

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
ORDER NO. PSC-13-0141-PCO-EM
ISSUED: March 25, 2013

ORDER ESTABLISHING SCHEDULE FOR BRIEFS ON CERTAIN LEGAL ISSUES

On March 5, 2012, Robert D. Reynolds and Julianne C. Reynolds, the owners of residential property on No Name Key, Florida, filed a complaint against the Utility Board of the City of Key West, Florida, d.b.a. Keys Energy Services (Keys Energy) for failure to provide electric service to their residence as required by the terms of a Territorial Agreement, which the Commission approved in 1991.¹ The Reynolds filed an amended complaint against Keys Energy on March 13, 2013, and a second amended complaint to correct a scrivener's error on March 20, 2013. The amended complaint asserts that the Commission has exclusive jurisdiction to interpret the territorial agreement it approved and determine whether property owners on No Name Key are entitled to electric service from Keys Energy. Essentially, the amended complaint asks the Commission to order Keys Energy to provide electric service to the Reynolds, as well as other No Name Key property owners who request it, and to determine that Monroe County (County)² cannot prevent provision of electric service to No Name Key by the application of its local comprehensive plan or other ordinances.

The controversy over whether No Name Key property owners should receive electric service from Keys Energy began long before the Reynolds filed their complaint with this Commission. It has a complicated legal history. Most recently, the County filed a complaint for a declaratory judgment and injunctive relief against Keys Energy and the No Name Key property owners in the 16th Judicial Circuit Court for Monroe County. The County asked the Circuit Court to determine whether the County could preclude Keys Energy from providing electric service to the island. The Circuit Court dismissed the action with prejudice, holding that the Commission has exclusive jurisdiction to determine whether Keys Energy should provide electric service to No Name Key property owners.

The Circuit Court's decision was affirmed in Alicia Roemmele-Putney, et. al. v. Robert D. Reynolds, et. al., 106 So. 3rd 78, 82 (Fla. 3rd DCA 2013), where the Third District Court of Appeal stated that the Commission is to determine the scope of its own jurisdiction over the No Name Key controversy. The District Court of Appeal also stated that:

¹ Order No. 25127, issued September 9, 1991, in Docket No. 910765-EU, In re: Joint Petition of Florida Keys Electric Cooperative Association, Inc. and the utility board of the City of Key West for approval of a territorial agreement.

² Monroe County was granted intervention in this proceeding on May 22, 2012, by Order No. PSC-12-0247-PCO-EM.

DOCUMENT NUMBER-DATE

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The appellees and the PSC also have argued, and we agree, that KES's existing service and territorial agreement (approved by the PSC in 1991) relating to new customers and 'end use facilities' is subject to the PSC's statutory power over all 'electric facilities' and any territorial disputes over service areas, pursuant to section 366.04(2)(e), Florida Statutes (2011). The PSC's jurisdiction, when properly invoked (as here) is 'exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties.'

Shortly after the District Court of Appeal issued its decision, the Circuit Court in Monroe County dismissed another complaint for declaratory judgment and injunctive relief filed by the County regarding essentially the same subject matter as the first complaint. The Circuit Court dismissed the complaint without prejudice, stating that once the Commission has decided the matters within its jurisdiction, the Circuit Court would be available to address any remaining issues. The Circuit Court quoted State v. Willis, 310 So. 2d 1 (Fla. 1975) as follows:

'Where the Public Service Commission, or this Court (Florida Supreme Court) on review, has disposed and completed a matter coming within the Commission's jurisdiction, subsequent unresolved claims or causes arising against the affected regulated carrier or utility which are not statutorily remediable by the Commission and lie outside its jurisdiction may be litigated in the appropriate civil courts.'

Twice now the Circuit Court for Monroe County has determined that the Commission has jurisdiction to review the subject matter of this dispute; and now that the District Court of Appeal has upheld that determination, it is time for the Commission to move forward to resolve all matters within its jurisdiction as expeditiously as possible. To that end, I am establishing a briefing schedule on certain fundamental legal issues that are central to the resolution of this proceeding. Resolving these issues first will help streamline the identification of any factual issues and thus facilitate an evidentiary hearing afterwards, if one will be necessary at all when these legal issues are resolved. The parties to this Docket shall file briefs on the issues identified below, according to the schedule identified below. The issues are intended to be interpreted broadly to accommodate the parties' legal arguments. The briefs shall be 25 pages in length.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

Legal Issues

1. Does the Commission have jurisdiction to resolve the Reynolds' complaint?
2. Are the Reynolds and No Name Key property owners entitled to receive electric power from Keys Energy under the terms of the Commission's Order

No. 25127 approving the 1991 territorial agreement between Keys Energy and the Florida Keys Electric Cooperative?

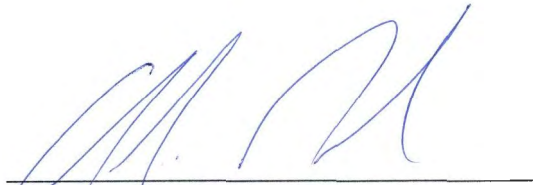
Briefing schedule

1. Briefs due – April 19, 2013
2. Staff recommendation filed – May 2, 2013
3. Commission Agenda Conference – May 14, 2013
4. Commission Order on legal issues – June 3, 2013

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that the schedule for filing briefs on certain legal issues is established as set out above.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 25th day of March, 2013.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.