

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for limited) DOCKET NO. 930256-WS
proceeding to implement water) ORDER NO. PSC-95-1213-S-WS
conservation plan in Seminole) ISSUED: October 2, 1995
County by SANLANDO UTILITIES)
CORPORATION.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
JOE GARCIA
JULIA L. JOHNSON

ORDER MODIFYING ORDER NO. PSC-95-0536-S-WS

BY THE COMMISSION:

Sanlando Utilities Corporation (Sanlando or utility) is a Class A water and wastewater utility located in Altamonte Springs, Florida, which operates three water and two wastewater plants. According to the 1993 annual report, Sanlando serves approximately 10,489 water and 8,725 wastewater customers. The revenue collected in 1993 by the utility was \$1,938,944 for the water system and \$2,731,650 for the wastewater system. Sanlando's entire service area lies within the St. John's River Water Management District (SJRWMD), which has declared its entire district as a water use caution area.

We opened this docket for the purpose of implementing Sanlando's water conservation plan approved in Order No. PSC-92-1356-FOF-WS, issued November 23, 1992. This conservation plan includes the construction of an effluent reuse system. By Proposed Agency Action Order No. PSC-93-1771-FOF-WS, issued December 10, 1993, we authorized increased gallonage charges in order to generate revenue for the conservation plan and required the utility to establish an escrow account to deposit those funds and any excess revenues.

Timely petitions protesting Order No. PSC-93-1771-FOF-WS were filed by Jack R. Hiatt, Robert E. Swett and Tricia Madden, individually and as President of Wekiva Hunt Club Community Association, Inc. In addition, the Office of Public Counsel (OPC) and SJRWMD filed notices of intervention in this docket.

DOCUMENT NUMBER-DATE

09734 OCT-2 1995

FPSC-RECORDS/REPORTING

This matter was set for a formal hearing in Seminole County on September 26-27, 1994. On September 19, 1994, OPC filed a motion to cancel the September 26, 1994 hearing and approve a stipulation among the parties. Order No. PSC-94-1157-PCO-WS, issued September 20, 1994, granted the motion to cancel the hearing.

Upon our initial review of the parties' proposed stipulation, we had concerns over several provisions, particularly jurisdictional considerations and the Commission's role in implementing the stipulation. We deferred the matter from our December 12, 1994 Agenda Conference and instructed the parties and our staff to review the stipulation with these considerations in mind. At our March 21, 1995 Agenda Conference, after considerable discussion, we voted to approve the amended stipulation. Order No. PSC-95-0536-S-WS, issued April 28, 1995, set forth that decision.

On May 15, 1995, the Office of Public Counsel filed a motion to clarify Order No. PSC-95-0536-S-WS. All of the parties involved in the stipulation endorsed the motion. OPC's motion asserts that the order does not accurately reflect our March 21, 1995 decision. We note initially that this motion does not seek clarification so much as it seeks to amend the order to comport with the parties' interpretation of our vote. This could be construed as a motion for reconsideration pursuant to Rule 25-22.060, Florida Administrative Code. However, for the purposes of review of this motion, we have not applied the standard for reconsideration.

The primary source of contention is the decision regarding the language of Paragraph 4(c) of the proposed stipulation. That section of the stipulation provides that any dispute concerning the reasonableness or prudence of expenses associated with the construction of the facility will first be addressed by an engineering firm, and that if that resolution is not acceptable, the dispute would then be submitted to the Commission for final resolution.

At the March 21, 1995, Agenda Conference, a significant portion of the discussion focused upon the issue of the Commission's role in resolving contractual disputes. After the discussion we adopted as modified our staff's primary recommendation, which was that we approve the stipulation with the caveat that the Commission was neither bound nor authorized to resolve disputes among the parties. Order No. PSC-95-0536-S-WS memorialized that decision, and addressed the issue in the following paragraph on page 5:

In light of these considerations, we will not resolve disputes concerning the Chief Operating Officer or the

Articles of Incorporation contemplated in Paragraph 1(a). Furthermore, we will not resolve disputes among parties or directly approve the reasonableness and prudence of contracts and expenses as contemplated by the current stipulation. However, through our regulatory function as it relates to the utility's recovery of lease expenses through the surcharge, we will review the reasonableness and prudence of expenses as they relate to what we allow the utility to recover in lease expenses. The determination of reasonableness of expenses would flow from our authority to review and approve those expenses when authorizing the release of the escrowed funds.

OPC's motion asserted that this paragraph, and particularly the last three sentences, did not comport with our discussion and final vote. After hearing argument on the motion at our July 17, 1995 Agenda Conference, we deferred the matter and directed our staff and the parties to discuss the matter further and attempt to reach agreement over more acceptable language.

At our September 12, 1995 Agenda Conference, our staff and the parties presented the following substitution of the paragraph contained on page 5 of Order No. PSC-95-0536-S-WS:

In light of these considerations, we will not resolve disputes concerning the Chief Operating Officer or the Articles of Incorporation contemplated in Paragraph 1(a). Furthermore, we do not have jurisdiction to resolve disputes between parties to the stipulation. However, pursuant to our regulatory authority to release the escrowed funds, we will review and approve the reasonableness and prudence of the proposed or actual expenditures of escrowed funds when presented to us.

Upon consideration, we find it appropriate to approve the parties' suggested language as set forth above and modify Order No. PSC-95-0536-S-WS accordingly. The second full paragraph contained on page 5 of Order No. PSC-95-0536-S-WS is hereby stricken, and the paragraph listed immediately above is hereby substituted in its place. Order No. PSC-95-0536-S-WS is affirmed in all other respects.

Order No. PSC-95-0536-S-WS ordered the parties to advise the Commission once the Internal Revenue Service has issued a letter ruling on the parties' proposed plan. Therefore, this docket shall remain open while the parties seek that letter ruling.

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Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-95-0536-S-WS is modified as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-95-0536-S-WS is affirmed in all other respects. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 2nd day of October, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.