

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 2

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, May 14, 2013

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

1 Owners Association, Monroe County, and Ms. Putney are
2 here to address the Commissioners, and there are also
3 some individual customers who would like to address the
4 Commission on Issues 3, 4, and 5.

5 We'd like to note at the outset that we
6 revised this recommendation on Friday to add Issue A
7 which addresses Ms. Putney's motion to stay this
8 proceeding pending her petition to the Florida Supreme
9 Court to review the Prehearing Officer's denial of her
10 petition to intervene. That motion was filed May 7th.
11 The Reynolds responded to the motion on May 8th.
12 Neither party has requested oral argument on the motion.

13 We recommend that you proceed by addressing
14 Issue A first, then Issues 1 and 2, which is Monroe
15 County's motion to dismiss. And then Issues 3, 4, and 5
16 perhaps could be addressed together or however you all
17 want to proceed. Those are the Proposed Agency Action
18 issues in the recommendation.

19 **CHAIRMAN BRISÉ:** Thank you.

20 So we are going to address Issue A, and then
21 we are going to address Issues 1 and 2, and then we are
22 going to move into Issues 3 through 6. Then we are
23 going to hear from -- in addressing Issues 3 through 6,
24 I think it would be appropriate for us to hear from the
25 consumers and those representing them on Issues 3

1 through 6, and then we'll have our discussion,
2 questions, and so forth.

3 So now we are on Issue A. No oral argument
4 was requested, so it's open for discussion by the
5 Commission.

6 Commissioner Edgar.

7 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

8 I had the opportunity to review the documents
9 and have substantial discussion with our staff, which
10 was also very helpful. And I would like to, you know,
11 thank and commend Ms. Putney for her interest and for
12 her participation in this docket, and for her
13 participation in the Commission's proceedings in this
14 forum.

15 However, I do not believe that the request or
16 the motion for stay meets the requirements set out.
17 And, therefore, either now or at the appropriate time I
18 would move that we approve the staff recommendation on
19 Issue A.

20 **CHAIRMAN BRISÉ:** Okay. Commissioners?

21 Okay. So would you like to convert that into
22 a motion?

23 **COMMISSIONER EDGAR:** I move that we deny the
24 request for the motion for stay of proceedings as is the
25 staff recommendation on Issue A.

1 **CHAIRMAN BRISÉ:** Okay. It has been moved and
2 seconded.

3 Any further discussion?

4 Seeing none, all in favor say aye.

5 (Vote taken.)

6 **CHAIRMAN BRISÉ:** All right. Thank you.

7 Moving on to Issue Number 1. Okay. Again,
8 here no oral argument was requested. If anyone has
9 questions regarding this item, you are able to ask
10 questions, but we are also in the posture to entertain a
11 motion, if that is the desire.

12 Commissioner Balbis.

13 **COMMISSIONER BALBIS:** Mr. Chairman, because no
14 party has requested oral argument, I move staff's
15 recommendation on Issue 1.

16 **CHAIRMAN BRISÉ:** Okay. It has been moved and
17 seconded.

18 Any further discussion?

19 Seeing none, all in favor say aye.

20 (Vote taken.)

21 **CHAIRMAN BRISÉ:** Okay. Thank you. Moving on
22 to Issue Number 2.

23 Again, this is another issue that no oral
24 argument was requested. Commissioners are welcome to
25 ask questions if they feel it's necessary.

1 Commissioner Edgar.

2 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

3 I did have this discussion with staff.

4 But for purposes of our discussion today, I would
5 ask staff to clarify for me what the cause of action
6 is that is in the information before us.

7 **MS. BROWN:** Commissioner, the cause of action
8 in this case is the Reynolds complaint filed pursuant to
9 our rule on complaints begins a party -- a person
10 subject to Commission jurisdiction which affects the
11 complainant's substantial interest and which is in
12 violation of a statute enforced by the Commission or any
13 Commission rule or order.

14 The complaint is that Keys Energy, a person
15 subject to the Commission's jurisdiction under 366.04,
16 has failed to comply with the terms of the territorial
17 agreement that the Commission approved in 1991. And the
18 relief requested would be for the Commission to
19 determine that the Reynolds and the No Name Key Property
20 Owners Association are entitled to receive electric
21 service from Keys Energy.

22 **COMMISSIONER EDGAR:** Thank you.

23 And, Mr. Chairman and Commissioners, I concur
24 with the staff analysis and, therefore, I move the staff
25 recommendation to deny the request to dismiss the

1 Reynolds complaint.

2 **CHAIRMAN BRISÉ:** Okay. It has been moved and
3 seconded.

4 Any further discussion?

5 Seeing none, all in favor say aye.

6 (Vote taken.)

7 **CHAIRMAN BRISÉ:** Okay. Thank you.

8 Now moving on to Issue 3 through 6. And we
9 are going to sort of take them together, because I
10 believe those who are going to speak are going to speak
11 on those issues together. So we are going to give the
12 attorneys an opportunity to sort of tee it up, and then
13 we'll ask those who are here from the No Name Key area
14 to come up and you will have about five minutes to
15 express your thoughts.

16 Okay. So we will start with the attorney or
17 the attorneys for Alicia Putney, and that is Deb Swim.

18 **MS. BROWN:** Mr. Chairman, I think since this
19 is the Reynolds complaint, perhaps it would be better
20 for them to go first.

21 **CHAIRMAN BRISÉ:** You're absolutely right.
22 Thank you.

23 So we will ask Mr. Bart Smith.

24 **MR. SMITH:** (Inaudible; microphone off.)

25 I apologize. We are here today requesting

1 that the Public Service Commission enforce the terms of
2 the territorial agreement and find that the Reynolds and
3 the No Name Key Property Owners Association is entitled
4 to receive power from Keys Energy Services. And this
5 all stems from the territorial agreement, and so we have
6 to ask what is a territorial agreement. It's more than
7 just lines on a map. It is about people. It's about
8 customers. It's about the customers that are served by
9 the utility.

10 Here the PSC, pursuant to the grid bill, was
11 granted the exclusive jurisdiction to plan, develop, and
12 maintain the power grid. As part of planning and
13 developing the power grid, the PSC was expressly granted
14 the authority to grant territorial agreements. This is
15 considered exclusive and preemptive jurisdiction over
16 this issue. So once we have determined that the Public
17 Service Commission has the exclusive and preemptive
18 jurisdiction over this issue, the Public Service
19 Commission then has the authority to rule.

20 When a territorial agreement is granted, the
21 PSC is obligated to actively police the terms of the
22 agreement to ensure that the agreement does not violate
23 the Sherman Antitrust Act. And should the PSC not
24 exercise jurisdiction over this agreement, it's not
25 doing so, it's not actively policing this agreement. In

1 fact, it is leaving people that have no choice over
2 their electric provider without the ability to obtain
3 electricity. Therefore, we are requesting that the PSC
4 accept jurisdiction.

5 In fact, what are antitrust regulations but
6 protection for the consumer? And here the consumers are
7 asking for the Public Service Commission to protect them
8 and to allow them to receive a service that is
9 considered one of the fundamental rights in the State of
10 Florida.

11 It is explicit through the PSC's statutory
12 authority that the Public Service Commission has
13 jurisdiction to enforce a territorial agreement for the
14 benefit of a consumer who has agreed to pay for service
15 under reasonable terms. Here the allegations are that
16 they have agreed to pay for service under reasonable
17 terms. In fact, Dale Finigan from Keys Energy is here
18 to testify that they have already installed the lines,
19 and at this time Monroe County is refusing to issue the
20 permits to actually allow the connection.

21 Chapter 366 specifically states in the first
22 section, the first section of Chapter 366 that it is in
23 the public interest and this chapter shall be deemed to
24 be an exercise of the police power of the state for the
25 protection of the public welfare, and all the provisions

1 hereof shall be liberally construed for the
2 accomplishment of that purpose. This gives the Public
3 Service Commission jurisdiction over this issue, and it
4 does not even need to be liberally construed that the
5 statutes that empower the PSC provide for jurisdiction.

6 Now, the question here is Monroe County is
7 claiming that their LDRs and comp plan would prohibit
8 this connection. What is a comp plan? A comprehensive
9 plan by law is the county's principles that guide
10 development. And what are the land development
11 regulations? Land development regulations implement the
12 comprehensive plan. However, Chapter 366.045 states
13 that the exclusive jurisdiction over the planning and
14 development -- development of the coordinated power grid
15 is within the jurisdiction of the Public Service
16 Commission. So in that sense the legislature has
17 expressly preempted local governments in the area of the
18 power grid, and so that puts the jurisdiction solely
19 within the Public Service Commission.

20 When this jurisdiction is invoked by the
21 Commission, it is superior to any political subdivision,
22 including Monroe County. This is expressly stated in
23 the statutes that empower the Commission, and it was
24 also found in the predecessor case that brought us here
25 today, which was Roemmele Putney versus Reynolds.

1 So, therefore, based on the forgoing, we are
2 requesting that the Public Service Commission find that
3 it has jurisdiction. And as the Third DCA has aptly
4 stated, that if this Public Service Commission does not
5 have jurisdiction over this issue and allows it go to
6 Monroe County, the statutory authority granted to the
7 PSC would be eviscerated if initially subject to the
8 government regulations.

9 So based on the forgoing, we would request
10 that the Commission find that it has jurisdiction over
11 this issue. Thank you.

12 **CHAIRMAN BRISÉ:** Thank you.

13 All right. So we will now hear from Monroe
14 County.

15 **MR. WRIGHT:** Thank you, Mr. Chairman. Good
16 morning, Schef Wright of the Gardner Bist Weiner law
17 firm appearing on behalf of Monroe County. Also with me
18 are Robert Shillinger, the county attorney, and
19 assistant county attorneys Derek Howard and Steve
20 Williams. We appreciate the opportunity to be heard
21 this morning.

22 I have some prepared remarks. I'm going to
23 talk about basically three things; what this case is
24 about, what it's not about, the black letter law
25 applicable to several issues that are implicated here.

1 And ultimately preemption, the preemption issue which
2 relates to the relationship between the Commission's
3 authority over territorial matters as compared to Monroe
4 County's regulatory jurisdiction pursuant to other
5 sections of Florida law over growth management and
6 specifically protecting the Florida Keys.

7 I'll start with what the case is and is not
8 about. This case is not about Monroe County attempting
9 to supplant or interfere with the Public Service
10 Commission's regulation in any way. The county is not
11 attempting to regulate anything the Commission
12 regulates. This should be clear on its face, because
13 there is no issue in play between the parties to the
14 territorial agreement. There is no territorial dispute,
15 and there is no conceivable threat of uneconomic
16 duplication of facilities, which is the whole purpose of
17 territorial regulation.

18 The county fully respects the Commission's
19 jurisdiction to regulate territorial disputes and to
20 regulate those six specific matters that are set forth
21 in Section 366.04, Sub 2, over which the Commission does
22 have express authority with respect to municipal and
23 cooperative utilities. Those are prescribe the Uniform
24 System of Accounts, prescribe a rate structure, approve
25 territorial agreements, resolve territorial disputes,

1 require conservation and reliability, and require
2 reports. None of these jurisdictional matters is in
3 play here.

4 This case is about the county's efforts to
5 continue, as it has been doing for nearly 20 years now,
6 to continue its implementation of the legislatively
7 mandated statewide growth management scheme, system, the
8 comp plan system, and the specific express statutory
9 mandate imposed on the county to protect the Florida
10 Keys as an area of critical state concern.

11 Your jurisdiction is surely superior to those
12 matters over which you have jurisdiction, but here there
13 is no express statutory obligation to serve. There is
14 no express statutory right to serve as conferred upon
15 any would-be customer of an electric utility, of a muni,
16 or a co-op as compared to an IOU for which there is an
17 obligation to serve under 366.03, and there is no
18 express grant of power to the Commission to require KES
19 to serve.

20 Before I leave the subject of jurisdiction, I
21 would like to fill in a couple of blanks as to what the
22 Third District Court of Appeal said. Yes, the court
23 said the PSC's jurisdiction when properly invoked as
24 here is exclusive and superior to that of all other
25 units of Florida government. We certainly agree with

1 this general principle. But as we discuss in detail
2 later, we strongly disagree that your jurisdiction has
3 been properly invoked here.

4 The point here, though, is that the court also
5 said as a threshold matter the PSC is to determine its
6 own jurisdiction, citing Bryson. They also said any
7 claim by the appellant homeowners that the PSC does not
8 have jurisdiction may be raised before the PSC, and if
9 unsuccessful there, by direct appeal to the Florida
10 Supreme Court. And they went on to say the appellants
11 do retain, however, the right to seek relief before the
12 PSC, and we express no opinion as to the merits of any
13 such claims by the appellants in that forum. Nobody
14 else told you that.

