Catherine Potts

From: Pamela Paultre on behalf of Office of Commissioner Brisé
Sent: Wednesday, May 15, 2013 9:38 AM
To: Commissioner Correspondence
Subject: FW: NNNKPOA, Inc letter of appreciation
Attachments: PSC letter of thank you.pdf

Cathi,

Please place the forwarded or enclosed correspondence in Docket Correspondence of Consumers and their representatives for docket no. 120054.

Thank you,

Pamela Paultre
Assistant to Chairman Ronald Brisé
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
(850) 413-6036

-----Original Message-----
From: Kathy Brown [mailto:kathyn56@earthlink.net]
Sent: Tuesday, May 14, 2013 3:37 PM
To: Office of Commissioner Balbis; Office Of Commissioner Edgar; Office of Commissioner Brisé; Office Of Commissioner Graham; Office of Commissioner Brown
Subject: NNNKPOA, Inc letter of appreciation

Dear Commissioners,
Attached please find letter of appreciation.

Sincerely,
Kathy Brown, President
NNKPOA, Inc.

No Name Key Property Owners' Association

No Name Key Property Owner's Association Officers

Kathryn Brown, President
Kathryn56@earthlink.net

Mary Frances Bakke, Esq.
Vice President
Mbakke100@hotmail.com

John Lentini
Treasurer
Johnlentini@yahoo.com

Ruth Eaken
Secretary
Reeatsml@aol.com

State of Florida
Articles of Incorporation
#N08000007867

May 14, 2013

Dear Commissioners Balbis, Edgar, Brisé, Brown, and Graham,

I want to take this opportunity to express appreciation from our board and our members for your assiduous and serious consideration of the Reynolds' complaint regarding the lack of electrical connection to our developed homes on No Name Key.

It is clear that each of you considered the individual criteria involved in our issue and were able to discern relevant, accurate, and jurisdictional issues. From listening to the live broadcast, it was obvious thorough research was done by the staff and there is exceptional communication between the staff and each of you, for which we are most appreciative.

Our association has worked closely with Keys Energy Services and is eager to connect to the energized lines sitting outside our homes, eliminate or minimize the toxic and dangerous battery banks, and eliminate generator dependency, noise and air pollution. So many of our members are anxious to participate in net metering and believe it is the only true sustainable green solution. Our quality of life and our surrounding environment will be safer, healthier, and our welfare will be immensely improved.

Thank you again for your detailed and respectful attention to our plight, we are grateful.

Sincerely,

Kathy Brown, President

Mission Statement:
The No Name Key Property Owners Association supports basic infrastructure improvements including a central sewer connection and its electrical power needs for residents of No Name Key in Monroe County, Florida. The Association does not advocate development of the island and has, as its principal goal, the long term, multi generational, and protection of the islands unique character that is achieved by its limited density and abundance of nature. The Association is a strong advocate of a central sewer system to protect our inshore and near-shore waters from pollution. The Association, while an advocate of grid-tie solar net metering and the environmental benefits it offers the world, feels that no one should be forced nor denied civilization's most basic infrastructure improvements such as central sewage treatment and disposal, or commercial electrical power.

Eric Fryson

From: Ruth McHargue
Sent: Tuesday, May 14, 2013 9:29 AM
To: Consumer Correspondence
Subject: FW: To CLK Docket 120054

Customer correspondence

From: Consumer Contact
Sent: Tuesday, May 14, 2013 8:04 AM
To: Ruth McHargue
Subject: To CLK Docket 120054

Copy on file, see 1110300C. DH

From: Elena Muratori [mailto:seamaid55@yahoo.com]
Sent: Monday, May 13, 2013 9:44 PM
To: Consumer Contact
Subject: Keep No Name Key off the grid - dismiss the Reynolds Complaint

Dear PSC Commissioners,

I am a resident of Key Largo in Monroe County, and am proud of the leadership our county has taken regarding the use of solar energy in our critically sensitive environment. Please uphold our local government's decision to limit the extension of commercial electric grids in less developed areas of our beautiful Florida Keys. Where solar and wind power are so readily accessible, there is no need for being on the electric grid on No Name Key. The desires of one or two new homeowners should not be able to override the longstanding desires of those who have chosen to live for years on No Name Key because it is "off the grid." But to the point: a PSC Order mandating KEYS to extend power lines to No Name Island, would meant that the PSC is also mandating Monroe County grant building permits for electrical connection **in violation of the County's comprehensive plan and land development code. Please dismiss the Reynolds Complaint.** Thank you for recognizing the importance of your role and for the work you do that makes a difference.

Sincerely yours,
Elena M.F. Muratori
203 Charlemagne Blvd.
Key Largo, FL 33037

Eric Fryson

From: Ann Cole
Sent: Tuesday, May 14, 2013 9:23 AM
To: Eric Fryson
Cc: Catherine Potts; Hong Wang
Subject: FW: No Name Key

Eric,

Please process. Thank you.

Ann

From: Office of Commissioner Balbis
Sent: Tuesday, May 14, 2013 9:19 AM
To: Commissioner Correspondence
Subject: FW: No Name Key

Cathi,

Please place the email below in Docket Correspondence, Consumers and their Representatives, in Docket No. 120054-EM.

Thank you,

Cristina

From: Joan Mowery Barrow [mailto:joanb2010@aol.com]
Sent: Monday, May 13, 2013 12:51 PM
To: Office of Commissioner Balbis
Subject: No Name Key

Dear Commissioner Eduardo Balbis,

The state of Florida and the county of Monroe should be proud of their designation of No Name Key as a solar community. Being in the CBRS, people should not be encouraged to build in that area.

The people asking for electric power saved money when they purchased their lots because there was no power. No one forced them to buy and build there.

Please keep NNK Solar.
Hope & Peace & Love,
Joan Mowery Borrow

Catherine Potts

From: Office of Commissioner Balbis
Sent: Tuesday, May 14, 2013 9:09 AM
To: Commissioner Correspondence
Subject: FW: re : Reynolds v.Keys Energy

Cathi,

Please place the email below in Docket Correspondence, Consumers and their Representatives, in Docket No. 120054-EM.

Thank you,

Cristina

From: deb [mailto:dmcurl@bellsouth.net]
Sent: Monday, May 13, 2013 1:13 PM
To: Office of Commissioner Balbis
Subject: re : Reynolds v.Keys Energy

Commissioner Balbis, I urge you to not ignore home rule issues of the Florida Keys. In this time of climate change, I feel that all governments should be doing everything that they can to support alternative sources of energy. With the money that the Reynolds and other residents spent to put up utility poles, state of the art solar power could have been installed for every owner whom seems to want electricity. They purchased their homes knowing that it was an "off grid" community .This is an opportunity to show your support for alternative energy. Thank you. Deb Curlee Cudjoe Key Fl

Catherine Potts

From: Office of Commissioner Balbis
Sent: Tuesday, May 14, 2013 9:05 AM
To: Commissioner Correspondence
Subject: FW: No Name Key

Cathi,

Please place the email below in Docket Correspondence, Consumers and their Representatives, in Docket No. 120054-EM.

Thank you,

Cristina

From: AmyLachatLynch@aol.com [mailto:AmyLachatLynch@aol.com]
Sent: Monday, May 13, 2013 1:21 PM
To: Office of Commissioner Balbis
Subject: No Name Key

I support the Solar Community of No Name Key and request that you deny the Reynolds' Complaint.

The Solar Community of No Name Key is a progressive community which should be a role model for the rest of us. All property owners bought or built on No Name with full knowledge the island was not served by commercially supplied electricity or water.

Please leave this local issue in the hands of the local government.

~Amy Lynch
Key West

Catherine Potts

From: Pamela Paultre
Sent: Tuesday, May 14, 2013 9:01 AM
To: Commissioner Correspondence
Subject: Docket no. 120054
Attachments: Monroe County, No Name Key - Reynolds Complaint; No Name Key - PSC Hearing, Tuesday, 05/14/2013; Extension of Electricity to No Name Key

Cathi,

Please place the forwarded or enclosed correspondence in Docket Correspondence of Consumers and their representatives for docket no.120054-EM.

Thank you,

Pamela Paultre
Assistant to Chairman Ronald Brisé
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
(850) 413-6036

Catherine Potts

From: Joyce Newman <keysjoyce@hotmail.com>
Sent: Monday, May 13, 2013 5:35 PM
To: Office of Commissioner Brisé
Subject: Monroe County, No Name Key - Reynolds Complaint

Dear Chairman Brise,

Regarding the Complaint filed by Reynolds in the Monroe County, No Name Key matter, I respectfully request that you **dismiss this Complaint** in your meeting tomorrow morning.

I believe the Reynolds Complaint asks you to ignore the important Home Rule issue argued by Monroe County, inasmuch as the County's Comprehensive Land Use Plan prohibits it from issuing permits for residents in Coastal Barrier Resources System (CBRS) units to connect to commercial electricity.

Private money underwrote the purchase and installation of electrical utility poles on No Name Key by Keys Energy Services (KEYS), with the understanding that private money would underwrite the removal of the utility poles if County regulations were enforced.

Please uphold the right of The Solar Community of No Name Key to maintain its off-grid lifestyle. Please uphold Monroe County's right to enforce its restrictions within CRBS units, including No Name Key. Please deny the Reynolds Complaint.

Thank you.

Sincerely,

Joyce Clark Newman
Big Pine Key, Florida

Catherine Potts

From: Kandy Kimble <keyfortwo@gmail.com>
Sent: Monday, May 13, 2013 4:36 PM
To: Office of Commissioner Balbis; Office Of Commissioner Edgar; Office of Commissioner Brisé; Office Of Commissioner Graham; Office of Commissioner Brown; mcbrown@psc.state.fl.us
Subject: No Name Key - PSC Hearing, Tuesday, 05/14/2013

Esteemed Chairman and Commissioners of the PSC,

My husband and I are asking that you consider the contents of this email before and during the PSC Hearing tomorrow:

-The Public Service Commission has been given misinformation regarding No Name Key. Almost all of the generators in use on NNK are owned and used by those demanding commercial power.

-We believe (as do many, many others) that those demanding commercial power, do so for their personal monetary gain.

-The off-grid island of No Name Key is a unique green community, the likes of which is found nowhere else in the Country. NNK should be used, by The State of Florida, as a role model for alternative energy source.

-All property owners bought or built on No Name with full knowledge that the island was not served by commercial utilities.

-Infrastructure increases development expectations and ultimately leads to increased development.

-No Name Key provides habitat for the Key deer and five other federally listed species that needs protection from the secondary impacts of development.

-No Name Key is a federally designated Coastal Barrier Resources System (CBRS) unit.

We close with a request that the PSC not order Keys Energy to extend commercial power to NNK and concede this jurisdiction to Monroe County and make a recommendation to the County that they uphold, rather than change, their current Comp Plan. Please do not make this about egos, personal power or monetary gain. This is about the land and the lives it protects.

Thank you for your time and consideration,

Harold and Kandy Kimble
Full-Time Residents
1909 Bahia Shores Rd.
No Name Key, FL 33043

Catherine Potts

From: Joan S. Borel <jborel@juno.com>
Sent: Monday, May 13, 2013 3:34 PM
To: Office of Commissioner Brisé; Office of Commissioner Balbis; Office Of Commissioner Edgar; Office Of Commissioner Graham; Office of Commissioner Brown
Subject: Extension of Electricity to No Name Key

Public Service Commission
Dear Commissioner,

I have been a resident of Monroe County for more than 40 years, and I am writing to ask that you please reject the Reynolds  request to extend power to No Name Key, which would destroy a unique solar community and a model for a sustainable future on the front lines of sea level rise. No Name Key is a federally designated Coastal Barrier Resource, and as such Monroe County code prohibits the extension of power lines to discourage additional development. The PSC does not have the authority to overrule Monroe County's Comprehensive Plan and land development regulations. No Name Key provides habitat for six federally endangered species that are threatened by development impacts. Please respect our right to home rule guaranteed by the Florida constitution and allow Monroe County to preserve this remote island community according to its own laws. Thank you for listening to the wishes of all residents, and not just the disgruntled few who purchased homes on No Name Key knowing full well it was solar only.

Joan Borel
1089 Ocean Dr.
Summerland Key, FL 33042

Catherine Potts

From: Office of Commissioner Brown
Sent: Tuesday, May 14, 2013 8:40 AM
To: Commissioner Correspondence
Subject: FW: Monroe County, No Name Key - Reynolds Complaint

Please place the attached in Docket Correspondence, Consumers and their Representatives, in Docket No. 120054-EM.

Thank you,

Katherine E. Fleming
Chief Advisor to Commissioner Brown
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
(850) 413-6028 (Office)
(850) 413-6029 (Facsimile)

From: Joyce Newman [mailto:keysjoyce@hotmail.com]
Sent: Monday, May 13, 2013 5:48 PM
To: Office of Commissioner Brown
Subject: Monroe County, No Name Key - Reynolds Complaint

Dear Commissioner Brown

Regarding the Complaint filed by Reynolds in the Monroe County, No Name Key matter, I respectfully request that you **dismiss this Complaint** in your meeting tomorrow morning.

I believe the Reynolds Complaint asks you to ignore the important Home Rule issue argued by Monroe County, inasmuch as the County's Comprehensive Land Use Plan prohibits it from issuing permits for residents in Coastal Barrier Resources System (CBRS) units to connect to commercial electricity.

Private money underwrote the purchase and installation of electrical utility poles on No Name Key by Keys Energy Services (KEYS), with the understanding that private money would underwrite the removal of the utility poles if County regulations were enforced.

Please uphold the right of The Solar Community of No Name Key to maintain its off-grid lifestyle. Please uphold Monroe County's right to enforce its restrictions within CRBS units, including No Name Key. Please deny the Reynolds Complaint.

Thank you.

Sincerely,

Joyce Clark Newman
Big Pine Key
Monroe County, Florida

Catherine Potts

From: Betty Leland
Sent: Tuesday, May 14, 2013 8:33 AM
To: Commissioner Correspondence
Subject: #120054-EM No Name Key
Attachments: Monroe County, No Name Key - Reynolds Complaint; Baird/Parker/Utilities: Investors Upbeat As Infrastructure Investment Ramps; No Name Key - PSC Hearing, Tuesday, 05/14/2013

Cathi,

Please place the attached emails in Docket Correspondence, Consumers and their Representatives, in Docket No. 120054-EM.

Thank you

Betty

Catherine Potts

From: Joyce Newman <keysjoyce@hotmail.com>
Sent: Monday, May 13, 2013 5:56 PM
To: Office Of Commissioner Graham
Subject: Monroe County, No Name Key - Reynolds Complaint

Dear Commissioner Graham,

Regarding the Complaint filed by Reynolds in the Monroe County, No Name Key matter, I respectfully request that you **dismiss this Complaint** in your meeting tomorrow morning.

I believe the Reynolds Complaint asks you to ignore the important Home Rule issue argued by Monroe County, inasmuch as the County's Comprehensive Land Use Plan prohibits it from issuing permits for residents in Coastal Barrier Resources System (CBRS) units to connect to commercial electricity.

Private money underwrote the purchase and installation of electrical utility poles on No Name Key by Keys Energy Services (KEYS), with the understanding that private money would underwrite the removal of the utility poles if County regulations were enforced.

Please uphold the right of The Solar Community of No Name Key to maintain its off-grid lifestyle. Please uphold Monroe County's right to enforce its restrictions within CRBS units, including No Name Key. Please deny the Reynolds Complaint.

Thank you.

Sincerely,

Joyce Clark Newman
Big Pine Key
Monroe County, Florida

Catherine Potts

From: Parker, David <dparker@rwbaird.com>
Sent: Monday, May 13, 2013 5:40 PM
To: Office Of Commissioner Graham
Subject: Baird/Parker/Utilities: Investors Upbeat As Infrastructure Investment Ramps

May 13, 2013 | **Baird Equity Research**
Energy

Utilities

Investors Upbeat As Infrastructure Investment Ramps

Click here for PDF version including all attachment(s)

After years of stagnant growth, infrastructure investment is again accelerating, fueled by low US natural gas prices. For the first time in the past several years, investors attending an industry financial conference were upbeat, as utility companies highlighted incremental investment opportunities driven by relatively lower-priced natural gas. The potential for significant reductions in customer bills has trumped a lack of federal policy, driving infrastructure investment in 2013 at much higher levels than expected.

- **It's simple economics! Low-cost energy saves customers money.** With concerns fading that huge US reserves of shale oil and gas are just a "pipe dream," customers are demanding access to the inexpensive commodities. The exploration, development, delivery and expanding use of this "new" energy source provides investors with several actionable investment themes:
  - **Exploration and production (E&P)**. Exploration, development and related services have been the first movers of accelerated investment opportunities. Companies under coverage with E&P activities or service providers include: MDU, AWK, WTR.
  - **Delivering commodity to load centers and new load**. CPK, PNY, MDU, VVC.
  - **Pipe integrity, maintenance and replacement.** AWK, WTR, PNY, TEG, VVC.
  - **Expanding natural gas usage, customer fuel switching, NG power generation, transportation**. ALE, CPK, LNT, NEE, NWE, TEG, UIL, UTL.
  - See details section for more information.
- **Top ideas.** Companies with demonstrated pipeline of infrastructure investment include: **ALE, CPK, LNT, NEE, PNM, and XEL.**

Prices as of 05/10/13			Rating	Target
Ticker	Price	Mkt Cap (mil)	Current Prior	Current Prior
ALE	$51.37	$2,003	O/A	$55
AWK	$42.03	$7,502	O/L	$45
CPK	$54.61	$530	O/A	$56
LNT	$52.10	$5,773	O/L	$56
MDU	$26.44	$5,002	O/A	$30
NEE	$80.00	$33,840	O/A	$85
NWE	$41.89	$1,567	N/A	$46
OTTR	$29.98	$1,085	N/A	$28
PNM	$22.86	$1,843	O/L	$26
PNY	$33.89	$2,464	O/L	$34
TEG	$59.84	$4,745	N/A	$57
UIL	$40.19	$2,058	N/L	$42
UTL	$30.19	$417	N/L	$31
VVC	$36.06	$2,968	N/A	$38
WEC	$43.12	$9,969	O/L	$45
WTR	$31.85	$4,497	N/L	$35

- Potentially improving total return prospects; **TEG, UIL, UTL, VVC**.

- **Utilities aren't "cheap," but are there better alternatives?** Three factors impacting sector valuation:
  - **The devil we know; more predictable utility EPS growth with accelerated infrastructure investment.** Forecasted three-year EPS CAGR of over 5% is tied to upgrades and/or replacement of aging infrastructure, NOT increasing customer demand, making EPS growth more predictable. However, the road from project announcement to full EPS impact can be long and filled with potential potholes, making an assessment of potential political/regulatory headwinds essential to avoid negative surprises.
  - **Utility Sector returns likely best in class**. Estimates for slow US GDP growth support the view that 8-10% forecasted average utility sector total returns should stack up well to alternative investments.
  - **Dividend yields continue to be well above historical averages** when compared to other bond alternatives, helping to support current valuations.

XEL	$30.25	$14,853	**O/L**	**$34**

Please refer to Appendix - Important Disclosures and Analyst Certification

David E. Parker	**Benjamin C. Gaither**	**Heike M. Doerr**
dparker@rwbaird.com	bgaither@rwbaird.com	hdoerr@rwbaird.com
813.274.7620	414.298.2480	215.553.7816

Prices as of 05/10/13	**Mkt Cap (mil)**	**Rating**	**Target**	**F2012**	**F2013**	**F2014**
COMPANY TICKER - PRICE		**Current** Prior	**Current** Prior	**Current** Prior	**Current** Prior	**Current** Prior
ALLETE ALE - 51.37	**$2,003**	**O/A**	**55**	**2.58**	**2.75**	**3.05**
Alliant Energy Corporation LNT - 52.10	**$5,773**	**O/L**	**56**	**3.05**	**3.15**	**3.30**
American Water Works Company, Inc. AWK - 42.03	**$7,502**	**O/L**	**45**	**2.11**	**2.20**	**2.35**
Aqua America, Inc. WTR - 31.85	**$4,497**	**N/L**	**35**	**1.32**	**1.43**	**1.50**
Chesapeake Utilities Corp. CPK - 54.61	**$530**	**O/A**	**56**	**2.99**	**3.40**	**3.40**
Integrys Energy Group TEG - 59.84	**$4,745**	**N/A**	**57**	**3.26**	**3.40**	**3.60**
MDU Resources Group Inc. MDU - 26.44	**$5,002**	**O/A**	**30**	**1.15**	**1.35**	**1.50**
NextEra Energy, Inc. NEE - 80.00	**$33,840**	**O/A**	**85**	**4.57**	**4.90**	**5.30**
NorthWestern Corporation NWE - 41.89	**$1,567**	**N/A**	**46**	**2.39**	**2.50**	**2.75**
Otter Tail Corporation OTTR - 29.98	**$1,085**	**N/A**	**28**	**1.30**	**1.40**	**1.50**
Piedmont Natural Gas Company, Inc. PNY - 33.89	**$2,464**	**O/L**	**34**	**1.66**	**1.77**	**1.95**

PNM Resources, Inc. PNM - 22.86	$1,843	O/L	26	1.31	1.35	1.55
UIL Holdings Corporation UIL - 40.19	$2,058	N/L	42	2.02	2.20	2.45
Unitil Corporation UTL - 30.19	$417	N/L	31	1.43	1.60	1.77
Vectren Corporation VVC - 36.06	$2,968	N/A	38	1.94	2.00	2.15
Wisconsin Energy Corporation WEC - 43.12	$9,969	O/L	45	2.35	2.44	2.55
Xcel Energy Inc. XEL - 30.25	$14,853	O/L	34	1.82	1.92	2.00

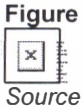
Details

Shale oil and gas exploration and production (E&P) activity a boon to shale area economies. "Tickle down" effect beginning.

