

State of Florida



Public Service Commission

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COMMISSION CLERK

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DATE: April 26, 2007

TO: Commission Clerk (Cole)

FROM: Division of Economic Regulation (Fletcher, Rendell, Springer) *BF A mad*
Office of the General Counsel (Brubaker) *JSB ALM*

RE: Docket No. 060258-WS – Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corp.

AGENDA: 05/08/07 – Regular Agenda – Acknowledging Implementation of Proposed Agency Action Rates - Participation is at the Discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Place next to Docket No. 060257-WS

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060258.RCM.DOC

Case Background

Sanlando Utilities Corp. (Sanlando or utility) is a Class A utility providing water and wastewater service to approximately 10,108 water and 8,201 wastewater customers in Seminole County. Water and wastewater rates were last established for this utility in its 1998 earnings investigation.¹

¹ See Order No. PSC-00-1263-PAA-WS, issued July 10, 2000, in Dockets Nos. 971186-SU, In re: Application for approval of reuse project plan and increase in wastewater rates in Seminole County by Sanlando Utilities Corporation., and 980670-WS, In re: Investigation of possible overearnings by Sanlando Utilities Corporation in Seminole County. Order No. PSC-00-2097-AS-WS, issued November 6, 2000, made Order No. PSC-00-1263-PAA-WS final as modified by the settlement agreement.

DOCUMENT NUMBER-DATE

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On May 15, 2006, Sanlando filed the Application for Rate Increase at issue in the instant docket. By Order No. PSC-07-0205-PAA-WS ("PAA Order"), issued March 6, 2007, the Commission approved rates that were designed to generate a water revenue requirement of \$2,491,321 and a wastewater revenue requirement of \$3,996,861.

On March 27, 2007, the Office of Public Counsel (OPC) timely filed a protest of the PAA Order. On April 5, 2007, Sanlando timely filed a cross-petition to protest the PAA Order, pursuant to Rule 25-22.029(3), Florida Administrative Code (F.A.C.). By letter dated April 9, 2007, Sanlando stated that it intends to put the PAA Order rates in effect during the pendency of the administrative hearing.

The Commission will also be considering whether to acknowledge the implementation of the PAA rates of another UI subsidiary at the May 8, 2007, Agenda Conference. Cypress Lakes Utilities, Inc. (Cypress Lakes) filed its Application for Rate Increase at issue in Docket No. 060257-WS on May 15, 2006. By Order No. PSC-07-0199-PAA-WS ("Cypress Lakes PAA Order")², issued March 5, 2007, the Commission approved increased PAA rates and charges, which included an annual revenue increases of \$42,874 for water and \$143,167 for wastewater. On March 26, 2007, Cypress Lakes Associates, Ltd., a developer, timely filed a protest of the Cypress Lakes PAA Order. On April 6, 2007, the OPC filed a cross-protest of the Cypress Lakes PAA Order. By letter dated April 9, 2007, Cypress Lakes stated that it also intends to put the Cypress Lakes PAA Order rates in effect during the pendency of the administrative hearing.

This recommendation addresses the implementation of the PAA rates and the security to guarantee the increased revenues collected under the PAA rates for Sanlando. The Commission has jurisdiction pursuant to Section 367.081, Florida Statutes, (F.S.).

² Issued March 5, 2007, in Docket No. 060257-WS, In re: Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities, Inc.

Discussion of Issues

Issue 1: Should the Commission acknowledge the implementation of the proposed agency action rates by Sanlando Utilities Corp.?

Recommendation: Yes. The Commission should acknowledge the utility's implementation of the proposed agency action rates on a temporary basis pending the outcome of this rate proceeding. (Fletcher)

Staff Analysis: As discussed in the Case Background, the PAA order was protested by the OPC and cross-protested by the utility. On April 9, 2007, Sanlando submitted its notice of intent to implement rates pursuant to Section 367.081(8), F.S., pending the resolution of the protest filed in this docket. The utility also submitted tariff sheets and a proposed customer notice.

Section 367.081(8), F.S., states:

At the expiration of 5 months following the official filing date, if the commission has not taken action or, if the commission's action is protested by a party other than the utility, the utility may place its requested rates into effect under bond, escrow, or corporate undertaking subject to refund, upon notice to the commission and upon filing the appropriate tariffs.

The filing of OPC's objection triggers the applicability of subsection 367.081(8), F.S., and the utility is allowed to implement the PAA rates as requested by the utility. Although the utility has the right to implement its requested final rates, Sanlando has elected to implement the final rates approved by the Commission in the PAA order. These Commission-approved rates are lower than the rates requested by the utility in its filing.

