

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: August 26, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Banks, Susac)
Division of Competitive Markets & Enforcement (Barrett)

RE: Docket No. 030746-TP – Complaint of Cargill Crop Nutrition, Inc., f/k/a Cargill Fertilizer, a subsidiary of Cargill Corporation, against Verizon Florida Inc. for enforcement of FCC orders and Florida Public Service Commission decisions eliminating application of tariff charges for complex inside wiring, and request for relief.

AGENDA: 09/07/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030746.RCM.DOC

Case Background

On August 1, 2003, Cargill Crop Nutrition, Inc. f/k/a Cargill Fertilizer (Cargill) filed a Complaint against Verizon Florida Inc. d/b/a Verizon Communications (Verizon) for enforcement of the Commission's Order No. PSC-97-0385-FOF-TL that eliminates the regulated charges under Verizon General Service Tariff 113.2. On August 26, 2003, Verizon filed its Response to Cargill's Complaint. On October 31, 2003, Cargill filed a Motion to Amend its Complaint against Verizon to clarify the relief sought in this docket. Verizon did not file a Response to Cargill's Motion. By Order No. PSC-03-1305-PCO-TP, issued November 7, 2003, Cargill's Motion to Amend its Complaint was granted. Verizon filed its Answer to the Amended Complaint on December 4, 2003.

Thereafter, several motions for continuances were granted allowing parties additional time to resolve the issues in this docket. On July 30, 2004, Cargill filed a Notice of Voluntary Dismissal of its Complaint with prejudice.

Discussion of Issues

Issue 1: Should the Commission acknowledge Cargill Fertilizer's Notice of Voluntary Dismissal of its Complaint with prejudice?

Recommendation: Yes. The Commission should acknowledge Cargill's Notice of Voluntary Dismissal of its Complaint with prejudice. In addition, all confidential materials filed in this Docket should be returned to the filing party. **(BANKS)**

Staff Analysis: The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So.2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68, 69 (Fla. 1978).

Therefore, staff recommends that the Commission acknowledge Cargill's Notice of Voluntary Dismissal of its Complaint with prejudice. Since no further action is needed, all confidential materials filed in this Docket should be returned to the filing party.

ISSUE 2: Should this Docket be closed?

RECOMMENDATION: Yes. There is nothing further in this Docket for this Commission to consider, and the Docket should be closed. **(BANKS)**

STAFF ANALYSIS: There is nothing further in this Docket for this Commission to consider. Therefore, the Docket should be closed.