The North Dakota and Texas economies are booming thanks to accelerated E&P activity in shale plays. Utility companies like MDU are enjoying unprecedented customer growth with robust E&P activity. A key challenge is providing services to the rapidly expanded workforce, and the related trickle-down effect. These new jobs drive the need for hotels, homes, restaurants, etc., in towns that typically don't have the infrastructure to serve this new demand. As a result, utilities are aggressively adding wires and pipes to meet this load. The abundance of low-cost energy in the production area is also beginning to fuel increased industrial demand, which could fuel a sizable uptick in energy infrastructure needs.

As Figure 1 highlights, accelerated natural gas production is forecasted to be a sustainable phenomena, supporting longer-term solutions to demands of this booming industry. Beyond the obvious need to connect new utility customers as previously highlighted, infrastructure build to alleviate points of congestion have provided incremental investment opportunities, particularly pipeline capacity, as roads are full of trucks providing water to frack wells. Companies like Aqua America and American Water have begun adding water pipes to serve this demand, at roughly one-third of the cost for truck delivered water. Another key benefit is that millions of truck trips are avoided.

Figure 1: US Dry Natural Gas Production, trillion cubic feet



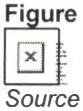
Source EIA, Annual Energy Outlook 2013 Early Release

It's simple economics; low-cost energy saves customers money. As Figure 2 highlights, the huge price differential US natural gas has over other developed economies is fueling a resurgence of demand, particularly in energy-intensive industrial processes like petrochemicals, fertilizer and metals. With forecasts that the US will continue to enjoy this enviable energy price differential for the foreseeable future, the US forecasts that industrial demand for natural gas will continue to be on the rise for the next several decades. (see Figure 3). With tightening environmental standards, electric power generation from natural gas is expected to substantially expand, with that incremental demand partially offset by expected anticipated efficiency improvements by residential customers.

Figure 2: Comparison of Global Natural Gas Spot Prices, $/BTU

Source Bloomberg, EIA

Figure 3: US Dry Gas Consumption, trillion cubic feet



Source EIA, Annual Energy Outlook 2013 Early Release

Low-relatively priced energy commodity prices a game-changer for the US. With concerns fading

that huge US reserves of shale oil and gas are just a "pipe dream," customers are demanding access to the inexpensive commodities. The exploration, development, delivery and expanding use of this "new" energy source provides investors with several actionable investment themes. (For company specific details, see Actionable Ideas section.)

- **Exploration and production**. Exploration, development and related services have been the first movers of accelerated investment opportunities. Investment over the past several years is finally paying dividends for MDU's E&P operations. With the rebound in natural gas commodity prices, developers are seeking longer-term solutions for infield service issues helping to provide WTR and AWK investment opportunities to provide water services for fracking, and MDU's aggregates operations to build drilling pads, roads and housing.
    - Companies under coverage expected to benefit from this trend include; MDU, AWK, WTR.
- **Delivering commodity to load centers and new load**. With drilling activity occurring at a robust rate, demand for infrastructure to take-away this new production is likely to remain at heightened levels for the foreseeable future. Also, US shale plays are significantly changing the way oil and natural gas production moves from the field to the customer. Natural gas traditionally moved from the Gulf of Mexico or the West to the Northeast. As Figures 4 and 5 highlight, Shale plays located in the Northeast and Midwest likely change the traditional flow of natural gas, which is expected to provide additional infrastructure investment opportunities.
    - Companies under coverage expected to benefit from accelerating midstream investment opportunities include; CPK, PNY, MDU, VVC.

Figure 4: US Shale Plays

Source: EIA

Figure 5: US Traditional and Emerging Pipeline Natural Gas Flows

Source: SNL Energy, Moody's

- **Pipe integrity, maintenance and replacement.** Pipeline integrity concerns have escalated with service and safety failures in the past several years. As a result, transmission companies and LDCs have accelerated inspections and evaluations of their systems, boosting infrastructure investment opportunities as pipe replacement programs accelerate and safety systems are enhanced. Companies under coverage expected to benefit from accelerating midstream investment opportunities include: **PNY, TEG, VVC**.
- **Expanding natural gas use, customer fuel switching, NG power generation, transportation**. With abundant supplies of attractively priced natural gas, strategies are being developed to enhance the energy infrastructure to meet increasing customer demand. For example, space heating in the Northeast US has been dominated by fuel oil and propane, reflecting system capacity constraints and limited price advantage natural gas had in the past. With natural gas now providing an opportunity to lower customer bills by 50% or more, customers with the option are switching fuels more readily, providing natural gas utilities new infrastructure investment opportunities. Tightening US environmental standards are prompting the retirement of older and inefficient coal, oil, and natural-gas fired power generation, with the likely plant replacement fueled by combined-cycle natural gas. See Figures 6 and 7 for more details. Companies under coverage expected to benefit from increasing end-market natural gas demand: **CPK, LNT, NEE, NWE, TEG, UIL, UTL**.

Figure 6: YOY Change in Natural Gas Consumption by Industrial and Electric Power Users

Source: US Energy Information Administration

Figure 7: Forecasted Coal Power Production Retirements

Source SNL Energy, RW Baird & Co. estimates

Figure 8: Forecasted Electric Power Production

Source: EIA 2013 Annual Energy Outlook Early Release

Actionable Ideas

Investors focus again on fundamental valuation: A positive, but many question if utilities are too expensive. From Risk On/Risk Off strategies that seemed to dominate investment themes in the past, we find investors' shift to fundamental analysis a refreshing change. However, strong utility sector performance has boost P/E multiples to levels typically not realized in the first half of the year prompting some investors to remain on the sidelines.

Despite improved stock price performance, we believe select utility stocks still have 8-10% upside, providing attractive relative total returns. Actionable ideas include: ALE, AWK, LNT, NEE, XEL.

- **ALE: Most recently Minnesota resource plan filed March 1 calls for incremental wind investment; recently announced acreage purchase could signal upside for wind development**. On the 1Q13 call, management indicated ALE now owns or leases 130,000 acres of North Dakota land (up from 60,000 previously) which would facilitate incremental wind construction above the ~600MW of potential wind resource capacity supported by the previous acreage. Given ALE's ~200MW of potential new regulated wind would have likely have fit within the previously owned-acreage, we believe this land grab could facilitate development of additional renewable projects. PPA interests has improved as wind generated electricity has declined to under 3 cents/kWh. With PTC extended, ALE has accelerated the timing and size of wind generation; now expected to be up to 200MW, with in-service targeted for 2014/2015. The total regulated capex opportunity could be $350-$425 million ($0.40-$0.60 EPS potential).

- **AWK: Expected EPS growth CAGR of 7-10% is expected to be driven by accelerated infrastructure investment, additional operating efficiency improvement, reduced regulatory lag through enhanced recovery mechanisms, portfolio rationalizations, and an increased contribution from AWK's Market-Based operations.** American Water has a long-term capital expenditure budget of $800 million - $1 billion annually, with plans to spend ~$950 million in 2013 (~2.3x/depreciation). Improved earned ROEs boost cash generated from operations. During 1Q13, AWK completed five utility tuck-in acquisitions and provided water services to several fracking operators in the Marcellus.

- **LNT: Accelerated infrastructure investment is expected to drive substantial rate base expansion through 2016.** Our expected EPS growth CAGR is 5-7%, reflecting investment opportunities that include environmental controls, natural gas-fired generation, electric transmission, and wind generation. Constructive regulatory environments, including the recovery of investments through enhanced regulatory mechanisms, are expected to reduce lag and keep earned returns on new investment reasonable.

- **NEE: Rate base growth opportunities reflect capital projects beyond FL generation modernization; PTC extension and shift toward more contracted generation mix should provide for improved Energy Resource EPS visibility.** In addition to the ~$9 billion of capex expected to be deployed at through 2016, management laid out $4-$5 billion in incremental capex potential. including distribution system hardening, natural gas pipeline construction, recently announced Vero Beach acquisition, and peaking generation upgrades. NEE expects to recover ~$9 billion in capex expansion without additional regulatory filings given the $350 million general rate increase effective January 2013 and ~$620 million increase from the GBRA when new generation facilities are placed into service.

    - NEER current backlog of long-term wind/solar PPAs translates into ~$3.6 billion of capex through 2016, which at a 50/50 capital structure, support equity returns in the high teens over the project life with a risk profile resembling a regulated asset. The recent extension of the PTC provides the potential for an incremental $1-$3 billion of wind investment (one driver of the anticipated 2014 equity issuance), and given delivered wind electric prices are ~50% below 2009 levels, we believe renewable demand to remain firm through 2014.

- **XEL: Continued execution of regulated growth strategy, supported by constructive regulatory environments should drive attractive total returns.** We believe XEL remains a core long-term holding as significant infrastructure investment opportunities in the next 3-5 years should drive attractive total returns, reflecting expected 5-7% EPS CAGR and an attractive yield. While regulatory activity remains heightened as the company seeks recovery of accelerated

infrastructure investment, we believe headline risks have been exaggerated. XEL's 2013 regulatory calendar is full; however, we note that a majority of the ~$395M in requested 2013 rate relief reflects recovery of investments pre-approved by state commissioners, which we believe limits the potential for outsized negative regulatory surprises.

Figure 9: Total Returns Fueled by Earned ROEs & Rate base Growth

Source: FactSet, RW Baird & Co. estimates

As highlighted in Figure 10, companies in the upper-right quadrant of the chart exhibit strong expected earned ROE prospects and accelerated capex plans (ALE, CPK, LNT, PNY, XEL). Accordingly, these are also the companies to which we prescribe premium multiples and outperform ratings. For the most part, companies with green indicators are those which have attractive rate base growth prospects or strong earned returns, but lack the confluence of these two factors that typically results in stock-price outperformance. For example, TEG has a very attractive pipeline of regulated infrastructure investment opportunities, but the current IL regulatory environment will likely pressure earned returns until rate clarity is received. For these select companies, stock price upside would likely come in the form of regulatory certainty and subsequent earned ROE improvement (HE and TEG), incremental capex opportunities (UTL and UIL), and/or stabilized non-regulated segment EPS performance (VVC, TE, OTTR).

Figure 10: Returns Fueled by Forecasted Earned ROEs & Rate base Growth

Source: FactSet, RW Baird & Co. estimates

Companies to watch as total return prospects could improve in 2013 include; TEG, OTTR, UIL, UTL, VVC.

- **TEG: Outcome of 2013 Illinois gas filing is most significant driver of near-term uncertainty.** With increased confidence surrounding positive IL regulatory outcomes on the heels of a favorable decoupling mechanism ruling and a constructive ALJ recommendation in TEG's pending gas rate cases, TEG could be well positioned for a prolonged period of above-average EPS growth. Returns at IES have stabilized as a result of reduced collateral commitments and improved market conditions, which should help alleviate one of the more significant investor concerns coming into 2013. Once certainty is received in pending legislative solutions (formulaic infrastructure rider) and IL regulatory filings, additional stock price upside is likely warranted.

- **OTTR: Electric rate base expansion opportunities should drive attractive EPS growth over the next 3-5 years.** Electric rate base expansion opportunities should drive attractive EPS growth over the next 3-5 years. Management's revised capex plan now calls for $715 million in regulated investment between 2013 and 2017 (down from $811 million originally), which would grow average rate base from $694 million in 2012 to $1.1 billion by 2017 (roughly a 10.5% five-year CAGR). The downward revision in regulated capex plans reflects lower anticipated costs for OTTR's share of the Big Stone environmental retrofit, as well as slightly lower transmission requirements to serve the Big Stone facility. Investments in wires and environmental control equipment are the biggest contributors to long-term rate base expansion, and are eligible for current cost recovery via rider mechanisms in Minnesota. Should these projects materialize as expected, there could be incremental EPS upside of ~$1.00 (exclusive of equity financing costs) based on current allowed ROEs (10.5%) and a 52% equity ratio.

- **UIL: Connecticut's Comprehensive Energy Strategy (CES) approved February 19, lays out a constructive framework for UIL's natural gas conversion plan,** including innovative financing options for tax credits for customers looking to convert to gas heating (bill financing for installation of gas furnaces, new main customer rate, etc.). The CES goal is to make natural gas available to over 250,000 additional residential customers over the next seven years and up 75% of businesses operating in Connecticut. Over the next five years, we anticipate 5-6% average annual EPS growth primarily driven by UIL's $2.2 billion capex program, focused on electric distribution and transmission upgrades and natural gas service expansion.

- **UTL: Similar to UIL, Unitil's infrastructure investment opportunities are accelerating driven by historically low natural gas commodity prices.** With oil the primary space heating fuel in New England, the sizable cost differential between natural gas and oil provides substantial customer savings potential. We expect UTL to generate above-average EPS CAGR of 6-8% over the next 3-5 years, reflecting enhanced customer switching opportunities as a result of low-cost

natural gas. Further margin improvement likely stems from additional rate relief and increased adoption of tracker mechanisms.

- **VVC: We are encouraged by stable and predictable utility growth and substantial infrastructure services momentum.** With weak coal margins now captured in forward EPS guidance, we expect stock price downside is limited. Updated utility capex calls for ~$1B in infrastructure investment supported by enhanced recovery mechanisms, and the infrastructure services business remains well positioned for the secular growth in energy-related construction activity.

Sector Valuation

Utilities lose momentum. Utility stocks have lost some of the ground they made up a few weeks ago, helping to support our position that the combination of peak market valuations and the prospects for US GDP under 2% in the near term makes select utility stocks a compelling investment.

- Baird's regulated utility index in up 17.8% YTD, while the S&P 500 and NASDAQ indices were up 20.1% and 16.2%, respectively. In the past two weeks, Utilities declined -1% while the S&P 500 and NASDAQ indices were up 2.6% and 3.6%, respectively.

Figure 11: Index Performance

Source: FactSet, RW Baird & Co.

Utilities aren't "cheap," but are there better alternatives? Three factors expected to impact sector valuation.

- **The devil we know; more predictable utility EPS growth with accelerated infrastructure investment**. Forecasted three-year EPS CAGR of over 5% is primarily fueled by upgrade and/or replacement of aging infrastructure NOT increasing customer demand, making EPS growth more predictable. However, the road from project announcement to full EPS impact can be substantially long and filled with potholes, making an assessment of potential political/regulatory headwinds essential to avoid negative surprises (See Regulatory Toolkit section for additional details).
- **Utility Sector returns likely best-in-class.** Estimates for slow US GDP growth support the view that 8-10% forecasted average utility sector total returns should stack up well to alternative investments. Since 2005, accelerating infrastructure investment opportunities has helped improve total returns, boosting the sector's valuation metrics including forward P/Es. See Figure 13. We believe aging infrastructure, tightening environmental standards and improving predictability of EPS growth opportunities supports higher-than-average forward P/Es, especially if US GDP growth and interest rates remain at very low levels.
- **Dividend yields continue to be well above historical averages when compared to other bond alternatives helping to support current valuation.** (See Figure 2.)

Figure 12: Trend for Utility Yield vs 10-Yr Treasury Bond

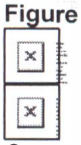
Source: FactSet, RW Baird & Co.

Current price targets reflect 2015 EPS estimates, reduced risk for higher dividend taxation and continued "constructive" state and federal regulatory environments. When fully valued, we expect the average electric utility to trade in the range of 14.5-15.5x 2015 EPS estimates and gas utility to trade 15.5x-16.5 2015 EPS estimate. (See Figures 13, 14, & 15.)

- Utility P/E multiple gap with S&P 500 has widened as EPS performance improved with accelerated infrastructure investment. (See Figure 13).
- Natural gas utility EPS CAGR has improved with expanding investment opportunities like fuel switching, boosting expected P/E multiple in line with electric peers. (See Figure 15).
- Premium valuations are justified if a utility has a demonstrated pipeline of infrastructure investment opportunities and supportive regulation to recover heightened investment. (See Figure

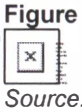
13).

Figure 13: S&P 500 & Regulated Utility Forward P/E Trend



Source: FactSet, RW Baird & Co. estimates

Figure 14: Regulated Utility Forward P/E Trend



Source: FactSet, RW Baird & Co.

Figure 15: Regulated Electric and Natural Gas Utility Forward P/E Trend

Source: FactSet, RW Baird & Co.

Regulatory Toolkit

- **We believe understanding the nuances of state regulatory practices is crucial for successful utility investing**, as profitability and financial fundamentals can be heavily dependent on the ability to earn a fair return. Our updated Regulatory Toolkit highlights topics to watch in 2013, reviews recent regulatory trends, and comments on possible commission changes.
- **While not often focused on, politicians also can play a key role in a state's regulatory environment**. In the past several years, state legislation has provided mechanisms to recover accelerated infrastructure investment that has allowed for more stable earned returns, improved financial flexibility and a smoothing of customer bill increases. These legislative actions have helped to improve the regulatory climate. As a result, we have begun tracking state legislative efforts for investors, similar to how we track rate proceedings, as we have noticed an increase in legislative activities.
- **ROEs continue downward trend.** The average authorized ROE for 1Q13 electric and natural gas rate proceedings were 9.73% and 9.57%, below the 10.16% and 9.94% average authorized during 2012.
- **In the near term, regulatory activity likely remains heightened with accelerated infrastructure investment.** Regulatory activity moderated following the recession, but has accelerated recently and will likely remain at heightened levels for the foreseeable future as utilities seek to recover invested capital. We believe monitoring regulatory activity and trends, especially during periods of heightened regulatory activity, can help investors avoid negative surprises.

Price Target Justification & Risks (All prices as of 5/13/13)

ALLETE (ALE) - $50.50, $55 PT
Valuation. Our $55 price target is 16x our 2015 EPS estimate after adjusting for the estimated $2-$3/share value of ALE's real estate assets;. we believe above-average EPS growth and attractive dividend yield warrant a premium valuation (versus peers currently trading at 15.4x 2015E).
Risks. Regulation, cyclicality of industrial customer usage, and continued weakness at ALLETE Properties.

Alliant Energy (LNT) - $51.70, $56 PT
Valuation. Our $56 target price reflects a 16x P/E of our 2015 EPS estimate, a premium to its regulated utility peers average (currently trading at 15.4x 2015 EPS) when fully valued, reflecting attractive EPS growth prospects primarily from pre-approved big ticket capital projects.
Risks. Changes in federal/state/local regulation, adverse weather, and financial market conditions.

American Water Works (AWK) - $41.98, $45 PT
Valuation. Our $45 price target assumes ~18x our 2015 EPS estimate versus peers at 17.6x 2015E, supported by improving earned ROEs via rate relief, effective cost containment efforts, and expansion of its Market-Based Operations.
Risks. Changes in federal/state/local regulation, adverse weather, acquisition risk, and financial market conditions.

Aqua America (WTR) - $31.95, $35 PT
Valuation. Our $35 price target is ~22.5x our 2015 EPS estimate, a premium to peers when fully valued (currently trading at 17.6x 2015 EPS) reflecting above-average EPS growth opportunities and generally more constructive regulatory mechanisms that provide above-average earned ROEs and enhance earnings stability.
Risks. Changes in federal/state/local regulation, adverse weather, acquisition risk, and financial market conditions.

Chesapeake Utilities (CPK) - $53.78, $56 PT
Valuation. Our $56 price target is 15.5x our 2015 EPS estimate, in line with peers when fully valued. Baird Regulated Electric/Gas utilities and natural gas LDCs trade at about 16x 2015 estimates. Given that most of CPK's growth is from NG LDC and pipeline operations, we believe CPK's stock should trade closer to its NG peer companies.
Risks. Acquisition risk, changes in federal/state/local regulation, adverse weather, wholesale commodity pricing.

Integrys Energy Group (TEG) - $59.66, $57 PT
Valuation. Our $57 12-month price target is 15x our 2015 EPS estimate, a discount to its electric/natural gas utility peers (currently trading at 16.3x 2015 estimates) when fully valued reflecting above-average EPS CAGR due to attractive infrastructure investment opportunities, and would warrant upward revisions should IL regulatory certainty materialize.
Risks. Acquisition risk, changes in federal/state/local regulation, adverse weather, wholesale commodity pricing.

Northwestern Energy (NWE) - $41.73, $46 PT
Valuation. Our $46 price target is comprised of a $43 utility valuation (15x our 2015 EPS estimate; peers currently trading 15x 2015) and $2-$3/share NOL carry-forward. Multiple expansion is warranted if clarity is received surrounding the pending DGGS FERC filing and/or new rate base expansion opportunities materialize, specifically MT generation additions.
Risks. Acquisition risk, changes in federal/state/local regulation, adverse weather, project delays/cancellations.

MDU Resources - $26.51, $30 PT
Valuation. Our $30 price target is 18x our 2015E EPS estimate, a premium to diversified utility peers (~16.5x 2015 EPS estimates), reflecting above-average utility EPS CAGR and substantial upside in EPS contribution from MDU's cyclical construction and E&P segments.
Risks. Acquisition risk, changes in federal/state/local regulation, adverse weather, competitive pressures at construction businesses.

Otter Tail Corporation (OTTR) - $29.40, $28 PT
Valuation. Assuming that OTTR's future EPS performance is less cyclical as non-reg businesses become a smaller percentage of OTTR's overall portfolio, we expect OTTR's P/E multiple to trend toward utility peers when fully valued (currently trading at 15.4x 2015E EPS). Our target price is $28, 17x our 2015 EPS estimate, assuming that above average utility EPS CAGR supports a premium valuation.
Risks. Economic uncertainty, state/federal regulation, non-regulated segment competition

PNM Resources (PNM) - $22.74, $26 PT
Valuation. Our $26 price target is 16.2x our 2015 EPS estimate, a premium to peers when fully valued (currently trading at 15.2x 2015 estimates) reflecting above-average EPS growth opportunities and improving regulatory environments.
Risks. Changes in federal/state/local regulation, adverse weather, and financial market conditions

Piedmont Natural Gas (PNY) - $34.03, $34 PT
Valuation. Our $34 price target is 16.6x our FY2015 EPS estimate, a premium to peers when fully valued (currently trading at 14.7x) reflecting above-average EPS growth fueled by successful execution of its integrated regional gas delivery strategy and constructive regulatory policies.
Risks. Wholesale natural gas pricing, adverse weather, federal/state/local regulation.

