

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030443-WS

In the Matter of:

APPLICATION FOR RATE INCREASE
IN PASCO COUNTY BY LABRADOR
UTILITIES, INC.



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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 9

BEFORE: CHAIRMAN BRAULIO L. BAEZ
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER RUDOLPH "RUDY" BRADLEY
 COMMISSIONER CHARLES M. DAVIDSON

DATE: Tuesday, December 7, 2004

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
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FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 MARTIN FRIEDMAN, ESQUIRE, Rose Law Firm, representing
3 Labrador Utilities, Inc.

4 KATHRYN G.W. COWDERY, ESQUIRE, representing Forest
5 Lake Estates Co-Op, Inc.

6 STEVE REILLY, ESQUIRE, represent the Office of
7 Public Counsel.

8 COCHRAN KEATING, ESQUIRE, DENISE GREENE, and TRICIA
9 MERCHANT, representing the Florida Public Service Commission
10 Staff.

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CHAIRMAN BAEZ: Item 9.

MS. GREENE: Commissioners, Item 9 is staff's recommendation on Labrador Utilities, Inc.'s requested rate increase. Labrador is going from flat rates to measured consumption. Mr. Marty Friedman is here representing the utility, and Mr. Steve Reilly is also here representing the Office of Public Counsel. Forest Lake Estates Co-op has been granted intervention in this docket, and Kathryn Cowdery is here on their behalf. Staff is available to answer any questions you may have.

CHAIRMAN BAEZ: Thank you.

Mr. Friedman, it is your petition.

MR. FRIEDMAN: Thank you, Chairman Baez, Commissioners. My name is Martin Friedman of the law firm of Rose, Sundstrom and Bentley. Our firm represents Labrador Utilities, Inc., and we just three issues in the staff recommendation that I would like to address this morning.

The first is the used and useful calculation which the staff has made with regard to the wastewater treatment plant, which is basically to reduce the used and usefulness of the wastewater treatment plant by about 20 percent. This recommended adjustment by the staff is largely based upon the fact that the co-op, which is also the owner of the mobile home park, owns a parcel of property of approximately 11.6 acres,

1 and that property apparently is zoned commercial and has
2 remained vacant since the inception of the park. And largely
3 based upon that development potential of that commercial site,
4 the staff is recommending that there is a reduction in the
5 wastewater treatment plant used and usefulness.

6 We have contended that the service area is
7 effectively built out and that, therefore, it is appropriate
8 under the Commission's rules that the used and usefulness for
9 the wastewater treatment plant be 100 percent. **The staff**
10 correctly points out that in making a used and useful
11 determination it is not purely the mathematical calculation. I
12 mean, that is the easy part about the wastewater treatment
13 plant. The rule has got a calculation that you have just got a
14 numerator and a denominator and it spits out a number.
15 However, the rule recognizes that there are situations that
16 require that the Commission look beyond the mere mathematical
17 calculation, and one of those factors is whether the service
18 area is built out.

19 As pointed out by the staff, the co-op owns this
20 land, and the co-op is also the owner of the mobile home park,
21 and this land currently is being used as an amenity to the park
22 residents to allow them to park their RVs on the property when
23 their RVs aren't being in use. There is absolutely no
24 indication that the co-op intends to develop this property, and
25 the utility should not be penalized merely because the co-op

1 has decided to use this property as an RV storage, which
2 doesn't create any wastewater demand.

3 As you know, wastewater utilities are required by DEP
4 to file capacity analysis reports. In the capacity analysis
5 reports that Labrador Utilities has filed with DEP and which
6 DEP has accepted, there is no indication in those reports of
7 any potential demand for wastewater service attributable to
8 this particular piece of property.

9 Lastly, if you look at the magnitude of the
10 adjustment, the staff says basically that there are 43,329.6
11 gallons per day of excess capacity to serve this 11.6 acre
12 parcel of property. That amounts to 229.25 ERCs, or 19.76 ERCs
13 for every acre of land in that piece of property. And I would
14
15 allowed on that piece of property that would allow that sort of
16 density. And so even if you were to accept the staff's
17 mathematical calculation and attribute some capacity to that
18 commercial site, we believe that that amount should be less.

19 We steadfastly believe that because the property is
20 not being utilized as a commercial property, it is being
21 utilized as an amenity for the parking of RVs, that the utility
22 shouldn't be penalized and we suggest that the service area
23 would thus be built out and we should not be penalized for the
24 fact that that piece of property is not going to be developed.

