Eric Fryson

From: Rhonda Dulgar <rhonda@gbwlegal.com>
Sent: Friday, April 19, 2013 4:06 PM
To: Filings@psc.state.fl.us; Bart@bartonsmithpl.com; dale.finigan@keysenergy.com; Shillinger-Bob@MonroeCounty-FL.Gov; dedenkwf@bellsouth.net; tobinlaw@terranova.net; tobinlaw2@gmail.com; Schef Wright
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a. Person responsible for this electronic filing:
Robert Scheffel Wright
Gardner, Bist, Wiener, Wadsworth, Bowden,
Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308
schef@gbwlegal.com
(850) 385-0070

b. 120054-EM
In Re: Complaint of Robert D. Reynolds and Julianne C. Reynolds Against Utility Board of the City of Key West, Florida Regarding Extending Commercial Electrical Transmission Lines to each Property Owner of No Name Key, Florida.

c. Document being filed on behalf of the Monroe County, Florida.

d. There are a total of 26 pages.

e. The document attached for electronic filing is Monroe County's Brief.
(see attached file: 120054.MonroeCountyBrief.4-19-13.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
Secretary to Jay LaVia & Schef Wright
Gardner, Bist, Wiener, Wadsworth, Bowden,
Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308
Phone: 850-385-0070
Fax: 850-385-5416
Email: rhonda@gbwlegal.com
http://www.gbwlegal.com/

GBW Gardner, Bist, Wiener, Wadsworth, Bowden, Bush, Dee, LaVia & Wright, P.A. ATTORNEYS AT LAW

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Robert D. Reynolds and Julianne C. Reynolds Against Utility Board of the City of Key West, Florida Regarding Extending Commercial Electrical Transmission Lines to each Property Owner of No Name Key, Florida.	)	DOCKET NO. 120054-EM FILED: APRIL 19, 2013

MONROE COUNTY'S BRIEF

Monroe County, Florida, pursuant to Order No. PSC-13-0141-EM-PCO, and further based on discussions with the Commission Staff and parties in issue identification conferences, hereby files its Brief addressing the specific issues set forth in the above-mentioned Order as well as several closely related issues.

PRELIMINARY STATEMENT

In this Brief, Monroe County is referred to either as "Monroe County" or simply as the "County." Keys Electric Services is referred to as "KES." Florida Keys Electric Cooperative is referred to as "FKEC." The Territorial Agreement between KES and FKEC, dated June 17, 1991, is referred to as the "Territorial Agreement" or simply as the "Agreement." Commission Order No. 25127, issued in Docket No. 910765-EU and which approved the Territorial Agreement, is referred to as the "Order Approving Territorial Agreement." The complainants are referred to as the "Reynoldses." The Florida Public Service Commission is referred to as the "PSC" or the "Commission." All references to the Florida Statutes (abbreviated as "F.S.") are to the 2012 edition. Other terms are defined within the body of the County's Brief.

PROCEDURAL, FACTUAL, AND HISTORICAL BACKGROUND

No Name Key is a small island within the Florida Keys, an Area of Critical State Concern within the meaning of Section 380.05, F.S., and specifically subject to protection under the Florida Keys Protection Act, Section 380.0552, F.S. The island is ecologically significant and is critical habitat for the federally endangered Key Deer; parts of the island lie within the Key Deer Refuge managed by the United States Fish & Wildlife Service (USFWS). USFWS also regulates development on the island pursuant to the Endangered Species Act. No Name Key was

developed in the 1950s and 1960s without centrally provided utilities, and all property owners on the Key have been aware of this for as long as they have owned their properties, in some cases for more than half a century.

Monroe County, a political subdivision of the State of Florida, is responsible for enforcing State and local laws. Pursuant to the requirements of Section 163.3177, F.S., Monroe County adopted its 2010 Comprehensive Plan ("Comp Plan") in 1996. Rule 28-20.100, F.A.C. The Comp Plan was amended by the County and approved by the Department of Community Affairs ("DCA")[1] in 1997.[2] Id. Consistent with Chapter 380 generally and the Florida Keys Protection Act specifically, the 2010 Comp Plan includes specific provisions to protect the Keys, including No Name Key. The County has enacted ordinances and promulgated regulations pursuant to the above-cited provisions of Chapter 380 and implementing the Comp Plan, including provisions that prohibit the extension of public utilities, including electric lines, to or through any lands designated as a unit of the Federal Coastal Barrier Resources System ("CBRS") and the County's CBRS Overlay District, in which No Name Key is located. See Monroe County Code § 130-122.[3]

As noted above, the County adopted its Comp Plan in 1996, and that Plan was approved by the DCA. In 1999, some pro-electrification residents of No Name Key, in the name of a corporation formed for the purpose, sued Monroe County seeking, *inter alia*, declaratory relief that they had a statutory or property right to have electric power extended to their homes. Taxpayers for the Electrification of No Name Key, Inc. v. Monroe County, Case No. 99-819-CA-

[1] The Department of Community Affairs is now known as the Department of Economic Opportunity. This brief shall refer to the agency as the DCA.

[2] Amended pursuant to DCA Rule 9J-14.022 on January 4, 1996; adopted by Rule 28-20.100, F.A.C., Part I, January 2, 1996 and Part II, July 14, 1997.

[3] The pertinent section of MCC § 130-122(b) reads: "Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity, and telephone and cable."

19, Final Summary Judgment, slip op. (Circuit Court of the 16th Judicial Circuit, July 11, 2002). The plaintiffs' claims were based on equal protection grounds and assertions of vested rights. They challenged the County Planning Commission's Resolution No. P17-99, which upheld the Planning Department's 1998 decision that the placement of electrical power lines on No Name Key would be inconsistent with Chapters 163 and 380, F.S., as well as with the Monroe County Year 2010 Comprehensive Plan ("Comp Plan").[4] In 2002, the Circuit Court denied the requested relief, holding, among other things, that the plaintiff property owners did not have either the statutory or property rights asserted, that Section 366.03, F.S., does not apply to Defendants Monroe County or KES, and that, even it if did, Section 366.03 would not provide a right to commercial electric service if such service would be inconsistent with Chapters 163 and 380 or the Monroe County Comp Plan. Id. at 3, para. 11.

