

Marguerite McLean

090478-WS

From: Derrill McAteer [Derrill@hoganlawfirm.com]
Sent: Friday, November 13, 2009 1:56 PM
To: Filings@psc.state.fl.us
Subject: Case Number 090478-WS: Objection and Request for Formal Administrative Hearing: City of Brooksville, Florida
Attachments: _11131~1.PDF

Please see attached for filing.

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R. J. N.

11/13/2009

DOCUMENT NUMBER-DATE

11304 NOV 13 09

FPSC-COMMISSION CLERK

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

IN RE: APPLICATION OF SKYLAND
UTILITIES, LLC, TO OPERATE A WATER
AND WASTEWATER UTILITY IN HERNANDO
AND PASCO COUNTIES, FLORIDA

Case No.:090478-WS

**THE CITY OF BROOKSVILLE'S OBJECTION TO APPLICATION OF
SKYLAND UTILITIES, LLC
AND REQUEST FOR FORMAL ADMINISTRATIVE HEARING**

1. The City of Brooksville, an incorporated municipality located within the boundaries of Hernando County, Florida ("Brooksville"), pursuant to Sections 367.045 and 365.171, Florida Statutes and Rule 25-30.031, Florida Administrative Code, hereby files its Objection to the *Application for Original Certificates for Proposed Water and Wastewater System and Request for Initial Rates and Charges* filed by Skyland Utilities, LLC (the "Application").

2. Brooksville further requests that a formal administrative hearing be held on the Application in accordance with Sections 120.569 and 120.57, Florida Statutes.

3. Brooksville hereby attaches as Exhibit "A", joins in and incorporates by reference as if stated herein *in haec verba* Hernando County's Objection to Application of Skyland Utilities, LLC and Request for Formal Administrative Hearing ("Hernando's Objection"), specifically those provisions relevant or applicable to Brooksville, including, but not limited to, Identifying the Parties, The Total Proposed Utility Territory, The Proposed Utility Area within the boundaries of Hernando County, The Proposed Utility Operation, the Funding of the Proposed Utility Operation, the Technical Experience of Skyland to Operate the Proposed Utility and other provisions stated therein as applicable.

4. Brooksville also objects to the noticing of this matter as no notice was sent to a City of Brooksville official or the City's acting counsel, the Hogan Law Firm (the undersigned). The Hogan Law Firm was notified of this issue by the Hernando County Attorney's office on November 12, 2009, and was denied an extension of time to object on November 13, 2009 by the Public Service Commission. This objection was due on Sunday, November 15, 2009.

5. Brooksville requests the same "Relief Requested" in Section V of Hernando's Objection as incorporated herein.

6. The City Limits of Brooksville are within five (5) miles of the proposed utility's service area as described in the Application, so Brooksville has standing to bring

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this objection. Moreover, the proposed utility may interfere or unfairly compete with Brooksville's First Right to Serve Area concerning potable water.

7. In light of the late and possibly deficient notice granted Brooksville to respond to the Application, Brooksville asks that this filing be accepted as a placeholder in the event that any substantive or procedural defects are noted, so that Brooksville may be allowed to amend this objection by a date certain.

Submitted November 13, 2009.

s/Derrill Lee McAteer
Derrill Lee McAteer (FBN 0628972)
Hogan Law Firm
City Attorney
20 South Broad Street
Brooksville, FL 34601
Phone (352) 799-8423
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent to the following this 13th day of November, 2009, by electronic filing (to the Clerk of the PSC) and U.S. Mail to all others listed below.

s/Derrill Lee McAteer

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Senior Assistant County Attorney
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and Administrative Services
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STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

IN RE: APPLICATION OF SKYLAND
UTILITIES, LLC, TO OPERATE A WATER
AND WASTEWATER UTILITY IN
HERNANDO AND PASCO COUNTIES,
FLORIDA

