

**Ruth Nettles**

090093-WS

**From:** DAVIS.PHYLLIS [DAVIS.PHYLLIS@leg.state.fl.us]  
**Sent:** Friday, August 07, 2009 3:43 PM  
**To:** Erik Saylor; hh4925@verizon.net; utilityconsultant@yahoo.com; Filings@psc.state.fl.us  
**Subject:** 090093-WS Electronic Filing  
**Attachments:** Petition for Formal Hearing 08-07-09.docx

On behalf of Linda Doepker  
303 50<sup>th</sup> Avenue Plaza West  
Bradenton, Florida 34207  
(e-mail) Doecottage@aol.com  
Phone: (941) 753-7357

1. This filing is to be made in Docket Number: 0990093-WS, In Re: Application for approval of transfer of Keith & Clara Starkey d/b/a Heather Hills Estates' Water and Wastewater Utility, holder of Certificates 577-W and 498-S, to Heather Hills Estates Utilities, LLC, in Manatee County.
2. Attached for filing on behalf of Linda Doepker is Petition for Formal Hearing.
3. There are a total of seven (7) pages for filing.

DOCUMENT NUMBER-DATE

08189 AUG-7 8

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Application for approval of transfer of  
Keith & Clara Starkey d/b/a Heather Hills  
Estates' Water and Wastewater Utility, holder  
of Certificates 577-W and 498-S, to Heather  
Hills Estates Utilities, LLC, in Manatee County

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Docket No: 090093-WS

Filed: August 7, 2009

**PETITION FOR FORMAL HEARING**

I, Linda Doepker, (Petitioner") hereby formally object to the application for approval of the transfer of the Heather Hills Estates' Water and Wastewater Utility system and certificates from Keith and Clara Starkey d/b/a Heather Hills Estates ("Applicant", "Seller", "Utility" or "Company") to Heather Hills Estates Utilities, LLC, ("Buyer" or "LLC") and I request a formal evidentiary hearing on this matter, and allege the following:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Docket No. 090093-WS

2. The name, addresses, telephone numbers and e-mail address of the Petitioner:

Linda Doepker  
303 50<sup>th</sup> Avenue Plaza West  
Bradenton, Florida 34207  
(941) 753-7357  
(11/01/09 – 04/15/10)

763 Treat Blvd.  
Tallmadge, Ohio 44278  
(330) 633-2213  
(Present – 10/31/09)

E-mail: Doecottage@aol.com

DOCUMENT NUMBER-DATE  
08189 AUG-7 8  
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3. An explanation of how the Petitioner's substantial interests will be affected by the application:

The Petitioner is a customer of the Utility and resides in the community of Heather Hills Estates in Manatee County, Florida. The substantial interests of the Petitioner will be affected by the Commission's decision in this docket because the proposed transfer of the Heather Hills Estates' water and wastewater systems is not in the public interest and if approved would adversely affect both the quality and cost of water and wastewater service to the Petitioner and the residents of Heather Hills Estates that include 353 residential units mostly owned by senior citizens on limited incomes.

4. A Statement of when and how the Petitioner received notice of the application:

Petitioner received a copy of the Utility's notice of application of the proposed transfer by U.S. mail in early May, 2009. Petitioner and numerous other affected residents filed timely objections to the proposed transfer. Subsequent to the timely objections, Petitioner was contacted by the Commission's Staff ("Staff") inquiring if the Petitioner wished to request the Commission to conduct a formal hearing to take evidence so that it could determine if the proposed transfer is in the public interest. Staff advised that this request should be filed with the Commission on or before August 7, 2009.

5. A concise statement of the ultimate facts alleged including specific facts that the Petitioner contends warrant denial of the application:

a. The Heather Hills water and wastewater systems have no treatment facilities and are only comprised of a water distribution system and a wastewater collection system that are both approximately 40 years old. Present ownership consistently failed to devote a portion of the revenues received from customers to properly maintain the system or to make necessary capital improvements to refurbish aging lines. Consequently, the rate base has effectively disappeared and the distribution and collection systems are in poor condition.

b. The application fails to provide the Commission with a copy of the Asset Purchase Agreement ("Agreement") dated as of January 1, 2009, describing all of the

terms and conditions of the proposed transfer of water and wastewater facilities. This failure has completely compromised Petitioner's ability to critique the proposed sale. Petitioner reserves the right to amend this objection after receiving a copy of this most important document, which is referenced in the promissory note, which was provided to the Commission. Without a copy of the Agreement the application fails to provide the following critical information:

i. Application fails to provide the purchase price and terms of payment, because the promissory note expressly provides that the Maker or Buyer, reserves the right to offset against the principal and interest owing under the note, dollar for dollar, any adjustments in favor of Buyer under the Agreement, as such adjustments are described therein, including those adjustments pursuant to Section 2.2(b) thereof, and any expenses, costs, debts, losses, liability or contractual obligations incurred by Buyer. It is also important to note that the LLC Buyer has no assets except those being purchased from the Applicant, and that none of the managing members of the Buyer or anyone else is personally guaranteeing payment of the promissory note.

ii. Application fails to adequately detail the assets being purchased, the dollar amount of the assets purchased and liabilities assumed or not assumed.

iii. Application fails to describe all consideration between the parties, for example, promised salaries, refinance fees, stock, stock options, and assumptions of obligations.

