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Sent: Monday, March 04, 2013 4:39 PM
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Subject: DOCKET NUMBER 120054-EM - Opposition to Petition to Intervene
Attachments: Reynolds Opposition to Putney Intervention.pdf

Good Afternoon,

The person filing this response is:

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Key West, Florida 33040

DOCKET NUMBER: 120054-EM

This Opposition to Alicia Roemelle-Putney's Petition to Intervene is being filed on behalf of Robert Reynolds and Julianne Reynolds.

Total number of pages (including attached documents): 34

Attached to the Opposition are two exhibits:

Exhibit A – Territorial Agreement between Keys Energy Services and Florida Keys Electric Cooperative

Exhibit B – Correspondence dated October 15, 2010 from the United States Department of the Interior to Keys Energy Services.

Gregory S. Oropeza, Esq.

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01138 MAR-4 2013

FPSC-COMMISSION CLERK

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BEFORE THE STATE OF FLORIDA PUBLIC SERVICE COMMISSION

ROBERT D. REYNOLDS and JULIANNE C.
REYNOLDS

Complainants,

v.

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

Docket No. 120054

Respondents.

**COMPLAINANTS, ROBERT D. REYNOLDS AND JULIANNE C. REYNOLDS’
OPPOSITION TO ALICIA ROEMMELE-PUTNEY’S MOTION TO INTERVENE**

Complainants, ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS (collectively, “Reynolds”), by and through undersigned counsel and pursuant to the Florida Rules of Administrative Code, file their opposition to ALICIA ROEMMELE-PUTNEY’S Motion to Intervene, and in support thereof state as follows:

FACTUAL AND PROCEDURAL HISTORY

1. On March 5, 2012, Reynolds filed a Complaint with the Florida Public Service Commission (“PSC”) because the Respondent, UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA d/b/a/ KEYS ENERGY SERVICES (“KES”), had refused to provide power to Reynolds and other similarly situated property owners located on No Name Key. See Reynolds’ Complaint ¶¶ 1, 15 – 16, 21 – 34, previously filed in this action and incorporated herein by reference. Reynolds’ Complaint alleges that the Florida Public Service Commission (“PSC”) approved a territorial agreement dated June 17, 1991 by and between KES and the Florida Keys Rural Electric Cooperative Association, Inc. (“Territorial Agreement”), wherein KES is the exclusive provider of commercial electric service to the lower Florida Keys,

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FPSC-COMMISSION CLERK

including No Name Key, where the Reynolds home is located. *Id.* at 12 – 13. A true and correct copy of the Territorial Agreement is attached hereto and incorporated herein as Exhibit A.

2. The prayer for relief in Reynolds' Complaint requests that the PSC: (a) Exercise jurisdiction over this action and the parties and hold an evidentiary hearing on the issues raised; (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 on the island of No Name Key; (e) Award reasonable attorney's fees and costs for the prosecution of this action; and (f) Award such other and supplemental relief as may be just and necessary under the circumstances.

3. 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 Agreement is a PSC Order enforceable solely by the PSC pursuant to the State of Florida's police power. The Territorial Service Area includes the island of No Name Key.

4. On March 17, 2012, KES approved Line Extension #746 ("Line Extension") with the No Name Key Property Owner's Association ("NNKPOA") for the extension of electrical service to No Name Key.

5. On or about July 26, 2012, pursuant to the Territorial Agreement and Line Extension, KES completed and energized the electrical lines installed during the Line Extension.

6. 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.

7. A majority of 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 by the Florida Keys' unique geographic features and No Name Key's remoteness.

8. 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 that exceeds the negative impacts which currently exist as a result of the current pollutants emitted to power the homes on No Name Key.

9. On February 21, 2013, Alicia Roemmele-Putney served her Petition to Intervene ("Putney Petition") based on the assertion that commercial electricity will affect her "enjoyment of No Name Key and more quantifiably, Petitioner's reasonable investment-backed expectations." *See* Putney Petition, ¶ 5. Moreover, Putney asserts her quality of life and the environment would be negatively impacted as result of the electrification of No Name Key. *See* Putney Petition, ¶ 4.

