

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water and
wastewater rates in Pasco County by Labrador
Utilities, Inc.

DOCKET NO. 060262-WS
ORDER NO. PSC-07-0129-SC-WS
ISSUED: February 14, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. TEW

ORDER INITIATING SHOW CAUSE PROCEEDINGS
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING RATE INCREASE AND REQUIRING REFUNDS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that, except for the initiation of show cause proceedings, the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Background

Utilities, Inc. (UI or parent) is an Illinois corporation which owns approximately 80 utility subsidiaries throughout 16 states including 16 water and wastewater utilities within the State of Florida. Currently UI has ten separate rate case dockets pending before this Commission. These dockets are as follows:

| <u>Docket No.</u> | <u>UI Subsidiary</u> |
|-------------------|-------------------------------|
| 060253-WS | Utilities Inc. of Florida |
| 060254-SU | Mid-County Services, Inc. |
| 060255-SU | Tierra Verde Utilities, Inc. |
| 060256-SU | Alafaya Utilities, Inc. |
| 060257-WS | Cypress Lakes Utilities, Inc. |
| 060258-WS | Sanlando Utilities, Inc. |
| 060260-WS | Lake Placid Utilities, Inc. |
| 060261-WS | Utilities Inc. of Pennbrooke |
| 060262-WS | Labrador Utilities, Inc. |
| 060285-SU | Utilities Inc. of Sandalhaven |

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FPSC-COMMISSION CLERK

This Order addresses Docket No. 060262-WS.

Labrador Utilities, Inc. (Labrador or utility) is a Class B water and wastewater utility located approximately one mile east of Zephyrhills, in Pasco County. The utility is located within the Southwest Florida Water Management District (SWFWMD), but the utility's service territory is not in a water use caution area. The utility serves approximately 902 water and 896 wastewater customers. According to its 2005 annual report, Labrador reported revenues of \$93,184 and \$327,716 for water and wastewater, respectively. Labrador reported a net operating loss of \$12,568 for water and a net operating income of \$42,856 for wastewater.

On May 15, 2006, the utility filed its application for approval of a final and interim rate increase in this docket and requested that the Commission process the case under the Proposed Agency Action (PAA) procedure. After review of the Minimum Filing Requirements (MFRs), our staff determined that the MFRs contained a number of deficiencies that required revisions by the utility. Those revisions were filed, and the official filing date for the utility's final rate increase was established as August 22, 2006.

The utility's requested test year for interim and final purposes is the historical test year ended December 31, 2005. Labrador requested annual interim revenue increases of \$55,637, or 36.95%, for water, and \$97,826, or 28.55%, for wastewater. On July 19, 2006, this Commission approved interim revenue increases of \$45,319, or 30.06%, for water, and \$51,294, or 14.91%, for wastewater. The utility has requested final revenue increases of \$103,047, or 68.43%, for water and \$145,461, or 42.45%, for wastewater.

On November 2, 2006, our staff held a customer meeting in Zephyrhills, Florida. Approximately 435 customers attended this meeting and several took the opportunity to express their opinions and concerns regarding Labrador's rates and service. The customers presented our staff with a petition signed by approximately 750 customers opposing the rate increase. Our staff also responded to 75 letters and 37 emails from customers complaining about Labrador's quality of service, quality of the water, and odors from the wastewater plant.

Water and wastewater rates were last established for this utility in its 2003 rate proceeding.¹ In that rate case, Labrador requested revenue requirements of \$199,958 and \$389,475 for water and wastewater, respectively. The requested revenue requirement exceeded test year revenues by \$144,477, or 260.41% for water, and \$260,380, or 201.70%, for wastewater. We approved revenue requirements of \$157,075, or 183.12% for water, and \$324,000, or 150.98% for wastewater, and the increased rates went into effect on February 3, 2005.

¹ See Order No. PSC-04-1281-PAA-WS, issued December 28, 2004, in Docket No. 030443-WS, In re: Application for rate increase in Pasco County by Labrador Utilities, Inc. Consummating Order No. PSC-05-0087-CO-WS, issued January 24, 2005, made Order No. PSC-04-1281-PAA-WS final and effective.

