

Eric Fryson

From: Megan Hodson <megan@hartsell-law.com>
Sent: Thursday, February 21, 2013 4:52 PM
To: Filings@psc.state.fl.us
Cc: 'Robert Hartsell, Esq.'
Subject: CASE 120054 Electronic Filing of Petition for Intervention
Attachments: 120054 Petition to Intervene Roemmele-Putney.pdf

Good Evening,

Kindly accept for filing the attached Petition for Intervention in Case Number 120054. The required information to be submitted with the filing follows:

Robert N. Hartsell, Esq.

Robert N. Hartsell, P.A.
1600 South Federal Highway, Suite 921
Pompano Beach, Florida 33062
(954) 778-1052
Robert@Hartsell-Law.com

Docket Number: 120054

Docket Title: In re: Complaint of Robert D. Reynolds and Julianne Reynolds against Utility Board of the City of Key West, Florida d/b/a Key Energy Services regarding extending commercial electrical transmission lines to each property owner of No Name Key, Florida.

Party: Alicia Roemmele-Putney

Pages: 11

Document: Alicia Roemmele-Putney's Petition to Intervene

Thank you.

Sincerely,

Megan Renea Hodson, Esq.

Robert N. Hartsell, P.A.
Federal Tower Building
1600 South Federal Highway, Suite 921
Pompano Beach, Florida 33062

(954) 778-1052
Megan@Hartsell-Law.com
www.Hartsell-Law.com

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Robert D. Reynolds and Julianne Reynolds against Utility Board of the City of Key West, Florida d/b/a Key Energy Services regarding extending commercial electrical transmission lines to each property owner of No Name Key, Florida.

DOCKET NO. 120054

ALICIA ROEMMELE-PUTNEY'S PETITION TO INTERVENE

Intervenor, Alicia Roemmele-Putney ("Intervenor"), pursuant to Chapters 120 and 366, Florida Statutes, and Rules 25-22.039, 28-106.201, and 28-106.205, Florida Administrative Code ("FAC"), hereby petitions the Florida Public Service Commission ("the Commission") to intervene in the above-styled matter, and states as follows:

INTRODUCTION

Alicia Roemmele-Putney (hereinafter, "Intervenor") owns a single-family residence located at 2150 No Name Drive, No Name Key, Florida. Intervenor and her now deceased husband, Dr. Snell Putney, purchased property in Key Largo, Florida in 1983. Shortly thereafter, Key Largo experienced an explosion in growth and development, and the quality of life experienced by Intervenor became negatively impacted by the noise and congestion that accompanied the development. In response to these negative impacts, Intervenor and her now deceased husband sought another location to reside in the Florida Keys that would possess and retain a tranquil character.

This search led Intervenor and her now deceased husband to consider the purchase of a lot and the construction of a single-family residence on No Name Key. Following assurances that electrical and water supply infrastructure would not be extended to No Name Key, Intervenor along with her now deceased husband in 1989 purchased Lot 23/24 of the Dolphin

Harbour Subdivision. On January 27, 1990, Intervenor and her now deceased husband applied for a building permit to construct a single-family home on Lot 23/24. As part of the application process and in order to satisfactorily meet existing electrical and plumbing codes, Intervenor and her now deceased husband were required to submit building plans that envisioned the construction of alternative power and water sources that

In order to comply with these requirements and confident that others who sought to build on No Name Key would be subject to similar requirements, Intervenor and her now deceased husband submitted plans that envisioned the use of solar power for electricity and the use of a cistern for fresh water. The installation of the solar energy system added between \$18,000 and \$19,000 to the construction cost of the residence. The installation of the cistern water system added between \$16,000 and \$17,000 to the construction cost. Furthermore, given the general public's lack of understanding of photovoltaic technology in 1990 and lack of such amenities the market value of Intervenor's property was reduced. Intervenor was willing to incur these increased costs and decreased property values in order to obtain the peace, tranquility and lessened development pressures that the lack of electrical and water supply infrastructure on an island within the National Key Deer Wildlife Refuge would promote. These values therefore underlie the reasonable investment-backed expectations of Intervenor.

Intervenor respectfully submits that the quality of life in which she has invested substantial resources and the environment upon which this quality of life depends would be adversely and irreparably impacted by the extension of commercial electricity to No Name Key. The extension of commercial electricity itself would negatively impact the environment and quality of life enjoyed by Intervenor. The installation of poles, wires and streetlights would adversely affect the scenic beauty, wildlife and view of the night sky on No Name Key.

