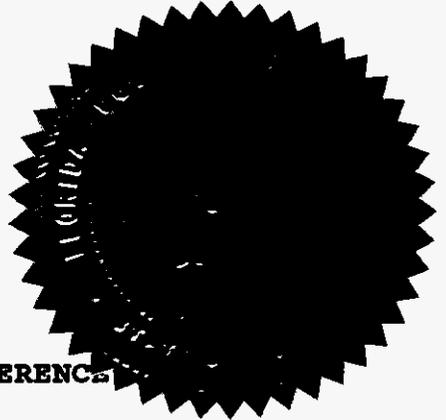


FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of
Petition for Limited
Proceeding to Implement Water
Conservation Plan in Seminole
County by SANLANDO UTILITIES
CORPORATION.

:
: Docket No. 930256-WS
:
:
:
:



PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER JULIA L. JOHNSON
Prehearing Officer

DATE: Tuesday, September 13, 1994

TIME: Commenced at 8:28 a.m.
Concluded at 9:25 a.m.

PLACE: FPSC Hearing Room 122
101 East Gaines Street
Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

DOCUMENT NO.
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1 APPEARANCES:

2 **CLEATOUS J. SIMMONS**, Lowndes, Drosdick,
3 Doster, Kantor & Reed, P.A., Post Office Box 2809,
4 Orlando, Florida 32802, Telephone No. (407) 843-4600,
5 appearing telephonically on behalf of **Sanlando Utilities**
6 **Corporation**.

7 **CHARLES LEE**, Senior Vice President, Florida
8 Audubon Society, 460 Highway 436, Suite 200,
9 Casselberry, Florida 32707, Telephone No. (407)
10 260-8300, appearing on behalf of **_Florida Audubon**
11 **Society and Friends of the Wekiva River, Inc.**

12 **NANCY B. BARNARD**, St. Johns River Water
13 Management District, Post Office Box 1429, Palatka,
14 Florida 32178-1429, Telephone No. (904) 329-4153,
15 appearing on behalf of **St. Johns River Water Management**
16 **District**.

17 **STEPHEN C. REILLY**, Office of Public Counsel,
18 111 West Madison Street, Room 812, Tallahassee, Florida
19 32399-1400, Telephone No. (904) 488-9330, appearing on
20 behalf of the **Citizens of the State of Florida**.

21 **MARGARET E. O'SULLIVAN**, Florida Public Service
22 Commission, Division of Legal Services, 101 East Gaines
23 Street, Tallahassee, Florida 32399-0863, Telephone No.
24 (904) 487-2740, appearing on behalf of the **Commission**
25 **Staff**.

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APPEARANCES CONTINUED:

**PRENTICE P. PRUITT, Florida Public Service
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Street, Tallahassee, Florida 32399-0862, Telephone No.
(904) 488-7463 Counsel to the Commissioners.**

P R O C E E D I N G S

(Hearing convened at 8:28 a.m.)

COMMISSIONER JOHNSON: I'm going to call this hearing to order in the petition of Sanlando Utilities Corporation. Counsel could you please read the notice.

MS. O'SULLIVAN: Yes, Commissioner. Pursuant to notice this prehearing has been set for this time and place in Docket 930256-WS, Petition for Limited Proceeding to Implement Water Conservation Plan for Seminole County by Sanlando Utilities Corporation.

COMMISSIONER JOHNSON: Thank you very much. I'd, at this time, like to take appearances from the parties.

COMMISSIONER JOHNSON: Mr. Simmons?

MR. SIMMONS: Yes.

COMMISSIONER JOHNSON: Would you like to make an appearance?

MS. O'SULLIVAN: Can you hear me, Mr. Simmons?

MR. SIMMONS: Can you turn up your volume a little bit?

MR. REILLY: That's as high as it goes.

MS. O'SULLIVAN: We need to have you make an appearance, Mr. Simmons.

MR. SIMMONS: This is Cleatous J. Simmons. I'm an attorney with Lowndes, Drosdick, Doster, Kantor

1 and Reed, 215 North Eola Drive, Orlando, Florida, and
2 I'm appearing on behalf of Sanlando Utilities
3 Corporation.

4 MS. BARNARD: I'm Nancy Barnard. I'm counsel
5 for St. Johns River Water Management District.

6 MR. REILLY: Steve Reilly and Jack Shreve, not
7 in that order, but for the Office of Public Counsel on
8 behalf of the ratepayers.

9 MR. LEE: Charles Lee, on behalf of the
10 Friends of Wekiva and Florida Audubon Society,
11 Intervenors.

12 MS. O'SULLIVAN: Maggie O'Sullivan, on behalf
13 of the Commission Staff.

14 COMMISSIONER JOHNSON: For purposes of
15 recording, we have one party, that is Mr. Simmons,
16 appearing via telephone conference.

17 For the record, there had not been a motion
18 for a telephone conference, and for the record, could
19 you please state the reasons why you are not here?

20 MR. SIMMONS: All right. We were attempting
21 to negotiate a settlement of this matter and had gotten
22 to the point where it appeared that we were going to
23 have a settlement but, for reasons which Mr. Shreve can
24 explain better than I, that didn't occur. Because of
25 timing conflicts and some other matters, I was unable to

1 be there this morning.

2 COMMISSIONER JOHNSON: Did you understand that
3 a prehearing had been scheduled for this morning at
4 8:00?

5 MR. SIMMONS: Yes, I did understand that. And
6 as I said, we believed we had this thing settled and
7 found out yesterday we did not.

8 COMMISSIONER JOHNSON: So you didn't make
9 arrangements to be here even though the hearing was
10 scheduled.

11 MR. SIMMONS: That's correct.

12 COMMISSIONER JOHNSON: Well, you've really
13 inconvenienced the Commission. We have spent half an
14 hour trying to set up a telephone conference which, if
15 we had known earlier, we perhaps could have accommodated
16 all of the parties and had this set up earlier and it's
17 the kind of situation that I, as a Commissioner, would
18 prefer not to see. I'm going to excuse it this time
19 only because Mr. Shreve went through so much work trying
20 to get this thing set up and Staff was able to
21 accommodate it.

22 But for purposes of appearing before this
23 Commission, to the extent that it will be necessary for
24 you to participate via telephone, please file the
25 appropriate motions and we can handle it and schedule it

1 so that all of the parties can be here and so we can
2 begin at a prompt hour and time.