25 The second issue which I would like it address is the

1 land lease. The utility leases the land upon which its
2 wastewater, water treatment plants, and effluent disposal
3 facilities are located at a cost of \$42,000 per year. The
4 staff has recommended reducing that amount to \$25,920.

5 Now, keep in mind that this is an expense which the
6 utility has to pay to the co-op, which is a customer of the
7 utility, whether or not that entire amount is approved by you.
8 It is a hard dollar out of pocket that the utility will have to
9 expend in the amount of \$16,080 a year, and that is without any
10 CPI increase, for the next 94 years, the life of those leases.
11 Which is over \$2,300,000 that the utility will have to really
12 physically pay out for which it will not be able to recoup any
13 in its rates if you agree with the staff's recommendation.

14 The negotiation, the original negotiation of this
15 lease was between the prior owner of the utility and the co-op,
16 an arm's-length transaction. These parties were not related
17 parties. It was an arm's-length transaction. And you would
18 expect, under those circumstances, that the former owner
19 negotiated the absolute best price he could get to lease these
20 properties. And there is no reason to believe that he didn't
21 do so. And that negotiated price was the prudent action that
22 was taken by the former owner at that particular time. And, I
23 don't think that we should now years later revisit that.

24 And if I might quote from the Bible on utility
25 regulation, Mr. Phillips' book, The Regulation of Public

1 Utilities, where he addresses this type of issue, he states,
2 "Prudence thus involves foresight, not hindsight. Decisions
3 must be judged as to their reasonableness at the time they were
4 made and not after the fact." And then he goes on to quote, "A
5 prudence review must determine whether the company's actions,
6 based on all that it knew or should have known at the time" --
7 at the time -- "were reasonable and prudent in light of the
8 circumstances that then existed. It is clear that such
9 determinations may not properly be made on the basis of
10 hindsight judgments, nor is it appropriate for the Commission
11 merely to substitute its judgment for the judgments made by the
12 company's managers."

13 When the utility purchased -- when Labrador Utilities
14 purchased this system from the former owner, it was cognizant
15 of Commission Order Number PSC-01-1483-PAA-WS. And in that
16 order this Commission stated the lease is for the land upon
17 which the utility facilities are located for a term of 99
18 years. The total rental amount is \$3,500 per month with
19 provisions for indexing based upon the consumer price index.
20 The company reviewed that order, and certainly the Commission
21 at that point was cognizant of the amount of the rent and the
22 length of the term.

23 Now, since the co-op represents a large number of the
24 customers, the utility has attempted to negotiate a more
25 favorable rental amount with the co-op, and thus far the co-op

1 has refused those offers to attempt to negotiate a downward
2 adjustment. And, as a result, we think that this Commission
3 should prudently accept the negotiated price at the time that
4 the former owner leased the property, and include back into the
5 rates the \$16,080 that the staff has recommended be excluded.

6 The final issue which I would like to address is that
7 the wastewater interim rates exceeded the interim rates, and
8 the amount of the wastewater rates should offset the interim
9 rates for water. In other words, the interim wastewater rates
10 there is no refund. There is a refund of water rates. And we
11 would suggest to you that the customer base is virtually
12 identical. Every water customer is virtually a wastewater
13 customer. And that under the Commission's methodology, we
14 believe that it is prudent policy for this Commission -- and I
15 will cite you some precedence in a minute -- that you reduce
16 any potential refund in the water rates by the amount that the
17 wastewater rates were exceeded. So, in other words, we think
18 an offset would be appropriate.

19 And the Commission has done that on occasion. The
20 last time I found was the -- there is a Pennbrooke Utilities
21 rate order issued in June of 2001 where the Commission found
22 that a reallocation of the revenue requirement between the
23 water and wastewater systems had the same effect on customers
24 as a reduction in one system and an increase in the other. In
25 that case the Commission decided that it would not reduce the

1 water rates even though typically the calculation showed a
2 reduction was necessary, and added that to the wastewater
3 rates.

4 That was also done in the Lindrick Service Company
5 case in 1999, and also in '97 in an earlier Lindrick Service
6 Company case. And then in Indiantown -- in a 1996 case for
7 Indiantown Company, the Commission looked at it and said the
8 common service area, and for the most part their common
9 customers, therefore, it was appropriate to net the revenues.
10 And so we would suggest that the revenues from the wastewater
11 rates should offset the overearnings in the water rates.

