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# Public Service Commission

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**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** March 18, 2004

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Vining) *WAV*  
Division of Economic Regulation (Bremson, D. Lee) *AEV WBM RLT*

**RE:** Docket No. 011333-EU – Petition of City of Bartow to modify territorial agreement or, in the alternative, to resolve territorial dispute with Tampa Electric Company in Polk County.

**AGENDA:** 03/30/04 – Regular Agenda – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\011333\011333.RCM.DOC

### Case Background

On October 4, 2001, the City of Bartow, Florida (Bartow or City), filed a petition to modify the territorial agreement or, in the alternative, to resolve a territorial dispute between Bartow and Tampa Electric Company (TECO or Company). Bartow and TECO entered into a territorial boundary agreement, on or about April 16, 1985, which contains a clause prohibiting either party from modifying or cancelling the agreement for a period of fifteen years from the date first written. See Order No. 15437, issued December 11, 1985, in Docket No. 850148-EU, In Re: Joint Petition for Approval of Territorial Agreement Between City of Bartow and Tampa Electric Company. Now that the fifteen-year term has expired, Bartow requested a modification to the territorial boundary line in order to serve the Old Florida Plantation (OFP) development, which spans the current boundary line.

By Proposed Agency Action Order No. PSC-03-0739-PAA-EU, issued June 23, 2003, the Commission found that a minor modification of the territorial boundary through OFP was appropriate in order to have more reliable electric service for future customers. Bartow and TECO were directed to file a description of the new boundary, as well as a map delineating the

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modification to their respective service areas. Subsequently, Bartow filed a protest to Order No. PSC-03-0739-PAA-EU, on July 14, 2003, and the matter was set for hearing. Then, on December 2, 2003, Bartow filed a notice of voluntary dismissal, dismissing this action without prejudice. This recommendation addresses Bartow's notice of voluntary dismissal and its effect on Order No. PSC-03-0739-PAA-EU. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the Commission acknowledge Bartow's voluntary dismissal of its petition, and if so, what effect does the dismissal have on Proposed Agency Action Order No. PSC-03-0739-PAA-EU?

**Recommendation:** Yes, the Commission should acknowledge Bartow's voluntary dismissal of its petition as a matter of right. The effect of the voluntary dismissal is to divest the Commission of further jurisdiction over this matter, rendering Proposed Agency Action Order No. PSC-03-0739-PAA-EU a nullity. (Vining)

**Staff Analysis:** It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975). Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason. Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978). Both of these legal principles have been recognized in administrative proceedings. Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1<sup>st</sup> DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2<sup>nd</sup> DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So.2d 1123 (Fla. 2<sup>nd</sup> DCA 1993) aff'd, 645 So. 2d 374 (Fla. 1994). In Saddlebrook Resorts at page 1128, the court concluded "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 this case, no formal hearing occurred, so the fact-finding process was not complete; therefore, staff believes that the Commission lost its jurisdiction to further address this matter once the petitioner, Bartow, withdrew its petition. In this instance, staff believes that Bartow can dismiss its petition as a matter of right, which is in accord with past Commission decisions. See 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. Therefore, staff recommends that the Commission find that the effect of the voluntary dismissal is to divest the Commission of further jurisdiction over this matter, rendering Proposed Agency Action Order No. PSC-03-0739-PAA-EU a nullity.

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

**Recommendation:** Yes. (Vining)

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