On November 13, 2006, our staff conducted a conference call with Labrador to discuss concerns with data supplied by the utility. The two major concerns were: 1) the reliability of the test year consumption data, and 2) the amount of wastewater treated at the treatment plant. By letter dated November 22, 2006, the utility supplied additional information. Although this additional information was supplied, our staff states that it is still unable to rely on this data to set rates.

This Order addresses the denial of a final revenue increase, the refund of interim rates, and initiation of Show Cause proceedings for the apparent failure of the utility to comply with a Commission order. We have jurisdiction pursuant to Section 367.081 and 367.161, Florida Statutes (F.S.).

II. Denial of Rate Increase

Our analysis of whether the utility has demonstrated a need for a rate increase focuses on two major areas: engineering data and billing determinants.

A. Engineering Data

Our staff reviewed the utility's MFR "F" Schedules, which lay out the engineering information required to process rate cases. The water and wastewater monthly flow data appeared to be highly questionable. The F-1 Schedule, Gallons of Water Pumped, Sold and Unaccounted for Water, show Labrador sold more water than it pumped in April, May, and June 2005. In addition, a review of the F-2 Schedule, which contains wastewater treatment plant flow data, revealed Labrador treated more wastewater than water sold to customers in ten out of the twelve months of the test year. Moreover, its F-9 and F-10 Schedules (the single family residential (SFR)) data (Columns 2 & 3) and the flow data (Column 7)) do not match the data in the utility's Annual Reports for the years (2003-2005). Therefore, this data appears to be erroneous.

In a data request, dated October 2, 2006, our staff requested an explanation regarding the questionable water and wastewater flows data. In addition, our staff requested the F-9 and F-10 Schedules be reconciled with the utility's annual reports.

On October 30, 2006, in response to that data request, the utility stated "it has been difficult to determine the reason for this difference, since there is such a short history of metered customer consumption." In addition, the utility stated it had complied with Order No. PSC-04-1281-PAA-WS, in which this Commission required the utility to test all of its customers' water meters by June 30, 2005. Further, Labrador stated in its response that it tested all customer meters and replaced over 300 (approximately 37%) of its meters. However, in its report to staff, the utility showed that it did not test all of the meters, and that some meters were tested or replaced as late as May of 2006. Therefore, Labrador appears to be in direct violation of the mandate of the order. This apparent violation will be addressed below.

The utility indicated that some meters were found to be registering above 100% while others were not functioning at all. The utility stated the inaccuracies of the meters may be a

factor in the difference between gallons pumped and sold. In addition, the utility indicated that in May 2006, the RV park's meter was replaced because it was also reading low. The utility stated the RV Park's meter was reading 10.5% low or 220,000 gallons annually. This was determined by comparing the same period meter readings in 2005 and 2006. The utility further stated that it had not yet been able to find a satisfactory explanation for the erratic and high unaccounted for water.

In response to our staff's question concerning the treated wastewater gallons exceeding the water sold, the utility stated the wastewater flow meter had been installed in the wrong location and was double counting the filter backwash. In addition, the meter was miscalibrated and was reading high; however, Labrador stated it did "not know the magnitude of the error." The utility further indicated the meter was replaced at the time it was relocated; therefore, it believed that a more accurate picture of wastewater flows would be presented if seasonal month flows after the flow meter replacement were used instead of the test year flows before the meter replacement. This flow data would be more than six months after the test year. Labrador indicated it would continue to monitor the wastewater plant, the plant flow meters, and customer meter readings until there is a satisfactory resolution.

In regards to reconciling the F-9 and F-10 Schedules with the Annual Report, Labrador stated: "In preparing the MFRs, no attempt is made to reconcile the total sales to those reported in the annual reports. It serves no useful purpose." Pursuant to Rule 25-30.110(2), Florida Administrative Code (F.A.C.), the utility is required to reconcile its MFRs with its annual reports.

On November 7, 2006, during a telephone conference with the utility, the Office of Public Counsel, and our staff, the utility stated it did not know the level of meter error. However, it suggested that our staff use the January and February 2006 wastewater flow data as a comparison with the wastewater flow data during the same period of 2005. Our staff did not agree with using the test-year data, which was known to be erroneous, with the out-of-test-year data.