NextEra Energy (NEE) - $79.62, $85 PT
Valuation. Our price target of $85 is 15.2x our 2015 EPS estimate, a slight premium to its utility/merchant peers (currently trading at 14.9x 2015) reflecting lower FL regulatory risks and an attractive pipeline of infrastructure investment opportunities; $7.8 billion (~$1.00/share potential EPS) in the next three years.
Risks. Weak economic conditions, energy policy concerning lower CO2 generation sources, and obtaining adequate rate recovery of operating costs and investments.

Unitil Corporation (UTL) - $29.68, $31 PT
Valuation. Our $31 price target is ~16.9x our 2015 EPS estimate, a slight premium to peers (who trade at 15.2x 2015E) when fully valued, reflecting above-average EPS growth potential via accelerated natural gas customer switching. Our Neutral rating primarily reflects our cautious outlook for the utility sector as global and US macro uncertainties are expected to limit utility stock price upside.
Risks. Adverse weather, declining consumption trends, economic cycle risk, changes in federal/state/local regulation

UIL Holdings (UIL) - $40.34, $42 PT
Valuation. Our $42 price target is 16.5x our 2015 EPS estimate, a premium to UIL's peers (currently trading at 15.2x 2015 EPS) when fully valued reflecting above-average EPS growth potential via accelerated natural gas and T&D investment recovered via enhanced regulatory recovery mechanisms that reduce regulatory lag.
Risks. State/federal regulation, weather, wholesale commodity pricing (natural gas, purchased power), credit risk, and acquisition integration risk.

Vectren Corporation (VVC) - $35.49, $38 PT
Valuation. Our price target of $38 is 16.9x our 2015 EPS estimate, a slight premium to diversified peers (currently trading at 15.8x 2015) given stable utility performance and robust infrastructure services growth, partially offset by a soft coal market outlook. Upside to our target price is likely should macro coal market conditions stabilize.
Risks. Adverse weather, wholesale commodity prices, changes in federal/state/local regulation, non-regulated segment competition, macroeconomic cyclicality.

Xcel Energy (XEL) - $30.04, $34 PT
Valuation. Our 12-month price target of $34 is 16x our 2015 EPS estimate, a premium to its peers (currently trading at 15.2x 2015 estimates) when fully valued, reflecting above-average EPS growth prospects and constructive regulation.
Risks. Adverse weather, changes in federal/state/local regulations, financial market conditions

Wisconsin Energy (WEC) - $42.75, $45 PT
Valuation. Our 12-month price target of $45 is 17x our 2015 EPS estimate, a premium to regulated utility peers (currently trading at 15.4x) when fully valued reflecting expectations of 4-6% annual EPS growth, constructive regulatory environments that help keep earned returns closer to authorized levels despite accelerated capex, and 10-13% annual dividend growth through 2014.
Risks. Changes in federal/state/local regulation, adverse weather, and financial market conditions.

Appendix - Important Disclosures and Analyst Certification

Covered Companies Mentioned

All stock prices below are the May 10, 2013 closing price.

ALLETE (ALE - $51.37 - Outperform)

Alliant Energy Corporation (LNT - $52.10 - Outperform)

American Water Works Company, Inc. (AWK - $42.03 - Outperform)

Aqua America, Inc. (WTR - $31.85 - Neutral)

Chesapeake Utilities Corp. (CPK - $54.61 - Outperform)

Integrys Energy Group (TEG - $59.84 - Neutral)

MDU Resources Group Inc. (MDU - $26.44 - Outperform)

NextEra Energy, Inc. (NEE - $80.00 - Outperform)

NorthWestern Corporation (NWE - $41.89 - Neutral)

Otter Tail Corporation (OTTR - $29.98 - Neutral)

Piedmont Natural Gas Company, Inc. (PNY - $33.89 - Outperform)

PNM Resources, Inc. (PNM - $22.86 - Outperform)

UIL Holdings Corporation (UIL - $40.19 - Neutral)

Unitil Corporation (UTL - $30.19 - Neutral)

Vectren Corporation (VVC - $36.06 - Neutral)

Wisconsin Energy Corporation (WEC - $43.12 - Outperform)

Xcel Energy Inc. (XEL - $30.25 - Outperform)

(See recent research reports for more information)

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Risk Ratings: L - Lower Risk - Higher-quality companies for investors seeking capital appreciation or income with an emphasis on safety. Company characteristics may include: stable earnings, conservative balance sheets, and an established history of revenue and earnings. A - **Average Risk** - Growth situations for investors seeking capital appreciation with an emphasis on safety. Company characteristics may include: moderate volatility, modest balance-sheet leverage, and stable patterns of revenue and earnings. **H - Higher Risk** - Higher-growth situations appropriate for investors seeking capital appreciation with the acceptance of risk. Company characteristics may include: higher balance-sheet leverage, dynamic business environments, and higher levels of earnings and price volatility. **S - Speculative Risk** - High-growth situations appropriate only for investors willing to accept a high degree of volatility and risk. Company characteristics may include: unpredictable earnings, small capitalization, aggressive growth strategies, rapidly changing market dynamics, high leverage, extreme price volatility and unknown competitive challenges.

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Catherine Potts

From: Kandy Kimble <keyfortwo@gmail.com>
Sent: Monday, May 13, 2013 4:36 PM
To: Office of Commissioner Balbis; Office Of Commissioner Edgar; Office of Commissioner Brisé; Office Of Commissioner Graham; Office of Commissioner Brown; mcbrown@psc.state.fl.us
Subject: No Name Key - PSC Hearing, Tuesday, 05/14/2013

Esteemed Chairman and Commissioners of the PSC,

My husband and I are asking that you consider the contents of this email before and during the PSC Hearing tomorrow:

-The Public Service Commission has been given misinformation regarding No Name Key. Almost all of the generators in use on NNK are owned and used by those demanding commercial power.

-We believe (as do many, many others) that those demanding commercial power, do so for their personal monetary gain.

-The off-grid island of No Name Key is a unique green community, the likes of which is found nowhere else in the Country. NNK should be used, by The State of Florida, as a role model for alternative energy source.

-All property owners bought or built on No Name with full knowledge that the island was not served by commercial utilities.

-Infrastructure increases development expectations and ultimately leads to increased development.

-No Name Key provides habitat for the Key deer and five other federally listed species that needs protection from the secondary impacts of development.

-No Name Key is a federally designated Coastal Barrier Resources System (CBRS) unit.

We close with a request that the PSC not order Keys Energy to extend commercial power to NNK and concede this jurisdiction to Monroe County and make a recommendation to the County that they uphold, rather than change, their current Comp Plan. Please do not make this about egos, personal power or monetary gain. This is about the land and the lives it protects.

Thank you for your time and consideration,

Harold and Kandy Kimble
Full-Time Residents
1909 Bahia Shores Rd.
No Name Key, FL 33043

Catherine Potts

From: Office of Commissioner Balbis
Sent: Tuesday, May 14, 2013 8:28 AM
To: Commissioner Correspondence
Subject: FW: Monroe County, No Name Key - Reynolds Complaint

Cathi,

Please place the email below in Docket Correspondence, Consumers and their Representatives, in Docket No. 120054-EM.

Thank you,
Cristina

From: Joyce Newman [mailto:keysjoyce@hotmail.com]
Sent: Monday, May 13, 2013 6:01 PM
To: Office of Commissioner Balbis
Subject: Monroe County, No Name Key - Reynolds Complaint

Dear Commissioner Balbis,

Regarding the Complaint filed by Reynolds in the Monroe County, No Name Key matter, I respectfully request that you **dismiss this Complaint** in your meeting tomorrow morning.

I believe the Reynolds Complaint asks you to ignore the important Home Rule issue argued by Monroe County, inasmuch as the County's Comprehensive Land Use Plan prohibits it from issuing permits for residents in Coastal Barrier Resources System (CBRS) units to connect to commercial electricity.

Private money underwrote the purchase and installation of electrical utility poles on No Name Key by Keys Energy Services (KEYS), with the understanding that private money would underwrite the removal of the utility poles if County regulations were enforced.

Please uphold the right of The Solar Community of No Name Key to maintain its off-grid lifestyle. Please uphold Monroe County's right to enforce its restrictions within CRBS units, including No Name Key. Please deny the Reynolds Complaint.

Thank you.

Sincerely,

Joyce Clark Newman
Big Pine Key
Monroe County, Florida

Catherine Potts

From: Betty Leland
Sent: Monday, May 13, 2013 3:53 PM
To: Commissioner Correspondence
Subject: No Name Key #120054
Attachments: Keys Energy hearing; Please support the Solar Community of No Name Key; Keys Energy hearing; no name key; No Name Key; Opposed to commercial power on No Name Key; Resident of No Name Key against commercial power; Extension of Electricity to No Name Key

Cathi,

Please place the forwarded or enclosed correspondence in Docket Correspondence of Consumers and their representatives for docket no. .120054-EM.

Thank you,

Catherine Potts

From: deb <dmcurl@bellsouth.net>
Sent: Monday, May 13, 2013 1:26 PM
To: Office Of Commissioner Graham
Subject: Keys Energy hearing

Commissioner Graham, I urge you to not ignore home rule issues of the Florida Keys. In this time of climate change, I feel that all governments should be doing everything that they can to support alternative sources of energy. With the money that the Reynolds and other residents spent to put up utility poles, state of the art solar power could have been installed for every owner whom seems to want electricity. They purchased their homes knowing that it was an "off grid" community .This is an opportunity to show your support for alternative energy. Thank you. Deb Curlee Cudjoe Key Fl

Catherine Potts

From: AmyLachatLynch@aol.com
Sent: Monday, May 13, 2013 1:21 PM
To: Office Of Commissioner Graham
Subject: Please support the Solar Community of No Name Key

I support the Solar Community of No Name Key and request that you deny the Reynolds' Complaint.

The Solar Community of No Name Key is a progressive community which should be a role model for the rest of us. All property owners bought or built on No Name with full knowledge the island was not served by commercially supplied electricity or water.

Please leave this local issue in the hands of the local government.

~Amy Lynch
Key West

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Sent: Monday, May 13, 2013 1:16 PM
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Catherine Potts

From: hans <hansencorry@tele2.nl>
Sent: Monday, May 13, 2013 1:15 PM
To: Office of Commissioner Balbis; Office Of Commissioner Edgar; Office of Commissioner Brisé; Office Of Commissioner Graham; Office of Commissioner Brown
Subject: no name key

Dear commissioner,

Please vote against electrification of no name key.We realy dont need it.

j.a.wernsen
c.van der linde

Noname key home owners for 17 years

Catherine Potts

From: Joan Mowery Barrow <joanb2010@aol.com>
Sent: Monday, May 13, 2013 12:57 PM
To: Office Of Commissioner Graham
Subject: No Name Key

Dear Commissioner Art Graham,

The state of Florida and the county of Monroe should be proud of their designation of No Name Key as a solar community. Being in the CBRS, people should not be encouraged to build in that area.

The people asking for electric power saved money when they purchased their lots because there was no power. No one forced them to buy and build there.

Please keep NNK Solar.

Hope & Peace & Love, Joan Mowery Borrow

Catherine Potts

From: Jody Smith Williams <jody@wschiro.com>
Sent: Monday, May 13, 2013 12:26 PM
To: Office of Commissioner Brisé; Office Of Commissioner Edgar; Office of Commissioner Balbis; Office Of Commissioner Graham; Office of Commissioner Brown
Subject: Opposed to commercial power on No Name Key

Dear Commissioners,

I'm writing to oppose bringing commercial power to the island of No Name Key in the Florida Keys. I believe the PSC should defer to Monroe County regarding local home rule on issues of land use and zoning codes.

The county should be allowed to enforce the limits of its comprehensive plan and code regarding extension of commercial power in federally designated coastal barriers.

I urge you to grant the county's motion to dismiss the Reynolds' complaint.

Sincerely,

Jody Smith Williams
Dr. Ross Williams
chiropractic . nutrition . functional medicine
1217 White Street, Key West, FL 33040
305 . 292 . 7222
http://www.wschiro.com
GLEE Community Garden
www.communitygardenkeywest.com

Catherine Potts

From: Michael Press <michaelpress@hotmail.com>
Sent: Monday, May 13, 2013 1:34 PM
To: Office of Commissioner Balbis; Office Of Commissioner Edgar; Office of Commissioner Brisé; Office Of Commissioner Graham; Office of Commissioner Brown; Anne Press; Alicia and Mick Putney
Subject: Resident of No Name Key against commercial power

Dear Commissioners,

As a resident on No Name Key of over 13 years as well as an electronic engineer and Solar business owner, I would like to inform you that bringing commercial power to No Name Key is a giant step in the wrong direction. The argument of net metering is not valid as it is now cost effective for homes to produce more power than they consume every month of the year, and battery technology has made giant steps forward. Most homes on No Name have very small arrays with old technology making grid connection unfeasible without a large expense for the small return.
Please don't base your opinion on real estate developers or companies which make a living tying miniscule solar arrays to the grid, the only smart grid is the grid you do not have to connect to!! Please read the attached link before making this monumental mistake.

http://www.heraldextra.com/news/new-battery-could-change-world-one-house-at-a-time/article_b0372fd8-3f3c-11de-ac77-001cc4c002e0.html

Michael Press

Catherine Potts

From: Joan S. Borel <jborel@juno.com>
Sent: Monday, May 13, 2013 3:34 PM
To: Office of Commissioner Brisé; Office of Commissioner Balbis; Office Of Commissioner Edgar; Office Of Commissioner Graham; Office of Commissioner Brown
Subject: Extension of Electricity to No Name Key

Public Service Commission
Dear Commissioner,

I have been a resident of Monroe County for more than 40 years, and I am writing to ask that you please reject the Reynolds  request to extend power to No Name Key, which would destroy a unique solar community and a model for a sustainable future on the front lines of sea level rise. No Name Key is a federally designated Coastal Barrier Resource, and as such Monroe County code prohibits the extension of power lines to discourage additional development. The PSC does not have the authority to overrule Monroe County's Comprehensive Plan and land development regulations. No Name Key provides habitat for six federally endangered species that are threatened by development impacts. Please respect our right to home rule guaranteed by the Florida constitution and allow Monroe County to preserve this remote island community according to its own laws. Thank you for listening to the wishes of all residents, and not just the disgruntled few who purchased homes on No Name Key knowing full well it was solar only.

Joan Borel
1089 Ocean Dr.
Summerland Key, FL 33042

 
 

Catherine Potts

From: Pamela Paultre
Sent: Monday, May 13, 2013 3:04 PM
To: Commissioner Correspondence
Subject: No Name Key
Attachments: Resident of No Name Key against commercial power; Please support the Solar Community of No Name Key; no name key; Keys Energy hearing; Opposed to commercial power on No Name Key; Denial of Commercial Power to No Name Key, Florida

Cathi,

Please place the forwarded or enclosed correspondence in Docket Correspondence of Consumers and their representatives for docket no. 120054-EM.

Thank you,

Pamela Paultre
Assistant to Chairman Ronald Brisé
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
(850) 413-6036

Catherine Potts

From: Michael Press <michaelpress@hotmail.com>
Sent: Monday, May 13, 2013 1:34 PM
To: Office of Commissioner Balbis; Office Of Commissioner Edgar; Office of Commissioner Brisé; Office Of Commissioner Graham; Office of Commissioner Brown; Anne Press; Alicia and Mick Putney
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Michael Press

Catherine Potts

From: AmyLachatLynch@aol.com
Sent: Monday, May 13, 2013 1:21 PM
To: Office of Commissioner Brisé
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Please leave this local issue in the hands of the local government.

~Amy Lynch
Key West

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Sent: Monday, May 13, 2013 1:15 PM
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Subject: no name key

Dear commissioner,

Please vote against electrification of no name key.We realy dont need it.

j.a.wernsen
c.van der linde

Noname key home owners for 17 years

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From: deb <dmcurl@bellsouth.net>
Sent: Monday, May 13, 2013 1:15 PM
To: Office of Commissioner Brisé
Subject: Keys Energy hearing

Chairman Brise, I urge you to not ignore home rule issues of the Florida Keys. In this time of climate change, I feel that all governments should be doing everything that they can to support alternative sources of energy. With the money that the Reynolds and other residents spent to put up utility poles, state of the art solar power could have been installed for every owner whom seems to want electricity. They purchased their homes knowing that it was an "off grid" community .This is an opportunity to show your support for alternative energy. Thank you. Deb Curlee Cudjoe Key Fl

Catherine Potts

From: Jody Smith Williams <jody@wschiro.com>
Sent: Monday, May 13, 2013 12:26 PM
To: Office of Commissioner Brisé; Office Of Commissioner Edgar; Office of Commissioner Balbis; Office Of Commissioner Graham; Office of Commissioner Brown
Subject: Opposed to commercial power on No Name Key

Dear Commissioners,

I'm writing to oppose bringing commercial power to the island of No Name Key in the Florida Keys. I believe the PSC should defer to Monroe County regarding local home rule on issues of land use and zoning codes.

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Sincerely,

Jody Smith Williams
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chiropractic . nutrition . functional medicine
1217 White Street, Key West, FL 33040
305 . 292 . 7222
http://www.wschiro.com
GLEE Community Garden
www.communitygardenkeywest.com

Catherine Potts

From:	anne@solars-smart.com
Sent:	Monday, May 13, 2013 1:07 PM
To:	Office of Commissioner Balbis; Office Of Commissioner Edgar; Office of Commissioner Brisé; Commissioner@localhost.localhost; Graham@psc.State.fl.us; Office of Commissioner Brown
Cc:	anne@solars-smart.com
Subject:	Denial of Commercial Power to No Name Key, Florida
Attachments:	NNK Petition Signatures_May 13%2C 2013.xlsx

Subject: Denial of Commercial Power to No Name Key
Date: Monday May 13, 2013

May 13, 2013

State of Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Chairman Brise' and Fellow Public Service Commission Commissioners:

My name is Anne M. Press I, along with my family own a home on No Name Key. We are members of The Solar Community of No Name Key and Adamantly opposed to the extension of Commercial power to this off-grid island.

We are also the sole owners of our business, Solar's Smart, which has been established for over a decade.

My family, which includes my husband, two sons and a daughter built our home on No Name Key because we believe in sustainable living and improving the carbon footprint.

We have all the conveniences of a grid-tied home. We take pride in our low impact lifestyle and are committed to it as a way of life.

Because of our business, we have many contacts in the field of renewable energies.

As such, we contacted Vote Solar and ask them to post a Petition of Support for Keeping No Name Key Off-Grid.

While the Petition in Support of Keeping No Name Key Off-Grid has only been posted for two weeks, as of this morning, Monday May 13,2013, we have over 204 signatures.

People from all over the United States have signed the Petition. The comments demonstrate the National interest in No Name Key and the belief that our future needs to move away from the dependency of non renewable sources of energy that pollutes are environment. Looking ahead to better technologies that are available now.

The Florida Public Service Commission should be looking at No Name Key as a model community of

sustainable energy, a community that should be emulated, not destroyed.

If you rule in favor of Robert and Julianne Reynolds you will in fact be destroying the self-sufficient solar community of No Name Key.

If you rule in favor of Robert and Julianne Reynolds you will be taking a step backwards in time.

Please make the responsible decision and allow No Name Key to remain the unique Sustainable Island it has always, been.

Please vote to deny the Robert and Julianne Reynolds Complaint.

Thank-you for your interest in this critical matter.

The Attached petition which is ongoing will continue to generate more signatures and comments

to support our efforts to stop power from coming to this fragile environmental ecosystem .

Please feel free to contact me at : 305-848-4896 or my cell : 321-213-2654

Sincerely,

Anne M. Press / Partner : Solar's Smart

2159 Spanish Channel Drive
No Name Key, Florida 33043

Catherine Potts

From: Terry Holdnak
Sent: Monday, May 13, 2013 1:44 PM
To: Commissioner Correspondence
Subject: Docket No. 120054-EM
Attachments: Please support the Solar Community of No Name Key; Keys Energy hearing; No Name Key; Please deny Reynold's complaint concerning electricity on No Name Key, Florida; Please vote for the future of No Name Key and allow us to stay off the grid with our solar power

Please place the attached correspondence in Docket Correspondence of Consumers and their representatives for docket no. 120054-EM.

Thank you,

Terry Holdnak
Assistant to Commissioner Julie I. Brown
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
(850) 413-6030

Catherine Potts

From: AmyLachatLynch@aol.com
Sent: Monday, May 13, 2013 1:21 PM
To: Office of Commissioner Brown
Subject: Please support the Solar Community of No Name Key

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Please leave this local issue in the hands of the local government.

~Amy Lynch
Key West

Catherine Potts

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Sent: Monday, May 13, 2013 1:17 PM
To: Office of Commissioner Brown
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Catherine Potts

From: Joan Mowery Barrow <joanb2010@aol.com>
Sent: Monday, May 13, 2013 12:59 PM
To: Office of Commissioner Brown
Subject: No Name Key

Dear Commissioner Julie Imanuel Brown

The state of Florida and the county of Monroe should be proud of their designation of No Name Key as a solar community. Being in the CBRS, people should not be encouraged to build in that area.

The people asking for electric power saved money when they purchased their lots because there was no power. No one forced them to buy and build there.

Please keep NNK Solar.

Hope & Peace & Love, Joan Mowery Borrow

Catherine Potts

From: Carlene Edwards <shetheboss@bellsouth.net>
Sent: Saturday, May 11, 2013 2:23 PM
To: Office of Commissioner Brown
Subject: Please deny Reynold's complaint concerning electricity on No Name Key, Florida

Dear Madam Commissioner:

I ask that you and the other Commissioners of the Public Service Commission vote NO on authorizing commercial electric to the Reynolds on No Name Key. I know it is probably the PSC's duty to allow public service, but there is so much more to this particular situation, as I'm sure you are already aware.

I ask that you defer to the County regarding home rule issues, and allow them to enforce the limits, according to the Comprehensive Plan, for this unique, federally protected coastal barrier resources system.