12 Thank you.

13 CHAIRMAN BAEZ: Thank you, Mr. Friedman.

14 Mr. Reilly, I'm not sure if I should let Ms. Cowdery
15 go first.

16 MR. REILLY: She can go first. And I was even hoping
17 to play a little follow-up with staff, if they would defend the
18 PAA, and I wanted to lend some comments probably in support of
19 staff's adjustments at that time. But if you want me to go
20 first, then I will.

21 CHAIRMAN BAEZ: Ms. Cowdery, go ahead.

22 MS. COWDERY: Commissioners, I'm Kathryn Cowdery
23 with Ruden McClosky representing Forest Lake Estates Co-op,
24 Inc. Forest Lake Estates Co-op, Inc. consists of 268
25 shareholders who are also residents of the mobile home park.

1 The mobile home park has 892 lots, just to give you a little
2 perspective there. The co-op does own the Forest Lake RV
3 Resort, which is a bulk service customer of the utility.

4 I will address a few comments of Mr. Friedman overall
5 with regard to the staff recommendation. The co-op has no
6 position, no specific position as to the technical computations
7 that went into doing the rates. We would like to commend staff
8 or its work on the case, especially with regard to the
9 requirements that the utility take a look at the meters, do
10 testing, submit reports to the Commission? This was a big
11 concern of customers and we are very glad that it is being
12 addressed.

13 Just a few comments, particularly with regard to Mr.
14 Friedman's suggestion that it might be appropriate to offset
15 the refunds between water and wastewater. Certainly what staff
16 is proposing is within the law. It is something that is within
17 the discretion of the Commission. It is certainly consistent
18 with past policy of the Commission. And in this particular
19 case, you know that the co-op intervened because of the great
20 increase in interim rates that it was experiencing, that it was
21 going from a flat rate, combined rate of \$2,740 a month to
22 \$7,145.92 a month. This was during a time period when it had
23 11 residents at the RV resort. Their total revenue in rent for
24 those months was \$1,650 per month. They had no opportunity to
25 increase their revenues during this time period because any

1 kind of annual leases at the RV resort are renewed in November,
2 so this has been done now. But at that time there was no way
3 to get that revenue to pay for these bills, it had to just come
4 out of other places.

5 At this point in time there is a water refund
6 recommendation. If I have added everything up correctly, I
7 think \$890.38, is that what was being refunded. And if you
8 look at the staff's proposed rates which are now going to the
9 base facility charge and gallonage, the combined base facility
10 charge for the RV resort per month will be \$918.50. So that
11 puts us back into a more reasonable position. If we had that
12 kind of thing during the summer time, when you add the
13 gallonage for 11 customers on top of that, you are not going to
14 come near more than \$7,000 for your monthly rate for that RV
15 co-op.

16 So looking at the big picture, I think, keep in the
17 circumstances of this case, you know, looking at the water
18 refund separately from the wastewater revenues, I think you are
19 looking at a just, fair, and reasonable situation for these
20 customers.

21 I really don't have any particular comments with
22 regard to the other two points raised by Mr. Friedman. If you
23 have any questions, I would be glad to address them. Other
24 than to say that when you look back at the original sale from
25 Mr. Henry Viau, the former owner, to the co-op, you were

1 looking at one big deal. You were looking at one transaction,
2 and the lease was part of that transaction. And I don't know
3 if you can make the assumptions that Mr. Friedman is
4 suggesting. You could also look at the fact that the
5 management of Utilities, Inc. knew what it was getting into
6 when it purchased the utility from Mr. Viau. Thank you.

7 CHAIRMAN BAEZ: Mr. Reilly.

8 Thank you, Ms. Cowdery.

9 MR. REILLY: Thank you. I can offer a few comments
10 in opposition to the arguments made by Mr. Friedman. First, of
11 course, this PAA is proposing a 183 percent increase in water
12 revenue and a 151 percent increase in wastewater revenues. The
13 customers have not made a final decision as to what their
14 response is going to be to this PAA. I'm going to be
15 personally meeting with them. Obviously to the extent that
16 this Commission in any way changes its PAA to make it even a
17 worse deal for the customers, it makes my job a lot more
18 difficult meeting with them concerning having any protests. So
19 I would say that this all has to be looked at in a total
20 package.

21 Now, Mr. Friedman said there is just no reason to
22 believe that the prior owner didn't negotiate the best deal he
23 could when he established this lease payment. I would suggest
24 that really it was the company's burden to establish the
25 reasonableness of this lease payment. Staff repeatedly asked

1 the company to provide that documentation, to provide the
2 original cost information, and in lieu thereof to provide an
3 appraisal that would be the basis to establish the
4 reasonableness, and the company continued to refuse to provide
5 that documentation.

