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FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

OCTOBER 7, 1993

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF WATER AND WASTEWATER (MESSER, MERCHANT,
STARLING) *as per* *BBM* *MS*
DIVISION OF LEGAL SERVICES (BEDELL) *CB* *[Signature]*

RE : UTILITY: SANLANDO UTILITIES CORPORATION
DOCKET NO. : 930256-WS
COUNTY: SEMINOLE

CASE: PETITION FOR LIMITED PROCEEDING TO IMPLEMENT WATER CONSERVATION PLAN IN SEMINOLE COUNTY BY SANLANDO UTILITIES CORPORATION.

AGENDA: OCTOBER 19, 1993 - CONTROVERSIAL - PROPOSED AGENCY ACTION - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

RECOMMENDATION FILE NAME: 930256.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 systems. Sanlando's entire service area lies within the St. Johns River Water Management District, which has declared its entire district as a critical use area.

The Commission last considered these systems within a full rate case in Docket No. 900338-WS. Order No. 23809, issued on November 27, 1990, required Sanlando to submit a plan detailing the actions it would take to implement water conservation initiatives and to file a brief economic study of the feasibility of implementing spray irrigation within 90 days of the effective date of the Order. The utility was also ordered to hold \$25,008 in annual revenues, referred to as "set-aside funds," for future expenses specifically related to water conservation. Sanlando submitted its water conservation plan on June 28, 1991.

By Order No. 24920, issued on August 16, 1991, the Commission approved in part and denied in part the water conservation plan submitted by Sanlando. The utility's filing addressed only two of the three requirements specified in Order No. 23809. The Commission had ordered the utility to file a plan containing the economic feasibility of spray irrigation, rate restructuring recommendations, and any other related suggestions for the use of the set-aside funds by September 30, 1991. The economic study on the feasibility of implementing spray irrigation was not included in the utility's report. The utility proposed delaying the economic study on spray irrigation until a later date because the St. Johns River Water Management District issued consumptive use permits to the three golf courses in the Sanlando service area, which eliminated their immediate need for utility spray effluent. The utility filed a supplement to the original water conservation plan on September 26, 1991.

The plan supplement was presented at the October 22, 1991 Agenda Conference. A representative of the Florida Audubon Society attended and expressed the Society's concern over Sanlando's current method of effluent disposal into the Wekiva River. He requested that this Commission deny approval of the plan supplement and require Sanlando to conduct a more thorough economic feasibility study. The Commission determined that the plan supplement was unsatisfactory and deferred the vote to a later date. The Commission instructed our staff to obtain a letter of intent from the St. Johns River Water Management District (SJRWMD)

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regarding its willingness to revoke the golf course consumptive use permits if spray effluent became available. The Commission also instructed the utility to submit additional conservation alternatives along with a more detailed feasibility study.

Sanlando's Water Conservation Plan Addendum

On September 21, 1992, the utility filed an addendum to its water conservation plan. The addendum presented Sanlando's plan for an effluent reuse program, an inclining block rate structure, and a report of the utility's conservation expenditures to date. The Commission also received the required information from the SJRWMD.

The plan stated that on July 10, 1992, the Department of Environmental Protection (DEP) renewed the permit authorizing Sanlando to continue operating its Wekiva wastewater treatment plant. The DEP specified as a condition to granting the permit that Sanlando enter into preliminary discussions with this Commission to determine if it would allow implementation of water conservation rates to fund the construction and improvements needed to further treat and deliver reclaimed wastewater to the three golf courses located within Sanlando's service area. The permit requires that on-site plant modifications and improvements be completed by December 31, 1995, and that the distribution system be completed by December 31, 1996. However, the permit also states that if the utility lacks sufficient revenue to make these improvements (by the lack of approval of the plan by the FPSC), the DEP will grant extensions of time, or other such relief as is appropriate under the circumstances.

All three golf courses are currently irrigating with on-site wells with combined estimated average daily usage of approximately 1 million gallons per day (MGD). As a result, Sanlando asserted its proposed reuse program, in addition to encouraging reduced water consumption by its customers, would result in a immediate and significant reduction in water resource withdrawal from Florida's diminishing potable water supply.

