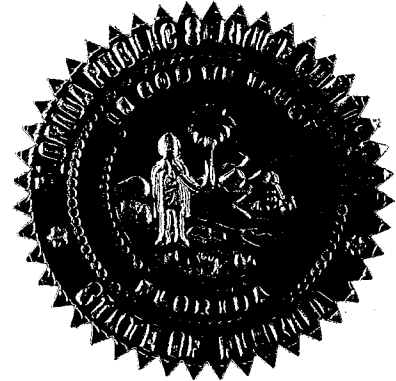


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060260-WS

In the Matter of

APPLICATION FOR INCREASE IN WATER AND  
WASTEWATER RATES IN HIGHLANDS COUNTY BY  
LAKE PLACID UTILITIES, INC.



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PROCEEDINGS:           AGENDA CONFERENCE  
                              ITEM NO. 25

BEFORE:                   CHAIRMAN LISA POLAK EDGAR  
                              COMMISSIONER MATTHEW M. CARTER, II  
                              COMMISSIONER KATRINA J. MCMURRIAN

DATE:                     Tuesday, March 13, 2007

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

REPORTED BY:            JANE FAUROT, RPR  
                              Official Commission Reporter  
                              (850)413-6732

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FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

## 1 APPEARANCES:

2 MARTIN FRIEDMAN, ESQUIRE, JOHN WILLIAMS, and FRANK  
3 SEIDMAN, representing Lake Placid Utilities, Inc.

4 STEPHEN C. REILLY, ESQUIRE, Office of Public  
5 Counsel, appearing on behalf of the Citizens of Florida.

6 MICHAEL COOKE, GENERAL COUNSEL, KATHERINE FLEMING,  
7 ESQUIRE, and TROY RENDELL, appearing on behalf of the  
8 Commission Staff.

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## P R O C E E D I N G S

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2 CHAIRMAN EDGAR: And we are on Item 25.

3 MR. RENDELL: Troy Rendell with Commission staff.  
4 Item 25 is an application by Lake Placid Utilities, Inc. for a  
5 rate increase. Staff is recommending an increase of  
6 19.86 percent on water and 25.81 percent on wastewater.

7 Mr. Steve Reilly from the Office of Public Service  
8 Counsel is here to address the Commission as well as Mr. Marty  
9 Friedman on behalf of the utility.

10 Staff is available to answer any questions you may  
11 have.

12 CHAIRMAN EDGAR: Thank you. Mr. Friedman.

13 MR. FRIEDMAN: Thank you, Commissioners. I am Martin  
14 Friedman with the law firm of Rose, Sundstrom & Bentley, and we  
15 represent Lake Placid Utilities, Inc. Also with me is John  
16 Williams, and behind me is Mr. Frank Seidman.

17 And we find the staff's memorandum, staff's  
18 recommendation to be acceptable. And I don't have any further  
19 comments. Although I would like to reserve some comments,  
20 should I want to respond to anything that Mr. Reilly may say.

21 Thank you.

22 CHAIRMAN EDGAR: Thank you.

23 Mr. Reilly.

24 MR. REILLY: Thank you.

25 The issue that causes Public Counsel the greatest

1 concern is Issue 15, and that is the issue that addresses the  
2 appropriate rate case expense. In this particular case,  
3 Utilities, Inc. requested close to \$172,000 worth of rate case  
4 expense. The staff analyzed that request and did its really  
5 quite detailed analysis looking at each specific expense,  
6 throwing out various expenses as either being unsupported or  
7 unreasonable, and the result of this entire process by staff  
8 was to eliminate about \$101,000 worth of rate case expense,  
9 leaving the customers of Lake Placid to pay \$70,620 of rate  
10 case expense. Amortized over four years, that's 17,655 spread  
11 out between the water and wastewater.

12 Really the problem comes in, and why we are bringing  
13 this to your attention is because of the very, very, very small  
14 nature of this utility. When staff went through all the other  
15 issues in the case, it determined that the company had  
16 established its entitlement to a revenue increase of \$1,607 on  
17 the water system, and about \$8,700 of revenue increase on the  
18 wastewater side. That is exclusive of this rate case expense  
19 issue.

