

Eric Fryson

From: Rhonda Dulgar <rhonda@gbwlegal.com>
Sent: Monday, April 01, 2013 12:07 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing - Docket No. 120054-EM
Attachments: 120054.MC-MotionToStrike.4-1-13.pdf

From: Rhonda Dulgar
Sent: Monday, April 01, 2013 12:04 PM
To: Martha Brown; ckiser@psc.state.fl.us; Larry Harris; Bart@bartonsmithpl.com; J R Kelly (kelly.jr@leg.state.fl.us); dale.finigan@keysenergy.com; dedenkwf@bellsouth.net; tobinlaw@terranova.net; tobinlaw2@gmail.com
Cc: Schef Wright; Shillinger-Bob (Shillinger-Bob@MonroeCounty-FL.Gov)
Subject: Electronic Filing - Docket No. 120054-EM

a. Person responsible for this electronic filing:
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b. 120054-EM
In Re: Complaint of Robert D. Reynolds and Julianne C. Reynolds Against Utility Board of the City of Key West, Florida Regarding Extending Commercial Electrical Transmission Lines to each Property Owner of No Name Key, Florida.

c. Document being filed on behalf of the Monroe County, Florida.

d. There are a total of 7 pages.

e. The document attached for electronic filing is Monroe County's Motion to Strike.
(see attached file: 120054.MC-MotionToStrike.4-1-13.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
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DOCUMENT NUMBER - DATE
01594 APR -1 2013
FPSC-COMMISSION CLERK

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Robert D. Reynolds)
and Julianne C. Reynolds against) Docket No. 120054-EM
Utility Board of the City of Key)
West, Florida d/b/a Keys Energy) Filed: April 1, 2013
Services regarding extending)
Commercial electrical transmission)
lines to each property owner of)
No Name Key, Florida.)
_____)

MONROE COUNTY'S MOTION TO STRIKE

Monroe County, Florida (the "County"), a political subdivision of the State of Florida and an intervenor party in this docket, by and through its undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), respectfully requests that the Florida Public Service Commission (the "PSC" or "Commission") issue an order striking irrelevant and unauthorized requests for relief in paragraphs c and e of the "Relief Requested" in the Second Amended Complaint filed by Robert D. Reynolds and Julianne C. Reynolds (collectively, the "Reynoldses"). In summary, the Reynoldses' request that the Commission issue an order finding that Monroe County cannot withhold building permits for Keys Energy Services' ("KES") customers and mandating that Monroe County cannot prevent connection to the power grid, and their request for attorney's fees are not authorized by any applicable Commission statute or rule and thus should be stricken as irrelevant. In support of its motion, the County says:

DOCUMENT NUMBER-DATE

01594 APR-1 2

FPSC-COMMISSION CLERK

Background

1. On March 7, 2012, the Reynoldses filed their initial Complaint which initiated this Docket No. 120054-EM.

2. On April 23, 2012, the County moved to intervene in this docket; and on May 22, 2012, the Commission issued an order granting the County intervenor status in the docket.

3. On March 13, 2013, the Reynoldses filed their Amended Complaint.

4. On March 20, 2013, the Reynoldses filed their Second Amended Complaint.¹

5. The Second Amended Complaint includes the following requests for relief.²

(c) Issue an Order finding that Monroe County cannot unreasonably withhold building permits from KES's customers based solely on their property location being on the island of No Name Key and mandate that Monroe County may not prevent the connection of a homeowner on No Name Key to the coordinated power grid;

(e) Award reasonable attorney's fees and costs for the prosecution of this action.

¹ Concurrently with the filing of this Motion to Strike, Monroe County is filing a Motion to Dismiss the Second Amended Complaint. The granting of Monroe County's Motion to Dismiss will render this Motion to Strike moot.

² The Second Amended Complaint erroneously includes two paragraphs identified as "(c)" in the request for relief. This Motion to Strike is directed to the second paragraph identified as "(c)".

6. For the reasons set forth below, paragraphs (c) and (e) of the Second Amended Complaint's "Request for Relief" are wholly irrelevant to this proceeding and should be stricken.

Legal Standard for Motion to Strike

7. Rule 1.140(f), Florida Rules of Civil Procedure ("FRCP")³ provides:

A party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time.

