

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding to implement water conservation plan in Seminole County by SANLANDO UTILITIES CORPORATION.

DOCKET NO. 930256-WS  
ORDER NO. PSC-97-1460-PCO-WS  
ISSUED: November 19, 1997

The following Commissioners participated in the disposition of this matter:

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

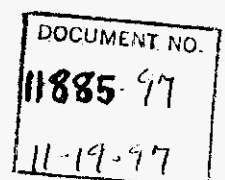
ORDER GRANTING MOTION TO HOLD DOCKET IN ABEYANCE PENDING  
COMMISSION RULING ON APPLICATION FOR APPROVAL OF REUSE PROJECT  
PLAN FILED IN DOCKET NO. 971186-SU

BY THE COMMISSION:

BACKGROUND

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 its 1996 annual report, Sanlando serves approximately 9,855 water and 8,871 wastewater customers. The revenue collected in 1996 by the utility was \$2,021,561 for the water system and \$2,855,217 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.

By Order No. PSC-92-1356-FOF-WS, issued November 23, 1992, in Docket No. 900338-WS, the Commission approved a water conservation plan for Sanlando, which plan includes the construction of an effluent reuse system. As required by that order, Sanlando filed a petition for a limited proceeding to implement the water conservation plan on March 10, 1993. This docket was opened to process the petition.



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On December 10, 1993, the Commission issued Proposed Agency Action Order No. PSC-93-1771-FOF-WS, approving Sanlando's petition and requiring the utility to file a proposed charge for reclaimed water. Moreover, the Commission 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.

Several timely protests were filed to Order No. PSC-93-1771-FOF-WS, and the Office of Public Counsel (OPC) and SJRWMD intervened in the docket. Consequently, the matter was set for formal hearing. The parties reached a settlement and submitted a proposed stipulation to the Commission for approval, which they later revised. The overall goal of the stipulation was to fund the construction of the proposed reuse facilities without incurring income tax liability, and thereby reduce the total cost of the project by approximately 40%. To accomplish this goal, the parties agreed for the utility to create a non-profit corporation which would own the reuse facilities and which would seek tax exempt status from the Internal Revenue Service (IRS). By Order No. PSC-95-0536-S-WS, issued April 28, 1995, we approved the revised stipulation, with modifications, and ordered the docket to remain open pending the issuance of an IRS letter ruling on the parties' proposed plan. We ordered the parties to report the results of the IRS ruling to us, and authorized the parties to implement the terms of the stipulation if the ruling is favorable to the proposed plan. Sanlando requested a tax ruling by letter dated June 15, 1995, to the IRS. By Order No. PSC-95-1212-S-WS, issued October 2, 1995, we modified Order No. PSC-95-0536-S-WS, striking a paragraph unrelated to the IRS ruling and substituting new language in its place, and otherwise affirmed the order.

Enclosed with a letter dated February 20, 1997, Sanlando provided a copy of its June 15, 1995, letter to the IRS requesting a ruling that monies received and transferred into an escrow account by the utility to fund the construction of the reuse facility would be contributions to capital under Section 118(a) of the Internal Revenue Code, and not taxable income. In the letter, the utility explained the terms of the approved stipulation; including that a not-for-profit corporation would be formed which would, among other things, own the escrow account and receive the monies. Sanlando also provided copies of letters supplementing the letter request, dated September 12, 1995, and October 30, 1995, as well as the IRS letter ruling, dated March 15, 1996, by which it ruled that the monies received by the utility in connection with

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the reuse facility would not qualify as contributions to capital. Moreover, we received a copy of a letter dated February 13, 1997, from utility counsel to OPC, suggesting a need to obtain an IRS ruling that the monies would not be deemed to be taxable income if they ultimately belonged to the non-profit corporation. OPC has recently advised our staff that it was preparing to seek such a ruling, but did not do so because the utility instead filed a new application for approval of a reuse plan, as discussed below.

MOTION TO HOLD DOCKET IN ABEYANCE

On September 10, 1997, Sanlando filed a Motion to Hold Docket No. 930256-WS in Abeyance Pending Commission's Ruling on Application for Approval of Reuse Project Plan and Increase for Wastewater Rates. No responses to the motion were filed, and pursuant to Rule 25-22.037(b), Florida Administrative Code, the response time has run.

In the motion, Sanlando states that due to IRS rulings and interpretations, the terms of the stipulation providing for the construction of the reuse facility by a separate, non-profit, tax-free entity may not be capable of being performed. According to Sanlando, it will be in the best interests of the utility and of the public for the utility to instead undertake the reuse project through the use of borrowed capital. Moreover, the utility states that it wishes to recover the cost of the reuse project through wastewater rates in accordance with the authority granted under Sections 367.0817 and 403.064, Florida Statutes, rather than pursue a full rate case. Finally, the utility states that if the Commission approves that application in a new docket, this docket will be moot. Therefore, the utility requests that this docket be held in abeyance pending a ruling on its new application.

On September 11, 1997, Sanlando filed an Application for Approval of Reuse Project Plan and Increase in Wastewater Rates (new reuse application), by which it indeed proposes to undertake the reuse project through the use of borrowed capital. That application is currently being processed in Docket No. 971186-SU. We agree that if the utility's request to fund the reuse project through the use of borrowed capital is approved, there will be no need for the parties to perform under the terms of the stipulation approved in this docket, and that such action would thus render this docket moot. On the other hand, if we deny the new reuse application filed in Docket No. 971186-SU, or if the utility were to withdraw it, this docket could be reactivated and the parties

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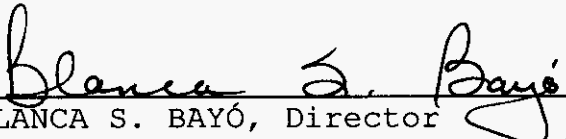
could either seek another IRS letter ruling, such as the one that OPC had begun to prepare as discussed above, or proceed to hearing. Moreover, as noted above, the Commission has required Sanlando to implement a conservation plan. By keeping this docket open pending a ruling on the new reuse application, we can assure that such a plan is implemented, if not in the new docket, then in this one. For the foregoing reasons, we hereby grant Sanlando's motion. This docket shall be held open in monitor status pending a ruling on the merits of the utility's application filed in Docket No. 971186-SU.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sanlando Utilities Corporation's Motion to Hold Docket No. 930256-WS in Abeyance Pending Commission's Ruling on Application for Approval of Reuse Project Plan and Increase for Wastewater Rates is hereby granted. It is further

ORDERED that this docket shall be held open in monitor status pending a ruling on the merits of Sanlando Utilities Corporation's application filed in Docket No. 971186-SU.

By ORDER of the Florida Public Service Commission this 19th day of November, 1997.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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 hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.