15 Now, the black letter law relating to your
16 jurisprudence as to the scope of your jurisdiction has
17 long been followed by the Commission and long followed
18 by the Florida Supreme Court in upholding your orders.
19 The rule is this, quote, "This Commission's powers and
20 duties are only those conferred expressly or impliedly
21 by statute. And any reasonable doubt as to the
22 existence of a particular power compels us to resolve
23 that doubt against the exercise of such jurisdiction,"
24 unquote.

25 That was the Commission speaking in the

1 underlying order in Lee County Electric Co-op v.
2 Seminole Electric Co-op. This was affirmed by the
3 Florida Supreme Court on exactly the same rationale
4 citing the Commission's brief, citing the Commission's
5 order under the name of Lee County Electric Co-op v.
6 Jacobs. It has also been followed in numerous other
7 cases by the Florida Supreme Court.

8 Again, here there is no express statutory
9 obligation to serve, no express statutory right to
10 service, and no express power conferred upon this
11 Commission to order a municipal utility or a cooperative
12 utility to serve. Accordingly, there is way more than a
13 reasonable doubt as to the existence or nonexistence of
14 this asserted power. There is a conclusive absence of
15 any power to do so. In Lee County Co-op there was at
16 least a plausibly close call in that you had a complaint
17 against an electric utility over the Respondent,
18 Seminole Electric Co-op's, rate structure. But you, the
19 Commission, had a reasonable doubt that even with that
20 statutory language that that power existed, and you
21 didn't exercise it, and the Supreme Court upheld you.

22 As the territorial agreement relates to this,
23 the staff's argument appears to be, and the Reynolds'
24 argument appears to be that the territorial agreement
25 articulates an obligation to serve where the territorial

1 agreement says the agreement shall be construed to
2 encourage the installation and maintenance of facilities
3 necessary to fulfill the parties' respective obligations
4 to serve. However, the Reynolds lack standing under the
5 territorial agreement. The agreement on its face says
6 nothing in this agreement -- which you approved, which
7 is now part of your order -- nothing in this agreement
8 shall be construed to confer any right, remedy, cause of
9 action, or anything else on any other party other than
10 exclusively KES, Keys Electric Service, and Florida Keys
11 Electric Co-op.

12 The fact that KES and Keys Electric Co-op
13 included this nice precatory language in their
14 territorial agreement is fine, but it cannot confer
15 jurisdiction on the Commission. Only the Florida
16 Legislature can confer that jurisdiction.

17 With regard to the assertion that 366.04,
18 Sub 1, establishes the Commission's jurisdictional
19 superiority over all aspects of the county's comp plan
20 and land development regulations, we assert that is
21 misplaced. First, 366.04, Sub 1 applies to public
22 utilities, not to electric utilities which are covered
23 in 366.04, Sub 2. Even if you assume that the section
24 were applicable to the Commission's powers over electric
25 utilities, we strongly believe that your jurisdiction is

1 only superior as far as it goes. And here the
2 legislature said this, in the statute it says the
3 jurisdiction conferred upon the Commission shall be
4 exclusive and superior. This means that the
5 jurisdiction that is conferred is exclusive and
6 superior, and we don't disagree with this.

7 We don't disagree that your jurisdiction to
8 prescribe the Uniform System of Accounts, to prescribe a
9 rate structure, to require conservation and reliability,
10 to approve territorial agreements, to resolve
11 territorial disputes, and to require reports is
12 superior. It is. But there is nothing in the statute
13 that provides a statutory obligation to serve on KES
14 that the Commission can enforce, that confers a
15 statutory right to service on would-be customers of KES,
16 or that confers upon this Commission the authority to
17 order KES to serve.

18 The county's comp plan and its land
19 development regulations exist in another sphere. They
20 do not impinge upon the Commission's jurisdiction to
21 regulate any of the specific jurisdictional matters
22 conferred on the Commission by 366.04, Sub 2.

23 And this leads into the preemption analysis.
24 And the staff asserts that the Commission's jurisdiction
25 is exclusive and preemptive, quote. It is Page 27 of

1 the recommendation. However, Florida case law makes
2 clear that any preemption of otherwise valid local
3 ordinances and regulations must be express, particularly
4 where the local government action that the other state
5 agency, the county in this case, seeks to preempt or
6 that the state agency, the Commission here seeks to
7 preempt the county's regulations, involves protection of
8 the public health and welfare.

9 It is indisputable that the county's comp plan
10 and associated land development regulations are an
11 exercise of the county's power delegated to it by the
12 Florida Legislature under 380.0552, Sub 7, Sub N, to
13 protect, quote, the public health, safety, and welfare
14 of the citizens of the Florida Keys and maintaining the
15 Florida Keys as a unique Florida resource.

16 Further, in M&H Profit versus City of Panama
17 City Beach, the First DCA stated the following, "The
18 protection of the welfare of the local citizenry through
19 the adoption of generally applicable land development
20 regulations has been exclusively within the province of
21 local government."

22 Similarly, in your brief, in the Commission's
23 brief to the Florida Supreme Court in Lee County Co-op
24 v. Jacobs, the Commission arguing in support of its
25 position that any exercise of a power, the existence of

1 which is subject to a reasonable doubt should be
2 arrested, cited to an admittedly old case, although your
3 fine attorneys pointed out that it was surely still
4 applicable during the early 2000s when this appeal went
5 on, St. Petersburg v. Carter, where the court said,
6 "There is no occasion to give one statutory creature,
7 such as your predecessor, the Florida Railroad and
8 Public Utilities Commission, jurisdiction over the
9 activities of another statutory creature, to wit, a duly
10 chartered municipality which is a distinct governmental
11 unit unless the law unmistakably so provides."

12 There is no unmistakable provision granting
13 the PSC preemptive power over Monroe County's Comp Plan
14 or the county's and the Department of Community Affairs,
15 now DEO, mandates under Chapter 163, and also under the
16 Florida Keys Protection Act. And, accordingly, there
17 can be no preemption here.

18 Commissioners, all the county wants to do here
19 is carry out its duties under the state comp planning
20 scheme, under the state's comp planning statutes, and
21 under the Florida Keys Protection Act. We operate under
22 these statutory mandates. Our regulation of the Coastal
23 Barrier Resource System, our regulation of growth
24 management does not conflict with any of your express
25 authority with respect to municipal utilities, or co-ops

1 for that matter.

2 The harmonious reading here of Chapter 366 and
3 Chapter 380 is for the Commission to regulate those
4 things over which it has express jurisdiction. For
5 example, to resolve a real territorial dispute where one
6 might exist, and for the county to regulate those things
7 over which it has express jurisdiction, specifically its
8 statutory mandates to protect pursuant to the comp plan
9 scheme, pursuant to the comp plan that was approved by
10 the DCA and adopted in the DCA's rules, and pursuant to
11 the Florida Keys Protection Act.

12 The Legislature surely could have given you
13 express preemptive power over these matters. They did
14 not. Your statutes do not preempt the Keys Protection
15 Act, they don't preempt the county's valid comprehensive
16 plan and land development regulations promulgated to the
17 comp planning act and the Florida Keys Protection Act.

18 Accordingly, we believe very strongly that you
19 should decline to entertain any further activity in this
20 docket. Thank you, again, for the opportunity to be
21 heard.

22 **CHAIRMAN BRISÉ:** Thank you.

23 Deb Swim.

24 **MS. SWIM:** Commissioners, thank you for the
25 opportunity to speak today. I am here on behalf of my

1 client, Doctor -- I mean, Alicia Putney.

2 I want to focus today on the Commission's
3 jurisdiction over territorial agreements, the local laws
4 at issue in the complaint, and the grid bill. We urge
5 you to deny staff's recommendation and to adopt a method
6 to reconcile the jurisdiction of the PSC with the
7 county's growth management authority and
8 responsibilities. Even if this was a dispute over
9 territory, and it most assuredly is not, the territorial
10 agreement itself specifically states that it confers no
11 rights on any entity that is not a party. So clearly
12 the territorial agreement itself creates no right in
13 Reynolds or in any other prospective customer by virtue
14 of the agreement.

15 And, further, as detailed in the county's
16 brief, there is no statutory obligation for a municipal
17 utility, such as KES, to serve. Nor does the
18 territorial agreement specifically express an
19 obligation. And even if it did, the utility parties to
20 the agreement may not create a statutory obligation to
21 serve. That is a legislative responsibility. And
22 Florida's Legislature has imposed no such obligation on
23 municipal utilities like KES.

24 But, most importantly, Commissioners, your
25 jurisdiction over territorial disputes should not be

1 invoked in this case because this is not a dispute over
2 territory. It is a dispute about the application of a
3 law within a Commission-approved territory with some
4 significant statewide implications.

5 The local law at issue here deserves the
6 Commission's respect in any event, but especially since
7 it is the product of a legislative mandate. Florida's
8 Growth Management Act requires local governments to
9 adopt a local comprehensive plan and to implement that
10 plan through land development regulations. These local
11 plans and implementing regulations must also be approved
12 by the state land planning agency, which is now in the
13 Florida Department of Economic Opportunity. The
14 Legislature also designated the Florida Keys, where this
15 island is located, as an area of critical state concern,
16 expressing purposes that include maintaining the Keys as
17 a unique Florida resource, and that's in Chapters 163
18 and 380.

19 Preemption of this local ordinance that the
20 Legislature has required be adopted is not warranted.
21 The staff recommendation cites 364.01 to support its
22 recommendation that the Commission find its
23 determination of the issues in this case is exclusive
24 and preemptive. But that section does not apply to the
25 municipal utility that is the subject of the Reynolds

1 complaint. Nor, as the county's brief aptly details, do
2 statutes or court decisions support preemption in this
3 case.

4 The staff's recommendation on Page 27 states
5 that it is not the Commission's place to direct the
6 county to act in any way. Yet the staff is also
7 recommending that the Commission preempt this critical
8 local land development regulation and find that it has
9 jurisdiction over matters raised in the -- that its
10 jurisdiction over the matters raised in the complaint is
11 exclusive. My client correctly, in my view, finds it
12 very hard to reconcile these two statements.

13 There are ways, some that are noted in the
14 county's brief, to interpret the Commission's
15 jurisdiction and Monroe County's jurisdiction as not
16 conflicting, and a Commission's finding of exclusive and
17 preemptive jurisdiction is not one of those ways.

18 For these reasons, we find the recommended
19 exercise of the Commission's jurisdiction to be lacking.
20 We also find it unwise, since it would constitute an
21 approach that one might call an
22 extend-the-lines-everywhere approach.

23 Now, an extend-the-lines-everywhere policy is
24 not required by any statute. And that, again, is
25 detailed in the county's brief and our brief. But,

1 furthermore, if the Commission were to instead apply a
2 policy that favors expansion of off-grid solar, that
3 would be consistent with a lot of legislative
4 directions.

5 So, in other words, a policy that says we want
6 to promote off-grid solar in the state, that would be
7 consistent with Section 366.92, which is Florida's
8 renewable energy policy, which has a lot of language
9 there in Subpart 1 to promote the development of
10 renewable energy for reasons of the economic viability
11 of the state, diversity of the fuel used to meet our
12 energy needs and, therefore, enhance reliability, lessen
13 dependence on natural gas, minimize volatility of fuel
14 costs, encourage investment within the state by
15 developing our native supplies, like the sun, instead of
16 sending the money out of the state to buy coal or
17 uranium. As well as all the environmental benefits, you
18 know, there are some nice legislative directives there.

19 There is also a very old statute, 366.01, that
20 addresses small power production and includes a
21 statement that electricity produced by small power
22 production, which is what the solar community in this
23 case uses, is of benefit to the public when included as
24 part of the total energy supply of the entire electric
25 grid of the state, or consumed by a small power

1 producer. So it is recognizing that on or off grid, it
2 is of benefit to the grid.

3 And that brings me to the grid bill which has
4 different parts of it, but one of them states that the
5 Commission has jurisdiction to require electric
6 conservation and reliability within a coordinated grid
7 throughout Florida for operational and emergency
8 purposes.

9 Commissioners, this does not require, as you
10 might think from reading the recommendation or the
11 Reynolds' filings, this does not require that you adopt
12 an extend-the-lines-everywhere approach. Off-grid solar
13 reduces the need to expand the grid. And so it is
14 energy conservation, which you are directed to -- you
15 are encouraged -- and, also, if you have off-grid solar,
16 especially in this case where the lines that were built
17 so far, they go through a coastal barrier that is very
18 vulnerable to hurricanes, it's not reliable to extend
19 lines there when you have an option that is highly
20 reliable to keep the solar community running and have it
21 grow, and many people there who want that to happen.