Under Rule 1.150(f), FRCP, a motion to strike should be granted if the matter to be stricken is "wholly irrelevant" to the proceeding. See McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, P.A. v. Weiss, 704 So. 2d 214, 216 (Fla. 2d DCA 1998); Abruzzo v. Haller, 603 So. 2d 1338, 1340 (Fla. 1st DCA 1992); Pentecostal Holiness Church, Inc. v. Mauney, 270 So. 2d 762, 769 (Fla. 4th DCA 1972).

Request for Relief Directed to Monroe County

8. In Paragraph (c) of the Second Amended Petition's request for relief, the Reynoldses request that the Commission issue an order "finding that Monroe County cannot unreasonably

³ While the Florida Rules of Civil Procedure are not specifically applicable in administrative proceedings, the Commission has utilized Rule 1.140(f), FRCP, to strike immaterial material from pleadings. See, e.g., In re: Petition for Approval of Special Gas Transportation Service Agreement with Florida City Gas by Miami-Dade County through Miami Dade Water and Sewer Department, 2011 WL 2090841, Docket No. 090539-GU, PSC Order No. PSC-11-0228-PCO-GU (May 20, 2011).

withhold building permits from KES's customers" and mandating "that Monroe County may not prevent the connection of a homeowner on No Name Key to the coordinated power grid." The Reynoldses cite no statutory basis by which the Commission is authorized to issue such an order and, accordingly, the request for relief is unauthorized and irrelevant to this proceeding, and should be stricken.

9. Monroe County, a political subdivision of the State of Florida, is responsible for enforcing its lawful ordinances, including its ordinances and regulations that relate to building permits and preservation of environmentally sensitive systems. The Monroe County Code prohibits the extension of public utilities, including electric lines, to or through lands designated as a unit of the Federal Coastal Barrier Resources System (CBRS) and the County's CBRS Overlay District, in which No Name Key is located. See Monroe County Code § 130-122. Monroe County is not an electric utility or a public utility, and is not otherwise subject to the Commission's regulatory jurisdiction with regard to the issues raised in the Second Amended Complaint. Nothing in Chapter 366, Florida Statutes, the Commission's rules, or the Commission's orders (including Order No. 25127, approving the territorial agreement at issue in this docket) authorizes the issuance of an order mandating Monroe County to ignore or act contrary to its lawfully adopted

ordinances and regulations. Such an order would clearly exceed the authority granted to the Commission by Chapter 366, Florida Statutes. Accordingly, the Commission should strike Paragraph (c) of the Reynoldses' request for relief in its entirety because it is not authorized by any Commission statute or rule and is wholly irrelevant to this proceeding.

Request for Attorney's Fees

10. In Paragraph (e) of the Second Amended Complaint's request for relief, the Reynoldses seek an award of their attorney's fees and costs for prosecuting this action. The Reynoldses cite no statutory basis by which they are entitled to an award of attorney's fees in this proceeding, and no such basis exists.

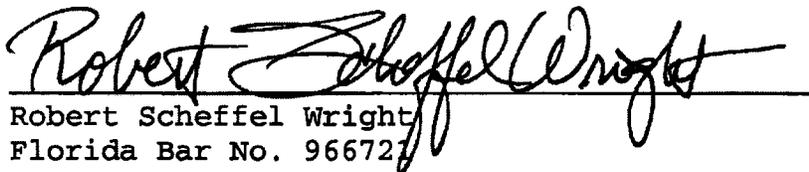
11. It is well-settled that the Commission has no authority to award attorney's fees and costs incurred by a party in a proceeding before the Commission. See In re: Robert D. Evans' Formal Complaint Against Tampa Electric Company Requesting Reimbursement of Money Paid for Installation of Infrastructure on Mr. Evans' Property for Which Tampa Electric Company Failed to Complete, 2012 WL 5210767, Docket No. 120192-EI, Order No. PSC-12-0556-PAA-EI (Oct. 19, 2012) (stating that the Commission has "consistently held that as an administrative body, we lack statutory authority to assess costs and attorney's fees."). Accordingly, the Reynoldses' request for attorney's

fees and costs is unauthorized and irrelevant to this proceeding and should be stricken.

12. Undersigned counsel has contacted counsel for the Reynoldses and is authorized to represent that they tentatively object to this Motion to Strike and reserve the right to file a response.

Wherefore, Monroe County respectfully requests that the Commission issue an order striking paragraphs (c) and (e) of the Second Amended Complaint's request for relief.

Respectfully submitted this 1st day of April 2013.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic mail, on this 1st day of April 2013.

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