3 MR. SIMMONS: Commissioner, I appreciate our
4 forbearance, and I apologize for what appears to be a
5 lack of consideration on our part before the Commission.

6 I would point out to you that the parties who
7 have filed objections to this matter are not there at
8 all. And they are, in effect, represented by Mr.
9 Shreve, and yet Mr. Shreve will point out to you that
10 while he's been negotiating on the stipulation for a
11 settlement, the reason that it wasn't agreed to is
12 because the parties that have brought this matter to
13 begin with aren't there, and haven't agreed to it yet.

14 COMMISSIONER JOHNSON: Well, maybe we can
15 discuss that in some of the preliminary matters.

16 MS. O'SULLIVAN: I think Mr. Taylor asked to
17 be excused from attending and have Mr. Reilly be up here
18 in his place.

19 COMMISSIONER JOHNSON: Yes, that was my
20 understanding, that the parties were being represented
21 and that they did not need to attend because Public
22 Counsel would be here on their behalf, and Public
23 Counsel is here and they were here promptly, and I think
24 we're ready to go into any preliminary matters that we
25 might have. Are there any preliminary matters?

1 MR. SHREVE: Commissioner, if you would like
2 for me to brief you just very briefly on what has been
3 going on.

4 Mr. Simmons is correct, we have been
5 negotiating for several weeks now and we have had good
6 cooperation from all of the parties. I think all of the
7 parties, Audubon Society, Water Management District,
8 customers, Sanlando have all endeavored to solve some
9 problems that we have. And I think as far as the
10 issues, the major issues at least, everyone is in
11 agreement. We're working on trying to implement this
12 and we do have more parties in this than normally and
13 that's tougher.

14 Mr. Simmons is correct, we don't have a
15 agreement. I would have to say whenever you don't have
16 an agreement you have two parties that are not in
17 agreement, not just one.

18 But, particularly, the company has been very
19 good about working on all of the problems in this, and I
20 think if we're able to implement this -- and I really
21 think we will be, I think we're well past the problems
22 of the settlement, I think it will be something that the
23 Public Service Commission and the Staff will be very
24 happy to endorse. We're always at a little bit at a
25 loss as to how much to fill in the Staff, and

1 particularly Commissioners, on settlement negotiations
2 because we've always had agreements particularly as to
3 the Commissioners, that they will not be informed as to
4 what they are in case it falls through and you have to
5 make some judgments down the line.

6 But I would like to say that every party has
7 been really good as far as trying to work towards
8 finalizing everything. I think it's been a good process
9 and I think it will finalize this week. But I apologize
10 for having you postpone things. So I think we should go
11 ahead with the prehearing conference, regardless.

12 COMMISSIONER JOHNSON: I understand that. And
13 first I'd like to compliment the parties on working
14 together because we do have a lot of parties with a lot
15 of different diverse interests here, and I understand
16 through my communications with Staff through -- and
17 Mr. Shreve with the respect to the procedure, and that
18 you all have been working towards settlement, and that
19 we have been trying to accommodate that. Because to the
20 extent all of the parties can get together and come to
21 us with a settlement, something that's in the public
22 interest, then we would appreciate that. But for
23 purposes of moving this thing forward and being prepared
24 just in case something does break down, I think, then,
25 that we should just walk through the prehearing, and to

1 the extent we can finalized the order, have ourselves
2 prepared in case we need to go to hearing.

3 Are there any preliminary motions or any
4 issues outstanding?

5 MS. O'SULLIVAN: Commissioner, we do have a
6 motion to intervene filed by a golf course in this case.
7 If you'd like to take it up right now.

8 I talked to the attorney for the golf course,
9 who is not here today. They filed a motion to intervene
10 requesting that they be allowed to intervene in the
11 docket because their interests have been affected by
12 testimony and issues raised by the parties in his this
13 case, concerning what they should pay. Rates right now
14 are for the reuse.

15 At this point, they have missed testimony
16 dates and have not filed a prehearing statement, but do
17 want to take part in the hearing as it goes forward.

18 Sanlando filed an objection to that motion to
19 intervene. If Mr. Simmons wants to speak to that right
20 now, he might want to.

21 MR. SIMMONS: All right. The objection to the
22 motion to intervene is based on the fact that the only
23 concern that the golf course has at this time is that
24 they are going to have imposed upon them, as a result of
25 this matter, of this docket, either an obligation to

1 take reuse water or an obligation to pay a fee for that
2 reuse water.

3 Either of those matters are at issue in this
4 particular hearing. They have been brought up as a
5 preliminary matter by the petitioners, I guess I'll call
6 them, who are the parties who petitioned for hearing
7 after we filed for the limited proceeding.

8 But it is my understanding, and perhaps this
9 is premature, maybe we need to talk about stipulating to
10 this fact, that nobody at this time is thinking that
11 we're going to impose an obligation. In fact, there
12 can't be an obligation until the reuse system is in
13 place. So their motion to intervene in this matter is
14 premature, and I think speculative, and we would oppose
15 it.

16 MS. O'SULLIVAN: I guess in response to that,
17 I spoke to Mr. Goodsby, who is the attorney for the golf
18 course, and he does not want to take part if it's not an
19 issue in the case. But at this point he believes it's
20 out there as a possible issue, and Staff recommends that
21 he be intervened in the event it does becomes an issue
22 in the case. He's assured me that if it is not an issue
23 in the case, he will not take part in the docket.

24 COMMISSIONER JOHNSON: Mr. Lee.

25 MR. LEE: Well, we would object to the

1 intervention of that party on the following grounds, and
2 we did file a motion objecting to the intervention on
3 the grounds that I'll state now, that is of record in
4 this proceeding:

5 One, given the fact they have missed the dates
6 to file their testimony, direct testimony with the
7 Commission. The allegations that they have a
8 substantial interest that they have alleged in their
9 petition, cannot be proven in this proceeding because
10 they can't present testimony to back up the allegations
11 that they are substantially affected.

