

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: September 24, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Mouring, Buleza-Banks, Fletcher, Lingo)
Office of the General Counsel (Jaeger)

Handwritten notes: BO, FSL, 1/9/09, and other initials.

RE: Docket No. 080249-WS – Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc.

AGENDA: 10/06/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: McMurrian, Edgar, Argenziano

PREHEARING OFFICER: Argenziano

CRITICAL DATES: 8-Month Effective Date Waived Through 4/6/10

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080249.RCM.DOC

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COMMISSION CLERK

Case Background

Labrador Utilities Inc. (Labrador or Utility) is a Class B utility providing water and wastewater service to approximately 897 water and 892 wastewater customers in Pasco County. Water and wastewater rates were last established for this Utility in 2004.

On August 28, 2008, Labrador filed an Application for Rate Increase in the instant docket. By Order No. PSC-08-0751-PCO-WS, issued November 13, 2008, the Commission approved interim annual revenue increases of \$97,862 or 62.83 percent for water and \$29,611 or 8.17 percent for wastewater. The revenue increases are being secured through a corporate undertaking by Utilities, Inc. (UI), Labrador's parent company. By Order No. PSC-09-0462-PAA-WS (PAA Order), issued June 22, 2009, the Commission approved rates that were

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designed to generate a water revenue requirement of \$257,003 and a wastewater revenue requirement of \$497,755.

On July 13, 2009, the Office of Public Counsel (OPC) timely filed a protest of the PAA Order. On July 22, 2009, Labrador timely filed a cross-petition to protest the PAA Order pursuant to Rule 25-22.029(3), Florida Administrative Code (F.A.C.).

On September 3, 2009, the Utility and OPC (collectively, Parties) filed a Joint Motion Requesting Commission Approval of Settlement Agreement (Joint Motion). That motion and settlement agreement are incorporated in this recommendation as Attachment A.

This recommendation addresses the Parties' Settlement Agreement. The Commission has jurisdiction pursuant to Sections 367.081 and 367.121, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve the Joint Motion Requesting Commission Approval of Settlement Agreement?

Recommendation: Yes. The Joint Motion and Settlement Agreement should be approved. The Utility should file a proposed customer notice and revised tariff sheets within 15 days of the Commission vote, which is consistent with the Commission's decision. The approved rates should be effective for service rendered on or after the stamped approval date of the tariff pursuant to Rule 25-30.475(1), F.A.C., after staff has verified that the proposed customer notice is adequate and the notice has been provided to the customers. The Utility should provide proof that the customers have received notice within 10 days after the date of the notice. (Mouring)

Staff Analysis: In the Settlement Agreement, the Parties note that they have not agreed on certain language in the PAA Order as follows: (1) the quality of service provided by the Utility,¹ (2) the determination of the used and usefulness of Labrador's wastewater treatment plant,² (3) the appropriate salaries and benefits expense,³ and (4) the appropriate amount of rate case expense.⁴ The Parties, have however, agreed that the PAA Order is to have no precedential value as to determining the aforementioned items. The Commission has previously approved a proposed settlement where language was stricken from a proposed agency action order.⁵ Staff agrees that the language in the PAA Order which the Parties seek to strike can be removed because each rate case is decided on its own merits. The Parties have agreed that the water revenue requirement be reduced by \$3,379 to \$253,624, and the wastewater revenue requirement be reduced by \$37,620 to \$460,135.

In lieu of stipulating to the above-mentioned items, Labrador and the Citizens have agreed and stipulated to a total revenue requirement and rates and charges to be paid by the customers. The Parties have further stipulated that no refund of the interim rates is required. Further, the Parties agree that the stipulated revenue requirement shall in no way limit or estop either party from espousing whatever positions either deems appropriate for each and every issue in any subsequent proceeding. Finally, Labrador "agrees not to file the minimum filing requirements for any new rate case until at least two years after the execution of the settlement agreement, except for price indexes and pass-throughs pursuant to Section 367.081(4), F.S., for the recovery of government-mandated improvements and those agreed upon between Labrador and the Citizens in the future."

¹ OPC believes the odors coming from the wastewater treatment plant continue to be a problem, and the Utility has agreed to work with customer representative to study the problem and propose cost effective measures to address the problem.

² The Parties do not agree on the calculation of the used and usefulness of the wastewater treatment facilities, and the last paragraph of Section IV. B. 2 of the PAA Order shall be stricken and have no precedential value.

