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FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

February 23, 1995

TO : DIRECTOR OF RECORDS AND REPORTING

FROM : DIVISION OF LEGAL SERVICES (O'SULLIVAN)
DIVISION OF WATER AND WASTEWATER (CHASE, GROOM, MERCHANT, RENDELL, VON FOSSEN, WALKER)
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (HICKS, CAUSSEAUX)

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

DATE : MARCH 7, 1995 - DECISION PRIOR TO HEARING -- INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

LOCATION OF FILE: I:\PSC\LEG\WP\930256C.RCM

CASE BACKGROUND

Sanlando Utilities Corporation (Sanlando or utility) is a Class A water and wastewater utility located in Altamonte Springs, Florida, which operates three water and two wastewater plants. According to the 1993 Annual Report, Sanlando serves approximately 10,489 water and 8,725 wastewater customers. The revenue collected in 1993 by the utility was $1,938,944 for the water system and $2,731,650 for the wastewater system. Sanlando's entire service area lies within the St. John's River Water Management District (SJRWMD), which has declared its entire district as a water use caution area.

This docket was opened for the purpose of implementing

Sanlando's water conservation plan approved by the Commission in Order No. PSC-92-1356-FOF-WS, issued November 23, 1992. This conservation plan includes the construction of an effluent reuse system. The prior recommendation in this docket, filed on November 21, 1994 and discussed at the December 20, 1994, Agenda Conference contains a complete background of the events leading to the approval of the utility's water conservation plan and the filing of the petition in this docket. As mentioned in that prior recommendation, the Commission issued Order No. PSC-93-1771-FOF-WS as a proposed agency action. The order authorized increased gallonage charges in order to generate revenue for the conservation plan and required the utility to establish an escrow account to deposit those funds and any excess revenues.

Timely petitions protesting Order No. PSC-93-1771-FOF-WS were filed by Jack R. Hiatt, Robert E. Swett and Tricia Madden, individually and as President of Wekiva Hunt Club Community Association, Inc. In addition, The Office of Public Counsel and St. John's River Water Management District have filed notices of intervention in this docket. This matter was set for a formal hearing in Seminole County on September 26-27, 1994.

On September 19, 1994, OPC filed a motion to cancel the September 26, 1994 hearing and approve a stipulation among the parties. Order No. PSC-94-1157-PCO-WS, issued September 20, 1994, granted the motion to cancel the hearing, noting that the stipulation would be reviewed by the Commission at a later date.

The overall goal of the stipulation is to fund the construction of the reuse facilities without incurring income tax liability, thus reducing the total cost of the project by approximately 40 percent. To accomplish this goal, the parties agreed to create a non-profit corporation which would own the reuse facilities and to seek tax exempt status of the corporation from the IRS. Sanlando would act merely as a collection agent for the corporation. Funds collected through a surcharge to Sanlando's water customers would be placed in an escrow account owned and controlled by the non-profit corporation. These funds would be used to construct the reuse facilities, which would then be leased to Sanlando. Sanlando would operate the facility and provide the reuse to potential end users. The operation and maintenance expenses of the facility and any revenue collected from the end users would be included in the determination of Sanlando's revenue requirement in any future rate proceeding.

Staff recognizes that the stipulation represents much thought and effort by the parties. Through this stipulation, the parties have attempted to find a reasonable compromise which enables the project to go forward while reducing the cost to the ratepayers by avoiding the income tax impact. Staff is aware that reuse facilities and similar conservation projects are of critical concern and that the Commission desires to be proactive in the promotion of reuse. We applaud the parties for their creative approach to this situation. However, we had concerns about the stipulation which caused us to recommend in our memorandum dated November 21, 1994, that it be denied as filed. We further recommended that the parties be encouraged to address these concerns and file another stipulation.

Staff's fundamental problem with the initial stipulation centered on the duties and responsibilities that were delegated to the Commission. The stipulation contemplated the Commission's role as basically administering the terms of the stipulation, including approving the corporation's articles of Incorporation and bylaws and chief operating officer, approving the selection of the engineering firm and contracts related to the construction of the facilities, and entering into a tri-party agreement with Sanlando and the corporation which, among other things, specifies the conditions upon which the reuse facilities would be designed and constructed. Staff considers such activities to be micro-management, and believes that the Commission should not have this level of involvement in the day-to-day operations of any regulated utility.

Further, since Staff considers the corporation to be a non-jurisdictional entity which does not meet the definition of a utility, we advised the Commission in our previous recommendation that, even if it believed it should assume the level of involvement contemplated in the stipulation, the Commission does not have the statutory authority to do so for an entity not subject to PSC regulation.

The Commission voted on December 20, 1994, to defer this matter to a future agenda conference, and instructed Staff to work with the parties to see if a stipulation could be reached that satisfactorily answered staff's concerns. Staff drafted proposed revisions to the stipulation and circulated the revised stipulation to the parties through the Office of Public Counsel. This recommendation is a result of these discussions.

ISSUE 1: Should the Commission approve the revised stipulation proposed by the parties?