Sanlando updated and revised its previous studies related to the reuse of treated effluent produced by Sanlando's Wekiva wastewater treatment plant. The revised study indicated that a system designed to maintain pressure for local system reuse on demand as well as for transmission to the respective golf courses would be advantageous and economical. The system would be designed with both on-site storage and pumping capabilities and have the ability to deliver slightly over 1 MGD to the three golf courses on

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an annual average basis, and another 225,000 gallons to commercial users in the vicinity of the main transmission route to the respective golf courses. The cost for the three golf course system was approximately \$1,820,000, and according to the utility's estimates, the three golf courses could accept approximately 50 percent of Sanlando's effluent.

According to the utility's plan, funding for the reuse facilities could be achieved by implementing an inclining block water rate structure. The utility proposed the structure below, beginning with the utility's existing gallonage charge of \$.355 per thousand gallons of water;

	<u>Charge Per</u> <u>1,000Gallons</u>
0 to 10,000 gallons per month	\$.355
10,000 to 20,000 gallons per month	\$.50
20,000 to 30,000 gallons per month	\$.65
over 30,000 gallons per month	\$.85

In addition, the charge per thousand gallons for general service, multi-family and bulk sale users would be increased from \$.355 to \$.60 per thousand gallons. In theory, this rate structure would encourage water conservation as well as produce excess revenues which could be used to fund the reuse project. Any excess revenues would be deposited in an escrow account and held solely for capital expenditures related to the water reuse program. There was no intention of earning a profit on the project and any interest earned from the escrow account would be used for the reuse project. The utility also proposed that any unused portion of the \$25,008 currently being set-aside each year for conservation expenses should be applied to the implementation of the effluent reuse program.

After reviewing this plan, the Commission found as follows in Order No. PSC-92-1356-FOF-WS issued November 23, 1992:

... we find that Sanlando has met the requirements set forth in Orders Nos. 23809 and 24920. The utility has followed through with its short term conservation incentives to educate customers on water conservation. Sanlando has more fully developed the long range

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conservation goals of implementing a reuse program and a conservation rate structure. We hereby approve the addendum and incorporate it into the utility's existing water conservation plan.

The Order went on to identify the amount of money collected from overearnings to be placed in a set-aside fund for water conservation efforts, and also restated that those monies were to be used for educational purposes for one year only. The Order continued:

Accordingly, we believe that the utility's proposal to use the remaining portion of the annual set-aside funds for implementation of the reuse program may be appropriate. However, because we agree that it would be more appropriate to address implementation of the reuse program through a limited proceeding, we are not addressing these issues at this time. Representatives from the SJRWMD, DEP, and Florida Audubon Society have all expressed their approval of the concept and their interest in pursuing implementation of the reuse program.

Therefore, since the requirements of Orders Nos. 23809 and 24920 have been met, we hereby close this docket. However, the utility shall file a limited proceeding for the purpose of implementing the conservation program discussed in the body of this Order within nine months of the issuance date of this Order." (emphasis added)

Sanlando complied with this mandate by filing a Petition for Limited Proceeding to Implement Water Conservation Plan on March 10, 1993, approximately 4 months after the issuance date of Order No. PSC-92-1356-FOF-WS. This Petition was assigned Docket No. 930256-WS. The St. Johns River Water Management District filed a Petition to Intervene in support of Sanlando Utilities Corporation's Petition for Limited Proceeding to Implement Water Conservation Plan on June 7, 1993. Charles Lee, representing the Florida Audubon Association filed to become an interested party in the docket in July 1993. Staff has sent the utility several data requests to clarify portions of the proposal and also conducted a customer meeting on July 8, 1993.

This case background has been presented to outline the history of this case up to the present filing. The details of the current filing and the staff primary and alternate recommendation are presented in the following discussion.

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ISSUE 1: Should Sanlando's Petition for Limited Petition to Implement Water Conservation Plan be approved?

