

State of Florida



Public Service Commission

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

DATE: January 10, 2007

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Joyce Edwards, Lingo, Rendell)
Office of the General Counsel (Jaeger)

RE: Docket No. 060262-WS – Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc.

AGENDA: 01/23/07 – Regular Agenda – Proposed Agency Action Except For Issue 4 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Tew

CRITICAL DATES: 01/23/07 (5-Month Effective Date (PAA Rate Case))

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060262.RCM.DOC

Case 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 the Public Service Commission (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.

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060257-WS	Cypress Lakes Utilities, Inc.
060258-WS	Sanlando Utilities, Inc.
060260-WS	Lake Placid Utilities, Inc.
060261-WS	Utilities Inc. of Pennbroke
060262-WS	Labrador Utilities, Inc.
060285-SU	Utilities Inc. of Sandalhaven

This recommendation 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 PAA procedure. After review of the Minimum Filing Requirements (MFRs), 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, the 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, the Commission staff held a customer meeting in Zephyrhills, FL. 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 staff with a petition with approximately 750 names opposing the rate increase. 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

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.

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\$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. At the scheduled agenda conference, the Commission approved revenue requirements of \$157,075, or 183.12% for water and \$324,000, or 150.98% for wastewater. The rates associated with the Commission approved revenue increases went into effect on February 3, 2005.

On November 13, 2006, staff conducted a conference call with Labrador to discuss concerns with data supplied by the utility. Staff discussed two major concerns: 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, staff is still unable to rely on this data to set rates.

This recommendation addresses the denial of a final revenue increase, the refund of interim rates and a Show Cause for failure to comply with a Commission order. The Commission has jurisdiction pursuant to Section 367.081, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should Labrador's request for a rate increase be approved?

Recommendation: No. The data supplied by Labrador is insufficient to determine a 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. Labrador has not presented credible evidence regarding the number of kgal actually sold during the 2005 test year, and that its 2005 and 2006 kgal sold data are irreparably flawed. Because the utility has not met its burden to prove that a rate increase is warranted, staff recommends that the utility's request for a rate increase in the instant case should be denied. (Edwards, Lingo, Joyce, Rendell)

Staff Analysis: Staff's analysis focuses on two major areas of this case: engineering data and billing determinants.

Engineering Data

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. For example: 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. In addition, 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, staff considered this data to be erroneous.

In a data request, dated October 2, 2006, staff requested an explanation regarding the questionable water and wastewater flows data. In addition, staff requested the F-9 and F-10 Schedules be reconciled with its Annual Reports.

On October 30, 2006, staff received the utility's response to the October 2, 2006 data request. In its response, 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 it was required to test all of its customers' water meters. Further, Labrador stated in its response that it tested all customer meters and replaced 37% of the meters because the meters were found to be inaccurate. 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 also replaced since 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 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 uncalibrated and was reading high; however, Labrador stated it did "not know the magnitude of the error." It 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 will 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 MRFs, 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 staff, the utility stated it did not know the level of meter error. However, it suggested staff use the January and February 2006 wastewater flow data as a comparison with the wastewater flow data during the same period of 2005. 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 which 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. The utility stated that due to the wastewater treated being in excess of the water sold in late 2005, it was determined that the prior owner had placed the flow meter at a location such that it measured not only flow to the plant but, recirculated flow. It was anticipated that relocating the flow meter would provide more accurate flow data; however, when the wastewater flows continued to exceed the water sold, the utility had the flow meter calibrated. 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 stated it had complied with Order No. PSC-04-1281-PAA-WS, p. 4, in which the Commission required Labrador to test all of its customers' water meters by June 30, 2005,

and make any necessary repairs or adjustments. In addition, the utility indicated it had replaced over three hundred meters (about 37% of the meters) during the test year because the meters were found to be inaccurate. However, in its report to staff, the utility showed that it did not test all of the meters. Therefore, Labrador appears to be in direct violation of the mandate of the order. This will be addressed in Issue 4. Further, staff does 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.

