

1 **APPEARANCES:**

2 **MARTIN S. FRIEDMAN**, Rose, Sundstrom &
3 Bentley, 2548 Blainstone Pines Drive Tallahassee,
4 Florida 32301, appearing on behalf of **North Fort Myers**
5 **Utility, Inc.**

6 **JACK SHREVE**, Public Counsel and **STEVE**
7 **REILLY**, Associate Public Counsel, c/o, Office of
8 Public Counsel, c/o The Florida Legislature, 111 West
9 Madison Street, Room 812, Tallahassee, Florida
10 32399-1400, appearing on behalf of the **Citizens of the**
11 **State of Florida.**

12 **JENNIFER BRUBAKER** and **SAMANTHA CIBULA**,
13 Florida Public Service Commission, Division of Legal
14 Services, 2540 Shumard Oak Boulevard, Tallahassee,
15 Florida 32399-0870, appearing on behalf of the
16 **Commission Staff.**

17 **RONALD LUDINGTON**, 509 Avanti Way, North Fort
18 Myers, Florida 33917, appearing telephonically on
19 behalf of **Ronald Ludington.**

20 **JOSEPH DEVINE**, 688 Brigantine Boulevard,
21 North Fort Myers, Florida 33917, appearing
22 telephonically on behalf of **Joseph Devine.**

23 **DONALD GILL**, 674 Brigantine Boulevard, North
24 Fort Myers, Florida 33917, appearing telephonically on
25 behalf of **Donald Gill.**

1 Also Participating Telephonically:

2 Stanley Durbin

3 Tom Gaylord

4 Jack Colvin

5 Richard DeHollander

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P R O C E E D I N G S

(Hearing convened at 1:30 p.m.)

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3 **COMMISSIONER JACOBS:** We will go on record
4 and call this prehearing to order. Counsel read the
5 Notice.

6 **MS. CIBULA:** By Notice issued August 17,
7 1999, this time and place was set for a prehearing
8 conference in Docket No. 981781-SU. The purpose of
9 the conference is set forth in the Notice.

10 **COMMISSIONER JACOBS:** We will take
11 appearances.

12 **MR. FRIEDMAN:** Martin Friedman of the law
13 firm of Rose, Sundstrom & Bentley, L.L.P.,
14 representing North Fort Myers Utility.

15 **MR. REILLY:** Jack Shreve and Steve Reilly
16 with the Office of Public Counsel on behalf of the
17 Citizens of the State of Florida, ratepayers.

18 **COMMISSIONER JACOBS:** It's my understanding
19 that we have several customers who have called in and
20 who are parties to this proceeding. For those
21 customers, what we'd like to do now is have you
22 announce to us your name and your address, I guess,
23 would be useful, and I guess that's about it. Would
24 you go ahead now.

25 **MR. LUDINGTON:** Hello.

1 **COMMISSIONER JACOBS:** Hi.

2 **MR. LUDINGTON:** Yes. This is Ronald
3 Ludington calling. Has the --

4 **COMMISSIONER JACOBS:** Could you spell your
5 last name please.

6 **MR. LUDINGTON:** Ronald Ludington,
7 L-U-D-I-N-G-T-O-N.

8 **COMMISSIONER JACOBS:** Thank you. And Mr.
9 Ludington, could you give us your address?

10 **MR. LUDINGTON:** My address? I'm getting an
11 awful echo off this and I can't hear myself.

12 **COMMISSIONER JACOBS:** Okay. We can hear you
13 fine, though.

14 **MR. LUDINGTON:** Well, every time I say
15 something all I hear is what I say.

16 **COMMISSIONER JACOBS:** Can you hear us?

17 **MR. LUDINGTON:** I can hear you.

18 **COMMISSIONER JACOBS:** Okay. We aren't
19 hearing an echo here, so if it's okay with -- if you
20 can ignore it, we hear you fine.

21 **MR. LUDINGTON:** Well, it's awfully hard to
22 ignore it. It sounds like I'm shouting in my own ear.
23 My park address is 509 Avanti Way, North Fort Myers,
24 Florida 33917.

25 **COMMISSIONER JACOBS:** Mr. Ludington, what I

1 am going to recommend is that maybe you can
2 re-establish your line by hanging up and dialing back
3 in. Is that okay with you?

4 **MR. LUDINGTON:** Say that again?

5 **COMMISSIONER JACOBS:** What I think would be
6 a good idea is if you hang up and dial back. Maybe we
7 can get you a different line that would be better. Is
8 that okay?

9 **MR. LUDINGTON:** All right. I'll try it
10 again.

11 **COMMISSIONER JACOBS:** Okay. Do we have
12 another consumer there on the line?

13 **MR. DEVINE:** My name is Joseph Devine. I
14 live at 688 Brigantine Boulevard, North Fort Myers,
15 33917.

16 **COMMISSIONER JACOBS:** I'm sorry. Could you
17 give me your name again, Mr. Devine?

18 **MR. DEVINE:** Mr. Joseph Devine, D-E-V-I-N-E.

19 **COMMISSIONER JACOBS:** Thank you.

20 **MR. DEVINE:** Mr. Chairman, could you speak a
21 little louder, please?

22 **COMMISSIONER JACOBS:** I will.

23 **MR. GILL:** Hello?

24 **COMMISSIONER JACOBS:** Yes, I will. Is that
25 better?

1 MR. GILL: Yes.

2 COMMISSIONER JACOBS: Great. Is there one
3 other?

4 MR. GILL: Yes, there is. My name is Donald
5 Gill. I live at 674 Brigantine Boulevard, North
6 Fort Myers, 33917, and along with Mr. Devine and
7 Mr. Ludington, I am a party to this -- the instant
8 action.

9 COMMISSIONER JACOBS: Thank you, Mr. Gill.
10 Can you hear us fine?

11 MR. LUDINGTON: Can you hear me better?

12 COMMISSIONER JACOBS: Hello?

13 MR. LUDINGTON: Yes. Ludington here.

14 COMMISSIONER JACOBS: Is that Mr. Ludington?

15 MR. LUDINGTON: Speaking.

16 COMMISSIONER JACOBS: We hear you very well.

17 MR. LUDINGTON: I'm still getting an echo.
18 Every time I say something, I hear it right back in my
19 ear. Very confusing.

20 COMMISSIONER JACOBS: Are you getting an
21 echo when we speak as well? Mr. Ludington?

22 MR. LUDINGTON: Yes, I'm still -- there.
23 It's gone now.

24 COMMISSIONER JACOBS: Okay.

25 MR. LUDINGTON: It has gone now.

1 **COMMISSIONER JACOBS:** Okay. Hopefully we
2 can proceed and you will be fine.

3 **MR. LUDINGTON:** Okay. Are the proceedings
4 scheduled at 1:30, have they started?

5 **COMMISSIONER JACOBS:** No. We were just
6 becoming introduced to one another.

7 **MR. LUDINGTON:** Oh, I see. Okay.

8 **COMMISSIONER JACOBS:** What I'd like to do,
9 because we have pro se participants, is just to
10 explain the process. And maybe, counsel, why don't
11 you just walk us through what we're going to do today.

12 **MR. LUDINGTON:** Hello. I've lost you.

13 **COMMISSIONER JACOBS:** Hello?

14 **MR. LUDINGTON:** Hello.

15 **COMMISSIONER JACOBS:** We're still here.

16 **MR. LUDINGTON:** I can hardly hear you now.

17 **MR. DEVINE:** I can hardly hear you also, Mr.
18 Chairman.

19 **COMMISSIONER JACOBS:** I'll make it a point
20 to speak into the mike when I speak. Is that better?