STAFF PRIMARY RECOMMENDATION: No. Sanlando's Petition for Limited Proceeding to Implement Water Conservation Plan should be denied. (MERCHANT)

STAFF ALTERNATE RECOMMENDATION: Yes. Sanlando's Petition for Limited Proceeding to Implement Water Conservation Plan should be approved. The water gallonage rates per 1,000 gallons per month for all customers should be: \$.355 for 0 to 10,000 gallons; \$.50 for 10,000 to 20,000 gallons; \$.65 for 20,000 to 30,000 gallons; and \$.85 over 30,000 gallons. Sanlando shall file monthly reports of water revenues collected by the utility in excess of water revenues at current rates to be placed in the designated escrow account for the purpose of financing the installation of the effluent transmission system, payment of regulatory assessment fees and income taxes related to those revenues. The Utility should also be required to file a proposed charge to the golf courses prior to the implementation of effluent transmission. Prior to the last phase of construction, the utility should file a plan on the disposition of the approved increasing block rate design and excess funds produced by the water conservation rates. (MESSER, STARLING)

STAFF ANALYSIS: The history of this docket has been detailed in the Case Background. In summary, at the conclusion of rate case Docket No. 900338-WS, the Commission ordered Sanlando Utility to develop a conservation plan utilizing excess water revenues resulting from their overearnings from water operations. The annual amount of the overearnings was about \$25,000 and the utility proposed a public education program. The Commission reviewed the program and told the utility the plan was not comprehensive enough, and suggested it pursue the feasibility of effluent reuse to three golf courses. The utility returned to the Commission with a proposal that would allow it to collect money through an increasing block water gallonage rate structure over a period of four years, hold this money in a separate escrow account including interest, and use the money for the purpose of building the distribution lines to the golf courses and on-site storage to provide the treated effluent.

The Commission accepted this plan as appropriate in concept, and allowed the rate case docket to be closed. Representatives from the SJRWMD, DEP, and Florida Audubon Society all expressed their approval of the concept and their interest in pursuing implementation of the reuse program. However, the Commission found it would be more appropriate to address actual implementation

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through a limited proceeding, and ordered the utility to file a limited proceeding for the purpose of implementing the conservation program discussed in the body of the order within nine months of the issuance date. The utility complied with this directive and filed the Petition For Limited Proceeding To Implement Water Conservation Plan on March 10, 1993. This recommendation addresses the refiled plan as stated in this petition.

The staff has two different perspectives on the appropriateness of this plan at this time, which are presented as the primary and alternate recommendations. Before presenting the discussion on those alternatives, we first want to describe the specifics of the revised plan.

Utility's Petition to Implement Water Conservation Plan

Sanlando's plan is essentially the same plan approved in concept by the Commission in Order No. PSC-92-1356-FOF-WS, but updated in terms of some of the costs and level of detail. The purpose of the plan is to generate revenue through an increasing block water gallonage rate over a four year period. The increased revenue generated will be used for the design and construction of a system to reuse a portion of the treated effluent generated by its Wekiva wastewater treatment plant. The system will consist of both on-site storage and pumping capabilities and off-site delivery facilities and will have the ability to deliver at least one million gallons per day on an annual average basis to three golf courses within the utility's service area. Long range plans expand the use of the effluent to providing another 225,000 gallons per day to commercial users within the Utility's service area which are in the vicinity of the main transmission routes to the respective golf courses.

The utility's plan proposes to raise \$2,000,000 over a four year period to implement the plan. The original estimate of the total expense of this project was \$1,820,000. This has been adjusted in the present petition to \$2,050,000 which includes the capital costs plus costs of collection such as regulatory assessment fees and income taxes. The original proposed time frame was from 1993 to 1996. This has been modified to implementation in 1994 to 1997. The proposed rate design for residential customers as detailed in the case background remains the same. These rates are also applied to general service, multi-family and bulk water users in the new petition.

All other features of the plan remain the same. The utility projected potential "excess" revenues from the implementation of

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this plan through the four year period. This money would be deposited to an escrow fund and held solely for capital expenditures related to the water reuse program. The petition also proposes to use the overearnings specified in Order No. 23809 along with the excess revenues for implementation of the conservation plan. Upon full implementation of the reuse program, a determination would be made by the Commission regarding the disposition of any excess funds produced by the water conservation rates. The utility suggested options such as reducing rates to a level consistent with the then current rate setting regulation, or continued collection for expansion of the water reuse program (i.e. to other commercial customers).