12 Furthermore, they have failed substantially to
13 meet the requirements of pleading under the rules of the
14 Commission. The Commission requires that you state what
15 the ultimate issues are in the case, essentially
16 disputed issues of fact, and they have failed, as we've
17 pointed out in our motion objecting to their
18 intervention, they've substantially failed to meet the
19 pleading requirements for intervention in at least three
20 categories. They are specifically listed in your rule
21 with regard to the required contents of a petition to
22 intervene.

23 The third matter is that the only issues that
24 they seem to be touching on are issues as have been
25 mentioned here; a question of whether there might be

1 some requirement that they hook up to reuse water. We
2 would argue that that's res judicata in a Water
3 Management District decision that is outside the purview
4 of this particular proceeding, something that the
5 ability for them to appeal or ask for a hearing before
6 the Water Management District. The time clocks on that
7 have already run and they are not entitled to a second
8 bite at the apple here.

9 And the second thing that we would argue is
10 that the specific terms of the PAA in this case, that
11 deal with the only other plausible issue, and that issue
12 being whether there would be rates charged for the
13 reclaimed water, are specifically reserved to a future
14 proceeding.

15 So it would appear to me on grounds, one, that
16 they are not able to present anything in the way of
17 direct testimony that would substantiate the position
18 they've alleged that they have substantially affected
19 party status.

20 Two, because they failed to meet the pleading
21 requirements in your rules for the content of their
22 petition.

23 Three, because the issues that they have
24 alleged, to the extent that there are any, and they are
25 sparse indeed, are issues that are really outside the

1 scope of the proceeding.

2 For those reasons their petition ought not to
3 be granted.

4 COMMISSIONER JOHNSON: Okay. Any other --
5 Public Counsel.

6 MR. SHREVE: Commissioner, my view may be a
7 little bit different from anyone else's.

8 I think if there's not a settlement of the
9 case, I think there's some issues that are going to be
10 included in this that are going to be important to the
11 golf courses.

12 We're talking about whether or not the
13 question -- one of the questions, I believe, an issue
14 that was raised by the Staff, should the Commission be
15 assured that the three golf courses be required to use
16 the reuse facilities before the Commission approves
17 construction of facilities? I'm not sure who raised
18 that, maybe it was us.

19 MS. O'SULLIVAN: It was raised by OPC.

20 MR. SHREVE: But the whole package here brings
21 together what the Water Management District and Mr. Lee
22 believe is going to help take care of the water problems
23 for the state of Florida. And I think it has to be
24 viewed in the whole package, because I don't believe the
25 Public Service Commission would have voted out this

1 investment and placed it either on Sanlando's back or on
2 the customer's responsibility without looking forward to
3 the fact that this was going to solve some problems.
4 They weren't just doing it in a vacuum. And I think
5 we're probably all in agreement that those things should
6 happen and I think those things are going to be of
7 interest to the golf courses.

8 It was my understanding that if we proceed
9 with the settlement, these issues will be put aside; but
10 if we proceed to a hearing, we are, at least, going to
11 be raising issues that we feel things that are going to
12 have to be considered in order to fully accomplish what
13 must be accomplished in these investments -- it just
14 can't be done in a vacuum.

15 What I would like to see done if it could be
16 possible, is reserve ruling on this, because I don't
17 think the golf courses have a problem with the
18 settlement we're talking about. If they come in or are
19 admitted as a party, then they are going to have to
20 enter into the settlement. If there is no settlement,
21 then I think they may very well want to participate in
22 the case.

23 COMMISSIONER JOHNSON: Staff.

24 MS. O'SULLIVAN: I agree that this has been
25 raised as an issue in Issue No. 17, raised by OPC. It

1 talks about how much the golf courses should pay. I
2 think it is an issue in this case if it doesn't settle.

3 I would have concerns about reserving judgment
4 because the settlement may not happen until five days
5 before the hearing, or two days before the hearing. I
6 think they should have some notice to know if they're
7 going to be in the case before this happens.

8 COMMISSIONER JOHNSON: Clarify something for
9 me, then. This has been -- the motion has been pending,
10 therefore, they've not been involved in the case at all.
11 What would happen if I granted them party status?

12 MS. O'SULLIVAN: At this point they've missed
13 testimony dates and they did not request to file a
14 prehearing statement or take part in this at all. They
15 knew about this, but they did not want to take part in
16 it. They want to monitor the case.

17 COMMISSIONER JOHNSON: How do they build their
18 case?

19 MS. O'SULLIVAN: They want to monitor the
20 case, I think, to be able to cross examine the
21 witnesses.

22 COMMISSIONER JOHNSON: But they will not
23 present witnesses.

24 MS. O'SULLIVAN: Right.

25 COMMISSIONER JOHNSON: They will not present

1 testimony.

2 MS. O'SULLIVAN: That's correct.

3 COMMISSIONER JOHNSON: They will have the
4 ability to cross examine and file briefs on the issues.

5 MS. O'SULLIVAN: That's correct.

6 MR. LEE: Your Honor, we would argue that
7 since they cannot present a case in chief that even
8 establishes that they own property or, as a matter of
9 fact, that you could find as a finding of fact are in
10 any way entitled to be considered as a substantially
11 affected party, that their ability to participate in the
12 case and complicate it and lengthen it with cross
13 examination, given the fact that you could not make any
14 findings of fact that they even own property or exist,
15 as far as this proceeding is concerned, because they've
16 missed those dates, is an unfair burden that the rest of
17 us will have to deal with.

18 I mean, they have been well aware of the
19 existence of this proceeding, and for whatever reason,
20 they decided not to file their petition until after all
21 the dates for testimony, and even responsive testimony,
22 closed.

23 And further, if you review their petition,
24 their petition simply doesn't comport with your rule.
25 Your rule requires, as most rules concerning

1 intervention, that there be some substantive content to
2 the petition as to their position, if you will, on the
3 case, as to what they believe the ultimate facts are,
4 what they believe the ultimate law is and the outcome of
5 the proceeding should be. They didn't do that.

6 And so because of their defective petition,
7 because of the fact that they cannot present any direct
8 testimony at this point to even establish that they have
9 any substantial effect, it would be our view that
10 they've missed it to the point now that their entry
11 would only prejudice against the other parties, and, in
12 fact, you couldn't ever make a finding of fact now that
13 they are substantially affected because they can't
14 present testimony to show that they are.