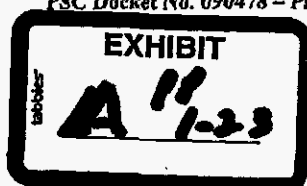
Case No.: 090478-WS

**HERNANDO COUNTY'S OBJECTION TO APPLICATION OF
SKYLAND UTILITIES, LLC AND
REQUEST FOR FORMAL ADMINISTRATIVE HEARING**

Hernando County, a political subdivision of the State of Florida, through counsel and pursuant to §§ 367.045, 365.171, Fla. Stat., and Rule 25-30.031, Fla. Admin. Code, hereby files its Objection to the *Application for Original Certificates for Proposed Water and Wastewater System and Request for Initial Rates and Charges* ("Application")¹ filed with the Public Service Commission ("PSC") by Applicant, Skyland Utilities, LLC ("Skyland").

Pursuant to § 367.045(4), Fla. Stat., Hernando County, a governmental authority, further requests that a formal administrative hearing be held on this Application in accordance with §§ 120.569 and 120.57(1), Fla. Stat.

¹/ The Application will be referred to as "App. at p. ___" and the page number(s) shall correspond to the page number(s) of the Application as found online at the PSC's online Docket in this matter (<http://www.psc.state.fl.us/dockets/cms/docketList.aspx?docketType=openWater>). Parenthesized material after App. at p. ___ will describe the document or exhibit.



I. KEY FACTS

A. The Parties

1. Hernando County is a political subdivision of the State of Florida in accordance with Art. VIII, § 1, FLA. CONST., and Chapter 125, Florida Statutes. Hernando County has adopted laws regarding the regulation of land use, water and wastewater. Hernando County is a non-jurisdictional county for purposes of Chapter 367, Fla. Stat.
2. Skyland is the entity that has filed the subject Application. **App. at p. 1 *et seq.*** According to the Florida Department of State, Division of Corporation's website, Skyland filed its formation papers on or about June 11, 2009.
3. Skyland is a wholly owned subsidiary of Evans Utilities Company, Inc. **App. at p.6** (Application at p. 2); **and App. at p. 32** (Application, Exhibit I).
4. In turn, Evans Utilities Company, Inc. is wholly owned by Evans Properties, Inc. **App. at p. 32** (Application, Exhibit I).
5. Evans Properties, Inc. ("Evans") owns all of the land inside of the service boundaries of the proposed utility. **App. at p. 17** (Application, Exhibit A at ¶ 2).
6. Evans and Skyland are affiliated/related entities. **App. at 17** (Application, Exhibit A at ¶ 2).
7. To sum up their inter-relationships in their own words: "Evans owns and controls Evans Utilities Company, Inc., which owns and controls 100% of the [Skyland

Utilities, LLC] Utility and is the sole managing member of the Utility.” **App. at p. 591** (Application, Appendix – *Funding Agreement* at p. 1). As described later, Evans will be providing the land for the Utility’s operations and will be providing all of the funding for the proposed Utility.

B. The Total Proposed Utility Territory

8. All of the land owned by Evans as specifically referenced in the subject Application shall hereinafter be referred to as the “Land” or the “Total Proposed Utility Territory” as these terms may be used interchangeably. The portion of the Land situated in Hernando County shall be referred to as the “Proposed Hernando Utility Territory” and the portion of the Land situated in Pasco County shall be referred to as the “Proposed Pasco Utility Territory”.

9. The Total Proposed Utility Territory consists of approximately 4,089 acres. **App. at p. 62** (Application, Appendix – *Development Phases – Draft*) and is situated primarily in rural northeastern Pasco County and rural southeastern Hernando County.

10. A portion of the Land will be leased from Evans to Skyland so that Skyland can conduct its utility operations. “Skyland will not own any of the land where the Utility’s water facilities will be located. Instead, the Utility will lease the land from the Landowner, Evans Properties, Inc.” **App. at 26** (Application, Exhibit E). Similarly, “Skyland will not own any of the land where the Utility’s wastewater facilities will be

located. Instead the Utility will lease the land from the Landowner, Evans Properties, Inc.” **App. at 31** (Application, Exhibit H).

