

State of Florida



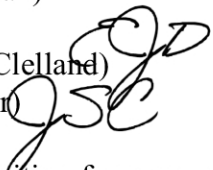
Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey, McClelland)
Office of the General Counsel (Stillet) 

RE: Docket No. 20230087-EU – Joint petition for renewal of territorial agreement and approval of a first amendment, in Monroe County, by Florida Keys Electric Cooperative Association, Inc. and Utility Board of the City of Key West.

AGENDA: 10/03/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On August 2, 2023, Florida Keys Electric Cooperative Association, Inc. (FKEC) and the Utility Board of the City of Key West, d/b/a Keys Energy Services (KEYS), filed a joint petition for renewal of territorial agreement and approval of a first amendment (First Amendment). The Commission approved a territorial agreement between FKEC and KEYS, (collectively, the parties) in 1991 (1991 Territorial Agreement).¹ The 1991 Territorial Agreement expired in September 2021 at the end of its 30-year term and automatically renewed for an additional 30 years. Although the two utilities did not seek Commission approval of their renewed 1991 Territorial Agreement at the end of its first 30-year term, as required by the 1991 Territorial

¹ Order No. 25127, issued on September 27, 1991, in Docket No. 910765-EU, *In re: joint Petition of Florida Keys Electric Cooperative association, Inc., and the Utility board of the City of Key West for approval of a territorial agreement.*

Agreement, the parties stated that they have abided by the conditions of the agreement with the exception of the provision of electric service to Pigeon Key.²

The proposed First Amendment addresses a modification to the existing service territory boundary to allow FKEC to provide electric service to Pigeon Key, which currently lies in KEYS' service territory. Pigeon Key was designated as a National Historic Landmark in 1990. In 1992, the Pigeon Key Foundation, Inc., (Foundation) was created as a non-profit organization to preserve and protect Pigeon Key. The Foundation has been utilizing self-service generators during the past 29 years and has requested electric service and hence the need for the proposed First Amendment.

The 1991 Territorial Agreement and territorial map are Attachment A and the proposed First Amendment, including the map depicting the modified service boundary, is included in Attachment B to this recommendation.

During the review process, staff issued two data requests to the parties on August 10 and 29, 2023. Responses were received on August 23 and on September 7, 2023. Staff also had an informal telephonic meeting with the parties on September 7, 2023. This recommendation addresses the renewal of the 1991 Territorial Agreement, proposed First Amendment to the 1991 Territorial Agreement and associated revised boundary map. The Commission has jurisdiction over this matter pursuant to Sections 366.04 and 366.05, Florida Statutes (F.S.).

² Response No. 2 in Staff's First Data Request, Document No. 04944-2023.

Discussion of Issues

Issue 1: Should the Commission approve the renewal of the 1991 Territorial Agreement and the proposed First Amendment to the 1991 Territorial Agreement and associated revised boundary map between Florida Keys Electric Cooperative Association, Inc. and the Utility Board of the City of Key West, d/b/a Keys Energy Services, in Monroe County?

Recommendation: Yes, the Commission should approve the renewal of the 1991 Territorial Agreement and the proposed First Amendment to the 1991 Territorial Agreement and associated revised boundary map between FKEC and KEYS in Monroe County. The renewal of the 1991 Territorial Agreement and proposed First Amendment would enable FKEC to provide electric service to the Foundation pursuant to the proposed revised service boundary and avoid duplication of service. (Guffey, McClelland)

Staff Analysis: FKEC is a rural electric cooperative and KEYS is a municipal electric utility. Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440(2), F.A.C., the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.³

1991 Territorial Agreement

FKEC and KEYS entered into an electric service territorial agreement in June 1991, which the Commission approved in September 1991.⁴ The 1991 Territorial Agreement which had a 30-year term, clearly identified the geographic areas to be served by each utility which allowed the two utilities to prevent potential uneconomic duplication of facilities and hazardous situations within their specified service territories. There were no customer or facility transfers contemplated in the 1991 Agreement.

The 1991 Territorial Agreement's 30-year term expired in September 2021 and automatically renewed for an additional 30 years since neither of the parties gave notice to not renew. Paragraph 11 of the 1991 petition recognized that any modifications, changes, or corrections must be approved by this Commission. Additionally, Section 5.1 of the 1991 Agreement states that:

each such renewal of this Agreement shall require prerequisite approval of the Commission with the same effect as the original Commission approval of this Agreement as required and approved for in Article 4 hereof.

