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March 21, 2008

VIA HAND-DELIVERY AND E-MAIL

Blessing Chukwu
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Keith Layton, Staff Attorney
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: **Perkins Mountain Water Company and Perkins Mountain Utility Company
Docket Nos. W-20380A-05-0490 and SW-20379A-05-0489
Seventh Supplemental Response to Staff's Second Set of Data Requests Dated 2/8/08**

Dear Ms. Chukwu and Mr. Layton:

Perkins Mountain Water Company and Perkins Mountain Utility Company ("Applicants") hereby submit the attached Supplemental Response to BNC 2.12 of Staff's Second Set of Data Requests dated February 8, 2008. An electronic version of this response is also being sent to you via e-mail. This supplement to the response provides additional information relating to the State of Florida. Please note that the documents attached to this Supplemental Response relate only to the supplemental information provided herein. With this Supplemental Response, Applicants' responses to BNC 2.12 and 2.13 are now complete.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Snell & Wilmer L.L.P.

Bradley S. Carroll

BSC/jyb
Enclosure

cc: Docket Control (Original plus 15 copies)
Robin Mitchell, Esq. (Via e-mail only)
Michele Finical (Via e-mail only)

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY
AND PERKINS MOUNTAIN UTILITY COMPANY
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BNC 2.12 In March 2007, the Illinois Commerce Commission in Docket No. 06-0360, cited five (5) affiliates of Utilities, Inc., for failure to comply with Commission Orders and with Commission Rules. Please provide a history of Citations issued by regulatory agencies in other jurisdictions against Utilities, Inc. and/or any of its respective affiliates since the year 2000.

Response: Utilities, Inc. is a holding company that owns the stock of approximately 90 operating utilities in 17 states. As such, to the best of my knowledge and belief, there have been no citations that have been issued by regulatory agencies against Utilities, Inc. in connection with utility compliance obligations. With respect to its utility operating company affiliates, the requested information is set forth below for each of the applicable states:

Arizona None

Georgia None

Kentucky None

Louisiana On August 11, 2004, the Louisiana Department of Environmental Quality issued a Compliance Order to *Louisiana Water Service, Inc.* following an inspection by the Department. A copy of the Compliance Order is attached.

On May 21, 2002, the Louisiana Department of Environmental Quality issued a Compliance Order to *Utilities, Inc. of Louisiana* following an inspection by the Department. A copy of the Compliance Order is attached.

Mississippi None

New Jersey None

Ohio None

Tennessee None

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Nevada – On October 25, 2000, the Public Utilities Commission of Nevada (“Commission”) issued an order in Docket No. 98-0-5008 relating to an application by *Spring Creek Utilities Company* to withdraw from its Capital Projects and Hydrant Fund. During the review of this application, the Commission’s Regulatory operations Staff identified three compliance issues including a failure to obtain a permit to construct pursuant to the Nevada Utility Environmental Protection Act (“UEPA”) for construction of a 500,000 gallon storage tank. *Spring Creek Utilities Company* entered into a Stipulation wherein it agreed to pay a \$5,000 fine that would be suspended for three years and expunged if the utility obtained all necessary construction permits and there were no further violations of the UEPA. A copy of the order is attached.

On October 17, 2006, the Commission issued an order approving a Settlement Agreement and Stipulation Agreement between the Commission Staff and *Spring Creek Utilities Company* relating to a Petition for an Order to Show Cause that alleged that *Spring Creek Utilities Company* failed to provide reasonably continuous and adequate service to its customers. A copy of the order is attached.

Maryland None

Pennsylvania None

Indiana - On August 24, 2004, as part of an order involving the sale of assets and approval of an acquisition adjustment, the Indiana Utility Regulatory Commission (“Commission”) found in Cause No. 41873 that certain records of *Indiana Water Services, Inc. (“IWSI”)* were being kept out of state (in Northbrook, Illinois) contrary to the requirement that a utility's books be kept in the state and not be removed except upon conditions prescribed by the Commission. *IWSI* did this because one of its Indiana affiliates, Twin Lakes Utilities, had already been given permission by the Commission to keep its books in Illinois. The Commission found that notwithstanding its authorization for the affiliate to keep its books and records out of state, *IWSI* should have asked for permission. The Commission did not require *IWSI* to transfer the books and records back to Indiana, but merely ordered that *IWSI* would have to pay the costs of the Commission and the Office of Utility Consumer Counselor related to any necessary visits to Northbrook.

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Virginia - On January 21, 2005 *Massanutten Public Service Corporation* ("MPSC") filed an application with the Virginia State Corporation Commission ("Commission") under the state's Affiliates Act requesting approval of a water services agreement with Water Service Corporation ("WSC") (an affiliate of MPSC) under which MPSC and WSC had already been operating. At the time MPSC and WSC had entered into the agreement, MPSC was exempt from the Affiliates Act because it did not meet the financial threshold that would have required approval of the agreement. On April 20, 2005, MPSC filed a request to withdraw its application because certain provisions of the agreement needed to be revised. On April 21, 2005, the Commission granted the application and dismissed the case without prejudice. By order dated June 7, 2005, MPSC was directed to file a new application with a Revised Agreement. MPSC filed a new application for approval of the Revised Agreement in Case No. PUE-2005-0063. On October 19, 2005, the Commission issued an order granting approval of the Revised Application. In its order approving the Revised Agreement, the Commission found that MPSC and WSC had been operating under the prior agreement which had not been approved by the Commission and ordered that MPSC "take the necessary steps to ensure that prior approval is obtained by the Commission under the Affiliates Act for any future affiliate transactions." A copy of the order is attached for your convenience.

On March 15, 2006, MPSC, entered into a Consent and Special Order ("Consent Order") with the Virginia Department of Environmental Quality to resolve alleged violations of environmental laws and regulations. MPSC without admitting or denying the factual findings or conclusions of law contained in the Consent Order, agreed to perform the actions described in Appendix A to the Consent Order and to pay a civil charge of \$19,700. A copy of the Consent Order is attached.

Illinois - On January 3, 2007, the Illinois Environmental Protection Agency ("EPA") accepted a Compliance Commitment Agreement proposed by *Galena Territory Utilities, Inc.* ("Galena") to resolve a notice of alleged violations under the Illinois Environmental Protection Act. A copy of the EPA's acceptance letter is attached as BNC 2.12 IL-A..

On March 21, 2007, the Illinois Commerce Commission ("Commission") issued an order in Docket No. 06-0360 relating to *Apple Canyon Utility Company, Cedar Bluff Utilities, Inc., Charmar Water Company, Cherry Hill Water Company* and *Northern Hills Water Company* ("collectively

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“*Companies*”). The Commission found, in part, that the *Companies* failed to maintain and file on April 7, 2005, continuing property reports (“CPRs”) as was required by the Commission. The *Companies* had testified that the in-house data base system that was designed to track the CPRs did not interface properly with other older systems and there was a delay in getting the data entry work completed in time for the April 7, 2005 deadline. Notwithstanding, the Commission issued an order that required that future rate base additions for the *Companies* must be supported by CPRs and assessed a civil penalty totaling \$5,000. A copy of the order is attached as BNC 2.12 IL-B.

On May 18, 2007, Circuit Court for the 15th Judicial Circuit of Stephenson County, Illinois, entered an order (No. 0CH96) approving a Consent Order between the Illinois Environmental Protection Agency and *Northern Hills Water and Sewer Company* (“*Northern Hills*”) wherein *Northern Hills*, without admitting the allegations of violations contained in the complaint, agreed to comply with the conditions of the Consent Order and pay a civil penalty of \$9,750. The allegations of the complaint were that *Northern Hills* had violated various provisions of the Illinois Environmental Protection Act relating to its waste water treatment plant in Freeport, Illinois. A copy of the Consent Order is attached as BNC 2.12 IL-C.

On August 30, 2006, the Commission issued an order in Docket No. 05-0452 relating to an application for a 2.95 acre extension of the CC&N for *Galena Territory Utilities, Inc.* (“*Galena*”) to provide sanitary sewer service to an existing 71-unit condominium development contiguous to its existing service territory. In approving the application, the Commission found, in part, that *Galena* had provided service prior to the issuance of the CC&N and ordered *Galena* to pay a \$1,000 fine. A copy of the order is attached as BNC 2.12 IL-D.

On July 12, 2005, Circuit Court for the Nineteenth Judicial District of Lake County, Illinois, entered an order (No. 05CH1009) approving a Consent Order between the Illinois Environmental Protection Agency and *Charmar Water Company* (“*Charmar*”) wherein *Charmar*, without admitting the allegations of violations contained in the complaint, agreed to comply with the conditions of the Consent Order and pay a civil penalty of \$5,000. The allegations of the complaint were that *Charmar* had failed to obtain a construction permit for a hydropneumatic storage tank and

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operate such tank without a permit. A copy of the Consent Order is attached as BNC 2.12 IL-E.

On or about November 6, 2003, the United States Environmental Protection Agency and *Northern Hills Water and Sewer Company* ("*Northern Hills*") entered into a Consent Agreement and Final Order ("Consent Agreement") in Docket No. CERCLA-05-2004 wherein *Northern Hills*, without admitting or denying the factual allegations of the complaint, agreed to pay a civil penalty of \$1,000 for failing to timely report release of chlorine from its Freeport facility. A copy of the Consent Agreement is attached as BNC 2.12 IL-F.

