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Florida Dept. of Revenue v. Florida Municipal Power Agency

THE FINAL CASE THIS MORNING, ON THE COURT'S ORAL ARGUMENT CALENDAR, IS THE DEPARTMENT OF REVENUE VERSUS THE FLORIDA MUNICIPAL POWER. YOU MAY PROCEED.

IT IS MY UNDERSTANDING THE CLOCK WILL PROCEED DOWN. I HAD RESERVED FOUR MINUTES.

THE YELLOW LIGHT WILL COME ON IN FOUR MINUTES.

INSTRUCTIONS ARE ON THE PODIUM.

THANK YOU, YOUR HONOR. I HAVE WITH ME, ALSO, JIM McCAULEY, ASSISTANT ATTORNEY GENERAL. HE HAS BEEN -- McALLLY, MY ASSISTANT -- McAULEY, MY ASSISTANT CO-COUNSEL THROUGHOUT THIS CASE. WHAT WE HAVE IS A STRUCTURE INVOLVING A TAX EXEMPTION PROVISION, AS CERTIFIED BY THE FIRST DISTRICT COURT OF APPEAL.

YOU STARTED OUT THAT WE HAVE A A STATUTORY CONSTRUCTION PROBLEM. DO WE, IN FACT, HAVE ONE, WHERE WE HAVE A STATUTE THAT A PLAIN READING OF IT SEEMS TO BE CLEAR. ON ITS FACE. AND ISN'T YOUR ARGUMENT THE FACT THAT, EVEN THOUGH IT IS CLEAR ON ITS FACE, THAT LEGISLATIVE INTENT IS SOMETHING DIFFERENT, AND IF YOU READ IT IN ITS NORMAL READING AND SO FORTH, IT LEADS TO A RIDICULOUS RESULT. ISN'T THAT, REALLY, YOUR ARGUMENT?

THAT IS ONE ARGUMENT, YOUR HONOR, AND THAT IS CERTAINLY THE DEPARTMENT'S POSITION. WE, ALSO, BELIEVE THERE IS A AMBIGUITY IN THE READING OF THE STATUTE. EVEN THOUGH THE FIRST DISTRICT COURT OF APPEAL APPLIED A LITERAL READING. WE BELIEVE THAT THERE IS AN AMBIGUITY.

OKAY. YOU WILL HAVE TO FOCUS ME ON THE AMBIGUITY.

YES, YOUR HONOR. WE BELIEVE THAT, IF YOU TAKE THE WORDS IN THE 96th AMENDMENT, "FOR TRANSMISSION OR DISTRIBUTION EXPANSION", AND YOU LOOK AT WHAT THOSE WORDS WOULD MOD TIE -- MODIFY, IN THE STATUTE, THE DEPARTMENT WOULD SUBMIT THAT THEY DON'T, REALLY, MODIFY THE WORDS "OWNED AND OPERATED", AND THEY DON'T REALLY MODIFY THE WORDS "SYSTEMS", SO IF YOU PUT THE WORDS WHERE, I BELIEVE, THE ARGUMENT OF THE RESPONDENTS WOULD BE SUBMITTING, IS YOU WOULD PUT THOSE WORDS AFTER "USED", USED FOR TRANSMISSION OR DISTRIBUTION EXPANSION, AND THEN THE OTHER WORDS IN THE STATUTE, IN THE GENERATION, TRANSMISSION OR DISTRIBUTION, WOULD CAUSE A CONFUSION OR WOULD BE SUPER INFLUENCES. WE BELIEVE THAT -- SUPERFLOUS. WE BELIEVE THAT THERE IS AN AMBIGUITY, AND, ALSO, BECAUSE AN UNREASONABLE READING LEADS TO AN UNREASONABLE RESULT.

AND THAT IS?

WHAT HAPPENS, IF YOU READ THE STATUTE LITERALLY, IN THE FIRST DISTRICT COURT OF APPEALS DECISION, WHAT HAS HAPPENED IS 25 YEARS OF TAX ADMINISTRATION HAS BEEN TURNED UPSIDE DOWN, AND WHAT WHAT WAS TAXABLE BEFORE -- AND WHAT WAS TAXABLE BEFORE IS NOW EXEMPT, AND WE BELIEVE THAT THAT IS UNREASONABLE, ESPECIALLY WHEN YOU CONSIDER THAT THE DEPARTMENT OF REVENUE, IN THEIR DECLARATORY STATEMENT, IN

RESUING THE LEGISLATIVE STAFF ANALYSIS, TO THE 96th AMENDMENT, DETERMINED THAT THERE WOULD BE NO FISCAL IMPACT.

