

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition of City of Bartow to modify territorial agreement or, in the alternative, to resolve territorial dispute with Tampa Electric Company in Polk County.

DOCKET NO. 011333-EU
ORDER NO. PSC-04-0376-FOF-EU
ISSUED: April 7, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER ACKNOWLEDGING BARTOW'S VOLUNTARY DISMISSAL

BY THE COMMISSION:

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, we 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 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 Order addresses Bartow's notice of voluntary dismissal and its effect on Order No. PSC-03-0739-PAA-EU. We have jurisdiction over this matter pursuant to Section 366.04, Florida Statutes.

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

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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. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2nd DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So.2d 1123 (Fla. 2nd 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, we lost our jurisdiction to further address this matter once the petitioner, Bartow, withdrew its petition. In this instance, we acknowledge 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, we find that the effect of the voluntary dismissal is to divest us of further jurisdiction over the matter in this proceeding, rendering Proposed Agency Action Order No. PSC-03-0739-PAA-EU a nullity.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the City of Bartow’s Notice of Voluntary Dismissal is hereby acknowledged. It is further

ORDERED that the effect of Bartow’s voluntary dismissal is to divest us of further jurisdiction over the matter in this proceeding, rendering Proposed Agency Action Order No. PSC-03-0739-PAA-EU, issued June 23, 2003, a nullity. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 7th day of April, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Marcia Sharma
Marcia Sharma, Assistant Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

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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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard,

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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 Director, Division of the Commission Clerk and Administrative Services 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.