Sanlando believes that its proposed reuse program would encourage reduced water consumption by residential customers which comprised 80% of the total utility consumption. The utility projects that without the new rate design, overall consumption would rise from about 3.0 to 3.2 billion gallons. If the increasing block rates are implemented, Sanlando projects that consumption would remain at or slightly below the 2.9 billion gallon range. This represents an annual reduction in potable water withdrawal of approximately 300 million gallons. However, the utility believes the bulk of the benefit will derive from the reduction in potable water withdrawal from the aquifer for the purpose of irrigating the golf courses. The replacement of 1 MGD of aquifer water with reused water among the three golf courses could save an additional 333 million gallons, so that the total annual reduction in potable water withdrawal when considering the golf course usage could be in excess of a half billion gallons per year.

The utility also filed a Memorandum of Law in support of its petition. The issue addressed by the Memorandum is whether the Commission has the authority to approve the rate structure change proposed by the petition. The Memorandum states that pursuant to Section 403.064(1), Florida Statutes, water conservation and effluent reuse are "state objectives" and that pursuant to Section 403.064(6), Florida Statutes, the Commission is required to allow utilities which implement reuse projects to recover the full cost of such facilities through their rate structure. The petition further cites Section 367.081(2)(a), Florida Statutes, for the proposition that plant to be constructed in the future for water conservation and reuse may be considered in this request to change the utility's rate structure. The utility also cites *Occidental Chemical Co. v. Mayo*, 351 So.2d 336 (Fla. 1977), for the proposition that conservation may be considered by the Commission in setting rates.

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Due to the controversial nature of the filing, the staff conducted a customer meeting on July 8, 1993. Approximately 15 customers attended the meeting. Eight individuals provided testimony. Four customers presented testimony opposed to the utility's plan. One customer stated he thought that the plan benefited the golf courses and not the customers, and suggested the utility try to come up with some other way of dealing with the disposal of the effluent. He also was opposed to the gallonage levels and increasing block rates. A second customer concurred that the plan seemed to tax customers with no mention of the golf courses making a contribution and stated concern about the rate structure level. The third customer questioned the effectiveness of the proposed rate structure in generating real conservation by the customers, stated that the golf courses should pay some portion of costs, and questioned various points of the plan. The fourth customer stated his disbelief in incremental rates having any impact on water consumption, stated his concern over exactly how excess funds generated would be kept and monitored, and that customers should not be, in effect, taxed to build plant to benefit a golf course.

Four individuals expressed support of the plan. A member of the governing board of the St. Johns Water Management District and the Senior Vice President of the Florida Audubon Society provided testimony to support the utility's plan. The representative of the Audubon Society was also a customer of the utility. They expressed their concern about the current method of effluent disposal by the utility into the Wekiva River, the overall benefit to the region of reducing the gallons of water removed from the aquifer by the golf courses and the increased water awareness that customers would develop through the increasing block gallonage rate design.

Two other customers also expressed support of the plan. One stated he was completely in favor of incremental water rates and the use of the treated effluent for irrigation. He had four positions on the idea of conservation which he stated as the following: that higher water users should pay progressively higher rates; that some of the regulatory assessment fees collected by the PSC should be used for conservation research; that utilities should institute water use audits, including cost sharing or reimbursement programs for conservation improvements, similar to electric utilities audit programs; and that higher efficiency utilities, like Sanlando, should be permitted higher rates of return as incentives. This customer also added that he believed the golf courses involved should participate financially in some fashion in the cost of transmitting the effluent. The other customer in favor of the plan restated how important it was to develop procedures

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that helped to preserve precious groundwater resources and that even with the increasing rate design, customers of Sanlando would compare very favorably with the rates of surrounding utilities.

STAFF PRIMARY RECOMMENDATION

The primary recommendation in this case is that Sanlando's Petition should be denied. Staff agrees with utility that the proposed golf course effluent disposal program will protect the Floridan Aquifer and the Wekiva River. As soon as this project is implemented the impact on the environment will be greatly improved over current conditions. Where staff disagrees with the proposal is the request to have the utility customers fund this plant construction years in advance, especially when this utility has very little investment in either its water or wastewater plant facilities.

