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ASSOCIATE ATTORNEY

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120054 - EM

VIA FEDERAL EXPRESS

March 5, 2012

Florida Public Service Commission
Commission Clerk and Administrative Services
Room 110, Easley Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Robert and Julianne Reynolds v. The Utility Board of Key West - Complaint

RECEIVED-FPSC
12 MAR -7 AM 10:34
COMMISSION
CLERK

Dear Clerk,

Please find enclosed on behalf of Robert and Julianne Reynolds ("Reynolds"), an original and seven copies of the Reynolds Complaint against The Utility Board of Key West. Please indicate receipt of this document by stamping the enclosed extra copy of this letter head and returning same to me with the self addressed envelope.

If you should have any questions, comments or concerns, or required additional information, please do not hesitate to contact me.

Very Truly Yours,

Gregory S. Oropeza, Esq.
For the Firm

COM _____
APA _____
ECR 6 _____
GCL 1 _____
RAD _____
SRC _____
ADM _____
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CLK _____

12 MAR -7 AM 10:16

FPSC

DOCUMENT NUMBER-DATE

01332 MAR-7 12

FPSC-COMMISSION CLERK

BEFORE THE STATE OF FLORIDA PUBLIC SERVICE COMMISSION

ROBERT D. REYNOLDS and JULIANNE C.
REYNOLDS

Complainants,

v.

VERIFIED COMPLAINT

UTILITY BOARD OF THE CITY OF KEY
WEST, FLORIDA d.b.a KEYS ENERGY
SERVICES,

Filed: March 5, 2012

Respondents.

Complainants, ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS, by and through undersigned counsel and pursuant to Florida Rules of Administrative Code §25-22.036, file this Verified Complaint against the Respondent, UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA d.b.a KEYS ENERGY SERVICES, and in support state as follows:

INTRODUCTION/PARTIES

1. Complainants, ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS (“Reynolds”), own and maintain real property located at 2160 Bahia Shores Road, No Name Key, Florida 33042 (“Property”). The Property is located on an island in Monroe County, Florida commonly known as No Name Key.

2. Respondent, UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA d.b.a KEYS ENERGY SERVICES (“KES”), is a Florida electric utility with its principal place of business located at 1001 James Street, Key West, Florida 33040.

3. KES’ territorial service area includes the island of Key West and extends beyond the City limits for approximately thirty-five (35) miles East through the Lower Florida Keys, terminating at Pigeon Key, Monroe County, Florida.

4. Mr. and Mrs. Reynolds are property owners within KES' territorial service area.

5. With this proceeding Mr. and Mrs. Reynolds seek: (1) a Public Service Commission ("PSC") Order mandating that KES extend commercial electrical service to Mr. and Mrs. Reynolds' Property pursuant to KES territorial agreement and Fla. Stat. §366.04; (2) an adjudication pursuant to 25-6.004 F.A.C, of the PSC's Orders, *infra*, in connection with the alleged violations of KES enumerated herein; and (3) a determination that Monroe County must apply the same building code requirements for connection to commercial power and cannot prohibit KES customers from connecting to the electric utility.

LEGAL AUTHORITY

6. This is a complaint pursuant to §25-22.036, Florida Administrative Code ("F.A.C."), complaining of an act or omission by an entity subject to Florida PSC jurisdiction which affects the complainants' substantial interests and which is in violation of statute enforced by the Commission and Commission order.

7. The PSC is an agency of the State of Florida with regulatory and police powers to regulate public utilities and electric utilities in the State of Florida, including KES. *See* Fla. Stat. §366.01. KES was created by legislative enactment Chapter 69-1191 of the Laws of Florida. *See* Chapter 69-1191, Laws of Florida (1969).

8. By statute, KES is defined as an Electric Utility. *See* Fla. Stat. §366.02(2)¹.

9. Fla. Stat. §366.04 empowers the PSC with exclusive jurisdiction over enforcement of a Territorial Agreement of an Electric Utility, including its terms. Fla. Stat. §366.04; *See also* F.A.C. §25-6.004.

¹ *Electric utility* means any electric municipal utility, investor-owned utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

10. The Supreme Court has affirmed that the “PSC derives its authority solely from the legislature, which defines the PSC’s jurisdiction, duties and powers.” *Florida Public Service Commission v. Fred L. Bryson*, 569 So.2d 1253 (Fla. 1990). The Court has specifically held that:

The Commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and services...The jurisdiction conferred upon the commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in case of conflict therewith, all lawful acts, orders, rules and regulations of the commission shall in each instance prevail. *Id.*

11. The PSC not only has the authority over enforcing its territorial agreement, the “PSC has the authority to interpret the statutes that empower it, including jurisdictional statutes and to make rules and issue orders accordingly.” *Id.* at 1255.

FACTUAL BACKGROUND

12. On September 27, 1991, the PSC issued its Order Approving Territorial Agreement, Order No. 25127, approving the Territorial Agreement governing the territorial service of City Electric Service (“CES”), the predecessor in interest to KES. A true and correct copy of the Territorial Agreement is attached hereto and incorporated herein as Exhibit A.

13. The Territorial Agreement provides a Territorial Service Area for which KES has the exclusive right and authority to provide commercial electrical services to customers. Pursuant to the Territorial Agreement, KES is required to extend commercial electrical service to customers within its Territorial Service Area. The Territorial Service Area includes the island of No Name Key.

14. The Territorial Agreement is a PSC Order enforceable solely by the PSC pursuant to the State of Florida’s police power. Absent PSC enforcement, the territorial agreement violates state and federal anti-trust statutes.

15. At present, KES does not offer commercial electrical service to property owners on No Name Key, despite No Name Key's location within KES's territorial service area.

16. For several decades, property owners on No Name Key have sought the extension of commercial electrical service to No Name Key and have been in repeated discussions and negotiations with KES to provide for the extension of commercial electrical service to their properties on No Name Key.

17. No Name Key property owners desire commercial electrical service because of the high costs associated with using alternative energy sources, and the inability to dispose of by-products of alternative energy, including exhausted batteries and damaged or worn propane tanks. More so, the use of large diesel fuel generators produces large amounts of environmental and noise pollutants, affecting all aspects of the ecosystem unique to No Name Key. Disposal costs are exacerbated even further due to the Florida Keys' unique geographic features and No Name Key's remoteness.

18. By connecting to commercial electrical power, the combined use of the existing solar capability together with commercial grade power would result in positive net solar metering producing a net positive impact on the environment, far exceeding the negative impacts which currently exist as a result of the current pollutants emitted to power the homes on No Name Key.

19. Pursuant to Fla. Stat. §381.0065 and Chapter 99-395 House Bill No. 1993 Section 6(6)(a), as amended by 2010 Fla. Sess. Law Serv. Ch. 2010-205 (C.S.C.S.C.S.S.B. 550), the State of Florida in conjunction with the Florida Department of Environmental Protection ("FDEP") and Department of Health has mandated that all Monroe County, Florida properties be connected to central sewer systems or the best available technology by December 31, 2015. The

Monroe County Board of County Commissioners (the “BOCC”) codified this Bill in Ordinance No. 04-2000 and later amended it in Ordinance No. 017-2002. No Name Key property owners are subject to this mandate and have not been able to connect to central sewers, install or upgrade their on-site systems to best available technology meeting state standards for treated wastewater. Many No Name Key property owners desire to connect to central sewer systems because the regulations required to upgrade or install an on-site sewage disposal system are not only cost prohibitive, but, due to physical restraints of their property size and the locations of private potable drinking water, are incapable of complying with the Department of Health’s requirements for installation of onsite wastewater disposal systems.²

20. The Florida Keys Aqueduct Authority (“FKAA”) has been tasked by the State of Florida with providing central sewers and water to property owners of unincorporated Monroe County. *See* Chapter 76-441, Laws of Florida, as amended by chapter 77-605, Laws of Florida, and Florida House Bill 4241, relating to the Florida Keys Aqueduct Authority. FKAA has expressed interest in providing central sewer services to No Name Key, but has indicated it cannot provide central sewer services without commercial electricity. No Name Key has been identified as a “hot spot” by the United States Environmental Protection Agency. By identifying No Name Key as a “hot spot”, the United States Government has placed a priority in eliminating the harmful effects caused by wastewater discharging directly into outstanding Florida waters.

21. On or about April 29, 2009, Reynolds applied to KES for the extension of commercial electricity to No Name Key (“Reynolds Application”) and was denied same by KES.

² For instance, no on-site sewage disposal system can be located within seventy-five (75) feet of a private potable water source or tidally influenced water body. *See* Fla. Stat. 381.0065(4)(e)(1) and (6)(“Onsite sewage treatment and disposal systems must not be placed closer than: (1) Seventy-five feet from a private potable well; (6) Seventy-five feet from the mean high-water line of a tidally influenced surface water body.”)

A true and correct copy of the Reynolds Application and resulting declination letter is attached hereto and incorporated herein as composite Exhibit B.

22. The No Name Key Property Owners Association, Inc., (“NNKPOA”), a Florida not-for-profit corporation co-founded by Mr. Reynolds and constituted for the purpose of addressing the interests of property owners on No Name Key and of which Mr. and Mrs. Reynolds are members, has also requested the extension of commercial electricity service to No Name Key, but has been similarly rebuffed.

23. Following Mr. Reynolds’ application, KES engaged in negotiations with NNKPOA to facilitate the extension of commercial electricity to No Name Key despite the denial of the Reynolds Application. Despite these negotiations, KES failed to provide NNKPOA or Reynolds with a response to whether KES believed they could in fact install power on No Name Key. Reynolds had the reasonable and understandable belief that KES, as the local authorized commercial power company could and would answer questions about the availability and legality of such an installation. KES, however, has repeatedly failed to provide Reynolds or the NNKPOA with an answer to their questions and exhibited continual mis-guidance on its intent to install or not install commercial power to No Name Key.

24. Notwithstanding KES’ evasive nature towards answering questions as to whether it would provide commercial power, KES initially agreed to facilitate the extension of commercial electricity to No Name Key and required NNKPOA to comply with financial, regulatory and contractual obligations required to furnish commercial electric service.

25. NNKPOA has complied with all of the financial, regulatory and contractual obligations required by KES.

26. Pursuant to the request for commercial electricity from the NNKPOA, KES required the execution of a Line Extension Agreement by the NNKPOA. Initially NNKPOA and Reynolds wished to have legal counsel review the Line Extension Agreement but representatives of KES informed NNKPOA and Reynolds that if legal counsel was engaged, then NNKPOA would have to pay for KES' legal counsel to be present. The requirement of paying for KES' legal representation placed an unreasonable burden on the NNKPOA, so much that NNKPOA was forced to forego legal representation. Nonetheless, NNKPOA received a legal invoice from KES for work performed on the Line Extension Agreement.

27. Without representation, but desiring commercial power, the NNKPOA executed the Line Extension Agreement. KES has failed and/or refused to execute same. A true and correct copy of the Line Extension Agreement is attached hereto as Exhibit C.

28. Based on concerns over public and political perception, KES installed two (2) "test poles" on No Name Key pursuant to a utility pole agreement with NNKPOA, despite KES' failure to execute the Line Extension Agreement. A true and correct copy of the utility pole agreement is attached hereto and incorporated herein as Exhibit D.

29. In order to extend commercial power, KES required that the property owners of No Name Key fund the entire proposed cost of the extension of commercial electricity to No Name Key. In reliance on the agreement memorialized by the Line Extension Agreement, and on representations, warranties and confirmations made by KES, NNKPOA remitted to KES and/or agents of KES (1) the sum of Thirteen Thousand Eight Hundred and 00/100 Dollars (\$13,800.00) as a deposit; (2) the sum of Twelve Thousand Five Hundred Ninety Two and 00/100 Dollars (\$12,592.00) for completion of a survey; (3) the sum of Nineteen Thousand Nine Hundred Fifty-Eight and 00/100 Dollars (\$19,958.00) for design work; (4) the sum of Eight Thousand Eight

Hundred Seventy-Six and 00/100 Dollars (\$8,876.00) for a Pole Contract; (5) the sum of Ninety-Eight Thousand Nine Hundred Twenty-Four and 42/100 Dollars (\$98,924.42) for sixty (60) poles; and (6) the sum of Four Hundred Fifty-Nine Thousand Two Hundred Fifty-Seven and 00/100 Dollars (\$459,257.00) for the completion of the extension of commercial transmission lines. KES' total proposed cost for the extension of commercial electricity to NNKPOA was Six Hundred Thirteen Thousand Four Hundred Seven and 42/100 Dollars (\$613,407.42).

30. The NNKPOA remitted a total of Six Hundred Thirteen Thousand Four Hundred Seven and 42/100 Dollars (\$613,407.42)³ to KES in order to obtain the extension of commercial electrical service to No Name Key. True and correct copies of the above referenced checks are attached hereto and incorporated herein as composite Exhibit E.

31. KES has not, however, deposited the check for Four Hundred Fifty-Nine Thousand Two Hundred Fifty-Seven and 00/100 Dollars (\$459,257.00) into a financial institution for safekeeping and, instead, retains those funds in its office safe. It is Reynolds' concern that KES, by demanding and accepting those funds, yet not depositing them, has both allowed those funds to expire and has simultaneously violated its fiduciary responsibility to its current and prospective customers by publicizing that it has been paid. As of the date of this filing, KES has deposited and expended all other checks provided by NNKPOA and retains the remaining check remitted to KES by NNKPOA.

32. In addition to the amounts outlined in paragraphs twenty-nine (29) through thirty-two (32) above, the NNKPOA has expended (1) Four Thousand Five Hundred and 00/100 Dollars (\$4,500.00) for a private easement over which to run transmission lines; (2) Fifteen Thousand and 00/100 Dollars (\$15,000.00) for an environmental study; and (3) thousands of

³ Although unbeknownst to KES, in order to pay for the line extension No Name Key property owners took on severe financial hardships including one property owner obtaining a loan secured by a first mortgage against his No Name Key homestead and another property owner withdrawing the funds from their 401(k).

additional sums at the request of KES. True and correct copies of the above referenced checks are attached hereto as composite Exhibit F.

33. In addition to financial considerations, Mr. Reynolds, Mrs. Reynolds, and the NNKPOA have coordinated approvals from various regulatory agencies, engaged in numerous planning meetings and discussions with KES, and relied on assertions made by KES to their detriment, including obtaining approval from Florida Fish and Wildlife Conservation Commission, Florida Department of Environmental Protection, and the United States Fish and Wildlife Service.⁴

34. On or about January 11, 2011, KES brought forward for final approval at the regularly scheduled board meeting the Line Extension Agreement which had already been agreed upon by KES' staff and NNKPOA. At that time, KES' board tabled the item, and, since that date, has not taken any further action with respect to the Line Extension Agreement for No Name Key.

35. In 2001, an anti-electricity property owner, Alicia Putney, successfully lobbied the Board of County Commissioners for Monroe County to enact an ordinance that prohibits the extension of utility lines to No Name Key in response to numerous property owners' prior efforts to obtain commercial electrical service from KES for No Name Key. *See* Monroe County Ordinance 043-2001, a copy of which is attached hereto as Exhibit G. Ms. Putney's continued lobbying efforts to prevent commercial electric power from being extended to No Name Key resulted in Monroe County questioning whether such extension of electrical service to No Name Key was permitted under Monroe County's Land Development Regulations ("LDRs") and Comprehensive Plan ("Comp. Plan").

⁴ The Army Corp of Engineers was contacted as well and stated they had no regulatory or jurisdictional authority over the extension of commercial electricity.

36. Fully aware of this question being raised by Monroe County, KES was prepared to move forward as represented by those certain emails from the General Manager of KES to the President of NNKPOA dated January 8, 2010 and December 16, 2009. True and correct copies of the e-mails are attached hereto and incorporated herein as composite Exhibit H.

37. Ultimately, KES chose to not proceed with the Line Extension Agreement and instead to cooperatively coordinate, facilitate and develop a “friendly” lawsuit with Monroe County to resolve the issue presented by Monroe County.

38. On or about April 1, 2011, Monroe County, with the foreknowledge and approval of KES, instituted the case styled as *Monroe County, a political subdivision of the State of Florida v. Utility Board of the City of Key West, Florida d.b.a. Keys Energy Services, et al.*, Case Number 2011-CA-342, in the Circuit Court of the Sixteenth Judicial Circuit, in and for Monroe County, Florida before the Honorable David J. Audlin (“County Law Suit”), on claims of declaratory relief and injunction against KES⁵ and all forty-three (43) property owners located on No Name Key (collectively, “Defendant Owners”).

39. Monroe County’s factual basis for its lawsuit was predicated on Monroe County’s belief that it has jurisdiction to regulate KES’ extension of electric services to property owners of No Name Key. A true and correct copy of Monroe County’s Complaint is attached hereto and incorporated herein as Exhibit I.

40. This position is contrary to the previous position of Monroe County regarding the extension of electrical transmission lines in the right-of-way. Monroe County has previously taken the position that electrical transmission lines in the right-of-way were not under the

⁵ Claimants are confounded as to why KES would assist in drafting a complaint which requested the Court enjoin KES from providing commercial power to No Name Key property owners. Claimants believe the PSC may be able to better shed light or answer this question as Claimants cannot find any justification for this action which interferes with KES’ contractual obligation to provide power to customers requesting service.

regulatory framework of the Comp. Plan as outlined in that certain letter dated April 29, 2010 from the Monroe County Attorney to the General Manager of KES. A true and correct copy of the XYZ letter is attached hereto and incorporated herein as Exhibit J. Moreover, in 1998, Monroe County successfully argued to the Third District Court of Appeals that development did not include the extension of utility lines down public right-of-ways based on Fla. Stat. § 380.04. *See Board of County Commissioners of Monroe County v. Department of Community Affairs*, 560 So.2d 240, 240 – 241 and Fla. Stat. § 380.04.

41. In the County Law Suit, Monroe County and KES argued that Monroe County's Land Development Regulations govern the extension of the utility line to the property owners of No Name Key in direct contradiction to their prior position in *Board of County Commissioners of Monroe County v. Department of Community Affairs*.

42. Mr. and Mrs. Reynolds filed a Motion to Dismiss in response to Monroe County's complaint in the County Law Suit, asserting the circuit court lacked subject matter jurisdiction over the issues brought forth in the County Law Suit and that jurisdiction was vested solely with the PSC.

43. On January 30, 2012, the Court granted Mr. and Mrs. Reynolds' Motion to Dismiss, and dismissed the County Law Suit with prejudice, holding that the PSC had exclusive jurisdiction on issues regarding the interpretation and enforcement of territorial agreements, and that the PSC was the proper forum for hearing the issues presented in the County Law Suit. A true and correct copy of the Court's Order of Dismissal with Prejudice is attached hereto and incorporated herein as Exhibit K.

44. Monroe County and other property owners have appealed the Court's Order. As of the date of this Verified Complaint, the appeal is still pending.

45. Mr. and Mrs. Reynolds, in their individual capacity as property owners on No Name Key and as members of the NNKPOA, reasonably acted and relied upon the assertions, representations and warranties set forth by KES.

46. The present dispute arises under the Territorial Agreement's terms which require KES to extend power to all property owners within the Territorial Service Area. While KES has asserted to Reynolds that the PSC only regulates KES' rate structures, Reynolds asserts the underlying dispute is encompassed under the PSC's regulatory framework and seeks the protection of the PSC from continued discrimination by KES.

**KES is Required to Complete the Extension of Commercial Electricity Transmission Lines to All Homeowners on No Name Key, Florida.
(Against KES and Monroe County)**

47. KES has failed and/or refused to extend commercial electricity transmission lines to the island of No Name Key despite the requests of No Name Key property owners and the requirement to provide commercial electricity to the property owners within the KES Territorial Service Area.

48. Article 6 of the Territorial Agreement, Construction of Agreement, Section 6.1 of the Territorial Agreement expressly provides that:

It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further the policy of the State of Florida to: actively regulate and supervise the service territories of electric utilities; supervise the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoid uneconomic duplication of generation, transmission and distribution facilities; and to encourage the installation and maintenance of facilities necessary to fulfill the Parties respective obligations to serve the citizens of the State of Florida within their respective service areas. (*underline and emphasis added*).

See the Territorial Agreement, Section 6.1, Construction of Agreement.

49. Moreover, KES' obligation to serve the citizens of the State of Florida within its respective service area is expressly stated in the Territorial Agreement's Section 0.2 and its enabling legislation which states:

“the full, complete and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the City of Key West, Florida, in Monroe County Florida, the electric public utility owned by said city, including the maintenance, operation, extension, and improvement thereof, and including all lines, poles, wires, mains, and all additions to and extension of the same . . .”

See Chapter 69-1191, Laws of Florida (1969).

50. KES, pursuant to the State of Florida's enabling legislation, its Territorial Agreement and incorporated Territorial Service Area, has an affirmative obligation to extend electrical transmission lines to any party requesting such an extension when the requesting party supplies the requisite funding for the extension.

51. The property owners of No Name Key have requested an extension of commercial electrical services from KES and have supplied the requisite funding for the extension.

52. As of the date of this Verified Complaint, KES has not extended electrical transmission lines to the residents and property owners of No Name Key, despite the Six Hundred Thirteen Thousand Four Hundred Seven and 42/100 Dollars (\$613,407.42) supplied to KES by the NNKPOA for said extension.

53. KES has failed to comply with their affirmative obligation to extend electrical transmission lines to the property owners of No Name Key.

**Monroe County Cannot Prohibit Connection to KES should KES Extend Electric Service
to No Name Key
(Against Monroe County)**

54. By way of information, threat and belief, Reynolds has been informed that Monroe County will prohibit the issuance of a building permit to connect No Name Key property owners to KES transmission line should KES extend its transmission line to No Name Key. Monroe County's refusal to issue building permits for connection to KES' transmission line is based solely on Monroe County's ordinance prohibiting public utilities from extending utilities to Coastal Barrier areas.

55. Reynolds asserts that the connection of customers to commercial electric service is not the extension of utilities into Coastal Barrier areas. No Name Key property owners already receive electricity from on-site sources. On-site electrical systems do not constitute public utility transmission or collection lines under Monroe County Code. *See* Section 19-31, Monroe County Code (Public or private utility includes any pipeline, gas, electric, . . . or other system by whomsoever owned and operated for **public use**, including, but not limited to, the Florida Keys Aqueduct Authority, BellSouth, Keys Energy System, The Florida Keys Electric Cooperative Association, Inc. and/or their successors, affiliates, subsidiaries or assigns). A private individual's on-site electric system does not fall under Monroe County Ordinance 043-2001 which only prohibits the extension of transmission or collection lines by public utilities.

56. Reynolds further asserts that prohibiting No Name Key property owners from connecting to commercial power violates the equal protection clause of the Florida Constitution by unfairly discriminating against No Name Key property owners because Monroe County's building code does not prohibit the connection of homes to commercial power. The connection to KES' commercial power grid by a No Name Key property owner does not constitute the

extension of public utilities into Coastal Barrier areas as on-site electrical power, including wiring, conduit, and transmission systems existing on each No Name Key property do not fall under the definition of public utilities. Therefore, connection to commercial power can only be prohibited based on health, safety, or welfare concerns already built into the building code. Should No Name Key property owners comply with all building code requirements, No Name Key property owners would be discriminated against if prohibited from connecting to commercial power.

57. Subject to reasonable building codes, Reynolds asserts Monroe County's position unreasonably infringes upon each No Name Key property owners' right under the Territorial Agreement to be furnished with electric service upon request.

RELIEF REQUESTED

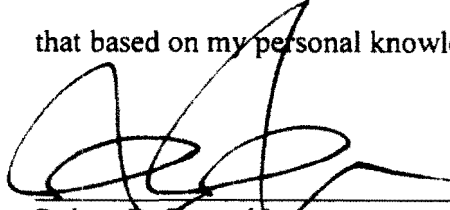
WHEREFORE, the Complainant, ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS, respectfully request that this Honorable Commission:

- (a) Exercise jurisdiction over this action and the parties hereto and hold an evidentiary hearing on the issues raised herein;
- (b) Issue an Order and/or Mandate requiring KES to extend commercial electrical transmission lines to each property owner of No Name Key, Florida;
- (c) Impose upon KES any fine, forfeiture, penalty, or other remedy provided by statute;
- (d) Issue a finding that Monroe County cannot unreasonably withhold building permits from KES' customers based solely on their property location being on the island of No Name Key;
- (e) Award reasonable attorney's fees and costs for the prosecution of this action;
- (f) Award such other and supplemental relief as may be just and necessary under the

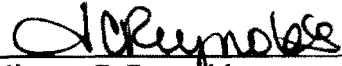
circumstances.

VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing Verified Complaint, and that based on my personal knowledge, the facts stated in it are true and correct.



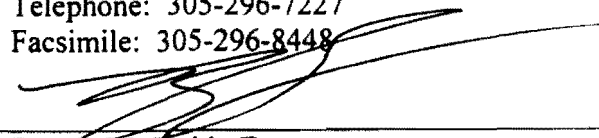
Robert D. Reynolds



Julianne C. Reynolds

Respectfully submitted,

BARTON SMITH, P.L.
624 Whitehead Street
Key West, Florida 33040
Telephone: 305-296-7227
Facsimile: 305-296-8448



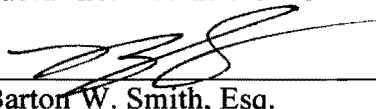
Barton W. Smith, Esq.
Florida Bar No. 20169
Patrick M. Flanigan, Esq.
Florida Bar No. 47703
Gregory S. Oropeza, Esq.
Florida Bar No. 56649

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint was served by US Mail and Electronic Mail Nathan E. Eden, Esq., Nathan E. Eden, P.A. 302 Southard Street, Suite 205, Key West, Florida 33040 this 5th day of March, 2012.⁶

Respectfully submitted,

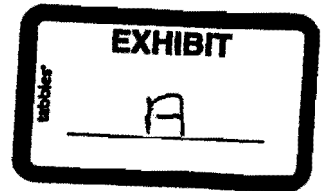
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Barton W. Smith, Esq.
Florida Bar No. 20169
Patrick M. Flanigan, Esq.
Florida Bar No. 47703
Gregory S. Oropeza, Esq.
Florida Bar No. 56649

⁶ Potentially interested third parties have been mailed a copy of the Complaint.

EXHIBIT A



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.)

DOCKET NO. 910765-EU
ORDER NO. 25127
ISSUED: 9-27-91

20 #
12

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On July 10, 1991, Florida Keys Electric Cooperative (FKEC) and City Electric System (CES) filed with this Commission a joint petition seeking approval of a territorial agreement executed by the parties on June 17, 1991. The joint petition was filed pursuant to Rules 25-6.0439 and 25-6.0440, Florida Administrative Code. The territorial agreement including its terms and conditions and the identity of the geographic areas to be served by each utility are shown in Appendix A. There will be no facilities exchanged or customers transferred as a result of the agreement.

The service areas of the parties with the unique typography of the Florida Keys affords a rational for the boundary between the parties. Neither party has any distribution facilities located in the territory of the other party, and neither party will construct, operate, or maintain distribution facilities in the territory of the other party.

The agreement does not, and is not intended to prevent either party from providing bulk power supply to wholesale customers for resale wherever they may be located.

DOCUMENT NUMBER-DATE
09628 SEP 27 1991

ORDER NO. 25127
DOCKET NO. 910765-EU
PAGE 2

Having reviewed the joint petition, the Commission finds that it satisfies the provisions of Subsection 366.04(2)(d), Florida Statutes and Rule 25-6.0440, Florida Administrative Code. We also find that the agreement satisfies the intent of Subsection 366.04(5), Florida Statutes to avoid further uneconomic duplication of generation, transmission, and distribution facilities in the state. We, therefore, find that the agreement is in the public interest and should be approved.

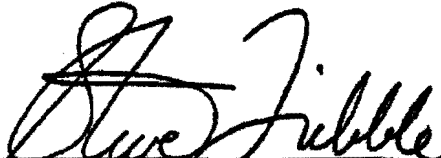
In consideration of the above, it is

ORDERED by the Florida Public Service Commission that the joint petition for approval of the territorial agreement between Florida Keys Electric Cooperative and City Electric System is granted. It is further

ORDERED that the territorial agreement and attachment are incorporated in this Order as Appendix A. It is further

ORDERED that this Order shall become final unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this
27th day of SEPTEMBER, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MRC:bmi
910765.bmi

ORDER NO. 25127
DOCKET NO. 910765-EU
PAGE 3

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 10/18/91.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

APPENDIX A
ORDER NO. 25127
DOCKET NO. 910765-EU
PAGE 4

AGREEMENT

Section 0.1. THIS AGREEMENT, made and entered into this 17th day of JUNE, 1991 by and between the Utility Board of the City of Key West, using the trade name "City Electric System," (referred to in this Agreement as "CES") organized and existing under the laws of the State of Florida and an electric utility as defined in Chapter 366.02(2) Florida Statutes, and Florida Keys Electric Cooperative Association, Inc. (referred to in this Agreement as "FKEC"), a rural electric cooperative organized and existing under Chapter 425, Florida Statutes, and Title 7, Chapter 31, United States Code and an electric utility as defined in Chapter 366.02(2), Florida Statutes, each of whose retail service territories are subject to regulation pursuant to Chapter 366, Florida Statutes and which are collectively referred to in this Agreement as the "Parties";

WITNESSETH:

Section 0.2: WHEREAS, the Parties are authorized, empowered and obligated by their corporate charters and the laws of the State of Florida to furnish electric service to persons requesting such service within their respective service areas;
and

Section 0.3: WHEREAS, each of the Parties presently

ORDER NO. 25127
DOCKET NO. 910765-EU
PAGE 5

Agreement /CES/FRBC
Page 2

Section 0.4: WHEREAS, although the respective service areas of the Parties are contiguous, their respective areas have an existing and natural boundary between Knight Key and Little Duck Key, which boundary is intersected by the Seven Mile Bridge, and

Section 0.5: WHEREAS, the unique geographic location of the service areas of the Parties and the unique topography of the Florida Keys affords a rational and non-controversial boundary between the Parties, and

Section 0.6: WHEREAS, the Parties desire to minimize their costs to their respective rate payers by avoiding duplication of generation, transmission, and distribution facilities, and by avoiding the costs of litigation that may result in territorial disputes; and

Section 0.7: WHEREAS, the Parties desire to avoid adverse ecological and environmental consequences that may result when competing utilities attempt to expand their service facilities into areas where other utilities have also constructed service facilities; and

Section 0.8: WHEREAS, The Florida Public Service Commission (referred to in this Agreement as the "Commission"), has previously recognized that duplication of facilities results in needless and wasteful expenditures and may create hazardous situations, detrimental to the public interest; and

ORDER NO. 25127
DOCKET NO. 910765-EU
PAGE 6

Agreement/CES/FKEC
Page 3

Section 0.9: WHEREAS, the Parties desire to avoid and eliminate the circumstances giving rise to potential duplication of facilities and hazardous situations, and toward that end have established a Territorial Boundary Line to delineate their respective retail Territorial Areas; and

Section 0.10: WHEREAS, the Commission is empowered by Section 366.04(2)(d), Florida Statutes, to approve and enforce territorial agreements between electric utilities, has recognized the wisdom of such agreements, and has held that such agreements, subject to Commission approval, are advisable in proper circumstances, and are in the public interest;

Section 0.11: NOW, THEREFORE, in consideration of the premises aforesaid and the mutual covenants and agreements herein set forth the Parties agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1: Territorial Boundary Line. As used in this Agreement, the term "Territorial Boundary Line" shall mean the boundary line shown on the map attached hereto as Exhibit "A", which differentiates and divides the FKEC Territorial Area and the CES Territorial Area.

Section 1.2: FKEC Territorial Area. As used in this Agreement, the term "FKEC Territorial Area" shall mean the geographic areas of Monroe County shown on Exhibit "A" designated

ORDER NO. 25127
DOCKET NO. 910765-EU
PAGE 7

Agreement/CES/FKEC
Page 4

"FKEC", and the balance of the geographic area of Monroe County, not shown on Exhibit "A" which lies North by Northeast of the Territorial Boundary Line.

Section 1.3: CES Territorial Area. As used in this Agreement, the term "CES Territorial Area" shall mean the geographic areas of Monroe County, shown on Exhibit "A", designated "CES", and the balance of the geographic area of Monroe County not shown on Exhibit "A" which lies South by Southwest of the Territorial Boundary Line.

Section 1.4: Transmission Line. As used in this Agreement, the term "Transmission Line" shall mean any Transmission Line of either Party having a rating of 69 kV or greater.

Section 1.5: Distribution Line. As used in this Agreement, the term "Distribution Line" shall mean any Distribution Line of either Party having a rating of up to, but not including 69 kV.

Section 1.6: Person. As used in this Agreement, the term "Person" shall have the same inclusive meaning given to it in Section 1.01(3), Florida Statutes.

Section 1.7: New Customer. As used in this Agreement, the term "New Customer" shall mean any Person that applies to either FKEC or CES for retail electric service after the effective date of this Agreement.

Agreement/CES/FKEC
Page 5

Section 1.8: Existing Customer. As used in this Agreement, the term "Existing Customer" shall mean any Person receiving retail electric service from either FKEC or CES on the effective date of this Agreement.

Section 1.9: End Use Facilities. As used in this Agreement, the term "end use facilities" means those facilities at a geographic location where the electric energy used by a customer is ultimately consumed.

ARTICLE 2

AREA ALLOCATIONS AND NEW AND EXISTING CUSTOMERS

Section 2.1: Territorial Allocations. During the term of this Agreement, FKEC shall have the exclusive authority to furnish retail electric service for end use within the FKEC Territorial Area and CES shall have the exclusive authority to furnish retail electric service for end use within the CES Territorial Area.

Section 2.2: Service to New and Existing Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any New or Existing Customer whose end-use facilities are or will be located within the Territorial Area of the other Party.

Section 2.3: Bulk Power for Resale. Nothing herein shall be construed to prevent either Party from providing a bulk power supply for resale purposes to any other electric utility

Agreement/CES/FKEC
Page 6

regardless of where such other electric utility may be located. . . .
Further, no other Section or provision of this Agreement shall be construed as applying to a bulk power supply for resale purposes.

Section 2.4: Service Areas of Other Utilities. This Agreement between FKEC and CES does not constitute an agreement on or allocation of any geographic area of Monroe County, that is currently being provided electric service by electric utilities not parties to this Agreement.

Section 2.5: CES Facilities in FKEC Territorial Area.
The Parties agree that the location, use, or ownership of transmission facilities by CES (or the use or right to the use of FKEC's transmission facilities) in FKEC's Territorial Area as defined herein, shall not grant CES any right or authority, now or in the future, to serve any consumers whose end use facilities are, or will be, located in FKEC's Territorial Area.

Section 2.6: Distribution Facilities. Neither Party has any distribution facilities located in the territorial area of the other Party, and neither Party shall construct, operate, or maintain distribution facilities in the Territorial Area of the other Party.

Section 2.7: No Transfer of Customers. Neither Party has any customers located in the Territorial Area of the other Party as of the date of this Agreement, and no customers will be transferred from one Party to the other by virtue of this Agreement.

Agreement/CES/FKEC
Page 7

ARTICLE 3

OPERATION AND MAINTENANCE

Section 3.1: Facilities to Remain. Electric facilities which currently exist or are hereafter constructed or used by a Party in conjunction with its electric utility system, which are directly or indirectly used and useful in service to its customers in its Territorial Area, shall be allowed to remain where situated and shall not be subject to removal or transfer hereunder except as provided in the Transmission Agreement dated February 6, 1985 between the Parties or as provided in any successor agreement; provided, however, that such facilities shall be operated and maintained in such a manner as to minimize interference with the operations of the other Party.

ARTICLE 4

PREREQUISITE APPROVAL

Section 4.1: Commission Approval and Continuing Jurisdiction. The provisions of and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission. Approval by the Commission of the provisions of this Agreement shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until Commission approval has been obtained, and the date of the Commission's

ORDER NO. 25127
DOCKET NO. 910765-EU
PAGE 11

Agreement/CES/FKEC
Page 8

order granting Commission approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modification to this Agreement shall be submitted to the Commission for prior approval. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance of this Agreement. The Parties recognize that the Commission has continuing jurisdiction to review this Agreement during the term hereof, and the Parties agree to furnish the Commission with such reports and other information as requested by the Commission from time to time.

Section 4.2: No Liability in the Event of Disapproval. In the event approval of this Agreement pursuant to Section 4.1 hereof is not obtained, neither Party will have any cause of action against the other arising under this document.

Section 4.3: Supersedes Prior Agreements. Upon its approval by the Commission, this Agreement shall be deemed to specifically supersede any and all prior agreements between the Parties defining the boundaries of their respective Territorial Areas in Monroe County.

ARTICLE 5

DURATION

Section 5.1: This Agreement shall continue and remain in effect for a period of thirty (30) years from the date of the

ORDER NO. 25127
DOCKET NO. 910765-EU
PAGE 12

Agreement/CES/PKEC
Page 9

Commission's initial Order approving this Agreement, and shall be automatically renewed for additional thirty (30) year periods unless either Party gives written notice to the other of its intent not to renew at least six (6) months prior to the expiration of any period; provided, however, that each such renewal of this Agreement shall require prerequisite approval of the Commission with the same effect as the original Commission approval of this Agreement as required and provided for in Article 4 hereof.

ARTICLE 6

CONSTRUCTION OF AGREEMENT

Section 6.1: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further the policy of the State of Florida to: actively regulate and supervise the service territories of electric utilities; supervise the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoid uneconomic duplication of generation, transmission and distribution facilities; and to encourage the installation and maintenance of facilities necessary to fulfill the Parties' respective obligations to serve the citizens of the State of Florida within their respective service areas.

ORDER NO. 25127
DOCKET NO. 910765-EU
PAGE 13

Agreement/CES/FKRC
Page 10

ARTICLE 7
MISCELLANEOUS

Section 7.1: Negotiations. Regardless of any other terms or conditions that may have been discussed during the negotiations leading up to the execution of this Agreement, the only terms or conditions agreed upon by the parties are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties hereto unless the same shall be in writing, attached hereto, signed by both of the parties and approved by the Commission in accordance with Article 4, Section 4.1 hereof.

Section 7.2: Successors and Assigns; for Benefit Only of Parties. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person other than the Parties hereto, or their respective successors or assigns, any right, remedy, or claim under or by reason of this Agreement, or any provision or condition hereof; and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of the Parties or their respective successors or assigns.

Section 7.3: Notices. Notices given hereunder shall be deemed to have been given to FKRC if mailed by certified mail, postage prepaid to

ORDER NO. 25127
DOCKET NO. 910765-EU
PAGE 14

Agreement/CES/FKEC
Page 11

General Manager
Florida Keys Electric Cooperative Association, Inc.
91605 Overseas Highway
Tavernier, Florida 33070

and to CES if mailed by certified mail, postage prepaid to:

General Manger
City Electric System
P. O. Box 6100
Key West, Florida 33041-6100

The person or address to which such notice shall be mailed may, at any time, be changed by designating a new person or address and giving notice thereof in writing in the manner herein provided.

Section 7.4: Petition to Approve Agreement. Upon full execution of this Agreement by the Parties, the Parties agree to jointly file a petition with the Commission seeking approval of this Agreement, and to cooperate with each other and the Commission in the submission of such documents and exhibits as are reasonably required to support the petition.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

ORDER NO. 25127
DOCKET NO. 910765-EU
PAGE 15

Agreement/CES/FKEC
Page 12

ATTEST:

UTILITY BOARD OF THE CITY OF
KEY WEST, "CITY ELECTRIC SYSTEM"


Robert R. Padron,
Secretary

By: 
William T. Cates

Title: Chairman

(SEAL)

ATTEST:

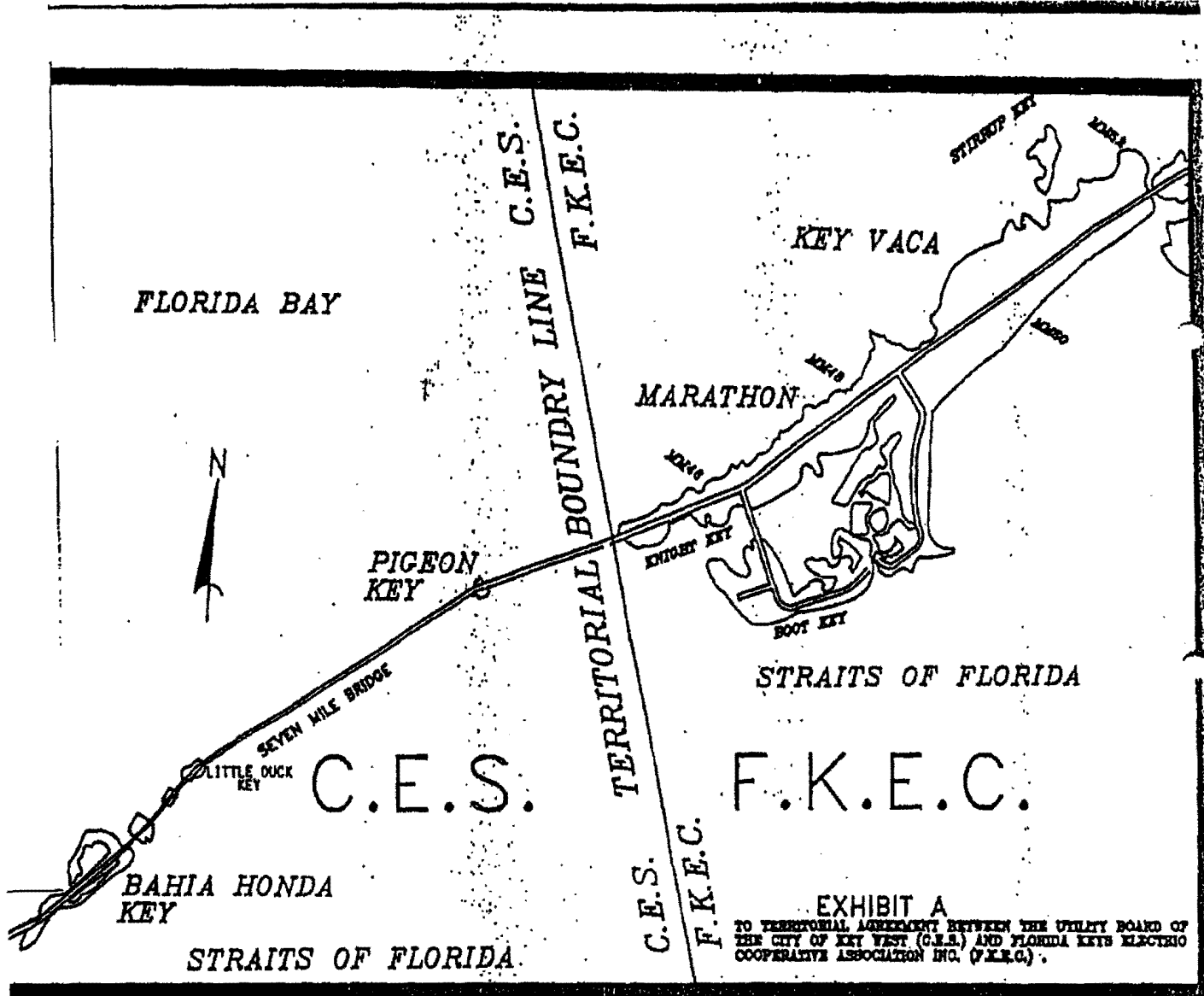
FLORIDA KEYS ELECTRIC COOPERATIVE
ASSOCIATION, INC.


R. L. Barnes, Secretary

By: 
B. L. Schwartz

Title: President

(SEAL)



ORDER NO. 25127
 DOCKET NO. 910765-EU
 PAGE 16

EXHIBIT A
 TO TERRITORIAL AGREEMENT BETWEEN THE UTILITY BOARD OF
 THE CITY OF KEY WEST (C.E.S.) AND FLORIDA KEYS ELECTRIC
 COOPERATIVE ASSOCIATION INC. (F.K.E.C.).

EXHIBIT B



(305) 295-1000
1001 James Street
PO Box 6100
Key West, FL 33041-6100
www.KeysEnergy.com

UTILITY BOARD OF THE CITY OF KEY WEST

May 5, 2009

Sent Via Certified Mail

Mr. Robert D. Reynolds
10395 SW 58 Court
Pinecrest, FL 33156

Re: Service Request
2160 Bahia Shores Road
No Name Key, FL 33043

Dear Mr. Reynolds:

I received your request for power connection dated April 29, 2009. Based upon your letter and your indication that 75% of the No Name Key homeowners have signed notarized affidavits expressing a desire for commercial power and a willingness to pay for said service, KEYS will begin the line extension process.

The line extension process will include:

- Updating the estimates for overhead and underground costs of the line extension;
- Opening a dialogue with Monroe County to determine if they will grant permission for both the water crossing (bridge attachment) and use of the rights-of-way and if approved, obtaining any technical constraints for the bridge attachment;
- Opening a dialogue with ATT to see if opportunities exist to lease conduit from them;
- Issuing a formal bid to determine cost of water crossing (bridge attachment);
- Working with other appropriate agencies for permits;
- Formalizing the costs of line extension once the "unknowns" have been determined; and
- Obtaining signed line extension contracts and associated payments from homeowners. (Homeowners will be paying the actual costs for the line extension, the bridge crossing, any permits and associated mitigation, and any litigation that may ensue from the line extension.)

Please provide KEYS with copies of the signed affidavits and any correspondence to date with Monroe County. We would appreciate being copied on future correspondence regarding commercial power to No Name Key so we are able to stay current on developments.

I am returning your contract for service, deposit agreement, your check in the amount of \$125.00 and other documents since we cannot process your request until commercial power has been established.

KEYS will provide you with periodic updates as to the progress of the above. In the meantime, please feel free to contact me at 305-295-1020. Both Engineering Services and Customer Services will be working with you in the future. Contacts are Dale Finigan at 305-295-1042 and Alex Tejada at 305-295-1088.

Sincerely,



Lynne Tejada
General Manager & CEO
Lynne.tejada@keysenergy.com

C:
Utility Board Members
Nathan Eden, Utility Board Attorney
Jack Wetzler, Assistant General Manager/CFO
Alex Tejada, Director Customer Services
Dale Finigan, Director of Engineering/System Control
George Neugent, Monroe County Mayor
Suzanne Hutton, Monroe County Attorney
Bob Peryam, KEYS Advisory Committee Area Representative
File: CUS-200

EXHIBIT C

**ELECTRIC EXTENSION AGREEMENT
LINE EXTENSION # 746**

THIS ELECTRIC EXTENSION AGREEMENT (the "Agreement"), made this 12th day of January 2011, by and between NO NAME KEY PROPERTY OWNERS ASSOCIATION, INC. with an address of 32731 Tortuga Lane No Name Key, Big Pine Key, Florida 33043 (see Exhibit "A" for Corporate Documents) hereinafter called "NNKPOA," and the UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, D/B/A Keys Energy Services, with an address of 1001 James Street Key West, Florida 33040, organized and existing under the laws of the State of Florida, hereinafter called "KEYS."

WHEREAS, the NNKPOA has applied to the KEYS for electric service of the character commonly known as single-phase, starting at Pole S38-36-65 on Watson Boulevard extending through the county right-of-way and proceeding from Old State Road 4A or Watson Road easterly to service customers on No Name Key, Florida; and

WHEREAS, said location requires an extension of KEYS' present distribution system from the last point of electrical service on the west side of the bridge from the Big Pine Key side extending with conduits attached to bridge and approximately 62 poles; and

WHEREAS, KEYS would not be justified in making said extension prior to the receipt of payment in full for the line extension estimated cost at the rate of \$648,752.55 for said Line Extension.

NOW, THEREFORE, WITNESSETH, that for and in consideration of the mutual covenants and agreement hereafter set forth for the parties hereto covenant and agree as follows:

ARTICLE I. The obligations of NNKPOA to fund and replenish the escrow account described herein and to pay for catastrophic damage to the electric facilities constructed pursuant to this Agreement will continue in perpetuity or until such obligations are waived in writing by KEYS.

