

## Eric Fryson

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**Subject:** Electronic Filing - Docket No. 120054-EM  
**Attachments:** Complainants' Second Motion to Amend Complaint.pdf

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This Second Motion to Amend Complaint is being filed on behalf of Complainants Robert and Julianne Reynolds, Docket Number 120054-EM.

Total Number of Pages – 20

The Complainants' Second Motion to Amend Complaint is a motion to amend their complaint in the action and contains the proposed Third Amended Complaint.

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BEFORE THE STATE OF FLORIDA PUBLIC SERVICE COMMISSION

ROBERT D. REYNOLDS and JULIANNE C.  
REYNOLDS

Complainants,

v.

**SECOND MOTION TO  
AMEND COMPLAINT**

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

Docket Number: 120054-EM

Filed: May 1, 2013

Respondent,

and

MONROE COUNTY, a political subdivision  
of the State of Florida, NO NAME KEY  
PROPERTY OWNERS ASSOCIATION, INC.

Intervenors.

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**COMPLAINANTS, ROBERT D. REYNOLDS AND JULIANNE C. REYNOLDS'  
SECOND MOTION TO AMEND COMPLAINT**

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 this Second Motion to Amend Complaint, and in support state as follows:

1. On March 5, 2012, Mr. and Mrs. Reynolds filed a Complaint with the Florida Public Service Commission ("PSC"). Reynolds' Complaint alleges that the PSC approved a territorial agreement for KES wherein KES is the exclusive provider of commercial electric service to the lower Florida Keys, including No Name Key where the Reynolds home is located. *Id.* at 12 – 13. Reynolds' Complaint alleges that KES has refused to provide commercial power

to Reynolds and other No Name Key Property Owners because Monroe County has enacted a land development regulation prohibiting the extension of utility lines by public utilities to Coastal Barrier Resource Zones, which certain No Name Key Property Owners are located within.<sup>1</sup> *Id.* at ¶¶ 35 – 46.

2. The prayer for relief in Reynolds' Complaint requests, among other things, that the PSC: (c) Issue an Order finding the commercial electrical distribution lines KES extended to each property owner of No Name Key, Florida are legally permissible and properly installed; (c)<sup>2</sup> Issue an Order finding that Monroe County cannot unreasonably withhold building permits from KES' 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;

3. On April 1, 2013, Monroe County filed its Motion to Strike, requesting the PSC strike Petitioners' prayer for relief's mislabeled paragraph (d) and paragraph (e).

4. Petitioner and Monroe County have conferred regarding Monroe County's Motion to Strike and have agreed that Petitioner may amend its complaint to eliminate Petitioner's prayer for relief paragraph (e) and revise mislabeled paragraph (d).

5. Petitioner has also deleted paragraph (14) after consideration of relevant case law.

6. Leave to amend should be freely granted when justice so requires, especially where no harm is caused to the opposing party. In the present case, no party to the action will suffer harm from the Third Amended Complaint because the Third Amended Complaint eliminates parts of the prayer for relief Monroe County has requested be stricken and includes a

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<sup>1</sup> Reynolds' property is not located within a Coastal Barrier Resource Zone, but the extension of utility lines to their property would require KES to place utility lines through a Coastal Barrier Resource Zone.

<sup>2</sup> Second Amended Complaint mislabeled paragraph (d) as paragraph (c).

request that the Public Service Commission find in the affirmative as to its second legal issue contained in the Public Service Commission's Order Establishing Schedule for Briefs on Certain Legal Issues, Order No. PSC-13-0141-PCO-EM.

7. Counsel for the Plaintiffs has conferred with counsel for the parties to this action and Keys Energy Services and No Name Key Property Owner's Association, Inc. are unopposed to the amendment. Monroe County is unopposed to the deletion of the language subject to their motion to strike but specifically reserve their objections and arguments contained in any and all filings it has filed in this matter.

