

FLORIDA PUBLIC SERVICE COMMISSION

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

M E M O R A N D U M

NOVEMBER 21, 1994

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

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

Handwritten initials and signatures:
A large circle containing initials.
Initials: Mo, JC, RUF, GND, AMM, CH.

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

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

AGENDA: DECEMBER 6, 1994 - DECISION PRIOR TO HEARING --
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

RECOMMENDATION FILE NAME: 930256B.RCM

DOCUMENT NUMBER-DATE

11729 NOV 21 84

FPSC-RECORDS/REPORTING

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

CASE BACKGROUND

Sanlando Utilities Corporation (Sanlando or utility) is a Class A water and wastewater utility located in Altamonte Springs, Florida, which operates three water and two wastewater systems. Sanlando's entire service area lies within the St. Johns River Water Management District (SJRWMD), which has declared its entire district as a water use caution area.

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

By Order No. 24920, issued on August 16, 1991, the Commission approved in part and denied in part the water conservation plan. The utility filed a supplement to the original water conservation plan on September 26, 1991, and an addendum on September 21, 1992. The addendum presented Sanlando's plan for an effluent reuse program, an inclining block rate structure, and a report of the utility's conservation expenditures to date and requested information from the SJRWMD.

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

All three golf courses are currently irrigating with on-site wells with combined estimated average daily usage of approximately 1 million gallons per day (MGD). As a result, Sanlando asserted

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

its proposed reuse program, in addition to encouraging reduced water consumption by its customers, would result in an immediate and significant reduction in water resource withdrawal from Florida's diminishing potable water supply.

Sanlando updated and revised its previous studies related to the reuse of treated effluent produced by Sanlando's Wekiva wastewater treatment plant. The revised study indicated that a system designed to maintain pressure for local system reuse on demand as well as for transmission to the respective golf courses would be advantageous and economical. The system would be designed with both on-site storage and pumping capabilities and have the ability to deliver slightly over 1 MGD to the three golf courses on an annual average basis, and another 225,000 gallons to commercial users in the vicinity of the main transmission route to the respective golf courses. The cost for the three golf course systems is approximately \$1,820,000, and according to the utility's estimates, the three golf courses could accept approximately 50 percent of Sanlando's effluent.

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

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

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

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

expenses should be applied to the implementation of the effluent reuse program.

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

Sanlando has met the requirements set forth in Orders Nos. 23809 and 24920. The utility has followed through with its short term conservation incentives to educate customers on water conservation. Sanlando has more fully developed the long range conservation goals of implementing a reuse program and a conservation rate structure. We hereby approve the addendum and incorporate it into the utility's existing water conservation plan.

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

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

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

Sanlando complied with this mandate by filing a Petition for Limited Proceeding to Implement Water Conservation Plan on March 10, 1993, approximately 4 months after the issuance date of Order No. PSC-92-1356-FOF-WS. That petition is the subject of this docket. The St. Johns River Water Management District filed a Petition to Intervene in support of Sanlando's petition on June 7, 1993. Staff conducted a customer meeting on July 8, 1993.

On December 10, 1993, the Commission issued Order No. PSC-93-

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

1771-FOF-WS as a proposed agency action. The order approved Sanlando's petition for a limited proceeding to implement the water conservation plan and required the utility to file a proposed charge for reclaimed water. 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.

On December 31, 1993, Jack R. Hiatt filed a timely petition protesting Order No. PSC-93-1771-FOF-WS. On January 3, 1994, Robert E. Swett and Tricia Madden, individually and as President of Wekiva Hunt Club Community Association, Inc. (Hunt Club), filed petitions protesting the order. The Office of Public Counsel (OPC) filed a notice of intervention in this docket on February 4, 1994. On January 26, 1994, the St. John's Water Management District's Petition for Intervention was granted. This matter was set for a formal hearing in Seminole County on September 26-27, 1994.

On January 24, 1994, Sanlando filed Motion to Dismiss and Answer to Petitions. On February 16, 1994, the Florida Audubon Society, Inc. (Audubon) and Friends of the Wekiva River, Inc. (Friends) filed a Petition to Intervene in support of Sanlando's conservation plan. On that same date, Audubon and Friends filed a Motion to Dismiss and Response to Motion to Amend of Tricia Madden. On April 25, 1994, Audubon and Friends were granted intervention in this docket.

On June 16, 1994, Sanlando, Audubon, and Friends filed a Notice of Supplemental Authority. By Order No. PSC-94-0987-FOF-WS, issued August 15, 1994, the Commission denied the motions to dismiss and the notice of supplemental authority.

On August 22, 1994, the Wekiva Golf Club filed a motion to intervene in this docket. Wekiva Golf Club alleged that as a potential reuse customer, its substantial interests would be affected in this docket if the Commission made a determination as to whether the golf courses should be required to accept reuse service. Sanlando and Audubon each filed a response objecting to Wekiva Golf Club's request to intervene.

After several scheduling changes at the request of OPC, the Prehearing Conference was held on September 13, 1994 in Tallahassee, Florida, before Commissioner Julia L. Johnson as Prehearing Officer. At the Prehearing Conference, the Prehearing Officer made rulings upon the procedures, witnesses, exhibits, issues and position in this docket. During the Conference, the parties stated that they were close to reaching a stipulation which would obviate the need for a hearing. The Prehearing Officer ruled that if the parties had not reached a settlement by September 19,

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

1994, Wekiva Golf Course's motion for intervention would be granted. As noted below, the parties did reach agreement on September 19, 1994. Therefore, Wekiva Golf Course's motion was deemed to be withdrawn.

On September 19, 1994, OPC filed a motion to cancel the September 26, 1994 hearing and approve a stipulation between 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. A copy of the Stipulation is appended to this recommendation as Attachment A.

