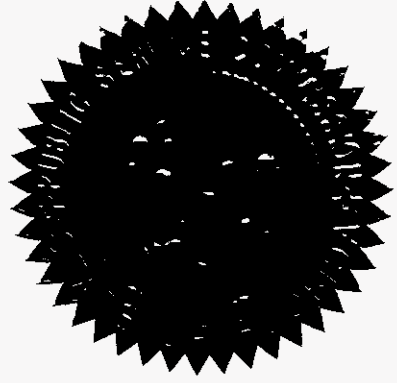


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090478-WS

APPLICATION FOR ORIGINAL  
CERTIFICATES FOR PROPOSED  
WATER AND WASTEWATER SYSTEM,  
IN HERNANDO AND PASCO COUNTIES,  
AND REQUEST FOR INITIAL RATES  
AND CHARGES, BY SKYLAND  
UTILITIES, LLC.



PROCEEDINGS: PREHEARING

COMMISSIONER PARTICIPATING: COMMISSIONER NATHAN A. SKOP  
PREHEARING OFFICER

DATE: Monday, June 28, 2010

TIME: Commenced at 3:30 p.m.  
Concluded at 4:56 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

RECEIVED BY MAIL ROOM  
JUN 29 10 15 AM '10  
FPSC-REGISTRATION OFFICE

## 1 APPEARANCES:

2 F. MARSHALL DETERDING, ESQUIRE and JOHN L.  
3 WHARTON, ESQUIRE, Rose Law Firm, 2548 Blainstone Pines  
4 Drive, Tallahassee, Florida 32301, appearing on behalf of  
5 Skyland Utilities, LLC.

6 DERRILL LEE MCATEER, ESQUIRE, c/o Hogan Law  
7 Firm, 20 South Broad Street, Brooksville, Florida 34601,  
8 appearing on behalf of the City of Brooksville.

9 GEOFFREY KIRK, ESQUIRE, 20 N. Main Street,  
10 Suite 462, Brooksville, Florida 34601, appearing on  
11 behalf of Hernando County Utility Regulation Authority  
12 and the Hernando County Water and Sewer District,

13 WILLIAM H. HOLLIMON, ESQUIRE, Pennington Law  
14 Firm, Post Office Box 10095, Tallahassee, Florida 32302,  
15 appearing on behalf of Pasco County.

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

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1 APPEARANCES (continued):

2 CAROLINE KLANKE, ESQUIRE, and LISA BENNETT,  
3 ESQUIRE, Florida Public Service Commission, 2540 Shumard  
4 Oak Boulevard, Tallahassee, Florida 32399-0850, appearing  
5 on behalf of the Florida Public Service Commission Staff.

6 SAMANTHA CIBULA, Deputy General Counsel,  
7 Florida Public Service Commission, 2540 Shumard Oak  
8 Boulevard, Tallahassee, Florida 32399-0850, Advisor to  
9 the Florida Public Service Commission.

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## P R O C E E D I N G S

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2           **COMMISSIONER SKOP:** Good afternoon. I'd like  
3 to call this prehearing to order, Commissioner Skop  
4 presiding. If staff could please read the notice.

5           **MS. KLANCKE:** By notice this time and place  
6 has been set for a prehearing conference in Docket  
7 Number 090478-WS.

8           **COMMISSIONER SKOP:** Thank you. If we can  
9 please take appearances.

10          **MR. WHARTON:** John Wharton and Marty Deterding  
11 for Skyland Utilities, LLC.

12          **COMMISSIONER SKOP:** Thank you.

13          **MR. REHWINKEL:** Charles Rehwinkel and Steve  
14 Reilly on behalf of the Office of Public Counsel.

15          **COMMISSIONER SKOP:** Thank you.

16          **MR. HOLLIMON:** Bill Hollimon on behalf of  
17 Pasco County.

18          **COMMISSIONER SKOP:** Thank you.

19          **MR. KIRK:** Geoff Kirk on behalf of Hernando  
20 County, Hernando County Water and Sewer District, and  
21 Hernando County Utility Regulatory Authority.

22          **COMMISSIONER SKOP:** Thank you.

23          **MR. MCATEER:** Derrill McAteer on behalf of the  
24 City of Brooksville.

25          **COMMISSIONER SKOP:** Thank you.

1 Staff.

2 **MS. KLANCKE:** Caroline Klancke and Lisa  
3 Bennett on behalf of Commission Staff.

4 **COMMISSIONER SKOP:** Thank you.

5 **MS. CIBULA:** Samantha Cibula, Advisor to the  
6 Commission.

7 **COMMISSIONER SKOP:** Thank you.

8 And any other appearances we need to take?  
9 Hearing none. Okay. Staff, at this time are there any  
10 preliminary matters that we need to address before we  
11 get to the draft prehearing order?

12 **MS. KLANCKE:** Yes, Commissioner, there are  
13 several preliminary matters at this time. The first of  
14 which is the joint motion to strike filed on June 14th,  
15 2010.

16 **COMMISSIONER SKOP:** Thank you. At this point  
17 I'd like to hear from the respective parties. I'm going  
18 to allot five minutes for oral argument on Pasco  
19 County's motion for the joint motion to strike, and we  
20 will start with the petitioner from Pasco County.

21 **MR. HOLLIMON:** Thank you, and good afternoon,  
22 Commissioner.

23 You know, I'm not sure if it's a disability,  
24 but my primary practice is not in front of this  
25 Commission. However, I do practice regularly in front

1 of federal and state courts, and I do believe that there  
2 is some fundamental aspects that are consistent across  
3 all courts, all proceedings in which facts are found.  
4 And one of those fundamental aspects is that the party  
5 that seeks affirmative relief bears the burden of proof.

6 And the other fundamental truth is that when a  
7 prehearing order is entered it has meaning. And so in  
8 this proceeding we have two fundamental aspects that I  
9 believe are at play. We have one, Skyland is the party  
10 seeking affirmative relief; and, therefore, they have  
11 the burden of proof in this proceeding. And, second, on  
12 February 24th, the order establishing procedure was  
13 entered and that order defines how Skyland is required  
14 to meet its burden of proof.

15 And so the order establishes a process whereby  
16 direct evidence is initially filed by Skyland. And  
17 direct evidence is the opportunity for Skyland to prove  
18 its case in chief. And the case in chief is every  
19 element that has to be proven in order for Skyland to  
20 obtain the relief that it requests.

21 Now, the prehearing order also gives the  
22 intervening parties an opportunity to file testimony, as  
23 well. However, a very important distinction here is  
24 that these intervening parties have absolutely no burden  
25 of proof in this proceeding. We simply have the ability

1 to contest evidence presented by Skyland. We bear no  
2 burden of proof. We have no affirmative obligation to  
3 bring forward any evidence in this proceeding.

4 And then rebuttal is also provided for, and  
5 rebuttal is well understood by this Commission to be  
6 evidence that explains, repels, counteracts, or  
7 disproves testimony that has already been entered into  
8 the record, okay. So in this case, we have direct  
9 testimony filed by Skyland that consists of six pages  
10 from one witness, one witness who is not even an  
11 employee of the utility or the landowner. Okay.  
12 Rebuttal testimony -- I mean, not rebuttal, excuse me --  
13 testimony filed by interveners and then rebuttal  
14 testimony, okay.

15 Now, the motion that we filed details in  
16 detail the aspects of the testimony that we seek to  
17 strike and the reasons why we seek to strike those, and  
18 we stand by those reasons as they are presented in that  
19 motion. We believe that that stands by itself.

20 And, finally, what I'd like to do is address  
21 the response that Skyland filed to this. And I would  
22 submit that it appears to me that the primary basis of  
23 this response is to try to obscure and to confuse the  
24 issues, to make it appear that Pasco and Hernando  
25 actually have some evidentiary burden in this

1 proceeding, which we absolutely do not, okay.

2 And I would also state that the response does  
3 not address the specific examples that are raised in the  
4 motion to strike. And so for all the reasons we have  
5 stated, we believe that the testimony as defined and  
6 described in the motion to strike should, in fact, be  
7 stricken from the record.

8 **COMMISSIONER SKOP:** Thank you.

9 Does the joint party, I believe Mr. Kirk, want  
10 to add to that?

11 **MR. KIRK:** Thank you, Commissioner.

12 I join in in what counsel for Pasco has said.  
13 I don't want to be redundant. To put this in the  
14 posture of where, as egregious as it was, Mr. Ronald  
15 Edwards is the president of Evans Property, Inc., which  
16 wholly owns Evans Utility, Inc., of which he is the  
17 president, which wholly owns Skyland Utilities, LLC, of  
18 which he is a managing partner.

19 If you look at the application of Skyland, Mr.  
20 Edwards is throughout the application. In connection  
21 with the leases in the application, he signs both as the  
22 lessor and the lessee. In terms of the funding  
23 agreement, he signs as both the lender and the lendeer.

24 Skyland is represented by very experienced  
25 counsel, the Rose Sundstrom law firm, and they appear



1 before this Commission on a regular basis, and their  
2 website boasts of their practice before the PSC. So  
3 when you look at the applicant, Mr. Edwards, and he had  
4 an opportunity to provide direct testimony, and instead  
5 they throw in his testimony in the last day rebuttal  
6 evidence is due. That doesn't give the intervenors an  
7 opportunity to contest or otherwise refute it. We  
8 believe the appropriate remedy is to strike the  
9 testimony because we don't believe it is in keeping with  
10 the letter and spirit of your order establishing  
11 procedure.