6 I mean, it would have been well within staff's
7 discretion to just say you failed to meet your burden, you
8 don't get anything. But so that they would not have that
9 result, staff went and made the case for the company, went to a
10 lot of trouble, and what seemed to be a fairly reasonable
11 methodology to establish the value and calculated, you know,
12 what the reasonable rent should be.

13 I would disagree with Mr. Friedman that there is no
14 reason to believe that the prior owner did not negotiate a fair
15 price because you look at the situation, you have to look at it
16 in the total package. He exacted from the co-op a certain
17 dollar value for the land and the entire park. But then when
18 he had to come back, since his utility assets, since they
19 didn't elect to buy the utility assets, he was back in the
20 position of negotiating a lease payment from the very people
21 that owned the land.

22 It was a sole source provider. Anytime you get
23 involved in a negotiation with a sole source provider, your
24 bargaining position with that sole source is obviously very
25 compromised. And it might be that the co-op, perhaps, didn't

1 get the best deal in the world as far as buying the park in the
2 first place, and perhaps exacted some small measure of
3 rebalancing of the deal when they were in a sole source
4 negotiating position. So I think there is something about the
5 negotiations that would imply that, in fact, something less
6 than a fair market value would be produced by those
7 negotiations.

8 Also please keep in mind from an equitable
9 standpoint, as Ms. Cowdery pointed out, he just wants to cherry
10 pick these little things and say give us this. You have to
11 understand this is the same utility, and this is another one of
12 these utilities that came in and got 31 percent of the rate
13 base free. This is one of those negative acquisition
14 adjustment cases where Utilities, Inc. paid \$800,000 for a rate
15 base of \$1,151,000. So this the company who is earning a
16 return on 31, almost one-third of its rate base it has no
17 investment in.

18 So I would strongly urge that in staff's efforts to
19 try to somehow moderate this incredible rate increase for these
20 customers that you not make it -- you know, that I think those
21 were reasonable efforts, and you certainly should not set aside
22 this effort. If you had left the company to its devices, it
23 might well have ended up with nothing. So I would urge that
24 you not take this PAA and make it even less desirable for the
25 customers. Thank you.

1 CHAIRMAN BAEZ: Thank you, Mr. Reilly.

2 Commissioners, questions? No questions?

3 Commissioner Deason.

4 COMMISSIONER DEASON: Staff, Mr. Friedman indicated
5 some cases that he asserted represented the precedent for the
6 Commission offsetting refunds, interim refunds. What has been
7 the Commission's practice, and what have we done and what has
8 been the Commission's rationale for doing one or the other?

9 MS. MERCHANT: Commissioners, based on my experience,
10 I have been doing interim refunds and interim calculations,
11 setting interim rates and calculating interim refunds. We
12 calculate them separately for water and wastewater for the
13 setting of interim rates, and then we calculate the refund
14 separately in a rate case for purposes of determining what the
15 refund will be. We have not combined them.

16 Several of these cases that he mentioned are
17 overearnings investigations. When you hold revenues subject to
18 refund in an overearnings investigation you are also using the
19 interim statute. It is called an interim decrease. But what
20 we are doing in that -- when we come up with the final
21 recommendation in that case, we are not raising rates. Many of
22 those times we are deciding not to do anything with the rates,
23 and that is when the Commission has netted overearnings and
24 underearnings together to determine whether or not to change
25 rates. So that is real common that the Commission has done

1 that, but not for purposes of determining what the interim
2 refund would be in a rate case. It's consistent with the
3 methodology used to determine the interim rate increase.

4 COMMISSIONER DEASON: No further questions.

5 CHAIRMAN BAEZ: No more questions, Commissioners. We
6 can entertain a motion.

7 COMMISSIONER DEASON: I move approval of staff's
8 recommendation.

9 COMMISSIONER DAVIDSON: Second.

10 CHAIRMAN BAEZ: Moved and seconded. All those in
11 favor say aye.

12 (Unanimous affirmative vote.)

13 CHAIRMAN BAEZ: Thank you all. Thank you, Staff.

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STATE OF FLORIDA)

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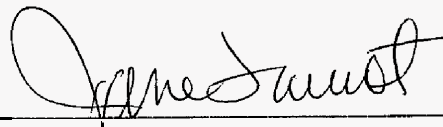
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 16th day of December, 2004.



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