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Sent: Thursday, December 09, 2010 4:34 PM
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Subject: Filing in PSC 09478-WS
Attachments: Hernando-Mtn-Strike-SkylandMtnDefer-120910.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 to Strike Skyland Utilities, LLC's Emergency Motion to Defer

- <<Hernando-Mtn-Strike-SkylandMtnDefer-120910.pdf>>

12/9/2010

DOCUMENT NUMBER-DATE
09850 DEC -9 2
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 TO STRIKE
SKYLAND UTILITIES, LLC'S EMERGENCY MOTION TO DEFER**

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 to Strike Skyland Utilities, LLC's Emergency Motion to Defer* filed on December 9, 2010, and state:

1. Skyland's motion violates Order No. PSC 10-0105-PCO-WS (ORDER ESTABLISHING PROCEDURE (OEP)) issued February 24, 2010; Document Number 01241-10. The OEP did not permit the parties to file any rebuttal or supplemental briefs. Skyland's motion contains substantive arguments in direct contravention of the OEP.

2. Skyland's motion violates Order No. PSC-10-0433-PCO-WS (ORDER DENYING HERNANDO COUNTY'S POST-HEARING PROCEDURAL REQUEST) issued July 6, 2010; Document Number 05497-10. This Order ruled, in part:

"After the record is closed, and the briefs filed, our [PSC] staff provides us with their advice in the form of a written recommendation. In rendering our decision and issuing a final order, we take into consideration the hearing record, including the briefs, and our staffs recommendation. Our final order is then subject to review by the appellate courts."

Skyland's instant motion is in direct contravention of this Order.

3. Guised as a motion to defer, Skyland makes substantive arguments in an attempt to discredit and argue against PSC Staff's Recommendation. **Because of the timing of this motion and its attempt to influence the Commissioners deciding this case**, Skyland's motion constitutes an impermissible *ex parte* communication in violation of Jennings v. Dade County, 589 So.2d 1337 (Fla. 3rd DCA 1991), rev. denied, 598 So.2d 75 (Fla. 1992) and its progeny. See also R. Regulating Fla. Bar 4-3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); R. Regulating Fla. Bar 4-3.5(a) (a lawyer shall not seek to influence a judge or decision maker except as permitted by law or the rules of court). Here, the rules were established in advance, and Skyland, through its counsel, is seeking to directly influence the Commissioners *prior* to their deciding this case in direct violation of the pre-established rules and orders of this tribunal (see Order Nos. PSC 10-0105-PCO-WS and PSC-10-0433-PCO-WS).

RECEIVED NUMBER DATE

9850 DEC-9 09

FPSC-COMMISSION CLERK

WHEREFORE, Hernando respectfully requests entry of an Order by the PSC granting the relief sought, and take such other action that may be just and proper.

Respectfully submitted this December 9, 2010.

s/Geoffrey T. Kirk



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, this 9th 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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and Administrative Services
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