

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of ) DOCKET NO. 900454-EQ  
 need for a solid waste-fired cogenera- ) ORDER NO. 24821  
 tion power plant by Lee County. ) ISSUED: 7/16/91  
 )

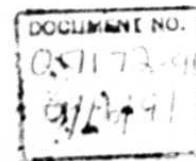
The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 MICHAEL MCK. WILSON

ORDER ACCEPTING VOLUNTARY DISMISSAL OF PROTEST  
 AND MAKING ORDER NO. 23963 FINAL AND EFFECTIVE

BY THE COMMISSION:

On May 8, 1990, Lee County filed a petition for a determination of need pursuant to Section 403.519, Florida Statutes, for a proposed resource recovery (waste-to-energy) facility. On July 27, 1990, Lee County filed supplemental information in support of its petition. On September 21, 1990, Lee County published notice that the Commission would conduct a public proceeding concerning the County's petition. On November 6, 1990 pursuant to the aforesaid notice, we considered this matter and announced our intent to issue a proposed agency action (PAA) order granting an affirmative determination of need for Lee County's facility. No one appeared at the noticed proceeding to discuss the facility and no adverse comments were received. On January 7, 1991, we issued a Proposed Agency Action Order No. 23963 which stated our intent to approve the County's petition. On January 28, 1991, A. Duda & Sons, Inc. (Duda) filed "Duda's Petition for Formal Proceedings on Proposed Agency Action Order 23963 and For Leave to Intervene" (Duda's Petition) and asked for a formal administrative hearing to contest our proposed action. No other petitions were received and no other entities have sought to intervene in this proceeding. On May 7, 1991, Lee County filed a Notice of Modification wherein Lee County announced that it was reducing the size of its proposed facility. On May 20, 1991, Duda and Lee County filed a Joint Stipulation which announced Duda's decision to voluntarily dismiss its request for an administrative hearing.



ORDER NO. 24821  
DOCKET NO. 900454-EQ  
PAGE 2

Duda who has stipulated to a voluntary dismissal, was the only party to protest proposed agency action Order No. 23963. Other effected persons had a clear point of entry and an opportunity to request a hearing at the time Order No. 23963 was issued and during the ensuing protest period. By failing to timely protest, other persons have waived the right to a hearing. Where persons have not availed themselves of a clear point of entry provided to them by the administrative process, they must be considered to have waived their rights to a hearing. Florida Medical Center v. Dept. of H.R.S., 484 So.2d 1292 (Fla. 1 DCA 1986); NME Hospitals, Inc. v. Dept. of H.R.S., 492 So.2d 379 (Fla. 1 DCA 1985). Thus, by accepting Duda's voluntary dismissal, and reviving Order No. 23963, no parties rights are violated.

It is therefore

ORDERED by the Florida Public Service Commission that pursuant to the stipulation of the parties, the petition of A. Duda & Sons, Inc. for formal proceedings on Proposed Agency Action Order No. 23963 is hereby dismissed. It is further

ORDERED that Order No. 23963 is hereby revived and is final and effective. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this  
16th day of JULY, 1991.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MAP:bmi  
900454a.bmi

ORDER NO. 24821  
DOCKET NO. 900454-EQ  
PAGE 3

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 Director, Division of Records and Reporting 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 or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.