

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval
of reuse project plan and
increase in wastewater rates in
Seminole County by Sanlando
Utilities Corporation.

DOCKET NO. 971186-SU
ORDER NO. PSC-00-0112-PAA-SU
ISSUED: January 12, 2000

The following Commissioners participated in the disposition of
this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING APPLICATION FOR APPROVAL OF REUSE PLAN
AND CLOSING DOCKET NO. 930256

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

CASE 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 the 1997 annual report, Sanlando serves approximately
9,872 water and 8,889 wastewater customers. The revenue collected
in 1997 by the utility was \$2,034,193 for the water system and
\$2,898,138 for the wastewater system. Sanlando's entire service

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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, we 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 in Docket No. 930256-WS.

On December 10, 1993, we 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, 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.

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 for our 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 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 to us the results of the IRS ruling, and authorized the parties to implement the terms of the stipulation if the ruling were favorable to the proposed plan. By Order No. PSC-95-1213-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. Sanlando requested a tax ruling by letter dated June 15, 1995, to the IRS. The IRS letter ruling, dated March 15, 1996, ruled that the monies received by the utility in connection with the reuse facility would not qualify as contributions to capital.

On September 10, 1997, the utility 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. By Order No. PSC-97-1460-PCO-WS, issued November 19, 1997, we granted Sanlando's motion and ordered that Docket No. 930256-WS be held open in monitor status pending a ruling on the merits of Sanlando's application filed in Docket No. 971186-SU.

On September 11, 1997, Sanlando filed an Application for Approval of a Reuse Project Plan and Increase in Wastewater Rates (Docket No. 971186-SU - new reuse application), which proposed to undertake the reuse project through the use of borrowed capital. The applicant's SJRWMD Consumptive Use Permit Number 2-117-0006UR2 and proposed renewal of its Florida Department of Environmental Protection (DEP) Wastewater Permit Number FL0036251 require that the utility implement a reuse program. To satisfy the permit conditions, the utility proposed to construct a reuse treatment facility along with reuse transmission and distribution mains. The project was designed to provide reclaimed water to four commercial customers - three golf courses and a commercial nursery. The applicant requested that we establish reuse rates and increase wastewater rates to recover the initial cost of the reuse project. When reuse customers were hooked-up and the utility started receiving reuse revenue, the utility proposed to partially reduce the wastewater rates.

The utility's application was filed pursuant to Section 367.0817, Florida Statutes, which provides that all prudent costs of a reuse project shall be recovered in a utility's rates. The Florida Legislature has found that reuse benefits water, wastewater, and reuse customers. Section 367.0817(3), Florida Statutes. This subsection requires us to allow a utility to recover all prudent costs of a reuse project from the utility's water, wastewater, or reuse customers, or any combination thereof, as we deem appropriate.

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On September 23, 1997, a deficiency letter was sent to the utility outlining minimum filing requirement deficiencies in the utility's application. The utility subsequently corrected the deficiencies and an official filing date of October 16, 1997 was established.

By Order No. PSC-97-1337-PCO-SU, issued October 27, 1997, we acknowledged intervention of the Citizens of the State of Florida by and through OPC. By Order No. PSC-97-1582-PCO-SU, issued December 17, 1997, we granted intervention by SJRWMD in support of Sanlando's petition for a limited proceeding to implement the water conservation plan.

Our staff sent two sets of data requests to the utility dated October 24, 1997 and November 5, 1997. We received the utility's responses to the data requests on December 10, 1997. We also received a draft customer notice from the utility for the originally scheduled January 7, 1998 customer meeting. While reviewing the proposed customer notice, our staff noticed that the rates were different from the rates in the original utility filing. After discussions with the utility, our staff discovered that the utility, without notifying staff, revised the original filing by including an additional 300,000 gallons per day potential reuse customer that was unknown at the time of the original filing. Also, since the original filing, the utility received and submitted actual pumping data from the golf courses who are potential customers for the reuse system.

The revisions to the utility's original filing were substantial enough to require the resetting of the five-month statutory time clock by which we are required to enter our proposed agency action (PAA) vote to approve or disapprove the utility's reuse project plan, pursuant to Section 367.0817(2), Florida Statutes. The utility's revised data met the minimum filing requirements required by Section 367.0817, Florida Statutes, and a new official filing date of December 15, 1997 was established.

After reviewing the new information, our staff required additional data and sent interrogatories and a request for production of documents (PODs) to Sanlando on January 30, 1998.

