

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, Inc.      DOCKET NO. 090415-SU  
ORDER NO. PSC-10-0199-FOF-SU  
ISSUED: March 31, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman  
LISA POLAK EDGAR  
NATHAN A. SKOP  
DAVID E. KLEMENT  
BEN A. "STEVE" STEVENS III

ORDER ACKNOWLEDGING VOLUNTARY WITHDRAWAL  
AND RENDERING ORDER NO. PSC-09-0793-PCO-SU A NULLITY

BY THE COMMISSION:

**Background**

West Lakeland Wastewater, Inc. (West Lakeland or Utility) is a Class C wastewater utility currently serving approximately 300 customers in Polk County. This area is in the Southwest Florida Water Management District and is considered a water use caution area. Water service is provided by the City of Lakeland. The Utility's 2006 annual report shows operating revenue of \$67,521 and net operating loss of \$34,442.

The Utility, previously known as ABCA, Inc., has been providing service to customers in Polk County since 1972. On January 9, 1990, the Polk County Commission granted a franchise to Ameribanc Investors Group for a system known as Village Lakeland. Polk County came under our jurisdiction on July 11, 1996. In 1998, we granted the Utility its grandfather Certificate No. 515-S for wastewater service.<sup>1</sup> ABCA's certificate was transferred to West Lakeland in 2001.<sup>2</sup>

By letter dated March 26, 2009, West Lakeland gave notice of abandonment effective June 30, 2009. On May 13, 2009, the County Attorney filed a Petition for Appointment of Receiver for West Lakeland Wastewater, Inc. in the Circuit Court of the Tenth Judicial Circuit (Circuit Court). The Circuit Court issued an order in Case No. 53-2009CA-005284, on June 22, 2009, in which it declared West Lakeland Wastewater, Inc. abandoned and appointed Mr.

<sup>1</sup> See Order No. PSC-98-0752-FOF-SU, issued June 1, 1998, in Docket No. 971531-SU, In re: Application for grandfather certificate to operate wastewater utility in Polk County by ABCA, Inc.

<sup>2</sup> See Order No. PSC-01-1576-FOF-SU, issued July 30, 2001, in Docket No. 010382-SU, In re: Application for transfer of Certificate No. 515-S in Polk County from ABCA, Inc. to West Lakeland Wastewater, Inc.

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Michael Smallridge (Mr. Smallridge or receiver) as receiver of the wastewater system. Previously, we acknowledged Mr. Smallridge as the receiver.<sup>3</sup>

On August 20, 2009, we received an application for a staff-assisted rate case (SARC) from West Lakeland. By letter dated September 15, 2009, the Utility waived the statutory time frame for its interim request through November 10, 2009. By Order No. PSC-09-0793-PCO-SU, issued December 1, 2009, we granted an interim rate increase request.

On February 11, 2010, the Utility, by direction of its receiver, voluntarily withdrew its SARC application. On February 16, 2010, the Utility informed us that it did not implement the approved interim rate increase because it was unable to obtain the financing to hold the collected funds subject to refund pursuant to Rule 25-30.360(6), Florida Administrative Code.

This order addresses West Lakeland's voluntary notice of withdrawal and its effect on Order No. PSC-09-0793-PCO-SU. We have the authority to consider this case pursuant to Sections 367.0814 and 367.082, Florida Statutes (F.S.)

### Analysis

It is a well established legal principle that a plaintiff's right to take a voluntary dismissal is nearly absolute. See e.g., Kelly v. Colston, 977 So. 2d 692, 693 (Fla. 1st DCA 2008). Once a voluntary dismissal is taken, the trial court loses jurisdiction over the matter and cannot reinstate the action for any reason. See id. Both of these legal principles have been recognized in administrative proceedings. In Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123, 1128 (Fla. 2d DCA 1993), the court concluded that "the jurisdiction of an 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." (emphasis in original).

In this case, West Lakeland applied for a SARC, was granted an interim rate increase, and without implementing interim rates, voluntarily withdrew its application. Although we had granted West Lakeland interim rates, West Lakeland can withdraw its application as a matter of right, which is consistent with our past decisions.<sup>4</sup>

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<sup>3</sup> See Order No. PSC-09-0607-FOF-SU, issued September 8, 2009, in Docket No. 090154-SU, In re: Notice of abandonment of wastewater system for The Village of Lakeland Mobile Home Park in Polk County, by West Lakeland Wastewater, Inc.

<sup>4</sup> See Order No. PSC-08-0822-FOF-WS, issued December 22, 2008, in Docket No. 080500-WS, In Re: Application for transfer of majority organizational control of Indiantown Company Inc., holder of Certificate Nos. 387-W and 331-S in Martin County, from Postco, Inc. to First Point Realty Holdings, LLC; 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;

Upon receipt of West Lakeland's notice of withdrawal, our staff contacted the receiver to determine whether the Utility had implemented interim rates. The receiver indicated by letter that it had not implemented the Utility's approved interim rate increase. Therefore, based upon these facts, we do not need to establish whether an interim rates refund is appropriate pursuant to Section 367.082, F.S., before acknowledging withdrawal. Moreover, the effect of West Lakeland's voluntary withdrawal is to render the interim rates order a nullity.<sup>5</sup>

Thus, consistent with our past practice, we acknowledge West Lakeland's voluntary withdrawal as a matter of right. Further, we find that effect of the voluntary withdrawal renders Order No. PSC-09-0793-PCO-SU, a nullity and divests this Commission of further jurisdiction over West Lakeland's application.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the voluntary withdrawal of West Lakeland Wastewater, Inc.'s application for a staff assisted rate case is acknowledged as a matter of right. It is further

ORDERED that West Lakeland Wastewater, Inc.'s withdrawal renders Order No. PSC-09-0793-PCO-SU a nullity. It is further

ORDERED that no further action is required and the docket shall be closed.

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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).

<sup>5</sup> See 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. (holding the effect of dismissal rendered the order a nullity). 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. (holding the effect of a voluntary dismissal divests the Commission of further jurisdiction over the proceeding, rendering the proposed agency action (PAA) order a nullity.)

By ORDER of the Florida Public Service Commission this 31st day of March, 2010.



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ANN COLE  
Commission Clerk

( S E A L )

ELS

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.