ARTICLE II. Upon execution of this Agreement by NNKPOA, NNKPOA shall advance to KEYS \$459,257.00 representing the known outstanding balance for current estimated construction cost of the requested line extension, \$2,950 for specialized training (Article XIV and \$50,000 for escrow account (Article XVI). See Exhibit "B" for the full breakdown of expenses paid and estimated to be paid. Upon completion, if actual costs associated with the construction of the requested line extension are less than the estimated construction cost, KEYS will return the difference to NNKPOA. NNKPOA will be responsible for the total cost of construction as described in Article IV and elsewhere in this Agreement, and NNKPOA acknowledges

that the total cost of construction may exceed the estimate of **\$459,257.00**. In this Agreement **NNKPOA** is obligated to pay for various matters, and such obligation includes the requirement to pay for the total costs of the matters described however incurred, including without limitation, the obligation to reimburse **KEYS** for sums due to third party contractors or the costs of providing the goods or services by **KEYS** through its employees.

ARTICLE III. All costs incurred by **KEYS** shall be documented and presented quarterly to **NNKPOA** upon request.

ARTICLE IV. **NNKPOA** shall be responsible for any and all expenses associated with this line extension from start to finish which includes but is not limited to the cost of litigation, permitting, construction overruns, construction delays, and contractor remobilization resulting from delays. From time to time, **KEYS** shall have the right to require advances from **NNKPOA** above the initial advance set out in Article I. If **NNKPOA** fails to make the payments as required by **KEYS**, construction on the project may be halted and **KEYS** may elect to terminate this Agreement.

In addition to its other duties or obligations stated in this Agreement, **NNKPOA** agrees to engage, pay for and coordinate an "on-site" biologist, with appropriate credentials, during initial construction of the electrical facilities in accordance with the Fish and Wildlife Services (FWS) requirements as stated in the "Stock Island Tree Snail and Garber's Spurge Impact Avoidance Procedures Plan". **NNKPOA** or its consultants will perform all work associated with this plan. Any associated project delays in construction or additional work will be paid by **NNKPOA**.

ARTICLE V. **NNKPOA** shall be responsible for all costs incurred in the event the Contract is cancelled or the project is stopped. **NNKPOA** will be responsible for any material purchased for the project. If such material can be used for another project (at **KEYS** sole determination), **KEYS** will charge a 20% material restocking fee. If bridge conduit system is in place, and contract stopped prior to project completion, **NNKPOA** is responsible for all costs incurred by **KEYS** or by any **KEYS** contractor or "subcontractor" including costs of deconstruction, removal, mitigation, disposal and any repairs to return the bridge or the rights-of-way to their preconstruction condition.

ARTICLE VI. The construction contemplated by this Agreement is limited to the single-phase, primary electrical facilities in the location as depicted on Line Extension drawing **D-4157** attached as **Exhibit "C"**. This Agreement does not include funds for any construction on private property to provide service to a home nor does it include costs that may be needed for construction of customer "Tap Poles" that may be needed to provide service to homes more than approximately **75** feet from the proposed primary lines. Any such construction costs to extend service from the primary electrical facilities to a home or property will be at the property owner's expense. Upon completion of construction and energizing the single phase distribution line shown on Extension drawing **D-4157** attached as **Exhibit "C"**, **KEYS** will have no further obligations under this Agreement.

Initials KEYS: ____ Customer: ____

ARTICLE VII. **KEYS** and the **NNKPOA** agree that the Line Extension drawing **D-4157** attached as **Exhibit "C"** is a single phase distribution facility designed to provide electrical service to the existing **43** homes and lots. (Identified under **Exhibit "J"**) The attached line extension drawing # **D-4157**, attached as **Exhibit "C"**, is part of this contract and made part hereof. Previously executed **Line Extension #754** for two poles will become a part of this line extension as **Exhibit "D"**.

ARTICLE VIII. There currently exists **43** residential homes and lots on No Name Key of which **25** are connecting to the electrical facilities as part of this Agreement. . Before the construction of the project is complete, the **NNKPOA** will provide **KEYS** with a list of **NNKPOA** members who are in compliance with their financial obligation to the **NNKPOA** in paying their full prorated financial share. This list will become **Exhibit "I"**. If at a future date, any of the remaining **18** homeowners, not currently listed on **Exhibit "I"**, elect to connect to the electrical facilities, they must meet all of **KEYS** policies. In addition, any of those remaining **18** homeowners will be responsible for paying in advance an amount outlined in **Exhibit "E"** representing their fair share of the total final cost associated with the line extension design and this line extension. Also, those remaining **18** homeowners may have additional costs associated with their specific line extension. **KEYS** shall reimburse the **NNKPOA** 85% of the amount outlined in **Exhibit "D"** and paid by the new customer. If electric service is requested to a parcel on No Name Key not included in the **43** parcels described above, then **KEYS** may deal with such additional parcel or customer in accordance with its then existing policies.

ARTICLE IX. The provisions of Article VIII of this Agreement shall terminate ten years from the date this Agreement is signed. The provisions of Article VIII do not extend to any lots that are not identified as the existing **43** residential homes and lots.

TITLE AND OWNERSHIP

ARTICLE X. Title to, and complete ownership and control over all the electrical facilities or associated items constructed pursuant to this Agreement, shall at all times remain in **KEYS**, and **KEYS** shall have the right to use the same for the purpose of service to other customers.

EASEMENTS AND PERMITTING

ARTICLE XI. **NNKPOA** will secure, grant, or cause to be granted to **KEYS**, and without cost to **KEYS**, all rights, permits and privileges necessary for the construction described herein and the rendering of service hereunder. **KEYS** shall work collaboratively with **NNKPOA** to obtain all necessary consents, permitting, easements and licenses necessary to accomplish this line extension but all costs shall be the sole and exclusive obligation of the **NNKPOA**. All permits, permissions and easements shall be obtained and provided to **KEYS** prior to commencement of construction. All

Initials KEYS: ____ Customer: ____

construction will be performed by **KEYS** or through contractors retained by **KEYS** and the entire project must be designed to **KEYS** requirements.

MAINTENANCE

ARTICLE XII. It is expressly understood and agreed that the amount paid by **NNKPOA** to **KEYS**, for the cost of the lines to be built hereunder includes cost of trimming trees or other obstructions from the right-of-way, and to trim all trees adjacent thereto in order that the lines to be built under may be safely and properly constructed. **KEYS** shall clear and trim all trees as necessary to begin the extension at the sole cost of **NNKPOA**. All initial tree trimming on private property prior to installation of service drops shall be performed/cut by the private property owner. After the extension is complete, maintenance of said trees shall be performed by **KEYS** in accordance with its normal operating procedures at no additional cost to **NNKPOA**.

ARTICLE XIII. **NNKPOA** also agrees to pay for required, necessary or appropriate training for **KEYS'** staff so that members of **KEYS'** staff may become certified in accordance with the "Stock Island Tree Snail and Garber's Spurge Impact Avoidance Procedures Plan" (see **Exhibit "F"**). This training and certification shall be done prior to energizing the new electrical high voltage facilities.

ARTICLE XIV. **NNKPOA** agrees to pay **KEYS** a one time **\$2,950** fee to cover the development of a "training program" in accordance with the "Stock Island Tree Snail and Garber's Spurge Impact Avoidance Procedures Plan". Additionally, **NNKPOA** agrees that during construction, **NNKPOA** shall pay and supply the required biologist as required in "Stock Island Tree Snail and Garber's Spurge Impact Avoidance Procedures Plan". This person shall be responsible for compliance in accordance with said Plan.

PROCEEDING WITH WORK

ARTICLE XV. Upon compliance with and completion of all predicate provisions herein, **KEYS** will proceed with construction of the extension outlined herein and as covered by sketch and specifications hereto attached and made a part hereof. It is agreed that construction of said line extension shall require an indeterminable period of time.

COASTAL BARRIER RESOURCES ACT (CBRA) - ESCROW - LIEN

ARTICLE XVI. **NNKPOA** and the owners of property to be served by the line extension acknowledge that **KEYS** shall have no obligation to make any reconstruction or repairs. **NNKPOA** and the owners of property to be served by the line extension further agree and recognize that sections of No Name Key are within a Coastal Barrier

Initials **KEYS**: ____ Customer: ____

Resources Act (CBRA) (see **Exhibit "G"**), and that certain electrical facilities may not be eligible for FEMA reconstruction funding after a Natural Disaster. **NNKPOA** and the owners of property to be served by the line extension acknowledge and agree that **KEYS** shall have no obligation to pay any sum for repairs or reconstruction that are typically covered by FEMA for non CBRA areas and **NNKPOA** or the owners of property served by the line extension shall be required to pay the cost for reconstruction and repairs that **KEYS** would otherwise have been reimbursed by FEMA. To minimize the possibility of delay in repair or reconstruction pending advanced payment to **KEYS**, **NNKPOA** shall establish an Escrow account to pay for such cost.

This escrow account shall be in **KEYS'** name and **KEYS** shall have total control. **KEYS** will use the funds in escrow solely for the for purposes consistent with this Agreement. This escrow account shall have an initial deposit of **\$50,000**, and **NNKPOA** shall pay this **\$50,000** to **KEYS** prior to commencement of any construction of the line extension. Interest earned, at the rate paid to **KEYS** by its depository institutions for short term deposit accounts, will remain in the account. In the event **KEYS** uses all or part of the escrow funds for repair or reconstruction of the facilities, the **NNKPOA** shall replenish the account within six (6) months, for the exact amount that was used. Failure to replenish the escrow account to **\$50,000** is a default in this Agreement entitling **KEYS** to suspend electric service along the line extension and to other rights as set forth herein.

In the event of a catastrophic damage to the No Name Key facilities constructed pursuant to this Agreement (catastrophic damage for purposes of this Agreement is deemed to be damage resulting in repair costs in an amount exceeding the amount of the escrow deposit held by **KEYS** at the time of the damage), **KEYS** has no obligation to make repairs until **NNKPOA** or the owners of property served by the line extension have paid to **KEYS** 100% of the funds estimated to be needed to pay for **KEYS'** costs that are typically covered by FEMA for non CBRA areas cost to make repairs to **KEYS**. **KEYS** shall have no obligation to restore service or make repairs until it receives or is assured to its satisfaction that all sums needed to restore service or complete the repairs will be paid for by FEMA or by **NNKPOA** so that it incurs no loss or cost associated with such repairs. This shall be in advance of any restoration work in CBRA areas.

Notwithstanding the foregoing, **NNKPOA** and the in the owners of property served by the line extension at the time of the damage hereby authorize **KEYS** to make repairs or to reconstruct the facilities built pursuant to this Agreement in the event of any damage regardless of whether sufficient funds are held in the Escrow account described herein. The costs of such repair in excess of any sums held in the Escrow account shall be a personal obligation of **NNKPOA** and of the property owners whose property was served by the line extension at the time of the damage (but such personal responsibility of the property owners is limited to their prorata share of the costs based on the number of properties served by the line extension). All of the costs of repair or reconstruction, together with interest and all costs and expenses of collection, including

Initials KEYS: ____ Customer: ____

reasonable attorneys' fees, are a continuing charge on the land of all such property owners, and **KEYS** shall have a right to a lien against all such property for the payment of such funds. This Agreement constitutes constructive notice to all subsequent purchasers and/or creditors of the existence of **KEYS'** lien rights. **KEYS** from time to time may record a Notice of Lien or in the public records for the purpose of evidencing the lien established by this Article and the priority of the Notice of Lien shall be based on the time and date of recording the Notice of Lien in the public records.

Any sum reflected in any Notice of Lien not paid within 30 days after its due date bears interest at the highest per annum rate of interest allowed by law. **KEYS** may bring an action at law against the property owner(s) personally obligated to pay such assessment and/or or foreclose its lien against such owner's property subject to the Notice of Lien. The lien for sums claimed pursuant to this Article may be enforced by judicial foreclosure in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In any such foreclosure, the property owner is required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees. All such costs and expenses are secured by the lien foreclosed. Each property owner is deemed to acknowledge conclusively and consent that all sums due to **KEYS** pursuant to this Article are for the improvement and maintenance of any homestead thereon and that **KEYS'** lien has priority over any such homestead.

ARTICLE XVII. NNKPOA agrees and acknowledges that each customer that applies for electrical service to a home or parcel on No Name Key shall execute a separate document entitled NOTICE AND AGREEMENT REGARDING PROVISION OF ELECTRIC SERVICE TO NO NAME KEY (the "Notice") (see **Exhibit "H"**) that acknowledges they understand and accept this Agreement.

Prior to providing electric service to a parcel, all persons or entities having an ownership interest in the parcel and all spouses of such persons shall execute the Notice before two (2) witnesses. The Notice shall be notarized and recorded in the public records of Monroe County, Florida at the Monroe County Court House 500 Whitehead Street Key West, Florida at the property owner's expense. The property owner shall deliver the original executed notice to **KEYS**, and receipt by **KEYS** of the original recorded Notice is a condition to the provision of electric service to a parcel or home on No Name Key.

DEFAULT

ARTICLE XVIII. If (a) **NNKPOA** fails to perform any of its obligations as described in this Agreement; or (b) a receiver is appointed for **NNKPOA**; or (c) there is falsity in any material respect of, or any material omission in, any representation or statement made to **KEYS** by or on behalf of **NNKPOA** in connection with this Agreement; or (d) **NNKPOA** is dissolved then **NNKPOA** shall be in default of this

Initials KEYS: ___ Customer: ___

Agreement within twenty days after notice of the default is provided to **NNKPOA**, and **KEYS** will be entitled to all remedies at law or in equity to enforce this Agreement. In addition, if **NNKPOA** fails to pay any sums due pursuant to this Agreement, **KEYS** may elect to terminate or suspend construction activities and may elect to terminate or suspend electric service along the line extension contemplated by this Agreement.

If **NNKPOA** asserts that **KEYS** has failed to perform any of its obligations set forth in this Agreement obligations, **NNKPOA** shall give **KEYS** written notice specifying the obligation(s) **KEYS** has failed to perform and providing **KEYS** with thirty (30) days to cure the asserted default. Provided, however, that if the nature of the specified obligation(s) is such that more than thirty (30) days are required for performance, then **KEYS** shall not be in default if **KEYS** commences performance within such 30-day period and thereafter prosecutes the same to completion.

GENERAL TERMS

ARTICLE IX. This Agreement supersedes all previous agreements, or representatives, either written or verbal, between **KEYS** and **NNKPOA**, made with respect to the matters herein contained. This Agreement, the Notice and the exhibits attached hereto contain the entire agreement between the parties. There are no promises, agreements, conditions, undertaking, warranties or representations, oral or written, express or implied between the parties other than as herein set forth. No amendment or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement or any other agreement referred to herein shall be valid unless in writing and signed by the party against whom enforcement is sought and any such written waiver shall only be applicable to the specific instance to which it related and shall not be deemed to be a continuing or future waiver. This Agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

In the event that any party to this Agreement shall be delayed, hindered or prevented from performance of any act required by this Agreement, except with respect to the obligations to pay any fees, expenses or other amounts required by this Agreement, by reason of strikes, labor troubles, inability to procure materials or services necessary for such performance, restrictive governmental laws or regulations, riots, insurrection, war, terrorism, Act of God, or any other reason beyond the reasonable control of such party, then performance of such act shall be excused for the period of the delay, and the period of the performance of any such act shall be extended for the period equivalent to the period of such delay.

Whenever any notice, demand, consent, delivery or request is required or permitted hereunder, it shall be in writing and shall be deemed to have been properly given or served (a) when delivered in fact to the other party, or (b) three (3) business

Initials KEYS: ____ Customer: ____

days after having been deposited in the United States mail, with adequate postage prepaid and sent by registered or certified mail with return receipt requested, or (c) when delivered to Federal Express or other comparable overnight courier which obtains a receipt to confirm delivery, to the addresses set forth above or at such other addresses as are specified by written notice so given in accordance herewith. Any notice to **KEYS** shall be sent to **KEYS** to the attention of the General Manager/CEO with a required copy to the Director of Engineering.

Any captions and headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement nor the intent of any provision hereof. This Agreement shall be construed and interpreted according to the laws of the State of Florida. Whenever used herein, the singular number includes the plural, the plural includes the singular, and the use of any gender includes all genders. This Agreement shall not be construed more strongly against of for either party and the rule of construction against the drafter shall not be followed or applicable to this Agreement. Any provision of this Agreement that is legally unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof. All exhibits referred to within and attached to this Agreement are by this reference incorporated within this Agreement and are considered a part of this Agreement. This Agreement is not a third party beneficiary contract and shall not in any respect whatsoever create any rights on behalf of any third parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

The parties agree that from time to time and following a request therefor by a party, each shall promptly execute and deliver to the other parties such further documents and instruments reasonably necessary to confirm and/or effectuate the obligations of each party hereunder and the consummation of the transactions contemplated hereby.

Time is of the essence in connection with this Agreement and each provision hereof. Unless this Agreement expressly or necessarily requires otherwise, any time period measured in "days" means consecutive calendar days, except that the expiration of any time period measured in days that expires on a Saturday, Sunday or legal holiday automatically will be extended to the next day so that it is not a Saturday, Sunday or legal holiday.

EACH PARTY HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY EACH PARTY AND EACH PARTY EXPRESSLY ACKNOWLEDGES THAT NEITHER THE OTHER PARTY NOR ANY PERSON ACTING ON BEHALF OF THE OTHER PARTY HAS MADE ANY REPRESENTATIONS OF FACT TO INCLUDE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. EACH PARTY ACKNOWLEDGES

Initials KEYS: ____ Customer: ____

TO THE OTHER THAT IT HAS READ AND UNDERSTANDS THE MEANING AND EFFECT OF THIS WAIVER PROVISION.

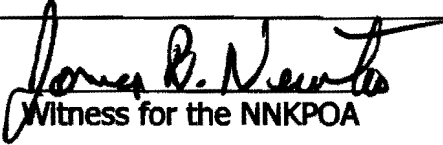


NNKPOA REPRESENTS AND WARRANTS TO KEYS THAT IT HAS CONSULTED LEGAL COUNSEL WITH REGARD TO THIS AGREEMENT OR THAT IT HAS HAD AMPLE OPPORTUNITY TO OBTAIN LEGAL COUNSEL AND HAS ELECTED NOT TO DO SO.

Each person signing this Agreement represents and warrants that he or she has full power and authority to enter into and execute this Agreement and that upon execution and delivery, this Agreement will be binding on and enforceable against the party for whom that persons signs.

REMAINDER OF PAGE INTENTIONALLY BLANK
SIGNATURES APPEAR ON FOLLOWING PAGE

Initials KEYS: ____ Customer: ____



IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

 Witness for the NNKPOA	No Name Key Property Owners Association, Inc.
 Witness for the NNKPOA	 Kathryn M. Brown, As president

_____ Witness for KEYS	UTILITY BOARD CITY OF KEY WEST "Keys Energy Services"
_____ Witness for KEYS	
Account # _____	_____ Lou Hernandez, Utility Board Chairman
ER# _____	
WO# _____	

Initials KEYS: ___ Customer: ___

FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS



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No Events No Name History

Detail by Entity Name

Florida Non Profit Corporation
NO NAME KEY PROPERTY OWNERS ASSOCIATION, INC.

Filing Information

Document Number N08000007867
FE/EIN Number 263222027
Date Filed 08/21/2008
State FL
Status ACTIVE
Effective Date 08/21/2008

Principal Address

32731 TORTUGA LANE
NO NAME KEY, BIG PINE KEY FL 33043 US
Changed 04/10/2009

Mailing Address

32731 TORTUGA LANE
NO NAME KEY, BIG PINE KEY FL 33043 US
Changed 04/10/2009

Registered Agent Name & Address

BROWN, KATHRYN M
32731 TORTUGA LANE
NO NAME KEY, BIG PINE KEY FL 33043 US
Name Changed: 04/10/2009
Address Changed: 04/10/2009

Officer/Director Detail

Name & Address

Title PRES
BROWN, KATHRYN M
32731 TORTUGA LANE
NO NAME KEY, BIG PINE KEY FL 33043 US

Title VP
NEWTON, JAMES B
2047 BAHIA SHORES RD.
NO NAME KEY, BIG PINE KEY FL 33043 US

Title SEC

EAKEN, RUTH
32844 BIMINI LANE
NO NAME KEY, BIG PINE KEY FL 33043 US

Title TREA

LENTINI, JOHN
32836 BIMINI LANE
NO NAME KEY, BIG PINE KEY FL 33043 US

Annual Reports

Report Year Filed Date

2009 04/10/2009
2010 03/22/2010

Document Images

- 03/22/2010 -- ANNUAL REPORT
- 04/10/2009 -- ANNUAL REPORT
- 08/21/2008 -- Domestic Non-Profit

Note: This is not official record. See documents if question or conflict.

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No Name History

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State of Florida, Department of State

Exhibit "B"

**No Name Key Cost & Billing Summary
at 1/6/2011**

Costs of Completed Work

Keys Incurred Expenses through 8/14/10	\$ 29,398.42 ¹
Survey Work (J. Lynn O'Flynn, Inc.)	21,574.80 ¹
Bridge Design (CCI Systems)	19,957.86 ¹
Completed portion of 2-Pole Pilot Program	4,193.39 ¹
Legal Fees (Carlton Fields)	4,234.25 ¹
Completed Work to Date:	\$ 79,358.72

Costs for Estimated Future Work

Expected Future Admin Expenses (Included in 8/31/10 billing)	\$ 6,529.75 ¹
Estimated Remaining 2-Pole Line Extension Pilot Program Costs	4,736.66 ¹
Remaining Line Extension Estimate	505,177.42 ²
Unbilled Escrow (for FEMA and CBRA)	50,000.00
Unbilled Training (future training needs for FWS)	2,950.00
Estimated Cost of Future Work:	\$ 569,393.83

Total Estimated Cost of Project: \$ 648,752.55

Payments Received as of 11/8/10

<u>Payment Description</u>	<u>Pmt Date</u>	<u>Check#</u>	<u>Amount</u>
2% Estimated Construction	12/4/2009	1003	\$ 13,800.00
Survey Estimate	4/2/2010	1026	12,592.00
Bridge Design Estimate	4/7/2010	1027	19,958.00
True-up of Actual Costs	10/28/2010	1032	35,345.08
2-pole Extension Pilot Program	10/28/2010	1033	8,876.05
Pole Costs & Restocking Fees	12/15/2010	1034	98,924.42

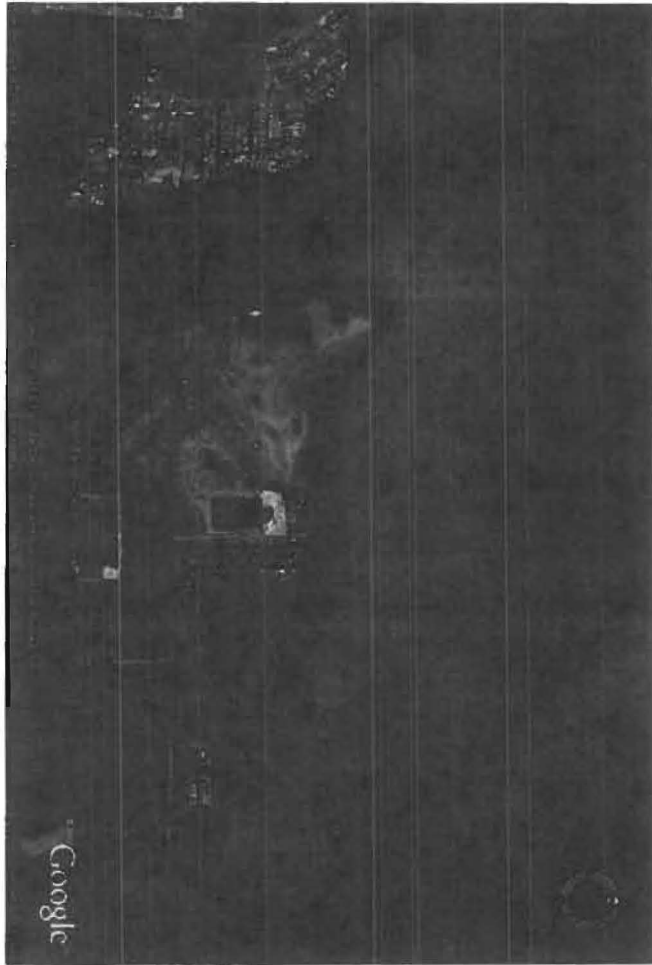
Total Payments to Date: \$ 189,495.55

Total Due From Customer: \$ 459,257.00

1 - These Charges Have Been Paid and are included in the "Payments Received"

2 - This estimate includes a 10% contingency. (See attached for detail)

Exhibit "C"



NOTES:

UNDERGROUND DESIGN SUMMARY:
2,237' OF CONDUIT ATTACHED TO BRIDGE
157' OF CONDUIT ON EACH SIDE OF BRIDGE (700' TOTAL),
TWO MANHOLES AND UG CABLE.