BUT YOU DID AGREE WITH WHAT JUSTICE SHAW SAID, THAT IF WE READ THIS PROVISION AND WHEN WE READ IT, IT SEEMS CLEAR THAT THIS WOULD BE EXEMPTED, THEN THE FACT OF WHAT IT PROCEEDED IN THE LEGISLATIVE HISTORY, THEN, IS NOT OUR -- WE DON'T GO BEYOND THE PLAIN LANGUAGE OF THE STATUTE. DO YOU AGREE WITH THAT?

YOUR HONOR, I BELIEVE THAT THE DEPARTMENT'S POSITION WOULD BE THAT WE DO NOT AGREE WITH THAT. BECAUSE --

NOT BECAUSE, WHEN YOU SAY UNREASONABLE, IT IS NOT UNREASONABLE BECAUSE THE PRIOR POLICY HAD BEEN SOMETHING ELSE, BUT ISN'T THAT, REALLY, KIND OF LEADING TO AN ABSURD RESULT, THAT THE COURTS HAVE USED WHEN THEY ARE SAYING, WELL, HOW COULD THE LEGISLATURE HAVE DONE THIS?

WELL, THE FIRST DISTRICT COURT OF APPEALS CERTIFIED THE QUESTION AS BEING ONE OF GREAT PUBLIC IMPORTANCE, AND WE BELIEVE, IN THE DEPARTMENT, THAT IT IS OF GREAT PUBLIC PERFORMANCE, BECAUSE IT CHANGES SUBSTANTIALLY AND IMPACTS THE TREASURY --

ALL YOU HAVE TO DO IS, THIS IS A LEGISLATURE, HERE, AND SAY YOU GUYS FORGOT TO CROSS OUT "DISTRIBUTION", PUT IT IN AND WE WILL ALL BE BACK ON TRACK.

WE WOULD AGREE, YOUR HONOR, THAT THIS ISSUE HAS BEEN IN LITIGATION, AND THEREFORE THERE HASN'T BEEN A FINAL DETERMINATION, AS TO THE EFFECT OF THOSE WORDS, AND WE SUBMIT --

BUT THAT DOESN'T STOP EFFORTS TO CHANGE LEGISLATION IN THE ULTIMATE.

YOUR HONOR, I AM AWARE THAT LEGISLATION SOMETIMES IS SUBMITTED AND PASSED DURING THE COURSE OF LITIGATION, BUT I, ALSO, BELIEVE THAT THAT IS NOT THE USUALLY POLICY OF THE LEGISLATURE, WHEN THERE IS LITIGATION PENDING.

WHAT SHOULD WE DO WITH THE LANGUAGE, THOSE TERMS "FOR TRANSMISSION OR DISTRIBUTION EXPANSION"? SHOULD WE READ THOSE OUT OF THE AMENDMENT OR HOW SHOULD WE DEAL WITH THAT?

YES, YOUR HONOR. I BELIEVE --

DO WE HAVE TO READ IT OUT, AND IF WE READ OUT THAT TERM, HAVEN'T WE, IN FACT, REWRITTEN THE STATUTE?

I BELIEVE, YOUR HONOR, THE WORDS SHOULD BE READ OUT OF THE STATUTE, AS BEING EITHER SCRIVENER'S ERROR OR SUPERFLOUS. THEY CERTAINLY DO NOT COMPORT WITH WHAT THE LEGISLATURE SAID THEIR INTENT WAS, IN THE ENTITLEMENT OF THE ACT WHEN THEY AMEND THE. THEY SAID, IN THE TITLE, THAT THEY WERE DELETING OBSOLETE LANGUAGE PERTAINING TO AN EXEMPTION FOR POLITICAL SUBDIVISIONS. WELL, HOW CAN YOU DELETE LANGUAGE IN AN EXCEPTION CLAUSE, BUT THEN, ALL OF A SUDDEN, CREATE -- THAT THEN, ALL OF A SUDDEN, CREATES A WHOLE NEW SCOPE OF WHAT IS EXEMPT AND WHAT ISN'T EXEMPT. WE WOULD SUBMIT THAT, IF THE LEGISLATURE WAS INTENDING TO CHANGE THE EXEMPTION PROVISION, THAT THEY WOULD HAVE PUT WORDS INTO THE STATUTE THAT WOULD CHANGE THE EXEMPTION PROVISION TO MAKE WHAT WAS TAXABLE BEFORE, NOW, NOT TAXABLE, AND SO WE BELIEVE THAT THE LITERAL READING CERTAINLY DOES LEAD TO AN UNREASONABLE RESULT.