The parties explained that due to staffing changes there was a delay in filing a petition with the Commission for renewal of the 1991 Territorial Agreement. However, the parties stated that with the exception of the provision of electric service to Pigeon Key, which is discussed below

³ Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

⁴ Order No. 25127, issued on September 27, 1991, in Docket No. 910765-EU, *In re: joint Petition of Florida Keys Electric Cooperative association, Inc., and the Utility board of the City of Key West for approval of a territorial agreement.*

and the subject of the proposed First Amendment, the parties abided by the 1991 Territorial Agreements and have had no disputes.

Proposed First Amendment to the 1991 Agreement

Through the proposed First Amendment to the 1991 Territorial Agreement, the parties seek to modify the service territory boundary and allow FKEC to provide electric service to Pigeon Key at the request of the Foundation. Prior to the Foundation's request for electric service, neither KEYS nor FKEC provided electric service to the island. Provision of electricity by KEYS to the Pigeon Key poses significant engineering and economic challenges due to the geographic and environmental conditions. Although KEYS owns electric transmission poles approximately 350 feet from the island, the poles do not carry distribution lines and KEYS does not have the ability to step down the electricity. The parties state that if KEYS were to extend the distribution lines to Pigeon Key, the most economical method to do so would cost approximately \$6 million.

The costs incurred by FKEC to add facilities within its service boundary in order to connect to the Foundation's point of service is \$6,011.53.⁵ Considering the above-stated challenges if KEYS were to provide electric service to the Foundation, allowing FKEC to provide electric service to the Foundation is the most economical and practical solution.

In response to staff discovery, the parties stated that FKEC has been providing service to the Foundation since May 2021.⁶ The parties acknowledge that they should have requested Commission approval of the First Amendment to the 1991 Agreement prior to providing service to the Foundation; however, the parties explained that due to staffing changes there was a delay in filing a petition with the Commission.

Pursuant to Rule 25-6.0440(1)(d), F.A.C., affected customers must be notified of difference in service and rates. In June 2023, FKEC provided the Foundation a customer notice indicating the rates and tariffs that would be applicable to the Foundation. The Foundation receives electric service under FKEC's General Service Demand tariff. In response to staff's data request, the parties provided a copy of FKEC's customer notification and applicable tariff information.⁷ The parties informed staff that there have been no customer comments or objections regarding this proposed territorial amendment and no customer comments have been filed in the docket file.

Conclusion

After review of the petition, the 1991 Territorial Agreement, the First Amendment to the 1991 Territorial Agreement, evaluation of responses to staff's data requests, and informal telephonic meeting with the parties, staff believes that the renewal of the 1991 Territorial Agreement and First Amendment would not be a detriment to the public interest and would enable FKEC to serve the Pigeon Key Foundation in an efficient manner. It appears that the 1991 Agreement and First Amendment and associated modified boundary map would eliminate any potential uneconomic duplication of facilities and not cause a decrease in the reliability of electric service. As such, staff believes that the Commission should approve the renewal of the 1991 Territorial Agreement between FKEC and KEYS along with the proposed First Amendment to the 1991

⁵ Paragraph 11 of the petition and customer notification referenced in Response No. 10 in staff's First Data Request.

⁶ Response No. 2 in Staff's First Data Request, Document No. 04944-2023.

⁷ Response No. 11 and attachments in Staff's First Data Request, Document No. 04944-2023.

Territorial Agreement and associated revised service boundary map, effective on the date of the final Commission order. FKEC and KEYS should be put on notice that any further modifications to the Territorial Agreement should be promptly submitted to the Commission for its review and approval.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Stiller)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

AGREEMENT

Section 0.1 THIS AGREEMENT, made and entered into this 17TH day of JUNE, 1991 by and between the Utility Board of the City of Key West, using the trade name "City Electric System," (referred to in this Agreement as "CES") organized and existing under the laws of the State of Florida and an electric utility as defined in Chapter 366.02(2) Florida Statutes, and Florida Keys Electric Cooperative Association, Inc. (referred to in this Agreement as "FKEC"), a rural electric cooperative organized and existing under Chapter 425, Florida Statutes, and Title 7, Chapter 31, United States Code and an electric utility as defined in Chapter 366.02(2), Florida Statutes, each of whose retail service territories are subject to regulation pursuant to Chapter 366, Florida Statutes and which are collectively referred to in this Agreement as the "Parties";

