

FLORIDA PUBLIC SERVICE COMMISSION
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TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (GERVASI) *RS*
DIVISION OF WATER & WASTEWATER (RENDELL) *JW*

RE: DOCKET NO. 930256-WS - PETITION FOR LIMITED PROCEEDING TO
IMPLEMENT WATER CONSERVATION PLAN BY SANLANDO UTILITIES
CORPORATION
COUNTY: SEMINOLE

AGENDA: NOVEMBER 4, 1997 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\930256-R.RCM

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 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.

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

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FPSC-RECORDS/REPORTING

DOCKET NO. 930256-WS
DATE: October 23, 1997

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 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, the Commission 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. The Commission ordered the parties to report the results of the IRS ruling to the Commission, 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, the result of which is discussed in Issue 1 of this recommendation. By Order No. PSC-95-1212-S-WS, issued October 2, 1995, the Commission 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.

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, which motion is the subject of this recommendation.

DOCKET NO. 930256-WS
DATE: October 23, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should the utility'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 be granted?

RECOMMENDATION: Yes, the motion should be granted. (GERVASI, RENDELL)

STAFF ANALYSIS: As noted in the case background, the parties reached a stipulation in this docket which the Commission approved with modifications. The overall goal of the stipulation was for the utility 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 contemplated that Sanlando would create a non-profit corporation which would own the proposed reuse facilities and which would seek tax exempt status from the IRS. In addition to approving the stipulation with modifications, the Commission ordered the docket to remain open pending the issuance of an IRS letter ruling on the parties' proposed plan.

Enclosed with a letter dated February 20, 1997, to staff counsel, 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 the reuse facility would not qualify as contributions to capital. Moreover, staff 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 staff that it was preparing to seek such a ruling, but did not do so because the utility instead filed with the Commission a new application for approval of a reuse plan, as noted below.

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

DOCKET NO. 930256-WS
DATE: October 23, 1997

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. Staff agrees that if the Commission approves the utility's request to fund the reuse project through the use of borrowed capital, 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 the Commission denies 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 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 in the case background, 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, staff recommends that Sanlando's motion should be granted. This docket should be placed in monitor status pending the Commission's ruling on the merits of the utility's application filed in Docket No. 971186-SU.

DOCKET NO. 930256-WS
DATE: October 23, 1997

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, if the Commission approves Issue 1 of this recommendation, the docket should be held open pending the disposition of the utility's application filed in Docket No. 971186-SU. (GERVASI)

STAFF ANALYSIS: If the Commission approves Issue 1 of this recommendation, the docket should be held open pending the disposition of the utility's application filed in Docket No. 971186-SU.