State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: JUNE 13, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (BRADY, WALDEN)
DIVISION OF LEGAL SERVICES (BRUBAKER)

RE: DOCKET NO. 000545-WS - APPLICATION FOR ORIGINAL CERTIFICATES TO OPERATE A WATER AND WASTEWATER UTILITY IN PASCO COUNTY BY LABRADOR SERVICES, INC.
COUNTY: PASCO

AGENDA: 06/25/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUE 3 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 07/02/01 - 90-DAY STATUTORY DEADLINE FOR AN ORIGINAL CERTIFICATE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\000545.RCM

CASE BACKGROUND

Labrador Services, Inc. (Labrador or utility) is a Class C utility located approximately one mile east of the City of Zephyrills in Pasco County, Florida. This is not a water use caution area. The utility provides central water and wastewater services to 894 lots in Forest Lake Estates Mobile Home Park (MH Park) and 274 lots in Forest Lakes R.V. Resort (RV Resort). The utility is essentially at build out. Based on its current monthly flat rates, the utility should have combined annual revenues of approximately $193,800.

Labrador most recently came to the attention of staff on March 15, 2000, when it requested a meeting regarding an application for original certificates as well as for an eventual rate proceeding. The water and wastewater systems were originally certified as constructed by the Florida Department of Environmental Protection

(FDEP), then known as the Florida Department of Environmental Regulation, in May, 1987. The construction permits had been issued to The Halprin Companies under the name of Frontier Acres for an adult manufactured housing community.

Prior to the construction, the development was investigated by Commission staff during the week of April 1, 1986. Staff found that the manufactured houses were to be bought by the homeowners but the lots were leased on a lifetime basis, renewable annually. Since water and wastewater charges were included non-specifically in the monthly lot rent, staff issued an April 30, 1986, memorandum indicating that it appeared Commission regulation would not apply pursuant to Section 367.022(5), Florida Statutes, which exempts landlords providing service to their tenants without specific compensation for service. Sometime in 1989, Mr. Henri Viau acquired ownership of the community and utility facilities under the name of Forest Lake Estates, Inc., and Forest Lake Village, Inc. Apparently, subsequent to acquiring the facilities, but prior to December 1997, Mr. Viau began charging separately for water and wastewater service at which time the utility became subject to Commission regulation.

On June 10, 1999, Mr. Viau sold the community facilities and land, exclusive of the utility systems, to Forest Lake Estates Co-Op Inc. (Co-op). The Co-op consists of the homeowners in approximately 240 of the nearly 900 lots in the MH Park. The transaction included the land under the lots in the MH Park and RV Resort as well as the land under the utility facilities. Mr. Viau established Labrador in June of 1999 for the purpose of continuing to own and operate the utility facilities. The Co-op had until January 1, 2000, to exercise an option to also purchase the utility facilities. When the time period for the option expired without being exercised, Mr. Viau initiated activity with staff to file for water and wastewater certificates of authorization.

On May 4, 2000, an application for original water and wastewater certificates was filed on behalf of Labrador. The application contained numerous deficiencies. The utility was still in the process of completing the filing requirements when, on September 9, 2000, Mr. Viau died in a boating accident. Mr. Viau, a Canadian citizen, died intestate. The application process was postponed pending a determination by Mr. Viau's heirs regarding the disposition of his assets. On October 11, 2000, Mr. Viau's daughter, Ms. Sylvie Viau, was selected as the liquidator of the Estate of Henri Paul Viau (Estate) and on February 16, 2001, a judgment to this effect was issued by the Canadian Superior Court.

Supplemental information completing application deficiencies was filed on April 2, 2001, and that date was determined to be the official filing date of the application. Pursuant to Section 367.031, Florida Statutes, the Commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application which, in this case, is July 2, 2001. On March 15, 2001, the Co-op filed a formal complaint in the instant docket against Labrador which it subsequently withdrew on May 10, 2001.

This recommendation addresses the utility's apparent violation of Section 367.031, Florida Statutes, for operating a water and wastewater utility without certificates of authorization, whether water and wastewater certificates should be granted, the establishment of rates and charges, the requirement of annual reports and regulatory assessment fees (RAFs), and the withdrawal of the Co-op complaint. The Commission has jurisdiction over these matters pursuant to Sections 367.045 and 367.161, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order the utility to show cause, in writing within 21 days, why it should not be fined for operating water and wastewater utilities without certificates of authorization in apparent violation of Chapter 367.031, Florida Statutes?

RECOMMENDATION: No. Show cause proceedings should not be initiated. (BRUBAKER)

STAFF ANALYSIS: As stated in the case background, the utility is in apparent violation of Section 367.031, Florida Statutes, which states that each utility subject to the jurisdiction of the Commission must obtain from the Commission a certificate of authorization to provide water or wastewater service. The utility has been providing water and wastewater services to the public for compensation since approximately 1997 without certificates of authorization from the Commission. Issue 3 contains a description of staff's efforts to determine the date specific rates were first charged for water and wastewater service.

Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, authorizes the 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, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.033, F.A.C., Relating To Tax Savings Refund For 1998 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 "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

The failure of the utility to obtain certificates of authorization from the Commission appears to have been due to a misinterpretation, rather than lack of knowledge, of the statutes and Commission rules. Although the utility had been in existence since 1987, Mr. Viau believed the utility was subject only to the Florida Mobile Home Act, Chapter 723, Florida Statues, as long as the utility facilities were owned in conjunction with the mobile home community facilities. At some time prior to December 1997, the utility began charging a specific rate for water and wastewater service. On June 10, 1999, the community facilities were sold to

the Co-op. However, the Co-op had until January 1, 2000, in which to exercise the option to purchase the utility facilities. When the option expired without being exercised, the utility immediately began procedures for filing for certificates of authorization.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, staff does not believe that the apparent violation of Section 367.031, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Albeit for the wrong reasons, the utility filed the instant application for water and wastewater certificates on its own and at the time it believed it was required to do so by the statutes. Had the utility not filed, staff would still be unaware of its existence. The delay in the completion of the application after the initial filing was due to circumstances beyond the control of the utility. For these reasons, staff recommends that the Commission not order the utility to show cause, in writing within 21 days, why it should not be fined for failing to obtain certificates of authorization from the Commission in apparent violation of Section 367.031, Florida Statutes.

ISSUE 2: Should the application of Labrador Services, Inc. for water and wastewater certificates be granted?

RECOMMENDATION: Yes. Labrador should be granted Water Certificate No. 616-W and Wastewater Certificate No. 530-S to serve the territory described in Attachment A. (BRADY, WALDEN, BRUBAKER)

STAFF ANALYSIS: As stated in the Case Background, on May 4, 2000, an application was filed on behalf of Labrador for original water and wastewater certificates for a utility in existence and charging rates. As filed, the application contained numerous deficiencies. Supplemental information completing the deficiencies was filed on April 2, 2001. Pursuant to Section 367.031, Florida Statutes, the Commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application which, in this case, is July 2, 2001.

The application as filed and amended is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules with regard to an application for a certificate of authorization for an existing utility currently charging for service. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. Pursuant to Rules 25-30.034(1)(h), (i), and (j), Florida Administrative Code, the application also contained a description of the territory to be served, a copy of a detailed system map showing the location of the utility's lines and treatment facilities, and a copy of a tax assessment map including the plotted territory. The territory requested by the utility is described in Attachment A.

Noticing. The application contained the requisite proof of noticing pursuant to Rule 25-30.030, Florida Administrative Code. No objections to the noticing were filed by any local utilities or governments. However, there were a number of objections timely filed by customers of the utility including the Forest Lake Estates Non Shareholders Homeowners Association (FLENS). As its name implies, FLENS was established by the lot owners who chose not to share in the purchase of the community facilities when offered for sale by Mr. Viau. FLENS' letter of objection consisted primarily of a series of questions rather than specific objections to the granting of certificates of authorization. Staff responded to FLENS' questions and concerns by letter dated June 8, 2000, as well as by numerous follow-up phone conversations. By memorandum filed June 22, 2000, legal staff confirmed that FLENS was not requesting a hearing but wished, instead, to be listed as an interested person.

The remaining letters of objection were, similarly, more letters of concern than protest. In addition to contacting each correspondent by phone, legal staff also sent each correspondent a letter formally requesting the correspondent's intentions with respect to a hearing. All correspondents responded that they did not wish to pursue a hearing in the matter. The primary concern voiced by the correspondents were environmental issues regarding the utility facilities. This matter is addressed in more detail below. There were also a few questions regarding the authority for the utility's existing rates and charges. This matter is addressed in more detail in Issue 3.

Although none of the responses to the noticing were considered objections pursuant to Rule 25-30.030, Florida Administrative Code, and the time for filing such has expired, a subsequent complaint was filed on behalf of the Co-op on March 15, 2001. This matter is addressed in more detail in Issue 6.

Department of Community Affairs. Pursuant to Section 367.045(5)(b), Florida Statutes:

> When granting or amending a certificate of authorization, the commission need not consider whether the issuance or amendment of the certificate of authorization is inconsistent with the local comprehensive plan of a county or municipality unless a timely objection to the notice required by this section has been made by an appropriate motion or application. If such an objection has been timely made, the commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality.

While there were no objections to the utility's application, the Commission has a Memorandum of Understanding with the Department of Community Affairs (DCA) in which each application for an original certificate, or an amendment to a certificate, is provided to the DCA for its input on the need for service and comprehensive plan consistency. Labrador's application was forwarded to the DCA on May 10, 2000. The DCA provided its comments by letter dated May 30, 2000.

In its response, the DCA indicated that the application is consistent with Pasco County's comprehensive plan, which contains policies to allow developers to construct and manage utilities in areas that are not otherwise served. Therefore, the DCA staff supports the subject application for original certificates. However, in its review, the DCA found an inconsistency between

Pasco County's service area maps and its Comprehensive Plan. As a consequence, the DCA requested that Pasco County revise its service area maps to include the Labrador service area.