Before we moved to Big Pine in 1995, we looked at two nice properties on No Name Key. The realtor failed to tell us that they had no electricity or water piped in, and when we noticed rather quickly that there was none, her comment to us was, "Oh, don't worry, they'll have electricity here in the next year or so." If we had believed her, we would probably be one of those on the island screaming for electricity. The fact is most of these people either didn't do their homework, like we did, and now they want to change things to make it good for them, or they gambled moving there, hoping that they could get things changed for their "diamond in the rough" homes.

Thank you for your time.

Sincerely,

Carlene Edwards
Big Pine Key, Florida

Catherine Potts

From: shw42@aol.com
Sent: Saturday, May 11, 2013 2:00 PM
To: Office of Commissioner Brown
Subject: Please vote for the future of No Name Key and allow us to stay off the grid with our solar power

We bought our house on No Name Key in 1998 many years before the recent people who now want it to change for their personal gain. We were promised when we purchased our home that it would remain off the grid.

Please grant the county's motion to dismiss the Reynolds' complaint because: The Territorial Agreement places no obligation on Keys Electric to provide central grid connected electric service to No Name Key. That is one of many reasons PSC must allow the county to enforce the limits that its comprehensive plan and code have in place to prohibit central grid service to undeveloped coastal barrier areas.

Thank you for your service

Susan and Tom Witter
2046 Bahia Shores Rd.
No Name Key, Florida 33043

Eric Fryson

From: Ann Cole
Sent: Monday, May 13, 2013 10:29 AM
To: Eric Fryson
Cc: Hong Wang; Catherine Potts
Subject: FW: Please vote to leave No Name Key as it is to protect it from further developement

Please process. Thanks, Ann

From: Pamela Paultre **On Behalf Of** Office of Commissioner Brisé
Sent: Monday, May 13, 2013 10:22 AM
To: Commissioner Correspondence
Subject: FW: Please vote to leave No Name Key as it is to protect it from further developement

Cathi,

Please place the forwarded or enclosed correspondence in Docket Correspondence of Consumers and their representatives for docket no. .120054-EM.

Thank you,

Pamela Paultre
Assistant to Chairman Ronald Brisé
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
(850) 413-6036

From: shw42@aol.com [mailto:shw42@aol.com]
Sent: Saturday, May 11, 2013 1:56 PM
To: Office of Commissioner Brisé
Subject: Please vote to leave No Name Key as it is to protect it from further developement

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Thank you for your service

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2046 Bahia Shores Rd.
No Name Key, Florida 33043

Eric Fryson

From: Ann Cole
Sent: Monday, May 13, 2013 10:29 AM
To: Eric Fryson
Cc: Hong Wang; Catherine Potts
Subject: FW: Please deny Reynold's compaint concerning electricity to No Name Key, Florida

Please process. Thanks, Ann

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Sent: Monday, May 13, 2013 10:22 AM
To: Commissioner Correspondence
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Thank you,

Pamela Paultre
Assistant to Chairman Ronald Brisé
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
(850) 413-6036

-----Original Message-----
From: Carlene Edwards [mailto:shetheboss@bellsouth.net]
Sent: Saturday, May 11, 2013 2:20 PM
To: Office of Commissioner Brisé
Subject: Please deny Reynold's compaint concerning electricity to No Name Key, Florida

Dear Chairman Ronald Brise:

I ask that you and the other Commissioners of the Public Service Commission vote NO on authorizing commercial electric to the Reynolds on No Name Key. I know it is probably the PSC's duty to allow public service, but there is so much more to this particular situation, as I'm sure you are already aware.

I ask that you defer to the County regarding home rule issues, and allow them to enforce the limits, according to the Comprehensive Plan, for this unique, federally protected coastal barrier resources system.

Before we moved to Big Pine in 1995, we looked at two nice properties on No Name Key. The realtor failed to tell us that they had no electricity or water piped in, and when we noticed rather quickly that there was none, her comment to us was, "Oh, don't worry, they'll have electricity here in the next year or so." If we had believed her, we would probably

be one of those on the island screaming for electricity. The fact is most of these people either didn't do their homework, like we did, and now they want to change things to make it right, or they gambled moving there, hoping that they could get things changed for their "diamond in the rough" homes.

Thank you for your time.

Sincerely,

Carlene Edwards
Big Pine Key, Florida

Eric Fryson 120054-EM

From: Ann Cole
Sent: Monday, May 13, 2013 9:21 AM
To: Eric Fryson
Cc: Hong Wang; Catherine Potts
Subject: FW: Please help us keep No Name Key safe from further development

Please process. Thanks, Ann

From: Office of Commissioner Balbis
Sent: Monday, May 13, 2013 9:05 AM
To: Commissioner Correspondence
Subject: FW: Please help us keep No Name Key safe from further development

Cathi,

Please place the email below in Docket Correspondence, Consumers and their Representatives, in Docket No. 120054-EM.

Thank you,

Cristina

From: shw42@aol.com [mailto:shw42@aol.com]
Sent: Saturday, May 11, 2013 1:50 PM
To: Office of Commissioner Balbis
Subject: Please help us keep No Name Key safe from further development

We bought our house on No Name Key in 1998 many years before the recent people who now want it to change for their personal gain. We were promised when we purchased our home that it would remain off the grid.

Please grant the county's motion to dismiss the Reynolds' complaint because: The Territorial Agreement places no obligation on Keys Electric to provide central grid connected electric service to No Name Key. That is one of many reasons PSC must allow the county to enforce the limits that its comprehensive plan and code that is in place prohibit central grid service to undeveloped coastal barrier areas.

Thank you for your service

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2046 Bahia Shores Rd.
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Cc: Hong Wang; Catherine Potts
Subject: FW: Please deny Reynold's complaint concerning electricity to No Name Key

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Cathi,

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Thank you,

Cristina

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Thank you for your time.

Sincerely,

Carlene Edwards
Big Pine Key, Florida

Catherine Potts

From: Cristina Slaton
Sent: Thursday, May 09, 2013 10:07 AM
To: Commissioner Correspondence
Subject: Docket Correspondence 120054-EM
Attachments: 120054 Ramsay-Vickrey.pdf

Cathi,

Please place the attached letter in Docket Correspondence, Consumers and their Representatives, in Docket No. 120054-EM.

Thank you,

Cristina

May 04, 2013
Commissioner Eduardo E. Balbis
Florida Public Service Commission

RE: No Name Key Electrical Service, PSC DOCKET 120054

Dear Commissioner Balbis-

I am one of the thirty No Name Key Property Association homeowners who are desperately trying to get safe reliable public electrical service to our homes.

I know that all the lawyers, on all sides, are addressing this issue with you ...but as an individual person who is affected on a daily basis by this issue; I wanted to write to you personally as I cannot make the 12 hour drive to attend the hearing.

You were absolutely correct in your Order stating our neighbor/opponent Ms Putney "*will suffer no actual injury*" should her neighbors be allowed to connect to the grid, and I feel your legal staff was 100% correct in their recommendations issued May 3rd, 2013.

We who want so desperately to connect to the grid do suffer daily injury without commercial power. My life without electricity is very hard. My home has a large solar array, but the sun doesn't shine every day, and it never shines at night. Even with one of the largest solar systems on No Name Key I cannot run central air-conditioning, I can't even run one simple window unit through the night without running my generator. These complicated mechanics of an off-grid solar/generator home require a lot of maintenance and repairs, and are financially draining as various components do not last long in the harsh salt infused South Florida environment.

Professing to want to stop our electric service in the name of the environment would be laughable if it weren't so serious. With some 39+ of the 43 No Name Key homes having and using generators, and given the known noise and air pollution of generators, this environmental argument is without merit. Nor does the environmental argument hold when confronted with the fact that so many of the homes are only occupied part-time, yet still produce clean solar energy even when unoccupied, but are not allowed to participate in net-metering (366.91F.S.) i.e., all that unused clean energy is wasted. Whether it is the pollution or waste, it most certainly is not "green".

Generators are not powered by solar. Generators are powered by fossil fuels, and they produce approximately 300% more CO2 emissions than energy produced from Florida Grid Electric. EPA greenhouse gasses equivalency calculators show, that based on fuel consumption, many of those No Name Key homes produce as much CO2 emissions as 2½ - 3 regular, non-solar, homes combined. This is another huge amount of toxic waste and carbon footprint increase caused by the lack of grid tie.

To give you a better idea of how much dirty fossil fuels are burned on NNK, I burn over $500.00 a month in fossil fuels using a small generator, and most of my neighbors (those with the big 20KW diesel generators) are burning nearly $1,000.00 worth of fossil fuels each month.

Your (PSC) website best clarifies your role: ***"The Florida Public Service Commission is committed to making sure that Florida's consumers receive some of their most essential services -- electric, natural gas, telephone, water, and wastewater -- in a safe, affordable, and reliable manner."*** http://www.psc.state.fl.us/about/overview.aspx

-That is all I am asking for, your help in making sure I receive the most essential of service – electricity.

For any local governmental body to "*prohibit*" (make illegal) one of the most basic of services is insane. If the PSC were to allow this action it would open the floodgates for any Florida city, county, or municipality to effectively regulate utilities, and would fly in the face of the larger US Government position on the duty and obligation of utilities to serve all in their territory under "regulatory compact" (see attached IRS whitepaper). The regulation of utilities must stay firmly under the authority and control of the Public Service Commission and without local interference, anything other would be a state-wide disaster.

Commissioner Balbis, I'm not an attorney, but I have researched and reviewed for some of the attorney's presenting this case before you. I note in their briefs Monroe County is playing word games in relying on "public utility" vs. "municipal utility" *(instead of the intent; i.e. the assurance and protection of the public in all matters concerning the provision of basic utility services)* in their (Monroe County's) argument against PSC jurisdiction and against our connection to the electrical utility lines which sit energized outside of our homes.

Given the County's insistence that "municipal utilities" are under no legal duty or obligation to serve their customers, I ask that you consider *Williams v. City of Mount Dora, 452 So. 2d 1143 - Fla: Dist. Court of Appeals, 5th Dist. 1984*
http://scholar.google.com/scholar_case?case=5417508551452869181&hl=en&as_sdt=2&as_vis=1&oi=scholarr
That case sets aside the validity of these misleading "word-games" as in that case the City of Mt Dora is in fact a "municipal utility", yet the Court referred to it as a "public utility" and used such reference in its decision:

> *"Within the geographic territory a public utility has undertaken to serve and concerning which it has the exclusive legal right to provide necessary services, a public utility has a legal duty to provide services on an equal basis to all users who apply for service ..... Because utility service is vested with a public interest, and the public utility by law is given an exclusive monopoly over services vital to the public, users are entitled to the equal protection provisions of the law and utility service must be provided and administered in all respects fairly, reasonably, and free from opposition and discrimination.[2] A public utility can attach no conditions to its duty to provide services which are unlawful, improper or personal to the user."*

In my mind it's quite simple: Basic public services (such as electricity) are a vital matter of (statewide) public interest and must be provided to all on an equal basis; discriminating against a person because of where they live is still discrimination.

There is an excellent white paper, sponsored by the U.S. Department of Energy, on "The Obligation to Serve and a Competitive Electric Industry" I hope you have the opportunity to read it (hyperlink below):
http://www.fsconline.com/downloads/Papers/1997%2005%20duty-to-serve.pdf

This 103 page white paper includes some of the following statements, and further dismisses the County assumptions (word games) re. "public utility" vs. "municipal utility", as in accepting a territorial agreement the legal obligation to serve is imposed:

> ***ELECTRIC UTILITY OBLIGATION TO SERVE***
> ***PART 1: HISTORICAL VIEW OF AN ELECTRIC UTILITY'S "OBLIGATION TO SERVE"***
> ***Historically, electric utility companies have had imposed upon them by common law a "duty to serve.***
> ***"The fundamental common law rule requires a utility to serve on reasonable terms all those who desire the service it renders.\6\ If a member of the public has applied for and made the necessary arrangements to receive service, and has paid for or offered to pay the price and abide by the reasonable rules of the company, it is the duty of a utility to provide the service.\7***
>
> ***An electric utility is under a legal obligation to render adequate and reasonably efficient service impartially, without unjust discrimination, and at reasonable rates.\8*** *In short, under the common law, a utility* ***must make its service available to all members of the public*** *to whom its public use and scope of operation extend, who apply for such service, and who comply with its reasonable rules and regulations.\9*
>
> *One key element of a utility's common law duty to serve is its total independence from any statutory basis.\10* ***The duty of an electric utility "is one implied at common law and need not be expressed by statute, or contract, or in the charter of the public utility."\11*** *The Indiana Supreme Court has noted:*
>
> > *When the state fails, or does not see fit, to regulate the rates and charges or services by legislation or by creating a commission for the purpose, the public, nevertheless, still has the basic right under the common law to be served in all particulars, without discrimination, and at a reasonable price \12*
>
> ***The duty to serve "is an integral aspect of public utility status. American courts imposed such a duty long before the establishment of comprehensive regulation of utilities pursuant to statutes."\13***
>
> *The Legal Basis for Imposing an Obligation to Connect:* ***The continuation of an obligation to serve is not strictly a public policy issue that can be freely decided one way or another. Instead, the obligation to serve is an explicit quid pro quo that was exacted in exchange for substantial --and continuing-- public benefits.*** *So long as the local distribution companies enjoy the fruits of that exchange, they must abide by the obligations that were bargained for as part of the exchange. In particular, electric utilities have been granted two sets of public perquisites:*

o The right to exercise eminent domain;\158\ and o The right to use the public's streets, alleys and public ways as transportation corridors.\159
In accepting these public perquisites, electric utilities have dedicated their property so supported to a public use. The "bargain" that has been made in consideration of these two public perquisites is both explicit and continuing.\160

The obligation to connect is imposed on the distribution utility, which is the part of a restructured electric industry that carries forward the traditional electric utility obligations. As discussed below, ***the obligation to actually provide service is imposed on the competitive service providers.***

Commissioner Balbis, this "obligation to serve" is even discussed by the Federal Government, IRS:
http://www.irs.gov/Businesses/Coordinated-Issue-Utilities-Industry-Investment-Credit-on-Transition-Property-%28Effective-Date:--June-3,-1997%29 (see attached), and include these excerpts, quote:
every one of the 50 states has state laws that set up exclusive retail marketing areas ***for investor-owned utilities.****[1] These laws and regulations take two forms. First, some commission-administered state laws specifically provide for service area assignments, i.e.,* ***territorial-type statutes. These statutes frequently specify their purposes as: avoiding expensive duplication of facilities, improving efficiency, and minimizing service area disputes****. Typically, these territorial-type statutes explicitly provide that the utility has the exclusive right and obligation to serve an identifiable service area.*

state territorial and certificate of convenience and necessity laws do not exist in isolation. They are part of what both legal scholars and utility practitioners recognize as the "regulatory compact." *While the exact details of this compact vary in minor ways from state to state, the "regulatory compact" provides for the rights and responsibilities of regulated public utilities. Public utilities have the opportunity to collect a reasonable price for their services based on their prudently incurred expenses and a reasonable return on prudent investments that are used and useful in providing service. Further, utilities have the right to impose reasonable rules and regulations on their customers. When providing adequate service at reasonable prices, utilities have the right to some protection against competition in their service areas. Finally, most utilities enjoy the right of eminent domain. See Charles Phillips, The Regulation of Public Utilities (Arlington, VA: Public Utilities Reports, Inc., 1985), 106-107.*

In exchange for these rights, utilities have certain responsibilities. First, they have an obligation to serve all who apply for service from within their service area. Second, they must provide safe and reliable service*. Third, they must not engage in undue price discrimination.*

the regulatory compact or franchise of a public utility is not a supply or service contract in the sense that it does not require the exchange of a specific service or supply for a stated price or compensation. Rather, ***this regulatory compact merely imposes an obligation on the utility by law to supply or service a particular area at the request of customers in exchange for the exclusive right to do so*** *plus a reasonable rate of return*

[6] The legal structure establishing a utility's retail service area is usually provided in one of two ways, or a combination thereof: (1) through commission-administered state laws specifically providing for service area assignments - i.e. territorial-type statutes - and (2) through statutes requiring the utility to obtain from the commission a certificate of public convenience and necessity to provide service in the area designated in the certificate. See "Legal and Regulatory Constraints on Competition in Electric Power Supply" Samuel Porter and John Burton, Public Utilities Fortnightly (May 25, 1989). ***See also Fla. Jur. 2d Energy §37, which states: An express contract is not essential to establish reciprocal rights between a public service company and the public it undertakes to serve, since such rights arise by implication of law.***

Commissioner Balbis, I am not a lawyer, I am simply a homeowner who knows right from wrong, and keeping any member of the public from receiving basic utility service is wrong.
-Please make this right.

Sincerely,

Beth Ramsay-Vickrey
2035 Bahia Shores Rd.
No Name Key, FL 33043
305-395-2755
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IRS

Coordinated Issue Utilities Industry Investment Credit on Transition Property (Effective Date: June 3, 1997)

Effective Date: June 3, 1997

ISSUES:

1. Whether the "regulatory compact" or franchise under which a regulated public utility operates qualifies as a binding written supply or service contract under section 204(a)(3) of the Tax Reform Act of 1986?
2. Whether the specifications and amounts of property necessary to provide utility services and/or goods in years after 1985 are readily ascertainable from the budget projections of a public utility and are these projections "related documents?"
3. What are the placed in service dates for transition property qualifying under section 204(a)(3) of the Tax Reform Act of 1986?

CONCLUSIONS:

1. Transition rules are applied narrowly. State law must be consulted to determine whether the regulatory compact or franchise of the utility is even considered a contract. However, even if the franchise is considered a contract, it may not be a written contract because all its terms may not be set forth in writing. Nor is it binding because its terms, most often the price to be charged, can be changed by the state or municipality. Finally, the franchise is not a supply or service contract as contemplated by Congress under the transition rule because it establishes reciprocal obligations other than to provide a service or supply for a given price. Instead, it grants the exclusive right to service or supply an area in return for the obligation to service or supply that area.
2. In general, utility budget projections are formulated long after the "regulatory compacts" or franchises were established; they are not part of that commitment process; and they are not sufficiently related to the franchise to serve as the basis for allowing the benefit under the transition rules. In any event, budget projections are mere cost estimates subject to change. They do not provide sufficient information to readily ascertain both the type and amount of property that will be required to conduct future utility operations.
3. The applicable placed in service date for property that otherwise qualifies for transition relief under section 204(a)(3) depends on the type of property involved. See I.R.C. § 49(e)(1)

SCOPE:

This paper addresses claims by investorowned regulated public utilities for additional investment tax credit [ITC] for the years 1986 through 1990. These claims are based upon the theory that all, or almost all, of the personal property placed in service in those years meets the "written supply or service contract" exception to the repeal of ITC and thereby qualifies as "transition property."

FACTS:

This paper is intended to cover regulated public utilities engaged principally in the generation, purchase, transmission, distribution, and/or sale of electric, gas, telephone, water or sewer services. A public utility is regulated by state and/or local authorities.

State and local governments have regulated the utility industry since the late 1800's. Some

form of state regulation of utilities now exists in all states. Each of the states has a commission empowered by statute to regulate utilities that render retail service to the public in the jurisdiction. The commission usually has broad powers of general supervision over such utilities, including the power to regulate their rates and practices and, in appropriate circumstances, to compel service or to make correction for inadequate or unauthorized service. Properly issued orders of the commission are enforceable by law, and violations of such orders and of the public utility laws of the state usually are punishable. Final orders of the commission are appealable in the state courts and, if federal questions are involved, in the federal courts.

Currently, every one of the 50 states has state laws that set up exclusive retail marketing areas for investor-owned utilities.[1] These laws and regulations take two forms. First, some commission-administered state laws specifically provide for service area assignments, i.e., territorial-type statutes. These statutes frequently specify their purposes as: avoiding expensive duplication of facilities, improving efficiency, and minimizing service area disputes. Typically, these territorial-type statutes explicitly provide that the utility has the exclusive right and obligation to serve an identifiable service area.

Second, in at least 38 states, service area assignments are made pursuant to so called "certificate of public convenience and necessity" statutes. These statutes do not expressly designate an exclusive service territory, but instead employ the certificates to assign retail service areas, normally evidencing an intention to have only one supplier in a service area. Often these statutes specify that they are meant to avoid duplication of facilities and to prohibit an entity from unreasonably interfering with existing utility service. New Mexico's Certificate of Convenience and Necessity law is representative of this type of statute.[2]

But, state territorial and certificate of convenience and necessity laws do not exist in isolation. They are part of what both legal scholars and utility practitioners recognize as the "regulatory compact." While the exact details of this compact vary in minor ways from state to state, the "regulatory compact" provides for the rights and responsibilities of regulated public utilities. Public utilities have the opportunity to collect a reasonable price for their services based on their prudently incurred expenses and a reasonable return on prudent investments that are used and useful in providing service. Further, utilities have the right to impose reasonable rules and regulations on their customers. When providing adequate service at reasonable prices, utilities have the right to some protection against competition in their service areas. Finally, most utilities enjoy the right of eminent domain. See Charles Phillips, The Regulation of Public Utilities (Arlington, VA: Public Utilities Reports, Inc., 1985), 106-107.

In exchange for these rights, utilities have certain responsibilities. First, they have an obligation to serve all who apply for service from within their service area. Second, they must provide safe and reliable service. Third, they must not engage in undue price discrimination. In other words, all similarly situated customers receiving the identical service must be served on the same terms and conditions and for the same price. Public utilities can only charge just and reasonable rates and cannot earn monopoly profits. Also, it is important to note that the "regulatory compact" is not necessarily an agreement that utilities have voluntarily accepted. The regulatory compact is instead often a balancing of utility rights and responsibilities, enacted by state legislatures and enforced by state public service commissions. When the regulatory compact is fundamentally changed, as would be the case if retail wheeling is permitted, then a fundamentally new regulatory compact with a new balancing of utility rights and responsibilities would be needed. See Charles Phillips, The Regulation of Public Utilities (Arlington, VA: Public Utilities Reports, Inc., 1985), 106-107.