Our staff received responses to the interrogatories and PODs on March 4, 1998. Our staff also held an informal telephone conference on February 24, 1998 with all parties to this docket. The purpose of the conference was to enable our staff to ask questions of the utility concerning its filing.

A customer meeting was held in the utility's service area on March 4, 1998 with representatives of the three golf courses who are proposed reuse customers, and officers of four homeowners associations representing over 4,100 water and/or wastewater customers of the utility. Also on hand were representatives of SJRWMD, DEP, and OPC.

The general customer meeting was held at 6:30 pm and attended by eight customers. Our staff explained the proposed reuse project, the proposed rate increase, and the PAA and hearing process. Four customers commented on the proposed reuse project and quality of service of the utility. A representative of the Sweetwater Oaks Homeowners Association (SOHA) was present and chose to give comments regarding the reuse project and the affect it will have on the residents of the Sweetwater Oaks subdivision. Currently, the utility's effluent runs into Sweetwater Creek which flows into Cove Lake and eventually the Wekiva River. SOHA is concerned about the quality of the effluent being discharged by the utility into the Cove Lake system. Although the utility's effluent meets all DEP standards, SOHA alleges that the Cove Lake system, which is surrounded by homes of the Sweetwater Oaks subdivision, is not being provided adequate environmental protection. An agreement termed the "Cove Lake System Restoration Agreement" was executed on November 8, 1991 between SOHA and the utility. This agreement, referred to as a "one-time clean up operation," was for the purpose of improving and maintaining the water and aesthetic quality of the Cove Lake System. Per the agreement, the utility provided \$95,000 to SOHA over a four year period which ended in 1996. In 1997, the utility applied for renewal of its DEP permit. SOHA filed a protest to the utility's permit renewal.

Another customer who spoke at the evening meeting expressed concern that there are no agreements in place with the three golf courses and nursery who are the proposed reuse customers and

questioned who would be paying for the golf course infrastructure necessary to facilitate the reuse project. The remaining two customers believed the costs of the reuse project should not be borne by the utility's existing water and/or wastewater customers but by the end-users of the reuse effluent.

Based upon our staff's review of Sanlando's 1996 annual report, an investigation of possible overearnings on a going forward basis for Sanlando's water and wastewater systems was performed. After examining the utility's 1996 annual report and completing a benchmark analysis, our staff completed a limited scope audit of certain 1996 operation and maintenance expenses. The utility filed a response to the audit on March 18, 1998. On April 17, 1998, OPC filed "Citizen's Comments on Sanlando's Reuse Application", and on April 24, 1998, the utility filed its "Response to Citizens" Comments on Sanlando's Reuse Application."

The utility's 1997 annual report was received on May 1, 1998. Due to the observations made in the limited scope audit concerning overearnings, our staff completed an expedited review of the 1997 annual report. By Order No. PSC-98-0892-PCO-WS, issued July 6, 1998, in Docket No. 980670-WS, we initiated an investigation into the utility's rates and charges, subjected certain revenues to refund based upon the amount of potential overearnings identified, and required security in the form of a corporate undertaking to protect the potential refund. On July 21, 1998, the utility timely filed a motion for reconsideration of that order. By Order No. PSC-98-1238-FOF-WS, issued September 21, 1998, we ordered that Sanlando's motion for reconsideration of Order No. PSC-98-0892-PCO-WS be denied.

A recommendation in this docket concerning Sanlando's reuse application was filed on April 30, 1998, and scheduled to be brought before us at the May 12, 1998 agenda conference. Our staff recommended that the reuse project plan be approved, but that the monies to fund the project should come from existing revenues because of overearnings of \$219,142 (10.84% of total water revenues) in water revenues and \$301,883 (10.57% of total wastewater revenues) in wastewater revenues in 1996. Our staff recommended that all overearnings be held in escrow.

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On May 11, 1998, the utility sent a "Response to Commission staff's memorandum dated April 30, 1998", and requested a deferral of the recommendation for two months "to enable the utility time to respond more fully to the staff's recommendation and also provide additional information regarding financing requirements and other matters which the utility believes will be helpful to the Commission in deciding the relevant issues." The Chairman's office deferred the item on May 11, 1998.

On July 29, 1998, Utilities, Inc. filed an application for transfer of majority control of Sanlando Utilities Corporation to Utilities, Inc. By Order No. PSC-99-0152-FOF-WS, issued January 25, 1999, in Docket No. 980957-WS, we approved the transfer of majority control.

On November 24, 1998, our staff requested an audit of Sanlando's books and records using a test year ending December 31, 1997 to determine possible overearnings.