OVERHEAD DESIGN SUMMARY:
62 POLES
14,200' OF SINGLE PHASE PRIMARY

END 2/26/11

	
NEW BRIDGE BEING LAYING SERVICE TO RD 20000 427 RD 20000 427, FL	
DESIGNED BY: CHARLES WILKINSON	
APPROVED BY: MATTHEW ALONSO	
DRAWN BY: DALE FRIEDMAN	
DATE: 2/2/11	
SCALE: 1" = 100'	
PROJECT: 10-01-02-1	
LE-746	
D-4157	

Exhibit "D"

STANDARD ELECTRIC EXTENSION AGREEMENT
LINE EXTENSION # 754

AGREEMENT, made this 19TH DAY OF OCTOBER 2010, by and between NO NAME KEY, PROPERTY OWNERS ASSOCIATION INC., hereinafter called "Customer," and the UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, DBA Keys Energy Services, a municipal owned utility, organized and existing under the laws of the State of Florida, hereinafter called "KEYS."

WHEREAS, the Customer has applied to the KEYS for electric service of the character commonly known as single-phase, on county right-of-way on Old State Road, on NO NAME KEY, FLORIDA.

WHEREAS, said location requires an extension of KEYS' present distribution system of approximately 2 poles; and

WHEREAS, KEYS would not be justified in making said extension prior to the receipt of payment in full for the line extension cost at the rate of \$4,438.02 per pole.

NOW, THEREFORE, WITNESSETH, that for and in consideration of the mutual covenants and agreement hereafter set forth for the parties hereto covenant and agree as follows:

ARTICLE I. At the time of acceptance of this agreement by the Customer, the said Customer shall advance to KEYS EIGHT THOUSAND, EIGHT HUNDRED AND SEVENTY-SIX DOLLARS AND 05/100 (\$8,876.05) representing a not to exceed total construction cost of the requested line extension.

ARTICLE II. KEYS shall impose and collect a line extension charge from any customer subsequently requesting service that is included in the contract and line extension drawing. The line extension charge shall be applied proportionally to the property based on the total service ability of this line extension. The attached line extension drawing #D-4176 is to be made a part of this contract.

ARTICLE III. KEYS shall reimburse the Customer entering and paying the cost of the line extension covered by this contract, 85% of the line extension charge imposed on any customer subsequently receiving service that is included in the line extension contract and drawing. However, the total refunds allowed under this Article shall not exceed the amount paid by the Customer, to KEYS, and provided further that no refunds will be made to the Customer who is in default in the payment of any bills for service furnished to the Customer, by KEYS. If there are no reimbursements indicated on the line extension drawing, Article III will not apply.

Article IV. This line extension agreement shall terminate ten years from the date the extension was completed. *Excluding services involving underground or over-water construction*

TITLE AND OWNERSHIP

ARTICLE V. Title to, and complete ownership and control over said extension, shall at all times remain in KEYS, and KEYS shall have the right to use the same for the purpose of service to other customers.

EASEMENTS AND RIGHTS

ARTICLE VI. The Customer will grant, or cause to be granted to KEYS, and without cost to KEYS, all rights, permits and privileges necessary for the rendering of service hereunder.

Initials: _____ Initials: _____

TRIMMING TREES

ARTICLE VII. It is expressly understood and agreed that the amount paid by the Customer, to KEYS, for the cost of the lines to be built hereunder does not include any cost of trimming or removing trees or other obstructions from the right-of-way, and to trim all trees adjacent thereto in order that the lines to be built under may be safely and properly constructed. KEYS shall not be required to begin construction of the lines until such clearing and trimming is completed to the satisfaction of KEYS.

PROCEEDING WITH WORK

ARTICLE VIII. KEYS, upon its approval of this agreement, will proceed with the extension outlined herein and as covered by sketch and specifications hereto attached and made a part hereof.

GENERAL TERMS

ARTICLE IX. NNKPOA shall be responsible for all costs incurred in the event the Contract is cancelled or the project is stopped. NNKPOA will be responsible for any material purchased for the project. If material can be used for another project (at KEYS sole determination), KEYS will charge a 20% material restocking fee. If bridge conduit system is in place, and contract stopped prior to project completion, NNKPOA is responsible for all costs incurred by KEYS "subcontractor" including costs of deconstruction, removal, mitigation, disposal and any repairs to return to return the rights-of-way to their preconstruction condition.

ARTICLE X. This agreement supersedes all previous agreements, or representatives, either written or verbal, between the KEYS and the Customer, made with respect to the matters herein contained, and when duly executed constitutes the agreement between the parties hereto.

This agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

_____	_____
Witness for the Customer	Customer's signature
_____	_____
Witness for the Customer	Corporation name (if applicable)

	Title

_____	By: _____
Witness for KEYS	Title: _____

Witness for KEYS	
Account # _____	UTILITY BOARD - CITY OF KEY WEST
ER# <u>2770-11</u>	"Keys Energy Services"

Utility Board of the City of Key West, Florida
 Schedule of No Name Key Line Extension Allocations

Account Number/Address	Estimate Cost	# of total participants	# of total potential participants	Administration fee for all lots	17% value percentage
1	\$ 653,349	25	25		
2	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
3	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
4	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
5	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
6	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
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8	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
9	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
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11	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
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14	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
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21	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
22	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
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31	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
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41	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
42	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)
43	\$ 187,521	(794.87)	(772.28)	\$ (686.41)	\$ (640.67)

Exhibit "F"

Stock Island Tree Snail and Garber's Spurge Impact Avoidance Procedures

Keys Energy Services Power Line Installation and Maintenance

No Name Key, Monroe County



Prepared for:

**No Name Key Property Owners Association
32731 Tortuga Lane
No Name Key, Florida 33043**

Prepared by:

**Terramar Environmental Services, Inc.
1241 Crane Boulevard
Sugarloaf Key, Florida 33042
(305) 393-4200 FAX (305) 745-1192
terramar@bellsouth.net**

August 9, 2010

Introduction

The Stock Island Tree snail (*Orthalicus reses reses*) is a Federally listed Endangered mollusk that occurs throughout the Florida Keys. A population of this snail was introduced onto No Name Key in 1996 from Key Largo, and that population may persist in areas of hardwood hammock. Garber's spurge (*Chamaesyce garberi*) is a small plant also Federally-listed as Endangered that occurs throughout South Florida, and occurs in pine rocklands, hardwood hammocks and also on disturbed roadsides. It is known to occur on No Name Key where it occurs on the limestone road shoulders.

Keys Energy Services (KEYS) is installing electrical power to No Name Key using concrete power poles and overhead electric lines. The proposed project consists of extending existing electrical service from Big Pine Key to No Name Key, where no electrical service currently exists. The project will employ a total of 61 utility poles located within existing right of way (ROW) owned by Monroe County or on private property. Power poles will be placed in the ROW within six feet of the edge of existing roadway pavement using an aerial truck and lift. Trimming of tree branches will be required for the initial installation of the system and ongoing trimming will be required to maintain the system in perpetuity.

KEYS will implement measures specifically designed to avoid impacts to the Stock Island tree snail and Garber's spurge during the initial installation of the system as well as during the long-term maintenance phase of the project.

Stock Island Tree Snail Relocation Procedures

The Stock Island Tree snail may occur on lateral branches and tree trunks that may require trimming during initial installation of the system as well as during ongoing maintenance. The following procedures will be implemented by KEYS during all tree trimming activities throughout the life of the project. These procedures follow the procedures established by Deborah A. Shaw, Ph.D., Environmental Affairs Manager for the Florida Keys Electric Cooperative and are based on many years of experience relocating tree snails associated with the power distribution system on Key Largo.

General Requirements

All staff conducting tree trimming activities will be provided a copy of this protocol and be instructed on tree trimming procedures on No Name Key by a qualified biologist. A qualified biologist is someone with the appropriate combination of education and training that makes them competent to direct trimming in a manner that avoids adverse impacts to tree snails. A qualified biologist will have direct experience in the handling and relocation of tree snails in South Florida. All tree snails associated with the project will be relocated including members of the genus *Orthalicus* and *Liguus*.

All limbs will be cut using hand-held trimming equipment such as a chain saw, power pruner or hand-operated loppers. No trimming using mechanized equipment is authorized.

Equipment Needed

High-quality loppers, cooler with sealed lid; clean spray bottle (plant mister type); source of fresh, clean water; paper towels; plant clippers, bucket to carry snails.

Relocation Procedures

Tree branches will be trimmed and placed on the ground for inspection by a qualified biologist. Each branch will be carefully inspected for tree snails, and any snails identified will be relocated. No tree branches will be removed off-site or chipped until approved by the qualified biologist. The qualified biologist will work directly with KEYS during trimming operations to ensure any tree snails are relocated properly.

Tree snails identified during tree trimming operations will be in one of three conditions:

- 1) sealed on a branch, aestivating during dry and/or cold weather;
- 2) aestivating but detached from branch with protective seal broken;
- 3) active and moving about, normally in warm, wet weather;

Procedures for the three scenarios are discussed below.

Snails sealed on a branch or tree trunk:

As long as the protective seal is intact, the snail can be left on the branch for relocation. Clip the branch with the snail attached. Trim extra twigs and leaves off of the branch leaving a forked branch to use as a hanger. Removing the extra branches and twigs minimizes the wrong turns that the snail can make when it awakens and leaves its twig to climb onto the new host tree and it makes it easier to handle the cut branch.

The trimmed branch with snail still attached is then placed in an appropriate host tree and secured with bio-degradable cotton string as needed. If the snail is sealed onto a branch that is too large to handle and relocate, the snail will have to be removed from the tree bark. This can be done safely by spraying the snail with clean fresh water which will soften the adhesive seal. After the seal softens, gently peel the snail off the tree bark. This should be done by an experienced tree snail handler. The adhesive membrane (seal) will be broken in this process so the snail will then have to be awakened to be relocated. See procedures for detached snails below.

Tree snails detached from branch or with broken protective seals:

Aestivating tree snails with broken protective seals will die of desiccation unless they are awakened by being held in a warm, moist box for a period of time (usually a few hours). To awaken aestivating snails, place them in a tree snail holding pen (cooler). On the bottom of the cooler lay two layers of clean paper towels saturated with clean fresh water. Fill the cooler with cut fresh Pigeon plum, *Coccoloba diversifolia*,

branches with leaves attached. Pigeon plum is a favorite host tree for tree snails and the leaves stay fresh in the cooler for a long time. Spray the branches with water to keep the air in the cooler saturated. Spray the protective membrane of each snail with clean fresh water. As it softens, peel it off to hasten the snail's awakening. Keep the drain plug open and keep the cooler lid open slightly to allow good air flow, but do not allow snails to escape the cooler once they awaken. Once they are active, they can be placed in a new host tree using the same technique described in the next section on active snails. Between uses, the cooler should be thoroughly cleaned and dried as it will become contaminated with snail excrement and mucus.

Active snails:

If the weather is warm and humid, active tree snails can be easily relocated by simply spraying the bark of the new host tree with clean fresh water. Place the snail on the wet bark and support it until it gets a firm grip. The snail will climb up the tree and relocation is complete. If conditions are warm but dry, the snail can still be released as it will simply reseal itself on the new tree as soon as it perceives the dry conditions.

Garber's Spurge Avoidance Procedures

Based on pre-construction surveys conducted at surveyed pole locations, Garber's spurge is either not present or extremely rare at proposed pole locations. Regardless, specific procedures will be implemented during the installation of the 62 power poles that are designed to avoid impacting any individual plants. These procedures include the following:

All staff conducting pole installation activities will be provided a copy of this protocol and be instructed on pole installation procedures by a qualified biologist. A qualified biologist is someone with the appropriate combination of education and training that makes them competent to direct pole installation in a manner that avoids adverse impacts to Garber's spurge. A qualified biologist will have direct experience in the identification of Garber's spurge and relevant construction management experience.

At each pole location, the work area will be delineated using staked silt fencing. This silt fencing will be installed around the pole location to clearly identify the work area; no soil disturbance will occur outside the work area. Work areas will be approximately 10' x 10' and will encompass the proposed pole location with adequate room for installation and containment of spoils.

Once the work area has been staked, a qualified biologist will inspect each work area for the presence of Garber's spurge. If no plants are identified, work may proceed at that location. If a Garber's spurge is found within the work area, the pole location will be relocated by KEYS engineering staff to a suitable adjacent location that will not result in impacts to Garber's spurge. Once the new location has been identified, a new work area will be established at this site. Any spurge identified outside a work area will be marked using traffic cones and protected from impacts during the installation process.

All spoils from the auger process will be contained within the work area and be removed off-site for appropriate disposal. Following pole installation, the work area will be raked smooth to restore the original topography and the silt fence removed for disposal.

Staging of supplies will not occur on the roadsides on No Name Key. Staging of project materials will occur off-site at a KEYS facility and supplies will be transported to the island as-needed. KEYS will maintain control over contractors during pole installation to ensure that the roadsides on No Name Key are not adversely impacted by the proposed project.



FEMA ELIGIBILITY		
COLOR DESCRIPTION	FEMA REFINANCEMENT	QUANTITY OF POUFS
RED	NO	24
ORANGE	YES	15
NO COLOR	YES	23

* TOTAL QUANTITY OF POUFS - 62
 * FEMA REFINANCEMENT - YES
 * TOTAL QUANTITY OF POUFS IN FEMA - 38
 * REFINANCEMENT OF POUFS IN FEMA - YES

PA-1218

DRP
 DISASTER REPAIR
 PROGRAM
 OPERATED BY DATE FRESH
 APPROVED BY MONTY W. ALLEN
 DATE 10/20/18
 PROJECT NO. 18-001
 SHEET 1 OF 1

Exhibit "H"

Prepared by and
Return to:
KEYS ENERGY SERVICES
Director of Engineering
1001 James Street
Key West, FL 33040

**NOTICE AND AGREEMENT
REGARDING PROVISION OF ELECTRIC SERVICE TO NO NAME KEY**

THIS NOTICE AND AGREEMENT, is made as of this ____ day of _____, 2010, by the following persons or entities who are all persons or entities having any ownership interest in the real property described below (the "Property") and all persons who are married to any person having an ownership interest in the Property, to and for the benefit of the UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, D/B/A Keys Energy Services ("Keys Energy") with an address of 1001 James Street, Key West, Florida 33040 (Attention: Director of Engineering):

(List of Owners and Spouses)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

The persons or entities described above may be referred to collectively in this Notice and Agreement as the "Owners" or individually as an "Owner." Wherever used herein the term Owner or Owners includes the heirs, legal representatives and assigns of individuals, and the successors and assigns of any entities.

The Owners have a collective mailing address of the following:

This Notice and Agreement relates to and encumbers the real property located in Monroe County, Florida described as follows:

Property Mailing Address as recognized by the U.S. Post Office:

Monroe County Parcel Appraiser Identification Number for the Property:

Legal Description of the Property as appearing in the Monroe County Property Appraiser's records or complete legal description:

BACKGROUND

At this time Keys Energy has not extended electric service to the Property. The Owners wish to have Keys Energy provide electric service to the Property, but Keys Energy is willing to extend electric service to the Property only on (i) the conditions and agreements set forth in this Notice and Agreement and (ii) the conditions and agreement as set forth in the STANDARD ELECTRIC EXTENSION AGREEMENT LINE EXTENSION # 732 (referred to herein as the "Extension Agreement") attached hereto and made a part hereof for all purposes and (iii) subject to any and all rules, policies, conditions, limitations and procedures as may exist or be established by Keys Energy from time to time.

The Owners have read the Extension Agreement and are in agreement with its terms and conditions. The Owners understand, acknowledge and agree that Keys Energy has no obligation to provide electric service to the Property if the No Name Key Property Owners Association, Inc. fails to comply with any of the requirements of the Extension Agreement at any time.

The Owners further understand, acknowledge and agree that the Extension Agreement or this Notice and Agreement gives them no greater rights than other customers of Keys Energy and that provision of electric service by Keys Energy is subject to all the rules, policies, conditions, limitations and procedures as now exist or as may be established by Keys Energy at any time in the future.

NOW THEREFORE for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Owners agree to the following with and for the benefit of Keys Energy:

1. The Owners represent and warrant to Keys Energy that all the statements set forth in the Background section above are true and correct, and all such statements are incorporated herein.
2. The undersigned Owners acknowledge and join in the Extension Agreement as it relates to the Property.
3. The Owners acknowledge that Keys Energy may require easements on or across the Property and on or across other areas as a requirement prior to provision of electric service to the Property. The Owners acknowledge and agree that the owners will cooperate with Keys Energy with regard to the grant of any easements requested by Keys Energy on or across the Property.
4. The Owners acknowledge and agree that any default or failure of the No Name Key Property Owners Association, Inc. to abide by any and all conditions or requirements of the Extension Agreement, including without limitation, the replenishing of escrow funds, may result in the permanent or temporary termination or cessation of electric power service by Keys Energy to the Property.
5. It is the intention of Owners that the agreements contained in this Notice and Agreement shall touch and concern the Property, run with the land and with the title to the Property, and shall apply to and be binding upon and inure to the benefit of the successors and assigns of Owners, and to Keys Energy, its successors and assigns, and to any and all parties hereafter having any right, title or interest in the Property or any part thereof. Keys Energy, its successors and assigns may enforce the terms and conditions of this Notice and Agreement by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of Keys Energy to exercise its right in the event of the failure of the Owners, their successors and assigns to comply with the provisions of this Notice and Agreement or the Extension Agreement shall not be deemed or construed to be a waiver of Keys Energy's rights. This Notice and Agreement shall continue in perpetuity, unless otherwise modified in writing by Owners, or their successors, and Keys Energy, its successors and assigns.

6. If any provision of this Notice and Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions thereof. All such other provisions shall continue unimpaired in full force and effect.

7. Owners covenant with Keys Energy and represent and warrant that, on the date of execution of this Notice and Agreement, Owners are seized of the Property in fee simple and have good right to create, establish, and impose this covenant on the Property. In the event Keys Energy determines this Notice and Agreement has not been validly executed by all persons or entities who have an ownership interest in the Property and by all persons who are married to persons having an ownership interest in the Property, Keys Energy may discontinue electric service to the Property at any time. Owners also covenant and warrant that the Property is free and clear of any and all liens, mortgages, or encumbrances that could impair Owners' rights to impose the covenant described in this Notice and Agreement.

8. This Notice and Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This Notice and Agreement shall be construed, governed, interpreted and enforced in accordance with the laws of the State of Florida.

REMAINDER OF PAGE BLANK
SIGNATURE(S) APPEAR ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF the undersigned Owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(execution by two natural persons as Owner such as Husband and Wife or Co-owners)

WITNESSES as to Both Signatures:

OWNERS:

Signature

Signature

Print name

Print name

Signature

Signature

Print name

Print name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 20____, by _____ and _____. Each are personally known to me, or have produced his/her _____ driver's license, or his/her _____ respectively as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

IN WITNESS WHEREOF the undersigned owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(execution by one natural person as Owner, also use this if co-owners are executing separately)

WITNESSES:

OWNER:

Signature

Signature

Print name

Print name

Signature

Print name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____ He or she is personally known to me, or have produced his/her _____ driver's license, or his/her _____ as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

IN WITNESS WHEREOF the undersigned owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(execution by one natural person as Owner, also use this if co-owners are executing separately)

WITNESSES:

OWNER:

Signature

Signature

Print name

Print name

Signature

Print name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____ He or she is personally known to me, or have produced his/her _____ driver's license, or his/her _____ as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

IN WITNESS WHEREOF the undersigned Owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(execution by one natural person as Owner, also use this if co-owners are executing separately)

WITNESSES:

OWNER:

Signature

Signature

Print name

Print name

Signature

Print name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____ He or she is personally known to me, or have produced his/her _____ driver's license, or his/her _____ as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

IN WITNESS WHEREOF the undersigned Owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(execution by Corporation Owner)

WITNESSES:

OWNER:

Signature

(Name of corporation), a _____ (state of organization) corporation

Print name

By: _____

Signature

Print Name: _____

Print name

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, in his/her capacity as _____ of _____, Inc., on behalf of the corporation. He/She is personally known to me, or has produced his/her _____ driver's license, or his/her _____ as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

IN WITNESS WHEREOF the undersigned Owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(execution by other types of entities)

WITNESSES:

OWNER:

Signature

(Name of entity), a _____ (state of organization)

Print name

By: _____

Signature

Print Name: _____

Print name

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, in his/her capacity as _____ of _____, on behalf of the entity. He/She is personally known to me, or has produced his/her _____ driver's license, or his/her _____ as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

Exhibit "I"

This page is intentionally blank as a page holder for the following future addition:

Pursuant to Article VIII the No Name Key Property Owners Association (NNKPOA) will provide Keys Energy Services with a list of NNKPOA members who are in compliance with their financial obligation to the NNKPOA in paying their full prorated financial share. This list of name will become Exhibit "I".

