

Diamond Williams

090478-WS

From: Bronwyn Revell [BRevell@RSBattorneys.com]
Sent: Monday, August 23, 2010 10:21 AM
To: Filings@psc.state.fl.us
Cc: John Wharton
Subject: Skyland 090478-WS
Attachments: Skyland Motion to Continue.pdf

This document was served on the parties on Friday.

- a. The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:
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- b. The docket number and title if filed in an existing docket:
 090478-WS, Skyland Utilities, LLC
- c. The name of the party on whose behalf the document is filed:
 Skyland Utilities, LLC
- d. The total number of pages in each attached document: 6 pages
- e. A brief but complete description of each attached document: Motion to Continue

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DOCKET NUMBER DATE
 090478-WS 8/23/10

FILED IN DOCKET

8/23/2010

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 090478-WS

DATED: August 20, 2010

**SKYLAND UTILITIES, LLC'S
MOTION TO CONTINUE**

SKYLAND UTILITIES, LLC ("Skyland"), by and through its undersigned counsel and pursuant to Rule 28-106.209, Florida Administrative Code, hereby moves for a continuance of this proceeding and in support thereof would state and allege as follows:

1. This application (the Skyland application) while standing on its own merit, was filed as one of three applications by the same ultimate parent entity, Evans Properties, Inc., for water and wastewater certification on certain properties Evans Properties owns in different locations in Florida. The Skyland application was filed on October 16, 2009. The Application of Grove Land Utilities was filed on September 11, 2009. The application of Bluefield Utilities was filed on September 25, 2009. Grove Land and Bluefield were consolidated by the Commission for the purposes of hearing. That hearing is set for February 1 and 2, 2011.

2. Although the Skyland application was actually filed subsequent to the applications of the Grove Land and Bluefield, this case was set for hearing on July 7 and 8, 2010 and proceeded to hearing as scheduled. On July 8, 2010, the determination was made by the Commission that the case could not finish within the allotted the time and that it should be rescheduled (after consultation between staff and the parties as to the availability of counsel and the various witnesses, with due deference to the Commission's calendar). The case was ultimately, after input from the various parties, reset for Tallahassee on September 20, 2010.

3. On August 10, 2010, staff informed the parties that the hearing on the Skyland application had been reset for October 13, 2010. The resetting of the completion of the hearing was at the request of the Chairman.

4. This case is a matter of some complexity and involves counsel from several different counties as well as expert and fact witnesses from several different counties. Yet to testify on behalf of Skyland is an expert witness from Orlando; a witness from Vero Beach; and an expert witness from Fort Myers. Two of those witnesses are experts with professional and personal schedules which are set far in advance of a given date. Another is the very busy President and CEO of a large agricultural and business enterprise. Also representing Skyland are counsel from Tallahassee and counsel from Fort Pierce, each with their own individual schedules and obligations.

- Mr. Hartman, the expert witness who was on the stand for Skyland when the hearing recessed, cannot attend the October 13, 2010 hearing. He has a preexisting obligation and in fact will be in Europe at that time (and on that day). Mr. Hartman's conflict cannot be resolved. To go forward on October 13, 2010, without Mr. Hartman is not a viable option for Skyland.
- Counsel for Skyland, John Wharton, has two separate obligations in circuit court in Lee County on October 11, 2010¹ and within eight business days thereafter is counsel in a complex litigation with the Department of Transportation, Martin County and the South Florida Water Management District which goes to trial in Martin County on

¹ *Forest Mere v Bonita Springs Utilities*, Case No. 04-CA-001695, and *Jamaica Bay West Associates, Limited Partnership v Source, Inc. and Forest Utilities, Inc.*, Case No. 09-CA-005087, both pending in the 20th Judicial Circuit, Lee County, Florida.

October 25-27, 2010.² These four matters set in such close relation to each other will adversely affect the undersigned's ability to prepare for each.

5. Good cause exists for the continuation of this hearing. A continuance of this matter, such that Skyland's witnesses may attend and Skyland's witnesses and counsel may adequately prepare for the same, is essential to provide Skyland due process and to allow an orderly completion of this litigation. The timing of the filing of Skyland's application, in juxtaposition with the applications filed by Evans Properties for Bluefield and Grove Land, and the nature and timing of the Skyland proposal and the long-term concerns of local government are all consistent with the continuance of this matter. None of Intervenor's concerns are time-sensitive. No reason exists, given the posture and nature of this case, why a delay of this case would prejudice any party, the Commission, its staff, or any member of the public. In stark contrast, going forward on October 13, 2010 will work a hardship, if not an impossibility, upon Skyland in relation to its ability to adequately complete this case and to present the most complete record possible.

6. Pursuant to Rule 28-106.204(3), Florida Administrative Code, the undersigned has attempted to confer with counsel for Hernando County, counsel for Pasco County, counsel for the City of Brooksville and counsel for the Office of Public Counsel regarding their respective positions on this motion. Hernando County was not categorically opposed to a continuance, but expressed the concern that the proceeding might have to be started "from scratch" if the continuance is calendared too far in the future. The City of Brooksville has written an email to staff counsel stating that the City would make its position known after the

² *Citizens for Smart Growth and Kathie Smith and Odias Smith v. Department of Transportation, Martin County, and South Florida Water Management District*, Case Nos. 10-3316, 10-3317 and 10-3318, pending before Division of Administrative Hearings.

filing of the Motion. An attempt to reach counsel for Pasco County and counsel for the Office of Public Counsel was not successful.

7. Skyland respectfully requests that this matter be continued and reset after coordination with counsel and their respective clients and witnesses. Such coordination can be accomplished at minimal inconvenience to the staff and with due deference to the Commission's schedule but will avoid the rescheduling of the matter on a date which conflicts with the existing schedule of all participants. Illustratively, the undersigned is entirely unavailable from December 10 until December 26, 2010.

8. Skyland has not previously requested any continuance of this matter.

WHEREFORE, in consideration of the above, Skyland respectfully requests that the Commission continue the hearing to a date established after consultation with the various parties, with due deference to the Commission's calendar, such that the matter may proceed to completion in an orderly fashion that affords all parties an opportunity to complete the presentation of their cases without undue hardship or expense.

Respectfully submitted this 20th day of
August, 2010, by:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 20th day of August, 2010, to:

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