

Marguerite McLean

090478-WS

From: Geoffrey Kirk [gkirk@co.hernando.fl.us]
Sent: Friday, December 17, 2010 12:43 PM
To: Filings@psc.state.fl.us
Cc: Garth Collier; Jon Jouben
Subject: Filing in PSC 09478-WS
Attachments: Hernando-Mtn-Clarify-Order 10-0732-Skyland-121710.pdf

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:

Hernando County, Hernando County Water and Sewer District, and
Hernando County Utilities Regulatory Authority

d. The total number of pages in each attached document: 3 pages

e. A brief but complete description of each attached document: Hernando's Motion for Clarification of Order No. PSC 10- -WS and Motion for Ancillary Relief

<<Hernando-Mtn-Clarify-Order 10-0732-Skyland-121710.pdf>>

12/17/2010

DOCUMENT NUMBER-DATE
10015 DEC 17 2010
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

**HERNANDO'S MOTION FOR CLARIFICATION OF
ORDER NO. PSC-10-0732-PCO-WS AND MOTION FOR ANCILLARY RELIEF**

Hernando County, a political subdivision of the State of Florida, Hernando County Water and Sewer District, a body politic of the State of Florida, and Hernando County Utility Regulatory Authority, a body politic of the State of Florida (collectively "Hernando") hereby jointly file and serve *Hernando's Motion for Clarification of Order No. PSC-10-0732-PCO-WS* issued December 15, 2010, and state:

1. On December 9, 2010, Skyland Utilities, LLC ("Skyland") filed a pleading entitled *Skyland Utilities, LLC's Emergency Motion to Defer* wherein Skyland moved the PSC to defer final agency action on its application from the PSC's December 2010 Conference Agenda to the PSC's January 2011 Conference Agenda. This motion, if granted, had the natural consequence of changing the make-up of the full Commission panel because the term of Commissioner Nathan Skop expires on December 31, 2010 and any final action taken by the full Commission would be by a revised panel.

2. Immediately following the filing of Skyland's *Emergency Motion to Defer*, Hernando and Pasco County each filed motions to strike Skyland's *Emergency Motion to Defer*. These motions were filed on December 9 and 10, 2010, respectively. The Office of Public Counsel filed a response on December 10, 2010 requesting that Skyland's *Emergency Motion to Defer* be rejected.

3. On December 14, 2010, the day that the full Commission was to take up the Skyland matter – at the beginning of the meeting – the full Commission voted 4-1 to grant Skyland's *Emergency Motion to Defer*. Presumably, the full Commission had been provided copies of Skyland's *Emergency Motion to Defer* prior to voting on same.

4. On December 15, 2010, pursuant to Order No. PSC-10-0732-PCO-WS, the Commission, through its Chairman, granted the motions to strike filed by Hernando and Pasco County.

5. As the Commission had already granted the relief that Skyland had requested in the *Emergency Motion to Defer*, Hernando is unclear as to what practical or procedural effect, if any, the Commission's granting of Hernando's and Pasco's motions to strike the *Emergency Motion to Defer* has on the instant proceedings. Further, the Commission provided Skyland with the substantive procedural advantage that it sought by filing the *Emergency Motion to Defer*; Commissioner Skop will not be on the Commission when it considers Skyland's Application.

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FPSC-COMMISSION CLERK

6. Hernando is in further doubt of how the “taint” or “prejudice” caused by Skyland’s improper *Motion* can now be undone¹ as the Commissioners have read the substantive, *ex parte* arguments that Skyland had deliberately inserted into its *Emergency Motion to Defer*. See Order No. PSC-10-0732-PCO-WS, at p. 3:


“In its Motion, Skyland advanced several substantive arguments on the merits in this proceeding which are wholly unrelated to deferral. Because of the procedural posture of this case, the other parties are not afforded with any mechanism to respond to Skyland’s arguments. In light of **the potential prejudice to other parties resulting from this pleading**, I hereby grant Hernando and Pasco County’s Motion to Strike to the extent that Skyland Utility LLC’s *Emergency Motion to Defer* shall be stricken.” (Emphasis added).

WHEREFORE, Hernando respectfully requests entry of an Order by the Commission:

- (1) Clarifying what practical effect Order PSC-10-0732-PCO-WS has on the instant proceedings; and
- (2) Fashioning a remedy which would have the effect of taking away from Skyland the reward it had obtained through its improper conduct such as calling a special meeting this month to hear the Skyland matter; or
- (3) Referring this matter to the Florida Division of Administrative Hearings (DOAH) so that an Administrative Law Judge may be assigned to conduct a new hearing without the taint created by the Commission’s receipt of Skyland’s *ex parte* arguments; and
- (4) Granting such other and further relief that the Commission may deem to be just and proper.

Respectfully submitted this December 17, 2010.

s/Geoffrey T. Kirk



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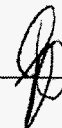
^{1/} See *Jennings v. Dade County*, 589 So.2d 1337 (Fla. 3rd DCA 1991) (court held that presence of ex parte communications creates a presumption of prejudice) *rev. denied* 598 So.2d 75 (Fla. 1992).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, this 17th day of December, 2010, a true and correct copy of the foregoing pleading has been filed electronically with the Clerk for the PSC and was sent, via email, to all counsel of record listed below.

s/Geoffrey T. Kirk

Geoffrey T. Kirk, Esq.



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