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ORIGINAL
FILE COPY

June 28, 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 Notice of Supplemental Authority 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 ✓
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG O'Sullivan
- LIN O'Sullivan
- OPC SCR/gr
- RCH Enclosures
- SEC 1
- WAS Bendell
- OTH _____

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FPSC-BUREAU OF RECORDS

Sincerely,

Stephen C. Reilly
Associate Public Counsel

DOCUMENT NUMBER-DATE
06408 JUN 28 1994
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a Rate Increase)
in Seminole County by SANLANDO UTILITIES)
CORPORATION.)
_____)

DOCKET NO. 930256-WS
FILED: June 28, 1994

CITIZENS' RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY

The Citizens of the State of Florida (Citizens), on behalf of the ratepayers of Sanlando Utilities Corporation, (Sanlando, utility or corporation) hereby file this Response to the Notice of Supplemental Authority filed by Sanlando and Intervenors Florida Audubon Society (Audubon) and Friends of the Wekiva River, Inc. (Friends) (Collectively Sanlando and Friends), and state:

1. The Notice of Supplemental Authority is really not a notice of supplemental authority at all. To properly be such a notice it must offer additional authority for arguments already presented in prior pleadings. The subject notice does not present additional authority for arguments previously made, but offers entirely new arguments with new authority to support Sanlando and Friends' desire to dismiss the ratepayers protest of PAA Order No. PSC-93-1771-FOF-WS. The pleading is essentially an amended or supplemental Motion to Dismiss by Sanlando and Friends.

2. In its motion Sanlando and Friends suggest that Chapter 94-243, Laws of Florida, and in particular new Section 367.0817, Florida Statutes, has a direct and dispositive bearing upon the major issues raised by the Petitioners in this proceeding.

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The Citizens concede that the enactment of Section 367.0817, Florida Statutes, might eliminate a single important issue previously raised by the Protestants. Prior to the enactment of this Section of the Statutes the Protestants firmly believed that Sanlando's reuse plan, with its method of financing, was violative of Chapter 367.081, Florida Statutes, and could not be legally approved by the Florida Public Service Commission. Enactment of Section 367.0817, Florida Statutes, probably empowers the Commission to consider and approve the Sanlando reuse plan if it deems that such approval is in the public interest.

3. However, enactment of Section 367.0817, Florida Statutes, does not dispose or eliminate the remaining concerns of the ratepayers or in anyway eliminate their right to a Section 120.57(1), Florida Statutes, hearing to determine if approval of the Sanlando reuse plan is in the public interest. In fact, the most important issue remains for the Commission to decide, namely, is the plan's method of financing prudent and reasonable and in the public interest. The Citizens strongly suggest that the evidence at hearing will show that the method of financing proposed by Sanlando and Friends is wasteful and imprudent and not in the public interest. Ironically it is a financing plan which poorly serves the interests of the environment and delays the cleanup of the Wekiva River.

4. Sanlando and Friends in its "notice" suggests that the Legislature has now expressly approved Sanlando's reuse plan as previously approved by the Commission when it issued PAA order No. PSC-93-1771-FOF-WS, on November 8, 1993. When the Commission actually issued Order No. PSC-93-1771-FOF-WS, on December 10, 1993, it merely stated that based upon what it knew at the time it believed that approval of the

plan was in the public interest, subject to substantially affected parties seeking a formal hearing, which would render the proposed order null and void. While Section 367.0817, Florida Statutes, "permits" approval of plans like Sanlando's it certainly doesn't "mandate" such plans nor automatically "approve" such plans.

5. Section 367.0817, Florida Statutes, expressly contemplates and authorizes protests and Section 120.57(1), Florida Statutes, hearings, which Sanlando and Friends are trying to deny the Protestants with their Motions to Dismiss.

6. Although within the same pleading Sanlando and Friends concede that the Petitioners have raised "major issues", plural, they later suggest that the protestants raised only one specific issue, concerning taxes to be paid indirectly by the customers. In the original protests and subsequent pleadings the Protestants have raised many material issues of fact and law to be resolved by the Commission. The Legislature's inclusion of "any applicable taxes" in the allowable costs of reuse projects in no way resolves the important tax issue before the Commission. The issue remains, is it prudent to finance the proposed reuse facilities with ratepayer contributions grossed up with Federal and State income taxes and regulatory assessment fees.

7. Any suggestion that Section 367.0817 (2), Florida Statutes, should be retroactively applied and change the critical dates of this proceeding is in error. Statutes are presumed to be prospective in application unless the Legislature manifests an intention to the contrary. Keystone Water Co. v. Bevis, 278 So.2d 606 (Fla. 1973), Freeman v. Case, 342 So.2d 815 (Fla. 1976).

8. The Legislature has not mandated the Commission to approve Sanlando's reuse

plan and Section 367.0817, Florida Statutes, has certainly not obviated the usefulness of a formal proceeding. To the contrary, after a protest has been filed the Legislature expects the Commission to hold an evidentiary hearing to determine if Sanlando's specific reuse plan is in the public interest.

WHEREFORE, the Citizens respectfully suggest that Sanlando and Friends Supplemental Motion to Dismiss, which is titled Notice of Supplemental Authority is without merit and should be denied.

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 28th day of June, 1994.

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