

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: May 22, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Barrera, Crawford) *JSC*
Division of Economics (Draper) *ESD J.W.D. MPB*

RE: Docket No. 130188-EM – Complaint regarding electric rate structure for Gainesville Regional Utilities.

AGENDA: 06/05/14 – Regular Agenda - Notice of Voluntary Dismissal– Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Balbis

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On July 16, 2013, Gainesville Regional Utilities (GRU) customers, Eye Associates of Gainesville, LLC and Deborah L. Martinez (Complainants), filed a Petition for Expedited Review of Electric Rate Structure for Gainesville Regional Utilities (Complaint), requesting a formal administrative hearing to review GRU's electric rate structure. On August 2, 2013, GRU filed a motion to dismiss (Motion). Complainants filed a response in opposition to GRU's Motion and a request for oral argument on August 12, 2013. On March 19, Order No. PSC-14-0137-FOF-EM (Order) granting GRU's motion was issued. Certain portions of the Complaint were dismissed without prejudice. Complainants were granted leave to file an amended complaint no later than March 28, 2014, and if no amended complaint was filed within the deadline, the docket would be closed administratively. On March 28, 2014, Complainants filed their First Amended Complaint. On April 30, 2014, GRU filed a Response to Commission Staff

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Regarding Customer Complaint and Notice of Filing Response to Customers. On May 6, 2014, Complainants filed a Notice of Voluntary Dismissal Without Prejudice (Notice).

This recommendation addresses Complainants' Notice dismissing its protest and the appropriate disposition of this docket. The Commission has jurisdiction over the subject matter pursuant to Sections 366.041, 366.05, 366.06 and 366.075, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission acknowledge Complainants' Notice of Voluntary Dismissal Without Prejudice?

Recommendation: Yes, the Commission should acknowledge Complainants' voluntary dismissal of its Petition without prejudice. (Barrera)

Staff Analysis: It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.¹ Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.² Both of these legal principles have been recognized in administrative proceedings.³ 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.

Staff therefore recommends that the Commission acknowledge Complainants' Notice of Voluntary Dismissal Without Prejudice as a matter of right, which is in accord with past Commission decisions.⁴

¹ Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

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

³ 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).

⁴ See Order No. PSC-13-0687-FOF-EI, issued December 31, 2013, in Docket No. 130007-EI, In re: Environmental cost recovery clause; Order No. PSC-12-0305-PCO-TP, issued June 14, 2012, in Docket No. 090538-TP, In re: Amended Complaint of Qwest Communications Company, LLC against MCI metro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination; Order No. PSC-12-0051-FOF-TP, issued February 3, 2012, in Docket No. 110071, In re: Emergency Complaint of Express Phone Service, Inc. against Bellsouth Telecommunications, Inc. d/b/a AT&T Florida regarding interpretation of the parties' interconnection agreement; Order No. PSC-11-0103-FOF-EI, issued February 7, 2011, in Docket No. 100410, In re: Review of Florida Power & Light Company's earnings; Order No. PSC-11-0417-PCO-EI, issued September 27, 2011, in Docket No. 110056, In re: Complaint against Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services for failure to pay intrastate access charges for the origination and termination of intrastate interexchange telecommunications service, by Bright House Networks Information Services (Florida), LLC; Order No. PSC-11-0453-FOF-EI, issued October 10, 2011, in Docket No. 100358-EI, In re: Investigation into the design of Commercial Time-of-Use rates by Florida Power & Light, pursuant to Order No. PSC-10-0153-FOF-EI; Order No. PSC-10-0248-FOF-EQ, issued April 22, 2010, in Docket No. 090146-EQ, In re: Petition by Tampa Electric Company for approval of extension of small power production agreement with City of Tampa; Order No. PSC-08-0822-FOF-WS, issued December 22, 2008, in Docket No. 080500-WS, In Re: Application for transfer of majority organizational control of Indiantown Company Inc., holder of Certificate Nos. 387-Wand 331-S in Martin County, from Postco, Inc. to First Point Realty Holdings, LLC; 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).

Issue 2: Should this docket be closed?

Recommendation: Yes. No further action by the Commission is required in this docket and the docket should be closed. (Barrera)

Staff Analysis: No further action by the Commission is required in this docket and the docket should be closed.