

Eric Fryson

From: Megan Hodson <megan@hartsell-law.com>
Sent: Monday, March 18, 2013 4:48 PM
To: Filings@psc.state.fl.us
Cc: 'Robert Hartsell'
Subject: CASE 120054 Electronic Filing of Motion and First Amended Petition for Intervention
Attachments: 120054 First Amended Petition to Intervene Roemmele-Putney.pdf

Good Afternoon,

Kindly accept for filing the attached Motion for Leave to Amend Petition for Intervention and First Amended Petition for Intervention in Case Number 120054. The required information to be included with this filing follows:

The required information to be submitted with the filing follows:

Robert N. Hartsell, Esq.

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Docket Number: 120054

Docket Title: In re: Complaint of Robert D. Reynolds and Julianne Reynolds against Utility Board of the City of Key West, Florida d/b/a Key Energy Services regarding extending commercial electrical transmission lines to each property owner of No Name Key, Florida.

Party: Alicia Roemmele-Putney

Pages: 16

Document: Motion for Leave to Amend Petition to Intervene and Alicia Roemmele-Putney's First Amended Petition to Intervene

Thank you.

Sincerely,

Megan Renea Hodson, Esq.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Robert D. Reynolds and Julianne Reynolds against Utility Board of the City of Key West, Florida d/b/a Key Energy Services regarding extending commercial electrical transmission lines to each property owner of No Name Key, Florida.

DOCKET NO. 120054

MOTION FOR LEAVE TO AMEND PETITION TO INTERVENE

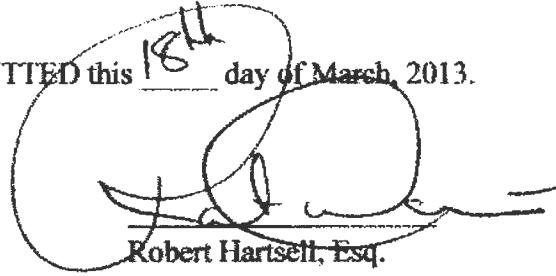
The Proposed Intervenor, Alicia Romelle-Putney (hereafter referred to as "Intervenor"), by and through the undersigned counsel, moves to amend her Petition to Intervene and as grounds state the following:

1. Claimants filed their initial action on or about March 7, 2012.
2. Intervenor filed its Petition to Intervene on or about February 21, 2013.
3. Claimants amended their Complaint on or about March 13, 2013.
4. Intervenor amends its Petition to Intervene to address issues raised in the Amended Complaint and issues raised by responses in opposition to intervention.
5. "As a general rule, Florida allows liberal pleading amendments unless it clearly appears that allowing the amendment would prejudice the opposing party, the privilege to amend has been abused, or the amendment would be futile." ABC Liquors, Inc. v. Centimark Corp., 907 So. 2d 1053 (Fla. 5th DCA 2007) (citing Yun Enters., Ltd. v. Graziani, 840 So. 2d 420, 422-23 (Fla. 5th DCA 2003)).
6. Intervenor has not abused the privilege to amend, nor would the proposed Amendment be futile or prejudice the other parties.
7. The proposed First Amended Petition is attached to this Motion.

8. Intervenor's counsel has consulted with counsel for all parties, they do not object to the filing of the Amended Petition although they may disagree as to whether the Petition should be granted.

WHEREFORE, Intervenor respectfully requests that this Commission enter an Order granting the Intervenor's Motion for Leave to Amend and accept the attached First Amended Petition to Intervene.

RESPECTFULLY SUBMITTED this 18th day of March, 2013.



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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served by Electronic Mail this 18th day of March, 2012 on the following:

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A handwritten signature in black ink, appearing to read 'Robert Hartsell', written over a horizontal line.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Robert D. Reynolds and Julianne Reynolds against Utility Board of the City of Key West, Florida d/b/a Key Energy Services regarding extending commercial electrical transmission lines to each property owner of No Name Key, Florida.