Stipulation

The intent of this docket is to consider the implementation of Sanlando's Water Conservation Plan which includes the construction of a effluent reuse system. 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 chose the tact of creating a non-profit corporation, for which they will attempt to obtain tax exempt status from the IRS. Sanlando would act merely as a collection agent for this 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. This collection mechanism is the key to the proposed tax-exempt status of the surcharge and the corporation itself.

Funds collected from the surcharge would be used to construct reuse facilities, which would then be leased to Sanlando. Sanlando would operate the facility and provide the reuse to potential end users. The fact that the Corporation, not Sanlando, would own the facilities, and Sanlando, not the Corporation, would provide the reuse service causes Staff to question the jurisdictional status of the Corporation.

Staff's approach to this recommendation is to first discuss the jurisdictional status of the Corporation (Issue 1), and then to provide a discussion of the Stipulation (Issue 2). Since, the Commission's regulatory responsibilities differ depending on the jurisdictional status of the Corporation, Staff's review of the Stipulation had to include both scenarios, as detailed in Issue 2.

The fundamental problem with the Stipulation centers on the duties and responsibilities that are delegated to the Commission. The Stipulation contemplates the Commission's role as basically administering the terms of the Stipulation, including approving the

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

Corporation's Articles of Incorporation and Bylaws and chief operating officer, approving 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 shall be designed and constructed. Staff considers such activities by the Commission to be micro-management. Regardless of the jurisdictional status of the Corporation, the Commission should not have this level of involvement in the day-to-day operations of the Corporation.

While Staff believes that the goal of the Stipulation is an admirable one, we are caught in a dilemma by being forced to react instead of participate in the formation of the Stipulation. The parties to the Stipulation are apparently satisfied with the terms and conditions and how it impacts on them. However, Staff has reviewed it from a regulatory standpoint and its impact upon the Commission. In our review, we found minor problems with the Stipulation and, in Issue 2, have suggested changes that answer these concerns. However, there remain fatal flaws in the Stipulation that force us to recommend that it be denied.

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

ISSUE 1: Is the non-profit corporation proposed by the Stipulation jurisdictional within the definition of Section 367.021(12), Florida Statutes?

STAFF RECOMMENDATION: Based upon the information at this time, the non-profit corporation would not be subject to the Commission's jurisdiction because it does not meet the definition of "utility" as set forth in Section 367.021(12), Florida Statutes. The Corporation should be required to notify the Commission if any change in its status occurs within 30 days of such change so that the Corporation's status may be reevaluated. However, if the Commission determines that the non-profit corporation would be jurisdictional, it should be required to file either an application for exemption or an application for original certificate within 60 days of its formation. (O'SULLIVAN, CHASE)

STAFF ANALYSIS: Before addressing the terms of the Stipulation, the jurisdictional status of the non-profit corporation should be resolved. This determination has a bearing upon the review of the entire Stipulation and the Commission's role in the implementation of the Stipulation.

Section 367.021(12), Florida Statutes, sets forth the definition of a utility:

a water or wastewater utility and, except as provided in s. 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation.

Essentially, the definition requires four elements: ownership, provision of service, service to the public, and compensation. The non-profit corporation, as described in the Stipulation, does not meet the above definition of a utility. Although it will own the reuse facilities, it will not provide service to the public for compensation. The Corporation's sole purpose is to own the reuse facility and lease it to Sanlando, which will operate the facility. The Stipulation specifically provides that the funds from the escrow account used to construct the facility will be owned by the Corporation (Paragraph 3). Sanlando will have no capital costs related to this project on their books. After construction is completed, the Corporation will continue to exist, and will own the facilities. However, Sanlando, not the Corporation, will be providing the reuse service to the public after construction is completed. The surcharge, then, is not revenue (or compensation) for utility service, but rather a funding mechanism to build the facilities. Staff believes that the Corporation would not be

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

subject to the jurisdiction of the Commission since it does not meet the above definition of a utility.

The Commission has addressed situations wherein a company proposed to lease utility-related facilities to a regulated utility. In the instances where the lessor did not actually provide service, but only provided the facilities by which the regulated utility could provide service, the Commission found that the lessor would not be subject to its jurisdiction.

For example, in *In re: Petition of Monsanto Company for a declaratory statement concerning the lease financing of a cogeneration facility*, (Docket No. 860725-EU), Monsanto proposed to lease a turbine generator in order to increase its generating capacity. The Commission determined that the lessor would not be providing electrical service to Monsanto because "Monsanto is leasing equipment which produces electricity rather than buying electricity that the equipment generates." (Order No. 17009, issued December 22, 1986, pg. 3). The Commission further found in that same order that the lessor would not be considered a public utility under Florida law because the lessor would not be selling electricity, but would simply be "supplying the means of producing electricity." (pg. 4).

More recently, in *In re: Petition for approval of separately negotiated contract for purchase of firm capacity and energy from Monsanto Company by Gulf Power Company*, (Docket No. 921167-WS), the Commission reviewed an agreement between Monsanto and two service companies, Niject and Praxair, that owned facilities located on Monsanto's property. Monsanto paid a monthly rental charge to lease the facilities, which provided compressed air and nitrogen to Monsanto's operations. Monsanto proposed to provide electricity to the leased facilities from its own cogeneration unit. This raised questions as to whether Monsanto would be reselling electricity. The Commission determined in Order No. PSC-93-0466-FOF-EQ, issued March 29, 1993, that because Monsanto would be providing power to a facility which it was leasing, Monsanto would not be considered a utility.

In situations where a company proposed to sell service to an unrelated entity, the Commission has found that the transaction would subject the company to jurisdiction. See *In re: Petition of PW Ventures, Inc. for Declaratory Statement in Palm Beach County* (Docket No. 870446-EU, Order No. 18302) and *In re: Petition for a Declaratory Statement Concerning Financing and Ownership Structure of a Cogeneration Facility in Polk County, by Polk Power Partners, L.P.* (Docket No. 931190-EQ, Order No. PSC-94-0197-DS-EQ). The situation in this docket is distinguished because the lessor is not proposing to provide service.

