

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corp. | DOCKET NO. 060258-WS
ORDER NO. PSC-07-0453-PCO-WS
ISSUED: May 29, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER ACKNOWLEDGING IMPLEMENTATION OF
PROPOSED AGENCY ACTION RATES SUBJECT TO REFUND

BY THE COMMISSION:

BACKGROUND

Sanlando Utilities Corp. (Sanlando or utility) is a Class A utility providing water and wastewater service to approximately 10,108 water and 8,201 wastewater customers in Seminole County. The utility is a wholly-owned subsidiary of Utilities, Inc. (UI). Water and wastewater rates were last established for this utility in its 1998 earnings investigation.¹

On May 15, 2006, Sanlando filed the Application for Rate Increase at issue in the instant docket. By Order No. PSC-07-0205-PAA-WS (PAA Order), issued March 6, 2007, we approved rates that were designed to generate a water revenue requirement of \$2,491,321 and a wastewater revenue requirement of \$3,996,861.

On March 27, 2007, the Office of Public Counsel (OPC) timely filed a protest of the PAA Order. On April 5, 2007, Sanlando timely filed a cross-petition to protest the PAA Order, pursuant to Rule 25-22.029(3), Florida Administrative Code (F.A.C.). By letter dated April 9, 2007, Sanlando stated that it intends to put the PAA Order rates in effect during the pendency of the administrative hearing.

Cypress Lakes Utilities, Inc. (Cypress Lakes), another UI subsidiary, also filed an Application for Rate Increase in Docket No. 060257-WS on May 15, 2006. By Order No. PSC-

¹ See Order No. PSC-00-1263-PAA-WS, issued July 10, 2000, in Dockets Nos. 971186-SU, In re: Application for approval of reuse project plan and increase in wastewater rates in Seminole County by Sanlando Utilities Corporation., and 980670-WS, In re: Investigation of possible overearnings by Sanlando Utilities Corporation in Seminole County. Order No. PSC-00-2097-AS-WS, issued November 6, 2000, made Order No. PSC-00-1263-PAA-WS final as modified by the settlement agreement.

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FPSC-COMMISSION CLERK

07-0199-PAA-WS (Cypress Lakes PAA Order²), issued March 5, 2007, we approved increased PAA rates and charges, which included an annual revenue increases of \$42,874 for water and \$143,167 for wastewater. On March 26, 2007, Cypress Lakes Associates, Ltd., a developer, timely filed a protest of the Cypress Lakes PAA Order. On April 6, 2007, OPC filed a cross-protest of the Cypress Lakes PAA Order. By letter dated April 9, 2007, Cypress Lakes stated that it also intends to put the Cypress Lakes PAA Order rates in effect during the pendency of the administrative hearing.

This order addresses the implementation of the PAA rates and the security to guarantee the increased revenues collected under the PAA rates for Sanlando. We have jurisdiction pursuant to Section 367.081, Florida Statutes (F.S.).

ACKNOWLEDGING IMPLEMENTATION OF PAA RATES

As discussed previously, the PAA Order was protested by the OPC and cross-protested by the utility. On April 9, 2007, Sanlando submitted its notice of intent to implement rates pursuant to Section 367.081(8), F.S., pending the resolution of the protest filed in this docket. The utility also submitted tariff sheets and a proposed customer notice.

Section 367.081(8), F.S., states:

At the expiration of 5 months following the official filing date, if the commission has not taken action or, if the commission's action is protested by a party other than the utility, the utility may place its requested rates into effect under bond, escrow, or corporate undertaking subject to refund, upon notice to the commission and upon filing the appropriate tariffs.

The filing of OPC's objection triggers the applicability of subsection 367.081(8), F.S., and the utility is allowed to implement the PAA rates as requested by the utility. Although the utility has the right to implement its requested final rates, Sanlando has elected to implement the final rates we approved in the PAA Order. These Commission-approved rates are lower than the rates requested by the utility in its filing.

Our staff reviewed the tariff sheets and the proposed customer notice. Once the utility has provided the appropriate security, the effective date can be established and incorporated in the tariff sheets and customer notice. The security for the rate increase is discussed below. Based on the above, we find it appropriate to acknowledge the utility's implementation of the PAA rates on a temporary basis pending the outcome of this rate proceeding.

