

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 980670-WS

In re: Application for approval of reuse project plan and increase in wastewater rates in Seminole County by Sanlando Utilities Corporation.

DOCKET NO. 971186-SU
ORDER NO. PSC-00-2097-AS-WS
ISSUED: November 6, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

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. Sanlando's 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, we 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, we issued Proposed Agency Action Order (PAA) No. PSC-93-1771-FOF-WS, approving Sanlando's petition and

DOCUMENT NUMBER-DATE

14304 NOV-68

FPSC-RECORDS/REPORTING

ORDER NO. PSC-00-2097-AS-WS
DOCKETS NOS. 980670-WS, 971186-SU
PAGE 2

requiring the utility to file a proposed charge for reclaimed water. Moreover, we 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 for our 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, we 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. We ordered the parties to report the results of the IRS ruling, 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, we 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, we 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

(Docket No. 971186-SU - 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 we establish reuse rates and increase wastewater rates to recover the initial cost of the reuse project. When reuse customers were connected 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 this 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 we deem appropriate. Therefore, while the utility proposed that the entire cost of the reuse project be recovered from its wastewater rates initially, we 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, we acknowledged the intervention of OPC. By Order No. PSC-97-1582-PCO-SU, issued December 17, 1997, we granted intervention by SJRWMD.

On December 10, 1997, we received a draft customer notice from the utility for the originally scheduled January 7, 1998 customer

meeting. While reviewing the proposed customer notice, we noticed that the rates were different from the rates in the original utility filing. After discussions with the utility, we discovered that the utility, without notifying this Commission, 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 time clock by which this Commission is required to enter its PAA vote to approve or disapprove the utility's reuse project plan, pursuant to Section 367.0817(2), Florida Statutes. We reviewed the revised data, found that the minimum filing requirements in Section 367.0817, Florida Statutes, had been met, and established a new official filing date of December 15, 1997.

A customer meeting was held in the utility's service area on March 4, 1998. Our 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 present were representatives of SJRWMD, DEP, and OPC.

The general customer meeting was held at 6:30 p.m. and attended by eight customers. Our staff explained the proposed reuse 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 was present and gave comments regarding the reuse project and the affect it will have on the residents of the Sweetwater Oaks subdivision.

Based upon a review of Sanlando's 1996 annual report, we conducted 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, we completed a limited scope audit of certain 1996 operation and maintenance expenses. The utility filed a

response to the audit on March 18, 1998. On April 17, 1998, OPC filed "Citizens' Comments on Sanlando's Reuse Application", and on April 24, 1998, the utility filed its "Response to Citizens' Comments on Sanlando's Reuse Application."

Our staff's recommendation concerning Sanlando's reuse application was filed on May 1, 1998, and scheduled to be considered at the May 12, 1998 Agenda Conference. Our 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. Our staff also 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 by memorandum dated May 11, 1998.

The utility's 1997 annual report was received on May 1, 1998. Due to the observations made in Docket No. 971186-SU concerning overearnings, we completed an expedited review of the annual report. By Order No. PSC-98-0892-PCO-WS, issued July 6, 1998, in 980670-WS, we initiated an investigation into the utility's rates and charges, ordered the utility to hold 5.17% of water revenues and 9.86% of wastewater revenues subject to refund, and required security in the form of a corporate undertaking to protect the potential refund. Additional revenues were subject to refund because of price indexes initiated in 1996 and 1997. 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, we denied the utility's Motion for Reconsideration of Order No. PSC-98-0892-PCO-WS.

On July 29, 1998, Utilities, Inc. filed an application for transfer of majority control of Sanlando to Utilities, Inc. By

ORDER NO. PSC-00-2097-AS-WS
DOCKETS NOS. 980670-WS, 971186-SU
PAGE 6

Order No. PSC-99-0152-FOF-WS, issued January 25, 1999, in Docket No. 980957-WS, we approved the transfer of majority control.

On April 7, 1999, our staff attended a presentation at the Altamonte City Commission Chambers by representatives of Sanlando and the City of Altamonte Springs (City). The purpose of the presentation was to inform all interested persons that Sanlando and the City were in the process of developing a revised reuse project plan which would have Sanlando interconnect with the City's reuse system. We were 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, we were advised that the time frame included 90 days for City Commission approval, six to nine months of design, and 18 months of construction.