11. An executed Water Lease Agreement between Evans and Skyland dated October 1, 2009 is attached to the Application. **App. at pp. 556-569** (Application, Appendix – *Water Lease Agreement*). The lease was signed by Ronald L. Evans, as President of Evans Properties, Inc., and counter-signed by Ronald L. Evans, as Manager, Skyland Utilities, LLC. **App. at 567** (Id.). A similar agreement dated October 1, 2009 is also provided for wastewater facilities. **App. at pp. 578-590** (Application, Appendix – *Wastewater Lease Agreement*).

C. The Proposed Hernando Utility Territory

12. The Proposed Hernando Utility Territory consists of approximately 791 acres. **App. at p. 62** (Application, Appendix – *Development Phases – Draft*).

13. With the exception of one small area designated ‘Conservation,’ all of the Proposed Hernando Utility Territory is designated ‘Rural’ on the Future Land Use Map (“FLUM”) of Hernando County’s adopted Comprehensive Plan (“Comp Plan”). **App. at p. 19** (Application, Exhibit B at ¶ 4).

14. Pursuant to the Comp Plan, the only uses allowed under the ‘Rural’ FLUM designation are: *agricultural, agricultural commercial, recreation, and residential* development with densities no greater than 1 unit per 10 acres, except in designated preexisting rural communities. (Comp Plan, Section D).

D. The Proposed Utility Operation

15. Pursuant to its Application, Skyland “proposes to provide potable and non-potable water and wastewater services to bulk exempt, bulk non-exempt, intensified agribusiness, residential and general service customers from the service territory described in this application.” App. at 17 (Application, Exhibit A at ¶ 1).

16. Specifically, as part of its proposed operations, Skyland indicated that it is “also considering selling bulk water.” App. at 620 (Application, Appendix – *Skyland Utilities, LLC Cost of Service Study*) (emphasis added).

17. The proposed utility operation is planned over five phases. App. at p. 17 (Application, Exhibit A at ¶ 3); and see App. at 610 (Application, Appendix – *Skyland Utilities, LLC Cost of Service Study*).

(i) Phase 1

18. Wastewater treatment and disposal for Phase 1 “will be pre-engineered wastewater treatment plants utilizing an extended aeration/MLE treatment process with percolation ponds.” App. at p. 9 (Application at p. 5). However, Skyland states that “[t]he full extent of treatment required for future Phases has not yet been determined.” *Id.* (emphasis added).

19. According to Skyland’s Application:

“In Hernando County, Phase 1 utility services are planned for ID 2 [see Map, App. at 62] that can serve the equivalent of developing the approximately 349 acres with an allowed density of 1 dwelling unit per 10 acres or approximately 35 ERCs [Equivalent Residential Connections].

Potable water service will be provided by modifying an existing well. The existing structures will continue to utilize on-site septic systems while the remaining 33 ERCs wastewater service will be provided by the use of a low-pressure wastewater collection system and a 10,000 gallon per day (gpd) wastewater package plant utilizing Extended Aeration (EA)/Modified Ludzack-Ettinger (MLE) treatment for nitrogen removal.”

App. at p. 21 (Application, Exhibit C at ¶ 1); *and see App. at pp. 28-29* (Application, Exhibit F, Types of Treatment and Capabilities of Facilities).

20. Skyland projects that the “[n]eed for Phase I utility services are anticipated to occur from 2010 to 2015, with 80% capacity reached in 2015. For this filing 2015 will be the Test Year.” **App. at 23** (Application, Exhibit D at ¶ 2).

21. Reuse of effluent is not part of Phase 1. **App. at 30** (Application, Exhibit G).

22. During the first five years, Skyland projects providing potable water supply to twenty (20) ERCs in year 1; twenty (20) ERCs in year 2; twenty-four (24) ERCs in year 3; twenty-seven (27) ERCs in year 4; thirty-one ERCs in year 5; and thirty-three (33) ERCs in year 6. **App. at 24** (Application, Exhibit D, Table D-2); *accord App. at 610* (Application, Appendix – *Skyland Utilities, LLC Cost of Service Study* at p. 1).