15 MS. O'SULLIVAN: Commissioner, I guess my
16 concern is ultimately a result could happen in this case
17 where they are -- a raise is imposed upon them. And if
18 they are not made a party in this docket, they wouldn't
19 be able to speak to that.

20 MR. LEE: My response to that is that they
21 have been aware of this case as long as we all have
22 been. They have been able to intervene as long as we
23 all have. Not only has this case been widely noticed
24 through the notice procedures of the Commission, it's
25 also been popularized in the press in the Orlando area.

1 And the fact that they have waited until this long, it
2 would appear to me that's a problem that they've created
3 for themselves.

4 And even if you accept the other parts of the
5 discussion Staff is raising, one cannot ignore the fact
6 that they have substantially failed to comply with the
7 requirements of the pleading. They don't have a proper
8 petition in front of the Commission. They've missed key
9 elements of it.

10 COMMISSIONER JOHNSON: Let me get back to one
11 of the statements that Staff made with respect to Public
12 Counsel's suggestion that perhaps we reserve ruling on
13 this.

14 How do you feel that the party would be
15 prejudiced? Why isn't that feasible?

16 MS. O'SULLIVAN: The settlement, I'm hoping it
17 happens soon, but it could happen the day before the
18 hearing. And if we tell the intervenor -- I hope that
19 doesn't happen but it could happen the day before the
20 hearing and the intervenor would have no time to prepare
21 without knowing if he's going to be part of the hearing
22 or not.

23 COMMISSIONER JOHNSON: So you're saying if we
24 were to rule today, than they are going to start doing
25 something differently they have been doing.

1 MS. O'SULLIVAN: That's true, they may not.

2 COMMISSIONER JOHNSON: And what would that be?
3 Because they can't file anything, they can't -- so all
4 they are going to be doing is cross examining, trying to
5 build their case through somebody else's cross
6 examination, which I find a little awkward.

7 So my feel is that they aren't going to do
8 much more than show up and perhaps participate in that
9 way anyway, to perhaps preserve some right or to
10 write -- more at the tail end writing a brief or
11 something.

12 So with that in mind, and Mr. Pruitt, what is
13 your -- and that was my question. Did we take your name
14 in the appearances?

15 MR. PRUITT: I didn't, but she always writes
16 me down.

17 COMMISSIONER JOHNSON: Okay.

18 MR. SHREVE: Mr. Pruitt has a standing
19 standing.

20 MR. PRUITT: Commissioner, the Commission has
21 a very, very liberal policy on allowing intervention.
22 If there's just a reasonable expectation that a person
23 will be adversely affected by -- or materially affected
24 by any action the Commission may take, they are
25 permitted to come in and litigate that.

1 I don't know how long the golf course has been
2 aware of these proceedings, because I'm not aware of
3 them all that much. But it may be the first time that
4 the issue of reuse of wastewater will be litigated, and
5 that's what is important.

6 If it involves reuse of wastewater and the
7 recipient of that reuse water is going to be a golf
8 course, and if they are going to pay something for it,
9 they ought to be heard, and I'd let them intervene.

10 MR. LEE: We just respond that there are about
11 three or four levels of objectionable nature to the
12 petition to intervene, beginning with the fact that the
13 four corners of the petition doesn't comply with your
14 rule. Even if the timeliness question were in not an
15 issue, the petition is inherently defective.

16 Further, even if the petition was ineffective,
17 they cannot prove to you that they have any substantial
18 interest because they can't present anything that lets
19 you make a finding of fact that they even own any land
20 that exists there. So for that reason it would appear
21 to me that while, you know, from some sort of conceptual
22 idea that they might be affected, one can sort of
23 speculate in those directions. There aren't any
24 findings of fact you'll be able to make in this
25 proceeding that would be able to prove that they are

1 even substantially affected.

2 MR. PRUITT: Commissioner, on that point let
3 tell you, the Commissioners have the authority under
4 case law to use their common, everyday walking around
5 sense. And if you see somebody out there that's going
6 to get affected, you know it whether there's any
7 pleadings filed to it or not.

8 And on intervention, intervention is
9 permissible at any stage of a Commission hearing, at any
10 stage of it. The rule is that when a person intervenes,
11 he or she takes the case as they find it at that point.
12 But the intervention can be at any point.

13 MR. LEE: Your Honor, I'd just make it clear.
14 We don't object to the idea that's been advanced by
15 Public Counsel that a decision on this matter be
16 deferred.

17 I'm at the 99% level of confidence that this
18 matter is going to be a settlement and we're probably
19 debating an issue that doesn't have to be a problem.
20 But if we should go to a hearing, we, as parties in the
21 proceeding, would object to having our case prejudiced
22 by the participation of somebody for whom you're not
23 even going to be able make findings of fact that they
24 have an interest that would entitled them to intervene.

25 MR. SIMMONS: Another Matter that hasn't been

1 discussed --

2 THE REPORTER: Excuse me. You'll have to
3 start again, I can't hear you.

4 MR. SIMMONS: There's another matter that we
5 should consider, and that is the fact that even if the
6 Commission were to determine that reuse should be
7 imposed on the golf course, as a function of the permit
8 that the golf course has for its water use, the Water
9 Management District is going to have to determine if the
10 imposition of a fee is an economically feasible matter
11 for the golf course. So they are going to have their
12 day in court, so to speak, under their permit, and under
13 the administrative procedures imposed on the Water
14 Management District. So they are not going to be
15 deprived of an opportunity to be heard. It may be in a
16 different forum.

17 COMMISSIONER JOHNSON: I'm going to reserve
18 ruling on the motion for a date certain. That date
19 being -- what is seven days before the hearing.

20 MR. SHREVE: Good point.

21 MS. O'SULLIVAN: Seven days before the
22 hearing, that would be September 19th.

23 COMMISSIONER JOHNSON: Until September 19th.
24 I think that gives the parties that now stand an
25 opportunity to work out the settlement and not muddy the

1 waters by adding another party that would have to sign,
2 and it will also give the intervenor, if I decide to
3 allow the intervention, opportunity to prepare to
4 whatever limited extent he may need to prepare.

