

MEMORANDUM

October 27, 1994

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TO: DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (O'SULLIVAN) *Magg*  
RE: DOCKET NO. 930256-WS - PETITION OF SANLANDO UTILITIES CORPORATION FOR A LIMITED PROCEEDING TO IMPLEMENT WATER CONSERVATION PLAN IN SEMINOLE COUNTY.

Please file the attached five (5) letters in the above-referenced docket. They are as follows:

1. Letter from Cleatous Simmons to Margaret O'Sullivan dated 10/20/94.
2. Letter from Charles Lee to Margaret O'Sullivan dated 10/21/94.
3. Letter from Robert Taylor to Margaret O'Sullivan dated 10/21/94.
4. Letter from Nancy Barnard to Magaret O'Sullivan dated 10/20/94.
5. Letter from Steve Reilly to Margaret O'Sullivan dated 10/21/94.

MEO/dp  
Attachment

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 AFA \_\_\_\_\_  
 APP \_\_\_\_\_  
 CAF \_\_\_\_\_  
 CMU \_\_\_\_\_  
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Matthew E. Beal

October 20, 1994

Margaret O'Sullivan, Esquire  
Senior Attorney  
Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0850

Re: Docket No. 930256-WS -- Petition of Sanlando Utilities Corporation for a Limited Proceeding to Implement Water Conservation Plan in Seminole County

Dear Ms. O'Sullivan:

The following are Sanlando Utilities Corporation's ("Sanlando's") answers to the questions posed in your letter to me dated October 7, 1994, regarding the stipulation which has been filed for approval by all the parties in the above referenced docket.

1. Sanlando has abundant experience in planning for construction projects, and then executing those projects. The trigger for Sanlando "reasonably" believing that the time has come to begin the preconstruction tasks will be when sufficient monies have been deposited in the escrow account to make it reasonable for Sanlando to believe that by the time the preconstruction tasks are completed there will be enough money in the escrow account to fund the construction.

There is no exact way to predict when enough funds will be available, but it should become obvious over time when the rate of accumulation of funds is known. Once the rate of accumulation is known, then Sanlando can calculate with some certainty when there will be approximately \$1,200,000.00 in the escrow account, and then backing up from that date some nine (9) months should give Sanlando enough time to get the preconstruction work done.

2. The charges in the stipulation have been reduced from those in Order No. PSC-93-1771-FOF-WS ("Order") by the simple assumption that there is not going to be an approximately 40% gross-up for taxes and regulatory assessments taken out of the funds collected. Thus, the amount being charged has been reduced to provide for a reuse facility surcharge which is approximately 60% of the amount which would have been collected under the Order

Margaret O'Sullivan, Esquire  
October 20, 1994  
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There are no workpapers as the calculations are simple and can be done on a calculator. The mathematics is easily explained in the following manner. Referring to page 10 of the stipulation, the change in the rates can be arrived at by multiplying 40% by the second numerical column labeled "calculated surcharge." This result is shown in the third column labeled "40% reduction in surcharge." The fourth column labeled "reduced surcharge" is the difference between column two and column three. These amounts are then added to the charge for 0 to 10,000 gallons to arrive at the "final stipulated rates, including surcharge," which is listed in column five.

3. The time it will take to collect the anticipated \$1,200,000.00 should be the same amount of time that would have been required to collect the amount provided for in the Order. While there is no way to be certain, that time should be approximately 4 to 5 years.
4. "Immediately" would be after the corporation is formed, and after the stipulation is approved by the Public Service Commission (the "PSC"). To seek an Internal Revenue Ruling ("IRS") before the stipulation is approved by the PSC could be a waste of time, if the stipulation is ultimately not approved by the PSC.
5. The corporation will be formed long before the IRS ruling has been obtained. The stipulation specifically provides that if the IRS ruling is not favorable, then the matter will be taken back before the PSC for its determination.
6. Sanlando does not contemplate that the board of the corporation, or its chief operating officer, will receive compensation for serving in those capacities.
7. Reasonable expenses incurred in operating the corporation could include, by way of example:
  - a. Fees paid to accountants for audits, and record keeping.
  - b. Attorney's fees paid by the corporation for legal service.
  - c. Filing fees and other fees required to be paid on behalf of the corporation to form the corporation and thereafter to keep it in good standing.

It is Sanlando's intention that the PSC determine whether or not any expenses incurred by the corporation are reasonable.

8. Revenues from the facilities should come from the sale of reused water to customers of the reuse facility. That will be a direct

Margaret O'Sullivan, Esquire  
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Page 3

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result of any tariff approved by the PSC for charging customers of the reuse facility for reuse water.