21 **MR. DEVINE:** Thank you.

22 **COMMISSIONER JACOBS:** Okay.

23 **MS. CIBULA:** We'd also like to make an
24 appearance. Samantha Cibula and Jennifer Brubaker for
25 Commission Staff.

1 **COMMISSIONER JACOBS:** Great.

2 **MS. BRUBAKER:** This is Jennifer Brubaker for
3 Commission Staff. Essentially the process we are
4 going through is a prehearing process. It's to afford
5 us an opportunity to discuss matters that are pending
6 prior to the hearing itself and to stipulate any
7 matters that can be stipulated to. There are several
8 pending matters which, at Commissioner Jacobs'
9 discretion, we may take up front or we may take after
10 going through the draft prehearing statement, at his
11 discretion.

12 Just as a point of order and convenience to
13 the court reporter, before the persons appearing on
14 the phone speak they may wish to identify themselves
15 for the ease of her transcription after the prehearing
16 conference please.

17 **MR. DEVINE:** Fine.

18 **COMMISSIONER JACOBS:** Now, the way I'd like
19 to proceed, for the benefit of Mr. Ludington, Mr.
20 Devine and Mr. Gill, we have a document we call a
21 Prehearing Order; that we basically have a draft and
22 we will kind of review that document section by
23 section. Do each of you have a copy of that document?

24 **MR. DEVINE:** Yes.

25 **MR. LUDINGTON:** No.

1 MR. GILL: No.

2 COMMISSIONER JACOBS: You do not?

3 MR. LUDINGTON: No.

4 MR. GILL: No.

5 COMMISSIONER JACOBS: Okay. I'm sorry. So,
6 could you tell me who the parties were who do not have
7 a copy?

8 MR. LUDINGTON: Ludington says no.

9 MR. GILL: Gill says no.

10 COMMISSIONER JACOBS: Okay. Here's what
11 we'd like to do. I don't believe that disrupts your
12 ability to participate today. I'll be especially
13 verbose, if you will, as to what's included in each of
14 these sections that we'll discuss, and you will get a
15 copy of the final draft -- I'm sorry -- the final
16 version of that document in the mail.

17 Now, what I'd like to do at this moment, as
18 counsel indicated, there was some preliminary matters.
19 As I understand it -- first of all, let me ask the
20 counsel here, did you have any preliminary matters
21 before us?

22 MR. FRIEDMAN: Not other than the motion
23 that we've raised which is identified in the --

24 COMMISSIONER JACOBS: The motion to strike?

25 MR. FRIEDMAN: That's correct.

1 **COMMISSIONER JACOBS:** Okay. I will deal
2 with that then.

3 Now, I have before me, under your signature,
4 Mr. Devine, a motion for an extension of time.

5 **MR. DEVINE:** That is correct, sir.

6 **COMMISSIONER JACOBS:** Would you like to
7 explain the basis for that motion?

8 **MR. DEVINE:** Excuse me. You would like me
9 to explain?

10 **COMMISSIONER JACOBS:** Yes. Rather than --
11 I'd be happy to but I wanted to make sure that you had
12 the opportunity to state it in your own words.

13 **MR. DEVINE:** I have a statement that I would
14 like to read. Can you hear me, Mr. Chairman?

15 **MS. BRUBAKER:** I'm sorry. May I interrupt
16 just a moment? This is Jennifer Brubaker for
17 Commission Staff again. One of my concerns is that
18 procedurally the Commission has not recognized filings
19 by facsimile copy, which is the only copy we have
20 before us. To my knowledge at this time we don't have
21 any motions actually filed, so if we need to have a
22 motion on the record, it would need to be made orally
23 please, by the parties.

24 **COMMISSIONER JACOBS:** Do you understand
25 Mr. Devine? Essentially what we're going to do is --

1 **MR. DEVINE:** I would like to file a motion,
2 Mr. Chairman.

3 **COMMISSIONER JACOBS:** Okay. What we're
4 going to do is, while we have this document, the
5 reading of your statement will constitute that motion.
6 You can proceed.

7 **MR. DEVINE:** May I proceed?

8 **COMMISSIONER JACOBS:** Yes.

9 **MR. DEVINE:** I, Joseph Devine, a party in
10 the above captioned matter, request the Public Service
11 Commission to continue, A, the August 30, 1999
12 prehearing conference; B, the September 7th, 1999
13 matter; and C, and the September 14th through 15th,
14 1999 hearing for the following good and sufficient
15 reasons:

16 One, the Public Service Commission, PSC, is
17 proceeding in the above captioned matter knowing that
18 there is a strong presumption of a fraudulent
19 conveyance of a privately owned wastewater system to a
20 public utility.

21 Two, the scheduled PSC hearings should be
22 stayed until the finding of the facts and laws behind
23 North Fort Myers Utility's fraudulent conveyance has
24 not been fully adjudicated by a court of competent
25 jurisdiction.

1 Three, the scheduled PSC hearings should be
2 stayed until all the parties and all the residents of
3 Buccaneer Estates have had a reasonable opportunity to
4 assemble, be informed of their rights and options and
5 collectively decide what is in their best interest.
6 Example; by the wastewater system, et cetera.

7 While the OPC does represent the State of
8 Florida and the people of Florida, the residents of
9 Buccaneer, pursuant to Steve Reilly, Office of Public
10 Counsel, the residents are not directly represented by
11 counsel and rightly or wrongly are not parties to the
12 above captioned.

13 Since the residents of Buccaneer Estates are
14 not directly represented by counsel, they should be
15 afforded the opportunity to present their issues at a
16 hearing. Because the Commission's order establishing
17 procedure setting prehearing and hearing dates in the
18 summer months of August and September for the closed
19 private community whose residents a majority of have a
20 long established tradition or custom of being absent
21 from the state during these summer months, the August
22 and September hearing dates are unreasonable. The
23 travel distance of 1,000 miles or more to North Fort
24 Myers will and does impose an undue financial and
25 convenience hardship on the parties and residents who

1 would otherwise be present at that hearing.

2 The August and September hearing dates
3 effectively deny these residents of their federal and
4 state rights of due process to attend and be heard at
5 these hearings.

6 Five, the PSC Staff and the Office of Public
7 Counsel have recently aggressively sought to have the
8 parties, Devine, Ludington and Gill, to stipulate to a
9 settlement between themselves, North Fort Myers
10 Utility, and the Office of Public Counsel that is
11 rooted in fraudulent and deceitful actions of North
12 Fort Myers Utility.

13 Because this agreement would effectively
14 reward North Fort Myers Utility for its wrong doing,
15 the agreement and subsequent decision of the
16 Commission would set a bad precedent and encourage
17 others to flaunt the laws of the State of Florida.

18 Six, there has been no communication system
19 that has kept all the residents fully informed of the
20 issues in the forthcoming proceedings. Therefore, to
21 proceed with this matter at this time will effectively
22 deny the residents of their right to make collective
23 informed decisions as to what is in their best
24 interest.

25 Whereas, it is in the public interest for

1 the state of Florida and all of its citizens due
2 process and the equal protection of the law, I
3 respectfully request this Commission continue the
4 above captioned matter to such a time that all parties
5 and the residents have their time to assemble, be
6 informed and make decisions as to what may or may not
7 be in their best interest.

8 With a strong presumption that North Fort
9 Myers Utility and the owners of Buccaneer Estates
10 acting together may have knowingly and fraudulently
11 violated a number of Florida Statutes, a continuance
12 in this matter will not prejudice the rights of North
13 Fort Myers Utility, but a Commission's denial of a
14 continuance will prejudice the rights of the innocent
15 parties and residents of Buccaneer Estates.