North Carolina – Although not a citation *per se*, on April 15, 2005, the North Carolina Utilities Commission ("Commission") issued an order granting a partial rate increase in connection with an application by *Carolina Water Service, Inc. of North Carolina* ("*CWS*") for a water and sewer rate increase in Docket No. W-354, Sub 266. As part of this rate case review, the Commission found that *CWS* had not complied with several requirements. Although the Commission specifically ruled in its order it was not appropriate to impose any penalties, it did take some of these items into consideration in setting rates and further ordered *CWS* to comply with the requirements in the future. A copy of this rate case order is attached as BNC 2.12 NC.

South Carolina – Attached (as identified) are copies of Consent Orders entered into between the South Carolina Department of Health and Environmental Control ("DHEC") and the Utilities, Inc. affiliates listed below. Pursuant to DHEC regulations to address system deficiencies through their enforcement process, Consent Orders would be issued to identify, correct and in many cases, assess civil penalties as part of the standard process.

Note: Six (6) of the nine (9) Consent Orders below involved *Utilities Services of South Carolina, Inc.* which was acquired by Utilities, Inc. in 2002 which had some deficiencies that were previously identified by DHEC.

- *Utilities Services of South Carolina, Inc. (Charleswood Subdivision)* – No. 06-098 DW, June 15, 2006. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-A

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- *Utilities Services of South Carolina, Inc. (Purdy Shores)* – No. 06-225 DW, December 4, 2006. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-B
- *Utilities Services of South Carolina, Inc. (Barney Rhett Subdivision)* – No. 05-149 DW, October 18, 2005. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-C
- *Utilities Services of South Carolina, Inc. (Foxwood Subdivision)* – No. 05-099-W, July 21, 2005. An \$8,400 civil penalty was agreed to. BNC 2.12 SC-D
- *Carolina Water Service, Inc. (Glenn Village II Subdivision)* – No. 05-094-DW, July 19, 2005. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-E
- *United Utility Company, Inc. (Briarcreek Subdivision I WWTF)* – No. 04-180-W, October 6, 2004. A \$3,000 civil penalty was agreed to. BNC 2.12 SC-F
- *Carolina Water Service, Inc. (River Hills Subdivision)* – No. 04-140-W, July 30, 2004. A \$9,600 civil penalty was agreed to. BNC 2.12 SC-G
- *Utilities Services of South Carolina, Inc. (Farrowood Estates)* – No. 04-073 DW, April 6, 2004. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-H
- *Utilities Services of South Carolina, Inc. (Washington Heights)* – No. 04-072 DW, April 6, 2004. No civil penalty was required if the utility complied with the Consent Order. BNC 2.12 SC-I

Florida – Attached (as identified) are copies of “short form” settlements entered into between the Florida Department of Environmental Protection (“DEP”) and the Utilities, Inc. affiliates listed below. Pursuant to DEP regulations that address system deficiencies through its enforcement process, settlements would be entered into to identify, correct and in many cases, assess civil penalties as part of the standard process.

- *Sanlando Utilities Corporation (Wekiva Hunt Club WWTF)* – No. OGC-06-0800, June 16, 2006. A civil penalty totaling \$2,500 was agreed to. BNC 2.12 FL-A
- *Bayside Utility Services, Inc.* – No. OGC 06-2421-03-DW, March 6, 2007. A civil penalty totaling \$2,200 was agreed to. BNC 2.12 FL-B

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- *Mid-County Services, Inc.* – No. OGC 06-1742, November 22, 2006. A civil penalty totaling \$4,500 was agreed to. BNC 2.12 FL-C
- *Miles Grant Water and Sewer Company* – No. OGC 06-1249, July 17, 2006. A civil penalty totaling \$350 was agreed to. BNC 2.12 FL-D
- *Miles Grant Water and Sewer Company* – No. OGC 06-0302, May 2006. A civil penalty totaling \$600 was agreed to. BNC 2.12 FL-E
- *Miles Grant Water and Sewer Company* – No. OGC 04-0892, July 9, 2004. A civil penalty totaling \$600 was agreed to. BNC 2.12 FL-F
- *Sanlando Utilities Corporation (Wekiva Hunt Club WWTF)* – No. OGC 02-1204, August 27, 2002. A civil penalty totaling \$4,650 was agreed to. BNC 2.12 FL-G

Attached is a copy of a “short form” settlement entered into between the Florida Department of Health and the following Utilities, Inc. affiliate pursuant to DEP regulations:

- *Cyprus Lakes Utilities, Inc.* – No. OGC 06-653PW5055A, December 13, 2006. A civil penalty totaling \$1,200 was agreed to. BNC 2.12 FL-H

Attached (as identified) are copies of Consent Orders entered into between the DEP and the Utilities, Inc. affiliates listed below. Pursuant to DEP regulations that address system deficiencies through its enforcement process, Consent Orders would be entered into to identify, correct and in many cases, assess civil penalties as part of the standard process.

- *Sandy Creek Utility Services, Inc.* – No. OGC 07-1887-03-DW, January 22, 2008. A civil penalty totaling \$1,225 was agreed to. BNC 2.12 FL-I
- *Utilities, Inc. of Florida* – No. OGC 06-100-51-PW, June 8, 2006. A civil penalty totaling \$500 was agreed to. BNC 2.12 FL-J
- *Miles Grant Water and Sewer Company* – No. OGC 05-2873, March 20, 2006. A civil penalty totaling \$500 was agreed to. BNC 2.12 FL-K
- *Utilities, Inc. of Eagle Ridge* – No. OGC 05-2747-36-DW, January 30, 2006. A civil penalty totaling \$2,000 was agreed to. BNC 2.12 FL-L

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- *Alfaya Utilities, Inc.* – No. OGC 05-0505, June 22, 2005. A civil penalty totaling \$3,500 was agreed to. BNC 2.12 FL-M

The following related to Florida Public Service Commission (“Commission”) rate case orders for the following Utilities, Inc. affiliates:

- *Utilities, Inc. of Sandalhaven* – Docket No. 020409-SU, Order No. PSC-03-0602-PAA-SU, May 13, 2003. The Commission found that the Company entered into a modified contract with a country club to provide reuse that included an annual fee of \$4,000 intended to cover the increase in cost for testing and operating the reuse system, which was not included in the original contract. The Commission subsequently learned that the charge was not included in the Company’s tariff. The Company subsequently requested approval of a tariff covering the fee. The Commission did recognize that the \$4,000 annual fee, paid in quarterly amounts of \$1,000, benefited the remaining customer base by reducing the portion of the revenue requirement generated from residential and other general use customers. In the rate case order, the Commission found that i) a show cause proceeding would not be initiated since the Company properly recorded the revenue from the charge; ii) the Company submitted a proposed tariff once it was informed that it did not have a tariff on file; and iii) the Commission wanted to encourage reuse. The Commission did not assess any administrative penalty and put the Company on notice that it may only charge those rates and charges approved by the Commission. The relevant pages from the Commission’s order are attached as BNC 2.12 FL-N.

Utilities, Inc. Subsidiary Settlement – On December 23, 2004, the Commission issued an order approving a settlement agreement (“Agreement”) filed by *Utilities, Inc.* (“UI”). The Agreement was in response to Docket No. 040316-WS that was opened by the Commission to bring all of UI’s Florida subsidiaries into compliance with Rule 25-30.115 following findings by the Commission in prior orders that UI’s Florida subsidiaries were not in compliance with the books and records requirements. A copy of the order and Agreement is attached as BNC 2.12 FL-O.

Alfaya Utilities, Inc. – On February 15, 2007, the Commission issued Order No. PSC-07-0130-SC-SU in Docket No. 060256-SU

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approving an increase in rates and charges for *Alafaya* and initiating a show cause proceeding. The order to show cause alleged various violations and proposed fines totaling \$4,200. The relevant pages from the Commission's order are attached as BNC 2.12 FL-P.

Cyprus Lakes Utilities, Inc. - On March 5, 2007, the Commission issued Order No. PSC-07-0199-PAA-WS in Docket No. 060257-WS approving an increase in rates and charges for *Cyprus* and initiating a show cause proceeding. The order to show cause alleged violations of prior Commission orders regarding books and records requirements and proposed a fine of \$3,000. The relevant pages from the Commission's order are attached as BNC 2.12 FL-Q.

Sanlando Utilities Corp. - On March 6, 2007, the Commission issued Order No. PSC-07-0205-PAA-WS in Docket No. 060258-WS approving an increase in rates and charges for *Cyprus* and initiating a show cause proceeding. The order to show cause alleged that *Cyprus* failed to notify the Commission of a project suspension and proposed a fine of \$500. The relevant pages from the Commission's order are attached as BNC 2.12 FL-R.

Labrador Services, Inc. - On July 16, 2001, the Commission issued Order No. PSC-01-1483-PAA-WS in Docket No. 000545 granting certificates and ordering that the 2000 annual report be filed and the annual regulatory assessment be paid. In its order granting the certificates, the Commission found that *Labrador* was in apparent violation of its certificate, annual report and regulatory assessment requirements. The Commission concluded, however, that under the circumstances that gave rise to these apparent violations, no order to show cause proceeding was necessary. The relevant pages from the Commission's order are attached as BNC 2.12 FL-S.