PRIMARY RECOMMENDATION: Yes. While Staff recommends that the Commission approve the stipulation as submitted, Staff believes that the parties should be placed on notice that the Commission is neither bound nor authorized to resolve disputes which arise from this stipulation.

ALTERNATIVE RECOMMENDATION: Yes, the revised stipulation should be approved. The technical staff believes that the Commission should agree to resolve disputes among the parties as a last resort as contemplated in the stipulation.

STAFF ANALYSIS: As mentioned in the Case Background, the stipulation has been revised to address concerns raised at the December 20, 1994, Agenda Conference. The Primary and Alternate Recommendations are identical, with the exception of the Commission's role in resolving disputes between the parties to the stipulation.

A copy of the revised stipulation has been included as Attachment A. This revised stipulation differs from the original as set forth below. We have referred to the numbered sections within the stipulation for ease of reference.

1. Section 1 - Eliminates the reference to Commission approval of the corporation's articles of incorporation and bylaws and chief operating officer, but permits parties to submit disputes regarding the articles or the chief operating officer to the Commission for resolution.

2. Section 2 - Specifies that the Office of Public Counsel will seek the tax ruling from the IRS, on behalf of the ratepayers and the corporation. The IRS will not accept requests for letter rulings on tax exemptions from any party other than the taxpayer, which in this case would be the corporation.

3. Section 2 - According to the original stipulation, the Letter Ruling Request from the IRS would be for the collection of the reuse facility surcharge by Sanlando and the construction of reuse facility for the Corporation. In the revised stipulation, the parties have agreed that the letter ruling would also include the expenses and revenues associated with

the operation of the reuse facilities.

4. Section 3 - Clarifies that any refund to the customers of unused escrow funds would include interest.

5. Section 4 - Removes the Commission involvement in the "Tri-Party Agreement", which calls for prior approval by the Commission of any contract with an engineer, construction company or other entity in connection with the design or construction of the reuse facilities. While some oversight of Sanlando may be desirable to the corporation, Staff did not believe that the Commission should furnish this type of service. This goes beyond the Commission's normal review process and could set a precedent for future situations, where the Commission could be asked to function in a similar fashion. Staff suggested that perhaps the parties would want to hire an engineering firm or other independent entity to perform this oversight. The parties have therefore agreed that the Corporation will retain an independent engineering firm to determine the prudency of the contracts. The fees charged by the firm will be paid from the escrow account. In the event that a disagreement cannot be resolved by the firm, then the disagreement will be submitted to the Commission for resolution.

6. Section 4 - Removes any reference to allowing "ex parte" meetings between Sanlando and the Commission. It would be inappropriate for the Commissioners to meet with Sanlando individually or with the parties on the workings of this stipulation outside of a public meeting.

7. Section 5 - The standard language about escrow accounts has been added.

8. Section 7 - Clarifies that the reuse charge to be established prior to the facilities being placed into service would be for existing golf courses within Sanlando's service area and any other potential end users, and that there could be more than one reuse charge established.

9. Section 9 - Clarifies when the utility's reports to the Commission on the collection of the surcharge will be due.

10. Section 10 - Clarifies that the legal expenses of the Wekiva Hunt Club Community Association, the Florida Audubon Society

and Friends of the Wekiva River that will be paid from the surcharge will stop upon approval of the stipulation. All reasonable costs incurred by the corporation will be reimbursed from the escrow account. Any disputes concerning the reasonableness of the expenses of the corporation will be resolved by the Commission.

Several components of the stipulation are addressed specifically below.

IMPLICATIONS OF THE SURCHARGE (CHASE)

As mentioned previously, in our memorandum dated November 21, 1994, staff recommended that the corporation be found non-jurisdictional since it does not meet the definition of a utility pursuant to Section 367.021(12), Florida Administrative Code. Therefore, we recommended that the surcharge, which is owned by the corporation, is a non-jurisdictional charge and Sanlando could not terminate a customer's water service for nonpayment of the surcharge. However, the charge could be viewed as a utility charge since it has been approved by the Commission for the construction of the reuse facility. The Commission will be a party to the written escrow agreement controlling the account, and no withdrawals from the account will occur without approval of the Director of the Division of Records and Reporting. Therefore, while not regulating the non-profit corporation, the Commission does regulate the collection and disbursement of the surcharge. Accordingly, this charge should be treated as any other regulated charge of the utility, and nonpayment of the surcharge by a customer would be justification to discontinue water service.

If one argues that the surcharge is not a regulated charge of the utility, Staff believes that the utility could still discontinue service if a customer refuses to pay the surcharge. Under the assumption that the surcharge is not a regulated charge, the collection of the surcharge by Sanlando on behalf of the corporation would be analogous to the collection of a franchise fee by a utility on behalf of a local government. In the various utility industries, utilities are often authorized to collect franchise fees, municipal utility taxes and other taxes.

In the case of franchise fees, the utility collects the fee and passes it along to the city or county government which imposed the fee. Franchise fees are a line item on the utility bill. Utility service can be discontinued if a utility customer refuses

to pay the franchise fee portion of the utility bill. Likewise, if a customer refuses to pay the surcharge, Sanlando can discontinue water and wastewater service for nonpayment of the bill.