iv. Application fails to describe the disposition of customer deposits, and interest thereon, any guaranteed revenue contracts, developer agreements, customer advances, debts of the utility or leases.

v. Application fails to adequately describe the financing of the purchase for the reasons stated in i.

c. The Applicant's statement that the transfer is in the public interest is seriously deficient. The statement provided with the application erroneously claims that the Buyers are "Rick and Chris Stephens" and that they are the "owners of the park" and its amenities that currently serve the residents of Heather Hills Estates. The Buyer is the

LLC, the residents own their own lots, and Manatee County owns all of the streets and the rest of the park, except for the club house area and the water and wastewater lines. The Exhibit "A" filed on May 5, 2009, corrects the earlier false statements, but continues the seriously deficient argument that the transfer is in the public interest, because the Buyer "currently serves the residents of Heather Hills Estates." The extremely inexperienced, inadequate, dismissive and openly discourteous service currently being provided by the Buyer to the residents of Heather Hills Estates is one of the primary reasons this transfer is **not** in the public interest.

d. The summary of the Buyer's experience highlights the complete lack of experience of the Buyer. Since February, 2009, neither the Applicant or the Buyer or even the Buyer's consultant have been able to correctly fill out the forms provided by the Commission or to correctly and timely file exhibits supporting the application.

e. The application fails to provide evidence that the Buyer has the financial ability to purchase the Utility and provide service to the customers. In fact, one of the primary sources of income outlined in the filing is the subject of litigation. If the litigation is resolved unfavorably to the Applicant and the Buyer, it could cause the LLC to default under the promissory note. With the principals of the LLC providing no personal guarantees of the promissory note, there would be no recourse against the principals, and the sale would effectively be voided.

f. Even after being reminded by the Commission's Staff in its April 1, 2009 letter to the Buyer's consultant, the Buyer has still failed to provide the statement required by Rule 25-30.037(2)(j), Florida Administrative Code, that the Buyer will fulfill the commitments, obligations and representations of the Seller with regard to utility matters. Based upon the present performance of the Buyer, the customers do not believe the Buyer is able or willing to fulfill the commitments, obligations and representations of the Seller.

g. Without a copy of the Agreement, Petitioner cannot be certain of the manner and amount of financing involved in the proposed transfer. Without the Agreement the Petitioner cannot be certain that the Applicant and Buyer have provided the Commission with all of the financial details of the proposed transfer, including but not

limited to list of all entities upon which the Buyer is relying to provide funding, copies of accurate, dated and executed financial statements and copies of all financial agreements with the Utility or its existing ownership.

h. The application fails to identify the Commission Order which last established the Utility's rate base, including identification of all adjustments made by the order and adjustments made to update the rate base to the date of the proposed transfer. The rate base information provided in the application appears to capitalize maintenance and repair work which has been seriously deferred because of being neglected for decades.

i. The application does not seek an acquisition adjustment, nor under the circumstance should one be granted. The proposed purchase price is unjustified and significantly higher than what it should be considering the depreciated condition and rate base of the system.

j. The Buyer states that after "reasonable" inspection the system appears to be in satisfactory condition. Given the poor condition of the Utility's lines, it is apparent that the Buyer failed to conduct much, if any, inspection of the water and wastewater lines. Further, the Buyer has failed to identify any improvements or repairs needed, and the approximate cost of such investments or repairs.

k. While there is no real estate being conveyed in this proposed transfer, there is a purported Quit-Claim deed conveying the Applicant's right, title and interest, "if any," in utility easements located within Heather Hills Estates to the Buyer. However, the purported Quit-Claim deed is useless, because it is not notarized and cannot be recorded, and it is conveying an interest in real property (easements), without warranty, to an entity that did not legally exist on the day of the purported conveyance. The Quit-Claim deed appears to be an unrecordable nullity.

l. The application fails to affirmatively assert the disposition of any outstanding regulatory assessment fees, fines or refunds owed.

m. The proposed transfer is substantially inferior to other alternatives available for the future operation of the Utility and for this reason and the other reasons outlined above the proposed transfer is not in the public interest.

n. Each of the foregoing allegations involve disputed issues of material facts.

6. A statement of the specific rules or statutes the Petitioner contends require denial or modification of the application:

The application should be denied because of Commission Rule 25-30.037(2) (g), (h), (i), (j), (k), (l), (m), (p), (q) and (r), Florida Administrative Code; and Section 367.071, Florida Statutes.

WHEREFORE for the reasons stated above, the Petitioner objects to the proposed transfer and reserves the right to amend this objection after receiving a copy of the Agreement, and requests the Commission to conduct a formal evidentiary hearing, pursuant to the provisions of Section 120.57(1), Florida Statutes, and further petitions that such hearing be scheduled at a convenient time in the Utility's certificated service area.

s/Linda Doepker  
Linda Doepker

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 090093-WS**

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition has been furnished by U.S. Mail and electronic mail to the following parties on this 7<sup>th</sup> day of August, 2009.

Eric Saylor, Esq.  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Heather Hills Estates Utilities, LLC  
4925 3<sup>rd</sup> Street, West  
Bradenton, FL 34207-2608

Mike Smallridge Utility Consultant  
Mike Smallridge  
1645 W. Main Street  
Inverness, FL 34450

s/Linda Doepker  
Linda Doepker