

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: AUGUST 19, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (HEWITT)

FROM: DIVISION OF APPEALS (HELTON) *mat DS*
 DIVISION OF AUDITING AND FINANCIAL ANALYSIS (HEWITT) *CBH*
 DIVISION OF ELECTRIC AND GAS (KUMMER) *CK*

RE: DOCKET NO. 990409-EM - PETITION BY OSCEOLA COUNTY TO INITIATE RULEMAKING TO AMEND RULE 25-9.0525, F.A.C., MUNICIPAL SURCHARGE ON CUSTOMERS OUTSIDE MUNICIPAL LIMITS.

AGENDA: 8/31/99 - REGULAR AGENDA - VOLUNTARY DISMISSAL - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\APP\WP\990409WD.RCM

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CASE BACKGROUND

On March 31, 1999, Osceola County, Florida (Osceola County) petitioned the Commission to initiate rulemaking to amend Rule 25-9.0525, Florida Administrative Code. Staff's recommendation concerning the substance of Osceola County's petition to initiate rulemaking was deferred from several agendas. Osceola County filed a notice of withdrawal of its petition on August 5, 1999.

DOCUMENT NUMBER-DATE
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DOCKET NO. 990409-EM
DATE: August 19, 1999

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge Osceola County's withdrawal of its petition to initiate rulemaking?

RECOMMENDATION: Yes, Osceola County's withdrawal divests the Commission of jurisdiction over this matter. The only further action the Commission can take is to acknowledge the withdrawal and close the docket.

STAFF ANALYSIS: The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975). Once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act and cannot revive the original action for any reason. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So. 2d 68, 69 (Fla. 1978).

Staff recommends that the Commission find Osceola County's withdrawal of its petition for declaratory statement divests the Commission of further jurisdiction over this matter. The only additional action the Commission can take is to acknowledge Osceola County's notice of withdrawal without prejudice and close the docket.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.