16 Mr. Chairman, I thank you for allowing me to
17 read.

18 **COMMISSIONER JACOBS:** Thank you. Let me
19 ask, would you like to respond with each one or
20 just --

21 **MR. SHREVE:** I don't want to respond because
22 we are not going to argue with the group of customers.
23 I do want to clarify one thing with Mr. Devine. There
24 must have been some misunderstanding with what
25 Mr. Reilly said because we do statutorily represent

1 all of the citizens of the state of Florida of which
2 this group of customers is ours. So they are
3 represented.

4 Now each individual customer has a right to
5 represent themselves or have an attorney to represent
6 them too. But we have in this case, and all other
7 cases we intervened, represent the citizens and the
8 customers of the utility. This is Jack Shreve.

9 **MR. DEVINE:** Who was speaking, please?

10 **MR. SHREVE:** Jack Shreve.

11 **MR. GILL:** I would like to know who's --
12 hello? This is Donald Gill. I would like to know who
13 is representing the Buccaneer Estates Association.

14 **MR. SHREVE:** We're representing the
15 customers as a group. The citizens of the state of
16 Florida is our statutory responsibility. We have been
17 in touch with Buccaneer Estates Citizens Group.

18 **MR. GILL:** But for the record, you are not
19 representing Buccaneer Estates. There is no
20 representation for Buccaneer Estates Association.

21 **MR. DURBIN:** Yes, there is.

22 **MR. GILL:** Who was the representative--

23 **COMMISSIONER JACOBS:** Excuse me. We are
24 going to have to make sure that as each one speaks
25 that you introduce yourself and give your name.

1 **MR. GILL:** You know, we're having great
2 trouble with feedback here. You hear yourself twice
3 and it completely disorients you as to what you are
4 saying.

5 **MR. DURBIN:** Mr. Commissioner, may I speak?

6 **COMMISSIONER JACOBS:** First, wait.
7 Mr. Gill, were you done with your statement?

8 **MR. GILL:** I'm done with my statement.

9 **COMMISSIONER JACOBS:** Your question
10 actually. I'm sorry. Okay. Go ahead.

11 **MR. DURBIN:** My name is Stanley Durbin. I
12 represent the Buccaneer Homeowners Association. There
13 are four of us present and we have asked Mr. Shreve
14 and Mr. Reilly to represent the Association on these
15 matters. It was filed with Mr. William Lowe at Legal
16 Services in Tallahassee and it's legitimate.

17 **COMMISSIONER JACOBS:** Your name again?

18 **MR. DURBIN:** Stanley Durbin, D-U-R-B-I-N.

19 **COMMISSIONER JACOBS:** Okay, Mr. Durbin. I
20 didn't even have you on the line. Is there anyone
21 else on the line that I missed earlier?

22 **MR. DURBIN:** Yes, you have. Jack.

23 **MR. COLVIN:** I'm Jack Colvin. I'm on the
24 Buccaneer Committee for wastewater and sewer. And I
25 live at 495 Avanti Way, North Fort Myers, 33917.

1 **COMMISSIONER JACOBS:** Your last name is
2 Colvin?

3 **MR. COLVIN:** Colvin. C-O-L-V-I-N.

4 **COMMISSIONER JACOBS:** Is there anyone else?

5 **MR. DEHOLLANDER:** Richard DeHollander, 433
6 Hidden Cove Road. I'm on the committee representing
7 the people of Buccaneer Estates.

8 **COMMISSIONER JACOBS:** Is there anyone else?

9 **MR. GAYLORD:** Tom Gaylord, President,
10 Buccaneer Homeowners Association, 363 Jose, J-O-S-E,
11 Gaspar, G-A-S-P-A-R, Drive, North Fort Myers, 33917.

12 **COMMISSIONER JACOBS:** It's my understanding
13 Mr. Durbin, that you're president of the Buccaneer
14 Homeowners Association?

15 **MR. DURBIN:** Mr. Gaylord just spoke to you.
16 He's president of the Homeowners Association. I'm a
17 member of the committee only.

18 **COMMISSIONER JACOBS:** I understand.
19 Mr. Gaylord, as president -- let me defer for a moment
20 in exactly your status because I understand that the
21 Homeowners Association is not officially a party; is
22 that correct?

23 **MS. BRUBAKER:** That's correct.

24 **COMMISSIONER JACOBS:** And Public Counsel
25 represents the customers, not the association.

1 **MR. SHREVE:** Statutorily we represent all of
2 the citizens of the state of Florida. In this case,
3 we're representing the customers as a customer group
4 in this case, as we do in all of them.

5 **COMMISSIONER JACOBS:** Okay. Now, what I'd
6 like to do for the moment, Mr. Gaylord, is defer the
7 issue that you raised because I want to let each party
8 have his full say and then we'll come back and resolve
9 all these issues. Is that okay with you?

10 **MR. GAYLORD:** Excuse me. I did not raise an
11 issue. You are speaking of Mr. Gill who raised the
12 issue.

13 **COMMISSIONER JACOBS:** Mr. Gaylord?

14 **MR. GAYLORD:** Yes.

15 **COMMISSIONER JACOBS:** I'm sorry. Mr. Gill.
16 You are correct. Mr. Gill is -- did raise the issue
17 initially.

18 **MR. GILL:** If we move on we will revisit
19 this issue.

20 **COMMISSIONER JACOBS:** I will come back. For
21 the moment, though, I want to complete the
22 presentations as we had them this order.

23 **MR. GILL:** I agree completely.

24 **COMMISSIONER JACOBS:** Great. Now, where we
25 were is Mr. Shreve has responded -- Mr. Friedman. I

1 was going to do you a real injustice. Mr. Friedman.

2 **MR. FRIEDMAN:** Yes. Thank you. I will try
3 to address each of the issues raised in the motion by
4 Mr. Gill in order.

5 First, he speaks of a strong presumption of
6 fraudulent conveyance, yet he hasn't presented any
7 prefiled testimony supporting that allegation, nor has
8 he filed any prehearing statement that raises that
9 allegation as a statement of issue of fact or law that
10 needs to be resolved, and were it for a fact that
11 we're not in a judicial forum, the statements that
12 Mr. Gill has made in his motion would very well be
13 libelist and only because we're in a judicial forum
14 has he insulated himself from potential liability for
15 slander.

16 Number two, the same issue. He's claiming
17 that the hearing should be stayed until there's more
18 facts about the fraudulent conveyance. Well, again,
19 there's no prefiled testimony by this witness or on
20 behalf of -- by this party or on behalf of this party
21 that even alludes to that.

22 The third, that there should be a reasonable
23 opportunity for those people to get together and
24 decide what's in their best interest. Well, except
25 for those three people and the Office of Public

1 Counsel, there are no other parties. Everybody had an
2 opportunity to be separately represented. These three
3 individuals chose to represent themselves and the
4 Office of Public Counsel represents everybody, I
5 guess, including those three people, although I think
6 they opted out of Public Counsel's representation, but
7 that's an issue that is not relevant to me.

8 In talking about, there is no prejudice by a
9 continuance, well, if you recall, North Fort Myers has
10 asked on two separate occasions to be able to charge
11 some rate for service rendered during this -- during
12 the pendency of this proceeding. And, in fact,
13 although, it -- North Fort Myers has not received
14 anything since December -- since November. So
15 beginning in December through today, North Fort Myers
16 has been providing wastewater service to those
17 customers for free. Obviously any further delay in
18 what we already think is a delayed process is
19 prejudicial to North Fort Myers, particularly when
20 these customers are claiming that they will not have
21 to pay any retroactive rates or any surcharges should
22 they be successful.

