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**Subject:** DOCKET NUMBER 120054- EM- REYNOLDS OPPOSITION TO MOTION FOR STAY  
**Attachments:** Reynolds PSC Opposition to Motion to Stay (final) v2.pdf

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This Opposition to Alicia Roemmele-Putney's for Motion to Stay of Proceedings is being filed on behalf of Complainants Robert and Julianne Reynolds.

Total Number of Pages - 8

Thank you,

*Keilina M. Castro*

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BEFORE THE STATE OF FLORIDA PUBLIC SERVICE COMMISSION

ROBERT D. REYNOLDS and JULIANNE C.  
REYNOLDS

Complainants,

v.

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

Docket No. 120054

Respondents.

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**COMPLAINANTS, ROBERT D. REYNOLDS AND JULIANNE C. REYNOLDS'  
OPPOSITION TO ALICIA ROEMMELE-PUTNEY'S MOTION FOR STAY OF  
PROCEEDINGS**

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 their opposition to Alicia Roemmele-Putney's Motion for Stay in Proceedings ("Motion to Stay"), and in support state as follows:

**PROCEDURAL HISTORY**

1. On May 7, 2013,<sup>1</sup> Alicia Roemmele-Putney ("Putney") filed her motion to stay the above-styled action based on her petition for review of a non-final order in which she requests the Florida Supreme Court review the Florida Public Service Commission's ("PSC") order denying her intervention, PSC Order No. PSC-13-0161-PCO-EM.

2. In her Motion to Stay, Ms. Putney alleges that the staying the proceedings for the duration of the review proceedings will minimize unnecessary expenditures and PSC resources

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<sup>1</sup> Ms. Putney's Motion for Stay of Proceedings' caption claims it was filed on May 2, 2013, but it was not served and filed until May 7, 2013.

and will advance the interests of justice. *See* Motion to Stay, ¶2. Ms. Putney further claims she will be prejudiced if the case were to continue without her participation to establish a proper record. *See* Motion to Stay, ¶3.

**MEMORANDUM OF LAW IN OPPOSITION TO THE UTILITY BOARD'S RESPONSE  
TO COMPLAINT AND MOTION TO DISMISS**

Ms. Putney's Motion to Stay should be denied because it provides no basis to stay these proceedings, does not address the fact that she has been permitted to participate fully in the above-styled action by submitting briefs and arguing in favor of her positions at conferences and in hearings, and does not show how, if at all, Ms. Putney would be prejudiced if the case were to proceed in its current posture.

Notwithstanding Ms. Putney's bald assertion of prejudice if not permitted to participate in the above-styled action as an intervenor, Ms. Putney has been permitted to participate throughout these proceedings, including attending all informal conference calls, submitting an initial brief pursuant to the PSC's Order Establishing Schedule for Briefs on Certain Legal Issues ("Order on Briefs"), and being recommended by PSC Hearing Officer Balbis to be allowed to fully participate in the final hearing of the above-styled action scheduled for May 14, 2013. *See* PSC Order No. PSC-13-0141-PCO-EM (the Order on Briefs) and PSC Order No. PSC-13-0161-PCO-EM (Order Denying Intervention). Based upon representations by Ms. Putney's counsel, Robert Hartsell, Esq., Ms. Putney is expected to take advantage of PSC Hearing Officer Balbis' recommendation and participate in the May 14<sup>th</sup> final hearing through Ms. Debra Swim, Esq.

Additionally, Ms. Putney's Initial Brief was reviewed and considered by the PSC's staff in preparing the recommendations to the PSC dated May 2, 2013 ("PSC Staff Recommendation"). *See* PSC Staff Recommendation, pgs. 17 – 18, 21 – 22, and 24. The PSC Staff Recommendation notes that Ms. Putney's positions are consistent with Monroe County's positions. *See* PSC Staff

Recommendation, pg. 17. After paying due consideration to the legal arguments of both Monroe County and Ms. Putney, the PSC staff recommended that the PSC has jurisdiction to decide the issues presented in the Petitioners' Complaint, and that the Petitioners are entitled to receive electric service. In doing so, the PSC staff explicitly addressed the arguments of both Monroe County and Ms. Putney regarding the Territorial Agreement's language in paragraph 6.1. *See* PSC Recommendation, pg. 22. In the PSC Recommendation, Ms. Putney's arguments received the same result as Monroe County's arguments, an actual party in the above-styled action. That fact clearly demonstrates that Ms. Putney's classification as a non-Intervenor has not prejudiced her in any way. She has had a full opportunity to participate, and her arguments have received identical consideration and review of actual parties to the action.

Based on the foregoing, Ms. Putney did not identify any factual circumstance that would necessitate staying the case. She baldly asserts she will be prejudiced should the case proceed to final hearing, but cannot provide any basis for her assertion. Her claim that her lack of participation as an Intervenor would not establish a proper record is without merit because she will be able to participate in the final hearing, just as she has fully participated in all other proceedings in this action. Thus, she loses nothing if the above-styled action proceeds.

Furthermore, the staying of an action during an interlocutory review is discretionary, and is not mandatory. Fla. Stat. §120.68(3) and Fla.R.App.P. 9.130(e)(2) state that a proceeding may be stayed pending an interlocutory review of an order of an administrative agency. In such a case, it is a balance of interests. Here, Ms. Putney cannot identify any justification or reason to stay the proceedings except claiming the broad general assertion of judicial economy. She does not identify how continuing the case will cause an unnecessary expenditure of the parties' and PSC's resources or will advance the "interests of justice". *See* Motion to Stay, ¶2.

