



Public Service Commission

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

DATE: NOVEMBER 5, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER AND WASTEWATER (JOHNSON, REDEMANN)
DIVISION OF LEGAL SERVICES (GERVASI)

RE: DOCKET NO. 980957-WS - APPLICATION FOR TRANSFER OF
MAJORITY ORGANIZATIONAL CONTROL OF SANLANDO UTILITIES
CORPORATION IN SEMINOLE COUNTY TO UTILITIES, INC.
COUNTY: SEMINOLE

AGENDA: November 17, 1998 - REGULAR AGENDA - DECISION PRIOR TO
HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\980957.RCM

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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 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

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 980957-WS
DATE: NOVEMBER 5, 1998

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 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. The motion to dismiss FWSC's objection is the subject of this recommendation.

DISCUSSION OF ISSUES

ISSUE 1: Should Utilities, Inc.'s, Motion to Dismiss Objection of Florida Water Services Corporation be granted?

RECOMMENDATION: Yes, the Motion to Dismiss Objection of Florida Water Services Corporation should be granted. (GERVASI)

STAFF ANALYSIS: 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 the 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 the Commission hold a formal hearing, deny Sanlando's application as to the overlapping areas, and deny Sanlando's motion to dismiss FWSC's objection.

Staff notes 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.

Staff does not believe that FWSC has met either prong of the Agrico test. Assuming that the Commission approves 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, staff recommends that Utilities, Inc.'s motion to dismiss FWSC's objection should be granted. By so recommending, staff does not intend to state that FWSC has no right to raise concerns about potential overlapping territory as between it and Sanlando. Staff has been informed that the utilities are attempting to resolve these concerns among themselves. Should they determine that overlapping territory does exist, either utility could request the Commission to resolve the problem by filing a petition to delete the overlapping territory from the territory description of the appropriate utility, or a similar request, in order to request that a docket be opened for the Commission to address this issue.

DOCKET NO. 980957-WS
DATE: NOVEMBER 5, 1998

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open in order to process Utilities, Inc.'s application for transfer of majority organizational control. (GERVASI)

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