

Environmental & Land Use Law Center, Inc.

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October 11, 2002

Chairperson Lila A. Jaber
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Docket No. 020829-EC - Petition for Declaratory Statement concerning urgent need for electrical substation in North Key Largo by Florida Keys Electrical Cooperative Association, Inc., pursuant to section 366.04, Florida Statutes.

Dear Chairperson Lila A. Jaber;

This office represents the Upper Keys Citizens Association (UPKA) and Florida Keys Chapter Isaak Walton League of America (Isaak Walton) in their administrative challenge in opposition to the Florida Keys Electrical Cooperative Association, Inc.'s (hereinafter, "FKEC") attempt to locate an electrical substation on environmentally sensitive lands in North Key Largo. That proceeding is the forum where the issue of consistency with the relevant local government planning and zoning laws is being determined. In that existing proceeding, we strongly maintain that several reasonable alternatives sites exist. We write to you to express our strong agreement with the recommendation of your Office of General Counsel that the PSC decline to issue a declaratory statement that FKEC must construct a new electrical substation at its currently proposed location.

I apologize that a prior commitment precludes me from addressing the Board in person on October 15 when it considers this matter, and I am hopeful that you will consider this letter and place it in the record.

We have reviewed in depth the legal analysis prepared by your Office of General

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Counsel. It is an excellent legal rationale and analysis of why the petition should be denied. In short, the statement sought by the FKEC is not a proper one to be issued under Section 120.565, Fla. Stat., the statute which authorizes agency declaratory statements. In addition, we offer the following additional case law in support of the denial of the Petition. Chapter 366, Fla. Stat. does not provide a right to commercial electric service if such service would be inconsistent with Florida's Growth Management and Area of Critical State Concern laws - Chapters 163 and 380 - or the Monroe County Comprehensive Plan. See e.g. Utilities Commission of New Smyrna Beach v. Florida Public Service Commission, 469 So.2d 731 (Fla. 1985); Story v. Mayo, 217 So.2d 304 (Fla. 1968); Gulf Coast Electric Co-op., Inc. v. Johnson, 727 So.2d 259 (Fla. 1999). There is no statutory entitlement to receipt of electric power in a manner that is inconsistent with the local comprehensive plan. See, City of Oviedo v. Clark, 699 So.2d. 316 (Fla. 1st DCA 1997).

Accordingly, for the reasons stated by the Public Service Commission's Office of General Counsel and the additional legal precedent arguments above, we strongly urge the PSC to deny the FKEC's petition.

Respectfully



Richard Grosso, Esq.
Robert Hartsell, Certified Legal Intern

cc: Commissioner J. Terry Deason
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Commissioner Michael A. Palecki
Commissioner Rudolf "Rudy" Bradley
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