In support of her position, Ms. Putney cites to the case of *Hathaway v. Munroe*, 97 Fla. 28 (Fla. 1929). *Hathaway* has no bearing on the above-styled action, and does not stand for the premise that staying proceedings will “minimize the unnecessary expenditures of the parties’ and PSC resources, and will advance the interests of justice.” *See* Motion to Stay, ¶2.

*Hathaway* was an injunction case involving a request for a supersedeas. *See Hathaway*, at 30. In *Hathaway*, a tax payer sought to enjoin the State Road Department, predecessor to the Florida Department of Transportation, from (1) awarding contracts; (2) accepting any bids on contracts; and (3) executing contracts from the construction of roads for Florida’s Highways. *Id.* *Hathaway* was predicated upon the fact that the State Road Department did not adopt a budget, as required to do by Florida law, and that the contracts at issue would exceed the amount of funds collected for the year in question. *Id.*, at 31. The legal question at issue in *Hathaway* was whether the State Road Department could be granted a supersedeas during the pendency of the appeal in order to maintain the status quo of the property and rights at issue in the case. *Id.* Thus, *Hathaway* dealt with a determination of whether it was appropriate to maintain the status quo regarding the construction of roads, and not whether it would be judicially economic to stay litigation. Nowhere in *Hathaway* are the issues of judicial economy or judicial preservation of resources discussed. *Hathaway* has no bearing on the present matter or the request of Ms. Putney.

In the above-styled action, Ms. Putney has been involved and submitted arguments at all stages of the proceedings, and is expected to continue to do so during the final hearing of this action. How then is she prejudiced by the continued progression of the above-styled action? The simple answer is that she is not prejudiced. The fundamental right granted through participation in litigation is the right to be heard and confront the evidence and argument against a party’s position. Although Ms. Putney has been denied Intervenor status, at every stage of the above-

styled action her arguments have been heard, weighed, and considered. Furthermore, she has had the opportunity to hear and argue against the positions of the Complainants. As an Intervenor, she would be entitled to nothing more than what she has already been granted. So, it is obvious that she has not been prejudiced by the progression of this case.

In her Motion to Stay, Ms. Putney also alleges that no party will be prejudiced as no final order may be rendered until her pending appeal is dispensed with. In this instance, judicial economy and the prejudicial effect of a stay favor not staying these proceedings. All parties, presumably, including Ms. Putney, have made travel arrangements to be present at the May 14<sup>th</sup> hearing, including the undersigned counsel, two of Monroe County's counsel, Ms. Putney, Ms. Putney's counsel, members of the No Name Key Property Owner's Association, Inc., amongst others. Should Ms. Putney's request to stay proceedings be granted the final hearing will be delayed, all parties will have to reschedule, and should Ms. Putney's appeal be denied, months will be lost.

Assuming, *arguendo*, that Ms. Putney's appeal results in an opinion in her favor, any such reversal would have no effect on the proceedings as the Order Denying Intervention would be considered harmless error because Ms. Putney has had her brief considered, exactly as a full party would have, participated at the final hearing, exactly as a full party did, and has the opportunity to appeal any final agency action, if she should be found to pass the *Agrico* test.

In *Gregory v. Indian River County*, the exact same circumstances as those present for Ms. Putney here occurred where the Appellants moved to intervene, were denied standing and appealed the Department of Environmental Regulations ("DER") granting of a permit to Indian River County for the construction of a stormwater system and dredge and fill activities amongst other issues appealed. *See Gregory v. Indian River County*, 610 So.2d 547, 549 (Fla. 1<sup>st</sup> DCA 1992).

In *Indian River County*, Indian River County applied for permits to DER, DER issued its intent to grant the requested permits, and appellants moved to intervene and petition for a formal hearing. *Id.* at 550. A formal hearing was held where the appellants were allowed to present and cross-examine witnesses, even presenting an expert witness. *Id.* On appeal, the First District Court of Appeal found that the appellants did have standing, and it was error, but *where a party is provided the "full opportunity to participate and present evidence, and the hearing officer rules on all issues which the intervenor may properly contest" it is considered harmless error.* *Id.* at 555 (*Emphasis added*). The First District Court of Appeal concluded that the denial of standing was harmless error as the appellants were afforded the opportunity to participate.

Here, the same facts and principal of law holds true. Ms. Putney petitioned to intervene and has been denied intervention. Nonetheless, she has been permitted to participate, including filing briefs that were considered in Staff's recommendations and participating at the final hearing. Thus, any error that could occur by proceeding to the final hearing would be harmless error. Conversely, should the PSC stay the matter, the parties and PSC will have to delay the final hearing causing undue harm and financial hardship on the parties. All that can be gained from a stay is the accomplishment of Ms. Putney's goal, to prevent or delay her neighbors from obtaining electrical service from Keys Energy Services.

WHEREFORE, Complainants ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS respectfully request the Commission enter an Order denying Alicia Roemmele-Putney's Motion to Stay and for such other relief the Commission may deem appropriate.

#### **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 9<sup>th</sup> day of May, 2013.

Respectfully submitted,

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