

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.

DOCKET NO. 100358-EI
ORDER NO. PSC-11-0453-FOF-EI
ISSUED: October 10, 2011

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 THE VOLUNTARY DISMISSAL OF
THE ASSOCIATION FOR FAIRNESS IN RATE MAKING

BY THE COMMISSION:

On May 11, 2011 we issued Order No. PSC-11-0216-PAA-EI (PAA Order) in this docket in which we found that there was not enough evidence that would support a new time-of-use (TOU) rate for Florida Power & Light Company's (FPL) commercial customers, and declined to require FPL to file a new commercial TOU rate. We ordered FPL to investigate whether fuel TOU factors based on marginal costs and/or summer and winter differentiation would benefit customers and provide system benefits and report back in testimony filed in the 2011 fuel proceeding.

On June 1, 2011 the Association For Fairness In Rate Making (AFFIRM) filed a Petition on Proposed Agency Action (Petition). On June 21, 2011, FPL filed a Motion to Dismiss AFFIRM's Petition on Proposed Agency Action, or in the alternative, Motion for a More Definite Statement. On July 7, 2011, AFFIRM filed a Response to FPL's motion. On July 15, 2011, AFFIRM filed a Clarification of AFFIRM'S Response to FPL's motion.

On September 8, 2011, AFFIRM filed a Notice of Voluntary Dismissal Without Prejudice (Notice), dismissing its Petition.

This Order addresses AFFIRM's Notice dismissing its protest and the appropriate disposition of this docket. We have jurisdiction over the subject matter pursuant to Sections 366.041, 366.05, 366.06 and 366.075, Florida Statutes (F.S.).

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FPSC-COMMISSION CLERK

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. We therefore acknowledge AFFIRM's Notice of Voluntary Dismissal Without Prejudice as a matter of right, which is in accord with our past decisions.⁴

AFFIRM was the only entity that filed a protest of the PAA Order issued May 11, 2011. The protest period for that order expired June 1, 2011. There were no other protests to the PAA Order. AFFIRM has now dismissed its protest. As such, Order No. PSC-11-0216-PAA-EI is now final and effective.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Association For Fairness In Rate Making's Voluntary Dismissal is hereby acknowledged. It is further

ORDERED that Order No. PSC-11-0216-PAA-EI is final and effective. It is further

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).

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 10th day of October, 2011.



ANN COLE
Commission Clerk
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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.