20 So what happens when you put in the rate case  
21 amortization into those two small dollar amounts, what happens  
22 is rate case expense represents 83 percent of the water  
23 increase, and about 53 percent of the wastewater increase. And  
24 this is all because there is only 125 water customers and  
25 194 wastewater customers.

1           Well, obviously the Legislature contemplated this  
2 problem of rate case expense in very, very small utilities and  
3 they enacted a statute. And they said utilities will be  
4 entitled to request and to receive staff assistance when they  
5 are very, very small, and they defined small even really  
6 smaller than Class C. I think it is \$150,000 of gross revenues  
7 on the water and 150,000 gross revenues on wastewater, so it's  
8 even really a smaller subset of Class C utilities. And, of  
9 course, staff has implemented that statute by implementing some  
10 staff-assisted rules. But the big problem comes in is when a  
11 stand-alone small, small utility like this happens to be owned  
12 and operated by a Class A utility. It has been historically  
13 the opinion of staff, and I think it has been implemented by  
14 this Commission that we are not going to give a Class A utility  
15 the benefits of staff assistance.

16           And here is where -- and I guess that staff  
17 assistance goes to two points. It goes not only to keep the  
18 small customers, small customer base from bearing, you know, a  
19 great deal of rate case expense, but there was a thought that  
20 the little maw and paw operator didn't have the expertise and  
21 the capital and so forth to really put on a case, but that  
22 certainly a Class A utility knows how to do it. And as is  
23 evidenced in this case, boy, they know how to do it and they  
24 know how to do it well.

25           And what I would say by that comment is when I did a

1 little analysis of what the rate case expense was on all of  
2 these cases that have been processed by staff, and all of these  
3 PAAs that have been issued, I'm not going to bore you with all  
4 the specifics, but essentially the requested rate increases  
5 ranged from the high 180, 190 to 200, 220, 230. All hovering  
6 around \$200,000. Some of the little larger ones have been 230,  
7 220, and none less than the 170, 180, 190.

8 So staff has done its analysis each time and  
9 generally cut it in half, sometimes more than cut it in half,  
10 but what happens is a lot of these other utility cases that we  
11 process, you have enough customer base to absorb that rate case  
12 expense. But when little Lake Placid comes along, they just  
13 get killed. And so you have some statutes that you need to  
14 look at. One is this statute that says afford these small  
15 systems staff assistance. You also have another statute that  
16 says you must disallow any unreasonable rate case expense.

17 We would argue today, Public Counsel argues today  
18 that it is almost per se unreasonable to say that the mere  
19 coming in of a rate case and the establishment of MFRs and  
20 answering staff's interrogatories, which apparently the going  
21 rate now is around 70 or 80,000 minimum to even take the  
22 cheaper route, not going to hearing, but going PAA route, that  
23 it is per se unreasonable to say that you, as a customer group,  
24 you are going to bear a 20 percent increase before we even get  
25 to the first issue. That we have a process in place that I

1 argue is perhaps per se unreasonable to that small customer  
2 group.

3           So I argue that you should revisit and look at this  
4 issue of stand-alone little small utilities like this, and if  
5 there is not something we can do. Now, I don't know what that  
6 something is, and really why I'm bringing this to your  
7 attention is to maybe get nothing more from you other than to  
8 instruct staff to perhaps have an informal workshop, if you  
9 will, with Public Counsel, with Utilities, Inc., and with any  
10 other larger utility that happens to own a stand-alone system,  
11 to see what can be done.

12           How many systems are out there? I mean, that's the  
13 next question. Staff -- I spoke to Marshall Willis before this  
14 agenda saying what would be the practical implication of trying  
15 to afford staff assistance to Class A -- I mean, to small  
16 systems stand-alone that happen to be owned by -- and I think  
17 there was a fear, well, there are so many out there that it  
18 would overburden an already overburdened staff.