WHEREFORE, the Complainants, ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS, respectfully request that this Commission enter an order (1) granting them leave to amend the Complaint against the Respondents, UTILITY BOARD OF KEY WEST, D.B.A KEYS ENERGY SERVICES and MONROE COUNTY, FLORIDA, A POLITICAL SUBDIVISION; (2) allowing the Third Amended Complaint attached hereto to stand without the necessity of filing a duplicate; and (3) granting such other, further relief as the Commission deems just, equitable and proper.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Electronic Mail to the attached Service List this 1<sup>st</sup> day of May, 2013.

Respectfully submitted,

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BEFORE THE STATE OF FLORIDA PUBLIC SERVICE COMMISSION

ROBERT D. REYNOLDS and JULIANNE C.  
REYNOLDS

Complainants,

v.

**THIRD AMENDED COMPLAINT**

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

Docket Number: 120054-EM

Filed: May 1, 2013

Respondents.

and

MONROE COUNTY, a political subdivision  
of the State of Florida, NO NAME KEY  
PROPERTY OWNERS ASSOCIATION, INC.

Intervenors.

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Complainants, ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS, by and through undersigned counsel and pursuant to Florida Rules of Administrative Code §25-22.036, file this Third Amended Complaint against the Respondent, UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA d.b.a KEYS ENERGY SERVICES and MONROE COUNTY, a political subdivision of the State of Florida, and in support state as follows:

**INTRODUCTION/PARTIES**

1. Complainants, ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS ("Reynolds"), own and maintain real property located at 2160 Bahia Shores Road, No Name Key, Florida 33042 ("Property"). The Property is located on an island in Monroe County, Florida commonly known as No Name Key.

2. Respondent, UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA d.b.a KEYS ENERGY SERVICES (“KES”), is a Florida electric utility with its principal place of business located at 1001 James Street, Key West, Florida 33040.

3. Intervenor, MONROE COUNTY, is a political subdivision of the State of Florida (“Monroe County”).

4. Intervenor, NO NAME KEY PROPERTY OWNERS ASSOCIATION, INC., is a Florida not for profit corporation (“NNKPOA”). NNKPOA is made up of members who own property on No Name Key, Florida and are desirous of connecting to commercial electrical service.

5. KES’ territorial service area includes the island of Key West and extends beyond the City limits for approximately thirty-five (35) miles East through the Lower Florida Keys, terminating at Pigeon Key, Monroe County, Florida.

6. Mr. and Mrs. Reynolds own real property on No Name Key, Florida, located within KES’ territorial service area.

7. With this proceeding Mr. and Mrs. Reynolds seek: (1) a Public Service Commission (“PSC”) Order declaring KES must connect customers located on No Name Key who request service from KES and meet the electrical safety code requirements of the Florida Building Code for electrical connection; (2) a determination that the PSC has exclusive jurisdiction over 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) cannot prohibit KES customers from connecting to the electric utility.

## LEGAL AUTHORITY AND JURISDICTION

8. This is a complaint pursuant to §25-22.036, Florida Administrative Code (“F.A.C.”), seeking authority from the PSC to engage in an activity subject to PSC jurisdiction and complaining of an act or omission by an entity subject to Florida PSC jurisdiction which affects the complainants’ substantial interests and which is in violation of statute enforced by the Commission and Commission order.

9. The PSC is an agency of the State of Florida with regulatory and police powers to regulate public utilities and electric utilities in the State of Florida, including KES. *See* Fla. Stat. §366.01, et. seq. KES was created by legislative enactment Chapter 69-1191 of the Laws of Florida. *See* Chapter 69-1191, Laws of Florida (1969).

10. By statute, KES is defined as an Electric Utility. *See* Fla. Stat. §366.02(2)<sup>1</sup>.

11. The Supreme Court has affirmed that the “PSC derives its authority solely from the legislature, which defines the PSC’s jurisdiction, duties and powers.” *Florida Public Service Commission v. Fred L. Bryson*, 569 So.2d 1253 (Fla. 1990). The Court has specifically held that:

The Commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and services...The jurisdiction conferred upon the commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in case of conflict therewith, all lawful acts, orders, rules and regulations of the commission shall in each instance prevail. *Id.*

12. The PSC not only has the authority over enforcing its territorial agreement, the “PSC has the authority to interpret the statutes that empower it, including jurisdictional statutes and to make rules and issue orders accordingly.” *Id.* at 1255.

