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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

UNITED WATER FLORIDA, INC.,

Appellant,

v.

FLORIDA PUBLIC SERVICE
COMMISSION,

Appellee.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND
DISPOSITION THEREOF IF FILED.

CASE NO. 98-4164

RECORDS AND
REPORTING

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971596-WS

Opinion filed April 13, 1999.

An appeal from an order of the Public Service Commission.

James L. Ade, Esquire, of Martin, Ade, Birchfield & Mickler,
Jacksonville, for appellant.

Robert D. Vandiver, General Counsel and Mary Anne Helton, Associate
General Counsel, Florida Public Service Commission, Tallahassee,
for appellee.

ORDER RELINQUISHING JURISDICTION

PER CURIAM.

Appellant United Water Florida, Inc. (UWF) petitioned the
Public Service Commission for variance from a rule and rate relief.

On September 21, 1998, the commission entered a notice of proposed
agency action that the requested relief would be denied. The order

DOCUMENT NUMBER-DATE

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- CTR _____
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- SEC _____
- WAW _____
- OTH _____

further provided that a substantially affected party may petition for a formal proceeding. The order went on to provide that, in the absence of a request for such a proceeding, the order would become final on October 13, 1998. UWF did not petition for a hearing but filed a notice of appeal on November 10, 1998.

Finding the question of its jurisdiction unclear, this court issued an order directing appellant to show cause why the appeal should not be dismissed because the notice of appeal was untimely. The appellant responded and explained the above described circumstances. Upon consideration of appellant's arguments, the commission was asked to address the jurisdictional issues presented and directed to show cause why jurisdiction should not be relinquished for entry of a final order.

In its response the commission states that the circumstances presented here, an appeal from an order where no hearing was requested, is virtually unknown in proceedings before it. According to appellee, entry of a second order to announce that a proposed agency action has become final where no hearing has been requested is an administrative inconvenience and almost always unnecessary. We find, however, that entry of such an order is appropriate in the instant case. Section 120.52(7), Florida Statutes, clearly contemplates that a written final order be filed

with the clerk of the agency at a particular date and such a document filing is necessary to compute the time for filing of the appeal. Appellate jurisdiction is invoked by the filing of a notice of appeal within 30 days of rendition of the order and "[a]n order is rendered when a signed, written order is filed with the clerk of the lower tribunal." Fla. R. App. P. 9.020(h). In the context of civil litigation arising from circuit court this court questioned the finality of an order which purported to become final at a later date without further judicial action. See Department of Transportation v. Post, Buckley, Schuh & Jernigan, 557 So. 2d 145 (Fla. 1st DCA 1990).

For the foregoing reasons, we deem it necessary that the Public Service Commission enter a final order in this cause and jurisdiction is relinquished to the agency for 20 days from the date of this order with directions to enter such an order. Thereafter this court will assume jurisdiction of the proceeding in this case number. See Fla. R. App. P. 9.110(m).

ERVIN, BOOTH and PADOVANO, JJ., concur.



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

971596

DATE: APRIL 15, 1999

TO: JOE GARCIA, CHAIRMAN
J. TERRY DEASON, COMMISSIONER
SUSAN F. CLARK, COMMISSIONER
JULIA JOHNSON, COMMISSIONER
E. LEON JACOBS, COMMISSIONER
WILLIAM TALBOTT, EXECUTIVE DIRECTOR
JAMES WARD, DEPUTY EXECUTIVE DIRECTOR/ADM.
MARY BANE, DEPUTY EXECUTIVE DIRECTOR/TECH.
ROB VANDIVER, GENERAL COUNSEL
DAVID SMITH, DIRECTOR OF APPEALS
NOREEN DAVIS, DIRECTOR OF LEGAL SERVICES
TIM DEVLIN, DIRECTOR OF AUDITING & FINANCIAL ANALYSIS
WALTER D'HAESELEER, DIRECTOR OF COMMUNICATIONS
STEVE TRIBBLE, DIRECTOR OF ADMINISTRATION
BEV DEMELLO, DIRECTOR OF CONSUMER AFFAIRS
JOE JENKINS, DIRECTOR OF ELECTRIC & GAS
DAN HOPPE, DIRECTOR OF RESEARCH & REGULATORY REVIEW
BLANCA BAYÓ, DIRECTOR OF RECORDS & REPORTING
CHUCK HILL, DIRECTOR OF WATER AND WASTEWATER

FROM: MARY ANNE HELTON, DIVISION OF APPEALS *MAH*

RE: UNITED WATER FLORIDA, INC. V. FLORIDA PUBLIC SERVICE COMMISSION, FIRST DCA CASE NO. 98-4164, PSC DOCKET NO. 971596-WS

On April 13, 1999, the First District Court of Appeal relinquished jurisdiction to the Commission to issue a final order in the above cause.

In this case, United Water Florida, Inc. (United Water) had appealed a proposed agency action order that became final by operation of law because no hearing was requested. After receiving the notice of appeal, the court issued a show cause order to United Water asking why the appeal should not be dismissed because the notice of appeal was untimely. After receiving United Water's response, the court issued a show cause order to the Commission inquiring why jurisdiction should not be relinquished to the Commission with directions to enter a final order.

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MEMORANDUM
PAGE 2
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In its response to the second show cause order, the Commission argued that the Commission's PAA procedure is consistent with Florida law and is in substantial compliance with the requirements concerning the rendition of a final order that are found in the Florida Rules of Appellate Procedure and the Administrative Procedures Act. The Commission also argued that the agency has not encountered any problems from its decision to stop issuing consummating orders over nine years ago. In addition, the Commission argued that requiring the agency to change its current automated, streamlined procedure would be cumbersome and costly. Finally, the Commission argued that the matter at issue in this appeal is an anomaly because United Water did not exhaust its administrative remedies since the utility never requested a formal hearing.

The court was not persuaded by the Commission's arguments and has deemed it necessary for the Commission to enter a final order in this cause. By order of the court, the Commission has jurisdiction until May 3, 1999, to enter a final order. A copy of the court's order is attached.

MAH
Attachment

cc: All Attorneys
Jan Kyle
Trish Merchant

UNITOPN.MAH

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