19           I don't know if that is so or not. You have the Aqua  
20 case coming. Aqua, as you know, owns a large number of small  
21 systems, but they have gone through a name change and a  
22 reorganization. They now -- we are just now digging into this  
23 case. And I haven't really figured out yet how these multiple  
24 small systems are going to be impacted by pooling them  
25 altogether in counties, having county-wide rates, and how it's

1 cross-subsidization and how it's benefitting and hurting  
2 different customer groups. I mean, this is one of the things  
3 that we will be looking at. And I know we want to be able to  
4 handle these cases as manageably as your staff and your  
5 Commission wants to handle them. And I don't want to prejudge  
6 the Aqua case. But, if, in fact, it turns out that Aqua is  
7 able to proceed in kind of a county-wide basis -- and I'm just  
8 not sure yet what the impacts are going to be and how many  
9 utilities are out there like Lake Placid that are stand-alone.  
10 So I would hope that we could just look at this issue and see  
11 if there is not some kind of a less expensive way that these  
12 small systems can consider rate increase requests without  
13 having these horrible impacts on the ratepayers.

14           It may be that after the Aqua case settles out there  
15 won't be so many of them, and if there is a few enough number  
16 of them, then we can just say you can avail yourself of staff  
17 assistance. If our analysis says, oh, there is a bunch of them  
18 out there and this is going to create an administrative  
19 problem, then that's when we have to -- I don't want to say  
20 thinking out of the box, but we need to truly look at some kind  
21 of a system, even if it involves a Class A kicking some extra  
22 money up that a little small maw and paw would not kick up,  
23 that would be a fraction of the 70 or 80,000 that they are  
24 spending. It might be 10 or 15. So there would be a hybrid  
25 case where staff would do more of the work, where it would be



1 more streamlined to consider a small system, and we could keep  
2 this incredible impact which has happened in this case.

3           And I look at a case like this and I say, what am I  
4 going to do, protest rate case expense and chase my tail? You  
5 know, trying to spin rate case expense to say that we have got  
6 to knock this down to 50,000, so I spend 20,000 to knock it  
7 down to 50,000, and I am right back where I started from.

8           So I'm kind of in an untenable position as I sit at  
9 this table today on this case, except to bring it to your  
10 attention with the hope that you could invite staff informally  
11 to talk to Public Counsel. And believe it or not, this is one  
12 of the few times that Marty Friedman says he agrees with me, so  
13 I'm going to yield to him to add some comments. Thank you.

14           CHAIRMAN EDGAR: Thank you, Mr. Reilly.

15           Mr. Friedman.

16           MR. FRIEDMAN: It is the only, not one of the few, it  
17 is the only time that Mr. Reilly and I have agreed on anything  
18 other than FSU sports.

19           The predicament that the utility is in is that it  
20 does take a certain amount of time, effort, and money to file a  
21 rate case, whether it has got 100 customers or 100,000  
22 customers. The utility is entitled to earn a return. If it is  
23 earning less than its authorized return, it is able to file for  
24 a rate case, and that is everything that we have done. I don't  
25 think that Mr. Reilly is saying that it was wrong. I do agree,

1 and what I agree with Mr. Reilly is that I would prefer  
2 staff-assisted, and Utilities, Inc., the parent company of Lake  
3 Placid, would prefer to do staff-assisted rate cases for these  
4 very small systems, because if you look at the economics of  
5 this case, I think when the day shakes out they probably really  
6 don't net anything more. When the staff cuts some of the rate  
7 case expense that they have had to expend, I think at the end  
8 of the day maybe they are not any better off.

9 So I would agree with Mr. Reilly that maybe the  
10 Commission ought to rethink its position that Class C utilities  
11 should not be able to avail themselves of staff-assisted rate  
12 cases merely because they are owned by a parent company that is  
13 a consolidated utility.

14 If you all have any questions, I will be glad to give  
15 you my two cents worth.

16 CHAIRMAN EDGAR: Commissioners?

17 Commissioner Carter.

18 COMMISSIONER CARTER: I probably should leave this  
19 alone, since Mr. Reilly and Mr. Friedman agreed. But I guess  
20 what you guys are saying is somehow or another -- I don't want  
21 to use the term unfair because then you have to define what it  
22 means by being unfair. But somehow or another we need to  
23 ascertain, first of all, the number of small water companies  
24 out there. Secondly, after we identify the universe of the  
25 small companies out there, how many of them are owned by Class

1 A companies. And then out of that universe, how much and what  
2 level of staffing would the Commission have to do, assuming  
3 that we were to provide -- and I'm not saying that we are doing  
4 that, I am just trying to think along with you guys -- to do  
5 that. And, I mean, our current cadre of staff, is it  
6 sufficient? I don't know. Do we need additional staff? Do we  
7 need -- I don't know, but certainly it is interesting.

