings@psc.state.fl.us
Subject: Filing in P.S.C. Docket Number 090478-WS
Attachments: Motion to Disqualify.pdf; mot2disqualify-final.wpd

Dear Sir or Madam:

Attached hereto please find a .pdf and WordPerfect copy (without exhibits) of "HERNANDO COUNTY'S MOTION TO DISQUALIFY APPLICANT'S COUNSEL WITH INCORPORATED MEMORANDUM OF LAW IN SUPPORT THEREOF," to be filed in *IN RE: APPLICATION OF SKYLAND UTILITIES, LLC, TO OPERATE A WATER AND WASTEWATER UTILITY IN*

HERNANDO AND PASCO COUNTIES, FLORIDA, P.S.C. Docket Number 090478-WS. This document is being filed on behalf of Objector, Hernando County, in the above-styled matter.

I am Jon A. Jouben, Esq., and my address is the Hernando County Attorney's Office, 20 North Main Street, Suite 462, Brooksville, Florida 34601. My telephone number is (352) 754-4122 and my e-mail address is jjouben@hernandocounty.us.

I am filing this document on behalf of Hernando County's counsel of record in the above-styled matter, Geoffrey T. Kirk, Esq.

The .pdf version of the document contains 23 pages, and the WordPerfect version contains 9 pages.

In this document, Hernando County moves to dismiss the Applicant's counsel due to a conflict-of-interest.

<<Motion to Disqualify.pdf>> <<mot2disqualify-final.wpd>>

12/18/2009

DOCUMENT NUMBER-DATE
12067 DEC 18 8
FPSC-COMMISSION CLERK

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

**HERNANDO COUNTY'S MOTION TO DISQUALIFY APPLICANT'S COUNSEL
WITH INCORPORATED MEMORANDUM OF LAW IN SUPPORT THEREOF**

Objector, HERNANDO COUNTY ("the COUNTY"), by and through its undersigned counsel and pursuant to Rule 4-3.7 of the Florida Rules of Professional Conduct, and moves the Public Service Commission for the entry of an Order disqualifying the law firm of Rose, Sundstrom & Bentley, LLP. ("Rose Sundstrom"), and all attorneys associated therewith, from acting as counsel for Applicant, SKYLAND UTILITIES, LLC. ("SKYLAND"), and as grounds therefore, states:

Factual and Procedural Background

1. The COUNTY retained Rose Sundstrom in 2003. At that time, Florida Water Services Corporation ("Florida Water") was the only private water and wastewater utility operating in Hernando County. The COUNTY sought to acquire Florida Water's intra-county operation and distribution system for the sole purpose of creating a single, county-owned water and wastewater utility to serve unincorporated Hernando County. To that end, the COUNTY retained Rose Sundstrom to represent the COUNTY with regard to its acquisition of Florida Water's Hernando County assets. A copy of Rose Sundstrom's retainer agreement with the COUNTY is attached hereto as Exhibit "A."

2. With the assistance of Rose Sundstrom, the COUNTY successfully acquired Florida Water's intra-county assets. The COUNTY paid Rose Sundstrom \$200,000.00 in attorney's fees.

3. To finance the purchase of Florida Water's Hernando County assets, the COUNTY issued over \$41 million in new water and sewer bonds. Rose Sundstrom participated in the bond issuance by providing an Opinion Letter as the COUNTY's Acquisition Counsel. A copy of the opinion letter is attached hereto as Exhibit "B."

4. In fact, Rose Sundstrom's website boasts of its representation of the COUNTY in connection with the COUNTY's acquisition of Florida Water's assets. A print-out of the applicable web page is attached hereto as Exhibit "C."

5. The acquisition of Florida Water's assets gave the COUNTY the opportunity to provide interconnections with the supply and distribution networks already operated by the Hernando County Water and Sewer District ("the District"). Following the acquisition, Florida Water's supply and distribution facilities have been taken over and fully consolidated into the operations of the District. In that manner, the District expanded its service territory to all of unincorporated Hernando County. The Bonds that were issued, and in which Rose Sundstrom opined as part of the closing of the Bonds, expressly recognized the future revenue stream that the District would enjoy as new areas developed and new customers were added. Based on that opinion, the COUNTY pledged its then current and future utility revenues in connection with the issuance of the Bonds.

6. Rose Sundstrom did not provide the COUNTY with any advance notice of its appearance on behalf of SKYLAND UTILITIES in the instant proceedings.

7. The COUNTY objects to Rose Sundstrom's representation of SKYLAND UTILITIES in the instant proceedings.

8. In an effort to amicably resolve this dispute, the COUNTY's counsel wrote to Rose Sundstrom and asked the firm to withdraw from its representation of SKYLAND UTILITIES in the instant proceedings. A copy of the letter, without attachments, is attached hereto as Exhibit "D."