In 2008, the Monroe County Commission adopted by a 3-2 vote Ordinance No. 020-2008, which would have allowed for the provision of utilities to developed properties located within the CBRS Overlay District, including No Name Key. However, pursuant to the DCA's statutory mandate "to approve or reject any land development regulations ("LDRs") that are enacted, amended, or rescinded by any local government in the Florida Keys Area of Critical State Concern," the DCA reviewed Ordinance No. 020-2008 and, having determined that it was inconsistent with several Principles for Guiding Development set forth in the Florida Keys Protection Act, issued a Final Order in which it REJECTED the ordinance. In Re: Monroe County Land Development Regulations Adopted by Monroe County Ordinance No. 020-2008, DCA Final Order No. DCA08-OR-352 (Dec. 24, 2008). Consistent with the DCA's Order, the County subsequently adopted its Ordinance No. 003-2009, rescinding Order No. 020-2008, thereby leaving the CBRS Overlay District in place and the prohibition of utility facilities in the

[4] Section 163.3184(5), F.S., provides that an affected person has the right to petition for an administrative hearing to challenge the DCA's decision concerning compliance with the Growth Management Act. The Reynoldses could have, but did not, pursue a timely challenge to the Comp Plan and LDRs.

CBRS District in effect.

In 2011, Monroe County filed a complaint for declaratory relief regarding its ability to enforce certain of its ordinances and regulations; the trial court dismissed the County's complaint, holding that the Commission has the exclusive jurisdiction to resolve the claims raised by the parties to that case. Monroe County v. Utility Board of the City of Key West d/b/a Keys Energy Services, Case No. 2011-CA-342-K, Order of Dismissal with Prejudice, slip op. (Circuit Court of the 16th Judicial Circuit in and for Monroe County, Jan. 30, 2012).

Another party to the case, Alicia Roemmele-Putney, appealed the trial court's decision to the Third District Court of Appeal, and the County participated in oral argument before that Court. On February 6, 2013, the Third District issued its opinion affirming the trial court's dismissal, stating, among other things, the following:

> Concluding that the Florida Public Service Commission has the exclusive jurisdiction to decide the issues raised by the appellants, we affirm the circuit court judgment dismissing the complaint with prejudice for lack of jurisdiction.
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> * * *
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> Any claim by the County or by the appellant homeowners that the PSC does not have jurisdiction may be raised before the PSC and, if unsuccessful there, by direct appeal to the Florida Supreme Court.
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> * * *
>
> The statutory authority granted to the PSC would be eviscerated if initially subject to local governmental regulation and circuit court injunctions of the kind sought by Monroe County in the case at hand. The appellants do retain, however, the right to seek relief before the PSC, and we express no opinion as to the merits of any such claims by the appellants in that forum.

(Emphasis supplied.)

This docket was initiated on March 5, 2012 by the filing of the Reynoldses' original complaint. Monroe County petitioned to intervene on April 23, 2012, and its petition was granted by Commission Order No. PSC-12-0247-PCO-EM, issued on May 22, 2012. Because of the pending court litigation, this docket was held in abeyance while the court proceedings continued. On March 13 and March 20, 2013, respectively, the Reynoldses filed their Amended

Complaint and Second Amended Complaint (referred to herein as the "Complaint").[5] On April 1, Monroe County filed its Motion to Dismiss the Reynoldses' Complaint, which is pending.

SUMMARY OF ARGUMENT

The Commission does not have statutory authority to order KES to provide service to the Reynoldses. There is simply no provision in Chapter 366, or anywhere else in the Florida Statutes, that imposes an obligation to serve on an "electric utility" such as KES or that expressly grants the power to the PSC to order an "electric utility" to serve.[6] The Florida Supreme Court has held, and the PSC has itself held and argued to the Supreme Court,

> that this Commission's powers and duties are only those conferred expressly or impliedly by statute, and any reasonable doubt as to the existence of a particular power compels us to resolve that doubt against the exercise of such jurisdiction.[7]

Following its own precedent and that of the Court, the PSC should thus dismiss the Reynoldses' Complaint, because there is no language in Chapter 366 that even hints that the PSC has the power to take such action. Further, notwithstanding the Reynoldses' numerous references to other laws, which it styles as KES's "enabling legislation," those laws are wholly outside the PSC's jurisdiction and none provides any basis for the PSC to order KES to provide service.

The Territorial Agreement neither affords any basis for the Reynoldses' requested relief, nor any basis for their standing to pursue their Complaint before the PSC. That Agreement is a

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[5] The Reynoldses also intend to file yet another amended complaint after the parties' briefs are filed. The County understands that this new amended complaint will only amend certain of the Reynoldses' prayers for relief in light of the County's pending Motion to Strike. If the new complaint goes beyond the scope represented by the Reynoldses' counsel, the County reserves its rights to file additional briefing in response.

[6] This absence is conspicuous in light of Section 366.03, Florida Statutes, which imposes an affirmative obligation to serve on "public utilities," but not on "electric utilities." Following the statutory construction principle of *expressio unius est exclusio alterius*, the PSC should recognize that the Legislature did not intend to confer any such obligation on electric utilities.

[7] Complaint and Petition of Lee County Electric Cooperative vs. Seminole Electric Cooperative, Inc., Order Dismissing Complaint and Petition for Lack of Subject Matter Jurisdiction, Order No. PSC-01-0217-FOF-EI at 9 (Fla. Pub. Serv. Comm'n, January 23, 2001), *affirmed sub nom.* Lee County Elec. Coop., Inc. v. Jacobs, 820 So. 2d 297, 300 (Fla. 2001).

contract that is exclusively between KES and FKEC.[8] Moreover, at the outset, it is clear that there is no current justiciable issue between KES and FKEC under the Agreement, and it is equally clear that there is no territorial dispute for the Commission to resolve. KES has clearly indicated its willingness to serve. The argument that certain surplus language in the Territorial Agreement, asserting the existence of a State policy favoring electrification, vests the PSC with the power to order KES to serve is misplaced because there is simply no jurisdictional basis in Chapter 366, F.S., for the PSC to order any of the relief requested by the Reynoldses, including specifically their request that the PSC order KES to provide service to them, and because, as the Florida Supreme Court has held, "Parties to a contract, however, can never confer jurisdiction." United Tel. Co. v. Public Service Comm'n, 496 So. 2d 116, 118 (Fla. 1986).

