



# Public Service Commission

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MCB JAR [initials] JDS

**DATE:** OCTOBER 22, 2003  
**TO:** DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)  
**FROM:** DIVISION OF ECONOMIC REGULATION (BIGGINS) [initials] OFFICE OF THE GENERAL COUNSEL (RODAN, BROWN) [initials]  
**RE:** DOCKET NO. 030748-SU - APPLICATION FOR APPROVAL OF NEW CLASS OF SERVICE FOR BULK WASTEWATER SERVICE IN LEE COUNTY BY FOREST UTILITIES, INC.  
COUNTY: LEE

**AGENDA:** NOVEMBER 03, 2003 - REGULAR AGENDA - TARIFF FILING AND MOTION TO DISMISS - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\030748rc2.RCM

### CASE BACKGROUND

Forest Utilities, Inc. (Forest or utility) is a Class B wastewater only utility providing service to approximately 2,068 wastewater customers in Lee County. As of December 31, 2002, the utility reported operating revenues of \$658,336 and operating expenses of \$620,559. On August 1, 2003, the utility filed an application pursuant to Section 367.091, Florida Statutes, for approval of a new class of service to provide bulk wastewater service to Jamaica Bay Mobile Home Park (Jamaica Bay) in Lee County. The application asserted that Jamaica Bay needed immediate assistance in treating its wastewater while it repairs its sewage treatment plant and ponds, as the Department of Environmental Protection has ordered it to do. On August 25, 2003, Lee County filed a motion to intervene, which was granted, and a motion to dismiss Forest's application.

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On September 26, 2003, Lee County informed the Commission that it had executed a contract with Jamaica Bay for temporary bulk wastewater service, and thereafter, at its September 30, 2003, Agenda Conference, the Commission suspended Forest's application pending review of the changed circumstances.

Forest has now filed a notice of voluntary dismissal of its application for approval of a new class of service for bulk wastewater service to Jamaica Bay. This is staff's recommendation to acknowledge the voluntary withdrawal and close the docket.

The Commission has jurisdiction pursuant to Section 367.091, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission acknowledge Forest's voluntary withdrawal of its application for approval of new class of service for bulk wastewater service?

**RECOMMENDATION:** Yes. Forest's voluntary 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. Since Forest has withdrawn the application, Lee County's Motion to Dismiss is moot. (RODAN, BROWN, BIGGINS)

**STAFF ANALYSIS:** A petitioner has an absolute right to dismiss its case before the case has been submitted to the tribunal for a final decision. Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975). Once a timely voluntary dismissal is taken, the tribunal 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).

Forest's voluntary withdrawal has divested the Commission of further jurisdiction over this docket. The Commission should therefore acknowledge the 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, the docket should be closed.