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ORIGINAL
DIVISION OF REGULATORY SERVICES
DANIEL M. HOPPE, DIRECTOR
(850) 413-6480

Public Service Commission

June 8, 2000

Mr. John Martin
President, FLENS Homeowners Association
6359 Spring Lake Circle
Zephyrhills, FL 33540

Re: Docket No. 000545-WS, Application for original certificates to operate a water and wastewater utility in Pasco County by Labrador Services.

Dear Mr. Martin:

On June 5, 2000, Mr. and Ms. Wasack filed a list of questions for a meeting of the Forest Lake Estates Non-Shareholders Homeowners' Association (FLENS). Earlier, Ms. Wasack requested that the response be directed to you as the President of FLENS. The questions identified several areas of concern, which I have summarized and responded to below.

Explain "certification" and, if a hearing is requested, what is involved? Are there any charges?

Pursuant to Section 367.031, Florida Statutes, each utility subject to the jurisdiction of the Commission must obtain from the Commission a certificate of authorization to provide water or wastewater service. Unless an objection is filed pursuant to Sections 120.569 and 120.57, Florida Statutes, the Commission must grant or deny an application for a certificate of authorization within 90 days after the "official filing date" of the completed application or the application will be deemed granted.

Labrador Services, Inc. (Labrador or utility) has been subject to the jurisdiction of the Commission since the utility corporation was formed. As such, Labrador is required by the above referenced statute to file an application for water and wastewater certificates. It appears the predecessor corporation, also owned by Mr. Henry Viau, may have been subject to the Commission's jurisdiction, as well. (See Question 2, below.) While Labrador's application for certificates was filed with the Commission on May 4, 2000, the application is not considered officially filed until staff determines the utility has completed the minimum filing requirements.

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The water and wastewater facilities which serve your community are owned by a private, for-profit utility corporation. The State of Florida and, in this case Pasco County, have given the Commission exclusive jurisdiction over the utility with respect to its authority, service, and rates. Pursuant to Section 367.011, Florida Statutes, such regulation is declared to be in the public interest and an exercise of the police power of the State for the protection of the public health, safety, and welfare. In other words, by being under the jurisdiction of the Commission, Labrador will be subject to, and held accountable for, Commission rules, regulations and oversight. In addition, any changes to customer rates and charges will be subject to prior review and approval by the Commission. There will also be a toll-free number for customers to register any complaints or concerns to which the utility must satisfactorily respond.

In determining whether to grant the utility's application pursuant to Section 367.045, Florida Statutes, the Commission must find that the utility has sufficient financial and technical ability to operate public water and wastewater facilities and that granting the certificates are in the public interest. If a substantially affected person timely files an objection to the utility's application and requests a hearing, the person would be required to provide testimony, participate in at least one Prehearing Conference held in Tallahassee, and present witnesses or other evidence supporting their position(s). Although the Commission allows individuals to represent themselves, it may be to their benefit to hire an attorney. There is also a separate state agency, the Office of Public Counsel, which represents the interests of customers in certain proceedings before the Commission.

Why was Labrador Services allowed to operate for at least nine years without being certified?

This is a question staff will attempt to answer during the processing of the application. At a minimum, a show cause issue may be presented to the Commission at the time it makes a decision on the utility's application as to whether the utility should be required to show cause in writing why it should not be fined for apparent violation of Section 367.031, Florida Statutes. However, it is not unheard of for utilities to operate for some period of time without the Commission being aware of their existence. The Commission regulates hundreds of water and wastewater utilities and, unless complaints are voiced to the Commission, there is no mechanism to "find" existing, unregulated utilities.

Before Labrador Services, Inc., is granted certificates, will the Commission demand they bring their plants up to standards set forth by the Environmental Protection Agency and, who will pay for the improvement? How will the Commission decide the matter of metering water and who will pay the costs for any additional meter installations?

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As part of the application process, staff coordinates with the Florida Department of Environmental Protection with regard to the utility's environmental compliance. Staff has already begun that process. It appears there may be environmental or capacity issues which need to be addressed. While staff cannot speak for the Commission, staff's recommendation at the time the Commission votes on the application will include a full disclosure of any environmental problems which may exist along with staff's recommended course of action. Any decision for action made by the Commission will require the utility's compliance within the manner and time-frame prescribed by the Commission in its decision. Failure by the utility to achieve such compliance may result in the imposition of penalties. If so, these penalties would be paid by the utility corporation.

However, to the extent that any environmental problems require plant improvement or replacement, the utility could make application for the costs to be included in its rate base by filing for a rate case proceeding. This proceeding would be separate from this docket and no such application has been made at this time. But, in general, the inclusion of plant improvements or plant replacements in rate base results in some degree of increased rates or charges. Also, in the utility's first rate case proceeding, the need for any additional water meters would likely be addressed. Generally, the Commission establishes a meter installation charge which would apply to customers without current meters and to customers applying for new service.

Please understand all answers regarding any future rate case proceeding must be generalizations. A rate case proceeding is a very sophisticated process of audit and analysis. It cannot be known in advance what decisions would ultimately result. Instead, what is important for FLENS to know is that all customer questions, complaints or concerns are heard by the Commission prior to its final decision. To accomplish this, a customer meeting would be conducted in the utility's service area for the sole purpose of allowing customers the opportunity to comment on any proposed rate changes.


Will Chateau Communities, acting on behalf of the Forest Lake Estates Co-Op Inc., be allowed to pass on to non-shareholders, in their lot rent, any cost to repair the utility's plants?

The Commission has no jurisdiction over lot rent for mobile home parks which is regulated by the Department of Business and Professional Regulation (DBPR). However, as indicated above, your water and wastewater service is provided by a public utility under the jurisdiction of the Public Service Commission. As such, any and all rates and charges for such service must be approved by the Commission pursuant to Chapter 367, Florida Statutes. Should Forest Lake Estate Co-Op Inc. attempt to duplicate any portion of your water and wastewater service rates and charges in lot rent, FLENS may bring this matter to the attention of the DBPR for appropriate action.

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Please be aware that the opinions expressed herein are those of the Commission staff, and they in no way bind the Commission. However, I hope this letter has been responsive to the questions posed by Mr. and Mrs. Wasack on behalf of FLENS. Should additional questions arise as a result of the homeowners' meeting, please feel free to call me at (850) 413-6686, or the attorney assigned to this docket, Jennifer Brubaker, at (850) 413-6228.

Sincerely,

A handwritten signature in black ink that reads "Patricia Brady". The signature is written in a cursive style with a large initial "P" and a decorative flourish at the end.

Patricia Brady
Regulatory Analyst IV

cc: Ms. Dolores Wasack
Mr. Richard S. Webb, IV
Division of Regulatory Oversight (Daniel, Messer, Redemann)
Division of Legal Services (Brubaker)
Division of Records and Reporting