

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Sun City Center
Community Association, Inc. against Peoples
Gas System for alleged improper billing. | DOCKET NO. 090083-GU
ORDER NO. PSC-10-0202-FOF-GU
ISSUED: April 1, 2010

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT

FINAL ORDER ACKNOWLEDGING VOLUNTARY WITHDRAWAL OF THE
COMPLAINT AND CLOSING THE DOCKET

BY THE COMMISSION:

On February 16, 2009, the Sun City Center Community Association, Inc. (Customer or SCCCA) filed its formal complaint in this docket. In the formal complaint, the Customer stated that the usage for the common areas of SCCCA was improperly switched in August 2005 from the GS-2 Service rate (commercial rate) to the Residential Service rate. The Customer requested that it be moved back to the Commercial GS-2 Service rate (tariff), and that it receive a refund with interest of the difference between the two rates from the time the switch occurred in August 2005.

In its response, the Peoples Gas System (Peoples or Company) alleged that it switched SCCCA to the Residential Service rate to comply with our Order No. 19365.¹ Quoting that Order, Peoples stated that this Commission found “that gas utilities should consider service to commonly owned areas of condominium associations, cooperative apartments, and homeowner associations as residential service.” In the case at hand, Peoples is providing gas for the heating of the community pool.

By Proposed Agency Action Order No. PSC-09-0661-PAA-GU (PAA Order), issued October 5, 2009, we proposed to dispose of the formal complaint. However, SCCCA timely protested the PAA Order and the PAA Order never became effective. The protest was assigned to a panel of Commissioners and set for a formal hearing. Order No. PSC-09-0853-PCO-GU (Order Establishing Procedure), issued December 30, 2009, set the controlling dates for the events in this proceeding.

Stating that a settlement had been reached, the Customer filed its Revised Notice of Voluntary Withdrawal of Complaint on February 16, 2010, and requested that the hearing and

¹ Issued May 24, 1988, in Docket No. 860106-PU, In re: General Investigation Into Deposit Practices.

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controlling dates be canceled.² Pending the Commission's consideration of the withdrawal, the request to cancel the hearing and delete the controlling dates was granted.³

This Order addresses the Customer's withdrawal of its complaint and whether this docket may now be closed. We have jurisdiction pursuant to Sections 366.04 and 366.05(1), Florida Statutes (F.S.).

Acknowledgement of SCCCA's Voluntary Withdrawal of Its Complaint

It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.⁴ Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.⁵ Both of these legal principles have been recognized in administrative proceedings.⁶ In Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123, 1128 (Fla. 2d DCA 1993), the court concluded that "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, the hearing has not yet occurred, so the fact-finding process is not complete. We therefore find that SCCCA's withdrawal of its complaint shall be acknowledged as a matter of right, which is in accord with our past decisions.⁷ With this withdrawal of the complaint, we are divested of jurisdiction and

² SCCCA initially filed a Notice of Voluntary Dismissal With Prejudice of its Petition on Proposed Agency Action. However, it did not want the Proposed Agency Action Order to become final, and filed what it styled as a Revised Notice of Voluntary Withdrawal of Complaint.

³ See Order No. PSC-10-0098-PCO-GU, issued February 22, 2010.

⁴ Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

⁵ Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978)

⁶ 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).

⁷ See Order No. PSC-07-0725-FOF-EU, issued September 5, 2007, in Docket No. 060635-EU, In re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee; Order No. PSC-07-0485-FOF-EI, issued June 8, 2007, in Docket Nos. 050890-EI, In re: Complaint of Sears, Roebuck and Company against Florida Power & Light Company and motion to compel FPL to continue electric service and to cease and desist demands for deposit pending final decision regarding complaint and 050891-EI, In re: Complaint of Kmart Corporation against Florida Power & Light Company and motion to compel FPL to continue electric service and to cease and desist demands for deposit pending final decision regarding complaint; 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.; Order No. PSC-04-0376-FOF-EU, issued April 7, 2004, in Docket No. 011333-EU, 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. 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).

the Proposed Agency Action Order No. PSC-09-0661-PAA-GU is a nullity. We further find that with the voluntary withdrawal of the complaint, there are no further actions required.

A voluntary dismissal does not affect our jurisdiction as granted by the Legislature to protect Florida ratepayers.⁸ We also note that the problems raised in SCCCA's complaint have been corrected in Peoples' most recent rate case.⁹ Prior to the last rate case, all of Peoples' residential customers initiating service after January 1988 took service under the RS rate, pursuant to Order No. 19365, even though the characteristics of the load could be similar to use by larger GS customers. In its most recent rate case, the General Service classes were restructured to expand the eligibility of the GS-1 through GS-5 rate schedules to include residential use. This allows the largest residential customers to be included with similarly-situated non-residential customers for pricing purposes based on their term usage levels. An additional benefit of this approach is that it clarifies the rights of condominium units to purchase their gas supply from a third-party pursuant to the Company's transportation service program because all commercial customers must be offered the right to take transportation-only services under federal law.¹⁰ The deposit terms and conditions associated with residential service continue to apply to condominium customers that are reclassified to a GS rate schedule.¹¹

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sun City Center Community Association, Inc.'s Revised Notice of Voluntary Withdrawal of Complaint is acknowledged. It is further

ORDERED that with the withdrawal of the complaint, we are divested of jurisdiction and the Proposed Agency Action Order No. PSC-09-0661-PAA-GU is a nullity. It is further

ORDERED that there are no further actions required in this docket and the docket shall be closed.

⁸ 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).

⁹ See Order No. PSC-09-0411-FOF-GU, issued June 9, 2009, in Docket No. 080318-GU, In re: Petition for a Rate Increase by Peoples Gas System.

¹⁰ See Rule 25-7.0335(1), F.A.C.

¹¹ See Order No. PSC-09-0411-FOF-GU, p. 55.

By ORDER of the Florida Public Service Commission this 1st day of April, 2010.



ANN COLE
Commission Clerk

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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.