By Order No. PSC-00-0111-PAA-WS, issued January 12, 2000, we ordered Sanlando to credit water contributions-in-aid-of-construction (CIAC) in the amount of \$138,460, and wastewater CIAC in the amount of \$260,432 to reflect 1997 and 1998 overearnings which were held subject to refund plus interest. We also ordered the utility to continue to hold 5.17% of annual water and 9.86% of annual wastewater revenues subject to refund as required by Order No. PSC-98-0892-PCO. In addition, we ordered Sanlando's parent company, Utilities, Inc., to continue to maintain the existing corporate undertaking on behalf of Sanlando as guarantee of any potential refund of revenues pending the outcome of an analysis of the utility's 1999 earnings.

By Order No. PSC-00-0112-PAA-SU, issued January 12, 2000, we ordered Sanlando to file a revised reuse project application within six months of the effective date of that Order. On March 9, 2000, Sanlando filed an "Amended Application for Approval of Reuse Project Plan." The \$5,831,000 plan calls for Sanlando to interconnect with the City's reuse system, and offer reuse to two golf courses, two homeowners' associations' common areas, and a commercial nursery. The utility did not file the various justifications required by Section 367.0817, Florida Statutes (Reuse Projects), because it is not proposing to recover the cost of the reuse project through rates. Sanlando states that its investment will eliminate any question of overearnings for the year

ORDER NO. PSC-00-2097-AS-WS
DOCKETS NOS. 980670-WS, 971186-SU
PAGE 7

2000 and beyond. Construction is scheduled to commence June 2000, and be completed by the end of 2001.

On March 13, 2000, Sanlando filed a "Motion to Close Docket 980670-WS", proposing that it book any 1999 overearnings as CIAC consistent with our prior actions, and that this docket be closed. The Motion also proposed that as of January 1, 2000, no earnings be held subject to refund, and that the corporate undertaking be terminated.

On March 24, 2000, OPC filed a "Citizens' response to Sanlando's Motion to close Docket No. 980670-WS", strongly objecting to Sanlando's Motion, and recommending denial of Sanlando's Motion to close Docket No. 980670-WS, to credit 1999 overearnings to CIAC, and to not require Sanlando to hold revenues for the year 2000 subject to refund.

On April 14, 2000, a noticed conference call was held between the utility, Commission staff and OPC to review the utility's Motion. The utility confirmed that it would agree to credit CIAC for the amount of monies held subject to refund for 1999 (\$407,009), provided this Commission would: 1) not require the utility to hold revenues subject to refund after January 1, 2000; 2) terminate the corporate undertaking; and 3) not conduct an audit of 1999 utility books.

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, filed March 13, 2000, as an offer of settlement. Accordingly, Sanlando's 1999 revenues held subject to refund were ordered to be charged to CIAC within 90 days of the effective date of the Order, and no further revenues of Sanlando were to be held subject to refund after January 1, 2000. The Order also provided that Utilities, Inc.'s corporate undertaking which guarantees Sanlando's potential refund shall be canceled, and established Sanlando's rate of return on equity as 9.81%, with a range of 8.81% to 10.81%. Finally, by Order No. PSC-00-1263-PAA-WS, we approved Sanlando's amended reuse project plan, filed March 10, 2000.

On July 31, 2000, OPC timely filed a petition protesting Order No. PSC-00-1263-PAA-WS. Essentially, OPC's petition protests the

charging of 1999 revenues to CIAC and discontinuance of collection of further revenues subject to refund. Further, OPC alleges that the Order establishes the utility's return on equity without properly auditing the books and records of the utility and determining the capital structure of the utility, and that the Order does not provide any mechanism to test the prudence or reasonableness of the expenditures made by the utility to construct or operate the reuse facilities.