³ The Parties do not agree on the calculation of the appropriate amount for salaries and benefits, and the amount of \$125,288 listed in the PAA Order shall have no precedential value.

⁴ The Parties do not agree on the appropriate amount of rate case expense and the amount of rate case expense listed in the PAA Order shall have no precedential value.

⁵ See Order No. PSC-06-0665-S-WS, issued August 7, 2006, in Docket No. 050281-WS, In re: Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

Staff believes that the Parties' Settlement Agreement is a reasonable resolution because it results in mutually acceptable rates. Further, staff believes that it is in the public interest for the Commission to approve the Settlement Agreement because it promotes administrative efficiency and avoids the time and expense of a hearing.

The Utility should file a proposed customer notice and revised tariff sheets within 15 days of the Commission vote, which is consistent with the Commission's decision. The approved rates should be effective for service rendered on or after the stamped approval date of the tariff pursuant to Rule 25-30.475(1), F.A.C., after staff has verified that the proposed customer notice is adequate and the notice has been provided to the customers. The Utility should provide proof that the customers have received notice within 10 days after the date of the notice.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staffs recommendation in Issue 1, this docket should be closed upon the issuance of the final order approving the Parties' Settlement Agreement. Further, upon the issuance of the final order approving the Parties' Settlement Agreement, staff recommends the corporate undertaking amount approved by the Commission for interim rates should be released. (Jaeger, Mouring)

Staff Analysis: If the Commission approves staffs recommendation in Issue 1, this docket should be closed upon the issuance of the final order approving the Parties' Settlement Agreement. Further, upon the issuance of the final order approving the Parties' Settlement Agreement, staff recommends the corporate undertaking amount approved by the Commission for interim rates should be released.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 080249-WS

Filed: September 3, 2009

**JOINT MOTION REQUESTING COMMISSION APPROVAL OF
SETTLEMENT AGREEMENT**

LABRADOR UTILITIES, INC. ("Labrador"), and the OFFICE OF PUBLIC COUNSEL ("OPC") file this Joint Motion requesting the Florida Public Service Commission ("Commission") to approve the attached Settlement Agreement. In support of this Joint Motion Labrador and OPC state:

1. Labrador and OPC have entered into a Settlement Agreement resolving OPC's Petition and Labrador's Cross Petition concerning Proposed Agency Action Order No. PSC-09-0462-PAA-WS, in accordance with the terms of the Settlement Agreement. A copy of the Settlement Agreement is attached hereto as Exhibit "A".
2. Labrador and OPC have entered into the Settlement Agreement to avoid the time, expense and uncertainty associated with adversarial litigation, in keeping with the Commission's long-standing policy and practice of encouraging parties in protested proceedings to settle issues whenever possible. For these reasons, Labrador and OPC request the Commission to expeditiously issue a Final Order approving the Settlement Agreement without modification and close Docket No. 080249-WS.
3. Pending Commission consideration of the Settlement Agreement, Labrador and OPC request the Commission to suspend discovery and all events currently scheduled in the CASR for this Docket until such time as the Commission acts on this Motion.

WHEREFORE, Labrador and OPC respectfully request the Commission to approve without modification the attached Settlement Agreement and to suspend discovery and other events scheduled in this proceeding until a Final Order is issued closing this docket.

Respectfully submitted this 3rd day of September, 2009.



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Office of Public Counsel
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Attorney for Citizens of the State of Florida

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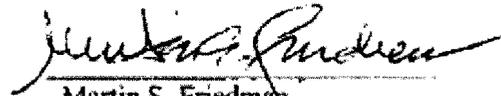
Attorney for Labrador Utilities, Inc.

WHEREFORE, Labrador and OPC respectfully request the Commission to approve without modification the attached Settlement Agreement and to suspend discovery and other events scheduled in this proceeding until a Final Order is issued closing this docket.

Respectfully submitted this 7 day of September, 2009.

Stephen C. Reilly
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Rm. 812
Tallahassee, FL 32399-1400
PHONE: (850) 488-9330

Attorney for Citizens of the State of Florida



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Longwood, FL 32779
PHONE: (407) 830-6331

Attorney for Labrador Utilities, Inc.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 080249-WS
Filed: September 3, 2009

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this 3rd September, 2009, by and between Labrador Utilities, Inc. (Labrador or Utility), and the Office of Public Counsel on behalf of the customers of Labrador (Citizens).