The utility submitted a follow-up letter dated November 21, 2006, concerning the issues addressed during the November 7, 2006, telephone conference. The letter contained new information regarding the water meter readings for 2006. The utility stated that since it serves a mobile home community that experienced no material growth between 2005 and 2006, the 2006 water consumption data was analyzed to verify the accuracy of the 2005 water consumption. The utility concluded the difference is less than one percent (1%). In addition, the utility stated there was no legitimate basis to question the 2005 consumption data.

Labrador also provided new information regarding the wastewater flow data. With the relocation and recalibration of the wastewater flow meter, the utility indicated that since June 2006, the wastewater flows have been averaging 74 percent of the water pumped and approximately 83 percent of the water sold, which is consistent in a residential community with the amount of water reasonably expected to be returned to the wastewater system.

The utility's MFRs' water flow data showed that it sold more water than it pumped, and had several months of high unaccounted for water. The MFRs' wastewater flow data showed that it treated more wastewater gallons than water sold. Also, as stated above, the RV park's water meter was inaccurate and replaced in May 2006. As stated earlier, Labrador indicated it could not find a satisfactory explanation, but would continue monitoring the plant, plant meters, customer meter readings, and inspect the system until there is a satisfactory resolution. Later, after our staff informed Labrador that it was considering recommending dismissal of this case, the utility provided new data that showed a difference of less than one percent (1%) between the flows for 2005 and 2006. Our staff believes this data is also erroneous and cannot be used to calculate used and useful (U&U) percentages. We agree. Further, we do not believe the submitted data is reliable since a large percentage of the water meters' flow measurements are inaccurate, as stated by the utility in its report and its response to staff's data requests.

In addition, the MFR's wastewater flow data indicated that on ten occasions, the utility treated more wastewater than water sold to customers. In fact, the data showed that on three occasions the amount of wastewater treated was double the amount of water sold. Also, during November 2005, the amount of wastewater treated was almost triple. As indicated above, initially the utility stated it was aware the wastewater plant's meter was miscalibrated and was located in the wrong place in the system. In addition, the utility stated the meter was reading high. Further, Labrador stated it did not know the magnitude of the error; however, it would continue monitoring the plant, plant meters, customer meter readings, and inspect the system. Later, after our staff informed Labrador that it may be recommending dismissal of this case, the utility provided new data containing water sold for the months January through November, 2006. Labrador believed this analysis would be adequate, with the proper adjustments made to the test year data, to complete its filings and continue forward with this case. Our staff did not find the new information to be compelling, and as discussed in this section and in the Billing Determinants section below, we agree.

The data contained in the utility's MFRs, monthly DEP reports, and the Annual Report do not match. Therefore, we find the accuracy of the data to be questionable.

Based on the above analysis, we find that the inconsistencies of the data found in the utility's MFRs, Annual Reports, and DEP monthly reports make all the data unusable. Because the utility has not provided accurate water or wastewater data, and the conflicting data cannot be reconciled, the appropriate used and useful percentages cannot be determined. In addition, the utility stated the flow data was incorrect and admitted that it did not know the magnitude of the error. We have made adjustments to flow data in past rate cases for utilities when the corrections were based on known and measurable changes. However, the data supplied by Labrador has so little probative value that we cannot make corrective adjustments in this case, and we cannot use the utility's data to calculate U&U percentages, determine the percentage of Inflow and Infiltration, or the level of unaccounted for water in this case.

B Billing Determinants

1. Test Year Water Thousand Gallons (Kgal) Sold

During the pendency of the last rate case, the utility performed meter accuracy tests on 47 meters, of which only 41 were found to be accurate. This correlated to a 13 percent error rate for the sample. In response to the meter tests, we found that “this error rate could be indicative of a system-wide problem.”² Consequently, we ordered Labrador to test all of its meters by June 30, 2005, and make any necessary repairs or adjustments.³ By letter dated July 15, 2005, the utility informed staff that testing remained incomplete because approximately 150 customers had turned off their isolation valves while away for the summer. The utility stated that it expected to complete testing by early November 2005, when these homeowners returned.