WITNESSETH:

Section 0.2: WHEREAS, the Parties are authorized, empowered and obligated by their corporate charters and the laws of the State of Florida to furnish electric service to persons requesting such service within their respective service areas; and

Section 0.3: WHEREAS, each of the Parties presently furnishes electrical service to consumers in Monroe County, Florida; and

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Section 0.4: WHEREAS, although the respective service areas of the Parties are contiguous, their respective areas have an existing and natural boundary between Knight Key and Little Duck Key, which boundary is intersected by the Seven Mile Bridge, and

Section 0.5: WHEREAS, the unique geographic location of the service areas of the Parties and the unique topography of the Florida Keys affords a rational and non-controversial boundary between the Parties, and

Section 0.6: WHEREAS, the Parties desire to minimize their costs to their respective rate payers by avoiding duplication of generation, transmission, and distribution facilities, and by avoiding the costs of litigation that may result in territorial disputes; and

Section 0.7: WHEREAS, the Parties desire to avoid adverse ecological and environmental consequences that may result when competing utilities attempt to expand their service facilities into areas where other utilities have also constructed service facilities; and

Section 0.8: WHEREAS, The Florida Public Service Commission (referred to in this Agreement as the "Commission"), has previously recognized that duplication of facilities results in needless and wasteful expenditures and may create hazardous situations, detrimental to the public interest; and

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Section 0.9: WHEREAS, the Parties desire to avoid and eliminate the circumstances giving rise to potential duplication of facilities and hazardous situations, and toward that end have established a Territorial Boundary Line to delineate their respective retail Territorial Areas; and

Section 0.10: WHEREAS, the Commission is empowered by Section 366.04(2)(d), Florida Statutes, to approve and enforce territorial agreements between electric utilities, has recognized the wisdom of such agreements, and has held that such agreements, subject to Commission approval, are advisable in proper circumstances, and are in the public interest;

Section 0.11: NOW, THEREFORE, in consideration of the premises aforesaid and the mutual covenants and agreements herein set forth the Parties agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1: Territorial Boundary Line. As used in this Agreement, the term "Territorial Boundary Line" shall mean the boundary line shown on the map attached hereto as Exhibit "A", which differentiates and divides the FKEC Territorial Area and the CES Territorial Area.

Section 1.2: FKEC Territorial Area. As used in this Agreement, the term "FKEC Territorial Area" shall mean the geographic areas of Monroe County shown on Exhibit "A" designated

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"FKEC", and the balance of the geographic area of Monroe County, not shown on Exhibit "A" which lies North by Northeast of the Territorial Boundary Line.

Section 1.3: CES Territorial Area. As used in this Agreement, the term "CES Territorial Area" shall mean the geographic areas of Monroe County, shown on Exhibit "A", designated "CES", and the balance of the geographic area of Monroe County not shown on Exhibit "A" which lies South by Southwest of the Territorial Boundary Line.

Section 1.4: Transmission Line. As used in this Agreement, the term "Transmission Line" shall mean any Transmission Line of either Party having a rating of 69 kV or greater.

Section 1.5: Distribution Line. As used in this Agreement, the term "Distribution Line" shall mean any Distribution Line of either Party having a rating of up to, but not including 69 kV.

Section 1.6: Person. As used in this Agreement, the term "Person" shall have the same inclusive meaning given to it in Section 1.01(3), Florida Statutes.

Section 1.7: New Customer. As used in this Agreement, the term "New Customer" shall mean any Person that applies to either FKEC or CES for retail electric service after the effective date of this Agreement.

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Section 1.8: Existing Customer. As used in this Agreement, the term "Existing Customer" shall mean any Person receiving retail electric service from either FKEC or CES on the effective date of this Agreement.

Section 1.9: End Use Facilities. As used in this Agreement, the term "end use facilities" means those facilities at a geographic location where the electric energy used by a customer is ultimately consumed.

ARTICLE 2

AREA ALLOCATIONS AND NEW AND EXISTING CUSTOMERS

Section 2.1: Territorial Allocations. During the term of this Agreement, FKEC shall have the exclusive authority to furnish retail electric service for end use within the FKEC Territorial Area and CES shall have the exclusive authority to furnish retail electric service for end use within the CES Territorial Area.