Labrador Services, Inc. - On February 14, 2007, the Commission issued Order No. PSC-07-0129-SC-WS in Docket No. 060262 WS denying a rate increase, ordering a refund of interim rates and initiating a show cause proceeding. The order to show cause alleged violations relating to adjustments to *Labrador's* books, and

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meter-related issues and proposed a fine of \$3,500. The relevant pages from the Commission's order are attached as BNC 2.12 FL-T.

Utilities, Inc. of Florida - On June 13, 2007, the Commission issued Order No. PSC-07-0505-SC-WS in Docket No. 060253-WS approving an increase in rates and charges and initiating a show cause proceeding. The order to show cause alleged that the utility was serving customers outside of its certificated area and that it had not kept its books and records in compliance with Commission rules. The order proposed fines totaling \$8,250. The relevant pages from the Commission's order are attached as BNC 2.12 FL-U.

Miles Grant Water and Sewer Company - On November 5, 2002, the Commission issued Order No. PSC-02-1517-TRF-WU in Docket No. 020925, approving a bulk irrigation class of service. As part of the order, the Commission found that the utility had initiated a new class of service prior to receiving Commission approval. The Commission found it was not necessary or appropriate to issue an order to show cause under the circumstances. The relevant pages from the Commission's order are attached as BNC 2.12 FL-V.

Prepared by: Michael T. Dryjanski
Manager, Regulatory Accounting
Utilities, Inc.
2335 Sanders Road
Northbrook, IL 60062

BNC 2.12 FL-0

BEFORE THE PUBLIC SERVICE COMMISSION

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.

DOCKET NO. 040316-WS
ORDER NO. PSC-04-1275-AS-WS
ISSUED: December 23, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER APPROVING SETTLEMENT AGREEMENT FILED
BY UTILITIES INC.

BY THE COMMISSION:

Background

Utilities, Inc. (UI) is the parent corporation of the following 16 utilities that provide water and wastewater services in the State of Florida and are subject to this Commission's jurisdiction: Alafaya Utilities, Inc., Bayside Utility Services, Inc., Cypress Lakes Utilities, Inc., Labrador Utilities, Inc., Lake Utility Services, Inc., Mid-County Services, Inc., Miles Grant Water and Sewer Company, Sandy Creek Utility Services, Inc., Sanlando Utilities Corporation, Tierre Verde Utilities, Inc., Utilities, Inc. of Eagle Ridge, Utilities, Inc. of Florida, Utilities, Inc. of Longwood, Utilities, Inc. of Pennbrooke, Utilities, Inc. of Sandalhaven, and Wedgefield Utilities, Inc. Water Service Corporation (WSC) is also a wholly-owned subsidiary of UI. WSC provides the necessary administrative and financial services to all of UI's subsidiaries. Our decision herein is not applicable to Sandy Creek Utility Services, Inc. and Bayside Utility Services, Inc., since Bay County rescinded jurisdiction on September 9, 2004,

Pursuant to Order No. PSC-04-0358-FOF-WS, issued April 5, 2004, in Docket No. 020407-WS, In re: Application for Rate Increase in Polk County by Cypress Lakes Utilities, Inc., we opened this docket to analyze UI's plan to bring all Florida subsidiaries into compliance with Rule 25-30.115, Florida Administrative Code. In particular, we address the specific areas of concern that were identified in Docket No. 020407-WS. On November 8, 2004, after discussions with our staff, UI filed a proposed settlement agreement to bring all Florida subsidiaries into compliance. For the reasons discussed below, we approve the settlement agreement in its entirety. We have jurisdiction pursuant to Sections 367.081 and 367.121, Florida Statutes.

Settlement Agreement

The proposed settlement agreement is appended hereto as Attachment A and is incorporated herein by reference. In the settlement agreement, UI agreed to the following:

- 1) **Annual Report and Minimum Filing Requirements (MFRs) shall begin with balance per books.** Beginning with all years ending after December 31, 2004, each UI subsidiary's annual report balances shall agree with the general ledger balances. All MFR pages that require a balance per books column shall either be the actual balance per the general ledger or an average test year balance, with supporting calculations provided that show that the components of the calculation came from the general ledger.
- 2) **Adjustments to Rate Base should be timely made.** 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. UI shall complete the adjustments to the books of Labrador Utilities, Inc., Bayside Utility Services, Inc., Mid-County Services, Inc., and Utilities, Inc. of Eagle Ridge when the Commission orders in their respective pending rate cases become final. UI shall complete the adjustments to the remaining Utilities' books on or before December 31, 2004. If UI has questions regarding adjustments for a specific Utility, it shall notify our staff prior to December 31, 2004. UI shall maintain sufficient workpapers so that our staff can easily review adjustments made and whether appropriate adjustments to reserve accounts have been made, since the date of transfer or the end of the test year in a rate case or other proceeding where rate base was established.
- 3) **Improvements to accounts cross reference and allocation methodology.** Beginning with the year ended December 31, 2004, and annually thereafter, UI shall maintain a schedule reconciling each general ledger account and sub-account to the Uniform System of Accounts (USOA) primary accounts. For any system that is utilizing a December 31, 2003 test year, UI shall complete this analysis before filing its MFRs. For all future rate cases, UI shall prepare a detailed schedule for reconciliation of the general ledger account and sub-account to the USOA primary accounts.
- 4) **Correction of pumping equipment account number.** UI shall continue to review account 310 and 311 to correct any mismatches between accounts 310 and 311. UI shall maintain supporting documentation to allow our staff to confirm that the adjustments have been made for any future Commission staff audits, and any adjustment will be reflected in future rate cases.
- 5) **Retirements to be made consistently.** UI shall complete, by the end of 2004, a review of all systems to ensure that all appropriate retirement entries have been made. Beginning with the year ended December 31, 2003, UI shall ensure that its operation

and accounting personnel consistently utilize UI's existing retirement policy. Beginning September 30, 2004, UI's regulatory accounting and operations personnel shall prepare a quarterly analysis of all plant additions to ensure that all required retirements have been made. Adjustments to the books of the UI subsidiaries shall be completed either before December 31, 2004, or prior to the filing of a rate case by the relevant subsidiary. UI has implemented a fully automated work order system to facilitate its work order process. UI has already added the following fields to its work order form and input screen to track retirements when items are moved from the CP ledger to the general ledger: (1) New, (2) Upgrade, (3) Repair, and (4) Replace. These additional data entry fields will allow UI to sort all projects and better evaluate which projects require retirements. In addition, UI shall require operations employees to provide accounting staff with the original date the asset was placed in service or the original cost, if available.

- 6) **Corrections to Contributions-In-Aid of Construction Amortization (CIAC) Rate.** The utility shall comply with Rule 25-30.140(9)(a), Florida Administrative Code, which states the following:

Beginning with the year ending December 31, 2003, all Class A and B utilities shall maintain separate sub-accounts for: (1) each type of CIAC charge collected including, but not limited to, plant capacity, meter installation, main extension or system capacity; (2) contributed plant; (3) contributed lines; and (4) other contributed plant not mentioned previously. Establishing balances for each new sub-account may require an allocation based upon historical balances. Each CIAC sub-account shall be amortized in the same manner that the related contributed plant is depreciated. Separate sub-accounts for accumulated amortization of CIAC shall be maintained to correspond to each sub-account for CIAC.

- 7) **Lack of support for WSC Allocations.** Pursuant to Order No. PSC-03-1440-FOF-WS, issued December 22, 2003, in Docket No. 020071-WS, we required Utilities, Inc. to use equivalent residential connections (ERCs) as its primary allocation factor for affiliate costs in future cases in Florida as of January 1, 2004, and to use the end of the applicable year as the measurement date. UI is reviewing the appropriateness of an ERC allocation methodology in other jurisdictions in which it operates. Until the appropriateness of this type of allocation can be determined, UI shall prepare a second WSC allocation book specifically for its Florida subsidiaries using the ERC as its primary allocation factor as delineated in Rule 25-30.055, Florida Administrative Code, beginning January 1, 2004. UI shall also maintain workpapers for each utility to show how the ERCs are determined on an annual basis.

- 8) **Allocation to non-owned systems.** UI has agreed to implement its allocation methodology to systems that it does not own but operates, and has included these systems in the 2003 allocation book.
- 9) **Documentation of "other water uses."** UI has implemented and is using the following standard operating protocol to track other water usage. UI believes that this protocol satisfies our concerns.

For each water system in Florida, the operator or field supervisor for each system will submit a report form each month entitled *water loss record* to the Florida regional office. This document shall identify the estimated volume of unmetered water used in the system on a given day and the reason why it was lost. For example, water lost due to a water main break would be calculated from the duration of the event, the size of the pipe, and the estimated flow rate.

Other types of unmetered water use include, but are not limited to:

- water main flushing activities;
- hydrant flow testing;
- filling and chlorinating new water main extensions, storage tanks or treatment units;
- filling new force main and reuse main extensions;
- water used internally in the treatment or disinfection process

Each month, the total sum of water noted on the *water loss record* is entered into the utility's spreadsheet that tracks and compares water pumped and water purchased, against water sold for each system. In this way, UI has the means to review the data on a routine basis. The monthly form is attached to and filed with the file copy of each utility's Monthly Operating Report and retained for future use.