LAW:

Summary:

The Tax Reform Act of 1986 (Act) terminated the regular percentage investment tax credit (ITC) effective for tax years beginning after December 31, 1985. In eliminating ITC, Congress created a number of transitional rules to provide relief to taxpayers who were in various

phases of construction, reconstruction, or acquisition of personal property and likely would have made financial commitments on the assumption that ITC would be available.

One of the general rules provided that taxpayers with written supply or service contracts would be excepted from the termination of the ITC for a transition period. This exception required that a taxpayer have a binding written supply or service contract as of December 31, 1985, and that the ITC property be necessary to fulfill the contract and be readily identifiable from the contract or related documents. The "written supply or service contract" rules are at issue in this position paper.

Statutes:

Section 49(a), as added by section 211(a) of the Act, provides that the 10 percent regular ITC does not apply to property placed in service after December 31, 1985. Section 49(b)(1) provides that the repeal does not apply to "transition property" as defined in section 49(e), subject to the general limitations in sections 49(c) and (d). Section 49(e)(1) defines the term "transition property" as any property placed in service after December 31, 1985, to which the amendments made by section 201 of the Act (the modification of ACRS) do not apply, with the substitution of the earlier effective date of December 31, 1985, in applying section 204(a)(3) of the Act and provides specific placed in service dates. In order to satisfy the transitional rules under section 49(e), property must satisfy both the specific effective date requirement and be placed in service by a specified date depending on the property's class life.

Section 203(b)(2)(C)(ii) of the Act further modifies property described in section 204(a) by allowing a special exception. This exception provides that property with a class life of at least 7 years but less than 20 years shall be treated as having a class life of 20 years. This provision therefore provides for a December 31, 1990, placement in service date for property that has a 7 year or longer class life and that is related to a written supply or service contract.

Conference Report No. 99-841, 99th Cong., 2nd Sess. II-55, 1986-3 (Vol. 4) C.B. 55, states that the general binding contract rule applies only to contracts in which the construction, reconstruction, erection, or acquisition of property is itself the subject matter of the contract. Moreover, a contract is to be considered binding only if it is enforceable under state law and does not limit damages to a specified amount, such as by a liquidated damages provision. However, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price is not treated as limiting damages.[3]

Section 204(a)(3) of the Act, as modified by section 49(e)(1)(B), provides transition relief to "any property which is readily identifiable with and necessary to carry out a written supply or service contract, or agreement to lease, that was binding on" December 31, 1985.

The Conference Report at II-59-60, 1986-3 (Vol. 4) C.B. 59-60, also discusses the transition relief in section 204(a)(3) of the Act as applying in those situations in which written binding contracts require the construction or acquisition of property, but the contract is not between the person who will own the property and the person who will construct or supply the property. According to the Conference Report, this transition rule applies to written service or supply contracts and agreements to lease entered into before January 1, 1986. The supply or service contract rule is applicable only where the specifications and amount of property are readily ascertainable from the terms of the contract, or from related documents. A written supply or service contract or agreement to lease must satisfy the requirements of a binding contract. This rule does not provide transition relief to property in addition to that covered under a contract described above, which additional property is included in the same project but does not otherwise qualify for transition relief.

There is no additional specific guidance in the Conference Report, House Report, or Senate Report concerning the interpretation of the requirements of the written service or supply contract transitional rule.

ANALYSIS:

The utility industry has taken the position that any "regulatory compact" or franchise in existence as of December 31, 1985, qualifies as a written supply or service contract enforceable under state law and described in section 204(a)(3) of the Act. Additionally, the industry asserts that all property installed pursuant to any of these types of "contracts" will qualify as property "readily identifiable and necessary to carry out" the terms of these "contracts," asserting that the internal plans and projections for future additions, replacements, upgrades, etc., constitute documents "related to" these "contracts" and adequately specify the property to be acquired. This expansive interpretation goes far beyond the intent of Congress in grandfathering certain types of projects for transitional relief.

Issue 1:

Whether the "regulatory compact" or franchise under which a regulated public utility operates qualifies as a binding written supply or service contract under section 204(a)(3) of the Act?

Although the Tax Reform Act of 1986 provides ITC transition property treatment to "written supply or service contract," it fails to define the term. We believe that Congress did not intend that a written supply or service contract for purposes of section 204(a)(3) would include the typical regulatory compact or franchise under which a public utility operates. Rather, Congress intended for a narrow meaning of that phrase as courts have long held that transition rules offering tax credits are to be strictly construed.

In a recently decided case, **United States v. Kjellstrom**, 916 F. Supp. 902, 905 (W.D. Wis.), **aff'd,** 100 F.3d 482 (7th Cir. 1996),[4] the district court stated that the ITC transition rules associated with the Tax Reform Act of 1986 are to be narrowly construed:

> Although the investment tax credit was intended to be construed liberally and included a provision to that effect, the general rule is that transition rules offering tax credits are to be construed strictly in accordance with Congress' intent. **Helvering v. Northwest Steel Mills**, 311 U.S. 46, 49 (1940) (provisions of tax statutes granting exemptions are to be strictly construed). **See also United States v. Hemme**, 476 U.S. 558, 566 (1986) (court will not impute to Congress an unstated intention); **Commissioner v. Drovers Journal** Pub. Co., 135 F.2d 276, 278 (7th Cir. 1943) (deductions from gross income must be construed narrowly and strictly). Because tax deductions and credits are within the discretion of the legislature, the courts will not expand them beyond what Congress has intended. **See New Colonial v. Helvering**, 292 U.S. 435, 440 (1934) (deductions depend on legislative grace); **Commissioner v. Fiske's Estate**, 128 F.2d 487, 489 (7th Cir.), **cert. denied**, 317 U.S. 635 (1942) (deductions are narrowly construed).

Even if one could characterize the public utility "regulatory compact" or franchise as being a binding contract, the utilities' attempts to classify such a "contract" as a "written service or supply contract," as that term is used in ITC transition rules is, at best, shallow-rooted. We believe that the industry's construction of "supply or service contract" is overexpansive and contrary to the intent of Congress.

For one thing, the regulatory compact or franchise of a public utility is not a supply or service contract in the sense that it does not require the exchange of a specific service or supply for a stated price or compensation. Rather, this regulatory compact merely imposes an obligation on the utility by law to supply or service a particular area at the request of customers in exchange for the exclusive right to do so plus a reasonable rate of return. The agreement between the customer and the utility is more characteristic of a classic service or supply contract.

Moreover, in subdivisions (5) through (33) of Act section 204(a), among the numerous specific exemptions from repeal are several for utilities. If, as contended by the utilities, the franchises, licenses and/or tariffs of utilities actually were, in the view of Congress, "supply or service contracts", those special exemptions would be rendered both superfluous and redundant as they would already be grandfathered under section 204(a)(3).

In **Kjellstrom**, 916 F. Supp. at 907, the district court discussed congressional intent with respect to the "world headquarters" ITC transition rule and stated as follows:

> It would run counter to Congress's clear intent to interpret section 204(a)(7) as applying to any company that enters into a lease agreement prior to September 26, 1985 for a building that can be labeled a world headquarters. Transition rules were intended to provide limited exemptions for certain taxpayers who would be affected adversely by a new law because they had relied on the old law to their detriment. Section 204(a)(7) provides transitional relief for companies like Merrill Lynch that entered into a new lease for the construction of a building with the understanding that certain depreciable property would be exempt from taxation. By contrast, Wisco signed its lease back in 1974 and did not rely detrimentally on the old law. Wisco cannot argue reasonably that it had an expectation interest that the provisions of the old law would never be repealed.

We believe, in a similar manner, that congressional intent associated with the "written supply or service contract" rule was not to include public utility "regulatory compacts" or franchises. Since public utilities established these "regulatory compacts" or franchises many years ago, it is obvious that they could not have relied detrimentally on the "old law." Consequently, a public utility cannot argue reasonably that it had an expectation interest that the provisions of the old law would never be repealed. Moreover, a utility is generally able to pass any increase in tax through to its customers.

It is implausible that Congress would have intended to grant wholesale exemptions from the repeal of the ITC upon the basis of very old "contracts," some of which can be aptly described as ancient, without making the intention to do so very clear. No detrimental reliance on the ITC is exhibited in the franchise or other documents that would warrant transition relief. On the contrary, the utility will and must acquire the property as part of its overall operations unrelated to the tax benefits attendant thereto. The acquisition of the property is not because of any "supply or service contract" but the raison d'etre of the utility's existence. Thus, under the utilities' expansive interpretation, the exception (transitional relief) would swallow the rule (repeal of the ITC), contrary to the mandate that these rules be strictly and narrowly construed. Public utilities argue further that the legislative history shows that the "written supply or service contract" exception clearly applied to "public franchises," noting the conference report reference to cable TV franchise agreements and congressional colloquies explaining "service contract." The conference report states at 1986-3 (Vol. 4) C.B. 60, "The conferees wish to clarify that this rule applies to cable television franchise agreements embodied in whole or in part in municipal ordinances or similar enactments before March 2, 1986 (January 1, 1986, for the investment tax credit.)"

The above conference report was discussed with respect to cable television franchises in a colloquy between Senators Glenn and Packwood in 132 Cong. Rec. S13,955 (daily ed. Sept. 27, 1986). Senator Packwood stated:

> It was the intent of the conferees, as indicated in the conference report, that the definitive franchise agreement which was contemplated by the July 1985, ordinance would be considered embodied in that ordinance and as such would qualify as a supply or service contract entered into prior to March 2, 1986, with respect to the depreciation rules and January 1, 1986, in the case of the investment tax credit rules. [Underscoring supplied.]

We believe that the legislative history cited by the public utilities does not stand for the proposition that all public franchises meet the "written supply or service contract" exception. Further, we do not read the legislative history to state that all cable television franchises meet this exception. We believe that the import of the legislative history is that the fact that a cable television franchise agreement later became part of a municipal statutory arrangement does not preclude that franchise agreement from qualifying for this exception. However, there first must have been an agreement, and that agreement must have been definitive, not vague or general.

Further, cable TV is distinguishable from regulated franchised utilities. The Cable Communications Policy Act of 1984 (See 47 U.S.C. section 541(c)) explicitly excludes cable systems from regulation as common carriers or utilities. See 47 U.S.C. section 541(c). In fact, cable operators competed and bid for the right to serve various cities and other political divisions and did enter into written (express) contracts to provide cable service and many of those contracts did become embodied in ordinances, resolutions or similar enactments. Inasmuch as the Cable Communications Policy Act of 1984, which took effect at the end of 1984, would have been very fresh in the mind of the legislators, the unique situation of TV cable systems would account for their special mention.[5] Accordingly, we believe that any exception for cable television franchises is limited to cable television franchises and does not extend to all public utilities.

Public utility franchises standing alone fail to meet the requirements of section 204(a)(3) because they are not binding written contracts within the meaning of the ITC transition provisions.

The position of the utilities industry is that any franchise, license, and/or tariff filing in existence as of December 31, 1985, qualifies as a binding written contract under section 204(a)(3). The utilities provide citations from state law in an attempt to show that franchises are considered to be contractual arrangements or contracts. The utilities also assert that tariffs filed with local, state and/or federal governments are also binding written contracts.

The utilities also suggest that the tariffs they file with various regulatory bodies constitute binding written contracts. But tariffs are not necessarily considered contracts. In 1921, the Supreme Court decided **Western Union Telegraph Co. v. Esteve Bros. & Co.**, 256 U.S. 566, 41 S. Ct. 584 (1921). The issue was whether a sender of a telegram, which, as received, contained a significant error (the number 2,000 was substituted for 200), could recover monetary damages in excess of the amount set forth in the tariff of the telegraph company, which limited damages to the fee charged. The Supreme Court held that the tariff supplanted/superseded the common law liability of the regulated carrier. "Before the (amendment) the (telegraph) companies had a common law liability .... Thereafter, ... the outstanding consideration became that of uniformity and equality of rates."; and concluded: "The rate became, not as before a matter of contract, but a matter of law by which uniform liability was imposed."

Some states may characterize public utility franchises and tariffs as being founded entirely on law while others may characterize them as founded on contract. Where the franchise or regulatory compact of a public utility is not characterized in terms of contracts under state law, taxpayers should not be able to recharacterize these state law arrangements as satisfying the binding written contract precondition to transition relief. We believe, however, that even if state law characterizes a compact as contractual, the compact, franchise, or tariffs are not "written supply or service contracts" within the meaning of the ITC transition rule.

Any contractual arrangement that arises between the utility and a state or municipality pursuant to the franchise is not an express contract in the sense that all the material terms are evidenced by a written instrument agreed to by both parties. Rather, any resulting contractual arrangement is in the nature of an implied contract in which the mutual assent of the parties is inferred from the actions of the parties. Because the transition rule of section 204(a)(3) is limited to certain written contracts, implied contractual arrangements of this sort not fully reduced to writing were not intended by Congress to qualify for the transitional relief.[6]

Further, although some utility tariffs set forth in detail the terms of the relationship between regulated utilities and their customers, the tariffs are not binding contracts, even with current customers, because they can be modified without the consent of the customer. Where one party can terminate or modify its promise at will, there is no legal or binding obligation upon it and its promise is, therefore, insufficient consideration for the other party's promise. **Corbin**

on Contracts §§ 265 and 1266 (1962). The tariffs do not qualify as binding written contracts for this additional reason.

The transition relief of section 204(a)(3) applies only to written supply or service contracts binding at the end of 1985. The case law tells us to grant this relief narrowly. Because transition relief was intended for taxpayers who had committed to acquire property in anticipation of the investment credit, it is unavailable to the typical utility that operates under a franchise granted many years ago. Detrimental reliance is lacking.

Even if the franchise is considered a contract under state law, it is not a written contract within the meaning of the ITC transition rule. But, more importantly, it is not binding because its terms, most often the price to be charged, can be changed by the state or municipality. Finally, the franchise is not a supply or service contract as it establishes reciprocal obligations other than to provide a service or supply for a given price. Instead, it grants the exclusive right to service or supply an area in return for the obligation to service or supply that area.

Issue 2:
Whether the specifications and amounts of property necessary to provide utility services and/or goods in years after 1985 are readily ascertainable from the budget projections of a public utility and are these projections related documents? Assuming, arguendo, that a utility "regulatory compact" or franchise is a written supply or service contract, the property that must be acquired to carry out that contract must be readily ascertainable from the contract itself or from related documents. The utilities contend that the construction budget projections they file with utility commissions, typically five-year plans, sufficiently identify the property necessary to provide utility service. We disagree[7].

The budget projections are mere cost estimates that can be and are modified as conditions change. For example, a natural disaster could cause postponement of a project; cost overruns or delays on one project could delay the start of another project; or changed economic conditions could affect the feasibility of a project. Changes in technology, including new products, also will alter the plans. Likewise, the subsidiary documents used to formulate the budget projections have the same defect -- they are mere projections or approximations.

It is not enough that property purchased is necessary to fulfill the written supply or service contract. To invoke transition relief, the specifications and amount of the property must be readily ascertainable from the contract and related documents in advance of purchase. The specificity requirement serves not only to identify specific property but also serves to identify property required to be purchased. Budget estimates, regardless of their specificity, are inherently inadequate because they merely describe property that may be required, notwithstanding how accurate these estimates eventually turn out to be. They are mere projections that do not commit the utility to purchase the property with respect to which the ITC is being claimed.

That such specificity is required by the transition rules is illustrated by the recent decision in **Zeigler Coal Holding Co. v. United States**, 934 F. Supp. 292 (S.D. Ill. 1996). The court in Zeigler held that in order for property to be eligible for the ITC under section 204(a)(3) of the Act, the property must be "readily identifiable" with the supply contracts, and "the specifications and amount of the property" must be "readily ascertainable from the terms of the contract, or from related documents." With respect to the specificity requirement associated with the written supply or service contract transition rule, the court stated at 934 F. Supp. at 295:

> [T]o allow a supply contract to implicitly require the acquisition of property, means that the transition rule exception would swallow the rule eliminating the ITC. As a result the Court agrees with plaintiff [Government] that in order to be eligible for ITC, the property must have been specifically described.

Another problem with the budget projections is that they came into existence long after the "regulatory compact" or franchise was established. For this reason, the budget forecasts are not documents sufficiently "related" so as to satisfy the written supply or service contract rules.

Typically, the utility franchises we are concerned with were established many years ago. When the utilities agreed to provide service and or goods, they were not doing so in reliance on the availability of the ITC. Indeed, many of the franchises predate the original passage of the ITC in 1962. As a result, the situations presented are not among those that prompted Congress to provide for transition relief.

A "regulatory compact" or franchise does not specify the property that must be purchased to supply service and/or goods. The utilities contend that problem is cured by their budget projections. However, these budget projections came into being many years later and were not part of the franchise.

At the time the utility committed itself to provide service and/or goods, its needs for years after 1985 were uncertain. While those needs may have become subject to some degree of forecasting in the years leading up to 1986, the commitment to fill those needs grew out of the "regulatory compact" or franchise, not out of the budget projections. Because the budget projections were formulated long after "regulatory compacts" or franchises were established, they are not part of that commitment process and not sufficiently related to the franchise to serve as the basis for allowing the ITC in years after it was unavailable to most taxpayers.

Issue 3:
What are the placed in service dates for transition property qualifying under section 204(a)(3) of the Tax Reform Act of 1986?

Even if property qualifies as transition property, it must meet an additional placement in service requirement under sections 203(b)(2) and 211(e)(1)(C) of the Act, as modified by section 49(e)(1)(C) of the Code. The placement in service requirements are stated in terms of a property's class life. For property whose class life is less than 5 years, the property must have been placed in service by June 30, 1986. For property whose class life exceeds 5 years but is less than 7 years, the property must have been placed in service by December 31, 1986. For property with a class life of at least 7 years but less than 20 years, the property must be placed in service by December 31, 1988. For property whose class life exceeds 20 years, the property must be placed in service by December 31, 1990.

Section 203(b)(2)(C)(ii) of the Act further modifies property described in section 204(a) by allowing property with a class life of at least 7 years but less than 20 years to be treated as having a class life of 20 years. This provision, therefore, provides for a December 31, 1990, placement in service date for property that qualifies under a written supply or service contract and that has a class life that equals or exceeds 7 years.

Especially noteworthy for telephone utilities is that section 203(b)(2)(C)(i) specifically identifies computer-based telephone central office switching equipment as having a class life of 6 years. Therefore, this equipment was required to be placed in service by December 31, 1986, to qualify as transition property.

Taxpayers argue that all property qualifying under section 204(a)(3) [written supply or service contract] may be placed in service through December 31, 1990. This position was espoused by the taxpayer in **Kjellstrom**. In that case, the district court determined that section 49(e)(1)(c)(ii) provided that property with a class life of less than 7 years must be placed in service before January 1, 1987. The district court stated at 916 F. Supp at 909:

However, the fact that § 49(e)(1)(C) does not apply solely to "property described in § 204(a)" does not render ineffective the clear provisions of § 49(e)(1)(C). In addition, § 49(e)(1)(C) applies expressly to "transition property with a class life of less than 7 years." 26 U.S.C. § 49(e)(1)(C) (emphasis added). Thus, 49(e)(1)(C)(i)'s requirement that section 203(b)(2) shall apply (and that provision's reference to "property described in § 204(a)" as having a class life of twenty years) cannot include transition property with a class life of less than seven years.

The **Kjellstrom** case made it clear that property with a class life of less than seven years must be placed in service before January 1, 1987, in order to qualify as ITC transition property. This rule applies even if the property qualifies for transition relief under section 204(a)(3). **But see, Airborne Freight Corp. v. United States**, __ F. Supp. __ (W.D. Wash. 1996), which concludes that the placed in service requirement for all section 204(a) property is that the property be placed in service by December 31, 1990.

Therefore, it is our position that the following placement in service requirements apply to transition property qualifying under the written supply or service contract rule [section 204(a)(3)]:

1) Property whose class life is less than 5 years must be placed in service by June 30, 1986;
2) Property whose class life exceeds 5 years but is less than 7 years must be placed in service by December 31, 1986;
3) Property whose class life equals or exceeds 7 years must be placed in service by December 31, 1990; and 4) Computer-based telephone central office switching equipment must be placed in service by December 31, 1986.

1. Much of the following discussion on state laws dealing with utility franchise areas is based upon Samuel Porter and John Burton, "Legal and Regulatory Constraints on Competition in Electric Power Supply," Public Utilities Fortnightly (May 25, 1989): 24-36.
2. N.M. Stat. Ann. sec. 62-9-1 et seq. (1984 & 1987).
3. To date, no cases have been decided on the "binding contract" transition rule in the 1986 Act. There are decided cases, however, on the binding contract transition rule contained in the 1969 Act. These cases held that the agreement must be definite and certain so that the promises and performances to be rendered by each party are reasonably certain. **See Sartori v. Commissioner**, 66 T.C. 680 (1977) and **Sudbury Textile Mills, Inc. v. Commissioner**, 68 T.C. 528 (1977).
4. The Seventh Circuit decided the case against the taxpayer on the "world headquarters" issue and did not address the transition rule for the placed in service issue.
5. The cable television franchises were specifically grandfathered in section 202(d)(11) of H.R. 3838 as passed by the Senate on June 24, 1986. Section 202(d)(11) provided, in part, that the amendments made by section 201 would not apply to any property that is readily identifiable with or necessary to carry out a binding obligation with a municipality under an ordinance granting television franchise rights if the ordinance was enacted on July 22, 1985, and a construction contract was signed before April 1, 1986. Although the 1986 Act as enacted did not contain the special carve-out for cable television in section 202(d)(11), the same result was intended to obtain under section 204(a)(3). See the above colloquy between Senators Glenn and Packwood. The inclusion of cable television franchises in section 204(a)(3) may not have interpretive application beyond that industry, but rather appears to be similar to the multitude of "rifle-shot" rules contained throughout section 204(a), wherein congressionally favored entities and industries were given transition relief.
6. The legal structure establishing a utility's retail service area is usually provided in one of two ways, or a combination thereof: (1) through commission-administered state laws specifically providing for service area assignments - i.e. territorial-type statutes - and (2) through statutes requiring the utility to obtain from the commission a certificate of public convenience and necessity to provide service in the area designated in the certificate. **See** "Legal and Regulatory Constraints on Competition in Electric Power Supply" Samuel

Porter and John Burton, Public Utilities Fortnightly (May 25, 1989). **See** also Fla. Jur. 2d **Energy** §37, which states: An express contract is not essential to establish reciprocal rights between a public service company and the public it undertakes to serve, since such rights arise by implication of law.