Section 2.2: Service to New and Existing Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any New or Existing Customer whose end-use facilities are or will be located within the Territorial Area of the other Party.

Section 2.3: Bulk Power for Resale. Nothing herein shall be construed to prevent either Party from providing a bulk power supply for resale purposes to any other electric utility

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regardless of where such other electric utility may be located. Further, no other Section or provision of this Agreement shall be construed as applying to a bulk power supply for resale purposes.

Section 2.4: Service Areas of Other Utilities. This Agreement between FKEC and CES does not constitute an agreement on or allocation of any geographic area of Monroe County, that is currently being provided electric service by electric utilities not parties to this Agreement.

Section 2.5: CES Facilities in FKEC Territorial Area. The Parties agree that the location, use, or ownership of transmission facilities by CES (or the use or right to the use of FKEC's transmission facilities) in FKEC's Territorial Area as defined herein, shall not grant CES any right or authority, now or in the future, to serve any consumers whose end use facilities are, or will be, located in FKEC's Territorial Area.

Section 2.6: Distribution Facilities. Neither Party has any distribution facilities located in the territorial area of the other Party, and neither Party shall construct, operate, or maintain distribution facilities in the Territorial Area of the other Party.

Section 2.7: No Transfer of Customers. Neither Party has any customers located in the Territorial Area of the other Party as of the date of this Agreement, and no customers will be transferred from one Party to the other by virtue of this Agreement.

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ARTICLE 3

OPERATION AND MAINTENANCE

Section 3.1: Facilities to Remain. Electric facilities which currently exist or are hereafter constructed or used by a Party in conjunction with its electric utility system, which are directly or indirectly used and useful in service to its customers in its Territorial Area, shall be allowed to remain where situated and shall not be subject to removal or transfer hereunder except as provided in the Transmission Agreement dated February 6, 1985 between the Parties or as provided in any successor agreement; provided, however, that such facilities shall be operated and maintained in such a manner as to minimize interference with the operations of the other Party.

ARTICLE 4

PREREQUISITE APPROVAL

Section 4.1: Commission Approval and Continuing Jurisdiction. The provisions of and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission. Approval by the Commission of the provisions of this Agreement shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until Commission approval has been obtained, and the date of the Commission's

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order granting Commission approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modification to this Agreement shall be submitted to the Commission for prior approval. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance of this Agreement. The Parties recognize that the Commission has continuing jurisdiction to review this Agreement during the term hereof, and the Parties agree to furnish the Commission with such reports and other information as requested by the Commission from time to time.

Section 4.2: No Liability in the Event of Disapproval. In the event approval of this Agreement pursuant to Section 4.1 hereof is not obtained, neither Party will have any cause of action against the other arising under this document.

Section 4.3: Supersedes Prior Agreements. Upon its approval by the Commission, this Agreement shall be deemed to specifically supersede any and all prior agreements between the Parties defining the boundaries of their respective Territorial Areas in Monroe County.

ARTICLE 5

DURATION

Section 5.1: This Agreement shall continue and remain in effect for a period of thirty (30) years from the date of the

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Commission's initial Order approving this Agreement, and shall be automatically renewed for additional thirty (30) year periods unless either Party gives written notice to the other of its intent not to renew at least six (6) months prior to the expiration of any period; provided, however, that each such renewal of this Agreement shall require prerequisite approval of the Commission with the same effect as the original Commission approval of this Agreement as required and provided for in Article 4 hereof.

ARTICLE 6

CONSTRUCTION OF AGREEMENT

Section 6.1: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further the policy of the State of Florida to: actively regulate and supervise the service territories of electric utilities; supervise the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoid uneconomic duplication of generation, transmission and distribution facilities; and to encourage the installation and maintenance of facilities necessary to fulfill the Parties' respective obligations to serve the citizens of the State of Florida within their respective service areas.

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ARTICLE 7

MISCELLANEOUS

Section 7.1: Negotiations. Regardless of any other terms or conditions that may have been discussed during the negotiations leading up to the execution of this Agreement, the only terms or conditions agreed upon by the parties are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties hereto unless the same shall be in writing, attached hereto, signed by both of the parties and approved by the Commission in accordance with Article 4, Section 4.1 hereof.

Section 7.2: Successors and Assigns; for Benefit Only of Parties. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person other than the Parties hereto, or their respective successors or assigns, any right, remedy, or claim under or by reason of this Agreement, or any provision or condition hereof; and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of the Parties or their respective successors or assigns.