9. In a letter dated December 16, 2009, John Wharton, Esq., wrote to the COUNTY's undersigned counsel on behalf of Rose Sundstrom and advised the COUNTY that his firm would not be withdrawing from its representation of SKYLAND UTILITIES in the instant proceedings. A copy of Wharton's letter is attached hereto as Exhibit "E."

10. The instant motion follows.

Applicable Legal Standard

11. The COUNTY acknowledges that the "[d]isqualification of a party's counsel is an extraordinary remedy and should be resorted to sparingly."¹

12. A tribunal, when confronted with a motion to disqualify, must consider the competing interests of maintaining professional standards and preserving client confidences, and on the other hand, permitting a party to hire their counsel of choice.²

13. Accordingly, "[a]n order involving the disqualification of counsel must be tested against the standards imposed by the [Florida Bar] Rules of Professional Conduct."³

14. A party seeking to disqualify opposing counsel based on a conflict of interest must demonstrate that: (1) an attorney-client relationship existed, thereby giving rise to an irrefutable

¹*Vick v. Bailey*, 777 So. 2d 1005, 1007 (Fla. 2d DCA 2000).

²*Manning v. Cooper*, 981 So. 2d 668, 670 (Fla. 4th DCA 2008).

³*Estright v. Bay Point Improvement Ass'n, Inc.*, 921 So. 2d 810, 811 (Fla. 1st DCA 2006) quoting *Morse v. Clark*, 890 So. 2d 496, 497 (Fla. 5th DCA 2004)).

presumption that confidences were disclosed during the relationship, and (2) the matter in which the law firm subsequently represented the interest adverse to the former client was the same or substantially related to the matter in which it represented the former client.⁴

15. Once the existence of an attorney-client relationship is established, an "irrefutable presumption" arises that confidences were disclosed during the course of the relationship.⁵ "Upon a showing there is an attorney-client relationship, there is a presumption there was a confidential relationship and confidential information was transferred to all members of a firm by the client."⁶ The presumption is irrebuttable.⁷ "The presumption acknowledges the difficulty of proving that confidential information useful to the attorney's current client was given to the attorney . . . [and] also protects the client by not requiring disclosure of confidences previously given to the attorney."⁸

16. In addition to the existence of the prior attorney-client relationship, a person seeking to disqualify an attorney must also show that "the matter in which the law firm subsequently represented the interest adverse to the former client is the same matter or substantially similar to the matter in which it represented the former client."⁹ Phrased another way, "[t]he second prong of the test for disqualification of counsel requires a showing of a substantial relationship between the prior

⁴*State Farm Mut. Auto. Ins. Co. v. K.A.W.*, 575 So. 2d 630, 633 (Fla. 1991).

⁵*Id.* at 633.

⁶*In re Outdoor Products Corp.*, 183 B.R. 645, 649 (Bankr. M.D. Fla. 1995).

⁷*Id.*; see also *Health Care and Retirement Corporation of America, Inc., v. Bradley*, 944 So.2d 508, 511 (Fla. 4thDCA 2006).

⁸*K.A.W.*, 575 So.2d at 634.

⁹*Bradley*, 944 So.2d at 511-12, citing *K.A.W.*, 575 So.2d at 633.

and current matters."¹⁰ No uniform test has evolved to determine whether the prior matter and the current matter are substantially related.¹¹ Accordingly, "whether the two matters are substantially related depends upon the specific facts of each particular situation or transaction."¹²

Legal Argument

17. The retainer agreement and bond opinion letter clearly establishes that a prior attorney-client relationship existed between the COUNTY and Rose Sundstrom. Therefore, an irrefutable presumption arose that Rose Sundstrom received confidential information from the COUNTY during the course of the representation. The presumption was created regardless of the nature, extent, or complexity of the services provided by Rose Sundstrom to the COUNTY.

18. The above-stated facts also establish that Rose Sundstrom's representation of SKYLAND UTILITIES in the instant proceedings is adverse to the interests advanced by that firm on behalf of the COUNTY in its acquisition of Florida Water's assets, to wit:

A. Rose Sundstrom represented the COUNTY in expanding the District's territorial coverage area. Now Rose Sundstrom represents a private utility provider client that seeks to shrink the District's territorial service area; and

¹⁰*Brotherhood Mutual Ins. Co. v. National Presto*, 846 F. Supp. 57, 59 (M.D. Fla. 1994).

¹¹*Compare McPartland v. ISI Investment Services, Inc.*, 890 F.Supp. 1029, 1031 (M.D. Fla.1995) (the term "substantially related" refers to whether the previous matters are akin to the present action in a way that a reasonable person would understand as important to the issues), *with In re Outdoor Products Corp.*, 183 B.R. at 649, n.5 (the term "substantially related" refers to whether the prior matters "coalesce with" the current matters).

¹²*The Florida Bar v. Dunagan*, 731 So.2d 1237, 1240 (Fla. 1999).