10. No Name Key is a community organized around a lifestyle of providing energy services through means of diesel generation, lead acid batteries and solar panels. The

overwhelming majority of residents of No Name Key maintain diesel generators and lead acid batteries as a primary means of providing energy services.

11. Reynolds maintain not only diesel and lead battery generation, but a substantial photovoltaic solar array for which Reynolds spend in excess of Twenty Thousand and 00/100 Dollars (\$20,000.00).

12. The overwhelming majority of residents and property owners on No Name Key are desirous of connecting to commercial electricity as a means of clean energy, opposed to the environmentally unfriendly diesel generators and lead acid batteries.

13. On August 12, 2010, the United States Department of the Interior, Fish and Wildlife Service ("USFW") issued a letter to KES confirming that the electrical services to No Name Key would not have an adverse impact on the endangered wildlife which maintain habitat on No Name Key. A true and correct copy of the USFW Letter to KES is attached hereto and incorporated herein as Exhibit B.

14. Putney has no legal obligation to connect or utilize any commercial utility service provider on No Name Key. Putney is free to choose not to connect to the commercial electrical lines which are installed on No Name Key.

**MEMORANDUM IN OPPOSITION TO
ALICIA ROEMELLE-PUTNEY'S PETITION TO INTERVENE**

Putney's Petition to Intervene should be denied as Putney does not have a substantial interest in the instant matter, and no substantial interest of hers is affected by the instant matter. Furthermore, Putney will not suffer an injury-in-fact that is of a type or nature which the PSC is designed to protect against. The installation and maintenance of commercial electrical lines on No Name Key does not give rise to an action in which Putney has a substantial interest because Putney is not desirous of connecting to commercial electrical service. Putney's desire to use the

Public Service Commission as a forum to assert her personal preference of choosing not to seek commercial electrical service is misplaced.

To demonstrate standing to intervene as a party in an administrative agency proceeding, a petitioner must demonstrate: (1) that he will suffer an injury in fact which is of sufficient immediacy to entitle him to a hearing under the Administrative Proceedings Act (“APA”); and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. *See Accardi v. Department of Environmental Protection*, 824 So.2d 992, 996 (Fla. 4th DCA 2002) (quoting *Ameristeel Corp. v. Clark*, 691 So.2d 473, 477 (Fla. 1997); *Agrico Chem. Co. v. Dep’t of Env’tl. Regulation*, 406 So.2d 478, 482 (Fla. 2d DCA 1981)).

Pursuant to Florida Statute §120.52(13)(b), a Party is “any person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action.” Fla. Stat. §120.052(13)(b); *see also* F.A.C. §25-22.039. The initiation of formal proceedings, as the Reynolds have initiated, is “appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant’s substantial interest and which is a violation of a statute enforced by the Commission, or of any Commission rule or order.” F.A.C. §25-22.036(2).

Here, Putney has failed to satisfy the first prong of the *Accardi* test, namely that she will suffer an injury in fact which is of sufficient immediacy to entitle her to a hearing under the APA. *See Accardi*, at 996. Putney’s allegations are unfounded and opinionated assertions as to the effect commercial electricity will have on her and her property. There is nothing in her Petition to Intervene to support that the relief sought by Reynolds in the above-styled action will injure her immediately. Putney asserts “the quality of life in which she has invested substantial