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. Initially, the utility stated the RV park's water meter appeared to be reading about 10.5% low and therefore replaced it 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 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%). Staff does not believe that it can use this new data as staff believes this data is also erroneous and cannot be used to calculate used and useful (U&U) percentages. 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 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 uncalibrated 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 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. Staff did not find the new information to be compelling, as discussed in the *Billing Determinants* section below.

The data contained in the utility's MFRs, monthly DEP reports, and the Annual Report do not match. Therefore, staff considers the accuracy of the data questionable. Staff, via a data request, tried to determine which data source may be correct and should or could be used to calculate the U&U percentages. Although the utility is required by Rule 25-30.110 (2), F.A.C., to reconcile its MFRs with the Annual Reports, in Labrador's response, it stated that it did not attempt to reconcile the MFRs with the Annual Reports because it serves no useful purpose.

Based on the above analysis, staff has concluded that the inconsistencies of the data found in the utility's MFRs, Annual Reports, and DEP monthly reports make all the data unusable. In addition, the utility stated the flow data was incorrect and admitted that it did not

know the magnitude of the error. Staff has 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 staff cannot make corrective adjustments in this case. Therefore, staff believes that it can not 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.

Billing Determinants

Test Year Water Kgals 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, the Commission found that "this error rate could be indicative of a system-wide problem."² Consequently, the Commission 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 have testing complete 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 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 the Commission.⁴ The test results are summarized in Table 1 below.

TABLE 1

FINAL REPORT -- METER TEST FLOW RESULTS: METERS REPLACED							
Meter Test Results	2005 Qtr 1	2005 Qtr 2	2005 Qtr 3	2005 Qtr 4	Total 2005	2006	Total Meters Replaced
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, there were 141 meters (or 16 percent of the utility's 900 total meters) which were tested and found to be defective due to slow or fast readings. The 16 percent

² Order No. PSC-04-1281-PAA-WS, p. 4.

³ Id.

⁴ See Order No. PSC-04-1281-PAA-WS.

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 (or 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, staff learned 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:

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. . . .

The Commission expressed concern during the utility's last case that defective meters could be a system-wide problem. Staff believes 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" is of concern to staff. Therefore, staff believes the test year kgal sold data is irreparably flawed and inappropriate for ratemaking.

Staff has an additional concern with the kgal sold data for 2005: Labrador's 2005 test year in the instant case is coincident with the year the revenue and rate structure changes from the utility's last case went into effect. In the utility's last rate case, the Commission granted a 183 percent increase for the water system and a 151 percent increase for the wastewater system. In addition, the 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.

Staff believes 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 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 refile 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 staff disagrees that there is no basis to question the 2005 consumption data, staff agrees that refileing with 2006 data would serve no useful purpose. As discussed above, staff believes that the 2005 kgal sold data is 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. Staff believes that setting noncompensatory rates would further perpetuate the frequency of rate case filings by the utility. Therefore, 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, staff is unable to determine the appropriate number of kgal sold by the utility during the test year. This renders staff 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 recommended rates. In Section 367.081, F.S., the Commission is charged with the statutory responsibility of setting rates which are fair and reasonable. It is not staff’s responsibility to make the utility’s case for it. 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, staff believes the utility has failed to meet its burden in this case. Therefore, staff recommends that Labrador has not presented credible evidence regarding the number of kgal actually sold during the 2005 test year, and that its 2005 and 2006 kgal sold data are irreparably flawed.

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).

Conclusion

In conclusion, the data supplied by Labrador is insufficient to determine 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. Cresce, 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 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")].

In a rate case filed by the utility, 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, the Commission acts within its discretionary authority in denying that petition. City Gas Company of Florida v. Florida Public Service Commission, 501 So. 2d 580 (Fla. 1987). Because of the aforementioned inconsistent data, staff believes the utility has not carried its burden of proof for the Commission to determine just, reasonable, compensatory, and not unfairly discriminatory rates. As such, staff recommends that Labrador's request for a final revenue increase be denied in its entirety in this instant case.

Issue 2: What are the appropriate water and wastewater rates?