22 So I urge you to think about adopting a pro
23 off-grid solar policy for economic as well as
24 environmental reasons, and I think you have the
25 statutory authority to do it. And, really, we need to

1 reject the extend-the-grid-everywhere policy, because it
2 is not always the most economic approach nor is it the
3 most reliable one.

4 So, in conclusion, we urge you to reject
5 staff's recommendation and find a way such as suggested
6 in the county's brief to adopt a harmonious approach
7 that reconciles your jurisdiction with that of the
8 county to undertake growth management. And we thank you
9 for the opportunity to speak. And if I have a few more
10 minutes, I don't know if my co-counsel wants to add
11 anything.

12 Thank you.

13 **CHAIRMAN BRISÉ:** Thank you very much.

14 **MR. TOBIN:** Good morning. I'm Andy Tobin,
15 and I represent the No Name Key Property Owners
16 Association. May I have a couple of minutes to --

17 **CHAIRMAN BRISÉ:** Sure. I was going to call
18 you next.

19 **MR. TOBIN:** First of all, it's a pleasure to
20 be here. It appears you have the last of the cool
21 weather for the year, so it's great coming up here.

22 I was kind of just going to sit back and just
23 watch the debate, but there's a couple of things that
24 were mentioned that I thought I should comment on.

25 First of all, this has -- there are

1 significant statewide implications, and we are not
2 antisolar, and those comments about reliability and
3 safety and the policy of this Commission to promote
4 solar. And those are all great things, but promoting
5 solar doesn't necessarily mean forcing people to live
6 with solar power.

7 In terms of reliability, and safety, and
8 hurricanes, and all those kind of things, I asked Mary
9 Bakke who is here with me, she lives on No Name Key, to
10 bring up a couple of photographs of what solar really
11 means to an individual homeowner.

12 These are a series of batteries that are below
13 someone's home. This is a diesel or gasoline -- diesel
14 storage tank right next to somebody's home and next to
15 somebody else's home. These are the generators that are
16 required when solar power isn't sufficient. And here is
17 a photograph of both the solar -- excuse me, the storage
18 tank and the generator.

19 So just to give you an idea of what it's like,
20 you know, living under these conditions. So we are not
21 anti-environment, we are not anti-reliability, we are
22 not anti-safety. We're in favor of all these things,
23 and as I'm sure you are.

24 Mr. Wright was right when he said that the
25 Legislature did not expressly say that every, you know,

1 city and county may not regulate electricity. There is
2 nothing in the legislation which says that that can't
3 happen, but there would be no reason for the Legislature
4 to say that when they give you exclusive jurisdiction
5 over the area of electricity.

6 And what has not really been mentioned before
7 is the doctrine of implied preemption, and that is a
8 well-recognized legal principle in the State of Florida.
9 There's plenty of case law on it, because to give
10 exclusive jurisdiction and not to mention every single
11 part of jurisdiction and power to regulate doesn't
12 necessarily mean that you don't have it because it's
13 implied.

14 And the thing that really strikes me here is
15 that if you allow Monroe County to regulate who gets
16 electricity and who doesn't get electricity, then you're
17 setting a precedent, a statewide precedent that allows
18 every city and every county to come up with some
19 environmental reason, or prosolar reason, or
20 proexperimentation, and that would basically undermine
21 your jurisdiction and a statewide coordinated ability of
22 the State of Florida to produce power.

23 There are environmental issues everywhere in
24 the State of Florida, and every county is very concerned
25 about it, and nobody is ignoring the environmental

1 issues. But, you know, to say that Monroe County is
2 special and they can regulate solar and not regulate
3 electricity, it just really would set a terrible
4 precedent in the State of Florida.

5 Thank you.

6 **CHAIRMAN BRISÉ:** Thank you very much.

7 Before we move into hearing from the
8 customers, I think there --

9 **MR. TOBIN:** Do you want copies of these, or
10 should I put them into the record, or is there --

11 **CHAIRMAN BRISÉ:** I think she wants them for
12 now.

13 **MS. BAKKE:** I want them for my speech. Thank
14 you.

15 (Laughter.)

16 **MR. TOBIN:** I guess Mary wants to talk later.

17 **CHAIRMAN BRISÉ:** Yes, she does.

18 Okay. So before we move into hearing from the
19 customers, I think there may be some questions for the
20 attorneys at this point, so we'll indulge that.

21 Commissioner Graham.

22 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

23 I guess my question before we hear from the
24 customers is to Monroe County. I think I heard
25 Mr. Wright say something about -- I know he was talking

1 about the comp plan and the Growth Management Act. And
2 coming from local government, I've had plenty of
3 experience with comp plans and I've got plenty of
4 experience with things that people put in comp plans and
5 what they put in for growth management. And I guess the
6 question I have, because I heard you say that this was
7 done to protect the Keys and protect the residents, but
8 I didn't hear anything you said about how this harms --
9 how this would harm the Keys or harm the residents.

10 **MR. WRIGHT:** Commissioner, I'm happy to have
11 Mr. Shillinger respond. I think that the general
12 response is this, that the county expressly considered
13 all those factors in appropriate hearings when it
14 adopted its comp plan and when it adopted its ordinance
15 in 2001 that provides for the prohibition of all utility
16 facilities -- it's not just electricity, it's all linear
17 utility facilities through or across county property in
18 the Coastal Barrier Resource System. The county
19 specifically considered the protection of the CBRS areas
20 against the adverse affected growth.

21 I'm going to turn it over to Mr. Shillinger,
22 the County Attorney.

23 **MR. SHILLINGER:** Thank you.

24 Bob Shillinger, Monroe County Attorney.
25 Understand that the State of Florida has placed severe

1 limits on the county's ability for new housing starts
2 for growth due to hurricane evacuation. We get an
3 annual allocation for new housing starts that is
4 controlled by the cabinet sitting as the administration
5 commission. And when this ordinance was adopted, we
6 were working under a system -- we still work under a
7 modified version of that system where we apportion out
8 those limited building rights through a competitive
9 process. That process is built on properties having a
10 variety of factors, some of which would encourage
11 development, some of which would -- development would
12 not be the best place to go in there.

13 The existence of utilities was one of the
14 factors in delineating where you set the priorities on
15 where you want to have your infill as opposed to where
16 you might want to discourage it. All of this is
17 premised, this entire system is premised on human
18 safety, public safety of being able to evacuate the Keys
19 in the event of a major hurricane within 24 hours. So
20 this ordinance was seen as a way of helping set the
21 priorities of where you want to set the development and
22 where you want to encourage development as opposed to
23 where you want to discourage it from within the context
24 of this statutory scheme where we only have so many new
25 housing starts that we can hand out.

1 We want to encourage infill in certain areas,
2 we want to discourage sprawl in other area within the
3 context of we only have so many of these housing starts
4 to give out, these ROGO allocations. And that whole
5 statutory scheme as a bedrock principle is based on
6 public safety in the form of safe evacuation of the
7 Keys, because we only have one road in and road out. So
8 it is a big picture issue when you ask how does it
9 promote public safety. And it was how we are able to
10 manage the growth which we have been allowed by another
11 arm of the state to have.

12 **COMMISSIONER GRAHAM:** But by not allowing --
13 by not allowing power going out there, that is not
14 stopping growth out there. Because somebody could still
15 build out there, they just have to do it with solar
16 power or with generators.

17 **MR. SHILLINGER:** I understand your question,
18 and if you want me to respond?

19 **COMMISSIONER GRAHAM:** Yes.

20 **MR. SHILLINGER:** The opportunities to build
21 out there -- it is more difficult to build out there
22 under the statutory scheme of the county and our
23 ordinance and our land development regulations than it
24 is in other parts because of issues such as the lack of
25 infrastructure. We have -- properties compete in a

1 system called the ROGO allocation system where --
2 there's two histories of that. One is a pre-tier
3 system, now post-tier system. When this ordinance was
4 adopted, there were a number of criteria in which you
5 looked at the individual property. Now, under the tier
6 system we have kind of lumped all those criteria into
7 different groups and precleared them into a Tier 3,
8 which is a pro-growth, or encourage infill, versus a
9 discourage growth.

10 And so, again, this is part of the area in
11 parceling out development. Yes, they are entitled to
12 build there if they can make it through the process.
13 And just understand the federal overlay with the CBRS,
14 this Coastal Barrier Resource System, limits federal
15 expenditures and federal things like federally
16 subsidized flood insurance and certain types of federal
17 mortgages within these areas. So there are additional
18 factors limiting growth there, as well, based on the
19 fact that because Coastal Barrier Resource System
20 islands are vulnerable to things like storm surge in the
21 event of a hurricane.

22 **COMMISSIONER GRAHAM:** It seems -- one of the
23 things we use to control or direct growth -- I guess not
24 control, but direct where it's going to be, a lot of
25 times it's trips on roads. You know, you put in a

1 two-lane road or a four-lane road and, therefore, if the
2 road is not sufficient then they have to pay into the
3 expanding of that road. With 43 people on this island,
4 your trips have got to be absolute minimum on that road,
5 correct?

6 **MR. SHILLINGER:** It's not a roadway issue. I
7 mean, the bridge is a separate issue, and that's not the
8 issue that's before --

9 **COMMISSIONER GRAHAM:** But I'm trying to look
10 at the uniqueness of using a utility, using providing
11 somebody electricity and not providing them electricity
12 as a growth management tool. I mean, I don't know if
13 any other county is doing that, and that's what I'm
14 trying to get my head around.

15 **MR. SHILLINGER:** You're right, and there
16 probably aren't many other counties. There aren't other
17 counties that are -- the entire county is an area of
18 critical state concern that has statewide resources that
19 are of -- you know, that are so unique that they have
20 been declared that that they are state resources that
21 are unique to the State of Florida.

22 The Florida Keys are on the cutting edge of
23 many growth management tools, so you probably are not
24 going to find other local governments that have been
25 forced to do that, or to have been as creative to look

1 at those ways of managing growth. You are also not
2 going to find another county in the State of Florida
3 that has Tallahassee telling it how many new housing
4 starts it can have every year based on the road
5 construction -- on the road evacuation capacity on
6 U.S. 1. So, yes, we are unique.

7 **COMMISSIONER GRAHAM:** Thank you.

8 **CHAIRMAN BRISÉ:** Commissioner Balbis.

9 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

10 And I want to focus my comments on Issue 3,
11 which pertains to the jurisdictional issues. And I may
12 have a question for staff on this.

13 From what I heard from both of the attorneys,
14 I think there is an agreement that Section 366.04, the
15 statutes clearly list that we have jurisdiction over
16 territorial agreements. And I think there is agreement
17 upon that. And I think staff did a good job of
18 outlining different case law and even Supreme Court
19 decisions which specified that they have no doubt that
20 we have the ability to modify or withdraw our approval
21 of those agreements, which ties us into the conditions
22 of it.

23 On top of that is the fact that other avenues
24 have been pursued. That the 16th Judicial Circuit ruled
25 twice that we have exclusive jurisdiction. We have a

1 Third District Court of Appeals ruling that we have
2 exclusive jurisdiction, and I think that based on those
3 reasons, it's pretty obvious to me that we do have
4 exclusive jurisdiction, and that it supersedes all
5 boards, agencies, counties, municipalities, et cetera.

6 And I have questions and comments on the other
7 aspects and the other issues of this docket which, you
8 know, pertains to the different issues that we have had
9 discussions on. But from a jurisdictional standpoint, I
10 think there's agreement from the attorneys that
11 territorial disputes we have jurisdiction over, and I
12 think specifically from the courts and the plain
13 language of the law we do. So --

14 **CHAIRMAN BRISÉ:** Commissioner Brown.

15 **COMMISSIONER BROWN:** Thank you.

16 And as a follow-up to Commissioner Balbis'
17 statement, I did want to hear from staff, and maybe give
18 you some time to respond to some of the statements made
19 by Mr. Wright and Ms. Swim after the customers get an
20 opportunity to speak. But I wanted to give you a heads
21 up that I would like to hear a response to -- it's
22 obviously not a dispute of territorial nature here that
23 we're talking about, as they indicated, and a clear
24 reading of 6.1 of the territorial agreement also does
25 not explicitly impose an obligation to provide service.

1 Rather, it encourages installation and maintenance of
2 facilities.

3 So I'd like to hear a response from you, but
4 after the customers have gone, as to a question toward
5 the attorneys that spoke, this would be directed towards
6 Mr. Smith or Mr. Tobin. My understanding is that 23
7 property owners have paid into -- about \$700,000 for the
8 installation of facilities, correct? Okay. That's 23
9 out of 43.