23 It's interesting that they make a large
24 lengthy argument about the fact that the hearing is
25 scheduled for September and claiming that their people

1 are not here in September. Well, that's an untimely
2 argument. The Prehearing Order established in this
3 procedure was issued in March. Now, Mr. Gill said
4 that it's always that lots of residents are gone
5 during the summer or during September. Now, if that
6 is true, and he knew that a lot of residents were
7 going to be out of town and he thought that they
8 needed to be there, then I would suggest to you that
9 he should have made this argument March, April, even
10 May, but not two weeks before the hearing. I think
11 just on that basis alone it's appropriate to deny it.

12 The fact that the -- five and six, North
13 Fort Myers has worked very hard, negotiated very hard
14 with the Office of Public Counsel in trying to reach a
15 settlement of this case. And, in fact, have done so.
16 We have three people who want to do their own deal and
17 North Fort Myers isn't willing to do that. What
18 everybody gets, what the Public Counsel negotiates for
19 those citizens everybody is entitled to and we're not
20 going to make any special deals just to get rid of
21 these three people.

22 And I would suggest to you that without
23 going too much into my motion to strike them as
24 parties, let me suggest to you that this motion for
25 continuance or for an extension of time is untimely,

1 and it would be severely prejudicial to North Fort
2 Myers, who's not receiving any revenue during the
3 pendency of the proceeding. Thank you.

4 **MR. GILL:** This is Don Gill. I'd like to
5 respond --

6 **COMMISSIONER JACOBS:** Excuse me. I'm sorry.
7 Who was speaking?

8 **MR. GILL:** Don Gill.

9 **COMMISSIONER JACOBS:** Mr. Gill, if you would
10 hold a moment I want to make sure Staff has no
11 response.

12 **MS. BRUBAKER:** Staff has just a few
13 comments, Commissioner. The first is that with regard
14 to a motion to continue the prehearing conference, I
15 would note that the prehearing conference has begun.
16 It may be a nicety of words, but it seems to me that
17 we're already here and that a continuance at this
18 point is untimely.

19 I would note also that with respect to
20 Mr. Gill's concerns about the customers not having
21 notice, not having an opportunity to participate, that
22 notice was sent to the customers in this case by
23 statute and according to rule, and that they were
24 afforded at that time an opportunity to protest the
25 case if they wished to do so, which certain customers

1 did. And after that there was an obligation to
2 participate in the process according to the rules,
3 statutes and the provisions of the order establishing
4 procedure, which was issued on March 1st of 1999.

5 Further, with respect to the statement that
6 Mr. Gill represents the customers, there is no
7 petition request or other motion before the Commission
8 which gives evidence that he does indeed speak as
9 their representative. To the best of Staff's
10 knowledge Mr. Gill speaks for himself. That's our
11 comments.

12 **COMMISSIONER JACOBS:** Thank you. Okay.
13 Mr. Gill, you had a response. You can proceed.

14 **MR. GILL:** I have a response. It's based on
15 this motion for a continuance and the time factor and
16 the summer months that this hearing was called for.

17 You spoke of a pretrial order that the
18 parties had to conform to. Well, the problem with
19 this pretrial order and the need for a continuance of
20 time is that a probate matter came up in Massachusetts
21 in which I had to leave Florida.

22 Now, the 1,415 miles between my home and
23 Florida and Rhode Island precluded me from having
24 access to the law libraries in Fort Myers. Being in
25 Rhode Island there is no way for me to knowledgeably

1 prepare a pretrial statement when I do not know what
2 it consists of. I would need access to the law
3 libraries, go in and do some research so I could
4 prepare an intelligent response. That is one of the
5 things that brought about this need and this idea for
6 a continuance.

7 Not only are the vast majority of the
8 residents absent from the park, but the persons who
9 are absent from the park have very limited access to
10 the Florida Statutes and any administrative
11 procedures. And that is really a concern of due
12 process and being informed and being prepared to
13 present your arguments. And that's about what I have
14 to say on that subject.

15 And as far as representing the residents, I
16 only represent Donald Gill as a resident of the park.
17 And any reference I make to the residents being
18 prejudiced also includes me because I am a resident.
19 And that's all. Thank you.

20 **COMMISSIONER JACOBS:** Thank you, Mr. Gill.

21 **MR. LUDINGTON:** Ludington here. May I speak
22 to the motion or to the information?

23 **COMMISSIONER JACOBS:** I'm sorry. Who is
24 speaking?

25 **MR. LUDINGTON:** Ludington.

1 **COMMISSIONER JACOBS:** Mr. Ludington, if you
2 would --

3 **MR. LUDINGTON:** -- (inaudible overlap) --
4 terrible feedback out here and everything I say
5 repeats itself.

6 **COMMISSIONER JACOBS:** What I think I'd like
7 to do, Mr. Ludington, we were going to move next to
8 the motion that you filed.

9 **MR. LUDINGTON:** Yes.

10 **COMMISSIONER JACOBS:** Well, actually you
11 joined in Mr. Gill's motion; is that correct?

12 **MR. LUDINGTON:** Say that again. I can't
13 hear you.

14 **COMMISSIONER JACOBS:** As I understand it,
15 you incorporated and joined in the motion of Mr. Gill
16 for an extension --

17 **MR. LUDINGTON:** That's exactly right. My
18 motion was to conform to his.

19 **COMMISSIONER JACOBS:** What I'd like to do is
20 now move -- Mr. Devine?

21 **MR. DEVINE:** Yes.

22 **MS. BRUBAKER:** Commissioner --

23 **COMMISSIONER JACOBS:** I'm going to defer
24 ruling.

25 **MR. DEVINE:** Excuse me?

1 **MS. BRUBAKER:** I'm sorry. If I may
2 interrupt for just a moment.

3 **COMMISSIONER JACOBS:** Hold up for a moment.
4 Hold up for a moment, Mr. Devine.

5 **MS. BRUBAKER:** Let me offer a matter of
6 clarification that may simply matters a bit. My
7 understanding is that the motion presented by Mr. Gill
8 is substantially similar to that -- well, it's
9 identical to that adopted by Mr. Ludington. And also
10 Mr. Devine's motion is, I believe, word for word the
11 same. If as a matter of convenience and according to
12 the parties being agreeable to this, I think it would
13 be possible to accept and treat all three as
14 substantially the same motion and perhaps take
15 comments as a group.

16 **MR. DEVINE:** This is Mr. Devine speaking.
17 That is not true. The other statement will be
18 different.

19 **MS. BRUBAKER:** Okay. Well, then I stand
20 corrected.

21 **COMMISSIONER JACOBS:** But, if I may. The
22 concept that was just described is, I think,
23 appropriate. But in order to not cut off any of your
24 comments, what I'm going to allow you now is that your
25 opportunity to respond. I'm speaking now to

1 Mr. Ludington and to Mr. Gill. I want to allow each
2 of you time to make your own comments as to the motion
3 for extension.

4 **MR. LUDINGTON:** Ludington here.

5 **COMMISSIONER JACOBS:** And if I can suggest
6 to you, since we've had extensive comments on them
7 already, I would ask you just to cover the points that
8 are different than those that have been raised
9 already, if that is not inconvenient to you. Is that
10 okay?

11 **MR. DEVINE:** Ron, can I say something?

12 **MR. LUDINGTON:** Go ahead.

13 **MR. DEVINE:** Mr. Chairman.

14 **COMMISSIONER JACOBS:** Yes.

15 **MR. DEVINE:** This is Mr. Devine.

16 Mr. Friedman mentioned in his remarks that I might
17 have said something that was inappropriate. If I may
18 respond to him on what I consider to be a legal
19 problem, and I'd like to refer to a Mr. Ted Bidy's
20 deposition that I have in front of me and I would only
21 like to respond to or mention one question that was
22 put to Mr. Bidy and his response, if I may.