12 Thank you.

13 **COMMISSIONER SKOP:** Thank you.

14 At this point we'll hear from Skyland and  
15 Mr. Wharton.

16 **MR. WHARTON:** Thank you, Commissioner.

17 Commissioner, you have 30 pages of  
18 documentation on this motion, and we won't repeat what  
19 is therein. I will, however, disagree with the  
20 characterization of counsel for Pasco County that I  
21 think that you need to view rebuttal within the context  
22 of the Commission's practice. In a state court, in a  
23 federal court if we were talking about the issue of  
24 rebuttal and we were about to present rebuttal, we would  
25 know exactly what had occurred. As we sit here right

1 now, the record is not yet complete in terms of  
2 depositions that may come in, discovery that may come  
3 in.

4 Basically, we would divide our testimony into  
5 the following categories. We stand by our ability to  
6 respond to five witnesses who said the application is  
7 not in the public interest. We believe that that  
8 testimony manifests itself in the prefiled testimony of  
9 Mr. Edwards and of Mr. Hartman, that it is a broad issue  
10 that the Commission in the end will accord that  
11 testimony such weight as it deems appropriate.

12 In terms of what we filed, Commissioner, we  
13 filed the testimony of a representative of the  
14 corporation. A corporation is not an entity that can  
15 speak with a voice. It is a disembodied person. And I  
16 would like to just read briefly to you one of the two or  
17 three pivotal cases, Commissioner, in administrative law  
18 is Florida Department of Transportation versus JWC,  
19 396 So.2d 778. And the court in JWC noted that we can  
20 conceive of no more orderly way for a formal hearing to  
21 be conducted than to have the applicant first present a  
22 prima facie case. The court ultimately says, at the  
23 very minium, this preliminary showing, that is the  
24 preliminary showing by the applicant, should include the  
25 application and the accompanying documentation and

1 information relied upon by the agency as the basis for  
2 its notice of intent.

3 As counsel noted, we have tried several cases  
4 in this manner. In Mr. Hartman's testimony, Mr. Hartman  
5 said that the application was true and correct and all  
6 of the pages of the application came in. We believe  
7 that the parts of Mr. Edwards' testimony and Mr.  
8 Hartman's testimony that we have asserted in our  
9 response addressed the public interest do fit within  
10 Ocean Properties and the other Commission cases. I  
11 would, once again, disagree with counsel about the  
12 clarity, for lack of a better phrase, of those cases. I  
13 believe that the rebuttal cases are a bit like a mirror.  
14 The way that they look out basically depends on who's  
15 looking in.

16 I know the Commission has issued several in  
17 which you merely talked about that rebuttal should be  
18 within the scope of the intervenors' direct. In this  
19 case, we ask you to exercise that discretion that you  
20 have to determine whether this is a matter of actual  
21 prejudice, this is a matter of surprise, it's a new  
22 formula, it's a new piece of a rate that is being asked  
23 for, or rather where if you exclude this testimony you  
24 are basically rewarding one party who filed no testimony  
25 and other parties who have represented to you they

1 intentionally held back evidence in an attempt to get us  
2 in some sort of a "got you" under the application of the  
3 evidentiary rules.

4 I do want to address two categories in  
5 addition to the public interest argument that we have  
6 made. Mr. Hartman's testimony on planning, his  
7 testimony that he has given before, the order in the  
8 East Central Florida Services case quoted Mr. Hartman's  
9 opinion on urban sprawl, even though in that case we  
10 also called an expert planner. Again, that testimony we  
11 believe was given from a unique perspective in terms of  
12 all the planners. Certainly it is well within the scope  
13 of the testimony that was filed contrary to the  
14 application, and we would ask that, again, it be allowed  
15 and afforded the weight deemed appropriate.

16 As far as Mr. Hartman's testimony about the  
17 cases, about the policies, that is something else that  
18 the record in ECFS and Farmington (phonetic) reflects  
19 that he did testify about to the extent that it reflects  
20 the ultimate legal issue, it should not be allowed. But  
21 I believe that it should be afforded as the testimony of  
22 someone who has been practicing in one method or another  
23 as a utility owner, as an expert witness, and as an  
24 applicant in front of the Commission for 30 years.

25 One final word, Commissioner, on Mr. Edwards'

1 testimony on the financial information. Frankly, I am  
2 more than prepared, and I have a feeling we will get  
3 into it eventually today, to argue that we are  
4 significantly surprised. There has not been a  
5 stipulation there. We tried to get at it in discovery.  
6 We tried to get at it in deposition. You may be  
7 surprised at the answers we got as it became apparent to  
8 us that although nothing had been filed on the issue  
9 that the intervenors did intend to make it an issue.

10 We included that testimony so that we could  
11 supplement the financial information in the record. We  
12 believe, once again, that is not a genuine issue. It is  
13 an issue that should be stipulated. We'll probably  
14 discuss later that that stipulation has been offered by  
15 Hernando County once. And we ask, again, that that  
16 testimony be allowed under your broad discretion, which  
17 can only be overturned upon a finding of abuse so that  
18 we can get all the facts on the record in this  
19 proceeding.

20 **COMMISSIONER SKOP:** Thank you, Mr. Wharton.

21 At this point I'll hear from staff as to a  
22 staff recommendation with respect to the joint motion to  
23 strike.

24 **MS. KLANCKE:** Staff has reviewed and taken  
25 into consideration the joint motion, the response filed

1 thereto, and all the cases cited therein, as well as the  
2 oral argument that has been provided here today, and  
3 staff believes that the joint motion to strike should be  
4 denied.

5 The testimony at issue here is rebuttal  
6 testimony. Witness Edwards' response to the challenges  
7 of each of the witnesses that the utility is not in the  
8 public interest by explaining what the utility and  
9 property owner intends to do with the utility and  
10 property. Witness Hartman responds to the concerns of  
11 the witnesses regarding the public interest. Staff  
12 notes that a portion of the motion to strike also  
13 challenges the testimony of Hartman and Edwards as  
14 expert witnesses in the areas of land use and planning,  
15 as well as law.

16 The testimony of Witness Edwards is not  
17 offered as expert testimony. Rather, he has been  
18 proffered as a fact witness. As a fact witness, Witness  
19 Edwards' testimony should be permitted to respond to the  
20 intent of the utility and its owners to develop the  
21 utility. Mr. Edwards can be cross-examined on his  
22 testimony and the Commission should afford to his  
23 testimony the weight that it deserves as a factual  
24 witness.

25 The testimony of Witness Hartman is offered as

1 an expert only in water and wastewater matters in  
2 Florida. He is not being offered as an expert in land  
3 use planning or in law. All of his testimony is subject  
4 to cross-examination. His testimony, therefore, should  
5 be viewed in light of his knowledge and expertise as an  
6 expert in water and wastewater matters. The Commission  
7 should thus afford to his testimony the weight that it  
8 is due.

9 In addition, in order to ensure that the  
10 record in this proceeding is complete and to provide all  
11 parties with a full opportunity to present their case,  
12 staff believes that nonutility parties of record in this  
13 matter should be afforded four days from the date of  
14 this prehearing to provide surrebuttal. We would  
15 suggest, should it please the Commission, that  
16 non-utilities surrebuttal testimony should thus be due  
17 on Friday, July 2nd, 2010.

18 **COMMISSIONER SKOP:** Thank you, Ms. Klancke.

19 Okay. Having afforded the parties the  
20 opportunity to be heard on this matter, and also in  
21 light of the staff recommendation, I do concur with the  
22 staff recommendation. The joint motion to strike will  
23 be denied. The testimony of Witness Edwards will not be  
24 offered as expert testimony, as an expert witness. The  
25 testimony of Witness Hartman is offered only as an

1 expert on water and wastewater matters in Florida only.  
2 His testimony is not being offered as an expert in land  
3 use planning or in law. And, accordingly, all of his  
4 testimony is subject -- or will be subject to objection  
5 and cross-examination on his direct testimony, and the  
6 Commission will give his testimony the weight it is due.

7 I think that that should resolve in part some  
8 of the concerns that I have heard from the counties,  
9 Pasco and Hernando, with respect to the scope of the  
10 expert testimony, or what the witnesses are being  
11 offered out as in terms of experts. I think it -- in  
12 addition to that, my ruling will be to provide the  
13 counties, the nonutility parties, the opportunity for  
14 surrebuttal, which will be due close of business on  
15 Friday, July 2nd. And I believe that will provide  
16 adequate opportunity, in light of the concerns raised by  
17 both parties, to address the issues that have been  
18 raised in the motion to strike. So that will be my  
19 ruling on that issue.

20 Are there any questions from the parties?

21 Hearing none. Staff, the next preliminary  
22 matter, please.

23 **MS. KLANCKE:** The next preliminary matter was  
24 raised in Hernando County's prehearing statement.  
25 Beginning on Page 10 of 12 and continuing on to Page 11,



1 Hernando County has made a request and has requested a  
2 ruling by the Prehearing Officer at this time. If it  
3 pleases the Commission, perhaps Hernando County should  
4 be afforded the opportunity to give a brief  
5 encapsulation of that request.

6 **COMMISSIONER SKOP:** Thank you, Ms. Klancke.