23. It is noted by Skyland – that as of the time of filing of its Application – “there were not appropriate power sources from Florida Power & Light (FP&L) to run the water and wastewater facilities” and that discussions with FP&L were ongoing. **App. at 611** (Application, Appendix – *Skyland Utilities, LLC Cost of Service Study* at p. 2).

(ii) Future Phases

24. “The future phases will begin upon the completion of Phase 1.” App. at 23 (Application, Exhibit D at ¶ 2).

25. However, according to the Application, “Phases II through V have not been conceptually designed at this time” App. at 23 (Application, Exhibit D at ¶ 2).

Similarly, the *Cost of Service Study*, which is a portion of the Application, states:

“It is anticipated that the future phases will be utilized in the order indicated on the proposed service area map in Appendix I and as discussed in more detail in Exhibit A. There have been no conceptual plans developed as of this time for future development phases. Where units and/or consumption have been assumed in future phases in this filing, the maximum permitted dwelling units have been used without consideration of any restrictive issues.”

App. at 610 (Application, Appendix – *Skyland Utilities, LLC Cost of Service Study* at p. 1) (emphasis added).

(iii) Future Phases – Physical Interconnection Traversing Hernando and Pasco Counties

26. Finally, “[p]hysical interconnections will occur that traverse county lines [between Hernando and Pasco Counties] during future phases.” App. at p. 22 (Application, Exhibit C at ¶ 1, last sentence).

27. It is further noted that the two contiguous parcels that are owned by Evans and which “*could*” connect Hernando and Pasco Counties are not planned for any development as part of Phase I. See App. at 62 (Application, Appendix – *Development Phases – Draft*) (Map depicting parcels owned) and referencing text.

E. Funding the Proposed Utility Operation

28. Evans will “provide the Utility with the funding necessary to build and operate the Utility System.” **App. at 32** (Application, Exhibit I, at ¶ 2); **App. at 35** (Application, Exhibit K); *and see App. at 591* (Application, Appendix – *Funding Agreement*).

29. However, Skyland freely states in its Application that “Skyland has not yet begun operations and thus does not have a detailed balance sheet, a statement of financial condition, or an operating statement.” **App. at 34** (Application, Exhibit J).

F. Technical Experience of Skyland to Operate the Proposed Utility

30. According to the Application: “The related landowner, Evans, owns all of the land and has overseen all of the water resources within the proposed service territory. Evans has vast experience in water management through its agricultural oversight” **App. at 32** (Application, Exhibit I at ¶ 3). However, notably absent from the Application is any experience of Evans or Skyland in running a proposed multi-county ‘utility system’. Instead, “Evans will contract the day-to-day operations of the Utility System to a qualified company.” **App. at 33** (*Id.*).

G. Notice

31. This matter was not ‘flagged’ by staff for Hernando County until receiving telephone notification of this Application from Pasco County. It appears that a copy of the ‘required’ notice was sent to the Clerk’s Office without cover letter. No

individualized notice – even as a courtesy if not statutorily required – was provided to David Hamilton, the County Administrator, Joseph Stapf, the County Utilities Director, or Garth Coller, the County Attorney. By all actions to date, it appears, perhaps, that Skyland was hoping that its Application would stay off of Hernando County’s radar screen until the thirty-day objection period had expired.

H. Hernando County’s Comprehensive Plan – Relevant Objectives and Policies

32. The following goals, objectives and policies of Hernando County’s Comp Plan are relevant to the subject Application:

Chapter 1: Future Land Use

POLICY 1.01B(6): Allow new development within the Rural Land Use Category which is compatible with the level of public services provided. The County will not provide water, sewer, transportation, or other infrastructure to support urban development in the Rural Land Use Category so that urban development can be directed into those areas which are planned to receive such services.

POLICY 1.01B(7): The County shall establish a procedure to evaluate the potential conversion of agricultural lands to non-agricultural uses which incorporate a site assessment process that considers the following:

- a. Adjacent land uses;
- b. Viability of adjacent parcels for continued or future agricultural use;
- c. Compatibility of proposed use with existing land characteristics;
- d. Comprehensive development plans;
- e. Available infrastructure;

f. Viability of the subject site including soils

POLICY 1.01T(1): Limit the potential for urban sprawl by establishing services in areas adjacent to concentrated growth.