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

Applying the precedents noted above to the instant situation further supports the determination that the Corporation would indeed be non-jurisdictional. Once the reuse facility is built, Sanlando will lease the facility for a set amount, plus related costs such as insurance and maintenance. Like the turbine generator leased by Monsanto, Sanlando will be leasing facilities which will provide reuse service, rather than purchasing reuse from the Corporation itself. The Corporation would only be supplying the means for Sanlando to provide reuse service.

Staff's analysis of the jurisdictional status of the Corporation is based upon the information contained in the stipulation and provided by the parties. At this point in the proceedings, the non-profit corporation has not been formed. Material changes in the structure of the corporation or the situation in this docket may result in the corporation becoming jurisdictional in the future. If any change does occur, the corporation should be required to notify the Commission of such changes within 30 days of such change so that its status may be reevaluated. If the Commission determines that the non-profit corporation is jurisdictional, the corporation should be required to either file an application for an exemption or file an application for an original certificate within 60 days of its formation.

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

ISSUE 2: Should the Commission approve the Stipulation submitted by the parties?

STAFF RECOMMENDATION: No. Regardless of the jurisdictional determination made in Issue 1, the Stipulation should be rejected. However, the parties should be encouraged to address the concerns outlined herein and file another proposed stipulation within 120 days of the issuance date of the order. (CHASE, GROOM, MERCHANT, RENDELL, VON FOSSEN, WALKER)

STAFF ANALYSIS: In Issue No. 1, the Commission will decide if the corporation is jurisdictional. This decision impacts on the level of scrutiny Staff would give to the terms and conditions of the Stipulation. Therefore, we have separated our analysis into two sections. Part A addresses the concerns and ramifications if the Corporation is found to be non-jurisdictional. Part B contains the closer scrutiny of the terms of the Stipulation necessitated if the Corporation is found to be jurisdictional. However, Staff has considered Sanlando's involvement under either scenario.

As mentioned in the Case Background, there are several provisions of the Stipulation that make it unacceptable and force staff to recommend its denial. However, Staff recognizes that the parties have engaged in negotiations in order to resolve this matter, and would recommend that the Commission encourage the parties to continue their negotiations in order to reach an acceptable stipulation. Staff further recommends that the Commission suggest to the parties that any future stipulation be reviewed with Staff in order to facilitate the Commission's review and acceptance.

If the Commission rejects the current proposed Stipulation, the parties should be given an opportunity to submit an acceptable agreement within 120 days of the issuance date of the Order.

A. CORPORATION IS NON-JURISDICTIONAL (VON FOSSEN, O'SULLIVAN)

If the Commission determines that the proposed non-profit corporation is non-jurisdictional, the role of the Commission in the operation and administration of the Corporation must be eliminated. The Commission's jurisdictional authority would only extend to the role of the regulated utility, Sanlando.

The Stipulation is, in effect, a request by the Corporation to allow Sanlando to collect its funds to build its facilities. Sanlando is unwilling to invest in a reuse system. In order for this project to be built, the needed funds must come from the utility customers. If Sanlando were to directly collect these funds, the funds would be considered revenue and thereby subject to

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

income taxes. The Stipulation and its proposed collection mechanism is designed to allow funds to be collected without incurring this tax liability. This is obviously to the benefit of the customers since it decreases the cost of constructing the facilities. We agree that providing the same facilities at a lower cost is an admirable goal. However, we are caught in a dilemma. The Commission wants to promote reuse, but can only do so within the constraints of its jurisdictional authority. While the Stipulation represents the result of much thought and effort, for all of its good intentions, it creates a document that we cannot recommend be approved as filed based upon its non-jurisdictional components.

It is not appropriate for this Commission to be involved through the Stipulation, or any other vehicle, with any aspect of its operation. The Commission regulates utilities pursuant to Chapter 367, Florida Statutes. Staff recognizes that reuse facilities and similar conservation projects are of increasing concern. While Staff desires to be proactive in promoting reuse, a stipulation is not a substitute for legislation in expanding the Commission's jurisdiction. A stipulation does not confer jurisdiction upon the Commission. Since the Corporation does not meet the definition of utility as contained in Section 367.012(12), Florida Statutes, the Commission has no statutory authority to invoke any oversight or control of the entity's articles, by-laws, or who is in charge. Controlling an escrow account or micro-managing a non-jurisdictional entity is clearly not a function of this Commission. Before Staff can recommend approval of the Stipulation, any responsibility imposed upon the Commission regarding the Corporation must be removed.

There are several statutory provisions which support this result. First, pursuant to Section 367.145(3), Florida Statutes, regulatory assessment fees collected from utilities "may only be used to cover the cost of regulating water and wastewater systems." Section 350.113, Florida Statutes, which addresses the Commission's trust fund, requires that:

(6) All moneys in the Florida Public Service Regulatory Trust Fund shall be for the use of the commission in the performance of its functions and duties as provided by law, subject to the fiscal and budgetary provisions of general law.

Taken together, these two statutes mandate that the Commission cannot expend funds to "regulate" a non-jurisdictional utility, and may only use its budget to perform its authorized duties and functions. While the proposed project may be a worthy one, and

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

while the Commission may wish to have involvement in it, the Commission must function within statutory parameters.

On one occasion, the Commission has been permitted, by specific statutory direction, to participate in the activities of non-regulated entities. Pursuant to Chapter 427, Florida Statutes, the Commission is required to establish and oversee the administration of a statewide telephone access system for the hearing impaired. Although some of these functions fall outside of the regulation of jurisdictional utilities, the Commission is authorized by specific legislative direction to perform them. Absent such authorization, Staff believes that the Commission cannot perform regulatory functions over a non-jurisdictional entity.

