

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 980670-WS
ORDER NO. PSC-98-1238-FOF-WS
ISSUED: September 21, 1998

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

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 its 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 staff recommendation concerning Sanlando's reuse application was filed on May 1, 1998, and scheduled to be brought before us for a proposed decision at our 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. The staff recommended that all overearnings be held in escrow.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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 the recommendation and to provide additional information regarding financing requirements and other matters which the utility believes will be helpful to us 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 our December 1, 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, we completed an expedited review of the annual report. By Order No. PSC-98-0892-PCO-WS, issued July 6, 1998, in this docket, we 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.¹ No party has filed a response to the motion.

MOTION FOR RECONSIDERATION

By Order No. PSC-98-0892-PCO-WS, we ordered that an investigation of Sanlando's water and wastewater rates and charges be initiated. We 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. We 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%. Our 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.

¹For informational purposes, we note 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.

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

1. is duplicative of the action which our staff 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.

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 our attention some point that we 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 our staff proposed in its recommendation filed on May 1, 1998, in Docket No. 971186-SU, we note that the staff has no authority to propose agency action. Our staff filed a recommendation on what action we should propose, including the initiation of a rate investigation.

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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 we 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 we 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, we 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, we are wholly unconvinced that we overlooked any point of law or fact, or erred in any way in rendering our decision proposed by Order No. PSC-98-0892-PCO-WS. Based on the foregoing, we find it appropriate to deny the utility's motion for reconsideration.

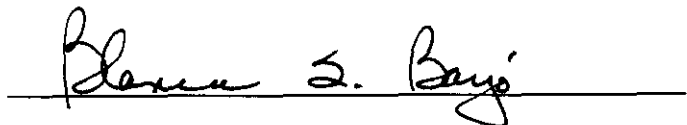
This docket shall remain open to complete the investigation of Sanlando's water and wastewater rates and charges, pursuant to Order No. PSC-98-0892-PCO-WS.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sanlando Utilities Corporation's Motion for Reconsideration of Order No. PSC-98-0892-PCO-WS is hereby denied. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 21st day of September, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RG

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NOTICE OF 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 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 or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.

M E M O R A N D U M

September 21, 1998

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (GERVASI)

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

[Handwritten initials]

PSC-98-1238-FOF-TWA WS

Attached is an ORDER DENYING MOTION FOR RECONSIDERATION, to be issued in the above-referenced docket.

(Number of pages in order - 5)

RG/dr

Attachment

cc: Division of Water and Wastewater (Willis, Rendell, Casey)

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