Utility Ownership. Pursuant to Rules 25-30.034(1)(a), (b), and (c), Florida Administrative Code, the application contained a description of the utility's corporate organization and ownership. Labrador is a Florida For-Profit Corporation established on June 2, 1999. On June 10, 1999, Labrador acquired the utility assets for $10 from Forest Lake Estates, Inc., and Forest Lake Village, Inc., both owned and controlled by Mr. Viau, prior to the transfer of the remaining community assets to the Co-op. The only entity owning any interest in Labrador at the time of the filing of the instant application was also Mr. Viau. Ownership has subsequently passed to the Estate.

Financial Ability. Rule 25-30.034(1)(d), Florida Administrative Code, requires a statement of the financial ability of the utility to continue to provide service. This was essentially the only remaining filing requirement at the time of Mr. Viau's death. Prior to his death, Mr. Viau had disclosed the total amount of his personal wealth but had not wanted to make his personal financial statements public. Staff had made arrangements for a field auditor to review those records at Mr. Viau's attorney's office in Bradenton. However, after Mr. Viau's death, the utility's attorney forwarded the financial statements to staff in Tallahassee. Not knowing the extent to which those assets would be available to the heirs nor the extent to which the heirs would pledge the assets to the utility, staff could not accept the information as representative of financial ability.

On March 30, 2001, a supplemental statement was provided by the counsel for the Estate indicating the amount of the Estate's current assets. The Estate indicated its intent to use these assets in order to ensure continued service to the community residents. Staff believes the assets represent an adequate showing of financial ability. Staff notes that a supplemental statement was also provided of the utility's intent to file, as soon as practicable, for a staff-assisted rate case in which compensatory rates can be established for the utility. Staff has confirmed that the utility has made initial contact with the Commission's Division of Economic Regulation for purposes of initiating a rate proceeding.

Technical Ability. Pursuant to Rule 25-30.034(1)(d), Florida Administrative Code, the application contained an initial statement regarding the technical ability of the utility to continue to

provide service. The initial statement indicated that Mr. Viau had operated the MH Park and RV Resort, including the water and wastewater treatment facilities, continuously from the time he acquired the assets in 1989 until June 10, 1999, when the community facilities were sold to the Co-Op. Also, Mr. Viau, through various entities, continued to own and operate various mobile home communities in Florida which had water and wastewater treatment facilities. As a consequence, the application stated that Mr. Viau was thoroughly versed in all phases of utility operations.

Prior to Mr. Viau's death, staff had requested clarification of the above statement. The response verified Mr. Viau's prior ownership and operation of mobile home park facilities. The response also included information that the utility employed an operator who held FDEP Class C drinking water and Class C wastewater treatment operator licenses.

After Mr. Viau's death, staff asked for a supplemental statement regarding the status of the plant operator. The statement indicated that the Estate had chosen to retain the services of the existing licensed operator as a full time employee of Labrador. The statement also indicated that the operator had recently qualified with the FDEP as a Class B operator.

FDEP Permits. Rule 25-30.034(1)(k), Florida Administrative Code, requires the utility to provide the numbers and dates of any permits issued for the systems by the FDEP. The application provided the most recent permit information. In addition, staff contacted the FDEP staff for an assessment of the utility's systems. While both systems experience occasional maintenance problems, they were considered by the FDEP to be in compliance with the FDEP rules and regulations at the time of the initial filing on May 4, 2000, and continue to be in essential compliance at this time of this recommendation.

Water System. According to the FDEP's records, the water system was inspected on April 21, 2000. As is often the case with inspections, a number of deficiencies were noted. The more notable deficiencies included the detection of a leak in the high service pump and an unusually large amount of screen sediment at the bottom of the overflow line from the storage tank. According to the FDEP's records, most of the deficiencies were corrected by the operator during the inspection. The remainder were corrected within two weeks of the inspection.

Wastewater System. The FDEP wastewater compliance staff were aware that Labrador had experienced odor problems with its

wastewater treatment plant early in 2000. The problems resulted from the loss of activated sludge due to blower mechanical failures while the backup blower was out for repairs. The problem was corrected by the re-introduction of activated sludge and the purchase and repair of upgraded blowers. According to the FDEP, the plant is virtually at maximum capacity during the high peak winter season. However, it still meets the FDEP's required standards and was repermitted in December, 1999, for another five years.

Labrador's wastewater treatment system consists of a 216,000 gallons per day Type II extended aeration treatment plant. In addition, Labrador has reuse facilities including a rapid infiltration basin (RIB), a slow-rate spray field, and a small low-pressure, slow-rate subsurface drain field. The RIB has a zero gallon permit. This means that discharge into the basin is on an emergency and wet-weather basis only, and any discharge into the basin must be reported to the FDEP within 24 hours as an abnormal event. The spray field is located approximately 1/3 mile north of the MH Park and RV Resort and consists of 34.7 acres of bahia grass. As previously permitted, the spray field was rated as public access. Under the new permit, the FDEP downgraded the rating to restricted public access.

Customer Configuration. Pursuant to Rule 25-30.034(1)(n), Florida Administrative Code, the application contains a description of the customers currently served and proposed to be served by meter size. Labrador's current and proposed service territory is limited to the MH Park and the RV Resort. These communities are essentially at build out with 894 lots in the MH Park and 274 lots in the RV Resort. The MH Park is served through two 6 inch master meters. Each lot in the MH Park is individually metered. The meters were installed in phases with the last meters installed in 2001. However, the meters have never been placed into service. The RV Resort is served by one 6 inch master meter. Currently the lots in the RV Resort are not individually metered.