Despite these concerns listed above, Staff is not suggesting that the proposal to create the Corporation is not feasible. If these concerns are addressed and remedied in a future stipulation, the Stipulation could be revisited. In that light, Staff has examined the Commission's role within the parameters imposed by the jurisdictional issue. If Sanlando enters into an agreement with the Corporation, the Commission's role in this project would initiate when the facilities are completed and leased. Since the cost of the facilities are not utility investment, we are not jurisdictionally impacted by the construction process. The option of owning or leasing equipment is that of the utility. When Sanlando leases the reuse equipment, the Commission would look at the prudence of the lease agreement and include it as an operating expense. The cost of the lease and maintenance and operational cost of the leased equipment would be considered as an expense. Further, consideration of a charge to the end user to recover some of those costs would be appropriate. This would be the extent of the Commission's jurisdiction in considering leased equipment.

Staff has contemplated what action the Commission would take if the parties submit another stipulation which the Commission approves. To facilitate implementation of the reuse project, the Commission could consider allowing Sanlando to act as a collection agent for the Corporation. However, care would have to be taken to acknowledge that this is a non-jurisdictional charge. As such, the Commission could allow Sanlando to act as an agent, but could not approve the level of the charge. The surcharge would be a separate line item on the bill and noted as a Reuse Facilities Charge. Further, Sanlando would have to be advised that as a non-jurisdictional charge, it could not terminate a customer's water service for non-payment of the charge. To assure that water customers are aware of the nature of the charge and that its level is not subject to approval by this Commission, Sanlando would have to be ordered to provide notice to each water customer prior to the

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

charge appearing on the customer's bill. Such notice, which should be subject to Commission approval, would contain an explanation of the creation and purpose of the non-profit corporation, as well as the customers' rights to become members and elect the board of directors. This notice should be given to customers prior to implementation of the Reuse Facilities Charge. Sanlando should also be required to file a revised tariff which includes the charge for Staff's approval prior to the implementation of the charge.

Staff had initial concerns with pointing out that the Commission would have no control over the Corporation, level of the surcharge, or the escrow account. However, we believe a reasonable comfort level is achieved based upon the structuring of the Corporation. The surcharge would be applied only to Sanlando's water customers. Pursuant to the Stipulation, each water customer will choose whether or not he or she wishes to become a member of the Corporation and all nine of the board of directors will be water customers. Since the water customers control the corporation, they can set the level of the charge they will pay, and control the escrow account. To assure expertise, and impartial oversight of the escrow account, the parties might want to consider retaining an engineering firm or other party to review contracts and administer the account.

B. CORPORATION IS JURISDICTIONAL (CHASE, GROOM, MERCHANT,
O'SULLIVAN, RENDELL, WALKER)

If the Commission determines in Issue 1 that the Corporation is jurisdictional and subject to Commission regulation, the Commission would have jurisdiction over the collection and use of the funds collected through the surcharge. Staff, therefore, reviewed each aspect of the Stipulation with this responsibility in mind.

Structure of Non-Profit Corporation (CHASE)

According to Paragraph 1 of the Stipulation, each Sanlando water customer shall be entitled to be a member of the Corporation, although membership in the Corporation is not mandatory. The Stipulation details the makeup of the initial board of directors of the Corporation and provides that at the first annual meeting of the membership a new board of directors shall be elected by the membership. There is also a provision that the Corporation's Articles of Incorporation and Bylaws as well as its Chief Operating Officer shall be approved by the Commission. While Staff understands that this provision is an attempt to provide some oversight to the Commission of the Corporation, Staff does not believe that it would be appropriate for the Commission to approve Articles and Bylaws or the selection of the Chief Operating

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

Officer. Essentially, the Stipulation would require Staff or the Commission to manage several aspects of the Corporation. It is not the Commission's role to manage utilities under its jurisdiction in this manner. Therefore, Staff recommends that this provision be eliminated from the Stipulation before approval by the Commission.

Tax Exempt Status of the Corporation (WALKER)

According to Paragraph 1 of the Stipulation, the Corporation will apply for tax-exempt status with the Internal Revenue Service (IRS). The parties crafted this stipulation as a tax avoidance measure: if the surcharge is collected for the benefit of the Corporation it may be tax exempt, whereas Sanlando's retention of the fee would presumably result in payment of income taxes. Absent this tax exemption, creation of the Corporation would be unnecessary. The stipulation, itself, does not disclose why tax exempt status would be unavailable for Sanlando standing alone. If as a result of the creation of the Corporation, neither Sanlando nor the Corporation will ultimately incur income taxes, the proposal has merit. Based upon the projected \$1,200,000 cost to install the effluent disposal equipment, the utility estimated that \$2,050,000 would be needed to pay the full cost of installing the plant and to pay associated income taxes and regulatory taxes. The rate increase approved by the Commission in PAA-Order PSC-93-1771-FOF-WS was designed to provide this full recovery and tax payment consideration.

Will the Corporation and Sanlando avoid payment of income taxes? The attorney who represents Ms. Madden, an intervenor in this proceeding, stated in his letter: "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." If the parties who crafted this stipulation have reasonable cause to believe that the answer will be yes, and the customers can thereby avoid payment of about \$850,000 in taxes, approval of the concept has merit.

Is the proposal of benefit to the general public? Does it fall within the public benefit exception described in the House Report and Notice 87-82? These are some of the principles that the IRS will employ to evaluate whether collection of the fee will be treated as a non-shareholder contribution to capital under Section 118(a) of the IRS tax code. The parties to the Stipulation believe that it improves the quality of water in the Wekiva River while it also promotes water conservation by reducing the demand for raw water from the aquifer.

According to Paragraph 2, the reuse facility surcharge will not be implemented until after the IRS renders an opinion regarding

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

the status of the tax-exempt nature of the surcharge. Staff agrees that this delay in implementation would be appropriate. Further, this Paragraph provides that this matter will be presented to the Commission for further action in the event the IRS determines that taxes should be paid.