- 10) **Maintenance of adjusting an entry log book.** For all years beginning with January 1, 2003, UI shall maintain an adjusting entry log book and supporting documentation (purpose of the entry, person making the entry, worksheets showing any calculations and any supporting documents, reconciliations, invoices, etc.) for each adjustment to the journal.
- 11) **Detailed supporting cash book and general ledger.** UI shall maintain supporting documentation (purpose of the entry, person making the entry, worksheets showing any calculations and any supporting documents, reconciliations, invoices, etc.), or a reference where the supporting documentation can be found.

We have reviewed the settlement agreement filed by UI and we believe that it is a reasonable resolution to bring the utility into compliance with Rule 25-30.115, Florida Administrative Code. Further, we believe that it is in the best interest to approve the settlement agreement because UI has addressed all of our concerns that were identified in Docket No. 020407-WS. Based on the foregoing, we find that the settlement agreement is hereby approved in its entirety.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement agreement filed by Utilities Inc. on November 8, 2004, attached hereto as Attachment A, is approved in its entirety. It is further

ORDERED that Attachment A is incorporated herein by reference. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of December, 2004.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

(SEAL)

SOME (OR ALL) ATTACHMENT PAGES ARE NOT ON ELECTRONIC DOCUMENT.

KEF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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FAX (407) 830-6522

MARTIN S. FRIEDMAN, P.A.
VALERIE L. LOUD

November 5, 2004

Ms. Blanca Bayo
Commission Clerk and Administrative Services Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 040316-WS; Analysis of Utilities, Inc.'s plan to bring Florida subsidiaries into compliance with Rule 25-20.115, Florida Administrative Code
Our File No.: 30057.81

Dear Ms. Bayo:

Utilities, Inc. proposes the following in settlement of the issues in this docket:

1. Annual Report and Minimum Filing Requirements (MFRs) to begin with balance per books. Beginning with all years ending after December 31, 2004, each of the Utilities' annual report balances shall agree with the general ledger balances. All MFR pages that require a balance per book's column shall either be the actual balance per the general ledger or an average test year balance, with supporting calculations provided that show that the components of the calculation came from the general ledger.
2. Adjustments to Rate Base to be timely made. Beginning with the year ended December 31, 2003, and continuing through December 31, 2004, UI shall have reviewed all Commission transfer and rate case orders to determine if proper adjustments have been made to correctly state rate base balances. UI shall complete the adjustments to the books of Labrador Utilities, Inc., Bayside Utility Services, Inc., Mid-County Services, Inc. and Utilities, Inc. of Eagle Ridge when the Commission orders in their respective pending rate cases have become final. UI will complete the adjustments to the remaining Utilities' books on or before December 31, 2004. If UI has questions regarding adjustments for a specific Utility, it shall notify Commission Staff prior to December 31, 2004. UI shall maintain sufficient workpapers so that Commission Staff can easily review adjustments made and whether appropriate adjustments to reserve accounts have been made since the date of transfer or the end of the test year in a rate case, or other proceeding where rate base was established.

Ms. Blanca Bayo
November 5, 2004
Page 2

3. Improvements to account cross reference and allocation methodology. Beginning with the year ended December 31, 2004, and annually thereafter, UI shall maintain a schedule reconciling each general ledger account and sub-account to the USOA primary accounts. For any system that is utilizing a December 31, 2003-test year, UI shall complete this analysis before filing its MFRs. For all future rate cases, UI will prepare a detailed schedule for reconciliation of the general ledger account and sub-account to the USOA primary accounts.

4. Correction of pumping equipment account number. UI will continue to review accounts 310 and 311 to correct any mismatches between accounts 310 and 311. UI shall maintain supporting documentation to allow Commission Staff to confirm that the adjustments have been made for any future Commission Staff audits, and any adjustment will be reflected in future rate cases.

5. Retirements to be made consistently. UI shall complete, by the end of 2004, a review of all systems to ensure that all appropriate retirement entries have been made. Beginning with the year ended December 31, 2003, UI shall ensure that its operation and accounting personnel consistently utilize UI's existing retirement policy. Beginning September 30, 2004, UI's regulatory accounting and operations personnel shall make quarterly analyses of all plant additions to ensure that all required retirements have been made. Adjustments to the books of the Utilities will be completed either before December 31, 2004, or prior to the filing of a rate case by the relevant Utility. UI has implemented a fully automated work order system to facilitate its work order process. UI has already added the following fields to its work order form and input screen to track retirements when items are moved from the CP ledger to the general ledger: 1. New, 2. Upgrade, 3. Repair, and 4. Replace. These additional data entry fields will allow UI to sort all projects and better evaluate which projects require retirements. In addition, UI will require operations employees to provide accounting staff with the original date the asset was placed in service or the original cost, if available.

6. Corrections to CIAC amortization rate. UI has completed these adjustments.

7. Lack of support for Water Service Corp. Allocations. Pursuant to Order No. PSC-03-1440-POF-WS, issued December 22, 2003, in Docket No. 0200710WS, the Commission ordered that "Utilities, Inc. shall use ERCs as its primary allocation factor for affiliate costs in future cases in Florida as of January 1, 2004, and shall use the end of the applicable test year as the measurement date." UI is reviewing the appropriateness of an ERC allocation methodology in other jurisdictions in which it operates. Until the appropriateness of this type of allocation can be determined, UI will prepare a second Water Services Corp. allocation book specifically for its Florida subsidiaries using the ERC as its primary allocation factor as delineated in Rule 25-30.055, Florida Administrative Code,

Rose, Sundstrom & Bentley, LLP

600 S. North Lake Blvd., Suite 160, Altamonte Springs, Florida 32701-6177

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beginning January 1, 2004. UI shall also maintain workpapers for each Utility to show how the ERCs are determined on an annual basis.

8. Allocation to non-owned systems. UI agrees to implement its methodology to systems that it doesn't own but operates, and has included these systems in the 2003 allocation book.

9. Documentation of "other water uses." UI has implemented and is using the following standard operating protocol to track other water usage. UI believes that this protocol conforms to the Staff's proposal.

For each water system in Florida, the operator or field supervisor for each system will submit a report form each month entitled **WATER LOSS RECORD** to the Florida regional office. This document shall identify the estimated volume of unmetered water used in the system on a given day and the reason why it was lost. For example, water lost due to a water main break would be calculated from the duration of the event, the size of the pipe, and the estimated flow rate.

Other types of unmetered water use include, but are not limited to:

- water main flushing activities;
- hydrant flow testing;
- filling and chlorinating new water main extensions, storage tanks, or treatment units;
- filling new force main and reuse main extensions;
- water used internally in the treatment or disinfection process.

Each month, the total sum of water noted on the **WATER LOSS RECORD** is entered into our spreadsheet that tracks and compares water pumped and water purchased, against water sold for each system. In this way, UI has the means to review the data on a routine basis. The monthly form is attached to and filed with the file copy of each Utility's Monthly Operating Report and retained for future use.

10. Maintenance of adjusting an entry log book. For all years beginning with January 1, 2003, UI shall maintain an adjusting entry log book and supporting documentation (purpose of the entry, person making the entry, worksheets showing any calculations and any supporting documents, reconciliations, invoices, etc.), with each adjustment to the journal.

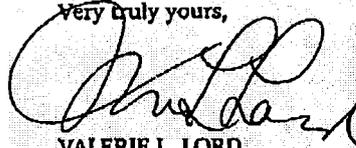
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11. Detail supporting cash book and general ledger. UI shall maintain supporting documentation (purpose of the entry, person making the entry, worksheets showing any calculations and any supporting documents, reconciliations, invoices, etc.), or a reference where the supporting documentation can be found.

Please do not hesitate to contact me, if you have any questions.

Very truly yours,



VALERIE L. LORD
For the Firm

VLL/dc

cc: Ms. Tricia Merchant, Division of Economic Regulation (by facsimile)
Mr. Steven M. Lubertozi

MAIL ALAMONTE UTILITIES INC./SUBSIDIARIES COMPLIANCE (A1)PSC Clerk (Bayo)03 (Stipulation and Settlement).br.rpd

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600 S. North Lake Blvd., Suite 160, Alamoonte Springs, Florida 32701-6177

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Based on the approved rate base components in this rate case, the utility's test year CIAC ratio is 55.89%.

As mentioned earlier in this Order, the utility's pro forma investments total \$1,854,647 which includes a pro forma plant retirement of 549,637 in this current case, and the approved pro forma investments totaling \$2,865,414 in the utility's last rate proceeding. Further, in 2007, the utility has plans for three additional reuse pro forma projects which include the construction of a 1.5 million gallon ground storage tank, the looping of the reuse distribution system in the Live Oak subdivision, and the installation of four augmentation wells for the reuse system. The total cost of these projects is approximately \$2 million.

In determining where the utility's plant capacity charge should be revised, we took the total cost of the wastewater treatment plant, including pumping equipment, and Alafaya's reuse investment, and divided the sum by the estimated 8,816 equivalent residential connections at buildout. Using this methodology, we calculate a plant capacity charge of \$1,762. This represents an increase of \$1,122 (\$1,762 less \$640). Further, as discussed earlier, we are allowing the utility to recover the cost to install reuse meters for its 1,200 existing reuse customers. Thus, we have found that a meter installation charge of \$150 is reasonable for future reuse connections. Utilizing the above charges, the CIAC ratio at the buildout date of 2012 is 68.03%. Therefore, consistent with the guidelines of the above-mentioned rule, we approve a plant capacity charge of \$1,762, and a meter installation charge of \$150 for this utility.