APPROVAL OF SETTLEMENT AGREEMENT

As discussed previously, on July 31, 2000, OPC timely filed a petition protesting PAA Order No. PSC-00-1263-PAA-WS. However, on September 6, 2000, OPC and Sanlando filed a Joint Motion to Accept Settlement Agreement (Motion). In their Motion, the parties request that we approve the attached settlement agreement which was executed by the parties on August 31, 2000. The settlement agreement provides as follows:

1. Sanlando shall reduce its monthly water base facility charge in order to reduce annual water revenues by one hundred twenty thousand dollars (\$120,000.00).
2. Sanlando shall not file a rate case for at least two (2) years after completion of construction of the reuse project approved by the PSC in Order No. PSC-00-1263-PAA-WS.
3. Sanlando shall not implement a water rate increase based upon the application of the price indices during the period in which it has agreed not to file a rate case.
4. Sanlando may implement a wastewater rate increase based upon application of the price indices beginning with the 2001 price index.
5. OPC will voluntarily dismiss the Petition on Proposed Agency Action filed July 31, 2000.
6. Except as specifically modified hereby, the provisions and rulings in Order No. PSC-00-1263-PAA-WS are hereby affirmed, with 1999 water overearnings subject to refund being charged to water CIAC and 1999 wastewater overearnings subject to

refund being charged to wastewater CIAC. Also, in the next rate case Sanlando will have to justify the actual dollars spent to construct the reuse facilities, before such sums can be recovered in any revenue requirement to be paid by the ratepayers.

7. The provisions of this Settlement Agreement are not severable and shall become effective only after the Commission has entered an order approving the Agreement in total. In the event the Settlement is not approved in whole, without modification, the Settlement Agreement shall be deemed withdrawn and null and void, and neither party may use this attempted Settlement Agreement in this or any other proceeding.

We have reviewed this settlement agreement and believe that it reaches a reasonable compromise and that it is in the public interest. The agreement was executed by the utility and OPC, and was also endorsed with the signatures of representatives of the Wekiva Hunt Club Community Association, Inc., the Regency Professional Management, Inc., the Sweetwater Oaks Homeowners' Association, Inc., and the Springs Community Association. No other protests were filed in this docket, and the withdrawal of OPC's protest will obviate the need for a hearing.

Because the SJRWMD was not a signatory to the settlement agreement, we have contacted the SJRWMD to obtain its position. The SJRWMD does not object to the settlement agreement, and is in full support of the utility moving forward on the reuse facility project. However, the SJRWMD has expressed some disappointment in how the water conservation programs have been addressed. The SJRWMD supports a more aggressive approach to water conservation programs in order to reduce the per capita consumption in Sanlando's service area. We also support aggressive conservation programs for Sanlando. Several water conservation proposals were previously proffered by our staff and discussed among the parties during earlier settlement negotiations. We also encourage Sanlando to pursue these conservation programs.

In light of these circumstances, we find it reasonable to grant the parties' Motion and approve the settlement agreement in its entirety. The withdrawal of OPC's protest is hereby

ORDER NO. PSC-00-2097-AS-WS
DOCKETS NOS. 980670-WS, 971186-SU
PAGE 10

acknowledged, and PAA Order No. PSC-00-1263-PAA-WS shall be made final as modified by the provisions of the settlement agreement. The utility shall file revised tariff sheets and a proposed customer notice to reflect the reduction in its monthly water base facility charge as provided in the settlement agreement. The approved charge shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code. The charge shall not be implemented until our staff has approved the proposed customer notice, and the notice has been received by the customers. The utility shall provide proof of the date notice was given no less than 10 days after the date of the notice.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the parties' Joint Motion to Accept Settlement Agreement is hereby granted, and the settlement agreement approved in its entirety. It is further

ORDERED that the withdrawal of OPC's protest is hereby acknowledged. It is further

ORDERED that PAA Order No. PSC-00-1263-PAA-WS is hereby made final as modified by the settlement agreement. It is further

ORDERED that the utility shall file revised tariff sheets and a proposed customer notice to reflect the reduction in its monthly water base facility charge as provided in the settlement agreement. It is further

ORDERED that the approved charge shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code. It is further

ORDERED that the charge shall not be implemented until the proposed customer notice has been approved, and the notice has been received by the customers. It is further

ORDER NO. PSC-00-2097-AS-WS
DOCKETS NOS. 980670-WS, 971186-SU
PAGE 11

ORDERED that the utility shall provide proof of the date notice was given no less than 10 days after the date of the notice. It is further

ORDERED that these dockets shall be closed administratively upon our staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved.

By ORDER of the Florida Public Service Commission this 6th day of November, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

JSB

ORDER NO. PSC-00-2097-AS-WS
DOCKETS NOS. 980670-WS, 971186-SU
PAGE 12

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 Records and Reporting, 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 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 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.