Proof of Land Ownership. Rule 25-30.034(1)(e), Florida Administrative Code, requires proof that the utility owns or has provided for the continued use of the land upon which the utility facilities are located. The application contained a copy of a "Lease Agreement for Water and Wastewater Treatment Facilities" (Lease) dated June 10, 1999, by and between the Co-Op, as Lessor, and Labrador, as Lessee. The Lease is for the land under the utility facilities for a term of 99 years. Total rental amount is $3,500 per month with provisions for indexing based on the Consumer

Price Index. According to the rule, a 99 year lease is acceptable proof of continued use of the land.

Also contained within the Lease is a provision for Labrador to charge each occupied lot in the MH Park and RV Resort, an all inclusive fee of $15 and $10 per month, respectively, for water and wastewater services, combined. These charges are due regardless of whether there is any consumption. According to the Lease, the charges are to remain unchanged until Labrador obtains certificates of authorization from the Commission.

Public Interest. Section 367.045(1)(b), Florida Statutes, requires a finding of the need for service in the area involved, and the existence or non-existence of service from other sources within geographic proximity to the area. Since the area is already being served by the utility, the need is apparent and no local government or utility protested the noticing of Labrador's application for original certificates.

Based on all the above, staff recommends that it is in the public interest to grant Labrador Services, Inc., Water Certificate No. 616-W and Wastewater Certificate No. 530-S to serve the territory described in Attachment A, and that the application for original certificates should, therefore, be granted.

ISSUE 3: What rates and charges should be approved for Labrador Services, Inc.?

RECOMMENDATION: The utility's existing flat rates for water and wastewater service for the MH Park and the RV Resort should be approved based on the allocation set forth in the Staff Analysis until the utility's first rate proceeding. The utility should be put on notice that, at the time of its next rate proceeding, all meters will be required to be installed and in compliance with Part III, Rule 25-30, Florida Administrative Code, and appropriate base facility charges and usage rates will be established by the Commission. The utility should also be allowed to charge the standard miscellaneous charges specified in the Staff Analysis. Customer deposits and service availability charges should not be authorized at this time. The utility should be required to perform regular billing or file for a waiver of Rule 25-30.335(1), Florida Administrative Code, within 60 days from the date of the order resulting from this recommendation. The utility has filed proposed water and wastewater tariffs. The effective date of the utility's rates and charges should be the stamped approval date of the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. (BRADY)

STAFF ANALYSIS: The utility currently charges customers in the MH Park a monthly flat rate of $15 and in the RV Resort a monthly flat rate of $10, which includes both water and wastewater service. Pursuant to Rule 25-30.034(1)(g), Florida Administrative Code, the initial application indicated that rates and charges were established at the time Mr. Viau, and affiliates, owned the MH Park and RV Resort, and are contained in the Prospectus approved by the Department of Business and Professional Regulation (DBPR). The application also indicated that the rates had not been raised since the sale of the MH Park and RV Resort community facilities to the Co-op. As such, the application indicates that the most recent authority for the current rates is based on the Lease at Page 2:

> The foregoing rates and changes [sic] shall remain unchanged until Lessee [Labrador] obtains a certificate from the Florida Public Service Commission ("PSC") for the Systems or until the Systems are sold to a PSC licensed utility who will assess rates in accordance with applicable law.

Since some concerns about the authority for the rates and charges were raised by the customers responding to the noticing, staff requested additional documentation regarding the MH Park's and RV Resort's Prospectuses. The utility obtained two integrated

prospectuses for the parks from the DBPR. Integrated prospectuses contain the changes made through time. According to information provided to staff, the first Prospectus only set forth the prospect of a separate water charge. The second Prospectus provided for separate water and wastewater charges based on usage. Neither Prospectus mentioned a flat rate structure and usage rates have never been implemented in the parks. However, one customer responding to the noticing had provided an undated copy of the rate sheet in his Prospectus which indicated the $15 combined monthly flat rate, contrary to the two prospectuses.

It is unclear exactly when the existing rates and charges were established and whether the rates were established pursuant to any authorization by the DBPR. However, the plant operator stated that the $15 flat rate had been charged to the residents in the MH Park since he was first employed in December, 1997. He had no knowledge of any charges to the RV Resort residents. Based on this information, it appears that at least one flat rate was in place by December, 1997.

Rule 25-30.255(1), Florida Administrative Code, requires that each utility measure water sold on the basis of metered volume sales unless the Commission approves a flat rate service arrangement for that utility. In order to design appropriate metered volume (usage) rates, metered usage data needs to be established. As noted in Issue 2, the RV Resort has never installed lot meters and, while the MH Park has installed lot meters, they have never been used. Therefore, before metered usage data will be available, lot meters in the RV Resort will need to be installed and the existing lot meters in the MH Park will need to be in compliance with Part III, Rule 25-30, Florida Administrative Code. Staff recommends that the utility be put on notice that meter installation and compliance will be required at the time of its next rate proceeding. Staff would note that the utility has contacted the Division of Economic Regulation with regard to filing for a staff-assisted rate case.