Additionally, the extension of commercial electricity would undermine the shared values of the solar community of No Name Key. No Name Key is a community organized around a low-impact and solar-based lifestyle, around the conservation of natural resources and the protection of the National Key Deer Wildlife Refuge, and characterized by customs of mutual assistance and a strong sense of unique identity. Thus, commercial electricity would eradicate the current No Name Key lifestyle and customs and would render this unique community indistinguishable from other developed communities where such infrastructure is present. Further, the extension of commercial electricity would not only result in the irretrievable loss of the financial and emotional investments of Intervenor and those similarly situated members of The Solar Community of No Name Key, but also would represent the destruction of a unique community found nowhere else in the State of Florida or this nation.

The extension of commercial power infrastructure to No Name Key would promote secondary growth impacts on the island by rendering the land thereon more valuable and more attractive to development. The resulting development would, in turn, lead to the fragmentation of wildlife habitat, increased mortality to endangered species including the Key Deer, and other negative environmental impacts. Commercial power infrastructure would directly impact Intervenor's use and enjoyment of No Name Key.

Intervenor relies on the Monroe County Comprehensive Plan and its implementing code to protect her life, property and the natural resources she uses and enjoys. Intervenor's reliance includes but not limited to Monroe County Code Section 130-122 *et. seq.* and Comprehensive Plan Policies 103.2.10; 215.2.3 and 1301.7.12.

The issue now before this commission, the commercial electrification of No Name Key has been the subject of a previous law suit. In 1999, the Taxpayers For The Electrification of No

Name Key, Inc. filed a Complaint in the Sixteenth Judicial Circuit seeking, *inter alia*, declaratory relief that they had a statutory or property right to have electric power extended to their homes on No Name Key. Taxpayers For The Electrification of No Name Key, Inc., Et. Al. v. Monroe County, Case No. 99-819-CA-19. Alicia Roemmele-Putney was an intervening Defendant in that case. In 2002, the Court in *Taxpayers* concluded that plaintiff property owners did not have a “statutory or property right to have electric power extended to their homes, which are operated with alternative, typically solar, energy sources.” The Court further concluded, “Section 366.03, Fla. Stat. does not apply to Defendants Monroe County or Keys Energy Service (“KES”). Even if it did apply here, Section 366.03, Fla. Stat., does not provide a right to commercial electric service if such service would be inconsistent with Chapters 163 and 380 or the Monroe County Comprehensive Plan.”

Subsequent to Taxpayers, on or about April 4, 2011, Monroe County initiated an action in circuit court seeking declaratory relief as to KES and a declaration as to whether Monroe County’s Comprehensive Plan and Land Development Code provisions could preclude the extension of and connection to commercial utility lines on No Name Key. Monroe County, et al v. Keys Energy Services, et al, Case No. 2011-CA-342-K. Alicia Roemmele-Putney was a named party Defendant in that action and the PSC was granted Amicus status.

Ultimately, on or about January 31, 2012, the circuit court concluded that the PSC was the Proper forum to hear the issues presented by the County and summarily dismissed the case with prejudice. On or about February 6, 2012, Alicia Roemmele-Putney and Monroe County appealed the lower court’s decision and were named appellants in the case. Alicia Roemmele-Putney, et al. v. Robert D. Reynolds, et al.; 2013 Fla. App. LEXIS 1756 (Fla. 3rd DCA. Feb. 6, 2013).

While the appeal remained pending, Robert D. Reynolds petitioned this Commission in the instant case for a hearing on the issues presented to the circuit court in Monroe County, et al v. Keys Energy Services, et al, Case No. 2011-CA-342-K. Subsequently, Monroe County and No Name Key Property Owners Association (an association of pro- commercial power property owners)(“NNKPOA”) intervened in the instant matter.

On July 24, 2012, despite the pending litigation before both this commission and the Third District Court of Appeals, KES moved forward with the installation of sixty two (62) commercial utility poles at the insistence and sole expense of NNKPOA. KES was indemnified of all risk and legal fees by operation of a line extension agreement between NNKPOA and KES.

Despite the adamant objection by Monroe County, the commercial power lines extend over and trespass onto conservation lands owned by Monroe County. On or about May 6, 2012 as a result of this trespass, Monroe County filed a civil action against KES. Monroe County, et al. v. Key Energy Services, et al., Case No. 2012 CA K 549. Alicia Roemmele-Putney was granted intervention as a Plaintiff in that action as well.

