

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 8, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Redemann)
Office of the General Counsel (Brubaker)

RE: Docket No. 030637-WS – Petition for approval of deletion of territory in Seminole County and for amendment of Certificate Nos. 279-W and 226-S by Florida Water Services Corporation.

Docket No. 030667-WS – Application for amendment of Certificate Nos. 247-W and 189-S for extension of water and wastewater service area in Seminole County, by Sanlando Utilities Corporation.

AGENDA: 07/20/04 – Regular Agenda – Motion for Reconsideration – Oral argument has not been requested; participation is at the Commission’s discretion

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\030637.RCM.DOC

Case Background

An overlap of territory was identified between Sanlando Utilities Corporation (Sanlando or utility) and Florida Water Services Corporation (FWSC or Florida Water), in Docket No. 980957-WS, In Re: Application for Transfer of Majority Organizational Control of Sanlando Utilities Corporation in Seminole County to Utilities, Inc. The utilities negotiated a Settlement Agreement with amendments to resolve the dispute, which was approved by the Commission by Order No. PSC-04-0532-AS-WS, issued May 25, 2004, in Docket Nos. 030637-WS and 030667-WS. On June 9, 2004, FWSC timely filed a Motion for Reconsideration and Clarification of Order No. PSC-04-0532-AS-WS. Staff is recommending that FWSC’s Motion be granted so that the Commission’s Order correctly states the territory served by FWSC and Sanlando. The Commission has jurisdiction pursuant to the provisions of Chapter 367, Florida Statutes, including, but not limited to, Sections 367.011 and 367.045, Florida Statutes.

Discussion of Issues

Issue 1: Should Florida Water Services Corporation's Motion for Reconsideration and Clarification of Order No. PSC-04-0532-AS-WS be granted?

Recommendation: Yes, the Motion should be granted and Order No. PSC-04-0532-AS-WS should be clarified and corrected as set forth in the staff analysis. (BRUBAKER)

Staff Analysis: In its Motion for Reconsideration and Clarification, FWSC states that the Settlement Agreement approved by Order No. PSC-04-0532-AS-WS provides for (1) the deletion of certain territory under FWSC's water and wastewater certificates for Seminole County, (2) the addition and deletion of certain territory for Sanlando's water certificate for Seminole County, and (3) the deletion of certain territory from Sanlando's wastewater certificate for Seminole County. Under the original Settlement Agreement, prior to its amendment, Sanlando was to delete certain other wastewater territory that was reflected in an Exhibit A to the Agreement. After concerns were raised by staff regarding that provision, FWSC and Sanlando filed an amendment to the Settlement Agreement on March 2, 2004. The amendment called for the deletion of Exhibit A in its entirety, so that Sanlando would no longer delete that specific wastewater territory described in Exhibit A to the original Settlement Agreement and would continue to serve that area.

Page five, paragraph three of Order No. PSC-04-0532-AS-WS, states as follows:

The November 4, 2003 Amendment to Sanlando's amendment application states that Sanlando has been providing water service to customers in the proposed extension area and will continue to do so without any changes in connections, interruption, or curtailment of service. The area to be added to Sanlando's territory is in part the same for which Florida Water seeks deletion. Although there are currently no active wastewater customers in the area to be deleted (the customers currently use septic systems), FWSC will be responsible for providing wastewater service to any of those customers who may, in the future, request wastewater service.

(emphasis added).

In its Motion, FWSC contends that this highlighted portion of Order No. PSC-04-0532-AS-WS at page five is inconsistent with the Settlement Agreement as amended, and appears to be a scrivener's error. The area referenced in that sentence has not been deleted from Sanlando's certificated wastewater territory in Seminole County, and is not part of FWSC's certificated wastewater territory in Seminole County. FWSC has no wastewater facilities in that area and it is not part of FWSC's certificated area under the Settlement Agreement, as amended. The area is and will continue to be served by Sanlando, since the territory remains included in Sanlando's certificated territory. FWSC therefore requests that the inadvertently included language be removed from the Order to clarify that FWSC is not responsible for providing wastewater service in an area which is not part of FWSC's certificated area. Finally, FWSC states in its Motion that it has conferred with counsel for Sanlando, who concurs with the requested relief.

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The purpose of a motion for reconsideration is to identify a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st DCA 1981). FWSC correctly identifies the last sentence of paragraph 3, page 5 of Order No. PSC-04-0532-AS-WS as having inadvertently been included in the Order. The Commission should therefore grant FWSC's Motion and Order No. PSC-04-0532-AS-WS should be corrected and clarified by deleting the last sentence in the third paragraph on page five of the Order, as discussed above.

Issue 2: Should the dockets be closed?

Recommendation: Yes. If the Commission grants FWSC's Motion, no further action need be taken and the dockets may be closed. (BRUBAKER)

Staff Analysis: If the Commission grants FWSC's Motion, no further action need be taken and the dockets may be closed.