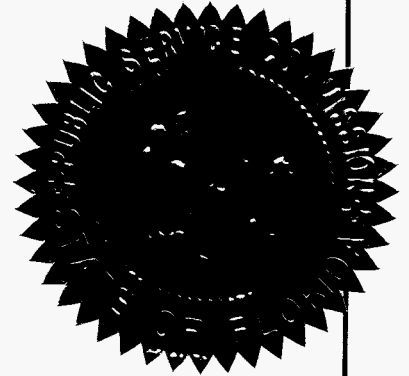


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100338-WS

INITIATION OF RULEMAKING TO AMEND
RULE 25-30.0371, F.A.C., PERTAINING
TO ACQUISITION ADJUSTMENTS FOR WATER
AND WASTEWATER UTILITIES.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 4

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ

DATE: Tuesday, September 14, 2010

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

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

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P R O C E E D I N G S

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3 **CHAIRMAN ARGENZIANO:** Now if staff would come
4 back and we'll move on to Item 4.

5 Good morning.

6 **MS. CHASE:** Good morning. I'm JoAnn Chase
7 with ECR.

8 Commissioners, Item 4 is staff's
9 recommendation on a rule proposal to amend Rule
10 25-30.0371 pertaining to acquisition adjustments for
11 water and wastewater utilities. Staff is recommending
12 changes to the rule as shown on Attachment A in the
13 recommendation in order to address concerns raised by
14 the Commissioners at an Agenda Conference and a later
15 workshop that the current rule may provide too much of a
16 benefit to a purchasing utility in cases where the
17 system is being purchased at a large discount and that
18 the rule language is overly complex and confusing.

19 The main substantive revisions to the rule
20 affect the treatment of negative acquisition
21 adjustments. The proposed changes are designed to give
22 more of a benefit of the negative acquisition adjustment
23 to the customers by increasing the amortization period
24 of the acquisition adjustment, especially for those
25 cases in which the systems are purchased at a

1 significant discount. Staff is available to answer any
2 questions the Commissioners might have.

3 Yesterday we received a letter from a
4 representative of Aqua Utilities Florida stating that
5 they were unable to attend the Agenda Conference today,
6 but are in agreement with staff's recommended rule
7 changes. In addition, Mr. Charlie Beck is here from the
8 Office of Public Counsel. And Marty Friedman on behalf
9 of Utilities, Inc. would like to address the Commission
10 on this item.

11 **CHAIRMAN ARGENZIANO:** Good morning.

12 **MR. FRIEDMAN:** Good morning. Thank you, Madam
13 Chairman, Commissioners. My name is Marty Friedman, Law
14 Firm of Rose, Sundstrom & Bentley. We represent
15 Utilities, Inc. and have some comments with regard to
16 this proposed rule change.

17 As the staff has pointed out, the adoption of
18 an acquisition adjustment rule has been a long and
19 winding road and an arduous one. It started back in
20 1999 was the first time that a workshop was actually
21 held on the acquisition adjustment rule. The issue was
22 raised years before by OPC. We finally started some,
23 some real rulemaking in '99 that ended in 2002 with the
24 existing acquisition adjustment rule.

25 The instant proceedings to amend the

1 acquisition adjustment rule appears to have been the
2 result of a unique situation where a utility system was
3 purchased at a substantial discount. And I would
4 suggest to you that it's not necessary nor appropriate
5 to amend the rule to attempt to resolve what I think is
6 an anomaly. And in fact, as, as staff has pointed out,
7 the proposed rule amendment goes beyond, goes beyond
8 correcting the anomaly that the staff, that the
9 Commission found that was the reason for starting this
10 proceeding, and that is that somebody bought a system at
11 a substantial discount. I believe it was probably less
12 than 50 percent.

13 So instead of just dealing with that issue,
14 and I would suggest to you that, you know, every time an
15 anomaly comes up, the Commission doesn't need to open a
16 workshop and try to correct the problem if one doesn't
17 exist. But what happened in this proceeding is that the
18 staff has gone beyond the concern that the Commission
19 raised in dealing with these purchases at a substantial
20 discount and also increased the amortization period in
21 those systems where the purchase price is 80 percent of
22 rate base. So the staff has gone, the current rule is
23 five years, and so the staff in their recommendation
24 have gone beyond the concerns that, that caused the
25 initiation of this docket.