Escrow Account (GROOM, RENDELL)

Paragraph 3 of the Stipulation states that 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 escrow funds shall be returned to the customers. Any funds remaining in the escrow account in excess of the cost of the reuse facilities shall be returned to the customers.

Staff has no problem with this provision. However, Staff recommends that the Stipulation address several items associated with the escrow account. First, the Stipulation should state that the escrow account is not subject to garnishments and that it is interest bearing. Second, if a refund to the customers is required, all interest associated with that refund should be distributed to the customers. If a refund to the customers is not required, the interest earned by the escrow account should revert to the Corporation.

The escrow account should be established between Sanlando, the Corporation, the Commission, and an independent financial institution pursuant to a written escrow agreement. The Commission should be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement should state the following: That the account is established at the direction of this Commission for the purpose set forth in this recommendation, that no withdrawals of the 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 the information concerning the escrow account should be available from the institution to the Commission or its representative at all times, and that pursuant to Consentino v. Elson, 263 So. 2d 253 (Fla. 3d. DCA 1972), escrow accounts are not subject to garnishments.

Paragraph 5 provides additional detail of the escrow account. Although this paragraph indicates that the parties enter into an escrow account pursuant to the terms and conditions of the Tri-Party Agreement, there is no indication that the escrow agreement shall be submitted to the Commission for prior approval. It is staff's interpretation that the parties believe that the time for approval by the Commission would be the same time the Commission

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

signs the said agreement. Staff would like the opportunity for the Commission to review the escrow account agreement before signing and entering into said agreement, therefore, the Stipulation should be modified to include this provision.

Staff would recommend approval of this portion of the Stipulation if the items listed above are included in the Stipulation.

Tri-Party Agreement (RENDELL)

Paragraph 4 provides that Sanlando, the Corporation and the Commission enter into a "Tri-Party Agreement" which shall specify the terms and conditions of making deposits and withdrawals from the escrow account and conditions upon which the reuse facilities shall be designed and constructed.

Staff believes that the best method for the withdrawals for expenditures would be for Sanlando to submit the request to the Commission for review. Upon Staff's review of the request, the Chairman of the Commission would be advised of the appropriateness of the request. The Chairman would then relay this approval to the Director of Division of Records and Reporting for signature.

Although this paragraph indicates that the parties enter into a "Tri-Party Agreement", there is no indication that this agreement shall be submitted to the Commission for prior approval. It is Staff's interpretation that the other parties believe that the time for approval by the Commission would be the same time the Commission signs the said agreement. Staff would like the opportunity for the Commission to review the "Tri-Party Agreement" before signing and entering into the said agreement. Therefore, the Stipulation should be modified to include this provision.

Paragraph 4 continues by stating that, prior to entering into any contract with any entity relating to the planning or construction of the reuse facility, Sanlando shall submit the proposed contract for those services to the Commission for approval. Once these contracts for engineering, construction, or any other service are approved, the Corporation shall pay for these services from the escrow account.

While the parties may believe that there should be some oversight of Sanlando in the choice of an engineering firm and construction contracts or some intermediary between Sanlando and the Corporation, Staff does not believe that it is appropriate for the Commission to fill this role. It should not be the Commission's responsibility to perform essentially management functions for either Sanlando or the Corporation. Staff suggests

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

that, if they believe this oversight is needed, the parties to the Stipulation attempt to find another third party to perform this function.

Subsection (a) provides that Sanlando will engage an engineering firm of its choice to do the engineering design, permitting and any other pre-construction task. In its letter dated October 7, 1994, Staff requested a response as to what action Sanlando expected to occur to indicate that it is time to engage the engineering firm. Sanlando responded in its letter dated October 20, 1994, that Sanlando has abundant experience in planning for construction projects and then executing them. The "trigger" for Sanlando will be when there are sufficient monies deposited into the escrow account to fund the construction, once the time of preconstruction is completed. Staff is not opposed to Subsection (a).

Subsection (b) provides that Sanlando will be responsible for filing for and obtaining the permits for the construction and operation of the reuse facility. All fees for these permits would also be paid out of the escrow account. Further Sanlando shall be authorized to engage the legal firm of its choice to perform the necessary legal services to obtain these permits. Subsection (c) provides that upon such time as there are sufficient funds to equal the estimated cost of construction, Sanlando shall contract with a construction contractor to install the reuse facility. Again staff has no opposition to Subsections (b) and (c).

Paragraph 4 further indicates that Sanlando would be entitled to meet with the Commission in ex-parte meetings for the administration of this Stipulation. Sanlando would provide courtesy pre-meeting telephonic notice to the Corporation, Executive Director of SJRWMD and Public Counsel. All of these parties would be entitled to attend such meetings.

It appears that this provision was included in order to allow the Commission to perform the administrative duties contemplated by the Stipulation. It is unclear whether the reference to "the Commission" refers to the Commissioners or the Commission Staff. Staff assumes that the reference is to the Commission Staff because any direct communication with the Commissioners would not be appropriate. In situations where activity regarding an escrow account takes place in an open docket, correspondence and documentation relating to the administration of the account is routinely placed in the open docket files. Staff does not have difficulty in recommending approval of the provision wherein Sanlando agrees to notify the other parties when they meet with Staff. This is consistent with the Commission's rules and procedures concerning communications with Staff. However, Staff is

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

not a party in this docket, and does not believe that its interaction with the parties in the course of administering the escrow account should be characterized as ex-parte. Therefore, Staff recommends that the reference to "ex parte meetings" be deleted.

Paragraph 6 provides that in addition to the collection agent function of Sanlando, the utility shall also be responsible for constructing and operating the reuse facilities pursuant to the Tri-Party Agreement.

Triple-Net Lease (MERCHANT)

Paragraph 7 describes that the reuse facilities will be owned by the non-profit Corporation but will be leased to Sanlando through a triple net lease. Staff's understanding of a triple net lease is a lease in which the lessee pays all of the expenses of the subject property. This does not have any correlation to and should not be confused with the Tri-party Agreement discussed earlier. In this instant lease, Sanlando will be responsible for maintaining liability and property insurance, paying \$1 a year rental, plus any administrative expenses of the Corporation. Further, the Stipulation states that all prudent expenses and revenues associated with the operation and maintenance of the plant will be paid by Sanlando and recovered in the utility's revenue requirement.