B. Rose Sundstrom previously represented the COUNTY in eliminating the sole private water and sewer utility then operating in Hernando County. Now Rose Sundstrom represents a client seeking to add a private water and sewer utility back into the COUNTY's service mix as well as to compete with District as to future customers in the subject service area; and

C. Rose Sundstrom provided an opinion letter in support of the COUNTY's issuance of over \$41 million in new bonds. Rose Sundstrom now represents a private utility provider client that seeks to limit the service area of the District, which will inevitably result in the limitation of future revenues from which the District can service the bonds; and

D. The primary goal of the COUNTY in acquiring Florida Water's assets was to ensure that all central water and sewer utility services within unincorporated Hernando County were publically provided, locally operated, and overseen by an elected board of county commissioners – as opposed to the Public Service Commission in Tallahassee. Now, Rose Sundstrom represents a company that seeks to reestablish the Public Service Commission's jurisdiction over the regulation of water and wastewater services within Hernando County.

Conclusion

19. Accordingly, pursuant to Rule 4-1.9 of the Rules Regulating the Florida Bar, Rose Sundstrom should not be allowed to represent SKYLAND UTILITIES in the instant proceedings.

Relief Requested

WHEREFORE, Objector, HERNANDO COUNTY, prays for the entry of an Order disqualifying the law firm of Rose, Sundstrom & Bentley, LLP., and the lawyers associated therewith, from representing Applicant, SKYLAND UTILITIES, LLC., in the instant proceedings, and granting such other and further relief as the Public Service Commission deems to be just and proper.

Verification of Motion

I understand that I am swearing or affirming under oath to the truthfulness of the factual allegations made in this verified motion and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

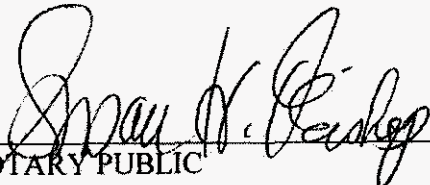


Chuck Lewis
Assistant Director & Controller
Hernando County Utilities Department

STATE OF FLORIDA
COUNTY OF HERNANDO

Sworn to or affirmed and signed before me ~~by~~ by Charles Lewis on

December 18, 2009.



NOTARY PUBLIC

[Print, type, or stamp name of notary or clerk.]

Personally known
 Produced identification
Type of identification produced _____

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail to all persons listed on the attached service list on December 18, 2009.

/Geoffrey T. Kirk

Geoffrey Kirk, Esq.

FBN: 861626

Jon A. Jouben, Esq.

FBN: 149561

Garth Coller, Esq.

County Attorney

FBN: 374849

20 N. Main Street, Suite 462

Brooksville, FL 34601

(352) 754-4122

(352) 754-4001 Fax

Counsel for Hernando County

Service List

Darrill Lee McAteer, Esq.
The Hogan Law Firm
20 South Broad Street
Brooksville, FL 34601

Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Michael Minton, Esq.
Dean, Mead, Minton & Zwemer, P.A.
1903 South 25th Street, Suite 200
Fort Pierce, FL 34947

J.R. Kelly, Public Counsel
Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

Joseph Richards, Esq.
Pasco County Attorney's Office
West Pasco Government Center
7530 Little Road, Suite 340
New Port Richey, FL 34654

F. Marshall Deterding, Esq.,
John L. Wharton, Esq.
2548 Blairstone Pines Dr.
Tallahassee, FL 32301

Ronald Edwards, Manager
Skyland Utilities, LLC
660 Beachland Blvd., Suite 301
Vero Beach, FL 32963-1708

Sharon Blanchard, Chairman
The Coalition to Preserve Our Water
Resources
P.O. Box 173
Dade City, FL 33526-0173

The Northeast Pasco Concerned Citizens Group
c/o Richard K. Riley
P.O. Box 6
Trilby, FL 33593

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STEVEN T. MUNDLIN, P.A.
DAREN L. SHIPPY
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JOHN L. WHARTON
ROBERT M. C. ROSE, *OF COUNSEL*
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MARTIN S. FRIEDMAN, P.A.
VALERIE L. LORD, *OF COUNSEL*
(LICENSED IN TEXAS ONLY)

May 19, 2003

Garth Collier, Esq.
County Attorney
Hernando County Attorney's Office
20 North Main Street
Suite 462
Brooksville, Florida 34601

Re: Agreement to provide legal services

Dear Garth:

Thank you for your consideration of this firm as special counsel to Hernando County regarding the acquisition of utility assets of the Florida Water Services Corporation. This letter provides the terms and conditions under which this law firm will represent and provide legal services to the County. The firm will provide services typical of acquisition counsel in such a transaction, and such other services as you may request from time to time, which will likely include the following.