resources and the environment upon which this quality of life depends would be adversely and irreparably impacted by the extension of commercial electricity to No Name Key.” Putney Petition, ¶ 6. While Putney claims the quality of life and the environment would be degraded, Putney provides not one piece of evidence to support such a claim.¹ Putney claims “the extension of commercial electricity would undermine the shared values of the solar community of No Name Key.” Putney Petition, ¶ 6. Again, Putney makes an unfounded assertion with no supporting evidence. Contrary to her assertion, the vast majority of No Name Key property owners and residents wish to engage in net metering which would create a more positive environmentally impact on No Name Key, than solar power alone. Putney claims the “extension of commercial electricity would result in the irretrievable loss of the financial and emotional investments. Putney Petition, ¶ 6. Putney is not obligated to connect to commercial electrical service and therefore the existence of commercial electricity would not render Putney’s solar investment a loss. Additionally, the rules and regulations of the PSC towards electric service by electric public utilities are intended to define and promote good utility practices and procedures, adequate and efficient service to public at reasonable costs, and to establish the rights and responsibilities of both the utility and the customer. *See* F.A.C. §26-6.002(1). The PSC is not intended to cater to the irrational paranoia of potential future development expressed by a single property owner on No Name Key. Monroe County and the State of Florida have procedures in place to regulate development.

While Putney makes several assertions regarding the negative financial and environmental impacts commercial electricity will have on No Name Key, she fails to quantify, qualify or support any of her assertions. Putney’s opinions and personal desires do not give rise

¹ Surely Putney has had time to evaluate the environmental impacts of the electrical lines on No Name Key which have been installed and energized for more seven (7) months.

to an injury in fact for which Putney should be entitled to a Fla. Stat. § 120.57 hearing through intervener status. Putney always has the ability to refuse to connect to the commercial electrical lines and to attempt to persuade her neighbors to do the same. Thus, Putney has an adequate remedy for her thoughts, feelings and desires set forth in her Petition to Intervene that does not involve the PSC.

The alleged injuries and negative effect commercial electrical service will have on Putney is not the type of effected interest for which the Public Service Commission's complaint process and formal proceeding process were designed to protect. Reynolds brought forth their initial formal complaint to enforce the terms and conditions of the Territorial Agreement. 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. (Emphasis added).

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).

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. Putney's allegations of injuries, including loss of emotional investments and investments in solar arrays, is not the type of injury the complaint and formal proceeding processes are in place for the Public Service Commission to be engaged in.

Conclusion

Putney's Petition to Intervene should be denied as Putney does not have a substantial interest in the instant matter, nor does the instant matter affect a substantial interest of Putney. Putney's Petition fails to provide sufficient evidence of an injury which would meet the standard set forth by the *Accardi* Court. As such, Putney has failed to establish that she will suffer an injury in fact which is of sufficient immediacy to entitle her to a section 120.57 hearing, and that her injury is of a type or nature which the proceeding is designed to protect.

WHEREFORE, Complainants ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS respectfully request the Commission enter an Order denying the ALCIA ROEMELLE-PUTNEY'S Petition to Intervene and granting such other, further relief the Commission may deem appropriate.

[Remainder of page intentionally left blank. Certificate of Service to follow.]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S.

Mail and Electronic Mail to the attached Service List this 4th day of March, 2013.

Respectfully submitted,

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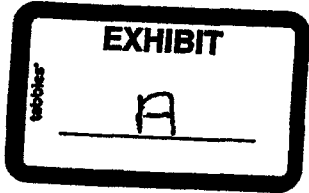
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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
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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

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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.

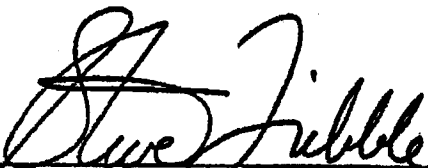
In consideration of the above, it is

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

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ORDER NO. 25127
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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.

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

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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

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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

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"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.

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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

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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 of 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.

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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

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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

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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.

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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 FKEC if mailed by certified mail, postage prepaid to

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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.