As of December 31, 1992, Sanlando had net contributions in aid of construction (CIAC) to net plant ratios of 97%, 74% and 84% for water, wastewater and total company, respectively. Rule 25-30.580, Florida Administrative Code (F.A.C.), states that the maximum amount of CIAC, net of accumulated amortization, should not exceed 75% of the total original cost, net of accumulated depreciation, of the utility's facilities and plant when the facilities and plant are at designed capacity. Although the utility has been highly contributed through several recent rate proceedings, the Commission has voted to continue the collection of CIAC charges even though the utility has been essentially built-out. If the utility were to invest in this plant instead of having it contributed by the customers, the CIAC ratio of the total company would be reduced to 75%, which is the maximum contribution rate as stated by rule.

In its response to staff's questions, Sanlando states that the Commission should not concern itself with the level of CIAC that this utility has. The Commission should instead focus on the quality of the systems and customer service provided, and the ability of the management to continue to operate award winning systems with the lowest rates in the state. The utility continues that it is unlikely that the Commission would find a more suitable candidate to undertake this pilot project. Although staff agrees that Sanlando is an excellent choice to undergo this project given its quality of service and management provided, we cannot overlook the implications to other utilities with higher rates that are required to implement reuse or other environmental regulatory requirements. Further, this would be an unusual precedent to allow recovery of prepayment for conservation or reuse plant so far in

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advance.

Another concern of staff's is the continued level of overearnings that have existed in the water system and the very likely possibility of continued overearnings in the future. This potential would be greater if the water rates are raised to a inclining block rate with no reduction in revenue requirement. Since the utility's rates are already very low, it is inconceivable that lower rates would be reasonable especially when the consumption level continues to be high. The only satisfactory solution to this problem, in staff's opinion, would be to require the utility to increase its investment in plant with no increase in CIAC and to allow the utility to recover the investment through rates.

The utility argues that all water overearnings will be used to fund the construction so there will be no overearnings. The approval of this project, the utility argues, will cure overearnings, if any in fact exist. Staff believes that the flaw with this argument is that the current rates, before the conservation rates are collected, are more likely to generate overearnings. However, none of these amounts other than the initial amount determined by the Commission will be set aside for the project.

The major problem that staff has with the advanced funding is that this violates Florida Statutes and firmly established Commission practice. Section 367.081(2)(a), Florida Statutes, states that the Commission shall fix rates that include a return on a utility's investment in property used and useful, excluding CIAC. Staff believes that this plant is not used and useful since it is not even projected to be constructed until it is fully funded at the end of four years. To the extent Section 367.081(2)(a), Florida Statutes, allows for recovery for plant to be constructed, it requires such construction to be completed within 24 months, unless extended by the Commission. In addition, even in projected test year rate bases when major plant additions are made, Commission practice dictates that utilities do not receive recovery of a return on that investment until that plant is actually providing service to customers.

Sanlando may argue that the statutes governing DEP state that the Commission shall allow entities which implement reuse projects to recover the full cost of such facilities through its rate structure (Section 403.064(6), Florida Statutes). Staff interprets this requirement to be consistent with Chapter 367 in that the plant is considered 100% used and useful when it goes into service

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but not before. The key words in staff's interpretation are "entities which implement" (emphasis added), meaning if the plant is not in service, reuse has not been implemented. Nothing in the language of 403.064(6), Florida Statutes, directs the Commission to authorize a utility to recover the full cost of conservation facilities prior to construction. Therefore, staff believes that 403.064(6), Florida Statutes, does not require the Commission to approve this petition as filed.

Staff believes that if the utility is required by DEP to discontinue disposing of effluent into the Wekiva River and to construct spray effluent facilities, the investment should be made by the utility and the facility placed in service within a year. Given that this construction would benefit the aquifer, some portion should be allocated to both the water and wastewater systems.

In response to a staff inquiry, Sanlando answered it does not have the ability to finance the construction. It states that the existing debt structure is already very high in relation to the utility's rate base. Even though the existing debt of the utility is secured by personal guarantees of the shareholders, the shareholders are not willing to guarantee or invest any more for this construction.

Staff is not convinced that the utility is unable to fund this construction. Since the shareholders have already personally guaranteed the current level of debt, the only reason stating why this project could not be similarly secured is that the shareholders do not want to given their age. If the utility were required to fund the construction up-front, the shareholders would not have the luxury to say they just do not want to do it.

