

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate
increase in Broward County by
Ferncrest Utilities, Inc.

DOCKET NO. 011073-WS
ORDER NO. PSC-02-1240-FOF-WS
ISSUED: September 9, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

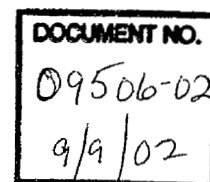
ORDER ACKNOWLEDGING WITHDRAWAL OF PETITION FOR RATE INCREASE
AND CLOSING DOCKET

BY THE COMMISSION:

Ferncrest Utilities, Inc. (Ferncrest or utility) is a Class B utility providing water and wastewater service for approximately 1,407 water and 1,351 wastewater customers in Broward County. Ferncrest's service territory is located within a Water Resource Caution Area within the South Florida Water Management District. For the year ended December 31, 2001, the utility reported water operating revenues of \$508,282 and a net operating loss of \$68,115. Wastewater operating revenues were \$643,843, with a net operating loss of \$33,164.

On January 11, 2002, the utility filed an application for approval of interim and permanent rate increases pursuant to Sections 367.081 and 367.082, Florida Statutes. On April 1, 2002, Ferncrest satisfied the Minimum Filing Requirements (MFRs), and this date was designated as the official filing date, pursuant to Section 367.083, Florida Statutes. The utility requested that we process its case under proposed agency action (PAA) procedures, pursuant to Section 367.081(8), Florida Statutes.

The utility requested that the test year for both interim and final purposes in this current proceeding be based on the year



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ended December 31, 2000. The final requested revenues are \$666,640 for water and \$772,433 for wastewater. This represents an increase of \$103,350 for water and \$38,900 for wastewater, or 18.35% and 5.30%, respectively.

By Order No. PSC-02-0879-PCO-WS, issued July 1, 2002, we suspended the utility's final requested rates and approved the utility's requested interim rates. Ferncrest requested interim revenues of \$642,976 for water and \$754,569 for wastewater. This represents an increase of \$93,750 for water and \$35,460 for wastewater, or 17.07% and 4.93%, respectively. Based upon our approved tariff, the utility's interim rates were effective for service rendered on or after June 20, 2002.

On July 18, 2002, Ferncrest filed a petition to withdraw its application for a rate increase. We have jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes.

In its notice of withdrawal, the utility stated that it withdraws its rate increase request with prejudice because Ferncrest will not seek any further rate increase based upon the use of the test period approved in this proceeding. Further, the utility stated that any rate increase sought in the future will be an entirely new proceeding, based upon the law and rules and regulations in force at that time. Ferncrest's attorney informed our staff that the reason for the utility's withdrawal is that it is not in the best interest of the company or its customers to proceed with rate relief at this time. We note that the utility did not request a refund of its filing fee for this proceeding.

We approved the utility's tariff sheets for the implementation of interim rates for service rendered on or after June 20, 2002. Ferncrest stated that although interim rates have been approved, there have been no bills sent to customers at the approved higher interim rates. The utility states that the next date bills would have been sent to customers is on or about August 1, 2002. Further, Ferncrest will only bill customers the rates in effect prior to the approved interim rates. As a result, no refunds associated with the approved interim rates are required.

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On July 18, 2002, Ferncrest submitted revised tariff sheets that contain the rates in effect prior to the approved interim rates. Rule 25-22.0407(10), Florida Administrative Code, requires notice to the customers no later than the same date of the first bill containing any revised rates. On July 29, 2002, the utility submitted a proposed customer notice. With a few modifications, the notice was approved on the same day. On August 1, 2002, Ferncrest sent the notice to all of its customers that no rate increase would be sought and continued to bill its customers the rates that had been approved by us prior to the utility filing a petition for a rate increase.

The law is clear that 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 Ferncrest's voluntary dismissal of its petition for a rate increase divests us of further jurisdiction over this matter. The only additional action we can take is to acknowledge Ferncrest's notice of voluntary dismissal with prejudice and close the docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Ferncrest Utilities, Inc.'s Withdrawal of Petition for Rate Increase is acknowledged. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 9th day
of September, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

LDH

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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak

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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 Director, Division of the Commission Clerk and Administrative Services 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.