For the above reasons, staff recommends that the utility continue charging its existing flat rates until all meters are installed and in compliance with Part III, Rule 25-30, Florida Administrative Code, and rate base has been established by the Commission in another proceeding. However, for tariff and annual report purposes, the existing flat rates must be allocated between water and wastewater service. Also, the MH Park and the RV Resort have different flat rates.

Staff reviewed the rates being charged to the lots in the MH Park and RV Resort to determine whether the rates were unduly discriminatory. The usage data during April, 2001, clearly indicate that the MH Park lots consume greater quantities of water than the RV Resort lots. The usage patterns are distinctive enough to conclude that charging the RV Resort lots 2/3 the flat rate charged the MH Park lots ($10 versus $15) does not appear to be unduly discriminatory. Also, the flat rates will change to usage rates once the remaining meters have been installed and usage rates can be established based on billing analysis. As noted previously, staff has confirmed that the utility has made initial contact with the Commission's Division of Economic Regulation for purposes of initiating a rate proceeding. Staff anticipates that the rate proceeding will be initiated shortly after the utility has been certificated and that a usage-based rate structure would result from that proceeding. Staff, therefore, recommends that the separate monthly rates of $10 for the RV Resort and $15 for the MH Park lots be continued until the installation of meters is complete and usage rates can be established in a future rate proceeding.

For the allocation between water and wastewater service, the utility provided an income statement prepared by Regulatory Consultants, Inc., for utility O&M expenses for the twelve month period ending May 31, 2000. According to the income statement, total water O&M expenses were $73,408 and total wastewater O&M expenses were $181,325. The resulting percentage allocation would be 29% for water and 71% for wastewater. Staff recommends that the Commission approve the utility's existing monthly rates for water and wastewater service, allocating 30% to water and 70% to wastewater for tariff purposes, until base facility charges and usage rates are established by the Commission in a subsequent rate proceeding.

Based on the allocation of costs between water and wastewater service and the separate rates for the MH Park and RV Resort, staff recommends the following flat rates be approved.

RESIDENTIAL SERVICE

Monthly	Total Flat Rate	Water Flat Rate	Wastewater Flat Rate
MH Park, per lot	$15	$4.50	$10.50
RV Resort, per lot	$10	$3.00	$ 7.00

Customer Deposits: The utility does not currently require customer deposits and Commission rules do not require a deposit. Staff recommends that no customer deposits be approved at this time.

Miscellaneous Service Charges: The utility does not currently have any miscellaneous service charges. However, the purpose of these charges is to recover the cost of providing these services. For this reason, staff believes that miscellaneous service charges are prudent and reasonable. Staff therefore, recommends that the Commission allow the utility to adopt the Commission's standard miscellaneous charges shown below:

Miscellaneous Service Charges

	Water	Wastewater
Initial Connection Fee	$15	$15
Normal Reconnection Fee	$15	$15
Violation Reconnection Fee	$15	Actual Cost
Premises Visit Fee	$10	$10

Service Availability Charges. The service area is built out, and the existing plants have little or no excess capacity. Meters have already been installed in the mobile home park. For these reasons, there does not appear to be a need for service availability charges except with respect to future meter installations at the RV park. However, since the requirement and time frame for installation of these meters will likely be assessed during the next rate proceeding, staff believes that a determination of a service availability charge, if any, for RV Park meter installation should be deferred until such proceeding.

Customer Billing. In its response to the noticing described in Issue 2, the questions posed by FLENS included confusion regarding utility billing. Since the rates are fixed and known, the utility does not bill directly for utility services. Pursuant to the terms of the Lease agreement, the Co-op is collecting the monthly fees on behalf of the utility. During the transition, the lot owners were being instructed to make payment to a number of different entity names and to mail them to a number of different addresses.

According to the utility's response to staff's inquiries about this matter, the billing situation has stabilized. Existing residents are now purported to be familiar with the monthly charges and where to mail their monthly payments. New residents are being

advised by Co-op management of the charge for utility services and where to direct their payments. Given the current flat rate structure, the utility does not believe it is cost effective to develop and mail invoices. As a consequence, Labrador does not have a billing form in its proposed tariffs.

Rule 25-30.335(1), Florida Administrative Code, requires that a utility render bills to customers at regular intervals. Therefore, staff recommends that the utility be required to either bill its customers monthly under the name of Labrador Services, Inc., or file for a waiver of Rule 30.335(1), Florida Administrative Code, within 60 days of the date of the order issued in this docket.

In summary, staff recommends that the Commission approve the utility's existing flat rates for water and wastewater service for the MH Park and RV Resort, based on the allocation set forth above. The utility should be put on notice that, at the time of its next rate proceeding, all meters will be required to be installed and in compliance with Part III, Rule 25-30, Florida Administrative Code, and appropriate base facility charges and usage rates will be established by the Commission. Staff recommends that the utility be allowed to charge the standard miscellaneous charges specified in the Staff Analysis. However, customer deposits and service availability charges should not be authorized at this time. The utility should be required to perform regular billing or file for a waiver of Rule 25-30.335(1), Florida Administrative Code, within 60 days from the date of the order resulting from this recommendation. The utility has filed proposed water and wastewater tariffs. The effective date of the utility's rates and charges should be the stamped approval date of the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code.

