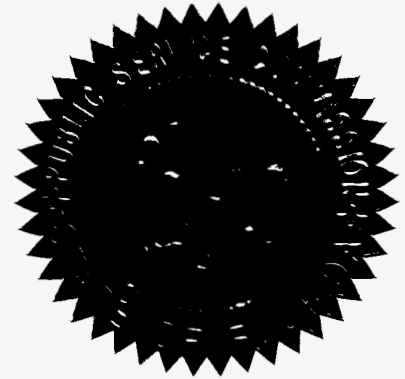


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090478-WS

In the Matter of:

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.



PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 19

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER NATHAN A. SKOP  
COMMISSIONER RONALD A. BRISÉ  
COMMISSIONER EDUARDO E. BALBIS

DATE: Tuesday, December 14, 2010

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

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

DOCUMENT NUMBER-DATE

10014 DEC17

FPSC-COMMISSION CLERK

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

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2           **CHAIRMAN GRAHAM:** I'd like to call to  
3 order the Agenda Conference, Tuesday, December 14th,  
4 2010. It is roughly about 9:34 a.m. We have  
5 several items on here that are going to be deferred.

6           The first list are the ones that are being  
7 deferred because they are part of an FPL case where  
8 there is a stay through the First District Court of  
9 Appeals. Those are 3, 8, 9, 10, 11 only Issues 2  
10 and 3, 12, 13, 14, and 15. Those are all deferred  
11 because of the stay. The following other items are  
12 deferred.

13  
14           **COMMISSIONER SKOP:** Excuse me, Mr. Chair.  
15 On Issue 19, I wish to have a discussion before that  
16 item is deferred.

17           **CHAIRMAN GRAHAM:** Okay. Items 4, 5, 6,  
18 and 7 are deferred. And, Commissioner Skop.

19           **COMMISSIONER SKOP:** Thank you.

20           With respect to the proposed deferral of  
21 Item 19, I believe paperwork was submitted yesterday  
22 where it was unilaterally deferred by the Chairman.  
23 And pursuant to APM Provision 2.11-7, a majority of  
24 the quorum of the Commission is needed to modify the  
25 Chairman's decision on deferral. I would like to

1 have a discussion before the full Commission as to  
2 the rationale for the deferral, as well as a full  
3 Commission vote. I believe that, you know, the  
4 issue deferral in itself, I'm not certain the  
5 rationale that you had in deferring that. At least  
6 from my perspective as a three-panel decisional body  
7 on that particular docket -- I believe that's  
8 correct, but let me double-check.

9 **CHAIRMAN GRAHAM:** That's correct.

10 **COMMISSIONER SKOP:** Okay. I am only one  
11 of two Commissioners that proceeded to hear the  
12 desire testimony and the entire record evidence in  
13 that proceeding, and I'm fully prepared today to  
14 decide the case on the merits in a fair and  
15 impartial manner pursuant to the staff  
16 recommendation.

17 My concern with that is that a tremendous  
18 amount of taxpayer money has been absorbed in having  
19 me travel to Brooksville, Florida, to be in hearing  
20 for over eight hours that day, and to also continue  
21 in that hearing. And I would like to, frankly,  
22 given the seemingly opposition to the deferral, as  
23 noted in the record, gain a complete and better  
24 understanding as to why you feel it is appropriate  
25 to defer this item, and also I would like the full

1 Commission vote.

2 **CHAIRMAN GRAHAM:** All right. There was a  
3 motion that came -- Commissioner Edgar.

4 **COMMISSIONER EDGAR:** Thank you, Mr.  
5 Chairman. I appreciate the opportunity.

6 I'm not sure that one of the statements  
7 that was just made is correct. It's my  
8 understanding that we have four or five  
9 Commissioners that are on this item, and I guess I  
10 would ask our legal staff to double-check that for  
11 me so we know for sure. And I don't know if  
12 Commissioner Balbis, having recently joined us, if  
13 he has been added to that or not, and just so we  
14 know who is on this docket.

15 **MS. HELTON:** It's my understanding that  
16 Commissioner Balbis has read the record and is  
17 prepared to vote on Skyland, so you have siting  
18 today five Commissioners who would be voting.

19 **CHAIRMAN GRAHAM:** The question I have,  
20 what we are looking to do, what Commissioner Skop is  
21 looking to do is overrule the chair on this  
22 deferral. After that it would be -- regardless of  
23 who's on the panel, the entire board votes on that,  
24 is that correct?

