

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**BOARD OF COMMISSIONERS OF THE  
SOUTHEAST LOUISIANA FLOOD PROTECTION  
AUTHORITY – EAST, et al**

**CIVIL ACTION**

**VERSUS**

**NO. 13-5410**

**TENNESSEE GAS PIPELINE COMPANY, LLC, et  
al.**

**SECTION: “G”(1)**

**ORDER**

On September 5, 2014, Defendant P.R. Rutherford filed a “Motion to Dismiss for Failure to State a Claim.”<sup>1</sup> According to the motion, P.R. Rutherford is an individual who passed away in 1983 and, because he is deceased, has no capacity to be sued under the applicable law.<sup>2</sup> On September 18, 2014, Rutherford filed an “Ex Parte Motion for Hearing,”<sup>3</sup> wherein he requests a hearing regarding his Motion to Dismiss. On September 19, 2014, the Court granted Rutherford’s Ex Parte Motion for Hearing and set oral argument for November 12, 2014 at 10:00 a.m.<sup>4</sup>

On September 30, 2014, Plaintiffs filed a “Notice of Voluntary Dismissal Without Prejudice,”<sup>5</sup> wherein they “voluntarily dismiss P.R. Rutherford, without prejudice, each party to bear its respective attorneys’ fees and costs.”<sup>6</sup> Plaintiffs state that “pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, defendant P.R. Rutherford may be dismissed without order of the

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<sup>1</sup> Rec. Doc. 417.

<sup>2</sup> Rec. Doc. 417-1 at p. 2.

<sup>3</sup> Rec. Doc. 438

<sup>4</sup> Rec. Doc. 440.

<sup>5</sup> Rec. Doc. 441.

<sup>6</sup> *Id.*

Court.”<sup>7</sup> Plaintiffs argue that as of September 30, 2014, no defendant in this matter has filed an answer or a motion for summary judgment.<sup>8</sup>

Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure provides that, “subject to Rules 23(e), 23.1(c), 23.2, 66, and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.”<sup>9</sup> Rules 23(e), 23.1(c), and 23.2 apply only to class actions;<sup>10</sup> Rule 66 governs an action in which the appointment of a receiver is sought or a receiver sues or is sued.<sup>11</sup> Neither Rule is applicable here, since this litigation is neither a class action nor involves the appointment of a receiver. No federal statutes appear to bar Plaintiffs’ “Notice of Voluntary Dismissal Without Prejudice.”<sup>12</sup>

Considering that the present motion is not subject to the exceptions provided in Rule

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Fed. R. Civ. P. 41(a)(1)(A)(i).

<sup>10</sup> *See* Fed. R. Civ. P. 23.

<sup>11</sup> Fed. R. Civ. P. 66.

<sup>12</sup> Rec. Doc. 441.

41(a)(1)(A)(i), and considering that no Defendant in this matter filed an answer or a motion for summary judgment<sup>13</sup> as of September 30, 2014, the date of plaintiffs' Notice of Voluntary Dismissal,

**IT IS HEREBY ORDERED** that all of Plaintiff's claims against defendant P.R. Rutherford are **DISMISSED WITHOUT PREJUDICE**.

**IT IS FURTHER ORDERED** that Defendant P.R. Rutherford's "Motion to Dismiss for Failure to State a Claim"<sup>14</sup> and "Ex Parte Motion for Hearing"<sup>15</sup> are **DENIED AS MOOT**.

NEW ORLEANS, LOUISIANA, on this 10th day of October, 2014.

  
**NANNETTE JOLIVETTE BROWN**  
**UNITED STATES DISTRICT JUDGE**

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<sup>13</sup> The Court notes that Plaintiffs filed a Motion for Partial Summary Judgment Regarding Louisiana Act 544 on August 6, 2014 (Rec. Doc. 389).

<sup>14</sup> Rec. Doc. 417.

<sup>15</sup> Rec. Doc. 438.