

STATE OF FLORIDA

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Public Service Commission

August 14, 2002

Mr. Carroll Webb  
Joint Administrative Procedures  
Committee  
Room 120 Holland Building  
Tallahassee, Florida 32399-1300

Re: PSC Docket No. 020829-EC

Dear Mr. Webb:

The Commission has received a Petition for Declaratory Statement from Florida Keys Electric Cooperative on July 29, 2002. A copy of the petition is enclosed. A notice will be published in the Florida Administrative Weekly on Friday, August 23, 2002.

Sincerely,

A handwritten signature in cursive script that reads "Christiana T. Moore".

Christiana T. Moore  
Senior Attorney

cc: Division of the Commission Clerk  
and Administrative Services

Enclosure

JAPC020829.CTM

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition of Florida Keys  
Electric Cooperative for a  
Declaratory Statement Concerning  
the Urgent Need for an Electric  
Substation in North Key Largo  
Pursuant to Section 366.04,  
FLA. STAT.

Docket No.: **020829-EC**  
Filed: July     , 2002

**PETITION FOR DECLARATORY STATEMENT**

FLORIDA KEYS ELECTRIC COOPERATIVE ("FKEC"), by and through its undersigned counsel, hereby petitions the Florida Public Service Commission ("Commission") pursuant to Section 120.565 of the Florida Statutes and respectfully requests the Commission's declaration that, based on the facts below, there is an urgent need for an electric substation in the Ocean Reef area of North Key Largo and that FKEC must build such a substation on a road bed that FKEC acquired from the Florida Department of Transportation located just North of and adjacent to, the old NIKE Missile Base on the East side of C-905 (the "Site"), the best available and suitable site, to ensure an adequate and reliable source of energy for the residents of Ocean Reef and to remedy an inadequacy in the energy grid. The site selected is the best site as determined by a study entitled "Key Largo Substation Needs Analysis", dated August 2,

2000, and which will have the least environmental impact and the best suitability for the electric facility needed. As grounds for the relief requested by this petition, FKEC ("Petitioner") respectfully shows:

1. Notices and communications with respect to this petition should be addressed to:

**For Florida Keys Electric Cooperative:**

John H. Haswell, Esquire  
Chandler, Lang, Haswell & Cole, P.A.  
P.O. Box 23879  
Gainesville, FL 32602  
352.376.5226  
352.372.8858 -FAX

**with a copy to:**

Timothy E. Planer  
CEO and General Manager  
Florida Keys Electric Cooperative  
91605 Overseas Highway  
Tavernier, FL 33070  
305.852.2431  
305.852.4794 -FAX

**BACKGROUND**

2. FKEC is an electric cooperative serving much of the Florida Keys with headquarters at 91605 Overseas Highway in Tavernier, Florida. FKEC is the utility responsible for providing power to the Ocean Reef and Anglers Club on North Key Largo, and is the exclusive service provider pursuant to territorial agreements approved by the Commission with Florida Power & Light Company, and the City Electric System of the City of Key West. The electric service demand and the energy needs of

the Ocean Reef community are rapidly growing beyond the capacity of the existing facilities serving Ocean Reef. Ocean Reef's electric needs are currently served by a 12-mile long distribution line that has become critically close to overloading its capacity in recent peak periods. FKEC must begin construction immediately on a new substation located closer to the Ocean Reef area before the winter peak period of 2002-2003 to prevent the likelihood of catastrophic power failures.

**STATUTES AND CASE INVOLVED**

3. FKEC seeks the Commission's declaratory statement regarding FKEC's obligation to provide adequate and reliable electric service to its members in the North Key Largo area of Ocean Reef. The statutory provisions and cases that apply to this set of circumstances are:

a. §366.04(1), FLA. STAT., which provides that the jurisdiction of the Commission supersedes that of all other boards, agencies, political subdivisions, municipalities, towns, villages, and counties.

b. §366.04(2), FLA. STAT., which provides that the Commission has the power over electric utilities to require electric power reliability.

c. §366.04(5), FLA. STAT., which provides that the Commission has jurisdiction over the development of Florida's electrical grid to assure an adequate and reliable source of energy.

d. §366.04(6), FLA. STAT., granting the Commission jurisdiction over all electric

utilities to establish and enforce safety standards.

e. Sutton v. Department of Environmental Protection, 654 So. 2d 1047 (Fla. 5th DCA 1995), where the court determined that an administrative agency can issue a declaratory statement where there is a bona fide, actual, present and practical need for the declaration and where the declaration deals with a present controversy as to a state of facts.