TAX CONSIDERATIONS (HICKS, CASSEAUX)

The monies paid by Sanlando's water ratepayers should be considered nontaxable contributions to the capital of the Corporation under Internal Revenue Code (IRC) §118(a) rather than taxable CIAC to Sanlando under IRC §118(b). Staff believes that this is the conclusion that the Internal Revenue Service (IRS) should reach. However, there are certain aspects of the stipulation that are of concern.

"Each water ratepayer shall be entitled to be a member of the Corporation" and may participate in the control of the Corporation. Some aspects of this are similar to the stock transactions the IRS has found taxable. Membership privileges must be distinguished from the taxable stock transactions.

Staff believes one reason for membership in the Corporation is protection of the ratepayers' interests in the assets if the Corporation is sold to or condemned by a city or county. Staff understands it is hoped membership will provide recovery of the fees. Clearly, ownership benefits the ratepayers. It must be shown that the potential future benefit from a sale of the facility is too intangible and speculative to be considered since there is no strong tie between the members' payments and the future benefit.

The stipulation states that reuse water will be available to the golf courses and other users. Water ratepayers who are also wastewater customers could be customers. It must be shown that this potential service is purely incidental to providing benefits to the community at large, *i.e.*, the "public good" to be derived from protecting the aquifer and the Wekiva River basin. Letter rulings show this should be possible.

Payment by the Office of Public Counsel of the letter ruling expenses could be considered taxable income to the corporation. Similarly, payment of expenses of Sanlando and others out of escrow account funds could be considered income to Sanlando and the others and might not be considered a valid expense of the corporation. The stipulation does not say whether the expenses and taxes would be paid at a grossed-up amount if the payment creates a secondary tax liability.

The letter ruling request obtained by the corporation will be applicable to the corporation. Although the stipulation says the request will address the provisions of Paragraph 6, the IRS may decline to rule on any effects on Sanlando.

Furnishing or receiving services is not the only thing that can cause a transaction to be treated as a taxable CIAC. Some of the provisions of Paragraph 6 have been specifically identified as taxable CIAC in IRS Notice 87-82, 1987-02 C.B. 389, (the Notice). Among them are "a lease of property to a util[i]ty at less than its fair market rental value . . . with the bargain element inherent in each periodic rent payment taxed to the utility at the time such payment is made." It should be shown that the $1.00 per year lease provision was made to induce Sanlando to operate the facility which is to benefit the public as a whole. Private letter rulings indicate this should be possible.

The Notice states that examination will be careful where the utility effectively obtains the burdens and benefits of ownership of property when legal title to such property is held by the customer, a governmental entity, or another person. Factors which suggest ownership "include, but are not limited to, (i) whether the utility is responsible for maintaining the property; (ii) whether the utility effectively has unrestricted access to an control of the property; and (iii) whether the utility would bear legal liabi[li]ty with respect to the malfunction or accident involving the property." It must be shown that the provisions of the stipulation which appear to transfer the burdens and benefits of ownership to Sanlando are incidental to the public good which motivated the proposal. Again, private letter rulings indicate that this should be possible.

It has been clearly shown that the proposal is an effort to avoid the payment of the taxes associated with the receipt of CIAC. The attorney representing Ms. Madden, an intervenor in this proceeding, says as much in his letter. According to the stipulation, OPC will seek a ruling on behalf of the corporation with the IRS. The stipulation also states that the corporation shall immediately seek an opinion from the IRS that collection and remittance by Sanlando of the surcharge, construction of the facility for the Corporation, and the provisions of Paragraph 6 of the stipulation are not taxable. Further, collection of the reuse facility surcharge is delayed until the opinion is received. It could be argued that any attempt to make a showing of public or community good or benefit is not the motivating factor behind the

proposal and is purely incidental to tax avoidance. The IRS looks at both the record of the proceeding and the request to determine the substance of a transaction.

The stipulation seems to presume the surcharge is not taxable if collected for the corporation but is taxable if retained by Sanlando. Without this assumption, the corporation seems unnecessary. The Stipulation does not say why Sanlando could not retain the fees tax free. Staff is not so certain that Sanlando would incur a tax liability. Since 1925 a true showing of "public good" or "public purpose" or "public benefit" has frequently been enough to avoid characterization of a transaction as taxable. Edwards v. Cuba Railroad Co., 268 U.S. 628 (1925). The "public good" provision was discussed when IRC §118(b) was amended. The U.S. Supreme Court found that, "it overtaxes [the] imagination that the farmers and others who furnished the funds were making contributions to the utility company." Detroit Edison Co. v. Commissioner, 319 U.S. 98 (1943). It should be shown that the ratepayers clearly intend these payments to be contributions to the corporation for the public good. Alternatively, the same showing could be made for Sanlando.