ESTABLISHING THE APPROPRIATE SECURITY

As previously discussed, the utility may place its requested rates into effect under bond, escrow, or corporate undertaking subject to refund pursuant to Section 367.081(8), F.S. In addition to allowing the utility to implement its requested rates, the statute requires that "[t]he

² Issued March 5, 2007, in Docket No. 060257-WS, In re: Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities, Inc.

utility shall keep accurate records of amounts received as provided by subsection (6).” Subsection (6) specifies that “[t]he utility shall keep accurate, detailed accounts of all amounts received because of such rates becoming effective under bond, escrow, or corporate undertaking subject to refund, specifying by whom and in whose behalf such amounts were paid.”

Pursuant to the PAA Order, we approved PAA rates and charges for Sanlando, which included an annual revenue increase of \$404,581 for water and \$664,394 for wastewater. In addition, by Order No. PSC-07-0199-PAA-WS, issued March 5, 2007, we approved PAA rates and charges for Cypress Lakes Utilities Inc. (Cypress Lakes), which included an annual revenue increase of \$42,874 for water and \$143,167 for wastewater. By letter dated April 9, 2007, Cypress Lakes also stated that it intends to put the PAA Order rates in effect during the pendency of the administrative hearing in Docket No. 060257-WS.

Sanlando and Cypress Lakes are wholly-owned subsidiaries of UI, which provides all investor capital to its subsidiaries. UI’s present cumulative corporate undertaking amount is \$1,784,788. UI has requested an additional corporate undertaking to secure the implementation of temporary PAA rates granted for Sanlando and Cypress Lakes. In accordance with Rule 25-30.360, F.A.C., our staff calculated the potential refund of revenues and interest collected to be \$910,583 for Sanlando and \$158,475 for Cypress Lakes. The total incremental amount of \$1,069,057 is based on an estimated ten months of revenue being collected. Adding the total incremental amount for Sanlando and Cypress Lakes, the total cumulative corporate undertaking amount would be \$2,853,845 (\$1,784,788 plus \$1,069,057).

The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Our staff reviewed the financial statements of the parent company to determine if UI can support an additional corporate undertaking on behalf of its subsidiaries. UI’s 2004, 2005 and 2006 financial statements were used to determine UI’s financial condition. UI’s average equity ratio over the most recent three year period has remained stable at 40%. In addition, UI’s relative level of liquidity has improved compared to 2005. However, both UI’s interest coverage and relative level of net income have declined over the three year review period. In addition, if granted, UI’s total cumulative corporate undertaking would be approximately \$2.9 million, and would represent 78% of UI’s average annual net income in 2005 and 2006. Based upon this analysis, we find that UI cannot support any incremental amount of corporate undertaking above the current cumulative amount of \$1,784,788. Therefore, we find it appropriate that Sanlando provide a surety bond or escrow agreement to guarantee the funds collected subject to refund.

If the security provided is an escrow account, the utility shall deposit 19.39% of water and 19.94% of wastewater revenues into the escrow account each month. In addition, the following conditions shall be part of the agreement:

- 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission.
- 2) The escrow account shall be an interest bearing account.

- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
- 8) The Commission Clerk must be a signatory to the escrow agreement.
- 9) This account must specify by whom and on whose behalf such monies were paid.

If the security provided is a surety bond, said instrument shall be in the amount of \$910,583. In addition, the surety bond shall state that it will be released or shall terminate only upon subsequent order of this Commission.

Regardless of the type of security provided, the utility shall keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), F.A.C., the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. In no instance shall maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and shall be borne by, the utility

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sanlando Utilities Corp.'s notice of implementation of the proposed agency action rates is hereby acknowledged as set forth herein. It is further

ORDERED that Sanlando Utilities Corp. shall open an escrow account or file a surety bond to guarantee any potential refund of revenues collected under interim conditions. If the security provided is an escrow account, Sanlando Utilities Corp. shall deposit 19.39% of water and 19.94% of wastewater revenues into the escrow account each month. Otherwise, the surety bond shall be in the amount of \$910,583. It is further

ORDERED that, pursuant to Rule 25-30.360(6), F.A.C., the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that, should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. It is further

ORDERED that this docket shall remain open to complete the hearing process.

By ORDER of the Florida Public Service Commission this 29th day of May, 2007.



ANN COLE
Commission Clerk

(S E A L)

JSB

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.