The utility filed a final meter testing report on June 23, 2006. In a letter that accompanied the final report, the utility notified our staff that the report reflected test results completed as of May 24, 2006. On November 7, 2006, Labrador submitted a corrected, final report of the meter flow test results as required by this Commission.⁴ The test results are summarized in Table 1 below.

TABLE 1

**FINAL REPORT -- METER TEST FLOW RESULTS:
METERS REPLACED**

| <u>Meter Test Results</u> | <u>2005</u> <u>Qtr 1</u> | <u>2005</u> <u>Qtr 2</u> | <u>2005</u> <u>Qtr 3</u> | <u>2005</u> <u>Qtr 4</u> | <u>Total</u> <u>2005</u> | <u>2006</u> | <u>Total Meters</u> <u>Replaced</u> |
|--|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-------------|--|
| Meters Read Slow – Replaced | 7 | 4 | 4 | 3 | 18 | 1 | 19 |
| Meters Read Fast – Replaced | 34 | 54 | 23 | 12 | 123 | 2 | 125 |
| Meters Replaced But Not Tested | 1 | 0 | 9 | 0 | 10 | 57 | 67 |
| Meters Replaced But Tested Within PSC Accuracy Reqmts | 3 | 7 | 22 | 35 | 67 | 34 | 101 |
| 6” Meter at RV Park Read Low – Replaced | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| TOTAL REPLACED | 45 | 65 | 58 | 50 | 218 | 95 | 313 |

As shown in Table 1, in 2005, the utility determined through meter tests that 141 meters (or 16 percent of the utility’s 900 total meters) were defective due to slow or fast readings. The 16 percent defective rate is three percentage points greater than the 13 percent defective rate from the sample tests taken in the last rate case. The utility replaced 218 meters (77 more than were found to be defective) during the 2005 test year. To further complicate matters, in response to staff’s fifth data request, dated October 2, 2006, question number 2, the utility advised our staff that the 6” meter serving the RV park was tested and replaced in mid-2006 because it was reading slow. In the aforementioned data request, the utility was asked to explain: a) how it could have sold more water than it pumped during the test year months of April through June; and b) why there were months with unaccounted for water percentages greater than 10 percent. In the utility’s response, filed on October 30, 2006, it stated:

² Order No. PSC-04-1281-PAA-WS, p. 4.

³ Id.

⁴ See Order No. PSC-04-1281-PAA-WS.

It has been difficult to determine the reason for this difference. . . . The utility tested all customer meters and replaced about 37% of them found to be inaccurate. . . . In May, 2006 . . . the park meter was replaced. It was reading low. . . . The utility has not yet found evidence of significant leaks in the system and has not yet been able to find a satisfactory explanation for the erratic and high unaccounted for water. . . .

This Commission expressed concern during the utility's last case that defective meters could be a system-wide problem. The 16 percent defective rate of the utility's meters during the test year, coupled with the discovered inaccuracy of the utility's 6" meter, substantiates that concern. This creates several problems with the resulting test year kgal sold data that cannot be overcome. Not only is it impossible to know how long each meter operated defectively during the test year, it is impossible to know the magnitude of each meter's error before the meter was replaced. The utility's admitted inability to explain the "erratic and high unaccounted for water" concerns us. We find that the test year kgal sold data is irreparably flawed and inappropriate for ratemaking.

We also have an additional concern with the kgal sold data for 2005: Labrador's 2005 test year is also the same year in which the revenue increases and rate structure changes from the utility's last case went into effect. In the utility's last rate case, this Commission granted a 183 percent increase for the water system and a 151 percent increase for the wastewater system. In addition, this Commission changed Labrador's water and wastewater rate structures from non-usage based, flat rate structures, to the current BFC/gallonage charge rate structures. The rates resulting from the last rate case became effective February 3, 2005 -- the first bill received under the new rates was approximately one month later. Therefore, customers' responses to the revenue and rate structure changes have not been fully captured and reflected in the 2005 test year data.