5 MR. SHREVE: Excellent.

6 COMMISSIONER JOHNSON: Any other preliminary
7 matters?

8 MS. O'SULLIVAN: No, none that Staff is aware
9 of.

10 COMMISSIONER JOHNSON: Seeing none, perhaps we
11 can go through this Prehearing Order rather quickly.

12 And what I suggest that we do is just go
13 section by section, and to the extent there are any
14 changes or revisions that we need to make, we'll make
15 those, and to the extent that there aren't, we'll just
16 move on to the next section. Starting with Section 1,
17 the case background.

18 MS. O'SULLIVAN: Commissioner Staff has one
19 small addition to make to Page 3, Line 3. It starts
20 off, "Proposed charge for reclaimed water," we want to
21 add the phrase, "once the reuse project is completed."
22 That's just part of what the PAA order says.

23 COMMISSIONER JOHNSON: "Once the reuse project
24 --"

25 MS. O'SULLIVAN: "Is completed."

1 COMMISSIONER JOHNSON: -- "is completed." Any
2 comments on that? Any other changes in Section 1?
3 Seeing none, Section 2? Seeing, none, Section 3? Any
4 changes in the order of witnesses or any changes in the
5 witnesses at all?

6 MR. LEE: Your Honor, I just have one matter
7 with regard to witnesses.

8 Dr. Yokel needs to testify, if possible, on
9 the 26th because of a scheduling problem, and Dr.
10 Fishkind is serving as a pro bono witness for us, and
11 we're -- we may need to discuss among the parties the
12 possible juggling of his testimony time to accommodate
13 him during the course of the hearing to get him into a
14 window when -- but those are the only concerns.

15 COMMISSIONER JOHNSON: Okay. Any objections
16 to taking either of those two perhaps out of order?
17 Seeing none, I think we can accommodate that, then,
18 during the hearing and we'll make note of that in the
19 final prehearing.

20 Section 5, basic positions of the parties.

21 MS. BARNARD: The District, I see one typo in
22 there under St. Johns.

23 COMMISSIONER JOHNSON: Okay. Under St. Johns.

24 MR. REILLY: A "J" instead of a "T."

25 COMMISSIONER JOHNSON: Any other changes to

1 the basic positions? Seeing none, Section 6, Issues and
2 positions.

3 MS. O'SULLIVAN: May I suggest we go through
4 them one at a time. I think some of them will go rather
5 quickly and some may take a little time.

6 COMMISSIONER JOHNSON: Issue 1.

7 MS. BARNARD: The District would also that it
8 also should be approved.

9 COMMISSIONER JOHNSON: So it would be, yes, it
10 should be approved. Okay. Issue 2.

11 MR. SIMMONS: Commissioner, the Utility would
12 take the position that the surcharge should not be
13 subject to regulatory assessment fees. The answer would
14 be no.

15 MR. LEE: Audubon and Friends would agree with
16 the Utility.

17 COMMISSIONER JOHNSON: Okay.

18 MR. REILLY: Our position is as stated in
19 Madden/Wekiva is stated the following: "Sanlando's
20 proposal should not be approved, but if it is, the
21 answer is no.

22 COMMISSIONER JOHNSON: Okay. Issue 3,
23 utility?

24 MR. REILLY: We might suggest a stipulation.

25 COMMISSIONER JOHNSON: With respect to Issue

1 3?

2 MR. REILLY: Issue 2.

3 COMMISSIONER JOHNSON: Oh, Issue 2.

4 MS. O'SULLIVAN: We all say no.

5 MR. LEE: I don't think there's any dispute on
6 that issue.

7 COMMISSIONER JOHNSON: Okay.

8 MR. SIMMONS: I don't think there's any. On
9 Issue 3?

10 COMMISSIONER JOHNSON: We'll show proposed
11 stipulation on Issue 2. Issue 3.

12 MR. SIMMONS: The Utility would take the
13 position that if there is a decrease in water
14 consumption resulting in a loss of earnings, then the
15 surcharge should be used to offset the earnings, so I
16 guess the answer is yes.

17 MR. LEE: Audubon and Friends would agree with
18 the Utility.

19 COMMISSIONER JOHNSON: Okay.

20 MR. REILLY: Our position is as stated in
21 similarly in Madden/Wekiva's position, that Sanlando's
22 proposal should not be approved but if it is, the answer
23 is no.

24 COMMISSIONER JOHNSON: Okay. Issue 4.
25 Utility?

1 MR. SIMMONS: We would agree with the position
2 taken by the Office of Public Counsel.

3 MR. LEE: Audubon and Friends would agree with
4 the Office of Public Counsel's position.

5 COMMISSIONER JOHNSON: Madden/Wekiva.

6 MR. REILLY: Madden/Wekiva agrees with Public
7 Counsel, and it's just a matter of checking the language
8 with Staff to see if we're really saying basically the
9 same thing. I would say that's a --

10 COMMISSIONER JOHNSON: Staff does that look
11 like something we could stipulate or are you all saying
12 something different?

13 MR. SIMMONS: I'd like to be able to stipulate
14 to a periodic report, rather than the word
15 "continuously" if we could put in "quarterly report."

16 MR. REILLY: We don't have an objection to
17 that.

18 MR. LEE: We would agree with that.

19 MS. O'SULLIVAN: Pretty much adopting Staff's
20 position, essentially?

21 MR. REILLY: Well, I think it's OPC's and
22 adding the word "quarterly," instead of "continuously."

23 MS. O'SULLIVAN: Staff will stipulate to that.

24 COMMISSIONER JOHNSON: Okay. Show Issue 4,
25 then, as another proposed stipulation. Issue 5.

1 O'SULLIVAN: The Utility would agree with the
2 Office of Public Counsel's position.

3 COMMISSIONER JOHNSON: Audubon.

4 MR. LEE: Your Honor, we would agree with
5 this, but would do so with one caveat, and that is that
6 nothing in the agreement would prejudice any future
7 possibility of going back to the Commission to continue
8 the rates to expand the reuse facility, because this
9 facility is only -- the contemplated facility will only
10 partially consume the wastewater produced by the
11 Utility. It's possible it would be in the public
12 interest to pursue a second phase but that would be a
13 second proceeding. We just wouldn't want any language
14 herein to imply that there was an agreement that it
15 should absolutely be cut off with no future possibility
16 of extension through another proceeding.

