

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of K W Resort Utilities Corp.
against Monroe County, Florida for alleged
entitlement to collect certain capacity
reservation fees for excess capacity used.

DOCKET NO. 130086-SU
ORDER NO. PSC-14-0150-FOF-SU
ISSUED: April 3, 2014

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER ACKNOWLEDGING DISMISSAL OF COMPLAINT AND CLOSING DOCKET

BY THE COMMISSION:

On April 18, 2013, KW Resort Utilities Corporation's (KWRU) initiated this docket by filing its complaint against Monroe County, Florida (County) for alleged entitlement to collect certain capacity reservation fees for excess capacity used. On May 8, 2013, the County filed an Unopposed Motion for the Extension of Time to Respond to KWRU's Complaint which was granted via Order No. PSC-13-0221-PCO-SU. Additional extensions of time were granted by separate orders issued on June 7, 2013, July 10, 2013, September 10, 2013, and December 12, 2013.¹ During this period, the County and KWRU prepared a Settlement Agreement which KWRU executed and which the County Commission approved at the County Commission meeting on November 20, 2013.

On January 14, 2014, KWRU filed a Corrected Notice of Voluntary Dismissal With Prejudice (Dismissal), advising us of its intent to voluntarily dismiss its complaint with prejudice and requesting that we close Docket No. 130086-SU.

It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.² Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.³ Both of these legal principles have been recognized in administrative proceedings.⁴ In Saddlebrook Resorts, Inc. v. Wiregrass

¹ See Order Nos. PSC-13-0255-PCO-SU, PSC-13-0310-PCO-SU, PSC-13-0418-PCO-SU, and PSC-13-0657-PCO-SU.

² 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).

³ Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978).

⁴ 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).

Ranch, Inc., 630 So. 2d 1123, 1128 (Fla. 2d 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 the instant case, no hearing in this matter was scheduled or undertaken. Thus, KWRU has requested the dismissal of the complaint in this matter prior to the completion of the fact-finding process. Thus we hereby acknowledge KWRU’s voluntary dismissal of its complaint with prejudice as a matter of right, which is in accord with our past decisions.⁵ We note that in the instant case, we are not evaluating the prudence of the Settlement Agreement involved herein. Moreover, we reserve the right to evaluate the Settlement Agreement in conjunction with any future rate case proceedings involving KWRU.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that KW Resort Utilities Corporation’s voluntary dismissal with prejudice of its complaint against Monroe County, Florida, is hereby acknowledged as set forth in the body of this Order. It is further

ORDERED that this docket shall be closed.

⁵ See Order No PSC-10-0382-FOF-EI, issued June 15, 2010, in Docket No. 090109-EI, In re: Petition for approval of solar energy power purchase agreement between Tampa Electric Company and Energy 5.0, LLC.; 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-10-0199-FOF-SU, issued March 31, 2010, in Docket No. 090415-SU, In re: Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, Inc.; Order No. PSC-09-0120-FOF-EI, issued March 2, 2009, in Docket No. 080621-EI, In re: Application for authority to issue and sell securities during calendar year 2009 pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company; Order No. PSC-08-0102-FOF-EI, issued February 18, 2008 in Docket No. 060638-EI, In re: Petition for approval of storm cost recovery surcharge to recover costs associated with mandatory storm preparedness initiatives, by Florida Public Utilities Company. 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).

By ORDER of the Florida Public Service Commission this 3rd day of April, 2014.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CMK

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.