Recommendation: Labrador’s appropriate rates should be the rates in effect prior to the approval of interim rates. The utility should file tariff sheets to reflect the appropriate rates. The appropriate rates are listed in staff’s analysis. (Joyce)

Staff Analysis: The utility has not met its burden of proof for the Commission to determine just, reasonable, compensatory, and not unfairly discriminatory rates. Therefore, Labrador’s appropriate rates should be the rates in effect prior to the approval of interim rates. The utility should file tariff sheets to reflect the appropriate rates. The appropriate rates are listed below:

Residential – Water

Base Facility Charge:

5/8” x 3/4”	\$6.28
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 – 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

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 (Per 1,000 gallons)	\$3.14

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Issue 3: Should Labrador be required to refund any interim revenues collected?

Recommendation: Yes. The interim revenue increase granted in Order No. PSC-06-0668-FOF-WS, should be refunded with interest, pursuant to Rule 25-30.360, Florida Administrative Code (F.A.C.). (Joyce)

Staff Analysis: Pursuant to Section 367.082, Florida Statutes, 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 order by the 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. 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 being collected from the approved interim rates granted in Order No. PSC-06-0668-FOF-WS. By letter dated August 15, 2006, Labrador filed with the Commission 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 staff's recommended rates in Issue 2 are approved. Therefore, the total amount of the interim refund cannot be determined at this time.

As discussed in Issue 1, the data supplied by Labrador is insufficient to determine an appropriate revenue requirement and set reasonable rates. Therefore, the utility has not met its burden of proof for the Commission to determine just, reasonable, compensatory, and not unfairly discriminatory rates. As such, Labrador should be required to refund all interim revenues collected pursuant to Order No. PSC-06-0668-FOF-WS.

Pursuant to Rule 25-30.360(7), F.A.C, Labrador should be required to file the appropriate refund reports. Pursuant to this rule, the amount of money to be refunded and how that amount was computed will be included in these reports.

Issue 4: Should Labrador Utilities, Inc. be ordered to show cause in writing, within 21 days, why it should not be fined for its apparent failure to 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, (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?

Recommendation: Yes. Labrador Utilities, Inc. should be ordered 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. The order to show cause should incorporate the conditions stated below in the staff analysis. (Jaeger, Joyce, Rendell)

Staff Analysis: Pursuant to Order No. PSC-04-1281-PAA-WS (PAA Order), the 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, 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, staff notes 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 to staff 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), 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, 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, Florida Statutes. In Commission 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.

Staff believes that the circumstances in this case are such that show cause proceedings should be initiated. Staff is 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. Staff notes that in the Order Approving Settlement Agreement Filed by Utilities, Inc.⁶ (Settlement Order), 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. Staff believes that the continued pattern of disregard for the Commission's rules, statutes, and orders warrants more than just a warning. Accordingly, staff recommends that Labrador 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, staff believes there are mitigating circumstances. A significant portion of Forest Lake Estates residents are present only during the winter, and by letter dated July 15,

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.

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 2 and ½ 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 staff believes that 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, staff believes that 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, staff does 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 recommends that Labrador 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.

As stated above, staff believes that the continued pattern of disregard for the Commission's rules, statutes, and orders warrants more than just a warning. Accordingly, staff recommends that Labrador 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 requirements of Order No. PSC-04-1281-PAA-WS.

Staff recommends that the show cause order incorporate the following conditions:

1. The utility's response to the show cause order should 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), Florida Statutes, 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 should 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 should 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 should 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 should be considered resolved.

Further, the utility should 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, Florida Statutes.

Docket No. 060262-WS

Date: January 10, 2007

Issue 5: Should this docket be closed?

Recommendation: No. 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 should remain open for 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 and verified by staff. If Labrador pays the \$3,500 in fines, the docket should be closed administratively upon staff's verification of the above items. If the utility timely responds in writing to the Order to show cause, the docket should remain open to allow for the appropriate processing of the response. (Jaeger, Joyce)

Staff Analysis: 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 should remain open for 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 and verified by staff. If Labrador pays the \$3,500 in fines, the docket should be closed administratively upon staff's verification of the above items . If the utility timely responds in writing to the Order to show cause, the docket should remain open to allow for the appropriate processing of the response.