

BEFORE THE PUBLIC SERVICE COMMISSION

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. DOCKET NO. 050890-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. DOCKET NO. 050891-EI  
ORDER NO. PSC-07-0485-FOF-EI  
ISSUED: June 8, 2007

The following Commissioners participated in the disposition of this matter:

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

ORDER ACKNOWLEDGING WITHDRAWAL OF COMPLAINTS

BY THE COMMISSION:

BACKGROUND

On November 21, 2005, Sears, Roebuck and Company (Sears) filed a complaint against Florida Power & Light Company (FPL) for alleged violations of Rule 25-6.097, Florida Administrative Code (F.A.C.), with respect to FPL's demand that Sears provide a customer deposit to continue to receive electric service from FPL. By Order No. PSC-06-0383-PAA-EI,<sup>1</sup> we denied Sears' complaint. Also on November 21, 2005, Kmart Corporation (Kmart) filed a complaint against FPL for alleged violations of Rule 25-6.097, F.A.C., with respect to FPL's demand that Kmart provide an additional deposit to continue to receive electric service from FPL. By Order No. PSC-06-0387-PAA-EI,<sup>2</sup> we denied Kmart's complaint. Pursuant to Sections 120.569 and 120.57, Florida Statutes (F.S.), and Rules 25-22.029 and 28-106.201, F.A.C., Sears and Kmart timely filed petitions requesting a formal administrative hearing on the respective Proposed Agency Actions.

<sup>1</sup> Order No. PSC-06-0383-PAA-EI, issued May 9, 2006, in Docket No. 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.

<sup>2</sup> Order No. PSC-06-0387-PAA-EI, issued May 9, 2006, In re: Docket No. 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.

DOCUMENT NUMBER-DATE

04632 JUN-8 5

FPSC-COMMISSION CLERK

By Order No. PSC-07-0165-PCO-EI, issued February 23, 2007, Docket Nos. 050890-EI and 050891-EI were consolidated for the purpose of hearing, and controlling dates were established for the hearing. By notices dated March 23, 2007, Sears and Kmart indicated that they had reached a confidential settlement of their issues with FPL, and that they therefore withdraw their respective complaints and request that Docket Nos. 050890-EI and 050891-EI be closed.

We have jurisdiction through the provisions of Chapter 366, F.S., including Sections 366.04, 366.041, and 366.05, F.S.

#### ACKNOWLEDGING WITHDRAWAL OF COMPLAINTS

It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.<sup>3</sup> Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.<sup>4</sup> Both of these legal principles have been recognized in administrative proceedings.<sup>5</sup> In Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123, 1128 (Fla. 2nd 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, no formal hearing occurred, so the fact-finding process was not complete; therefore, this Commission lost its jurisdiction to further address this matter once the petitioners, Sears and Kmart, withdrew their respective complaints. Thus, Sears and Kmart can dismiss their complaints (and ensuing protests to Order Nos. PSC-06-0383-PAA-EI and PSC-06-0387-PAA-EI) as a matter of right, which is in accord with past Commission decisions.<sup>6</sup> We find that the effect of Sears and Kmart's voluntary withdrawals of their respective complaints is to divest us of further jurisdiction over this matter, rendering both Proposed Agency Action Order Nos. PSC-06-0383-PAA-EI and PSC-06-0387-PAA-EI nullities.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sears and Kmart's voluntary withdrawal of their respective complaints are acknowledged as a matter of right. It is further

---

<sup>3</sup> Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

<sup>4</sup> Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978)

<sup>5</sup> Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1<sup>st</sup> DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2<sup>nd</sup> DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2<sup>nd</sup> DCA 1993) aff'd, 645 So. 2d 374 (Fla. 1994).

<sup>6</sup> See 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.

ORDER NO. PSC-07-0485-FOF-EI  
DOCKET NOS. 050890-EI, 050891-EI  
PAGE 3

ORDERED that Order Nos. PSC-06-0383-PAA-EI and PSC-06-0387-PAA-EI are rendered as nullities. It is further

ORDERED that Docket Nos. 050890-EI and 050891-EI shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of June, 2007.



---

ANN COLE  
Commission Clerk

( S E A L )

JSB

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.