

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:** February 19, 2015

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Brownless) *MB JSC*  
Division of Economics (Garl) *ED J.W.D.*  
Division of Engineering (Moses) *Q 723*

**RE:** Docket No. 140024-EI – Initiation of formal proceedings on Complaint No. 1109752E of Brenda Rodriguez against Duke Energy Florida, Inc. for alleged improper billing.

**AGENDA:** 03/03/15 – Regular Agenda – Notice of Withdrawal - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** ~~Brisé~~ *All Commissioners* *2-19-15*

**PREHEARING OFFICER:** Brisé

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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COMMISSION  
CLERK

### Case Background

On May 7, 2013, Brenda Rodriguez filed Complaint No. 1109752E against Duke Energy Florida, Inc. (Duke or Company). In that complaint, Ms. Rodriguez contested Duke's assertion that she had tampered with her meter causing it to register zero kilowatt hours (kWh) and further contested the amount of the investigation and back-billing charges Duke imposed. Order No. PSC-14-0303-PAA-EI, issued on June 12, 2014, denied Rodriguez's request for relief and confirmed as reasonable Duke's charge of \$7,974.44 for investigation and back-billing charges. On July 1, 2014, Rodriguez filed a timely request for hearing. Pursuant to Order No. PSC-14-0674-PCO-EI, issued on December 5, 2014, Commission staff, Duke and Rodriguez all filed prehearing statements, which included direct exhibits, on January 8, 2015. A prehearing and final hearing were scheduled in this case on February 4 and 11, 2015, respectively. On February

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2, 2015, Rodriguez filed a Notice of Withdrawal requesting that her complaint against Duke be withdrawn, that no further action be taken in this docket, and that the docket be closed.

The Commission is vested with jurisdiction over this subject matter through the provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

**Discussion of Issues**

**Issue 1:** Should the Commission acknowledge Ms. Rodriguez's Notice of Withdrawal?

**Recommendation:** Yes, the Commission should acknowledge the voluntary withdrawal of Ms. Rodriguez's complaint. The voluntary withdrawal renders Order No. PSC-14-0303-PAA-EI a nullity by operation of law. (Brownless)

**Staff Analysis:** It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.<sup>1</sup> Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.<sup>2</sup> Both of these legal principles have been recognized in administrative proceedings.<sup>3</sup> 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 Ms. Rodriguez's Notice of Withdrawal of her complaint as a matter of right, which is in accord with past Commission

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

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

<sup>3</sup> 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).

decisions.<sup>4</sup> The voluntary withdrawal renders Order No. PSC-14-0303-PAA-EI a nullity by operation of law.

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<sup>4</sup> 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 MCImetro 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. This docket should be closed administratively after the time for appeal of the final order has run. (Brownless)

**Staff Analysis:** This docket should be closed administratively after the time for appeal of the final order has run. (Brownless)