7. Indeed, under the utilities' expansive interpretation not only would the entire industry, including electric, natural gas, water, and telephone companies, be grandfathered from the repeal of the ITC, but service companies accounting for a large part of the economy of the United States would be eligible as well. Undoubtedly, many of these service companies will have contracts with customers to provide services. All well-managed companies will also have long-range capital expenditure budget projections. Under the utility industries' interpretation of section 204(a)(3), all of these companies would also be eligible for ITC transition relief. Further, manufacturers will have contracts to supply the product they make, coupled with their own capital budget projections, so they would also be grandfathered. The manufacturers' suppliers also would all be eligible, as well as the suppliers of the suppliers, and so on reductio ad absurdum. We find it implausible that the Congress would have, in the thirty-seven words of section 204(a)(3), carved out such a broad reaching exception to the repeal without making this abundantly clear.

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THE "OBLIGATION TO SERVE"

AND A COMPETITIVE ELECTRIC INDUSTRY

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Introduction:

ELECTRIC UTILITY OBLIGATION TO SERVE

Historically, electric utility companies have had imposed upon them by common law an "obligation to serve." The fundamental common law rule requires a utility to serve on reasonable terms all those who desire the service it renders. If a member of the public has applied for and made the necessary arrangements to receive service, and has paid for or offered to pay the price and abide by the reasonable rules of the company, it is the duty of a utility to render adequate and reasonably efficient service impartially, without unjust discrimination, and at reasonable rates.

This obligation to serve arises from an electric utility's dedication of its property to a public use. Declarations in the corporate charter and other words or actions which represent a dedication to the public use would result in the creation of an obligation to serve. So, too, would actions such as accepting franchises from state and local governments or making a commitment by contract (such as by accepting public funds).

Definition:

For purposes of the obligation to serve, "universal service" means that all persons desiring to take electric service, and paying or agreeing to pay the reasonable price for such service, and abide by the reasonable rules, shall have the opportunity to take such service on a nondiscriminatory basis. The "opportunity to take service" is defined to include an affirmative obligation by service providers to engage in best efforts to make affordable service available to all customers. The definition of "universal service" has several key components.

First, "universal service" does not seek to *guarantee* that every person has electric service. What it does instead is to guarantee that every person has *access* to electric service. In this sense, "access" means that every person has the opportunity to take electric service.

While there can be no guarantee that all persons will find service to be both available *and* affordable, the obligation to serve involves a responsibility to take specific actions to bring about that result. This duty is not merely one of proscriptions (*e.g.*, prohibitions on discriminatory exclusion), but instead involves a requirement for market participants to make specific efforts in furtherance of universal service. The passive offer of service to any person who wants it is insufficient compliance with the obligation if the price or terms of the offering would represent a functional denial of service to a substantial subpopulation of persons.

CONCLUSION:

Given the historical basis for imposing a legal obligation to serve on the electric industry and its continuing validity, the failure of non-electric industries to achieve universal service

based exclusively upon a societal obligation to serve, the inherent structural barriers that a competitive market presents to achievement of universal service, and the existence of readily available non-electric obligation-to-serve models applicable to competitive markets, **an electric utility obligation to serve consisting of the elements provided above is necessary, reasonable, and appropriate.**

PART 1: HISTORICAL VIEW OF AN ELECTRIC UTILITY'S "OBLIGATION TO SERVE"

Historically, electric utility companies have had imposed upon them by common law a "duty to serve.

"The fundamental common law rule requires a utility to serve on reasonable terms all those who desire the service it renders.\6\ If a member of the public has applied for and made the necessary arrangements to receive service, and has paid for or offered to pay the price and abide by the reasonable rules of the company, it is the duty of a utility to provide the service.\7\

An electric utility is under a legal obligation to render adequate and reasonably efficient service impartially, without unjust discrimination, and at reasonable rates.\8\

In short, under the common law, a utility must make its service available to all members of the public to whom its public use and scope of operation extend, who apply for such service, and who comply with its reasonable rules and regulations.\9\

One key element of a utility's common law duty to serve is its total independence from any statutory basis.\10\ **The duty of an electric utility "is one implied at common law and need not be expressed by statute, or contract, or in the charter of the public utility."**\11\ The Indiana Supreme Court has noted:

> *When the state fails, or does not see fit, to regulate the rates and charges or services by legislation or by creating a commission for the purpose, the public, nevertheless, still has the basic right under the common law to be served in all particulars, without discrimination, and at a reasonable price* * * *.\12\

The duty to serve "is an integral aspect of public utility status. American courts imposed such a duty long before the establishment of comprehensive regulation of utilities pursuant to statutes."\13\

Statement of Purpose

PRINCIPLE NO. 1: The purpose of the obligation to serve is to attain and maintain universal service\146\ within the electric industry.

The purpose of imposing an obligation to serve within the electric industry is to attain and maintain universal service. The foundation of imposing an obligation to serve lies in the fact that the service in question is not merely important, but essential, to persons in today's world. The lack of access to the service will adversely affect persons in the entire range of their personal, economic and social wellbeing. In addition, the lack of access imposes significant harms on society as a whole. Finally, the obligation to serve is imposed because competitive markets have not, and by their nature cannot, fulfill the social goal of universal service.

PRINCIPLE NO. 2: The purpose of the "obligation to serve" is to prevent involuntary deterioration in current penetrations of electric service amongst those seeking service.

The electric industry stands alone in its achievement of complete success in service penetration levels. Indeed, the Census Bureau has even stopped asking the question of whether homes are served by electric power. Penetration of electric service approaches 100 percent.

Whether or not universal service is reached in any of these other industries is not the question here, however. The *electric* obligation to serve should incorporate a "no deterioration" policy.

Definition of Universal Service: DEFINITION
For purposes of the obligation to serve, "universal service" means that all persons desiring to take electric service, and paying or agreeing to pay the reasonable price for such service, and abide by the reasonable rules, shall have the opportunity to take such service on a nondiscriminatory basis. The "opportunity to take service" is defined to include an affirmative obligation by service providers to engage in best efforts to make service available to all customers.

The definition of "universal service" has several key components. First, "universal service" does not seek to *guarantee* that every person has electric service. What it does instead is **to guarantee that every person has *access* to electric service.**\148\ In this sense, "access" means that every person has the opportunity to take electric service. Providing the opportunity to take services, however, involves more than providing kWh. It incorporates an element of affordability as well.\149\

While there can be no guarantee that all persons will find service to be both available and affordable, the obligation to serve involves a responsibility to take specific actions to bring about that result. This duty is not merely one of proscriptions (*e.g.*, prohibitions on discriminatory exclusion), but instead involves a requirement for market participants to take affirmative steps. The duty is to be measured against a specific legal standard, that of "best efforts."\151\

"Best efforts" is a concept out of the law of fiduciary relationships.\152\ The standard is neither unusual nor onerous. For example, in the law of promotional and requirements contracts,\153\ the concept of "best efforts" implies a duty to seek to discover exactly what contingencies may require adjustment, as well as a duty to act on information known or discovered. Broadly stated, the "best efforts" standard requires the provider of a product essential to public health and safety to use due care in attempting to discover alternative performances that would allow the customer to maintain service. Its application in the electric industry would be akin to its application in other contract law areas.\154\

The Specific Enforceable Components of the Obligation
The following discussion is designed to identify what components might be made a part of a utility's obligation to serve. The obligations are presented with greater specificity than the policy declarations. They are presented with a discussion of their rationale and a description of their

anticipated operation where appropriate, with the exception of some which are considered essential (and are noted as such), they may be viewed as a package, but need not be.

COMPONENT NO. 1: The "obligation to serve" should include a distribution utility's obligation to connect.

An essential component to a distribution utility's obligation to serve involves the "obligation to connect" customers to the distribution system assuming that the provision of electric power eventually becomes competitive at the retail level. This obligation to connect is consistent with the historical legal obligations within the electric industry as well as with the various obligation-to-serve requirements discussed above in other non-electric industries.

Dedication to a Public Use: The obligation to connect is not an obligation that has been imposed upon a utility by the government. Instead, it is an obligation to which utilities have submitted themselves, one they have voluntarily taken upon. One need only to look closely at the oft-quoted language of the U.S. Supreme Court in its seminal decision in *Munn v. Illinois*:\156\

The Legal Basis for Imposing an Obligation to Connect: The continuation of an obligation to serve is not strictly a public policy issue that can be freely decided one way or another. Instead, the obligation to serve is an explicit *quid pro quo* that was exacted in exchange for substantial -- and continuing-- public benefits. So long as the local distribution companies enjoy the fruits of that exchange, they must abide by the obligations that were bargained for as part of the exchange.

In particular, electric utilities have been granted two sets of public perquisites:

o The right to exercise eminent domain;\158\ and

o The right to use the public's streets, alleys and public ways as transportation corridors.\159\

In accepting these public perquisites, electric utilities have dedicated their property so supported to a public use. The "bargain" that has been made in consideration of these two public perquisites is both explicit and continuing.\160\

The obligation to connect is imposed on the distribution utility, which is the part of a restructured electric industry that carries forward the traditional electric utility obligations. As discussed below, the obligation to actually provide service is imposed on the competitive service providers.

The Obligation to Provide Service to Residual Classes

COMPONENT NO. 2: The "obligation to serve" should include an electric service provider's obligation to participate in providing service to residual classes.

A second essential part of the obligation to serve would require a competitive service provider to participate in serving all members of the residual classes not served by the voluntary market. In a competitive retail environment, in other words, the state would impose an obligation to serve on all companies selling power at retail.

In sum, companies selling electric power at retail will have imposed upon it an obligation to serve. This obligation would state that a utility is obligated to participate in the mechanism developed to serve residual classes.\188\

The Obligation to Make a Standard Offer

COMPONENT NO. 3: The "obligation to serve" should include the obligation of an electric service provider to make available at least a minimum standard offer of service.

It ensures that the residual classes are not unduly discriminated against in the provision of service. In this sense, the need for such a standard offer when dealing with a residual customer class served by a public market has been made evident from experience in the various insurance industries.\192\

Finally, it ensures that the goal of universal service is truly met. As the Federal Communication Commission (FCC) recently held with respect to its universal service obligations: "We find that the overarching universal service goals may not be accomplished if low-income universal service support is provided for service inferior to those supported for other subscribers."

The Telecommunications Act of 1996, for example, provides that services eligible for universal service support through that federal statute would include any services meeting one or more of the following criteria:

1. Are essential to education, public health, or public safety;

2. Have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

3. Are being deployed in public telecommunications networks by telecommunications carriers; and

4. Are consistent with the public interest, convenience and necessity.\193\

CONCLUSION

The imposition of this obligation to serve does not represent an unreasonable regulatory burden. The obligation is instead simply the *quid pro quo* exacted in exchange for substantial --and continuing-- public benefits provided to the industry. So long as the electric industry enjoys the fruits of that exchange, it should abide by the obligations bargained for as part of the exchange. In particular, electric utilities have been granted two sets of public perquisites:

(1) the right to exercise eminent domain; and

(2) the right to use the public's streets, alleys and public ways as transportation corridors. In accepting these public perquisites, electric utilities have dedicated their property so supported to a public use. The bargain that has been made is both explicit and continuing. The obligation to serve is a type of compensation, the "payment" for the grant of certain public powers.

The mere fact that the electric industry may become competitive does not eliminate either the need for, or the justification for, obtaining this compensation.

Statements of Principle

Principle No. 1: The purpose of the obligation to serve is to attain and maintain universal service within the electric industry.

Principle No. 2: The purpose of the "obligation to serve" is to prevent involuntary deterioration in current penetrations of electric service amongst those seeking service.

APPENDIX A

SUMMARY

- The obligation to serve is intended primarily to ensure that electric service is extended to all who desire service and either pay for service or express a willingness to pay for the service rendered.

- The obligation to serve involves a basic commitment to universal service. While this commitment does not ensure that customers will retain service if they do not or cannot pay for it, it does seek to ensure that all customers (and potential customers) have the opportunity to take service.

- The obligation to serve has a requirement of non-discrimination; discrimination historically has involved a commitment to refrain from making unreasonable distinctions. Non-discrimination implies the lack of unreasonable distinctions.

- The obligation to serve flows from the common law. Specific regulations or pieces of legislation setting forth the obligation are merely restatements of the common law.

- The purpose of an obligation to serve is to redress the harm of denying the availability of an essential service.

- Enforcing the obligation to serve benefits not only the person for whom access to the essential service is affected, but all of the various components of society.

- The implementation of an obligation to serve will involve making specific affirmative efforts to make available essential services to those who are difficult to serve, not merely making passive offerings to anyone who might come.

- Offering essential products and services to persons in residual markets at unaffordable prices and/or unreasonable terms is the effective equivalent of excluding those persons in the first instance.

IMPOSING A LEGAL OBLIGATION TO SERVE

- The "exchange" of an obligation to serve for public support for the industry bearing the obligation is appropriate public policy.

- The obligation to serve imposed in exchange for public perquisites provided in support of the industry should be in furtherance of the goal of universal service.

SUMMARY OF OBLIGATION TO SERVE

PRINCIPLE NO. 1:

The purpose of the obligation to serve is to attain and maintain universal service within the electric industry.

- Universal service cannot be measured by reference to customers as a whole. For there to be universal service, there must be universal service in each sub-market as well as for consumers as a whole.

- The obligation to serve is not narrowly focused on eliminating particular market failures. It is instead a broad-based policy determination that the service in question should be universally available.

PRINCIPLE NO. 2:
The purpose of the "obligation to serve" is to prevent involuntary deterioration in current penetrations of electric service amongst those seeking service.

- Any deterioration in existing penetration levels of electric service will be unacceptable.

DEFINITION:
For purposes of the obligation to serve, "universal service" means that all persons desiring to take electric service, and paying or agreeing to pay the reasonable price for such service, and abide by the reasonable rules, shall have the opportunity to take such service on a nondiscriminatory basis. The "opportunity to take service" is defined to include an affirmative obligation to engage in best efforts to make service available to all customers.

- "Universal service" does not seek to *guarantee* that every person has electric service, what it does instead is to guarantee that every person has *access* to electric service.

- "Access" means that every person has the opportunity to take electric service by paying, or agreeing to pay, the reasonable price for such service.

- "Universal service" incorporates an element of affordability within it. Pricing services at unaffordable levels is the functional equivalent of denying service altogether.

- The obligation to serve imposes an affirmative duty to ensure that the opportunity to take electric service is made universally available.

- The obligation to serve requires market participants to take *specific* efforts in furtherance of universal service.

- The passive offer of service to any person who wants it is insufficient compliance with the obligation

- The service which is provided must be provided on a nondiscriminatory basis.

- While there is no guarantee that all persons will find service to be both available and affordable, the affirmative obligation to take specific actions to bring about that result is designed to make service available on a "best efforts" standard. Best efforts requires not minimum competence, but rather a calling of diligence.

COMPONENT NO. 1:
The "obligation to serve" should include a distribution utility's obligation to connect.

- A distribution utility's obligation to serve should include the "obligation to connect" customers to the distribution system.

- The obligation to serve is an explicit *quid pro quo* that was exacted in exchange for substantial --and continuing-- public benefits. So long as the local distribution companies enjoy the fruits of that exchange, they must abide by the obligations that were bargained for as part of the exchange. The benefits include the power to exercise eminent domain and the right to use public streets and ways.

- The obligation to serve flows from at least two different sources for electric utilities.
- First, the grant of the right to exercise the power of eminent domain has inherent within it the obligation to serve.
- Second, the grant of the right to use public streets, alleys and public ways has within it the obligation to serve.

- The obligation to serve is a type of "payment" for the grant of these powers. The obligation to serve is a type of public compensation.

- The imposition of a perpetual duty-to-serve on utility property in exchange for the grant of public perquisites is not different from the imposition of a perpetual duty to dedicate the assets of non-profit institutions to charitable purposes in exchange for tax exempt status.

An electric service provider shall have the obligation to make service available on a non-discriminatory basis.

- The obligation to serve should include the obligation to make service available on a non-discriminatory basis.

- This duty of "non-discrimination" should have two elements to it.
- First, actions that have the *effect* of imposing adverse impacts on a residual class should be unlawful unless they are dictated by a business necessity.
- Second, the duty of non-discrimination must extend beyond those decisions by electric service providers that may be economically irrational.

Citations noted:

\7\ Annotation, *Liability of gas, electric or water company for delay in commencing service*, 97 ***A.L.R.*** 838, 839 (1935); *see also*, 26 ***Am.Jur.2d***, *Electricity, Gas and Steam*, _110 (1966) (delay in commencing electric service); 26 ***Am.Jur.2d***, *Electricity, Gas and Steam*, _216 (1966) (delay in commencing gas service).

\8\ *See e.g.*, ***Arizona Corp. Comm'n v. Nicholson***, 497 P.2d 815, 817 (Az. 1972) (citations omitted).

\9\ For excellent discussions of the scope and ramifications of this duty, *see generally*, Comment, "Liability of Public Utility for Temporary Interruption of Service," 1974 ***Wash. L. Qtrly*** 344, 346, n. 10 (1974); Gustavus Robinson, "The Public Utility Concept in American Law," 41 ***Harv. L.Rev.*** 277 (1928); Norman Arterburn, "The Origin and First Test of Public Callings," 75 ***U.Penn. L.Rev.*** 411 (1927); Charles Burdick, "The Origin of the Peculiar Duties of Public Service Companies," 11 ***Columbia L.Rev.*** 514 (1911).

\10\ *See e.g.*, ***Snell v. Clinton Electric Light, Heat and Power Company***, 196 Ill. 626, 58 L.R.A. 284, 63 N.E. 1082 (1902). "There is no statute regulating the manner under which electric light companies shall do business in this state. They are, therefore, subject only to the common law and such regulations as may be imposed by the municipality which grants them privileges." *Id.*, at 1083; *see also*, ***Morehouse Natural Gas Company v. Louisiana Public Service Commission***, 140 So.2d 646 (La. 1962); ***Messer v. Southern Airways Sales Co.***, 17 So.2d 679, 681 (Ala. 1944); ***Birmingham Railway,***

Light and Power Company v. Littleton, 77 So. 565, 569 (Ala. 1917); ***Snell v. Clinton Electric Light Company***, 196 Ill. 626, 58 L.R.A. 284 63 N.E. 1082 (1902); ***Gibbs v. Baltimore Gas Company***, 130 U.S. 396 (1888); ***Southwest Gas Corp. v. Public Service Commission***, 474 P.2d 379 (Nev. 1970).

\11\ 64 ***Am.Jur.2d***, *Public Utilities*, _16 (1972) (citations omitted). The duty may well be incorporated into state statutes for regulated utilities, *see*, Comment, "Liability of Public Utility for Temporary Interruption of Service," 1974 ***Wash. U.L.Q.*** 344, 345 - 46, n.9 (1974), but it exists at common law for those public utilities not covered by statute.

\12\ ***Foltz v. Indianapolis***, 130 N.E.2d 650 (1955); *see also*, ***Montgomery Ward & Co. v. Northern Pacific Terminal Co.***, 128 F.Supp. 475 (D.Ore. 1953); *accord*, ***Messer v. Southern Airways Sales Co.***, 17 So.2d 679 (Ala. 1944). So, too, have the Missouri courts held with regard to the common law duty to serve, "such duties arise from the public nature of a utility, and statutes providing affirmatively therefor are merely declaratory of the common law." ***Overman v. Southwestern Bell Tele. Co.***, 675 S.W.2d 419, 424 (Mo. App. 1984). According to the Missouri courts, "a public utility is obligated *by the nature of its business* to furnish service or commodity to the general public, or that part of the public which it has undertaken to serve, without arbitrary discrimination." *Id.*, *quoting*, 73B ***C.J.S.***, *Public Utilities*, _8 (1983). (emphasis added).

\13\ Floyd Norton and Mark Spivak, "The Wholesale Service Obligation of Electric Utilities," 6 ***Energy Law Journal*** 179, 182 (1985).

\146\ The term "universal service" is defined below to mean: "For purposes of the `obligation to serve,' `universal service' means that all persons desiring to take electric service, and paying or agreeing to pay the reasonable price for such service, shall have the opportunity to take such service on a nondiscriminatory basis at reasonable rates and under reasonable terms. The `opportunity to take service' is defined to include an affirmative obligation to engage in best efforts to make service available to all customers."

\148\ Compare the efforts to promote universal service in the telecommunications industry. "Universal service has never implied an entitlement program under which U.S. residents would have a right to telephone service at government expense. Rather, the goal. . .is to ensure that the structure of the industry makes telephone service universally accessible and affordable." Edwin Parker *et al.* (1989). ***Rural America in the Information Age: Telecommunications Policy for Rural Development***, Aspen Institute: Lanham, MD.

\149\ Compare the current efforts in promoting universal service in the telecommunications industry. "The 1996 Act makes explicit that Universal Service policies should promote affordability of quality telecommunications services. The Commission seeks comment proposing standards for evaluating the affordability of telecommunications services." ***Universal Service and The Telecommunications Act of 1996***, *supra* note 61, at 5.

\151\ Charles Goetz and Robert Scott, "The Mitigation Principle: Toward a General Theory of Contractual Obligation," 69 ***Virginia L.Rev.*** 967, 985, 1015 - 1016, and n.126 (1984) (courts should impose a best efforts obligation whenever a single party controls the instrumentality necessary to achieve a cooperative goal).

\152\ *See*, E. Allan Farnsworth, II ***Farnsworth on Contracts***, 336 - 338 (1990), Little, Brown Co.: Boston; E. Allan Farnsworth, "On Trying to Keep One's Promises: The Duty of Best Efforts in Contract Law,"46 ***U.Pitt. L.Rev.*** 1 (1984).