ISSUE 4: Should Labrador be ordered to show cause, in writing within 21 days, why it should not be fined for failure to file its 2000 annual report in apparent violation of Rule 25-30.110, Florida Administrative Code?

RECOMMENDATION: No. Show cause proceedings should not be initiated at this time. Staff further recommends that the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, should not be assessed. However, Labrador should be required to file its 2000 annual report by October 1, 2001. If Labrador fails to do so, staff will bring a show cause recommendation at that time. Moreover, the utility should be put on notice that penalties, if assessed, continue to accrue until such time as the annual report is filed and that the annual report must comply with Rule 25-30.110, Florida Administrative Code, including compliance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts (NARUC USOA), which requires the use of original costs to report the cost of the utility's assets when it was first dedicated to public service. (BRUBAKER, BRADY)

STAFF ANALYSIS: Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Annual reports are due from regulated utilities regardless of whether the utility has actually applied for or been issued a certificate. Requests for extension of time must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. A further extension may be granted upon a showing of good cause. Incomplete or incorrect reports are considered delinquent, with a 30 day grace period in which to supply the missing information.

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). Thus, any intentional act, such as the utility's failure to timely file its annual report, would meet the standard for a "willful violation." 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, Florida Administrative Code, 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. Section 367.161, Florida Statutes, authorizes the 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 Commission rule, order or provision of Chapter 367, Florida Statutes.

Moreover, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities, is $3 per day, based on the number of calendar days elapsed from March 31, or from an approved extended filing date, until the date of filing. Assuming a filing date of October 1, 2001, for the utility's 2000 annual report, staff has calculated that the total penalty would be $552.00 calculated as follows: $3.00 per day x 184 days = $552.00. The penalty, if assessed, would continue to accrue until such time as Labrador files its 2000 annual report. Staff notes that pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the Commission may, in its discretion, impose greater or lesser penalties for such noncompliance.

Staff believes that Labrador has shown good cause for its noncompliance with the requirement to file its 2000 annual report. As discussed in Issue 1, although the utility had been in existence since 1987, the owner believed the utility was subject only to the Florida Mobile Home Act, Chapter 723, Florida Statues, as long as the utility facilities were owned in conjunction with the mobile home community facilities. Once the option to purchase the utility facilities expired without being exercised, the utility immediately began procedures for filing for certificates of authorization. Had the utility not done so, staff would still be unaware of its existence. The delay in the completion of the application after the initial filing was due to circumstances beyond the control of the utility. Finally, the utility has been very cooperative with Commission staff in its efforts to come into compliance with Commission rules.

For the foregoing reasons, staff does not believe that the apparent violation of Rule 25-30.110(3), Florida Statutes, rises in these circumstances to the level of warranting the initiation of a show cause proceeding. Moreover, staff believes that the utility has demonstrated good cause for its apparent noncompliance. Therefore, staff recommends that the Commission not order Labrador to show cause, in writing within 21 days, why it should not be fined for its failure to file its 2000 annual report. Staff

further recommends that the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, should not be assessed.

Nevertheless, staff notes that annual reports are used to determine the earnings level of the utility; to determine whether a utility is in substantial compliance with the NARUC USOA, as well as applicable rules and orders of the Commission; to determine whether financial statements and related schedules fairly present the financial condition and results of operations for the period presented; and to determine whether other information presented as to the business affairs of the utility are correct for the period they represent.

Therefore, staff recommends that the utility be required to file its 2000 annual report by October 1, 2001. If Labrador fails to do so, staff will bring a show cause recommendation at that time. Moreover, the utility should be put on notice that penalties, if assessed, continue to accrue until such time as the annual report is filed and that the annual report must comply with Rule 25-30.110, Florida Administrative Code, including compliance with the NARUC USOA, which requires the use of original costs to report the cost of the utility's assets when it was first dedicated to public service.

ISSUE 5: Should Labrador be ordered to show cause, in writing within 21 days, why it should not be fined for failure to timely pay RAFs for 2000, in apparent violation of Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code?

RECOMMENDATION: No, show cause proceedings should not be initiated at this time. However, Labrador should be required to remit RAFs in the amount of $8,721.00 for 2000 by October 1, 2001, along with a statutory penalty in the amount of $2,180.25 and $610.47 in interest, for its failure to timely pay its 2000 RAFs. If Labrador fails to do so, staff will bring a show cause recommendation at that time. In addition, the utility should be put on notice that interest continues to accrue until such time as the 2000 RAFs are remitted. (BRUBAKER, BRADY)

STAFF ANALYSIS: Pursuant to Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each utility shall remit annually a RAF in the amount of 0.045 of its gross operating revenue. Pursuant to Rule 25-30.120(2), Florida Administrative Code, "[t]he obligation to remit the [RAFs] for any year shall apply to any utility which is subject to [the] Commission's jurisdiction on or before December 31 of that year or for any part of that year, whether or not the utility has actually applied for or been issued a certificate."