1 I would suggest to you that the proposed
2 changes deinvertivize acquisitions. And the purchase --
3 the purpose of the, of the acquisition adjustment rule
4 is to encourage the consolidation and takeover of small,
5 poorly run, poorly financed utility companies. And I
6 would suggest to you that the rule has worked very well,
7 as did the policy, frankly, before you even adopted a
8 rule. The rule worked well, it's simple, the current
9 rule. You amortize those, those, the acquisition
10 adjustment over the five years, and if you don't file a
11 rate case in that five years, then the acquisition
12 adjustment goes away. You know, that has worked well in
13 the industry. And merely because there's an anomaly
14 created doesn't, shouldn't mean let's open a docket and
15 try to correct it and then go ahead and go farther than
16 what the intent was.

17 I would also point out that, that, you know,
18 in my 30 years of practicing before the Commission, I've
19 always tried to say let's, let's look at things --
20 what's good for the goose is good for the gander kind of
21 argument. And this rule is not that way. I mean, this
22 rule allows, if you buy a utility company at, at less
23 than rate base, you're going to amortize that over some
24 period of time. It doesn't take into consideration
25 those, those times when you may have to pay in excess of

1 rate base, a small amount in excess of rate base.
2 Basically positive acquisition adjustments are
3 impossible as a practical standpoint. But there are
4 those situations, I would suggest to you, that, that it
5 may be in the public interest for a company to, to pay
6 more than rate base for a system. If it needs to be
7 taken over and you have a recalcitrant seller, sometimes
8 you have to do that, and this rule doesn't take that
9 into consideration.

10 So my point is, is that there are anomalies
11 out there. This rule, the acquisition adjustment rule
12 as it currently exists takes care of 99 percent of the,
13 of the, of the problems. The rule has been in effect
14 since '02. This issue arose in '09, as I understand it.
15 All during that time I don't think there have been any
16 issues with the, with the acquisition adjustment rule.
17 It's worked well, it's worked very simply. And the
18 position of Utilities, Inc. is that, is if it ain't
19 broke, don't fix it. And I would suggest to you that
20 it's not necessary to create these, to adopt these rule
21 amendments merely to resolve what, what I believe is an
22 anomaly. Thank you.

23 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

24 **COMMISSIONER SKOP:** Thank you, Madam Chair.

25 Mr. Beck, do you want to add to that before I

1 begin?

2 **MR. BECK:** No, Commissioner. I'm here to
3 answer any questions you might have.

4 **COMMISSIONER SKOP:** Okay. All right. Madam
5 Chair, to Ms. Chase and Mr. Willis, with respect to the
6 proposed rule that resulted from the acquisition of a
7 new system at approximately 20 percent of book value, if
8 my memory serves me correct, the intent of the original
9 rule was to incentivize and encourage the acquisition of
10 dilapidated properties, not necessarily the instance
11 which got us into the instant docket, and I just wanted
12 staff to speak specifically to the rule, the proposed
13 rule.

14 My understanding is for negative acquisition
15 adjustment purposes, that when a utility purchase,
16 purchases a system at less than 50 percent of book value
17 on a forward-going basis, 50 percent of the negative
18 acquisition adjustment would then be amortized over
19 seven years, with the remaining 50 percent over the
20 useful life of the assets, which would be equivalent to
21 contribution in aid of construction. And I just want to
22 make sure that's my understanding of staff's proposed
23 rule to address my concern that I previously raised.

24 **MS. CHASE:** Yes, Commissioner. That is how
25 the proposed rule would work.

1 **COMMISSIONER SKOP:** Okay. And then for over
2 50 percent of book value acquisition that was made, say,
3 of a dilapidated system, if you will, then that
4 amortization period would be over seven years instead of
5 the current five; is that correct?