7 At the time we will hear from Hernando County  
8 with respect to why it cannot comply with the  
9 requirement in the order establishing procedure.

10 **MR. KIRK:** Good afternoon, Commissioner.

11 Again, Hernando County.

12 Chapter 367 provides an opportunity that  
13 governmental entities that challenge a water and  
14 wastewater certificate can have a proceeding pursuant to  
15 Sections 120.569 and 120.57 of the Florida Statutes,  
16 which is the procedures for formal administrative  
17 hearings before an agency.

18 I have not practiced before the PSC before. I  
19 have practiced somewhat extensively before the Division  
20 of Administrative Hearings, and in a typical 120  
21 procedure the parties -- as a hearing takes place, all  
22 the parties, including the agency, is afforded  
23 opportunities to submit proposed recommended orders.

24 Specifically, 120.57 sets forth the  
25 procedure -- Subsection 1 sets forth the procedures

1 which govern the Administrative Procedures Act. That  
2 includes a judge being -- an administrative law judge  
3 being assigned. In this case, the Commission sits in  
4 the role of an administrative law judge. And then the  
5 parties, including the agency, is afforded an  
6 opportunity to submit proposed recommended orders by a  
7 date certain. And the agency is on -- whether it is the  
8 Department of Environmental Protection, or the  
9 Department of Community Affairs, or any of the other  
10 numerous state agencies, the agency is on the same  
11 footing as the parties, meaning that they can submit  
12 proposed recommended orders, but the proposed  
13 recommended orders are due by a time certain.

14 The trier of fact, in this case the  
15 Commissioner is the trier of fact, receives proposed  
16 recommended orders from all of the parties and everybody  
17 is on the same footing. It's my understanding that it  
18 has been the practice of the Commission or the  
19 Commission staff to basically look at the parties'  
20 proposed filings and then basically prepare like a super  
21 memorandum or a proposed order for the Commission's  
22 consideration. We would humbly request that an order is  
23 entered whereby all of the parties may file proposed  
24 final orders by a date certain and everybody is on  
25 basically the same playing field.

1 Thank you.

2 **COMMISSIONER SKOP:** Thank you, Mr. Kirk.

3 A response from Mr. Wharton.

4 **MR. WHARTON:** Briefly, Commissioner.

5 First of all, as someone who practices for a  
6 long time in front of the Commission and DOA, I don't  
7 particularly believe that the methods used at DOAH  
8 post-hearing achieve any better result than the method  
9 that has traditionally been used by the Commission. I  
10 also don't believe that a proposed recommended order  
11 would be appropriate in this case since an ALJ sits as  
12 the agency head and you and the panel are the agency  
13 heads.

14 I think that the unique role of staff is  
15 something to consider, and the fact that the Commission  
16 probably should not make these decisions ad hoc or  
17 piecemeal. I don't see any reason not to do it in the  
18 way that was contemplated in the case and the way that  
19 the Commission normally does it.

20 **COMMISSIONER SKOP:** Thank you, Mr. Wharton.

21 At this point we'll hear from staff. And,  
22 staff, do you have a staff recommendation with respect  
23 to the request?

24 **MS. KLANCKE:** We do.

25 Staff believes that Hernando's request should

1 be denied. Staff believes that there is ample statutory  
2 authority for the Commission's procedures and methods of  
3 adjudication contained in Chapters 120 and 350 of the  
4 Florida Statutes. As such, staff believes that the  
5 Administrative Procedures Act clearly contemplates our  
6 agency's adjudication and resolution of administrative  
7 proceedings outside of DOAH. Accordingly, staff  
8 believes that this request should be denied.

9 **COMMISSIONER SKOP:** Thank you, Ms. Klancke.

10 Okay. Having afforded the parties the  
11 opportunity to be heard on this matter, and based on the  
12 staff recommendation, I do concur with the staff  
13 recommendation and the Hernando County request will  
14 be denied.

15 The Commission has the ability to enter final  
16 orders and to conduct its own hearings, and we do that  
17 frequently irrespective of going the route that has been  
18 proposed by the request, so I do appreciate the request.  
19 It is properly denied before the Commission. So, thank  
20 you.

21 Staff, are there any additional preliminary  
22 parties that we need to address?

23 **MS. KLANCKE:** We do. Staff at this time would  
24 like to note for the record that several motions were  
25 filed in this docket on Friday, June 25th.

1                   **COMMISSIONER SKOP:** Okay. And can staff  
2 articulate what those motions are, please?

3                   **MS. KLANCKE:** Yes, sir. In particular, Pasco  
4 County's motion to strike portions of the direct  
5 testimony of Gerald Hartman -- it is my understanding  
6 that a joinder was also filed. No, that was with  
7 respect to the objections. I apologize.

8                   Pasco County's motion to compel and Hernando  
9 County's motion to withdraw Paul Wieczorek as a witness  
10 in this matter.

11                   **COMMISSIONER SKOP:** Okay. So there were three  
12 motions that were filed, it's my understanding, on late  
13 Friday afternoon?

14                   **MS. KLANCKE:** That is correct.

15                   **COMMISSIONER SKOP:** Okay. Great. Thank you.

16                   Okay. Before we get to those outstanding  
17 motions, I do want to go back and just add a point of  
18 information to my prior ruling on Pasco County's motion  
19 to strike, and I would ask the parties to specifically  
20 reference Section 120.569, Subsection G of the Florida  
21 Statutes, which does speak to the fact that evidence can  
22 be -- shall be admissible whether or not such evidence  
23 would be admissible in a trial court -- excuse me. I'm  
24 reading this; it would be better if I put it in front of  
25 me. That evidence shall be admissible whether or not

1 such evidence would be admissible in a trial in the  
2 courts of Florida.

3 So, again, there is broad discretion there  
4 with respect to the admissibility of testimony. I think  
5 it's the Commission's desire to have a full and complete  
6 record to make a decision on the merits in a fair and  
7 impartial matter, and that is what we hope to achieve.

8 So going back to the outstanding motions, I  
9 think that at this point, based on my rulings with  
10 respect to the motion to strike and Hernando County's  
11 request, it may be appropriate to afford the parties a  
12 certain amount of time to see if they can get together  
13 and resolve some of the differences on these outstanding  
14 motions before we proceed further.

15 In that regard, I've always been a big belief  
16 of trying to get the parties together to work things out  
17 in an amicable fashion when it's possible. So what I  
18 would like to do is, basically, recess for 30 minutes to  
19 allow the parties time to confer on these outstanding  
20 motions to see if there can be some agreement that can  
21 be resolved that would otherwise preclude the need to  
22 address the motions from the Prehearing Officer's  
23 standpoint. And if we can reach some compromise, great;  
24 if not, I'll go to Plan B.

25 But at this point we're going to temporarily

1 recess, and we will reconvene at approximately 25 after  
2 the hour. We stand in recess. Thank you.

3 (Recess.)

4 **COMMISSIONER SKOP:** Okay. We're going to go  
5 back on the record. And where we left off is I afforded  
6 the parties approximately 30 minutes to see if they  
7 could reach some consensus with respect to the three  
8 outstanding motions. And I'll look to Commission staff  
9 to see if any progress has been made.

10 Ms. Klancke, you're recognized.

11 **MS. KLANCKE:** During the break the parties did  
12 make a good faith effort in which to negotiate with  
13 respect to the three outstanding motions. As a result  
14 of those deliberations, the parties have been able to  
15 reach an agreement as to the motion to compel. However,  
16 the parties were not able to resolve either the motion  
17 to strike or the motion to withdraw at this time.

18 **COMMISSIONER SKOP:** All right.

19 And with respect to the motion to compel, I  
20 reviewed that motion over the weekend, and I know staff  
21 worked numerous hours over the weekend, so I commend our  
22 legal staff for taking the time to address some of these  
23 issues. But what was the agreement specifically on the  
24 motion to compel as it pertained to some of the concerns  
25 raised by the counties with respect to -- and I'll get

1 to it.

2 **MR. WHARTON:** Commissioner.

3 **COMMISSIONER SKOP:** Hold on for one second and  
4 let me get to my point. And with respect to Pasco's  
5 Interrogatory Number 12 and the deposition transcript  
6 citations they put in that, was there any resolution  
7 with respect to that?

8 I'll look to you in a second, Mr. Wharton.

9 **MS. KLANCKE:** I would turn to the parties to  
10 encapsulate the agreement that they have reached during  
11 the break.

12 **COMMISSIONER SKOP:** Okay. Mr. Wharton, you're  
13 recognized.

14 **MR. WHARTON:** In a nutshell, with regard to  
15 the request to admit, the objections will be withdrawn,  
16 and the two requests to admit that, basically, as I  
17 recall said admit or deny that you are in violation of  
18 the administrative code rule, those requests will be  
19 withdrawn.

20 **COMMISSIONER SKOP:** Okay.

21 **MR. WHARTON:** With regard to the work product  
22 objection, tomorrow the documents will be produced, and  
23 I have explained to counsel for Pasco County what the  
24 nature is of the three documents that will be withheld,  
25 and there is an agreement there that they can be



1 withheld.

2 **COMMISSIONER SKOP:** Okay. So with respect to  
3 the motion on Page 5, it's my understanding that Skyland  
4 will provide a privilege law as to the documents that it  
5 details to be -- or determines to be privileged.