In and of itself, Staff does not foresee a problem with the triple net lease and this paragraph of the stipulation should be approved. We were, at first, perplexed with the term and its meaning and what impact this would have on the regulation of Sanlando and the operations of the non-profit entity. We do believe that Staff's lack of understanding could have been mitigated if we had been included in the discussions with the parties when the topic was first raised.

Charge for Reclaimed Water (VON FOSSEN)

A majority of the stipulation deals with obtaining the capital costs and construction of the reuse facilities. However, once built and providing service, the Commission must consider how the on-going operation and maintenance costs will be recovered. This will necessitate evaluating the cost of providing reuse and determining a split of recovery of this cost from among the utility's water and wastewater customers as well as the reuse customers.

Paragraph 8 of the stipulation indicates that prior to the reuse facilities being placed in service, Sanlando shall file with

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

the Commission a proposed charge for reclaimed water. This provision is acceptable, particularly in light of the fact that the golf courses did not participate in this docket because the parties agreed that an end user charge for reuse would not be approved in this docket. Staff agrees that it is appropriate to set a charge in a subsequent docket, which would allow the entry of affected parties. At that time, the reuse project will be well past the projected stage and reliable cost figures and usage characteristics should be available. We believe that Sanlando should file for establishment of a reuse charge no later than six months prior to placing the project in service.

A related concern of Staff is, if the reuse project is approved and completed, are sufficient reuse customers available to utilize sufficient quantities to make the project beneficial? At the Prehearing Conference, the parties identified a major issue as, "should the Commission be assured that the three golf courses will be required by SJRWMD to use the reuse facilities before the commission approves the construction of the facilities?" This issue was to be fully explored at hearing. However, the Stipulation, is silent on this issue. The primary benefit of reuse is to reduce the withdrawal of fresh water from the aquifer by replacing such withdrawals with reuse. Sanlando cannot force customers to accept reuse. For the golf courses to take reuse, SJRWMD would have to limit withdrawals through modification of the golf courses' consumptive use permits, thereby making reuse an attractive alternative. Prior to approving the project, Staff would have a higher comfort level if we had assurance from SJRWMD that they would aggressively limit withdrawals to promote reuse. Like any prudent regulator, we would not want to approve construction of a stadium for which there may be no team. Therefore, Staff recommends that the parties address this issue in a future stipulation.

Inclining Block Rates (GROOM)

Paragraph 9 contains the stipulated conservation inclining block rates (60% of the increase approved by the PAA Order No. PSC-93-1771-FOF-WS, representing the estimated 1.2 million dollar cost to construct the reuse facilities):

DOCKET NO. 930256-WS
 NOVEMBER 21, 1994

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 in 1993. Rates in all categories will be subject to index, pass through, or full rate increase adjustments whenever they occur.

Staff has reviewed the proposed stipulated rates, including surcharge, and recommends their approval. To assure that water customers are aware of the nature of the charge, Sanlando should be ordered to provide to notice each water customer prior to the charge appearing on the customer's bill. Such notice, which should be subject to Commission approval, should contain an explanation of the creation and purpose of the non-profit corporation, as well as the customers' rights to become members and elect the board of directors. This notice should be given to customers prior to implementation of the Reuse Facilities Charge. Furthermore, the surcharge should be a separate line item on the bill and noted as a Reuse Facilities Charge.

Staff also recommends that Sanlando be required to file a tariff which includes the Reuse Facilities Charge. Staff should be

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

authorized to approve the tariff administratively prior to the implementation of the charge.

Monthly Reports (CHASE)

According to Paragraph 10, Sanlando shall file monthly reports and documentation regarding the amount of the surcharge collected and deposited into the escrow account. This information would be appropriate in order to monitor the escrow account. In addition, Staff believes there is a need to evaluate the effects of this inverted rate structure on conservation. To that end, staff believes it is appropriate to require the utility to compile monthly reports containing the number of customer bills, gallons billed and revenues collected by customer class, meter size and usage block. The utility should also compile, on a monthly basis, rainfall amounts for the service area. In addition, in the event irrigation restrictions are mandated by any governmental or regulatory agency, the utility should provide information as to when the restrictions were in place and to what areas of the service territory the restrictions apply. All of the information to evaluate the conservation rate structure, which is compiled monthly, should be filed with the Commission on a quarterly basis commencing on the first billing cycle the surcharge becomes effective and continuing until the surcharge is discontinued.

The Stipulation does not need to be amended to include this requirement. Staff is recommending that if a stipulation is approved in the future, the Commission should order Sanlando to provide the data as detailed above.

Payment of Parties' Expenses from Escrow Account (O'SULLIVAN)

Paragraph 11 of the Stipulation provides for the reimbursement of rate case expense for the utility and three of the intervenors in this docket, Audubon, Hunt Club, and Friends. It requires the Commission to determine Sanlando's "reasonable rate case expense", which will be reimbursed from the funds deposited in the escrow account. It further permits the rate case expense of Audubon, Hunt Club and Friends to be paid from the same account, and includes "continuing expenses to implement all aspects of this Stipulation." In response to Staff's inquiry, the utility clarified that because this docket is not a rate case, the expenses are not rate case expenses, but simply expenses associated with this case.

In a settlement prior to hearing or trial, parties often make some resolution regarding expenses. Parties sometimes agree to pay their own expenses, or agree to some compensation for expenses. However, the stipulation before the Commission in this docket is significantly different in that the parties propose that the

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

expenses of intervenors will be paid from monies collected from the ratepayers. Staff believes that the Commission must address the propriety, reasonableness and authority to approve such a provision.