If there is no timely protest to this PAA Order by a substantially affected person, the utility shall file the appropriate revised tariff sheets within ten days of the issuance of the Consummating Order for the approved tariff changes. Our staff shall administratively approve the revised tariff sheets upon staff's verification that the tariff is consistent with our decision. If the revised tariff sheets are filed and approved, the tariff sheets shall become effective on or after the stamped approval date. Within ten days of the issuance of the Consummating Order for the Commission approved tariff changes, the utility shall also provide notice of the Commission's decision to all persons in the service area who are affected by the approved plant capacity charges and the authorization to collect donated property. The notice shall be approved by our staff prior to distribution. The utility shall provide proof that the appropriate customers or developers have received noticed within ten days of the date of the notice.

VIII. OTHER ISSUES

A. Show Cause for Apparent Violation of an Order

Pursuant to Order No. PSC-04-0363-PAA-SU (PAA Order),²⁴ this Commission required Alafaya to 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

²⁴ Issued April 5, 2004, in Docket No. 020408-SU, In re: Application for rate increase in Seminole County by Alafaya Utilities, Inc.

date of a final order. That PAA Order was finalized by a Consummating Order, Order No. PSC-04-0435-CO-SU, issued April 28, 2004. Therefore, the appropriate adjustments to all the applicable primary accounts should have been accomplished and proof of such adjustments should have been provided by no later than July 27, 2004.

A review of Docket No. 020408-SU, the docket in which the PAA Order was issued, shows that the utility never provided any proof that such adjustments had been made. Moreover, pursuant to Audit Finding No. 1, in the Audit Report filed in this docket, under the STATEMENT OF FACT section, the auditors stated:

The utility adjusted its general ledger in December 2005 to record the utility plant in service adjustments required as of December 31, 2002, for its last rate case proceeding in Docket No. 020408-SU.

Because these adjustments were made at such a late date, we believe that this has led to problems with reconciling the minimum filing requirements to the adjustments which should have been made pursuant to the PAA Order in Docket No. 020408-SU. Based on this audit finding, it appears that the required adjustments to plant in service and accumulated depreciation were not made until December 2005. Therefore, it appears that the appropriate adjustments were not made until almost 17 months after the due date of July 27, 2004. Also, it appears that several schedules filed in its minimum filing requirements (MFRs) were not "consistent with and reconcilable with the utility's annual report to the Commission," as required by Rule 25-30.110(2), F.A.C.

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), F.S., 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 and Rule 25-30.110(2), F.A.C., the utility's acts were "willful" in the sense intended by Section 367.161, F.S. 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.

We find that the circumstances in this case are such that show cause proceedings shall be initiated. We are especially concerned with Alafaya's apparent failure to adjust its books to reflect the adjustments to all the applicable primary accounts required by the PAA Order. We note that in the Order Approving Settlement Agreement Filed by Utilities, Inc. (Settlement

Order),²⁵ 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 eight months apart, should have made the utility acutely aware of the problems that it was having in maintaining its books and records. Also, see Docket No. 060262-WS, In re: Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc., where we discovered another Utilities, Inc. utility, Labrador Utilities, Inc., has also apparently failed to adjust its books and records. The continued pattern of disregard for our rules, statutes, and orders warrants more than just a warning. Accordingly, Alafaya shall be made to show cause in writing, within 21 days, why it should not be fined \$2,500 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.

Also, the MFR schedules filed with this rate case were not "consistent with and reconcilable with the utility's annual report," as required by Rule 25-30.110(2), F.A.C. However, this apparent violation may be attributable to the utility's failure to timely adjust its books to reflect the adjustments reflected in the PAA Order. Accordingly, Alafaya shall be made to show cause in writing, within 21 days, why it should not be fined \$500 for its apparent failure to file MFR schedules consistent with its annual report.

Based on the above, Alafaya shall be made to show cause in writing, within 21 days, why it should not be fined a total of \$3,000 for its two apparent violations noted above. The following conditions shall apply:

1. The utility's response to the show cause order shall contain specific allegations of fact and law;
2. Should Alafaya 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), F.S., 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 shall 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 Alafaya fails to file a timely response to the show cause order, the fine shall be deemed assessed with no further action required by the Commission;

²⁵ See 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.

5. If the utility responds timely but does not request a hearing, a recommendation shall 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 shall be considered resolved.

Further, the utility shall 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, F.S.

B. Show Cause for Assessing Unauthorized Charges

Section 367.091(3), F.S., states that "[e]ach utility's rates, charges, and customer service policies must be contained in a tariff approved by and on file with the commission." As discussed earlier in this Order, it does not appear that this Commission has approved any miscellaneous service charges for Alafaya. However, according to its past annual reports and MFRs in its last rate case and this current case, the utility began in 1995 assessing the standard charges that this Commission has routinely allowed since at least 1990. Most of the utility's sister companies that are currently in for rate cases appear to have authorization to assess the standard miscellaneous service charges. This appears to be an oversight on UI's part in not obtaining this Commission's approval to collect these charges when it acquired Alafaya in 1995.

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), F.S., 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, F.S., or any lawful order of the Commission. By failing to comply with Section 367.091(3), F.S., and charging miscellaneous service charges without an approved tariff, 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.

For the reason set forth earlier, the utility shall not be required to refund any of the unauthorized charges, and shall be allowed to charges miscellaneous service charges as set forth in this Order. However, given the number of years the utility has assessed unauthorized charges, we find that Alafaya shall be required to show cause why it should not be fined \$1,200 for

apparently assessing miscellaneous service charges without an approved tariff. This equates to approximately \$100 per year. The conditions set forth in the show cause proceeding immediately preceding this show cause proceeding shall also apply in this show cause proceeding. Also, as stated in the immediately preceding show cause, the utility shall be put on notice that failure to comply with orders, rules, or statutes will again subject the utility to additional 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, F.S.

C. Proof of Adjustments

To ensure that the utility adjusts its books in accordance with our decisions, Alafaya shall provide proof within 90 days of the final order issued in this docket that the adjustments for all the applicable NARUC USOA primary accounts have been made.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application for increased wastewater rates of Alafaya Utilities, Inc. is approved as set forth in the body of this Order. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that the schedules and attachments to this Order are incorporated by reference herein. It is further

ORDERED that Alafaya Utilities, Inc. shall file revised wastewater tariff sheets and a proposed customer notice to reflect the approved wastewater rates shown on Schedule No. 4. It is further

ORDERED that the tariffs shall be approved upon our staff's verification that the tariffs are consistent with our decision herein. It is further

ORDERED that the approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. It is further

ORDERED that the approved wastewater rates shall not be implemented until our staff has approved the proposed customer notice. It is further

ORDERED that Alafaya Utilities, Inc. shall provide proof of the date notice was given no less than ten days after the date of the notice. It is further

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of rate case expense and the gross-up for regulatory assessment fees which is \$11,627 for water and \$10,587 for wastewater. The decreased revenues will result in the rate reduction as shown approved on Schedule Nos. 4-A and 4-B, attached hereto and incorporated herein by reference.

The utility shall file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The utility shall file a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. The approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-40.475(1), F.A.C. The rates shall not be implemented until our staff has approved the proposed customer notice. The utility shall provide proof of the date notice was given no less than 10 days after the date of the notice.

If the utility files these reductions in conjunction with a price index or pass-through rate adjustment, separate data shall be filed for the price index and/or pass-through increase or decrease, and for the reduction in the rates due to the amortized rate case expense.

Show Cause Proceeding

By Order No. PSC-03-0647-PAA-WS, issued on May 28, 2003, in Docket No. 020407-WS, In re: Application for rate increase in Polk County by Cypress Lakes Utilities, Inc., (Show Cause Order), we found that the utility's failure to keep its books and records was an apparent violation and ordered the utility to show cause why it should not be fined \$3000. The utility responded to the show cause order and committed to changes that would improve its books and records. In Order No. PSC-04-0358-FOF-WS, issued on April 5, 2004, in Docket No. 020407-WS, (Final Order), we ordered that the \$3000 not be imposed based on the commitments made by the utility to adjust its books and records. In that same order, we opened a separate docket to address the issue of noncompliance with regard to all Florida subsidiaries of Utilities, Inc. By Order No. PSC-04-1275-AS-WS, issued on December 23, 2004, 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 (Settlement Order), we approved the settlement whereby Cypress Lakes would adjust its books to reflect the adjustments to all the applicable primary accounts required by that Order. Based on the settlement order, the appropriate adjustments to all the applicable primary accounts should have been accomplished no later than December 31, 2004.

In the Show Cause Order, issued May 28, 2003, the utility was ordered to make several accounting adjustments by December 31, 2004. According to the utility's general ledger, the ordered entries were not made until February 15, 2006. We believe that, because these adjustments were made at such a late date, this has led to problems with reconciling the minimum filing requirements to the adjustments which should have been made pursuant to the Settlement Order. Based on the audit, we believe that the required adjustments to plant in service and accumulated depreciation were made in February 2006, effective for the calendar year ending December 31, 2005. Therefore, it appears that the appropriate adjustments were not made until almost 14 months after the due date of December 31, 2004.