8 And, Madam Chairman, I don't know, obviously not in  
9 this case, but maybe there may come a time where we may want to  
10 do a workshop on issues like this, particularly when you  
11 consider that there are a number of small water systems in the  
12 state. And I have said this before, that, you know, you can do  
13 without electricity and you can do without a phone, but you  
14 have got to have water. You have just got to have water. And  
15 somehow or another, this kind of -- I hate to, you know, allow  
16 this moment of kumbaya to go past without us taking action, but  
17 it may seem like a good opportunity for us to maybe workshop  
18 this issue and have the Public Counsel and the water companies  
19 and have our staff input in it. Thank you.

20 CHAIRMAN EDGAR: Thank you.

21 Commissioner McMurrian.

22 COMMISSIONER McMURRIAN: I agree with Commissioner  
23 Carter that we certainly ought to look at these issues somehow,  
24 and I guess one idea I had as he was speaking was maybe at  
25 least starting off by looking at sort of what is included in

1 the bare bones rate case expense. When we make adjustments and  
2 we end up with, in this case, 31,000 for water and 39,000 for  
3 wastewater, maybe there is even some things you can do with  
4 those components that end up resulting in that number that  
5 looks like about 70,000, 71,000.

6 But I think that if something outside of this case, I  
7 don't think it is a suggestion we should let go by, that we  
8 could at least start looking at ways to address the problem.  
9 Even if, you know, the answer ultimately is we can't do SARCs  
10 for every single utility in the same kind of circumstances.

11 So, you know, I would agree that we could at least  
12 look at something going forward. Of course, I do question  
13 whether or not staff has much time right now to even look at  
14 the question. I think I told them in a meeting the other day,  
15 they're dropping like flies. We have had quite a few people  
16 that have left the Commission lately, and I think there is a  
17 lot of strain on staff with the Utilities, Inc. and Aqua cases.  
18 And I think, of course, Mr. Reilly knows well and Mr. Friedman  
19 knows well how much work they are. But I agree that I think it  
20 is a question worth looking into. We've got a lot of interest  
21 in it. And it is probably the fair thing to do, given the  
22 percentage of rate case expense in this case and probably  
23 others.

24 CHAIRMAN EDGAR: There has been some strain on  
25 Commissioners, as well, lately.

1 Mr. Rendell, do you have comments?

2 MR. RENDELL: Just briefly. I don't believe it rises  
3 to the level of a workshop. Utilities, Inc. is probably the  
4 only one that it's going to effect because of the way they are  
5 corporately structured. They own several subsidiaries. Lake  
6 Placid is not a stand-alone utility, I want to make that very  
7 clear. They are a subsidiary of a very large company.  
8 Affording a staff-assisted rate case to this type of utilities  
9 I do not believe was contemplated by the statute. The statute  
10 was for the small stand-alone, what we refer to as mom and pops  
11 that do not have this ability.

12 Doing a staff-assisted rate case would be extremely  
13 difficult. I mean, extremely difficult if not next to  
14 impossible for staff on these type of utilities. We have to  
15 look at corporate level and allocations coming down from a very  
16 large corporation in Illinois. I believe Mr. Willis indicated  
17 that it may have been tried in the past before my history with  
18 staff-assisted rate cases, and it just did not work. There is  
19 a tremendous amount of time.

20 We would be glad to sit down and discuss our concerns  
21 with the Office of Public Counsel as well as Utilities, Inc.  
22 Aqua would not qualify; they are one company, just one company.  
23 They would have to file a rate case. I know they have filed  
24 rate cases before the Commission. But we would be more than  
25 happy to express our concerns of, you know, how we don't

1 believe that a staff-assisted rate case would apply here. But  
2 we are very sympathetic to the amount of rate case expense, and  
3 we are open to discussions, furthers discussions of how we  
4 might be able to keep those down on the part of the utility as  
5 well as the Office of Public Counsel.