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ATTEST:

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

Robert R. Padron
Robert R. Padron,
Secretary

By: William T. Cates
William T. Cates

Title: Chairman

(SEAL)

ATTEST:

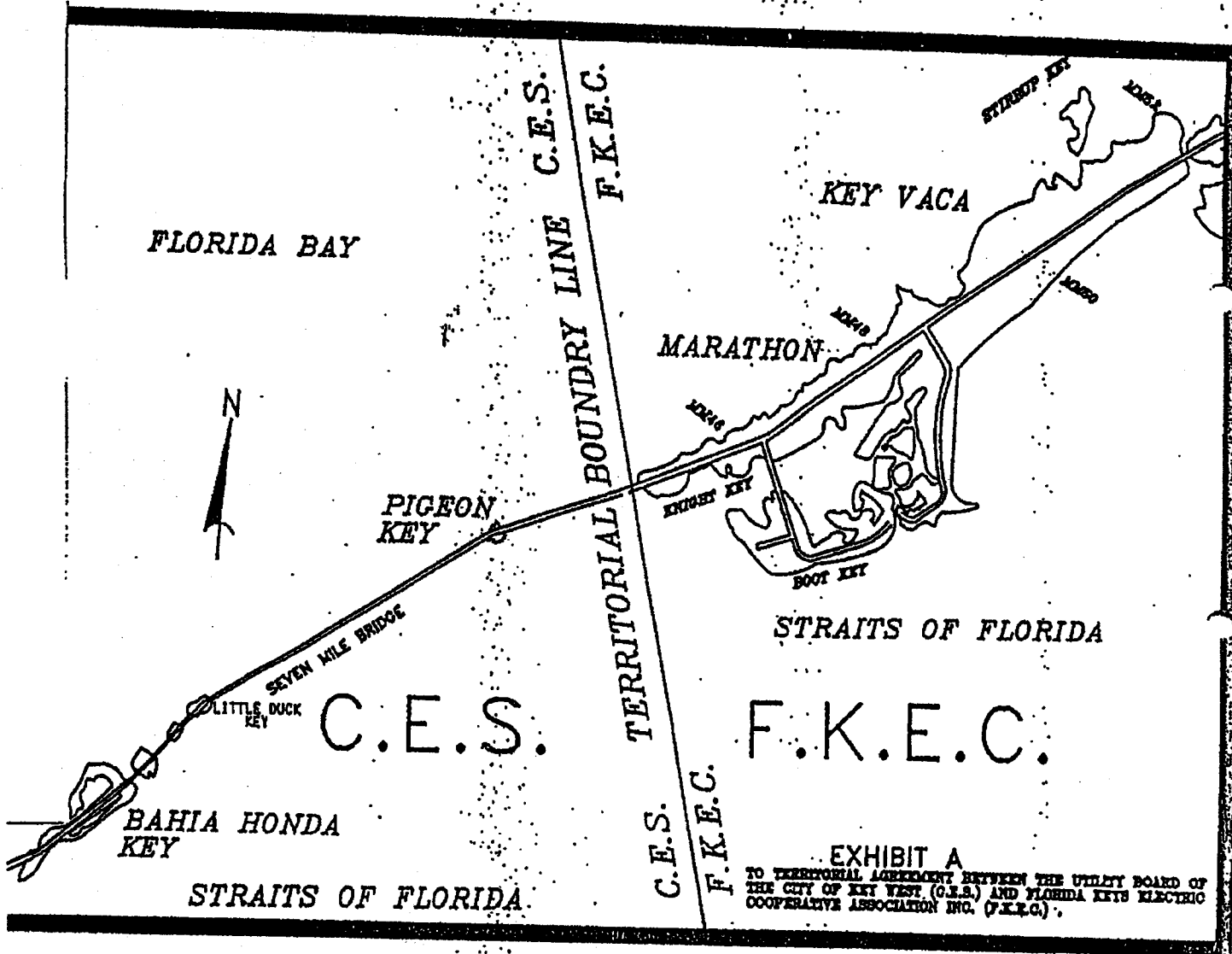
FLORIDA KEYS ELECTRIC COOPERATIVE
ASSOCIATION, INC.