6 **MR. WHARTON:** We can certainly do that. It is  
7 just the three letters -- the three e-mails that I  
8 wrote.

9 **COMMISSIONER SKOP:** Okay. Fine.

10 **MR. WHARTON:** With regard to the  
11 interrogatory, we will respond, as we will to the  
12 request to produce, by the end of the day on Wednesday.

13 **COMMISSIONER SKOP:** Okay. Very well. And  
14 that would include providing a complete answer to  
15 Interrogatory 12 in accordance with the Florida Rules of  
16 Civil Procedure?

17 **MR. WHARTON:** Yes.

18 **COMMISSIONER SKOP:** Thank you. All right.  
19 From the county, Mr. -- real quick, Mr.  
20 Hollimon, if you could speak to concerns on Pasco's  
21 motion and whether you are satisfied with --

22 **MR. HOLLIMON:** (Inaudible. Microphone off.)

23 **COMMISSIONER SKOP:** I'm sorry. Let's start  
24 over. Mr. Hollimon, you're recognized.

25 **MR. HOLLIMON:** The agreement that Mr. Wharton

1 discussed is, in fact, our agreement. I have no  
2 disagreement with what he said.

3 **COMMISSIONER SKOP:** Okay. All right. Thank  
4 you.

5 Staff, how do we need to proceed with respect  
6 to the agreement amongst the parties on the motion to  
7 compel?

8 **MS. KLANCKE:** As stated by representative  
9 counsel from Skyland, the motion to compel will be  
10 addressed pursuant to the agreement once the documents  
11 have been provided. The substance of the underlying  
12 basis for the motion no longer exists, and thus it will  
13 be a moot point.

14 **COMMISSIONER SKOP:** Okay. So at the  
15 appropriate time, based upon the responsive documents,  
16 if Pasco is happy, it will withdraw its motion to  
17 compel?

18 **MR. HOLLIMON:** Yes. I mean, the  
19 representation has been that everything would be  
20 provided by Wednesday. If, in fact, that occurs, Pasco  
21 will withdraw the motion.

22 **COMMISSIONER SKOP:** Okay. Mr. Wharton, is  
23 that your agreement?

24 **MR. WHARTON:** Yes.

25 **COMMISSIONER SKOP:** All right. Great. Thank

1       you.

2               All right.  So for the remaining two, I think  
3       that covered the motion to compel, and I appreciate the  
4       parties getting together in good faith and trying to  
5       resolve their differences.  Again, the purpose of this  
6       procedure is to create a complete evidentiary record  
7       that supports the basis of the decision on the merits in  
8       a fair and impartial matter, and that is what I hope to  
9       achieve by encouraging the parties to work together.

10              With respect to the two remaining outstanding  
11       motions, Pasco County's motion to strike portions of the  
12       direct testimony of Mr. Hartman, and Hernando County's  
13       motion to withdraw the witness' testimony -- I'm not  
14       going to try to pronounce that name, unless somebody can  
15       give me some help on that one.

16              **MR. KIRK:**  Mr. Wieczorek.

17              **COMMISSIONER SKOP:**  Wieczorek.  Okay.

18              On Hernando County's motion to withdraw Paul  
19       Wieczorek as a witness, both of those motions, again,  
20       Skyland has the legal right and opportunity to be heard  
21       pursuant to -- give me one second here -- pursuant to  
22       our rule, and that would be Rule 28-106.204, Florida  
23       Administrative Code, regarding motions provides that  
24       when time allows, and that's the key word in this case,  
25       other parties may within seven days of service of a

1 written motion file a response in opposition.

2 Due process requires that the utility be  
3 afforded the opportunity to respond to the  
4 above-referenced motions, being the ones that are still  
5 outstanding, prior to ruling on the issues by the  
6 Prehearing Officer. However, Rule 28-106.204, Florida  
7 Administrative Code, only requires that seven days be  
8 given when time allows. In the instant case, seven days  
9 were provided to the utility to respond to the two  
10 outstanding motions. The responsive pleadings would be  
11 filed on Monday, July 5th, only two days before the  
12 commencement of the hearing, and that's really not going  
13 to work for anyone, because, again, I need to see the  
14 responsive pleadings. Our legal staff needs to take the  
15 time to review those and make a recommendation to the  
16 Prehearing Officer, and then I need to issue an order,  
17 which I hope to rule on those motions prior to the start  
18 of hearing.

19 So what we are going to do on that issue is  
20 that Skyland needs to be afforded the opportunity to be  
21 heard and respond. We're going to give Skyland four  
22 days in which to respond to both motions, and after that  
23 there will be a response due by the close of business on  
24 Friday, July 2nd. And after receiving those responses,  
25 I'll issue an order via -- on the motions via separate

1 order. So both of those will be addressed subsequently  
2 upon getting a responsive pleading from Skyland on both  
3 of those outstanding motions, and, hopefully, it will be  
4 agreeable to each of the respective parties.

5 **MR. HOLLIMON:** Mr. Commissioner.

6 **COMMISSIONER SKOP:** Yes. Mr. Hollimon, you're  
7 recognized.

8 **MR. HOLLIMON:** I just want to point out that  
9 the reason why the second motion to strike the Pasco  
10 County file was only filed last Friday was because the  
11 substantive issues are based upon the deposition  
12 transcript, which was only received on Wednesday last  
13 week.

14 **COMMISSIONER SKOP:** That's fine. And, again,  
15 I recognize that, you know, we are trying to deal with  
16 the motions as they come in in a timely manner, but  
17 ensuring that we are providing -- affording due process  
18 to the parties before each of those motions are ruled  
19 upon by the Prehearing Officer.

20 So I commend our legal staff. I know I was  
21 reading documents until about 2:00 in the morning last  
22 night. So, again, I think that what's important to me  
23 and what's important to the Commission as a whole is  
24 making sure that, you know, any motion that comes in is  
25 given due consideration, the opportunity to be heard

1 from all the parties before a ruling is made, and that  
2 is what I intend to do.

3 So with respect to the two other outstanding  
4 motions, again, Skyland will be provided the opportunity  
5 to respond. That response is due by close of business  
6 on Friday, July 2nd, 2010, and that will be ruled upon  
7 by a forthcoming order, both of those motions.

8 **MR. KIRK:** Commissioner, if it's appropriate,  
9 Hernando County would like to join in Pasco's motion as  
10 drafted.

11 **COMMISSIONER SKOP:** Mr. Kirk, can you repeat  
12 that, and I'll ask our staff to opine on that at this  
13 point. (Pause.)

14 Mr. Kirk, can you repeat your request for the  
15 record, please?

16 **MR. KIRK:** Okay. To the extent allowed,  
17 Hernando County would like to join in Pasco County's  
18 motion to strike.

19 **COMMISSIONER SKOP:** Okay. To legal staff,  
20 with respect to Hernando's late request to join in Pasco  
21 County's motion to strike that was filed last Friday,  
22 does that provide a procedural problem or can we allow  
23 that noting that Skyland has been or will be afforded  
24 the opportunity to respond by close of business on  
25 July 2nd, and noting that there will be no additional

1 pleading that they are just joining in Pasco County's  
2 original motion.

3 **MS. KLANCKE:** Provided that Hernando County,  
4 pursuant to its oral motion for joinder to the motion of  
5 Pasco County does not add any additional pleadings or --

6 **MR. KIRK:** No.

7 **MS. KLANCKE:** -- any information to the  
8 motion, then staff does not foresee any problems with  
9 respect to that joinder.

10 **COMMISSIONER SKOP:** Okay. Great. Thank you.

11 All right. So based on Hernando County's  
12 request that -- or actually their oral motion for  
13 joinder to join the Pasco County motion to strike, show  
14 that as granted. And, again, Skyland will have the  
15 opportunity to provide opposition response to the motion  
16 by the close of business on Friday, July 2nd. Is that  
17 acceptable to you, Mr. Wharton?

18 **MR. WHARTON:** Yes.

19 **COMMISSIONER SKOP:** All right. Thank you.

20 Any other questions before I move on? Okay.  
21 I think that addresses the outstanding motions. And,  
22 staff, I think now we need to address or take note of  
23 the objection to staff's exhibits list. If staff could  
24 briefly speak to that.

25 **MS. KLANCKE:** Staff would like -- staff at

1 this time would like to note that several objections to  
2 exhibits have been filed in this docket. Staff notes,  
3 for the record, that objections to any document, whether  
4 sponsored by a party or sponsored by staff, should be  
5 raised at the time the party sponsoring the document  
6 moves the presiding officer to enter the document into  
7 the record. At that time, the presiding officer will  
8 issue a ruling on the admissibility of the particular  
9 exhibit. That is all.

10 **COMMISSIONER SKOP:** Okay. Very well.

11 Just to the counties, just for the record,  
12 show that the objection to the exhibits has been  
13 received and is duly noted. Again, as discussed by  
14 staff, typically in a hearing posture when we get to  
15 evidentiary hearing there is a comprehensive exhibit  
16 list. Exhibits will be moved into evidence and any  
17 objection to those exhibits coming in as evidence will  
18 be ruled upon by the presiding officer at that --  
19 contemporaneously at that point in time. So I think  
20 that should address some of the concerns raised by not  
21 only Pasco, but Hernando and Brooksville. And if there  
22 are any other additional questions on that, I would  
23 be happy to hear from the counties at this time. Okay.  
24 All right. Hearing none.

