

Marguerite McLean

090478-WS

From: Geoffrey Kirk [gkirk@co.hernando.fl.us]
Sent: Tuesday, February 02, 2010 2:36 PM
To: Filings@psc.state.fl.us
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Subject: Electronic filing in Case No. 090478-WS
Attachments: Hernando-County-Reply-PSC-Staff-Memo-020210.pdf

Case No. 090478 - WS

In re Application of Skyline Utilities, LLC

Attached for filing is *Hernando County's Reply to PSC Staff Memorandum*

<<Hernando-County-Reply-PSC-Staff-Memo-020210.pdf>>

Respectfully submitted,

s/Geoffrey T. Kirk

Assistant County Attorney

Hernando County

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DOCUMENT NUMBER-DATE

00749 FEB-2 2010

FPSC-COMMISSION CLERK

2/2/2010

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 COUNTY'S¹ REPLY TO PSC STAFF MEMORANDUM

Hernando County, a political subdivision of the State of Florida, through counsel and pursuant to Rule Chapters 25-22 and 28-106, Fla. Admin. Code, replies to the PSC Staff Memorandum filed on January 28, 2010 (5 days hereof), and states:

1. Hernando County responds to one argument raised by the PSC Staff in its memorandum: that the general statutory definition of "utility" contained in § 367.021(12), Fla. Stat., includes "proposed" utilities; therefore, for purposes of § 367.171(7), water or sewer lines transversing between counties may be proposed as well. This bootstrapping argument ignores several fundamental principles of statutory construction. Section 367.171(7) states that "the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional . . .").

First, the polestar of statutory construction is to give the words used their plain meaning.

"Legislative intent is primarily discerned from the language of the statute. *Miele v. Prudential-Bache Securities, Inc.*, 656 So.2d 470, 471 (Fla.1995). "The cardinal rule of statutory construction is that the courts will give a statute its plain and ordinary meaning." *Weber v. Dobbins*, 616 So.2d 956, 958 (Fla.1993). The plain ordinary meaning of words may be ascertained by reference to a dictionary. *Green v. State*, 604 So.2d 471, 473 (Fla.1992). **The word "transverse" means: "situated or lying across."** *The American Heritage College Dictionary* 1438 (3d ed.1993). We conclude that the requirements of this statute can only be satisfied by evidence that the facilities forming the asserted "system" exist in contiguous counties across which the service travels. *See Board of County Commissioners of St. Johns County v. Beard*, 601 So.2d at 593."

^{1/} Hernando County Water and Sewer District and Utility Regulatory Authority join herein.

DOCUMENT NUMBER - DATE

00749 FEB-29

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Hernando County v. Public Service Commission, 685 So.2d 48, 50 (Fla. 1st DCA 1996) (the only reported appellate decision which defines the word “transverse”) (emphasis added).

The second fundamental principle is that a specific statute will trump a general statute.²

Here, the general definition of ‘utility’ contained in § 367.021(12) is trumped by the more specific requirement contained in § 367.171(7) which mandates that the service must transverse county boundaries as a prerequisite to the PSC obtaining exclusive jurisdiction. *PSC Staff got it backwards*. Transverse is an active verb. Conversely, if the Legislature had intended that the mere proposal to cross county boundaries at some point in the future was sufficient it would not have used the active phrase “whose service transverses” county boundaries.

Finally, § 367.171(7) should be read *in para materia* with the other subsections of § 367.171 which recognize the rights of counties to self-govern water and sewer utilities within their boundaries. Thus, at the time the utility has pipes in the ground which cross county boundaries, then giving the PSC jurisdiction to set common rates makes rationale sense. To find otherwise would render the rights given to counties pursuant to § 367.171 illusory and reach an absurd result if a utility can simply avoid local jurisdiction by merely promising to provide cross-county service – at some undefined point in the future – and thereby defeat counties from exercising self-governance over local water and sewer utilities as the Florida Legislature intended.³

^{2/} *E.g.*, *School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220, 1233 (Fla. 2009) (“principle that specific statutes covering a particular subject area will control over a statute covering the same subject in general terms”); *Murray v. Mariner Health*, 994 So.2d 1051, 1061 (Fla. 2008) (“where two statutory provisions are in conflict, the specific provision controls the general provision”).

^{3/} As the Florida Supreme Court has stated: “A second relevant rule of statutory construction is that a statutory provision will not be construed in such a way that it renders meaningless or absurd any other statutory provision.” *Murray, supra*, 994 So.2d at 1061.

2. The remainder of the County's arguments have previously been set forth in its *Motion to Dismiss* and *Hernando County's Objection to Application of Skyland Utilities, LLC*, separately filed on November 13, 2009, and which are incorporated herein by reference (noting that the PSC Staff Memorandum ignores the County's second argument in the alternative altogether, see *Motion to Dismiss* at pp. 8-9 and *Hernando County's Objection* at pp. 17-18).

WHEREFORE, Hernando County prays for the entry of an Order granting *Hernando County's Motion to Dismiss*.

Dated: February 2, 2010.

Respectfully submitted,

s/Geoffrey T. Kirk 

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CERTIFICATE OF SERVICES

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent, in the manner stated below, to all persons listed below, this 2nd day of February, 2010.

s/Geoffrey T. Kirk 

Geoffrey T. Kirk, Esq.

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