The suggestion that the Commission's jurisdiction in the instant circumstances is preemptive is likewise misplaced. The PSC's jurisdiction as to matters within its jurisdiction is preemptive, to be sure, but its jurisdiction extends only as far as it extends. In this instance, Monroe County is not, in any way, seeking to usurp the PSC's jurisdiction: the County is not attempting to regulate the service territories of KES or FKEC, or any other matter within the PSC's jurisdiction. Rather, the County is attempting to protect the Florida Keys, an Area of Critical State Concern, from the adverse impacts of development and to protect "the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource," Section 380.5552(7)(n), F.S., by enforcing its Comp Plan and associated ordinances and LDRs, validly promulgated pursuant to Chapters 163 and 380, F.S., and specifically approved by the DCA. Particularly where, as here, a local government's regulations are directed toward protecting the public health, safety, and welfare, any preemption

[8] The Agreement, as approved by the PSC, expressly states that it is not "intended," and not to "be construed, to confer upon or give to any person other than the Parties hereto, . . . any right, remedy, or claim under or by reason of this Agreement, . . . ; and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of the Parties or their respective successors or assigns. In re: Joint Petition of Florida Keys Electric Cooperative Association, Inc. and the Utility Board of the City of Key West for Approval of a Territorial Agreement, PSC Docket No. 910765-EU, FPSC Order No. 25127, Order Approving Territorial Agreement (Fla. Pub. Serv. Comm'n, Sept. 27, 1991) at 13 (emphasis supplied).

must be clearly expressed. M & H Profit, Inc. v. City of Panama City, 28 So. 3d 71 (Fla. 1st DCA, 2009).

Further, the suggestion that the County's enforcement of its Comp Plan and LDRs might impair the PSC's ability to actively supervise utilities subject to its regulatory jurisdiction for the purpose of preventing anticompetitive behavior and preserving the state action immunity that PSC regulation confers is misplaced. Monroe County's growth management regulations simply pose no interference with the PSC's ability to regulate any anti-competitive behavior by any utility. In this case, KES is willing to serve, which establishes on its face that there is no anti-competitive behavior requiring the PSC's, or any other entity's, attention; KES is simply abiding by the law. Finally, the PSC's own rules expressly contemplate that a public utility may refuse to provide service where doing so would involve "violation of any state or municipal law or regulation governing electric service." Rule 25-105(5)(a), F.A.C. This is exactly what is at issue here: valid local regulations that implement valid state laws and validly approved pursuant to those laws, which prohibit all (not just electric) utility facilities in designated areas of the Florida Keys, an Area of Critical State Concern, pursuant to Chapter 163, F.S., and the Florida Keys Protection Act, Section 380.0552, F.S. It is obvious on its face that the PSC would not have adopted a rule that would have vitiated its ability to supervise utilities for antitrust purposes, and the cited PSC rule thus demonstrates that compliance with a valid state or local government law governing electric service cannot impair the PSC's ability to fulfill its antitrust law obligations.

In the end, the PSC should respect the County's valid Comp Plan and LDRs, and it should respect the DCA's valid approvals of the Comp Plan and LDRs pursuant to Chapter 163 and the Florida Keys Protection Act. The PSC should recognize the Reynoldses' latest foray, this time to the PSC, as just another attempt to circumvent the lawful requirements of Monroe County's Comp Plan and the County's associated ordinances and LDRs, and the PSC should reject this attempt and dismiss their Complaint.

ARGUMENT

The Order Establishing Briefing Schedule identified the following specific issues:

1. Does the Commission have jurisdiction to resolve the Reynolds' complaint?

2. Are the Reynolds and No Name Key property owners entitled to receive power from Keys Energy under the terms of the Commission's Order No. 25127 approving the 1991 territorial agreement between Keys Energy and the Florida Keys Electric Cooperative?

As explained in the body of Monroe County's Brief, the answer to both these questions is unequivocally "No." Because several other legal theories have been advanced by both the Reynoldses and the PSC in its *amicus curiae* briefs, the County's Brief addresses those issues as well, all the while staying on point in addressing the questions identified by the Prehearing Officer in the Order Establishing Briefing Schedule.

I. The Commission Has No Jurisdiction to Resolve the Reynoldses' Complaint, Because the Commission Has No Jurisdiction To Order KES to Provide Service to Customers on No Name Key.

No provision of Chapter 366, nor any other provision of the Florida Statutes, imposes an obligation to serve on electric utilities, confers a right to service on would-be customers of electric utilities, or grants the PSC the power to order electric utilities to serve. Because the powers of the PSC are only those conferred by statute, and because there is no such power here, the PSC must decline to entertain the Reynoldses' Complaint.

A. The Commission's Powers and Duties Are Only Those Conferred by Statute, and Any Reasonable Doubt as to the Existence of a Particular Power Must Be Resolved Against the Exercise of Such Jurisdiction.

The PSC's jurisdiction over electric utilities is as set forth in Chapter 366, F.S. Specifically, Section 366.04(2)(a)-(f), F.S., enumerates six areas where the PSC has jurisdiction and power with respect to electric utilities: to prescribe systems and classifications of accounts, to prescribe a rate structure, to require electric power conservation and reliability within a coordinated grid, to approve territorial agreements, to resolve territorial disputes, and to prescribe and require the filing of reasonably necessary reports and data. Nowhere in this section, nor in any other section of Chapter 366, is there either a grant of power to the PSC to order an electric

utility to serve, and nowhere has the Legislature imposed an affirmative obligation to serve on electric utilities. In sharp contrast, in Section 366.03, F.S., the Legislature has imposed an affirmative obligation to serve on "public utilities," as defined in Section 366.02(1), F.S., but municipal utilities, such as KES, are expressly excluded from that definition and thus from that obligation to serve.

As the Florida Supreme Court has held, and as the PSC itself has held and argued to the Court,

> this Commission's powers and duties are only those conferred expressly or impliedly by statute, and any reasonable doubt as to the existence of a particular power compels us to resolve that doubt against the exercise of such jurisdiction.

Lee County Elec. Coop. v. Seminole Elec. Coop., PSC-01-0217-FOF-EI at 9.[9] The Commission made the same argument to the Court in its Answer Brief filed in the appeal of its Lee County Electric Coop. v. Seminole order (at page 16), and the Court adopted exactly this argument in affirming the PSC's order on appeal. Lee County Elec. Coop., 820 So. 2d at 300. This is the correct statement of the law, and applying it in this case, the PSC must reject and dismiss the Reynoldses' Complaint.