POLICY 1.01T(2): Provide infrastructure for future development within areas of facility availability and investment in accordance with long range plans by the County for providing potable water, sanitary sewer, transportation and other facilities at planned levels of service and timing. Infrastructure for future development will be provided within the Residential, Commercial, Industrial, and Planned Development District Category areas indicated on the Future Land Use Map. The County may manage the timing of infrastructure availability within these areas to influence the timing and location of development.

POLICY 1.01T(4): Hernando County shall discourage the urban sprawl development pattern characterized as functionally unrelated to or integrated with other surrounding development. The following are representative characteristics of the urban sprawl development pattern:

- a. Leap frog development which is not contiguous to, or in close proximity to, existing urban infrastructure which requires costly public investments to provide such urban services for development.
- b. Linear or strip development that expands along major roadways beyond urban infrastructure causing the degradation of roadway capacity and incompatibility of adjoining land uses.
- c. Single dimensional development lacking supportive services.

POLICY 1.01T(8): Planning for water and sewer facilities will be consistent with the areas planned for urban development and designated on the Future Land Use Map.

OBJECTIVE 1.01U PROVIDE FOR THE DEVELOPMENT OF MECHANISMS TO LOCATE PUBLIC FACILITIES IN SUCH A MANNER AS TO EFFECTIVELY AND EFFICIENTLY SERVE EXISTING AND

PROJECTED DEVELOPMENT AND MINIMIZE THE FACILITIES' IMPACT ON NEARBY NATURAL RESOURCES AND EXISTING LAND USES.

POLICY 1.01U(1): The location of major public facilities shall be approved only after adequate opportunity has been provided for public review and comment.

POLICY 1.01U(2): As part of the major public facility locational review process, a statement of impact shall be prepared for new facilities describing the current condition of adjacent natural resources and land uses, the projected impact of the proposed facility on these adjacent areas and how the projected impact will be mitigated or minimized.

Chapter 5: Sanitary Sewer

OBJECTIVE 4.01A: THE COUNTY SHALL CONTINUE TO DEVELOP A WASTEWATER SERVICE PLAN FOR A TWENTY (20) YEAR PERIOD AT FIVE (5) YEAR INTERVALS TO BE UPDATED ANNUALLY WHICH EVALUATES THE DEMANDS AND SUPPLY OF WASTEWATER TREATMENT FACILITIES AND ESTABLISHES CRITERIA AND COSTS FOR THE DEVELOPMENT OF SERVICE AREAS WHICH DISCOURAGES URBAN SPRAWL.

POLICY 4.01A(2): The County will initiate the construction of wastewater treatment facilities based on the Wastewater Service Plan as required in Objective 4.01A.

POLICY 4.01A(5): All future wastewater collection and treatment systems within Hernando County should be owned and operated by or under contract with Hernando County, the Hernando County Water and Sewer District, or a municipality within Hernando County.

Chapter 8: Potable Water

OBJECTIVE 4.11G THE COUNTY SHALL PLAN FOR BUILDING NEW WATER SUPPLY FACILITIES OVER AT LEAST A TEN YEAR PLANNING PERIOD AS NECESSARY TO SERVE EXISTING AND NEW DEVELOPMENT.

POLICY 4.11G(1): The County shall utilize the following work plan in meeting this objective:

- a) The Hernando County Utilities Department or other appropriate agency shall prepare, and update as necessary, water supply plans to project and meet the needs of existing and new development within the urban growth areas designated by the Residential, Commercial, Industrial, and Planned Development District categories on the Future Land Use Map.
- b) The Water Resources Assessment Project (WRAP) model will be regularly calibrated and utilized to evaluate the impacts of development and provide guidance for development of water supply facilities.
- c) The Capital Improvements Element and Capital Improvements Plan as updated annually will be utilized to plan and program water supply facility projects and expenditures utilizing a five year planning period.
- d) Water supply planning will consider and coordinate with the Southwest Florida Water Management District's adopted water management plan, or regional water supply plan, should a regional water supply plan be adopted for that portion of the district which includes Hernando County.
- e) The demands of natural systems will be considered.
- f) Water supply planning conducted by the County will utilize a public participation process.