25 All right. Staff, I believe that takes us to



1 the draft prehearing order.

2 **MR. WHARTON:** Commissioner Skop, if I may.

3 **COMMISSIONER SKOP:** Mr. Wharton, you're  
4 recognized.

5 **MR. WHARTON:** Procedurally it may be the same  
6 in the end, but we do move ore tenus understanding that  
7 the decision will not be made until the time that the  
8 exhibit is introduced and that all objections are  
9 reserved that Staff 14 be appended to Hartman Exhibit 1.  
10 Staff 14 is the financial statement that before we  
11 became involved in the case, when Skyland had different  
12 counsel, staff solicited that as a part of the  
13 application and it was filed. When the application was  
14 filed with the direct testimony, that financial  
15 statement was not included in the very large application  
16 that was filed. And it is a part of the application,  
17 understanding that it might be subject to objections as  
18 other parts of the application have been in the motion  
19 to strike, but we do want to make that motion for the  
20 record.

21 **COMMISSIONER SKOP:** Okay. And before I look  
22 to staff on that particular point, I heard the first  
23 part of your request with respect to Staff Exhibit 14.  
24 I did not hear the second part of that as Exhibit 1.  
25 There was something else you added to it.

1           **MR. WHARTON:** The application itself is an  
2 exhibit to Hartman's Direct Testimony.

3           **COMMISSIONER SKOP:** Okay.

4           **MR. WHARTON:** And our motion would say, so the  
5 record is complete, that that particular financial  
6 statement should be made a part of that particular  
7 exhibit.

8           **COMMISSIONER SKOP:** And that would be Exhibit  
9 1?

10          **MR. WHARTON:** I believe it was GCH-1.

11          **COMMISSIONER SKOP:** And, staff, can you speak  
12 to the motion?

13          **MS. KLANCKE:** Certainly. As a point of  
14 clarification, Staff's Exhibit 14 contains Skyland's  
15 response to staff's deficiency letter dated November  
16 29th, 2009. Portions of this document have been  
17 requested under confidentiality. At this time, staff  
18 does not believe this question is ripe, and thus should  
19 be raised during the hearing contemporaneously with the  
20 request to enter it into the record. Any objections  
21 will also be considered at that time and a ruling should  
22 be made by the presiding officer during the hearing.

23          **COMMISSIONER SKOP:** All right. Thank you.

24                               From the counties, any concerns on the motion?

25                               Mr. Hollimon, you're recognized.

1           **MR. HOLLIMON:** Yes. Thank you, Commissioner.

2           I'm not sure exactly what difference it makes  
3 whether that exhibit is included within another exhibit  
4 or not. I still have objections as to the authenticity  
5 of any such exhibit. So as long as I can preserve my  
6 objections, then I don't -- I'm indifferent.

7           **COMMISSIONER SKOP:** Okay. Mr. Kirk from  
8 Hernando County.

9           **MR. KIRK:** We concur with Pasco's comments.

10          **COMMISSIONER SKOP:** Okay. And, Mr. McAteer?

11          **MR. MCATEER:** It's McAteer, sir.

12          **COMMISSIONER SKOP:** McAteer, I'm sorry.

13          **MR. MCATEER:** And we concur with Pasco County.

14          **COMMISSIONER SKOP:** All right. Very well.

15          All right. Staff, anything else that needs to  
16 be added to that?

17          Okay. Mr. Wharton, at this point I'm going to  
18 deny the motion, the oral motion to address that, and  
19 you're free to raise that contemporaneously at hearing,  
20 subject to objection and determination by the presiding  
21 officer as to whether or not it's appropriate to admit  
22 those documents into evidence.

23          **MR. WHARTON:** Thank you, Commissioner.

24          **COMMISSIONER SKOP:** All right. Thank you.

25          Mr. Hollimon.

1           **MR. HOLLIMON:** Yes, Commissioner. Just  
2 one maybe point of clarification to make sure I  
3 understand this. Pasco filed the notice of objection  
4 that relates to, for instance, the GCH-1, the  
5 application document, and the basis of that objection is  
6 that there are portions of that document which cannot be  
7 properly authenticated by the witness.

8           **COMMISSIONER SKOP:** Right.

9           **MR. HOLLIMON:** And I just want to make sure  
10 that I will have the ability to object to portions, not  
11 all of that exhibit.

12           **COMMISSIONER SKOP:** Very well, and I don't  
13 want to get into trying the case in a prehearing  
14 posture. What we will do at the appropriate time when  
15 they move, I believe, just to give you a primer on how  
16 things work at the Commission, typically we'll hear  
17 direct testimony, that will be moved into the record as  
18 though read, subject to cross-examination by the  
19 parties, subject to rebuttal -- not rebuttal, but  
20 redirect, and then they will move exhibits at the end of  
21 that witness' testimony. At that point, you are free to  
22 make any objections to any exhibits coming into the  
23 Comprehensive Exhibit List, and those will be, you know,  
24 discussed at that time and a ruling will be made by the  
25 presiding officer as to whether those documents come in

1 or stay out. Does that address your question?

2 **MR. HOLLIMON:** Yes, thank you.

3 **COMMISSIONER SKOP:** All right. Great. Thank  
4 you.

5 Mr. Wharton, anything to add?

6 **MR. WHARTON:** No.

7 **COMMISSIONER SKOP:** Okay. Great.

8 All right. Staff, anything else?

9 **MS. KLANCKE:** Not that I'm aware of.

10 **COMMISSIONER SKOP:** Okay. It's going smooth  
11 as silk. That's good.

12 All right. Let's proceed through the draft  
13 prehearing order, and I will identify each of the  
14 sections, and I want the parties to let me know if there  
15 are any corrections or changes that need to be made.

16 We are going to move through this quickly, so  
17 if the parties have a concern, please speak up if a  
18 change or correction is warranted. And I do appreciate  
19 the parties, again, trying to work together to resolve  
20 their differences. It makes the prehearing process as  
21 well as the hearing go much smoother.

22 Okay. So we are going to proceed with the  
23 draft prehearing order. Section I, Case Background.  
24 Are there any concerns from the parties? Okay. Hearing  
25 none, show Section I as written.

1           Section II, Conduct of Proceedings. Any  
2 concerns from the parties? All right. Hearing none,  
3 Section II will remain as written.

4           Section III, Jurisdiction. Any concerns from  
5 the parties?

6           **MR. KIRK:** Hernando County would just note  
7 that Hernando, Pasco, and the City of Brooksville at  
8 different times in this proceeding have raised  
9 objections as to jurisdiction. So along as we are not  
10 conceding jurisdiction, all of that could be noted in  
11 this section.

12           **COMMISSIONER SKOP:** All right. And I would  
13 also note in relation to that there has been -- the  
14 First District Court of appeals has, basically, issued a  
15 ruling stating the Commission has jurisdiction, but I  
16 will look to staff to speak to that specific issue.

17           **MS. KLANCKE:** Staff reiterates that a motion  
18 to dismiss was analyzed -- was filed by Hernando County  
19 and analyzed before the full Commission. An order was  
20 issued with respect to that jurisdictional issue. That  
21 order was subsequently appealed to the First District  
22 Court of Appeals where it was resolved.

23           Therefore, for the purposes of the prehearing  
24 order, staff does not believe that inclusion of a  
25 jurisdictional analysis in this section is necessary,

1 nor is it necessary to preserve Hernando County's right  
2 to raise jurisdictional issues in the future.

3 **COMMISSIONER SKOP:** And to staff to address  
4 Mr. Kirk's concerns, certainly in their prehearing  
5 position statement on that issue they are free to make  
6 that argument, would that be correct?

7 **MS. KLANCKE:** They were free and they have  
8 made that argument.

9 **COMMISSIONER SKOP:** All right. So, Mr. Kirk,  
10 does that address your concern?

11 **MR. KIRK:** Yes, sir, Mr. Commissioner.

12 **COMMISSIONER SKOP:** All right. Thank you.

13 All right. That takes us to Section IV,  
14 Procedure for Handling Confidential Information. Any  
15 concerns from the parties? Okay. Hearing none, show  
16 Section IV remaining as written.

17 Section V, Prefiled Testimony, Exhibits and  
18 Witnesses. Any concerns on those issues? And with  
19 respect to the parties, again, with the witness  
20 summaries of testimony, typically five minutes is  
21 afforded for each witness to summarize their direct  
22 testimony or rebuttal testimony. Is that going to be a  
23 problem for any of the parties? Okay. Hearing none,  
24 just show that the witness summaries will be limited to  
25 five minutes per witness. And I think hearing no other

1 further questions on Section V, we'll move on to  
2 Section VI.

3 Okay. Section VI, Order of Witnesses. Staff,  
4 do you have any concerns on Section VI?

5 **MS. KLANCKE:** Staff requests that the  
6 Commission allow staff's Department of Community Affairs  
7 witness to be permitted to testify immediately after  
8 Skyland's direct witnesses.

9 **COMMISSIONER SKOP:** Okay. Do any of the  
10 parties have any concerns with that request from staff?  
11 Okay. Hearing none, show that to be the case, that the  
12 DCA witness will be permitted to testify immediately  
13 after the utilities' direct witnesses. And at this  
14 point, staff, I believe none of the witnesses have been  
15 stipulated to, is that correct?

