

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

RECEIVED-FPSC  
13 MAY 23 AM 11:44  
COMMISSION CLERK

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**DATE:** May 23, 2013  
**TO:** Ann Cole, Commission Clerk, Office of Commission Clerk  
**FROM:** Martha Brown, Senior Attorney, Office of the General Counsel **MCB**  
**RE:** 120054-EM - 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.

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Please place the attached Agreed Order Granting Petitioners' Unopposed Renewed Petition for Writ of Mandamus from the Sixteenth Judicial Circuit Court in the referenced docket file.

MCB/ace  
Attachment

DOCUMENT NUMBER - DATE  
02851 MAY 23 2013  
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IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT,  
IN AND FOR MONROE COUNTY, FLORIDA

JAMES B. NEWTON, RUTH L. NEWTON,  
ROBERT D. REYNOLDS AND JULIANNE  
C. REYNOLDS,

Petitioners/Plaintiffs,

v.

CASE NO. 2013-CA-86-K

MONROE COUNTY, FLORIDA, a Political  
Subdivision of the State of Florida,

Respondent/Defendant.

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**AGREED ORDER GRANTING PETITIONERS' UNOPPOSED RENEWED PETITION  
FOR WRIT OF MANDAMUS**

THIS MATTER came before the Court upon Petitioners' Unopposed Renewed Petition for Writ of Mandamus, and being otherwise fully informed in the premises, hereby **FINDS** as follows:

1. On May 14, 2013, the Florida Public Service Commission ("PSC") adopted staff's recommendations that it has exclusive jurisdiction over No Name Key property owners' connection to the Utility Board of Key West, d.b.a. Keys Energy Services' ("KES") electric power grid and that the PSC's jurisdiction is preemptive. In doing so, the PSC adopted staff's recommendation that its jurisdiction is "superior to that of all boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and, in each case of conflict therewith, all lawful acts, orders, rules and regulations of the commission shall in each instance prevail."
2. After adopting the PSC staff's recommendation as to the extent of its jurisdiction, the PSC adopted the PSC staff's recommendation that the Newtons and Reynolds were

DOCUMENT NUMBER-DATE

02851 MAY 23 2013

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entitled to receive electric service and connect to KES' electric grid. The PSC's jurisdiction over the connection and service by KES is exclusive and superior to Monroe County's Comp. Plan and Land Development Regulations when properly invoked such as here.

3. On May 15, 2013, the Monroe County Commission voted to direct staff to begin the legislative process of amending § 130-122 the Land Development Code to remove the prohibition against the extension of utilities to and through CBRS areas. During discussion of that item, the Board estimated that the legislative process could extend into 2014.
4. On May 15, 2013, the County Commission also voted 3 – 2 that: (1) the County will not appeal the PSC's Proposed Agency Action<sup>1</sup>; (2) When the PSC issues its Final Agency Action, Monroe County will not appeal the Final Agency Action<sup>2</sup>; (3) Monroe County will recognize, at this time, the vote of the PSC as a Final Agency Action; (4) Monroe County will no longer oppose any appeal of denial of issuance of a building permit; and (5) should a person petition for a writ of mandamus to order the County to issue building permits for residential electric service and subfeed and order the County to allow KES to connect the person to the electric distribution lines on No Name Key, Monroe County will not oppose the issuance of the writ and will not appeal the issuance of said writ.
5. A writ of mandamus is necessary for Monroe County to issue the subject permit prior to completing the lengthy legislative process to change its applicable regulations

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<sup>1</sup> Provided that the Proposed Agency Action comports with the staff recommendation approved on May 14, 2013.

<sup>2</sup> Provided that the Final Agency Action comports with the staff recommendation approved on May 14, 2013.

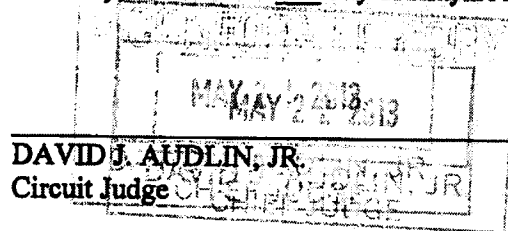
without subjecting those permits to the risk of a lengthy administrative appellate process during which time work pursuant to the permits could not legally proceed.

6. Based on the foregoing, Monroe County is unopposed to the granting of this Writ of Mandamus in so far as it authorizes only the expeditious issuance of residential building permits to the Petitioners and those similarly situated property owners on No Name Key who desire electric service from Keys Energy Service (KES).

WHEREFORE, it is **ORDERED** and **ADJUDGED** that:

- A. Upon payment of all applicable fees by the Petitioners, Monroe County shall issue forthwith Reynolds and Newtons' electrical permits for 200 AMP Electric Service and Subfeed to their properties located at 2047 Bahia Shores Road, No Name Key, Florida 33043 and 2160 Bahia Shores Road, No Name Key, Florida 33043 and upon passing inspection by the Monroe County Building Department to confirm that the completed electrical work complies with the Florida Building Code, Monroe County shall notify KES that said electrical work passed inspection and allow the Reynolds and Newtons to connect to KES' electric distribution lines on No Name Key;
- B. § 130-122 of the Monroe County Land Development Code shall not serve as a basis for Monroe County denying a duly applied for building permit for an Electric Service and Subfeed connection by any similarly situated residential property owner on No Name Key who desires electric service from Keys Energy Service; and
- C. Any challenge to the issuance of any permit issued pursuant to this Order shall be brought before this Court within 10 days of the issuance of that permit.

DONE and ORDERED at Key West, Monroe County, Florida this 22 day of May 2013.



cc:

Barton W. Smith, Esq.  
Derek V. Howard, Esq.  
Michael Burke, Esq.  
Andrew M. Tobin, Esq.

Approved as to form and content.

A handwritten signature in black ink, appearing to be "RBS", followed by the date "5/21/13" written in a similar style.

Robert B. Shillinger, FBN: 58262  
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