6 **MS. CHASE:** That's true. It would work
7 exactly the same as it does now. It's just a small
8 increase in the amortization period.

9 **COMMISSIONER SKOP:** Okay. And then with
10 respect to positive acquisition adjustment, I believe
11 that staff has noted in its analysis Public Counsel's
12 comments to clarify the rule. And I just wanted to
13 mention, and, Mr. Friedman, if you want to elaborate.
14 Again, my perspective of positive acquisition
15 adjustments is addressed by the rule, which are
16 typically not allowed by the Commission.

17 But if an out-of-state utility wanted to enter
18 the market in Florida and acquire properties in Florida
19 at a premium because, again, when you want to enter a
20 market, sometimes you have to pay a premium for the
21 assets, that typically or historically the Commission
22 has not allowed such a positive acquisition adjustment
23 to book value. It seems to be consistent with, with
24 past practice. And I'm not sure why, you know, unless
25 there was some extraordinary circumstance, which I

1 really was trying to run through the analysis in my mind
2 based on Mr. Friedman's comments but I couldn't get
3 there.

4 So, you know, I just wanted to make sure on
5 the positive acquisition adjustment the rule stays as
6 is, typically not afforded, and the typical situation is
7 that of a utility wanting to enter the market and paying
8 a premium for existing assets so it can grow its market
9 share, if you will. And that shouldn't be passed on to
10 ratepayers.

11 **MS. CHASE:** That's, that's correct,
12 Commissioner. We made very few changes to the positive.
13 The concept is the same.

14 **COMMISSIONER SKOP:** Okay. All right. All
15 right. Very well.

16 **MR. FRIEDMAN:** And if I might address that, I
17 don't, I don't think that necessarily accurately
18 reflects what happens in Florida. The positive
19 acquisitions in the systems in which we have been
20 involved were systems that there were utilities that
21 were already in business in Florida. Now obviously
22 you're right that there are some times when somebody
23 comes into the state and if they decide to pay a
24 premium, that's one thing. But I think most of the
25 acquisitions that we've been involved in, certainly by

1 my client, Utilities, Inc., have occurred, and we paid a
2 premium, have occurred after Utilities, Inc. has already
3 been in business in this state.

4 And my second point is that, is that I want to
5 reiterate that this goes beyond the concern of Aqua
6 buying a system at 25 percent. It also increases that
7 amortization period and I don't know why. The current
8 rule with the five-year amortization period was a rule
9 that was negotiated with the staff, Public Counsel and
10 the industry after, after three years of workshops. And
11 it was -- and I participated in that proceeding and it
12 was, it was a give and take all the way around. We
13 don't like the rule as it exists today. But it's
14 something that was negotiated, and with the negotiated
15 rule you give and take. It's got some pluses and
16 minuses, and I'm sure that Mr. Beck is going to tell you
17 the same thing. It isn't exactly what they wanted in
18 2002 either, but they were willing to live with it. And
19 so, and that was the five-year amortization.

20 And now all of the sudden because we're
21 dealing with an anomalous situation where somebody got a
22 heck of a deal, and I don't, I wasn't involved in that
23 case, I don't know why they got such a good deal, but
24 you ought to applaud them for getting such a good deal,
25 that also you're changing the five years that was, that

1 was negotiated back in '02 to seven years without any
2 real explanation other than, gee, let's increase it to
3 seven years. And I don't think that's, I don't think
4 there's really any basis to change what was, that
5 five-year amortization period that was negotiated. And
6 the very least, I would, I would -- if you're going to
7 adopt these changes, I would ask that you not adopt that
8 change.

9 **CHAIRMAN ARGENZIANO:** Staff, to address the
10 amortization, the change.

11 **MS. CHASE:** Yes. The, the increase from five
12 to seven years, that was actually suggested by a member
13 of the industry when we went to a workshop.

14 But we did start this rulemaking to address
15 that specific concern that was, that the Commissioners
16 had at that Agenda Conference. But in doing so, we just
17 realized that the rule has been in effect since 2002,
18 that maybe it is time just to look at how it works and
19 could it work better. And when we look back on it, I
20 mean, it has been working fine, but there isn't any --
21 we started looking at ways to maybe the customers can
22 share a little bit in the negative acquisition
23 adjustment a little bit more.