In failing to remit its 2000 RAFs, Labrador is in apparent violation of the above-referenced statutory and rule provisions. 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). Thus, any intentional act, such as the utility's failure to remit its 2000 RAFs, would meet the standard for a "willful violation." 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, Florida Administrative Code, 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. Section 367.161, Florida Statutes, authorizes the 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 Commission rule, order or provision of Chapter 367, Florida Statutes.

Staff believes that there are mitigating circumstances in this case which lead staff to recommend that show cause proceedings are not warranted at this time. As previously discussed, although the utility had been in existence since 1987, the owner believed the utility was subject only to the Florida Mobile Home Act, Chapter 723, Florida Statues, as long as the utility facilities were owned in conjunction with the mobile home community facilities. Once the option to purchase the utility facilities expired without being exercised, the utility immediately began procedures for filing for certificates of authorization. Had the utility not done so, staff would still be unaware of its existence. The delay in the completion of the application after the initial filing was due to circumstances beyond the control of the utility. Finally, the utility has been very cooperative with Commission staff in its efforts to come into compliance with Commission rules.

For the foregoing reasons, staff does not believe that the apparent violation of Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, rises in these circumstances to the level of warranting the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Labrador to show cause, in writing within 21 days, why it should not be fined for its failure to remit its 2000 RAFs.

Nevertheless, pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

> 1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
>
> 2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% per annum.

For the foregoing reasons, staff recommends that Labrador should be required to remit RAFs in the amount of $8,721.00 for 2000 by October 1, 2001. This amount is calculated based upon estimated combined annual revenues of approximately $193,800, based

on the utility's current monthly flat rates. Additionally, the utility should be required to remit a statutory penalty in the amount of $2,180.25 and $610.47 in interest, calculated in accordance with Rule 25-30.120(7)(a), Florida Administrative Code, for its failure to timely pay its 2000 RAFs. If Labrador fails to pay its 2000 RAFs along with the requisite penalties and interest by October 1, 2001, staff will bring a show cause recommendation at that time. In addition, the utility should be put on notice that interest continues to accrue until such time as the 2000 RAFs are remitted.

ISSUE 6: Should the Commission acknowledge the Co-op's withdrawal of its March 15, 2001, complaint against Labrador for apparent violation of Rule 25-30.355(1), Florida Administrative Code?

RECOMMENDATION: Yes. (BRADY, WALDEN, BRUBAKER)

STAFF ANALYSIS: On March 15, 2001, a formal Complaint was filed in this docket on behalf of the Co-op which alleged that the utility had failed to make a full and prompt acknowledgment and investigation of all customer complaints and to respond fully and promptly to all customer requests as required by Rule 25-30.355(1), Florida Administrative Code. The Complaint contained two issues.

The first issue alleged that the utility had subjected its customers to unbearably offensive odors emanating from the wastewater treatment plant. Attached to the Complaint was a February 21, 2001, notice to Labrador from the Co-op's legal counsel stating that the unbearable odor constituted a non-monetary default of the Lease agreement between the Co-Op and Labrador. The provisions of the Lease are described in more detail in Issue 2 under "Proof of Ownership." The Co-op's legal counsel's notice to Labrador attached a copy of the Co-op member's original February 15, 2001, complaint which bore 145 signatures.

The second issue alleged that the utility currently owed the Co-op $28,371.69 in delinquent rental amounts and taxes for the years 1999 and 2000. Attached to the Complaint was a copy of a March 15, 2001, demand for payment by the Co-op's legal counsel which the Complaint alleged had not yet been paid. As a consequence of these issues, the Co-op had serious concerns about the utility's financial ability to make any necessary modifications or repairs to the wastewater treatment plant as well as concerns that the utility lacked the financial ability to otherwise properly operate and maintain the facilities.

Despite the proof of noticing described in Issue 2, the Complaint indicated that the President of Co-op's Board of Directors was unaware, until March 8, 2001, that Labrador had filed an application for original certificates with the Commission. The Complaint requested that the Co-Op's issues be consolidated into the extant docket and be investigated by staff.

On March 21, 2001, staff contacted legal counsel for the utility who was unaware of the issues or the formal Complaint. By letter dated March 23, 2001, staff requested that the utility's attorney review the Complaint and respond accordingly. By letter dated March 26, 2001, staff informed the FDEP wastewater compliance

staff of the environmental issue in the Complaint. The FDEP was also unaware of any problems. According to the FDEP's records, the utility had no outstanding complaints nor had the FDEP issued any citations or other notices of corrective action. However, the FDEP indicated its willingness to perform an on-site investigation of the matter.

On April 26, 2001, the utility's attorney filed an answer to the Complaint on behalf of Labrador (Answer). The Answer corrected the name and address of the utility and stated that Labrador was without knowledge as to the allegations in the Complaint and denied any wrongdoing. With regard to the first issue, the Answer acknowledged that there had been an upset in the spring of 2000 due to a blower failure which caused the wastewater treatment bacteria to die. However, the Answer indicated that Labrador had responded immediately and in coordination with the FDEP. As a consequence, no citation or fine was imposed by the FDEP. The Answer alleged that the wastewater treatment plant had operated smoothly since that time. The blower failure incident is described in more detail in Issue 2.