We believe an attempt to either rehabilitate the current filing by using 2006 kgal sold data or file a new case using 2006 kgal sold data would also yield flawed results. In a letter to our staff dated November 21, 2006, the utility compared January through November kgal sold data for 2005 versus 2006. The utility stated: "As you can see, the difference is less than 1 percent. Thus, there is no legitimate basis to question the 2005 consumption data. Further, the data shows that dismissing the current docket and refiling with a 2006 test year would serve no useful purpose since it would be based upon the same water usage as the current case." While we disagree that there is no basis to question the 2005 consumption data, we agree that refiling with 2006 data would serve no useful purpose. As discussed above, the 2005 kgal sold data appears to be irreparably flawed. If the 2006 kgal sold data is within 1 percent of the corresponding 2005 data, it does not prove the voracity of the 2005 data. Rather, it is an indication that the 2006 kgal sold data is equally flawed. Also, as shown on Table 1, the utility replaced an additional 61 meters during 2006. Although only 4 of the 61 meters actually tested positive for defects, it is unknown how many of the remaining 57 meters that were replaced without being tested were also, in fact, defective. In addition, the defective 6" meter represents a material number of kgal sold. Based on 2005 figures, this meter accounts for approximately 8

percent of the utility's total water sold. Finally, as late as October 30, 2006, the utility has not, by its own admission, been able to find a satisfactory explanation for the "erratic and high unaccounted-for water."

There are two possible scenarios with respect to the flawed data. If the test year kgal sold data is too low, then the resulting rates will, all other things being equal, be overstated. This may possibly cause the utility to overearn in subsequent years. Conversely, if the test year kgal sold data is too high, then the resulting rates will be less than compensatory, which would probably result in a shorter period before the utility files another request for a rate increase. There have been numerous customer complaint letters in this case that specifically mentioned displeasure with Labrador's request for rate relief because it was granted an increase within the past two years. If we were to set noncompensatory rates, we believe this would further perpetuate the frequency of rate case filings by the utility. Therefore, we find that setting rates based on flawed data would be neither fair nor reasonable to the customers or the utility.

Due to the number and nature of the defective meters found during the test year, as well as the timing of the test year coincident with the period when rates from the last rate case went into effect, we are unable to determine the appropriate number of kgal sold by the utility during the test year. This renders us unable to see the entire test year ratemaking picture, both with respect to: a) how many kgal were actually sold (affecting whether the current rates are, in fact, noncompensatory, and, if so, by what magnitude); and b) the appropriate number of kgal to use in the design of rates. In Section 367.081, F.S., we are charged with the statutory responsibility of setting rates which are fair and reasonable. It is neither our nor our staff's responsibility to make the utility's case. The burden of proof is upon the utility to show that its present rates are unreasonable, fail to compensate the utility for its prudently incurred expenses, and fail to produce a reasonable return on its investment.⁵ Based on the foregoing, we find the utility has failed to meet its burden of proof in this case, in that Labrador has not presented credible evidence regarding the number of kgal actually sold during the 2005 test year, and its 2005 and 2006 kgal sold data are irreparably flawed.

Conclusion

In conclusion, the data supplied by Labrador is insufficient to determine the revenue requirement and set reasonable rates. The burden of proof is upon the utility to show that its present rates are unreasonable, fail to compensate the utility for its prudently incurred expenses, and fail to produce a reasonable return on its investment. See South Florida Natural Gas v. Florida Public Service Commission, 534 So. 2d 695 (Fla. 1988); Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982) (finding that the burden of proof in a Commission proceeding is always on a utility seeking to change, and upon other parties seeking to change established rates); and Order No. 24715, issued June 26, 1991, in Docket No. 900329-WS, In re: Application for rate increase in Citrus, Martin, Marion, and Charlotte/Lee Counties by Southern states Utilities, Inc.; in Collier County by Marco Island Utilities (Deltona) and Marco Shores

⁵ See South Florida Natural Gas v. Florida Public Service Commission, 534 So. 2d 695 (Fla. 1998); Florida Power Corporation v. Cresse, 413 So. 2d 1187 (Fla. 1982).

Utilities (Deltona); in Marion County by Marion Oaks Utilities (united Florida); and in Washington County by Sunny Hills Utilities (United Florida) [See Southern States Utilities v. Florida Public Service Commission, 602 So. 2d 944 (Fla. 1992) (in which Order No. 24715 was “Per Curiam. Affirmed”)].

