

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: April 24, 2008

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Fleming) *LEF JEB KK SDP PJ -S*
Division of Economic Regulation (Brady, Kaproth, Rieger, Slemkewicz) *ORRS*

198

RE: Docket No. 060276-WS – Application for certificates to provide water and wastewater service in Putnam County by Mariposa Utility Company, LLC.

AGENDA: 05/06/08 – Regular Agenda – Notice of Withdrawal – Interested Persons May Participate

RECEIVED--FPSC
08 APR 24 AM 10:43
COMMISSION CLERK

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060276.RCM.DOC

Case Background

On March 23, 2006, Mariposa Utility Company, LLC (Mariposa) filed an application for original certificates to operate a water and wastewater utility in Putnam County, Florida. The territory proposed to be served comprised of 2,061 acres on which an affiliated developer was proposing to construct a self-contained community consisting of approximately 3,046 equivalent residential connections (ERCs) and 320 commercial ERCs. Service was intended to begin approximately three years from the date of the filing.

Along with the application for original certificates, Mariposa filed a motion for temporary waiver of Rule 25-30.033(1)(j), (k), (m), (r), (t), (u), (v), and (w), Florida

DOCUMENT NUMBER-DATE

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Docket No. 060276-WS
Date: April 24, 2008

Administrative Code. By Order No. PSC-06-0835-PAA-WS, issued October 9, 2006, the Commission granted the temporary rule waiver.

On April 19, 2006, Putnam County (County) filed an objection to Mariposa's application for original certificates. On May 25, 2006, the County withdrew its objection to the application for a wastewater certificate. At their request, parties were given time to negotiate a settlement regarding water service and on June 19, 2007, the County withdrew its objection to the application for a water certificate.

On May 9, 2006, pursuant to a memorandum of understanding with the Department of Community Affairs (DCA), the DCA filed its comments on the development's consistency with the County's current comprehensive plan. While the DCA noted that the proposed Development of Regional Impact (DRI) was currently under review, the DCA indicated that the County's Future Land Use Map (FLUM) and Future Land Use Element (FLUE) would require amendments to accommodate the proposed project. In addition, the DCA noted that the sources for financing the capital improvements necessary to support the project were not yet included in the County's Schedule of Capital Improvements.

Pursuant to request, Mariposa was given additional time to attempt to resolve the DRI, comprehensive plan, and capital improvements issues such that development could proceed. On March 14, 2008, Mariposa filed a notice of voluntary dismissal of its application because it appeared that the proposed development was not going to go forward as planned. Because agency action has been taken, the notice of voluntary withdrawal may not be disposed of administratively pursuant to Section 2.07(C)(2)(d)(4), Administrative Procedures Manual.

This recommendation addresses the applicant's request to withdraw its application for original certificates. The Commission has jurisdiction pursuant to Sections 367.031 and 367.045, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission acknowledge Mariposa Utility Company, LLC's voluntary withdrawal of its petition for water and wastewater certificates, and if so, what effect does the withdrawal have on Docket 060276-WS?

Recommendation: Yes, the Commission should acknowledge Mariposa's voluntary withdrawal of its petition for water and wastewater certificates as a matter of right. The effect of the voluntary withdrawal is to divest the Commission of further jurisdiction over this matter. (Fleming)

Staff Analysis: 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 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. Staff therefore recommends that the Commission acknowledge Mariposa's withdrawal of its petition as a matter of right, which is in accord with past Commission decisions.⁴ The Commission should further find that the effect of Mariposa's voluntary withdrawal of its petition for water and wastewater certificates is to divest the Commission of further jurisdiction over this matter.

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)

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-07-0725-FOF-EU, issued September 5, 2007, in Docket No. 060635-EU, In re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee; Order No. PSC-07-0485-FOF-EI, issued June 8, 2007, in Docket Nos. 050890-EI, In re: Complaint of Sears, Roebuck and Company against Florida Power & Light Company and motion to compel FPL to continue electric service and to cease and desist demands for deposit pending final decision regarding complaint and 050891-EI, In re: Complaint of Kmart Corporation against Florida Power & Light Company and motion to compel FPL to continue electric service and to cease and desist demands for deposit pending final decision regarding complaint; Order No. PSC-94-0310-FOF-EQ, issued March 17, 1994, in Docket No. 920977-EQ, In re: Petition for approval of contract for the purchase of firm capacity and energy from General Peat Resources, L.P. and Florida Power and Light Company; Order No. PSC-97-0319-FOF-EQ, issued March 24, 1997, in Docket No. 920978-EQ, In re: Complaint of Skyway Power Corporation to require Florida Power Corporation to furnish avoided cost data pursuant to Commission Rule 25-17.0832(7), F.A.C.; Order No. PSC-04-0376-FOF-EU, issued April 7, 2004, in Docket No. 011333-EU, In re: Petition of City of Bartow to modify territorial agreement or, in the alternative, to resolve territorial dispute with Tampa Electric Company in Polk County. 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).

Docket No. 060276-WS

Date: April 24, 2008

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, the docket should be closed. (Fleming)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, the docket should be closed.