

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Skyway) DOCKET NO. 920978-EQ
Power Corporation to require) ORDER NO. PSC-97-0319-FOF-EQ
FLORIDA POWER CORPORATION to) ISSUED: March 24, 1997
furnish avoided cost data)
pursuant to Commission Rule 25-)
17.0832(7), F.A.C.)
_____)

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER ACKNOWLEDGING VOLUNTARY DISMISSAL

BY THE COMMISSION:

On September 29, 1992, Skyway Power Corporation (Skyway) filed a complaint requesting that the Commission require Florida Power Corporation (FPC) to furnish Skyway with FPC's avoided cost data pursuant to Rule 25-17.0832(7), Florida Administrative Code, for FPC's Polk County 3 and 4 generating units. In addition, Skyway's complaint requested the Commission to order FPC to provide Skyway with its PROMOD and PROSCREEN data bases. FPC provided Skyway with the avoided cost data but refused to relinquish the PROMOD and PROSCREEN data bases. Pursuant to Proposed Agency Action Order No. PSC-93-0843-FOF-EQ, issued June 7, 1993 (Order No. 93-0843), the Commission found that Rule 25-17.0832(7), Florida Administrative Code, does not require FPC to provide Skyway with PROMOD and PROSCREEN data bases and that the docket could be closed. Skyway filed a protest to Order 93-0843 and the matter was set for hearing. Subsequent to its protest filing, Skyway requested and was granted three motions for continuance. The basis for the motions was the Commission's ongoing rules amendment proceedings relating to avoided cost, cogeneration and bidding requirements. Skyway averred that the outcome of the rulemaking may obviate the need for the litigation. On December 13, 1996, Skyway filed a notice of voluntary dismissal of its complaint pursuant to Rule 1.420, Florida Rules of Civil Procedure.

We acknowledge Skyway's voluntary dismissal of its complaint. The effect of the dismissal is to render Order No. 93-0843 a nullity. It is well established in the law that a complainant has an absolute right to voluntarily dismiss an action by timely filing

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a notice thereof. Fears v. Lunsford, 314 So.2d 578, 579 (Fla. 1975) The effect of the dismissal is to divest the Commission of all jurisdiction over the matter. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68,69 (Fla. 1978) The divesture of jurisdiction relates to prior orders rendered in the proceedings and, as such, the PAA Order is a nullity. This action is consistent with our decision in Order No. PSC-94-0310-FOF-EQ, issued in Docket No. 920977-EQ, Petition for approval of contract for the purchase of firm capacity and energy between General Peat Resources, L.P. and Florida Power and Light Company. In that Order, we acknowledged General Peat's voluntary dismissal and determined that the PAA Order previously issued and timely protested was of no effect. Therefore, we acknowledge Skyway's voluntary dismissal of its complaint. The effect of the dismissal is to render Order No. 93-0843 a nullity.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Skyway Power Corporation's complaint to require Florida Power Corporation to furnish avoided cost data pursuant to Commission Rule 25-17.0832(7), F.A.C., is dismissed and PAA Order No. 93-0843 is null and void. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 24th day of March, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

LJP/RVE

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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 Director, Division of Records and Reporting, 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 Director, Division of Records and Reporting 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.