DOCKET NO. 120054

ALICIA ROEMMELE-PUTNEY'S FIRST AMENDED PETITION TO INTERVENE

Intervenor, Alicia Roemmele-Putney ("Intervenor"), pursuant to Chapters 120 and 366, Florida Statutes, and Rules 25-22.039, 28-106.201, and 28-106.205, Florida Administrative Code ("FAC"), hereby petitions the Florida Public Service Commission ("the Commission") to intervene in the above-styled matter, and states as follows:

INTRODUCTION

On March 11, 2013, Robert D. Reynolds and Juliane C. Reynolds filed an Amended Complaint against the Utility Board of the City of Key West, Florida d.b.a. Keys Energy Services ("KES") and Monroe County ("County"). The Amended Complaint seeks the following from this honorable Commission:

1. A Commission Order stating that KES must connect customers located on No Name Key who request service and meet Florida electrical safety code requirements of the Florida Building Code bypassing the County's local restrictions on such connections in environmentally sensitive areas of the County.
2. A determination that the PSC has exclusive jurisdiction over the KES territorial agreement, including enforcement of its terms.
3. PSC's jurisdiction over the territorial agreement preempts Monroe County's Ordinance 043-2001 as it pertains to KES and its electric lines.

4. A determination that Monroe County does not have jurisdiction over No Name Key customers' connection to KES and;
5. Monroe County cannot prohibit KES customers from connecting to the electric utility.

Alicia Roemmele-Putney (hereinafter, "Intervenor") owns a single-family residence located at 2150 No Name Drive, No Name Key, Florida. Intervenor and her now deceased husband, Dr. Snell Putney, purchased property in Key Largo, Florida in 1983. Shortly thereafter, Key Largo experienced an explosion in growth and development, and the quality of life experienced by Intervenor became negatively impacted by the noise, light pollution and congestion that accompanied the development. In response to these negative impacts, Intervenor and her now deceased husband sought another location to reside in the Florida Keys that would possess and retain a tranquil character.

This search led Intervenor and her now deceased husband to consider the purchase of a lot and the construction of a single-family residence on No Name Key. Following assurances that electrical and water supply infrastructure would not be extended to No Name Key, Intervenor along with her now deceased husband in 1989 purchased Lot 23/24 of the Dolphin Harbour Subdivision. On January 27, 1990, Intervenor and her now deceased husband applied for a building permit to construct a single-family home on Lot 23/24. As part of the application process and in order to satisfactorily meet existing electrical and plumbing codes, Intervenor and her now deceased husband were required to submit building plans that envisioned the construction of alternative power and water sources.

In order to comply with these requirements and confident that others who sought to build on No Name Key would be subject to similar requirements, Intervenor and her now deceased

husband submitted plans that envisioned the use of solar power for electricity and the use of a cistern for fresh water. The installation of the solar energy system added between \$18,000 and \$19,000 to the construction cost of the residence. The installation of the cistern water system added between \$16,000 and \$17,000 to the construction cost. Furthermore, given the general public's lack of understanding of photovoltaic technology in 1990 and lack of such amenities, the market value of Intervenor's property was reduced. Intervenor was willing to incur these increased costs and decreased property values in order to obtain the peace, tranquility and lessened development pressures that the lack of electrical and water supply infrastructure on an island within the National Key Deer Wildlife Refuge would promote. These values therefore underlie the reasonable investment-backed expectations of Intervenor.

Intervenor respectfully submits that 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. The extension of commercial electricity itself would negatively impact the environment and quality of life enjoyed by Intervenor. The extension of commercial electricity would undermine the shared values of the solar community of No Name Key. No Name Key is a community organized around a low-impact and solar-based lifestyle, around the conservation of natural resources and the protection of the National Key Deer Wildlife Refuge, and characterized by customs of mutual assistance and a strong sense of unique identity. Additionally, the installation of poles, wires and streetlights would adversely affect the scenic beauty, wildlife and view of the night sky on No Name Key. Thus, commercial electricity would eradicate the current No Name Key lifestyle and customs, and would render this unique community indistinguishable from other developed communities where such infrastructure is present. Further, the extension of

commercial electricity would not only result in the irretrievable loss of the financial and emotional investments of Intervenor and those similarly situated members of The Solar Community of No Name Key, but also would represent the destruction of a unique community found nowhere else in the State of Florida or this nation.

The extension of commercial power infrastructure to No Name Key would promote secondary growth impacts on the island by rendering the land thereon more valuable and more attractive to development. The resulting development would, in turn, lead to the fragmentation of wildlife habitat, increased mortality to endangered species including the Key Deer, and other negative environmental impacts. Thus, commercial power infrastructure would directly impact Intervenor's use and enjoyment of No Name Key.