10 **MR. SMITH:** I believe it was 33.

11 **COMMISSIONER BROWN:** Mr. Chairman?

12 **MR. SMITH:** Okay. There's 30 members to the
13 No Name Key Property Owners' Association, but 23 had the
14 funds to contribute. And the other funds were made up
15 by the other 23, because it was a number that Keys
16 Energy required to install the lines, and that number
17 just, however it needed to be paid, was made up between
18 the property owners. But there's 30 members of the No
19 Name Key Property Owners Association that contributed.

20 **MR. TOBIN:** And they have paid about \$800,000
21 to -- about 750 to Keys Energy and then surveying costs,
22 so there's about \$800,000 that has already been paid and
23 expended. And the poles are sitting right there.

24 **COMMISSIONER BROWN:** Is it a requirement to
25 join the homeowners association or optional?

1 **MR. TOBIN:** Optional.

2 **COMMISSIONER BROWN:** And the questions, I
3 guess, I have for you, either of you, if you have
4 knowledge, have the facilities that have already been
5 constructed properly complied with the U.S. Fish and
6 Wildlife Service regulations?

7 **MR. TOBIN:** Yes. The U.S. Fish and Wildlife
8 Service gave us a letter. We coordinated with the U.S.
9 Fish and Wildlife, and they found that it would not
10 create an incidental take of endangered species. There
11 is Key Deer on No Name Key, and we have a letter from
12 Fish and Wildlife.

13 **MR. SMITH:** Dale Finigan (phonetic) from Keys
14 Energy Services is here today. I think he can properly
15 speak to what was done to comply with the U.S. Fish and
16 Wildlife during the installation.

17 **MR. FINIGAN:** Good morning, Commissioners.

18 Yes, there was twelve special conditions that
19 the Fish and Wildlife mandated on us for construction of
20 the lines, and we have complied with all of those. It
21 was during construction and also to maintain after
22 installation. For the record, the homeowners have paid
23 approximately \$800,000 to date to Keys Energy. We have
24 installed all the poles in accordance with the county
25 for attaching to the bridge. The project consists of

1 two components, half a mile going over the bridge and
2 another three and a half miles of high voltage
3 distribution lines. All the lines have been constructed
4 and installed for Fish and Wildlife.

5 **COMMISSIONER BROWN:** What else is outstanding
6 in order to provide electric service at this point?

7 **MR. FINIGAN:** At this point all the
8 transformers have been installed; they are energized.
9 All it is is county approval to go ahead, and from their
10 building official to make that final connection to the
11 home, the service drop. And that can be done within 24
12 hours after the customer is completed, obtain
13 inspections, and submitted that approval to Keys Energy.

14 **COMMISSIONER BROWN:** And those property owners
15 that have not contributed and do not wish to have
16 electric service, they are not required to pay for
17 electric service, correct?

18 **MR. FINIGAN:** You're correct, ma'am.

19 **COMMISSIONER BROWN:** Thank you.

20 **MR. FINIGAN:** And if anybody in the future
21 wants to join, we have our line extension program where
22 they would come in and contribute towards that, if they
23 decide at a later late.

24 **COMMISSIONER BROWN:** Thank you.

25 **CHAIRMAN BRISÉ:** Thank you. All right. At

1 this time we are going to hear from the customers, or
2 the potential customers maybe.

3 **MR. WRIGHT:** Commissioner Brisé.

4 **CHAIRMAN BRISÉ:** Yes, sir.

5 **MR. WRIGHT:** Chairman Brisé. I know I went
6 over my seven minutes, and I appreciate your indulgence,
7 genuinely. I did have some brief prepared remarks
8 regarding the issue of implied preemption. It's very
9 brief, if you're interested.

10 In response to Mr. Tobin, nobody argued that.
11 It's not really in the staff's recommendation. And so
12 when I was trying to cut out to get down close to seven
13 minutes, I cut it out. At some point if I could present
14 those remarks, I would appreciate the opportunity.

15 **CHAIRMAN BRISÉ:** Sure. Just to give you --
16 what we are going to do, we are going to hear from the
17 customers, and then after that we are going to sort of
18 go through the issues, the remaining issues. So you
19 will probably have an opportunity to address this on
20 some of the questions that may come forward.

21 **MR. WRIGHT:** Thank you, Mr. Chairman.

22 **CHAIRMAN BRISÉ:** Thank you.

23 All right. Please state your name.

24 **MS. BAKKE:** My name is Mary Frances Bakke. I
25 live on No Name Key, and I am here representing the No

1 Name Key Homeowners Association, Inc.

2 **CHAIRMAN BRISÉ:** Ms. Bakke, just so that the
3 customers know, you have five minutes. These lights
4 will help you. So long as it's green you're okay. When
5 it's yellow you have two minutes; when it's red you have
6 thirty seconds; when it's flashing -- I don't want to
7 have to cut off your mike, okay.

8 **MS. BAKKE:** You will not have to. I can
9 behave today. The homeowners association represents
10 over 70 percent of the homeowners on No Name Key, and I
11 would just like to share my personal experience of
12 living on No Name Key. The opponents use the words
13 solar as a magic bullet and implies that it means
14 everything good and green.

15 I know that a solar panel is not green unless
16 it is properly used, and solar is never recommended as a
17 standalone energy source for a home. For comparison
18 purposes, think of your home. In your home you have an
19 electric service panel box, and in that box you have 20
20 to 40 separate 12 to 20-amp circuit breakers that serve
21 your entire home. My home is served on 20 amps total
22 unless I use my generator.

23 This is a picture of a generator and a home.
24 This is the generator. Here is his diesel fuel tank.
25 They are very, very close to our homes. So we get all

1 the fumes, we get all the noise, we get all the toxics
2 that go with it. And the solar people never tell you
3 that you only get five hours of useable output from your
4 panels. The other 19 hours we run on generators and
5 batteries.

6 It's foolish to believe that we have 43 homes
7 operating duplicate systems that cost more than 30,000
8 each, and we have all separate expensive subsystems
9 there on this one tiny little island to run one house
10 each. 39 of the 43 homeowners on No Name Key use
11 generators on a regular daily basis.

12 The uncommon uses of the generator system and
13 the high amount of fuel burned on this one island has
14 been a disaster to the environment and our quality of
15 life. The impacts of diesel are real and it's intense.
16 The black smoke of the generator is in the air. It is
17 pollutants. It's known as particulate matter; it is
18 classified toxic, and a health concern for all.

19 The lack of grid power has destroyed our
20 environment. Diesel soot is everywhere. The limestone
21 gravel in our yards and around our tanks are black. And
22 can you imagine the damage done if there is a major
23 hurricane that hits No Name Key and all these fuel tanks
24 empty thousands of gallons of diesel into the
25 environment. That's not green.

1 Batteries are a very high concern of ours,
2 also, because you store all of your energy in batteries
3 for the night time. Residents have banks of batteries
4 stored under their house. They have big health
5 concerns. The vapors produced in these batteries is
6 hydrogen, and it off-gases and it leaches all the time.
7 And it is dangerous and it is flammable. Batteries do
8 explode, and it has happened on No Name Key.

9 They talk about the green environment. When I
10 built my house, the county allowed all of these homes to
11 be built. They gave us building permits. We are
12 developed. We are there. So this argument about
13 evacuation, we have to get out just like everybody else.
14 This is not new development. They gave us the permit.
15 They gave us an electric permit that was inspected for
16 grid-tie service. We are entitled to it. After the
17 fact they changed their mind, and now say that we have
18 to live off-grid.

19 All of Monroe County is an area of critical
20 concern. There are 15 CBRS areas in Monroe County and
21 they have all of the utilities. No Name Key they have
22 singled out to not get utilities.

23 If you don't have the power to control
24 utilities, then you're going down a slippery slope.
25 Every little podunk city and advocates and radicals in

1 that state will be deciding who gets service and who
2 does not. As Doctor Spock said, to deny facts is
3 illogical. If you want to protect the health and safety
4 and welfare of the citizens of this state, you need to
5 give them electricity.

6 Please help us.

7 **CHAIRMAN BRISÉ:** Thank you.

8 Are there any questions for Ms. Bakke?

9 Well, I have one. So I think I heard you say
10 that when you moved in and you built your property that
11 you had an electric permit.

12 **MS. BAKKE:** All of these homes were issued
13 normal building permits by Monroe County, and one of the
14 permits was an electric permit that had no restrictions
15 on it. We could have gone and connected that day. But
16 they built the houses one at a time so there was not
17 enough people there to support bringing in electricity
18 there. And the utility company kept telling us, when a
19 few more homes come we will connect you because it won't
20 be so expensive.

21 By the time there were enough homes there to
22 afford the electricity, the county had passed this land
23 development regulation saying No Name Key will not get
24 any public infrastructure and public utilities. That's
25 where we are today.

1 **CHAIRMAN BRISÉ:** Okay.

2 Commissioner Graham.

3 **COMMISSIONER GRAHAM:** I think you answered the
4 question I was going to ask. So you're saying that
5 there was nothing limiting you from having any utilities
6 prior to the comp plan?

7 **MS. BAKKE:** Most of this construction went on
8 in the '60s, '70s, '80s and '90s. There was not a
9 restriction until 2001.

10 **COMMISSIONER GRAHAM:** So the only restriction
11 was basically --

12 **MS. BAKKE:** Money.

13 **COMMISSIONER GRAHAM:** -- financial.

14 **MS. BAKKE:** Money.

15 **COMMISSIONER GRAHAM:** They couldn't run a
16 water line out there, they couldn't run a sewer line out
17 there, they couldn't run electricity out there because
18 it was cost prohibitive.

19 **MS. BAKKE:** Because the county never put the
20 inadequacy of infrastructure on this island in their
21 capital improvement plan, five-year plan. They left us
22 alone, pretended we didn't exist, and we were on our
23 own. And they said if you want infrastructure, if you
24 want utilities, you pay for it. Well, you've got five
25 or six houses, and you're looking at an \$800,000 bill,

1 they can't pay that. So the island continued, the
2 county continued to issue building permits out there.
3 If they didn't want us to have a single-family home, why
4 issue the building permit?

5 **COMMISSIONER GRAHAM:** I don't think they were
6 picking on you. I can just tell you from being on the
7 county that sometimes it is cost prohibitive.

8 **MS. BAKKE:** It is cost prohibitive, and we
9 understand that. And we asked them year after year
10 would they pay for it, and they said no. They kept
11 telling us when you can pay for it yourself you can have
12 it. In the meantime, they passed this ordinance
13 prohibiting it.

14 **COMMISSIONER GRAHAM:** Thank you.

15 **CHAIRMAN BRISÉ:** Commissioner Balbis.

16 **COMMISSIONER BALBIS:** Thank you.

17 And thank you for your comments here today. I
18 really appreciate you making the trip up here. I know
19 it's a long travel.

20 I have a question, because I received a letter
21 from Ms. Ramsey Vickery (phonetic) that indicated that
22 she pays upwards of \$500 a month for fuel for her
23 generators. How much do you pay per month?

24 **MS. BAKKE:** This is the tank of my husband and
25 I. This is our house. It's a 500-gallon tank. We are

1 fortunate. We retired recently, and we have an RV and
2 we travel to get away from this. We were paying \$1,000
3 a month for diesel fuel to air condition our home, which
4 is only 1,400 square feet. But in the summer that's
5 what's required.

6 In the summer, it's routine to put five to
7 \$800 in this. And I know Ms. Vickery, and she is a
8 member of the association. I am well aware of her
9 system and her home. And my neighbor just put 800 --
10 Kathy Brown, who is the president of the association,
11 couldn't be here today, and asked me to be here. She
12 just put over \$800 in her tank, and she expects it to
13 last six weeks, maybe.

14 **COMMISSIONER BALBIS:** Okay. And the lines
15 that have been recently installed by Keys Electric, how
16 far away are they from your house?

17 **MS. BAKKE:** Close. It's where I park my car.
18 It's that close.

19 **COMMISSIONER BALBIS:** Thank you.

20 **CHAIRMAN BRISÉ:** One other question I have for
21 you. Is it your understanding that if you were to -- if
22 we were to approve the notion of electrifying that part
23 of the island that you would be required to be on the
24 system?

25 **MS. BAKKE:** We beg you, please require us to

1 be on the system.

2 (Audience laughter.)

3 **CHAIRMAN BRISÉ:** But you wouldn't be required
4 to?

5 **MS. BAKKE:** Absolutely.

6 **CHAIRMAN BRISÉ:** So you wouldn't be required.
7 It's your understanding that you would not be required
8 to get on the system?