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<sup>1</sup> *Electric utility* means any electric municipal utility, investor-owned utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.



13. Fla. Stat. §366.04 empowers the PSC with exclusive jurisdiction over enforcement of a Territorial Agreement of an Electric Utility, including its terms. Fla. Stat. §366.04; *See also* F.A.C. §25-6.004. In *Monroe County v. KES*, the Public Service Commission filed an amicus brief wherein it argued “that it has the exclusive jurisdiction to interpret and enforce its Order approving the terms of the 1991 territorial agreement, and to determine, whether, to what extent, and under what terms and conditions, the residents of No Name Key are entitled to receive electric service from Keys Energy.” *See Motion of the Florida Public Service Commission for Leave to Participate as Amicus Curiae to Inform the Court of its Position Regarding Jurisdiction* filed January 23, 2012, the Circuit of the Sixteenth Judicial Circuit in and for Monroe County, Florida, Case No. 2011-CA-342-K, Order of Dismissal dated January 30, 2012, *supra*, *affirmed with opinion Roemelle-Putney v. Reynolds*, 38 Fla. L. Weekly D300 (Fla. 3<sup>rd</sup> DCA 2013).

#### **FACTUAL BACKGROUND**

14. On September 27, 1991, the PSC issued its Order Approving Territorial Agreement, Order No. 25127, approving the Territorial Agreement governing the territorial service of City Electric Service (“CES”), the predecessor in interest to KES. A true and correct copy of the Territorial Agreement is attached to the previously filed Second Amended Complaint as Exhibit A and incorporated herein by reference.

15. 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 Service Area includes the island of No Name Key.

16. The Territorial Agreement is a PSC Order enforceable solely by the PSC pursuant to the State of Florida's police power. Absent PSC enforcement, the territorial agreement violates state and federal anti-trust statutes.

17. Pursuant to Chapter 366, Florida Statutes, the PSC is empowered to oversee the provision of electric service throughout the State of Florida to approve, supervise and enforce the Territorial Agreement. Moreover, the PSC has exclusive jurisdiction over the planning, development, and maintenance of the coordinated power grid.

18. Since 1969, property owners on No Name Key have sought the extension of commercial electrical service to No Name Key and for decades 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.

19. The overwhelming 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.

20. 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. The net positive impact would far exceed the negative impacts which currently exist as a result of the current pollutants emitted to power the homes on No Name Key.

21. Despite the desire of the majority of the property owners on No Name Key, and the environmental benefits commercial electricity could bring to No Name Key, in 2001, an anti-electricity property owner, Alicia Putney, successfully lobbied the Board of County Commissioners for Monroe County to enact an ordinance that prohibits the extension of utility lines to No Name Key. *See* Monroe County Ordinance 043-2001, a copy of which is attached to the previously filed Second Amended Complaint as Exhibit B and incorporated herein by reference.<sup>2</sup>

22. On September 26, 2001, the Monroe County Planning Commission, including then-Commission member Alicia Putney, approved a resolution (“Planning Resolution”) supporting Ordinance 043-2001. A true and correct copy of the Planning Resolution is attached to the previously filed Second Amended Complaint as Exhibit C and incorporated herein by reference.

23. Monroe County, with the assistance of then-sitting Monroe County Planning Commission member Alicia Putney, who then and still currently resides on No Name Key, drafted Ordinance 043-2001, which prohibits the extension or expansion of public utilities, including electric utilities, through CBRS units. Ordinance 043-2001 amended Monroe County Code Section 9.5-258 by creating an overlay district on all areas, except for Stock Island, within federally designated boundaries of a CBRS Unit. Additionally, Ordinance 043-2001 provides that within the overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity; and telephone cable.

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<sup>2</sup> Notwithstanding the foregoing, Petitioners’ have filed an action in circuit court captioned In the Circuit of the Sixteenth Judicial Circuit in and for Monroe County, Florida, Case No. 2013-CA-86-K, requesting the court declare Ordinance 043-2001 *void ab initio* for failure to properly notice the County Commission vote on said ordinance.