Another area of concern that staff has regarding the utility's proposed plan is that having the customers contribute the funds up-front increases the overall cost of the project by \$232,000. This relates to the income tax expense and regulatory assessment fees that would have to be paid if the funds were collected as revenue. If the utility were to fund the construction, the customers would have to pay a return on the original cost of the construction and depreciation expense over the life of the asset. The interest expense would be a reduction in cost to the utility in the form of taxes instead of revenue immediately being taxable. This certainly would lower the overall cost and allow the customer to pay for this cost as service is rendered over the years.

Staff perceives numerous advantages if the utility were to

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invest in this plant. First, the spray effluent could be implemented much sooner. If the utility were required to fund this construction, the project could conceivably be completed in twelve or eighteen months at most. This would put environmental safeguards in effect at least 2 to 3 years prior to the utility's proposed plan. Second, the overall contribution level of the utility would be reduced, bringing the utility's CIAC more in line with Commission rules. As a direct result of the increase in rate base, future overearnings in the water system could be reduced, plus the water rates could be increased to allow for the additional return as well as depreciation and taxes on that investment. Also, the additional revenue requirement could be used to implement inclining block rates. The utility has already admitted that the increase in water rates alone would have little overall effect in water consumption by the customers, especially since the utility's service territory is made up of mostly higher income consumers.

Based on the above, staff recommends that the utility's proposed plan be denied as filed. The utility should be required to fund this construction up-front instead of the customers. This method is more reasonable and fair to the customers than having current customers pay for plant to be constructed at least four years into the future. Also, having the utility fund the construction is consistent with Commission practice concerning recovery of pro forma plant. It is consistent with our rules regarding CIAC and service availability policies and comports with the provisions of Chapter 367 and Section 403.064(6), Florida Statutes. Staff believes that this utility investment should satisfy DEP, SJRWMD, and the Audubon Society in that the project could be implemented much sooner than the proposed four years.

STAFF ALTERNATE RECOMMENDATION

This case presents the Commission with some unique predicaments and also some unique possibilities. The primary recommendation discussed some facts about the financial status of the utility. This alternate recommendation acknowledges those facts, but instead places them in a broader context.

Sanlando Utility has always been a unique utility because of its ownership and location. It has always been considered one of the most well-run utilities of all the investor-owned utilities regulated by the Commission. Year after year the utility has won numerous community service and environmental awards. Sanlando's location (just north of downtown Orlando) has contributed to its success. The service area is largely residential, full of upper

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middle class homes. This has provided a stable environment for the utility both in numbers of customers and revenue flows. The result of this combination of factors is that Sanlando's customers use water for their homes and yards, and this usage has allowed rates to remain lower than most of the utilities regulated by the Commission.

This combination of factors has also generated some of the regulatory concerns with this utility, as presented in the primary recommendation. The utility's CIAC level for its water operations has been over the Commission's Rule guideline of 75 percent. In addition, the revenues from water operations were found to be excessive by the amount of approximately \$25,000 annually per the 1990 rate case. While all of these issues are important, none of them are any different than they were at the time the Commission made it's final decision in the rate case docket, approving this conservation plan in concept and ordering the utility to file a Limited Proceeding to implement it.

As stated in the primary recommendation, the utility's CIAC level has been above the level identified in the rule. However, this rule is stated as "Guidelines for Designing Service Availability". Rule 25-30.580 (1)(a), F.A.C. states, "the maximum amount of CIAC should not exceed 75% of the original cost..." (emphasis added). Staff believes this language is clearly permissive. Part (2) of the Rule in fact provides for an exemption of the utility from the guideline if compliance introduces unusual hardship or unreasonable difficulty, and the Commission, utility, or interested party shows that it is not in the best interests of the customers to require compliance. In fact, the contribution level of Sanlando has been an issue in three prior dockets before the Commission, and an exception to Rule 25-30.580(1), F.A.C., has been allowed in all instances. Flexibility is built into the rule.

Another issue presented in the primary recommendation is the ability of the utility to cure its overearnings problems with the separate escrow account used to build the project. The primary recommendation suggests that the current rates are more likely to produce overearnings. It also argues that only the designated overearnings as determined by the commission would be set aside for the project.

