

090478-WS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of Skyland Utilities, LLC
to operate a water and wastewater utility
in Hernando and Pasco County, Florida.

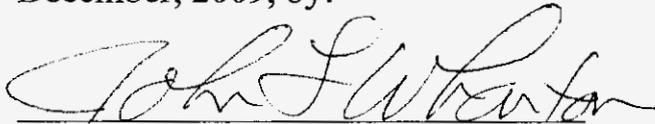
Docket No. 040478-WS

RECEIVED-PPSC
09 DEC 18 PM 2:55
COMMISSION
CLERK

**SKYLAND UTILITIES, LLC'S
NOTICE OF FILING AND SERVICE OF
MOTION FOR ATTORNEY'S
FEE AND SANCTIONS**

SKYLAND UTILITIES, LLC ("Skyland"), by and through its undersigned counsel and pursuant to §57.105(5), *Florida Statutes*, hereby gives notice of its filing and service of Skyland Utilities, LLC's Motion for Attorney's Fee and Sanctions. Twenty-one days have elapsed after initial service of the Motion on Hernando County and the subject motion of Hernando County have not been withdrawn or appropriately corrected.

Respectfully submitted this 18th day of
December, 2009, by:



JOHN L. WHARTON
FL BAR ID NO. 563099
F. MARSHALL DETERDING
FL BAR ID NO. 515876
ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555
(850) 656-4029 FAX

- COM _____
- APA _____
- ECR _____
- GCL 1
- RAD _____
- SSC _____
- ADM _____
- OPC _____
- CLK _____

DOCUMENT NUMBER-DATE
12076 DEC 18 09
FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and fax* this 18th day of December, 2009, to:

Caroline Klancke, Esquire*
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Geoffrey Kirk*
Garth Coller
Hernando County Attorney
20 North Main Street
Brooksville, FL 34601

Michael Milton
Dean, Mead, Minton & Zwerner
1903 South 25th Street, Suite 200
Fort Pierce, FL 34947

Derrill Lee McAteer
Hogan Law Firm
City Attorney
20 South Broad Street
Brooksville, FL 34601

Joseph D. Richards
Senior Assistant County Attorney
West Pasco County Government Center
7530 Little Road, Suite 340
New Port Richey, FL 34654

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



JOHN L. WHARTON

IN RE: Application of Skyland Utilities, LLC
to operate a water and wastewater utility
in Hernando and Pasco County, Florida.

Docket No. 040478-WS

**SKYLAND UTILITIES, LLC'S MOTION FOR ATTORNEY'S
FEE AND SANCTIONS**

SKYLAND UTILITIES, LLC ("Skyland"), by and through its undersigned counsel and pursuant to §57.105(5), Florida Statutes, hereby serves this Motion for Attorney's Fee and Sanctions and in support thereof would state and allege as follows:

1. On November 13, 2009, Hernando County ("the County") filed its Motion to Dismiss Application of Skyland Utilities, LLC For Lack Of Jurisdiction With Incorporated Memorandum of Law ("the Motion").

2. The Motion is not supported by the material facts necessary to establish the claim asserted therein and is not supported by the application of existing law to those material facts.

3. The County and its counsel are well aware that the claims made in the Motion are unsupported as a matter of fact and law, as evidenced by the second paragraph of Section II, on page 2 of 11, of the Motion which anticipates this

request for an attorney's fee and sanctions and preemptively attempts to present a defense to the same.¹

4. The County's Motion is a not good faith argument for the extension, modification, revised interpretation, or reversal of existing law or the establishment of new law, as applied to the material facts, with a reasonable expectation of success. Nothing about the fact pattern of this particular matter differs from the facts and law on which the Commission has relied for decades on agency action which is directly contrary to the County's urged interpretation of §367.171(7). Additionally, the County has absolutely no reasonable expectation of success, given the Commission's prior decisions; the plain language of §367.171(7); and the absurd results that would be visited upon the Commission and some of its regulated utilities if the County's interpretation of §367.171(7) was accepted by the Commission. The County's threat that it intends to seek "similar relief" in the appropriate appellate court, if unsuccessful, is a nullity and should be disregarded by the Commission.

5. Deciding in November of 2009 that one has a problem with a 9 year old Commission Order, based on a 13 year old appellate decision, addressing a 20 year old statutory provision, may only disingenuously be couched as a good faith

¹ Merely putting in the Motion the very language from §57.105, which presents a "get out of jail card free" to a Motion which is (for all practical purposes) frivolous cannot, and does not, change the nature of the Motion, nor make it less subject to an Order ultimately adjudicating that its filing should result in the award of an attorney's fee and/or sanctions to the opposing party.

argument for the extension, modification, or revised interpretation, or reversal of existing law. Additionally, the assertion that the Motion has a “reasonable expectation of success”, under these facts and circumstances, seems to be founded on little more than hope and desire. The train that the County is now attempting to derail left the station long ago, and for the Commission to revisit the statute at this point would undermine two decades of activities of the Commission and its staff, and would be to the detriment of the (known and unknown) individuals, utilities and governmental entities who have relied upon the public interpretation of §367.171(7) in the interim. If the Commission reversed course on its interpretation of §367.171(7) now, as the Motion demands, it would create work for lawyers on a going forward basis while simultaneously undermining the clear will of the legislature.

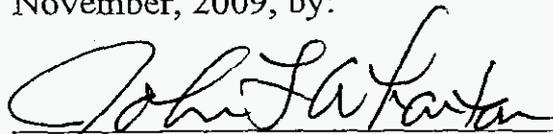
6. §57.105(4) requires that a motion by a party seeking sanctions under this section must be served, but may not be filed with or presented to the court, unless within 21 days after service of the motion the challenged paper, claim, defense, contention, allegation or denial is not withdrawn or appropriately corrected. Contemporaneous with the service of this Motion, the County will have received Skyland’s response to its Motion which demonstrates what the County

already knows: that the Motion is not supported by an application of existing law and that its filing should be immediately withdrawn.²

7. Skyland herein seeks an award of sanctions, reasonable costs, and attorney's fees, and such other relief as the Commission deems appropriate against the County and/or its counsel.

WHEREFORE, in consideration of the above, Skyland respectfully requests that the Commission determine that the Motion supports an award of sanctions, attorney's fees, and costs, and such other relief as the Commission deems appropriate, under §57.105(5).

Respectfully submitted this 23rd day of
November, 2009, by:



JOHN L. WHARTON
FL BAR ID NO. 563099
F. MARSHALL DETERDING
FL BAR ID NO. 515876
ROSE, SUNDBSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555
(850) 656-4029 FAX

² Skyland hereby incorporates by this reference its Response to Hernando County's Motion to Dismiss Application of Skyland Utilities, LLC, for Lack of Jurisdiction With Incorporated Memorandum of Law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and fax on this 23rd day of November, 2009, to:

Geoffrey Kirk, Esquire
Jon Jouben, Esquire
Garth Colle, Esquire
County Attoney
20 N. Main Street, Suite 462
Brooksville, FL 34601


JOHN L. WHARTON