9 **MS. BAKKE:** We would not be required. Well,
10 our neighbors are not required. I understand utility --
11 if you want it you have to go apply for it and put down
12 a deposit and pay your bills every month. If you don't
13 want to do that, you don't get it. So if they don't
14 apply, I'm happy that they don't get it.

15 **COMMISSIONER BALBIS:** I just wanted to make
16 sure as a consumer if --

17 **MS. BAKKE:** We do not want to force anybody,
18 but we would like to have our choice to live the way we
19 want to in our home. And electricity is vital to
20 everybody's health and safety and welfare. We just want
21 to be treated fairly and enjoy our homes rather than
22 having to travel three months of the year.

23 **CHAIRMAN BRISÉ:** Thank you.
24 Commissioner Brown, and then we're going to
25 move on.

1 **COMMISSIONER BROWN:** Thank you. I just have a
2 question for the county in response to something that
3 Rebecca or Becky --

4 **MS. BAKKE:** Mary Frances.

5 **COMMISSIONER BROWN:** Completely wrong. Sorry,
6 Mary. Ms. Frances said that all of the Keys is in the
7 state of critical concern as defined by Florida
8 Statutes, and that No Name Key specifically is the only
9 county that does not provide electric service. I just
10 wanted a clarification or a response to that.

11 **MR. SHILLINGER:** The ordinance is applied
12 countywide to all CBRS -- there are CBRS districts
13 within the county. The CBRS districts are set by
14 Congress, and No Name Key is the one that -- it's not
15 the only area that doesn't have electricity. There are
16 some areas at the end of the line, and Mr. Finigan can
17 probably tell you where those are better than I. But it
18 is the only -- as I understand it, the only CBRS
19 district that didn't have preexisting utilities of
20 electricity.

21 There are some CBRS areas that don't have
22 preexisting utilities like wastewater. No Name Key did
23 have, as I understand it, preexisting utilities of phone
24 lines. They do have phone lines out there. So it's not
25 as absolute, but it's pretty close to one.

1 **MS. BAKKE:** Excuse me. Could I add one more
2 thing?

3 The majority of the homes on No Name Key that
4 are asking for electric service are not in a CBRS area.
5 Are not in a CBRS area. So the fact that just where
6 they live they are being denied.

7 **MR. SHILLINGER:** The line has to run through
8 the CBRS district, the CBRS area to get to them. That's
9 where the issue comes in.

10 **CHAIRMAN BRISÉ:** All right. Thank you.

11 Next customer.

12 **MR. NEWTON:** Thank you. Commissioners, good
13 morning.

14 My name is Jim Newton. My wife and I, Ruth,
15 who accompanies me today, built our house on No Name
16 Key. We retired after 30-some-odd years in the Volusia
17 County school system just down around Daytona Beach.
18 And I was lucky enough to have a good education from the
19 U-of-F. I've got a sticker on my car out there. I hope
20 it's safe up here in Tallahassee.

21 (Audience laughter.)

22 But I was blessed with a degree in
23 agriculture, which also involves a lot of mechanical
24 education. So I was well-equipped to retire to an area
25 such as No Name Key which was off the grid when we

1 selected our home. We had visited the Keys for 20 years
2 prior to living there, and we received our CO in 1997
3 prior to the ordinance that was passed prohibiting
4 utilities on No Name Key.

5 I was comforted by the fact that we had
6 telephones on No Name Key. That was great. I never
7 took it to be a cause to champion to fight for
8 electricity on No Name Key.

9 It was, however, probably my fault that a lot
10 of people on No Name Key started questioning the sewer
11 law that was approaching the Keys and the demand that we
12 have sewers throughout the Keys. It was that conflict
13 between the ordinance that says you shall not have
14 utilities on No Name Key and the state law saying but
15 all the Keys should be sewerred. And I started talking
16 to neighbors, and what are our choices? And one of my
17 neighbors explained we were going to be able to have a
18 glorified, basically, porta-potty in a self-contained
19 system within your house so that you would have a
20 composting toilet. And my wife didn't like that idea
21 too much.

22 The other choice was a self-contained aerobic
23 system, which when I read the rules set down by the
24 health department stated such things as you shall not
25 have one of these leach fields that accompanies a

1 self-contained aerobic system within 50 feet of a
2 Buttonwood Association landscape, which includes all
3 sorts of native vegetation. Being an agriculturalist, I
4 love that sort of environment and have been able to
5 learn and identify many of the trees and plants that we
6 have as well as the fauna in that area.

7 And I sat down with the man that was in charge
8 of the health department there in the Keys, and when I
9 asked him, I said doesn't it seem to be in conflict that
10 your rules state we can't have that due to our
11 landscape, and yet you're saying that's what we have got
12 to have? Do you agree with the -- and he hung his head.
13 And I asked him about the next point, the next rule, and
14 I said, well, of course, you know the answer to that
15 one, too. It's your rule. We went on from there.

16 As well as that particular conflict, I had a
17 background which was probably unique when I moved to
18 No Name in that I have served as a board member on the
19 solar community board. The president is Alicia Putney.
20 I was asked to be vice-president. That's not my sort of
21 thing. I didn't retire to the Keys to do that sort of
22 thing. I have never been a joiner of organizations.

23 However, one of my very good friends at that
24 time, Mrs. Gotto (phonetic), urged me to. I have also
25 been the first president of -- I stepped down from the

1 solar group, obviously. I have also been the first
2 president of the No Name Key Property Owners
3 Association. I have seen all the background.

4 I see my yellow light going, so I have to
5 mention one thing. When you asked the questions, sir,
6 about the harm done, I'd like to mention the fact that
7 the gentleman stated -- we built our house under ROGO,
8 where you are given points for such thing as the
9 insulation that you have in your home, the wonderful
10 windows you install, which are airtight also. I didn't
11 receive any points for being solar. They didn't reward
12 me in any way for being solar. It was never mentioned.

13 I have the same sort of a CO that everybody
14 else in Florida has offered, or everybody in Monroe
15 County, at least, if they are consistent from
16 county-to-county. And, yes, I got that same electrical
17 inspector that came through and passed my house, because
18 the system was installed by an electrical contractor, a
19 certified electrical contractor with me playing helper.

20 When I say my wife and I built our home, I
21 mean with our four hands, basically. We didn't hire
22 people. We did benefit from many, many friends and help
23 that came to us because I had done the same thing in
24 Volusia County for 32 years helping other people with
25 their homes, and then it was time to return the favors.

1 But we never moved there to fight for electricity. My
2 experience, though, tells you now, my 10 or 12 years
3 there, it is not doable by the average person unless you
4 are equipped with mechanical skills or -- I don't want
5 you to turn off my -- thanks, I'll stop.

6 **CHAIRMAN BRISÉ:** You can finish your
7 statement.

8 **MR. NEWTON:** Well, it's not doable to live
9 under pure solar because when my electricity goes down,
10 my wife looks at me. She doesn't say I wonder how long
11 it will take them to come, okay.

12 (Audience laughter.)

13 **MR. NEWTON:** Well, I'm pretty handy now. I'm
14 not that bad. And I have learned a lot. I didn't know
15 anything about sewers, but I can tell you a lot about
16 sewers now. Not that I want to, but I'm saying
17 electricity I know more about than I ever have before.
18 I can repair -- I have installed systems.

19 One of the things that you have to do is be
20 willing to get your pocketbook out if you are going to
21 call a man from Marathon, because he's going to charge
22 you \$150 to come from that company just to show up and
23 diagnose your problem, then we'll get down to how much
24 it's going to cost you to repair it.

25 I just spent \$500 on my generator because a

1 little control panel burned out. And when the man
2 brought me the new one and installed it, I said, look,
3 the plastic is falling apart on this little panel -- and
4 it had a glass window in front of it, it was locked and
5 everything. And he said, yes, you need to put some foil
6 on that glass so the light can't get through there to
7 the plastic and disintegrate it. And I thought, boy,
8 that would have been handy to know nine years ago when I
9 bought that generator.

10 We didn't move there and buy a generator. We
11 moved there and lived two years without a generator. My
12 wife finally said I can't take the heat anymore. Due to
13 age and change in biology, I can't take the heat
14 anymore. We've got to move or you've got to air
15 condition me. And, so, okay. I was blessed with
16 Mr. Bakke, her husband, being a man that knew how to do
17 that. He taught me. I did it, and so we stayed. But
18 it's not a doable situation, certainly not on the
19 budgets that two retired school teachers are going to
20 take into their retirement.

21 **CHAIRMAN BRISÉ:** Thank you, Mr. Newton.

22 Any questions?

23 Okay. We'll hear from the next interested
24 person.

25 **MRS. NEWTON:** I would just -- I'm Jim's wife.

1 I would just like to say one thing.

2 **CHAIRMAN BRISÉ:** Sure. Please state your
3 name.

4 **MRS. NEWTON:** Ruth Newton.

5 I have heard CBRS quoted a lot. And when I
6 went to school years ago we studied the constitution,
7 and we studied the preamble to the constitution, and the
8 preamble to the CBRS clearly states that the CBRS Act
9 was not intended to hurt developed communities. And we
10 are a developed community. We are a citizen of the
11 State of Florida, and I think we should have the right
12 to be comfortable like everybody else in the State of
13 Florida.

14 Thank you.

15 **CHAIRMAN BRISÉ:** Thank you, Mrs. Newton.

16 All right. Are there any more interested
17 persons?

18 Martha.

19 **MS. BROWN:** Mr. Chairman, I thought there were
20 a couple of --

21 **CHAIRMAN BRISÉ:** I think there are.

22 **MS. BROWN:** -- individuals who wanted to
23 speak. Maybe just one.

24 **MS. SWIM:** There's two more in addition to my
25 client that I know about.

1 **CHAIRMAN BRISÉ:** Okay.

2 **MS. PUTNEY:** Good morning, the Public Service
3 Commission. Thank you very much for allowing me to
4 speak today. I've got some comments prepared.

5 **CHAIRMAN BRISÉ:** Please state your name.

6 **MS. PUTNEY:** My name, for the record, is
7 Alicia Roemmele Putney. I reside at 2150 No Name Drive,
8 No Name Key, Florida.

9 I have some prepared comments for what -- I
10 thought my speaking time was three minutes. I want to
11 say after listening to what I listened to, you have been
12 given information that is partially correct. You have
13 been given some very complicated land use practices and
14 they haven't been explained completely accurately. So
15 if you are confused, I understand that.

16 Monroe County did not permit the houses, these
17 homes, the electrical service on these homes with the
18 intention to bring power out there or grid tie.
19 Throughout Monroe County, if you have electricity hooked
20 up to your house, and Dale Finigan will correct me if
21 I'm wrong, it's paid for by the customer. It's a line
22 extension. And so if you live on a remote island like
23 No Name Key, the customer always pays. The county has
24 never done that.

25 I am speaking today on behalf of the solar

1 community of No Name Key. No Name Key is unique for
2 many reasons. It lies entirely within the boundaries of
3 the National Key Deer Refuge. It's federally designated
4 as a CBRS unit. It is entirely designated as an area of
5 critical state concern. It provides habitat for six
6 federally listed species, and it is an off-grid island.

7 The uniqueness of No Name Key should continue
8 to be protected. Over 20 years ago, based on assurances
9 that my husband and myself received from Monroe County,
10 Keys Energy, and Aquaduct Authority that utilities were
11 not coming to No Name Key, we built a solar home.

12 Energy-wise, I live within the footprint of
13 the photovoltaic panels that are on my roof. I do not
14 own a generator. When the grid goes down after a
15 hurricane, my friends come over from Big Pine to No Name
16 to use my electricity.

17 We, the members of the solar community of No
18 Name Key, are proud of our self-sufficient solar
19 lifestyles. It is part of who we are. We have evolved
20 into a solar community that should be allowed to grow as
21 a model for self-sufficiency. Everyone who bought on No
22 Name Key knew that No Name Key was off grid. Many
23 people looked at No Name Key to purchase a home, and
24 when they found out it was off-grid said it's not for
25 me. No Name Key is not for everyone.

1 Mr. Reynolds purchased his vacation home in
2 2005 fully aware of the fact that this was an off-grid
3 island. In spite of what you have heard this morning,
4 solar works. I have all the amenities of a typical
5 lovely house on the bay. If you came and had dinner at
6 my house, and we had a full course meal, and I prepared
7 it and cooked it and then we watched a movie, you would
8 not know you were in a solar home. My electric panel is
9 wired like your house is. I have 26 circuits, and I
10 don't know if it is 150-amp or 200-amp.

11 We urge this Commission to reject the
12 extend-the-grid-everywhere approach recommended in the
13 staff report. Extend-the-grid-everywhere is an
14 outdated Roosevelt-era reflecting policies adopted long
15 ago far before we learned that sending electricity from
16 big power plants everywhere through wires is not always
17 the most affordable approach.

