

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding regarding other postretirement employee benefits and petition for variance from or waiver of Rule 25-14.012, F.A.C., by United Water Florida Inc.

DOCKET NO. 971596-WS
ORDER NO. PSC-99-0848-FOF-WS
ISSUED: April 28, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER FINALIZING PROPOSED AGENCY ACTION
ORDER NO. PSC-98-1243-FOF-WS

BY THE COMMISSION:

By Proposed Agency Action (PAA) Order No. PSC-98-1243-FOF-WS, issued September 21, 1998, in this docket, we proposed to deny United Water Florida Inc.'s (UWF or utility) petitions for limited proceeding and for variance from or waiver of Rule 25-14.012, Florida Administrative Code. In the Notice of Further Proceedings or Judicial Review attached to the PAA order, we gave our customary notice that the PAA order would become final and effective on a date certain if a petition for a formal proceeding were not timely filed by a date certain. The notice further provided that if the order were to become final and effective, any substantially affected person could request judicial review by filing a notice of appeal within thirty days of the effective date of the order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

Because there were no protests to the PAA, the order became final and effective on October 13, 1998. Although UWF did not file a protest, on November 10, 1998, it did file a notice of appeal of the order to the First District Court of Appeal (Court).

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After receiving UWF's notice of appeal, the Court issued a show cause order to the utility asking why the appeal should not be dismissed because the notice of appeal was untimely. After receiving the utility's response, the Court issued a show cause order to the Commission inquiring why jurisdiction should not be relinquished with directions to enter a final order. After receiving our response to the second show cause order, the Court entered an opinion in which it ordered that the Commission has jurisdiction through May 3, 1999, to enter a final order in this cause.

In its show cause order to the Commission, the Court stated that it appeared that the procedure employed by the Commission impermissibly combined a notice of proposed agency action and a final order, and that a final order must be rendered by filing with the agency clerk on the effective date of that order, pursuant to Section 120.52(7), Florida Statutes, and Rules 9.020(h) and 9.110(c), Florida Rules of Appellate Procedure.

In its order relinquishing jurisdiction in which it ruled on its show cause orders, the Court found that:

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).

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We hereby issue this final order to comply with the Court's directive.

Moreover, we note that because nothing distinguishes this case from any other case in which our practice would be to combine a notice of proposed agency action and a final order, in order to comport with judicial intent, we shall reinstate our prior practice of issuing "consummating orders" to declare that PAA decisions

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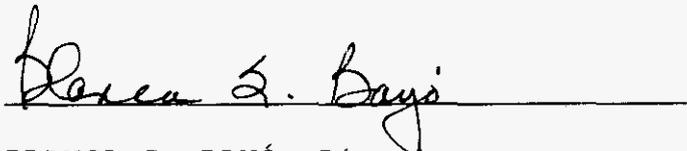
which have not been protested have become final on the effective (issuance) date of the "consummating order."¹

This docket shall remain open pending the final outcome on appeal.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Proposed Agency Action Order No. PSC-98-1243-FOF-WS, issued September 21, 1998, in this docket, is hereby final.

By ORDER of the Florida Public Service Commission this 28th day of April, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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

¹In order to finalize proposed agency actions, "consummating orders" were issued after such actions had become final when no timely protests had been received.

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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.