

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-**

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**DATE:** June 3, 2021

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

**FROM:** Division of Accounting and Finance (Norris) *ALM*  
Office of the General Counsel (Trierweiler, Crawford, Stiller) *JSC*

**RE:** Docket No. 20200189-WS – Petition for approval of a regulatory asset to record costs incurred due to COVID-19, by Utilities, Inc. of Florida.

**AGENDA:** 06/15/21 – Regular Agenda – Notice of Voluntary Dismissal - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Fay

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On August 3, 2020, Utilities, Inc. of Florida (UIF) filed a petition for approval to establish a regulatory asset to record costs incurred due to COVID-19, and therein requested deferral of incremental bad debt expense, assorted operating expenses, and safety-related costs attributable to COVID-19. On October 26, 2020, the Commission issued PAA Order PSC-2020-0403-PAA-WS, approving UIF's request. On November 16, 2020, The Office of Public Counsel (OPC) timely filed a Petition Protesting a Proposed Agency Action and requested an administrative hearing on the proposed action.

By Order No. PSC-2021-0104-PCO-PU, issued on March 12, 2021, UIF's petition in Docket No. 20200189-WS was consolidated with Docket Nos. 20200151-EI and 20200194-PU. In both of the dockets, OPC had also protested PAA Orders approving regulatory assets to record

Docket No. 20200189-WS

Date: June 3, 2021

costs incurred due to COVID-19.<sup>1</sup> By Order No. PSC-2021-0104-PCO-PU, all three dockets are scheduled for an administrative hearing on June 16, 2021. On March 30, 2021, UIF filed a Notice of Voluntary Dismissal Without Prejudice of its petition filed in Docket No. 20200189-WS.

The Commission has jurisdiction over this matter pursuant to Sections 367.011, 367.081, and 367.121, Florida Statutes (F.S.).

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<sup>1</sup> Docket Nos. 20200151-EI, *In re: Petition for approval of a regulatory asset to record costs incurred due to COVID-19, by Gulf Power Company*, and 20200194-PU, *In re: Petition for approval of regulatory assets to record costs incurred due to COVID-19, by Florida Public Utilities Company, Florida Public Utilities Company - Indiantown Division, Florida Public Utilities Company - Fort Meade, Florida Division of Chesapeake Utilities Corporation*.

## Discussion of Issues

**Issue 1:** Should the Commission acknowledge UIF's Notice of Voluntary Dismissal Without Prejudice?

**Recommendation:** Yes, the Commission should acknowledge UIF's voluntary dismissal of its Petition without prejudice. With the voluntary dismissal of UIF's petition, the Commission is divested of jurisdiction and Proposed Agency Action Order No. PSC-2020-0403-PAA-WS is a nullity. The Commission should further find that UIF is dismissed from the June 16, 2021 hearing, and there are no further actions required with respect to this docket. (Trierweiler)

**Staff Analysis:** It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.<sup>2</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>3</sup> Both of these legal principles have been recognized in administrative proceedings.<sup>4</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 UIF's Notice of Voluntary Dismissal Without Prejudice of its petition as a matter of right, which is in accord with past Commission decisions.<sup>5</sup> With the voluntary dismissal of UIF's petition, the Commission is divested of jurisdiction and Proposed Agency Action Order No. PSC-2020-0403-PAA-WS is a nullity. The Commission should further find that UIF is dismissed from the June 16, 2021 hearing, and there are no further actions required with respect to this docket.

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<sup>2</sup> *Fears v. Lunsford*, 314 So. 2d 578, 579 (Fla. 1975); see also *Kelly v. Colston*, 977 So. 2d 692, 693 (Fla. 1st DCA 2008) (holding that a plaintiff's right to take a voluntary dismissal is nearly absolute).

<sup>3</sup> *Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc.*, 360 So. 2d 68, 69 (Fla. 1978)

<sup>4</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).

<sup>5</sup> See Order PSC-15-0116-FOF-EI, issued March, 4, 2015, in Docket No. 20140024-EI, *In re: Complaint of Brenda Rodriguez against Duke Energy Florida, Inc.*, 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-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: 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. (Trierweiler)

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