24 Now by increasing the amortization from five
25 to seven years, it does add an extra incentive for the

1 purchasing utility to stay out of a rate case for an
2 additional two years. However, they're not forced to.
3 They can come in. It's just that whatever is left of
4 that amortization would be considered in that rate case.
5 So we don't believe that's an onerous change to make,
6 and it just, it is a way to try to share the negative
7 acquisition adjustment a little bit more with the
8 customers of that utility being purchased.

9 **COMMISSIONER SKOP:** Madam Chair.

10 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

11 **COMMISSIONER SKOP:** Thank you, Madam Chair.

12 And thank you, Ms. Chase, for that explanation.

13 Just to Mr. Friedman's point about the
14 positive acquisition adjustment, under the provisions of
15 the proposed rule before us, the opportunity still
16 exists for a utility, if it shows good cause, to request
17 a positive acquisition adjustment, is that correct, on a
18 case-by-case basis?

19 **MS. CHASE:** Absolutely. Absolutely. And I'm
20 glad you brought that up. Because it's true that what
21 they have to show is that the customers would get a
22 benefit from it, and that would be either environmental
23 compliance or better quality of service or more rate
24 stability. They would have to show those kinds of --
25 and certainly it's something they could endeavor to do.

1 **COMMISSIONER SKOP:** Okay. Thank you. And
2 then, Madam Chair, to Mr. Friedman's comment, I agree
3 that the, the existing rule worked very well for
4 utilities to incentivize the purchase of dilapidated
5 systems. In the instant case, however, there was a
6 loophole that somehow, you know, got exploited or
7 attempted to -- you know, there was a glitch in the
8 rule. And I think that the instant proceeding is an
9 attempt to address that to prevent its reoccurrence,
10 while also being fair and at the current state take that
11 and take comments to make the rule better, as Ms. Chase
12 has alluded to.

13 **CHAIRMAN ARGENZIANO:** Mr. Friedman.

14 **MR. FRIEDMAN:** And one of my concerns is that
15 the staff went farther than that. I mean, it seems like
16 to me that increasing the amortization period, it seems
17 like they just arbitrarily said let's go to seven years
18 and see what happens, see if that disincentivizes the
19 industry. And I think that's, I think that's wrong. I
20 don't think they should change something that was, that
21 was negotiated between the industry, the OPC and the
22 staff in 2002 and just arbitrarily say increase it to
23 two years. And if they said somebody in the industry
24 did it, then, then that's something that they may have
25 done. And I don't know what their motivation for doing

1 it is, but that's certainly not the industry's position
2 that it should be increased from five to seven years.

3 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

4 **COMMISSIONER SKOP:** Thank you, Madam Chair.

5 To Ms. Chase, with respect to the comments
6 received at the workshops that were held by staff, and I
7 think we had a Commission workshop also, what were the
8 comments specifically in relation to the amortization
9 period, and did Utilities, Inc. raise concerns at that
10 time?

11 **MS. CHASE:** Yes, they did raise concerns at
12 that time. The only other participants we had in our
13 workshop was Aqua Utilities and the Office of Public
14 Counsel, and they were both in agreement with the
15 changes, so.

16 **COMMISSIONER SKOP:** Okay. All right. Thank
17 you.

18 **CHAIRMAN ARGENZIANO:** Mr. Friedman.

19 **MR. FRIEDMAN:** My final comment would be just
20 because Aqua said it was so doesn't mean that it's in
21 the best interest of the industry.

22 (Laughter.)

23 **CHAIRMAN ARGENZIANO:** Do you find, does
24 Utilities, Inc. find it particularly onerous?

25 **MR. FRIEDMAN:** Particularly onerous. I think

1 it disincentivizes the purchase of utility systems and
2 trying to, to negotiate the best deal you can. Whether,
3 whether it's particularly onerous, I'm not sure that,
4 how that standard fits in there. My suggestion is and
5 my argument is that there's no reason to change it from
6 five to seven years just arbitrarily because we want to
7 give the customers a little more benefit. I don't think
8 that's a good enough reason to do it.