6 CHAIRMAN EDGAR: Commissioners, additional thoughts?  
7 No. No. I knew it. Go right ahead.

8 COMMISSIONER McMURRIAN: You seem to want a thought.  
9 No, I was just going to reiterate essentially what I said  
10 earlier, that maybe there is a way that we can look at sort of  
11 the major categories of what makes up rate case expense, at  
12 least start with that, and look at maybe ways to somehow  
13 minimize those. For instance, maybe Mr. Friedman doesn't want  
14 to sit here all day through telecom items.

15 But, anyway that seems like a reasonable place to  
16 start. And, maybe that doesn't get us anywhere either, but I  
17 think Mr. Reilly has brought up a good point that we should try  
18 to look at some way, even if we can't go that far, and  
19 especially if we don't have the flexibility under the statute  
20 to do that. And like Mr. Rendell has said, it is very  
21 difficult. But I think we can at least start to look at those  
22 kinds of issues, and parties are never precluded from seeking  
23 out staff and getting together and talking about a specific  
24 issue within the rate case expense, so I would encourage  
25 everyone to do that.

1 CHAIRMAN EDGAR: Mr. Reilly.

2 MR. REILLY: That's fine. If staff had the time to  
3 even define how many utilities are out there that meet the kind  
4 of definition I'm talking about so that we could begin to  
5 appreciate what impacts it would have on staff. I'd like to  
6 try to work on this a little bit, because to the extent I could  
7 I would like to keep from being in this seat again where I have  
8 to go back to the customers and explain, well, you only had a  
9 \$1,000 increase, but it's going up 25 percent because of rate  
10 case expense. We can hope and pray that they are not going to  
11 come back in in a year and a half for another 20 percent  
12 increase.

13 It is impossible -- almost I say, per se,  
14 unreasonable. And as far as the statute goes, it doesn't say  
15 anything about the situation here, you know, about these  
16 utilities. And we have different opinions on that. And the  
17 last argument is even these cases take a lot of staff time. I  
18 mean, processing these PAA, they still did all of that stuff.  
19 They did the allocations, they went through all of this. So  
20 I'm saying if you are doing it anyway, we could do it in the  
21 format of the staff-assisted rate case. And even if the AA  
22 kicks in a little extra money, we can devise some kind of  
23 mechanism that doesn't guarantee this big increase to these  
24 little small systems, and without negatively impacting on staff  
25 without being compensated unless we add two positions that the

1 new money brings in.

2 I mean, I'm really thinking that I just want us to  
3 look at it and see if there is not some way that this can't be  
4 a win/win/win situation. Maybe it's not possible, but if a  
5 direction from the Commission to say, staff, at least look to  
6 see if there is not some way we can approach this problem. See  
7 what the magnitude of the problem is and see what the creative  
8 solutions might be, that's really all I'm asking for.

9 MR. COOKE: Madam Chairman.

10 CHAIRMAN EDGAR: Mr. Cook.

11 MR. COOKE: Since we are talking the statute, I just  
12 want to throw out one precaution, which is the statute is  
13 permissive on the part of the company to ask for the  
14 staff-assisted rate case. So it may well be that all of these  
15 are good things to be working on, but the statutory  
16 authorization is the company may request a staff-assisted rate  
17 case. So at the end of the day we can't necessarily force  
18 somebody to ask for one.

19 MR. FRIEDMAN: Well, we knew that. As a matter of  
20 fact, I don't think any of you were around when we had the  
21 Bayside Utilities case before Bay County took back  
22 jurisdiction, but we brought it up in that case, which is also  
23 a very small system, that we wanted to file as a  
24 staff-assisted, and the staff made it clear that it was not  
25 eligible for staff assistance.



1           So I don't want to make it sound like, gee, we didn't  
2 think that that was an alternative, so that wasn't something  
3 that -- that that was something that we should have tried,  
4 because we knew that it wasn't available to us. And I don't  
5 want you all to misunderstand that we took this route when  
6 there might have been another route available. There was not  
7 another route available. We took the only route that was  
8 available to compensate the utility for what it was entitled to  
9 get.

