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090478-WS

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**Sent:** Friday, October 15, 2010 4:58 PM  
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**Cc:** REILLY.STEVE; Charles Rehwinkel  
**Subject:** 090478-WS OPC's Post-Hearing Statement of Positions and Post-Hearing Brief  
**Attachments:** 090478 OPC's Post Hearing Statement of Positions and Post Hearing Brief FINAL.docx; 090478-WS OPC's Post-Hearing Statement of Positions and Post-Hearing Brief.pdf

Electronic Filing

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b. Docket No. 090478-WS

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

c. Documents being filed on behalf of Office of Public Counsel

d. There are a total of 23 pages.

e. The documents attached for electronic filing are (090478-WS OPC's Post-Hearing Statement of Positions and Post-Hearing Brief).

Thank you for your attention and cooperation to this request.

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

DOCKET NO.: 090478-WS

FILED: October 15, 2010

**CITIZENS' POST-HEARING STATEMENT OF POSITIONS  
AND POST-HEARING BRIEF**

Pursuant to Order No. PSC-10-0422-PHO-WS, issued July 1, 2010, the Citizens of the State of Florida, by and through the Office of Public Counsel ("OPC"), hereby submit their Post-Hearing Statement of Positions and Post-Hearing Brief. Herein, "EPI" refers to Evans Properties, Inc., "Skyland" refers to Skyland Utilities, Inc., "Pasco" refers to Pasco County and "Hernando" refers to Hernando County.

**OVERALL STATEMENT, ARGUMENT AND RECOMMENDATION**

The OPC offers no opinion in this case regarding the ultimate determination whether granting the certificates for the proposed territories is affirmatively in the public interest. Rather, in this post hearing filing, the OPC offers its observations, suggestions and recommendations about the facts of this case and the potential impact on customers of the Skyland application. The OPC's recommendation on the scope of certification is made in the event the Commission decides, based on the record, to grant the application.

At the outset, the OPC states that it respects EPI's property rights and its desire and rights to use its own property to the highest and best use. The OPC recognizes that the Company submits this certification proposal in good faith based on its corporate needs and what is in its

corporate best interest. OPC's limited participation in this case is consistent with its statutory authorization, pursuant to Sections 350.0611 and 367.045(4), Florida Statutes, to make recommendations to the Commission regarding the public interest in matters like this. The OPC agrees with EPI and Skyland CEO Ron Edwards that what is in the public interest encompasses more than what is in the private corporate interests of EPI. T. 853. Our recommendations are made consistent with that belief and the Public Counsel's statutory mandate.

The OPC offers its recommendation based on several observations. First, the observations:

- a. Skyland's proposed certificated area is relatively highly dispersed over a fairly large geographic area in two counties – one of which is not jurisdictional. Ex. 42.
- b. Skyland's lone request for service appears to be in Pasco County and does not appear to be in the first two development phases. Ex. 42, T. 852.
- c. There is no pending request for service in Hernando County. T. 852.
- d. The overall Skyland application is vague on details and appears to contain information calculated to meet minimum certification, rather than represent a concrete comprehensive commitment to provide service in defined developments.

- e. Rates are calculated in a way that may not include all of the reasonable and realistic costs that would be expected if service is to be provided without subsidy from EPI. T. 108-113, 116, 118, 656-657.
  
- f. Service from either Pasco County or Hernando County would be at a significantly lower monthly cost than even Skyland's artificially low rates by almost half. T. 107, 266, 377.
  
- g. Crucial arrangements regarding access to land, water, funding, electric service, and rights-of-way and interconnection corridors are either incomplete, speculative or of such a tenuous or illusory nature as to give the Commission little more than a speculative basis upon which to make decisions affecting rates future customers would pay.

Based upon the forgoing, OPC offers the following alternative recommendations:

1. That the Commission should limit the grant of any water certificate to the largest piece of monolithic property in the requested area -- namely parcels 3, 7A, 7B, 7C, 9 & 11 (Parcels 12A & 12B are not contiguous) -- lying wholly within Pasco County. Ex. 43.