The burden is on the utility to prove that the requested rate increase is warranted. When a utility fails to establish its entitlement to the relief requested in its petition, we have the authority to deny that petition. City Gas Company of Florida v. Florida Public Service Commission, 501 So. 2d 580 (Fla. 1987). Because of the aforementioned inconsistent data, we find the utility has not carried its burden of proof for us to determine just, reasonable, compensatory, and not unfairly discriminatory rates. As such, Labrador’s request for a final revenue increase is denied in its entirety in this instant case.

III. Appropriate Water and Wastewater Rates

The utility has not met its burden of proof for this Commission to determine just, reasonable, compensatory, and not unfairly discriminatory rates. Therefore, Labrador shall charge the rates in effect prior to the approval of interim rates. The utility shall file tariff sheets to reflect the appropriate rates. The approved rates are listed below:

Residential – Water

| | |
|---------------------------------------|--------|
| Base Facility Charge: | |
| 5/8” x 3/4” | \$6.28 |
| Gallage Charge (per 1,000 gallons) | \$3.14 |

General Service – Water

| | |
|---------------------------------------|----------|
| Base Facility Charge | |
| 5/8” x 3/4” | \$6.28 |
| 3/4” | \$9.42 |
| 1” | \$15.70 |
| 1-1/2” | \$31.40 |
| 2” | \$50.24 |
| 3” | \$100.48 |
| 4” | \$157.00 |
| 6” | \$314.00 |
| Gallage Charge (per 1,000 gallons) | \$3.14 |

Residential – Wastewater

| | |
|---|---------|
| Base Facility Charge | |
| (All Meter Sizes) | \$12.09 |
| Gallage Charge – Per 1,000 Gallons (10,000 gallon cap) | \$9.34 |

General Service - Wastewater

| | |
|---------------------------------------|----------|
| Base Facility Charge | |
| 5/8” | \$12.09 |
| 3/4” | \$18.14 |
| 1” | \$30.23 |
| 1-1/2” | \$60.45 |
| 2” | \$96.72 |
| 3” | \$193.44 |
| 4” | \$302.25 |
| 6” | \$604.50 |
| Gallage Charge (per 1,000 gallons) | \$11.21 |

Irrigation – Water

| | |
|----------------------|---------|
| Base Facility Charge | |
| 2” | \$50.24 |
| Gallage Charge | \$3.14 |
| (Per 1,000 gallons) | |

IV. Refund of Interim Revenues

Pursuant to Section 367.082, F.S., revenues collected under interim rates shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by this Commission. In this case, the total annual interim revenue increase granted in Order No. PSC-06-0668-FOF-WS was \$45,319 (30.06%) for water and \$51,294 (14.91%) for wastewater. Our staff calculated the potential refund of revenues and interest collected under interim conditions to be \$57,183. This amount is based on an estimated seven months of revenues collected from the approved interim rates granted in Order No. PSC-06-0668-FOF-WS. By letter dated August 15, 2006, Labrador filed a corporate undertaking pursuant to the order above. In its interim revenue report dated December 21, 2006, Labrador indicated the interim revenues collected during the period September 2006 through November 2006 was \$9,809. The interim rates will continue to be collected until the tariffs containing the original rates are approved. Therefore, the total amount of the interim refund cannot be determined at this time.

Because the data supplied by Labrador is insufficient to determine an appropriate revenue requirement and set reasonable rates, we have found that the utility has not met its burden of proof for this Commission to determine just, reasonable, compensatory, and not unfairly discriminatory rates. As such, Labrador shall refund, with interest, all interim revenues collected pursuant to Order No. PSC-06-0668-FOF-WS. Pursuant to Rule 25-30.360(7), F.A.C, Labrador shall file the appropriate refund reports indicating the amount of money to be refunded and how that amount was computed.

V. Show Cause Proceeding

Pursuant to Order No. PSC-04-1281-PAA-WS (PAA Order), this Commission required Labrador to:

- (1) adjust its books to reflect the adjustments to all the applicable primary accounts required by that Order and provide proof of such adjustments within 90 days of the issuance date of a final order; and
- (2) to test all of its meters by June 30, 2005, make any necessary repairs or adjustments, maintain a log of all meters tested, and file quarterly reports.