#### FACTS

4. FKEC is the exclusive electric utility that provides power to the Ocean Reef and Anglers Club area of North Key Largo, in Monroe County, Florida. In 1990, FKEC's consulting engineering firm, Resource Management International (RMI), performed a long-range study to determine what improvements FKEC would need to make to its system in the coming years to provide adequate and reliable service. RMI determined that the 12-mile long distribution line serving Ocean Reef was insufficient to meet the area's growing needs and that a new substation would need to be built. The line losses from such a long distribution line exacerbated the already limited capacity of the line. At the time of the 1990 recommendation, the projected line load in the year 2000 was to be 10,876 kW. The load on the Ocean Reef line reached 10,970 kW by 1995 and reached an all time high of 17,992 kW in December 2000. Each of RMI's reports since 1990 have urged the need to construct a new

substation closer to Ocean Reef to serve the Ocean Reef area. FKEC is now concerned that a very hot or very cold weather condition during peak demand periods will likely result in black out conditions and the inability to restore service for significant periods of time.

5. In accordance with RMI's recommendations, FKEC began plans to construct a substation on an FKEC-owned 3.1 acre site in the vicinity of the Ocean Reef area. A poor environmental impact review from the Rural Electrification Administration and the site's closer but still significant distance from the growing Ocean Reef area made it an undesirable and inefficient location for the substation. FKEC then sought to swap the 3.1-acre site for a small part of the former NIKE Missile Base that was 3 miles closer to Ocean Reef. However, the swap was rejected by the State since the Missile Base property was to be used for conservation purposes only. Another swap was attempted with the Florida Department of Transportation (DOT) for an old right-of-way at the "four way stop" area, nearby the missile base. Federal, state, and local agencies rejected this plan in 1994. Finally, in 1998 FKEC negotiated a swap with the DOT, trading the 3.1 acre site for a smaller section of an abandoned road bed  $\frac{3}{4}$  mile south of the four way stop and adjacent to the old missile base (the "Site").

6. Although the Site is located in a designated wildlife hammock, FKEC has pledged to minimize environmental impacts of an electrical substation by creating wildlife corridors around the Site and by removing debris and non-native plants from the Site. Additionally, FKEC designed the substation to have a minimal environmental footprint of only 100 feet by 215 feet of fenced area and by locating the entire substation on the old road bed of the DOT. This is the only remaining site that would meet the requirements of the substation, that is not owned by the state or federal governments, where construction has not been prohibited, and is the best of 12 considered locations.

7. In 1998, an application for a minor conditional use permit was filed with Monroe County to build an unmanned electrical substation on the Site. The application was opposed by Michael Chenoweth, President of the Florida Izaak Walton League (FIWL), alleging that the Site is environmentally inappropriate for this use. This site was approved by the Monroe County Planning Commission in July of 2001. However, construction has not begun because two suits have been filed by Mr. Chenoweth to block the issuance of the permit. One of these suits was filed with an administrative judge by Michael Chenoweth on

environmental grounds. The other suit concerns an alleged conflict of interest by one of the Planning Commission's members.

8. Detailed statements of the facts of this case are attached as affidavits of Timothy E. Planer and John M. Burch, which are incorporated herein by reference.

#### DISCUSSION

9. The distribution line serving the Ocean Reef area is dangerously close to reaching its maximum capacity and the growth in electric demand in the area strongly suggests that this limit will be reached in the near future. An electric substation located closer to the Ocean Reef area will solve this problem. In order to assure an adequate and reliable source of energy to Ocean Reef's residents, a substation must be built before December 31, 2002 on the Site.

