

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer  
of majority organizational  
control of Sanlando Utilities  
Corporation in Seminole County  
to Utilities, Inc.

DOCKET NO. 980957-WS  
ORDER NO. PSC-98-1640-FOF-WS  
ISSUED: December 7, 1998

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

ORDER GRANTING MOTION TO DISMISS

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 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 July 29, 1998, Utilities, Inc., filed an Application for Approval of Change in Majority Organizational Control of Sanlando to Utilities, Inc. On July 31, 1998, Utilities, Inc., sent notice of the application pursuant to Section 367.071, Florida Statutes, and to Rule 25-30.030, Florida Administrative Code, to the entities as required by the Rule. Also as required by the Statute and the Rule, on August 4, 1998, Sanlando sent notice of the application by First Class U.S. Mail to each of its customers, and caused the

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matter to be published in the August 2, 1998, issue of the Orlando Sentinel.

On September 4, 1998, Florida Water Services Corporation (FWSC) timely filed an objection to the application and a demand for formal hearing on the matter. On September 11, 1998, Utilities, Inc. timely filed a motion to dismiss FWSC's objection. On September 24, 1998, FWSC timely filed a response to the motion to dismiss the objection.

#### MOTION TO DISMISS

In its objection and demand for formal hearing, FWSC states that it files the objection because the legal description contained in Sanlando's notices of application appear to describe territory to be transferred which may overlap FWSC's Commission-approved territory for its Apple Valley and Meredith Manor service areas. According to FWSC, its substantial interests are affected by the application because it has lines and customers in the possible overlap area, and it has a prior right to serve those customers. FWSC identifies as issues of material fact currently in dispute: 1) whether Utilities, Inc., has the right to serve the disputed territory in light of FWSC's prior claim; and 2) whether it is in the public interest for FWSC or Utilities, Inc., to provide service to the overlap area.

In its motion to dismiss the objection, Utilities, Inc., argues that FWSC's substantial interests are not affected by the application since this proceeding will not affect Sanlando's service area. According to Utilities, Inc., the objection has nothing to do with the issue of who owns the stock of Sanlando; whether it is the prior owners or Utilities, Inc. If there is an overlap in service areas, it was not caused by the transfer of ownership of the utility. Further, Utilities, Inc., argues that if FWSC believes there is an overlap in its service area with that of Sanlando, it may have the right to bring that issue to the Commission for resolution. However, it should be addressed in a separate docket since it is unrelated to the issues relevant to the instant docket.

In its response to the motion to dismiss, FWSC argues that if Utilities, Inc.'s, arguments were true, there would be little reason for the Commission rules to require an applicant seeking approval of a transfer of majority organizational control to provide notice of the transfer to neighboring utilities. Whether

a prospective transferee's territory overlaps the approved territory of a neighboring utility may be considered part of this Commission's public interest determination when evaluating a proposed transfer. According to FWSC, for this reason, it has an affected interest and should be given standing to object. Finally, FWSC argues that if it had not filed an objection to the proposed transfer, Utilities, Inc. might later argue that FWSC waived its rights relative to the territory overlap in any subsequent proceeding. FWSC requests that we hold a formal hearing, deny Sanlando's application as to the overlapping areas, and deny Sanlando's motion to dismiss FWSC's objection.

We note that in the area of administrative law, the Florida Courts have set forth a specific standard for determining whether a person has a substantial interest in a proceeding. In Agrico Chemical Co. v. DER, 406 So. 2d 478 (Fla. 2d DCA 1981), the Court developed a two-pronged test: 1) an individual must show that he or she will suffer injury in fact of sufficient immediacy to warrant a formal hearing; and 2) the injury must be of a type or nature which the proceeding is designed to protect.

We find that FWSC has not met either prong of the Agrico test. Assuming that we approve the transfer of majority organizational control, FWSC will be in the same position as it was in before the transfer. If the stock sale is approved, it will not impact the question of whether there is overlapping territory as between Sanlando and FWSC. This proceeding involves a transfer of stock, not of assets, and not of the potentially overlapping property which is of concern to FWSC. Therefore, FWSC has not demonstrated that it will suffer injury in fact. Further, the concern over potential overlapping territory raised by FWSC is not of the type which a proceeding regarding a transfer of majority organizational control is designed to protect. The primary focus of Section 367.071, Florida Statutes, and Rule 25-30.037, Florida Administrative Code, is whether the stock transfer is in the public interest, and whether the buyer is willing and able to fulfill the commitments, obligations, and representations of the utility. The application procedures set forth in the Statute and the Rule do not address territory overlap concerns such as those raised by FWSC.

For the foregoing reasons, we hereby grant Utilities, Inc.'s motion to dismiss FWSC's objection. By so ruling, we do not preclude FWSC from raising concerns about potential overlapping territory as between it and Sanlando, nor do we recognize the territory described in the notices provide by the utility as being

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exclusively within Sanlando's service territory. We have been informed that the utilities are attempting to resolve these concerns among themselves. Should they determine that overlapping territory does exist, either utility could petition this Commission for deletion of the overlapping territory from the territory description of the appropriate utility, or file a similar request, in order to request that a docket be opened for us to address this issue.

This docket shall remain open in order to process Utilities, Inc.'s application for transfer of majority organizational control.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Utilities, Inc.'s Motion to Dismiss Objection of Florida Water Services Corporation is hereby granted. It is further

ORDERED that this docket shall remain open pending a ruling upon Utilities, Inc.'s application for transfer of majority organizational control.

By ORDER of the Florida Public Service Commission this 7th day of December, 1998.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

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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.