

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of The Great Marathon Radio Company against Florida Keys Electric Cooperative Association, Inc. seeking penalties and other relief for failure to fulfill its duty to provide service, failure to follow its tariff, failure to comply with multiple Florida Public Service Commission rules, and attempting to impose an unduly discriminatory rate structure.

DOCKET NO. 20180191-EC

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**FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC.'S
RESPONSE IN OPPOSITION TO THE GREAT MARATHON RADIO COMPANY'S
MOTION TO EXPEDITE**

Florida Keys Electric Cooperative Association, Inc. (the "Cooperative"), pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby responds in opposition to the Motion to Expedite filed by The Great Marathon Radio Company ("Marathon Radio") dated October 18, 2018, and states:

1. Marathon Radio's motion should be denied because it seeks expedited consideration of a "complaint and petition" pertaining to alleged actions which, even if taken as true, fall far outside the Commission's limited jurisdiction over electric cooperatives. Consequently, the Cooperative will timely file a motion to dismiss and other responsive pleadings within the time prescribed by the Commission's rules and the Uniform Rules of Procedure.

2. Marathon Radio paints a picture of the current situation as one in which the Cooperative has refused to restore service. The Cooperative disputes this rendition of the facts and will set forth accurately the correct facts in its responsive pleadings to the complaint. For now, however, it will suffice to note that the Cooperative has never refused to restore service; rather, it is Marathon Radio that has refused to pay for the restoration of service. Distilled to its essence, Marathon Radio's quarrel is over the dollar amount the Cooperative charges for

restoring service. This is a classic example of a dispute over an electric cooperative's "rates" not "rate structure", which is outside of the Commission's limited jurisdiction over the Cooperative. *See City of Tallahassee v. Mann*, 411 So. 2d 162, 163 (Fla 1981) ("There is a clear distinction between 'rates' and 'rate structure' though the two concepts are related. 'Rates' refer to the dollar amount charged for a particular service.... 'Rate structure' refers to the classification system used in justifying different rates.")

3. When it comes to the Commission's jurisdiction over electric cooperatives, the Florida Supreme Court has made clear "[a]ny reasonable doubt regarding its regulatory power compels the PSC to resolve that doubt against the exercise of jurisdiction." *Lee Cnty. Elec. Co-op., Inc. v. Jacobs*, 820 So. 2d 297, 300 (Fla. 2002). Thus, the Commission should reject Marathon Radio's invitation to plunge ahead and immerse itself in issues over which it has no jurisdiction.

WHEREFORE, the Cooperative respectfully requests the entry of an order denying Marathon Radio's Motion to Expedite.

Respectfully submitted this 25th day of October, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
electronic mail this 25th day of October, 2018, to the following:

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