On February 6, 2013, without reaching the merits, the Third District Court of Appeals affirmed the lower court’s decision in Monroe County, et al v. Keys Energy Services, et al, Case No. 2011-CA-342-K, concluding that the PSC is the proper forum to hear the case and “appellants [Alicia Roemmele-Putney and Monroe County] do retain, however, the right to seek relief before the PSC...”. Alicia Roemmele-Putney, et al. v. Robert D. Reynolds, et al., 2013 Fla. App. LEXIS 1756 (Fla. 3rd DCA. Feb. 6, 2013). Along the same line of reasoning, on February 21, 2013, the circuit court dismissed the claims of trespass on the grounds that when the jurisdiction of the PSC is invoked, the PSC must first pass on the jurisdiction prior to the

circuit court taking any action in the matter.

In accordance with the aforementioned decisions, Alicia Roemmele-Putney comes to this court requesting intervention as a full party. Alicia Roemmele-Putney has a direct interest in the subject matter of the instant case. The participation of Intervenor in this proceeding and the consideration of her rights by the Commission would therefore further the ends of justice. *See Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d 505, 507 (Fla. 1992).

Accordingly, Intervenor has a substantial interest in this matter and should be granted full party status to protect her interest. In further support of this Petition to Intervene, Intervenor states as follows:

1. **The Petitioner.** The name, address, and telephone number of the Petitioner are as follows:

Alicia Roemmele-Putney
2150 No Name Drive
No Name Key, Florida 33043-5202
(305) 872-8888

2. **Petitioner's Representative.** All pleadings, orders and correspondence should be directed to Petitioner's representative as follows:

Robert N. Hartsell, Esq.
Robert N. Hartsell, P.A.
Counsel for Alicia Roemmele-Putney
(Fla Bar No. 0636207)
Federal Tower Office Building
1600 S. Federal Highway, Suite 921
Pompano Beach, Florida 33062

3. **Affected Agency.** The agency affected by this Petition to Intervene is:

Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

4. **Statement of Affected Interests.** Intervenor is directly affected by the

Commission's decision as stated above. Intervenor chose No Name Key because it was not served by commercial electricity or a centralized water distribution system, hence the threat of development was minimal. In order to build a single family home on No Name Key and comply with Monroe County's building permit, Intervenor spent between \$34,000 and \$36,000 on top of construction costs in order to have an alternative solar energy source and rainwater as a source of potable water. Additionally, because No Name Key lacks those amenities, the value of Intervenor's property is decreased. The decreased value, and increased construction costs were costs the Petitioner was willing to accept in order to obtain the peace and tranquility that No Name Key provides. Monroe County's prohibition of the extension of commercial utilities on No Name Key inhibits development and enhances the protection of Intervenor's life and property within this Coastal Barrier Resource System unit. Furthermore, having lived on No Name Key, Intervenor frequently enjoys the Key's wildlife, having studied the plant and animals of the Key. The Commission's decision will directly affect Intervenor's enjoyment of No Name Key and more quantifiably, Petitioner's reasonable investment-backed expectations. Furthermore, Intervenor is a "party" as defined by Section 120.52(13)(b), Florida Statutes.¹

5. **Disputed Issues of Material Fact.** None at this time. Intervenor reserves all rights to raise additional issues in accordance with the Commission's rules and the anticipated Order Establishing Procedure in this case.

6. **Statement of Ultimate Issue.** Intervenor, Alicia Roemmele-Putney, by and through its undersigned counsel asserts that based on the law of the State of Florida, the following is the ultimate conclusion the Public Service Commission should reach in this docket:

¹ Section 120.52(13)(b), Florida Statutes, defines "party" as "Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party."

The PSC does not have exclusive jurisdiction over this entire matter. There is no provision in Chapter 366 that would, other things being equal, give the PSC the authority to authorize a municipal utility such as KES to provide service to an applicant in violation of a Monroe County's Comprehensive Plan and Land Development Regulations to an applicant. This is critical because the PSC "derives its powers solely from the legislature." United Telephone Co. of Florida v. Public Service Comm'n, 496 So. 2d 116, 118 (Fla. 1986). Lacking the specific power to authorize a municipal utility to serve, the PSC could not order KES to provide service: as the Florida Supreme Court stated in United Telephone, "If there is a reasonable doubt as to the lawful existence of a particular power that is being exercised, the further exercise of the power should be arrested." Id. at 118 (citing Radio Telephone Communications, Inc. v. Southeastern Telephone Co., 170 So. 2d 577, 582 (Fla. 1965)). Allow Monroe County to enforce its Local Code and Comprehensive Plan under Home Rule to prohibit the unlawful extension of commercial distribution lines on No Name Key. Declare that the PSC lacks any colorable jurisdiction over whether or not building permits can be authorized for connection of a customer to a commercial power line in violation of a County Comprehensive Plan and Land Development Regulations under Monroe County's constitutional Home Rule powers. Wilson v. Palm Beach County, 62 So.3d 1247, 1252 (Fla. 4th DCA 2011).

