

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for limited) DOCKET NO. 930256-WS
proceeding to implement water) ORDER NO. PSC-93-1771-FOF-WS
conservation plan in Seminole) ISSUED: 12/10/93
County by Sanlando Utilities)
Corporation.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING PETITION FOR LIMITED PROCEEDING TO IMPLEMENT
WATER CONSERVATION PLAN AND REQUIRING THE UTILITY TO FILE A
PROPOSED CHARGE FOR RECLAIMED WATER

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 substantial interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Sanlando Utilities Corporation (Sanlando or utility) is a class A water and wastewater utility located in Altamonte Springs, Florida, operating three water and two wastewater systems. Sanlando's service area lies within the St. Johns River Water Management District (SJRWMD), which has declared its entire district as a critical water supply problem area.

By Order No. 23809, issued on November 27, 1990, in the utility's most recent rate case, the utility was required to file a conservation plan and an economic study of the feasibility of implementing spray irrigation within 90 days of the effective date of the Order. The utility was also ordered to hold \$25,008 in annual revenues, referred to as "set-aside funds," for future

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expenses specifically related to water conservation. Sanlando submitted its first water conservation plan on June 28, 1991.

By Order No. 24920, issued on August 16, 1991, the Commission approved in part and denied in part the water conservation plan submitted by Sanlando because the plan addressed only two of the three requirements of Order No. 23809. Thereafter, the utility filed a supplement to the original water conservation plan on September 26, 1991, which was considered at the October 22, 1991 Agenda Conference. We determined at that time that the supplement was unsatisfactory as filed, and instructed the utility to submit additional conservation alternatives along with a more detailed feasibility study.

On September 21, 1992, the utility filed an addendum to its water conservation plan. The addendum presented Sanlando's plan for an effluent reuse program with an inclining block water rate structure. The addendum also stated that on July 10, 1992, in renewing the permit authorizing Sanlando to continue operating its Wekiva wastewater treatment plant, the Department of Environmental Protection (DEP), directed Sanlando to seek a determination from this Commission as to whether implementation of water conservation rates to fund the construction and improvements needed for treating and delivering reclaimed water to golf courses would be allowed. In addition, the addendum stated that the proposed reuse plan once implemented would result in an immediate and significant reduction in withdrawal of water from the aquifer because the three golf courses included in the plan are currently irrigating with on-site wells with a combined estimated average daily usage of approximately 1 million gallons per day (MGD).

The utility also updated and revised its previous studies on the reuse of treated effluent produced by Sanlando's Wekiva wastewater treatment plant. The revised study concluded that a system designed to maintain pressure for local system reuse on demand as well as for transmission to the respective golf courses would be advantageous and economical. The proposed system, with both on-site storage and pumping capabilities, would have the ability to deliver slightly over 1 MGD to the three golf courses on an annual average basis, with another 225,000 gallons available to commercial users in the vicinity of the main transmission route to the respective golf courses. The estimated cost was approximately \$1,820,000, and according to the utility's estimates, the three golf courses could accept approximately 50 percent of Sanlando's effluent. The utility's plan also proposed an inclining block

water rate structure to generate funding for construction of the reuse project and to encourage water conservation.

By Order No. PSC-92-1356-FOF-WS, issued November 23, 1992, the addendum was approved and incorporated into the utility's existing water conservation plan. The Order directed the utility to file a limited proceeding to address the funding of the construction for the reuse program. On March 10, 1993, the utility filed a Petition for Limited Proceeding to Implement Water Conservation Plan.

A customer meeting on the proposed implementation of the water conservation plan was held on July 8, 1993. Approximately fifteen customers attended the meeting. Four customers presented testimony opposed to the utility's plan. These customers were concerned that the plan benefited the three golf courses at the expense of the utility customers. The customers also expressed their concern that the plan would have very little impact on water consumption. In addition, one customer was concerned about how the funding for the plan would be monitored. A member of the governing board of the St. Johns Water Management District, the Senior Vice President of the Florida Audubon Society, and two other customers provided testimony in support of the utility's plan.