BUT THEY HAD AN OPPORTUNITY TO DO THAT, IN THE 1996 AMENDMENT, BY SIMPLY DELETING,

AS THEY DID, "EXCEPT".

WE THINK THEY MADE A MISTAKE. I DON'T KNOW WHAT THE CONFUSION WAS. I DO KNOW THAT, IN PREPARING OUR BRIEFS, WE HAD CONFUSION, BECAUSE THE LAWS OF FLORIDA, AS PUBLISHED, IF YOU LOOK AT THE 1971 AMENDMENT, TO THE STATUTE, WHERE THE ENTIRE EXCEPTION CLAUSE WAS PUT IN, AND THAT CLAUSE WAS "EXCEPT SALES, RENTAL, USE, CONSUMES OR -- CONSUMPTION FOR WHICH USE OR BONDS ARE GENERATED ON OR BEFORE JANUARY 1 OF 1973", THAT EXCEPTION CLAUSE WAS, ALSO, PUT IN, ALONG WITH TRANSMISSION AND DISTRIBUTION, FURTHER UP IN THE STATUTE, SO THE LEGISLATURE HAD IN MIND SOMETHING, OBVIOUSLY, PERTAINING TO BOND ISSUES.

WELL, THEY SAID WHAT THEY HAD IN MIND. IT WAS TO DELETE OBSOLETE LANGUAGE. THEY MADE THAT CRYSTAL CLEAR, AND THE OBSOLETE LANGUAGE WAS PART THAT THEY DID, IN FACT, DELETE.

YOUR HONOR, WE WOULD SUBMIT THAT THAT PORTION WAS OBSOLETE BUT, ALSO, THE REMAINING WORDS WERE OBSOLETE, PAW THOSE REMAINING WORDS -- BECAUSE THOSE REMAINING WORDS" FOR -- THOSE REMAINING WORDS "FOR TRANSMISSION, DISTRIBUTION", WERE SPECIFICALLY THERE IN THE MODIFICATION EXCEPTION PROVISION, AND THEREFORE I BELIEVE THAT WHAT HAPPENED, WHEN THE LEGISLATURE OF 1976, PASSED THEIR AMENDMENT, THEY DID NOT, BY MISTAKE, EXCLUDE THE WORDS "FOR TRANSMISSION OR DISTRIBUTION EXPANSION".

YOU ARE SAYING THAT THAT IS WHAT THE ENTIRE WORDS WERE, FOR TRANSMISSION OR DISTRIBUTION?

YES, MA'AM. FOR WHICH BONDS OR REVENUE CERTIFICATES ARE VALIDATED BEFORE A SPECIFIC DATE.

SO THE EXCEPTION FOR TRANSMISSION OR DISTRIBUTION EXPANSION PERTAINED ONLY TO BONDS THAT WERE VALUED DATED BEFORE JANUARY 1 OF 1973.

EXPLAIN TO ME, AGAIN, WHY THE LEGISLATURE DIDN'T CORRECT THIS CLEAR ERROR, IN '97, '98, '99.

YOUR HONOR, I CAN'T EXPLAIN WHY ANY DIDN'T. I DO KNOW THAT THE DEPARTMENT -- WHY THEY DIDN'T. I DO KNOW THAT THE DEPARTMENT DID NOT CHANGE ITS RULE, WHICH, ALSO, HAD BEEN IN EFFECT SINCE 1973.

THAT IS THE BASIS -- THAT IS WHAT THE DISTRICT COURT SAID THE DEPARTMENT HAD TO DO.

RIGHT.

BECAUSE THE LEGISLATURE, IN THE INTERVENING YEARS, HAS KEPT THIS LAW THE SAME.

BUT THE DEPARTMENT INTERPRETING THE STATUTE, HAD IS ONE THAT THEY ADMINISTER, DID NOT INTERPRET THE AMENDMENT TO BE THE WAY THE FIRST DISTRICT COURT OF APPEAL ULTIMATELY DECIDED. AND THE LEGISLATURE IS PRESUMED TO KNOW WHAT THE DEPARTMENT'S RULES ARE. THE ADMINISTRATION OF THE TAX PROVISION AND THE EXEMPTION PROVISIONS HAVE NOT BEEN DIFFERENT, SINCE, REALLY, 1971. NOTHING HAS CHANGED, UNTIL THIS --

THAT KIND OF REASONING, THEN, PUTS THE AGENCY ACTS ON SUPERIOR TO THE LEGISLATURE'S ACTS, IN TERMS OF WHAT THE LAW ACTUALLY IS. AND THAT IS NOT ANYTHING THAT --