ID	RECORD	NAME	ADDRESS	CITY	STATE	ZIP	LEGALS	DECATON	NO NAME	SUBDIVISION
100043.0006	0018462-000000	BROUILLETTE OSCAR JACOB	1843 BAHIA SHORES RD	BIG PINE KEY	FL	32049	18 08 30 000018-06-1-1 NO NAME KEY PT NW 1/4 OF SW 1/4	1843 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0003	0018462-000000	KIMBLE BARBARA AND KANDY	3208 JAN STREET	WESTPAT RIDGE	GA	30043	BK 17 3 AMENDED PLAT OF DOLPHIN HARBOR NO NAME	1901 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0004	0018462-000000	HAPLACHER ANTHONY G AND ELIZABETH A	1851 BAHIA SHORES RD	BIG PINE KEY	FL	32043	BK 17 4 AMENDED PLAT OF DOLPHIN HARBOR NO NAME	1851 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0005	0018462-000000	DANIEL S THOMAS AND DONORITRY	1831 SPANISH CHANNEL DR	BIG PINE KEY	FL	32043	LT 29 AMENDED PLAT OF BAHIA SHORES PHS	1831 SPANISH CHANNEL	NO NAME K	DOLPHIN HARBOR AMD
318462.0006	0018462-000000	ZEMAN LAWRENCE L E	1281 GOLD SPUR CT	CALIFORNIA	CA	90338	LT 3 AMENDED PLAT OF DOLPHIN HARBOR NO NAME KEY	1831 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0007	0018462-000000	BARBER ROBERT F AND CAROL C	1831 NO NAME DR	BIG PINE KEY	FL	32043-3211	LT 40 AMENDED PLAT OF DOLPHIN HARBOR NO NAME KEY	1831 NO NAME DR	NO NAME K	DOLPHIN HARBOR AMD
318462.0008	0018462-000000	LOUISA REALTY INC	2240 WOODBRIDGE RD	BOYNTON BEACH	FL	33435	LT 7 AMENDED PLAT OF DOLPHIN HARBOR PHS	1907 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0009	0018462-000000	BOHE CHARLES R AND SAUREY P TR (922629)	PO BOX 1023 PL	BOYNTON BEACH	FL	33435-7428	LT 11 AND 9 1/2 LT 12 AMENDED PLAT OF DOLPHIN HARB	2011 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0010	0018462-000000	SCHEPERS THOMAS A AND BARBARA J	PO BOX 1023 PL	BOYNTON BEACH	FL	33435	LT 11 AND 9 1/2 LT 12 AMENDED PLAT OF DOLPHIN HARB	2011 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0011	0018462-000000	WICKREY WILLIAM BRADFORD AND BETH	2045 BAHIA SHORES RD	BIG PINE KEY	FL	32043	AMENDED PLAT OF DOLPHIN HARBOR NO NAME KEY	2045 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0012	0018462-000000	WITTEN THOMAS B AND SUSAN H	11 FREET AVE	BANSENBURG	NY	11773	BK 17 3 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	2045 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0013	0018462-000000	NEWTON FRANCIS B	2047 BAHIA SHORES RD	BIG PINE KEY	FL	32043	BK 17 3 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	2047 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0014	0018462-000000	PICHEL FRANCISCO	1303 HWY 28 ST	BIG PINE KEY	FL	32043	BK 17 3 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	2047 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0015	0018462-000000	BANDORON JOHN R	PO BOX 608123	ORLANDO	FL	32816	AMENDED PLAT OF DOLPHIN HARBOR CHIC	2047 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0016	0018462-000000	COLEMAN KATHRYN H TRUSTEE	879 HWY 42ND AVENUE	COCONA CREEK	FL	32043	BK 17 3 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	2047 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0017	0018462-000000	ATWELL FRANKLIN R	2127 BAHIA SHORES RD	BIG PINE KEY	FL	32043	BK 17 3 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	2127 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0018	0018462-000000	BENTON ROBERT T	2148 BAHIA SHORES RD	BIG PINE KEY	FL	32043	BK 17 3 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	2148 BAHIA SHORES RD	NO NAME K	DOLPHIN HARBOR AMD
318462.0019	0018462-000000	PUTNEY ALICIA ROEMELLE	2150 NO NAME DRIVE	BIG PINE KEY	FL	32043	BK 17 3 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	2150 NO NAME DRIVE	NO NAME K	DOLPHIN HARBOR AMD
318462.0020	0018462-000000	PUTNEY MICHAEL AND ANNE	2159 SPANISH CHANNEL DR	BIG PINE KEY	FL	32043	BK 17 3 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	2159 SPANISH CHANNEL	NO NAME K	DOLPHIN HARBOR AMD
318462.0021	0018462-000000	REYNOLDS ROBERT D AND ALJANNE G	4085 SW 28TH CT	PHOENIX AZ	AZ	85024	LT 40 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	2159 SPANISH CHANNEL	NO NAME K	DOLPHIN HARBOR AMD
318462.0022	0018462-000000	ELSHALL FAMILY LIMITED PARTNERSHIP	4085 SW 28TH AVE	PHOENIX AZ	AZ	85024	LT 40 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	2159 SPANISH CHANNEL	NO NAME K	DOLPHIN HARBOR AMD
318462.0023	0018462-000000	MARGARELLA LLC	3250 CAT LN	FAIRLAND	IN	46126-8614	LT 40 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	3250 CAT LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0024	0018462-000000	DOSAVILLE HALETT AND LINDA V	3250 CAT LN	FAIRLAND	IN	46126-8614	LT 40 AMENDED PLAT OF BAHIA SHORES NO NAME KEY	3250 CAT LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0025	0018462-000000	MCCOELLAND HALL A AND LINDA V	PO BOX 63283	BIG PINE KEY	FL	32043	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3250 CAT LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0026	0018462-000000	BROWN ROBERT G AND KATHRYN H	5273 TORTUGA LN	BIG PINE KEY	FL	32043	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3273 TORTUGA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0027	0018462-000000	TURKEL BRUCE EVAN AND GLORIA NUNEZ IV	11101 SOUTHWEST 84TH AVE	PHOENIX AZ	AZ	85036	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3273 TORTUGA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0028	0018462-000000	FLETCHER MARSHA D	P O BOX 1418	BIG PINE KEY	FL	32043	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3273 TORTUGA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0029	0018462-000000	BANDER JOHN AND MARY	32769 BAHIA LANE	BIG PINE KEY	FL	32043	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3276 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0030	0018462-000000	LENTINI JOHN J	15 PEAKS ST	OSTER BAY	NY	11771	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3276 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0031	0018462-000000	KAMA TRACY JOHN AND LEANNE	137 PARKS RD	PRESTON	CT	06896	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0032	0018462-000000	BANKEN ROBERT L AND RUTH E	12 RUE DES PETITES-BOUTTES	WESTMINSTER	CO	80021	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0033	0018462-000000	PHILIP KAREN ANN	7130 W BOTHER DR	WESTMINSTER	CO	80021	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0034	0018462-000000	ORLOFFMAN JACOB	PO BOX 42081	BOCA RATON	FL	33428	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0035	0018462-000000	STAFICEVICH JILL M & TIMOTHY O EBNER (M)	21888 FALL RIVER DR	BOCA RATON	FL	33428	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0036	0018462-000000	THOMPSON DEAR O LUE	PO BOX 42089	BOCA RATON	FL	33428	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0037	0018462-000000	LIGHT MARK AND MARJORIE	PO BOX 42089	BOCA RATON	FL	33428	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0038	0018462-000000	BARNES MICHAEL	8371 N 80 W	FAIRLAND	IN	46126-8614	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0039	0018462-000000	MCCORDY CHARLES JOSEPH	7 EBBEL WAY DR	POTTSTOWN	PA	19405-2014	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0040	0018462-000000	RAISER RANDALL A	PO BOX 42089	BOCA RATON	FL	33428	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0041	0018462-000000	BARNES MICHAEL	PO BOX 42089	BOCA RATON	FL	33428	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0042	0018462-000000	MCCORDY CHARLES JOSEPH	41 SW 42TH ST	DAMA	FL	32094	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0043	0018462-000000	MORRIS CELIA	3000 NE 30TH ST	DAWA	FL	32094	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD
318462.0044	0018462-000000	MCCORDY CHARLES JOSEPH	8607 N 800 W	FAIRLAND	IN	46126-8614	18 08 30 NO NAME KEY PT LOT 5 (LOT 5) AND 4 OF AN UNRECOR	3284 BAHIA LN	NO NAME K	DOLPHIN HARBOR AMD

EXHIBIT D



(305) 295-1000
1001 James Street
PO Box 6100
Key West, FL 33041-6100
www.KeysEnergy.com

UTILITY BOARD OF THE CITY OF KEY WEST

October 19, 2010

Ms. Kathryn Brown
No Name Key Property Owner's Association
32731 Tortuga Lane
No Name Key, FL 33043

RE: 2 Test Poles, No Name Key, Florida
Line Extension # 754
ER # 2770-11

Dear Ms. Brown:

The Customer Service Section and the Engineering Section has completed the initial review of your request for electric service at the referenced location.

Enclosed are two copies of our Standard Electric Extension Agreement, together with a site layout of the line extension. Please note that the Standard Electric Extension Agreement states the number of linear feet required to complete your requested extension, and the amount that must be advanced to KEYS to enable the Engineering Section to proceed with your request. The time schedule for starting construction is approximately ten (10) weeks after receiving payment. Keys Energy will not proceed with this request unless all prior bills are paid in addition to the full cost of this Line Extension.

Should you desire to proceed with this line extension, please complete both copies of the enclosed agreement with the necessary signatures, and return them with your check payable to Keys Energy Services, addressed to the attention of the Customer Accounts Section. The contract will be signed by an authorized Keys Energy Representative and an original will be returned to you for your personal records.

Should you have any questions, please do not hesitate to contact Catherine Nix at 295-1080, or Kevin Hawthorne at 295-1078.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Hawthorne", written over a horizontal line.

Kevin Hawthorne
Senior Customer Accounts Representative

KH/am

C:
A. Tejada, Director of Customer Services
M. Alfonso, Supervisor of Engineering

File: CUS-200

Enclosure

STANDARD ELECTRIC EXTENSION AGREEMENT
LINE EXTENSION # 754

AGREEMENT, made this 19TH DAY OF OCTOBER 2010, by and between NO NAME KEY, PROPERTY OWNERS ASSOCIATION INC., hereinafter called "Customer," and the UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, DBA Keys Energy Services, a municipal owned utility, organized and existing under the laws of the State of Florida, hereinafter called "KEYS."

WHEREAS, the Customer has applied to the KEYS for electric service of the character commonly known as single-phase, on county right-of-way on Old State Road, on NO NAME KEY, FLORIDA.

WHEREAS, said location requires an extension of KEYS' present distribution system of approximately 2 poles; and

WHEREAS, KEYS would not be justified in making said extension prior to the receipt of payment in full for the line extension cost at the rate of \$4,438.02 per pole.

NOW, THEREFORE, WITNESSETH, that for and in consideration of the mutual covenants and agreement hereafter set forth for the parties hereto covenant and agree as follows:

ARTICLE I. At the time of acceptance of this agreement by the Customer, the said Customer shall advance to KEYS EIGHT THOUSAND, EIGHT HUNDRED AND SEVENTY-SIX DOLLARS AND 05/100 (\$8,876.05) representing a not to exceed total construction cost of the requested line extension.

ARTICLE II. KEYS shall impose and collect a line extension charge from any customer subsequently requesting service that is included in the contract and line extension drawing. The line extension charge shall be applied proportionally to the property based on the total service ability of this line extension. The attached line extension drawing #D-4176 is to be made a part of this contract.

ARTICLE III. KEYS shall reimburse the Customer entering and paying the cost of the line extension covered by this contract, 85% of the line extension charge imposed on any customer subsequently receiving service that is included in the line extension contract and drawing. However, the total refunds allowed under this Article shall not exceed the amount paid by the Customer, to KEYS, and provided further that no refunds will be made to the Customer who is in default in the payment of any bills for service furnished to the Customer, by KEYS. If there are no reimbursements indicated on the line extension drawing, Article III will not apply.

Article IV. This line extension agreement shall terminate ten years from the date the extension was completed. *Excluding services involving underground or over-water construction*

TITLE AND OWNERSHIP

ARTICLE V. Title to, and complete ownership and control over said extension, shall at all times remain in KEYS, and KEYS shall have the right to use the same for the purpose of service to other customers.

EASEMENTS AND RIGHTS

ARTICLE VI. The Customer will grant, or cause to be granted to KEYS, and without cost to KEYS, all rights, permits and privileges necessary for the rendering of service hereunder.

Initials: _____ Initials: _____

TRIMMING TREES

ARTICLE VII. It is expressly understood and agreed that the amount paid by the Customer, to KEYS, for the cost of the lines to be built hereunder does not include any cost of trimming or removing trees or other obstructions from the right-of-way, and to trim all trees adjacent thereto in order that the lines to be built under may be safely and properly constructed. KEYS shall not be required to begin construction of the lines until such clearing and trimming is completed to the satisfaction of KEYS.

PROCEEDING WITH WORK

ARTICLE VIII. KEYS, upon its approval of this agreement, will proceed with the extension outlined herein and as covered by sketch and specifications hereto attached and made a part hereof.

GENERAL TERMS

ARTICLE IX. NNKPOA shall be responsible for all costs incurred in the event the Contract is cancelled or the project is stopped. NNKPOA will be responsible for any material purchased for the project. If material can be used for another project (at KEYS sole determination), KEYS will charge a 20% material restocking fee. If bridge conduit system is in place, and contract stopped prior to project completion, NNKPOA is responsible for all costs incurred by KEYS "subcontractor" including costs of deconstruction, removal, mitigation, disposal and any repairs to return the rights-of-way to their preconstruction condition.

ARTICLE X. This agreement supersedes all previous agreements, or representatives, either written or verbal, between the KEYS and the Customer, made with respect to the matters herein contained, and when duly executed constitutes the agreement between the parties herto.

This agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

_____	_____
Witness for the Customer	Customer's signature
_____	_____
Witness for the Customer	Corporation name (if applicable)

	Title

_____	By: _____
Witness for KEYS	Title: _____

Witness for KEYS	
Account # _____	UTILITY BOARD - CITY OF KEY WEST
ER# <u>2770-11</u>	"Keys Energy Services"

STANDARD ELECTRIC EXTENSION AGREEMENT
LINE EXTENSION # 754

AGREEMENT, made this 19TH DAY OF OCTOBER 2010, by and between NO NAME KEY, PROPERTY OWNERS ASSOCIATION INC., hereinafter called "Customer," and the UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, DBA Keys Energy Services, a municipal owned utility, organized and existing under the laws of the State of Florida, hereinafter called "KEYS."

WHEREAS, the Customer has applied to the KEYS for electric service of the character commonly known as single-phase, on county right-of-way on Old State Road, on NO NAME KEY, FLORIDA.

WHEREAS, said location requires an extension of KEYS' present distribution system of approximately 2 poles; and

WHEREAS, KEYS would not be justified in making said extension prior to the receipt of payment in full for the line extension cost at the rate of \$4,438.02 per pole.

NOW, THEREFORE, WITNESSETH, that for and in consideration of the mutual covenants and agreement hereafter set forth for the parties hereto covenant and agree as follows:

ARTICLE I. At the time of acceptance of this agreement by the Customer, the said Customer shall advance to KEYS EIGHT THOUSAND, EIGHT HUNDRED AND SEVENTY-SIX DOLLARS AND 05/100 (\$8,876.05) representing a not to exceed total construction cost of the requested line extension.

ARTICLE II. KEYS shall impose and collect a line extension charge from any customer subsequently requesting service that is included in the contract and line extension drawing. The line extension charge shall be applied proportionally to the property based on the total service ability of this line extension. The attached line extension drawing #D-4176 is to be made a part of this contract.

ARTICLE III. KEYS shall reimburse the Customer entering and paying the cost of the line extension covered by this contract, 85% of the line extension charge imposed on any customer subsequently receiving service that is included in the line extension contract and drawing. However, the total refunds allowed under this Article shall not exceed the amount paid by the Customer, to KEYS, and provided further that no refunds will be made to the Customer who is in default in the payment of any bills for service furnished to the Customer, by KEYS. If there are no reimbursements indicated on the line extension drawing, Article III will not apply.

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ARTICLE V. Title to, and complete ownership and control over said extension, shall at all times remain in KEYS, and KEYS shall have the right to use the same for the purpose of service to other customers.

EASEMENTS AND RIGHTS

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Initials: _____ Initials: _____

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ARTICLE X. This agreement supersedes all previous agreements, or representatives, either written or verbal, between the KEYS and the Customer, made with respect to the matters herein contained, and when duly executed constitutes the agreement between the parties herto.

This agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

_____	_____
Witness for the Customer	Customer's signature
_____	_____
Witness for the Customer	Corporation name (if applicable)

	Title

_____	By: _____
Witness for KEYS	Title: _____

Witness for KEYS	
Account # _____	UTILITY BOARD - CITY OF KEY WEST
ER# <u>2770-11</u>	"Keys Energy Services"

EXHIBIT E

1003

NO NAME KEY P.O.A.
32731 TORTUGA LANE
NO NAME KEY, FL 33043

DATE 12/4/09

63-1411-670

PAY TO THE
ORDER OF

Keys Energy

\$ 13,800.00

Thirteen thousand eight hundred

no/100

DOLLARS



300 Water Road
Big Pine Key, Florida 33042
www.ny100bank.com

Katherine M. Brown

FOR line design agreement # 10-001

Jan Newton

1026

NO NAME KEY P.O.A.
32731 TORTUGA LANE
NO NAME KEY, FL 33043

DATE 04/02/10 65-1411-670

PAY TO THE ORDER OF KEYS ENERGY SERVICES \$ 12,597.⁰⁰

TWELVE THOUSAND FIVE HUNDRED NINETY-TWO AND 00/100 DOLLARS



200 U.S. Mail
Big Post Key, Florida 33043
www.usps.com

FOR NO NAME KEY SURVEY

[Handwritten Signature]

[Redacted]

[Redacted]

1027

NO NAME KEY P.O.A.
32731 TORTUGA LANE
NO NAME KEY, FL 33043

DATE 4/7/2010 63-1411-670

PAY TO THE ORDER OF Keys Energy Services

\$ 19,958.00

Nineteen thousand nine hundred fifty eight ⁰⁰/₁₀₀ DOLLARS



200 Water Road
Big Pine Key, Florida 33043
www.my100bank.com

FOR BRIDGE DESIGN

James B. ...
Jim ...

1033

NO NAME KEY P.O.A.
32731 TORTUGA LANE
NO NAME KEY, FL 33043

DATE 10/08/2010

63-1411-870

PAY TO THE
ORDER OF KEYS Energy

\$ 8,876.05

Eight thousand eight hundred seventy six and 05/100 DOLLARS



200 Wilder Road
Big Pine Key, Florida 33046
www.my100bank.com

Norman B. Newell
John J. [unclear]

FOR _____

1032

NO NAME KEY P.O.A.
32731 TORTUGA LANE
NO NAME KEY, FL 33043

DATE 10/28/2010 63-1411-670

PAY TO THE ORDER OF KEYS Energy

\$ 35,345.48

Thirty five thousand three hundred forty five and 48/100 DOLLARS



100 Wilder Road
Big Pine Key, Florida 33043
www.my100bank.com

Kathryn A. Brown

My 100

FOR KEYS Energy deposit



1034

NO NAME KEY P.O.A.
32731 TORTUGA LANE
NO NAME KEY, FL 33043

DATE 12/13/10 63-1411-870

PAY TO THE ORDER OF KEYS ENERGY SERVICES \$ 98,924.42

NINETY-EIGHT THOUSAND, NINE HUNDRED TWENTY-FOUR AND 12/100 DOLLARS



200 Water Road
Big Pine Key, Florida 33043
www.my100bank.com

Kenneth M. Brown

John [Signature]

FOR 60 PILES



EXHIBIT F

ORDINANCE NO. 043 -2001

AN ORDINANCE AMENDING THE MONROE COUNTY CODE BY ADDING SEC. 9.5-258; PROVIDING FOR THE SEVERIBILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR THE INCORPORATION INTO THE MONROE COUNTY CODE; AND DIRECTING THE CLERK OF THE BOARD TO FORWARD A CERTIFIED COPY OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Coastal Barrier Resources Act (CBRA) of 1982 established the Coastal Barrier Resources System (CBRS) to restrict the federally subsidized development of coastal barrier areas and specifically prohibited the "construction or purchase of any structure, appurtenance, facility, or related infrastructure" 16 U.S.C. 3504(a)(1) in said areas; and

WHEREAS, Monroe County has 15 designated units of the CBRS which can be found listed in Table 3.21 of the Monroe County Year 2010 Comprehensive Plan Technical Document and illustrated on the Existing Land Use Maps of the Comprehensive Plan Map Atlas; and

WHEREAS, Objective 102.8 of Monroe County Year 2010 Comprehensive Plan states: "Monroe County shall take actions to discourage private development in areas designated as units of the Coastal Barrier Resources System [9J-5.006(3)(b)4]"; and

WHEREAS, Policy 102.8.5 of Monroe County Year 2010 Comprehensive Plan states: "Upon adoption of the Comprehensive Plan, Monroe County shall initiate efforts to discourage the extension of facilities and services provided by the Florida Keys Aqueduct Authority and private providers of electricity and telephone services to CBRS units"; and

WHEREAS, Current Flood Insurance Rate Maps published for the National Flood Insurance Program by the Federal Emergency Management Agency, indicates there are five developed residential areas (with five structures or less per acre) and one commercial area that fall within the CBRS designation; and

WHEREAS, on Thursday, April 19, 2001 the Growth Management Staff was directed by the Board of County Commissioners to create an overlay district prohibiting the extension of public utilities to certain areas of the county; and

WHEREAS, the Development Review Committee on August 14, 2001, reviewed the legal authority and the proposed text, and recommended approval of the proposed text; and

WHEREAS, during a regular meeting held on September 26, 2001, the Monroe County Planning Commission conducted a public hearing on the proposed text, and recommended approval of the proposed text; and

WHEREAS, The Monroe County Board of County Commissioners was presented with the following information, which by reference is hereby incorporated as part of the record of said hearing:

1. The staff report prepared on September 19, 2001 by K. Marlene Conaway, Director, Planning and Environmental Resources.
2. Proposed changes to the Monroe County Land Development Regulations.
3. The sworn testimony of the Growth Management Staff.
4. Comments by the public; and

WHEREAS, the Monroe County Board of County Commissioners examined the proposed amendments to the Monroe County Code submitted by the Monroe County Planning Department; and

WHEREAS, the Monroe County Board of County Commissioners hereby supports the decision of the Monroe County Planning Commission and the staff of the Monroe County Planning Department; and

WHEREAS, it is the desire of the Monroe County Board of County Commissioners that the following amendment to the County Code be approved, adopted and transmitted to the state land planning agency for approval;

NOW THEREFORE; BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

Section 1. Chapter 9.5, Article VII Division 2 is hereby amended to include the following:

Sec. 9.5-258. Coastal barrier resources system overlay district.

(a) *Purpose:* The purpose of the Coastal Barrier Resources System Overlay District is to implement the policies of the comprehensive plan by prohibiting the extension and expansion of specific types of public utilities to or through lands designated as a unit of the Coastal Barrier Resources System.

(b) *Application:* The Coastal Barrier Resources System Overlay District shall be overlaid on all areas, except for Stook Island, within federally designated boundaries of a Coastal Barrier Resources System Unit on current Flood Insurance Rate Maps approved by the Federal Emergency Management Agency, which are hereby adopted by reference and declared part of this chapter. Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity; and telephone and cable. This prohibition shall not preclude the maintenance and upgrading of existing public utilities in place on the effective date of this ordinance and shall not apply to wastewater nutrient reduction cluster systems.

Section 2. If any section, subsection, sentence, clause, item, change, or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such validity.

Section 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 4. This ordinance shall be filed in the Office of the Secretary of State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administrative Commission approving the ordinance.

Section 5. This ordinance shall be transmitted by the Planning Department to the Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes.

Section 6. The Director of Growth Management is hereby directed to forward a copy of this ordinance to the Municipal Code Corporation for the incorporation in the Monroe County Code of Ordinances once this ordinance is in effect.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the 19th day of December, A.D., 2001.

Mayor Charles "Sonny" McCoy	<u>yes</u>
Mayor Pro Tem Dixie Spehar	<u>yes</u>
Commissioner Murray Nelson	<u>yes</u>
Commissioner George Neugent	<u>yes</u>
Commissioner Nora Williams	<u>yes</u>

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA



BY 

Mayor Charles "Sonny" McCoy

ATTEST: DANNY KOHLAGE, CLERK


DEPUTY CLERK

APPROVED AS TO FORM
AND LEGAL EFFICIENCY
BY 
Attorney's Office

EXHIBIT G

To: bob@morrisandreynolds.com
CC: mbakke100@hotmail.com

----- Forwarded Message -----

From: "Tejeda, Lynne" <Lynne.Tejeda@KeysEnergy.com>
To: kathryn56@earthlink.net; jbnewton@bellsouth.net
Cc: "Finigan, Dale" <Dale.Finigan@KeysEnergy.com>; "Delph, Edee" <Edee.Delph@KeysEnergy.com>
Sent: Thu, January 7, 2010 2:56:30 PM
Subject:

Kathy and Jim,

I received the attached information from the County today. The BOCC will discuss No Name Key Electrification at its meeting on January 20th at 1:45.

We are still awaiting word from USFWS. Last we officially heard was we would get something in early January; however, we saw something in the News Barometer that seemed to indicate it was more likely that the response would be mid to late January.

Dale has completed the bid specifications and forwarded them to our purchasing department for processing.

Without the letter from USFWS and with the BOCC discussion scheduled, I believe it is best to hold off on any other activities that continue to be expensed against the deposit made by the No Name Key Property Owners Association. As such I have asked for work to stop.

We are of course, willing to continue if that is your preference. If you wish us to continue the process, please respond accordingly. Otherwise we will remain on hold until after the BOCC meeting, at which point we can regroup.

Regards,
Lynne Tejeda

Hotmail: Powerful Free email with security by Microsoft. [Get it now.](#)

Robert D. Reynolds, CIC, CPIA, AAM, AIS, AU
Morris & Reynolds Insurance
14821 South Dixie Highway
Miami, Florida 33176-7928
305.238.1000 Phone/Ext. 116
305.255.9643 Fax
Visit Us Online at: <http://www.morrisandreynolds.com>

Established 1956

MORRIS & REYNOLDS
Insurance

From: Tejada, Lynne [mailto:Lynne.Tejeda@KeysEnergy.com]
Sent: Thursday, December 17, 2009 10:59 AM
To: Robert Reynolds
Subject: RE: No Name

Bob,

see below

From: Robert Reynolds [mailto:bob@morrisandreynolds.com]
Sent: Wednesday, December 16, 2009 7:16 PM
To: Tejada, Lynne
Subject: No Name

Dear Lynne

1) One of our residents has asked me to ask you about the option, if it makes sense, is possible, is cost effective, of placing poles in the sea bed, the water, as is done say to Little Palm and in other cases rather than a bridge attaching. Is that an option and what are the issues in your/Keys view? It is possible; however it is more expensive and would require Army Corps approval. In addition to the construction expense there could be mitigation expense. (by the way we do not own nor maintain the line to Little Palm we only power to a meter point on this side of the water crossing)

2) As you likely know, some on the BOCC continue their punitive thoughts towards No Name and are, it seems, confused, over the fact that Keys has the right, as we understand it, by state law to provide us power. The County Attorney has made that clear to the BOCC in writing and I think you have a copy of her now two written opinions on same. My question is, has Keys done its own research on the matter and if so what option has your legal counsel offered on this topic? I am unaware of any punitive thoughts from the BOCC. We have the right to construct our system on public streets, roads, bridges and or highways. I believe we all agree on that issue.