17 MS. BARNARD: I would agree with Mr. Lee.
18 Maybe if we could change the question to say that "If
19 the water conservation plan is approved, how long should
20 the surcharge for this project or this proposal --"

21 MR. LEE: Particular project.

22 MS. BARNARD: -- this plan be in effect?"
23 Because this plan is pretty specific to the construction
24 of the reuse lines.

25 COMMISSIONER JOHNSON: Okay. I just noticed

1 on several of these, Water Management District, you all
2 have no position?

3 MS. BARNARD: We have no position. Those are
4 financial issues which we have not participated in.

5 COMMISSIONER JOHNSON: Okay.

6 MR. REILLY: Is this a Staff issue?

7 MS. O'SULLIVAN: This is an issue that we had
8 during one of our "prepres."

9 MR. REILLY: I think so, because --

10 MS. O'SULLIVAN: Right, we all talked about
11 it.

12 MR. REILLY: We don't have an objection to
13 adding the words "for this project " after the word
14 "surcharge," which would, you know, address your
15 concerns and then stick to our position. And If
16 everyone stipulated to our position, we'd have a
17 stipulation.

18 MR. LEE: I think we do.

19 MR. SHREVE: Mr. Reilly is willing to take a
20 stipulation as long as it's our position.

21 MR. REILLY: With a slightly reworded issue.

22 MS. O'SULLIVAN: I guess we think maybe it's
23 not really necessary to say "for this project."
24 Obviously, if they want to come back and file for
25 another phase, we could do that in another limited

1 proceeding.

2 COMMISSIONER JOHNSON: In a abundance of
3 caution, then, we'll just include it; it won't hurt
4 anything.

5 MR. REILLY: I agree with Staff that her
6 opinion is correct, but I don't know that it hurts us to
7 do that if it gives him a little more comfort level.

8 O'SULLIVAN: The Utility would agree with
9 Audubon as corrected.

10 COMMISSIONER JOHNSON: Okay. Then we'll
11 clarify it by adding that language just in an abundance
12 of caution. For the record, we stated here that we
13 believe that you would have that right.

14 Issue 6.

15 MR. SIMMONS: The Utility would agree with the
16 Office of Public Counsel and in so doing we're going to
17 have to modify Issue 7 and take the words "non-CIAC" off
18 of our petition because we've rethought it and it is a
19 depreciable asset and has contribution in aid of
20 construction.

21 COMMISSIONER JOHNSON: Okay. On Issue 6, the
22 Utility adopts OPC's position.

23 Audubon?

24 MR. LEE: We would adopt the OPC position as
25 well.

1 COMMISSIONER JOHNSON: Okay. Madden/Wekiva
2 the same, adopt OPC?

3 MR. REILLY: That's correct.

4 COMMISSIONER JOHNSON: And Staff and OPC are
5 the same, so it's another stipulation.

6 On Issue 7, you strike -- with respect to
7 Utility, strike the "comma, non-CIAC" and put a period
8 there, and that would be your position then?

9 MR. SIMMONS: That would be our position. We
10 don't have any trouble with accepting the Staff
11 position. I'm assuming that separate Subaccount No. 380
12 would be an appropriate accounting mechanism. I'm not
13 an accountant, so I can't address that, but if that's
14 the Staff's position, I don't think we would object.

15 MR. LEE: Audubon would agree, as well.

16 MR. REILLY: So, we're basically stipulating
17 to Staff's language there.

18 MR. SIMMONS: If that includes the concept of
19 being carried as a depreciable asset, the answer is yes.

20 MS. O'SULLIVAN: Combine both Staff and the
21 Utility's positions into one stipulation.

22 COMMISSIONER JOHNSON: Okay.

23 MR. REILLY: That's okay with us.

24 COMMISSIONER JOHNSON: It looks like we'll
25 have a proposed stipulation on Issue 7.

1 Issue 8. Utility?

2 MR. SIMMONS: We don't have a problem with St.
3 Johns' position but I think it's presumptuous of us to
4 say that it is consistent with their policy. They set
5 their policy and they should be the ones who determine
6 that.

7 MS. O'SULLIVAN: Commissioner, Staff -- Issues
8 8 through 13 Staff thought were not really issues in
9 this case. They were part of the testimony and the
10 facts filed in this case but maybe we should not
11 consider these issues.

12 COMMISSIONER JOHNSON: 8 through 13? Any
13 objections to Issues 8 through 13 being taken out as
14 nonissues, or nonissues, but perhaps facts to be
15 discussed and discovered through the case?

16 MR. REILLY: If you'll just give us one
17 minute.

18 COMMISSIONER JOHNSON: Sure.

19 MS. BARNARD: They are going to tow my car.
20 As long as we can still -- well, I guess the testimony
21 is already in the -- already been filed, so I would
22 agree to that, leaving those out as issues.

23 MR. REILLY: So this is 8 through 12? 13?

24 COMMISSIONER JOHNSON: 13. Public Counsel has
25 no problem with that?

1 MR. REILLY: No.

2 COMMISSIONER JOHNSON: Water Management
3 District? Audubon?

4 MR. LEE: None.

5 COMMISSIONER JOHNSON: No problem?

6 MR. SIMMONS: The Utility has no problem.

7 COMMISSIONER JOHNSON: The Utility has no
8 problem. We will strike 8 through 13.

9 Let's go off record.

10 (Discussion off the record.)

11 COMMISSIONER JOHNSON: Okay. We're going to
12 go back on the record and continue. I think we struck
13 Issues 8 through 13 and we're now on Issue 14. The
14 Utility.

15 MR. SIMMONS: Yes.

16 COMMISSIONER JOHNSON: Oh. Yes, is your
17 position. Audubon and Friends?

18 MR. SIMMONS: Their position is yes.

19 COMMISSIONER JOHNSON: And we have Water
20 Management. OPC.

21 MR. REILLY: We have the following position:
22 "While the procedural requirements of Chapter 367.0817,
23 Florida Statutes, cannot be retroactively applied to
24 this docket, the statute authorizes the Commission to
25 consider prospectively proposals such as this one.

1 Prior to enactment of this statute the
2 Commission would not have had the authority to approve
3 Sanlando's proposal," period.