I WOULD NOT SUBMIT, OBVIOUSLY, THAT RULES TAKE PRECEDENCE OVER STATUTES, BUT I DO SUBMIT, ON BEHALF OF THE DEPARTMENT OF REVENUE, THAT THE DEPARTMENT OF REVENUE IS

CHARGED WITH ADMINISTERING THE STATUTES AND ADOPTING RULES AND INTERPRETING THOSE STATUTES, AND THEY CHOSE NOT TO AMEND THEIR RULE, AND I THINK THAT THEY HAD VALID REASONS FOR NOT AMENDING THE RULE, AND IN THE DECLARATORY STATEMENT, ONE OF THE REASONS WAS THEY INDICATED THAT THERE WAS AN AMBIGUITY IN THE STATUTE, AND IN LOOKING AT LEGISLATIVE HISTORY, IT WAS CLEAR TO THE DEPARTMENT THAT THOSE WORDS WERE --

I AM HAVING TROUBLE IN UNDERSTANDING HOW YOU GET TO THE AMBIGUITY. YOU WERE SAYING, TO JUSTICE SHAW, THAT THERE WAS AN AMBIGUITY AS TO WHAT TRANSMISSION OR DISTRIBUTIONS SYSTEMS MODIFIED, OR ARE YOU, REALLY, SAYING IT JUST SHOULDN'T BE IN THERE, WHICH IS, TO ME, DIFFERENT THAN AN AMBIGUITY. AN AMBIGUITY WOULD MEAN THERE IS TWO DIFFERENT WAYS -- IF WE DON'T KNOW ANYTHING ABOUT THE HISTORY, WE DON'T KNOW WHAT HAPPENED IN '71. WE ARE JUST THERE WITH A FRESH LOOK, READING THE STATUTE, TELL ME HOW TWO REASONABLE PEOPLE COULD COME TO DIFFERENT RESULTS ABOUT WHAT THE TRANSMISSION OR DISTRIBUTION SYSTEM LANGUAGE MEANS.

THE DEPARTMENT THAT WROTE THE DECLARATORY STATEMENT OBVIOUSLY CAME TO A DIFFERENT CONCLUSION.

BUT THEY DID IT, BASED ON WHAT THEY KNEW WAS THE PREVIOUS LAW, LIKE, WELL, WE MUST -- THE LEGISLATURE COULDN'T HAVE MEANT THAT, BECAUSE THEY WOULD HAVE CONSULTED US, AND WE DON'T THINK THEY COULD HAVE MEANT THIS. I AM TALKING ABOUT JUST TWO, JUST OUT, TWO JIMS LOOKING AT THIS, HOW CAN YOU READ THIS AS TO ANYTHING OTHER THAN THE FIRST DISTRICT'S INTERPRETATION?

I BELIEVE THAT WHAT I SUBMITTED EARLIER IS THAT, IF YOU LOOK AT THOSE LAST FIVE WORDS THAT ARE IN THE STATUTE CURRENTLY, "FOR TRANSMISSION OR DISTRIBUTION EXPANSION", THE PHRASE IS JUST STICKING OUT THERE, AT THE END OF THE SENTENCE. WHAT DOES THAT PHRASE MODIFY? DOES IT MODIFY "OWNED AND OPERATED"? WE DON'T BELIEVE SO.

DOESN'T THAT PHRASE IN THE STATUTE -- ISN'T THAT PHRASE IN THE STATUTE TWICE, BEFORE THE AMENDMENT?

THE PHRASE --

"TRANSMISSION OR DISTRIBUTION", THE PHRASE "FOR TRANSMISSION OR DISTRIBUTION EXPANSION".

NO. NOT EXPANSION. THE PHRASE "TRANSMISSION OR DISTRIBUTION" WAS ADDED AT THE SAME TIME AS THE EXCEPTION CLAUSE WAS, IN 1971. AND THE DEPARTMENT SUBMITS THAT THE EXCEPTION CLAUSE, WHEN THEY ADDED IN "TRANSMISSION OR DISTRIBUTION" TWO GENERATIONS IN THE STATUTE, THEY WERE PROVIDING THE PURCHASES WERE NOT LONGER -- WERE NO LONGER EXEMPT, UNDER THAT PARTICULAR PROVISION. BUT THEN THEY WENT AHEAD, BECAUSE OF BOND ISSUES, AND THEY HAD AN EXCEPTION CLAUSE, AND THE EXCEPTION CLAUSE WAS THOSE BONDS THAT WERE I SHOULD FOR TRANSMISSION OR DISTRIBUTION EXPANSION, AND THOSE THAT WERE ISSUED BEFORE -- THAT WERE ISSUED FOR TRANSMISSION OR DISTRIBUTION EXPANSION, AND THOSE THAT WERE ISSUED BEFORE JANUARY 1, 1973, SO WE SUBMIT THAT WHAT HAPPENED IS THOSE BONDS EXPIRED, AND WHEN THE LEGISLATURE SAID THEY WERE DELETING OBSOLETE LANGUAGE PERTAINING TO POLITICAL SUBDIVISIONS, THE DELETION OF OBSOLETE LANGUAGE SHOULD HAVE, ALSO, INCLUDED "FOR TRANSMISSION OR DISTRIBUTION EXPANSION".