Thank you in advance for your insight and answer.

Bob Reynolds
2160 Bahia Shores Road
No Name Key

EXHIBIT H

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA
CIVIL DIVISION

MONROE COUNTY, a political subdivision of
the STATE of FLORIDA,

Plaintiff,

vs.

JUDGE: _____
CASE NO.: CA K 11- _____

UTILITY BOARD OF THE CITY OF
KEY WEST, FLORIDA d.b.a.
KEYS ENERGY SERVICES; and,

the owners of 43 lots of developed properties on No Name Key, to-wit: Robert L. Eaken and Ruth E. Eaken; Hallett Douville and Linda S. Douville; Robert D. Barber and Carol C. Barber; Robert G. Brown and Kathryn M. Brown; Michael Press and Anne Press; Thomas B. Witter and Susan H. Witter; Jacob Druckman; Robert D. Reynolds and Julianne C. Reynolds; Bruce Evan Turkel and Gloria Nunez; Anthony C. Harlacher and Elizabeth A. Harlacher; Alicia Roemmele Putney; Marginella, LLC; Robert T. Benton; Charles R. Bone and Sabrey P. Bone Trust 6/25/2010; Elbualy Family Limited Partnership; John Bakke and Mary Bakke; Karen Ann Phillip; Jill M. Starcevich and Timothy G. Ebner; Lawrence Zeman; John J. Lentini; Kathryn H. Coleman, Trustee; Hal A. McClelland and Linda McClelland; Marsha D. Fletcher; Herbert E. Craig or Lois M. Craig, Trustees; James B. Newton; Robert M. Scanlon and Janice J. Scanlon; Randall Hochberg; J.A. Wemsen and Cornelia Van Der Linde; Laurence R. Dry; John D. Morris and Linda A. Morris; Tracey John Kamm and Leanne Kamm; Mark Licht and Marjorie Licht; Thomas A. Sinclair and Barbara J. Sinclair; Franklin R. Atwell; Randall A. Raser; Thomas Daniels and Dorothy Daniels; Harold Kimble and Kandy Kimble; Dean O. Thompson; Louja Realty, Inc.; John J. Sandroni; Francisco Pichel; Oscar Jason Brouillette; William Bradford Vickrey and Beth Vickrey, the owners of 43 lots of developed property on No Name Key,

Defendants.

COMPLAINT

The Plaintiff Monroe County ("the County"), by and through the Monroe County Attorney's Office and the undersigned Attorney, hereby sue Defendants Utility Board of the City of Key West d/b/a Keys Energy Services ("KES"), and the

owners of 43 lots of developed properties on No Name Key to-wit: Robert L. Eaken and Ruth E. Eaken; Hallett Douville and Linda S. Douville; Robert D. Barber and Carol C. Barber; Robert G. Brown and Kathryn M. Brown; Michael Press and Anne Press; Thomas B. Witter and Susan H. Witter; Jacob Druckman; Robert D. Reynolds and Julianne C. Reynolds; Bruce Evan Turkel and Gloria Nunez; Anthony C. Harlacher and Elizabeth A. Harlacher; Alicia Roemmele Putney; Marginella, LLC; Robert T. Benton; Charles R. Bone and Sabrey P. Bone Trust 6/25/2010; Elbualy Family Limited Partnership; John Bakke and Mary Bakke; Karen Ann Philipp; Jill M. Starcevich and Timothy G. Ebner; Lawrence Zeman; John J. Lentini; Kathryn H. Coleman, Trustee; Hal A. McClelland and Linda McClelland; Marsha D. Fletcher; Herbert E. Craig or Lois M. Craig, Trustees; James B. Newton; Robert M. Scanlon and Janice J. Scanlon; Randall Hochberg; J.A. Wemsen and Comelia Van Der Linde; Laurence R. Dry; John D. Morris and Linda A. Morris; Tracey John Kamm and Leanne Kamm; Mark Licht and Marjorie Licht; Thomas A. Sinclair and Barbara J. Sinclair; Franklin R. Atwell; Randall A. Raser; Thomas Daniels and Dorothy Daniels; Harold Kimble and Kandy Kimble; Dean O. Thompson; Louja Realty, Inc.; John J. Sandroni; Francisco Pichel; Oscar Jason Brouillette; William Bradford Vickrey and Beth Vickrey, as more fully described in Exhibit A to this Complaint, which is incorporated by reference herein, and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Monroe County, is a political subdivision of the state of Florida, with an official address of 500 Whitehead Street, Key West, Florida and

administrative offices located at 1100 Simonton Street, Key West, Monroe County, Florida 33040.

2. Defendant KES is a municipal utility duly organized and existing under the laws of the State of Florida with its principal place of business at 1001 James Street, Key West, Florida, which is located in Monroe County, Florida.

3. Defendant KES at all times relevant, has been engaged in the business of providing electricity to customers located south of the Seven Mile Bridge in Monroe County.

4. Under section 11, chapter 69-1191, Laws of Florida, KES has "the full, complete, and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the city of Key West, Florida in Monroe County, Florida, the electric public utility owned by said city including the maintenance, operation, extension and improvement thereof, and including all lines, poles, wires, pipes, mains and all additions to and extension of the same . . . used or intended for use in or in connection with said electric public utility" (Emphasis supplied). For ease of reference, copy of 69-1191 is attached hereto.

5. The Defendant property owners more fully described in Exhibit A, are listed in public records as the owners of at least one developed parcel of property located on No Name Key, Florida. Each Defendant listed on Exhibit A owns a developed parcel of property with a structure that would be eligible to connect to KES line, assuming all appropriate permits are obtainable and in fact obtained.

6. A number of the Defendant property owners listed in Exhibit A have applied to KES for electric service.

7. KES has indicated that it is in the final design stages for the installation of electrical facilities to various residences on No Name Key.

8. The majority of No Name Key is located within the Coastal Barrier Resources System. See CBRS Unit FL-50 map, which is incorporated herein as Exhibit B.

9. The Monroe County Code prohibits the extension of public utilities including electricity within the Coastal Barrier Resources System Overlay District. See, M.C.C. § 130-122. That section reads:

(a) Purpose. The purpose of the coastal barrier resources system overlay district is to implement the policies of the comprehensive plan by prohibiting the extension and expansion of specific types of public utilities to or through lands designated as a unit of the coastal barrier resources system.

(b) The coastal barrier resources system overlay district shall be overlaid on all areas, except for Stock Island, within federally designated boundaries of a coastal barrier resources system unit on current flood insurance rate maps approved by the Federal Emergency Management Agency, which are hereby adopted by reference and declared part of this chapter. Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity, and telephone and cable. This prohibition shall not preclude the maintenance and upgrading of existing public utilities in place on the effective date of the ordinance from which this section is derived and shall not apply to wastewater nutrient reduction cluster systems. (Emphasis added).

10. Section 6-100 of the Monroe County Code requires the issuance of a building permit "for work in the electrical, mechanical, and plumbing trades."

11. However, the Legislature has exempted the construction of utility lines from the definition of development for purposes of Chapter 380, the Florida Environmental Land and Water Management Act of 1972 and part II of Chapter 163, the Local Government Comprehensive Planning and Land Development Regulation Act. See, F.S. 163.3164(6)¹ and F.S. 380.04(3)(b). F.S. 380.04(3)(b) reads:

Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on ***established rights-of-way*** any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners. (Emphasis added).

12. Through the operation of F.S. 380.04(3)(b), work by a utility such as KES is exempted from local and state permitting requirements provided that the work is done on "established rights-of-way". See, *Monroe County v. Dept. of Community Affairs*, 580 So.2d 240, 241 (Fla. 3d DCA 1990).

13. The term "established rights of way" is not defined in chapters 163 or 380 nor has that term, as it is used in the context of F.S. 380.04(3)(b), been defined by the Courts or the Attorney General.

14. To be clear, the Legislature has defined the term "right of way" in two different statutes which may be instructive but not necessarily controlling in this context. See, F.S. 177.031(16) and F.S. 334.03(22).

15. In part I of chapter 177, entitled "Platting", the term "right of way" is defined to mean: "land dedicated, deeded, used, or to be used for a street, alley,

¹ F.S. 163.3164(6) incorporates the definition of the term "development" as it appears in F.S. 380.04(3)(b).

walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies." F.S. 177.031(16).

16. However, the County is uncertain as to whether that definition of the term applies to the instant matter because at least some of the roads at issue are located on a plat which has never been accepted or approved by the County pursuant to chapter 177 or whether this definition is even applicable in the context of F.S. 380.04(3)(b).

17. In the Florida Transportation Code, the term "[r]ight-of-way" means land in which the state, the department, a county, or a municipality owns the fee or has an easement devoted to or required for use as a transportation facility." F.S. 334.03(22).

18. Once again, the County is uncertain as to whether each of the roads on No Name Key along which KES intends to extend electric service along fall within the definition of the term "right of way" under F.S. 334.03(22) or whether this definition is even applicable in the context of F.S. 380.04(3)(b).

19. Additionally, the County Commission adopted a resolution in 1951 which resolved to grant permission to the City of Key West, the predecessor in interest to KES, "to construct and maintain an electrical system on and over any of the public streets, roads, bridges and/or highways under [the County's] jurisdiction and control within the Florida Keys, Monroe County, Florida, from the City of Key West, Florida up to and including Pigeon Key, Florida." See Resolution dated September 4, 1951, which is incorporated herein as Exhibit C.

20. Again, the County is uncertain whether the roads on No Name Key along which KES intends to run its utility line qualify as being under the County's jurisdiction and control in light of the platting issues set forth above.

21. Accordingly, an initial threshold question is whether each of the roads on No Name Key along which KES intends to run electric utility lines constitute an "established right of way", as that term appears in F.S. 380.04(3)(b).

22. A companion question is whether KES has the authority under state law to run electric utility lines across property that is NOT an "established right of way" under F.S. 380.04(3)(b) despite the prohibition set forth in Monroe County Code § 130-122. Stated differently, is M.C.C. § 130-122 pre-empted by chapter 69-1191 and/or some other provision of state law?

23. An additional question is whether the 1951 Resolution vests KES with the authority to extend its utility lines along each of the roads on No Name Key or whether that delegation of authority has been modified through the adoption M.C.C. § 130-122.

24. Another question arises regarding whether the prohibition against the extension of electric utilities to properties within the CBRS overlay district, as set forth in M.C.C. § 130-122, prohibits the County from issuing building permits to the property owners on No Name Key who desire to connect to electrical service provided by KES. Stated differently, assuming KES has the right to erect the poles and string the lines, do the Defendant property owners have the right to connect their homes to the utility's lines despite the prohibition in

M.C.C. § 130-122?

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COUNT I -- DECLARATORY JUDGMENT AS TO KES

4/14/52

25. The County re-alleges the factual allegations set forth in paragraphs 1 through 24.

26. The Plaintiff has a bona fide, actual, present practical need for the declaration as to whether the Defendant is required to obtain a development permit for the extension of a power line on No Name Key and if so, under what circumstances.

27. Because the County would be the permitting authority for the issuance of such a permit and the Defendant KES is the only party who would be required to obtain a permit to extend the utility line, all adverse parties involved in this discrete issue are present before the Court.

28. Given the pending application for power by potential KES customers on No Name Key, the dispute satisfies the present controversy requirement for a declaratory judgment action.

29. The declaration is being sought by the County not for mere curiosity or legal advice but to determine the parties' rights under state law and pursuant to Monroe County Code § 130-122.

30. As a result of the foregoing, the Court has jurisdiction under the Florida Constitution and Chapter 86, Florida Statutes to hear this matter.

WHEREFORE, the Plaintiff Monroe County respectfully requests the Court to enter a judgment:

A. Declaring whether the Defendant Utility Board of the City of Key West,

d/b/a Keys Energy Services is exempt from local and state permitting requirements and the extent and scope of any exemption;

B. Awarding the costs of suit; and

C. Granting such other and further relief as the Court deems just and proper.

**COUNT II – DECLARATORY JUDGMENT AGAINST NO NAME KEY
RESIDENTIAL PROPERTY OWNERS**

31. The Plaintiff re-alleges paragraphs 1 through 30.

32. Assuming the question posed in Count I is answered in favor of Defendant KES, the second question posed above will ripen into an immediate question requiring the Court's determination.

33. Assuming KES is authorized by law to run utility lines onto No Name Key, the owners of developed properties on No Name Key are in a present position to pay KES to extend the utility line and then seek permits to connect their homes to that line, therefore, those owners listed in Exhibit A and the County have a present and immediate need for a judicial determination regarding whether those owners will be able to lawfully connect to KES service line in light of the prohibition on the extension of utility lines set forth in M.C.C. § 130-122.

34. The need for this determination is immediate and present for if the law prohibits the connection of the homeowners to the utility line, any expenditure towards running the utility lines onto No Name Key in the first place would be a waste of resources, regardless of their source.

35. Since the 43 property owners named as Defendants are the only property owners with constructed residences on No Name Key, all parties with a present need for the declaration are present before the Court.

36. In light of the prohibitory language set forth in M.C.C. § 130-122, the interests of the property owners desiring electrical service are adverse to those of Plaintiff Monroe County, which would be obligated to deny any permit that would seek to connect the residence to the line extended by KES.

37. The Plaintiff has a bona fide, actual, present practical need for the declaration as to whether the Defendants desiring to connect to KES line would be eligible to obtain building permits in order to receive electric service from KES or whether those permits would be prohibited under M.C.C. § 130-122 or whether that ordinance is pre-empted by state law.

WHEREFORE, the Plaintiff Monroe County respectfully requests the Court to enter a judgment:

A. Declaring whether Monroe County Code § 130-122 prohibits the issuance of building permits to any of the Defendant property owners on No Name Key for the extension of electrical service by the Utility Board of the City of Key West, d/b/a Keys Energy Services to the Defendants' respective properties or whether that ordinance is pre-empted by State law.

B. Awarding the costs of suit; and

C. Granting such other and further relief as the Court deems just and proper.

COUNT III – INJUNCTIVE RELIEF

38. The County re-alleges paragraphs 1 through 37.

39. The Plaintiff Monroe County is the local government with regulatory authority for land use on No Name Key. F.S. 163.3171(2).

40. Land use regulation falls within the County's police powers. See, e.g., *Town of Bay Harbor Islands v. Driggs*, 522 So.2d 912 (Fla. 3d DCA 1988).

40. Section 130-122 of the Monroe County Code is an exercise of the County's police powers.

41. Because the County is seeking an injunction in order to enforce its police powers, specifically those conferred by M.C.C. § 130-122, any alternative legal remedy is ignored and irreparable harm is presumed. *Metro-Dade County v. O'Brien*, 660 So.2d 364, 365 (Fla. 3d DCA 1995); and *Ware v. Polk County*, 918 So.2d 977, 979 (Fla. 2d DCA 2005).

42. The County's interest in having its land development code obeyed would nevertheless be irreparably harmed if Defendant KES and/or the Defendant property owners started erecting utility poles and taking further steps towards the provision of electrical utility service on No Name Key.

43. Any knowing violation of the County's land development code, including § 130-122, would vest the County with a clear legal right to relief in the form of an injunction. See, *O'Brien*, 660 So.2d at 365 and *Ware*, 918 So.2d at 980.

44. A temporary injunction would serve the public interest by preserving the *status quo* and prevent the unnecessary waste of public and private assets during the pendency of this litigation.

45. A permanent injunction relief would serve the public interest by providing a mechanism for enforcing the declaratory judgments issued in Counts I and II.

WHEREFORE, the Plaintiff respectfully requests the Court to:

A. Enter a temporary injunction prohibiting the Defendants from expending any funds or taking any steps towards the extension of electrical service to No Name Key during the pendency of this action; and

B. Grant such further injunctive relief, temporary and/or permanent, as this Court deems just and proper.

Respectfully submitted,

MONROE COUNTY ATTORNEY'S OFFICE
1111 12th Street, Suite 408
Key West, Florida 33040
(305) 292-3470
(305) 292-3516 facsimile

By 
Suzanne A. Hutton
County Attorney
FBN: 336122

Robert B. Shillinger
Chief Assistant County Attorney
FBN: 58262

Exhibit A to Plaintiff's Complaint

Name of Property Owner	No Name Key Address	RE Number
Eaken, Robert L. & Ruth E.	32844 Bimini Lane	00108120-000300
Douville, Hallett & Linda S.	32340 Cat Lane	00108050-000206
Barber, Robert D. & Carol C.	1934 No Name Drive	00319492-004000
Brown, Robert G. & Kathryn M.	32731 Tortuga Lane	00108130-002000
Press, Michael & Anne	2159 Spanish Channel Drive	00319491-000300
Witter, Thomas B. & Susan	2046 Bahia Shores Road	00319491-003800
Druckman, Jacob	32860 Bimini Lane	00108120-000100
Reynolds, Robert D. & Julianne C.	2160 Bahia Shores Road	00319491-004700
Turkel, Bruce Evan & Gloria Nunez, H/W	32734 Bimini Lane	00108120-001300
Harlacher, Anthony C. & Elizabeth A.	1921 Bahia Shores Road	00319492-000400
Putney, Alicia Roemmele	2150 No Name Drive	00319492-002300
Marginella, LLC	32029 Marginella Drive	00319493-000400
Benton, Robert T.	2148 Bahia Shores Road	00319491-004600
Bone, Charles R. & Sabrey P. TR 6/25/10	2011 Bahia Shores Road	00319492-001100
Elbualy Family Limited Partnership	31549 Old St. Rd. 4A (Vacant)	00108480-000200
Bakke, John & Mary	32766 Bimini Lane	00108120-000900
Philipp, Karen Ann	32857 Tortuga Lane	00108130-003100
Starceovich, Jill M. & Timothy G. Ebner, H&W	32865 Tortuga Lane	00108130-003200
Zeman, Lawrence, L/E	1933 Bahia Shores Road	00319492-000500
Lentini, John J.	32836 Bimini Lane	00108120-000600
Coleman, Kathryn H., Trustee	2123 Spanish Channel Drive	00319491-000500
McClelland, Hal A. & Linda	32723 Tortuga Lane	00108130-001900
Fletcher, Marsha D.	32763 Tortuga Lane	00103130-002400
Craig, Herbert E. or Lois M., Trustees	2060 No Name Drive	00319492-003000
Newton, James B.	2047 Bahia Shores Road	00319492-003000
Scanlon, Robert M. & Janice J.	1845 No Name Drive	00103050-000103
Hochberg, Randall	32750 Bimini Lane	00108120-001200
Wernsen, J.A. & Van Der Linde, Cornelia, T/C	1910 No Name Drive	00319492-004200
Dry, Laurence R.	1868 No Name Drive	00319492-004400
Morris, John D. & Linda A.	Tortuga Ln. (Part of Lot 5)	00108130-002500
Kamm, Tracey John & Leanne	32840 Bimini Lane	00108120-000500
Licht, Mark & Marjorie	2083 Bahia Shores Road	00319492-001700
Sinclair, Thomas A. & Barbara J.	2024 No Name Drive	00319492-003300
Atwell, Franklin R.	2137 Bahia Shores Road	00319492-002100
Raser, Randall A.	No Name Drive	00319492-002500
Daniels, Thomas & Dorothy	1931 Spanish Channel Drive	00319491-002000
Kimble, Harold & Kandy	1909 Bahia Shores Road	00319492-000300
Thompson, Dean O. L/E	714 Tortuga Lane	00108130-002700
Louja Realty, Inc.	1957 Bahia Shores Road	00319492-000700
Sandrini, John J.	2084 No Name Drive	00319492-002800
Pichel, Francisco	2081 Spanish Channel Drive	00319491-000800
Brouillette, Oscar Jason	1843 Bahia Shores Road	00108040-000500
Vickray, William Bradford & Beth	2035 Bahia Shores road	00319492-001300



**RESOLUTION GRANTING THE CITY OF KEY WEST,
FLORIDA PERMISSION TO USE THE RIGHTS-OF-WAY
OF CERTAIN PUBLIC STREETS, ROADS, BRIDGES
AND/OR HIGHWAYS IN MONROE COUNTY, FLORIDA.**

WHEREAS, the City of Key West, Florida, desires to run electrical line from the City of Key West, Florida to Pigeon Key, Florida for the purpose of furnishing electricity to the residents of the Florida Keys residing in said area, and,

WHEREAS, the City of Key West, Florida has requested the Board of County Commissioners of Monroe County, Florida to grant easements on and over the public streets, roads, bridges and/or highways under said Board's jurisdiction and control, and,

WHEREAS, the said City of Key West, Florida has agreed not to charge any higher rates to residents of the above areas than it charges within the boundaries of the City of Key West, Florida, and that in furnishing service to residents not residing on a public street, road and/or highway not to charge any higher rate for the extension of the pole lines than that which is charged by the Florida Keys Electrical Cooperative Association, which is now operating in another area in Monroe County, Florida, and

WHEREAS, the City of Key West, Florida has agreed to furnish service under the conditions set forth in the above paragraphs to any and all subscribers who may apply for same, now, therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, that permission be and the same is hereby granted to the City of Key West, Florida to construct and maintain an electrical system on and over any of the public streets, roads, bridges and/or highways under said Board's jurisdiction and control within the Florida Keys, Monroe County, Florida, from the City of Key West, Florida up to and including Pigeon Key, Florida, provided that the City of Key West, Florida charges the agreed rates and costs to consumers for extension as set forth in the introductory paragraphs of this Resolution.

Dated this 4th day of September, A.D. 1951.