23 **COMMISSIONER JACOBS:** Go ahead. Proceed.

24 **MR. DEVINE:** The question to Mr. Bidy, a
25 professional in this field was, do you have an opinion

1 of why such a complicated and complex method of
2 charging the system capacity charges was devised by
3 North Fort Myers Utility and the owner. Mr. Bidy's
4 response -- and that's on Page 8 of his testimony.
5 "Yes," says Mr. Bidy. "It would appear that North
6 Fort Myers Utility had no right to assess these system
7 connection charges since Buccaneer is not within its
8 service territory. The scheme devised by North Fort
9 Myers Utility and the owner of Buccaneer for the owner
10 to charge the residents a pass through charge and then
11 assign to North Fort Myers the right to collect these
12 charges was simply a back door method to try to
13 legalize an otherwise illegal charge. That is from
14 Mr. Bidy's testimony, Page 8. And I'll give you the
15 date as soon as I can find it.

16 **COMMISSIONER JACOBS:** That's not necessary.
17 That's not necessary. What I'd like -- now your part
18 regarding that was?

19 **MR. DEVINE:** Hello? Yes?

20 **COMMISSIONER JACOBS:** Yes. You don't need
21 to give us the date, but what I wanted to ask you is,
22 you were making the point that, from that testimony
23 that --

24 **MR. DEVINE:** I am making the point that a
25 professional has looked into this matter and he's made

1 a decision, and one of his statements, not mine, is
2 that this is simply a back door method to try to
3 legalize an otherwise illegal charge. If I can't put
4 a faith in a professional in this deal, I don't know
5 who I can put faith in.

6 **COMMISSIONER JACOBS:** I understand your
7 point now.

8 **MR. DEVINE:** Thank you, Mr. Chairman.

9 **COMMISSIONER JACOBS:** But if I can direct
10 this back to the issue that we're discussing. We're
11 discussing the merits of whether or not extension of
12 time is due on the proceedings that have been
13 established thus far, i.e., today's prehearing
14 conference and the hearing. If we get to hearing --

15 **MR. DEVINE:** So --

16 **COMMISSIONER JACOBS:** Excuse me. If we were
17 to go to hearing, the statements that you've read
18 would be perfectly in order and there will be -- you
19 will be allowed an opportunity to question Mr. Bidy
20 on those comments.

21 Where we are today is, should there be an
22 extension of time granted for today's proceeding and
23 or for the hearing that's scheduled on the 14th.

24 **MR. DEVINE:** Thank you, Mr. Chairman.

25 **MR. LUDINGTON:** Mr. Chairman, may I speak to

1 the issue? It's Ludington here.

2 **COMMISSIONER JACOBS:** Proceed,
3 Mr. Ludington.

4 **MR. LUDINGTON:** I can't recall the exact
5 number that -- and I believe it was Mr. Friedman that
6 brought up the subject that there had been a
7 settlement agreement reached between the parties and
8 that it appears to be a cut and dried deal as far as
9 he's concerned.

10 I would suggest that he's wrong on that. It
11 has never been approved in a legal manner, lawful
12 manner by the Homeowners Association, as they're
13 required to do under their bylaws and the rules of
14 orders of the meetings, so we take issue with the
15 statement that a settlement has been reached.

16 **MR. GAYLORD:** May I rebut that testimony?

17 **COMMISSIONER JACOBS:** I'm sorry. Who is
18 speaking?

19 **MR. GAYLORD:** President of the Buccaneer
20 Association.

21 **COMMISSIONER JACOBS:** Give us your name
22 again, please.

23 **MR. GAYLORD:** Tom Gaylord. President,
24 Buccaneer Homeowners Association.

25 **COMMISSIONER JACOBS:** If I may ask you, Mr.

1 Gaylord, I'm getting to you. If you will be patient
2 for just a moment. I want to get the statements from
3 Mr. Ludington and Mr. Gill on the record, then we'll
4 get to you.

5 **MR. GAYLORD:** Surely.

6 **COMMISSIONER JACOBS:** Okay. Mr. Ludington,
7 does that complete your statement?

8 **MR. LUDINGTON:** Yes, it does at the moment.

9 **COMMISSIONER JACOBS:** Okay. Mr. Gill. I'm
10 sorry. Mr. Gill? Did you have any additional
11 comments as to the motion?

12 **MR. GILL:** Yes. I believe by an extension
13 of time, and if this matter can be resolved -- if we
14 do not get an extension of time, I believe that
15 Mr. Devine and Mr. Ludington and I will go and file a
16 complaint with the Circuit Court and that in itself
17 will stay these proceedings.

18 We are not trying to complicate the matter.
19 We are trying to be able to get our voice heard and we
20 have a serious question about the indispensable
21 parties such as North Fort -- not North Fort Myers,
22 the manufactured homes community who are party to the
23 problem, but are not party to the proceedings. We
24 have no recourse through these proceedings on MHC and
25 any decisions that this Commission makes in regard to

1 the utility will make -- move several very important
2 issues. And if we go to a Circuit Court I'm sure the
3 doctrine of res judicata will kick in and we won't be
4 able to raise these essential points. And
5 essentially, that's what I have to say.

6 **COMMISSIONER JACOBS:** Thank you, Mr. Gill.
7 Now, Mr. Gaylord, as to the motion, you have a
8 comment?

9 **MR. GAYLORD:** Yes. As to Mr. Ludington's
10 statement regarding not full representation of the
11 park, he is not aware that over 710 people in
12 Buccaneer Estates have approved of this committee and
13 this Association to handle these negotiations for
14 them, number one.

15 Number two, they seem to indicate that we're
16 trying to ramrod this through and that is not our
17 position. Our position is, as is theirs, for the
18 protection of the Buccaneer residents. We have done
19 that since last March I would think, and continually
20 every month informing our residents of what was
21 transpiring and what was going on and the
22 conversations that we had with the attorneys and with
23 North Fort Myers Utility. Now, North Fort Myers
24 Utility did not appear in this action until
25 approximately November when they wanted to --

1 UNIDENTIFIED SPEAKER: Of last year.

2 MR. GAYLORD: Pardon?

3 UNIDENTIFIED SPEAKER: Of last year.

4 MR. GAYLORD: November of last year when
5 they wanted to charge us for hook up fees. We then --

6 UNIDENTIFIED SPEAKER: What does this --

7 COMMISSIONER JACOBS: Excuse me. Excuse me.

8 (Simultaneous talking.) I would ask you not

9 interrupt.

10 MR. GAYLORD: Please let me finish.

11 COMMISSIONER JACOBS: Go ahead, Mr. Gaylord.

12 I asked the other parties not to interrupt.

13 MR. GAYLORD: -- with the authorities in
14 Tallahassee and appointed Steve Reilly to represent us
15 and we have done everything legally, and the residents
16 of this park, although they may be up North, have
17 given us their permission to represent them in this
18 action.

19 Now, number two, we would like to get this
20 settled for them. We don't like to see North Fort
21 Myers Utility going through the headaches they're
22 going through. We want to get it settled and I think
23 this is the best way and it's an agreement.

24 Incidentally, they also mentioned that very
25 few people are here. We had an emergency meeting last

1 Thursday. Over 300 people attended; 320 of which 297
2 want to do just what we're asking for. Thank you.

3 **COMMISSIONER JACOBS:** Thank you.

4 **MR. DEVINE:** Mr. Chairman, Mr. Devine.

5 **COMMISSIONER JACOBS:** Very briefly,
6 Mr. Devine. I'll give you very few moments.