R. L. Barnes
R. L. Barnes, Secretary

By: E. L. Schwartz
E. L. Schwartz

Title: President

(SEAL)



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United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960



October 15, 2010

Dale Finigan
Keys Energy Services
1001 James Street
Post Office Box 6100
Key West, Florida 33040-6100

Service Federal Activity Code: 41420-2009-TA-0539
Date Received: August 12, 2010
Project: No Name Key Extension of
Electrical Service
County: Monroe

Dear Mr. Finigan:

The Fish and Wildlife Service (Service) has reviewed your biological assessment and letter dated, July 9, 2010 and August 11, 2010, respectively, and other information submitted by the Keys Energy Services (KES), on behalf of various property owners on No Name Key, for the project referenced above. We understand Monroe County (County) has advised KES the project requires our review in accordance with the Big Pine Key Habitat Conservation Plan (HCP).

PROJECT DESCRIPTION

According to your documents, KES is proposing to extend electrical services to No Name Key, Monroe County, Florida, via overhead power lines. The project would include 61 concrete utility poles and an electrical system line placed within existing right of way (ROW) owned by the County or private land. Placement of power poles will occur largely on existing scarified ROW and will be set back 6 feet from roadways. No clearing of native vegetation will occur as a result of the proposed project; however minimal trimming of overhead tree limbs may occur during initial system installation. No ancillary facilities will be developed on No Name Key. This design would be able to provide power for up to 43 potential residential customers and a single commercial customer. However, Monroe County has stated no new developments are anticipated on No Name Key as a result of this additional electricity.

THREATENED AND ENDANGERED SPECIES

In your Biological Assessment, KES has determined the project may affect, but is not likely to adversely affect, the endangered Key deer (*Odocoileus virginianus clavium*), endangered Lower Keys marsh rabbit (*Sylvilagus palustris hefneri*), endangered silver rice rat (*Oryzomys palustris natator*), threatened eastern indigo snake (*Drymarchon corais couperi*), threatened Stock Island tree snail (*Orthalicus reses*), endangered Key tree cactus (*Pilosocereus robinii*) and threatened

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Garber's spurge (*Chamaesyce garberi*). In addition, KES has made a determination the project may affect, but is not likely to adversely affect designated critical habitat for the silver rice rat.

During an August 4, 2010, site visit to No Name Key, KES and Service staff discussed a number of avoidance and minimization measures that will be implemented throughout construction and long-term maintenance to further reduce the proposed project's impact on listed species, as follows:

1. Poles will be placed near paved roads to avoid and minimize disturbance to native habitats.
2. The project was designed to allow for flexibility in pole placement. The distance between poles was extended to the maximum practical amount in order to reduce total pole count. In addition, pole locations in all areas (except corner poles) are flexible to allow the individual poles to be placed so as to avoid the permanent removal of native vegetation and minimize trimming.
3. This flexibility will greatly reduce potential impacts to Garber's spurge, which has been documented along the roadsides of Old State Road 4A as recently as 2008. Surveys conducted by KES in April and May 2010 did not locate the plant on at each proposed pole location or in the immediate vicinity of each pole. However, even at the time of installation KES has agreed to reposition the pole locations in order to avoid the species should it be encountered. Therefore the avoidance measures detailed in the *Garber's Spurge Protection Plan* (see attached) will be conducted by a qualified biologist during system installation and all pole maintenance. If the plant is encountered, the pole will be repositioned.
4. The poles that will be employed are taller than normal residential poles thereby allowing power line placement to occur above the vegetation. Pole heights of 45 feet will be used to minimize initial and yearly re-occurring tree trimming.
5. No vegetative trimming will be conducted until all poles are placed and the power lines are strung. This will allow KES to trim only those branches that will actually obstruct the power lines, thereby minimizing vegetation removal to the maximum extent.
6. The only self-sustaining population of the Stock Island tree snail with long-term viability in the Lower Florida Keys is located in the hardwood hammock south of Old State Road 4A on the eastern side of No Name Key, and may occur on trees within the ROW. Therefore the avoidance measures detailed in the *Stock Island Tree Snail Protection Plan* (see attached) will be conducted by a qualified biologist, during system installation and all pole maintenance.
7. Poles will only be placed at residences that have requested power, thereby reducing the scope of the overall project.
8. High strength concrete poles, storm-rated at 148 MPH, will be employed to reduce replacement intervals and subsequent maintenance.
9. Best management practices for construction impacts will be implemented, including placement of silt fence around all pole location area, removal of all spoils off-site, securing trash, and minimal staging of construction equipment and supplies.