Section 367.081(7), Florida Statutes, addresses the Commission's role in determining rate case expense in a rate proceeding. Section 367.0816, Florida Statutes, requires that rate case expense be recovered over a period of four years. There is no other provision in Chapter 367 for the payment of utility or any party expense. However, in other non-rate case proceedings, the Commission does sometimes allow a utility to recover expenses associated with the proceeding. However, Staff questions whether the Commission has the authority to approve an agreement which would allow for the recovery of expenses to a non-utility party, when the expenses would be paid from ratepayer monies.

Staff is uncertain as to the exact corporate or non-profit status of The Florida Audubon Society and The Friends of the Wekiva river, but both organizations are primarily concerned with environmental issues. They intervened in this docket in order to support the utility's plan. The Wekiva Hunt Club Community Association is a homeowners association which intervened in this docket in opposition to the surcharge proposed by the utility.

All three parties chose to intervene in this docket in order to advocate their respective positions and participate as parties. In response to a Staff inquiry, OPC stated that Sanlando, Audubon, Hunt Club, and Friends are the only parties that have actively participated in this docket and incurred expenses which were not reimbursed by either state revenue or assessment funds. However, Staff believes that their choice to participate in this docket should not be funded by the customers.

Staff also has concerns with specific provisions in Paragraph 11. Although the Stipulation would require the Commission to determine the utility's reasonable expense, there is no provision for the Commission to determine the reasonableness of the expenses for the intervening parties. Furthermore, the Stipulation would allow parties to be reimbursed for "continuing expenses to implement all aspects of this provision." This provision is vague in that it does not define what types of expenses would be included, does not specify a time period, and does not establish how often, if at all, the expenses would be reviewed for reasonableness. Furthermore, Staff believes that the approval of Paragraph 11 would set an inappropriate precedent for future dockets.

Although the questions of implementation may be worked out by

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

the parties, Staff's primary concern is the disposition of any escrow funds to pay for expenses of intervenors. While Staff understands that this provision was intended as a fair compensation to the parties, Staff cannot recommend approval of the stipulation with this provision. Although the stipulation proposes an overall reduction in the surcharge to the customers, Staff believes that Paragraph 11 would result in inappropriate expenses being borne by the customers. While it is unlikely that these expenses will equal or exceed the amount of tax savings due to the creation of the non-profit corporation, staff is unaware of the amount of the expenses and cannot say for certain how much of a net savings will be experienced due to the Stipulation. Therefore, Staff recommends that the Commission not approve the Stipulation unless the provisions of Paragraph 11 are stricken.

Remaining Issues (O'SULLIVAN)

During the Prehearing Conference on September 13, 1994, the Prehearing Officer made determinations as to the final list of issues and positions in this docket. Furthermore, the parties stipulated to several other issues.

The Motion to Continue filed on September 19, 1994, states that the Stipulation addresses all of the issues in this docket. Although the Stipulation addresses many of the issues before the Commission in this docket, issues raised by the parties and approved by the Prehearing Officer should be addressed in some manner in the stipulation.

The following issues were approved and finalized at the Prehearing Conference:

1. Should the Commission approve Sanlando's petition to implement the water conservation plan?
2. If the water conservation charge is approved, should the surcharge be used to offset underearnings that may occur as a result of decreased water consumption?
3. Do the 1994 Legislative changes to Chapter 367, Florida Statutes (Chapter 94-243, Law of Florida), apply to the matter which is the subject of this proceeding?
4. Should the Commission be assured that the three golf courses will be required by SJRWMD to use the reuse facilities before the Commission approves the construction of the facilities?
5. If the Commission approves Sanlando's proposal, will it

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

cause the utility to be in greater non-compliance with Commission Rule 25-30.580, Florida Administrative Code?

Issues 1, 2, 3, and 5 are either resolved in some manner or are rendered moot by the Stipulation. Issue 4, dealing with whether the Commission should approve the plan before knowing whether the golf courses would be required to take reuse, has not been addressed in the Stipulation. As discussed previously, because Staff believes that this is an important issue in this docket, Staff recommends that the Commission require the parties to address it in some manner in a revised stipulation.

The parties stipulated to the following issues:

1. If the water conservation plan is approved, the surcharge should not be subject to regulatory assessment fees.
2. If the water conservation plan is approved, the funds should be placed in an interest bearing account controlled by the Commission and designed solely to fund the construction of the approved reuse facilities. The company should provide quarterly reports of the amount of extra funds being collected from the ratepayers under the conservation inclined block rates.
3. If the water conservation plan is approved, the surcharge for this project should remain in effect only until the company has collected enough funds to build the approved reuse facilities. The utility should not be prejudiced from filing a limited proceeding for another plan in the future.
4. If the water conservation plan is approved, the surcharge should be booked as CIAC.
5. If the water conservation plan is approved, the reuse plant should be booked as a depreciable asset, as a separate sub-account of Account No. 380, Treatment and Disposal Equipment.
6. Water conservation and reuse are in the public interest.

Because these stipulations hinged upon approval of the water conservation plan's approval, Staff believes that these stipulations are no longer applicable if the Commission approves the Stipulation.

DOCKET NO. 930256-WS
NOVEMBER 21, 1994

ISSUE 3: Should this docket remain open?

RECOMMENDATION: Yes. If the Commission decides to reject the Stipulation, the parties should be given 120 days to file another proposed stipulation. If, after the expiration of the 120 day period, no stipulation is filed, this matter should be set for hearing. (O'SULLIVAN)

STAFF ANALYSIS: Staff has recommended in Issue 1 that the proposed Corporation would be non-jurisdictional and therefore not subject to the Commission's regulation. Therefore Staff has recommended in Issue 2 that the Commission reject the Stipulation and urge the parties to file an acceptable stipulation within 120 days. If the parties are unwilling or unable to reach another agreement, this matter should be set for hearing.