LET ME ASK YOU, YOU INDICATED THAT WE SHOULD CLARIFY THIS ON THE BASIS OF AMBIGUITY AND ABSURD RESULT, BUT YOU, ALSO, MENTION SCRIVENER'S ERROR. HOW DO WE GET TO SCRIVENER'S ERROR, AND WHAT ARE THE RULES REGARDING THAT?

THERE IS NOTHING, BECAUSE IT APPEARED THROUGH A PETITION FOR DECLARATORY STATEMENT TO THE DEPARTMENT. THE ONLY THING THAT WE HAVE TO GO ON IS WHAT IS RECITED BY THE DECLARATORY STATEMENT, AND GOING INTO THE STAFF ANALYSIS THAT INDICATES NO FISCAL IMPACT.

GOING BACK TO WHAT JUSTICE WELLS ASKED, THE NORMAL WAY, I MEAN, THE LEGISLATURE, EVERY YEAR, PASSES LAWS, AND SOMETIMES THERE IS DRAFTING ERRORS, AND SO WHAT HAPPENS IS THE NEXT SESSION, THEY GO BACK, AND THEY CORRECT DRAFTING ERRORS, AND NOW WE ARE HERE, YOU KNOW, FIVE YEARS AFTER THIS HAS PASSED, AND YOU ARE ASKING THIS COURT TO DO, REALLY, WHAT IS A LEGISLATIVE RESPONSIBILITY, AREN'T YOU? YOU ARE ASKING US TO CROSS OUT LANGUAGE. THAT IS WHAT YOU ARE ASKING US TO DO.

WE ARE ASKING YOU TO CROSS OUT THE LANGUAGE, BUT WE ARE NOT ASKING YOU TO LEGISLATE. WE ARE ASKING YOU TO DETERMINE WHAT THE LEGISLATIVE INTENT WAS, WHEN THEY AMENDED THE STATUTE. AND IN ORDER TO DO THAT, YOU LOOK TO THE TITLE OF THE ACT. YOU LOOK TO THE HISTORY OF THE ACT. YOU LOOK TO THE EFFECT OF WHAT TOOK PLACE IN THE ACT, WHEN IT TOTALLY CHANGED 25 YEARS OF TAXATION, AND NOW MADE SOMETHING THAT WAS TAXABLE, BEFORE THE AMENDMENT, EXEMPT, AND JUST CHANGED EVERYTHING, BY DELETION OF OBSOLETE LANGUAGE, AND SO WE SUBMIT THAT THAT IS NOT WHAT THE LEGISLATURE INTENDED, WHEN THEY ELIMINATED LANGUAGE --

YOU ARE IN YOUR REBUTTAL TIME.

THANK YOU, YOUR HONOR. I RESERVE MY OTHER.

MR. BRYANT.

THANK, SIR.

MAY IT PLEASE THE COURT. I AM FREDERICK BRYANT, ATTORNEY FOR THE FLORIDA MUNICIPAL POWER AGENCY. MY POSTER SHOWS THAT THEY STRUCK WHAT THEY STRUCK THROUGH IN GREEN, BUT WHAT THEY DID NOT STRIKE THROUGH AND WHAT THE DEPARTMENT OF REVENUE IS ASKING THIS COURT TO STRIKE THROUGH, WE SAY, IN THE CASE BECAUSE -- AND CASE LAW SAYS THIS COURT SIMPLY CANNOT DO. THAT IT CANNOT BE THE LEGISLATIVE BODY, SUPERIMPOSE ITS MIND AND ITS WILL UPON THE MIND AND THE WILL OF THE LEGISLATURE, AND TRY TO DETERMINE WHAT THE LEGISLATURE INTENDED TO STRIKE THROUGH, IN THEIR LEGISLATION, AS OPPOSED TO WHAT THE LEGISLATURE ACTUALLY STRUCK THROUGH. THE DEPARTMENT OF REVENUE WOULD HAVE YOU BELIEVE THAT THIS STATUTE, AS IT READS NOW, IS AMBIGUOUS AND UNINTELLIGIBLE. I DON'T THINK ANYONE HAS EVER ACCUSED THE LEGISLATURE OF BEING THE MODEL OF CLARITY, IN EVERY STATUTE THAT IT DRAFTS AND PASSES, BUT CERTAINLY THERE IS NO AMBIGUITY. THERE IS NO DIFFICULTY IN READING AND UNDERSTANDING THIS STATUTE. IT IS ENTIRELY CLEAR. THE DEPARTMENT'S BEEF IS THAT IT DOESN'T LIKE THE RESULT OF WHAT HAPPENED IN THE LEGISLATURE. THE RESULT OF WHAT HAPPENED IN THE LEGISLATURE IS THAT IT CHANGED THEIR TAX TAXING SCHEME. THE RESULT OF WHAT HAPPENED IN THE LEGISLATURE MEANS THAT PRIOR TO THIS TIME, MY CLIENTS PAID TAXES ON PURCHASES FOR TRANSMISSION AND DISTRIBUTION, EXPANSION AND REPAIRS AND REFURBISHMENTS.