10           MR. REILLY: And my last response on the  
11 permissiveness, obviously if it is available to the company and  
12 they elect not to do it, you can imagine what an issue that  
13 would be in the case. You know, \$750 versus \$70,000. I would  
14 suspect that Public Counsel would take the position that it was  
15 not reasonable for the company not to avail itself of staff  
16 assistance, and I would hope we would win that case or that  
17 issue before the Commission. So it's a fait accompli. If it  
18 is available, it will be used.

19           MR. COOKE: Madam Chairman, my comment was only to  
20 clarify that we only have so much control with regard to the  
21 statute, and I'm not implying that it wasn't sought, or, you  
22 know, based on history was not sought in this case. But just  
23 in terms of future expectations that is the way the statute is  
24 written.

25           CHAIRMAN EDGAR: Thank you.

1 Commissioner Carter.

2 COMMISSIONER CARTER: Madam Chairman, I would like to  
3 make a comment and then a motion.

4 CHAIRMAN EDGAR: You're recognized.

5 COMMISSIONER CARTER: First of all, based upon what  
6 Mr. Rendell said, it seemed like they have some guesstimate, at  
7 best, in terms of the number of companies here. And I think we  
8 would miss out on a golden opportunity to at least provide this  
9 information to the Public Counsel and to the other parties that  
10 may be so that we will have some kind of idea. I mean, you  
11 guys said -- I thought the workshop was a good idea, but of  
12 course, you know, you said that that is inappropriate. But we  
13 need to do something. I don't think it's inappropriate for us  
14 to share information with the Office of Public Counsel because  
15 they have got staff concerns. Mr. Reilly is right, he has got  
16 to go and say, look, you know, on the one hand, you know, I  
17 kept the rate increase down to a thousand bucks, but on the  
18 other hand, you know, you have got to mortgage your grandma and  
19 your little kid because you have got to pay the rate case  
20 expense. So, I mean, it is like, you know, do you want to die  
21 by arsenic or, you know, what is it, firing squad. Pick.

22 And I think there is something different than the  
23 arsenic and the firing squad. I think that the Public  
24 Counsel's Office has said we want to work with you, and I think  
25 we would be derelict in our duties if we don't take advantage

1 of this opportunity. The companies are saying they are willing  
2 to work with us, and you said, I think, the discussion earlier  
3 was there is only a couple of companies in here similarly  
4 situated. So if that's the case, let's cobble together the  
5 information. At least get it out there, and then see if there  
6 is a -- but whether we do a workshop or not, we do need to  
7 maintain a dialogue, because I think the bottom line is  
8 whatever we do, the bottom line at the end of the day is  
9 there's a person, there's a person. You know, whatever rates  
10 that are allowed in terms of expenses, or whatever increase,  
11 there is a person at the end of the day that has got to write  
12 the check. And, I think that, you know, if there is an  
13 opportunity for us to work together with the industry and the  
14 Public Counsel's Office, I think we need to take it. Not take  
15 it, seize it and run with it.

16           And I think whatever we need to do, Madam Chairman.  
17 I mean, it's just a matter of sharing information, but  
18 certainly do that and show that there is an environment for  
19 progress. I'm willing to do that. Whenever I'm recognized, I  
20 would like to make a motion that we move staff recommendation  
21 in Case Number 060260-WS.

22           CHAIRMAN EDGAR: Thank you, Commissioner Carter. So  
23 now I am at Missoula bad, dialogue good. I appreciate your  
24 comments, and I know that our staff has been taking notes and  
25 nodding along with us, and that Mr. Rendell, Ms. Banks, and

1 Doctor Bane will follow through as well to work with the Office  
2 of Public Counsel to see what information we have and what  
3 information we are able to get and see cooperatively where that  
4 takes us.

5 And with that, I believe that you have made a motion  
6 for the staff recommendation of all issues included in Item 25.

7 Commissioner McMurrin, is there a second?

8 COMMISSIONER McMURRIAN: Yes, second.

9 CHAIRMAN EDGAR: Thank you. All in favor say aye.

10 (Unanimous affirmative vote.)

11 CHAIRMAN EDGAR: Opposed? Show it adopted. Thank  
12 you.

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

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

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

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

19 DATED THIS 19th day of March, 2007.

20

21

  
\_\_\_\_\_  
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