7 **MR. DEVINE:** I didn't hear you, Mr.
8 Chairman.

9 **COMMISSIONER JACOBS:** Very briefly. You had
10 a comment. Would you please be very brief.

11 **MR. DEVINE:** In response, there's 1,000
12 homes in this community which probably represent over
13 2,000 customers, and at the meeting the other evening
14 there was only, as he said, 300 people, which if most
15 were couples you're really asking 150 homes out of a
16 total of 1,000 homes. Not a majority.

17 **COMMISSIONER JACOBS:** I understand. Thank
18 you very much. Any further comments?

19 **MR. FRIEDMAN:** I do have one, if I might.

20 **COMMISSIONER JACOBS:** Very briefly.

21 **MR. FRIEDMAN:** I will try to be very brief.

22 **MR. LUDINGTON:** Who is speaking please?

23 **MR. FRIEDMAN:** This is Marty Friedman. One
24 of the gentlemen referenced the service availability
25 charges and what impact that has, and that's a

1 separate proceeding that is under Chapter 723 which
2 the Homeowners Association is already in litigation
3 with the mobile home park owner about and doesn't have
4 anything to do with this proceeding.

5 **COMMISSIONER JACOBS:** Thank you.

6 **MR. FRIEDMAN:** And my last comment is, the
7 gentleman who said he was up North and wasn't able to
8 do his research that he needed, if he knew he was
9 going to be up North and couldn't do the research, he
10 should have asked or filed this motion --

11 **COMMISSIONER JACOBS:** I'm going to go ahead
12 and proceed. I think we're okay on that one.

13 **MR. FRIEDMAN:** All right.

14 **COMMISSIONER JACOBS:** What I'd like to do
15 now is I'd like to rule on the motions for continuance
16 of time, understanding that we still have the motion
17 outstanding from Mr. Friedman. As I understand this,
18 Staff, both motions were filed after the time allotted
19 in the rules for such a motion to be filed?

20 **UNIDENTIFIED SPEAKER:** Cannot hear you, sir.

21 **COMMISSIONER JACOBS:** I'm sorry. As I
22 understand it, the motions for extension of time were
23 both filed outside of the proper time; is that
24 correct?

25 **MS. BRUBAKER:** Well, it's more a matter of

1 timeliness, Commissioner. There isn't a strict --

2 **COMMISSIONER JACOBS:** Time line for this?

3 **MS. BRUBAKER:** -- time line for it. The
4 question is, the motions were faxed, not actually
5 file. The motions weren't actually filed, if you wish
6 to use that term, until they were orally entered into
7 the record today at the prehearing conference. We had
8 received, as of approximately Wednesday last week,
9 which is three weeks before the hearing, faxed drafts
10 of those requests for an extension of time.

11 **COMMISSIONER JACOBS:** Okay.

12 **MR. GILL:** This is Don Gill. Could I say
13 that those -- that fax, the motion --

14 **COMMISSIONER JACOBS:** Mr. Gill. Excuse me,
15 Mr. Gill.

16 **MR. GILL:** Commission shouldn't --

17 **COMMISSIONER JACOBS:** Mr. Gill, excuse me.
18 I'm going to accept your motions as stated today. I'm
19 not going to rule that the motions were filed
20 untimely. Okay.

21 **MR. GILL:** Okay. Thank you.

22 **COMMISSIONER JACOBS:** I accept the motions
23 as filed today, and I'm going to accept them as being
24 timely. And I will rule on the motions on the merits.
25 Essentially the parties argue that if these hearings

1 go forward on the allotted time schedule --

2 **MR. LUDINGTON:** Cannot hear you, sir.

3 **COMMISSIONER JACOBS:** I'm sorry. I will try
4 to get closer to the microphone. That if the
5 prehearing that is scheduled for today, as well as the
6 hearing that is scheduled for September 14th through
7 the 15th proceed in their appointed times, that the
8 parties will be deprived of some manner of due process
9 for the reasons that they've stated in their
10 statements today. Additionally, the parties indicate
11 that they would be better able to develop their own
12 arguments if they were allotted additional time.

13 My view is that we've had, as was indicated
14 in their response, we've had a substantial amount of
15 time since this case was filed and since the schedule
16 for procedure has been noticed to the parties. It's
17 my understanding that notice was given to the
18 customers of this utility. And so they've had
19 adequate notice as to the procedure and as to the
20 particular dates that were set out in that schedule.

21 I do understand and I do give some leeway
22 that these parties are not attorneys, and therefore,
23 have proceeded based on their knowledge of the
24 process. However, even in that light, I do not
25 believe that it would be of any further benefit to

1 delay, specifically the prehearing hearing today. Nor
2 am I of the opinion that it will be of any benefit to
3 delay the hearings scheduled for September 14th. So,
4 essentially, my ruling is that the motions for
5 extension of time are denied.

6 However, I am going to make sure that these
7 parties have an opportunity now that they
8 understand -- they understand from the very source --
9 accurate sources that they do have representation with
10 the Office of Public Counsel. I would encourage them
11 to make sure that they have every opportunity to
12 discuss their issues with the Office of Public Counsel
13 and at least come to understand where their
14 differences lie, and if they retain their differences
15 that they surely have the opportunity to move forward
16 and come to the hearing, if it indeed occurs on
17 September 14th and participate in the manner that's
18 appropriate according to how they've participated in
19 the process thus far.

20 So, the ruling is that the motion for
21 extension of time filed by Messrs. Ludington, Devine
22 and Gill are denied.

23 Now, I'd like --

24 **MR. GILL:** This is Don Gill. I assume on
25 your decision that we have a right of appeal, a motion

1 for rehearing or reconsideration?

2 **COMMISSIONER JACOBS:** On the ruling for a
3 motion, sir, generally, it's very limited, if at all.
4 I will leave you to the advice of counsel on that. I
5 will leave you to the advice of your own counsel on
6 that. And if you choose to pursue that, that is
7 certainly up to you.

8 **MR. GILL:** Well, if you're going to pursue
9 the answer, would you please see that I get the
10 answer?

11 **COMMISSIONER JACOBS:** In other words, are
12 you requesting a written motion -- I'm sorry -- a
13 written order for this ruling today?

14 **MR. GILL:** Yes.

15 **COMMISSIONER JACOBS:** Okay. We can provide
16 you that to you.

17 (Simultaneous talking.)

18 **MR. GILL:** -- appeal.

19 **UNIDENTIFIED SPEAKER:** It can be appealed.

20 **COMMISSIONER JACOBS:** We will provide you a
21 written order and I think any rights will be stated in
22 that order.

23 **MR. GILL:** Thank you very much.

24 **COMMISSIONER JACOBS:** Well, let me state it
25 this way. The law, as it applies to that order, will

1 be stated. I would advise you to go get advice of
2 counsel as to your rights on appeal.

3 **MR. DEVINE:** Chairman, may I ask a question?

4 **COMMISSIONER JACOBS:** Yes.

5 **MR. DEVINE:** On your ruling, is this going
6 to prejudice our participation in anyway, shape or
7 form in the September 14th, 15th, hearing?

8 **COMMISSIONER JACOBS:** Not so far. We have a
9 motion that we have to look at in a moment though that
10 could, but that motion has not been ruled on. So, you
11 will get an opportunity to state your position on that
12 in just a moment. Okay?

13 **MR. DEVINE:** Okay. Thank you.

14 **COMMISSIONER JACOBS:** Okay. Mr. Shreve.