### **Circuit Court Procedural History**

24. On or about April 1, 2011, Monroe County, instituted the case styled as *Monroe County, a political subdivision of the State of Florida v. Utility Board of the City of Key West, Florida d.b.a. Keys Energy Services, et al.*, Case Number 2011-CA-342, in the Circuit Court of the Sixteenth Judicial Circuit, in and for Monroe County, Florida before the Honorable David J. Audlin (“County Law Suit”), on claims of declaratory relief and injunction against KES and all forty-three (43) tax payers which own property located on No Name Key (collectively, “Defendant Owners”).

25. Monroe County’s factual basis for its lawsuit was predicated on Monroe County’s belief that it has jurisdiction to regulate KES’ extension of electric services to property owners of No Name Key. In the County Law Suit, Monroe County and KES argued that Monroe County’s Land Development Regulations govern the extension of the utility line to the property owners of No Name Key in direct contradiction to their prior position in *Board of County Commissioners of Monroe County v. Department of Community Affairs*. A true and correct copy of Monroe County’s Complaint is attached to the previously filed Second Amended Complaint as Exhibit D and incorporated herein by reference.

26. Monroe County has previously taken the position that electrical transmission lines in the right-of-way were not under the regulatory framework of the Comp. Plan as outlined in that certain letter dated April 29, 2010 from the Monroe County Attorney to the General Manager of KES. A true and correct copy of the letter from the Monroe County Attorney to the General Manager of KES letter is attached to the previously filed Second Amended Complaint as Exhibit E and incorporated herein by reference. Moreover, in 1998, Monroe County successfully argued to the Third District Court of Appeals that development did not include the extension of

utility lines down public right-of-ways based on Fla. Stat. § 380.04. *See Board of County Commissioners of Monroe County v. Department of Community Affairs*, 560 So.2d 240, 240 – 241 and Fla. Stat. § 380.04.

27. Mr. and Mrs. Reynolds filed a Motion to Dismiss in response to the County Law Suit, asserting the circuit court lacked subject matter jurisdiction over the issues brought forth in the County Law Suit and that jurisdiction was vested solely with the PSC.

28. On January 30, 2012, the Court granted the Reynolds' Motion to Dismiss, and dismissed the County Law Suit with prejudice, holding that the PSC had exclusive jurisdiction on issues regarding the interpretation and enforcement of territorial agreements, and that the PSC was the proper forum for hearing the issues presented in the County Law Suit. A true and correct copy of the Court's Order of Dismissal with Prejudice is attached to the previously filed Second Amended Complaint as Exhibit F and incorporated herein by reference.

29. Monroe County and Alicia Roemelle-Putney appealed the County Suit dismissal. The Third District Court of Appeal (3<sup>rd</sup> DCA) affirmed Judge Audlin's ruling in the County Law Suit. In reaching its opinion, the 3<sup>rd</sup> DCA found that the legislative authority of Florida Statute Section 366.04(5) grants the PSC jurisdiction over "the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission and distribution facilities." *See Alicia Roemmele-Putney, et al. v. Robert D. Reynolds, et al., supra*, pg. 4. Pursuant to section 366.04(1), the PSC's jurisdiction, when properly invoked, is exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties. *Id.* at 5. Statutory authority granted to the PSC would be eviscerated if initially subject to local

governmental regulation and circuit court injunctions of the kind sought by Monroe County. *Id.* A true and correct copy of the opinion by the Third District Court of Appeal is attached to the previously filed Second Amended Complaint as Exhibit G and incorporated herein by reference.

30. 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. 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.

31. On May 16, 2012 Monroe County, in their continued effort to prevent the majority of the taxpayers owning property on No Name Key from connecting to commercial electricity, once again sued KES alleging the electrical lines were violating the LDR’s and Comp. Plan and sought an injunction against KES (“Count Injunction Suit”). In addition, Monroe County claimed a portion of the distribution lines were crossing over lands which are owned by Monroe County for the benefit of the public at large. The Reynolds intervened and filed a Motion to Dismiss alleging the PSC, not the circuit court had the exclusive jurisdiction over the matter.