25 **MS. HELTON:** It would be -- a majority of

1 the quorum who would vote on the item would need to  
2 overrule your deferral, so it would require three  
3 Commissioners to agree -- or two Commissioners to  
4 agree with Commissioner Skop for a total of three.

5 **CHAIRMAN GRAHAM:** Okay.

6 **COMMISSIONER BALBIS:** Mr. Chair, I have a  
7 question.

8 **CHAIRMAN GRAHAM:**

9 **COMMISSIONER BALBIS:** More from a  
10 procedure standpoint, I understand that there was a  
11 motion filed for a deferral. I have not read that  
12 motion; however, I assume that the Chair gets  
13 requests, general requests for deferral from either  
14 the applicant or other parties. What is the  
15 precedent that has been set in the past on deferral  
16 of items based on a request?

17 **CHAIRMAN GRAHAM:** Well, I was getting  
18 ready to say that. There was motion that came in,  
19 and the motion that came in from Skyland was they  
20 wanted to defer the item, and they wanted an  
21 opportunity to come back and reargue the case. I'm  
22 denying the motion to reargue the case, but if they  
23 want to defer the item for some more time -- because  
24 if that was their game plan was to reargue, and we  
25 are not going to let them reargue, if they want some

1 more time to figure out what they are going to do  
2 next, if they want to withdraw or if they want to  
3 move forward, that's fine. I looked at it as just  
4 being a common courtesy. And so I saw no harm in  
5 deferring this thing for one cycle.

6 Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you.

8 Again, from my perspective,  
9 notwithstanding the fact that the petitioner,  
10 Skyland, may have requested a deferral in its  
11 emergency motion, it was opposed by Public Counsel,  
12 it was opposed by other municipalities. There is a  
13 complete closed record. It is ripe for decision.  
14 My concern, again, with this is notwithstanding the  
15 fact that no matter who was assigned to the panel,  
16 and I do commend Commissioner Balbis for reading the  
17 record, that's very commendable to be prepared to  
18 make a decision today, but the decision before the  
19 Commission is ripe for a decision.

20 I think what is a tremendous downside to  
21 this, and a loss, and, you know, I take it to be  
22 somewhat out of character is the fact that, again,  
23 there was a two-day hearing, one in Brooksville, one  
24 at the Commission. I am one of two Commissioners  
25 that participated in that entire hearing process. I

1 have four years -- nearly four years of experience  
2 on this bench, and I would welcome the opportunity  
3 to participate in a decision where the taxpayers  
4 paid a tremendous amount of money for the Commission  
5 to undertake that process. And I think the  
6 unilateral deferral by the Chair, notwithstanding  
7 the objection of Public Counsel, is improper and it  
8 denies me the effective ability to participate in  
9 this docket. And that's, you know, just my  
10 perspective.

11 If the will of the Commission is to grant  
12 the deferral over the objection of Public Counsel,  
13 then certainly that's something the Commission can  
14 entertain. But the reality of that is that it  
15 denies me as a Commissioner, a sitting Commissioner,  
16 the ability to cast my vote on a decision that is  
17 properly before the Commission that's ripe for  
18 decision. The evidentiary record has been closed  
19 for such time. There is a staff recommendation, and  
20 it's ready for a decision. So I see no reason, with  
21 all due respect, why it should be deferred. And,  
22 you know, I can't help to think that it is deferred  
23 to deny me the opportunity to participate.

24 **CHAIRMAN GRAHAM:** I'm passing the gavel to  
25 Commissioner Edgar so she can run this part so I can

1 make a motion.

2 **COMMISSIONER EDGAR:** Commissioner Graham,  
3 you're recognized.

4 **CHAIRMAN GRAHAM:** Thank you, Commissioner  
5 Edgar.

6 It's a shame that some people find  
7 decisions -- think that there is something that is  
8 personal. There is nothing personal about this. I  
9 saw a utility company out there that was looking for  
10 something that we grant most times just a common  
11 courtesy. There's nothing that's going to be lost  
12 or hurt by putting this thing out for one cycle. So  
13 as my position as Chair, I was going to defer it.  
14 It seems like that question is going to be  
15 challenged. So Commissioner Edgar is now going to  
16 be chair for this one part. So I'd like to move to  
17 defer this item.