15 **MR. SHREVE:** Mr. Chairman. In response to
16 your instructions that Mr. Ludington, Devine and
17 Mr. Gill would have access to our office, we would be
18 glad to work with them in any way we can. This has
19 come as a cumbersome situation for us because we are
20 representing all of the customers, and there appears
21 to be a division between the three intervenors,
22 Mr. Ludington, Mr. Devine and Mr. Gill and a large
23 part of the other customers.

24 So, we're not going to argue for or against
25 either one of the sides. By the same token we have to

1 do what we feel is best and represent as best we can
2 whatever would appear to be a majority of the
3 customers. This is a situation we don't run into very
4 often. I cannot remember a situation like this where
5 we run into it within a utility. We've had it where
6 there have been differences of opinions within a case,
7 but between different utilities.

8 So we're not going to argue one way or the
9 other. We will be glad to work with Mr. Ludington,
10 Devine and Gill as best we can to help them in
11 preparing whatever they would like to prepare. We
12 will continue to represent all of the customers as
13 best we can and try and abide by what we perceive as
14 being a majority of the customers' wishes on this.

15 **COMMISSIONER JACOBS:** I think that's
16 understood. I think the parties understand that.

17 **MR. DEVINE:** Yes, to the last gentleman.

18 **COMMISSIONER JACOBS:** Mr. Shreve.

19 **MR. DEVINE:** Mr. Shreve, you perceive that
20 the 297 people out of roughly 1,700 or 1,800 is a
21 majority? Is that your opinion?

22 **MR. SHREVE:** No, sir. My perception would
23 be that 290 people of 300 would be a majority. That
24 was how many were there. We didn't hear from the
25 others.

1 **MR. DEVINE:** Yeah, well, I've never --

2 **MR. SHREVE:** This is a case where we're
3 going to have to perceive it and do the best we can.
4 We've been doing it for 21 years and have generally
5 come out pretty well and tried to do what the
6 customers want. You may from time to time have a
7 difference of opinion even from the customer groups.
8 I have had customers come forward and say that they'd
9 even like to have a rate increase. But that is not
10 where we came down representing them and in general
11 we'd represent the rest of the group in a majority.

12 We'll be more than happy to work with any of
13 the three of you. You've called us in the past. We'd
14 be happy to work with you.

15 We are going to have to make a decision at
16 some point as to what we feel is best. We cannot work
17 on 100% process. There's no way we can do that.

18 **COMMISSIONER JACOBS:** If I might add, if
19 you -- if it turns out, Mr. Ludington, Devine and
20 Gill, that you do not believe that your views and
21 interests would not be advocated, you still have the
22 options of proceeding, again, pending resolution of
23 the upcoming issue, and proceeding at hearing because
24 you did enter into the process as parties. And, of
25 course, you do have access to the courts, however that

1 matter might present itself. So we're not foreclosing
2 or taking away any rights from you today.

3 **MR. DEVINE:** Thank you, Mr. Chairman.

4 **MR. LUDINGTON:** Thank you, Mr. Chairman.

5 **COMMISSIONER JACOBS:** Now, then, what I'd
6 like to do is move on to Mr. Friedman's motion. Would
7 you like to address it?

8 **MR. FRIEDMAN:** Yes. Thank you, Commissioner
9 Jacobs. North Fort Myers has filed a motion to strike
10 as parties, Mr. Gill, Mr. Ludington and Mr. Devine.

11 As you may be aware, and I alluded to
12 earlier, North Fort Myers and the Office of Public
13 Counsel have reached a settlement agreement, obviously
14 one that has to be signed off by the Commission to be
15 effective. The three individuals who have opted out
16 of representation by Office of Public Counsel and
17 chose to represent themselves have not chose to join
18 this settlement.

19 I would point out that the -- (music
20 playing) --

21 **COMMISSIONER JACOBS:** Excuse me. It just
22 left. We had some background noise, but I think we
23 just lost it. Thank you for whoever took it away for
24 us. Proceed.

25 **MR. FRIEDMAN:** Thank you, Commissioner

1 Jacobs. The order establishing procedure that was
2 issued on March the 1st is very clear about the
3 requirements that every party has got to abide by.
4 And those requirements are written out very succinctly
5 so that nonlawyers can understand what they are.

6 What has happened in this case is that these
7 three gentleman have not filed any prefiled testimony
8 or exhibits. They have been riding the coattail of
9 the Office of Public Counsel from day one, and now
10 when they want to take a position different than
11 Office of Public Counsel, all of a sudden they're
12 throwing up their hands and yelling, we'll be
13 prejudiced if we're not allowed to present our
14 position. That's the risk when you ride somebody
15 else's coattails that they may change their position,
16 and that's what's happened in this case.

17 And as a result, none of these three
18 gentlemen filed any prefiled testimony, any prefiled
19 exhibits. They didn't even file a statement adopting
20 the prefiled statements -- I mean, the prefiled
21 testimony and exhibits of the Office of Public
22 Counsel, which we often see customers do.

23 The same about the prehearing statement.
24 The prehearing -- it's order on procedure is very
25 clear that if you don't raise any issues then -- in a

1 prehearing statement that you file, then you waive
2 those issues. You kind of take the case as everybody
3 else brings it to you.

4 And none of these three gentlemen filed a
5 prehearing statement. None of these three gentleman
6 filed anything purporting to adopt the prehearing
7 statement filed by Office of Public Counsel. So as we
8 sit here today, those three individuals don't have a
9 right to do anything at that hearing but ask questions
10 on the issues that Office of Public Counsel and the
11 utility and the Staff set forth, using the witnesses
12 and testimony that the Public Counsel and Staff and
13 North Fort Myers present. They can't do anything
14 other than discuss that.

15 And, in fact, I would suggest to you that
16 that testimony is going to change at the hearing to be
17 consistent with the settlement agreement which is
18 going to result in basically the testimony being
19 presented at the hearing only supporting one position,
20 and that is the settlement agreement.

21 The problem that you have in allowing these
22 three gentlemen to delay this case is that, number
23 one, besides it's possible jeopardy in the settlement
24 agreement, it certainly puts my client, North Fort
25 Myers Utility, at a disadvantage and prejudice

1 because, two things; one, the hearing process is long.
2 This case is not scheduled to be over with until next
3 year and we've gone nine months without getting any
4 revenue and don't think we can look at another six or
5 eight months without getting any revenue, although we
6 continue to provide service.

7 Number two is, it's an expensive
8 proposition. We're going to have to go to the hearing
9 and spend a day or two maybe. We've got to file post
10 hearing briefs, memoranda of statement of positions
11 and issues, and it's a time consuming process. And I
12 don't think that the process, although we always bend
13 over backwards for customers, I don't think the
14 process was intended to allow three people to
15 basically sit around and do absolutely nothing and be
16 able to --

17 **MR. LUDINGTON:** Objection.

18 **MR. FRIEDMAN:** -- defeat a hardly
19 negotiated --

20 **COMMISSIONER JACOBS:** Excuse me, Mr.
21 Friedman. We'll allow each of the parties who are the
22 subject of this motion to respond, but I will ask for
23 now that you allow Mr. Friedman to complete his
24 statement.

25 **MR. FRIEDMAN:** That's where I was. I was

1 right in the closing sentence, Mr. Jacobs, and that is
2 that; that those three people sat around and did
3 nothing, and that all of a sudden they want to ruin a
4 deal that was hard fought and negotiated between the
5 two parties and concessions were made. Substantial
6 concessions were made by North Fort Myers and I'm sure
7 that Mr. Reilly will tell you that the customers made
8 substantial concessions and that is what a settlement
9 agreement is about.

10 And I would suggest to you that even giving
11 all deference to customers who are unrepresented by
12 counsel at their own choosing -- they could have had
13 lawyers -- that they shouldn't be allowed to place the
14 other parties in this position. Thank you.

