BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: 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. | DOCKET NO. 120054-EM<br>ORDER NO. PSC-13-0161-PCO-EM<br>ISSUED: April 19, 2013 |

# ORDER DENYING PETITION TO INTERVENE

## Background

On March 5, 2012, Robert D. Reynolds and Julianne C. Reynolds (the Reynolds), the owners of residential property on No Name Key, Florida, filed a complaint against the Utility Board of the City of Key West, Florida, d.b.a. Keys Energy Services (Keys Energy), for failure to provide electric service to their residence as required by the terms of a Territorial Agreement, which the Commission approved in 1991.[1] The Reynolds filed an amended complaint against Keys Energy on March 13, 2013, and a second amended complaint to correct a scrivener's error on March 20, 2013. The amended complaint asserts that the Commission has exclusive jurisdiction to interpret the territorial agreement it approved and determine whether property owners on No Name Key are entitled to electric service from Keys Energy. Essentially, the amended complaint asks the Commission to order Keys Energy to provide electric service to the Reynolds, as well as other No Name Key property owners who request it, and to determine that Monroe County (County)[2] cannot prevent provision of commercial electric service to No Name Key by the application of its local comprehensive plan or other ordinances.

## Amended Petition to Intervene

After the Reynolds filed their amended complaint, Ms. Alicia Roemmele-Putney filed an Amended Petition to Intervene on March 18, 2013. Ms. Roemmele-Putney claims that she has a substantial interest in this proceeding. She alleges that she expended additional funds to install solar panels and alternative plumbing fixtures when she constructed her house on No Name Key upon assurances that the electrical and water supply would not be extended to the island. She states that she was willing to incur the additional expenses:

> 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.

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[1] Order No. 25127, issued September 9, 1991, in Docket No. 910765-EU, 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.

[2] Monroe County was granted intervention in this proceeding on May 22, 2012, by Order No. PSC-12-0247-PCO-EM.

Amended Petition to Intervene, p.3.

Ms. Roemmele-Putney asserts that her quality of life, the environment on No Name Key, and the "solar community" on the island would be adversely affected by the introduction of commercial electricity to the island.

> 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.

Amended Petition to Intervene, p.4.

Ms. Roemelle-Putney argues that since the No Name Key Property Owners Association (Association) has been granted standing in this proceeding, she should be granted standing as well. Ms. Roemelle-Putney also relies upon the Third District Court of Appeal's opinion in Alicia Roemelle-Putney, et. al., v. Robert D. Reynolds, et. al., 106 So. 3d 78, 82 (Fla. 3d DCA 2013), where she was an appellant. In its opinion, the Court stated: "The appellants do retain, however, the right to seek relief before the PSC, and we express no opinion as to the merits of any such claims by the appellants in that forum." Ms. Roemelle-Putney also relies on the land development code and comprehensive plan of Monroe County that she believes preclude the provision of electric service to the island by Keys Energy. She states in conclusion:

> 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, safety, property interest and investment-backed expectations will be directly affected by the Commission's decision, Intervenor qualifies as a substantially affected person.

Amended Petition to Intervene, p. 4.

Objections to Amended Petition to Intervene

On March 19, 2013, the Association filed a Renewed Opposition to Putney's Motion to Intervene, and on March 25, 2013, the Reynolds filed their Opposition to Alicia Roemmele-Putney's First Amended Motion to Intervene. The Association and the Reynolds both argue that Ms. Roemmele-Putney does not have standing to intervene in this case because she has not shown either that she has a substantial interest of sufficient immediacy to entitle her to a formal administrative hearing, or that her alleged injury is of the type this proceeding before the Commission is designed to protect. They assert that she will not be required to obtain electric

service from Keys Energy and thus she will not suffer an injury in fact and has failed to demonstrate "that she will be directly or indirectly affected if electricity is provided to her neighbors." Association's Renewed Opposition, p.4. They also argue that Ms. Roemmele-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." Association's Renewed Opposition, p. 4.

Ruling

Pursuant to Rule 25-22.039, Florida Administrative Code (F.A.C.), persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties, may petition for leave to intervene. Petitions for leave to intervene must be filed at least five days before the evidentiary hearing, conform with Rule 28-106.201(2), F.A.C., and include 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 Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding. Intervenors take the case as they find it.

To have standing, the intervenor must meet the two-prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981). The intervenor must show that (1) she will suffer injury in fact which is of sufficient immediacy to entitle her to a Section 120.57, F.S., hearing, and (2) the substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. The "injury in fact" must be both real and immediate and not speculative or conjectural. International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla. 3rd DCA 1990). See also, Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

With respect to the first prong of the Agrico test, Ms. Roemmele-Putney has not demonstrated an injury in fact that is real and immediate. If Keys Energy is permitted to serve electric power to No Name Key property owners who request it, and if the property owners connect to Keys Energy's facilities, Ms. Roemmele-Putney will suffer no actual injury. She will not be required to take electric service from Keys Energy. She will be able to continue relying solely on alternative sources of energy on her property, and thus her position will remain the same whether or not others receive service from Keys Energy. See, Ameristeel Corporation v. Clark, 691 So. 2d 473, 478 (Fla. 1997). Suppositions that Ms. Roemmele-Putney's quality of life will be adversely affected or that commercial power infrastructure on the island would degrade her enjoyment of her property are too speculative to confer standing.

With respect to the second prong of the Agrico test, Ms. Roemmele-Putney has not alleged an interest that this proceeding is designed to protect. This proceeding is conducted pursuant to the authority granted to the Commission by the terms of Sections 366.04(2) and (5), F.S., over territorial agreements between electric utilities, to facilitate the planning, development,

and maintenance of a coordinated electric power grid throughout Florida. It is designed to protect interests associated with those statutes. It is not designed to protect environmental interests, quality of life interests, and property interests. These are the interests Ms. Roemmele-Putney has alleged will be harmed. See, Order No. PSC-06-0956-PCO-GU, in Docket No. 060635-EU, In re; Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee, issued November 16, 2006, where the Commission denied intervention to an individual member of the Sierra Club who had a general interest in the environmental impacts of fossil fuel generation. In that Order the Commission noted that the Sierra Club had been granted intervention in the case, and the individual petitioner would have the benefit of representation through that organization.

Conclusion

Ms. Roemmele-Putney's petition to intervene does not meet the legal standard for intervention as a full party in this proceeding and, therefore, I deny the petition. I note, however, that Monroe County has been granted intervention to defend its ordinances precluding electric service to No Name Key. These are the same ordinances Ms. Roemmele-Putney relies upon in her petition, and Ms. Roemmele-Putney will have the benefit of the County's participation in the case. I also note that briefs are due to be filed on April 19, 2013, on certain legal issues identified in Order No. PSC-13-0141-PCO-EM, issued March 25, 2013, which the Commission will consider at its May 14, 2013 Agenda Conference. Although Ms. Roemmele-Putney has been denied intervention, she shall be permitted to file a brief on the legal issues, if she so chooses. Also, the Commission has the discretion to hear from interested persons at its Agenda Conferences, and I will recommend to the Commission that Ms. Roemmele-Putney be permitted to address it on May 14th.

Based on the foregoing, it is

ORDERED by the Eduardo E. Balbis, as Prehearing Officer, that Ms. Alicia Roemmele-Putney's Amended Petion to Intervene is denied.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 19th day of April, 2013.

EDUARDO E. BALBIS
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.