Additionally, the utility has added several new developments since its last rate case. The utility's records, however, did not reflect any new additions to UPIS or CIAC for wastewater mains or lift stations. The auditors requested that the utility provide information about any additions since the last case. The requested information was included in the audit work papers. Our staff's review of the documentation provided by the utility during the audit indicated that one addition was completed in late 2004, and two other additions were completed in 2005.

In its response to the audit, the utility agreed with the auditors, and indicated that it recognized certain assets were contributed by a developer and in service that were not recorded in either CIAC or the utility's general ledger. The utility indicated it would properly record these assets in UPIS and CIAC accordingly. While it appears the failure to make these accounting entries have little or no impact on revenue requirement or rates, the utility again failed to properly update its books and records in a timely manner.

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), F.S., authorizes this 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 Final and Settlement Orders in a timely manner, the utility's acts were "willful" in the sense intended by Section 367.161, F.S. 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.

We find that the circumstances in this case are such that show cause proceedings shall be initiated. We are especially concerned with Cypress Lakes' apparent failure to adjust its books to reflect the adjustments to all the applicable primary accounts required by the Final Order and the subsequent Settlement Order. In the 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 Final Order, issued approximately eight months apart, should have made the utility acutely aware of the problems that it was having in maintaining its books and records. Also, see Docket No. 060262-WS, In re: Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc., where another Utilities, Inc. utility has failed to adjust its books and records. This continued pattern of disregard for our rules, statutes, and orders warrants more than just a warning. Accordingly, Cypress Lakes shall 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 Final Order and provide proof of such adjustments within 90 days of the Consummating Order.

Based on the above, Cypress Lakes shall show cause in writing, within 21 days, why it should not be fined a total of \$3,000 for its apparent violations noted above. The following conditions shall apply:

1. The utility's response to the show cause order should contain specific allegations of fact and law;
2. Should Cypress Lakes 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), F.S., 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 Cypress Lakes 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 shall be considered resolved.

Further, the utility is on notice that failure to comply with our 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, F.S.

Proof of Compliance with NARUC USOA

To ensure that the utility adjusts its books in accordance with our decision, Cypress Lakes shall provide proof, within 90 days of the Consummating Order, that the adjustments for all the applicable National Association of Regulatory Utility Commissioners' (NARUC) Uniform System of Accounts (USOA) primary accounts have been made.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Cypress Lakes Utilities, Inc.'s application for increased water and wastewater rates is granted to the extent set forth in the body of this Order. It is further

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the proposed customer notice. The utility shall provide proof of the date notice was given no less than 10 days after the date of the notice.

If the utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data shall be filed for the price index and/or pass-through increase or decrease, and for the reduction in the rates due to the amortized rate case expense.

OTHER ISSUES

Appropriate Meter Installation Fees for Water and Reuse Customers

The utility currently has an authorized water meter installation fee of \$60 and \$110 for a 5/8"x3/4" and 1" meters, respectively. In its response to a staff data request, Sanlando stated that the new Gallimore subdivision is currently under construction and that no meters have been installed. The utility asserted that the cost to install 5/8"x3/4" meter would be \$150, which includes labor and materials and that the cost to install meters greater than 5/8"x3/4" should be at actual cost. We have approved a meter installation fee of \$250 by Order No. PSC-03-0740-PAA-WS,²⁶ issued June 23, 2003, and a \$200 fee by Order No. PSC-04-1256-PAA-WU,²⁷ issued December 20, 2004, for 5/8"x3/4" meters. In addition, a \$190 fee was approved by Order No. PSC-02-1831-TRF-WS,²⁸ issued December 20, 2002. Therefore, we find it appropriate to authorize Sanlando to collect water and reuse meter installation fees of \$150 for 5/8"x3/4" meter and actual cost for meters greater than 5/8"x3/4".

The utility shall file a proposed customer notice to reflect the charges approved herein. The approved charges shall be effective for service rendered on or after the stamped approval date of the tariff, pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the notice has been approved by Commission staff. Within 10 days of the date the order is final, the utility shall provide notice of the tariff changes to all customers. The utility shall provide proof the customers have received notice within 10 days after the date that the notice was sent.

Initiating Show Cause Proceedings

Rule 25-30.116(1)(d)5., Florida Administrative Code, states:

When the construction activities for an ongoing project are expected to be suspended for a period exceeding six (6) months, the utility shall notify the Commission of the suspension and the reason(s) for the suspension, and shall submit a proposed accounting treatment for the suspended project.

²⁶ Docket No. 021067-WS, In re: Application for staff assisted rate case in Polk County by River Ranch Water Management, L.L.C.

²⁷ Docket No. 041040-WU, In re: Application for certificate to operate water utility in Baker and Union Counties by B & C Water Resources, L.L.C.

²⁸ Docket No. 020388-WS, In re: Request for approval to increase meter installation fees to conform to current cost in Lake County by Sun Communities Finance, LLC d/b/a/ Water Oak Utility.

As discussed previously, we are approving a pro forma water plant increase of \$1,178,493 for the utility's electric control upgrade project. According to the support documentation provided for this project, the first invoice of \$40,165 was dated June 22, 2004, and the second invoice of \$4,877 was dated April 26, 2005. Based on these invoice dates, it appears the utility had suspended this project for approximately 10 months. However, the utility did not notify the Commission of this project's suspension, nor did it submit a proposed accounting treatment, as required by Rule 25-30.116(1)(d)5., Florida Administrative Code.

In response to staff's first inquiry, the Vice President of Operations in Florida (VPOF) stated that the 10-month suspension reflected the completion of the work at the Des Pinar water treatment plant (WTP) and the start-up of the work at the Wekiva WTP. The VPOF asserted that, due to the size and complexity of the Wekiva WTP design as well as the impact of Hurricane Katrina on the costs of materials, the portion of the project associated with Wekiva WTP was reexamined in an effort to verify the cost effectiveness of the design. Based on this initial response, it appeared that the work on the Des Pinar WTP was completed in June 2004. However, upon a further data request from the corporate office personnel of the utility's parent, UI stated that the work on the Des Pinar WTP was not completed until January 2006. UI also asserted that the invoices for this work totaled \$169,688 and that this amount remained in construction work in progress and accrued as AFUDC.

As stated above, the work on the Des Pinar plant was completed almost one year before the Wekiva plant. Because the work on each plant was independent of one another, the utility is encouraged not to combine projects like this one, but rather to separate them as one project for each independent purpose. By separating them into distinct projects, it should avoid the likelihood of any excessive AFUDC accrual. As discussed previously, we approved the appropriate amount of AFUDC for this project in accordance with Rule 25-30.116, Florida Administrative Code. Thus, Sanlando will not realize a return on any unwarranted AFUDC resulting from the suspension of the electric control upgrade project.

Section 367.161, Florida Statutes, authorizes this 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 have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. In failing to notify this Commission of this project's suspension and to submit a proposed accounting treatment, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, 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., having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." 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).

We realize that there are going to be numerous plant projects to keep track of for such a large water system like Sanlando's. However, Sanlando's parent, UI, is a very large and sophisticated company providing water and wastewater service to customers in several states,

and, as such, should be more cognizant of our rules than the smaller water and wastewater companies. UI's continued pattern of disregard for the Commission's rules, statutes, and orders warrants more than just a warning.

Based on the above, we find it appropriate that Sanlando shall show cause in writing, within 21 days, why it should not be fined a total of \$500 for its apparent violation noted above. The show cause order incorporates the following conditions:

1. The utility's response to the show cause order shall contain specific allegations of fact and law;
2. Should Sanlando 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 shall 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 Sanlando fails to file a timely response to the show cause order, the fine shall 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 shall 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 shall be considered resolved.

Further, the utility is 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.

Proof of Compliance with NARUC USOA

To ensure that the utility adjusts its books in accordance with our decisions herein, Sanlando shall provide proof within 90 days of the final order issued in this docket that the adjustments for all the applicable NARUC USOA primary accounts have been made.

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

Supplemental information completing application deficiencies was filed on April 2, 2001, and that date was determined to be the official filing date of the application. Pursuant to Section 367.031, Florida Statutes, we are required to grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application which, in this case, was July 2, 2001. This requirement was met by our decision at the June 25, 2001 Agenda Conference. On March 15, 2001, the Co-op filed a formal complaint in the instant docket against Labrador which it subsequently withdrew on May 10, 2001.

We have jurisdiction over these matters pursuant to Sections 367.045 and 367.161, Florida Statutes.

DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS AND
REQUIRING FILING OF ANNUAL REPORTS AND REGULATORY ASSESSMENT FEES

Apparent Violation of Section 367.031, Florida Statutes

The utility is in apparent violation of Section 367.031, Florida Statutes, which states that each utility subject to our jurisdiction must obtain a certificate of authorization to provide water or wastewater service. The utility has been providing water and wastewater services to the public for compensation since approximately 1997 without certificates of authorization.

Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, authorizes us 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,

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Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.033, F.A.C., Relating To Tax Savings Refund For 1998 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

The failure of the utility to obtain certificates of authorization appears to have been due to a misinterpretation, rather than lack of knowledge, of our statutes and rules. Although the utility had been in existence since 1987, Mr. Viau believed the utility was subject only to the Florida Mobile Home Act, Chapter 723, Florida Statutes, as long as the utility facilities were owned in conjunction with the mobile home community facilities. At some time prior to December 1997, the utility began charging a specific rate for water and wastewater service. On June 10, 1999, the community facilities were sold to the Co-op. However, the Co-op had until January 1, 2000, in which to exercise the option to purchase the utility facilities. When the option expired without being exercised, the utility immediately began procedures for filing for certificates of authorization.

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

Apparent Violation of Rule 25-30.110, Florida Administrative Code
and Requirement that Utility File 2000 Annual Report

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

As discussed previously, utilities are charged with the knowledge of our rules and statutes. Moreover, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities, is \$3 per day, based on the number of calendar days elapsed from March 31, or from an approved extended filing date, until the date of filing. Assuming a filing date of October 1, 2001, for the utility's 2000 annual report, we calculate that the total penalty would be \$552 calculated as follows: \$3.00 per day x 184 days = \$552. The penalty, if assessed, would continue to accrue until such time as Labrador files its 2000 annual report. We note that pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, we may, in our discretion, impose greater or lesser penalties for such noncompliance.

We believe that Labrador has shown good cause for its noncompliance with the requirement to file its 2000 annual report. As discussed previously, although the utility had been in existence since 1987, the owner believed the utility was subject only to the Florida Mobile Home Act, Chapter 723, Florida Statutes, as long as the utility facilities were owned in conjunction with the mobile home community facilities. Once the option to purchase the utility facilities expired without being exercised, the utility immediately began procedures for filing for certificates of authorization. Had the utility not done so, we would still be unaware of the change in its jurisdictional status. The delay in the completion of the

application after the initial filing was due to circumstances beyond the control of the utility. Finally, the utility has been very cooperative with our staff in its efforts to come into compliance with Commission rules.

For the foregoing reasons, we find that the apparent violation of Rule 25-30.110(3), Florida Statutes, does not rise in these circumstances to the level of warranting the initiation of a show cause proceeding. Moreover, we find that the utility has demonstrated good cause for its apparent noncompliance. Therefore, we decline to order Labrador to show cause, in writing within 21 days, why it should not be fined for its failure to file its 2000 annual report. Further, the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, shall not be assessed.

Nevertheless, we note that annual reports are used to determine the earnings level of the utility; to determine whether a utility is in substantial compliance with the National Association of Regulatory Utility Commissioners Uniform Systems of Accounts (NARUC USOA), as well as applicable rules and orders of the Commission; to determine whether financial statements and related schedules fairly present the financial condition and results of operations for the period presented; and to determine whether other information presented as to the business affairs of the utility are correct for the period they represent.

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

Apparent Violation of Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, and Requiring Utility to Pay 2000 Regulatory Assessment Fees (RAFTs)

Pursuant to Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each utility shall remit annually a RAF in the amount of 0.045 of its

gross operating revenue. Pursuant to Rule 25-30.120(2), Florida Administrative Code, the obligation to remit RAFs for any year shall apply to any utility which is subject to our jurisdiction on or before December 31 of that year or for any part of that year, whether or not the utility has actually applied for or been issued a certificate. In failing to remit its 2000 RAFs, Labrador is in apparent violation of the above-referenced statutory and rule provisions.

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

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

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

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in

which failure continues, not to exceed a total penalty of 25 percent.

2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% per annum.

For the foregoing reasons, Labrador shall remit RAFs in the amount of \$8,721.00 for 2000 by October 1, 2001. This amount is calculated based upon estimated combined annual revenues of approximately \$193,800, based on the utility's current monthly flat rates. Additionally, the utility shall remit a statutory penalty in the amount of \$2,180.25 and \$610.47 in interest, calculated in accordance with Rule 25-30.120(7)(a), Florida Administrative Code, for its failure to timely pay its 2000 RAFs. If Labrador fails to pay its 2000 RAFs along with the requisite penalties and interest by October 1, 2001, our staff is directed to bring a show cause recommendation at that time. In addition, the utility shall be on notice that interest continues to accrue until such time as the 2000 RAFs are remitted.

CERTIFICATES NOS. 616-W AND 530-S

As discussed in the background, on May 4, 2000, an application was filed on behalf of Labrador for original water and wastewater certificates for a utility in existence and charging rates. As filed, the application contained numerous deficiencies. Supplemental information curing the deficiencies was filed on April 2, 2001.

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

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Irrigation – Water

Base Facility Charge	
2"	\$50.24
Gallorage Charge	\$3.14
(Per 1,000 gallons)	

IV. Refund of Interim Revenues

Pursuant to Section 367.082, F.S., 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 ordered by this 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. Our 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 collected from the approved interim rates granted in Order No. PSC-06-0668-FOF-WS. By letter dated August 15, 2006, Labrador filed 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 the original rates are approved. Therefore, the total amount of the interim refund cannot be determined at this time.

Because the data supplied by Labrador is insufficient to determine an appropriate revenue requirement and set reasonable rates, we have found that the utility has not met its burden of proof for this Commission to determine just, reasonable, compensatory, and not unfairly discriminatory rates. As such, Labrador shall refund, with interest, all interim revenues collected pursuant to Order No. PSC-06-0668-FOF-WS. Pursuant to Rule 25-30.360(7), F.A.C, Labrador shall file the appropriate refund reports indicating the amount of money to be refunded and how that amount was computed.

V. Show Cause Proceeding

Pursuant to Order No. PSC-04-1281-PAA-WS (PAA Order), this 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, our 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, our staff noted 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 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), F.S., authorizes this 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, F.S., 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, F.S. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, 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.

We find that the circumstances in this case are such that show cause proceedings shall be initiated. We are 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. In

the Order Approving Settlement Agreement Filed by Utilities, Inc. (Settlement Order),⁶ 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. This continued pattern of disregard for our rules, statutes, and orders warrants more than just a warning. Accordingly, Labrador shall 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, the utility has demonstrated mitigating circumstances. A significant portion of Forest Lake Estates' residents are present only during the winter, and by letter dated July 15, 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 2½ 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 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, 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, we do 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 Labrador shall 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.

Based on the above, Labrador shall 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

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.

requirements described above in Order No. PSC-04-1281-PAA-WS. The following conditions shall apply:

1. The utility's response to the show cause order shall 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), F.S., 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 shall 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 shall 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 shall 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 shall be considered resolved.

Further, the utility shall 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, F. S.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of Labrador Utilities, Inc., for increased water and wastewater rates is denied. It is further

ORDERED that the appropriate rates for Labrador Utilities, Inc., are the rates in effect prior to the approval of interim rates, and the utility shall file revised tariff sheets as shown in the body of this Order. It is further

ORDERED that pursuant to Rule 25-30.360, F.A.C., Labrador Utilities, Inc. shall, refund, with interest, the interim revenues granted by Order No. PSC-06-0668-FOF-WS. It is further

ORDERED that Labrador Utilities, Inc., shall 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

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County. The reduction in revenues will result in the rate reduction approve on Schedule Nos. 4-A and 4-B.

Table 30-1

Rate Case Expense Including Regulatory Assessment Fees

	Commission Approved Amount	Amount Including RAF
Marion Water	\$0	\$0
Marion Wastewater	554	580
Orange Water	0	0
Pasco Water	23,772	24,892
Pasco Wastewater	9,058	9,485
Pinellas Water	3,458	3,621
Seminole Water	21,345	22,351
Seminole Wastewater	11,393	11,930
Total	\$69,580	\$72,859

UIF shall file revised tariff sheets for each system to reflect the Commission-approved rates no later than one month prior to the actual date of the required rate reduction. The utility shall also file a proposed customer notice for each system setting forth the lower rates and the reason for the reduction with the revised tariffs. The approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-40.475(1), F.A.C. The rates shall not be implemented until our staff has approved the proposed customer notices, and the notice has been received by the customers. The utility shall provide proof of the date notices were given no less than ten days after the date of the notices.

If the utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease, and for the reduction in the rates due to the amortized rate case expense.

VIII. OTHER ISSUES

A. Show Cause Proceeding for Utility Apparently Serving Outside its Certificated Territory

The water distribution and wastewater collection maps provided by the utility in its MFRs indicate that the utility is serving outside its certificated territory for two systems in Orange County and five systems in Seminole County. The two systems in Orange County are Davis Shores (approximately one customer) and Crescent Heights (approximately eight customers). The five systems in Seminole County are Jansen Estates (approximately 58 customers in eight different areas), Oakland Shores (approximately three customers), Park Ridge (approximately one

customer), Phillips (approximately 13 customers in two different areas), and Ravenna Park (approximately five customers in two different areas).

Based on these maps provided by the utility, the utility is serving outside its certificated territory in apparent violation of Section 367.045(2), F.S. Pursuant to that subsection: "A utility may not delete or extend its service area outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the commission."

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), F.S., 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, F.S., or any lawful order of the Commission. By failing to comply with the above-noted requirements of Subsection 367.045(2), F.S., the utility's acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL entitled 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.

The circumstances in this case are such that show cause proceedings should be initiated. In the past, where there have been just isolated instances of a utility serving outside its territory, this Commission has declined to initiate show cause proceedings.¹⁸ However, in this docket, there is a continued pattern of disregard for the statutory requirement to amend the utility's certificate prior to serving customers located outside the utility's certificated territory. When our staff contacted the utility, the utility indicated that it would probably not be able to file amendments for these "oversights" until September 30, 2007.

