

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of solar energy power purchase agreement between Tampa Electric Company and Energy 5.0, LLC. | DOCKET NO. 090109-EI
ORDER NO. PSC-10-0382-FOF-EI
ISSUED: June 15, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP

ORDER ACKNOWLEDGING VOLUNTARY DISMISSAL
WITH PREJUDICE OF PETITION

BY THE COMMISSION:

On March 9, 2009, Tampa Electric Company (TECO or Company) filed a petition requesting approval of a solar energy purchased power agreement with Energy 5.0, LLC (Energy 5.0). By Order No. PSC-10-0057-PAA-EI, issued January 25, 2010, we approved the solar energy purchased power agreement between TECO and Energy 5.0. By Order No. PSC-10-0138-PCO-EI, issued March 10, 2010, we vacated Order No. PSC-10-0057-PAA-EI. At the time we vacated our prior decision, the protest period had not expired, nor had the PAA Order been consummated. Subsequently, the matter was scheduled for a formal administrative hearing on June 30 and July 1, 2010.

On May 7, 2010, TECO filed its Notice of Voluntary Dismissal with Prejudice of its March 9, 2009, Petition for approval of a solar energy power purchase agreement between Tampa Electric Company and Energy 5.0, LLC.

This order addresses TECO's voluntary dismissal. We have jurisdiction over this matter pursuant to Sections 366.051 and 366.81, Florida Statutes (F.S.).

The law is clear that a plaintiff's right to take a voluntary dismissal is absolute if the dismissal is taken before the fact-finding process is completed and the matter is not yet before the decision-maker for final resolution. Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975); see also Kelly v. Colston, 977 So. 2d 692, 693 (Fla. 1st DCA 2008) (holding that a plaintiff's right to take a voluntary dismissal is nearly absolute). 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). Both of these legal principles have been recognized in administrative

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proceedings.¹ 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, although this matter was set for a formal administrative hearing, we had not reached a final decision on whether to approve the solar energy power purchase agreement between TECO and Energy 5.0. Thus, TECO can dismiss its petition as a matter of right. This is consistent with our past decisions.² Therefore, we acknowledge TECO’s voluntary dismissal with prejudice of its petition as a matter of right and the voluntary dismissal divests us of further jurisdiction in this docket.

Based on the foregoing, it is

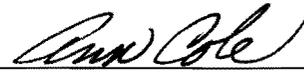
ORDERED by the Florida Public Service Commission that Tampa Electric Company’s voluntary dismissal with prejudice of its petition for approval of solar energy power purchase agreement with Energy 5.0 is hereby acknowledged. It is further

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

² See Order No. PSC-10-0248-FOF-EQ, issued April 22, 2010, in Docket No. 090146-EQ, In re: Petition by Tampa Electric Company for approval of extension of small power production agreement with City of Tampa; 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-07-0877-FOF-EI, issued October 31, 2007, in Docket No. 070467-EI, In re: Petition to determine need for Polk Unit 6 electrical power plant, by Tampa Electric Co.; 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 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; 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).

ORDERED that there are no further actions to be taken in Docket No. 090109-EI and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 15th day of June, 2010.



ANN COLE
Commission Clerk

(SEAL)

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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.