No one with authority to stop wastewater discharge into the Wekiva River basin or require reuse has required either action although virtually everyone believes that the provision of reuse water to the golf courses and others is in the public interest and that monies for that purpose should not be treated as taxable CIAC. Further, staff understands one of the golf courses may say it will face economic harm if forced to take reuse water and that, faced with such an assertion, the St. Johns River Water Management District may not revoke that golf course's water use permit. This might cause the "public good" aspect of the proposal to be questioned. In addition, the fee stops. Will this facility alone provide adequate conservation so the designation as a water use caution area can be lifted? Do those paying the fee need to reduce water usage? Are there other utilities and golf courses in the area designated as a water use caution area and are they being encouraged to do what is proposed?

One final area of concern is the treatment of the reuse charge and the operation and maintenance expenses and the revenues from the reuse facility. There are differences from the favorable rulings. These difference should be shown as being of form rather than substance.

Staff could argue for, or against, delay in implementing the increased gallonage charge. However, Staff believes the delay was proposed to avoid the loss of the gross-up monies by the ratepayers in the interim and so agrees that delay is appropriate until the IRS rules.

COMMISSION'S ROLE IN RESOLVING DISPUTES

Primary Recommendation: While Staff recommends that the Commission approve the stipulation as submitted, Staff believes that the parties should be placed on notice that the Commission is neither bound nor authorized to resolve the potential disputes set out in the stipulation. (O'SULLIVAN)

Alternative Recommendation: The revised stipulation should be approved. The technical staff believes that the Commission should agree to resolve disputes among the parties as a last resort as contemplated in the stipulation. (CHASE)

Primary Staff Analysis: Several portions of the stipulation contain references to the Commission making determinations if the parties cannot reach agreement. Specifically, Paragraph 1(c) states that if the parties cannot reach agreement with respect to the selection of the corporation's Chief Operating Officer and Articles of Incorporation, "the parties may submit any such dispute which arises to the Commission for resolution." Paragraph 4(c) states that if a dispute arises concerning the reasonableness or prudency of expenses associated with construction of the facility, the parties agree to retain an independent engineering firm to determine. However, in the event that a disagreement cannot be resolved, the disagreement would be submitted to the Commission for resolution. Finally, Paragraph 10 states that any dispute concerning the reasonableness of such expenses, costs or fees shall be resolved by the Commission.

As noted earlier, a substantial concern of staff in its previous recommendation centered upon the Commission's involvement in the operations of a non-jurisdictional entity. Staff's initial recommendation removed the Commission's role from the stipulation. While the parties' revised stipulation greatly reduces the Commission's participation in the decision-making of the corporation, it requires the Commission to be the final decision-maker in the event that the parties cannot agree to certain terms. This raises concerns as to the Commission's authority and ability to act in this manner.

In United Telephone Company v. Public Service Commission, 496 So.2d 116 (Fla. 1986), the Supreme Court held that while the language of a contract between two telephone companies permitted the Commission to intervene, parties to a contract cannot confer jurisdiction to the Commission. See also Swebilius v. Florida Construction Industry Licensing Board, 365 So.2d 1069 (Fla. 1st DCA 1979). More recently, in Order No PSC-95-0209-FOF-EQ, issued February 15, 1995 (In Re: Petition for Resolution of a cogeneration contract dispute with Orlando Cogen Limited, L.P., by Florida Power Corporation, Docket No. 940357-EQ), the Commission granted a cogenerator's motion to dismiss a petition requesting that the Commission interpret and resolve a contractual dispute. Although the Commission had previously approved the cogeneration contract, it found that it did not have continuing jurisdiction over the interpretation of the contract. The Commission noted that:

> Even if we determined that Orlando Cogen had not complied with the provisions of the contract, we would not have the authority to order the cogenerator to perform. When we approved this contract for cost recovery purposes, we determined that FPC's ratepayers would be protected in the event the cogenerator defaulted. Any further remedy for breach of the contract itself lies with the court. Order No. PSC-95-0209-FOF-EQ, page 7-8

Staff believes that these same concerns must be addressed related to the stipulation presented by the parties. If it is the parties' intention that the Commission interpret specific provisions of the settlement and resolve disputes regarding the parties' interpretation or performance, Staff cannot recommend approval of the stipulation. However, these provisions could also be viewed as an agreement of the parties to bind themselves to arbitration by the Commission. The concern then becomes, can the Commission act as an arbitrator?

In a typical contractual situation, parties may always seek to enforce a provision or remedy a breach of contract in court. Contracting parties may also agree to seek arbitration or mediation in the event of a dispute. In this situation, the parties intend to have the Commission resolve any final disputes. While the Commission may accept and approve the settlement, Staff does not believe that the stipulation can be binding upon the Commission. Furthermore, as noted in the FPC Cogeneration decision, one of the

entities in the settlement is not a utility. Therefore, the Commission would not have the authority to order compliance.

Furthermore, Section 350.113(1), Florida Statutes, allows the Commission to use its funds "in the performance of the various functions and duties as required by law." Since the corporation is non-jurisdictional, it would not be appropriate to expend Commission funds to resolve the possible disputes discussed in the stipulation.