\153\ ***Goetz and Scott***, *supra* note 151, at 1015 - 1016.

\154\ ***Trigg v. Tennessee Electrical Membership Corp.***, 533 S.W.2d 730, 734 (Tenn. App. 1975); ***Carroll v. Local No. 269***, 31 A.2d 223 (N.J. Chanc. 1943); ***McCreery Angus Farms v. American Angus Association***, 379 F.Supp. 1068 (D.Ill.), *aff'd*, 506 P.2d 1404 (7th Cir. 1974).

\156\ 94 U.S. 113 (1876).

\159\ McQuillan, ***The Law of Municipal Corporations***, _34.01 (3d ed. 1986). ("One thing should be kept constantly in mind, and that is that the rules of law governing franchises to use the streets do not depend, except to a very limited extent, on whether the grantee of the franchise is a gas company, or a water company, or an electric light company, or a telegraph or telephone company, or a street railway company, or any other public service company.")

\160\ In addition to these two public perquisites, electric utilities have frequently been granted an exemption from local zoning ordinances. Annotation, ***Applicability of Zoning Regulations to Projects of Nongovernmental Public Utility as Affected by Utility's Having Power of Eminent Domain***, 87 ***A.L.R.3d*** 1265 (1978) ("It has been held, especially where a utility is of statewide or national scope in its service, that if granted the power of eminent domain, the utility would be immune from local zoning regulations in exercising its reasonable discretion in choosing utility routes and location, it being reasoned that local control would cripple the function of state regulation, hamper the utility in serving the general welfare for the benefit of a local few, and weaken eminent domain.") *See also*, note 134, *supra*, and accompanying text.

\188\ *But see*, note 186, *supra*, and accompanying text.

\192\ *See*, notes 69 - 74, 111 and 117 - 150, *supra*, and accompanying text.

The legal structure establishing a utility's retail service area is usually provided in one of two ways, or a combination thereof: (1) through commission-administered state laws specifically providing for service area assignments - i.e. territorial-type statutes - and (2) through statutes requiring the utility to obtain from the commission a certificate of public convenience and necessity to provide service in the area designated in the certificate. **See** "Legal and Regulatory Constraints on Competition in Electric Power Supply" Samuel Porter and John Burton, Public Utilities Fortnightly (May 25, 1989). **See** also Fla. Jur. 2d **Energy** §37, which states: An express contract is not essential to establish reciprocal rights between a public service company and the public it undertakes to serve, since such rights arise by implication of law.

The right to provide a utility service is conditioned upon the ability to be able to do so
In JJ's Mobile Homes, this court held that "the right (franchise) to provide utility services to the public carries a concomitant duty to promptly and efficiently provide those same services." [2] Id., 579 So.2d at 225.

Excerpts: 579 So.2d 219 (1991) CITY OF MOUNT DORA, Florida, Appellant, v. JJ's MOBILE HOMES, INC., Appellee. No. 90-733. District Court of Appeal of Florida, Fifth District. April 25, 1991.
"The essence of the concept of utilities serving the public is that it is in the best interests of the public that the entities, governmental or private, providing utility services not be permitted to compete 225*225 as to rates and service and that each entity be given an exclusive service area and monopolistic status. This unusual economic advantage is given a utility in our free market economy in exchange for the utility relinquishing its usual right to determine the level of service it provides and to set its own competitive rates and submitting those two matters to a governmental authority which regulates the quality of service to be provided and sets rates to provide the utility a reasonable return on its investment. The term public utility implies a public use with a duty on the public utility to service the public and treat all persons alike. *See,* 73 C.J.S., *Public Utilities* § 2 (1983) and 78 Am.Jur., *Waterworks and Water Companies,* § 2 (1975)."

"Territorial rights and duties relating to utility services as between prospective suppliers are more properly defined and delineated by administrative implementation of clear legislation than by judicial resolution of actual cases and controversies resulting from the lack of clear legislative direction. However, the problem is currently a controversial political matter in the State of Florida and in the absence of clear legislative intent, courts must resolve individual disputes by the application of principles which appear to best serve the public and to be fair and equitable to legitimate competing interests. **Some such principles are**:

(1) **In Florida** the basis for the right of both governmental and private entities to provide utility services to the public is statutory and the franchise right of each is equal and neither entity is, per se, superior or inferior to the other.

(2) A franchise granted to an entity, either governmental or private, authorized by law to provide utility service to the public, may be exclusive as to both type of service and territory. *See,* *St. Joe Natural Co. v. City of Ward Ridge,* 265 So.2d 714 (Fla. 1st DCA 1972), *cert. denied,* 272 So.2d 817 (Fla. 1973).

(3) **The right (franchise) to provide utility services to the public carries a concomitant duty to promptly and efficiently provide those same services**. *See,* 73B C.J.S., *Public Utilities,* § 2 (1983).

4) The right (franchise) to provide utility services to the public in a franchised territory is inherently subject to, and conditional upon, the ability of the franchise holder to promptly and efficiently meet its duty to provide such services. Section 367.045(5)(a), Florida Statutes." -AFFIRMED.

Catherine Potts

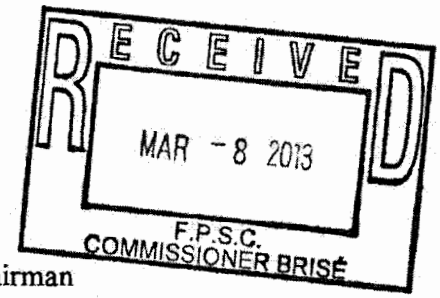
From: Pamela Paultre
Sent: Tuesday, March 12, 2013 10:08 AM
To: Commissioner Correspondence
Subject: Docket no. 120054
Attachments: 03-08 Brown #120054.pdf

Cathi,

Please place the forwarded or enclosed correspondence in Docket Correspondence of Consumers and their representatives for docket no. 120054-EM.

Thank you,

Pamela Paultre
Assistant to Chairman Ronald Brisé
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
(850) 413-6036



Robert G. Brown
32731 Tortuga Lane
Big Pine Key (No Name Key), FL
33043

March 3, 2013

Ronald A. Brise', Chairman
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dear Chairman Brise',

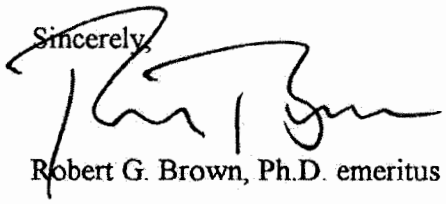
I am one of a super majority of homeowners who have struggled against unfair assertions and machinations for many years for the extension of grid electricity to our homes on No Name Key. The matter has been complicated with lawsuits, endless commissioner meetings, and redundant public and private assertions to the point it has become the *theater of the absurd*. I know it will be impossible for you to name a single instance where basic infrastructure has been denied a citizen in these United States where service is available. No campground, state or national park is without electrical or sanitary services, e.g. water and sewer, even though they are clearly environmentally and developmentally protected otherwise.

Your purview is the State of Florida, so I invite you to look up and down our state and seashores and find another instance where electricity does not serve all citizens. More significantly, it is the law of the land. The county has conducted a 15 year ritual rain dance around the notion that their comprehensive land plan prohibits or discourages development. Providing electrical service to homes built in most instances years prior, given certificates of occupancy, with required code readiness has absolutely nothing to do with development. It does, however, relate to the currently illegal denial of basic services to residents. Our lawyer(s) have supplied you with ample case law, precedent, and prior litigation to make it clear that the issue lies with the denial of what every citizen of Monroe County, and throughout the land enjoys, i.e. the right to walk into a courthouse and file for a permit to hook up to the service provided to each citizen, without prejudice.

This has been from the beginning a legal travesty that has gone one since I was 60 years old. I am now, 77! None of the arguments against hooking up to the legally installed grid system have been logically, legally, or scientifically supported. Rather than reiterate these mindless claims, you have only to listen to dissenters. Grid electricity will eliminate all, not most, of the pollution now imposed on the purported, but scientifically denied, sensitive environment of No Name Key, which is not unlike any of our state wildlife, and seashore preserves, and parks. All have electrical power. This has been documented. As just one example: I shall spend an average of $600 every summer month for diesel fuel, as I have for the past 12 years.

You have an opportunity to end this fiasco in a heartbeat by either ruling in our favor, or allowing us to send the legal morass back to the circuit court. I am disappointed that you have chosen to further complicate and extend the process. You have known for over a year that you might be called into this confounded question, yet you have professed that you don't know the extent of your jurisdiction. Why not? You have a full staff and attorneys to consult. You imply that you want our attorney, and the hostile county attorney to offer legal briefs to support their case (yet again). This is reminiscent of the Lincoln/Douglas Debates and the legality of slavery. You either know the extent of the Public Service Commission's authority, or you seemingly don't. In the meantime, we who have every legal right to electrical power yet continue to suffer...this summer as in past summers when we need grid power most, and we painfully rely on generated power stored in lead/acid batteries. Please understand that I am aware you have been assigned the onus to make a very important decision. You should not have needed to be involved at all. The county should have provided approval for the same extension of basic services available in all civilized society long ago without question or delay. It is my belief and the belief of my neighbors, that you can without further delay decide what is fair and just without the baggage that we have carried for decades. It does not require the lengthy path you have proposed. It only requires that you recognize that it is our right to be connected; that the electricity that has been delivered to the island was done so legally, and it your opinion that we should be connected. If you don't think you have the authority to say that, with or without power to enforce it, we can move to seek legal recourse, and we will. Any delay by the PCS will have to be viewed as a dire disappointment. Putting off your decision until July or later is unconscionable. We have suffered under an unfair system too long as it is.

Sincerely,



Robert G. Brown, Ph.D. emeritus professor

Catherine Potts

From: Cristina Slaton
Sent: Friday, March 08, 2013 11:39 AM
To: Commissioner Correspondence
Subject: Docket Correspondence - 120054-EM
Attachments: SKMBT_36313030811350.pdf

Cathi,

Please place the attached letter in Docket Correspondence, Consumers and their Representatives, in Docket No. 120054-EM.

Thank you,
Cristina

Robert G. Brown
32731 Tortuga Lane
Big Pine Key (No Name Key), FL
33043

March 3, 2013

Edwardo E. Balbis, Commissioner
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dear Commissioner,

I am one of a super majority of homeowners who have struggled against unfair assertions and machinations for many years for the extension of grid electricity to our homes on No Name Key. The matter has been complicated with lawsuits, endless commissioner meetings, and redundant public and private assertions to the point it has become the *theater of the absurd.* I know it will be impossible for you to name a single instance where basic infrastructure has been denied a citizen in these United States where service is available. No campground, state or national park is without electrical or sanitary services, e.g. water and sewer, even though they are clearly environmentally and developmentally protected otherwise.

Your purview is the State of Florida, so I invite you to look up and down our state and seashores and find another instance where electricity does not serve all citizens. More significantly, it is the law of the land. The county has conducted a 15 year ritual rain dance around the notion that their comprehensive land plan prohibits or discourages development. Providing electrical service to homes built in most instances years prior, given certificates of occupancy, with required code readiness has absolutely nothing to do with development. It does, however, relate to the currently illegal denial of basic services to residents. Our lawyer(s) have supplied you with ample case law, precedent, and prior litigation to make it clear that the issue lies with the denial of what every citizen of Monroe County, and throughout the land enjoys, i.e. the right to walk into a courthouse and file for a permit to hook up to the service provided to each citizen, without prejudice.

This has been from the beginning a legal travesty that has gone one since I was 60 years old. I am now, 77! None of the arguments against hooking up to the legally installed grid system have been logically, legally, or scientifically supported. Rather than reiterate these mindless claims, you have only to listen to dissenters. Grid electricity will eliminate all, not most, of the pollution now imposed on the purported, but scientifically denied, sensitive environment of No Name Key, which is not unlike any of our state wildlife, and seashore preserves, and parks. All have

electrical power. This has been documented. As just one example: I shall spend an average of $600 every summer month for diesel fuel, as I have for the past 12 years.

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Sincerely,

Robert G. Brown, Ph.D. emeritus professor

Catherine Potts

From: Katherine Fleming
Sent: Friday, March 08, 2013 10:07 AM
To: Commissioner Correspondence
Subject: Docket No. 120054-EM
Attachments: SKMBT_36313030810010.pdf

Please place the attached in Docket Correspondence, Consumers and their Representatives, in Docket No. 120054-EM.

Thank you,

Katherine E. Fleming
Chief Advisor to Commissioner Brown
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
(850) 413-6028 (Office)
(850) 413-6029 (Facsimile)

Robert G. Brown
32731 Tortuga Lane
Big Pine Key (No Name Key), FL
33043

March 3, 2013

Julie Imanuel Brown, Commissioner
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dear Commissioner,

I am one of a super majority of homeowners who have struggled against unfair assertions and machinations for many years for the extension of grid electricity to our homes on No Name Key. The matter has been complicated with lawsuits, endless commissioner meetings, and redundant public and private assertions to the point it has become the *theater of the absurd*. I know it will be impossible for you to name a single instance where basic infrastructure has been denied a citizen in these United States where service is available. No campground, state or national park is without electrical or sanitary services, e.g. water and sewer, even though they are clearly environmentally and developmentally protected otherwise.

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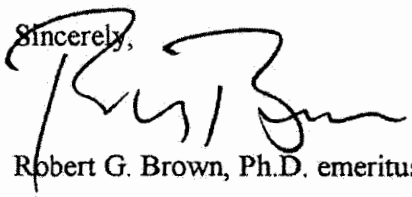
Sincerely,



Robert G. Brown, Ph.D. emeritus professor

Eric Fryson

From: Ruth McHargue
Sent: Tuesday, March 20, 2012 10:28 AM
To: Eric Fryson
Cc: Hong Wang; Matilda Sanders
Subject: docket 120054

Customer correspondence

From: Consumer Contact
Sent: Tuesday, March 20, 2012 10:00 AM
To: Ruth McHargue
Subject: FW: no name key electricity - zip#33043

From: lou appignani [mailto:appignanilou@aol.com]
Sent: Tuesday, March 20, 2012 9:46 AM
To: Consumer Contact
Subject: no name key electricity - zip#33043

As a homeowner on No Name Key in the Florida Keys, I appreciate your efforts to finally bring electricity to No Name Key. I know there is a formal complaint filed, but a high majority of residents on No Name Key feel we deserve electricity in our homes just like other Americans. We certainly appreciate your help in this regard.

Louis J Appignani
AppignaniLou@aol.com

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: March 9, 2012

TO: Ann Cole, Commission Clerk

FROM: Martha C. Brown, Senior Attorney MCB

RE: Docket 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.

Please place the attached letters in the correspondence side of the above docket. Thank you.

MCB:tf

CONSUMER

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

STATE OF FLORIDA

GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

March 9, 2012

Mr. and Mrs. Jim Newton
2047 Bahia Shores Road
No Name Key, FL 33043

RE: Docket 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.

Dear Mr. and Mrs. Newton:

Thank you for the March 3 letters from No Name Key homeowners regarding the above-mentioned docketed complaint of Robert D. Reynolds and Julianne C. Reynolds against The Utility Board of Key West concerning the extension of commercial electrical service to the property owners of No Name Key.

As this is now a docketed item for the Florida Public Service Commission, we are prohibited from forwarding your letters to the Commissioners at this time. Your letters will be placed in the correspondence side of the docket file and will be presented to the Commissioners at the appropriate time.

Should you have questions, you may contact either Ms. Martha C. Brown at (850) 413-6187 or mbrown@psc.state.fl.us or Curt Kiser at (850) 413-6189 or ckiser@psc.state.fl.us.

Sincerely

S. Curtis Kiser
General Counsel

Martha C. Brown
Senior Attorney

SCK:MCB:tf

cc: Jim and Ruth Newton
Charles and Sabrey Bone
Robert Benton
Lou and Lori Appignani
John Sandroni
Mark and Margery Licht
Bruce and Gloria Turkel
Kristie Killam and Randy Hochbert
David Eaken

March 3, 2012

Florida Public Service Commission
2540 Shumand Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Case #2011-342-K

To Whom It May Concern:

Enclosed please find letters with attachments from residents of No Name Key intended for each PSC Board Member and attorneys (S. Curtis Kiser and Martha C. Brown) regarding No Name Key grid electricity issues.

Thank you for your prompt attention to this matter.

Sincerely,

Ruth L. Newton
Jim Newton

cell # 305-393-3024
jbnewton@bellsouth.net

Ruth and Jim Newton
2047 Bahia Shores Road
No Name Key, Florida 33043

March 3, 2012

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Commissioners:

We are homeowners that live on No Name Key, Monroe County, Florida. We have been involved in a long and difficult journey to bring electricity and more recently sewers to our small community of 43 homes. Based on the Amicus Brief filed by the Public Service Commission before the Circuit Court in Monroe County, (case no. 2011-342-K) , the PSC is very aware of the legal matters and state statutes that guarantee Florida residents fair and equitable access to public services. These services include electricity and sewers. Please accept this letter as thanks and a plea for your continued support and control of our efforts.

We hope that in addition to the legal aspects of the case, you will also consider the human, quality of life issues that affect our daily lives. Our rights as residents of Florida, to be serviced by utilities, have essentially been held in limbo for decades. We live in legally permitted homes yet we are forced to supply our own electrical service from a combination of generator and solar-supplied electricity. Our quality of life, as well as that of our local environment suffer from the noise and air pollution created by these generators. More than a few homes have small solar systems that require them to operate their generators 4-15 hours a day to supply their homes with the minimum requirements of electricity for day-to-day living. During the summer months the generators are absolutely essential if a home is to be air-conditioned.

We have a continuous chain of letters between City Electric / Keys Energy and residents of No Name Key during 1995 – Jan 1996 documenting their progress towards installing electric service to No Name Key. In February 1996, a letter from the Monroe county engineer to Keys Energy states *"While we feel confident that the technical details can be worked out this issue is a political one. Thus the approval must come from the Monroe County BOCC."* With that letter Monroe County essentially told Keys Energy to stop and they did. By the end of 2001, The BOCC of Monroe County had acted to "create a land use overlay district to prohibit all properties on No Name Key from being served by public electricity and other utilities," This Coastal Barrier Resource System (CBRS) overlay affected No Name Key residents only.

For almost two decades now the Monroe County BOCC has discriminated against and deprived homeowners on No Name Key our legal access to electricity. Keys Energy has deferred to the County for the final decision as to whether to approve the line extension to No Name Key. The County contends that we have no right to cross their County conservation easements (which are roadways we drive over each day as well as happen to be already crossed by buried phone lines). At a point in the future, when the grid legally arrives at the front of our homes, the County has recently stated they will block our access to electricity by refusing to issue permits for residents to attach to the grid. In essence, the Monroe County BOCC contends that they have the authority to write legislation that supersedes that of the PSC, and that they are entitled, through their

Comprehensive Plan, to pick and choose who is worthy of receiving electricity, regardless of State Statutes or PSC jurisdiction.

In 2009, we re-initiated communication with Keys Energy and were charged $13K (2% of estimated project cost). In Oct. 2010 we paid $90K for their staff time, engineering surveys, their legal fees, and bridge attachment line design. We paid a consultant approx. $10,000 to help us produce a required biological assessment which was used to get our October 2010 "Letter of Concurrence" from United States Fish and Wildlife Service granting their approval to move forward with the project. Our No Name Key Property Owners Board was told by Keys Energy that "they would not stop the project unless ordered to by a judge". Upon hearing this, we paid an additional $99K for power poles. We even signed an, by most residents opinion, onerous Line Extension Agreement and deposited the full remaining cost of the project (total $660+K) to Keys Energy in Jan. 2011. Once again, at this point, Keys Energy succumbed to pressure from the Monroe County BOCC, and terminated the project, leaving most homeowners out tens of thousands of dollars. Recently (Mar.2012), residents are being asked by Keys Energy Board to attend their March 7th Board Meeting. It seems some of them want to see us beg for electricity again while others acknowledge they are legally required to bring us power. We also are being told that signing the onerous Line Extension Agreement (LEA), as written by Keys Energy, is our only option for electricity. Many residents are very uncomfortable with the LEA but at this point are willing to sign anything in hopes of attaining grid electricity. We hope the PSC can shed some light on the legality of this LEA as it is written.

There is a core group of homeowners that have, since the 1990's, been intimately involved in attempting to bring electricity to No Name Key. We would be very willing to meet or talk with you at your convenience to share our records of correspondence with Keys Energy and the Monroe County BOCC. All of our statements above are factual and can be backed up with information we have collected over time. We are including some of this information and some recent newspaper articles that reflect the attitude of our BOCC towards the PSC. We thought these might be of interest to you.

Rest assured that without PSC intervention we held, and hold little hope of an unbiased hearing in our local court system. We hope that with PSC's continued initiative to see our houses supplied with and hooked to the local grid, we will realize the vision of No Name Key as a grid-tie community living in the 21st century.

Sincerely,

Jim and Ruth Newton, 2047 Bahia Shores Road, No Name Key
Charles and Sabrey Bone, 20ll Bahia Shores Road, No Name Key
Robert Benton, 2148 Bahia Shores Road, No Name Key
Lou and Lori Appignani, 1957 Bahia Shores Road, No Name Key
John Sandroni, 2084 No Name Drive, No Name Key
Mark and Margery Licht, Bahia Shores Road, No Name Key
Bruce and Gloria Turkel, 32734 Bimini Lane, No Name Key
Kristie Killam and Randy Hochberg, 32750 Bimini Lane, No Name Key
David Eaken, 32844 Bimini Lane, No Name Key

UTILITY BOARD OF THE CITY OF KEY WEST 11

POST OFFICE DRAWER 6100
KEY WEST, FLORIDA 33041-6100

TELEPHONE: (305) 294-5272
TELECOPIER: (305) 294-5685

June 30, 1993

Mr. Ernest Damop
P.O. Box 1627
Green Cove Springs, FL 32040

RE: Electric Service to No Name Key

Dear Mr. Damop:

A preliminary layout and cost analysis for providing electric service to No Name Key has been completed by City Electric System's Engineering Section. The total estimated engineering and construction costs for providing this service will be $435,000.00, which shall be the customers' responsibility.

