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May 9, 1994

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32399-0863

RE: Docket No. 930256-WS

Dear Ms. Bayo:

Enclosed please find the original and fifteen (15) copies of Citizens' Response to Motion to Dismiss Filed by Florida Audubon Society and Friends of the Wekiva River, Inc. for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

- ACK
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Sincerely,

Stephen C. Reilly
Associate Public Counsel

DOCUMENT NUMBER-DATE

04442 MAY-94

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a Rate Increase)
in Seminole County by SANLANDO UTILITIES) DOCKET NO. 930256-WS
CORPORATION) FILED: May 9, 1994
_____)

**CITIZENS' RESPONSE TO MOTION TO DISMISS FILED BY
FLORIDA AUDUBON SOCIETY AND FRIENDS OF THE WEKIVA RIVER, INC.**

The Citizens of the State of Florida (Citizens), on behalf of the ratepayers of Sanlando Utilities Corporation, (Sanlando, utility, or corporation) hereby file the following response in opposition to Florida Audubon Society's (Audubon) and Friends of the Wekiva River, Inc.'s (Friends) Motion to Dismiss, and state:

1. In paragraph 1 of the Audubon's and Friends' Motion to Dismiss they suggest that the Petitioners request for a formal hearing and the Citizens' pleadings filed in this docket have been filed in the wrong forum. The motion suggests that the Intervenors must launch a Section 120.56, Florida Statutes, rule challenge of the requirements of Chapter 17-40 and Chapter 42-2 of the Florida Administrative Code. The motion suggests that this proceeding is merely a collateral attack on these Department of Environmental Protection and Florida Land and Water Adjudicatory Commission rules. This suggestion is clearly erroneous.

The Citizens have not challenged the provisions of any of those rules. The Citizens do challenge the method of funding for the "conservation program" being proposed by

Sanlando an supported by Audubon and Friends. We suggest the proposed method of funding is imprudent, wasteful, unduly discriminatory, does violence to Rule requirements of the Commission and poorly serves the water conservation and preservation goals espoused by Audubon and Friends. If the Sanlando, Audubon and Friends' proposal is accepted by the Commission the supposedly needed reuse system will not be constructed for an unknown number of years into the future.

2. In paragraph 2 of the motion, Audubon and Friends suggest that the Petitioners and Citizens are challenging the legislative directive found in Section 403.064(6), Florida Statutes. This is simply not true. The Citizens do not take issue with Section 403.064(6), Florida Statutes. It is rather Sanlando, Audubon and Friends who are choosing to ignore the provisions of Section 403.064(6), Florida Statutes. As Audubon and Friends state in their motion, Section 403.064(6), Florida Statutes directs that:

Pursuant to Chapter 367, the Florida Public Service Commission shall allow entities which implement reuse projects to recover the full cost of such facilities through their rate structure. (emphasis added)

The word that Sanlando and its friends choose to ignore is the word "recover" in the above statutory directive. If only Sanlando made the investment in the reuse system and recovered those costs over time in their rate structure the system would be constructed far sooner and at a fraction of the cost being proposed.

3. In the third paragraph of the motion, Audubon and Friends suggest that the Petitioner and Citizens should be estopped from protesting Proposed Agency Action Order No. PSC-93-1771-FOF-WS because of the doctrines of res judicata and laches. This argument has no merit. Neither the Petitioners nor the Citizens are barred from

exercising their statutory right to protest PAA Order No. PSC-93-1771-FOF-WS. Neither the Petitioners nor the Citizens were a party to the other proceedings which decided different issues. The resolution of those other issues by different parties in no way bars the Petitioners or Citizens from challenging the method of funding the proposed conservation program before the Florida Public Service Commission. This is precisely the appropriate time and the appropriate forum to resolve this issue.

WHEREFORE, the Citizens respectfully request the Commission to deny Audubon's and Friends' Motion to Dismiss and grant the Petitioners and the other ratepayers the Section 120.57(1), Florida Statutes, formal hearing they have requested.

Respectfully submitted,

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Attorneys for the Citizens
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**CERTIFICATE OF SERVICE
DOCKET NO. 930256-WS**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail or *hand-delivery to the following parties in this 9th day of May, 1994.

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