Section 7.3: Notices. Notices given hereunder shall be deemed to have been given to FKEC if mailed by certified mail, postage prepaid to

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General Manager
Florida Keys Electric Cooperative Association, Inc.
91605 Overseas Highway
Tavernier, Florida 33070

and to CES if mailed by certified mail, postage prepaid to:

General Manger
City Electric System
P. O. Box 6100
Key West, Florida 33041-6100

The person or address to which such notice shall be mailed may, at any time, be changed by designating a new person or address and giving notice thereof in writing in the manner herein provided.

Section 7.4: Petition to Approve Agreement. Upon full execution of this Agreement by the Parties, the Parties agree to jointly file a petition with the Commission seeking approval of this Agreement, and to cooperate with each other and the Commission in the submission of such documents and exhibits as are reasonably required to support the petition.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

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ATTEST:

UTILITY BOARD OF THE CITY OF
KEY WEST, "CITY ELECTRIC SYSTEM"


Robert R. Padron,
Secretary

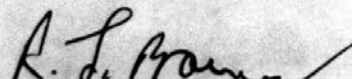
By: 
William T. Cates

Title: Chairman

(SEAL)

ATTEST:

FLORIDA KEYS ELECTRIC COOPERATIVE
ASSOCIATION, INC.

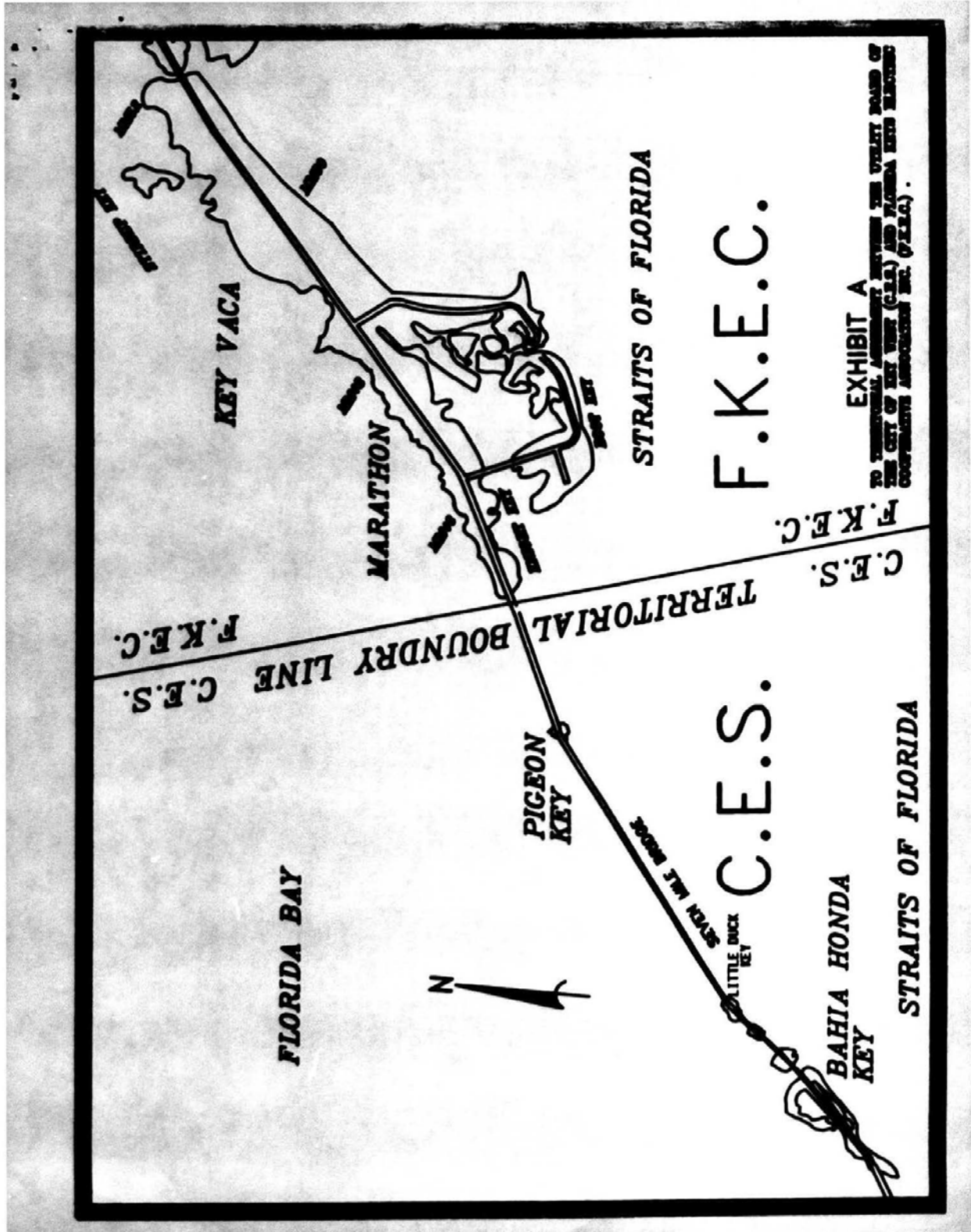

R. L. Barnes, Secretary

By: 
B. L. Schwartz

Title: President

(SEAL)





**FIRST AMENDMENT TO
TERRITORIAL AGREEMENT BETWEEN
FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC.
AND THE UTILITY BOARD OF THE CITY OF KEY WEST,
A/K/A KEYS ENERGY SERVICES**

This is the First Amendment ("First Amendment") to that certain Territorial Agreement ("Agreement") dated June 17, 1991, between Florida Keys Electric Cooperative Association, Inc. ("FKEC") and the Utility Board of the City of Key West f/k/a City Electric System, now d/b/a "Keys Energy Services" ("KEYS"). The Agreement was approved by the Florida Public Service Commission on September 27, 1991, in Document No. 910765-EU and Order No. 25127 (Order).

1. The existing territorial boundary line, approved by the Florida Public Service Commission, is shown on page 16 of the Order. The parties hereto desire to modify that boundary to allow FKEC to provide electric service to Pigeon Key which currently lies in KEYS' territory. The rationale for entering into this First Amendment is set forth in the parties' Joint Petition for Approval of this First Amendment, which is incorporated herein. The revised territorial boundary line ("Revised Boundary") is attached hereto as Exhibit 1.