4 COMMISSIONER JOHNSON: Okay. Staff.

5 MS. O'SULLIVAN: I think I would agree with
6 OPC's first sentence but not the last sentence.

7 MS. BARNARD: Could you repeat your last
8 sentence?

9 MR. REILLY: "Prior to enactment of this
10 statute the Commission would not have had the authority
11 to approve Sanlando's proposal." It's a gratuitous
12 statement. It's really of no consequence at this point.

13 MR. SHREVE: We're not going to charge for it.

14 MR. REILLY: That's the position we had taken
15 prior to the enactment of that statute and I know the
16 parties didn't all agree on that, but it met -- mooted
17 it by the passage of the statute.

18 MR. SIMMONS: After listening to that, my
19 inclination is to ask what is your point?

20 MR. SHREVE: That was what we read.

21 MR. REILLY: That's our position.

22 COMMISSIONER JOHNSON: And Staff, what is your
23 position, same as OPC, except you would strike "prior to
24 the statute."

25 MS. O'SULLIVAN: Right. That's correct. So

1 it's no stipulation or anything.

2 COMMISSIONER JOHNSON: That's fine.

3 MS. BARNARD: Unless we could agree that the
4 Commission has the authority to approve this type of an
5 arrangement at this time. Yes/no?

6 MR. SHREVE: Commissioner, what we may want to
7 argue, and this is our choice on this, at the time this
8 procedure started and at the time this filing was made
9 by the petitioners, this type of activity or ruling by
10 the Commission was not allowed. That's our point. And
11 we may want to argue that it's still not available in
12 this proceeding.

13 COMMISSIONER JOHNSON: Okay. I understand the
14 positions of the parties. Issue 15.

15 MS. O'SULLIVAN: We suggested that it be
16 combined with Issue No. 16.

17 COMMISSIONER JOHNSON: Okay. We're going to
18 combine those two issues. With Issues 15 and 16
19 combined, what would be the position of the Utility?

20 MR. REILLY: But the issue that is combined
21 would be Issue 16, slightly reworded by adding the words
22 "St. Johns River Water Management District" after the
23 word "required" on the second line there, so it's a
24 slightly reworded Issue 16.

25 COMMISSIONER JOHNSON: Okay.

1 MR. REILLY: And then Issue 15 drops off.

2 COMMISSIONER JOHNSON: Got you. Okay.

3 MR. REILLY: And then positions.

4 COMMISSIONER JOHNSON: 16 as revised, what
5 would be the position of the Utility?

6 MR. SIMMONS: The utility doesn't have a
7 position.

8 COMMISSIONER JOHNSON: Okay. Audubon, do we
9 remember theirs?

10 MS. O'SULLIVAN: It would be the same, I
11 think, as the Utility.

12 COMMISSIONER JOHNSON: Okay. No position.
13 Water Management District?

14 MS. BARNARD: I would disagree with the
15 Commission. I would say no. The position of the
16 District is that there are a lot of issues before the
17 District with regard to that that would come up in front
18 of the review of the consumptive use permit by the golf
19 courses at that time, and that it's not within the
20 Commission's authority to have to have that assurance
21 prior to approval of this conservation claim.

22 COMMISSIONER JOHNSON: OPC as stated.

23 MR. REILLY: Well, no, what we're going to do
24 is combine our positions of the issue that was deleted,
25 so what we'll have is our answer would be yes, followed

1 as the second sentence on our position would be our
2 position on Issue 15, and then go back to our position
3 on 16.

4 COMMISSIONER JOHNSON: Okay. Madden/Wekiva,
5 would they do the same thing?

6 MR. REILLY: It would be the same thing.

7 COMMISSIONER JOHNSON: Adding that insertion
8 from 15?

9 MR. REILLY: Correct.

10 COMMISSIONER JOHNSON: Okay. Staff.

11 MS. O'SULLIVAN: Our position would be yes.

12 COMMISSIONER JOHNSON: Okay. Issue 17.
13 Utility.

14 MR. SIMMONS: The Utility's position would be
15 that the method of financing to be approved would be
16 that set out in the PAA.

17 MS. O'SULLIVAN: I think we propose to
18 eliminate this issue since it's kind of part of Issue 1.
19 Is that what we did during the break there?

20 MR. REILLY: Well, this is an OPC issue and
21 during the break we did agree with Staff that we could
22 do that, and combine 17 with 1. And what we're going to
23 do is just add our position on 17 to our position on No.
24 1.

25 COMMISSIONER JOHNSON: Okay. Show that --

1 make sure that is reflected in the final order, and I'm
2 assuming all of the other parties' positions kind of
3 fall out.

4 MS. BARNARD: The District's would.

5 COMMISSIONER JOHNSON: Okay. Issue 18.

6 MS. O'SULLIVAN: Commissioner, we propose a
7 stipulation on 18 and the answer is yes.

8 COMMISSIONER JOHNSON: Okay. Proposed
9 stipulation on Issue 18.

10 MR. REILLY: We agree.

11 MS. O'SULLIVAN: I'm going to ask a favor of
12 the parties to supply me with their positions in a
13 couple of days in giving the order correctly, all the
14 new positions that have come from the issues.

15 MR. REILLY: I didn't hear anything on that
16 stipulation on 18 from the Utility; is that correct?

17 MR. SIMMONS: Tell me what we're being asked
18 to stipulate to.

19 MR. REILLY: That you're violating the
20 Commission's rules. I thought it would be nice if you
21 commented on that. (Laughter)

22 MR. SIMMONS: I don't think we agree that
23 we're violating the Commission's rules. We're in
24 compliance with all the orders and rules at issue that
25 apply to us so far.

1 MR. REILLY: Well, then, you might need to
2 read Issue 18 before we stipulate to it, then. Because
3 it seems to say, "with greater noncompliance with this
4 particular rule."

5 MS. O'SULLIVAN: We can reword the issue,
6 perhaps, to say, "Will they be in excess of 75% as set
7 forth in the rule." Is that one of the concerns?

8 MR. SIMMONS: We have less equity in our -- on
9 a ratio basis after this than we did before. I'll
10 stipulate to that. We have more contribution in aid of
11 construction, I'll stipulate to that, but I'm not going
12 to stipulate to the fact we're in noncompliance with the
13 rule.

14 COMMISSIONER JOHNSON: Okay. We won't have a
15 stipulation here. So what would be your position on 18?

16 MR. SIMMONS: Our position would be that we
17 are -- if approved by the Commission, we continue to be
18 in compliance with all rules as authorized by the
19 Commission.