32. On February 22, 2012, Judge Audlin, once again ruled that the PSC, not the circuit court, was the proper forum and the agency with the exclusive jurisdiction to decide the merits of the suit. A true and correct copy of Judge Audlin’s Order of Dismissal is attached to the previously filed Second Amended Complaint as Exhibit H and incorporated herein by reference.

#### **Homeowners Attempts to Connect to the Coordinated Power Grid**

33. After KES installed the electric distribution line on No Name Key, Reynolds applied on December 13, 2012 for an electric permit to install a 200 AMP Electric Service and

Subfeed (“Reynolds’ Electric Permit Application”) to connect to the electric distribution line outside their home located on No Name Key.

34. On January 14, 2013, Monroe County denied Reynolds Electric Permit Application (“Reynolds Denial Letter”). A true and correct copy of the Reynolds Denial Letter is attached to the previously filed Second Amended Complaint as Exhibit I and incorporated herein by reference.

35. In addition to the Reynolds attempt to connect the coordinated power grid, Mr. James Newton and Mrs. Ruth Newton (collectively the “Newtons”) attempted to connect to the energized electrical lines on No Name Key. On April 3, 2012, the Newtons applied for an electrical building permit for the installation of 200 AMP Electric Service and Subfeed to their No Name Key property (“Newton Electrical Permit Application”). A true and correct copy of the Electrical Permit Application is attached to the previously filed Second Amended Complaint as Exhibit J and incorporated herein by reference.

36. On May 15, 2012, Monroe County issued the Newtons an electrical permit, bearing permit number 121-1527 (“Newton Electrical Permit”) pursuant to the Electrical Permit Application. A true and correct copy of the Newton Electrical Permit is attached to the previously filed Second Amended Complaint as Exhibit K and incorporated herein by reference.

37. On June 12, 2012, Monroe County revoked the Newton Electrical Permit, stating the permit was issued in error (“Newton Revocation Letter”). A true and correct copy of the Newton Revocation Letter is attached to the previously filed Second Amended Complaint as Exhibit L and incorporated herein by reference.

38. The Revocation Letter, in part, alleges that electrical service is not authorized on a property located within a Coastal Barrier Resource System (“CBRS”) pursuant to the Coastal Barrier Resource Act (“CBRA”).

39. The Newtons and Reynolds’ property are not located within a CBRS, and are therefore not subject to the CBRA. A true and correct copy of the nearest CBRS designated area to the Property is attached to the previously filed Second Amended Complaint as Exhibit M and incorporated herein by reference.

40. Pursuant to Monroe County’s own admissions, the type of service and work which would have been performed pursuant to the Newton Electrical Permit does not conflict with the Comp. Plan, yet the County denied the Newton Electrical Permit in an attempt to regulate the extension of the coordinated power grid and a customer’s connection to said grid. True and correct copies of testimony from Growth Management Director Christine Hurley acknowledging the type of work which would occur pursuant to the Newton Electrical Permit is attached to the previously filed Second Amended Complaint as Exhibit N and incorporated herein by reference.

41. The present dispute arises under the Territorial Agreement’s terms of service which require KES to extend and maintain power to all property owners within the Territorial Service Area. Although KES has attempted to provide service to Reynolds’ property, to date KES has failed to provide electricity to and connect Reynolds’ property to the coordinated power grid due to Monroe County’s intentional interference in the jurisdiction of the PSC to plan, develop, and maintain the coordinated power grid.



**KES is Required and Authorized Pursuant to the Territorial Agreement to Complete the Extension of Commercial Electricity Lines to All Homeowners on No Name Key, Florida.**

42. KES has extended commercial electrical distribution lines to the island of No Name Key and is required to connect customers despite the regulations imposed by Monroe County. To date, KES has failed to connect customers requesting service due to Monroe County's insistence that it can regulate a property owner's connection to the coordinated power grid.

**Monroe County Cannot Prohibit a Customer's Connection to KES**

43. 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. (*underline and emphasis added*).

See the Territorial Agreement, Section 6.1, Construction of Agreement.

44. 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 which states:

"the Parties are authorized, empowered and obligated to furnish by their corporate charters and the laws of the State of Florida to furnish electric service to persons requesting such service within their respective areas;" ("underline added")

KES enabling legislation under the laws of the State of Florida states that KES has:

"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).