Water Conservation Plan

Sanlando's water conservation plan filed in this limited proceeding is essentially the same plan approved in concept in Order No. PSC-92-1356-FOF-WS, with updated costs and more detail. The purpose of the plan is to generate revenue through an increasing block water gallonage rate over a four year period. The increased revenue generated will be used for the design and construction of a system to reuse a portion of the treated effluent generated by its Wekiva wastewater treatment plant. The system will consist of both on-site storage and pumping capabilities and off-site delivery facilities and will have the ability to deliver at least one million gallons per day on an annual average basis to three golf courses within the utility's service area. Long range plans expand the use of the effluent to providing another 225,000 gallons per day to commercial users within the utility's service area which are in the vicinity of the main transmission routes to the respective golf courses.

The utility's plan includes an increasing block rate design estimated to generate \$2,050,000 over a four year period for the construction of an effluent reuse system. The estimate includes

the capital costs plus costs of collection such as regulatory assessment fees and income taxes. The utility's proposed increasing block design, applicable to all customers, is discussed in detail in a later portion of this Order. The funds collected through the implementation of this plan will be deposited into an escrow account and held for the capital expenditures related to the reuse system. Overearnings specified in Order No. 23809 will also be added to the escrow account.

Sanlando believes that its proposed reuse program will encourage reduced water consumption by residential customers which comprises 80 percent of the total utility consumption. The utility projects that without the new rate design, overall consumption will rise from about 3.0 to 3.2 billion gallons. Sanlando also projects that the implementation of the increasing block rates will cause the residential consumption to remain at or slightly below the current level. This represents a reduction in potable water withdrawal of approximately 300 million gallons per year. However, the utility believes the greatest conservation benefit will be the reduction in potable water withdrawn from the aquifer for the purpose of irrigating the golf courses. The replacement of 1 MGD of aquifer water with reused water for the three golf courses will save an additional 333 million gallons per year. The utility estimates that the total reduction of water withdrawn from the aquifer as a result of the implementation of the conservation plan would be in excess of half a billion gallons per year.

Legal Authority

The utility also filed a Memorandum of Law in support of its petition. The issue addressed by the Memorandum is whether the Commission has the authority to approve the utility's petition as filed. The Memorandum states that pursuant to Section 403.064(1), Florida Statutes, water conservation and effluent reuse are state objectives and that pursuant to Section 403.064(6), Florida Statutes, the Commission is required to allow utilities which implement reuse projects to recover the full cost of such facilities through their rate structure. The petition further cites Section 367.081(2)(a), Florida Statutes, for the proposition that plant to be constructed in the future for water conservation and reuse may be considered in this request to change the utility's rate structure. The utility also cites Occidental Chemical Co. v. Mayo, 351 So.2d 336 (Fla. 1977), for the proposition that conservation may be considered by the Commission in setting rates.

We agree with the utility that we have the authority to design rates that consider conservation. In addition, we have the authority to include a return on pro forma plant in rates pursuant to § 367.081, Florida Statutes. However, in approving the plan herein, we are not providing the utility a return on its investment in plant. The plan will generate prepaid contributions-in-aid-of-construction (CIAC) for the purpose of funding the reuse facilities. Such funding, while not a common practice, is permissible. Generally, the cost of constructing new facilities for additional plant to serve a growing customer base is included in a charge, such as a system capacity charge or a service availability charge, to new customers. In this instance, the cost of new plant is being collected from all customers through rates rather than charges, and the customers are paying for new plant designed for conservation purposes, not for an incremental increase in plant capacity. That portion of the rates approved herein designed to cover the costs associated with the conservation plan are not rates designed to provide the utility a return on used and useful plant as contemplated by §367.081, Florida Statutes. Therefore, we find that the conservation plan does not violate the provisions of § 367.081, Florida Statutes. To the extent that the utility argues in the Memorandum of Law that the provisions of § 403.064(1), Florida Statutes, require this Commission to approve the utility's plan to construct reuse facilities and lines, we disagree. The above-referenced statute provides for the recovery of the full cost of certain plant, it does not require that the Commission include in rates the costs associated with future plant construction.

CIAC

In reaching our conclusion herein, we have considered several factors. One factor of concern is the utility's level of CIAC. Rule 25-30.580, Florida Administrative Code, sets forth the guidelines for designing service availability and provides that the maximum amount of CIAC should not exceed 75 percent of the original cost of plant. Rule 25-30.580, Florida Administrative Code, also provides for an exemption from the guidelines if compliance would cause unusual hardship or unreasonable difficulty, and the Commission, utility, or interested party shows that it is not in the best interests of the customers to require compliance. The utility currently exceeds the Rule 25-30.580 guideline of 75 percent. The contribution level of Sanlando has been an issue in three prior dockets, and an exception to the Rule has been allowed in all instances. Therefore, since the utility is already exempt

from the provisions of the Rule, we find that the additional prepaid CIAC generated by the implementation of the utility's plan is not a impediment to approving the plan.