16 **MS. KLANCKE:** That is correct.

17 **COMMISSIONER SKOP:** Is there any chance of the  
18 parties stipulating to any of the witnesses?

19 Mr. Hollimon.

20 **MR. HOLLIMON:** When you say stipulate to the  
21 witness, what exactly are you -- does that mean?

22 **COMMISSIONER SKOP:** I'll look to staff to  
23 explain that, and then, Mr. Wharton, if you want to add  
24 to it, I'll allow you to chime in.

25 Ms. Klancke.



1           **MS. KLANCKE:** It's a procedural stipulation  
2 with respect to allowing that witness' testimony to be  
3 entered into the record as though read.

4           **COMMISSIONER SKOP:** But also not -- also not  
5 cross-examination.

6           **MS. KLANCKE:** And provided that the  
7 Commissioners do not have any questions for that  
8 witness, that witness would be excused from having to be  
9 present at the hearing.

10          **COMMISSIONER SKOP:** Right.

11          **MS. KLANCKE:** And there would be no  
12 cross-examination.

13          **COMMISSIONER SKOP:** So, basically, in a  
14 nutshell, how that would work in the administrative  
15 hearing setting that the Commission uses, if a witness  
16 is stipulated, then the witness typically does not have  
17 to appear, barring any other questions from the bench,  
18 and then the witness' testimony would not be subject to  
19 cross-examination.

20                 So I take it that none of the witnesses will  
21 be stipulated here, and I think Mr. Rehwinkel might want  
22 to add to that.

23                 Mr. Rehwinkel.

24          **MR. REHWINKEL:** I just had one question, and  
25 just for edification of the other parties, I think that

1 it would also include staff exhibits that were related  
2 to that witness if it were so done.

3 **COMMISSIONER SKOP:** Right. Absolutely.

4 Like I say, I don't think we are going to have  
5 that luxury here because I think that each of the  
6 witnesses will be subject to cross-examination, but, you  
7 know, it's part of the process to try and encourage the  
8 parties to stipulate when, you know, consensus can be  
9 achieved as to witnesses that are not in dispute or the  
10 testimony is not in dispute.

11 **MS. KLANCKE:** Commissioner.

12 **COMMISSIONER SKOP:** Ms. Klancke.

13 **MS. KLANCKE:** To the extent that anyone should  
14 wish to stipulate to a witness after the prehearing  
15 conference, please work with staff -- and by staff I  
16 mean me -- to afford us with knowledge of any  
17 stipulations, even possible stipulations on behalf of  
18 your representative entities.

19 **COMMISSIONER SKOP:** Okay. And that is the  
20 point I was going to raise next. In light of the  
21 contentious nature of this procedural posture that we  
22 are in, it is probably unlikely that we will get those  
23 stipulations, but if the parties are able to come to  
24 consensus, please let our legal staff know so that we  
25 can address that and expedite the hearing process.

1           Okay. Any other concerns on Issue VI, the  
2 order of witnesses before we move on? Okay.

3           Hearing none, let's move to Section VII, Basic  
4 Positions. Any concerns there?

5           Mr. Rehwinkel, you're recognized.

6           **MR. REHWINKEL:** Yes. Commissioner, the Public  
7 Counsel has one small modification to make to its basic  
8 position. I'll be happy to read that into the record.

9           **COMMISSIONER SKOP:** That's fine.

10          **MR. REHWINKEL:** On the third to the last line  
11 in front of the word OPC, we would insert "pursuant to  
12 Section 350.0611(1), and Section 367.045(4), Florida  
13 Statutes,." That's all.

14          **COMMISSIONER SKOP:** All right. Thank you.  
15 Staff, did you receive that? Okay.

16          **MS. KLANCKE:** Yes. We'll follow up with the  
17 court reporter with respect to it.

18          **COMMISSIONER SKOP:** All right. So, basically,  
19 show the oral modification to Public Counsel's change in  
20 basic position on that specific point as noted for the  
21 record.

22          **MR. REHWINKEL:** Commissioner, any  
23 modifications we make to our positions we would be glad  
24 to provide them in word to the staff and other parties.

25          **COMMISSIONER SKOP:** Okay. In parallel, can

1 you please send a follow-up, either an e-mail or  
2 electronically to all the parties and to staff as to  
3 what the change in position was in addition to the oral  
4 modification that was just made.

5 Okay. Any other questions or concerns on  
6 Section VII, Basic Positions, before we move on? Okay.  
7 Hearing none, Section VIII, Issues and Positions. And  
8 if the parties wish to modify or edit their positions,  
9 can staff speak briefly to that, please?

10 **MS. KLANCKE:** Certainly. If the parties would  
11 like to edit their positions, staff would suggest that  
12 the parties be directed to work with staff so that their  
13 positions can be incorporated in the final prehearing  
14 order. This would be done by electronic mail, CCing all  
15 the parties.

16 **COMMISSIONER SKOP:** Okay. Great. And with  
17 respect to any possible stipulations, can staff speak to  
18 that issue, also?

19 **MS. KLANCKE:** With regard to any possible  
20 stipulations, staff would similarly reiterate that the  
21 parties please be proactive in working with staff so  
22 that any stipulations can be reflected in the final  
23 prehearing order that will be issued on the 30th.

24 **COMMISSIONER SKOP:** Great. Thank you. Any  
25 other additional concerns on Section VIII, Issues and

1 Positions, before we move on?

2 Mr. Rehwinkel.

3 **MR. REHWINKEL:** Commissioner Skop, as you may  
4 have noted in your review of the documents, and I think  
5 other parties are aware of it, the Public Counsel's  
6 position on several of these issues is no position at  
7 this time pending further development of the record.  
8 Public Counsel is well aware from our practice before  
9 the Commission that the Commission's prehearing  
10 procedures normally require a party to take a position  
11 by the conclusion of the prehearing conference or to,  
12 essentially, waive its position.

13 The modification we made to our prehearing,  
14 our basic position in this docket, cites the Public  
15 Counsel statute which allows the Public Counsel or  
16 empowers the Public Counsel to recommend to the  
17 Commission or the counties by petition, the commencement  
18 of any proceeding, or action, or to appear in the name  
19 of the state or its citizens in any proceeding or action  
20 before the Commission or the counties and urge therein  
21 any position which he or she deems to be in the public  
22 interest.

23 In that regard, and in regard to the Public  
24 Counsel's status set apart from customers in general in  
25 367.045, Public Counsel has taken a position to

1           intervene in this docket that is unusual in our history.  
2           We believe that this docket and the facts of this case  
3           warrant Public Counsel's participation and invocation of  
4           this section of 350.061. We would prefer to take this  
5           position and to use our position in the docket to help  
6           develop the record based on our view of the public  
7           interest. And I don't know if that's a problem with the  
8           Commission, or the staff, or the other parties, but that  
9           would be our preference to, in good faith, work with the  
10          limited posture of this office in this case at this  
11          time.

12                   **COMMISSIONER SKOP:** Okay. I'm not sure what  
13          the request was there in terms of the issues and  
14          positions, but maybe you can succinctly --

15                   **MR. REHWINKEL:** We would prefer to maintain  
16          our position of no position at this time pending further  
17          development of the record.

18                   **COMMISSIONER SKOP:** Okay. Any concerns from  
19          the parties?

20                   Mr. Wharton.

21                   **MR. WHARTON:** No.

22                   **COMMISSIONER SKOP:** Okay. All right.

23                   Mr. Hollimon?

24                   **MR. HOLLIMON:** No.

25                   **COMMISSIONER SKOP:** Mr. Kirk?

1           **MR. KIRK:** No.

2           **COMMISSIONER SKOP:** Let me see if we can get  
3 this right. Mr. McAteer.

4           **MR. MCATEER:** Commissioner Skop, Derrill  
5 McAteer.

6           **COMMISSIONER SKOP:** McAteer, I'm sorry.

7           **MR. MCATEER:** And I'm sorry if I'm out of  
8 order. In looking at the prehearing order, I noted  
9 there are a couple of statements in which it says that  
10 Brooksville has no position at this time. There are a  
11 couple of positions in which the City of Brooksville  
12 would simply like to adopt Hernando County's position on  
13 certain issues. I don't know if staff or Skyland would  
14 object to us doing that in this proceeding or how the  
15 best way is to go about doing that, but a couple of  
16 these we, basically, adopted them in our amended  
17 objection, and so we would like the prehearing order to  
18 reflect that.

19           **COMMISSIONER SKOP:** Okay. I will look to  
20 staff. And, staff, I think my understanding would be  
21 that certainly the City of Brooksville would be able to  
22 change their position subject to providing that  
23 electronically to staff and to all the parties in a  
24 timely basis, like, hopefully, by, you know, tonight or  
25 something so we can get it incorporated in the

1 prehearing order. But I don't see a problem with that,  
2 and I will look staff to confirm that and set some  
3 ground rules.

4 **MS. CRAWFORD:** That's correct. Jennifer  
5 Crawford for legal staff.

6 Yes, certainly, and I believe it was discussed  
7 earlier today in the prehearing conference if parties  
8 have changes to their positions, we would urge them to  
9 provide them to us expeditiously so they can be  
10 incorporated in the prehearing order.