IS THERE NO WAY THAT, WHEN THE COURT -- WHERE THERE IS SOMETHING THAT IS FAIRLY OBVIOUS THAT JUST IS NONSENSICAL, LIKE IF, RATHER THAN WHAT THEY STRUCK, THIS CAME OUT, THIS EXEMPTION SHALL INCLUDE SALES, RETAIL, AND THE WORD "NOT" WAS LEFT OUT. IS THERE NO WAY THAT THE COURT CAN REACH AND LOOK AND SEE, WELL, THERE IS DEBATE THERE, IN THE LEGISLATURE, IT WAS TOTALLY NOT ABOUT THAT. I MEAN, THEY WERE LEAVING THE EXEMPTIONS IN THERE.

YES, SIR, AND WE CITED IN OUR BRIEF, CASES WHERE, IN FACT, THE COURTS HAVE, WHERE THERE

HAS BEEN OBVIOUS MISTAKES AND A "OF" INSTEAD OF A "TWO" OR SOME GRAMMATICAL MISTAKE OR MAYBE A DATE, 1978, AND THE "8" AND THE "7" WERE SWITCHED AND SUPERIMPOSED, BUT THOSE ARE OBVIOUS CLERICAL ERRORS THAT THE COURT IS ALLOWING FOR.

I AM TALKING ABOUT A SUBSTANTIVE ERROR, WHERE YOU CHANGE, THE WORDS, EVERYBODY, THE WHOLE WORLD KNOWS THE WORDS SHOULD BE "IT SHALL NOT" BUT IT ACTUALLY IS JUST "SHALL", THERE IS NO WAY THE COURT CAN REACH THAT.

FIRST OF ALL, SIR, YOU PRESUPPOSE THAT THE WHOLE WORLD KNOWS. THAT THE CASE SHOULD BE "SHALL NOT" OR "SHALL". THAT IS NOT THE SITUATION HERE. WE DON'T KNOW WHAT THE LEGISLATURE INTENDED, OTHER THAN TO DELETE CERTAIN OBSOLETE WORDS.

BUT YOU DO AGREE THAT, BEFORE THIS AMENDMENT, THAT THE TERM FOR TRANSMISSION OR DISTRIBUTION EXPANSION REFERRED ONLY TO THE TYPE OF BONDS. DO YOU AGREE WITH THAT?

YES. ABSOLUTELY. THERE IS NO DOUBT THAT, AT THE TIME THIS LANGUAGE WAS PASSED, IT WAS PART OF THE LANGUAGE DEALING WITH BONDS THAT HAD BEEN VALIDATED ON ONE BEFORE 1978, I BELIEVE, WAS THE DATE.

FOR TRANSMISSION OR DISTRIBUTION EXPANSION.

YES, MA'AM. BUT WHAT WE DON'T KNOW IS WHAT DID THE LEGISLATURE DETERMINE, IN THIS INSTANCE, WAS OBSOLETE? WHICH OF THE WORDS THAT ARE IN THERE WERE NOT DELETED OR SHOULD HAVE BEEN DELETED THAT WERE OBSOLETE? MAYBE THE LEGISLATURE ONLY INTENDED TO DELETE THE DATE BUT WENT TOO FAR. MAYBE THE LEGISLATURE INTENDED TO DELETE "TRANSMISSION" BUT NOT "DISTRIBUTION". WE CANNOT PLAY A GAME OF MAYBE, OF WHAT THE LEGISLATURE INTENDED.

