

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

Filed: November 13, 2018

**FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC.'S
NOTICE OF FILING RESPONSE TO CUSTOMER COMPLAINT**

Florida Keys Electric Cooperative Association, Inc. (the "Cooperative"), pursuant to Rule 25-22.032, Florida Administrative Code, gives notice it has responded to the customer complaint filed by The Great Marathon Radio Company ("Marathon Radio") in the above referenced docket on October 18, 2018, by sending a written response to Marathon Radio on November 13, 2018, by certified mail and email (the "Response"). By this notice, the Cooperative serves on the Commission the attached copy of that Response. The Cooperative does not concede that the issues raised in Marathon Radio's complaint fall within the Commission's jurisdiction, and thus will file a motion to dismiss the complaint within the time allowed by Florida Administrative Code Rule 28-106.204(2).

Respectfully submitted on November 13, 2018.

HOLLAND & KNIGHT LLP

/s/D. Bruce May, Jr. _____

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*Counsel for Florida Keys Electric Cooperative
Association, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
electronic mail this 13th day of November, 2018, to the following:

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The Great Marathon Radio Company
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Marathon, Florida 33050
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/s/D. Bruce May, Jr. _____
Attorney



FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC. – FKEC

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By Certified Mail and Email

The Great Marathon Radio Company
Joseph P. Nascone
1638 Overseas Highway
Marathon, Florida 33050
joe@floridakeysradio.net

SUBJECT: Complaint and Petition of The Great Marathon Radio Company Regarding Restoration of Service to Boot Key

Dear Mr. Nascone:

Florida Keys Electric Cooperative Association, Inc. (the “Cooperative”) has received the complaint and petition (the “Complaint”) filed by The Great Marathon Radio Company (“Marathon Radio”) with the Florida Public Service Commission (the “Commission”) on October 18, 2018. We have carefully reviewed the concerns raised in the Complaint, and we firmly believe in the importance of listening to members and trying to address their concerns.

While the Cooperative takes seriously the concerns of its members and welcomes member participation in the Cooperative’s process for establishing rates and policies for electric service, the Cooperative disputes the rendition of facts contained in the Complaint. First, there is no active electric service account on Boot Key in your name or the name of Marathon Radio. The only electric service account held by Marathon Radio is associated with a “mainland” location in Marathon, Florida, at 1638 Overseas Highway. The active electric service accounts on Boot Key that have been linked to radio stations in the past are in the name of a different company, Choice Radio Keys Corporation. To date, you have not applied for any electric service account on Boot Key.

Further, to the Cooperative’s knowledge, there is no radio station currently operating on Boot Key. Prior to the May 21, 2018 sailboat accident which resulted in the loss of power to Boot Key, the WFFG 1300 AM station referenced in your Complaint was the subject of proceedings at the Federal Communications Commission which culminated in an order permitting that station to remain silent. It is also the Cooperative’s understanding that you caused the power to be disconnected to the WFFG 1300 AM radio station site prior to the

sailboat accident on May 21. The transmitter for the other station you reference, WGMX 94.3 FM, was moved from Boot Key before the sailboat accident on May 21 and continues to be operated by Choice Radio Keys Corporation at other locations. In fact, based upon the Cooperative's initial investigation, neither of the two radio stations appears to be owned or operated by Marathon Radio. Consequently, the Cooperative is perplexed by your allegations that Marathon Radio is unable to maintain the same quality of service at these two radio stations, which do not appear to be owned or operated by Marathon Radio and which do not appear to have been impacted by the loss of power to Boot Key.

Putting those issues aside, the gravamen of your Complaint is that the Cooperative has refused to restore service to Marathon Radio's property on Boot Key. The Cooperative has not refused to restore service to Boot Key and remains willing to serve Boot Key under reasonable terms and conditions. When you asked for restoration of service following the sailboat accident on May 21, 2018, the Cooperative investigated what was needed to restore that service, and the paramount need is access to the island itself. As you know, the only means of getting to Boot Key is by boat; a bridge once operated by the Florida Department of Transportation has been closed and long abandoned. Repairing the damage caused by the sailboat on May 21, 2018, and restoring service will require the deployment of heavy equipment onto Boot Key. There is no dock, seawall, or other facility on Boot Key that will allow the deployment of heavy equipment from a barge or other vessel. Thus, the Cooperative has no physical means to deploy the heavy equipment necessary to restore service at Boot Key at this time.

You suggest that the Cooperative has previously restored service without additional cost under similar circumstances. While it is true that the Cooperative was able to restore service after a sailboat accident that occurred on October 28, 2012, the magnitude of that accident and the repairs necessary to restore service were very different. The 2012 sailboat accident only caused minor damage; the Cooperative was able to repair this damage by deploying a jon boat and ordinary service equipment—not heavy equipment. In other words, the Cooperative had access to complete the necessary repairs without extraordinary cost to its members.