Section 367.0817, Florida Statutes, enacted in 1994, provides for the Commission's review and approval of reuse projects. Section 367.0817 sets forth the application requirements, procedures for approval, and recovery of costs. While this statute addresses reuse and the Commission's role in approving reuse plans, Section 367.0817 does not confer upon the Commission the authority or jurisdiction to resolve disputes as contemplated by the proposed stipulation.

The Commission considered a similar situation last year when reviewing and approving an agreement in several consolidated dockets involving Southern Bell.[1] The settlement contained several provisions which required the Commission to take specific action in the future. In Order No. PSC-94-0172-FOF-TL, the Commission, citing the United Telephone case, stated that such a settlement cannot bind the Commission and cannot confer jurisdiction upon the Commission. Nevertheless, the Commission approved the settlement, noting that, "[i]n our view, any such provisions in the Settlement are not fatal flaws; they are simply unenforceable against the Commission and are void ab initio." (Order No. PSC-94-0172-FOF-TL, page 6).

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[1] In Re: Comprehensive review of revenue requirements and rate stabilization plan of Southern Bell, (Docket No. 920260-TL); In Re: Investigation into the integrity of Southern Bell's repair service Activities and Reports, (Docket No. 910163-TL); In Re: Investigation into Southern Bell's compliance with Rule 25-4.110(2), F.A.C., Rebates, (Docket No. 910727-TL); In Re: Show Cause proceeding against Southern Bell for misbilling customers, (Docket No. 900960-TL); and In Re: Request by Broward Board of County Commissioners for extended area service between Ft. Lauderdale, Hollywood, North Dade and Miami, (Docket No. 911034-TL).

Likewise, the concerns raised in this instance do not preclude the Commission from accepting the stipulation, but the Commission cannot be bound by any provisions that are inconsistent with the Commission's authority set forth in the statute.

Alternative Staff Analysis: As mentioned in the Case Background, staff's fundamental problem with the original stipulation of the parties was that the duties and responsibilities delegated to the Commission were really micro-management of the corporation and went beyond what the Commission normally does or should do in the day to day operations of any entity, jurisdictional or not. The parties have made a good faith effort to address this concern in the revised stipulation. They have significantly reduced the Commission's involvement by including provisions that call for Commission resolution as a last resort only when the parties are unable to reach agreement. According to the revised stipulation, the areas that will be left to the Commission for final decision are:

1. Selection of the chief operating officer or drafting of the Articles of Incorporation or Bylaws in the event the parties cannot reach agreement;

2. Resolution of a dispute related to the reasonableness or prudency of the contracts for design, permitting and construction of the reuse facility. Such disputes would only be presented to the Commission if the dispute cannot be resolved in negotiations among the parties, and after the corporation has hired an independent engineering firm to conduct a prudency review; and,

3. Any disputes concerning the reasonableness of costs and expenses incurred by the Corporation in undertaking all obligations imposed upon it by the stipulation.

Two of the above areas involve activities that will be funded by the escrow account -- costs involved in the design or construction of the reuse facility, and the expenses of the corporation. As is normal with escrow accounts, the Commission must give prior approval for any withdrawal of funds. Normally, the Commission would review requests for withdrawal from an escrow account after the amount has been determined. The stipulation simply provides for an earlier review by the Commission in cases where the parties are not able to resolve disputes.

The Division of Water and Wastewater believes that the level of Commission involvement specified in the revised stipulation is reasonable. Through the stipulation, the parties have developed an innovative approach to fund the reuse facility at the lowest possible cost by avoiding the payment of income taxes on the collection of the monies to build the facility. Staff believes the Commission should likewise be innovative in its approach to reviewing this stipulation. Essentially, our view is that it is in the public interest to implement reuse and seek the lowest cost alternative. This goal should not be obscured by administrative barriers and shortcomings.

CONCLUSION

Staff recommends that this revised stipulation be approved despite our concerns raised in the earlier recommendation dated November 21, 1994. Staff realizes that it is sometimes necessary to adapt our standard approach in order to accomplish the overall goal, which in this case is to encourage water conservation while protecting the interests of the ratepayers.

While the parties have agreed in principle to enter into this stipulation, because of time constraints, the parties have not had the opportunity to execute the stipulation. Therefore, if the Commission approves the stipulation, Staff recommends that the parties be given 30 days from the Commission vote to submit an executed copy of the stipulation with the Commission.

ISSUE 2: Should this docket remain open?

RECOMMENDATION: Yes. The docket should remain open until the letter rulings from the IRS have been issued. If the ruling is favorable to the proposed plan, the docket should be closed administratively. (O'SULLIVAN)

STAFF ANALYSIS: The next step in this matter will be the request for a ruling from the IRS. Once the ruling is issued, the parties should be required to report to the Commission the results of the ruling. If the ruling is unfavorable to the plan proposed by the parties and approved in the stipulation, Staff will advise the Commission at a future agenda. If the ruling is favorable, the parties may implement the plan, and the docket should be closed administratively.