IT IS OBVIOUS OBSOLETE LANGUAGE DEALING WITH THE OBSOLETE BONDS, THE BONDS, THEY HAD NO BEARING NOW. THEY WERE THROUGH. ISN'T THAT THE OBVIOUS LANGUAGE, IF YOU LOOK AT IT?

NO, SIR. I DON'T THINK WE CAN DRAW THAT CONCLUSION. NUMBER ONE, THERE IS NOTHING IN THE RECORD TO SO STATE. BUT WE KNOW THOSE OF US, WHO, AND THIS COURT HAS DEALT WITH MANY, MANY BOND SITUATIONS BEFORE, THAT THESE BOND INDENT WRURS LAST FOR -- INDENT YOURS LAST FOR MANY YEARS. MY COMPANY HAS BOND INDENT YOURS OUTSTANDING THAT ARE OVER 25 YEARS OLD. WAS THE LANGUAGE OBSOLETE? I DON'T KNOW. I DO KNOW THAT THE TERM FOR THE BOND INDENTURE RENDERED USELESS AND THE TERM WAS OBSOLETE, BUT WHETHER OR NOT THE BOND, ITSELF, WAS OBSOLETE, NO, I DON'T KNOW THAT THAT IS TRUE, SIR, BECAUSE MANY TIMES BOND INDENTURES LAST MANY, MANY YEARS WHAT WE ARE DEALING WITH HERE, BUT, AGAIN, THAT IS MY SPECULATION. THAT IS THEIR SPECULATION, AND I THINK THE LAW IS CLEAR THAT YOU ALL CANNOT MAKE THAT SPECULATION. LET ME SAY, IN CONCLUSION, THAT THE DEPARTMENT HAS TRIED TO TAKE A STATUTE THAT CHANGES THEIR DOMAIN AND RAISE CLARITY ISSUES OF SOMETHING THAT, TO MY READING, IS EXTREMELY CLEAR. THE DEPARTMENT HAS TRIED TO TAKE ONE SENTENCE OF LEGISLATIVE EXPRESSION OF INTENT TO DELETE OBSOLETE LANGUAGE, TO SAY THAT THE LEGISLATURE SHOULD HAVE DELETED FIVE MORE WORDS, AND THEREFORE THIS COURT SHOULD TAKE ITS PEN AND ACT IN THE FORM OF THE LEGISLATURE, AND DELETE THOSE FIVE ADDITIONAL WORDS. I DON'T BELIEVE THAT THIS COURT WANTS TO OR CAN DO THAT. THANK YOU.

MR. MURCIHSON YOUR HONOR, THIS IS AN EXEMPTION PROVISION, AND IF THERE IS ANY DOUBT IN CONSTRUING THE '96 AMENDMENT TO THE STATUTE, THE DOUBTS HAVE TO BE CONSTRUED IN FAVOR OF THE AGENCY.

NOW, AGAIN, I DON'T WANT TO BELABOR THIS, BUT THAT THEY RULE A STATUTORY

CONSTRUCTION THAT WE ENGAGE IN, IF WE ARE UNSURE ABOUT THE MEANING, AFTER A PLAIN READING OF THE STATUTE, CORRECT?

THAT IS THE STATUTE OF RECONSTRUCTION ARGUMENT, YES, YOUR HONOR.

BUT IF WE READ IT AND COME TO ONLY ONE CONCLUSION AS TO WHAT IT MEANS, IN ITS CURRENT FORM, WITHOUT REGARD TO HISTORY, THEN WE DON'T GO TO THE NEXT STAGE OF STATUTORY CONSTRUCTION.

THAT WOULD BE CORRECT. I WOULD AGREE WITH THE COURT. HERE, THOUGH, WE BELIEVE THAT THE INTENT OF THE LEGISLATURE WAS EVIDENT, THOUGH, BECAUSE STRIKING THE OBSOLETE LANGUAGE, WHAT HAPPENED IS THAT, AS I MENTIONED BEFORE, THE EXEMPTION PROVISION SCOPE CHANGED. THIS IS NOT CONSISTENT WITH DELETION OF OBSOLETE LANGUAGE. AND IT IS FOR THE A TAX PROVISION. IT -- IT IS NOT A TAX PROVISION. IT IS TRULY AN EXEMPTION PROVISION.

WE HAVE HELD, MANY TIMES, THAT STATUTES ARE NOT, DID NOT COME OUT AS THE LEGISLATURE INTENDED THEM TO COME OUT, AND WE DOUBTED VERY SERIOUSLY IF THE LEGISLATURE INTENDED THE RESULTS THAT WE HELD TO BE UNDER THE TRUE, CLEAR MEANING OF THE STATUTE. WHY WOULD THAT NOT BE THE RESULT HERE, IF WHAT YOU ARE REALLY SAYING IS THE LEGISLATURE DIDN'T MEAN TO DO THIS, AND WE ARE STRUGGLING WITH THERE IS REALLY NOTHING FOR US TO SAY THEY CAN'T BE WRONG.