- Negotiate Terms and Conditions of Sale;
- Draft Agreement of Purchase and Sale;
- Draft Agreement For Utility Asset Acquisition;
- Coordinate Public Briefing Document and Statutory Public Hearings;
- Review Contract Exhibits including Developer Agreements, Service Contracts, and Permits;
- Real Estate Due Diligence including Title Insurance Policy review, Surveys, Easements, and Environmental Audits;
- Prepare Closing Documents including Bill of Sale, Assignment and Assumption Agreement, Warranty Deeds, Closing Certificates and Legal Opinions;

Exhibit "A"

12/18/2009 10:45AM (GMT-05:00)

Garth Collier, Esq., County Attorney

May 19, 2003

Page 2

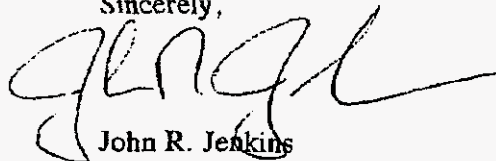
- Assist as necessary with Local Government Resolutions;
- Coordinate Financing Team Functions and Review Bond Documents, Disclosure Documents; and Bond Purchase Agreements;
- Work with Seller on Regulatory Approval Process.

As is typical with our governmental clients, no retainer fee is required. Pursuant to our previous discussions, and the acquisition counsel cost estimates provided in the previous acquisition cost structure, the fee for our services in closing the transaction will be \$200,000. Payment will be due at closing for this engagement, and fees and costs will be accrued until that time. Also included will be typical out-of-pocket expenses incurred including long distance telephone and telecopy expenses, photocopying, travel, and the like. Costs are not considered part of the legal fee for services rendered. In the event the transaction fails to close, this firm will be paid by the County for services rendered billed at a discounted rate of \$185 per hour for partners, \$150 for associates, and \$50 for law clerks, as well as reimbursed for costs advanced. In that event, a monthly detailed statement containing the tasks performed, and hours of legal time expended and itemized costs and expenses will be provided.

As we have previously discussed, this firm will act as lead negotiator for a group of local governments acquiring water and wastewater assets from Florida Water Services Corporation. The local governments have agreed to this joint representation as advantageous to them and to the Seller in this utility transaction. However, in any situation in which a law firm represents more than one client, the potential for conflict of interest exists, and a waiver of such conflict is required from the County. Please review the Conflict Acknowledgment and Waiver attached to this letter and feel free to contact me with any questions or concerns you may have regarding this issue.

If this arrangement meets with your approval, please sign below and return a copy of this letter to me. Please consider this letter as replacing the May 12, 2003 letter previously provided to you. We look forward to working with you in meeting the needs of the County, and thank you for the trust and confidence you have placed in this firm. As always, should you have any questions or concerns please feel free to call.

Sincerely,



John R. Jenkins
For the Firm

JRJ:wjt


Hernando County\Retainer Letter

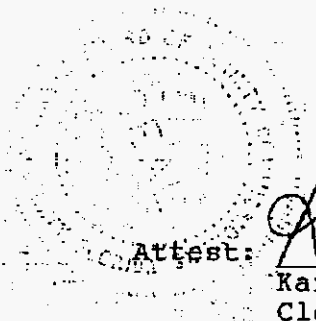
Agreed to this 3rd day of May, 2003:



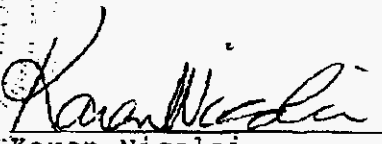
Garth Collier, Esq.
County Attorney
Hernando County


Hernando County Board of
County Commissioners

By: 
Mary E. "Betty" Whitehouse
Chairperson



Attest:


Karen Nicolai
Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY  5/23/03
County Attorney's Office

Conflict Acknowledgment and Waiver

This form acknowledges that Rose, Sundstrom & Bentley, LLP has been retained to represent Hernando County ("County") in the acquisition of the utility assets of Florida Water Services Corporation. The firm has, or may also be, retained by the City of Marco Island, the City of Deltona, the City of Palm Coast and the Florida Governmental Utility Authority in the acquisition of the utility assets of Florida Water Services Corporation in and around their local jurisdictions (jointly referred to as the "Acquisition Group"). In particular, the firm has been retained as lead negotiator for the County and the Acquisition Group pursuant to that certain Agreement for Acquisition of Utility Assets entered into by the parties, which joint undertaking they believe to be in their mutual best interests.

Although the interests of the County and the Acquisition Group are generally aligned regarding these matters, and are not fundamentally antagonistic to each other, it is conceivable that interests of the County and the Acquisition Group may create a conflict of interest for Rose, Sundstrom & Bentley, LLP. It is our understanding, however, that the County and the Acquisition Group will waive any claim of conflict of interest and consents to our representation of each in this matter.

In accordance with Rule 4-1.7 of the Rules Regulating The Florida Bar, we have explained the implications of the concurrent representations of the County and the Acquisition Group, including the risks involved. You have indicated that you are aware of these factors and have consented to our concurrent representation in this matter.

Thank you for the confidence you place in our firm. We look forward to working with the County toward a successful transaction.