In response to the Co-op's Complaint, the Answer indicated that the wastewater treatment plant was inspected by the FDEP during peak operating hours while the community was at high seasonal occupancy and no odor was detected. In addition to the FDEP inspection, Labrador engaged the services of an engineering consultant to inspect the plant in consultation with the FDEP. The Answer indicated that the engineering consultant did not observe any odors during the inspection, either. At the time the Answer was filed, Labrador was waiting for the inspection report from the FDEP.

On April 30, 2001, the FDEP issued its inspection report which confirmed no detection of odor. However a number of relatively minor deficiencies were observed during the inspection. Labrador responded to the FDEP's notice of deficiencies on May 17, 2001. In its response, Labrador indicated that all the deficiencies had been corrected or would be corrected as soon as practicable.

With regard to the second issue, the Answer indicated that Labrador was current in all payments to the Co-op. Attached to the Answer was Labrador's March 28, 2001, response to the Co-op's March 15, 2001, demand for payment. Labrador had enclosed a check for the full amount demanded despite the fact that the Estate had not yet determined whether or not any of the amounts had been previously paid. In its Answer, Labrador requested an accounting

from the Co-op as to how the amounts were determined, as it had originally requested in its March 28, 2001, payment.

With regard to a demonstration of financial ability to make necessary modifications or repairs to the wastewater treatment plant, the Answer indicated that such documentation had been provided to Commission staff and, as such, the concern in the Complaint was unfounded. The information provided to staff is described in Issue 2 under "Financial Ability." Finally, as proof that the notice was given to customers of the utility, the Answer cited the number of customers who had filed responses with the Commission.

On May 10, 2001, the Co-op filed a Notice of Withdrawal of Complaint (Withdrawal). The Withdrawal was based on the utility's assurances in its Answer that it intends to commit its financial resources, as needed, to maintain the utility and comply with applicable laws. The Withdrawal was also based on the utility's response to the allegations of odor problems described in its Answer. The Withdrawal acknowledged that the Co-op is not currently experiencing significant odor problems which it hopes is attributable to a more stable state of affairs now that Ms. Sylvie Viau has been appointed to oversee the Estate.

Since the Complaint has been withdrawn, staff recommends that the Commission take no further action in this matter and acknowledge the withdrawal of the complaint.

ISSUE 7: Should this docket be closed?

RECOMMENDATION: No. If no timely protest is received to the proposed agency action issue, upon the expiration of the protest period a Consummating Order should be issued. The docket should remain open pending receipt of the utility's 2000 annual report and 2000 RAFs including penalties and interest. Upon receipt and verification of the annual report and RAFs, the docket should be administratively closed. (BRUBAKER)

STAFF ANALYSIS: If no timely protest is received to the proposed agency action issue, upon the expiration of the protest period a Consummating Order should be issued. The docket should remain open pending receipt of the utility's 2000 annual report and 2000 RAFs including penalties and interest. Upon receipt and verification of the annual report and RAFs, the docket should be administratively closed.

ATTACHMENT A

WATER AND WASTEWATER SERVICE TERRITORY
FOR
LABRADOR SERVICES, INC.
IN
PASCO COUNTY, FLORIDA

FOREST LAKE ESTATES MOBILE HOME PARK
and
FOREST LAKES R.V. RESORT

PARCEL A:

A tract of land lying in Sections 5 & 8, Township 26 South, Range 22 East, Pasco County, Florida. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Begin at the Southwest corner of said Section 5, also being the Northwest corner of said Section 8, thence North 00°35'43" East along the West boundary of said Section 5, a distance of 1,747.18 feet to the South right-of-way line of Frontier Drive; thence South 89°55'21" East along said right-of-way line a distance of 50.00 feet to the East right-of-way line of Frontier Boulevard; thence North 00°35'43" East along said East right-of-way line of Frontier Boulevard a distance of 690.21 feet; thence continue along said East right-of-way line North 00°36'06" East a distance of 357.18 feet to the Southerly right-of-way line of State Road 54; thence Northeasterly along said right-of-way line and a curve to the left having a radius of 5,779.58 feet, a chord bearing and distance of North 71°56'58" East 684.96 feet; thence along the arc of said curve a distance of 685.36 feet; thence continue along said right-of-way North 68°33'08" East a distance of 381.15 feet; thence continuing along said right-of-way line North 68°35'45" East a distance of 1,067.00 feet; thence South 00°01'19" West a distance of 1,096.12 feet; thence South 00°00'38" East a distance of 3,473.69 feet; thence North 89°55'55" West a distance of 2,097.29 feet to the West boundary line of said Section 8; thence North 01°04'30" East along said West boundary a distance of 1,030.84 feet to the POINT OF BEGINNING.

Containing 60.05 acres.

AND

PARCEL B:

Township 25 South, Range 22 East
Section 32

The Southeast 1/4 of the Southwest 1/4 of said Section 32, Township 25 South, Range 22 East in Pasco County, Florida.

ALSO

The South 1/2 of the Northeast 1/4 of the Southwest 1/4 of said Section 32.

LESS

That part thereof within any railroad right-of-way.

Containing 197.00 acres.