

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for a ) DOCKET NO. 930490-EQ  
Declaratory Statement concerning ) ORDER NO. PSC-94-0618-FOF-EQ  
sale of cogenerated power by ) ISSUED: May 24, 1994  
South Florida Cogeneration )  
Associates to Metropolitan Dade )  
County. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
SUSAN F. CLARK  
JULIA L. JOHNSON

ORDER ACKNOWLEDGING VOLUNTARY DISMISSAL

BY THE COMMISSION:

On May 18, 1993, Metropolitan Dade County filed a petition for declaratory statement concerning the sale of cogenerated power by South Florida Cogeneration Associates (SFCA) to Dade County. Thereafter, SFCA petitioned to intervene and requested a hearing. Intervention was granted and this matter was set for hearing on October 11-13, 1993. Dade County filed a motion for continuance which was granted and the hearing was reset for July 6-8, 1994. SFCA filed a motion for an additional continuance which was also granted and the hearing was again reset for October 19-21, 1994.

On April 26, 1994, Dade County filed a notice of voluntary dismissal with prejudice pursuant to settlement between Dade County and SFCA. The dismissal is also filed pursuant to Rule 1.420(a)(1), Florida Rules of Civil Procedure, and Rule 25-22.035(3), Florida Administrative Code. Rule 1.420(a)(1) provides

an action may be dismissed by plaintiff without order of court (A) before trial by serving, or during trial by stating on the record, a notice of dismissal at any time before a hearing on motion for summary judgment, or if none is served or if the motion is denied, before retirement of the jury in a case tried before the jury or before submission of a nonjury case to the court for decision . . . . Unless otherwise stated in the notice . . . ., the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication on the merits when served by a plaintiff who has once dismissed

DOCUMENT NUMBER-DATE

05050 MAY 24 1994

FPSC-RECORDS/REPORTING

ORDER NO. PSC-94-0618-FOF-EQ  
DOCKET NO. 930490-EQ  
PAGE 2

in any court an action based on or including the same claim.

Pursuant to Rule 25-22.035, Florida Administrative Code, Rule 1.420(a)(1) is applicable to Commission proceedings unless it is superseded by or conflicts with a Commission rule.

The plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So.2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court 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).

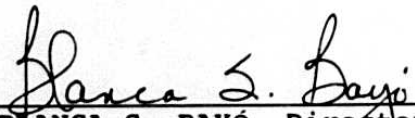
We find that Dade County's voluntary dismissal of its petition for declaratory statement divests the Commission of jurisdiction over this matter. The only additional action we can take is to acknowledge Dade County's dismissal and close the docket. Because Dade County states its voluntary dismissal is with prejudice, Dade County cannot file a similar petition for declaratory statement with the Commission.

It is, therefore,

ORDERED that the Florida Public Service Commission hereby acknowledges Metropolitan Dade County's voluntary dismissal with prejudice of its petition for declaratory statement. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 24th day of May, 1994.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

MAH

ORDER NO. PSC-94-0618-FOF-EQ  
DOCKET NO. 930490-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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.