POLICY 4.11G(2): Water supply plans developed and updated hereunder, along with the adopted Capital Improvement Plan, shall be utilized to guide the location and timing of land development requiring potable water service.

POLICY 4.13A(1): Public Facility Zoning Approval shall be required prior to the construction of any major potable water well fields to review the

impacts on surrounding and proposed land uses and the aquifer and require mitigation of significant negative impacts.

POLICY 4.13A(4): With the exception of cities within Hernando County, the County will be the sole franchiser of water production or supply.

POLICY 4.13B(6): Hernando County shall provide for the development of water supplies to meet the demands of existing and projected populations within the County. Development of water supplies will be in accordance with the statutorily mandated Minimum Flows and Levels established by the Southwest Florida Water Management District to protect the water resources of the citizens of Hernando County.

II. GOVERNING LAW

33. This matter is governed by Chapters 120, 125, 163 (Part II), and 367, Fla. Stat., Rule Chapters 25-22 and 25-30, Fla. Admin. Code, Florida decisional law, and established principles of statutory interpretation.

III. OBJECTIONS TO APPLICATION OF THE PROPOSED UTILITY

34. Paragraphs 1 thru 33 above are incorporated herein by reference as if fully set forth herein.

A. Siting of Skyland Utility Where Proposed in Hernando County is Inconsistent with Hernando County's Adopted Comprehensive Plan

The Proposed Hernando County Utility Territory is in a rural and largely undeveloped region of the County. The siting of a public water and/or wastewater utility system in this region violates the 'Rural' FLUM designation assigned to the Evans' properties.

Additionally, the proposed Utility violates numerous other objectives and policies of the Comp Plan as listed in Section I.H. above, without limitation.

B. Proposed Utility will be in Competition with and/or Duplication of an Existing Utility Operated by Hernando County Water and Sewer District

Currently, the Proposed Hernando Utility Territory is wholly within the service district of the Hernando County Water and Sewer District ("HCWSD"). HCWSD is governed by the locally elected Board of County Commissioners, a public body politic. The geographic service area and jurisdiction of HCWSD is clearly established and codified at Chapter 28 of the Hernando County of Ordinances.

Conversely, Skyland has not adequately demonstrated that its current needs over the next six year planning horizon (this was the time period it used in its Application and *Skyland Utilities, LLC Cost of Service Study*) could not be satisfied by HCWSD and/or existing permitting policies for private wells, septic and package treatment plant systems.

C. Approving the Proposed Utility is NOT in the Public Interest

First, just based on the four corners of the Application, the proposed utility cannot be cost effective or efficient by providing centralized utility service to houses with a density of less than one unit per ten (10) acres and to non-contiguous parcels. Of the 791 acres in Hernando owned by Evans, Skyland proposes only approximately 155 connections in the first five or six years of operations. Public interest is promoted by cost effective and efficient utility systems. Public interest is not served if persons residing in a certain geographic area of the county, *i.e.* southeastern Hernando County, who are

subjected to the future jurisdiction of the proposed Utility must pay higher water and wastewater rates due to lack of cost effectiveness, inefficiency, lack of economies of scale and/or the inexperience of the owner. (See facts set forth in Sections I.D, I.E and I.F, *supra*).

Second, the Proposed Hernando Utility Territory is wholly within the service district of the HCWSD, therefore, it is not in the public interest to duplicate or overlap utility service providers.

Third, as previously stated, it is not in the public interest to violate the goals, objectives and policies of Hernando County's adopted Comp Plan.

Fourth, it is not in the public interest to promote "urban sprawl" by encouraging new development and growth to occur prematurely in an area that is presently rural and largely undeveloped and without proper planning and infrastructure in place including roads, utility network, urbanized services and adequate electric power, without limitation. The presence of centralized water and sewer would encourage other development to occur in a leap frog and unplanned manner.

