



Public Service Commission
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DATE: MARCH 20, 2003
TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYO)
FROM: DIVISION OF ECONOMIC REGULATION (BRINKLEY) *ms JS DM* OFFICE OF THE GENERAL COUNSEL (RODAN) *JAR*
RE: DOCKET NO. 021191-GU - PETITION FOR APPROVAL OF NEW ACCOUNT AND TREATMENT OF COSTS ASSOCIATED WITH RIGHT-OF-WAY EXPENSES, BY FLORIDA PUBLIC UTILITIES COMPANY.
AGENDA: 04/01/03 - REGULAR AGENDA - VOLUNTARY DISMISSAL - PARTIES MAY PARTICIPATE
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\ECR\WP\021191.RCM

CASE BACKGROUND

On November 27, 2002, Florida Public Utilities Company (FPUC or the Company) petitioned the Commission for approval of a new account and treatment of costs associated with right-of-way expenses. Staff's recommendation concerning the petition for approval was deferred from the January 21, 2003 agenda. FPUC filed a notice of withdrawal of its petition on March 11, 2003.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge FPUC's withdrawal of its petition for approval of a new account and treatment of costs associated with right-of-way expenses?

RECOMMENDATION: Yes, FPUC's withdrawal divests the Commission of jurisdiction over this matter. The only further action the Commission can take is to acknowledge the withdrawal and close the docket. (BRINKLEY, RODAN)

STAFF ANALYSIS: The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975). 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).

Staff recommends that the Commission find FPUC's withdrawal of its petition for approval of a new account and treatment of costs associated with right-of-way expenses divests the Commission of further jurisdiction over this matter. The only additional action the Commission can take is to acknowledge FPUC's notice of withdrawal without prejudice and close the docket.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. (RODAN)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.