LAW OFFICES

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C. BRANNAN
CHESTER
DALL DETEROING
JENKINS, P.A.
T. MINDLIN, P.A.
SHIPPY
E. SUNDBSTROM, P.A.
TREMOR, P.A.
WHARTON
M. C. ROSE, OF COUNSEL
SCHIEFELBEIN, OF COUNSEL

March 11, 2004

Hernando County
Hernando County, FloridaPrager, Sealy & Co., LLC
Orlando, FloridaMBIA Insurance Corporation
Armonk, New YorkBryant Miller & Olive P.A.
Tallahassee, FloridaBanc of America Securities LLC
Clearwater, FloridaNabors, Giblin & Nickerson P.A.
Tampa, FloridaRaymond James & Associates, Inc.
St. Petersburg, Florida

Re: \$41,045,000 Hernando County, Florida Water and Sewer Revenue Bonds, Series 2004

Ladies and Gentlemen:

We have acted as Acquisition Counsel to Hernando County ("County"), in connection with acquisition of the Spring Hill System financed pursuant to the issuance of \$41,045,000 Hernando County, Florida Water and Sewer Revenue Bonds, Series 2004 ("Bonds"). This opinion is provided pursuant to that certain Bond Purchase Agreement dated February 27, 2004 between the County and the underwriters listed above ("BPA"). Terms used in this opinion letter which are defined in the BPA are used herein with the same meanings unless otherwise defined herein.

We have examined fully executed originals or copies, certified or otherwise identified to our satisfaction, of the BPA, the Asset Acquisition Agreement, and such ordinances, resolutions and other documents as we have deemed necessary in order to render the opinions expressed below. In rendering these opinions, we have relied as to certain factual matters on representations of public officials and officers of the County, and have assumed that: each

Exhibit "B"

document submitted to us for review is accurate and complete, each such document that is an original is authentic, each such document that is a copy conforms to an authentic original, and all signatures on each such document are genuine. The law covered by the opinions expressed herein is limited to the federal law of the United States of America and the law of the State of Florida.

Based upon and subject to the foregoing, and to the qualifications and limitations hereinafter set forth, we are of the opinion that:

1. The County has duly authorized all action necessary to be taken by it, or on its behalf, for the execution and delivery of the Asset Acquisition Agreement and the Transition Services Agreement and the carrying out, giving effect to and consummation of the transactions contemplated thereby;

2. The Asset Acquisition Agreement and the Transition Services Agreement have been duly and validly authorized, executed and delivered by the County and the same are in full force and effect as of this Settlement Date and are the valid and legally binding obligations of the County, enforceable against the County in accordance with their respective terms, except to the extent the terms and conditions have been satisfied and are no longer in effect, or to the extent the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors rights generally and generally principles of equity or public policy;

3. The information in the Preliminary Official Statement and in the Official Statement under the caption "CONDEMNATION OF SPRING HILL AND TRANSITION TO COUNTY OWNERSHIP" and "REGULATORY APPROVAL" is fair and accurate and is true and complete in all material respects, based upon our review of the Official Statement as Acquisition Counsel to the County and without having undertaken to determine independently the accuracy or completeness of the contents of such other portions of the Official Statement, we have no reason to believe that such other portions of the Official Statement (except for the financial and statistical data contained therein and the information relating to the County, municipal bond insurance, the reserve account insurance policies, and to DTC and its book-entry system of registration, as to which no view is expressed) contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading;

4. The County has complied with all requirements of Section 125.3401, Florida Statutes, which was a pre-conditioned to the lawful acquisition of the Spring Hill System from FWSC pursuant to the Asset Acquisition Agreement;

5. The County is in compliance with its remaining obligations under the Asset Acquisition Agreement and Transition Services Agreement and, as of the Settlement Date, the Purchased Assets (as defined in the Asset Acquisition Agreement) have been acquired by the County;

6. Except as otherwise disclosed in the Official Statement, the County has all necessary permits, licenses and certifications required to lawfully operate the System; and

7. The County has the authority and power pursuant to Florida law to own and operate the Spring Hill System, all as described in the Official Statement.

Our opinions are subject to generally applicable rules of law and, to the extent the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally. Our opinions deal only with the specific legal issues explicitly addressed herein and do not address any other matters. No one other than you shall be entitled to rely on the foregoing opinions, and you may rely on such opinions only for the purpose contemplated by the BPA. Without our prior written consent, this opinion letter may not be used or relied upon by you or any other person for any other purpose whatsoever.