9 **MS. CHASE:** Commissioners, can I, can I just
10 add, on page 20 of the recommendation there's an
11 Attachment C that shows the, the transfers, the
12 acquisitions that have been done since the rule was
13 adopted.

14 And there are only six negative acquisition
15 adjustments since that time, and Utilities, Inc. has had
16 none of those. They've had three -- they've been
17 involved in three positive acquisition adjustments. So,
18 you know.

19 **CHAIRMAN ARGENZIANO:** Okay. Any other
20 questions? Commissioner Edgar.

21 **COMMISSIONER EDGAR:** Thank you. I would like
22 to ask Mr. Beck to respond to the concern or the point
23 raised by Mr. Friedman about the proposed changes to the
24 rule disincentivizing acquisitions. Do you have any
25 thoughts or comments on that?

1 **MR. BECK:** No. I, I disagree with that. I
2 think the changes, first of all, are very modest,
3 extending the, the amortization of the negative
4 acquisition adjustment from five years to seven years.
5 And don't forget, when you extend it, you also lessen
6 the impact too. So there's two things. The lessening
7 of it cuts in favor of the utilities. You know, they,
8 they don't like it extending to seven years. But I
9 think the changes are modest and we support them.

10 **COMMISSIONER EDGAR:** Thank you.

11 **CHAIRMAN ARGENZIANO:** Mr. Friedman, I think, I
12 think, I think what I heard you a few times saying is
13 that I think what you're really concerned with is that
14 the rules have changed. There was an agreement and now
15 it's changed, and I'm trying to figure out really if it
16 does disincentivize, because that's not what I think any
17 of us want to do.

18 **MR. FRIEDMAN:** Well, and the problem is we may
19 not know that until it goes into effect. I mean, that's
20 the problem is that, is that nobody can sit here today
21 and say, and tell you whether it's going to change their
22 philosophy on acquisitions in Florida because you
23 changed it from five to seven.

24 But I want to, I want to reiterate that while
25 you corrected the problem that you saw with that, with

1 that situation, I understand that. And philosophically
2 if you saw the problem and you think it ought to be
3 corrected, correct it.

4 What I really don't see is the changing of the
5 amortization from five to seven years. That wasn't,
6 that wasn't a problem, hadn't been an issue with, with,
7 with the industry, with acquisitions, it just hasn't.
8 And all of the sudden we take, not just correcting the
9 problem, but going farther than that. And I would
10 suggest to you that that may not be appropriate.

11 **CHAIRMAN ARGENZIANO:** Just another question
12 for staff. What brought about the change for
13 amortization? What, what sparked that if it did not
14 address the anomaly that was found?

15 **MS. CHASE:** Well, I think what we were looking
16 at is just in general what changes can the rule make to
17 make it more, to make it more even between the
18 purchasing utility and the customers? And we thought
19 this additional two years was just not that great, and
20 --

21 **CHAIRMAN ARGENZIANO:** Okay.

22 **MS. CHASE:** -- we believed more of a sharing
23 with the customers is appropriate.

24 **CHAIRMAN ARGENZIANO:** Okay. Thank you.

25 Any other questions? Commissioner Skop.

1 **COMMISSIONER SKOP:** Thank you, Madam Chair.

2 And also too with respect to the change in the
3 amortization period, which really was not at issue for
4 me in this but I guess something that staff addressed,
5 the practical effect of the amortization, I think as you
6 mentioned, Ms. Chase, is that the utility can stay out
7 for a longer period of time to gain the benefit of the
8 negative acquisition adjustment or accrue that benefit.
9 If it comes in earlier, it'll lose only that small
10 portion that's not yet been amortized. For instance, if
11 it was seven years and they came in at year five, I mean
12 they would have captured the majority of the negative
13 acquisition adjustment already at that time; is that
14 correct?

15 **MS. CHASE:** That's correct.