18 In a newsletter about a meeting of a group of
19 high energy industry executives and regulators who
20 recently met at Princeton University notes the U.S.
21 electric utility industry faces a critical juncture as
22 new technology and declining prices allow a more
23 distributed system of small scale generators, renewable
24 energy installations, and energy-efficient strategies.
25 There are many benefits to a distributed system.

1 Hannah Wiseman points out in Monday's
2 Tallahassee Democrat opinion editorial that distributed
3 solar does not require large hard to site transmission
4 lines, and because solar diversifies our resource mix
5 and has no fuel costs it can actually reduce the rate of
6 fluxation.

7 Bringing grid power to this island is a step
8 backwards in time. Everybody should be looking at
9 living like I live off of an alternative energy that
10 doesn't pollute the environment and that works.

11 Thank you for your time.

12 **CHAIRMAN BRISÉ:** Thank you.

13 Commissioner Balbis.

14 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

15 And thank you, Ms. Putney, for your comments
16 here today. I appreciate, again, all of the residents
17 for taking time to travel here.

18 I have a couple of questions concerning your
19 comments. And I appreciate your statement that, you
20 know, the solar community would like to remain solar,
21 and if you want to make that individual choice to be off
22 the grid, you should be able to do so. But regardless of
23 how we rule today, wouldn't you still be able to stay
24 off of the grid and those customers or residents that
25 wanted to continue to use solar just --

1 **MS. PUTNEY:** Bringing grid power to the island
2 changes the island from an off-grid island to an on-grid
3 island. You can't say with a sense of pride, I live in
4 a solar home on an off-grid island when the houses
5 around you are tied to the grid. It just inexorably
6 changes the definition of No Name Key as a unique place.
7 It changes it.

8 **COMMISSIONER BALBIS:** Okay. And you made a
9 couple of comments concerning the benefits of
10 distributed generation. Are you aware of our net
11 metering rule to encourage or allow individual customers
12 who generate their own power to sell --

13 **MS. PUTNEY:** I have a basic familiarity with
14 it.

15 **COMMISSIONER BALBIS:** Okay. Well, one of the
16 benefits from that rule is that if a customer generates
17 more power than they use, then they can sell it back to
18 the system so that it lowers costs and demand for the
19 entire system. And that's one of the benefits that have
20 been argued about distributed generation. But if those
21 solar generation facilities are not connected to
22 anything, then the system as a whole doesn't benefit
23 from that. Would you agree with that? Wouldn't you be
24 able to take advantage --

25 **MS. PUTNEY:** I would agree with that. I would

1 also like to point out with due respect that if you --
2 if these people that are talking about net metering on
3 No Name Key had sufficient power to have extra power to
4 sell back to the power company, they would have
5 sufficient power to be comfortable.

6 **COMMISSIONER BALBIS:** And then I want to
7 comment -- you made a lot of statements about the
8 character of No Name Key. And we had previous residents
9 indicate that a large majority, I believe 39 use
10 generators. And we saw pictures of large fuel tanks and
11 large generators, and, you know, I assume the associated
12 noise and environmental pollution associated with that.
13 I mean, are you concerned about the environmental
14 impacts of the generators at all?

15 **MS. PUTNEY:** I would disagree with the numbers
16 of how many generators there are. There is two really
17 basic areas on the island. One is in the center section
18 and the other is off on the east end. I can only speak
19 to the area where I live.

20 The people next to me who are not there except
21 on a very rare occasion come and they use the generator
22 the first day or so, and then they don't use the
23 generator. Other than that, I don't hear generators.

24 Now maybe they are quiet. Maybe they are two
25 streets away, but I don't live with the pollution that

1 is being described. I can only assume that this
2 pollution exists on the east end of the island.

3 From my perspective, and the fact that I know
4 firsthand that solar works, using a diesel generator,
5 using a gasoline generator is something they are doing
6 by choice, which doesn't make sense to me, because for
7 far less money you could live in a totally solar home
8 like I do and be comfortable.

9 **COMMISSIONER BALBIS:** You indicate in your
10 part of the island that your neighbors are not there all
11 the time. Are they more seasonal residents in your part
12 of the island?

13 **MS. PUTNEY:** There's a lot of people on No
14 Name Key that don't live there full-time. I don't know
15 exactly how many people live there full-time, but I will
16 say that among the people that want commercial
17 electricity, there is a fair number of people that live
18 there all the time. Mr. Reynolds is not one of those
19 people.

20 **COMMISSIONER BALBIS:** Those people that don't
21 live there all the time, are they mostly there during
22 the summer and then travel in the winter or are they
23 there in the winter?

24 **MS. PUTNEY:** The neighbor that I'm most aware
25 of it is throughout the year.

1 **COMMISSIONER BALBIS:** But those that are --

2 **MS. PUTNEY:** But there are certainly -- I
3 think you are hinting at an answer I can give you.
4 Certainly there is a percentage -- this is all small
5 numbers when you're talking about 43 homes. There is a
6 certain percentage of people that leave during the
7 summertime, they are called snowbirds, that have homes
8 on No Name Key.

9 **COMMISSIONER BALBIS:** Could it be because in
10 the summer it is very hot and they would need air
11 conditioning and they don't have power to --

12 **MS. PUTNEY:** I wasn't going to get into this,
13 but I have firsthand knowledge of homes that are totally
14 solar that do not have generators that have zoned air
15 conditioning. It's not accurate to say that you cannot
16 have air conditioning with solar power. You can.

17 You have to make sure that your house is
18 insulated well. You have to make sure you buy the
19 appropriate air conditioner unit, and you have to make
20 sure that you have sufficient panels. But we are not
21 talking a lot of money. We're talking less money than
22 these people, the pro-utility people are paying to Keys
23 Energy to hook up to the grid.

24 **COMMISSIONER BALBIS:** Okay. Thank you.

25 **CHAIRMAN BRISÉ:** Commissioner Graham.

1 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

2 Ms. Putney, I just had one question for you.
3 You said that all the residents of No Name Key knew when
4 they built their house or bought the house that it was
5 an off-the-grid island.

6 **MS. PUTNEY:** Yes.

7 **COMMISSIONER GRAHAM:** Now, knowing at the time
8 that it was off the grid, it was currently off the grid,
9 but was there any knowledge that it was always going to
10 be off the grid when they bought or purchased their
11 homes, all these people?

12 **MS. PUTNEY:** I can only tell you what we found
13 out before we bought the lot. My husband and myself
14 called up the various agencies. When we talked to
15 Florida Keys Aquaduct Authority, which is the supplier
16 of water, because there is no commercially supplied
17 water on the island, we collect -- we harvest rainwater
18 and it's stored in cisterns.

19 They said there was a rule on the books that
20 would make it impossible to bring water to No Name Key.
21 The county said that they didn't have any regulations
22 that would prohibit electricity on No Name Key at that
23 time, but they didn't think, given the low density and
24 the fact that the people had to pay for it themselves,
25 that it would be coming.

1 And then the third phone call was to Keys
2 Energy, and they said the same thing they have said
3 forever. They have been very consistent in their
4 message that there's nothing in their organization that
5 would prohibit electricity to No Name Key, and they
6 would gladly provide it to anyone that paid the line
7 extension.

8 **COMMISSIONER GRAHAM:** Okay. Thank you.

9 **CHAIRMAN BRISÉ:** All right. Thank you, Ms.
10 Putney, for your testimony today.

11 **MS. PUTNEY:** Thank you for your time.

12 **MR. HERTZEL:** If I may, Commissioner, Mr.
13 Chairman, Ms. Putney had some handouts for the
14 Commission, a couple of articles and one on-line
15 petition containing approximately 170 signatures from
16 Key's residents in favor of solar.

17 **CHAIRMAN BRISÉ:** Sure. You can make it
18 available to one of our staff and they will make it
19 available to us.

20 **MR. HERTZEL:** Thank you.

21 **CHAIRMAN BRISÉ:** You may proceed.

22 **MR. STILLER:** Thank you, Commissioner. My
23 name is Shaw Stiller. I'm appearing here to provide
24 public comment.

25 For 16 years, I resided across the street here

1 at the Department of Community Affairs. For 12 of those
2 years, I was an Assistant General Counsel, and I was
3 privileged for the last four years to be General Counsel
4 of the Department of Community Affairs. Throughout that
5 time, I had occasion to become very familiar with, of
6 course, Chapter 163, Chapter 380, and our relations with
7 the Commission. In fact, I'd like to take credit for a
8 Memorandum of Understanding that was executed in the
9 late 1990s giving more communication between the
10 Commission and the then Department of Community Affairs
11 on issues such as utilities.

12 I do not know the details like these folks do.
13 I don't live on No Name Key. I live right around the
14 corner here in Indianhead, but I have spent a lot of
15 time in Monroe County, and I have spent a lot of time
16 studying the law on these issues. So I just want to
17 bring you my perspective.

18 We have gone from looking at the forest, to
19 looking at the trees, to tearing apart leaves here
20 today. What is the forest? Monroe County is an area of
21 critical state concern, which means the state has made a
22 policy decision that Monroe County is different. Just
23 like the City of Apalachicola, an area of critical state
24 concern. Ninety percent of Florida's oysters,
25 10 percent of the nation's oysters. Green Swamp,

1 Central Florida's drinking water. Big Cypress area of
2 critical state concern, the only place where those big
3 panthers can still wander around. And then the Keys,
4 and, of course, Key West.

5 And as Mr. Shillinger knows, I'm one of those
6 people in Tallahassee who sat up here for 16 years and
7 told them not to build anything. And there was a reason
8 for it. People cannot get out safely, and the ecology
9 can hardly support any more people. So Monroe County
10 has an admirable strategy, multi-pronged, land
11 purchases, the tier system, and refusing the extension
12 of utilities to keep the growth pressures down. Because
13 we'd all like to live there. It's a beautiful place,
14 but we can love it to death.

15 And it may seem like a minor issue to say,
16 well, we're going to wire 43 houses for electricity.
17 But if you start chipping at Monroe County's strategy,
18 and you start saying it's okay for these outlying
19 islands to have electricity, then it's going to be
20 water, then it's going to be sewer, and there's going to
21 be more development.

22 The Governor and Cabinet just last month
23 approved what my client I was representing then contends
24 is 20 years of building permits to be allocated over the
25 next ten years. The building pressure is there.

1 Utilities will make it stronger. A very wise man,
2 Doctor Earl Starnes, that some people would say is the
3 godfather of growth management said follow the pipes and
4 the roads. Follow the pipes and the roads. The
5 infrastructure will guide development.

6 Is this major? I have just been studying this
7 for a little while, and, again, plugging up 43 houses
8 doesn't seem like it, but it's going to chip away at
9 their strategy.

10 Do utilities make a difference? Yes. Martin
11 County has two urban service boundaries, primary and
12 secondary. Miami-Dade has an urban service boundary,
13 and it is the only reason that development is not
14 bleeding towards the Everglades and into the Redlands
15 area, one of the most productive winter vegetable
16 producing areas. It's services.

17 You have heard a whole lot, so I don't need to
18 say much. But let me point out one thing. The reason
19 why these houses were wired as if they could go on the
20 grid, and I know this because I worked at DCA, it's
21 something called the Florida Building Code. It has to
22 do with fire protection. Every house in the state has
23 to be wired the same way. It's not whether you are on
24 grid or off grid, it is because we don't want fires, and
25 that has been a state concern.

1 Thank you very much for the opportunity to
2 speak to you all this morning, Commissioners.

3 **CHAIRMAN BRISÉ:** Thank you.

4 Any questions?

5 Okay. Seeing none, thank you.

6 Anyone else?

7 **MR. PATTERSON:** Good morning, Mr. Chairman,
8 members of the Commission. My name is Charles
9 Patterson. I am president of 1,000 Friends of Florida.
10 We have been involved with Keys issues since the 1980s.

11 I had the privilege of actually working for
12 the Department of Community Affairs to help the county
13 adopt their first comprehensive plan back in '86, and
14 was the planning director for a couple of years
15 following that to help implement it.

16 You heard -- and I'm glad I'm following
17 Mr. Stiller, because he has basically said everything I
18 wanted to tell you. I just wanted to reiterate that to
19 us utility extensions are a key part of managing growth
20 throughout Florida, not just No Name Key.

21 He said it very well. Many local governments
22 use utility extensions or prohibitions to guide growth
23 and development in their communities. If the Commission
24 were to decide that it has the ability to overrule those
25 key policy decisions that have been made by local

1 governments statewide, I believe you will see unintended
2 consequences in many parts of Florida.