11 May I make a comment with regard to OPC's  
12 request?

13 **COMMISSIONER SKOP:** You may. And then if  
14 staff could also refresh my memory on what day it is  
15 expected the prehearing order will be issued. Is that  
16 going to be tomorrow or the following day?

17 **MS. KLANCKE:** The prehearing order is  
18 scheduled to be filed on the 30th.

19 **COMMISSIONER SKOP:** Okay. That is?

20 **MS. KLANCKE:** Wednesday.

21 **COMMISSIONER SKOP:** Wednesday. Okay. Will it  
22 be a hardship on staff if any changes come in by noon  
23 tomorrow?

24 **MS. KLANCKE:** Noon tomorrow.

25 **COMMISSIONER SKOP:** Okay. So that's going to



1 be my ruling on any changes with respect to issues and  
2 positions would be submitted to staff and the parties by  
3 noon tomorrow.

4 Ms. Crawford, if you want to speak briefly to  
5 Public Counsel's --

6 **MS. CRAWFORD:** Thank you, sir.

7 Just briefly, and it's just really more for  
8 clarification of the record. The OEP says that if the  
9 Prehearing Officer finds that a party has acted  
10 diligently in good faith to take a position and further  
11 finds that the party's failure to take a position will  
12 not prejudice other parties or confuse the proceeding,  
13 the party may maintain no position at this time, so on  
14 and so forth.

15 While Public Counsel typically does -- is  
16 expected as all parties are to take a position or else  
17 to show good cause why they couldn't take a position at  
18 the time of the prehearing, if the parties are in  
19 agreement in this instance and have no objection, they  
20 do not indicate that they are prejudiced by Public  
21 Counsel doing so, staff certainly has no objection.

22 **COMMISSIONER KLEMENT:** All right. Thank you.  
23 Any additional concerns?

24 Mr. Kirk, you are recognized.

25 **MR. KIRK:** Commissioner, Hernando County is

1 willing to state for the record that we concur with the  
2 list of issues as drafted by PSC staff, and we do not  
3 intend to change any of our positions as stated in the  
4 proposed prehearing order.

5 **COMMISSIONER SKOP:** All right. Great. Thank  
6 you.

7 Mr. Rehwinkel.

8 **MR. REHWINKEL:** Yes, Commissioner, having  
9 asked, and I appreciate the accedence by all parties in  
10 our request, we will endeavor to try to flesh out  
11 positions beyond what we have in here and submit those  
12 by the deadline. In fact, I do have two specific  
13 changes on Issues 10 and 13 that I can read, they are  
14 very short, that I can read to you at this time.

15 **COMMISSIONER SKOP:** Okay.

16 **MR. REHWINKEL:** And on Issue 10, we will take  
17 the position that we agree with Skyland on the -- our  
18 position is agree with Skyland. And on Issue 13 our  
19 position would be that we agree with Skyland, subject to  
20 verification of the correctness of the debt -- cost of  
21 debt, and I'll provide that electronically.

22 **COMMISSIONER SKOP:** Okay.

23 **MR. REHWINKEL:** And any of these other  
24 positions we will provide electronically.

25 **COMMISSIONER SKOP:** All right. Any other

1 concerns on Section VII, Issues and Positions? Okay.  
2 Hearing none, the ruling is going to be that any changes  
3 to the issues and positions need to be submitted  
4 electronically to the parties and staff by close -- by  
5 noon tomorrow to afford staff appropriate time to  
6 incorporate those into the prehearing order before it's  
7 issued. I think that will accommodate some of the  
8 concerns I have heard here today, as well as giving  
9 staff the opportunity to cut and paste those things that  
10 have been stated orally on the record.

11 Any concerns before I move forward? Okay.  
12 Hearing none, we will move on to Section IX, the  
13 Exhibits List. And, staff, any concerns there?

14 **MS. KLANCKE:** Staff has received some  
15 stipulations from the parties with respect to the  
16 exhibit list both as a predicate to this prehearing  
17 conference and in discussions with the parties at the  
18 prehearing conference. Staff encourages and reiterates  
19 that we encourage the stipulation of exhibits for the  
20 correctness and fullness of the record and the  
21 expediency of the hearing. And we encourage you during  
22 the period following the prehearing conference prior to  
23 the hearing to work with staff in order to reach  
24 stipulations with respect to those exhibits.

25 **COMMISSIONER SKOP:** Okay. Any concerns from

1 the parties on Section IX, Exhibits List?

2 Mr. Rehwinkel.

3 **MR. REHWINKEL:** Commissioner Skop, I just want  
4 to state for the record that the Public Counsel's Office  
5 will not participate in these stipulations, so it would  
6 be one of those stipulations where we don't -- we won't  
7 hinder the parties who have the documents that are  
8 offering them. We will not be a part of that, but we  
9 will not be in the way, either.

10 **COMMISSIONER SKOP:** Okay. Great. Any other  
11 concerns from the parties?

12 Mr. Hollimon.

13 **MR. HOLLIMON:** Yes. Skyland has committed to  
14 providing discovery responses by the close of business  
15 on Wednesday. I note that a lot of discovery responses  
16 are included in the exhibits, and so I just was curious  
17 as to whether it's staff's intention to include those,  
18 as well.

19 **COMMISSIONER SKOP:** Staff, can you speak to  
20 that? And also, too, how that may affect a change of  
21 position if it is due by noon tomorrow?

22 **MS. KLANCKE:** May we have a moment to confer?

23 **COMMISSIONER SKOP:** Yes, you may.

24 (Off the record.)

25 **COMMISSIONER SKOP:** Okay. We're ready to go

1 back on the record.

2 Staff, you're recognized.

3 **MS. KLANCKE:** At this time, staff would like  
4 to request the opportunity to review the responses  
5 before we make any determinations with respect to their  
6 inclusion or non-inclusion in Staff's Comprehensive  
7 Exhibit List.

8 **COMMISSIONER SKOP:** Okay. Mr. Hollimon,  
9 you're recognized. Microphone, Mr. Hollimon.

10 **MR. HOLLIMON:** I just want to make sure that I  
11 have preserved my right to object or not as appropriate,  
12 depending on what is produced.

13 **COMMISSIONER SKOP:** Staff.

14 **MS. KLANCKE:** Absolutely. Your ability to  
15 object is preserved under the process we have just  
16 discussed.

17 **COMMISSIONER SKOP:** Okay. All right. So any  
18 other concerns on Section IX, the Exhibits List?  
19 Hearing none, again, I would -- as articulated by staff,  
20 I would encourage the parties to try and achieve  
21 stipulation and work in good faith to resolve  
22 differences where it is possible to do so. Certainly,  
23 the administrative proceeding is a little bit less  
24 formal setting than a full-blown court, and, you know,  
25 we try to avoid, you know, trial by surprise. We want

1 to address each of the parties' concerns, but we want to  
2 do so in a collegial disciplined manner.

3 So, again, if there are areas where the  
4 parties can reach consensus, as we were able to do here  
5 in part today, I certainly encourage the parties as the  
6 prehearing officer to try and do that where it's  
7 appropriate for each of the respective clients to do so.

8 Okay. That takes us to Section X, Proposed  
9 Stipulations. And, staff, I believe there is no -- some  
10 stipulations, but not others. So there is still room  
11 for improvement if the parties are able to come  
12 together, is that correct?

13 **MS. KLANCKE:** That is correct.

14 **COMMISSIONER SKOP:** All right. Any other  
15 concerns on Section X, Proposed Stipulations? All  
16 right. Hearing none, that takes us to Section XI,  
17 Pending Motions. And, Staff, could you briefly  
18 articulate the outstanding motions and the disposition  
19 of those motions?

20 **MS. KLANCKE:** As we have discussed here today,  
21 Pasco County's motion to strike filed on June 14th has  
22 been denied by the prehearing officer.

23 **COMMISSIONER SKOP:** All right. And that will  
24 be followed by an order.

25 **MS. KLANCKE:** To be issued at a later date

1 prior to the hearing.

2 **COMMISSIONER SKOP:** All right. Great. Thank  
3 you.

4 **MS. KLANCKE:** In addition, Hernando County's  
5 request as specified in its prehearing statement has  
6 also been denied.

7 **COMMISSIONER SKOP:** That will be a forthcoming  
8 order, also.

9 **MS. KLANCKE:** Absolutely.

10 As we have discussed, pursuant to and  
11 following the break and the conference by the parties,  
12 Pasco County's motion to compel will be -- pursuant to  
13 the agreement discussed on the record herein, will be  
14 withdrawn once the agreement has been satisfied, the  
15 documents have been provided, and all the terms have  
16 been satisfied on Wednesday, the 30th.

17 With respect to Pasco County's motion to  
18 strike filed on June 25th, 2010, Skyland has been  
19 afforded until July 2nd in order to respond. Once that  
20 period for response has terminated, the Commission will  
21 issue an order with respect to our findings as to that  
22 motion.

23 **COMMISSIONER SKOP:** And that is by close of  
24 business on July 2nd, 5:00 p.m., correct?

25 **MS. KLANCKE:** That is correct. Similarly,

1 Hernando County's motion to withdraw Paul Wieczorek as a  
2 witness filed on June 25th will also -- we have  
3 determined that we will also afford Skyland with the  
4 opportunity to respond to that motion by the close of  
5 business on July 2nd, whereupon the motion will be  
6 resolved by a separate order issued after that time.

