

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of formal proceedings on  
Complaint No. 1109752E of Brenda Rodriguez  
against Duke Energy Florida, Inc. for alleged  
improper billing.

DOCKET NO. 140024-EI  
ORDER NO. PSC-15-0116-FOF-EI  
ISSUED: March 4, 2015

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
LISA POLAK EDGAR  
RONALD A. BRISÉ  
JULIE I. BROWN  
JIMMY PATRONIS

ORDER ACKNOWLEDGING NOTICE OF WITHDRAWAL

BY THE COMMISSION:

On May 7, 2013, Brenda Rodriguez (Rodriguez) filed Complaint No. 1109752E against Duke Energy Florida, Inc. (Duke or Company). In that complaint, Ms. Rodriguez contested Duke's assertion that she had tampered with her meter causing it to register zero kilowatt hours (kWh) and further contested the amount of the investigation and back-billing charges Duke imposed. Order No. PSC-14-0303-PAA-EI, issued on June 12, 2014, denied Rodriguez's request for relief and confirmed as reasonable Duke's charge of \$7,974.44 for investigation and back-billing charges. On July 1, 2014, Rodriguez filed a timely request for hearing. Pursuant to Order No. PSC-14-0674-PCO-EI, issued on December 5, 2014, Commission staff, Duke and Rodriguez all filed prehearing statements, which included direct exhibits, on January 8, 2015. A prehearing and final hearing were scheduled in this case on February 4 and 11, 2015, respectively. On February 2, 2015, Rodriguez filed a Notice of Withdrawal requesting that her complaint against Duke be withdrawn, that no further action be taken in this docket, and that the docket be closed.

We are vested with jurisdiction over this subject matter through the provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.<sup>1</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>2</sup> Both of these legal principles have been recognized in administrative proceedings.<sup>3</sup> In Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123, 1128 (Fla. 2d DCA 1993), the court concluded that "the

<sup>1</sup> Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

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

<sup>3</sup> 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).

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, the hearing has not yet occurred, so the fact-finding process is not complete.

Therefore, in accord with our past decisions,<sup>4</sup> we acknowledge Ms. Rodriguez’s Notice of Withdrawal of her complaint as a matter of right and further find that the voluntary withdrawal renders Order No. PSC-14-0303-PAA-EI a nullity by operation of law.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Ms. Rodriguez’s Notice of Withdrawal of her complaint as a matter of right is acknowledged. It is further

ORDERED that Order No. PSC-14-0303-PAA-EI, issued on June 12, 2014, is null and void by operation of law. It is further

ORDERED that this docket shall be closed administratively after the time for appeal of this final order has run.

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<sup>4</sup> See Order No. PSC-13-0687-FOF-EI, issued December 31, 2013, in Docket No. 130007-EI, In re: Environmental cost recovery clause; Order No. PSC-12-0305-PCO-TP, issued June 14, 2012, in Docket No. 090538-TP, In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination; Order No. PSC-12-0051-FOF-TP, issued February 3, 2012, in Docket No. 110071, In re: Emergency Complaint of Express Phone Service, Inc. against Bellsouth Telecommunications, Inc. d/b/a AT&T Florida regarding interpretation of the parties' interconnection agreement; Order No. PSC-11-0103-FOF-EI, issued February 7, 2011, in Docket No. 100410, In re: Review of Florida Power & Light Company's earnings; Order No. PSC-11-0417-PCO-EI, issued September 27, 2011, in Docket No. 110056, In re: Complaint against Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services for failure to pay intrastate access charges for the origination and termination of intrastate interexchange telecommunications service, by Bright House Networks Information Services (Florida), LLC; Order No. PSC-11-0453-FOF-EI, issued October 10, 2011, in Docket No. 100358-EI, In re: Investigation into the design of Commercial Time-of-Use rates by Florida Power & Light, pursuant to Order No. PSC-10-0153-FOF-EI; 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-Wand 331-S in Martin County, from Postco, Inc. to First Point Realty Holdings, LLC; 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 4th day of March, 2015.



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

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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.