3 We think this is an important principle. This
4 was an ordinance that the county carefully considered in
5 2001 and adopted. It required the DCA's approval as
6 well as the Governor and Cabinet. It was a further
7 attempt to better manage growth and development in a
8 critical area of the Florida Keys.

9 We think that, again, with urban service
10 boundary policies and many comprehensive plans around
11 the state that the ability of a local government to
12 direct where utilities may or may not go is fundamental
13 to better growth and development in our state. And I
14 thank you for your time.

15 **CHAIRMAN BRISÉ:** Thank you very much.

16 Any questions?

17 Okay. Seeing none, thank you.

18 All right. So now we are going to -- yes, it
19 is 11:40, and I know that our court reporter needs a
20 break. So we're going to take a ten-minute break, and
21 then we are going to come back at 11:50, and we are
22 going to begin our discussion on the issues that remain.

23 (Recess.)

24 **CHAIRMAN BRISÉ:** All right. So we are going
25 to reconvene at this time. We have dealt with Issues 1

1 and 2. We are on Issue 3.

2 I know, Mr. Wright, you wanted to make some
3 comments; and then, Mr. Smith, you can make some
4 comments after that, as well.

5 **MR. SMITH:** Thank you.

6 **CHAIRMAN BRISÉ:** Mr. Wright.

7 **MR. WRIGHT:** Thank you very much, Mr.
8 Chairman. And I promise these will be brief. This
9 follows on the preemption discussion that we were having
10 earlier. And as I mentioned, the general principle is
11 that preemption has to be express. There is also a
12 doctrine of implied preemption, and I was prepared to
13 discuss it, and I would like to do so now.

14 As I mentioned earlier, in M&H Profit versus
15 City of Panama City Beach, the First DCA said,
16 "Protection of the welfare of the local citizenry
17 through the adoption of generally applicable land
18 development regulations has been exclusively within the
19 province of local government."

20 The court went on to say, "An interpretation
21 of state statutes which would impede the ability of
22 local government to protect the health and welfare of
23 its citizens should be rejected unless the Legislature
24 has clearly expressed the intent to limit or constrain
25 local government action." And further, the First DCA

1 went on to state that, quote, "Implied constraints
2 within these particular areas should be even more
3 carefully scrutinized," unquote. And that's at
4 28 So.3d at 71 -- at 77.

5 The general test under Florida law for implied
6 preemption is that such preemption must be, quote, "So
7 pervasive as to evidence an intent to preempt the
8 particular area and where strong public policy reasons
9 exist for finding preemption," unquote. That's Pinellas
10 County versus City of Key Largo.

11 The regulatory scheme under which the
12 Commission regulates municipal utilities and cooperative
13 utilities is not pervasive. It's limited to the six
14 express powers in 366.04, Sub 2, prescribe accounts,
15 prescribe rate structure, approve territorial
16 agreements, resolve territorial disputes, require
17 conservation and reliability, and require reports. None
18 of these is invoked here. The statute surely does not
19 evidence any intent by the Florida Legislature to
20 preempt the comp planning system or to preempt the
21 Florida Keys Protection Act.

22 For example, the Legislature could have said
23 notwithstanding any local government regulations,
24 notwithstanding the growth management system
25 administered by the Department of Community Affairs

1 under Chapter 163 and 380. They didn't do that. And,
2 again, harking back to what the court said in a very
3 early Commission case, there is no -- there's no
4 argument by this Commission to the court, by the way --
5 there is no occasion to give one statutory creature
6 jurisdiction over the activities of another statutory
7 creature unless the law unmistakably so provides. There
8 is no provision indicating any intent to override the
9 comp plan system, the growth management system, or the
10 Florida Keys Protection Act. And, accordingly, there is
11 no preemptive jurisdiction here. Thank you.

12 **CHAIRMAN BRISÉ:** Thank you.

13 Mr. Smith.

14 **MR. SMITH:** A point of clarification before I
15 begin, because I think a lot of the public comment went
16 beyond just jurisdiction. We are going to have an
17 opportunity to address the Issues 4 and 5, correct?

18 **CHAIRMAN BRISÉ:** I think I was pretty clear
19 when I said Issues 3 through 6 were to be contained
20 within that discussion, so this is your opportunity.

21 **MR. SMITH:** All right. And that's fine. And
22 I'm just going to go through --

23 **CHAIRMAN BRISÉ:** Make it brief.

24 **MR. SMITH:** I'm going to address mainly the
25 comments, because I think there's a lot of

1 misinformation that was provided. First, as to the
2 jurisdiction issue, I don't think we can get more clear
3 than the case that preceded this, which was Roemmele
4 Putney versus Reynolds wherein the Third District Court
5 of Appeals began by concluding that the issues raised
6 are within the exclusive jurisdiction of the PSC. That
7 statement cannot be misinterpreted to decide anything
8 but the exclusive jurisdiction to decide these issues is
9 within the PSC.

10 And as to any issues to address the
11 territorial agreement, the county keeps going to 366.04,
12 Subsection 2, to state this is a territorial agreement
13 dispute and there is no claim that this was a dispute
14 between the two utilities. You have to look at 366.04,
15 Subsection 5, which is that this Commission has
16 exclusive jurisdiction. It states exclusive
17 jurisdiction over the planning, development, and
18 maintenance of the coordinated power grid.

19 We are speaking right now about a
20 comprehensive plan which guides development. However,
21 as to the development of the coordinated power grid, the
22 exclusive jurisdiction is with this Commission. It
23 can't be more clear than that.

24 Going forward to addressing the area of
25 critical concern, the area of critical concern is

1 contained in Chapter 380. 380.04 defines what
2 development is. Development, it specifically states, is
3 not -- and let me repeat that -- is not the extension of
4 utilities in right-of-ways. So when it comes to
5 utilities, it is expressly excluded from being
6 development. So when you have the DCA or anything
7 coming forward and stating that utilities are going to
8 encourage development, well, that's just not the case.
9 In fact, it is not deemed development. And so what we
10 are dealing with here is people that already have homes
11 built. They are developed.

12 The issue here isn't -- not the extension to
13 new areas that don't have homes built. The permits were
14 issued. And with those permits these subdivisions have
15 utility easements in front of their homes. In fact, my
16 client right now in his utility easement has a utility
17 pole that is already -- Mr. Finigan has connected the
18 electric line to in that utility easement.

19 Monroe County is refusing to issue the permit
20 that would allow him to connect. It is clearly within
21 this Commission's jurisdiction to state that he's
22 entitled to connect. That's where the jurisdiction goes
23 to, the connection. And in this case, Monroe County is
24 overstepping its boundaries.

25 Now, Monroe County has the right to guide

1 development. It has the comprehensive plan. By state
2 law it's required to have a comprehensive plan. Nowhere
3 in Chapter 163 or 380 does it state that a comprehensive
4 plan, which is a county ordinance, nowhere does it state
5 that it is superior to Florida Statutes which state the
6 exclusive jurisdiction to decide this issue is with the
7 Public Service Commission. It is a county ordinance,
8 not a state statute that vested you with jurisdiction.
9 The land development regulation is a county ordinance.

10 The idea here is they keep stating we need to
11 protect against future development, future growth,
12 future evacuation times. The county has many mechanisms
13 in place to deal with future development. They have
14 enacted the tier system. In fact, the county didn't
15 state that they just commissioned a study which is going
16 to be discussed tomorrow on the county commission agenda
17 which specifically states there is no necessity of even
18 having this LDR that prohibits the extension of CBR
19 systems to -- sorry, the extension of utilities to CBRS
20 systems. They commissioned a study that specifically
21 states there's no necessity for this.

22 The tier system and other mechanisms can
23 restrict growth away from areas that are not suitable
24 for growth and protect against future development. The
25 DCA has allocated the ROGOs for the next ten years. The

1 county can choose where they want those ROGOs to be
2 allocated as they deem fit. If they choose not to
3 allocate them towards vacant lots on No Name Key, they
4 are free to do so. This is about individual homeowners
5 that have built their homes, that have utility easements
6 in front of their homes that have the expectation to
7 receive power just as every citizen of the state that
8 has a home would expect.

9 As to the idea of the CBRS being a
10 restriction, the CBRS federal statutes are not a
11 restriction on development. It's a discouragement of
12 development by limiting subsidization of federal
13 funding. You can actually have federally subsidized
14 flood insurance, you can get a federally subsidized
15 mortgage if you are already built prior to the CBRS
16 overlay. There are many homes that are in CBRSs that do
17 have federally subsidized flood insurance. So to state
18 that the CBRS -- it is the county's duty to enforce the
19 CBRS is a misstatement. That is a federal law. And any
20 time that a government goes beyond a federal statute
21 they open themselves up to the liability that comes with
22 it.

23 In this case, they have gone beyond
24 discouraging development to just stating something that
25 is not development, which is the extension of utilities,

1 is prohibited. There's nothing in the CBRS federal
2 statutes that requires Monroe County to do so. The only
3 basis they are refusing to provide power is under their
4 ordinance which they adopted, which Mr. Newton forgot to
5 state, that no one on the island even got notice of the
6 adoption. There was no letters mailed that we are
7 considering adopting this. In fact, the second -- the
8 vote where it was voted to be approved was not even
9 noticed in a paper of regular circulation.

10 So the fact of the matter is it was adopted
11 without even their notice so they can participate in the
12 government process. What we are asking for you to do is
13 to take your jurisdiction and make the right choice,
14 which is that they are entitled to power just as
15 everyone else.

16 As to the idea of the other CBRSs, having done
17 the research, the Bahia Honda State Park, it's a state
18 park in the Florida Keys, it actually in 2005 had
19 built -- no, it was 2010. Sorry, my client acquired his
20 house in 2005. In 2010, it built new cabins. It's
21 completely located in a CBRS. Built new cabins for
22 people to stay in. It actually got permits for 200-amp
23 subfeed and connected those cabins to electricity.

24 So to state that this issue isn't specific to
25 No Name Key is a misstatement, as well. They have been

1 singled out. In fact, the staff report when the
2 ordinance was adopted that prohibited the extension of
3 CBRS (sic) to Coastal Barrier Resource Systems,
4 specifically states that it is to prohibit electricity
5 in No Name Key. So it was intended for this purpose.
6 It was intended to usurp the jurisdiction and make the
7 decision as to who can receive power when that is solely
8 supposed to be your determination.

9 And in this case you have homes and you have
10 people. These people are customers. And a territorial
11 agreement means customers. And so what we are asking
12 for you to do is find that these customers are entitled
13 to electric service, that these customers are entitled
14 to the same things that every customer is entitled to.
15 That the territorial agreement terms that state that it
16 is a policy of Florida to provide electricity isn't just
17 words on paper, but it means something. It means that
18 they get service.

19 And so what we are asking you to do is to find
20 that you have jurisdiction; we are asking you to find
21 that they are entitled to service; and we are asking you
22 to find that it cannot be prohibited, and that counties
23 and cities and municipalities cannot usurp your
24 jurisdiction and then eviscerate the power of the PSC as
25 was stated by the Third DCA. If you start allowing

1 every county to make ordinances of who can receive power
2 and who cannot receive power, your jurisdiction and
3 power has been eviscerated.

4 **CHAIRMAN BRISÉ:** Thank you, Mr. Smith.

5 **MR. SMITH:** And so we would request that you
6 find jurisdiction and find that these people are
7 entitled to power. Thank you.

8 **CHAIRMAN BRISÉ:** Thank you. Okay.

9 Commissioner Balbis.

10 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
11 Just a few comments.

12 And there has been lot of discussion on the
13 controlling of growth and development in Monroe County,
14 and I want to follow-up on some of Commissioner Graham's
15 comments concerning the other mechanisms and avenues
16 that Monroe County will retain. I mean, they have the
17 comprehensive planning process, other zoning
18 regulations.

19 I had served on the Treasure Coast Regional
20 Planning Council for a number of years prior to this
21 appointment. And it was an eye-opening experience to
22 see the layers and levels of regulations in order to
23 control and properly manage growth. So I don't see that
24 this case eliminates any of the other avenues,
25 regardless of how we decide, eliminates any of those

1 avenues to properly manage growth. So I agree with
2 Mr. Smith's comments on that, and I know that
3 Commissioner Graham serving in the city, or the county,
4 I'm not sure which --

5 **COMMISSIONER GRAHAM:** They're the same.

6 **CHAIRMAN BRISÉ:** Right.

7 **COMMISSIONER BALBIS:** And Commissioner Brown
8 at the City of Tampa, I mean, we are familiar with all
9 the other mechanisms that are out there, and we are in
10 no way saying that we are going to eliminate those
11 mechanisms. But in this case, the jurisdiction, I
12 believe, is clear as to our authority.