16 **COMMISSIONER SKOP:** Okay. All right. So it's
17 just a little bit matter of semantics. But if I heard
18 staff correctly, it's a matter of equity between the
19 incentive to the utility but also fairness to the
20 customers.

21 **CHAIRMAN ARGENZIANO:** Which, and, you know, I
22 mean, that's probably a very good thing in many cases.
23 But my concern and I guess a little bit of a concern
24 that I have is that if you have an agreement, then how
25 does anybody ever rely on an agreement? And I don't

1 know if the agreement is supposed to never change or
2 not, but how do you enter agreement in the future if it
3 changes a few years down the road? And maybe you can
4 help me with that.

5 **MR. WILLIS:** Commissioner Argenziano, let me,
6 let me try and address that. I was directly involved in
7 that rule process. And it was a rule process. It
8 wasn't a, it wasn't really a settlement.

9 **CHAIRMAN ARGENZIANO:** Okay.

10 **MR. WILLIS:** Back when this rule was
11 originally adopted, it was a long, tortuous process, it
12 took many, many years, close to 17 to actually come up
13 with a rule. The Commission was very desirous of
14 pushing a rule through because a lot of the acquisitions
15 at that time were very litigious.

16 **CHAIRMAN ARGENZIANO:** I remember.

17 **MR. WILLIS:** It was costing customers a lot of
18 rate case expense, costing companies a lot of rate case
19 expense, they were being protested left and right. And
20 it was thought that if we could come up with a rule that
21 satisfied everyone, then that litigation would go away
22 and it could just be applied.

23 We finally sat down and reached not really a
24 settlement on it, but what we reached was a rule that
25 Public Counsel said we won't protest and the industry

1 said, okay, we can live with it too. We had nothing in
2 writing that said we all agree on this, we all settle
3 this. The Commission adopted the rule and no one
4 protested the rule and it went forward.

5 What we have now is just a refinement. If you
6 look from the five- to seven-year amortization, if a
7 company came in in the third or fourth year, you might
8 end up with a phasing in of much higher rates. Because
9 what we've seen in the past is that companies that
10 purchase these things will usually be in within that
11 fifth year to raise rates. But it would provide the
12 customers with some benefit by having more of a phase in
13 of a higher rate.

14 **CHAIRMAN ARGENZIANO:** Okay. Thank you. That
15 helps. I understand the angst by Mr. Friedman, but I do
16 know that rules change.

17 Mr. Friedman.

18 **MR. FRIEDMAN:** I was just going to say it's a
19 matter of semantics as to whether we agreed to it or the
20 staff adopted it and we both agreed not to protest it.
21 I don't know why he tried to make that distinction. I
22 don't, I don't think there is a distinction there
23 between what you agreed to and how you ended up
24 evidencing that agreement.

25 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

1 **COMMISSIONER SKOP:** Thank you, Madam Chair.
2 If there are no further questions, I'd like to be
3 recognized for a motion.

4 **CHAIRMAN ARGENZIANO:** Any other questions,
5 Commissioners? Okay. You're recognized.

6 **COMMISSIONER SKOP:** Thank you. With respect
7 to the disposition of Item 4 before the Commission, I'd
8 respectfully move staff recommendation on Issues 1 and
9 2.

10 **CHAIRMAN ARGENZIANO:** Do I have a second?

11 **COMMISSIONER GRAHAM:** Second.

12 **CHAIRMAN ARGENZIANO:** I have a second. All
13 those in favor, say aye.

14 (Unanimous vote.)

15 All those opposed. The motion passes. Thank
16 you.

17 (Agenda item concluded.)

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1 STATE OF FLORIDA)
 2 : CERTIFICATE OF REPORTER
 3 COUNTY OF LEON)

4 I, LINDA BOLES, RPR, CRR, Official Commission
 5 Reporter, do hereby certify that the foregoing
 6 proceeding was heard at the time and place herein
 7 stated.

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

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

18 DATED THIS 17th day of September,
 19 2010.

20 Linda Boles
 21 LINDA BOLES, RPR, CRR
 22 FPSC Official Commission Reporter
 23 (850) 413-6734
 24
 25