



# Public Service Commission

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RECORDS AND REPORTING

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**DATE:** AUGUST 20, 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYD)

**FROM:** DIVISION OF LEGAL SERVICES (GERVASI)  
DIVISION OF WATER AND WASTEWATER (CASEY)

**RE:** DOCKET NO. 980670-WS - INVESTIGATION OF POSSIBLE  
OVEREARNINGS BY SANLANDO UTILITIES CORPORATION IN SEMINOLE  
COUNTY: SEMINOLE

**AGENDA:** SEPTEMBER 1, 1998 - REGULAR AGENDA - MOTION FOR  
RECONSIDERATION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\980670.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 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 area lies within the St. John's River Water Management District (SJRWMD), which has declared its entire district as a water use caution area.

On September 11, 1997, the utility filed an application for approval of a reuse project plan and increase in wastewater rates, which was filed in Docket No. 971186-SU. A recommendation concerning Sanlando's reuse application was filed on April 30, 1998, and scheduled to be brought before the Commission at the May

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12, 1998, agenda conference. 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. Staff recommended that all overearnings be held in escrow.

On May 11, 1998, the utility filed 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 staff's recommendation and to 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. The matter is currently scheduled to be considered at the Commission's September 22, 1998, agenda conference.

The utility's 1997 annual report was received on May 1, 1998. Due to the observations made in Docket No. 971186-SU concerning overearnings, staff completed an expedited review of the annual report. By Order No. PSC-98-0892-PCO-WS, issued July 6, 1998, in this docket, the Commission 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. No party has filed a response to the motion. This recommendation addresses the motion for reconsideration.<sup>1</sup>

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<sup>1</sup>For informational purposes, staff notes that on July 29, 1998, Utilities, Inc., filed an application for approval of change in majority organization control of Sanlando to Utilities, Inc., which application is currently pending.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Sanlando's motion for reconsideration of Order No. PSC-98-0892-PCO-WS?

RECOMMENDATION: No. The Commission should deny Sanlando's motion for reconsideration of Order No. PSC-98-0892-PCO-WS. (GERVASI)

STAFF ANALYSIS: As noted in the case background, the utility filed a motion for reconsideration of Order No. PSC-98-0892-PCO-WS. By that Order, the Commission ordered that an investigation of Sanlando's water and wastewater rates and charges be initiated. The Commission further ordered the utility to hold annual water revenues of \$72,541 and annual wastewater revenues of \$241,287 subject to refund and required the utility to provide a corporate undertaking in the amount of \$241,151 as a guarantee of any potential refund of water and wastewater revenues collected in the interim period. The Commission found the utility's water system to be earning a 15.32% overall rate of return and the wastewater system to be earning an overall rate of return of 17.37%. The Commission's calculation of revenue requirements for purposes of interim rates indicated that a 5.17% decrease in water revenue and a 9.86% decrease in wastewater revenue was warranted, to allow the utility the opportunity to recover its expenses and earn an approved return of 9.05% on its investment.

In its motion for reconsideration, Sanlando contends that the Order:

1. is duplicative of the action which the Staff has proposed in its recommendation filed on April 30, 1998, in Docket No. 971186-SU;

2. does not properly consider the capital expenditures and operating expenses of the utility's proposed reuse project nor the utility's high level of contributions-in-aid-of-construction (CIAC);

3. would impair the ability of the utility to raise capital necessary to fund the cost of the reuse project by providing insufficient revenue for it to be able to borrow the necessary funds;

4. erroneously reduced allowable legal expenses and director fees; and

5. erroneously subjected index rate increases to the possibility of refund.

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Rule 25-22.060(1), Florida Administrative Code, permits a party who is adversely affected by an order of the Commission to file a motion for reconsideration of that order. It is well-established in the law that the purpose of reconsideration is to bring to the Commission's attention some point that the Commission overlooked or failed to consider or a mistake of fact or law. The standard for determining whether reconsideration is appropriate is set forth in Diamond Cab Co. of Miami v. King, 146 So. 2d 889, 891 (Fla. 1962). In Diamond Cab, the Florida Supreme Court declared that the purpose of a petition for reconsideration is to bring to an agency's attention a point of law or fact which it overlooked or failed to consider when it rendered its order. It is not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the judgment or order. We have applied this standard in our review of Sanlando's motion.

Concerning the utility's first ground for the filing of its motion, that the Order is duplicative of the action which the Staff has proposed in its recommendation filed on April 30, 1998, in Docket No. 971186-SU, we note that staff has no authority to propose agency action. Staff filed a recommendation on what action the Commission should propose, including the initiation of a rate investigation. However, because a ruling on that recommendation has been deferred, no action has as yet been taken. Thus, Order No. PSC-98-0892-PCO-WS is not duplicative of any proposed agency action, and the Commission did not err or overlook any point of law or fact by rendering the Order.

With respect to the remaining grounds for the filing of the motion, the utility summarily states that the Commission erred or failed to consider various matters, as set forth above, without providing any basis or support whatsoever for these statements. Section 367.082(5)(b)1, Florida Statutes, requires that, in calculating interim rates, adjustments be made consistent with those in the utility's last rate proceeding. Pursuant to this provision, by Order No. PSC-98-0892-PCO-WS, the Commission calculated rate base consistent with the treatment allowed in Sanlando's last rate proceeding, as reflected in Order No. 23809, issued November 27, 1990, in Docket No. 900338-WS. Therefore, staff is wholly unconvinced that the Commission overlooked any point of law or fact, or erred in any way in rendering its decision proposed by Order No. PSC-98-0892-PCO-WS. Based on the foregoing, staff recommends that the utility's motion for reconsideration should be denied.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open to complete the investigation of Sanlando's water and wastewater rates and charges, pursuant to Order No. PSC-98-0892-PCO-WS. (GERVASI)

STAFF ANALYSIS: By Order No. PSC-98-0892-PCO-WS, the Commission ordered that an investigation of Sanlando's water and wastewater rates and charges be initiated. This docket should remain open for that purpose.