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

IN RE:	)	
	)	
Petition of SANLANDO UTILITIES CORPORATION For A Limited Proceeding to Implement Water Conservation Plan in Seminole County	)	DOCKET NO.: 930256-WS

STIPULATION

THIS STIPULATION is made and entered into among Sanlando Utilities Corporation (Sanlando), the Florida Audubon Society (Audubon), Friends of the Wekiva River (Friends), St. Johns River Water Management District (SJRWMD), Office of the Public Counsel (Citizens), Tricia A. Madden, individually and as President of the Wekiva Hunt Club Community Association, Inc. (Association), Jack R. Hiatt (Hiatt), and Robert E. Swett (Swett).

WITNESSETH:

WHEREAS, on March 10, 1993 Sanlando filed a Petition for a Limited Proceeding to implement a water conservation plan, including reuse of reclaimed water, which proposes to establish inclining block water rates which would generate additional funds to be put in an escrow account; and

WHEREAS, the funds in the escrow account would be devoted to the construction of reuse facilities to divert a substantial amount of Sanlando's wastewater from the Wekiva River to three golf courses and other reuse users; and

WHEREAS, the Florida Public Service Commission (Commission) on December 10, 1993, issued Order No. PSC-093-1771-FOF-WS approving Sanlando's Petition for Limited Proceeding to implement the water conservation plan and requiring Sanlando to file a proposed charge for reclaimed water; and

WHEREAS, Hiatt, Association and Swett filed timely protests to the Commission's Order PSC-93-1771-FOF-WS, the Citizens filed their Notice of Intervention, and the SJRWMD, Audubon and Friends' Petitions to Intervene were granted; and

WHEREAS, after the protests were filed in this docket, the Florida Legislature passed Committee Substitute for House Bill 1305, which was signed into law by Governor Chiles on May 25, 1994 and became Chapter 94-243, Laws of Florida; and

WHEREAS, Chapter 94-243, Laws of Florida, amends Chapter 367, 373, and 403, Florida Statutes, to encourage and promote water conservation and the reuse of reclaimed water in the State of Florida; and

WHEREAS, Chapter 94-243, Laws of Florida, creates Chapter 367.0817, Florida Statutes, which requires the Commission to review a utility's reuse project plans and determine whether the projected costs are prudent and whether the proposed rates are reasonable and in the public interest; and

WHEREAS, Chapter 367.0817, Florida Statutes, requires that all prudent costs of approved reuse facilities shall be recovered in rates and that this recovery can be from a utility's water, wastewater or reuse customers or any combination thereof; and

WHEREAS, Chapter 367.0817, Florida Statutes, authorizes the Commission to approve rates based upon projected costs and permits the rates to be implemented when the reuse project plan is approved or when the project is placed into service.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. The parties agree that a not-for-profit corporation (the "Corporation") shall be established for the purposes of encouraging water conservation and reuse and for the education of the public on the use of water. The Corporation shall apply for 501-c (3) tax exempt status. Each Sanlando water customer shall be entitled to be a member of the Corporation. The initial Board of Directors of the Corporation shall be composed of nine (9) members, to be constituted as follows:

A. One representative to be appointed by each of the following homeowners associations:

a. Wekiva Hunt Club Community Association

b. The Springs Community Association

c. Wingfield Reserve Homeowners' Association

d. Wekiva Cove Homeowners Association

e. Sweetwater Oaks Homeowner's Association

f. Sable Point Master Association

B. Two representatives to be selected by the six (6) above directors, who are not eligible to be members of any of the above six (6) associations.

C. One representative to be selected by the six (6) above directors, who is a commercial water customer.

At the first annual meeting of the membership a new board of directors shall be elected by the membership pursuant to the terms of the Bylaws.

The Chief Operating Officer of the Corporation shall be selected by the Corporation, subject to the reasonable approval of all parties to this Stipulation until construction of the reuse facility is completed, and shall be authorized to disburse monies from the escrow account on behalf of the Corporation pursuant to approval of the Commission as set out in Paragraph 2 of this Stipulation. After the reuse facility's construction is completed and final payment from the escrow account for construction of the reuse facility has been disbursed, Sanlando shall no longer participate in selection of the Chief Operating Officer of the Corporation. The SJRWMD shall be responsible for preparing the Articles of Incorporation, which Articles must be approved by all parties hereto. The SJRWMD shall also be responsible for preparing the initial draft of the Bylaws for the Corporation, which Bylaws must be approved by all parties hereto before final approval by the Corporation. If for any reason the parties are unable to reach agreement with respect to selection of the Chief Operating Officer, or drafting the Articles of Incorporation or the Bylaws for the Corporation, then the parties may submit any such dispute which arises to the Commission for resolution.

