

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint regarding electric rate
structure for Gainesville Regional Utilities.

DOCKET NO. 130188-EM
ORDER NO. PSC-14-0316-FOF-EM
ISSUED: June 13, 2014

The following Commissioners participated in the disposition of this matter:

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

ORDER ACKNOWLEDGING VOLUNTARY DISMISSAL WITHOUT PREJUDICE

BY THE COMMISSION:

On July 16, 2013, Gainesville Regional Utilities (GRU) customers, Eye Associates of Gainesville, LLC and Deborah L. Martinez (Complainants) filed a Petition for Expedited Review of Electric Rate Structure for Gainesville Regional Utilities (Complaint), requesting a formal administrative hearing to review GRU's electric rate structure. On August 2, 2013, GRU filed a motion to dismiss (Motion). Complainants filed a response in opposition to GRU's Motion and a request for oral argument on August 12, 2013. On March 19, Order No. PSC-14-0137-FOF-EM (Order) granting GRU's motion was issued. We dismissed certain portions of the Complaint without prejudice. We granted Complainants leave to file an amended complaint no later than March 28, 2014, and if no amended complaint was filed within the deadline, the docket would be closed administratively. On March 28, 2014, Complainants filed their First Amended Complaint. On April 30, 2014, GRU filed a Response to Commission Staff Regarding Customer Complaint and Notice of Filing Response to Customers. On May 6, 2014, Complainants filed a Notice of Voluntary Dismissal Without Prejudice (Notice).

We have jurisdiction over the subject matter pursuant to Sections 366.041, 366.05, 366.06 and 366.075, Florida Statutes (F.S.).

It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.¹ Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.² Both of these legal principles

¹ Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

² Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978)

have been recognized in administrative proceedings.³ In Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123, 1128 (Fla. 2d DCA 1993), the court concluded that “the jurisdiction of any agency is activated when the permit application is filed . . . [and] is only lost by the agency when the permit is issued or denied or when the permit applicant withdraws its application prior to completion of the fact-finding process.” In this case, the hearing has not yet occurred, so the fact-finding process is not complete.

We hereby acknowledge Complainants’ Notice of Voluntary Dismissal Without Prejudice as a matter of right, which is in accord with our past decisions.⁴

Based on the foregoing, it is

ORDERED by the Public Service Commission that the Notice of Voluntary Dismissal Without Prejudice filed by Eye Associates of Gainesville, LLC and Deborah L. Martinez is hereby acknowledged. It is further

ORDERED that this docket shall be closed.

³ Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2d DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2d DCA 1993), aff’d, 645 So. 2d 374 (Fla. 1994).

⁴ See Order No. PSC-13-0687-FOF-EI, issued December 31, 2013, in Docket No. 130007-EI, In re: Environmental cost recovery clause; Order No. PSC-12-0305-PCO-TP, issued June 14, 2012, in Docket No. 090538-TP, In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination; Order No. PSC-12-0051-FOF-TP, issued February 3, 2012, in Docket No. 110071, In re: Emergency Complaint of Express Phone Service, Inc. against Bellsouth Telecommunications, Inc. d/b/a AT&T Florida regarding interpretation of the parties’ interconnection agreement; Order No. PSC-11-0103-FOF-EI, issued February 7, 2011, in Docket No. 100410, In re: Review of Florida Power & Light Company’s earnings; Order No. PSC-11-0417-PCO-EI, issued September 27, 2011, in Docket No. 110056, In re: Complaint against Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services for failure to pay intrastate access charges for the origination and termination of intrastate interexchange telecommunications service, by Bright House Networks Information Services (Florida), LLC; Order No. PSC-11-0453-FOF-EI, issued October 10, 2011, in Docket No. 100358-EI, In re: Investigation into the design of Commercial Time-of-Use rates by Florida Power & Light, pursuant to Order No. PSC-10-0153-FOF-EI; Order No. PSC-10-0248-FOF-EQ, issued April 22, 2010, in Docket No. 090146-EQ, In re: Petition by Tampa Electric Company for approval of extension of small power production agreement with City of Tampa; Order No. PSC-08-0822-FOF-WS, issued December 22, 2008, in Docket No. 080500-WS, In Re: Application for transfer of majority organizational control of Indiantown Company Inc., holder of Certificate Nos. 387-Wand 331-S in Martin County, from Postco, Inc. to First Point Realty Holdings, LLC; But see Order No. PSC-07-0297-FOF-SU, issued April 9, 2007, in Docket No. 020640-SU, In re: Application for certificate to provide wastewater service in Lee County by Gistro, Inc. and Order No. PSC-96-0992-FOF-WS, issued August 5, 1996, in Docket No. 950758-WS, In re: Petition for approval of transfer of facilities of Harbor Utilities Company, Inc., to Bonita Springs Utilities and cancellation of Certificates Nos. 272-W and 215-S in Lee County (voluntary dismissal cannot be utilized to divest the Commission as an adjudicatory agency of its jurisdiction granted to it by the legislature).

By ORDER of the Florida Public Service Commission this 13th day of June, 2014.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.