Overearnings

The utility has stated that it will not pursue the conservation plan if it is required to fund the construction with internal financing because the utility's debt to rate base ratio is very high and the shareholders, who have personally guaranteed the utility's current debt, are not willing to fund this new construction. The utility's DEP operating permits are based on the granting of this petition, although DEP has not mandated that Sanlando build reuse plant and lines.

The utility's revenues from water operations were found to be excessive by the amount of approximately \$25,000 annually in its 1990 rate case. In that previous rate proceeding, we concluded that lowering the utility's water rates to reduce overearnings would send the wrong signal relative to water conservation. It was for this reason that the overearnings were earmarked for conservation purposes. It became apparent that a meaningful and effective water conservation program would require significantly more funds than the minimal amount of overearnings identified. The conservation plan now before us increases rates which already produce overearnings. The utility has stated that it intends to combine the prior designated overearnings with the additional revenues from the revised rate design approved herein and to place those funds in an escrow account to fund construction. Thus, the utility will not retain the overearnings for any other purpose than the costs associated with the conservation plan. Therefore, we find that the utility will not be overearning with regard to the funds it will collect as a result of our approval of this conservation plan and the \$25,000 designated "set-aside funds" that will be placed in escrow.

The utility has also requested that the escrow account be adjusted for any underearnings that may occur as the result of decreased water consumption. We find this request appropriate under the circumstances. However, to insure that the proper amounts are escrowed, staff shall review the earnings level of the water system annually to determine whether any over or underearnings exist. Based on staff's review and determination of any over or underearnings, the escrow account will be adjusted accordingly.

Rates for Golf Courses

The customers raised the issue of the golf courses receiving the benefit of the reuse plant at the customers' expense. The utility's plan does not contain any provisions for the golf courses to pay for reclaimed water. Ideally the golf courses should pay a charge to recover at least a portion of the operating costs of the reclaimed water system; however, it may not be possible to implement such a charge at this time. Generally, we evaluate each effluent reuse situation on a case by case basis. In a number of situations, no charge was set for golf courses which had alternative sources of water such as access to water from the aquifer. The golf courses which will receive the reclaimed water from Sanlando are now obtaining irrigation water from the aquifer at either a minimal cost for pumping or at no cost. The SJRWMD has stated that it will require the golf courses to use reclaimed water when it becomes available. At this time, we find that we do not have sufficient information to determine whether a charge is appropriate or what that charge should be. Therefore, we are not making a determination on a charge for the golf courses at this time, but we will address that issue prior to the reuse plant becoming operational. Accordingly, we find it appropriate to require the utility to file a proposed charge for the reclaimed water sent to the golf courses prior to the completion of the reuse system.

Benefits

As discussed above, the utility believes the greatest actual benefit from the implementation of the conservation plan would be the long range reduction of water withdrawals from the aquifer for the golf courses, not substantial reduction in water consumption by customers. The new rate design would increase customers' bills if their usage remains the same. However, the petition states that the increased rates will be lower than those of most of the surrounding communities.

We find that the concern for water conservation in Sanlando's service area is genuine. According to the utility, all of the utility's service area west of Interstate 4 has been under water restrictions imposed by the SJRWMD due to the low level of the Wekiva River since June of this year. These restrictions reduce the hours the customers can use water for irrigation and require the utility to reduce its operating pressure. The Wekiva River is fed by springs that are directly affected by the golf course wells.

We find that this conservation plan is in the public interest in that it will reduce the depletion of the aquifer.