2. The stipulated reuse facility surcharge reflecting the conservation inclining block water rates as set out in Paragraph 8 shall be implemented with all of the collected reuse facility surcharge being placed in an interest bearing escrow account in the name of the Corporation. Sanlando shall function as a collection agent for the Corporation. Sanlando shall be solely responsible for collecting the reuse facility surcharge on behalf of the Corporation and depositing it into the escrow account. In addition to being responsible for collecting the reuse facility surcharge for the Corporation, Sanlando shall also be solely responsible for constructing and operating the reuse facility pursuant to the terms and conditions of the Facility Agreement between Sanlando and the Corporation described in paragraph 4 below. The Corporation shall be responsible for and shall pay from the escrow account all prudent expenses, including any and all taxes imposed against the Corporation or Sanlando, fees and permits associated with the collection of the reuse facility surcharge, establishment of the escrow account, or funding and construction of the reuse facilities. Any withdrawals of funds from the escrow account shall be subject to the prior approval of the Commission through the Director of the Division of Records and Reporting. The standard for such approval shall be that the funds being requested are being spent for expenditures authorized in accordance with this Stipulation and the contracts for design, permitting and construction of the reuse facility entered into in accordance with the provisions of paragraph 4. There shall be no tax liability

incurred by Sanlando for acting as the collection agent for the reuse facility surcharge. Any federal or state income taxes assessed or imposed against Sanlando with respect to the reuse facility surcharge or the reuse facility shall be paid from the Escrow Account.

Notwithstanding the above, the Corporation shall immediately seek an opinion from the Internal Revenue Service that the collection and remittance by Sanlando of the reuse facility surcharge, the construction of the reuse facility for the Corporation, and the provisions of Paragraph 6 of the Stipulation are not taxable. The proposed ruling request shall be filed on behalf of the Corporation and the rate payers of Sanlando by the Office of Public Counsel. Until this opinion is rendered the reuse facility surcharge shall not be implemented. If the IRS should decide that taxes would be due and owing on the surcharge if implemented, then this matter will be presented to the Commission for further action.

3. The escrow account shall be owned by the Corporation. Reasonable expenses to operate the Corporation shall be paid from the escrow account. If for any reason the reuse facilities are not constructed or completed, unused escrowed funds, including interest, shall be returned to the customers from whom they were

collected. Any funds remaining in the escrow account in excess of the cost of the reuse facilities shall be returned to the customers from whom they were collected.

4. If a favorable ruling request is obtained from the Internal Revenue Service, then Sanlando and the Corporation shall enter into an agreement (the "Facility Agreement") which shall specify terms and conditions upon which the reuse facilities shall be designed and constructed. The Corporation shall, from the escrow account, pay invoices which have been presented pursuant to contracts entered into in accordance with the Facility Agreement.

The Facility Agreement shall provide, in part, the following:

a. Sanlando will, at such time as it reasonably believes will give sufficient time to timely complete all design, permitting and other pre-construction tasks, engage an engineering firm of its choice to do engineering design, construction drawings and specifications for the reuse facility. The charges for the engineering work will be paid by the Corporation out of the escrow account upon submittal by Sanlando of invoices received by Sanlando from the engineer.

b. Sanlando will be responsible for filing for and obtaining permits for the construction and operation of the reuse facility. All fees for such permits will be paid by the Corporation out of the escrow account. All engineering work required to file for and obtain the permits, together with any legal services required to obtain the

permits will be paid for by the Corporation out of the escrow account. Sanlando shall be authorized to engage legal counsel of its choice to perform such legal services without requirement for approval and to incur reasonable legal fees, to be paid from the escrow account.

c. At such time as the monies in the escrow account equal the estimated cost of construction as determined by the engineer based upon the engineering design, construction drawing and specifications, Sanlando will contract with a construction contractor to install the reuse facility pursuant to the plans and specifications prepared by the engineer and requisite permits issued by state agencies. The cost of construction of the reuse facilities will be paid by the Corporation out of the escrow account as invoices are received by Sanlando from the contractor.

d. If disagreement arises between the parties as to the reasonableness or prudency of the contracts for design, permitting and construction of the reuse facility, or any action to be taken under the contracts, then the parties agree that the Corporation shall be authorized to retain an independent engineering firm experienced in water and wastewater facility design and construction to determine the reasonableness or prudency of the contracts, or the actions to be taken under the contracts. The fees charged by the engineering firm to conduct such

reasonableness or prudency review shall be paid from the escrow account. In the event a disagreement cannot be resolved in this manner, then the disagreement shall be submitted to the Commission for resolution.

5. The escrow account shall be established pursuant to a written agreement (the "Escrow Agreement") between the Corporation, the Commission and an independent financial institution, and subject to the terms and conditions of the Facility Agreement between Sanlando and the Corporation as stated in paragraph 4 of this Stipulation. Said escrow account should be established between the Corporation and an independent financial institution pursuant to an Escrow Agreement. The Commission shall be a party to the Escrow Agreement and a signatory to the escrow account. The Escrow Agreement should state the following: That the account is established at the direction of the Commission and in accordance with the Stipulation 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 representative at all times, and that pursuant to Cosentino v. Elson, 263 So.2d 253 (Fla. 3d. DCA 1972), escrow accounts are not subject to garnishments. Sufficient surcharge shall be collected and deposited into the escrow account to fund the construction of the reuse facilities (which is estimated to be approximately 1.2 million dollars) and to

pay for other necessary incidental expenses, including those mentioned in paragraph 10 below. Sanlando shall obtain no ownership interest in connection with entering into contracts and constructing the reuse facilities as provided for in the Facility Agreement between Sanlando and the Corporation.