The utility acknowledged that it believes the largest actual benefit from its' plan would occur through the long range reduction of water withdrawals from the aquifer for the golf courses, and not from substantial water reduction by their customers. The new rate design would increase customer's bills if their usage remained the

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same. However, the petition states these rates would still be lower than most of the surrounding communities. Based on their experience with their customers, the utility believes that while there may be some initial reductions, over the four year period consumption will be basically the same which would generate their projected revenues.

Elaborating on their petition, the utility stated in a response to a staff data request that they would combine the prior designated overearnings with whatever additional revenues they received from the rate design. The combination of these monies would be placed in an escrow account to fund construction. At the conclusion of the last rate case, the utility began to use the identified overearnings to develop a water conservation program. It became apparent that a meaningful and effective water conservation program would require significantly more funds than the minimal amount of overearnings identified. The Commission agreed in the last rate case that lowering the utility's water rates (as a way to reduce overearnings) would send the wrong signal relative to water conservation. Sanlando's proposal implements a rate design to send the proper signal, using the additional revenue to support the effluent transmission plan. The utility has no plans to benefit from this water conservation program.

The staff believes that if approved, the escrow account should be established between the utility and an independent financial institution pursuant to written agreement. Any withdrawals of funds from this escrow account would be subject to the prior approval of this Commission through the Director of the Division of Records and Reporting. The written escrow agreement should state the following: that the account is established at the direction of this Commission for the purpose set forth above, that no withdrawals of funds should occur without the prior approval of the Commission through the Director of the Division of Records and Reporting, that the account should be interest bearing, that information concerning the escrow account should be available from the institution to the Commission or its representatives at all times, and that pursuant to Consentino v. Elson, 263 So.2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

Staff also raised a legal issue in the primary recommendation, stating that Section 367.081 (2)(a), Florida Statutes (F.S.), prohibits the Commission from considering the derivation of rates to recover (among other areas) only used and useful plant. Since the plant at issue is not constructed, it can not be considered used and useful.

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The staff notes that the Commission has departed from the provisions of 367.081, Florida Statutes, in at least one case in order to allow funding of future capital improvements through current customer rates. In Order No. 24750 issued July 2, 1991, the Commission authorized Lake Utilities, Ltd. to collect rates based on pro forma plant additions. The difference between the rates which included pro forma plant in rate base and the rates which did not include pro forma plant was to be placed in an escrow account, pending the completion of the plant expansions. The Commission authorized the collection for an eighteen month period.

The alternate recommendation argues that this petition was filed under Section 367.0822, F.S., which encompasses Limited Proceedings. The previously stated statute is applied in full rate case proceedings.

The Limited Proceeding Statute, paragraph 1 states:

"Upon petition or by its own motion, the commission may conduct limited proceedings to consider, and act upon, any matter within its jurisdiction, including any matter the resolution of which requires a utility to adjust its rates. The commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other related matters. However, unless the issue of rate of return is specifically addressed in the limited proceeding, the commission shall not adjust rates if the effect of the adjustment would be to change the last authorized rate of return."

Sanlando has not requested a rate revision that would result in an adjustment to their last authorized rate of return. The Limited Proceeding statute provides the Commission the flexibility to determine the issues to be considered, to expand the scope to include other related matters and to adjust the utility's rates. Staff believes that the Commission has the flexibility under this statute to consider Sanlando's request as proposed.

In addition to these issues, the alternate recommendation also recognizes the issue concerning whether the golf courses should be required to pay for the effluent. While ideally the staff believes the golf courses should pay a charge recovering the operating costs of the effluent reuse, this may not be possible to implement. The

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Commission has looked at each effluent reuse situation as a unique set of circumstances. Typically, if there is some ownership relationship between the golf course and the utility, the Commission has implemented a charge for the effluent to the golf course. In other scenarios, a charge has been set equivalent to the prior cost of pumping the water from the aquifer. In a number of situations, the Commission has found itself unable to develop any charge because the golf course either had an alternative source (water from the aquifer), or the golf courses refused to pay.