2. That the Commission should further limit the granting of a wastewater certificate to the smallest parcel where service is being requested within Parcel 9. This would be consistent with the *Silver Lakes Utilities* case (*supra*) and perhaps more in line with limiting the proliferation of uneconomic septic tank or package plant based central wastewater service;
3. That, if it grants the application in part or in whole, the Commission refrain from setting rates for future unrelated customers at this time, but authorize EPI/Skyland to charge rates to itself at the pending service request location (if necessary) until such time that EPI decides to serve customers who are not affiliated with itself. The Commission should require the Company to file -- in the undefined future point in time -- for realistic rates based on a more defined, known and measurable cost structure, once actual development plans actually appear to be more imminent; and
4. That the Commission should also require more certainty and definition to be provided by Skyland (and or future applicants) with respect to:
  - Rates/cost structure.
  - Guaranteed access to a permanent and reasonable cost water supply.
  - Dependable and permanent access to land containing the central utility facilities upon which future unrelated customers would be paying the true cost of service.

- Reasonable, realistic and binding access to financial resources.

### ARGUMENT

To the extent the OPC has concerns, they relate to the expansive scope of the application regarding the geographic dispersion of the requested certification of territories and the resulting impact on customers. Under these circumstances, the OPC believes there is good reason for the Commission to take a cautious approach in considering whether to grant the application either in part or as filed. Limiting the grant of the certificate to a more discrete area and refraining from setting rates may benefit future customers by avoiding saddling them with rates that will most likely increase in the future beyond their reasonable expectations.

Pursuant to Section 350.0611, Florida Statutes, the Public Counsel is entrusted with the following power and duty:

To...appear, in the name of the state or its Citizens, in any proceeding or action before the Commission or the counties and urge therein any position which he or she deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the Commission or the counties...

Furthermore, through Section 367.045(4), Florida Statutes, the Legislature established a role in certification cases for Public Counsel, separate and apart from existing and substantially affected customers, and envisioned a role for the OPC in certification cases -- where no customers exist.

Consistent with these statutory provisions, the OPC intervened in an original certificate case for the first time in recent memory (if not ever) and participated in the hearing. In its roles as set out by the Legislature, the OPC has developed an alternative recommendation on the overall consideration of the Skyland application.

From the OPC's perspective it is important to point out that the Skyland application presents a case of first impression on the basic fact scenario. In our view this gives rise to the need for a measured, cautious approach that balances the rights of EPI, the interests of the local governments and the interests of the consuming and ratepaying public. One could argue that the interests of future ratepayers are *the* most important consideration.

The OPC acknowledges that Evans Properties' expressed intent to develop its own land as it transitions out of a downturn in the citrus industry seems sincere. This is not being questioned. Rather, the OPC questions the parent guarantees associated with the provision of service combined with the family-owned nature of the EPI business and, importantly the scattered nature of 8 separate raw land parcels of approximately 4,100 acres scattered over a 45 square mile area. Based on the scale of "one inch equals 6,500 linear feet" shown on Ex. 42, the 3.5 inch by 8.5 inch rectangular area containing the 8 distinct parcels equates to a 4.3 mile by 10.4 mile rectangular area of approximately 45 square miles. At a ratio of 640 acres per square mile, the 4,089 acres shown in the legend on Exh. 42, divided by the 28,800 acres in the 45 square miles yields a density of 14.2%. Some of the parcels are miles apart. T.668. This is hardly the scenario in the cases cited by Skyland supporting the avoidance of "carving up a vast tract of land." T. 662.

The fundamental concern of the OPC is that EPI, with the best of honorable intentions will create a monopoly service area authorized to provide monopoly utility services in uneconomically configured raw land parcels that may not be sustainably and realistically priced. True, this is not a certainty; however, it is a very real possibility and no less speculative than the potentialities and assumptions offered by EPI to justify its proposal.

The core issue from the future customers' public interest perspective is whether unrelated third party purchases of residences will be receiving utility services that would be better provided by others at a lower price (T.107, 266, 377) or that will be provided by a utility that may be divested when EPI-provided subsidies are removed. If this happens, a new owner would likely be entitled to seek higher, compensatory rates based on the more realistic cost of service.