Intervenor relies on the Monroe County Comprehensive Plan and its implementing code to protect her life, property and the natural resources she uses and enjoys. Intervenor's reliance includes, but is not limited to, Monroe County Code Section 130-122 *et. seq.* and Comprehensive Plan Policies 103.2.10; 215.2.3 and 1301.7.12. These are the same Code and Plan requirements Reynold's seeks this Commission to prohibit the County from enforcing.

The issue now before this commission- the commercial electrification of No Name Key- has been the subject of a previous law suit. In 1999, the Taxpayers For The Electrification of No Name Key, Inc. filed a Complaint in the Sixteenth Judicial Circuit seeking, *inter alia*, declaratory relief that they had a statutory or property right to have electric power extended to their homes on No Name Key. Taxpayers For The Electrification of No Name Key, Inc., Et. Al. v. Monroe County, Case No. 99-819-CA-19. Alicia Roemmele-Putney was an intervening Defendant in that case. In 2002, the Court in *Taxpayers* concluded that plaintiff property owners did not have a "statutory or property right to have electric power extended to their homes, which

are operated with alternative, typically solar, energy sources.” The Court further concluded, “Section 366.03, Fla. Stat. does not apply to Defendants Monroe County or Keys Energy Service (“KES”). Even if it did apply here, Section 366.03, Fla. Stat., does not provide a right to commercial electric service if such service would be inconsistent with Chapters 163 and 380 or the Monroe County Comprehensive Plan.”

Subsequent to Taxpayers, on or about April 4, 2011, Monroe County initiated an action in circuit court seeking declaratory relief as to KES and a declaration as to whether Monroe County’s Comprehensive Plan and Land Development Code provisions could preclude the extension of and connection to commercial utility lines on No Name Key. Monroe County, et al v. Keys Energy Services, et al, Case No. 2011-CA-342-K. Alicia Roemmele-Putney was a named party Defendant in that action and this honorable Commission was granted Amicus status.

Ultimately, on or about January 31, 2012, the Circuit Court in and for Monroe County concluded that the Commission was the Proper forum to hear the issues presented by the County and summarily dismissed the case with prejudice. On or about February 6, 2012, Alicia Roemmele-Putney and Monroe County appealed the lower court’s decision and were named appellants in the case. Alicia Roemmele-Putney, et al. v. Robert D. Reynolds, et al., 2013 Fla. App. LEXIS 1756 (Fla. 3rd DCA, Feb. 6, 2013).

While the appeal remained pending, Robert D. Reynolds petitioned this Commission in the instant case for a hearing on the issues presented to the Circuit Court in Monroe County, et al v. Keys Energy Services, et al, Case No. 2011-CA-342-K. Intervenor is explicitly referred to by name in the Reynolds’ complaint at paragraphs 22, 23, 24, and 30. Subsequently, Monroe County and No Name Key Property Owners Association (an association of pro-commercial

power property owners)(“NNKPOA”) intervened in the instant matter.

On July 24, 2012, despite the pending litigation before both this commission and the Third District Court of Appeals, KES moved forward with the installation of sixty two (62) commercial utility poles at the insistence and sole expense of NNKPOA. KES was indemnified of all risk and legal fees by operation of a line extension agreement between NNKPOA and KES.

Despite the adamant objection by Monroe County, the commercial power lines extend over and trespass onto conservation lands owned by Monroe County. On or about May 6, 2012 as a result of this trespass, Monroe County filed a civil action against KES. Monroe County, et al. v. Key Energy Services, et al., Case No. 2012 CA K 549. Alicia Roemmele-Putney was granted intervention as a Plaintiff in that action as well.

On February 6, 2013, without reaching the merits, the Third District Court of Appeals affirmed the lower court’s decision in Monroe County, et al v. Keys Energy Services, et al, Case No. 2011-CA-342-K, concluding that the Commission is the proper forum to hear the case and **“appellants [Alicia Roemmele-Putney and Monroe County] do retain, however, the right to seek relief before the PSC...”**. Alicia Roemmele-Putney, et al. v. Robert D. Reynolds, et al., 2013 Fla. App. LEXIS 1756 (Fla. 3rd DCA, Feb. 6, 2013) *emphasis added*. Along the same line of reasoning, on February 21, 2013, the circuit court dismissed the claims of trespass on the grounds that when the jurisdiction of the Commission is invoked, the Commission must first pass on the jurisdiction prior to the Circuit Court taking any action in the matter.