That PAA Order was finalized by Consummating Order, Order No. PSC-05-0087-CO-WS, issued January 24, 2005. Therefore, the appropriate adjustments to all the applicable primary accounts should have been accomplished by no later than April 24, 2005. Also, pursuant to the

PAA Order, all the meters were originally to have been tested by June 30, 2005, and progress reports were to have been filed on April 15, July 15, and October 15, 2005.

By letter dated April 22, 2005, counsel for Labrador provided a schedule indicating the required adjustments to primary accounts had been made. Also, by letter dated July 15, 2005, counsel for Labrador advised that all meters had been tested except for approximately 150 homes where the homeowners had turned off isolation valves, and that testing on those meters would not be completed until the end of October or early November 2005. Finally, by letter dated June 23, 2006, counsel for Labrador submitted an attached final report of meter flow test results stating that all test results were completed on May 24, 2006.

Although the utility had indicated that all required adjustments to the primary accounts had been made as of April 22, 2005, in processing the current rate case, our staff determined that the required adjustments to plant in service and accumulated depreciation were either not made or not made until December 2005. Therefore, the letter dated April 22, 2005, was incorrect, and it appears that the appropriate adjustments were not made until almost eight months later, i.e., eight months late. Also, it appears that the utility did not complete testing the meters until May 24, 2006, almost eleven months later than required. In reviewing the initial meter report, our staff noted that the dates of testing reflect test dates from September 2000 through April 2002, some two and one-half years before the PAA Order which required the testing. The utility later moved to correct that report, but it appears that many meters were not tested until well after the June 30, 2005 deadline. Moreover, by letter dated November 22, 2006, the utility states that it tested 799 meters, but did not test the remaining 103 meters. The utility states that these 103 meters were either new meters installed by the utility, which were tested and certified by the manufacturer prior to installation, or meters that the utility was unable to test because they were not connected to a water source.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes this Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S., or any lawful order of the Commission. By failing to comply with the above-noted requirements of the PAA Order in a timely manner, the utility's acts were "willful" in the sense intended by Section 367.161, F.S. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "willful" implies an intent to do an act, and this is distinct from an intent to violate a statute or rule. Id. at 6.

We find that the circumstances in this case are such that show cause proceedings shall be initiated. We are especially concerned with Labrador's apparent failure to adjust its books to reflect the adjustments to all the applicable primary accounts as required by the PAA Order. In

the Order Approving Settlement Agreement Filed by Utilities, Inc. (Settlement Order),⁶ issued December 23, 2004, in Docket No. 040316-WS, the utility specifically agreed that: "Beginning with the year ended December 31, 2003, and continuing through December 31, 2004, UI shall review all Commission transfer and rate case orders to determine if proper adjustments have been made to correctly state rate base balances." Both the Settlement Order and the PAA Order, issued just five days apart, should have made the utility acutely aware of the problems that it was having in maintaining its books and records. This continued pattern of disregard for our rules, statutes, and orders warrants more than just a warning. Accordingly, Labrador shall be made to show cause in writing, within 21 days, why it should not be fined \$3,000 for its apparent failure to adjust its books to reflect the adjustments to all the applicable primary accounts required by the PAA Order and provide proof of such adjustments within 90 days of the Consummating Order.

Although the utility has apparently not timely complied with the requirement to test all its meters by June 30, 2005, the utility has demonstrated mitigating circumstances. A significant portion of Forest Lake Estates' residents are present only during the winter, and by letter dated July 15, 2005, the utility advised staff that, because the homeowners had turned off their isolation valves and were not in Florida for the summer, it had not yet tested approximately 150 meters. The utility indicated it expected all testing to be done by October or November of 2005. Subsequently, by letter dated June 23, 2006, the utility advised that the testing had been completed as of May 24, 2006, and attached a report. However, the report attached to that letter showed meter test dates from September 2000 through April 2002, over 2½ years before there was a requirement for meter tests, and a corrected report was not filed until November 7, 2006. By letter dated November 22, 2006, the utility claims that it tested 799 meters out of a total of 902. Of the remaining 103 meters, the utility states that 73 were new meters which had been tested and certified by the manufacturer prior to installation, with 67 meters being replaced without testing because the owners had shut off the water and the utility was unable to test the existing meter. Of the remaining 30 meters, the utility states that they were on vacant lots and had no service lines, and thus the utility was physically unable to test them.