Rose, Sundstrom & Bentley, LLP
Rose, Sundstrom & Bentley, LLP

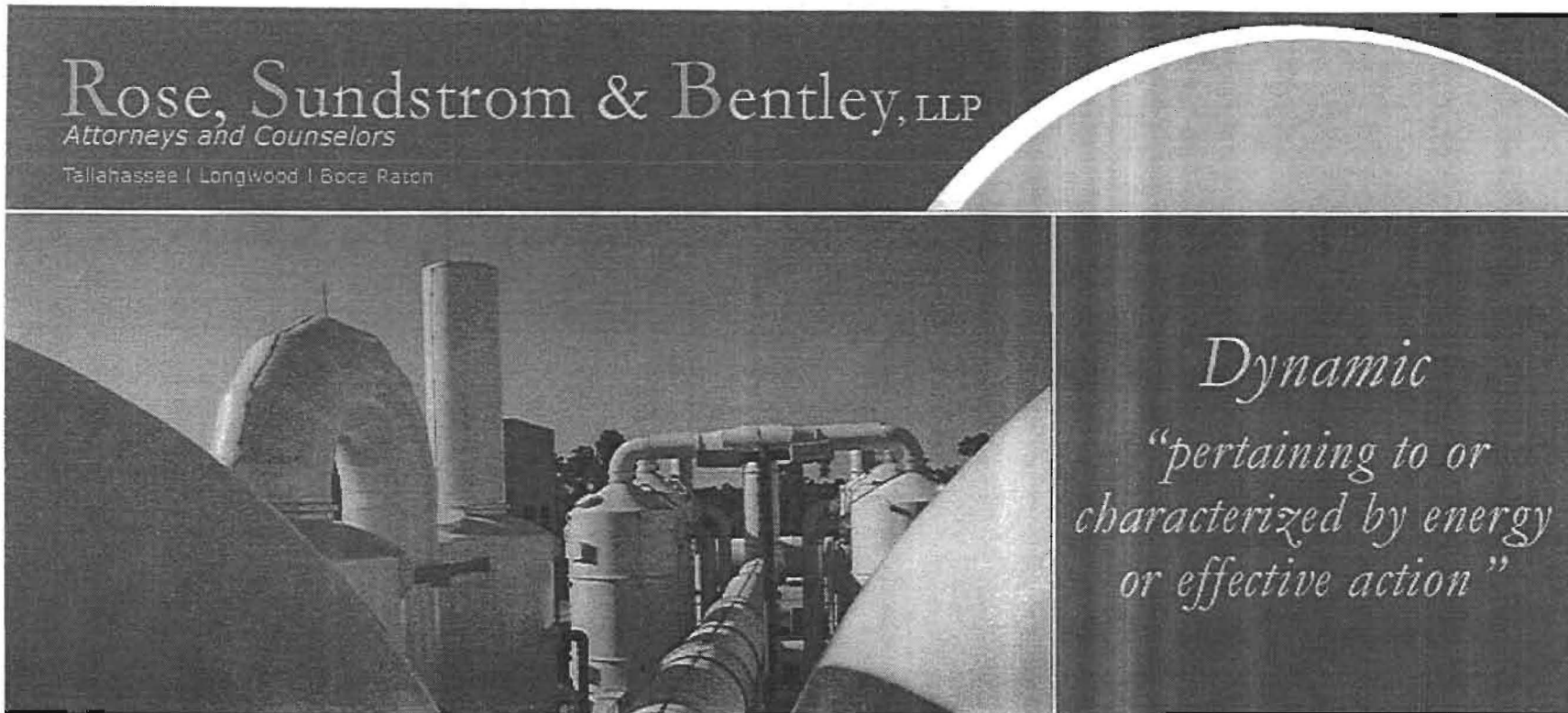


Exhibit "C"

- [HOME](#)
- [AREAS OF PRACTICE](#)
- [ATTORNEYS](#)
- [HISTORY](#)
- [CONTACT US](#)

Water and Wastewater Utility Purchase and Sale Transactions

The partners and associates who make up the firm of Rose, Sundstrom & Bentley, LLP have acted as senior counsel on the following transactions (most recent transactions listed first):

- (1) Sale of the assets of ALOHA UTILITIES, INC to the Florida Governmental Utility Authority, on behalf of Pasco County, Florida. (2009)