On April 7, 1999, our staff attended a presentation at the Altamonte City Commission Chambers by representatives of Sanlando and the City of Altamonte Springs. The purpose of the presentation was to inform all interested parties that Sanlando and the City of Altamonte Springs were in the process of developing a revised reuse project plan which would have Sanlando interconnect with the city's reuse system. Our staff was advised that this proposal may include golf courses and a commercial plant nursery which would be connected from the reuse line constructed to the city's reuse lines. At that time, our staff was advised that the time frame included 90 days for city commission approval, six to nine months of design, and 18 months of construction.

On May 6, 1999, the audit was suspended when our staff was advised that Sanlando wished to enter into negotiation/settlement discussions on the reuse and overearnings dockets. On June 2, 1999, all parties were invited to an informal meeting held June 15, 1999; however, a settlement was never reached. At the December 21, 1999 agenda conference, in Docket No. 980670-WS, we ordered Sanlando to credit water CIAC in the amount of \$138,460 and wastewater CIAC in the amount of \$260,432 within 90 days of the

effective date of that Order to reflect overearnings for 1997 and 1998 which have been held subject to refund. We also required Sanlando to continue holding revenues subject to refund pending an audit of the utility's 1999 books.

REUSE APPLICATION

Sanlando has notified us that it is in the process of developing an agreement with the City of Altamonte Springs to send a significant percentage of its highly treated effluent to Altamonte Springs' existing Project Apricot reuse transmission and distribution system. The utility's latest revised reuse application dated December 10, 1997, proposed that the utility's reuse effluent would be sent to three golf courses and one commercial plant nursery and have an estimated cost of approximately \$2,000,000. Sending the utility's reuse effluent to the City of Altamonte Springs would be a major cost and concept change from the utility's reuse application presently filed. On September 16, 1999, the utility advised our staff that the updated estimated cost of the reuse project and interconnection with the City of Altamonte Springs would be approximately \$5,000,000. The transfer of majority control of Sanlando Utilities Corporation to Utilities, Inc. approved by Order No. PSC-99-0152-FOF-WS, in Docket No. 980957-WS, may also have a significant effect on the costs of the reuse project.

According to the utility, modified drawings of the project have been submitted to DEP, and the mains are 90% designed. The utility anticipates that all pre-construction work will be completed by mid to late February, 2000, with construction to begin in March, 2000.

The utility has provided a waiver of the five-month statutory time clock for its reuse project application through December 31, 1999. Rather than continuing to receive waivers of the five-month statutory time clock we find it appropriate to deny the existing utility application and order the utility to refile a reuse project application with updated information and costs within six months of the effective date of this Order.

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CLOSING OF DOCKET NO. 930256-WS

On September 10, 1997, Sanlando filed a motion to hold Docket No. 930256-WS in abeyance pending our ruling on its application for approval of a reuse project plan and increase for wastewater rates. As discussed earlier in this Order, on September 11, 1997, Sanlando filed an application for approval of a reuse project plan and increase in wastewater rates which is being processed in Docket No. 971186-SU.

Docket No. 930256-WS was held open in monitor status pending a ruling on the merits of Sanlando's reuse application filed in Docket No. 971186-SU. By Order No. PSC-92-1356-FOF-WS, issued November 23, 1992, we ordered Sanlando to implement a conservation plan. Docket No. 971186-SU can assure that such a plan is implemented, and if not, appropriate actions will be initiated.

It is now evident that the utility is indeed proceeding with the reuse project plan, and therefore, the reason for keeping Docket No. 930256-WS to monitor the utility's progress in this area has been rendered moot. Therefore, if no timely protest is received upon expiration of the protest period, this Order will become final upon the issuance of a Consummating Order, and Docket No. 930256-WS shall be closed.

CLOSING OF DOCKET NO. 971186-WS

If no timely protest is received upon expiration of the protest period, this Order will become final upon the issuance of a Consummating Order. However, Docket No. 971186-SU shall remain open to allow the utility to file a revised reuse project application within six months of the effective date of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sanlando Utility Corporation's application for approval of reuse plan is hereby denied. It is further

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ORDERED that Sanlando Utilities Corporation shall refile a reuse project application with updated information and costs within six months of the effective date of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, Docket No. 930256-WS shall be closed; however, Docket No. 971186-WS shall remain open to process Sanlando Utilities Corporation's refiled application for approval of reuse plan.

By ORDER of the Florida Public Service Commission this 12th day of January, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 2, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.