9. The corporation will own the reuse facility and thus will need to continue in existence as the owner and as the lessor to Sanlando of the reuse facility. As long as the corporation continues in existence it will have at least the expenses for maintaining itself in good standing on an annual basis, and may also incur expenses for legal counsel or accounting services.
10. No, the six homeowners' associations do not represent all the customers in the Sanlando Utility franchise area. They do represent six of the largest groups, and they are believed to be the six most active associations. The only rationale involved in picking that six was to have a core group to establish a board of directors and to get the corporation operational. Since all water customers are potential members, all can have input, and vote for the board members of their choice, if they elect to be members.
11. Sweetwater Country Club is not a water customer of Sanlando, and thus does not have standing to be a member of the corporation, or to serve on the board of the corporation, unless elected to that role by the members. Sabal Point Country Club and Wekiva Golf Course are water customers of Sanlando and would be entitled to be members of the corporation if they choose and could serve on the board if elected.
12. No. The only "rate case expenses" being reimbursed are the expenses incurred by Sanlando Utilities, the Audubon Society, and the one homeowners association referenced in the stipulation. The only persons "notified" of this reimbursement are the parties to the stipulation. In reality, while the stipulation refers to the expenses as "rate case expenses" this matter is not a rate case, and thus the expenses are not rate case expenses, but are simply expenses.
13. The stipulation contemplates, although it may not be completely clear in the stipulation, that the actual expenses incurred by the parties involved in their participation in the case and in negotiating the stipulation be reimbursed.
14. Expenses of operating and maintaining the reuse facility should be treated as separate line items in Sanlando's operating statement.
15. No, the utility does not anticipate any investment in reuse facilities at this time.

Margaret O'Sullivan, Esquire  
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16. The reuse facilities will not be owned by Sanlando, and thus will not be "booked" on Sanlando's books.
17. No. The reuse facility will be owned solely by the corporation. The Utility will be a lessee of the reuse facility and will not receive any CIAC in connection with its lease of the reuse facility.
18. A triple-net lease is a lease which intends that the lessee pay all taxes, insurance, and repairs for the facility leased. In effect the lessor has no obligation other than to make the facility available to the lessee, and to collect rent. In the case of the reuse facility there should be no taxes collected on the rental of the facility due to the intended tax free status of the corporation. There is no third party involved in a typical triple-net lease arrangement, and there is none intended in the case of the reuse facility. The reuse facility will be owned by the corporation who will be the lessor, and the reuse facility will be leased to Sanlando who will be the lessee.
19. We do not understand why unrecovered operating expenses for the reuse facilities would be divided between customers. If the operating expenses are treated as expenses of the reuse system, then logically any unrecovered operating expenses would be borne by the reuse customers.
20. The PSC's ministerial function will continue for as long as the stipulation is operational. This could conceivably be as long as the reuse facility is leased from the corporation. In reality, after the monies from the reuse facility surcharge are collected and escrowed and the reuse facility surcharge ends, the reuse facility is built, paid for and is operating, and a rate structure has been approved by the PSC for the reuse water, then there will be little, if anything, remaining for the PSC to do with respect to the stipulation. Possibly the only ministerial functions then remaining will relate to deciding what charges can be passed through in the lease to provide enough rental income to the corporation to pay its expenses, as is contemplated in the stipulation.

Margaret O'Sullivan, Esquire  
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We trust that the foregoing has been responsive to your questions, and will be helpful to you in making the staff's recommendation to the PSC. Obviously we are hopeful that the staff's recommendation will be positive. Please feel free to call if you need any further clarification.

Very truly yours,



Cleatous J. Simmons

CJS/cjs  
c: John F. Lowndes, Esquire  
Mr. Bob Mandell  
Mr. George Billings  
Mr. Hampton Conley  
001080/38700



## FLORIDA AUDUBON SOCIETY

Margaret O'Sullivan, Esquire  
Senior Attorney  
Public Service Commission  
101 E. Gaines St.  
Tallahassee, Fl. 32399-0850

October 21, 1994

RE: Docket No. 930256-WS -- Petition of Sanlando Utilities Corporation for a limited proceeding to Implement Water Conservation Plan in Seminole County

Dear Ms. O'Sullivan:

The following are the Florida Audubon Society's and Friends of the Wekiva's answers to the questions posed in your letter to me dated October 7, 1994 regarding the stipulation filed by all parties concerning the above referenced matter, which is now pending before the Commission.

