



# Public Service Commission

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RECORDS AND REPORTING

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**DATE:** DECEMBER 9, 1999

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

**FROM:** DIVISION OF WATER AND WASTEWATER (WILLIS, BENDALL, CASEY)  
DIVISION OF LEGAL SERVICES (VACCARO)

**RE:** DOCKET NO. 971186-SU - APPLICATION FOR APPROVAL OF REUSE PROJECT PLAN AND INCREASE IN WASTEWATER RATES IN SEMINOLE COUNTY BY SANLANDO UTILITIES CORPORATION

DOCKET NO. ~~930256~~-WS - PETITION FOR LIMITED PROCEEDING TO IMPLEMENT WATER CONSERVATION PLAN BY SANLANDO UTILITIES CORPORATION

COUNTY: SEMINOLE

**AGENDA:** 12/21/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** 5-MONTH EFFECTIVE DATE: WAIVED UNTIL DECEMBER 31, 1999

**SPECIAL INSTRUCTIONS:** TO BE SCHEDULED IMMEDIATELY AFTER RECOMMENDATION FOR DOCKET 980670-WS

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\971186SU.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 1998 annual report, Sanlando serves approximately 12,613 water and 8,905 wastewater customers. The revenue collected in 1998 by the utility was \$2,302,032 for the water system and \$2,985,359 for the wastewater system. Sanlando's entire service area lies within the St. John's River Water Management District

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(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 in Docket No. 930256-WS.

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 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 were favorable to the proposed plan. By Order No. PSC-95-1213-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. 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, the Commission granted Sanlando's motion and ordered that Docket 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 (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 the Commission 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 requires the Commission 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 it deems appropriate. Therefore, while the utility proposed that the entire cost of the reuse project be recovered from its wastewater rates initially, the Commission may find it appropriate for the costs to be shared in a different manner.

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, the Commission 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, the Commission granted intervention by

SJRWMD in support of Sanlando's petition for a limited proceeding to implement the water conservation plan.

Staff sent two sets of data requests to the utility dated October 24, 1997 and November 5, 1997. The Commission received the utility's responses to the data requests on December 10, 1997. The Commission also received a draft customer notice from the utility for the originally scheduled January 7, 1998 customer meeting. While reviewing the proposed customer notice, staff noticed that the rates were different from the rates in the original utility filing. After discussions with the utility, staff discovered that the utility, without notifying the Commission 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 timeclock by which the Commission is required to enter its proposed agency action (PAA) vote to approve or disapprove the utility's reuse project plan, pursuant to Section 367.0817(2), Florida Statutes. Staff reviewed the revised data, found that minimum filing requirements required by Section 367.0817, Florida Statutes, had been met, and established a new official filing date of December 15, 1997.

After reviewing the new information, staff needed additional data and sent interrogatories and a request for production of documents (PODs) to Sanlando on January 30, 1998. Staff received responses to the interrogatories and PODs on March 4, 1998. 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 Commission 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. Staff conducted an afternoon meeting 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. PSC staff explained the proposed reuse

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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 staff's review of Sanlando's 1996 annual report, staff did an investigation of possible overearnings on a going forward basis for Sanlando's water and wastewater systems. After examining the utility's 1996 annual report and completing a benchmark analysis, staff completed a limited scope audit of certain 1996 operation and maintenance expenses. The utility filed a response to staff's 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, 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, 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. By Order No. PSC-98-1238-FOF-WS, issued September 21, 1998, the Commission ordered that Sanlando Utilities Corporation's Motion for Reconsideration of Order No. PSC-98-0892-PCO-WS be denied. A recommendation addressing Sanlando's 1997 and 1998 overearnings has been filed for consideration at the December 21, 1999 agenda conference.

A recommendation in this docket concerning Sanlando's reuse application was filed on April 30, 1998, and scheduled to be brought before the Commission at the May 12, 1998 agenda conference. Staff recommended 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 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, the Commission approved the transfer of majority control.

On November 24, 1998, 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, 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. 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, staff was advised that the timeframe 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 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. Staff presented a proposal which included a one time \$5 refund to customers, a revenue sharing plan, resetting of the utility's return on equity, initiation of a water conservation plan, and a adjustment to CIAC of the remaining overearnings. The settlement was to be effective July 31, 1999, and contingent upon the utility's agreement to complete construction of the reuse project.

By letter dated September 16, 1999, the utility responded to the proposed resolution presented by staff. The utility's response was to stipulate that all alleged overearnings through December 31, 1999 should be booked as revenue, and all alleged overearnings commencing January 1, 2000 will be booked as CIAC. On September 29, 1999 a letter was sent to Sanlando notifying it that booking all alleged overearnings through December 31, 1999 as revenue was unacceptable to the Commission staff, and advising it that the Commission is statutorily required to act upon any overearnings, and booking them as revenues would ignore that position. The utility was informed that staff would begin reviewing the audit and preparing a recommendation concerning possible overearnings to be filed December 9, 1999 for the December 21, 1999 agenda. Sanlando was also notified that if it desired to submit a revised settlement offer prior to the December 9th filing date, staff would gladly review it.

As mentioned above, Sanlando has notified staff 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 the city's existing Project Apricot reuse transmission and distribution system. This recommendation addresses the proposed changes to the utility's existing reuse project plan application.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Sanlando Utilities Corporation's proposed reuse plan be approved?

**RECOMMENDATION:** No, the Commission should deny the existing utility reuse application and order the utility to refile a reuse project application with updated information and costs within six-months of the effective date of the Commission Order. (CASEY, WILLIS, RENDELL)

**STAFF ANALYSIS:** Sanlando has notified staff 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 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 timeclock for its reuse project application through December 31, 1999. Rather than continuing to receive waivers of the five-month statutory timeclock (the case assignment and scheduling record is currently on the 16th revision level), staff recommends that the Commission 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 the Commission Order.



**ISSUE 2:** Should Docket No. 930256-WS be closed?

**RECOMMENDATION:** Yes, Docket No. 930256-WS should be closed.  
(VACCARO, CASEY, WILLIS, RENDELL)

**STAFF ANALYSIS:** On September 10, 1997, Sanlando filed a motion to hold Docket No. 930256-WS in abeyance pending the Commission's ruling on its application for approval of a reuse project plan and increase for wastewater rates. As stated in the case background, 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, the Commission ordered Sanlando to implement a conservation plan. Docket No. 971186-SU can assure that such a plan is implemented, and if not, initiate appropriate actions.

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. Issue No. 3 recommends that Docket 971186-SU remain open to process Sanlando's reuse project rate case. Therefore, staff recommends that Docket No. 930256-WS should be closed.

**ISSUE 3:** Should Docket No. 971186-SU be closed?

**RECOMMENDATION:** No. If no timely protest is received upon expiration of the protest period, the PAA Order will become final upon the issuance of a Consummating Order. However, Docket No. 971186-SU should remain open to allow the utility to file a revised reuse project application within six-months of the effective date of the Commission order. (VACCARO, CASEY, WILLIS, RENDELL)

**STAFF ANALYSIS:** Issue No. 1 recommends the Commission 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 the Commission Order. If no timely protest is received upon expiration of the protest period, the PAA Order will become final upon the issuance of a Consummating Order. However, Docket No. 971186-SU should remain open to allow the utility to file a revised reuse project application within six-months of the effective date of the Commission order.