

Ruth Nettles

From: Geoffrey Kirk [gkirk@co.hernando.fl.us]
Sent: Tuesday, April 20, 2010 2:46 PM
To: Filings@psc.state.fl.us
Cc: Caroline Klancke; Dean Mead; Derrill McAteer; John Wharton; Joseph Richards; Marty Deterding; Jon Jouben; Bill H. Hollimon; Sidney W. Kilgore; Linda Strumski; Geoffrey Kirk
Subject: RE: Electronic filing in Case No. 090478-WS
Attachments: Mtn-Stay-Proceedings-042010.pdf

Case No. 090478 - WS

In re Application of Skyline Utilities, LLC

Attached for filing is Hernando County's *Motion for Stay of Proceedings Pending Judicial Review*

Respectfully submitted,

s/Geoffrey T. Kirk

Geoffrey T. Kirk, Esq.

Assistant County Attorney

Hernando County

(352) 754-4122

<<Mtn-Stay-Proceedings-042010.pdf>>

4/20/2010

FILE NUMBER-DATE
090478 APR 20 09
CLERK OF 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

MOTION FOR STAY OF PROCEEDINGS PENDING JUDICIAL REVIEW

Objector, HERNANDO COUNTY, through counsel and pursuant to Fla. R. App. P. 9.310(a) and Fla. Admin. Code R. 25-22.061(2), hereby files its *Motion for Stay of Proceedings Pending Judicial Review*, and states:

HERNANDO COUNTY has initiated a quo warranto proceeding in the First District Court of Appeal to review the Amendatory Order, rendered by the Florida Public Service Commission (the "Commission") on March 12, 2010. This proceeding is styled *Hernando County v. The Florida Public Service Commission*, Case Number 1D10-1784.

Pursuant to Fla. Admin. Code R. 25-22.061(2), a party seeking to stay a final or nonfinal order of the Commission shall file a motion with the Commission. The Commission may, among other things, consider: (a) whether the movant is likely to prevail on appeal; (b) whether the movant is likely to suffer irreparable harm if the stay is not granted; and (c) whether the delay will cause substantial harm or be contrary to the public interest. HERNANDO COUNTY will address each consideration in turn.

The pending quo warranto petition is based on interpreting Fla. Stat. § 367.171. HERNANDO COUNTY disputes the Commission's interpretation as set forth in the Commission's Amendatory Order. In the event that the First District Court of Appeal issues an order to show cause, the Court will then likely resolve this dispute. Naturally, to predict the likelihood of success

of HERNANDO COUNTY's petition, at this time, depends upon where one sits. Instead, HERNANDO COUNTY will focus on the second and third considerations of the Rule.


Skyland Utilities, LLC, ("Skyland") stated in its pending application that it seeks to operate a water and wastewater utility in Hernando and Pasco Counties. Currently, Skyland has no infrastructure or operations in either County. In fact, should Skyland's application be granted by the Commission, Skyland's is only proposing about twenty (20) new residential connections in Hernando County, for example, during its first year of proposed operations (Application, Exhibit D, at Table D-2). Further, Skyland will be operating on land owned by a related or parent entity. Consequently, any stay of these proceedings should not cause substantial harm to Skyland based upon its representations within the four corners of its application. On the other hand, HERNANDO COUNTY **will have to expend public dollars, resources and staff time preparing and filing prehearing testimony and preparing for hearing** in a matter which may become moot [to HERNANDO COUNTY] depending upon the future actions of the First District Court of Appeal. Here, the public interest weighs on the side of HERNANDO COUNTY, a local government, not having to commit public dollars, resources and staff time in this proceeding until the First District Court of Appeal acts on the pending quo warranto petition. In sum, it is now up to the First District to determine if HERNANDO COUNTY will be required to participate in this administrative action or be dismissed as a party.¹

WHEREFORE, HERNANDO COUNTY respectfully requests that the Commission enter an order staying this administrative proceeding in its entirety pending judicial review/action by the First District Court of Appeal, and granting any other such relief that is just and proper.

¹/ Not having HERNANDO COUNTY as a party, would have the consequence of reducing the ultimate amount of paper filed in this administrative action, reducing the corresponding responses by the other parties, and simplifying the final (formal) hearing.

Respectfully submitted this 20th day of April, 2010

/Geoffrey T. Kirk



Geoffrey Kirk, Esq. (FBN 861626)
Jon A. Jouben, Esq. (FBN 149561)
Garth Coller, Esq. (FBN 374849)
County Attorney
20 N. Main Street, Suite 462
Brooksville, FL 34601
(352) 754-4122
(352) 754-4001 Fax
Counsel for Hernando County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed electronically with the Florida Public Service Commission and sent by U.S. Mail to all other persons listed on the attached service list on April 20, 2010.

/Geoffrey T. Kirk



Service List

Derrill Lee McAteer, Esq.
The Hogan Law Firm
20 South Broad Street
Brooksville, FL 34601

Michael Minton, Esq.
Dean, Mead, Minton & Zwemer, P.A.
1903 South 25th Street, Suite 200
Fort Pierce, FL 34947

Joseph Richards, Esq.
Pasco County Attorney's Office
West Pasco Government Center
7530 Little Road, Suite 340
New Port Richey, FL 34654

F. Marshall Deterding, Esq.,
John L. Wharton, Esq.
2548 Blairstone Pines Dr.
Tallahassee, FL 32301

Ronald Edwards, Manager
Skyland Utilities, LLC
660 Beachland Blvd., Suite 301
Vero Beach, FL 32963-1708

Sharon Blanchard, Chairman
The Coalition to Preserve Our Water
Resources
P.O. Box 173
Dade City, FL 33526-0173

The Northeast Pasco Concerned Citizens Group
c/o Richard K. Riley
P.O. Box 6
Trilby, FL 33593

Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(via electronic filing)

J.R. Kelly, Public Counsel
Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

William H. Hollimon, Esq.
Pennington Moore Wilkinson
Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095