

Eric Fryson

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Sent: Wednesday, February 27, 2013 10:58 AM
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Subject: SERVICE OF COURT DOCUMENT
Attachments: 2013-02-26 NNKPO Opposition 2 Putney's M 2 Intervene.pdf

Please see attached Motion for Case Docket # 120054-EM: No Name Key Property Owners Association's Opposition to Putney's Motion to Intervene and Suggestion of Mootness.

Thank You,

Pamela Piton
Legal Assistant

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DOCUMENT NUMBER-DATE

01029 FEB 27 2013

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:

Complaint of Robert D. Reynolds and
Julianne C. Reynolds against Utility
Board of the City of Key West,
Florida d/b/a Keys Energy Services
regarding extending commercial
electrical transmission lines to each
property owner of No Name Key,
Florida

DOCKET NO. 120054-EM

**NO NAME KEY PROPERTY OWNERS ASSOCIATION'S
OPPOSITION TO PUTNEY'S MOTION TO INTERVENE AND
SUGGESTION OF MOOTNESS**

No Name Key Property Owners Association, Inc. ("the Association") hereby files its opposition to the motion to intervene by Alicia Roemmele-Putney ("Putney") and respectfully suggests that Count I of the Reynolds' Petition, that sought to compel Keys Energy to provide electricity to NNK has been rendered moot by the construction of the transmission poles and lines as of July 2012.

RULE 28-106.205

Rule 28-106.205 allows persons "whose substantial interest will be affected by the proceeding and who desire to become parties" to move for leave to intervene. The motion must include:

(c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding;

Parties who oppose the motion must do so within 7 days.

PUTNEY'S STANDING ALLEGATIONS

Paragraph 7 of Putney's motion, titled: "Substantial Interests Affected" alleges:

Because Intervenor spent years acquiring permission to build her home on No Name Key, spent monies upwards of \$34,000 beyond the cost of construction to comply with No Name Key's Land Codes, has personally enjoined the natural area of No Name Key for over 20 years and because proposed Intervenor's quality of life, safety, property interest and investment backed expectation will be directly affected by the Commission's decision, Intervenor qualifies as a substantially affected person.

THE LAW OF STANDING

The concept of standing in an administrative proceeding depends on whether the particular entity at issue qualifies as a "party." Section 120.52(12)(b) defines a "party" as "any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action" *Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1083 (Fla. 2d DCA 2009). Thus only a person whose substantial interests may or will be affected by the Public Service Commission's action may file a petition for a 120.57 hearing. See § 120.57, *Florida Statutes* (2011).

In *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981), the Court held that to demonstrate standing to intervene a petitioner must demonstrate: i) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a *section 120.57* hearing, and ii) that his substantial injury is of a type or nature which the proceeding is designed to protect. 406 So. 2d at 482. The Second

District went on to explain that a third-party challenger "must frame their petition for a section 120.57 formal hearing in terms which **clearly show injury in fact** to a protected interests. Absent such a showing, the agency must deny standing and proceed on the permit directly with the applicant.

The following cases are instructive on the issue of standing. In *Ameristeel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla. 1997), the Supreme Court relied on *Agrico* to affirm the PSC's decision to deny AmeriSteel standing to intervene in a proceeding before the PSC to approve a territorial agreement. The PSC found that AmeriSteel substantial interests were not affected because it might be more economical for AmeriSteel to obtain service from the City of Jacksonville. In *International Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n*, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990) the Court found that a change in playing dates that might affect labor dispute, resulting in economic detriment to players, was too remote to establish standing. In *Florida Soc'y of Opthamology v. State Board of Optometry*, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988) the Court held that some degree of loss due to economic competition is not of sufficient "immediacy" to establish standing. In *Village Park Mobile Home Ass'n, Inc. v. State Dep't of Bus. Regulation*, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), the Court held that possible occurrence of injurious events included in a prospectus were too remote. Relying on *Florida Department of Rehabilitation v. Jerry*, 353 So.2d 1230 (Fla. 1st DCA 1978) the Court held that abstract injury is not enough. "The injury or threat of injury must be both real and immediate, not conjectural or hypothetical." Id.

THE PURPOSE OF THE ADMINISTRATIVE PROCEEDING

The Petitions filed by Reynolds and the Association, seeks an administrative hearing 1) to compel Keys Energy's to provide electrical services to the residents living on No Name Key; and 2) to compel Monroe County to issue building permits to connect their homes to the recently installed transmission lines adjacent to their homes

Count 1 of the Petition has been rendered moot as July 24, 2012, when Keys Energy completed the installation of 62 transmission poles and energized the lines on No Name Key. The remaining issue for adjudication by the PSC is whether the doctrine of express or implied preemption prevents Monroe County from denying electricity to homeowners by withholding building permits to connect to the transmission poles located adjacent to their homes.

CONCLUSION

Putney motion does not include any facts that **clearly show** that providing electricity to her neighbors, some of whom lives miles away from her, will result in a substantial injury to her quality of life, safety, property interest, or investment backed expectation. Even if Putney can establish that her quality of life will be affected, or that her property will diminish in value, the purported injury is not of a type of nature which the administrative proceeding before the PSC is designed to protect.

For the reason set forth herein, Putney's motion to intervene should be **DENIED**.

Respectfully submitted by



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CERTIFICATE OF SERVICE

I CERTIFY THAT a true copy of the foregoing was furnished to the following persons by EMAIL on this 26th day of February 2013.

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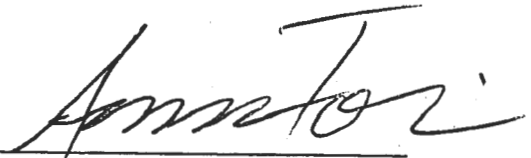
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