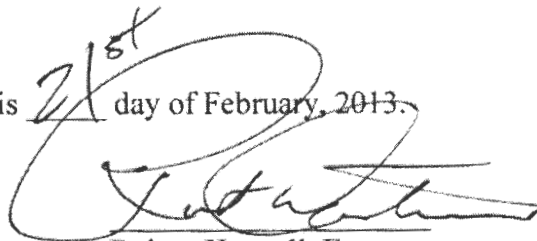
7. **Substantial Interests Affected.** Intervenor, Alicia Roemmele-Putney, seeks intervention to participate as a party in this docket as defined by Section 120.52(13)(b), Florida Statutes. Section 120.52(13)(b) allows intervention of any person "whose substantial interests will be affected by proposed agency action" Additionally, Rules 25-22.039, 28-106.201, and 28-106.205, FAC, similarly provide that persons whose substantial interests are subject to determination in agency proceeding are entitled to intervene in such proceeding. Because

Intervenor spent years acquiring permission to build her home on No Name Key, spent monies upwards of \$34,000 beyond the cost of construction to comply with No Name Key's Land Codes, has personally enjoyed the natural area of No Name Key for over 20 years, and because proposed Intervenor's quality of life, safety, property interest and investment-backed expectations will be directly affected by the Commission's decision, Intervenor qualifies as a substantially affected person.

CONCLUSION

WHEREFORE, Intervenor requests that this Commission : a) grant her leave to intervene in this cause with full party status; b) direct the clerk to amend the style in this case to reflect the intervention; and c) grant such other relief this Commission may deem just and proper.

RESPECTFULLY SUBMITTED this 21st day of February, 2013.



Robert Hartsell, Esq.
(Fla Bar No. 0636207)
Robert N. Hartsell, P.A.
Federal Tower Office Building
1600 S. Federal Highway, Suite 921
Pompano Beach, Florida 33062
Robert@Hartsell-Law.com
(954) 778-1052 – Phone
(954) 941-6462 - Fax

CERTIFICATE OF SERVICE

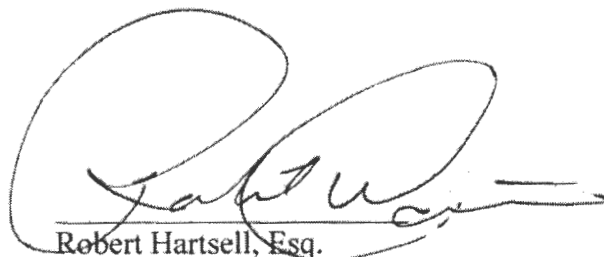
The undersigned certifies that a true and correct copy of the foregoing has been served by Electronic and U.S. Mail this 21st day of February, 2013 on the following:

Robert B Shillinger, Esq.
Derek Howard, Esq.
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, Florida 33040
Howard-derek@monroecounty-fl.gov
Dastugue-laurie@monroecounty-fl.gov
(305) 292-3470
(305) 292-3516 – facsimile

Nathan E. Edan, Esq.
Nathan E. Edan, P.A.
302 Southard Street, Suite 205
Key West, Florida 33040
neecourtdocs@bellsouth.net
(305) 294-5588

Barton W. Smith, Esq. and Gregory S. Oropeza, Esq.
Barton Smith, P.L.
624 Whitehead Street
Key West, Florida 33040
bart@bartonsmithpl.com
greg@bartonsmithpl.com
tiffany@bartonsmithpl.com

Andrew M. Tobin, Esq.
Andrew M. Tobin, P.A.
P.O. Box 620
Tavernier, Florida 33070
tobinlaw@terranovalaw.net
tobinlaw2@gmail.com



Robert Hartsell, Esq.
(Fla Bar No. 0636207)
Robert N. Hartsell, P.A.
Federal Tower Office Building
1600 S. Federal Highway, Suite 921

Pompano Beach, Florida 33062
Robert@Hartsell-Law.com
(954) 778-1052 – Phone
(954) 941-6462 - Fax