It is worth noting that, unlike the instant case, Lee County Elec. Coop. presented a plausibly close call in that it involved the complainant (Lee County Electric Cooperative, a utility that purchased at wholesale from another electric utility, Seminole Electric Cooperative) asserting that the PSC had jurisdiction over the "rate structure" of an "electric utility," which is squarely within the PSC's jurisdiction under Section 366.04(2)(b), F.S. Notwithstanding the fact that the case involved Lee County Electric Coop's complaint that the rate structure of Seminole Electric, an electric utility was unfair, the PSC dismissed Lee County Coop's complaint because it held that there was doubt as to whether it actually had the jurisdiction to regulate the rate

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[9] Following its long history of applicable precedent, the Florida Supreme Court affirmed the PSC's order, applying exactly this principle. Lee County Elec. Coop. v. Jacobs, 820 So. 2d at 300; see also, City of Cape Coral v. GAC Utilities, Inc., of Florida, 281 So. 2d 493, 496 (Fla. 1973); Radio Tel. Communications, Inc. v. Southeastern Tel. Co., 170 So. 2d 577, 582 (Fla. 1964); Southern Armored Service, Inc. Mason, 167 So. 2d 848, 850 (Fla. 1964).

structure of a wholesale-serving electric utility. The instant case is not a close call: there is simply no language in any provision of Florida law that even suggests that the PSC has the jurisdiction to order KES to serve.

B. No Other Statutory Provisions Cited by the Reynoldses Either Imposes An Affirmative Obligation To Serve on KES or Confers on the PSC the Power to Order KES to Serve.

The Reynoldses' claimed bases for relief in the "laws of the State of Florida" are grounded almost entirely on two separate legislative acts, Chapter 163, Florida Statutes, and Chapter 69-1191, Laws of Florida. Neither of these laws imposes either an affirmative obligation to serve on KES or confers a right to service from KES on any would-be customer. Moreover, neither of these laws is part of the Public Service Commission's statutes. In fact, no Florida statute, law or rule imposes such an obligation on KES.

1. Chapter 163, F.S., Neither Confers Jurisdiction Over the Reynoldses' Complaint on the Commission nor Imposes an Obligation to Serve on KES.

Chapter 163, and specifically Section 163.01(15), F.S., gives entities such as KES the permissive authority to "plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend, or otherwise participate jointly in one or more electric projects" consistent with terms specified in that statute. Neither this provision, nor any other provision of Chapter 163, however, imposes any affirmative obligation to serve on KES or on any other utility. Moreover, there are only two references to the Commission in Chapter 163, neither of which even hints at giving the PSC the jurisdiction that the Reynoldses wish it had. The two references are in Section 163.01(7)(g)1., F.S., which exempts certain legal entities formed for the purpose of constructing or operating water and wastewater facilities from PSC regulation, and Section 163.3209, F.S., which requires local government plans for vegetation management to be consistent with the National Electrical Safety Code. Therefore, no provision of Chapter 163, F.S., affords any statutory basis for either the Reynoldses' requested relief or for their standing to bring any action before the PSC. No provision of Chapter 163 imposes any obligation to serve on KES (or on any other utility, for that matter), and no provision of Chapter

163 confers any jurisdiction on the PSC at all.

2. Chapter 69-1191, Laws of Florida, Neither Confers Jurisdiction Over The Reynoldses' Complaint On the Commission Nor Imposes an Obligation to Serve on KES.

The Reynoldses' other citations to the "State of Florida's enabling legislation" (see, e.g., Paragraphs 45, 46, and 48 of the Complaint) are to Chapter 69-1191, Laws of Florida, which authorized the Utility Board of the City of Key West and later gave it the authority to use the trade name of "Keys Energy Services." This legislation gives KES the following powers:

> The Utility Board of the City of Key West, Florida shall have the full, complete and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the City of Key West, Florida, in Monroe County, Florida, the electric public utility owned by said city, including the maintenance, operation, extension and improvement thereof, and including all lines, poles, wires, pipes, mains and all additions to and extensions of the same, and all buildings, stations, substations, machinery, appliances, land and property, real, personal and mixed, used or intended for use in or in connection with said electric public utility, and the Utility Board shall have all of the powers in connection with such other public utilities hereafter constructed or acquired by said board that are granted by this act to said board with respect to the electric public utility now owned by said city.

This law does indeed give KES the permissive power and authority to operate its electric system, presumably to the fullest extent allowed by and consistent with other applicable law. No provision of Chapter 69-1191, however, imposes an obligation to serve on KES, and no provision of this law confers a right to service on any would-be customer of KES. Moreover, as applicable to any possible claim that this law affords any basis for the relief requested by the Reynoldses, Chapter 69-1191 is a "special act" wholly outside this PSC's jurisdiction. Indeed, Chapter 69-1191 makes no mention of the Commission at all. Therefore, this law affords no statutory basis for the Reynoldses' requested relief, or for their standing to bring any action before the PSC.

C. The Commission's "Grid Bill" Authority Does Not Impose Any Obligation to Serve on KES, Does Not Confer Any Right to Service on Potential Customers of KES, and Does Not Confer Any Power on the PSC to Order KES to Provide Service.

Finally, although the Reynoldses fail to cite to the specific provision of the Commission's

statutes, they do make a tangential reference to the Commission's general "Grid Bill" authority and "jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida." (See, e.g., Paragraphs 18 and 42 of the Complaint. The relevant provision is found at Section 366.04(5), F.S.) To the extent that they attempt to ground their request for relief in this statutory provision, however, such attempt is at best over-reaching and misplaced, for the simple reason that the referenced statute does not address any utility's obligation to serve or any customer's right to service; if the Legislature wanted to impose an affirmative obligation to serve on "electric utilities" such as KES and FKEC, it would have been extremely easy for the Legislature to do so,[10] and had that been the Legislature's intent, it presumably have done so.[11]

In summary, notwithstanding the Reynoldses' assertion that "KES . . . has an affirmative obligation to extend electrical lines to any party requesting such an extension" (Paragraph 46), they have failed to cite to any statutory provision that articulates any such "affirmative obligation." Accordingly, the Reynoldses' Complaint should be dismissed, with prejudice.

II. The Territorial Agreement Between KES and FKEC Provides No Basis and No Authority for the PSC to Order KES to Provide Service to No Name Key.

The Reynoldses' Complaint is based on the Territorial Agreement between KES and FKEC. (See Complaint at para. 42: "The present dispute arises under the Territorial Agreement's terms of service which require KES to extend and maintain power to all property owners within the Territorial Service Area." See also the numerous additional references in paragraphs 7, 12, 13, 16, 17, 18, 44, 45, and 46 of the Complaint.) While some of their assertions are true, as far as they go – e.g., the PSC surely does have jurisdiction to enforce territorial agreements as between

[10] For example, the Legislature could have accomplished this purpose simply by using the term "electric utility" instead of the defined term "public utility" in Section 366.03, F. S.