It should be acknowledged that OPC's concerns about what may happen in the future are speculation to some degree. But, again, as the testimony has shown, EPI's plans for the proposed service territory are no less speculative – and in some respects even more speculative than the OPC's contentions. For instance, the Skyland application raises concerns about the speculative nature of the filing with regard to:

1. Whether a true need for central services exists beyond the obviously superficial, straw-man service “need” at a house and barn that clearly were built and occurred with a belief that well/septic service was sufficient for the needs of the occupant. Exh.15, p. 41.



2. Whether EPI will transfer irrevocable, dependable and reasonably priced rights to access water to the utility or whether Skyland will be allowed to acquire its own water rights. Testimony at hearing was coy at best and non-committal at worst. T.608, 713-714.
3. Whether EPI will maintain its business plan as described in the filing (T. 819-820, 859-860) or, as a family-owned business, whether subsequent generations of the family-owned business will divest assets and/or change the business plan -- as was acknowledged could happen. T. 860.
4. Whether the lease, funding and royalty arrangements that are important parts of the Utility's cost components that will be maintained. Uncontroverted testimony by EPI president Edwards indicated that the Company had recently divested itself of 1,700 acres of land for \$52.5 million.T.864. Furthermore, the Company's overall witness – Mr. Hartman also disclosed that the Company is actively considering divesting assets. Ex. 15, 128. Mr. Edwards acknowledged that the lease, signed by himself , as both lessor and lessee could be amended as to price in at least four instances. T. 870, Ex. 46. He also acknowledged that it could be unilaterally abrogated by EPI. T. 875. The same illusory status exists for the funding agreement.

As stated in its opening statement, the OPC has at least a theoretical concern about certification of a utility in a geographically dispersed configuration. The OPC's recommended approach will not be inconsistent with the "checkerboard" uniform, multi-county certificate cases pointed to in the testimony of Skyland witness Hartman (*Aqua America* and *Utilities Inc*) T.

662-667. Those cases deal with existing, operating systems with known customers, known operating costs and known rate base. The cases involve after-the-fact consolidation of existing systems. In those cases there is no central issue regarding the landowner's desire to maintain the control of large, dispersed raw land tracts. In fact, there appears to be no common utility and developer ownership in the latter cited cases. T.666-667.

This OPC-recommended approach for Skyland would also avoid the potential hazards of bootstrapping non-jurisdictional Hernando County into FPSC jurisdiction with no pending requests for service in Hernando and no realistic scheme for interconnection based solely on the scant allegation of a need for service many years hence. It appears obvious on its face on Ex. 42 that development of the eight separate parcels is not logically or geographically related to the efficient or cost-effective development of a utility system/infrastructure.

The bottom line recommendation for OPC is that the Commission should move cautiously and refrain from creating troubling precedent based on the facts of this case. Clearly, uneconomical service in a sprawling, scattered, disjointed "checkerboard" combination of service territories should not be encouraged. The ECFS, Farmton, Silver Lakes and Town and Country cases do not support full certification of all eight parcels dispersed across Pasco and Hernando Counties. The Commission should exercise restraint and avoid fostering the deployment of uneconomical utility infrastructure that holds a very real risk of coming back to haunt customers, regulators and local governments in the form of service problems and higher costs and rates.

Perhaps the greatest need for caution is the situation where Skyland seeks to certificate eight non-contiguous raw land parcels dispersed over two counties with a very tenuous, far off request for service in only one county. The OPC is concerned that the lack of contiguity could create a slippery slope with no clear line of demarcation as to widely flung parcels under common ownership at the time of certification. This would create enormous potential for uneconomic development of utility infrastructure post certification, when circumstances change. This in turn translates into the central concern for the OPC – namely costly rates and potential for poor service in the future.

