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**Sent:** Wednesday, September 14, 2011 2:58 PM  
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**Subject:** Docket No. 110022-WS - Equity LifeStyle Properties, Inc., HV Utility Systems, L.L.C. - Motion to Dismiss

**Attachments:** 3165\_001.pdf

**Docket No.:**

Docket No. 110022-WS – Application for certificate to operate water utility in Pasco County by Equity LifeStyle Properties, Inc., HV Utility Systems, L.L.C.

**Person Filing:**

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**Filed on behalf of:**

Equity LifeStyle Properties, Inc.

**Total number of pages:**

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**Description:**

Motion to Dismiss

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9/14/2011

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September 14, 2011

Ms. Ann Cole, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RE: Docket No. 110022-WS – Application for certificate to operate water utility in Pasco County by Equity LifeStyle Properties, Inc., HV Utility

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket is Equity LifeStyle Properties' Motion to Dismiss.

Thank you for your assistance with this filing and please do not hesitate to contact me if you have any questions.

Sincerely,

Michael G. Cooke

MGC:amb  
Enclosure

RM:810053:1

DOCUMENT NUMBER DATE  
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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

Application for certificate to operate water  
utility in Pasco County by HV Utility Systems,  
L.L.C.

Docket No. 110022-WS

Filed: September 14, 2011

**MOTION TO DISMISS**

Pursuant to Rule 28-106.204(2), Fla. Admin. Code, Equity LifeStyle Properties ("ELS"), by and through its counsel, hereby files<sup>1</sup> this Motion to Dismiss each Objection to the Proposed Utility and Petition For Formal Administrative Hearing ("Objections") filed on July 13, 2011, by, respectively, Pasco County ("County") and The City of New Port Richey ("City") (collectively, the "Joint Petitioners").<sup>2</sup> In support of this Motion, ELS states as follows:

**BACKGROUND**

1. ELS filed its Application for Certificate to Operate Water Utility ("Application") in Pasco County by HV Utility Systems, L.L.C., in this proceeding on January 7, 2011.

2. On June 10, 2011, in accordance with section 367.045(1)(a), Fla. Stat., ELS, forwarded by U.S. mail to both Pasco County and the City of New Port Richey a copy of the Notice of Application that had been approved for use by Commission staff. The notice was dated June 10, 2011, and it specifically stated that any objection must be filed with the Commission within thirty days from the date of the notice.

3. In addition, pursuant to 25-30.030, F.A.C., on June 11, 2011, ELS caused to be published in a newspaper of general circulation in the area served (the *Pasco Times*) a copy of the Notice of Application. The notice was dated June 11, 2011, and it specifically stated that any objection must be filed with the Commission within thirty days from the date of the notice.

4. Copies of the Affidavit of Mailing and Affidavit of Publication that were filed in this docket are attached as Exhibit A.

5. On July 13, 2011, the Joint Petitioners filed at the Commission Objections to the Application and requested an administrative hearing pursuant to sections 120.569 and 120.57, Fla. Stat.

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<sup>1</sup> Concurrent with the filing of this Motion, ELS has filed a second unopposed motion for an extension of time to file a motion to dismiss. ELS has requested that the deadline for filing its motion to dismiss be extended to December 15, 2011. ELS is filing the instant motion out of an abundance of caution, but requests that it not be acted upon until the second motion for extension of time has been ruled upon. If the motion for extension of time is granted, ELS will withdraw the instant motion to dismiss and will refile, as necessary, within the timeframe of any extension granted.

<sup>2</sup> The County and City each filed on its own behalf a separate Objection, but they are substantially similar and raise the same issues.

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6. On July 28, 2011, ELS filed an unopposed motion to extend the time to file a motion to dismiss from August 2, 2011, to September 15, 2011. On August 5, 2011, the Prehearing Officer granted ELS' motion for an extension of time to file its motion to dismiss until September 15, 2011.

7. Although the parties have met informally and are discussing potential resolution of the issues raised in the Objections, ELS does not want to be construed as having waived its right to file a motion to dismiss the Objection. Therefore, as noted in footnote 1, above, ELS has filed this motion as a precaution and requests that it not be acted upon until a ruling on the second motion for extension of time has been made.

**THE PETITIONS WERE NOT TIMELY FILED AND MUST BE DISMISSED**

As noted above, pursuant to 367.045, Fla. Stat., and 25-30.030, F.A.C., ELS mailed the Notice of Application to the Joint Petitioners and published the Notice of Application on June 10, 2011, and June 11, 2011, respectively. Section 367.045(3), Fla. Stat., states that:

If, within 30 days after the last day that notice was mailed or published by the applicant, whichever is later, the commission does not *receive* written objection to the notice, the commission may dispose of the application without hearing. (Emphasis added.)

Therefore, as provided in 367.045(3), Fla. Stat., the Joint Petitioners had until July 11, 2011, to file at the Commission an objection and request a hearing. The Joint Petitioners did not comply with this deadline.

Section 120.569(2)(c), Fla. Stat., which governs the right to an administrative hearing specifically provides that a "petition shall be dismissed if . . . it has been untimely filed." It has been held that an agency is required to dismiss the petition with prejudice if it is filed even one day late. *Cann v. Department of Children and Family Services*, 813 So.2d 237 (Fla. 2<sup>nd</sup> DCA 2002).

WHEREFORE, ELS respectfully requests that the Objections and requests for hearing be dismissed with prejudice.

DATED this 14<sup>th</sup> day of September, 2011.

By: s/ Michael G. Cooke  
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(Fla. Bar No. 0979457)  
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**CERTIFICATE OF SERVICE  
DOCKET NO. 110022-WS**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery and/or U.S. Mail this 14<sup>th</sup> day of September, 2011, to the following:

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