- (2) Sale by LANIGER ENTERPRISES OF AMERICA, INC. of its water and wastewater assets to Martin County, Florida. (2008)
- (3) Sale by TAMIAMI VILLAGE WATER COMPANY, INC. of its assets in Lee County, Florida, to Ni America, Inc. (2008)
- (4) Sale by INTERCOASTAL UTILITIES, INC. of its water and wastewater assets in St. Johns County, Florida, to St. Johns County, Florida. (2007)
- (5) Purchase by UTILITIES, INC. of all the outstanding stock of Perkins Mountain Water Company and Perkins Mountain Utility Company in Mohave County, Arizona. (2007)
- (6) Sale by FAIRWAYS/MOUNT PLYMOUTH UTILITY SYSTEM of its water and wastewater assets in Lake County, Florida, to Aqua Utilities, Inc. (2007)
- (7) Sale by UTILITIES, INC. OF MARYLAND of its water and wastewater assets in Prince Georges County, Maryland, to the Washington Suburban Sanitary Commission. (2006)
- (8) Purchase by SUN RIVER UTILITIES, INC. of all of the outstanding stock of MSM Utilities, LLC in Charlotte County, Florida. (2006)
- (9) Purchase by NORTH FORT MYERS UTILITY, INC. of the wastewater assets of the DeITura Limited Partnership in Lee County, Florida. (2006)
- (10) Sale by The Plantation at Leesburg Limited Partnership of the assets of its LAKE UTILITY COMPANY water and wastewater system to the City of Leesburg, Florida. (2006)
- (11) Purchase by PALM BEACH COUNTY of the water and wastewater assets of the Village of Royal Palm Beach, Florida. (2006)
- (12) Sale by Nuon Global Solutions USA of 100% of the stock of UTILITIES, INC. to Hydro Star, LLC. (2006)
- (13) Acquisition by PALM BEACH COUNTY of the present and future interests of the water and wastewater utility assets of the Seminole Improvement District in Palm Beach County, Florida. (2006)
- (14) Sale by GRAND HAVEN COMMUNITY DEVELOPMENT DISTRICT of its water and wastewater assets to the City of Palm Coast, Florida. (2005)

- (15) Purchase by NORTH FORT MYERS UTILITY, INC. of the wastewater assets to Heron's Glen Utilities In Lee County, Florida. (2005)
- (16) Sale by OCEAN CITY UTILITIES, INC. of its water and wastewater assets to Flagler County, Florida. (2004)
- (17) Purchase by UTILITIES, INC. OF HUTCHINSON ISLAND of the water and wastewater assets of Columbia Properties Stuart, LLC d/b/a Plantation Utilities. (2004)
- (18) Purchase by HERNANDO COUNTY of the water and wastewater assets of Florida Water Services Corporation in that County. (2003)
- (19) Sale by EAST PASCO UTILITIES, INC. of its water and wastewater assets to Pasco County, Florida. (2003)
- (20) Purchase by the CITY OF MARCO ISLAND of the water and wastewater assets of Florida Water Services Corporation within and about the city limits. (2003)
- (21) Purchase by the CITY OF DELTONA of the water and wastewater assets of Florida Water Services Corporation in and about the city limits. (2003)
- (22) Purchase by the CITY OF PALM COAST of the water and wastewater assets of Florida Water Services Corporation in and about the city limits. (2003)
- (23) Purchase by UTILITIES, INC. OF PENNBROOKE of the water and wastewater assets of Pennbrooke Utilities, Inc. (2003)
- (24) Sale by PARK MANOR WATERWORKS, INC. of its water and wastewater assets to Orange County, Florida. (2003)
- (25) Transfer of assets and assumption of financial obligations of GULF ENVIRONMENTAL SERVICES, INC. to and by Lee County, Florida. (2003)
- (26) Purchase by the CLAY COUNTY UTILITY AUTHORITY of the water system assets of Keystone Heights, Lake View Villas, Post Master Village, Geneva Lake Estates, and Keystone Club Estates Water Systems in Clay and Bradford Counties, Florida. (2003)
- (27) Sale by FLORIDA PUBLIC UTILITIES CORPORATION of its water system assets to the City of Fernandina Beach, Florida. (2003)

Board of County Commissioners

Hernando County
County Attorney's Office



Garth C. Coller, County Attorney
Geoffrey T. Kirk, Assistant County Attorney
Jon A. Jouben, Assistant County Attorney
Erica Moore, Assistant County Attorney
Susan H. Bishop, Legal Administrator

20 N. Main Street, Suite 462
Brooksville, FL 34601
352-754-4001 Fax
352-754-4122

December 7, 2009

Via U.S. Mail and
Fax: (850) 656-4029

John L. Wharton, Esq.
F. Marshall Deterding, Esq.
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee FL 32301

Re: *In re: Application of Skyline Utilities, LLC.*
PSC Docket No. 040478-WS
Objection to Rose, Sundstrom & Bentley, LLP's Conflict-of-Interest

Dear Mr. Wharton and Mr. Deterding:

Please be advised that Hernando County ("the County"), as a former client of Rose, Sundstrom & Bentley, objects to the firm's representation of Skyland Utilities in the above-referenced proceedings. As explained below, the firm's representation of Skyland Utilities constitutes a prohibited conflict-of-interest in violation of Rule 4-1.9, Rules Regulating the Florida Bar. Please consider this letter to be the County's good faith effort to resolve this situation.

The County retained Rose, Sundstrom & Bentley in 2003. At that time, Florida Water Services Corporation ("Florida Water") was the only private water and wastewater utility operating in Hernando County. The County sought to acquire Florida Water's intra-county operation and distribution system for the sole purpose of creating a single, county-owned water and wastewater utility to serve unincorporated Hernando County. To that end, the County retained Rose, Sundstrom & Bentley to represent the County with regard to its acquisition of Florida Water's Hernando County assets. A copy of your firm's retainer agreement with the County is enclosed.