In contrast, the damage here will necessitate the replacement of a number of poles and require the use of heavy equipment to do so—which the Cooperative again cannot deploy without some structure such as a dock or seawall that will allow the deployment from a barge or similar vessel. In recognition of these realities, in response to your request to restore power after the 2018 sailboat accident, the Cooperative provided you with a proposed, non-binding term sheet meant as a starting point for negotiations to build the necessary infrastructure and complete repairs in order to restore service. Among other things, the Cooperative offered to pay the first \$50,000 toward costs for repairs (the approximate cost for repairs if the service location was not on an inaccessible island), and asked that you provide a \$250,000 deposit toward the restoration of services and also establish and maintain infrastructure on Boot Key necessary to restore and maintain service. Once the full repair costs were known, the Cooperative also stated in the term sheet that it would seek reimbursement from the sailboat owner and his insurance company

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for the damage caused, and all funds recovered from the sailboat owner or his insurance company exceeding the Cooperative's damages and costs would be applied to your costs.

Another potential option would be for the Cooperative to place a meter on the "mainland" in Marathon and for you to arrange for the placement of conductor infrastructure from Boot Key that would run to that meter. The Cooperative has done something similar in order to provide power to another inaccessible island in which the customers agreed to pay for and obtain the necessary infrastructure.

Thus, the Cooperative remains amenable to resolving this issue, but at the same time, it must consider the impact on its other members. It would be unreasonable and unfair to require the Cooperative's other members to fully bear the estimated \$250,000 to \$500,000 cost to restore power to a single customer. And while the Cooperative aims to serve all within its service area, such service is limited by the requirements of reasonableness. Indeed, the Cooperative's Bylaws recognize that the Cooperative "shall make diligent effort to see that electric service is extended to all unserved persons within the Cooperative's established service area who (a) desire such service and (b) *meet all reasonable requirements established by the Cooperative as a condition of such service.*" Cooperative Bylaws Article XI, § 7 (emphasis added).

Aside from its dispute with the facts set forth in your Complaint, the Cooperative also does not believe it is the Commission's responsibility to address the issues detailed in your Complaint. The Cooperative's non-binding term sheet presented to you as the starting point for negotiations is not a new rate structure within the jurisdiction of the Commission. By law, cooperatives operate under a democratic, "one member/one vote" governance structure that gives members direct control in electing the Cooperative's Board of Trustees which, in turn, establishes the policies and determines the level of the rates that members pay for electric service. Because a cooperative's rate policies are member-driven, the Florida Legislature does not provide the Commission jurisdiction over the levels of a cooperative's rates and charges. Instead, Florida law sensibly requires that the rates should be determined pursuant to the Cooperative's democratic self-governance structure rather than by the Commission. The same is true regarding your concerns about the proposed reasonable terms and conditions presented to Marathon Radio in order to restore service at Boot Key. Thus, the Complaint falls outside of the Commission's jurisdiction.

Similarly, you contend that the Cooperative should memorialize a restoration of service policy within its tariff, and that the "failure" to do so constitutes a violation of several provisions of the Florida Administrative Code. That is not the case for several reasons. The Cooperative's general management policy is to address restoration on a case-by-case basis, which makes sense. Each restoration of service is unique and defies ready conversion to a rate "schedule" as Marathon Radio seems to suggest. In the ordinary case, restoration will entail no new charges to the customer, as the necessary infrastructure to restore power is not damaged or is not significantly damaged and there is ready access to make the required repairs. However, in extraordinary cases, like this one, the magnitude of damage to infrastructure coupled with the island's inaccessibility necessitates that the

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Cooperative require, as a reasonable term and condition on the restoration of service, the payment of a rate by the customer requesting restoration that does not unduly burden the entire Cooperative membership. Regardless, though, nothing requires that the Cooperative include the specific, non-binding request made to Marathon Radio in either its tariff or in any other filing required to be made with the Commission at this time. And further, a complaint regarding the Cooperative's restoration policy is a complaint regarding the Cooperative's management policies, which falls outside the jurisdiction of the Commission.

Even though your Complaint involves concerns outside the Commission's jurisdiction, the local process through which the Cooperative's rates and policies are developed and established has been and remains fully open to you and all other Cooperative members. And particularly here, the Cooperative remains ready to work with you on a reasonable, revenue-neutral solution to restore service to Boot Key that does not unduly burden the Cooperative's other members.

Should you have any additional questions, please do not hesitate to contact me.

Regards,



Scott Newberry, CEO
Florida Keys Electric Cooperative Association, Inc.

Copies to:

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