Fifth, it is not in the public interest to delete or reduce the service territory of the Hernando County Water and Sewer District if the geographic area being deleted was contemplated as being served in connection with bonds that have been issued or planned and the potential impact to the bondholders resulting from diminution of the secured interests.

Sixth, the public is currently served by an elected group of public officials who oversees HCWSD and they have local input into rates and regulations. It is not in the public interest to reassign a rural geographic segment of Hernando County to a private utility – with no known utility experience – to provide service. Especially since there has been no public demand for such service. Conversely, the person or entity (Evans) that is requesting private service from Skyland is the same entity that wholly owns the entity that wholly owns Skyland. Evans will also be leasing the land to Skyland to run the proposed utility system and Evans will be funding Skyland.

Lastly, adequate potable water supply is an important and valuable commodity to Hernando County and its residents. The possibility of this commodity being sold in bulk and pumped out of Hernando County violates the public interests of Hernando County and its residents and violates the doctrine of ‘local sources first’. (See facts set forth in Sections I.D, I.E and I.F, *supra*).

D. Proposal by Skyland is Not a Utility Providing Service to the “The Public” “For Compensation” as Required by Chapter 367, Fla. Stat.

Here, the entity/person requesting the utility service is the same entity which owns the proposed utility, which is the same entity leasing the land to Skyland and which is the same entity that will be funding Skyland. (See facts set forth in Section I.B and I.E., *supra*). Chapter 367 defines ‘Utility’ to mean “a water or wastewater utility . . . who is providing, or proposes to provide, water or wastewater service to the public for compensation.” § 367.021(13), Fla. Stat. (emphasis added). The term “for

compensation” also begs the question as to who is paying whom when one examines the inter-relationships between Evans Properties, Inc., Evans Utilities, Inc. and Skyland Utilities, LLC. In this regards, it is noted that the proposed Funding Agreement (App. at p. 591) was signed by Ronald L. Evans, as President of Evans Properties, Inc., and counter-signed by Ronald L. Evans, as Manager, Skyland Utilities, LLC. Accordingly, the term “the public” envisions a broader base than oneself (or a closely related/affiliated entity or alter ego) and “for compensation” envisions something more than shifting balance sheets among related entities. Skyland has not adequately demonstrated that it will be serving the “the public” “for compensation”.

E. Mere Speculation to Provide Cross-County Service does Not Constitute “Transversing” for purposes of § 367.171(7), Fla. Stat. – PSC Lacks Jurisdiction over Hernando County, a Non-Jurisdictional County

As explained in Hernando County’s *Motion to Dismiss* dated November 13, 2009 as separately filed in this matter (the content and arguments contained therein are incorporated into this pleading by reference as if fully set forth herein), the PSC lacks jurisdiction to grant the relief requested in Skyland’s *Application*. No infrastructure owned or controlled by Skyland currently traverses any border between Hernando County and Pasco County. The actual existence – and transversing – of such infrastructure is a prerequisite to the exercise of jurisdiction by the PSC over a water or wastewater utility situated in a non-jurisdictional county.

Moreover, the actual transversing of lines between Hernando and Pasco Counties is extremely speculative including when and how it might occur. Skyland admits in its application that no planning, design or exact timing has been planned for future phases (see facts set forth in Section I.D., *supra*). Skyland further admits that any transversing of county boundaries will not occur until some future phase. *Id.* Surely the PSC should not use the weight of the State to override Hernando County's primary jurisdiction based upon the mere recitation of Skyland that it intends to transverse County lines at some point after the 2015 year as part of a Phase not yet planned or designed and for which the number of users or capacity demands have not been calculated.

Accordingly, the PSC lacks the necessary jurisdiction to grant Skyland's application as pertaining to Hernando County. See *Hernando County v. Public Service Commission*, 685 So.2d 48, 51-52 (Fla. 5th DCA 1996).