[11] Although not directly relevant to the issues presented here, the County does not concede that, even if the utility in question were a public utility, the obligation to serve provisions of Section 366.03, F.S., would be superior to the County's valid growth management ordinances, which were promulgated pursuant to mandates of other provisions of the Florida Statutes and approved by a sister state agency, DCA, in accordance with the terms of, and in furtherance of the purposes of, those statutes.

the utility parties to such agreements – neither their claims nor the Territorial Agreement provide any basis for the relief that the Reynoldses seek.

In fact, that Agreement, as approved by the PSC, expressly provides that it does not confer or give any benefits to any person other than KES and FKEC. Specifically, Section 7.2 of the Territorial Agreement states:

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

In re: Joint Petition of Florida Keys Electric Cooperative Association, Inc. and the Utility Board of the City of Key West for Approval of a Territorial Agreement, PSC Docket No. 910765-EU, FPSC Order No. 25127, Order Approving Territorial Agreement (Fla. Pub. Serv. Comm'n, Sept. 27, 1991) at 13 (emphasis supplied).

Thus, the Territorial Agreement by its own terms denies and negates any basis for the Reynoldses - or for the No Name Key Property Owners Association, or for any entity other than KES or FKEC – to seek any relief whatsoever under that Agreement. Moreover, the PSC, in approving the Agreement in its Order No. 25127, expressly approved this standard "no third party benefits" provision of the Agreement, and therefore, by the principle that territorial agreements merge into the PSC's orders, the PSC's Order No. 25127 itself bars the Reynoldses from seeking relief under that Agreement. Accordingly, the Reynoldses' Complaint should be dismissed, with prejudice.

The suggestion that certain surplus language in the Territorial Agreement, asserting the existence of a State policy favoring electrification, vests the PSC with the power to order KES to serve is misplaced because there is simply no jurisdictional basis in Chapter 366, F.S., for the PSC to order any of the relief requested by the Reynoldses, including specifically their request that the PSC order KES to provide service to them, and because, as the Florida Supreme Court has held, "Parties to a contract, however, can never confer jurisdiction." United Tel. Co., 496 So.

2d at 118. United Telephone involved the PSC's attempt to assert jurisdiction over certain revenue distribution contracts between telephone companies and to direct the distribution of a certain amount of money ($9.7 million) to a particular company; other companies appealed. Having concluded that there was no express statutory basis for the PSC to take jurisdiction over, and modify the revenue distributions under, the subject contracts, the Court turned to the PSC's implied assertion "that jurisdiction can be derived from the contracts themselves." Id. While the Court recognized that the "language of the contracts permits the commission to intervene," it stated unequivocally, "Parties to a contract, however, can never confer jurisdiction." Id. The Court quashed the PSC's orders. Id. at 119. As true as that principle was in United Telephone, it is doubly so here, where the "slender reed" to which the Reynoldses would cling is merely surplusage in the Agreement between KES and FKEC, a recitation – without citation – to an assumed state policy favoring electrification.

III. Monroe County's Comprehensive Plan and Land Development Regulations Do Not Interfere with the PSC's Jurisdiction in Any Way.

Monroe County's Comp Plan and LDRs, all duly approved by the DCA pursuant to Chapter 163, F.S., and the Florida Keys Protection Act, do not interfere with or infringe upon the PSC's exercise of any of its regulatory powers under Chapter 366, F.S. As noted above, pursuant to Section 366.04(2), F.S., the PSC has six specific powers over electric utilities such as KES: (a) to prescribe systems and classifications of accounts, (b) to prescribe a rate structure, (c) to require electric power conservation and reliability within a coordinated grid, (d) to approve territorial agreements, (e) to resolve territorial disputes, and (f) to prescribe and require the filing of reasonably necessary reports and data. Enforcing the County's Comp Plan and LDRs has no impact whatsoever on any of these powers or on the PSC's ability to exercise them with respect to KES. As related to territorial regulation, Monroe County's Comp Plan and LDRs do not impair the PSC's ability to prevent the uneconomic duplication of facilities, which is the fundamental purpose of the PSC's jurisdiction over territorial disputes and territorial agreements. See, e.g., Gulf Coast Elec. Co-op., Inc. v. Johnson, 727 So. 2d 259, 264 (Fla. 1999) ("This Court

has stated that the PSC is to be guided by this statutory mandate to avoid further uneconomic duplication of facilities in its decisions regarding territorial agreements and territorial disputes.") No issue of potential duplication of facilities is presented in this case.

IV. No Provision of Chapter 366, Florida Statutes, Preempts the County's Comp Plan and LDRs at Issue in this Case.

To the extent that the Reynoldses claim that any provision of Chapter 366, F.S., preempts the provisions of the County's Comp Plan and associated LDRs at issue in this proceeding, that claim is misplaced and should be rejected. First, Sections 366.01 and 366.04(1), F.S., expressly apply **only** to public utilities, and not to electric utilities, and thus cannot provide any statutory basis for preempting the County's Comp Plan and LDRs in this case. Second, the Grid Bill neither expressly nor impliedly preempts the Comp Plan and LDRs. Third, preemption is not applicable in the instant case because the PSC's authority under the Grid Bill is limited to the "planning, development and maintenance of a coordinated electric grid" and the prevention of "uneconomic duplication of generation, transmission and distribution facilities" neither of which are at issue in this case and because there is no territorial dispute at issue in this case.

A. The law of preemption in Florida.

It is well-settled that Florida law recognizes two types of preemption: express and implied. Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880, 886 (Fla. 2010) (hereinafter "Browning"). "Express preemption requires a specific legislative statement; it cannot be implied or inferred. Express preemption of a field by the Legislature must be accomplished by clear language stating that intent." Id. (citations omitted)

With regard to implied preemption, the Florida Supreme Court in Browning stated:

> Preemption is implied "when 'the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.'" . . . Implied preemption is found where the state legislative scheme of regulation is pervasive and the local legislation would present the danger of conflict with that pervasive regulatory scheme. . . . In determining if implied preemption applies, the court must look "to the provisions of the whole law, and to its object and policy." . . . The

> nature of the power exerted by the Legislature, the object sought to be attained by the statute at issue, and the character of the obligations imposed by the statute are all vital to this determination.

Id. (citations omitted) For the reasons stated below, any contention that the County's Comp Plan and LDRs are preempted should be rejected.