WITNESSETH

WHEREAS, the Florida Public Service Commission (Commission) issued Proposed Agency Action Order No. PSC-09-0462-PAA-WS in this docket on June 22, 2009 (PAA Order); and

WHEREAS, on July 13, 2009, the Citizens filed a timely protest to the PAA Order; and

WHEREAS, on July 22, 2009, Labrador timely filed a Cross-Petition; and

WHEREAS, in order to avoid the time, expense and uncertainty associated with adversarial litigation, and in keeping with the Commission's long-standing policy and practice of encouraging parties in protested proceedings to settle issues whenever possible, the Citizens and Labrador hereby enter into this Agreement to settle this case in accordance with the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth below, the Citizens and Labrador agree as follows:

1. In regards to Quality of Service, the PAA Order shall be amended to note that the Citizens believe the odors coming from the wastewater treatment plant continue to be a problem, particularly when the plant is underutilized during the time the park is less occupied. The Utility

Exhibit "A"

has agreed to work with customer representatives to study the problem, and if necessary, propose cost effective measures to address the wastewater plant odor problem.

2. In regards to Rate Base, the Utility and the Citizens agree that the PAA Order should be amended to note that Labrador and the Citizens do not agree on the determination of the used and usefulness of the Utility's wastewater treatment facilities. It is the intent of Labrador and the Citizens that the PAA shall have no precedential value as to determining the used and usefulness of the wastewater treatment plant. Consequently, the last paragraph of Section IV. B.2. shall be stricken. In lieu of stipulating to any used and useful percentage, the Utility and the Citizens have agreed and stipulated to a total revenue requirement and rates and charges to be paid by the customers.

3. In regards to salaries and benefits, the Citizens do not believe that the total of \$125,288 for salaries and benefits is appropriate. It is the intent of Labrador and the Citizens that the PAA Order shall have no precedential value as to determining the appropriate amount of salaries and benefits. In lieu of stipulating to an appropriate amount of total salaries and benefits, Labrador and the Citizens have agreed and stipulated to a total revenue requirement and rates and charges to be paid by the customers.

4. In regards to rate case expense, the Utility and the Citizens do not agree on the appropriate amount of rate case expense. It is the intent of Labrador and the Citizens that the PAA Order shall have no precedential value as to determining the appropriate amount of rate case expense. In lieu of stipulating to an appropriate amount of total rate case expense, Labrador and the Citizens have agreed and stipulated to a total revenue requirement and rates and charges to be paid by the customers.

5. The Utility and the Citizens have agreed that the appropriate revenue requirements are \$253,624 for water and \$460,135 for wastewater.

6. Labrador and the Citizens agree that based on these reduced revenue requirements the base facility charges from the PAA Order should not be changed and only the gallonage charge for water and wastewater should be adjusted to yield the agreed upon revenue requirement.

7. The Utility and the Citizens agree that the appropriate rates are as follows:

Labrador Utilities, Inc.		Docket No. 080249-WS			
Water Monthly Service Rates					
Test Year Ended 12/31/08					
	Commission Approved Interim	Utility Requested Final	PA Order Rates	Settlement Rates	4-Year Rate Reduction
<u>Residential Service</u>					
All Meter Sizes	\$10 69	\$12 75	\$8 87	\$8 87	\$0 32
Gallage Charge, per 1,000 Gallons	\$5 34	\$6 36	\$6 74	\$6 57	\$0 24
<u>General Service</u>					
Base Facility Charge by Meter Size:					
5/8" x 3/4"	\$10 69	\$12 75	\$8 87	\$8 87	\$0 32
3/4"	\$16 03	\$19 11	\$13 31	\$13 31	\$0 48
1"	\$26 72	\$31 86	\$22 18	\$22 18	\$0 81
1-1/2"	\$53 46	\$63 75	\$44 35	\$44 35	\$1 61
2"	\$85 52	\$101 99	\$70 96	\$70 96	\$2 58
3"	\$171 04	\$203 98	\$141 92	\$141 92	\$5 16
4"	\$267 24	\$318 71	\$221 75	\$221 75	\$8 06
6"	\$534 48	\$637 42	\$443 50	\$443 50	\$16 12
Gallage Charge, per 1,000 Gallons	\$5 34	\$6 36	\$6 74	\$6 57	\$0 24
<u>Irrigation</u>					
Base Facility Charge by Meter Size:					
2"	\$85 52	\$101 99	\$70 96	\$70 96	\$2 58
Gallage Charge, per 1,000 Gallons	\$5 34	\$6 36	\$6 74	\$6 57	\$0 24
<u>Tylen Residential Bills</u>					
3,000 Gallons	\$26 71	\$31 83	\$29 09	\$28 58	
5,000 Gallons	\$37 39	\$44 55	\$42 57	\$41 72	
10,000 Gallons	\$64 09	\$76 35	\$76 27	\$74 57	