10. Despite the danger of blackouts and the lack of other suitable locations, the Izaak Walton League has blocked the construction of the new substation by appealing the July 2001 decision of Monroe County's Planning Commission which authorized the project. The delay in construction caused by the FIWL creates great uncertainty as to whether FKEC can continue to provide the adequate and reliable power referred to in FLA. STAT. §§366.04(2)(c) and



366.04(5). Furthermore, the appeal prevents FKEC from acting to insure the safety of its facilities. Therefore, it is essential that the Commission take the steps to quickly resolve this uncertainty as described in FLA. STAT. §120.565.

11. Chapter 366 of the Florida Statutes grants the Commission the jurisdiction and power to require an electric utility to install facilities necessary to remedy any inadequacy in the electric grid and to remedy any safety issues. FLA. STAT. §§366.04(2) & (5) and 366.04(6). Additionally, FLA. STAT. §366.04(1), provides that the Commission has the exclusive jurisdiction over the issues in this case and that its power is superior to the orders of "all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties . . .". The Commission can resolve the uncertainty surrounding this case by issuing a declaratory statement that FKEC shall promptly construct an electrical substation on the Site prior to December 31, 2002, to assure the adequate and reliable availability of electricity, and to remedy an inadequacy in Florida's energy grid. In Sutton v. Department of Environmental Protection, 654 So. 2d 1047 (Fla. 5th DCA 1995), the court ruled that administrative agencies can issue a declaratory statement where there is a

bona fide, actual, present and practical need for the declaration and where the declaration deals with a present controversy as to a state of facts.

12. Resolution of this matter by the issuance of the declaratory statement below will ensure the continued availability of adequate and reliable power to the Ocean Reef area, will allow FKEC to cure an inadequacy in the energy grid, and resolve serious safety issues.

**DECLARATORY STATEMENT REQUESTED**

13. Based on the facts set forth in this petition and the attached affidavits, Florida Keys Electric Cooperative Association, Inc., respectfully requests the Commission's declaration that:

Florida Keys Electric Cooperative Association, Inc., the exclusive electric utility supplier for the North Key Largo area, shall promptly construct a new electric substation at the Site, no later than December 31, 2002, to prevent power failures, to ensure adequate and reliable electric service to the residents of the Ocean Reef community in the North Key Largo area, to remedy an inadequacy in the energy grid, and to resolve safety concerns.

**CONCLUSION**

14. A speedy clarification of the uncertainty regarding FKEC's obligation to build the substation at the Site will end the certain danger of catastrophic facility failures caused by the inadequacy of Ocean Reef's current

electric distribution feeder. An order by the Commission setting forth the declaration requested herein will allow the Petitioner to construct the substation in time for this coming winter's demand in usage and to prevent blackouts. This order will be consistent with the Commission's statutory duties to ensure adequate and reliable electric service, to require utilities to remedy inadequacies in Florida's electrical grid, and to provide for safe electrical facilities. Pursuant to FLA. STAT. §§ 366.04(2), (5), & (6), FKEC must build the electric substation on the Site for the following reasons:

- the Ocean Reef area urgently needs a new substation to serve its growing electrical demands;
- without a new substation, the Ocean Reef area will likely experience power failures in future peak use periods due to the failure of the current 12 mile long electric distribution line;
- environmental concerns prompting Mr. Chenoweth's appeal have already been addressed in FKEC's plans for the proposed substation;
- the Site is the best available and suitable location for an electrical substation serving the Ocean Reef area;

- it is the Commission's duty to require utilities to remedy inadequacies in the electric grid, and to ensure the safe, adequate and reliable availability of electrical service;
- orders by the Commission are exclusive and superior to those of any other state or local agency.


The legislative intent of FLA. STAT. §366.04 concerning the Public Service Commission was to ensure the availability of adequate and reliable power to all of Florida's residents. The Commission should grant the Petitioner's request and issue the declaration sought herein. It is urgently needed.

WHEREFORE, Florida Keys Electric Cooperative requests that the Commission declare that Florida Keys Electric Cooperative must construct an electric substation on the Site to ensure the availability of adequate and reliable service to the residents of Ocean Reef in North Key Largo and to remedy an inadequacy in the electrical grid, or grant similar other relief as is just and reasonably consistent with this petition.

Respectfully submitted this 22 day of July, 2002.



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Cooperative Association**  
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