B. Sections 366.01 and 366.04(1), F.S., do not provide a statutory basis for preemption in this case.

Chapter 366, F.S., is entitled "Public Utilities" and makes a clear distinction between "public utilities" and "electric utilities." Section 366.02(1), F.S., defines a public utility as:

> "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term "public utility" does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof . . . .

Section 366.02(2), F.S., defines an electric utility as:

> "Electric utility" means any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

The terms "public utility" and "electric utility" are not interchangeable. A "public utility" is an investor-owned, for-profit entity. "Electric utility" is a broader term that includes not only "public utilities" but also municipal utilities and cooperative utilities. (The only utility involved in this docket is KES, a municipal electric utility.)[12] Under Chapter 366, F.S., the PSC's jurisdiction to regulate public utilities, up to the limits of the powers and authority granted to it by the Legislature, is plenary. In contrast, the PSC's jurisdiction over "electric utilities" is expressly limited to those portions of Chapter 366, F.S., that are applicable to electric utilities. See Section 366.04(2), F.S. The key and undisputed fact is that the two utilities involved in this

[12] FKEC is also an electric utility, but it is not even involved in the matters at issue in this docket.

case, KES and, albeit tangentially, FKEC, are both electric utilities, not public utilities.[13] See Alicia Roemelle-Putney v. Reynolds, 106 So. 3d 78, 80 (Fla. 3d DCA 2013) (stating that KES is not a public utility).

Section 366.01, F.S., provides in pertinent part: "The regulation of public utilities . . . is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of this state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose." (Emphasis supplied.) Clearly, Section 366.01, F.S., applies only to "public utilities" and is therefore irrelevant to any claim of preemption in this case. Similarly, Section 366.04(1), F.S., describes some of the PSC's jurisdiction over "public utilities," but not its power over "electric utilities," which expressly and specifically enumerated in Section 366.04(2)(a)-(f), F.S. The first sentence of Section 366.04(1), F.S., begins: "In addition to its existing functions, the commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service . . . ." Fla. Stat. § 366.04(1) (2012) (emphasis supplied). Consequently, Section 366.04(1), F.S., is also irrelevant to any claim of preemption in this case in which no public utility is involved. Moreover, the language at the end of Section 366.04(1), F.S., which states that the PSC's jurisdiction – over public utilities – "shall be exclusive and superior to that of all other" state agencies, is likewise irrelevant, because it describes the status of the PSC's power ***over public utilities***.

[13] In In re: Petition by City of Parker for declaratory statement concerning City's application of its Comprehensive Plan, Land Development Regulations, and City Codes and Ordinances to Gulf Power Company's proposed aerial power transmission line planned to travel from private property located within the City, crossing the shoreline of the City, and running across St. Andrew Bay, (Docket No. 030159-EU) (Order No. PSC-03-0598-DS-EU) (hereinafter "In re: City of Parker"), the PSC determined that Section 366.04(1), F.S., preempted certain comprehensive plan provisions and land development regulations of the City of Parker. In re: City of Parker is clearly distinguishable from this case because the utility involved (Gulf Power Company) is a "public utility" subject to the PSC's plenary jurisdiction and the statutory basis for preemption in In re: City of Parker, Section 366.04(1), F.S., is not applicable in this case. See also Florida Power Corp. v. Seminole Co., 579 So. 2d 105 (Fla. 1991) (distinguishable on the same grounds).

C. The Grid Bill does not preempt the Comp Plan and LDRs.

Section 366.04(5), F.S., (part of the Grid Bill) provides:

> The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

The matter at issue in this case, the electrification of No Name Key, is simply not within the scope of the Grid Bill, and thus the relevant provisions of Chapter 366, F.S., do not preempt the County Ordinances. See generally, Gaines v. City of Orlando, 450 So. 2d 1174, 1180 (Fla. 5th DCA 1984) (finding that the Florida Electrical Power Plant Siting Act did not preempt proposed City charter amendments that would prohibit the construction of a power plant because the proposed amendments were beyond the scope of the Act); see also, City of St. Petersburg v. Carter, 39 So. 2d 804, 806 (Fla. 1949) (stating, "There is no occasion to give one statutory creature, such as the Florida Railroad and Public Utilities Commission, jurisdiction over the activities of another statutory creature, to wit: a duly chartered municipality, which is a distinct governmental unit, unless the law unmistakably so provides.") There is obviously no "unmistakable" provision granting the PSC preemptive power over Monroe County's Comp Plan or the County's and the DCA's mandates under Chapter 163 and the Florida Keys Protection Act, and accordingly, there can be no implied preemption in this case.

The substantive provisions of the Grid Bill grant the PSC authority over the "planning, development and maintenance of a coordinated electric grid"[14] and authority to prevent

[14] The provision in Section 366.05(8), F.S., which gives the PSC power to order the installation of certain facilities if the PSC "determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry," does not support a claim of jurisdiction to order an electric utility to serve. Not only is there no express language to that effect, it is clear from the statute that the Legislature's intention was to enable the PSC to promote "mutual benefits . . . to the electric utilities involved" in any project under that section, by giving the PSC the power to "require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received" by the utilities affected.

"uneconomic duplication" of electrical facilities. As noted above, nothing in the Grid Bill grants the PSC the authority to mandate that an electric utility (KES in this case) provide service to any specific customer or area. The County's prohibition of electrification of No Name Key in no way implicates the PSC's authority over the planning, development and maintenance of a coordinated electric grid. Similarly, in this case there is no possibility of any uneconomic duplication of electric facilities, nor is there any indication that there is a need for mutual action by utilities to beef up the grid. In fact, there is no dispute whatsoever over which electric utility would provide service to No Name Key if service were authorized. Accordingly, there is no threat of duplication of electrical facilities.

