

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of possible
overearnings by Sanlando
Utilities Corporation in
Seminole County.

DOCKET NO. 011188-WS
ORDER NO. PSC-01-2174-FOF-WS
ISSUED: November 5, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER DECLINING TO INITIATE AN OVEREARNINGS INVESTIGATION
AND CLOSING DOCKET

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. Sanlando's service area lies within the St. Johns River Water Management District (SJRWMD), which has declared its entire district as a water use caution area.

The utility's last rate proceeding was an overearnings investigation in Docket No. 980670-WS, which was ultimately disposed of by Order No. PSC-00-2097-AS-WS, issued November 6, 2000. Our staff's preliminary analysis performed in the instant docket, based upon a review of the utility's 2000 Annual Report, indicates that the utility's water system earned a 28.78% overall rate of return and the wastewater system earned a 22.30% overall rate of return. This equates to a 52.56% return on equity (ROE) for the water system and a 38.22% ROE for the wastewater system. Both exceed the 8.89% ROE authorized by Order No. PSC-00-2097-AS-WS. Our staff believed that these achieved returns for water and

DOCUMENT NUMBER-DATE

13960 NOV-5

FPSC-COMMISSION CLERK

ORDER NO. PSC-01-2174-FOF-WS
DOCKET NO. 011188-WS
PAGE 2

wastewater clearly exceeded the last authorized return, and recommended that we initiate an overearnings investigation.

We have jurisdiction pursuant to Sections 367.081, 367.082 and 367.121, Florida Statutes.

DECISION DECLINING TO INITIATE AN OVEREARNINGS INVESTIGATION

Section 367.082, Florida Statutes, authorizes us to initiate an investigation of a utility's earnings upon a preliminary demonstration that the utility is earning a rate of return which is outside the range of reasonableness. To the extent that the achieved rate of return exceeds the required rate of return on rate base, we may require revenues to be collected subject to refund pending the completion of the investigation.

As previously noted, the utility's last rate proceeding was an overearnings investigation in Docket No. 980670-WS. On March 13, 2000, the utility filed a Motion to Close Docket No. 980670-WS. The Motion requested that we book any 1999 overearnings as contributions in aid of construction (CIAC); that no earnings be held subject to refund as of January 1, 2000; that we terminate the corporate undertaking; and that we close the docket upon determination of 1999 overearnings. The utility contended that there would be no overearnings in the year 2000 since the utility's reuse project (under consideration in Docket No. 971186-SU) would be under construction, and that the utility would not seek a rate increase for this new construction at that time.

On July 10, 2000, we issued Order No. PSC-00-1263-PAA-WS, which provided for the consolidation of Dockets Nos. 980670-WS and 971186-SU, and further approved Sanlando's Motion to Close Docket No. 980670-WS as an offer of settlement. We found that the utility had provided ample evidence that it would not be overearning once the reuse plant project was initiated, and that acceptance of the utility's offer would be in the customers' best interests. Accordingly, we ordered that Sanlando's 1999 revenues held subject to refund be charged to CIAC within 90 days of the effective date of the Order, and that no further revenues of Sanlando were to be held subject to refund after January 1, 2000. We also established Sanlando's ROE of 8.89%, with a range of 7.89% to 9.89%, and canceled Utilities, Inc.'s corporate undertaking which guaranteed Sanlando's potential refund. By Order No. PSC-00-1263-PAA-WS, we

ORDER NO. PSC-01-2174-FOF-WS
DOCKET NO. 011188-WS
PAGE 3

also approved Sanlando's amended reuse project plan, filed March 10, 2000.

On July 31, 2000, the Office of Public Counsel (OPC) timely filed a petition protesting Order No. PSC-00-1263-PAA-WS. However, on September 6, 2000, OPC and Sanlando filed a Joint Motion to Accept Settlement Agreement. The major components of the settlement agreement provided that Sanlando reduce its monthly water base facility charge in order to reduce annual water revenues by \$120,000. In addition, for at least two years after completion of construction of the reuse project approved in Order No. PSC-00-1263-PAA-WS, the parties agreed that Sanlando would not file for rate relief nor implement a water price index rate increase during that time frame. Sanlando could, however, implement a wastewater price index rate increase beginning with the 2001 price index. The stipulation also requested affirmation of the provisions of Order No. PSC-00-1263-PAA-WS, except as specifically modified by the settlement agreement.

By Order No. PSC-00-2097-AS-WS, we approved the settlement agreement in its entirety, finding that it reached a reasonable compromise and that it was in the public interest. The withdrawal of OPC's protest was acknowledged, and PAA Order No. PSC-00-1263-PAA-WS was made final as modified by the provisions of the settlement agreement.

In June 2001, our staff spoke with the utility regarding the 2000 earnings levels for several of the Utilities, Inc. systems. By facsimile dated July 23, 2001, Mr. Carl Wenz responded for the utility. Regarding the Sanlando system, Mr. Wenz objected to staff's proposal to "rewrite" the terms of the settlement by recommending that an overearnings investigation be initiated. He stated that all parties were involved in the terms of the settlement and that overearnings in 2000 and 2001 may exceed the estimates but that underearnings in the latter two years could also exceed the estimates. Mr. Wenz continued that how accurate the estimates compare to the actual earnings is irrelevant since the settlement was agreed upon in good faith. In conclusion, Mr. Wenz stated that Sanlando intends to honor the settlement agreement and expects the other parties to do the same.

Also, by facsimile dated September 27, 2001, counsel for Sanlando expressed additional concerns regarding staff's proposed

recommendation filed on September 20, 2001, in this docket. The utility's counsel states that the settlement agreement intended to hold Sanlando's rates constant from the date of that settlement until two years after completion of construction of the reuse project. Further, he believes it would undermine the terms of the agreement for this Commission to prospectively reduce rates while at the same time prohibiting Sanlando from filing for a rate increase for the first two years after construction of the reuse project, even if the utility were underearning during those two years because of the increased rate base and cost of operation of the reuse system.

Our legal staff spoke with OPC concerning its position regarding the intent of the settlement agreement approved by Order No. PSC-00-2097-AS-WS. OPC conveyed to staff that it was not its intent or understanding that the settlement agreement would prohibit this Commission from initiating a subsequent overearnings investigation. Further, OPC does not believe that the provisions of Orders Nos. PSC-00-1263-PAA-WS or PSC-00-2097-AS-WS in any way restrict or urge restraint by this Commission from reviewing possible 2001 overearnings by Sanlando.

As a matter of policy, we encourage settlement of disputes. Certainly, we would be extremely reluctant to take action in contravention of an approved settlement agreement unless a change in circumstances or a public interest concern required that approval of the agreement be revisited. In this instance, we are persuaded by the perception that it would contravene the purpose and intent of the settlement agreement for us to initiate an overearnings investigation of Sanlando at this time. Instead, our staff is directed to monitor the construction of the reuse facilities up through the two-year, post-construction period contemplated by the settlement agreement. If there are indications at the end of that period that the utility is overearning, staff is directed to bring a recommendation to our attention at that time.

Based on the foregoing circumstances, an overearnings investigation shall not be initiated at this time, and this docket shall be closed.

ORDER NO. PSC-01-2174-FOF-WS
DOCKET NO. 011188-WS
PAGE 5

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that an overearnings investigation shall not be initiated at this time. It is further

ORDERED that our staff shall monitor the construction of the utility's reuse facilities up through the two-year, post-construction period contemplated by the settlement agreement. If there are indications at the end of that period that the utility is overearning, staff is directed to bring a recommendation to our attention at that time. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 5th day of November, 2001.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

JSB

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 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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.