2. Pigeon Key Foundation, Inc. ("Foundation") initially requested service from FKEC, which declined to provide such service because Pigeon Key is currently in KEYS' service territory. Foundation then arranged for the construction and installation of electric service facilities (conduit, wire, labor, engineering fees, constructing underground on the island, transformers and a power pole), with the approval of the Florida DOT to run from the island, across a portion of the old 7-mile Bridge to a point of service inside FKEC's assigned territory. The facilities constructed by the Foundation are wholly owned by the Foundation. FKEC has constructed no facilities outside of its current service area. Because of the Florida Supreme Court's decision in *Lee County vs. Marks*, the parties deem it appropriate to obtain the approval of the Florida Public Service Commission for this unique situation.

**EXHIBIT 1 to
Joint Petition for Renewal of
Territorial Agreement &
Approval of First Amendment**

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3. The Revised Boundary is hereby agreed to and adopted by the parties, and shall be deemed incorporated into the Agreement, as of the effective date hereof. Except as otherwise stated herein, the parties ratify and confirm the terms and conditions of the Agreement dated June 17, 1991. The effective date of this agreement shall be the date that the last of the parties signs this First Amendment, or the date the Florida Public Service Commission approves the parties' Joint Petition for Renewal of Territorial Agreement, or any agreed successor petition, whichever is later. The terms hereof shall have no effect unless approved by the Florida Public Service Commission.

IN WITNESS WHEREOF, this First Amendment to the Agreement has been caused to be executed by FKEC in its name by its President and its corporate seal hereto affixed, and attested by the Secretary of FKEC, and by KEYS in its name by its Utility Board Chair, and its corporate seal hereto affixed and attested by its Clerk on the dates set forth by their signatures, and each acknowledges receipt of a signed duplicate original hereof.

FLORIDA KEYS ELECTRIC COOPERATIVE
ASSOCIATION, INC.

By: *Karl Wagner*
Karl Wagner, President

Attest: *Grethen Holland*
Grethen Holland, Secretary

Dated: 6/26/2023

THE UTILITY BOARD OF THE
CITY OF KEY WEST, D/B/A KEYS ENERGY
SERVICES

By: *Timothy Root*
Timothy Root, Utility Board Chair

Attest: *Lynne Tejeda*
Lynne Tejeda, Clerk

Dated: 07/26/2023



