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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:	DOCKET NO. 120054-EM
Complaint of Robert D. Reynolds and Julianne C. Reynolds against Utility Board of the City of Key West, Florida d/b/a Keys Energy Services regarding extending commercial electrical transmission lines to each property owner of No Name Key, Florida	

NO NAME KEY PROPERTY OWNERS ASSOCIATION'S RENEWED OPPOSITION TO PUTNEY'S MOTION TO INTERVENE

No Name Key Property Owners Association, Inc. (the Association) hereby files its opposition to the First Amended Motion to Intervene filed by Alicia Roemmele-Putney (Putney), and as grounds therefore states.

RULE 28-106.205

Rule 28-106.205 allows persons "whose substantial interest will be affected by the proceeding and who desire to become parties" to move for leave to intervene. The motion must include:

> (c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding;

Parties who oppose the motion must do so within 7 days.

PUTNEY'S ALLEGATIONS ARE INSUFFICIENT

In Paragraph 4 of the Amended Motion, Putney alleges *inter alia*, that her substantial interests will be affected because she purchased a home in an area that was not served by electricity, she spent upwards of $34,000 for an alternative electricity source, and the value of her property and the quality of life will be affected if her neighbors receive electricity.

STANDING TO INTERVENE

The concept of "standing" in an administrative proceeding depends on whether the particular entity at issue qualifies as a "party." Section 120.52(12)(b) defines a "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 . . . ." *Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1083 (Fla. 2d DCA 2009). Thus only a person whose substantial interests may or will be affected by the Public Service Commission's action may file a petition for a 120.57 hearing. *See § 120.57, Florida Statutes* (2011).

In *Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981),* the Court held that to demonstrate standing to intervene a petitioner must demonstrate: i) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a *section 120.57* hearing, and ii) that his substantial injury is of a type or nature which the proceeding is designed to protect. *406 So. 2d at 482.* The Second District went on to explain that a third-party challenger "must frame their petition for a section 120.57 formal hearing in terms which **clearly show injury in fact** to a protected

interests. Absent such a showing, the agency must deny standing and proceed on the permit directly with the applicant.

The following cases are instructive on the issue of standing. In *Ameristeel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla. 1997), the Supreme Court relied on *Agrico* to affirm the PSC's decision to deny AmeriSteel standing to intervene in a proceeding before the PSC to approve a territorial agreement. The PSC found that AmeriSteel substantial interests were not affected because it might be more economical for AmeriSteel to obtain service from the City of Jacksonville. In *International Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990)* the Court found that a change in playing dates that might affect labor dispute, resulting in economic detriment to players, was too remote to establish standing. In *Florida Soc'y of Opthamology v. State Board of Optometry, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988)* the Court held that some degree of loss due to economic competition is not of sufficient "immediacy" to establish standing. In *Village Park Mobile Home Ass'n, Inc. v. State Dep't of Bus. Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987)*, the Court held that possible occurrence of injurious events included in a prospectus were too remote. Relying on *Florida Department of Rehabilitation v. Jerry,* 353 So.2d 1230 (Fla. 1st DCA 1978) the Court held that abstract injury is not enough. "The injury or threat of injury must be both real and immediate, not conjectural or hypothetical." Id.

THE PURPOSE OF THE ADMINISTRATIVE PROCEEDING

The Petition filed by Reynolds and the Association, seeks an administrative hearing 1) to compel Keys Energy's to provide electrical services to the residents living on No

Name Key; and 2) to compel Monroe County to issue building permits to connect their homes to the recently installed transmission lines adjacent to their homes .

The remaining issue for adjudication by the PSC is whether the doctrine of express or implied preemption prevents Monroe County from denying electricity to homeowners by withholding building permits to connect to the transmission poles located adjacent to the homes owned by the Petitioners and the members of the Association.

CONCLUSION

Putney amended motion fails to include facts that **clearly show** that she has a substantial interest in the outcome of the proceedings or that she will be directly or indirectly affected if electricity is provided to her neighbors. Moreover, Putney has failed to show that this administrative hearing is designed to protect her investment in solar power, the value of her home, or the quality of her life.

For those reason, Putney's amended motion to intervene should be **DENIED.**

Respectfully submitted by

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CERTIFICATE OF SERVICE

I CERTIFY THAT a true copy of the foregoing was furnished to the following persons by EMAIL on this 19TH day of ~~February~~ March 2013.

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