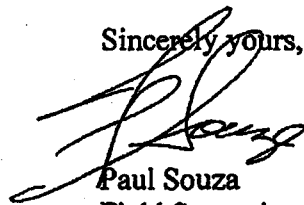
10. KES will conduct pre-construction training with all contractors and KES staff working on the project regarding the presence of listed species. Training will be provided by a qualified biologist familiar with lower keys wildlife and environmental regulations.
11. *Standard Protection Measures for the Eastern Indigo Snake* (see attached) will be implemented during construction activities.
12. Best management practices will be implemented to prohibit feeding of key deer either intentionally or unintentionally by work crews during construction activities and lunch breaks, as well as traffic control measures to avoid deer-vehicle collisions during construction activities.

Based on the best currently available scientific and commercial information, as well as the avoidance and minimization measures outlined above and within the biological assessment, the Service concurs with your view that the proposed extension of electrical service to No Name Key is not likely to adversely affect the Key deer, Lower Keys marsh rabbit, silver rice rat, eastern indigo snake, Stock Island tree snail, Key tree cactus, or Garber's spurge and formal consultation is not required.

Reinitiation of consultation may be necessary if: (1) modifications are made to the project; (2) additional information involving potential effects to listed species becomes available; or (3) a new species is listed, or if critical habitat is designated that may be affected by the project.

Thank you for your cooperation in the effort to protect federally listed species. If you have any questions regarding this project, please contact Mark Salvato at 772-562-3909, extension 340.

Sincerely yours,



Paul Souza
Field Supervisor
South Florida Ecological Services Office

Enclosures

cc: w/o enclosures (electronic only)
Florida Keys Aqueduct Authority, Key West, Florida (Jim Reynolds)
Monroe County Government, Key West, Florida (Roman Gastesi, Suzanne Hutton, Mark Rosch)
Service, Washington, DC (Katie Niemi)
Service, Big Pine Key, Florida (Anne Morkill)
Service, Atlanta, Georgia (Cynthia Bohn)
FDCA, Tallahassee, Florida (Rebecca Jetton)

STANDARD PROTECTION MEASURES FOR THE EASTERN INDIGO SNAKE

1. An eastern indigo snake protection/education plan shall be developed by the applicant or requestor for all construction personnel to follow. The plan shall be provided to the Service for review and approval at least 30 days prior to any clearing activities. The educational materials for the plan may consist of a combination of posters, videos, pamphlets, and lectures (*e.g.*, an observer trained to identify eastern indigo snakes could use the protection/education plan to instruct construction personnel before any clearing activities occur). Informational signs should be posted throughout the construction site and along any proposed access road to contain the following information:
 - a. a description of the eastern indigo snake, its habits, and protection under Federal Law;
 - b. instructions not to injure, harm, harass or kill this species;
 - c. directions to cease clearing activities and allow the eastern indigo snake sufficient time to move away from the site on its own before resuming clearing; and,
 - d. telephone numbers of pertinent agencies to be contacted if a dead eastern indigo snake is encountered. The dead specimen should be thoroughly soaked in water and then frozen.

2. If not currently authorized through an Incidental Take Statement in association with a Biological Opinion, only individuals who have been either authorized by a section 10(a)(1)(A) permit issued by the Service, or by the State of Florida through the Florida Fish Wildlife Conservation Commission (FWC) for such activities, are permitted to come in contact with an eastern indigo snake.

3. An eastern indigo snake monitoring report must be submitted to the appropriate Florida Field Office within 60 days of the conclusion of clearing phases. The report should be submitted whether or not eastern indigo snakes are observed. The report should contain the following information:
 - a. any sightings of eastern indigo snakes and
 - b. other obligations required by the Florida Fish and Wildlife Conservation Commission, as stipulated in the permit.

Revised February 12, 2004

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 auger 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, *Cocoloba 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.