Limiting the grant of water certification to the largest contiguous land parcels would be in-line with the theory that some level of certification might be appropriate consistent with the cases of ECFS, (*In Re: Application of East Central Florida Services, Inc., for an Original Certificate in Brevard, Orange and Osceola Counties*, Docket No. 910114-WU, Order No. PSC-92-0104-FOF-WU, Issued May 27, 1992) and Farmton (*Re: Farmton Water Resources LLC*, Docket No. 021256-WU, Order No. PSC-04-0980-FOF-WU, Issued October 8, 2004), as well as the similar cases of Silver Lake Utilities (*In Re: Application for Certificates to Provide Water and Wastewater Service in Glades County and in Highlands County by Silver Lakes Utilities, Inc.*, 060726-WS, Order No. PSC-07-0717-WS, Issued September 4, 2007) and Town and Country Utilities (*In re: Application for certificate to operate a water utility in Charlotte and Lee Counties, by Town and Country Utilities*, Docket 981288-WU, Order No. PSC-99-2198-WU, Issued November 8, 1999) cases (which were not cited by the company, but which are very similar to the ECFS and Farmton cases in that they involve the Commission certifying large essentially monolithic parcels in multiple counties so as to avoid breaking up or

carving up” into multiple regulatory jurisdictions an applicants’ raw, undeveloped land.) See also, Edwards testimony at T. 905-906. *Silver Lakes Utilities* also supports limiting the grant of wastewater service to an even smaller parcel (which is the smallest discrete parcel where Skyland has identified an actual request for service). This narrow request is what was requested by Lykes Brothers in *Silver Lakes Utilities*. The OPC submits that such a restriction would be in the public interest in that it would not require rates to be set based on the uneconomic dispersion of more capital intensive wastewater plant or relatively temporary interim plants such as those proposed by Skyland in the application.

The OPC is aware of other utilities which have experienced service quality and financial resource deficiencies once the original developer sells off or abandons the utility, leaving the customers vulnerable to unanticipated increases in their bills once the cost of neglect is factored in or developer subsidies are removed from the Utility’s cost structure. The OPC’s fundamental concern is that future unrelated residential customers especially be protected from unanticipated cost increases after they have invested in a home based on an assumed cost structure.

An illustrative example is offered by the OPC in support of the OPC’s urge for caution. Historically throughout Florida many water and wastewater systems were constructed and operated to serve small and medium sized mobile home parks. While the mobile homes in the parks were being purchased, the cost of water and wastewater service was non-specifically included in the monthly rent for the lots. The initial cost of receiving water and wastewater services was not a material consideration in the decision to purchase the mobile homes or live in the parks.

However, after all of the mobile homes were purchased and the park owners elected to divest their ownership of the water and wastewater systems, the cost of receiving these services skyrocketed. Many of these parks have water and wastewater costs being imposed upon elderly customers with limited and fixed incomes. The high water and wastewater costs, which in some cases exceed the customers' electric bills, have resulted in reducing demand for people to purchase mobile homes and live in these parks. This reduced demand has depressed the resale value of the mobile homes in many of these parks.

The final orders from the dockets addressing Labrador Utilities is illustrative of this situation, which has occurred throughout Florida. In 2001, when Labrador sought certificates from the Commission to operate its water and wastewater systems, its estimated gross revenue from its then unauthorized but specified flat fees was \$193,000 annually. A short eight years later, in October 2009, and after the sale of the utility to Utilities, Inc. of Florida, the gross revenues of the Utility have increased 391%, forcing customers who are often limited income seniors to pay approximately \$80.00 monthly for 3,000 gallons of water and wastewater service. See Docket Nos. 000545-WS, 020484-WS, 030443-WS, 060262-WS and 086249-WS.

This scenario, while not exactly like the Skyland situation illustrates the potential harm that can occur when a developer owns the land and the utility and assumptions change after the passage of time. While we understand that EPI and Skyland have no intention of creating such a situation, it can happen – especially if the initial rates are high already and do not include all of

the costs that will ultimately required. The OPC expresses a concern that the uneconomic dispersion of the properties also exacerbates the potential for this to occur.

Specifically, regarding Skyland, the OPC's areas of concern that support careful and cautious consideration are:

1. Skyland proposes monthly rates which are much higher (as much as 2 times) than Pasco or Hernando Counties' monthly recurring rates. T.107, 266, 377.
2. Rates and charges – though significantly higher than the potential Pasco and/or Hernando providers – still may not include all of the costs that will likely result from a reasonable level of build out and integration in and amongst the dispersed parcels, namely:
  - The cost of acquiring right of way for parcel integration;
  - The cost of interconnection facilities;
  - The cost of electric facilities to serve the proposed theoretical utility sites;
  - Land Costs (if divested) to an unrelated party;
  - Water Costs (if divested) to an unrelated party;
  - CIAC designed to recover only 55% instead of 75% of allocable capital costs; and
  - Cost of capital (if divested) for an unrelated party utility owner.