With regard to Questions Numbered 1 through 7, Audubon and Friends adopt the answers provided by counsel for Sanlando Utilities Corporation to the corresponding questions which were propounded to Sanlando (questions 5 through 11) in your letter to them of October 7, 1994.

With regard to question number 8, this question appears to be a slight variation on question number 5 to us, and question number 9 to Sanlando. Again, we are in agreement with Sanlando, as the Corporation will need to maintain a nominal existence as the owner and lessor to Sanlando of the reuse facility.

With regard to Question number 9 propounded to Audubon and Friends, which corresponds to question number 13 propounded to Sanlando Utilities Corporation, Audubon and Friends (a) adopt the answer of Sanlando and (b) further state that we are willing to, and would propose to submit a statement of expenses prior to the Commission's final consideration of this matter on December 6, 1994, with the intention that this statement of expenses be reviewed by the Commission to assure that only reasonable expenses resulting from this case are paid from the customer's surcharge. If the Commission staff desires us to proceed in this manner, we will be happy to provide you with a statement detailing our claims for expenses within 10 days of your notification to us that this procedure would be acceptable to you.

Sincerely,

  
Charles Lee  
Senior Vice President

CC: Parties of Record

The Voice of Conservation Since Nineteen Hundred

**CURRY, TAYLOR & CARLS, P.A.**

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October 21, 1994

Facsimile: 904-488-3121Margaret O'Sullivan, Senior Attorney  
State of Florida  
Division of Legal Services  
Public Service Commission  
Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850Re: Docket No. 930256-WS -- Petition of Sanlando Utilities  
Corporation for a Limited Proceeding to Implement Water  
Conservation Plan in Seminole County

Dear Ms. O'Sullivan:

On behalf of Tricia Madden and the Wekiva Hunt Club Community Association, I hereby answer the questions raised in your letter of October 7, 1994. My answers follow the same numbering system used for your questions.

1. I concur with the responses supplied by both Steve Reilly and Cleatous Simmons to this question. (Their Question 4) As an additional comment, however, I wish to emphasize that the overriding intent of the stipulated plan is to delay any rate increase and avoid any unnecessary expenses until a ruling can be obtained from the IRS.

2. I concur with the responses supplied by both Steve Reilly and Cleatous Simmons to this question. (Their Question 5)

3. I concur with the responses supplied by both Steve Reilly and Cleatous Simmons to this question. (Their Question 6)

4. I concur with the responses supplied by both Steve Reilly and Cleatous Simmons to this question. (Their Question 7) As an additional comment, however, while there is no way to anticipate all corporate expenses, there are other costs that may arise which were not specifically addressed by Mr. Reilly and Mr. Simmons. These include the cost of preparing the lease agreement with Sanlando Utilities, the expenses of writing checks during construction, and the general costs to interface with the Corporate members, such as notices, costs of directors elections, costs of meetings, postage, etc.,

5. I concur with the responses supplied by both Steve Reilly and Cleatous Simmons to this question. (Their Question 8)



Margaret O'Sullivan, Senior Attorney  
State of Florida  
Re: Pet. of Sanlando Utilities  
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6. I concur with the responses supplied by both Steve Reilly and Cleatous Simmons to this question. (Their Question 9)

7. I concur with the responses supplied by both Steve Reilly and Cleatous Simmons to this question. (Their Question 10) As an additional comment, however, please note that:

- a. All customers are eligible to be members of the Corporation and may vote for subsequent board members; and
- b. The composition of the initial board will only remain until the first annual meeting, at which time the members may elect any board members they wish.


8. I concur with the responses supplied by both Steve Reilly and Cleatous Simmons to this question. (Their Question 11)

9. The Corporation is to remain in existence as long as the reuse facility remains. (Note: Mr. Reilly nor Mr. Simmons were asked this question.)

10. It is our understanding and intent that all expenses are subject to the approval of the Commission. These expenses include attorneys fees and costs incurred by the parties addressed in that paragraph.

If I can supply any additional assistance, please let me know.

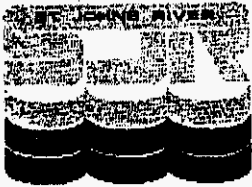
Very truly yours,



Robert L. Taylor

RLT:pmk

cc: Tricia Madden, Esquire  
Charles Lee  
Nancy Barnard, Esquire  
Cleatous J. Simmons, Esquire  
Stephen C. Reilly, Esquire



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October 20, 1994

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To <i>Maggie O'Sullivan</i>	From <i>Nancy Baird</i>
Co.	Co.
Dept.	Phone #
Fax # <i>904/488-3121</i>	Fax #

**Re: Docket Number 930256-WS -- Petition of Sanlando Utilities Corporation for a Limited Proceeding to Implement Water Conservation Plan in Seminole County -- Response to Questions of PSC staff of October 7, 1994.**

Dear Maggie:

The following is the District's response to your questions as set forth in your letter of October 7, 1994.