**PLAINTIFF'S
EXHIBIT**

PL 1041

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CHAPTER 69-1191

House Bill No. 2946

AN ACT concerning local government in the City of Key West, Florida; creating the Utility Board of the City of Key West, Florida; granting said board the full, complete and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the City of Key West, Florida, in Monroe County, Florida, improve, finance and re-finance the electric public utility now owned by said city, and to build, construct and acquire by purchase, gift or otherwise, from time to time, other public utilities, and providing for said board to have all of the powers in connection with such other public utilities as those granted by any special or local bill to said board with respect to the electric public utility now owned by said city; providing for any legally appointed and authorized board under the provisions of Chapter 65-1770, Laws of Florida, Acts of the Legislature Year 1965, to be the governing body of the Board created under this act, until the election of the first board under the provisions of this act; providing for the election of the first members of said Board created under this act; fixing their terms of office; providing for the election and terms of office of subsequent members of said Board; providing the qualifications and compensation for members of said Board; providing for the organization of said Board; providing for removal of members; prescribing the jurisdiction, powers, functions, authority, duties and privileges of said board; granting said Board the exclusive right to issue and sell from time to time revenue bonds against the income of said public utility or against the income of any one (1) or more of them, at prices determined by said Board, and the exclusive right to incur indebtedness against said public utilities or their income; providing for prior approval by the City Commission of the City of Key West, Florida before said Utility Board may validate and issue any bonds as authorized hereunder; authorizing and empowering said board to establish, adopt, provide, operate, maintain and assist in the support of a pension system or plan for the relief of social security of disabled or retired officers and employees of said Board, and to delegate authority for the handling of said plan or system; empowering said Board to make contracts of insurance for its officers and employees for life, health or accident insurance, and to contract for annuities or pensions and appropriate money for the aforesaid purposes; ratifying all actions heretofore taken in connection with the pension system or plan by the predecessor board; authorizing and empowering said Board to create, establish, provide for, adopt, maintain, operate and regulate a civil service system and plan for the security of the employees of said Board and to adopt rules and regulations for the government and operation of said civil service system and plan, and to appropriate necessary funds for said purpose; providing for the disposal of surplus and obsolete property of said board; providing for a legislative audit of the accounts of said board; providing for disclosure of personal interest of any Board member or employee of said board in firms contracting with said Board, and providing a penalty for failure to disclose same; providing a method of payment for official travel expenses of Board members, agents and employees; providing procedures required in the purchase of lands by said board; declaring all records of said board to be public records; providing that said board created under the provisions of this act shall be the successor to the Utility Board of the City of Key West, Florida, created and existing by and under said Chapter 65-

47 1770, Laws of Florida, Acts of the Legislature Year 1965, and acts amendatory thereto,
48 and as such successor shall succeed to all the rights, powers, privileges, duties and
49 obligations of its predecessor board; and shall succeed to the title and ownership of all
50 credits, money, assets, choices in action, properties, both real, personal and mixed, of
51 which said predecessor board was possessed or had title to or used in the operation of or
52 in connection with said electric public utility; declaring the title to all such property, real,
53 personal and mixed, to be vested in said Board created under the provisions of this act;
54 declaring the legislative intent that this act shall not be deemed repealed or amended by
55 the passage of any act, whether general, special or local, at this regular session of the
56 Legislature or any future session thereof, unless the act seeking to effect, repeal or amend
57 this act makes specific reference to this act; declaring that the provisions of this act are
58 severable, and if any be held unconstitutional by a competent court, the remainder of this
59 act shall not be affected by such holding; repealing all laws and parts of laws, whether
60 general, special or local, in conflict with this act, to the extent of such conflict; providing
61 that this act shall be liberally construed; and providing when this act shall take effect.
62
63

64 *Be It Enacted by the Legislature of the State of Florida:*
65

66 **Section 1. RIGHTS OF THE UTILITY BOARD:** There is hereby created the Utility
67 Board of the City of Key West, Florida, to be composed of five (5) members as
68 particularly hereinafter set forth. Such Utility Board created by this act shall be and is
69 hereby made the successor to the Utility board of the City of Key West, Florida,
70 heretofore created and existing by and under the provisions of chapter 65-1770, Laws of
71 Florida, Acts of the Legislature Year 1965, and acts amendatory thereto. The full,
72 complete and exclusive power and right to manage, operate, maintain, control, extend,
73 and extend beyond the limits of the City of Key West, Florida, in improve, finance and
74 re-finance the electric public utility now owned by the City of Key West, Florida, and the
75 nonexclusive right to build, construct, operate and acquire other public utilities, by
76 purchase, gift, grant, lease, rental or otherwise, from time to time, from the United States
77 Government, its departments, agencies, bureaus and commissions, and from the State of
78 Florida and any of its political subdivisions, and corporations which are publicly or
79 privately owned or operated, and by the right of eminent domain, shall be carried on by
80 such Utility Board composed of five (5) members, all of whom shall be elected by the
81 qualified electors of the City of Key West, Florida, at large, as hereinafter set forth.
82 Furthermore, said Utility Board shall have the power and right to sell at retail or
83 wholesale certain tangible personal property related to its utility services, including, but
84 not limited to, generators, protection and conservation equipment, and appliances. The
85 term "public utility", as used herein, shall include, but not be limited to, cable and
86 telecommunication facilities. Nothing herein shall grant the right of eminent domain as to
87 cable or telecommunication facilities. The name of the Utility Board shall be "Utility
88 Board of the City of Key West, Florida," and said board shall function and operate as
89 hereinafter provided. Said Utility Board shall have the right to sue and be sued, may
90 adopt and use a seal and change it at pleasure, and may use in the conduct of its business
91 the trade name of "Keys Energy Services," the use of which heretofore by its predecessor
92 board is approved, confirmed and validated; further, said Utility Board may change such

93 trade name and from time to time adopt such trade names as it deems expedient and
94 proper in the conduct of its business, operations and activities.

95
96 **Section 2. ELECTION OF UTILITY BOARD MEMBERS:** The first election for the
97 nomination or election of candidates for members of the Utility Board of said city shall
98 be held no earlier than forty-five (45) days and no later than sixty (60) days from the date
99 this act shall become law and on the first Tuesday in November biannually thereafter,
100 commencing with the election of 1971 and shall be held concurrent with the election for
101 the office of City Commission of the City of Key West, Florida. Such elections shall be
102 non-partisan elections and every person voting in said election shall be entitled to vote for
103 as many candidates for the utility board as there are members to be elected to said Board.
104 The name of any qualified elector of the City of Key West who meets the qualifications
105 for member of said Utility Board, as set forth in this act, may appear upon the election
106 ballot as a candidate for the office of member of the Utility Board, upon said elector
107 paying to the City of Key West, Florida, the sum of one hundred dollars (\$100.00) and
108 said sum shall be deposited with the City Clerk of said city at his office not later than
109 5:00 p.m. on the date set for the closing of qualification by the election officials, for the
110 first election under the provisions of this act, and thereafter the second Tuesday in
111 October of the year in which subsequent elections under this act are to be held. A
112 qualifying fee for such candidate for such office, and said elector shall submit to the said
113 city clerk concurrently therewith the sworn statement of his or her name, address,
114 occupation, willingness to serve if elected and shall indicate on such sworn statement his
115 or her desire for his or her name to appear on the ballot as a candidate for such office.
116 Provided, however, that any person who holds an elective office in the government of the
117 City of Key West, Florida, County of Monroe, the State of Florida, or any political
118 agency, board or commission is compensated by wages, salaries or otherwise shall not be
119 eligible to serve concurrently as a member of the board created by this act. Only the name
120 or names of candidates complying with this section shall appear on the ballot as a
121 candidate for nomination or election. No candidate having qualified and thereafter
122 withdrawing or becoming disqualified under the provisions of this act shall be entitled to
123 a refund of the aforesaid qualifying fee paid.

124
125 **Section 3. MEMBERSHIP OF UTILITY BOARD:** The Utility Board shall consist of five
126 (5) members who shall be elected from the city at large in groups numbered I, II, III, IV,
127 and V. All persons desiring to qualify for members shall file in groups numbered I, II, III,
128 IV or V. The member in group number I shall be elected in the regular municipal general
129 election commencing in 2007 and at each general election every four (4) years thereafter.
130 Members in groups numbered II and III shall be elected in the special general election in
131 1969 as provided for herein at each regular municipal general election each four (4) years
132 thereafter, commencing in 1973 and at each general election each (4) years thereafter.
133 Members in groups numbered IV and V shall be elected at the special general election
134 provided for herein in 1969 and at the regular municipal general election to be held in
135 1971 for a term of four (4) years and at each general election thereafter for a term of four
136 (4) years. All members shall hold office until their successors are elected and qualified
137 from 12:00 noon of the day after the canvas of the vote and the declaration of the results
138 of the election. All members shall be subject to removal for good and sufficient cause by

139 a four-fifths (4/5) vote of the city commission. If a candidate for member receives a
140 majority of votes in the primary election in the candidate's group, the candidate shall be
141 considered elected upon and after the canvas of the vote and the declaration of the result
142 of the election as hereinafter provided. If there is no majority, two (2) candidates for
143 nomination to the office of member who receives the greatest vote in the primary election
144 each group shall be placed on the ballot at the next regular or special municipal general
145 election following the primary as provided in the city charter of the City of Key West,
146 Florida. The candidate for nomination receiving the greater vote in the regular or special
147 municipal general election following the primary election if otherwise qualified shall be
148 elected to office from the group in which candidate is qualified. One (1) of said member
149 shall serve as Chairperson of the Utility Board. The Chairperson shall be selected from
150 the five (5) members by the five (5) members during an organizational meeting in
151 December immediately following an election and serve as such until the next
152 organizational meeting following an election. A member may serve as Chairperson for
153 consecutive terms.

154
155 Section 4. **ELECTION AUTHORITIES:** For the purposes of this act, the election
156 authorities shall be the same authorities conducting elections under the Charter of the
157 City of Key West, Florida, and any amendment thereto. The Utility Board of the City of
158 Key West is hereby directed to pay as an administrative expense to said authorities the
159 actual expense incurred in conducting the first election to be held under the provisions of
160 this act.

161
162 Except as otherwise provided in this act, the provisions of the general election laws of
163 the State of Florida shall apply to elections held under this act. All elections provided for
164 by this act shall be conducted by said election authorities.

165
166 Section 5. **ELECTION PROCESS:** The full names of all candidates nominated for
167 membership in the Utility Board, except those who have withdrawn, died, or become
168 ineligible, shall be printed on the official ballots of the City of Key West, Florida, without
169 party designation or symbol. If two (2) or more candidates have the same surname, or
170 surnames so similar as to be likely to cause confusion, each candidate may submit an
171 identifying name by which he or she is commonly known. If no such selection shall be
172 made by the candidate, their residence addresses shall be printed with their names on the
173 ballot.

174
175 A regularly nominated candidate shall be entitled, upon written application to the election
176 authorities at least five (5) days before the election, to appoint two (2) persons to
177 represent him as watchers and challengers at each polling place where voters may cast
178 their ballots for him. A person so appointed shall have all the rights and privileges
179 prescribed for watchers and challengers by or under the general election laws of the State
180 of Florida. The watchers and challengers may exercise their rights throughout the voting
181 and until the ballots have been counted.

182

183 **Section 6. UTILITY BOARD VACANCY; (1) The office of members of the Utility**
184 **Board shall become vacant upon his or her death, resignation, removal from office in any**
185 **manner authorized by law, or forfeiture of his office, or as otherwise provided herein.**
186

187 **(2) A member of the Utility Board shall forfeit his or her office if he (1) lacks at any time**
188 **during his or her term of office any qualification for the office prescribed by law; (2)**
189 **violates any express prohibition of this law; (3) is convicted of a crime involving moral**
190 **turpitude; or (4) fails to attend three (3) consecutive regular meeting of the Utility Board**
191 **without being excused by the Board.**

192
193 **(3) A vacancy in the board shall be filled for the remainder of the unexpired term, if any,**
194 **at the next regular election, but a quorum of the remaining members of said Board shall**
195 **by majority vote appoint a qualified person to fill the vacancy until the person elected to**
196 **serve the remainder of the unexpired term takes office. If the board fails to do so within**
197 **sixty (60) days following the occurrence of the vacancy, the City Commission of the City**
198 **of Key West, Florida shall appoint a member to fill the said vacancy for the unexpired**
199 **term. Notwithstanding the requirement that a quorum of the Board consists of three (3)**
200 **members, if at any time the membership of the Board is reduced to less than three (3), the**
201 **City Commission of said city shall fill the vacancies for the unexpired term.**

202
203 **(4) The City Commission of the City of Key West, Florida shall be the judge of the**
204 **election and qualification of the members of the Utility Board and of the grounds for**
205 **forfeiture of their office and for that purpose shall have power to subpoena witnesses,**
206 **take testimony and require the production of records. A member charged with conduct**
207 **constituting grounds for forfeiture of his office shall be entitled to a public hearing on**
208 **demand; and notice of such hearing shall be published in one (1) or more newspapers of**
209 **general circulation in said city at least one (1) week in advance of the hearing. Removal**
210 **from said office should be by a four-fifths (4/5) vote of the City Commission. Decisions**
211 **made by the City Commission of the City of Key West, Florida under this section shall**
212 **be subject to review by the courts.**

213
214 **Section 7. RECALL OF UTILITY BOARD MEMBER; Any member of the Utility**
215 **Board of the City of Key West, Florida may be subject to recall by the electors of the**
216 **City of Key West, Florida by the same laws, methods rules, and regulations prescribed by**
217 **State law of City Charter for the removal of a member of the City Commission of the**
218 **City of Key West, Florida. Any vacancies which occur as a result of said recall process**
219 **shall be filled in the manner heretofore prescribed for filling vacancies on said Utility**
220 **Board.**

221
222 **Section 8. COMPENSATION; The Chairman of the Utility Board shall receive a**
223 **monthly salary as compensation for his services in an amount set by majority vote of the**
224 **board, pursuant to resolution. The other members of the board shall receive a monthly**
225 **salary as compensation for their services in an amount set by majority vote of the board,**
226 **pursuant to resolution. All compensations set forth herein shall be payable as an**
227 **operating expense of the electric public utility.**
228

229 Section 9. UTILITY BOARD PROCESS: A majority of the members of the Utility
230 Board at any meeting shall constitute a quorum, and the Utility Board may adopt rules
231 and by-laws for time, place and conduct of its meetings. Provided, however, that in the
232 event of a catastrophe or disaster whereby one (1) or more members of the Utility Board
233 is physically incapacitated from any cause and temporarily unable to serve, then the
234 remaining member or members are hereby vested with the power and right to conduct all
235 of the business of the Utility Board until such time as such member or members
236 temporarily incapacitated are able to resume their duties. Provided further, that in the
237 event of the death of one (1) or more members of the Utility Board from any cause, the
238 remaining member or members are hereby vested with the power and right to conduct all
239 of the business of the utility Board until such time as appointments to fill the vacancies
240 created by death can be made in due course, pursuant to the terms and conditions of this
241 act.

242
243 Section 10. UTILITY BOARD MEETINGS: The Chairman shall preside at all meeting
244 when present, and shall call special meetings on his own motion or when requested to do
245 so by any two (2) members of the board. A record shall be kept of the proceeding, which
246 shall be available for inspection as other municipal records.

247
248 Section 11. (1) POWERS OF THE BOARD-- The Utility Board of the City of Key
249 West, Florida shall have the full, complete and exclusive power and right to manage,
250 operate, maintain, control, extend, extend beyond the limits of the City of Key West,
251 Florida, in Monroe County, Florida, the electric public utility owned by said city,
252 including the maintenance, operation, extension and improvement thereof, and including
253 all lines, poles, wires, pipes, mains and all additions to and extensions of the same, and
254 all buildings, stations, sub-stations, machinery, appliances, land and property, real,
255 personal and mixed, used or intended for use in or in connection with said electric public
256 utility, and the Utility Board shall have all of the powers in connection with such other
257 public utilities hereafter constructed or acquired by said Board that are granted by this act
258 to said Board with respect to the electric public utility now owned by said city. The
259 Board shall have the power and right to extend its utilities services beyond the limits of
260 Monroe County, Florida. As it relates to the extension of services of the electric public
261 utility, the power to extend services beyond the limits of Monroe County, Florida, shall
262 become effective only if the Legislature enacts legislation permitting any person other
263 than the Utility Board to sell electric energy to customers of the Utility Board. The said
264 Utility Board shall have exclusive power and authority to determine what improvements
265 shall be made to all such public utilities.

266 (2) BUDGETS-- The said Utility Board shall adopt annual budgets and amend
267 the same from time to time, but in so doing shall conform to the requirements, if any, of
268 any existing ordinance or resolution authorizing the issuance of revenue bonds now
269 outstanding or hereafter issued against the income of the said Utility Board.

270 (3) REVENUE BOND AND OTHER FINANCING MATTERS-- Revenue
271 bonds may be issued by said Utility Board for the purpose of refunding outstanding
272 revenue bonds as well as for any other purposes which the Utility Board of said city
273 deems proper in the management, operation, maintenance, control, improvement,
274 extension, betterment, financing and refinancing of the electric public utility owned by

275 The City of Key West, Florida as well as for purposes of acquisition, purchase, building
276 and construction and operation of additional public utilities which are deemed proper by
277 said Utility Board, and revenue bonds may also be issued by said Board against the
278 income of any additional public utilities so acquired , and the granting of such authority
279 to the Utility Board of the City of Key West, Florida, to issue revenue bonds against
280 income of the electric public utility owned by said city, or against the income of any
281 additional public utilities hereafter acquired by said Utility Board, is exclusive to said
282 Board, and the governing body of said city shall not have the right to issue any such
283 bonds or otherwise incur any indebtedness or obligations whereby the income of said
284 public utilities owned by the Utility Board of the City of Key West, or the income of any
285 additional public utilities, hereafter acquired by said Utility Board, becomes charged for
286 the payment thereof. The maturity dates and rate of interest of any bonds issued
287 hereunder shall be determined and fixed by the Utility Board of the City of Key West,
288 Florida and said Board shall have the exclusive right to sell said bonds at prices to be
289 determined by said Board. The Utility Board of the City of Key West, Florida is
290 authorized and empowered to adopt such resolutions as may be necessary or advisable in
291 connection with the authorization, execution, sale, and delivery of the revenue bonds
292 authorized hereunder. The Utility Board shall further have the power to issue commercial
293 paper notes and variable rate bonds to enter into interest rate swap transactions as
294 determined from time to time to be in the best interests of the ratepayers of the electric
295 public utility of the City. Bonds and refunding bonds issued pursuant to this act may be
296 sold at competitive or negotiated sale, provided any negotiated sale shall comply with
297 section 218.385, Florida Statutes.

298 **(4) CONTRACTUAL RIGHTS--** Said Utility Board shall have the exclusive
299 right and power to buy, purchase, contract for exchange, lease and convey by deed or
300 such other lawful means as permitted by the laws of Florida, whether special, local or
301 general, without the consent or approval of the City Commission or other governing body
302 of the City of Key West, Florida, or its municipal successor, from time to time, any of the
303 property, real, personal or mixed, specified or referred to herein before in this act, for
304 such price or prices and on such terms, provisions and under such conditions as herein set
305 forth at the time or times it determines that such property, real, personal or mixed, is
306 excess to the needs of the electric public utility, or such other public utilities the Utility
307 Board acquires. Said Board shall have the full and complete power and exclusive
308 authority to accept gifts, contributions, contributions in aid of construction, properties,
309 whether real, personal or mixed, from the United States Government or any of its
310 departments, bureaus, commissions or agencies, and the said full and complete power and
311 exclusive authority herein before provided shall also apply to the acceptance of gifts,
312 contributions, contributions in aid from the State of Florida, or any of its political
313 subdivisions, departments bureaus, commissions, or agencies, corporations, publicly or
314 privately owned or operated, private persons and individuals. The Utility Board created
315 by this act shall have the full and complete power and exclusive authority to contract with
316 the United States Government, or any of its departments, bureaus, commissions or
317 agencies, other public utilities, the State of Florida, or any of its political subdivisions,
318 departments, bureaus commissions or agencies, corporations, either publicly or privately
319 owned and operated, private persons or individuals, for the acquisition, purchase and
320 operation of other public utilities and said Utility Board may determine in its judgment,

321 and to purchase, contract for the sale, lease or exchange of any products and services,
322 material, and commodities, by-products and water, steam or heat from all or any of its
323 activities or operations. The said Utility Board shall have full and complete power and
324 exclusive authority to fix rates and charges for electricity and charges or prices for any
325 other real and personal property, products and services, materials and commodities, by-
326 products of and from all or any of its activities or operations, furnished or sold by said
327 Utility Board, and to provide for the collection of the same.

328 **(5) SENIOR CITIZEN AND DISABLED VETERAN DISCOUNT--** The
329 Utility Board shall grant a special lower rate and charge for electricity on the residential
330 account of any personal who meets low income standards adopted by the Utility Board,
331 who is a permanent resident of the geographical service area covered by the Utility Board
332 in furnishing electricity in Monroe County, Florida and who is sixty-two (62) years of
333 age or older or a totally and permanently disabled American veteran. As used in this
334 section "residential account" means an account for a person residing in a house, mobile
335 home, condominium, apartment, or other housing unit. Submission of an affidavit that the
336 applicant claiming the special lower rate and charge under this section is a permanent
337 resident of the geographical service area heretofore mentioned and who is sixty-two (62)
338 years of age or older or a totally and permanently disabled American veteran, shall be
339 prima facie proof of such residence, disability, and age. The affidavit shall include the
340 annual income of the applicant.

341 **(6) ACCOUNTING MATTERS--** All bills for electricity and electric service and
342 for the furnishing and sale of the products and services, materials and commodities, by-
343 products and water, steam or heat and by-products of and from all or any activities or
344 operations shall be collected and accounted for by said Utility Board, and all
345 disbursements in connection with the foregoing, shall be ordered paid out only upon
346 approval of said Board; or pursuant to policies adopted by said Board or pursuant to
347 policies established by resolution adopted by the Utility Board.

348 **(7) EMINENT DOMAIN--** Said Board acting by, for, and in the name of the City
349 of Key West, Florida, a municipal corporation, and any municipal successor thereto,
350 existing under the laws of Florida, shall have the vested right which are herein conferred
351 of eminent domain, for the purpose of acquiring lands and rights-of-way necessary and
352 expedient for the location, establishment, construction, maintenance and operation of the
353 works and projects authorized in this act, and for the acquisition and construction of any
354 and all kinds and classes of real, personal or mixed property, tangible or intangible,
355 whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish
356 the purposes and objects authorized by this act, provided, however said Utility Board
357 shall at all times be governed by and conform to the provisions of any proceeding
358 authorizing and providing for the issuance of bonds, or other obligations of said city,
359 which by their terms are secured by or payable from the revenues of the electric public
360 utility, or the revenues of any of the additional public utilities acquired by said Utility
361 Board.

362 **(8) ADVERTISING--** The Utility Board is hereby authorized to purchase
363 advertising including, but not limited to, advertising from recognized, established
364 advertising media, such as newspapers, radio and television, as a proper expenditure of
365 the system. The Utility Board may make expenditures that are reasonable and necessary
366 for advertising the Board's utility systems including advertising events and programs

367 which are sponsored by the Utility Board or in which the Utility Board participates.
368 Furthermore, nothing in this paragraph shall be construed to prevent the Utility Board
369 from sponsoring charitable events or events which would benefit the Utility Board or its
370 utility system or systems.

371
372 Section 12. MANAGERS CONTRACT: The Utility Board shall have the power from
373 time to time to enter into a contract employing a manager to manage and administer to
374 the electric public utility now owned by the City of Key West, Florida, and to manage
375 and administer to any additional public utilities acquired by said Utility Board. The
376 contract employing said manager shall set forth the tenure of office, not to exceed four
377 (4) years, the compensation, terms of employment, and the procedure for termination of
378 said contract. The Utility Board, through such manager, shall direct, employ, fix the
379 compensation of and discharge all employees of the electric public utility and all
380 employees of all public utilities owned or operated by said Utility Board; provided
381 however, that terms, compensation and termination of the contract shall be governed by
382 and conform to the provisions of any proceedings authorizing and providing for the
383 issuance of bonds, or other obligations of said city, which by their terms are secured by or
384 payable from the revenue of the electric public utility or other public utilities owned or
385 operated by said Utility Board.

386
387 Section 13 (1) CONSTRUCTION PROJECTS-- All construction, reconstruction,
388 repairs or work of any nature made by the Utility Board, where the entire costs, value, or
389 amount of such construction, reconstruction, repairs or work, including the labor and
390 materials, shall exceed the amount as established by resolution adopted by the Utility
391 Board, except construction, reconstruction, repairs, or work done by employees of the
392 Utility Board or by labor supplied under agreement with the federal government or state
393 government, with supplies and materials purchased hereinafter provided, shall be done
394 only under contract or contracts to be entered into by the Utility Board with the lowest
395 cost or best responsible bidder upon proper terms, after due public notice has been given
396 asking for competitive bids as hereinafter provided.

397 (2) POWER OF AUTHORITY-- Nothing in this section shall be construed to
398 limit the power of authority to construct, repair or improve the utility system, or any part
399 thereof, or any addition, betterment or extension thereto, directly by the officers, agents
400 an employees of the Utility Board, or otherwise than by contract.

401 (3) ALL OTHER PURCHASES, EXCLUDING CONSTRUCTION PROJETS--
402 All supplies, equipment, machinery and materials costing more than the amount as
403 established by resolution adopted by the Utility Board shall be purchased only after
404 advertisement as provided hereinafter. The Utility Board shall accept the lowest cost or
405 best bid or bids, kind, quality and material being equal, but said Board shall have the
406 right to reject any or all bid or select a single item from any bid. The provision as to
407 bidding shall not apply to the purchase of patented and manufactured products offered for
408 sale in a noncompetitive market or solely by a manufacturer's authorized dealer.

409 (4) ADVERTISING-- The term "advertisement" or "due public notice" wherever
410 used in this section shall mean a notice published at least once a week for two (2)
411 consecutive weeks before the opening of any sealed bid, in a daily newspaper published

412 and having a general circulation in the City of Key West, Florida, and in such other
413 newspapers or publications as the Utility Board shall deem advisable.

414 **(5) CONFLICT OF INTREST--** No member of the Utility Board or officer or
415 employee thereof shall either directly or indirectly be a party to, or be in any manner
416 interested in, any contract or agreement with the Utility Board for any matter, cause or
417 thing whatsoever in which such member shall have a financial interest or by reason
418 whereof any liability or indebtedness shall in any way be created against such board. If
419 any contract or agreement shall be made in violation of the provisions of this section, the
420 same shall be null and void, and no action shall be maintained thereon against the Utility
421 Board.

422 **(6) OTHER PROVISIONS--** Subject to the aforesaid provisions, the Utility
423 Board may (but without intending by this provision to limit any powers of said board)
424 enter into and carry out such contract, or establish or comply with such rules and
425 regulations concerning labor and materials and other related matters in connection with
426 any construction project, or portion thereof, as the Utility Board may deem desirable;
427 provided that the provisions of this section shall not apply to any contract or agreement
428 between the Utility Board and any engineers, architects, attorneys, or for other
429 professional services, or to any contract or agreement relating to fiscal advisors, fiscal
430 agents, or investment bankers, relating to the financing of project herein authorized.