Based on the above-noted pattern of disregard, we find that the situation warrants more than just a warning. Accordingly, UIF shall be made to show cause in writing, within 21 days, why it should not be fined \$5,250 (\$750 for each of the seven systems) for its apparent failure to amend its certificate of authorization prior to serving customers outside its certificated territory. Moreover, UIF shall file by September 30, 2007, an amendment application for all its systems in which it is serving outside its certificated territory to correct its apparent violation of Subsection 367.045(2), F.S. This show cause proceeding shall incorporate the following conditions:

1. The utility's response to the show cause order shall contain specific allegations of fact and law;

¹⁸ See Order No. PSC-04-0149-FOF-SU, issued February 11, 2004, in Docket No. 030957-SU, In re: Application for amendment of Certificate No. 379-S for extension of wastewater service area in Seminole County, by Alafaya Utilities, Inc. (another Utilities, Inc. subsidiary).

2. Should UIF 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), F.S., 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 shall 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 UIF fails to file a timely response to the show cause order, the fine shall 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 shall be considered resolved.

Further, the utility is 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, F.S.

B. Show Cause Proceeding for Utility's Apparent Failure to Comply With Rule 25-30.115, F.A.C., and Orders Nos. PSC-03-1440-FOF-WS and PSC-04-1275-AS-WS.

In Order No. PSC-03-1440-FOF-WS, issued December 22, 2003,¹⁹ this Commission discussed whether UIF should be made to show cause for its failure to maintain its books in accordance with the NARUC USOA, as required by Rule 25-30.115, F.A.C. The Commission noted that there was testimony that the utility had violated a prior settlement order (First Settlement Order),²⁰ and that "the utility is in apparent violation of Rule 25-30.115, F.A.C., as well as of numerous Commission orders." However, this Commission noted that the utility had stated that it was voluntarily taking steps to come into compliance. Based on this assurance, we decided that the interests of the customers would best be served by not initiating another show cause proceeding, and by monitoring the utility's future compliance and actions in conjunction with Docket No. 020407-WS,²¹ and in future rate filings for UI systems in Florida.

Also, in Order No. PSC-04-0363-PAA-SU (PAA Order),²² we required Alafaya Utilities, Inc., a UI subsidiary, to adjust its books to reflect the adjustments to all the applicable primary

¹⁹ Order issued in Docket No. 020071-WS, In re: Application for rate increase in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida.

²⁰ See Order No. PSC-00-2388-AS-WU, issued December 13, 2000, in Docket No. 991437-WU, In Re: Application for increase in water rates in Orange County by Wedgefield Utilities, Inc.

²¹ In re: Application for rate increase in Polk County by Cypress Lakes Utilities, Inc.

²² Issued April 5, 2004, in Docket No. 020408-SU, In re: Application for rate increase in Seminole County by Alafaya Utilities, Inc.

accounts required by that Order, and provide proof of such adjustments within 90 days of the issuance date of a final order. In that PAA Order, on page 42, this Commission cited at least four other orders in which UI and its Florida subsidiaries had been cited for improperly maintaining their books and records in violation of either Rule 25-30.115 or 25-30.450, F.A.C.

Now, our staff has again determined that UIF has not kept its books and records in compliance with Rule 25-30.115, F.A.C., and has not made timely adjustments to its books and records in accordance with adjustments made in Order No. PSC-03-1440-FOF-WS, the Order issued in the utility's last rate case. Although Order No. PSC-03-1440-FOF-WS was issued on December 23, 2003, the auditor states in Audit Finding No. 1, in the Audit Report filed in this docket, that the adjustments were not made until March 16 and April 27, 2006. Because these adjustments were made at such a late date, our staff has had problems reconciling the minimum filing requirements to the adjustments which should have been made pursuant to Order No. PSC-03-1440-FOF-WS

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), F.S., 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, F.S., or any lawful order of the Commission. By failing to comply with the above-noted requirements of the above-noted Orders in a timely manner and Rule 25-30.115, F.A.C., the utility's acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL entitled 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.

We find the circumstances in this case are such that show cause proceedings are warranted. In the Order Approving Settlement Agreement Filed by Utilities, Inc. (Second Settlement Order),²³ 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 Second Settlement Order and Order PSC-03-1440-FOF-WS, issued just one year apart, and all the other previous orders, should have made the utility acutely aware of the problems that it was having in maintaining its books and records. Also, at the January 23, 2007 Agenda Conference, in Dockets Nos. 060262-WS, In re: Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc., and 060256-SU, In re: Application for increase in wastewater rates in Seminole County by Alafaya Utilities, Inc., we required two other UI subsidiaries to show cause why they should not be

²³ See 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.

fined \$3,000 for failure to properly adjust their books and records as required by Rule 25-30.115, F.A.C. The continued pattern of disregard for our rules, statutes, and orders warrants more than just a warning. Accordingly, UIF shall 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 Order No. PSC-03-1440-FOF-WS. This show cause proceeding shall incorporate the following conditions:

1. The utility's response to the show cause order shall contain specific allegations of fact and law;
2. Should UIF 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), F.S., 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 shall 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 UIF fails to file a timely response to the show cause order, the fine shall 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 shall be considered resolved.

Further, the utility is 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, F.S.

C. Proof of Adjustments

To ensure that the utility adjusts its books in accordance with our decisions, UIF shall provide proof within 90 days of the final order issued in this docket that the adjustments for all the applicable NARUC USOA primary accounts have been made.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application for increased water and wastewater rates of Utilities, Inc. of Florida is approved as set forth in the body of this Order. It is further

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base facility/gallonage rate structure was not appropriate given the usage characteristics of that service. Because Miles Grant Country Club only requires this bulk irrigation service when there is not enough readily available effluent to keep area ponds at DEP-required levels, we find that a gallonage-only rate is appropriate.

We recognize that the orders cited above approve rates for raw, untreated water for the purposes of irrigation and that Miles Grant provides this service utilizing potable water. We believe, though, that the rate charged by Miles Grant is a reasonable wholesale potable water rate as compared to a bulk raw water rate. We note that the appropriateness of this rate will be further evaluated in the utility's next rate proceeding.

In conclusion, we find that the requested bulk irrigation rate of \$0.50 per thousand gallons is a reasonable charge given the circumstances, and we grant Miles Grant's request for approval of its bulk irrigation class of service. Accordingly, the utility is hereby permitted to continue collection of the bulk irrigation rates currently being charged. Further, Tariff Sheet No. 18.1 shall be approved as filed pursuant to Rule 25-30.475, Florida Administrative Code, for service rendered as of the stamped approval date on the tariff sheet.

II. Timeliness of Miles Grant's Request for Approval of New Class of Service

As noted above, Miles Grant initiated a new class of bulk irrigation service on or about December 1988, providing bulk water to Miles Grant Country Club for irrigation and pond level maintenance purposes as required by the DEP. In doing so, Miles Grant failed to comply with Sections 367.091(4) and 367.091(5), Florida Statutes. Section 367.091(4), Florida Statutes, states:

A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved.

Section 367.091(5), Florida Statutes, states:

If any request for service of a utility shall be for a new class of service not previously approved, the utility

may furnish the new class of service and fix and charge just, reasonable, and compensatory rates or charges therefor. A schedule of rates or charges so fixed shall be filed with the commission within 10 days after the service is furnished. The commission may approve such rates or charges as filed or may approve such other rates or charges for the new class of service which it finds are just, reasonable, and compensatory.

Section 367.161, Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "it is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Thus, any intentional act, such as the utility's failure to file for a new class of service with this Commission in a timely manner, would meet the standard for a "willful violation." In In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, this Commission found that the company had not intended to violate the rule, but nevertheless found it appropriate to order the company 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.

Although Miles Grant did not comply with Sections 367.091(4) and 367.091(5), Florida Statutes, we find that a show cause proceeding is not necessary or appropriate for the following reasons. First, because the revenue generated by providing bulk irrigation service to only one customer is of an immaterial amount, (averaging less than \$250/yr.), we believe pursuit of a show cause proceeding or fine would be unnecessarily excessive. Second, Miles Grant has been cooperative in providing the necessary information to apply for a new bulk irrigation class of service since it was notified of our staff's findings. Finally, Miles Grant has

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provided assurances that while no approved tariff was on file with this Commission, all revenues generated by providing bulk irrigation services have been included in its annual reports for each of the past fourteen years, and appropriate Regulatory Assessment Fees have been remitted.

For these reasons, we find that it is not necessary to order Miles Grant Water and Sewer Company to show cause why it should not be fined by this Commission for failure to apply for a new class of service in compliance with Section 367.091(4), Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Miles Grant Water and Sewer Company's request for approval of a bulk irrigation class of service (Tariff Sheet No. 18.1) is granted, and the tariff is approved as filed, pursuant to Rule 25-30.475, Florida Administrative Code, for service rendered as of the stamped approval date on the tariff sheet. It is further

ORDERED that if a protest is filed within 21 days of issuance of this Order, the tariff shall remain in effect with any charges held subject to refund pending resolution of the protest. It is further

ORDERED that if no timely protest is filed, this docket shall be closed upon the issuance of a Consummating Order.