Any or all of these costs, to the extent they are left out of the initial determination of rates would come to roost in the cost structure and rates by the time service actually is needed. These additional costs could be a trap for the unwary future customer of a

Skyland water or wastewater system who has invested life savings or assets into a home and is then stuck with spiraling utility rates. At this time, the request for service – to the extent it represents a true need – is found in Parcel 9 (T. 852) which would not be developed for at least 5 years.

3. Right to use the land is not sufficiently reliable for the needed certainty so essential in establishing rates. This certainty is needed so that customers will be aware of and must pay if the Utility is divested after customers buy lots or houses and before a future owner might request cost-based rates in a subsequent rate case. The purported lease document has many “outs” regarding pricing. T.870. The Company claims that the form and terms of the lease are based on an unnamed precedent and based on private discussions with staff. T. 872, 878-879. No citation or listing of these examples was provided. Furthermore, there was no rule waiver of Rule 25-30.033, F.A.C. that would allow the company to depart from the necessary proof of long-term access to the land underlying the utility facilities.
  
4. Access to water under the proposal is uncertain at best. Under lease, there are at least four ways to increase rates to benefit EPI in addition to its ability to unilaterally terminate at its discretion. T.870. Witness Hartman was very cryptic in his prefiled testimony and his response to questions seeking specifics on Skyland’s access to water. T. 608,713-714.

5. The purported funding agreement is little more than illusory. The document cannot be relied upon in any realistic way. There is no consideration given for the “commitments” contained therein. It is not enforceable in court. It doesn’t contain terms other than a vague commitment from the property owner who admitted that portions of the business are always for sale (T. 854, 876-880) and has a track a record of selling significant amounts of land. (T.864). The company admitted that sales or divestiture plans are being considered. Ex.15, p.128 Under these circumstances, there appears to be little likelihood that the funding agreement – such as it is – would have any meaning if the utility were to be divested and then to serve future customers utilizing realistic, arms-length costs of capital.
  
6. Skyland admitted that the lease and funding agreement were signed and submitted because other such documents in similar form and in similar certification cases had been submitted and had passed muster before. No further evidence or citation to past Commission cases was provided. Nevertheless, the fact that the terms of both documents could be unilaterally abrogated and were signed by the same person in both capacities (grantor/beneficiary; lessor/lessee) should be a cause for concern.
  
7. The Company tried to brush off the significance of any rate comparison by saying first, that Evans had agreed with itself that the rates were acceptable and second, that the rates were not uncommon in the state but no other comparison with other rates was provided. T. 649.



8. The counties testified as to either their willingness to serve the areas likely to receive customer growth when and if it comes or did state a lack of willingness to serve. T. 268, 378.
9. The package plant(s) that are proposed for service to the initial service location would be merely an enhanced septic tank and would not really even constitute central utility service by the Company's definition. Ex.15, p.125 Moreover, it is commonly accepted that installation of these types of wastewater plant are relatively interim measures that expose future customers to increases when they need to be replaced in a relatively short time or become inadequate to serve much, additional growth.

For all the above reasons, the OPC offers this alternative approach in its recommending role as contemplated by the applicable statutes. The Commission is urged to proceed cautiously and to **NOT** open the Pandora's box of the uneconomic establishment of monopoly service territories in far-flung checkerboard, raw land configurations. The slippery slope of multiple non-contiguous properties in 3, 4, 6, 7, 10 or more counties would be legally indistinguishable from the Skyland proposal. The only essential criteria that would have to be demonstrated would be common ownership of the far-flung, dispersed parcels and a single request for service on only one of the parcels in order to grant a single certificate covering all parcels, no matter how dispersed; thus potentially depriving a county of jurisdiction over the rates of a utility that might evolve on a separate parcel with no other relation to the one where service is being requested.

The OPC offers this alternative as a balance between protecting the rights of future, unsuspecting customers, protecting the interests of Skyland and EPI and the interests of local governments, while avoiding creation of a runaway precedent.