Our approval of this utility's plan is a departure from the Commission's practice in setting rates in that the Commission has not approved rate increases for the purpose of funding future capital investment related solely to conservation. However, Sanlando has always been considered one of the better run utilities regulated by this Commission. Further, the utility has won numerous community service and environmental awards. Based on the utility's performance, we find that the management of this utility is such that we can rely on this utility to responsibly manage this substantial, long-term project. Accordingly, we find that Sanlando's low water rates, its location in a water supply problem area, and its exemplary performance as a regulated utility, make this utility a viable candidate for such an innovative and far-reaching conservation plan. We find this utility to be in a unique position to serve the overall public interest while at the same time inducing conservation by customers who might not otherwise reduce their water consumption. Based on the foregoing, and the facts specific to this docket, we approve the utility's petition for a limited proceeding to implement the conservation plan.

Rates and Rate Design

The approved gallonage rates for water service utilize an increasing block rate design. There is no change to the base facility charge rate structure or rate. As filed, the utility's plan started with its previously approved gallonage charge of \$.355 per thousand gallons of water for residential customers. The increasing block rates, as filed, are shown below. However, the rates shown below and approved herein do not include the additional pass-through rate increase approved administratively after the limited proceeding was filed.

<u>GALLONAGE CHARGE</u>	
	Charge Per 1,000 Gallons
0 to 10,000 gallons per month	\$.355
10,001 to 20,000 gallons per month	\$.50
20,001 to 30,000 gallons per month	\$.65
over 30,000 gallons per month	\$.85

In addition, the charge per thousand gallons for general service, multi-family and bulk sale users is increased from \$.355 to \$.60 per thousand gallons.

The approved rates will be effective for meter readings on or after thirty days from the stamped approval date of the revised tariff sheets. The revised tariff sheets will be approved upon staff's verification that the tariffs are consistent with the Commission's decision and that the proposed customer notice is adequate. The rates reflected in the customer notice shall include the additional increase in rates included in the pass through request which was approved administratively after the filing of the petition approved herein.

Escrow Agreement

The water revenues collected by the utility in excess of water revenues at current rates are to be placed in an escrow account for the purpose of financing the installation of the effluent transmission system, payment of regulatory assessment fees and income taxes related to those revenues. An escrow account shall be established between the utility and an independent financial institution pursuant to written agreement for the purpose of setting aside funds for constructing reuse facilities consistent with our decision herein. Any withdrawals of funds from this escrow account shall be subject to the prior approval of this Commission through the Director of the Division of Records and Reporting. The written escrow agreement shall state the following: that the account is established at the direction of this Commission for the purpose set forth above; that no withdrawals of funds shall occur without the prior approval of the Commission through the Director of the Division of Records and Reporting; that the account shall be interest bearing; that information concerning the escrow account shall be available from the institution to the Commission or its representatives at all times; and that pursuant to Consentino v. Elson, 263 So.2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

Sanlando shall file monthly reports and documentation of the water revenues deposited into the escrow account. The appropriate disposition of any excess escrowed funds will be determined by the Commission after construction is completed. Prior to the last phase of construction, the utility shall file a plan for the disposition of the excess escrow funds. At that time, the utility

should also file a proposal for rate design changes to reflect the completion of the conservation plan.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition for limited proceeding to implement water conservation plan filed by Sanlando Utilities Corporation is hereby approved. It is further

ORDERED that all of the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida, 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that the increased gallonage charge rates approved herein shall be effective for meter readings taken on or after thirty days from the stamped approval date on the revised tariffs. It is further

ORDERED that, prior to its implementation of the rates approved herein, the utility shall submit and have approved revised tariff sheets. The revised tariff sheets will be approved upon staff's verification that the tariff sheets accurately reflect this Commission's decision, upon staff's approval of the proposed customer notice and upon expiration of the protest period. It is further

ORDERED that Sanlando Utilities Corporation shall deposit all excess revenues from the approved rates into an escrow account established in accordance with the provisions set forth in the body of this Order. It is further

ORDERED that Sanlando Utilities Corporation shall file a proposed charge for reclaimed water to the golf courses prior to the completion of the effluent transmission system. It is further

ORDERED that Sanlando Utilities Corporation shall file a plan on the disposition of the approved increasing block rate design and excess funds produced by the water conservation rates prior to the last phase of construction.

ORDER NO. PSC-93-1771-FOF-WS
DOCKET NO. 930256-WS
PAGE 11

By ORDER of the Florida Public Service Commission, this 10th
day of December, 1993.



STEVE TRIBBLE, 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 120.59(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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 31, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it

ORDER NO. PSC-93-1771-FOF-WS
DOCKET NO. 930256-WS
PAGE 12

satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.