I BELIEVE YOU CAN, YOUR HONOR, IF YOU UNDERSTAND, AGAIN, THAT THE SCOPE OF TAXATION AND EXEMPTION CHANGED TOTALLY, AND I WOULD SUBMIT, THOUGH --

BUT THAT -- YOU ARE ASSUMING THAT THE LEGISLATURE DOES NOT WANT TO CHANGE 25 YEARS OF A TAXING STRUCTURE, AND HOW DO WE KNOW THAT THEY DON'T?

BECAUSE THE LEGISLATIVE STAFF ANALYSIS INDICATED THERE WOULD BE NO FISCAL IMPACT.

BUT WE DON'T GO TO THERE, IF THERE IS -- IF THE STATUTE IS CLEAR.

BUT, AGAIN, YOU HAVE PRONOUNCEMENTS FROM THIS COURT, EVEN RECENT ONES, THAT INDICATE THAT A LITERAL READING WILL NOT BE GIVEN, IF IT LEADS TO AN UNREASONABLE RESULT, AND WE SUBMIT THAT THAT LEADS TO AN UNREASONABLE RESULT.

BUT ONLY BECAUSE 25 YEARS OF HISTORY HAS BEEN OVERTURNED.

THAT AND THE TITLE TO THE ACT AND THE STAFF ANALYSIS AND THE DEPARTMENT'S RULE, I THINK, ARE ALL CONSISTENT. THERE ARE COGENT REASONS FOR INTERPRETING AN ELIMINATION OF THOSE FIVE WORDS.

WHAT SIGNIFICANCE DO WE PLACE ON THE FACT THAT THE LEGISLATURE HAS HAD AN OPPORTUNITY TO CORRECT WHAT YOU SAY IS AN ERROR ON THEIR PART, AND THEY HAVE NOT DONE IT. HOW -- DON'T WE HAVE TO FACTOR THAT IN?

WELL, I KNOW JUSTICE PARIENTE ASKED, I THINK, THE SAME QUESTION ABOUT --

CAN WE IGNORE THAT?

I BELIEVE THAT IT IS NOT SO LONG AGO, IN VIEW OF THE FACT THAT NOBODY CHALLENGED THE DEPARTMENT'S RULE, AFTER THE AMENDMENT, THE AGENCY AND THE MUNICIPALITIES WERE STILL PAYING THEIR TAXES, IN ACCORDANCE WITH THE DEPARTMENT'S RULE, AND NOTHING HAPPENED, UNTIL THERE WAS A REQUEST FOR DECLARATORY STATEMENT, IN 1999, AND WE HAVE

BEEN IN LITIGATION EVER SINCE. THAT COULD BE --

HAS THE DEPARTMENT EVER ASKED, EVER TRIED TO GET THE LEGISLATURE TO DO SOMETHING?

THE DEPARTMENT DOES NOT PROPOSE BILLS, BUT THEY CERTAINLY DO WORK WITH THE LEGISLATURE AND THE COMMITTEES IN WHATEVER BILLS MAY BE BEFORE THEM, BUT BEFORE I CONCLUDE, THIS COURT, IN THE 1913 CASE THAT WAS RELIED UPON BY COUNSEL FOR RESPONDENTS, DAVIS VERSUS FLORIDA POWER COMPANY, IN DISCUSSING WORDS TO BE DELETED OUT OF A STATUTE OR CONSIDERED TO BE DELETED OUT OF A STATUTE, THE WORDS THAT THEY WERE CONSIDERING WERE "OR BY THE WRONGFUL ACT, NEGLIGENCE, CARELESSNESS OR DEFAULT OF ANY OFFICER, AGENT OR EMPLOYEE", AND THEN FURTHER DOWN THE STATUTE, THE WORD "INDIVIDUAL". THIS COURT WENT ON TO SAY, IN THERE, THAT WORDS THAT WERE PART OF THE OMITTED SUBSTANTIVE PROVISIONS THAT ARE USELESS IN REENACTED ARE DISREGARDED AS BEING MERE SURPLUS AGE, AND WE SUBMIT THAT, BECAUSE OF THE TOTAL ECONOMIC CHANGE, THAT THESE WORDS ARE MERE SURPLUS AGE.

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE FORM THE COURT WILL BE IN RECESS. THE MARSHAL: PLEASE RISE.