To this end and in summary, the OPC recommends:

1. That the Commission should limit the grant of any water certificate to the largest piece of monolithic property in the requested area -- namely parcels 3, 7A, 7B, 7C, 9 & 11 (Parcels 12A & 12B are not contiguous) – lying wholly within Pasco County. Ex. 43.
2. That the Commission should further limit the granting of a wastewater certificate to the smallest parcel where service is being requested within Parcel 9. This would be consistent with the *Silver Lakes Utilities* case (*supra*) and perhaps more in line with limiting the proliferation of uneconomic septic tank or package plant based central wastewater service;
3. That, if it grants the application in part or in whole, the Commission refrain from setting rates for future unrelated customers at this time, but authorize EPI/Skyland to charge rates to itself at the pending service request location (if necessary) until such time that EPI decides to serve customers who are not affiliated with itself. The Commission should require the Company to file – in the undefined future

point in time -- for realistic rates based on a more defined, known and measurable cost structure, once actual development plans actually appear to be more imminent; and

4. That the Commission should also require more certainty and definition to be provided by Skyland (and/or future applicants) with respect to:

- Rates/cost structure.
- Guaranteed access to a permanent and reasonable cost water supply.
- Dependable and permanent access to land containing the central utility facilities upon which future unrelated customers would be paying the true cost of service.
- Reasonable, realistic and binding access to financial resources.

### **SPECIFIC ISSUES**

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

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

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

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

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

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

**ARGUMENT**

Because the only request for service in the record is from Skyland's affiliate and based on the testimony from the president and the man most familiar with both the proposed utility and the EPI holdings that the only concrete "need" and request for service is in Parcel 9, which is slated for development no sooner than five years from now, the need for service is in doubt, based on the record through the time of the hearing. At this point, there is no demonstrated need for service in Hernando County, nor is there a basis for "bootstrapping the speculative need in Parcel 9, Phase 3 into a need for service in the far flung parcels in Hernando County, if at all. See, also OPC general argument and position *supra*.

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

\*Prefiled testimonies and other materials submitted so far by all the parties indicates that, at the present time, and as currently configured, the applicant may NOT have the financial ability and the near term commitment to serve the requested territories over the long term.\*

**ARGUMENT**

See, also OPC general argument and position *supra*.

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

\*Prefiled testimonies and other materials submitted so far by all the parties indicates that, at the present time, and as currently configured, the proposed utility may NOT have the ability to provide continued use of the land in the requested service territories that the applicant proposes to serve.\*

**ARGUMENT**

There was testimony that Skyland would convert the lease from a 20 year lease to a “99-year” lease. T.869. Though it sounds good, changing the number “20” to a “99” is a relatively insignificant event in light of the lack of permanence of the lease as well as the ability of EPI to modify the pricing every three years and modify it for other reasons apart from unilateral fiat by EPI. See, also OPC general argument and position *supra*.

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

\*It may not be in the public interest to grant the certificates to the full extent requested by Skyland in its application.\*

## ARGUMENT

See, also OPC general argument and position *supra*.

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

\*The Commission should not set rates or charges for service to unaffiliated customers of Skyland at this time.\*

## ARGUMENT

The Commission should consider refraining from setting rates and charges for future unrelated customers at this time, but authorize EPI/Skyland to charge rates to itself at the pending service request location (if necessary) until such time that EPI decides to serve customers who are not affiliated with itself. The Commission should require the Company to file – in the undefined future point in time -- for realistic rates based on a more defined, known and measurable cost structure, once actual development plans actually appear to be more imminent. See, also OPC general argument and position *supra*.

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

\*The Commission should not set rates or charges for service to unaffiliated customers of Skyland at this time.\*

**ARGUMENT**

See, issue 11 and also OPC general argument and position *supra*.

Respectfully submitted,

J.R. KELLY  
Public Counsel

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Attorneys for the Citizens  
of the State of Florida

**CERTIFICATE OF SERVICE**

**Dkt No. 090478-WS**

**I HEREBY CERTIFY** that a true and foregoing **CITIZEN'S POST HEARING STATEMENT OF POSITIONS AND POST HEARING BRIEF** has been furnished by electronic mail on this 15<sup>th</sup> day of October, 2010, to the following:

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