18 **COMMISSIONER EDGAR:** Commissioners, we  
19 have a motion. Is there a second?

20 **COMMISSIONER BRISÉ:** I'll second just to  
21 open the item for discussion. I have a question for  
22 staff.

23 **COMMISSIONER EDGAR:** Thank you,  
24 Commissioner Brisé. We have a motion; we have a  
25 second. That leads us to discussion. And,



1 Commissioner Brisé, you're recognized for a question  
2 to staff.

3 **COMMISSIONER BRISÉ:** Yes. To staff, if we  
4 defer this item at this time, what impact will that  
5 have on what needs to be done with this case, if  
6 any?

7 **MS. KLANCKE:** Substantively, there will be  
8 little impact on the pendency of this case. As was  
9 previously stated, there is a closed record. We are  
10 going to maintain the sanctity of the record as it  
11 exists on the basis of all the evidence and proceed  
12 forward.

13 **CHAIRMAN GRAHAM:** Madam Chair.

14 **COMMISSIONER EDGAR:** Commissioner Graham.

15 **CHAIRMAN GRAHAM:** I call the question.

16 **COMMISSIONER BALBIS:** I just have one  
17 comment, Madam Chair, but the question has been  
18 called.

19 **COMMISSIONER EDGAR:** Commissioner Balbis.

20 **COMMISSIONER BALBIS:** I just want to  
21 comment to respond to staff. Having reviewed the  
22 entire record and the sanctity, if you will, of the  
23 record, and the fact that it is available to review  
24 the hours and hours of testimony, the video of  
25 testimony, et cetera, all of the prefilled

1 information, I can say that upon review of all of  
2 that information I feel comfortable that with that  
3 review I have, you know, adequate information to  
4 make a decision.

5 I guess my point is with the deferral of  
6 the item, I don't feel having gone through the  
7 entire record without participating that it leaves  
8 me in any less of a position to make a decision.

9 **COMMISSIONER EDGAR:** We have a motion. We  
10 have a second. We have a request to call the  
11 question, which I understand is --

12 **CHAIRMAN GRAHAM:** Nondebatable.

13 **COMMISSIONER EDGAR:** -- is nondebatable,  
14 which is what --

15 **COMMISSIONER SKOP:** (Inaudible.)

16 **CHAIRMAN GRAHAM:** I call the question to  
17 the vote.

18 **COMMISSIONER SKOP:** So we have terminated  
19 the discussion?

20 **COMMISSIONER EDGAR:** Excuse me. My  
21 understanding, and I am going to look to our General  
22 Counsel, but my understanding is that with  
23 Commissioner Graham's request to call the question,  
24 that that is nondebatable. I will look to our  
25 General Counsel to make sure that I am on firm

1 ground there. And I will ask you to say so into the  
2 microphone, because although I think you are nodding  
3 a yes, that's not going to be picked up by the court  
4 reporter.

5 **MR. KISER:** Right. No, it's typical  
6 through all parliamentary procedures, when you call  
7 the question it is nondebate. You go straight to  
8 the vote to see whether or not the will of the  
9 majority is to vote on it.

10 **COMMISSIONER EDGAR:** Okay.

11 Thank you, General Counsel Kiser.

12 With that, we will have a vote now on the  
13 motion, which is to defer Item 19. All in favor of  
14 the motion to defer say aye.

15 **CHAIRMAN GRAHAM:** Aye.

16 **COMMISSIONER EDGAR:** Aye.

17 **COMMISSIONER BRISÉ:** Aye.

18 **COMMISSIONER BALBIS:** Aye.

19 **COMMISSIONER EDGAR:** All opposed?

20 **COMMISSIONER SKOP:** No.

21 **COMMISSIONER EDGAR:** Okay. I give that a  
22 four-to-one. And with that, Item 19 will be  
23 deferred. And, Chairman Graham, I will give you  
24 back the gavel.

25 **CHAIRMAN GRAHAM:** Thank you, Commissioner

1 Edgar.

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STATE OF FLORIDA )

: CERTIFICATE OF REPORTER

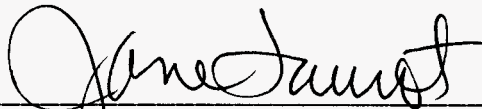
COUNTY OF LEON )

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 17th day of December, 2010.



\_\_\_\_\_  
JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
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