

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of a regulatory asset
to record costs incurred due to COVID-19, by
Utilities, Inc. of Florida.

DOCKET NO. 20200189-WS
ORDER NO. PSC-2021-0241-FOF-WS
ISSUED: July 1, 2021

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
ANDREW GILES FAY
MIKE LA ROSA
GABRIELLA PASSIDOMO

ORDER ACKNOWLEDGING UTILITIES, INC. OF FLORIDA'S
NOTICE OF VOLUNTARY DISMISSAL

BY THE COMMISSION:

Background

On August 3, 2020, Utilities, Inc. of Florida (UIF) filed a petition for approval to establish a regulatory asset to record costs incurred due to COVID-19, and therein requested deferral of incremental bad debt expense, assorted operating expenses, and safety-related costs attributable to COVID-19. On October 26, 2020, we issued PAA Order PSC-2020-0403-PAA-WS, approving UIF's request. On November 16, 2020, The Office of Public Counsel (OPC) timely filed a Petition Protesting a Proposed Agency Action and requested an administrative hearing on the proposed action.

By Order No. PSC-2021-0104-PCO-PU, issued on March 12, 2021, UIF's petition in Docket No. 20200189-WS was consolidated with Docket Nos. 20200151-EI and 20200194-PU. In both of the dockets, OPC had also protested PAA Orders approving regulatory assets to record costs incurred due to COVID-19.¹ By Order No. PSC-2021-0104-PCO-PU, all three dockets were scheduled for an administrative hearing on June 16, 2021. On March 30, 2021, UIF filed a Notice of Voluntary Dismissal Without Prejudice of its petition filed in Docket No. 20200189-WS.

We have jurisdiction over this matter pursuant to Sections 367.011, 367.081, and 367.121, Florida Statutes (F.S.).

¹ Docket Nos. 20200151-EI, *In re: Petition for approval of a regulatory asset to record costs incurred due to COVID-19, by Gulf Power Company*, and 20200194-PU, *In re: Petition for approval of regulatory assets to record costs incurred due to COVID-19, by Florida Public Utilities Company, Florida Public Utilities Company - Indiantown Division, Florida Public Utilities Company - Fort Meade, Florida Division of Chesapeake Utilities Corporation*.

Decision

It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.² Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.³ Both of these legal principles have been recognized in administrative proceedings.⁴ 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.

Therefore, we hereby acknowledge UIF's Notice of Voluntary Dismissal Without Prejudice of its petition as a matter of right, which is in accord with our past decisions.⁵ With the voluntary dismissal of UIF's petition, we are divested of jurisdiction and Proposed Agency Action Order No. PSC-2020-0403-PAA-WS is a nullity. Further, we find that UIF is dismissed from the June 16, 2021 hearing, and there are no further actions required with respect to this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we acknowledge Utilities, Inc. of Florida's notice of voluntary dismissal of its petition without prejudice. It is further

ORDERED that with the voluntary dismissal of the Utility's petition, we are divested of jurisdiction and Proposed Agency Action Order No. PSC-2020-0403-PAA-WS is a nullity. It is further

² *Fears v. Lunsford*, 314 So. 2d 578, 579 (Fla. 1975); see also *Kelly v. Colston*, 977 So. 2d 692, 693 (Fla. 1st DCA 2008) (holding that a plaintiff's right to take a voluntary dismissal is nearly absolute).

³ *Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc.*, 360 So. 2d 68, 69 (Fla. 1978)

⁴ *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).

⁵ See Order PSC-15-0116-FOF-EI, issued March, 4, 2015, in Docket No. 20140024-EI, *In re: Complaint of Brenda Rodriguez against Duke Energy Florida, Inc.*, 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-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: 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).

ORDERED that UIF is dismissed from the June 16, 2021 hearing, there are no further actions required with respect to this docket, and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 1st day of July, 2021.



ADAM J. TEITZMAN
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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.

WLT

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.