In accordance with the aforementioned decisions, Alicia Roemmele-Putney comes to this honorable Commission requesting intervention as a full party. Alicia Roemmele-Putney has a direct interest in the subject matter of the instant case. To the extent Reynolds’ and the

NNKPOA would have standing to participate in this case with a desire to connect to commercial power, Intervenor would have standing to participate in this case with sufficient demands to prohibit the extension of commercial electricity on No Name Key.

It is clear that intervention in this proceeding is necessary to protect Intervenor's interests. Intervenor's quality of life within No Name Key's low impact solar-only community will be destroyed if the Commission grants the Complainant's requests. Furthermore, this issue comes to the Commission from the trial court and Third District Court of Appeal, where Intervenor held full party status. Minus the Supreme Court of Florida, this Commission is Intervenor's last chance to protect her substantial interests in this matter. Therefore, this type of administrative proceeding and issue to be discussed before the Commission is in fact the type of proceeding designed to protect Intervenor's interest.

Therefore participation of Intervenor in this proceeding and the consideration of her rights by the Commission would therefore further the ends of justice. See Union Cent. Life Ins. Co. v. Carlisle, 593 So. 2d 505, 507 (Fla. 1992). Under the "Agrico Test", to demonstrate standing to intervene as a party in an administrative proceeding, Intervenor must show "1) that [s]he will suffer injury in fact which is of sufficient immediacy to entitle h[er] to a[n] [Administrative Procedure Act] section 120.57 hearing, and 2) that h[er] substantial injury is of a type or nature which the proceeding is designed to protect." Agrico Chem. Co. v. Dep't of Env'tl. Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). Concerning the instant matter, Intervenor satisfies both prongs of the "Agrico Test".

Accordingly, Intervenor has a substantial interest in this matter and should be granted full party status to protect her interest. In further support of this Petition to Intervene, Intervenor states as follows:

1. **The Petitioner.** The name, address, and telephone number of the Petitioner are as follows:

Alicia Roemmele-Putney
2150 No Name Drive
No Name Key, Florida 33043-5202
(305) 872-8888

2. **Petitioner's Representative.** All pleadings, orders and correspondence should be directed to Petitioner's representative as follows:

Robert N. Hartsell, Esq.
Robert N. Hartsell, P.A.
Counsel for Alicia Roemmele-Putney
(Fla Bar No. 0636207)
Federal Tower Office Building
1600 S. Federal Highway, Suite 921
Pompano Beach, Florida 33062

3. **Affected Agency.** The agency affected by this Petition to Intervene is:

Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

4. **Statement of Affected Interests.** Intervenor is directly affected by the Commission's decision as stated above. Intervenor chose to reside on No Name Key because it was not served by commercial electricity or a centralized water distribution system, and therefore the threat of development was minimal. In order to build a single family home on No Name Key and comply with Monroe County's building permit, Intervenor spent between \$34,000 and \$36,000 on top of construction costs in order to have a solar power sole alternative energy source and rainwater as a alternative potable water source. Additionally, because No Name Key lacks those amenities, the value of Intervenor's property is decreased. The decreased property value, and increased construction costs were costs the Petitioner was willing to accept in order to obtain the peace and tranquility that No Name Key provides. Monroe County's prohibition of the

extension of commercial utilities on No Name Key inhibits development and enhances the protection of Intervenor's life and property within this Coastal Barrier Resource System unit. Furthermore, having lived on No Name Key, Intervenor frequently enjoys the Key's wildlife, having studied the plant and animals of the Key. This Commission's decision will directly affect Intervenor's enjoyment of No Name Key and more quantifiably, Petitioner's reasonable investment-backed expectations. Furthermore, Intervenor is a "party" as defined by Section 120.52(13)(b), Fla. Stat..¹

5. **Disputed Issues of Material Fact.** None at this time. Intervenor reserves all rights to raise additional issues in accordance with the Commission's rules and the anticipated Order Establishing Procedure in this case.