45. 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 lines to any party requesting such an extension when the requesting party supplies the requisite funding for the extension.

46. KES, pursuant to Chapter 163, Florida Statutes, has the authority to install electrical transmission lines in the established rights of way. KES has installed the electrical lines on No Name Key, in the established rights of way.

47. KES, pursuant to the pursuant to Chapter 163, Florida Statutes, the State of Florida’s enabling legislation, its Territorial Agreement and incorporated Territorial Service Area has properly installed the distribution system to No Name Key and is properly maintaining such system.

49. Monroe County has prohibited the issuance of a building permit to connect No Name Key property owners to the KES distributions lines on No Name Key. Monroe County’s refusal to issue building permits for connection to KES’ distribution line is based solely on Monroe County’s incorrect belief that it has the authority to regulate a customer’s ability to be supplied electrical power within KES territory and that pursuant to Ordinance 43-2001 it can prohibit a customer from connecting to KES electrical line.

50. Reynolds asserts that Monroe County has no jurisdiction over KES planning, development and maintenance of the distribution line which would connect Reynolds to the coordinated power grid. Reynolds position is that the PSC has exclusive jurisdiction over the planning, development and maintenance of the coordinated power grid. Moreover, the PSC has

the jurisdiction to enforce the terms of its Order approving KES territorial agreement, including the provisions which require KES to provide service to customers upon agreement of reasonable provisions for the providing of service.

51. Notwithstanding the foregoing, the connection of customers to an electrical utility is not within the purview of Ordinance 043-2001. Specifically, on-site electrical systems do not constitute public utility transmission or collection lines under Monroe County Code. *See* Section 19-31, Monroe County Code (Public or private utility includes any pipeline, gas, electric, heat, water, oil, sewer, telephone, telegraph, radio, cable television, transportation, communication or other system by whomsoever owned and operated for public use, including, but not limited to, the Florida Keys Aqueduct Authority, BellSouth,<sup>3</sup> Keys Energy System, The Florida Keys Electric Cooperative Association, Inc. and/or their successors, affiliates, subsidiaries or assigns). A private individual's on-site electric system and connection does not fall under Monroe County Ordinance 043-2001 which prohibits the extension of transmission or collection lines by public utilities.

52. More so, Reynolds asserts that prohibiting No Name Key property owners from connecting to commercial power violates the equal protection clause of the Florida Constitution by unfairly discriminating against No Name Key property owners because Monroe County's building code does not prohibit the connection of homes to commercial power. The connection to KES' commercial power grid by a No Name Key property owner does not constitute the extension of public utilities into Coastal Barrier areas as on-site electrical power, including wiring, conduit, and transmission systems existing on each No Name Key property do not fall under the definition of public utilities. Therefore, connection to commercial power can only be

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<sup>3</sup> Bellsouth's successor in interest, AT&T, already has high speed internet and phone service extended to No Name Key and the law is clear Monroe County does not have jurisdiction to regulate telephone providers.

prohibited based on health, safety, or welfare concerns already built into the building code. Should No Name Key property owners comply with all building code requirements, No Name Key property owners would be discriminated against if prohibited from connecting to commercial power.

53. Reynolds asserts Monroe County's position unreasonably infringes upon each No Name Key property owners' right under the Territorial Agreement to be furnished with electric service upon request.

**RELIEF REQUESTED**

WHEREFORE, the Complainant, ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS, respectfully request that this Honorable Commission:

(a) Exercise jurisdiction over this action and the parties hereto;

(b) Issue an Order declaring the PSC's jurisdiction preempts Monroe County's enforcement of Ordinance 043-2001 as it applies to KES, its territorial agreement and enabling legislation;

(c) Issue an Order finding the commercial electrical distribution lines KES extended to each property owner of No Name Key, Florida are legally permissible and properly installed;

(d) Issue an Order finding Reynolds are entitled to receive electric power from Keys Energy; and

(e) Award such other and supplemental relief as may be just and necessary under the circumstances.

**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 1<sup>st</sup> day of May, 2013.

Respectfully submitted,

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/s/ Barton W. Smith, Esq.

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