13 **CHAIRMAN BRISÉ:** Commissioner Brown.

14 **COMMISSIONER BROWN:** Thank you, Mr. Chairman.

15 And I would concur with Commissioner Balbis.
16 And, Mr. Smith, you couldn't have stated it more clearly
17 as with regard to Issue 3. I think there is a clear
18 delineation in statutory authority given to us as the
19 Third DCA repeated and stated. And I was even confused
20 why this particular issue was before us, because I
21 thought that this had already been adjudicated and
22 decided by the Third DCA, and that was a question that I
23 had with staff during my briefing.

24 But I would like, Ms. Brown, would you
25 please -- I'd like to give you an opportunity to respond

1 to some of the comments that were made earlier by the
2 parties here, if you so choose, notably Mr. Wright and
3 Ms. --

4 **MS. SWIM:** Swim.

5 **COMMISSIONER BROWN:** Thank you, Ms. Swim.

6 -- Ms. Swim's earlier comments.

7 **MS. BROWN:** Well, there have been a lot of
8 comments, Commissioner Brown.

9 (Laughter.)

10 **MS. BROWN:** I think the ones you are referring
11 to, and if you can give me some guidance about what you
12 would like me to discuss that would be helpful. I think
13 you're interested in the scope of our jurisdiction and
14 the preemptive nature of it. That's one of them.

15 **COMMISSIONER BROWN:** That's correct. And I
16 will elaborate on that, too. You know, the No Name is
17 an area of critical state concern within 385.05. Then
18 we also have the other statutes that are under our
19 jurisdiction, 366.01 and 366.04. I wanted you to just
20 reconcile those statutes and the preemptive nature given
21 to us under 366.01 and .04.

22 **MS. BROWN:** Well, it is my opinion -- well,
23 let me say this. This recommendation is not designed to
24 encroach upon the county's abilities to control further
25 development, which is stated right now. But within that

1 I believe our jurisdiction under 366 is preemptive, and
2 that involves all entities subject to our jurisdiction:
3 Electric utilities with respect to territorial
4 agreements and disputes in the grid bill, some electric
5 utilities with respect to conservation and demand-side
6 management.

7 All of those areas of the Commission's
8 jurisdiction are preemptive as the Third DCA clearly
9 stated when it said, "The Appellees and the PSC also
10 have argued and we agree that KES's existing service and
11 territorial agreement approved by the PSC in 1991
12 relating to new customers and end-use facilities is
13 subject to the PSC's statutory power over all electric
14 facilities and any territory disputes over service areas
15 pursuant to Section 366.04(2)(e). The PSC's
16 jurisdiction when properly invoked as here is exclusive
17 and superior to that of all other boards, agencies,
18 political subdivisions, municipalities, towns, villages,
19 or counties." And that applies to -- that section is
20 found in 366.041, but it is worded to say that the
21 jurisdiction under the chapter is exclusive to all of
22 these.

23 So I don't agree that there is a limitation on
24 the Commission's authority over territorial agreements
25 or disputes here. In fact, I think it's important that

1 the Commission -- for several reasons that the
2 Commission exercise its jurisdiction to continually
3 exercise its jurisdiction over territorial agreements in
4 Florida because they are so essential to the protection
5 of the state action immunity doctrine.

6 I noticed no one mentioned that here today.
7 One of the reasons we have territorial agreements to
8 start with is to -- in the State of Florida, is to have
9 a monopoly system of the provision of electric service
10 with a statewide regulator to oversee it. Because
11 otherwise the territorial agreement between Keys Energy
12 and the co-op would be a horizontal division of
13 territory and subject to antitrust liability. But if
14 the Commission actively supervises those agreements,
15 reviews them, has the power to modify them as the courts
16 have said, then we can protect the utilities from
17 antitrust liability. And that's important, and that has
18 to be done on a continuing basis because you have to
19 show a pattern of active supervision. Otherwise, a
20 rubber stamp of a territorial agreement once, and you
21 never look at it, you never enforce its terms, it
22 doesn't comply with the state action immunity doctrine.
23 I think I got off a little bit, but --

24 **COMMISSIONER BROWN:** An excellent elaboration.
25 You need not go further.

1 **MS. BROWN:** Okay.

2 **CHAIRMAN BRISÉ:** Commissioner Graham.

3 **COMMISSIONER GRAHAM:** I move staff
4 recommendation on Issue Number 3.

5 **CHAIRMAN BRISÉ:** Okay. It has been moved and
6 seconded. Any further discussion? Okay. Seeing none,
7 all in favor say aye.

8 (Vote taken.)

9 **CHAIRMAN BRISÉ:** Moving on to Issue Number 4.
10 Commissioner Graham.

11 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.
12 Ms. Brown, effectively what does approval of
13 Issue 4 do to the residents of No Name Key and to Monroe
14 County?

15 **MS. BROWN:** It allows the residents of No Name
16 Key who wish to receive electric service -- it states
17 that they are entitled to have electric service if they
18 wish to, but only if they wish to. That's not imposing
19 any obligation on a solar community to hook up. It is
20 limited to No Name Key and those customers who have
21 developed property, or have building permit rights in
22 those areas, and it is not designed to at all effect
23 future growth management plans of the county.

24 And, in fact, I say that in the
25 recommendation. And if you would like, we can make it

1 even stronger in the order that this just applies to the
2 existing homes that are there on No Name Key, and
3 anything future would be well within the county's
4 purview. And as Commissioner Balbis said, the county
5 has many avenues to discourage growth on No Name Key.

6 Does that answer your question?

7 **COMMISSIONER GRAHAM:** Thank you.

8 **CHAIRMAN BRISÉ:** Any further questions?

9 Okay. Commissioner Balbis.

10 **COMMISSIONER BALBIS:** I have a question for
11 staff. Obviously with our decision on Issue 3 that we
12 have jurisdiction, now we have to look at the
13 territorial agreement itself. And I appreciate staff's
14 recommendation on this and the analysis citing
15 Section 6.1 of the agreement, which just reading that
16 last sentence to encourage the installation and
17 maintenance of the facilities necessary to fulfill the
18 parties respective obligations to serve the citizens
19 within their respective service territories. I think
20 that the territorial agreement is clear that the parties
21 to that agreement are obliged to provide service. So if
22 Commissioner Graham is poised and ready for a motion, I
23 cannot see any reason to disagree with staff's
24 recommendation on this issue.

25 **CHAIRMAN BRISÉ:** Okay. I think -- let's see

1 if anybody else has any thoughts or further questions on
2 this issue. Okay.

3 Commissioner Edgar.

4 **COMMISSIONER EDGAR:** Thank you. And I'm glad
5 that we did take up Issue 3, the jurisdictional issue, a
6 little bit separately to allow, if need be, for a little
7 more discussion than on the implementation here with the
8 issues that are before us.

9 I do believe that our jurisdiction is clear on
10 this. And just a couple of comments in response to a
11 few of the things that we have heard today. Mr. Smith
12 said that the issue before us is about the customers and
13 that service is a fundamental right. And as with almost
14 everything that comes before us, this issue is about the
15 customers, and I do believe that service is a
16 fundamental right, and I have heard that for water and
17 wastewater and electric service from many members of the
18 Legislature over the years.

19 I also agree -- or maybe I disagree. I'm
20 taking this a little out of context, and I recognize
21 that. So, forgive me, but Mr. Tobin said that Monroe
22 County is not special, and I recognize that you were
23 using that regarding jurisdiction. But I'm going to use
24 it as a springboard to say that I do believe Monroe
25 County is special and that has been pointed out to us by

1 Mr. Wright and Ms. Swim and others.

2 The state has, through numerous actions, taken
3 note of that uniqueness and the special nature of the
4 area, not the least of which is the designation as an
5 area of critical state concern and the National Marine
6 Sanctuary designation and others. However, within all
7 of that, I do not believe that the jurisdiction that we
8 have just affirmed and recognize applies to many of the
9 points that have been raised here as to the sensitivity
10 of a number of the species, as to the recognition of the
11 desire of some of the homeowners to retain an
12 off-the-grid characterization. I believe those concerns
13 do go beyond our jurisdiction.

14 And so with that, at the appropriate time, Mr.
15 Chairman, I am willing and ready and able to support the
16 staff recommendation on the remaining issues.

17 **CHAIRMAN BRISÉ:** Okay. Thank you.

18 Commissioner Balbis.

19 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

20 And just to follow-up with Commissioner Edgar
21 concerning some of the environmental issues that were
22 brought up. And I'm glad that included in this
23 recommendation is Attachment B, which is a very clear
24 letter from the United States Department of the Interior
25 and the Fish and Wildlife Service, which discusses all

1 of the endangered species that could be impacted.
2 Everything from the Key deer, the Lower Keys Marsh
3 Rabbit, the Silver Rice Rat, the Eastern Indigo Snake,
4 the Stock Island Tree Snail, the Garber Spurge, and even
5 the Key Tree Cactus will not be harmed if electrical
6 service is provided to the island.

7 So there has been a lot of discussion on all
8 of the issues here that if we do approve the issue in
9 question, I believe it has been adequately addressed in
10 staff's recommendation, so I would support a motion
11 supporting that.

12 **CHAIRMAN BRISÉ:** Okay.

13 Commissioner Graham.

14 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

15 I am one of those guys that have come from
16 both city government and county government. I always
17 believe in home rule, so this is always a difficult
18 thing to do or difficult position to come from. But as
19 I believe the attorney said earlier, one of the most
20 obvious things is that these houses and these lots were
21 plotted with utility easements. I mean, so why would
22 you have a utility easement if you are not going to
23 allow them to have utilities?

24 I mean, I get where the county is coming from,
25 and I have seen all kinds -- as I mentioned earlier, all

1 kinds of things that people have tried to do and have
2 successfully put in their comp plans. Some you agree
3 with and some you don't agree with. In this case, it's
4 a bitter pill for me to try to swallow to say that you
5 are denying somebody the ability for electricity.

6 I know we have had many issues come along
7 where there's dirt roads going out to people's homes,
8 and the city and the county have told them that we can't
9 afford to pave a road all the way out to where your
10 house is because there is only three houses out there.
11 Now, we have done things where we have shared the price
12 with the people, where we paid a third and the person
13 living on one side of the road paid a third, and the
14 person that lived on the other side of the road paid a
15 third.

16 In this case, you have the residents out there
17 that paid 100 percent of the cost to run that power out
18 to where they are. And if my understanding is correct,
19 Ms. Brown, what we are doing is basically legitimizing
20 what they have already paid for and what they have
21 already done, is that correct?

22 **MS. BROWN:** Yes.

23 **COMMISSIONER GRAHAM:** Okay. We cannot issue
24 the permits to connect to the homes. All we can do is
25 legitimize what they have currently done, correct?

1 **MS. BROWN:** Yes, I agree with that.

2 **COMMISSIONER GRAHAM:** That being the case, I
3 move approval of both issues -- well, Issues 3, 4,
4 and -- I'm sorry, 4, 5, and 6, the staff recommendation.

5 **COMMISSIONER EDGAR:** Second.

6 **CHAIRMAN BRISÉ:** Okay. It has been moved and
7 seconded. Any further discussion on any one of those
8 issues? Okay.

9 Seeing none -- oh, sorry, Commissioner Brown.

10 **COMMISSIONER BROWN:** And just to follow-up,
11 and I support the motion, and I also support everything
12 that my fellow Commissioners have said.

13 I did want to commend those that have spoken
14 before us. It did help elucidate the issues presented
15 here. I also wanted to commend those that live on solar
16 in part or in whole. I don't think approval of this is
17 going to impair you remaining on solar in any fashion.
18 You are not going to be required to get on the grid.

19 I also do believe that those concerned about
20 further development on the island, there are various
21 mechanisms in place to preserve the essence of the
22 island. So with that, I just wanted to add that
23 sentiment and I support the motion.

24 **CHAIRMAN BRISÉ:** Okay. Commissioner Balbis
25 did you -- okay.

1 With that, we are ready for a vote. All in
2 favor say aye.

3 (Vote taken.)

4 **CHAIRMAN BRISÉ:** Okay. Thank you very much.

5 Thank you to all those who participated,
6 especially those who traveled from afar to come today.
7 We certainly appreciate your input. And as was stated
8 by my fellow colleagues here, there are other aspects of
9 this issue that can be dealt with in other forums, as
10 well. So we certainly hope that you exercise your
11 avenues there, as well. Okay. Thank you very much.

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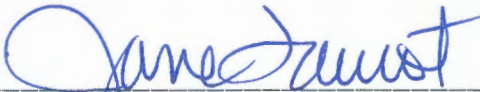
STATE OF FLORIDA)
 :
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 11th day of June, 2013.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
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