6. **Statement of Ultimate Issue.** Intervenor, Alicia Roemmele-Putney, by and through its undersigned counsel asserts that based on the law of the State of Florida, the following is the ultimate conclusion that the Public Service Commission should reach in this docket: The PSC does not have exclusive jurisdiction over this entire matter. There is no provision in Chapter 366 that would, other things being equal, give the Commission the authority to authorize a municipal utility such as KES to provide service to an applicant in violation of a Monroe County's Comprehensive Plan and Land Development Regulations. This is critical because the PSC "derives its powers solely from the legislature." United Telephone Co. of Florida v. Public Service Comm'n, 496 So. 2d 116, 118 (Fla. 1986). Lacking the specific power to authorize a municipal utility to serve, the Commission could not order KES to provide service: as the Florida Supreme Court stated in United Telephone, "If there is a reasonable doubt as to

¹ Section 120.52(13)(b), Fla. Stat., defines "party" as "Any other 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, and who makes an appearance as a party."

the lawful existence of a particular power that is being exercised, the further exercise of the power should be arrested.” emphasis added. Id. at 118 (citing Radio Telephone Communications, Inc. v. Southeastern Telephone Co., 170 So. 2d 577, 582 (Fla. 1965)). Allow Monroe County to enforce its Local Code and Comprehensive Plan under Home Rule to prohibit the unlawful extension of commercial distribution lines on No Name Key. Declare that the PSC lacks any colorable jurisdiction over whether or not building permits can be authorized for connection of a customer to a commercial power line in violation of a County Comprehensive Plan and Land Development Regulations under Monroe County’s constitutional Home Rule powers. Wilson v. Palm Beach County, 62 So. 3d 1247, 1252 (Fla. 4th DCA 2011).

7. **Substantial Interests Affected.** Intervenor, Alicia Roemmele-Putney, seeks intervention to participate as a party in this docket as defined by Section 120.52(13)(b), Fla. Stat.. Section 120.52(13)(b) allows intervention of any person “whose substantial interests will be affected by proposed agency action” Additionally, Rules 25-22.039, 28-106.201, and 28-106.205, FAC, similarly provide that persons whose substantial interests are subject to determination in agency proceeding are entitled to intervene in such proceeding.

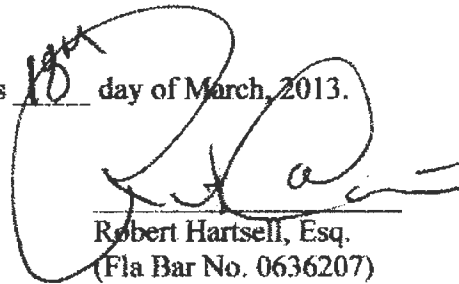
Because the Third District Court of Appeals concluded Intervenor has **the right to seek relief before the PSC.** Alicia Roemmele-Putney, et al. v. Robert D. Reynolds, et al., 2013 Fla. App. LEXIS 1756 (Fla. 3rd DCA. Feb. 6, 2013). Intervenor has an interest and relies upon the land development code and comprehensive plan language Reynold’s seeks to have this honorable Commission mandate the County violate; Intervenor spent years acquiring permission to build her home on No Name Key, spent monies upwards of \$34,000 beyond the cost of construction to comply with No Name Key’s Land Codes, has personally enjoyed the natural area of No Name

Key for over 20 years; and because proposed Intervenor's quality of life, safety², property interest and investment-backed expectations will be directly affected by the Commission's decision, Intervenor qualifies as a substantially affected person.

CONCLUSION

WHEREFORE, Intervenor requests that this Commission: a) grant her leave to intervene in this cause with full party status; b) direct the clerk to amend the style in this case to reflect the intervention; and c) grant such other relief this Commission may deem just and proper.

RESPECTFULLY SUBMITTED this 10th day of March, 2013.



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² The majority of No Name Key is located within the Coastal Barrier Resources System (CBRS), a federal designation that restricts federal spending and financial assistance to discourage the development of coastal barriers. In passing the Coastal Barrier Resources Act in 1982, Congress aimed to reduce the loss of human life, wasteful spending of federal money, and damage to fish, wildlife, and other natural resources associated with coastal barriers along the Atlantic and Gulf of Mexico coasts. Monroe County Code § 130-122 prohibits the extension of public utilities including electricity within the Coastal Barrier Resources System Overlay District. This section of the code seeks to implement the policies of the County's comprehensive plan by adopting by reference the federally designated boundaries of a CBRS district on current flood insurance rate maps approved by the Federal Emergency Management Agency.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served by Electronic and U.S. Mail this 18th day of March, 2013 on the following:

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