

To: Robin H. Upchurch

From: Guest

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060276

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Kmp

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificates to provide
water and wastewater service in Putnam
County by Mariposa Utility Company, LLC.

DOCKET NO. 060276-WS
ORDER NO. PSC-08-0326-FOF-WS
ISSUED: May 19, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER ACKNOWLEDGING WITHDRAWAL OF PETITION**BY THE COMMISSION:**

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 Administrative Code. By Order No. PSC-06-0835-PAA-WS, issued October 9, 2006, we 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 between this Commission and 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.

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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.

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 find it appropriate to acknowledge Mariposa's withdrawal of its petition as a matter of right, which is in accord with past Commission decisions.⁴ We further find that the effect of Mariposa's voluntary withdrawal of its petition for water and wastewater certificates is to divest us 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).

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Mariposa Utility Company, LLC's voluntary withdrawal of its petition is hereby acknowledged as a matter of right. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 19th day of May, 2008.

/s/ Ann Cole

ANN COLE

Commission Clerk

This is an electronic transmission. A copy of the original signature is available from the Commission's website, www.floridapsc.com, or by faxing a request to the Office of Commission Clerk at 1-850-413-7118

(S E A L)

KEF

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.

Kimberley Pena

060276-WS

From: Kimberley Pena
Sent: Tuesday, May 13, 2008 7:35 AM
To: Don Christie
Cc: Ann Cole; Dorothy Menasco
Subject: FW: Contacts

PARTIES

Don, could you update the information on the Administrative Procedures Committee entry that goes in automatically upon entry of Progmodes A11a, b, and c and B7a, b, and c. Thanks.

From: Ann Cole
Sent: Monday, May 12, 2008 3:43 PM
To: Kimberley Pena
Subject: Contacts

Kim, this is the proper contact name for the Administrative Procedures Committee. Please update our records. Thank you.

Scott Boyd, Executive Director and General Counsel
Administrative Procedures Committee
Holland Building, Room 120
Tallahassee, Florida 32399-1300

*Done
05/15/08
KMP*

DOCUMENT NUMBER-DATE

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