7 **COMMISSIONER SKOP:** All right. Thank you.

8 Any concerns from the parties with respect to  
9 the pending motions and the disposition thereof? All  
10 right. Hearing none, that takes us to Section XII,  
11 Pending Confidentiality Motions. Staff.

12 **MS. KLANCKE:** There are no pending  
13 confidentiality matters at this time.

14 **COMMISSIONER SKOP:** Okay. Any other concerns  
15 on Section XII, Pending Confidentiality Motions?

16 Hearing none, that takes us to Section XIII,  
17 Post-Hearing Procedures. And I just want to speak to  
18 the parties as to the number of words that they may  
19 require in the post-hearing positions. Fifty words is  
20 typically provided, and the number of pages in the  
21 post-hearing briefs, 40 is typically provided. So  
22 that's my intended ruling unless there is concern from  
23 the parties in which we will have a discussion. Okay.

24 Mr. Rehwinkel, any concerns there?

25 **MR. REHWINKEL:** No.



1                   **COMMISSIONER SKOP:** Okay. All right.

2                   Hearing none, no concerns from the parties,  
3 post-hearing positions will be limited to 50 words and  
4 the number of pages in post-hearing briefs will be  
5 limited to 40 pages.

6                   Okay. Section XV -- actually, Section XIV,  
7 Rulings. Staff, any other matters on Section XIV that  
8 we need to address?

9                   **MS. KLANCKE:** Yes. Staff would suggest that  
10 the prehearing officer make a ruling that opening  
11 statements, if any, should not exceed ten minutes.

12                   **COMMISSIONER SKOP:** Okay. Now, we do have  
13 different intervening parties. They are not joint, so  
14 what does staff recommend or what has been the  
15 Commission's consistent practice? Let's use a rate case  
16 for example. We are in the same situation as to  
17 affording time to the parties.

18                   **MS. KLANCKE:** I believe that, as you have  
19 said, the parties in the instant case are individually  
20 represented entities and thus should be afforded each an  
21 opportunity, a certain temporal scope with which to  
22 provide opening statements.

23                   **COMMISSIONER SKOP:** All right. So, basically,  
24 we will have opening statements from Skyland, basically  
25 one from Pasco County, one from Hernando County, one

1 from the City of Brooksville, and one from Public  
2 Counsel.

3 Mr. Wharton, in terms of ten minutes, again,  
4 the other side, if I do my math correctly, is going to  
5 get 30 and Public Counsel is going to get ten. Is ten  
6 minutes going to be adequate or do you need a little bit  
7 longer period for an opening statement?

8 **MR. WHARTON:** Thank you. I will try to keep  
9 it under ten.

10 **COMMISSIONER SKOP:** Okay. Great. Excellent.  
11 Okay. Mr. Kirk, you're recognized.

12 **MR. KIRK:** Commissioner, under rulings if you  
13 would note that -- I don't think it was addressed by  
14 staff, but Hernando County did request certain  
15 post-hearing procedures which was ruled on and denied,  
16 so maybe that could be referenced in their prehearing  
17 order.

18 **COMMISSIONER SKOP:** Okay. Staff, can you  
19 address the denial of Hernando County's proposed order  
20 that was denied? I think that is what Mr. Kirk is  
21 speaking to. Am I correct, Mr. Kirk, under Rulings?

22 **MR. KIRK:** Yes.

23 **MS. KLANCKE:** As we stated previously, we are  
24 going to issue a separate order which is reflecting the  
25 denial of that request.

1           **COMMISSIONER SKOP:** Okay.

2           **MS. KLANCKE:** So, therefore, the necessity of  
3 including it in the post-hearing procedures is not  
4 required.

5           **COMMISSIONER SKOP:** Mr. Kirk, is that --

6           **MR. KIRK:** That's satisfactory.

7           **COMMISSIONER SKOP:** Okay. Great. Thank you.

8           All right. So with respect to the outstanding  
9 motions, again, they will be followed up by a formal  
10 written order at the appropriate time, and I think that  
11 should address those concerns.

12           All right. So based on the -- hearing from  
13 the parties, each party will be afforded ten minutes for  
14 opening statements. Skyland is going to get ten  
15 minutes, Pasco will get ten minutes, Hernando County  
16 will get ten minutes, the City of Brooksville will get  
17 ten minutes, Public Counsel will be afforded ten  
18 minutes, and Mr. Wharton said he was okay with that. So  
19 that's my ruling on that particular issue. Opening  
20 statements will be limited to ten minutes per party.

21           Okay. Staff, any other additional matters  
22 that we need to address in the prehearing conference?

23           **MS. KLANCKE:** Just one. Staff would request  
24 and reiterate that for the clarity of the record, to the  
25 extent that any of the parties have taken no position or

1 wish to change their position to be proactive about  
2 providing me this evening and tomorrow morning any  
3 changes to their positions that they have. As ruled on  
4 by the prehearing officer, you have until noon tomorrow,  
5 Tuesday, the 29th, in which to provide those positions.

6 **COMMISSIONER SKOP:** Thank you.

7 Is that going to provide a hardship to any of  
8 the parties or do we think we can get that done by noon  
9 tomorrow?

10 Mr. Rehwinkel.

11 **MR. REHWINKEL:** That will be fine. We  
12 probably will have the most significant changes, and we  
13 will be -- that will be fine.

14 **COMMISSIONER SKOP:** Okay. Mr. Wharton, fine  
15 with that?

16 **MR. WHARTON:** Fine.

17 **COMMISSIONER SKOP:** Okay. Mr. Hollimon?

18 **MR. HOLLIMON:** Yes.

19 **COMMISSIONER SKOP:** Mr. Kirk?

20 **MR. KIRK:** Yes.

21 **COMMISSIONER SKOP:** Okay. Mr. McAteer? Did I  
22 get it right? I'm trying. Help me out.

23 **MR. MCATEER:** That's okay.

24 **COMMISSIONER SKOP:** No, I don't want to  
25 butcher your name. McAteer?

1           **MR. MCATEER:** I'm three and half decades of  
2 that getting butchered, so don't worry about it.

3           **COMMISSIONER SKOP:** Okay. Say it for me one  
4 more time.

5           **MR. MCATEER:** McAteer.

6           **COMMISSIONER SKOP:** McAteer, sorry.

7           **MR. MCATEER:** The City of Brooksville, the  
8 only amendments we are going to have is simply adoption  
9 of Hernando County's position, because the statement  
10 currently states that we don't have a position on  
11 certain issues, not all of them, but on a few of the  
12 issues that are relevant to the City. So it will be a  
13 very easy amendment for staff to incorporate.

14           **COMMISSIONER SKOP:** All right. Thank you,  
15 Mr. McAteer. I got it right that time.

16           All right. Any other matters that we need to  
17 address before we adjourn.

18           Staff.

19           **MS. KLANCKE:** It has come to my attention that  
20 there is one additional matter from Skyland.

21           **COMMISSIONER SKOP:** Mr. Wharton.

22           **MR. WHARTON:** The prehearing order asked that  
23 demonstratives be produced. We brought three copies,  
24 which are essentially small versions of demonstratives  
25 we might use. I understand there might be objections at

1 the time, but we will hand them out to the parties  
2 today.

3 **COMMISSIONER SKOP:** Okay. Can we do that, I  
4 guess, by virtue of the order establishing procedure  
5 that they need to provide those demonstratives for  
6 review by the opposing parties no later than the  
7 prehearing conference subject to objection  
8 contemporaneously at hearing. Is that correct, staff?

9 **MS. KLANCKE:** That is correct. Staff would  
10 like to note for the purpose of the parties that they --  
11 at the time that the demonstrative exhibits are raised  
12 at the hearing, the parties will be afforded the  
13 opportunity to object and raise their issues at that  
14 time.

15 **COMMISSIONER SKOP:** Okay. So, Mr. Hollimon,  
16 Mr. Kirk, and Mr. McAteer --

17 **MR. MCATEER:** McAteer.

18 **COMMISSIONER SKOP:** Okay. Thank you. That  
19 one is hard for me. It seems so easy, but I'm reading  
20 it wrong. All right. So, Mr. McAteer, you fully  
21 understand that, and, basically, it's my understanding  
22 that Mr. Wharton will provide you with the proposed  
23 demonstrative exhibits, subject to your contemporaneous  
24 objection at hearing, if you have any, to the use of  
25 those exhibits. So we are all on the same page on that

1 one? Okay. Great.

2 All right. Staff, any other additional  
3 matters or do the parties have any additional concerns  
4 before we conclude?

5 **MS. KLANCKE:** None that I'm aware of.

6 **COMMISSIONER SKOP:** Okay. Mr. Rehwinkel, is  
7 there anything else that we need to discuss?

8 **MR. REHWINKEL:** No, sir.

9 **COMMISSIONER SKOP:** Okay. All right. Hearing  
10 none from the parties, at this point we will stand  
11 adjourned. Thank you.

12 (The Prehearing Conference concluded at 4:56  
13 p.m.)

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STATE OF FLORIDA )

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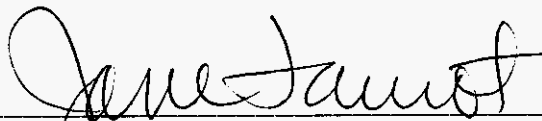
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 1st day of July, 2010.



JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
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