Labrador Utilities, Inc. Wastewater Monthly Service Rates Test Year Ended 12/31/07		Docket No. 080249-WS			
	Commission Approved Interim	Utility Requested Final	PAA Order Rates	Settlement Rates	4-Year Rate Reduction
Residential					
Base Facility Charge All Meter Sizes:	\$13.59	\$18.85	\$21.91	\$21.91	\$0.43
Gallonge Charge - Per 1,000 gallons (6,000 gallon cap)	\$10.51	\$14.57	\$11.55	\$9.77	\$0.19
General Services					
Base Facility Charge by Meter Size:					
5/8" x 3/4"	\$13.59	\$18.85	\$21.91	\$21.91	\$0.43
3/4"	\$20.38	\$28.28	\$32.87	\$32.87	\$0.64
1"	\$33.97	\$47.14	\$54.78	\$54.78	\$1.07
1-1/2"	\$67.96	\$94.29	\$109.55	\$109.55	\$2.15
2"	\$108.72	\$150.86	\$175.28	\$175.28	\$3.44
3"	\$217.44	\$301.73	\$350.56	\$350.56	\$6.87
4"	\$339.76	\$471.45	\$547.75	\$547.75	\$10.74
6"	\$679.51	\$942.90	\$1,095.50	\$1,095.50	\$21.48
Gallonge Charge, per 1,000 Gallons	\$12.59	\$17.47	\$13.86	\$11.72	\$0.23
Typical Residential Bills					
3,000 Gallons	\$45.12	\$62.56	\$56.56	\$51.22	
5,000 Gallons	\$66.14	\$91.70	\$79.66	\$70.76	
6,000 Gallons (Wastewater Gallonge Cap - 6,000 Gallons)	\$76.65	\$106.27	\$91.21	\$80.53	

8. Further, Labrador and the Citizens agree that there is no requirement for a refund of interim rates.

9. The Utility agrees not to file the minimum filing requirements for any new rate case until at least two years after the execution of the Settlement Agreement, except for price indexes and pass-throughs pursuant to Section 367.081(4), Florida Statutes, for the recovery of government-mandated improvements, and those agreed upon between Labrador and the Citizens in the future.

10. The submission of this Settlement Agreement by the Parties is in the nature of an offer to settle. Consequently, if this Settlement Agreement is not accepted and approved without

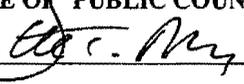
modification by Commission Order, then this Settlement Agreement is rejected and shall be considered null and void and neither Party may use the attempted agreement in this or any other proceeding.

11. Labrador and the Citizens expressly agree that all activity relating to this docket should be suspended until the Commission disposes of the Joint Motion Requesting Commission Approval of Settlement Agreement.

12. This Settlement Agreement will become effective on the date the Commission enters a final order approving the agreement in total. Upon the Commission issuing a final order approving this Settlement Agreement, the Citizens Petition on Proposed Agency Action and Labrador's Cross-Petition shall be deemed resolved, in accordance with the terms of this Settlement Agreement.

13. The Parties have evidenced their acceptance and agreement with the provisions of this Settlement Agreement by their signatures, and personally represent that they have authority to execute this Settlement Agreement on behalf of their respective Parties.

OFFICE OF PUBLIC COUNSEL

By:  _____

Stephen C. Reilly
Associate Public Counsel
On behalf of the Customers
Of Labrador Utilities, Inc.

LABRADOR UTILITIES, INC.

By: _____

Martin S. Friedman
Attorney for Labrador Utilities, Inc.

Concurring with the Settlement Agreement

Ralph Bechtold
President
Forest Lake Estates Nonshareholders Association, Inc.

Beverley Culliford
President
Forest Lake Estates Coop, Inc.

Eva Rush
Chairman of the Utility Committee
Forest Lake Estates Nonshareholders Association, Inc.

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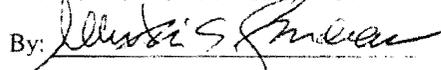
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