- 1. Pursuant to Paragraph 1 of the stipulation the Water Management District will draft the articles of incorporation and bylaws of the corporation. Will there be a charge to the Corporation for this service? Is the Water Management District authorized to provide legal services for a private corporation?**

The District will not charge the Corporation for the drafting of the Articles of Incorporation or the By-Laws. The District is performing this service in the settlement of this case, not as a service to a private corporation. This task benefits all the parties involved in the case. The District has participated in this case as an intervenor to promote the water conservation that will result from the construction of the reuse facilities if authorized by the Commission. Any one of the parties could undertake the role of drafting the documents and the District agreed to do the initial drafting.

- 2. What is the intended time frame for preparing the articles of the incorporation for the Corporation, as well as the initial draft of the Bylaws for the Corporation?**

Letter to Maggie O'Sullivan  
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The District is currently drafting the Articles of Incorporation and By-Laws and will finalize the documents upon approval of the settlement stipulation by the Commission. Paragraph 1 of the stipulation also provides that all parties must approve the documents before final approval by Sanlando.

- 3. If the IRS should decide that taxes would be due and owing on the surcharge, is it still the intention of the parties that the Corporation should be formed?**

The Corporation will be formed before the IRS ruling has been obtained. Paragraph 2 of the stipulation provides that "should the IRS decide that taxes would be due and owing on the surcharge if implemented, then the matter will be presented to the Commission for further action." Therefore, the situation would be reassessed if the IRS ruling is unfavorable.

- 4. Is it the intention of the parties that the nine member board of directors of the Corporation or the Chief Operating Officer receive a salary for their participation? What salary level(s) is anticipated?**

The SJRWMD does not intend that the board of directors or Chief Operating Officer be compensated for serving in the designated capacity.

- 5. We note in Paragraph 3 that reasonable expenses to operate the Corporation shall be paid from the escrow account. Other than the salaries discussed above, what expenses are anticipated? Is it the parties' intention that the Commission shall determine the reasonableness of the Corporation expenses to be paid from the escrow account?**

Reasonable expenses incurred in operating the Corporation could include, without limiting, the following:

- a. Fees paid to accountants for audits and record keeping
- b. Attorney's fees paid by the Corporation for legal services
- c. Filing fees and other fees required to be paid on behalf of the Corporation to form the Corporation and maintain the Corporation in good standing with the Department of State.

The District intends that the Commission determine the reasonableness of the Corporation expenses to be paid from the escrow account.

Letter to Maggie O'Sullivan  
 October 20, 1994  
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- 6. We note in Paragraph 7 of the stipulation that the reuse facilities will be owned by the Corporation, although all prudent operation, maintenance and rental expenses and revenues associated with the facilities shall be recovered through the utility's revenue requirement. Please specify any and all revenues associated with the facilities that are anticipated?**

Anticipated revenues from the reuse facilities will come from the sale of reused water to customers of the reuse facility. That will be a direct result of any tariff approved by the Commission for charging customers of the reuse facility for reuse water.

- 7. At the time the surcharge is discontinued as contemplated by Paragraph 10 of the stipulation, will the Corporation continue to exist? If so, for what purpose and what expenses of the corporation will continue? How will these expenses be paid? If not, what will happen to the ownership of the corporation's assets?**

The Corporation will own the reuse facility and thus will need to continue in existence as the owner and as the lessor to Sanlando of the reuse facility. As long as the corporation continues in existence it will have at least the expenses for maintaining itself in good standing on an annual basis, and may also incur expenses for legal counsel or accounting services.

- 8. Are all water customers of Sanlando represented by the six associations shown in Paragraph No. 1 of the stipulation? If not, what is the rationale of having only a portion of the customers represented?**

No, the six homeowners' associations do not represent all the customers in the Sanlando Utility franchise area. They do represent the six of the largest groups, and are believed to be the six most active associations. The only rationale involved in selecting that six was to have a core group to establish the board and to get the Corporation operational. Since all water customers are potential members, all can have input, and a vote for the board members of their choice, if they elect to be members. Paragraph 1 B of the stipulation provides for the selection of two board of directors who are not eligible to be members of the listed associations. Paragraph 1C of the stipulation provides for the selection of one board of director who is a commercial water customer. Therefore, there is representation on the board by people other than just the associations.