With the assistance of Rose, Sundstrom & Bentley, the County's acquisition of Florida Water's intra-county assets was ultimately successful and the County paid your firm \$207,964 in attorney's fees.

Exhibit "D"

The acquisition entailed the issuance of \$41,045,000 in new water and sewer bonds (the "**Bonds**") and your firm issued an Opinion Letter as Acquisition Counsel for the County (copy enclosed). **In fact, your firm's website boasts of its representation of the County in connection with the County's acquisition of Florida Water's assets.** A printed copy of your firm's website is enclosed herewith.

The acquisition of Florida Water's assets gave the County the opportunity to provide interconnections with the supply and distribution networks operated by the Hernando County Water and Sewer District ("the District"). Following the acquisition, Florida Water's supply and distribution facilities have been taken over and consolidated into the operations of the District. The acquisition also allowed the County to expand its territory so that all of unincorporated Hernando County was covered by the District. The Bonds that were issued, and in which your firm opined as part of the closing of the Bonds, expressly recognized the future revenue stream that District would enjoy as new areas developed and new customers were added. Based on the various opinions including that of your firm, the County pledged its then current and future utility revenues in connection with the issuance of the Bonds.

The County is deeply troubled that your firm has agreed to represent Skyline Utilities in a manner that is contrary to the County's interest without the County's informed consent, to wit:

- Previously your firm represented the County in **expanding** the District's territorial coverage area. Now your firm has taken on representing a private utility provider client that seeks to **shrink** the District's territorial service area.
- Previously your firm represented the County in **eliminating** the sole private water and sewer utility then in Hernando County. Now your firm has taken on representing a client in **adding** a private water and sewer utility back into the County's service mix as well as to compete with the District as to future customers in the subject service area.
- Previously your firm represented the County in providing an Opinion Letter in connection with the issuance of the Bonds. Now your firm has taken on representing a private utility provider client that has the potential of controlling the market share within southeastern Hernando County and which will have the downstream impact on reducing future connections in this area and, thereby, reducing future revenues which were pledged as part of the Bonds. Again, an opposite result which is adverse to the County and the District.
- Additionally, one of the consequences of the County acquiring Florida Water's assets was that all central water and sewer utility services within unincorporated Hernando County were publically provided, locally operated, and overseen by an elected board of county commissioners – as opposed to the Public Service Commission ("PSC")

Letter to Messrs. Wharton and Deterding
Re: Objection to Rose, Sundstrom & Bentley's Conflict-of-Interest
December 7, 2009
Page 3

in Tallahassee. Now your firm has taken on representing a private utility provider client that seeks to involve the PSC in regulating utility services, in part, within Hernando County. Again an opposite result which is adverse to the County and the District.

Rose, Sundstrom & Bentley's representation of Skyland Utilities in PSC in Docket No. 040478-WS, to which the County does **NOT** consent, is clearly prohibited by Rule 4-1.9, Rules Regulating the Florida Bar. The County therefore requests that you immediately withdraw from such representation.

If your firm does not move to withdraw from representing Skyland Utilities within ten (10) days of the date of this letter, the County will have no choice but to file a motion to disqualify your firm and/or take any other legal action available to us.

Please govern yourselves accordingly.

Respectfully,


Garth Collier
County Attorney

Enclosures

cc: David Hamilton, County Administrator
Joseph Staph, Utilities Director

LAW OFFICES

ROSE, SUNDSTROM & BENTLEY, LLP

www.rsattorneys.com

Please Respond to the Tallahassee Office

FREDERICK L. ASCHAUER, JR.
CHRIS H. BENTLEY, RA.
ROBERT C. BRANNAN
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CHASITY H. O'STEEN
BRIAN J. STORST
WILLIAM E. SUNDSTROM, RA.
DIANE D. TAYLOR, RA.
JOHN L. WHARTON

ROBERT M. C. ROSE, (1924-2006)

December 16, 2009

VIA FACSIMILE & U.S. MAIL

Garth C. Collier, County Attorney
County Attorney's Office
Hernando County
20 North Main Street, Suite 462
Brooksville, Florida 34601

Re: Application of Skyland Utilities, LLC; PSC Docket No. 090478-WS
Our File No. 44071.01

Dear Mr. Collier:

Thank you for your letter of December 7, 2009. We have taken the County's concerns very seriously and we have expended significant time and money in both an internal and external review of the matter. Your proposition that our representation of Skyland Utilities in PSC Docket 090478-WS is prohibited by Rule 4-1.9, Rules Regulating the Florida Bar, is not supported by either the Rules or the applicable authority. Accordingly, we decline your request that we withdraw from the representation.

Sincerely,



JOHN L. WHARTON
For the Firm

JLW/bsr

Exhibit "E"

2548 BLAIRSTONE PINES DRIVE, TALLAHASSEE, FLORIDA 32301 (850) 877-6555 FAX (850) 656-4029

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12/16/2009 12:16PM (GMT-05:00)