6. The reuse facilities shall be owned by the Corporation, with Sanlando being given full authority to operate the reuse facilities pursuant to a lease agreement entered into between Sanlando (as lessee) and the Corporation (as lessor). The lease agreement shall be in the form of a triple net lease and shall provide that Sanlando shall be responsible for maintaining reasonable liability and property damage insurance naming Sanlando and the Corporation as insured. The rental for use of the reuse facilities by Sanlando shall be $1.00 per year plus, after the escrow account is closed, such additional amounts reasonably necessary to effectively operate the Corporation, including but not limited to annual filings and other administrative costs. All prudent expenses and revenues associated with the operation and maintenance of the reuse facilities and rental paid therefore shall be included in the operating expenses of Sanlando, and be a part of any calculation to determine the Sanlando's revenue requirement for rate setting purposes.

7. Prior to the reuse facilities being placed into service, Sanlando shall file with the Commission a proposed charge for the reclaimed water for the existing golf courses within Sanlando's service area as well as any other potential end users of the reclaimed water. Upon receiving Sanlando's proposal, the

Commission shall determine a fair and equitable charge or charges for the reclaimed water.

8. The stipulated conservation inclining block rates (60% of the increase approved by the PAA Order, representing the estimated 1.2 million dollar cost to construct the reuse facilities implemented are:

GALLONAGE CHARGE

USER CLASS	PAA Approved Charge Plus Surcharge per 1,000 gallons	Calculated Surcharge	40% Reduction in Surcharge	Reduced Surcharge	Final Stipulated Rates, Including Surcharge
0 to 10,000 gallons per month (gpm)	$0.37 *	$0.00	$0.00	$0.00	$0.37
10,001 to 20,000 gpm	.50	.13	.052	.078	.448
20,001 to 30,000 gpm	.65	.28	.112	.168	.538
over 30,000 gpm	.85	.48	.192	.288	.658
General Service, multi-family and bulk sale users	.60	.23	.092	.138	.508

* Includes $0.015 for indexed rate increase. Rates in all categories will be subject to index, pass through, or full rate increase adjustments whenever they occur.

9. Within 30 days of implementation of the surcharge, Sanlando shall begin to file monthly reports and documentation with the Commission, including but not limited to the calculations setting forth the amount of surcharge collected and the amount of surcharge deposited into the escrow account. These reports shall be due by the 15th day of each month. When the escrow account is

fully funded to construct the approved reuse facilities, the utility shall cease collecting the surcharge and file an amendment to its tariff reflecting at a minimum the following reduction in rates:

GALLONAGE CHARGE

USER CLASS	Removal of Surcharge per 1,000 gallons
0 to 10,000 gallons per month	$0.00
10,001 to 20,000 gallons per month	.078
20,001 to 30,000 gallons per month	.168
over 30,000 gallons per month	.288
General Service, multi-family, and bulk sale users	.138

10. The Commission shall determine Sanlando's reasonable expense for this docket. This approved expense shall be reimbursed from funds deposited into the escrow account. The Wekiva Hunt Club Community Association's and the Florida Audubon Society's and Friends of the Wekiva River's expenses shall also be paid from funds deposited into the escrow account, which shall include expenses associated with their participation in this docket up to and including approval of the Stipulation. All reasonable costs and expenses incurred by the Corporation in undertaking all obligations imposed upon it by this Stipulation, including but not limited to, negotiating and finalizing the Facilities Agreement, the Escrow Agreement and the Lease Amendment shall be reimbursed to it from the Escrow Account. This shall include all reasonable professional fees required for these tasks. Any dispute concerning

the reasonableness of such expenses, costs or fees shall be resolved by the Commission.

IN WITNESS WHEREOF, the parties have executed this Stipulation in several counterparts.

Signed, sealed and delivered
in the presence of:

_____
Name:_____

_____
Name:_____

_____
JOHN F. LOWNDES, ESQUIRE
Attorney for Sanlando Utilities Corporation

Date:_____

_____
Name:_____

_____
Name:_____

_____
NANCY B. BARNARD, ESQUIRE
Attorney for St. Johns River Water Management District

Date:_____

_____
Name:_____

_____
Name:_____

_____
CHARLES LEE
Senior Vice President, Florida Audubon Society and Representative, Friends of the Wekiva River

Date:_____

Name: _____

Name: _____

JACK SHREVE, ESQUIRE
Public Counsel on Behalf of the Citizens of the State of Florida

Date: _____

Name: _____

Name: _____

ROBERT L. TAYLOR, ESQUIRE
Attorney for Tricia A. Madden and Wekiva Hunt Club Community Association, Inc.

Date: _____

Name: _____

Name: _____

ROBERT E. SWETT

Date: _____

Name: _____

Name: _____

JACK HIATT

Date: _____