Staff reviewed the tariff sheets and the proposed customer notice. Once the utility has provided the appropriate security, the effective date can be established and incorporated in the tariff sheets and customer notice. The security for the rate increase is discussed further in Issue 2. Based on the above, staff recommends that the Commission acknowledge the utility's implementation of the PAA rates on a temporary basis pending the outcome of this rate proceeding.

Issue 2: What is the appropriate security to guarantee the increased revenues collected under the temporary proposed agency action rates?

Recommendation: The utility should be required to open an escrow account or file a surety bond to guarantee any potential refund of revenues collected under interim conditions. If the security provided is an escrow account, the utility should deposit 19.39% of water and 19.94% of wastewater revenues into the escrow account each month. Otherwise, the surety bond should be in the amount of \$910,583. Pursuant to Rule 25-30.360(6), F.A.C., the utility should provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. (Fletcher, Springer)

Staff Analysis: As discussed in Issue 1, the utility may place its requested rates into effect under bond, escrow, or corporate undertaking subject to refund pursuant to Section 367.081(8), F.S. In addition to allowing the utility to implement its requested rates, the statute requires that "The utility shall keep accurate records of amounts received as provided by subsection (6)." Subsection (6) specifies that, "The utility shall keep accurate, detailed accounts of all amounts received because of such rates becoming effective under bond, escrow, or corporate undertaking subject to refund, specifying by whom and in whose behalf such amounts were paid."

Pursuant to the PAA Order, the Commission approved PAA rates and charges for Sanlando, which included an annual revenue increase of \$404,581 for water and \$664,394 for wastewater. In addition, by Order No. PSC-07-0199-PAA-WS, issued March 5, 2007, the Commission approved PAA rates and charges for Cypress Lakes Utilities Inc. (Cypress Lakes), which included an annual revenue increase of \$42,874 for water and \$143,167 for wastewater. By letter dated April 9, 2007, Cypress Lakes also stated that it intends to put the PAA Order rates in effect during the pendency of the administrative hearing in Docket No. 060257-WS.

Sanlando and Cypress Lakes are wholly-owned subsidiaries of UI, which provides all investor capital to its subsidiaries. UI's present cumulative corporate undertaking amount is \$1,784,788. UI has requested an additional corporate undertaking to secure the implementation of temporary PAA rates granted for Sanlando and Cypress Lakes. In accordance with Rule 25-30.360, F.A.C., staff has calculated the potential refund of revenues and interest collected to be \$910,583 for Sanlando and \$158,475 for Cypress Lakes. The total incremental amount of \$1,069,057 is based on an estimated ten months of revenue being collected. Adding the total incremental amount for Sanlando and Cypress Lakes, the total cumulative corporate undertaking amount would be \$2,853,845 (\$1,784,788 plus \$1,069,057).

The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviewed the financial statements of the parent company to determine if UI can support an additional corporate undertaking on behalf of its subsidiaries. UI's 2004, 2005 and 2006 financial statements were used to determine the financial condition of the Company. UI's average equity ratio over the most recent three year period has remained stable at 40%. In addition, UI's relative level of liquidity has improved compared to 2005. However, both the Company's interest coverage and relative level of net income have declined over the three year review period. In addition, if granted UI's total cumulative corporate undertaking outstanding of approximately \$2.9 million

would represent 78% of the parent Company's average annual net income in 2005 and 2006. Based upon this analysis, staff recommends that UI cannot support any incremental amount of corporate undertaking above the current cumulative amount of \$1,784,788. Therefore, staff recommends that the utility provide a surety bond or escrow agreement to guarantee the funds collected subject to refund.

If the security provided is an escrow account, the utility should deposit 19.39% of water and 19.94% of wastewater revenues into the escrow account each month. In addition, the following conditions shall be part of the agreement:

- 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission.
- 2) The escrow account shall be an interest bearing account.
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
- 8) The Commission Clerk must be a signatory to the escrow agreement.
- 9) This account must specify by whom and on whose behalf such monies were paid.

If the security provided is a surety bond, said instrument should be in the amount of \$910,583. In addition, the surety bond should state that it will be released or should terminate only upon subsequent order of the Commission.

Regardless of the type of security provided, the utility should keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), F.A.C., the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.340, F.A.C. In no instance should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by, the utility

Docket No. 060258-WS

Date: April 26, 2007

Issue 3: Should the docket be closed?

Recommendation: No. This docket should remain open to complete the hearing process.
(Brubaker, Fletcher)

Staff Analysis: Because a protest has been filed to the Proposed Agency Action Order No. PSC-07-0205-PAA-WS, the docket should remain open to complete the hearing process.