The Grid Bill contains no specific statement evincing a legislative intent that the Grid Bill expressly preempts LDRs that implement the Comp Plan provisions of Chapter 163, F.S., and that implement the provisions of the Florida Keys Protection Act.[15] Similarly, the Grid Bill does not create a legislative scheme so pervasive as to evidence any legislative intent to preempt local governments in Florida from applying reasonable land use regulation such as the Comp Plan and LDRs to electric utilities. See Santa Rosa County v. Gulf Power Co., 635 So 2d 96, 100 (Fla. 1994) (rejecting a claim that the pervasiveness of the PSC's regulation under Chapter 366, F.S.,

[15] To the extent that the Reynoldses claim that the Grid Bill preempts the Comp Plan and LDRs pursuant to the PSC's authority over the "planning, development, and maintenance of a coordinated electric power grid," that authority simply does not include the authority for the PSC to mandate that an electric utility provide service, nor does it express any intent to override local governments' powers to protect the public health and welfare through valid land development regulations. If the Legislature had meant to give that power to the PSC, it would have done so using language analogous to that in Section 366.03, F.S., where the Legislature mandated that "Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission." (Emphasis supplied.) Alternately, the Legislature could have included an additional grant of power for the PSC to order electric utilities to serve in the list of specific powers set forth in Section 366.04(2), F.S. The Legislature, however, simply did not do so. Moreover, as the PSC itself expressly stated to the Florida Supreme Court, "Under its contemporaneous analysis of the Grid Bill, the Commission concluded that 'the main purpose of the law is to place authority in the Commission for the development of a total energy network or grid for the State of Florida.'" It says nothing about imposing an obligation to serve on electric utilities, and nothing about any authority for the PSC to order electric utilities to provide service. Lee County Elec. Coop. v. Jacobs, Case No. SC01-373, Answer Brief of Appellee PSC at 16.

preempts imposition of a franchise fee because the "prevailing theme" of Chapter 366, F.S., involves the regulation of rates" (emphasis in original)).

Moreover, it is well-settled in Florida that an interpretation of a statute "which would impede the ability of local government to protect the health and welfare of its citizens should be rejected unless the Legislature has clearly expressed the intent to limit or constrain local government action." M&H Profit, 28 So. 3d at 77. In M&H Profit, the First District Court of Appeal found that the Bert Harris Act[16] did not expressly or impliedly preempt certain local LDRs. The court explained:

> The protection of the welfare of the local citizenry through the adoption of generally applicable land development regulations has been exclusively within the province of local government. Implied constraints within these particular areas should be even more carefully scrutinized.

Id. (emphasis supplied). The rationale in M&H Profit is equally applicable to this case: the County's Comp Plan and LDRs were duly enacted by the County and approved by the DCA; their enactment was exclusively within the power of local government, subject, by statute, to the DCA's approval. Any argument that the County's Comp Plan and LDRs are superseded by a theory of implied preemption must be rejected.

D. The PSC's Authority over Territorial Agreements and Disputes does Not Preempt the Comp Plan and LDRs.

The PSC's authority under section 366.04(2)(3), F.S., over territorial disputes is not implicated by this case. There simply is no dispute between the two parties to the Territorial Agreement over which electric utility would provide service to No Name Key; if service were not prohibited by the County's lawful Comp Plan and LDRs, implemented pursuant to Chapter 163 and the Florida Keys Protection Act, KES would provide service. Accordingly, because the matter at issue in this case is beyond the scope of the authority granted to the PSC by the relevant provisions of Chapter 366, F.S., there can be no preemption of the County's Comp Plan or LDRs.

[16] The Bert Harris Act is found at Section 70.001, F.S.

E. No provision of the other laws cited by the Reynoldses, Chapter 163, F.S., and Chapter 69-1191, Laws of Florida, provides any basis for preemption of the County's Comp Plan and LDRs.

As is the case with Chapter 366, F.S., there is no provision in either Chapter 163, F.S., which in part grants municipalities the permissive power to operate utility systems, or in Chapter 69-1191, Laws of Florida, which created KES and gave it the power – but not the obligation – to extend its lines outside the City limits of Key West, that would preempt the County's Comp Plan and LDRs.

V. Enforcement of the County's Comp Plan and LDRs to Prohibit KES from Extending Utility Facilities to No Name Key Does Not Impair the PSC's Role in Protecting the Public Against Anti-competitive Behavior.

The suggestion that Monroe County's enforcement of its Comp Plan and LDRs might impair the PSC's ability to actively supervise utilities subject to its regulatory jurisdiction for the purpose of preventing anti-competitive behavior and preserving the state action immunity that PSC regulation confers is misplaced. In the first instance, there is simply no anti-competitive behavior at issue here: KES is ready and willing to serve, which establishes on its face that there is no anti-competitive behavior requiring the PSC's, or any other entity's, attention; KES is simply abiding by the law. Monroe County's Comp Plan and LDRs simply pose no interference with the PSC's ability to regulate any anti-competitive behavior by any utility. The Comp Plan and LDRs do not inhibit the PSC from enforcing territorial agreements between the utility parties thereto, nor do they inhibit the PSC from resolving any real territorial dispute, nor, in any case, would they prevent the PSC from protecting the public from anticompetitive behavior by KES (or any other utility); the County's Comp Plan and LDRs simply protect an Area of Critical State Concern, and KES is simply abiding by the law.

Finally, the PSC's own rules expressly contemplate that a public utility may refuse to provide service where doing so would involve "violation of any state or municipal law or regulation governing electric service." Rule 25-105(5)(a), F.A.C. This is exactly what is at issue here: valid local regulations that implement valid state laws and validly approved pursuant to those laws, which prohibit all (not just electric) utility facilities in designated areas of the Florida

Keys, an Area of Critical State Concern, pursuant to Chapter 163, F.S., and the Florida Keys Protection Act, Section 380.0552, F.S. It is obvious on its face that the Commission would not have adopted a rule that would have vitiated its ability to supervise utilities for antitrust purposes, and the cited PSC rule thus demonstrates that compliance with a valid state or local government law governing electric service cannot impair the PSC's ability to fulfill its antitrust law obligations.

VI. The PSC Is Not Judicially Estopped From Ruling That It Lacks Jurisdiction To Order KES to Provide Service to No Name Key.

To the extent that the Reynoldses claim that the PSC is judicially estopped from determining that it does not have jurisdiction in this matter, that claim is misplaced and should be rejected. The doctrine of judicial estoppel is:

> . . . an equitable doctrine that is used to prevent litigants from taking totally inconsistent positions in separate judicial, including quasi-judicial, proceedings. . . . The doctrine prevents parties from "making a mockery of justice by inconsistent pleadings . . . and playing fast and loose with the courts.

Blumberg v. USAA Casualty Ins. Co., 790 So. 2d 1061, 1066 (Fla. 2001) (citations omitted). Clearly, judicial estoppel is intended to prevent parties from taking inconsistent positions in separate litigation. The doctrine is not applicable to the PSC for the simple reason that the PSC was not a party in the proceedings in the Circuit Court and the Third District Court of Appeal; rather, the PSC appeared as *amicus curiae*. Moreover, the PSC is not a party in this proceeding – instead the PSC is an agency granted quasi-judicial power under Chapter 366, F.S. Accordingly, the PSC should reject any assertion that it is judicially estopped from determining its own jurisdiction in this case. See Alicia Roemelle-Putney, 106 So. 3d at 81 (finding that the County may assert, as an argument to the PSC in this docket, that the PSC does not have jurisdiction over this matter).