431 **(7) EMERGENCY PURCHASES--** Notwithstanding the aforesaid provisions,
432 the Utility board may, in its reasonable discretion, authorize and permit such expenditures
433 of funds as necessary for making emergency purchases or may delegate such authority to
434 such employees and offers of the utility system or systems.

435 **(8) FUEL AND POWER PURCHASES--** Nothing in this section shall apply to
436 the purchase of fuel products or produced power on a single-lot basis when such fuel or
437 power is offered for sale to the Utility Board at a below advertised price basis.

438 **(9) LOCAL, STATE, AND FEDERAL CONTRACTS--** All purchases of
439 commodities or contractual services under the provisions of local, state, and federal
440 purchasing contracts shall be exempt from the competitive procurement requirements,
441 provided that the following criteria are all satisfied:

- 442 a) The terms and conditions of the original contract or approved renewal or
443 extension by the federal, state or local government or electric cooperative are
444 satisfactory to the Utility Board.
- 445 b) The original contract or approved renewal or extension by the federal, state, or
446 local government or electric cooperative are executed within twenty-four (24)
447 months prior to the proposed purchase of commodities or services by the
448 Utility Board.
- 449 c) The purchasing agent has performed an informal solicitation to determine if
450 the prices of the original contract are fair and reasonable, and to assure local
451 vendors have an opportunity to compete.
- 452 d) The Utility Board authorizes such procurement when the cost of the
453 commodities (materials) or contractual services (labor and materials) exceeds
454 the amounts as established by resolution adopted by the Utility Board.
- 455

456 Section 14. **PENSION PLAN:** The Utility Board created by this act is hereby authorized
457 and empowered to establish, adopt, provide, operate, maintain and assist in the support of

458 a pension system or plan for the relief or social security of disabled or retired officers and
459 employees of said Utility Board, and to delegate authority for the handling and
460 perpetuation of such a plan or system to designated officials or employees of said Utility
461 Board, or a special committee created for such purposes. Further, said Utility Board shall
462 have power to make contracts of insurance with any insurance company authorized to
463 transact business in the State of Florida, insuring its officers and employees or any class
464 or classes thereof under a policy or policies of group insurance covering life, health, or
465 accident insurance, or any two or more of such classes of insurance, and may contract
466 with any company granting annuities or pensions and authorized to transact business
467 within the State of Florida for the pensioning of such officers and employees or any class
468 or classes thereof; and provide for any money necessary to pay premiums or charges
469 incidental to the carrying on of such policies or contracts or for the support of a pension
470 system, and the action of its predecessor Utility Board in connection with the pensions
471 now in effect is hereby ratified, validated and confirmed.

472
473 **Section 15. CIVIL SERVICE SYSTEM:** (1) The Utility Board created by this act is
474 hereby authorized and empowered to create, establish, provide for and adopt, maintain,
475 operate and regulate a civil service system and plan for the security of the employees of
476 said board, and may amend and change such system and plan from time to time. Further,
477 said Utility Board is empowered to adopt rules and regulations for the government and
478 operation of said civil service system and plan, and to delegate authority for the handling
479 and management of said system and plan to designated officials or employees of said
480 board, or a special committee or a civil service board created by said Utility Board for
481 such purposes. Further, said Utility Board is authorized and empowered to appropriate
482 out of its available funds any money necessary or expedient to carry out the provisions
483 and purposes of this act that maybe be lawfully used for such purposes.

484 (2) The employees of the City of Key West, Florida may require the Utility Board
485 to establish a civil service board for them by an affirmative vote of the majority of the
486 employees cast in a secret election to be held under the rules prescribed by the board.
487 Said election shall be held within (30) days of the presentation of a petition containing
488 the signatures of no less than ten per centum (10%) of the employees of al classes of said
489 system requesting such an election.

490
491 **Section 16. DISPOSITION OF ASSETS OF THE UTILITY:** The Utility Board of the
492 City of Key West, Florida shall have discretion to classify as surplus any of its property
493 that is obsolete or that which is uneconomical or inefficient, or which serves no useful
494 function. All such items valued more than the amount as established by resolution
495 adopted by the Utility Board shall be offered as surplus property to other governmental
496 units within, the County of Monroe and to the general public with an effective means of
497 notification. The notification shall disclose the value and condition of the properties
498 when known. Any such properties as would serve no useful function and for which no
499 bids have been received, may be disposed of by donation, destruction or abandonment.

500
501 **Section 17. ANNUAL AUDIT:** The Utility Board of the City of Key West, Florida shall
502 provide for an annual audit and be subject to audit by the Legislative Auditor of the State
503 of Florida, of all utility board accounts, and said Board is hereby authorized to pay the

504 expenses thereof when required to do so and may provide for such more frequent audits
505 as it deems necessary. A copy of the audit is to be delivered to the City Commission of
506 the City of Key West, Florida within seven (7) working days, after the Utility Board
507 receives its copy from the audit agency. The Utility Board shall deliver to any other
508 authorized agency, as they may be required, additional copies of the audit. The expenses
509 of said audit should be paid by the Utility Board of the City of Key West, Florida.

510

511 **Section 18. CONFLICT OF INTEREST:** Any board officer or employee who has a
512 substantial financial interest, direct or indirect by reason of ownership of stock in any
513 corporation, in any contract with the Utility Board or in the sale of any land, material,
514 supplies or services to said board or to a contractor supplying said board, shall make
515 known that interest and shall refrain from voting upon or otherwise participating in his
516 capacity as a board member or employee in the making of such sale or in the making or
517 performance of such contract. Any board member or employee who willfully conceals
518 such a substantial financial interest or willfully violates the requirements of this section
519 shall be guilty of malfeasance in office or position and shall forfeit his office or position.
520 Violation of this section with the knowledge, express or implied, of the person or
521 corporation contracting with or making a sale to the city shall render the contract or sale
522 voidable by said Utility Board.

523

524 **Section 19. BUSINESS TRAVEL:** Members of said Utility Board, and agents and
525 employees of said board traveling on official business should be reimbursed for travel
526 and expenses in accordance with resolutions adopted by the Utility Board.

527

528 **Section 20. PURCHASE OF LANDS:** Purchase of all lands deemed necessary by the
529 Utility Board of the City of Key West, Florida shall be made subject to the following
530 conditions:

531 (1) Such purchases shall be made only upon recommendation of the engineers of
532 record of said Board who shall advise the Board that the acquisition of such
533 lands is necessary for the expansion of the system. The Board shall obtain
534 appraisals from at least three (3) licensed and certified appraisers in the State
535 of Florida.

536 (2) Said Utility Board shall pay no more than the highest appraisal furnished by
537 the aforesaid appraisers.

538

539 **Section 21. PUBLIC RECORDS:** The operating budget and all other records of said
540 Utility Board shall be considered public records, and available for inspection by the
541 public at the office of said Utility Board.

542

543 **Section 22. BOARD CREATION:** The Utility Board created by this act shall be and is
544 hereby made the successor to the Utility Board of the City of Key West, Florida
545 heretofore created and existing by virtue of Chapter 65-1770, Laws of Florida, Acts of
546 the Legislature Year 1965, and all acts amendatory thereto, and shall succeed to all the
547 rights, privilege, duties and obligations, monies, credits, and choices in action, properties,
548 real, personal and mixed, of its predecessor board, including title to all properties
549 belonging to its predecessor board. No obligations or contracts of its predecessor board,

550 including bonds heretofore issued by its predecessor board, shall be impaired or voided
551 by this act, but all such contracts and obligations shall pass to and be binding upon the
552 Utility Board created by this act.

553

554 Section 23. REFERENCES: Whenever reference is made in this act to the governing
555 body of the City of Key West, Florida, it shall be construed to mean the City Commission
556 of the City of Key West, Florida, or to the successor to said City Commission of the City
557 of Key West, Florida.

558

559 Section 24. REPEAL OR AMENDMENTS: It is hereby declared to be the intention of
560 the Legislature that this act shall not be deemed repealed or amended by the passage of
561 any act, whether general, special, or local, at this regular session of the Legislature,
562 unless the act seeking to effect repeal or amend this act makes specific reference to this
563 act for such purpose.

564

565 Section 25. SEVERABILITY: The provisions of this act are severable, and it is the
566 intention to confer the whole or any part of the powers herein provided for, and if any of
567 the provisions of this act or any of the powers granted by this shall be held
568 unconstitutional by any court of competent jurisdiction, the decision of such court shall
569 not affect or impair any of the remaining provisions of this act, or any of the remaining
570 powers granted by this act. It is hereby declared to be the legislative intent that this act
571 would have been adopted had such unconstitutional provisions or powers not been
572 included therein.

573

574 Section 26. CONFLICT WITH THE LAW: All laws and parts of laws, whether general,
575 special or local, particularly Chapter 65-1770, Laws of Florida, Acts of the Legislature
576 Year 1965, and acts amendatory thereto, in conflict with this act, are hereby repealed to
577 the extent of such conflict.

578

579 Section 27. CONSTRUCTION: This act shall be liberally construed to effect the
580 purposes thereof.

581

582 Section 28. EFFECTIVENESS: This act shall take effect, relative to the provisions
583 calling for the election of the first board as provided herein, immediately upon its
584 becoming a law and all other provisions shall take effect upon the election of said board.

585

586 Became a law without the Governor's approval.

587

588 Filed in Office Secretary of State July 9, 1969.

589

590 Amendments:

591

- June 27, 1975: Section 11 amended to grant lower rates to certain permanent residents over 60 years of age or persons who are totally and permanently disabled American veterans.

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- **June 25, 1976: Section 11 amended to require rather than authorize the Utility Board of the City of Key West to grant lower rates for those over 60 years of age or persons who are totally and permanently disabled American veterans.**
- **May 30, 1984: Section 13 amended to increase the amount above which public bidding is required for any work contracted by the Utility Board, and public bidding to be required for purchasing by excepting the purchase of insurance from the public bidding requirements of said act shall not be required when an emergency situation is declared to exist by vote of Utility Board; providing that all laws that conflict are superseded.**
- **May 28, 1985: Section 8 amended to provide that the board shall set the salaries received by the Chairman and members of the Utility Board.**
- **June 14, 1995: Section 1 amended to revise provisions relating to the Utility Board.**
- **May 26, 1999: Sections 11 and 13 amended to revise provisions relating to the Utility Board.**
- **May 25, 2001 Sections 1, 8, 11,13 and 17 amended to improve efficiencies and enable City Electric System to be more competitive when deregulation occurs in Florida**
- **June 15, 2007 Sections 1, 2, 3, 6, 11, 13, 15, 16, 19 and 20 amended to state name change from City Electric System to Keys Energy Services; revised terms of group I board member; revised election of chairperson; revised filling of vacancy; provides that the Board does not need approval for issuing bonds; removes certain requirements for certain discounts ; removes certain surety requirements; provides that the board may accept lowest cost or bid; revises provisions relating to contracts; provides for surplus property & disposition of utility's assets; provides for resolutions to set reimbursements**

EXHIBIT I



BOARD OF COUNTY COMMISSIONERS

Mayor Sylvia J. Murphy, District 5
Mayor Pro Tem Heather Carruthers, District 3
Kim Wigington, District 1
George Neugent, District 2
Mario Di Gennaro, District 4

Suzanne A. Hutton, County Attorney**
Robert B. Shillinger, Chief Assistant County Attorney **
Pedro J. Mercado, Assistant County Attorney **
Susan M. Grimsley, Assistant County Attorney **
Natileene W. Cassel, Assistant County Attorney
Cynthia L. Hall, Assistant County Attorney
Christine Limbert-Barrows, Assistant County Attorney
Derek V. Howard, Assistant County Attorney
Lisa Granger, Assistant County Attorney

Office of the County Attorney
1111 12th Street, Suite 408
Key West, FL 33040
(305) 292-3470 – Phone
(305) 292-3516 – Fax

** Board Certified in City, County & Local Govt. Law

April 29, 2010

Lynne Tejada
Keys Energy Services
1001 James Street
PO Box 6100
Key West, Fl. 33040-6100

RE: No Name Key

Dear Ms. Tejada:

On March 11, 2010, you emailed me that KES had opened bids on the No Name Key project, and was analyzing the bids as well as the FWS letter [of January 20, 2010]. You asked if the County was reviewing the issue raised by FWS in Comment #6 of that letter, particularly the last sentence, i.e. "Based on our preliminary review, we believe the extension of electrical service to No Name Key is inconsistent with the Monroe County Comprehensive Land Use Plan." You asked the following two questions:

- a) Does the County interpret "discourages the extension of utilities" as "prohibits the extension of utilities?" and
- b) Who determines a project's consistency with the plan and what is the process for such a determination?

The short answers to those questions are: (a) no, with respect to the Monroe County Comprehensive Land Use Plan [hereinafter "Comp Plan"], although there is a land development code provision, Sec. 130-122, MCC, which prohibits extension or expansion of utilities in a CBRS overlay district, which raises a question re permitting of individual homes, discussed later in this letter; and (b) the County has no authority for determining consistency of placement of utilities in or on established rights-of-way with the Comp Plan as the County does not issue development permits within a right-of-way [hereafter "ROW"]. Further explanations of the answers follow.

There remains for the County additional questions regarding the permitting of connections of individual properties to the utilities, in light of a separate land use regulation, which questions are still under review and being researched. However, it has been over a month since you raised the issues re the Comp Plan, and the legal and Growth Management administrative staffs have concluded that review and discussion.

Comp Plan Policy 102.8.5 states:

“Monroe County shall initiate efforts to discourage the extension of facilities and services by the Florida Keys Aqueduct Authority and private providers of electricity and telephone service to CBRS units. These efforts shall include providing each of the utility providers with:

1. a map of the areas of Monroe County which are included in the CBRS units;
2. a copy of the Executive Summary in Report to Congress: Coastal Barrier Resources System published by the U.S. Department of the Interior, Coastal Barriers Study Group, which specifies restrictions to federally subsidized development in CBRS units;
3. Monroe County policies regarding local efforts to discourage both private and public investment in CBRS units.”

Attempts in 2008 to amend that policy to reduce the scope of the policy to undeveloped properties within the CBRS and to clarify the related land use regulation failed upon a DCA appeal of the County Commission action.

Accordingly, the County is still dealing with provisions which were in place in the late 1990's when various County officials wrote letters about the inconsistency between the Comp Plan and extension of utilities to No Name Key, a great deal, but not all, of which is in the CBRS. However, none of those letters address the definition in Section 380.04(3)(b) excluding from the term “development.”

“Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners.

Electricity was added to the sub-section by Ch. 2002-20, S. 94, Laws of Florida., as well as Ch. 2002-296, S. 29. Under this statute, the County clearly has no authority to issue permits for, or otherwise regulate, the installation or construction of electric utility lines on the established ROWs. Accordingly, notwithstanding prior interpretations of the Comp Plan Policy 102.8.5, it is clear that the County acts solely as a messenger with respect to public or private utilities and can do no more than “discourage” activity by informing utilities as to the boundaries of CBRS units, federal policies against subsidizing development in CBRS units, and the County’s discouragement of public or private investment in CBRS units. The County has no regulatory authority under Ch. 380, F.S., over the placement of utilities in the ROW. Any County regulatory authority over the ROWs exists pursuant to Ch. 316 (re traffic control) and Ch. 336, F.S. (re construction & improvements, maintenance, closing and abandoning of county roads). Since the installation of utility lines in or on the ROW is not deemed development by state statute, the County’s Comp Plan Policy 102.8.5 cannot be deemed to be a prohibition, but only that which it specifies – discouragement.

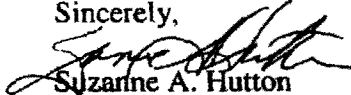
This conclusion then moots out the question as to who determines consistency with respect to the issue of installing the utility lines in the right-of-way.

You may find it useful to review the various orders in the case of Taxpayers for the Electrification of No Name Key, Inc. et al. v. Monroe County et al., Case No. 99-819-CA-18. They are somewhat difficult to follow due to amendments and vacations, but it appears that the July 12, 2002 order and findings therein were resurrected by the 6/13/03 vacation of the Amended Order Granting Summary Judgment (entered 6/11/2003 nunc pro tunc 6/11/2002 & which had amended the 2002 order) and the entries of the 6/13/2003 order vacating the amended order and the Final Summary Judgment. The case of City of Oviedo v. Clark, 699 So.2d 316 (Fla. 1st DCA 1997), seems to be right on point in holding the PSC had to consider the Comp Plan but was not bound by it.

Since the County does not have authority to regulate as development the installation of utilities in the ROW, and since, as the January 20, 2010 letter from FWS notes, the Big Pine Key Habitat Conservation Plan (HCP) excludes extension of utilities to No Name Key and the associated Incidental Take Permit (ITP), if the proposed extension has any impact to the silver rice rat, Stock Island tree snail, or Garber's spurge, the County believes that would have to be addressed through a separate ITP issued to KES, as determined by FWS. Similarly, any mitigation required as a result of the proposed electric installation would not be the County's responsibility.

As previously mentioned, there still remains a question as to the effect of the regulation in Monroe County Code section 130-122 and whether that will require that the County deny permits for the connections to the individual buildings on private property otherwise covered by the land use regulations. As soon as we reach a definitive conclusion, I will advise you.

Sincerely,


Suzanne A. Hutton
County Attorney

Cc:
County Commissioners
Roman Gastesi
Christine Hurley
Susan Grimsley
Derek Howard
Bob Shillinger
Townesley Schwab
Dale Finigan
Paul Souza
Anne Morkill
Jim Reynolds
Rebecca Jetton

EXHIBIT J

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

CASE NO: 2011-CA-342-K

MONROE COUNTY, a political
Subdivision of the State of Florida,

Plaintiff

Vs.

UTILITY BOARD OF THE CITY OF
KEY WEST, FLORIDA, d/b/a
KEYS ENERGY SERVICES, et al.,

Defendants

ORDER OF DISMISSAL WITH PREJUDICE

THIS MATTER came before the Court upon the Motion to Dismiss of Defendants herein, and the Court, having reviewed the Motion, the Response thereto, and the motion of the Florida Public Service Commission for leave to participate as Amicus Curiae regarding subject matter jurisdiction, having conducted oral argument in this matter on January 26, 2012, and being otherwise fully informed in the premises, hereby finds and Orders as follows:

1. This action is a lawsuit by Plaintiff MONROE COUNTY, a political subdivision of the State of Florida, against Defendants UTILITY BOARD OF THE CITY OF KEY WEST, and 43 property owners of properties located on No Name Key, Florida. The Complaint seeks declaratory relief as to KEYS ENERGY SERVICE, (Count I), Declaratory Relief against the No Name Residential Property Owners (Count

II), and injunctive relief to enforce any declaratory judgment entered by the Court in Counts I and II (Count III).

2. The Complaint seeks a declaration from this Court as to whether the Defendant UTILITY BOARD OF THE CITY OF KEY WEST is required to obtain a development permit from Monroe County, for the extension of a power line to No Name Key, or whether the issue of the provision of electrical service to residents of No Name Key is an issue vested by law in the Public Service Commission, as suggested by Defendants and the Florida Public Service Commission itself, through its Motion for Leave to Participate as amicus curiae. Second, the lawsuit seeks to determine whether the portion of the Monroe County Code which prohibits the extension of public utilities, including electricity within the Coastal Barrier Resources System Overlay District (M.C.C. Section 130-122) prohibits the extension of utility lines to the Defendant residents, or whether that ordinance has been preempted by state law, to wit, the authority granted to the Public Service Commission in Chapter 366, Florida Statutes.
3. The Court has carefully reviewed pertinent portions of Chapter 366, Florida Statutes, as well as the Territorial Agreement between the municipal utility of the City of Key West (Keys Energy) and the Florida Keys Rural Electric Cooperative, approved by the Public Service Commission on September 27, 1991, and has determined that issues regarding interpretation and enforcement of territorial agreements of this sort are exclusively vested in the Florida Public Services Commission ("PSC"), and therefore the PSC is the proper forum for hearing the issues presented in this case. Accordingly, the questions posed by Plaintiff

MONROE COUNTY regarding the extension of electrical power line to No Name Key residents, which would constitute providing service pursuant to the Territorial Agreement, as well as any question regarding whether owners of property on No Name Key may lawfully connect to Keys Energy Service service lines, pursuant to the Territorial Agreement, despite the provisions set forth in Monroe County Code Section 130-122, are all properly presented to the PSC for resolution.

4. Section 366.04(1), Florida Statutes expressly confers jurisdiction on the PSC to regulate and supervise each public utility with respect to its rates and service. This jurisdiction is “exclusive and superior to that of all . . . municipalities . . . or counties, and, in case of conflict therewith, all lawful acts, orders, rules and regulations of the Commission shall in each instance prevail.” (Section 366.04(1), Florida Statutes).
5. By order issued May 12, 2003, in re: Petition by City of Parker for Declaratory Statement, etc., Docket No: 030159-EU, Order numbered FPSC-03-0598-DS-EU, the PSC denied a motion to dismiss which had been predicated on the argument presented by Monroe County in the instant case, that the PSC did not have authority to resolve the issues of statutory analysis and balancing of state supremacy claims as against local or regional land use plans. In that order, the PSC specifically found that its subject matter jurisdiction reached the question of whether the jurisdiction of the Florida Public Service Commission preempted the City of Parker’s application of its comprehensive plan, land development regulations, and city codes and ordinances to Gulf Power Company’s proposed aerial power transmission line.

6. That order of the Public Service Commission determined that the PSC has subject matter jurisdiction, and is also the appropriate forum, in cases of this sort, because it describes and denotes jurisdiction which is exclusive pursuant to Section 366.04(2)(c) and (2)(d), Florida Statutes.
7. This legal conclusion is reinforced by the holding of the Florida Supreme Court in Public Service Commission v. Fuller, 551 So.2d 1210 (Fla. 1989). In Fuller, the City of Homestead filed an action in the Dade County Circuit Court seeking a declaration of rights and a construction of a Territorial Agreement, regarding rights and obligations of the parties thereto. Although Fuller deals with an attempt to terminate the Territorial Agreement by the City, not enforcement or interpretation or limitation of the agreement with regard to the provision of electrical services to persons who claim to be eligible for such services under the agreement, the logic of Fuller applies to the instant case. The narrow interpretation suggested by Plaintiff MONROE COUNTY, which would limit the exclusive statutory jurisdiction of the PSC to disputes regarding the boundary created by the agreement, and related issues, is clearly at odds with the broad grant of legislative authority set forth in Florida Statutes, and the language used by the Florida Supreme Court in Fuller, supra.
8. The service agreement grants to the UTILITY BOARD OF THE CITY OF KEY WEST

“the full, complete and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the City of Key West, Florida, in Monroe County, Florida, improve, finance and re-finance the electric public utility now owned by the said city,”

Furthermore, pursuant to Section 11 of the Agreement, the UTILITY BOARD has "the full, complete and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the City of Key West, Florida, in Monroe County, Florida, the electric public utility owned by said city, including the maintenance, operation, extension and improvement thereof, and including all lines, poles, wires, pipes, mains, and all additions to and extensions of the same, and all buildings, stations, sub-stations, machinery, appliances, land and property, real, personal and mixed, used or intended for use in or in connection with said electric public utility. . . ."

This Court specifically finds that the purpose of the action brought by MONROE COUNTY before this Court is to interpret and/or modify the territorial agreement set forth above, by seeking to interpret, modify or limit the service agreement and authority of the UTILITY BOARD OF THE CITY OF KEY WEST thereunder.

Accordingly, pursuant to the clear mandate of Public Service Commission v. Fuller, 551 So.2d 1210 (Fla. 1989), this Court finds that exclusive subject matter jurisdiction is vested in the Florida Public Service Commission, and that the PSC is the correct forum for hearing the issues herein, and this action is accordingly DISMISSED WITH PREJUDICE.

DONE and ORDERED at Key West, Monroe County, Florida, this 30th day of January, 2012.

CONFIRMED COPY
JAN 30 2012
DAVID J. ADDEN JR.
CIRCUIT JUDGE
CHIEF JUDGE

cc: Robert B. Shillinger, Esq.
Robert Hartsell, Esq.
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Barton W. Smith, Esq.
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