In this docket, the golf courses are now obtaining irrigation water from the aquifer at either the minimal cost of pumping or at no cost. Staff believes that it may be more prudent to fully resolve this issue when the project approaches its conclusion. While the SJRWMD has stated that it will require the golf courses to use the effluent when it is available, there is no mention of a charge. Whether the golf courses could be expected to pay a charge that provides substantial contribution to effluent operations is unknown at this time. The letter from the Water Management District qualifies the golf courses' CUPs on the availability of reclaimed water at a reasonable cost and water that is economically feasible for the golf course.

One possibility in pursuing developing a charge would be to estimate their current cost of pumping water from the aquifer and use that as a barometer of reasonableness. That specific information has not been identified in this docket. Staff believes this element should be readdressed in the future, prior to the effluent distribution system becoming operational.

As we stated at the beginning of this recommendation, this petition has its share of issues. None of the parties, including staff, dispute that the project is a good idea. The problem develops over the method of funding.

The utility has stated that it will not pursue the plan if it is required to fund the construction with internal financing. The DEP may require Sanlando to build effluent lines as an alternate method of wastewater disposal. However, the operating permits now in force allow for an extension of time to consider other alternatives, should this petition be denied. There is interest and support by the SJRWMD to control the renewal of the three golf course consumptive use permits. However, these are based on the availability of reclaimed water provided at a reasonable cost and that any necessary irrigation system renovations are financially feasible for the golf courses to make (i.e., that the use of the reclaimed water is economically feasible). Neither the Commission

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or the SJRWMD can force the utility to install the effluent distribution lines for water conservation and complete the project.

Staff believes the Commission has an opportunity to be innovative with a company that is in an excellent trial position. Located within a critical use area, the concern for water conservation is real. Since mid-June all of the utility service area west of Interstate 4 has been under water restrictions imposed by the St. John's River Water Management District due to the low level of the Wekiva River. These restrictions reduce the hours the customers can use water for irrigation and required the utility to reduce its operating pressure. The Wekiva River is fed by springs that are directly affected by the golf course wells. Continued use of the aquifer for irrigating golf courses should not be considered an appropriate alternative.

Staff further believes this petition presents a prime example of the necessity to look beyond the strict rate base, rate of return regulatory concept the Commission is used to dealing with, and instead focus on the overall public interest. The Commission has the opportunity to be innovative within its own parameters, and yet also take the step of addressing issues that are of statewide concern. In addition, the unique qualities of the utility operations in combination with the customer usage characteristics make Sanlando Utility a viable candidate for this unique proposal.

Staff also believes that the unusual set of conditions provides the Commission a set of parameters to define this "experiment", preventing other utilities from assuming that affirmation of the petition creates an automatic precedent for any other utility. The Commission can clearly state that this is not the case.

Therefore, the staff recommends that the petition should be approved. The water gallonage rates per 1,000 gallons per month for all customers should be: \$.355 for 0 to 10,000 gallons; \$.50 for 10,000 to 20,000 gallons; \$.65 for 20,000 to 30,000 gallons; and \$.85 over 30,000 gallons. Sanlando should be required to file monthly reports of water revenues collected by the utility in excess of water revenues at current rates to be placed in the designated escrow account for the purpose of financing the installation of the effluent transmission system. The escrow account will be subject to the requirements as stated in the body of the recommendation. The utility should also be ordered to file a proposed charge to the golf courses prior to the implementation of the effluent transmission system. Prior to the last phase of construction, the utility should file a plan on the disposition of

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the approved increasing block rate design and excess funds produced by the water conservation rates.

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: In the event a timely protest is not filed, the docket may be closed. If the Commission approves the Staff Alternative Recommendation, the rates will become effective for meters read on or after thirty days from the stamped approved tariff sheets providing the tariffs are consistent with the Commission's decision, the proposed customer notice is adequate, and the escrow account is properly established. The docket should be closed. (MESSER, BEDELL)

STAFF ANALYSIS: If a protest is not received within 21 days of the issuance of the proposed agency action order, that order will become final. If the Commission approves the primary recommendation, the docket should be closed. If the Commission approves the alternate recommendation, the docket may be closed after the utility files and the staff approves the proposed customer notice, tariffs consistent with the Commission decision, and the establishment of the escrow account.