F. OBJECTIONS RAISED BY PASCO COUNTY

Hernando County hereby incorporates by reference, as if fully set forth herein, all objections timely raised by Pasco County and any other objector in this matter to the extent applicable to Hernando County.

IV. REQUEST FOR FORMAL ADMINISTRATIVE HEARING INVOLVING DISPUTED ISSUES OF MATERIAL FACT

In the event the PSC does not dismiss Skyland's Application for lack of jurisdiction over Hernando County or, in the alternative, summarily deny Skyland's

Application, then Hernando County makes demand for a formal administrative proceeding in accordance with §§ 120.569 and 120.57(1), Fla. Stat.

A. The affected agency is the Florida Public Service Commission.

B. The name, address and telephone number of the Applicant, Skyland Utilities, LLC, is set forth in the Application. *App. at 1 et seq.* The name address of Hernando County and other parties entitled to notice are set forth in the signature block and certificate of service at the end of this document.

C. Petitioner, Hernando County, received notice as described in Section I.G.

D. In the event that the PSC does not dismiss, or summarily deny, Skyland's Application, then the following issues of material fact are in dispute:

- (i) Whether Skyland's Application comports with all of the requirements set forth in § 367.045, Fla. Stat. and Rule 25.30.033, Fla. Admin. Code;
- (ii) Whether the siting of the Utility where proposed by Skyland will violate Hernando County's adopted Comprehensive Plan;
- (iii) Whether the siting of the Utility where proposed by Skyland will encourage "urban sprawl" in southeastern Hernando County;
- (iv) Whether the Utility proposed by Skyland will compete with and/or duplicate the services of the Hernando County Water and Sewer District;

- (v) Whether the Utility proposed by Skyland is in the Public Interest or, in the alternative, whether the proposed Utility violates the Public Interest;
- (vi) Whether the Utility proposed by Skyland will impact any existing or contemplated bond as issued by Hernando County and/or the Hernando County Water and Sewer District;
- (vii) Whether the Utility proposed by Skyland will be serving “the public” for purposes of Chapter 367, Fla. Stat., if the provider and intended user are related or affiliated entities or alter egos;
- (ix) Whether the Utility proposed by Skyland will be operating “for compensation” for purposes of Chapter 367, Fla. Stat., if the provider and intended user are related or affiliated entities or alter egos;
- (x) Whether an applicant’s mere *statement of intent* to “transverse” pipes across county lines at some undefined point in the future – in connection with some future Phase of development not yet conceptualized, planned or designed – is sufficient for the Public Service Commission to usurp the jurisdiction of a sovereign non-jurisdictional county under the guise of § 367.171(7), Fla. Stat.; and,

(xi) All disputed issues of material fact timely raised by Pasco County and any other objector to this proceeding.

E. Hernando County restates and incorporates by reference, as ultimate facts, all facts and matters set forth in Section I above (Paragraphs 1 thru 32) as if fully set forth herein.

F. This matter is governed by Chapters 120, 125, 163 (Part II) and 367, Fla. Stat., Rule Chapters 25-22 and 25-30, Fla. Admin. Code, Florida decisional law, and established principles of statutory interpretation.

G. Petitioner, Hernando County, seeks the relief requested immediately below.

V. RELIEF REQUESTED

WHEREFORE, Hernando County prays for the entry of an Order:

1. Dismissing Skyland's *Application for Original Certificates for Proposed Water and Wastewater System and Request for Initial Rates and Charges* for lack of jurisdiction pursuant to § 367.171, Fla. Stat.; or,
2. Alternatively, if jurisdiction is rendered, deny the Application; or,
3. If the PSC will not dismiss or summarily deny the Application, then PSC is requested to refer this matter to formal administrative hearing pursuant to §§ 120.569 and 120.57(1), Fla. Stat.; and,
4. Granting such other and further relief as the Public Service Commission deems just and proper consistent with the foregoing.

Dated: November 13, 2009.

Respectfully submitted,



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CERTIFICATE OF SERVICES

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent, in the manner stated below, to all persons listed below, this 13th day of November, 2009.



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