I am providing you with this information for your consideration. Should you decide to proceed with this project, please contact City Electric System to enable us to begin.

If you have any questions, please feel free to give me a call.

Sincerely,

UTILITY BOARD - CITY OF KEY WEST
"CITY ELECTRIC SYSTEM"
Robert R. Padron, General Manager

Customer Services Supervisor
AT/ha

cc:
R. Padron, General Manager
R. Rodriguez, Customer Services Manager
L. Thompson, Operations Manager
D. Finigan, Engineering Superintendent
P. Cates, Engineering Services Supervisor
File(2)

PLAINTIFF'S EXHIBIT 2 1/18/02 DS

UTILITY BOARD THE CITY OF KEY WEST

POST OFFICE DRAWER 6100
KEY WEST, FLORIDA 33041-6100

TELEPHONE: (305) 295-1000

February 8, 1995

Ms. Alicia Roemmele-Putney
50 No Name Drive
Big Pine Key, FL 33043

Re: No Name Key

Dear Ms. Roemmele-Putney:

We are in receipt of your letter concerning your petition requesting that electrical power not be installed on No Name Key. City Electric's position on this issue is that we will provide electrical service to No Name Key if permitting is made possible by the applicable agencies and payment is made to bring the power to the island.

Please feel free to contact me, and I will update you of any changes of the status.

Sincerely,

UTILITY BOARD-CITY OF KEY WEST
"CITY ELECTRIC SYSTEM"
Leo L. Carey, General Manager

Alex Tejeda
Customer Service Supervisor

AT/kp

cc:
L. Carey, General Manager
L. Thompson, Asst. General Mgr./Operation Mgr.
R. Rodriguez, Customer Service Manager
D. Finigan. Engineering Superintendent
file

PLAINTIFF'S EXHIBIT 4 1/18/02 DS

UTILITY BOARD OF THE CITY OF KEY WEST

POST OFFICE DRAWER 6100

KEY WEST, FLORIDA 33041-6100

TELEPHONE: (305) 295-1000

27

January 18, 1996

Ms. Antonia Gerli
Monroe County Planning Department
2798 Overseas Highway
Marathon, Florida 33050

RE: ELECTRICAL SERVICE - NO NAME KEY

Dear Ms. Gerli:

City Electric System (CES) is in the process of developing cost and preliminary design to provide electrical service to residences of No Name Key. In order to perform such design, existing and potential future electrical loads are required.

CES is seeking your assistance in identifying the following at a minimum:

- Available residential zoned lots
- Available commercial zoned lots
- Amount of governmental owned property
- Land use requirements and restrictions
- Current and future permitting limitations
- Anticipated annual approved permits for this area
- Zoning restrictions for electrical services

Any information available will be extremely helpful in performing our calculations.

Thanks again for your continual cooperation. If you would like to discuss in more detail, please call me at (305) 295-1042.

Sincerely,

UTILITY BOARD - CITY OF KEY WEST
"CITY ELECTRIC SYSTEM"

Dale Finigan
Engineering Superintendent

DF/ba

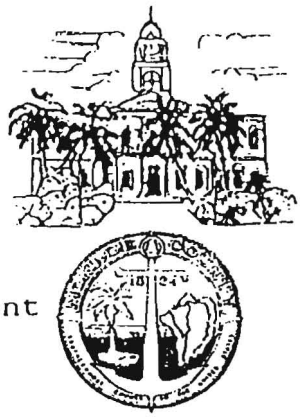
cc:
L. Carey, General Manager
L. Thompson, Asst. General Mgr./Operations Mgr.
R. Rodriguez, Customer Services Manager
R. Rewolinski, T&D Superintendent
P. Cates, Engineering Supervisor
A. Tejeda, Meter Services Supervisor
Barbara Damon - No Name Key
File:CUS:201

general/mc-nnky

PLAINTIFF'S EXHIBIT 8 7/18/02 DS

PENCAD-Baycomb, N. J.

COUNTY of MONROE
KEY WEST FLORIDA 33040



BOARD OF COUNTY COMMISSIONERS
MAYOR, Shirley Freeman, District 3
Mayor Pro Tem, Jack London, District 2
Wilhelmina Harvey, District 1
Mary Kay Reich, District 5
Keith Douglass, District 4

RECEIVED
FEB 20 1996
Ans'd

Engineering Department
5100 College Rd.
Key West, Fl 33040

February 15, 1996

Mr. Dale Finigan
Engineering Superintendent
Utility Board of the City of Key West
City Electric System
Post Office Drawer 6100
Key West, FL 33041-6100

cupf ✓ Leo Cane
✓ Larry
✓ Ray
✓ No name Key P
✓ File - No name Key

RE: Electrical Service
No Name Key Bridge

Dear Mr. Finigan:

We have reviewed your request for conceptual approval to provide electrical service to No Name Key by attaching conduits to the No Name Key bridge. While we feel confident that the technical details can be worked out this issue is a political one. Thus, said approval must come from the Monroe County Commission. Please contact the County Administrator's office one month in advance for scheduling an agenda item on the Commission meeting.

If you have any questions don't hesitate to call me.

Sincerely,

David S. Koppel, P.E.

DSK/jl
ESNNKB.DF

cc: James L. Roberts
Dent Pierce

PLAINTIFF'S EXHIBIT 11 1/18/02 DS

PASSED AND ADOPTED By the Planning Commission of Monroe County, Florida, at a regular meeting held on the 26th day of September 2001.

Chair David C. Ritz	absent
Vice Chair Denise Werling	YES
Commissioner P. Morgan Hill	YES
Commissioner Jerry Coleman	YES
Commissioner Alicia Putney	YES

PLANNING COMMISSION OF MONROE COUNTY, FLORIDA

BY _____
David C. Ritz, Chair

Signed this 7th day of Nov., 2001

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY _____
Attorney's Office

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY

Taxpayers for the Electrification of No Name Key, Incorporated, et. al.,	:	
Plaintiffs,	:	
v.	:	Circuit Court Case No. 99-819-CA-18
Monroe County, A Political Subdivision of the State of Florida and City Electric System,	:	
Defendants.	:	

MOTION OF DR. SNELL PUTNEY AND ALICIA ROEMMELE-PUTNEY FOR LEAVE TO INTERVENE

The above-named applicants hereby move for leave to intervene in this action pursuant to Section 1.230, Florida Rules of Civil Procedure and, in furtherance thereof, hereby state:

1. Dr. Snell and Alicia Roemmele-Putney, husband and wife (hereinafter, "Intervenors"), are owners of a single-family residence located at 2150 No Name Drive, No Name Key, Florida.

2. Intervenors 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 the Intervenors became negatively impacted by the noise and congestion that accompanied the development.

3. In response to these negative impacts, Intervenors sought another location to reside in the Florida Keys. Determined to avoid a repetition of their experience in Key Largo, Intervenors undertook an extensive yearlong search for a location that would possess and retain a tranquil character.

BOARD OF COUNTY COMMISSIONERS 36

AGENDA ITEM SUMMARY

Meeting Date: November 20, 2001 Division: Growth Management

Bulk Item: Yes ___ No X Department: Planning

AGENDA ITEM WORDING:
First of two public hearings to adopt an ordinance amending the Monroe County Land Development Regulations by adding Section 9.5-258 to establish a new Land Use Overlay District that will prohibit the extension or expansion of public utilities to units of the Coastal Barrier Resources System.

ITEM BACKGROUND:
The Coastal Barrier Resources Act (CBRA) of 1982 established the Coastal Barrier Resources System (CBRS) to restrict the federally subsidized development of coastal barrier areas. Policy 102.8.5 of the Year 2010 Comprehensive Plan states that Monroe County shall initiate efforts to discourage the extension of facilities and services to CBRS units. On September 26, 2001 the Planning Commission recommended approval of the amendment.

PREVIOUS REVELANT BOCC ACTION:
At the regular meeting held on Thursday, April 19, 2001 the Growth Management Staff was directed to create an overlay district to prohibit all properties on No Name Key from being served by public electricity and resolve issues surrounding the lawsuit brought against the County by Taxpayers for the Electrification of No Name Key, Inc.

CONTRACT/AGREEMENT CHANGES:
N/A

STAFF RECOMMENDATIONS:
Approval

TOTAL COST: N/A **BUDGETED:** Yes ___ No ___

COST TO COUNTY: N/A

REVENUE PRODUCING: Yes ___ No X **AMOUNT PER MONTH** ___ **Year** ___

APPROVED BY: County Atty X OMB/Purchasing N/A Risk Management N/A

DIVISION DIRECTOR APPROVAL: Timothy J. McGarry, AICP

DOCUMENTATION: Included X To Follow ___ Not Required ___

DISPOSITION: **AGENDA ITEM #** 1-13

Revised 2/27/01

The Coastal Barrier Resources Act

Harnessing the Power of Market Forces to Conserve America's Coasts and Save Taxpayers' Money

Executive Summary

Coastal barriers provide many free services that are foundations of a strong economy and healthy environment. They create the back-bay water quality needed to support productive and lucrative fisheries, offer habitat for migratory birds and many at-risk plants and animals, and are also popular vacation destinations and a boon to local economies. Every year, millions of visitors flock to coastal barriers along the Gulf and Atlantic—from Galveston, Texas to Portland, Maine—to enjoy their beautiful beaches, unique dunes and wetlands, and biological diversity.

These characteristics make coastal barriers attractive places to build. Developing them, however, is risky business. Coastal barriers are the first land forms tropical storms strike; they must bear the full force of storm surges and hurricane winds. The constant pounding of waves keeps coastal barriers in flux, losing sand in some places and gaining it in others. Moreover, chronic erosion is a real and growing problem especially in the southeast, rendering development that appeared safe years ago vulnerable to storms today.

Aware of the risk and value of coastal barriers, Congress adopted the Coastal Barrier Resources Act (CBRA) in 1982. The Act is the essence of free-market natural resource conservation; it in no way regulates how people can develop their land, but transfers the full cost from Federal taxpayers to the individuals who choose to build. People can develop, but taxpayers won't pay. By limiting Federal subsidies and letting the market work, the Act seeks to conserve coastal habitat, keep people out of harm's way, and reduce "wasteful" Federal spending to develop—and rebuild again and again—places where storms often strike and chronic erosion is common. This is a classic example of how the Federal government can encourage conservation by simply getting out of the way.

The Act restricted spending within the John H. Chafee Coastal Barrier Resources System, named after the late Senator who was instrumental in shaping the law and a life-long champion of natural resource conservation. In 1982, the System included about 590,000 acres of undeveloped coastal barrier habitat along the Atlantic and Gulf coasts. The undeveloped status of System lands was an important underpinning of the law. The idea was to help steer new construction away from risky, environmentally sensitive places where development was not yet found, not to hurt existing communities where serious commitments of time and money had already been made. Congress

Power

Continued from Page 1A

The commission agreed to align itself with residents Alicia Putney, Robert and Carol Barber, and Elizabeth and Anthony Harlacher, who oppose commercial power and appealed to the 3rd District Court of Appeal on Feb. 6.

"We voted to not allow them to hook up to power, so why wouldn't we align ourselves with the appellants?" Commissioner Sylvia Murphy said.

"We are staying the course by joining the appeal," Commissioner Kim Wigington added.

In his Feb. 1 ruling, the judge said power issues are the sole jurisdiction of the Public Service Commission, but the county and residents argue it's a local issue, because under county code, the county is not required to issue the building permits needed to connect the lines from the power poles to the homes.

The county's comprehensive plan discourages public utilities for that area, saying it could affect wildlife and their habitat, particularly in the National Key Deer Refuge.

"If we don't support our own comp plan, what are we doing?" Commissioner Heather Carruthers asked.

The judge's ruling agreed with No Name Key resident Bob Reynolds, a power proponent who had asked Audlin to defer to the Public Service Commission, after the county had asked him to determine whether its policies were legal or if the utility was required to provide power.

Wastewater

The commission also approved a resolution formally asking the state Legislature for $50 million for Keys wastewater projects. The money is part of the $200 million the Legislature approved for Keys sewer projects in 2007, but never allocated.

County officials have taken several trips to Tallahassee in the past month to lobby House members to include the $50 million in the House budget proposal. State Rep. Denise Grimsley, chairwoman of the House Appropriations Committee, has included it in the House's proposed budget, said Florida Keys Rep. Ron Saunders.

The Senate did not include the allocation in its budget, County Administrator Roman Gastesi said, adding he remained confident the Keys could obtain the money.

"It's not over yet," Gastesi said. "We will still work it."

The Keys are under a state mandate to have all properties connected to advanced wastewater systems by December 2015, but Keys governments do not have the funds to complete the task.

In November, the county plans to ask voters to approve a referendum to extend a one-penny sales tax that is set to expire in 2018. The county wants voters to extend the revenue stream by another 12 years to 15 years, which could generate an additional $50 million to $60 million for wastewater projects.

Water utility board

The commission discussed placing a referendum on the November ballot asking voters if they want the Florida Keys Aqueduct Authority board to be changed from a governor-appointed board to an elected body.

See POWER, Page 5A

BOCC joins power appeal

Wants local judge to rule on No Name

BY TIMOTHY O'HARA
Citizen Staff

Monroe County will join No Name Key residents' appeal of a judge's ruling allowing the state agency that regulates utility companies to decide whether commercial power can be brought to the remote island.

The County Commission unanimously agreed Wednesday to join the appeal of circuit Judge David Audlin's ruling that the Public Service Commission, not himself, will decide if it is legal for the county to allow Keys Energy Services to provide power to the 43-home island, which relies on the sun and generators for power.

See POWER, Page 3A

Key•Little, Middle & Big Torch Key•Ramrod Key•Summerland Key•Cudjoe Key•Sugarloaf Key

Barometer

FEBRUARY 17, 2012 FREE

BOCC backs No Name appeal

BY STEVE ESTES

News-Barometer Editor

The Monroe Board of County Commissioners Wednesday decided to throw its support behind a group appealing a court decision claiming that the Public Service Commission has sole jurisdiction to decide commercial power issues in Coastal Barrier Resource areas in the county.

The county last year filed a declaratory action with the circuit court seeking to get clarification on several issues surrounding the possibility of bringing commercial power to No Name Key.

Commissioners wanted to clarify their rights and obligations in the more-than-two-decade-old

See APPEAL on Page 3

APPEAL

from Page 1

battle. The questions the BOCC wanted the court to answer included:

Whether the county had to allow public power grids to cross conservation lands that are publically owned

Whether the county had to allow the extension of commercial power into CBRS units

Whether the county had the ability to deny building permits to hook into power lines if they were run because the county's comprehensive land use plan "discourages" the extension of public utilities into CBRS units and its land development regulations prohibit that same extension

No Name Key property owner Bob Reynolds, who first applied for commercial power to his No Name Key home, asked that Circuit Judge David Audlin dismiss the county's action, claiming that sole jurisdiction for the extension of commercial power lines belonged to the PSC.

Following a Jan. 26 hearing, Audlin did indeed dismiss the county's case, claiming that the PSC did have jurisdiction over the matter.

But that alone, said Assistant County Attorney Bob Shillinger, didn't answer the questions for the county because the judge didn't invalidate the county's ordinance prohibiting the issuance of building permits for residents to hook up to power lines if they were run in the public right-of-way.

Just days after Audlin's ruling, five No Name Key residents filed an appeal of the ruling with the Third District Court of Appeals.

County Attorney Suzanne Hutton presented the BOCC with several options in the case.

She said that the BOCC could support Audlin's ruling that the PSC had sole jurisdiction in the matter and take the questions county officials have to the PSC for determination.

"Do you want us to file a brief with the DCA that it was improper to dismiss the action based on jurisdiction?" asked Hutton.

During the oral arguments, county legal staff had argued that the PSC did not have sole jurisdiction to decide county land use rules on public infrastructure enhancements.

Hutton said she would recommend that the county not take a different tack from the property owners for fear that they would have one ruling from the court and a different one from the PSC, placing the county in the position to defend a position.

"The reason we filed the action was because we didn't know what our rights and obligations are on this issue," said Hutton. "And we still don't."

"If the appeal is upheld, it could set the case up to go to the Florida Supreme Court, if it will accept," said Hutton. "Or the appeals court could send the case back to Judge Audlin to render a decision based on the parameters of the appeal court's ruling."

"That one could go either way," she said. "But if the appeal is lost, we will find ourselves in front of the PSC arguing the validity of our land use regulations."

The county argued in January that it should maintain jurisdiction where local land use regulations are involved.

"We voted unanimously last year not to allow the use of our conservation lands for power lines on No Name Key," said Commissioner Sylvia Murphy. "And we voted not to change our comprehensive plan to remove the prohibition against commercial power in a CBRS."

"Based on that history, I think we must align ourselves with those appealing the dismissal," Murphy added.

The other four commissioners agreed with her position and voted to file briefs supporting the appeal Audlin's ruling to the DCA.

"In an earlier time, there were Stock Island sewer issues that were argued in front of the PSC," said Commissioner Kim Wigington. "It was my opinion that the PSC was stymied by our local land use ordinances in that instance. I'm not an attorney, but I don't believe the PSC has jurisdiction over our local LDRs."

"And if we don't support our own comprehensive plan, why are we sitting here?" said Commissioner Heather Carruthers.

Courts could silence No Name Key debate

Editorial

Since 1998, a group of No Name Key property owners have been trying to bring commercial electricity to their island. This ever-increasing group of homeowners has seen the decision on whether they can connect to the commercial grid bounced from the Monroe County Commission to the 16th Circuit Court to the 3rd District Court of Appeal and, most recently, to the Florida Public Services Commission (PSC).

Originally, the county attorney advised the County Commission to deny commercial hookup because it was in conflict with the county's comprehensive land-use plan, which discourages development on coastal barrier islands. In this case and the eventual appeal, the courts decided that commercial electricity did constitute development, and was denied.

Later, a state mandate requiring countywide wastewater treatment brought commercial electricity back to the table — electrical power is needed for sewage treatment. While the sewer issue was placed on the back burner, the U.S. Fish & Wildlife Service ruled that bringing commercial electricity to No Name Key would not adversely affect endangered species or their habitat on the barrier island.

More recently a group of about 30 homeowners entered into an agreement with Keys Energy Services to install two test poles on the island and run electricity to all the homes whose owners requested it. Keys Energy collected the funds to handle the preliminary work, and about $450,000 to pay for the remainder of the project. But after the test poles were installed, the County Commission requested that work stop until an opinion could be obtained from the 16th Circuit Court to determine the legality of continuing with the electric connection.

Last week, Circuit Court Judge David Audlin ruled that the PSC had jurisdiction over the issue rather than the courts. Another group of No Name Key homeowners filed an appeal with the 3rd District Court of Appeal to bring the case back to the circuit court, and it was joined in that appeal this week by the County Commission.

Whew. After 14-plus years of scrutiny and debate, it seems time that *someone* made a decision. But don't hold your breath just yet.

If the PSC rules on the issue, it has no jurisdiction over the County Commission, so the land-use question likely would have to go back before the circuit court, so that brings it back to Audlin's courtroom. If the appellate court sends it back to the circuit court, then it's back in Audlin's courtroom in that scenario.

One observer recently noted that any decision other than to connect is a temporary decision, in that some property owners will keep trying until they are on the grid. We're not quite so cynical. A definitive yes or no from the courts would go a long way to bringing the debate to closure. We hope it comes sooner than later.

— *The Citizen*

March 3, 2012 ◆ Vol. 136 ◆ No. 63 ◆ 16 pages 50 Cents

Utility to decide No Name Key issue

Board to vote Tuesday on whether to connect barrier island to the grid

BY TIMOTHY O'HARA
Citizen Staff

The board that oversees Keys Energy Services is expected to decide Tuesday night whether the utility will connect No Name Key to the commercial power grid, a prospect that has generated heated debate among residents and has found no resolution in county government or the courts.

At the Key West Utility Board's Feb. 22 meeting, an attorney and several No Name Key homeowners argued that the board has the authority to bring power to the barrier island, and that county land-use rules have no bearing on the utility. Residents on the other side of the issue believe the utility must abide by the county's comprehensive land-use plan, which discourages extending utilities to the sparsely populated island within the National Key Deer Refuge.

The issue has split the community of 43 homes, which rely on the sun and generators for power.

County attorneys and planners said that even if Keys Energy Services installs power

See POWER, Page 3A

Power

Continued from Page 1A

poles and power lines to No Name Key, the county could refuse to issue permits to connect power lines to homes. There also is uncertainty over whether lines can be run across county easements.

Circuit Judge David Audlin ruled that the state Public Service Commission, not the court, should rule on whether the county can deny commercial power to No Name Key residents. That ruling is currently being challenged by Monroe County and a group of No Name residents.

Mary Frances Bakke, a resident who represents the No Name Key Homeowners Association, doesn't believe Monroe County can deny the residents permits for public utilities. She, too, thinks the Public Service Commission has jurisdiction.

Attorney Greg Oropeza also has argued that the county cannot deny building permits for hookups. The permit, he says, is no different from those issued for homes connecting to solar panels or generators.

The board will vote on a resolution to "approve electric extension agreement (Line Extension #746) with No Name Key Property Owners Association, Inc.," according to the agenda for Tuesday's meeting.

"I am encouraging people to come to Tuesday's meetings and tell us how they feel," said board member Barry Barroso. "I want to hear from as many as members of the public as possible."

Barroso said he has not made up his mind, but that the issue raises questions about the core functions of the utility, including providing power to residents.

In a statement, the utility states it's "Growing Greener Every Day."

"These are all issues that we are going to have to address," he said.

Fellow board member Charlie Bradford said the utility is required by state statute to provide power to all residents from Key West to the Seven Mile Bridge.

Bradford asserts that providing power does not equal development, even though the restriction on utilities on No Name Key was put in place to curb development.

Bradford noted that if No Name Key was connected to the grid, residents could sell excess solar power to the utility.

The U.S. Fish & Wildlife Service issued an opinion stating that power lines would not adversely affect endangered species if some basic protocols were followed.

The Utility Board will meet at 5 p.m. Tuesday at the board's headquarters.