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

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

STIPULATION

THIS STIPULATION is made and entered into among Sanlando Utilities Corporation (Sanlando, utility or company), 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 which proposes to establish inclining block water rates which would generate additional revenues 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 the utility'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 the utility to file a proposed

DOCUMENT NO.
07592-94
9/19/94

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 utilities' 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 the 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 Corporations 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 approval of the Commission and shall be authorized to disburse monies from the escrow account on behalf of the Corporation pursuant to orders of the Commission. 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. The Articles of Incorporation and Bylaws of the Corporation shall be approved, and modified if necessary by the Commission.

2. The stipulated reuse facility surcharge reflecting the conservation inclining block water rates as set out in Paragraph 9 shall be implemented with all of the subject surcharge being placed in an interest bearing escrow account in the name of the Corporation. 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 surcharge, establishment of the escrow account, or funding and construction of the reuse facilities. There shall be no tax liability incurred by

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

Notwithstanding the above, the Corporation or the Office of the Public Counsel, on behalf of the citizens of the State of Florida, shall immediately seek an opinion from the Internal Revenue Service that the collection and remittance by Sanlando of the reuse facility surcharge and the construction of the reuse facility for the Corporation is not taxable. 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 shall be returned to the customers. Any funds remaining in the escrow account in excess of the cost of the reuse facilities shall be returned to the customers.

4. Sanlando shall function as a collection agent for the Corporation. Sanlando shall be responsible for collecting the surcharge on behalf of the Corporation and depositing them into the

escrow account. The Commission shall be the only entity having control over expenditures from the escrow account. Sanlando, the Corporation and the Commission shall enter into a Tri-Party agreement ("Tri-Party Agreement") which shall specify terms and conditions of making deposits into and withdrawals from the escrow account and the conditions upon which the reuse facilities shall be designed and constructed. Prior to entering into any contract with an engineer, construction company or other party or entity providing services to Sanlando in connection with the design or construction of the reuse facilities, Sanlando will submit the proposed contract for those services to the Commission for its approval. After any contract has been approved by the Commission the Corporation shall, from the escrow account, pay invoices which have been presented pursuant to an approved contract. 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 Tri-Party 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 drawings 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.

Administering this Stipulation and the Tri-Party Agreement, as well as any contracts between Sanlando and contractors or engineers shall be a ministerial function of the Commission. Sanlando shall

be entitled to meet with the Commission in ex-parte meeting for such administration. Sanlando shall provide courtesy pre-meeting telephonic notice to the Corporation, Executive Director of SJRWMD and Public Counsel who shall be entitled to attend such meetings.

5. The escrow account shall be established pursuant to an agreement between the Corporation and a financial institution, and subject to the terms and conditions of the Tri-Party Agreement. Sufficient surcharge shall be collected and deposited in 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 11 below. Sanlando shall obtain no ownership interest in connection with entering into contracts and constructing the reuse facilities as provided for in the Tri-Party Agreement.

6. In addition to being responsible for collecting the surcharge for the Corporation, Sanlando shall also be responsible for constructing and operating the reuse facilities pursuant to the terms and conditions of the Tri-Party Agreement.

7. 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 and the Corporation. The lease shall be in the form of a triple net lease and shall provide that the lessee shall be responsible for maintaining reasonable liability and property damage insurance naming the lessee 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 utility's revenue requirement for rate setting purposes.

8. Prior to the reuse facilities being placed into service Sanlando shall file with the Commission a proposed charge for the reclaimed water. Upon receiving Sanlando's proposal the Commission shall determine a fair and equitable charge for the reclaimed water.

9. 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) to be 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.

10. Sanlando shall file monthly reports and documentation, including but not limited to the calculations setting forth the amount of surcharge collected and the amount of surcharge deposited into the escrow account. 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:

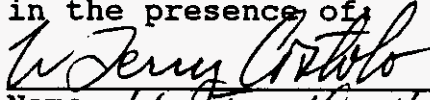
GALLONAGE CHARGE


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

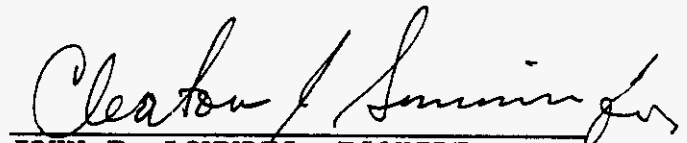
11. The Commission shall determine Sanlando's reasonable rate case expense for this docket. This approved rate case expense shall be reimbursed from funds deposited into the escrow account. The Wekiva Hunt Club Community Association's and the Florida Audubon Society's and Friends of the Wekiva River's rate case expenses shall also be paid from funds deposited into the escrow account, which shall include continuing expenses to implement all aspects of this Stipulation. .

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

Signed, sealed and delivered in the presence of:


Name: W. Jerry Costello


Name: Terri Irvin


JOHN F. LOWNDES, ESQUIRE
Attorney for Sanlando Utilities Corporation

Date: 9-19-94

Stacy P. Raulerson
Name: Stacy P. Raulerson

Jennifer L. Burdick
Name: Jennifer L. Burdick

Bonnie J. Hart
Name: Bonnie J. Hart

Cheryl A. Marsh
Name: CHERYL A. MARSH

Steph C. Reilly
Name: STEPHEN C. REILLY

Victoria Stalls
Name: VICTORIA STALLS

Pauline Christenson
Name: PAULINE CHRISTENSON

Eileen P. Randall
Name: EILEEN P. RANDALL

Robert E. Swett
Name: _____

Name: _____

P. Vincent
Name: _____

P. Vincent
Name: _____
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Nancy B. Barnard
NANCY B. BARNARD, ESQUIRE
Attorney for St. Johns River
Water Management District

Date: 9-20-94

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

Date: 9/19/94

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

Date: 9/19/94

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

Date: 9/19/94

Robert E. Swett
ROBERT E. SWETT

Date: 9-16-94

Jack Hiatt
JACK HIATT

Date: 9/18/94