

State of Florida



**Public Service Commission**  
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

DEC 23 AM 10:34

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COMMISSION  
CLERK

**DATE:** DECEMBER 23, 2003

**TO:** DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** OFFICE OF THE GENERAL COUNSEL (HOLLEY) *JAM wat JR*  
DIVISION OF ECONOMIC REGULATION (RIEGER, WALDEN) *AW JDS*

**RE:** DOCKET NO. 020554-WS - PETITION BY FLORIDA WATER SERVICES CORPORATION (FWSC) FOR DETERMINATION OF EXCLUSIVE JURISDICTION OVER FWSC'S WATER AND WASTEWATER LAND AND FACILITIES IN HERNANDO COUNTY, AND APPLICATION FOR CERTIFICATE OF AUTHORIZATION FOR EXISTING UTILITY CURRENTLY CHARGING FOR SERVICE.  
COUNTY: HERNANDO

**AGENDA:** 01/06/04 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\020554.RCM

**CASE BACKGROUND**

On June 21, 2002, Florida Water Services Corporation (FWSC or Utility) filed its petition for Determination of Exclusive Commission Jurisdiction Over Florida Water's Land and Facilities in Hernando County and Application for Original Certificates of Authorization for an Existing Utility Currently Charging for Service. Pursuant to Section 367.045, Florida Statutes, and Rule 25-30.030, Florida Administrative Code, FWSC provided notice, dated June 25, 2002, of its application to the governing body of the county or cities affected, the Office of Public Counsel (OPC), the Commission, and such other persons and in such other manner as prescribed by Commission rule.

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FFSC-COMMUNICATIONS

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In response to FWSC's Notice of Application, on July 25, 2002, Hernando County filed its Notice of Protest of Petition by Florida Water Services Corporation, in which it set forth its arguments against the application filed by FWSC, and also requested a formal administrative hearing pursuant to the provisions of Chapter 120, Florida Statutes. Additionally, on July 15, 2002, Pasco County filed its formal notification of protest to FWSC's application, and in a subsequent letter dated August 5, 2002, requested a formal administrative hearing. Accordingly, by Order No. PSC-02-1316-PCO-WS, issued September 30, 2002, this docket was set for hearing.

On November 21, 2003, FWSC filed its Notice of Dismissal of Application and Withdrawal of Application. This recommendation addresses FWSC's Notice of Dismissal of Application and Withdrawal of Application. The Commission has jurisdiction pursuant to Section 367.031, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission acknowledge Florida Water Services Corporation's Notice of Dismissal of Petition and Withdrawal of Application?

**RECOMMENDATION:** Yes. Staff recommends that this Commission acknowledge the utility's Notice of Dismissal of Petition and Withdrawal of Application. (HOLLEY)

**STAFF ANALYSIS:** As stated previously, this docket was opened in order to address FWSC's Petition for Determination of Exclusive Commission Jurisdiction Over Florida Water's Land and Facilities in Hernando County and Application for Original Certificates of Authorization for an Existing Utility Currently Charging for Service.

On November 21, 2003, FWSC filed its Notice of Dismissal of Application and Withdrawal of Application (Notice of Dismissal). In its Notice of Dismissal, FWSC states that on November 7, 2003, the Circuit Court of the Fifth Judicial Circuit in and for Hernando County, Florida, entered a judgment in Case No. H-27-CA-2003-00703-DM and Case No. H-27-CA-2003-0084-DM, approving Hernando County's efforts to acquire FWSC's utility assets in Hernando County through the power of eminent domain. Consequently, Hernando County has acquired title to all of FWSC's land and facilities in Hernando County. Thus, according to FWSC, its petition for Determination of Exclusive Commission Jurisdiction Over Florida Water's Land and Facilities in Hernando County and Application for Original Certificates of Authorization for an Existing Utility Currently Charging for Service, is moot. Further, FWSC requests that the Commission issue an order closing this docket.

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). 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).

Accordingly, staff recommends that the Commission acknowledge FWSC's notice of dismissal of petition and withdrawal of its application.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed. (HOLLEY)

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