20 COMMISSIONER JOHNSON: Okay. Audubon.

21 MR. SIMMONS: Same.

22 COMMISSIONER JOHNSON: Same. Water Management
23 District.

24 MS. BARNARD: No position on that one. I
25 wouldn't touch that with a ten-foot pole.

1 COMMISSIONER JOHNSON: OPC.

2 MR. REILLY: Yes for OPC and yes for Madden
3 and Wekiva.

4 COMMISSIONER JOHNSON: Staff.

5 MS. O'SULLIVAN: Yes for Staff.

6 COMMISSIONER JOHNSON: Okay. It looks like
7 we've made it through the issues section. And, again,
8 if the parties could get their revised positions to
9 Staff so that she can incorporate those into the
10 Prehearing Order, that would be appreciated by when,
11 date certain being?

12 MS. O'SULLIVAN: End of this week, perhaps.

13 COMMISSIONER JOHNSON: End of the week.

14 MS. O'SULLIVAN: Friday.

15 COMMISSIONER JOHNSON: So we expect to have
16 those positions to Staff by this Friday, five o'clock.
17 Section 7, Exhibit List, any changes or additions?

18 MR. SIMMONS: The Utility has none.

19 MR. REILLY: A couple of questions.

20 COMMISSIONER JOHNSON: Yes, sir.

21 MR. REILLY: I don't believe Public Counsel
22 received a copy of the resume of Mr. Sweazy. Did anyone
23 else, any of the other parties?

24 MR. SIMMONS: Mr. Who?

25 MR. REILLY: Mr. Sweazy.

1 MS. BARNARD: The District's witness. I'll be
2 happy to provide it to anybody who doesn't have it.

3 MR. REILLY: And we just want to reserve, put
4 on the record that we -- YW-2, 3, 4 and 5 exhibits
5 listed by the Water Management District, were not
6 attached to the prefiled testimony of Mr. Wang, and
7 normally would not be a prefiled exhibit in this
8 Prehearing Order. We did, through discovery, receive
9 copies of these fairly voluminous documents and that's
10 why we want to reserve the right, really, to object to
11 these being put in the record. But, frankly, we're not
12 at this point taking the position that we will object
13 but we just want to put the parties on notice that we
14 have not thoroughly reviewed those documents yet. They
15 are fairly voluminous.

16 COMMISSIONER JOHNSON: Okay.

17 MS. BARNARD: That's why they weren't attached
18 to the prefiled testimony.

19 COMMISSIONER JOHNSON: That's noted for the
20 record. Any other comments or changes? Seeing none,
21 Section 8, "Proposed Stipulations," we have the three
22 here? Are they still --

23 MS. O'SULLIVAN: These were proposed by St.
24 Johns, and we haven't had a chance to discuss these. We
25 didn't have a "prepre." Does anybody have any --

1 MR. REILLY: We can stipulate to A, but we
2 cannot stipulate to B or C at this point.

3 MR. SIMMONS: I think -- couldn't you agree to
4 C?

5 MR. REILLY: I don't believe so.

6 MR. SIMMONS: Where is it going to come from
7 if it's in the reuse system?

8 MR. REILLY: At this point we don't know how
9 this reuse is going to be discharged and there's no
10 assurance that in any way there will be a reduction of
11 discharge into the waters, if that becomes the last
12 alternative --

13 MR. SIMMONS: Assumes that the plant is going
14 to be implemented, which means it's going to be
15 discharged to the golf courses.

16 MR. REILLY: I don't thing think we can assume
17 that's it's going to be discharged to the golf courses
18 at this moment.

19 MR. SIMMONS: Well, that's what she said.

20 MR. REILLY: I'd let them work it out in
21 stipulation.

22 COMMISSIONER JOHNSON: We'll just, because
23 Mr. Pruitt and I have to get out of here in a few
24 seconds, we're going to let you work on those proposed
25 stipulations and they'll just be reflected in the

1 prehearing order.

2 I think we've addressed the pending motions,
3 but we have not -- the motion in limine, was that filed?

4 MS. BARNARD: No, ma'am.

5 COMMISSIONER JOHNSON: Okay. So there are no
6 more pending motions.

7 I will rule on the motion to intervene on what
8 was that date?

9 MS. O'SULLIVAN: September 19th.

10 COMMISSIONER JOHNSON: September 19th, and I
11 think that.

12 MR. REILLY: At five o'clock? (Laughter.)

13 COMMISSIONER JOHNSON: So I think that gives
14 the parties ample time to work out their settlement and
15 any other matters that we need to address in this
16 prehearing?

17 MS. O'SULLIVAN: No, Commissioner.

18 COMMISSIONER JOHNSON: I thank the parties for
19 coming and I really appreciate you all working together,
20 and hope to see that settlement before us soon. Thank
21 you very much.

22 MR. SIMMONS: Appreciate your forbearance.

23 MR. SHREVE: Thank you for your consideration
24 in the whole matter, appreciate it.

25 COMMISSIONER JOHNSON: Take care.

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(Thereupon, the prehearing conference
adjourned at 9:25 a.m.)

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1 STATE OF FLORIDA)
 2 :
 3 COUNTY OF LEON)

CERTIFICATE OF REPORTERS

4 I, JOY KELLY, Chief, Bureau of Reporting, CSR,
 5 RPR,

6 DO HEREBY CERTIFY that the prehearing
 7 conference in Docket No. 930256-WS was heard by the
 8 Florida Public Service Commission at the time and place
 9 herein stated; it is further.

10 CERTIFIED that I stenographically reported the
 11 said proceedings; that the same has been transcribed
 12 under my direct supervision; and that this transcript,
 13 consisting of 45 pages, inclusive, constitutes a true
 14 transcription of my notes of said proceedings.

15 DATED this 6th day of October, 1994.

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STATE OF FLORIDA)
 :
 COUNTY OF LEON)

The foregoing certificate was acknowledged
 before me this 6th day of October, 1994, by JOY KELLY,
 who is personally known to me.

PATRICIA A. CHURCH
 Notary Public - State of Florida
 My Commission No. CC-90785

Notary Public, State of Florida
 My Commission Expires April 20, 1995
 Bonded thru Troy Fair - Insurance Inc.