While a six-month extension to December 30, 2005, might have been warranted, the utility did not request such an extension, and then did not complete the testing until May 24, 2006, which was almost eleven months past the original due date. Moreover, there is some question of whether the 73 new meters should have been retested at installation, and whether the 30 meters on vacant lots should have been tested. Based on all the above, we do not believe the delay in testing the meters was as serious as the utility's failure to adjust its books to reflect the adjustments reflected in the PAA Order, and Labrador shall be made to show cause in writing, within 21 days, why it should not be fined \$500 for its apparent failure to timely test all its meters by June 30, 2005.

Based on the above, Labrador shall be made to show cause in writing, within 21 days, why it should not be fined a total of \$3,500 for its apparent failure to timely comply with the two

⁶ Order No. PSC-04-1275-AS-WS, in Docket No. 040316-WS, In re: Analysis of Utilities, Inc.'s plan to bring all of its Florida subsidiaries into compliance with Rule 25-30.115, Florida Administrative Code.

requirements described above in Order No. PSC-04-1281-PAA-WS. The following conditions shall apply:

1. The utility's response to the show cause order shall contain specific allegations of fact and law;
2. Should Labrador file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Sections 120.569 and 120.57(1), F.S., a further proceeding will be scheduled before a final determination of this matter is made;
3. A failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue;
4. In the event that Labrador fails to file a timely response to the show cause order, the fine shall be deemed assessed with no further action required by the Commission;
5. If the utility responds timely but does not request a hearing, a recommendation shall be presented to the Commission regarding the disposition of the show cause order; and
6. If the utility responds to the show cause order by remitting the fine, this show cause matter shall be considered resolved.

Further, the utility shall be put on notice that failure to comply with Commission orders, rules, or statutes will again subject the utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F. S.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of Labrador Utilities, Inc., for increased water and wastewater rates is denied. It is further

ORDERED that the appropriate rates for Labrador Utilities, Inc., are the rates in effect prior to the approval of interim rates, and the utility shall file revised tariff sheets as shown in the body of this Order. It is further

ORDERED that pursuant to Rule 25-30.360, F.A.C., Labrador Utilities, Inc. shall, refund, with interest, the interim revenues granted by Order No. PSC-06-0668-FOF-WS. It is further

ORDERED that Labrador Utilities, Inc., shall be made to show cause in writing, within 21 days, why it should not be fined a total of \$3,500 for its apparent failure to timely comply

with the requirements of Order No. PSC-04-1281-PAA-WS to (1) adjust its books to reflect the adjustments to all the applicable primary accounts required by that Order and provide proof of such adjustments within 90 days of the issuance date of a final order; and (2) to test all of its meters by June 30, 2005, and make any necessary repairs or adjustments, maintain a log of all meters tested, and file quarterly reports. It is further


ORDERED that any response shall comply with the conditions as set forth in the body of this Order and shall be filed with the Director, Division of the Commission Clerk and Administrative Services within 21 days of the date of issuance of this Order. It is further

ORDERED that the provisions of this Order, except for the show cause proceedings, are issued as proposed agency action, and shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no person whose substantial interests are affected by the proposed agency action issues files a protest within twenty-one days of the issuance of the Order, a Consummating Order will be issued for the proposed agency action issues. The docket shall remain open for our staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff, and that the interim refund has been completed. It is further

ORDERED that if Labrador Utilities, Inc. pays the \$3,500 in fines, the docket shall be closed administratively upon our staff's verification of the above items. If the utility timely responds in writing to the Order to show cause, the docket shall remain open to allow for the appropriate processing of the response.

By ORDER of the Florida Public Service Commission this 14th day of February, 2007.


BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The show cause portion of this Order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this Show Cause Order may file a response within 21 days of issuance of the Show Cause Order as set forth herein. This response must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 7, 2007.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to the show cause portion of this Order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this Order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

As identified in the body of this Order, our action denying the rate increase, requiring return to rates in effect prior to the interim rates, and requiring a refund with interest is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this Order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 7, 2007. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this Order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.