- 9. It is noted in Paragraph No. 1 that the purpose of the corporation is encouraging water conservation and reuse and for the education of the public on the use of water. Since water conservation through reuse**

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**requires that customers use the reused water, should the golf courses be represented on the board of directors?**

Sweetwater Country Club is not a water customer of Sanlando, and thus does not have standing to be a member of the Corporation. The club could seek representation on the board pursuant to paragraph 1 B or C of the stipulation. Sabal Point Country Club and Wekiva Golf Club are water customers of Sanlando and would be entitled to be members of the Corporation if they choose and could serve on the board if elected.

**10. Will the Corporation be dissolved once the reuse facilities are constructed?**

The Corporation will own the reuse facility and thus will need to continue in existence as the owner and as the lessor to Sanlando of the reuse facility.

Should you have any questions, please do not hesitate to contact me. The District is interested in this project moving forward as soon as possible and offer our assistance in resolving the pending issues.

Sincerely,



Nancy B. Barnard  
Assistant General Counsel



JACK SHREVE  
PUBLIC COUNSEL

**STATE OF FLORIDA**  
**OFFICE OF THE PUBLIC COUNSEL**

c/o The Florida Legislature  
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October 21, 1994

Margaret O'Sullivan  
Division of Legal Services  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0850

Re: Docket NO. 930256-WS.

Dear Maggie:

The following responses are offered to the questions posed in your October 7, 1994 letter to the Office of Public Counsel:

1. Public Counsel defers to Sanlando Utilities' answer to this question.
2. By eliminating the gross-up for taxes and regulatory assessments the revenue requirement was reduced by forty percent (40%.) There are no workpapers as the calculations were performed on a calculator. However, the mathematics are easily explained. Referring to page 10 of the Stipulation, the change in the rates can be arrived at by multiplying 40% by the second numerical column labeled "calculated surcharge". This result is shown in the third column labeled "40% reduction in surcharge". The fourth column labeled "reduced surcharge" is the difference between column two and column three. These amounts are then added to the charge for 0 to 10,000 gallons to arrive at the "final stipulated rates, including surcharge", which is depicted in column five.
3. Under the stipulation it will require the same approximate four (4) year collection period envisioned in the company's original proposal as approved by the Commission in their proposed agency action Order.
4. The IRS opinion letter will be sought after the Commission approves the Stipulation.

Maggie O'Sullivan

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5. The corporation will be formed if and when an order is issued approving the Stipulation. The Parties have agreed, by virtue of the Stipulation, that an unfavorable ruling by the IRS would cause the matter to be brought back before the Commission.
6. It is not contemplated that the board of directors or the chief operating officer will be paid salaries.
7. The corporation will have expenses associated with seeking the IRS ruling, filing necessary annual reports, and IRS tax returns. The Commission will determine the reasonableness of any disbursements out of the escrow account.
8. The only revenues associated with the reuse facilities will be the revenues collected from the purchasers of the reuse water.
9. The corporation will continue to exist for the purpose of owning the reuse facilities. The corporation will continue to have the minimal expenses necessary to maintain its corporate existence. These minimal expenses shall be paid as necessary expenses of the reuse operations of Sanlando Utilities.
10. The six associations represent the six largest and most active associations in the utility's territory. Representatives of these six customer groups are obligated to select two board members from customer groups not included in the six associations and a third board member who is not a member of the six associations and is also a commercial customer. It is believed that such a board will permit representation of all customer groups.
11. We understand that two of the golf courses' country clubs are currently customers of Sanlando and would be eligible to become board members. The third golf course would be eligible upon becoming a reuse customer.
12. All of the customers of Sanlando are not represented by one of the parties mentioned in paragraph 11. However, all of the customers were represented by the parties that entered into the Stipulation Agreement, of which paragraph 11 is but a small part. The parties mentioned in paragraph 11 are the only parties who actively participated in this docket and incurred expenses that were not reimbursed by either state general revenue funds or assessment fees.

Maggie O'Sullivan

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13. Given the complexities of this docket and the negotiation of the Stipulation, the parties believe that the amount of rate case expense of the other parties are reasonable. It is believed that only actual expenses will be reimbursed.
14. Public Counsel defers to Sanlando Utilities to discuss the term "triple net lease."
15. The Commission's ministerial function regarding the agreement shall virtually terminate upon the completion of the construction of the reuse facilities. There will probably be some Commission review of the reuse facilities' expenses in any future Sanlando rate case proceeding.

If you have any questions with the foregoing please feel free to call.

Sincerely,  


Stephen C. Reilly  
Associate Public Counsel

SCR/gr