VII. The Commission Should Respect Monroe County's Comprehensive Plan and LDRs, and the DCA's Approval of the Comp Plan and LDRs Pursuant to Chapter 163 and the Florida Keys Protection Act, and Should Accordingly Reject This Latest Attempt by Pro-Electrification Residents of No Name Key to Circumvent These Valid State-Approved Regulations Implementing Valid Florida Statutes.

As a general principle, all state laws should be read together in harmony if at all possible. Here, the obvious harmonic interpretation is for the PSC to respect the County's Comp Plan and LDRs just as Monroe County respects the PSC's jurisdiction over territorial and all other matters within its express jurisdiction. Here, the County asks the PSC to respect its valid Comp Plan and LDRs, all duly approved by the PSC's sister state agency, the DCA, which were enacted and promulgated for the express purposes of protecting the Florida Keys and protecting "the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource," Section 380.5552(7)(n), F.S.

The Legislature did not give the PSC jurisdiction to override Monroe County's Comp Plan or LDRs, nor did it give the PSC the power to override the state planning laws or the Florida Keys Protection Act. The pro-electrification forces on No Name Key[17] have simply failed in all their attempts to reverse the County's Comp Plan and LDRs, and generally failed to timely pursue various avenues were available to them, e.g., a challenge to the Comp Plan pursuant to Section 163.3184(4), F.S. Having failed everywhere else, they have now come to this Commission, clutching at non-existent straws that they attempt to fabricate from whole cloth, again attempting to circumvent valid state and local laws and regulations. The PSC should reject this latest attack on those valid enactments and approvals.

If the Legislature had intended for the PSC to have the authority to override the state planning laws and the Florida Keys Protection Act, it could have done so easily; it did not, and the Commission should rule accordingly here. As the Florida Supreme Court stated eloquently,

[17] While the specific facts of this case probably do not technically satisfy the elements of *res judicata* or collateral estoppel, because some of the complainants here are different from those in the earlier proceedings, the Commission can surely recognize that these issues have been litigated, and the political agendas advocated, many times over the past fifteen years, and that ultimately, the complainants in this case are simply trying to achieve through this Commission what they could not achieve through proper political, administrative, and legal processes.

> There is no occasion to give one statutory creature, such as the Florida Railroad and Public Utilities Commission, jurisdiction over the activities of another statutory creature, to wit: a duly chartered municipality, which is a distinct governmental unit, ***unless the law unmistakably so provides***.

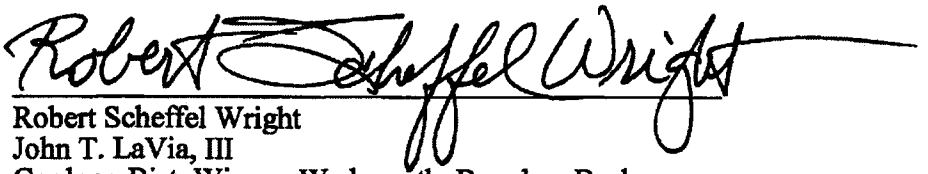
City of St. Petersburg, 39 So. 2d at 806 (emphasis supplied) (cited in the PSC's Answer Brief to the Supreme Court in Lee County Elec. Coop v. Jacobs, at 22-23). It is clear that Florida law provides no basis for the PSC to override Monroe County's Comp Plan and LDRs, nor to override the DCA's approvals thereof pursuant to applicable law, and accordingly, the PSC should reject and dismiss the Reynoldses' Complaint. .

CONCLUSION AND RELIEF REQUESTED

As demonstrated by the foregoing analyses, the Commission does not have jurisdiction to order KES to provide electric service on No Name Key. No provision of Florida Statutes confers such power on the PSC, nor does the Territorial Agreement between KES and FKEC; moreover, that Territorial Agreement, as approved by the PSC, expressly denies standing to the Reynoldses to bring any action thereunder. Enforcement of the County's Comp Plan and LDRs, all duly approved by the DCA pursuant to Chapter 163, F.S., and the Florida Keys Protection Act, does not interfere with the PSC's exercise of any of its regulatory powers under Chapter 366, is not preempted by any provision of Florida law, does not impair or interfere with the PSC's role in protecting the public from anti-competitive conduct by monopoly utilities, and does not thwart the "state action immunity" doctrine.

In the final analysis, the PSC should respect Monroe County's Comp Plan and LDRs, and it should respect the DCA's valid approvals of the Comp Plan and LDRS pursuant to applicable law. The PSC should reject these latest efforts by certain residents of No Name Key to circumvent these valid state laws and regulations, and should, accordingly, dismiss the Reynoldses' Complaint, with prejudice, for the reasons set forth in this Brief and in Monroe County's Motion to Dismiss that Complaint.

Respectfully submitted this 19th day of April 2013.



Robert Scheffel Wright
John T. LaVia, III
Gardner, Bist, Wiener, Wadsworth, Bowden, Bush,
Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308
Telephone (850) 385-0070
Facsimile (850) 385-5416

and

Robert B. Shillinger, County Attorney
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, Florida 33040
Telephone (305) 292-3470
Telecopier (305) 292-3516

Attorneys for Monroe County, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic mail, on this 19th day of April 2013.

Martha Carter Brown
Curt Kiser
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
mcbrown@psc.state.fl.us

Andrew M. Tobin
P.O. Box 620
Tavernier, FL
tobinlaw@terranova.net
tobinlaw2@gmail.com

Barton W. Smith
Barton Smith, P.L.
624 Whitehead Street
Key West, Florida 33040
Bart@bartonsmithpl.com

Robert D. Reynolds & Julianne C. Reynolds
2160 Bahia Shores Road
No Name Key, Florida 33042

J.R. Kelly
Office of Public Counsel
c/o the Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
KELLY.JR@leg.state.fl.us

Dale Z. Finigan
Keys Energy Services
P.O. Drawer 6100
Key West, Florida 33041-6100
dale.finigan@keysenergy.com

Nathan E, Eden
Nathan E. Eden, P.A.
302 Southard Street, Suite 205
Key West, Florida 33040
dedenkwf@bellsouth.net

Robert Scheffel Wright
Attorney