15 **COMMISSIONER JACOBS:** Thank you. What I'd
16 like to do is to allow -- there are three parties
17 named in this motion; Mr. Gill, Ludington and Devine.
18 I think those are the appropriate parties to respond
19 to this. And so -- and if there's no predescribed
20 order, I will ask each of you to go in that order.
21 Gill, Ludington and Devine.

22 And I know you want to have your say, but I
23 would ask you to please keep your comments as concise
24 as possible. But feel free to say what you think you
25 need to say.

1 **MR. GILL:** This is Don Gill. I defer my
2 comments until after Ron, who objected, says his while
3 it's fresh in his mind.

4 **COMMISSIONER JACOBS:** Very good.

5 **MR. LUDINGTON:** Ludington here. I have a
6 bit of a prepared comment, so I'll read it to you.
7 This refers to some comments that were made in the
8 written portion of the motion to strike. Mr. Friedman
9 did not go through the complete thing in his verbal
10 abuse.

11 Ludington has been accused of refusing to
12 sign a settlement agreement which has been thrust into
13 his hands with little warning unless special
14 concessions were granted to him by North Fort Myers
15 Utility. This is not true. Ludington told a
16 representative of North Fort Myers Utility on August
17 the 26th in a telephone conversation that he did not
18 wish to be a customer of North Fort Myers Utility at
19 the beginning of these proceedings, and he did not
20 wish to ever be a customer of North Fort Myers Utility
21 at any time now or in the future.

22 Ludington stated that this so-called
23 settlement was being forced upon him and he did not
24 agree with it, but might sign it if he was not forced
25 to become a customer of North Fort Myers Utility.

1 Ludington felt that this was the same kind
2 of coercion that North Fort Myers Utility had used to
3 entice the park owners to enter into an agreement that
4 precipitated this proceeding in the first place. The
5 representatives from North Fort Myers Utility told
6 Ludington that it was not possible to exclude him and
7 the matter was dropped.

8 Ludington then asked a North Fort Myers
9 representative for assurances that the park owners
10 were also going to be billed for their fair share of
11 the sewer connections in the park under the agreement.

12 Ludington stated that it did not appear to
13 him that the park owner was obliged to supply to North
14 Fort Myers Utility necessary water meter readings
15 dated for billing. This was not clear in the original
16 developer agreement between the park owner and North
17 Fort Myers Utility which had been concluded last
18 August.

19 The representatives said that assurances
20 would be forthcoming that very day by fax and would
21 address all of Ludington's questions. The resulting
22 fax from Mr. Friedman did not do much to assure
23 Ludington of anything except that some sort of a
24 billing would be in effect. It did nothing to
25 convince Ludington to sign the agreement, and, in

1 fact, it indicated to him that perhaps something was
2 really still amiss.

3 Ludington cannot speak for Gill or Devine
4 but Ludington certainly cannot be accused of filing
5 any -- of not any testimony or exhibits.

6 Ludington filed exhibits and testimony to
7 Stephen Reilly of Florida Office of Public Counsel on
8 several occasions during the late spring of 1999 with
9 the knowledge that Ludington was going to be out of
10 the country for all of the summer and would be of
11 little help in formulating the guts of this case.

12 Names of possible witnesses and their
13 possible testimony were forwarded to OPC along with
14 pictures of certain articles which could be used as
15 evidence.

16 Ludington trusted OPC to make use of these
17 articles but it appears his efforts have been
18 frustrated by a back door deal arranged by lawyers.

19 Ludington also filed several rebuttals to
20 North Fort Myers' motions early in the case even
21 though he had very little experience in these matters.
22 He had determined that this case was very important to
23 his fellow homeowners and that he would do what he
24 could to aide them.

25 Ludington trusted the Public Service

1 Commission will make some allowances for Ludington's
2 inexperience in these matters. I have no comment on
3 No. 3 issue.

4 No. 4, North Fort Myers Utility states that
5 the only evidence that will be presented at a final
6 hearing must pertain to the settlement, but Ludington
7 will remind the PSC that the letters it sent out to
8 all concerned parties earlier indicated that any
9 interested party would have an opportunity to address
10 the September 14th and 15th hearing and be heard on
11 this matter.

12 One notice from the PSC dated February the
13 5th, 1999 in its final recommendation states, the
14 customers of Buccaneer Estates have protested and
15 requested a hearing. This matter is set for a hearing
16 on September 14th, 15th, 1999, therefore, this matter
17 should not be closed.

18 That's my statement. Thank you.

19 **COMMISSIONER JACOBS:** Thank you. Mr --
20 who's next?

21 **MR. GILL:** Don Gill.

22 **COMMISSIONER JACOBS:** Mr. Gill. Once more,
23 I would want to make sure that we remain focused.
24 That's not to criticize, but I want to make sure that
25 we're clear that the purpose of the motion that we're

1 addressing is that because you didn't file prehearing
2 matters, your opportunity to participate at a hearing
3 will be extremely limited so as to make that
4 opportunity of little use, and therefore, it would be
5 more expeditious to minimize or, in fact, even to --
6 it would be of any little further use I should say to
7 have that process, and therefore, not to pursue your
8 statements further than what we've done already.

9 In other words, you had opportunity to make
10 your statements known. What you could address at
11 hearing would be fairly limited, and therefore, you
12 would be of little extra -- additional benefit to have
13 that hearing. That's the purpose of and the substance
14 of that motion. If I'm wrong, please correct me.

15 So I want to make sure that that's how you
16 addressed the motion. I understand the merits and I
17 understand that you see those things as important, but
18 those are issues that we will probably best be
19 discussed should we go to hearing.

20 Okay. Go ahead please.

21 **MR. GILL:** Okay. This is Don Gill. I
22 object to the motion given by Mr. Friedman because I
23 have no notice of this motion and it comes as a
24 surprise and I don't think this is the proper time to
25 hear this motion until it has been properly filed and

1 all parties have been given notice. And basically
2 that's all I have to say.

3 **COMMISSIONER JACOBS:** Okay. Thank you. And
4 Mr. Devine, I believe.

5 **MR. DEVINE:** No. I'll wait on the decision,
6 Mr. Chairman.

7 **COMMISSIONER JACOBS:** Okay. Public Counsel.

8 **MR. LUDINGTON:** Mr. Chairman, may I ask a
9 question?

10 **COMMISSIONER JACOBS:** Briefly, please.

11 **MR. LUDINGTON:** I don't have it right in
12 front of me, but I understand that the law restricting
13 our rights to participate says that we may be
14 restricted, not that we shall be restricted. Am I
15 correct on that? I don't have the numbers in front of
16 me.

17 **COMMISSIONER JACOBS:** I'm going to ask Staff
18 counsel to respond.

19 **MS. BRUBAKER:** Excuse me. Can you hear me
20 now?

21 **MR. LUDINGTON:** Barely.

22 **MS. BRUBAKER:** Let me clarify for my
23 purposes. You're talking about what would restrict
24 you from participating. You're talking about the
25 order establishing procedure and what it requires for

1 failure to file testimony and prehearing statements?

2 **MR. LUDINGTON:** That's right.

3 **MS. BRUBAKER:** Okay. I can read those
4 provisions to you. That order is No.
5 PSC-99-0420-PCO-SU, issued March 1, 1999. As a party
6 you should have received that order. However, if
7 you'd like an additional copy sent to you, I'd be
8 happy to do so. Please call me after the hearing or
9 the prehearing, if so.

10 On Page 3 of that order regarding prefiled
11 testimony and exhibits it states that "each party
12 shall prefile, in writing, all testimony that it
13 intends to sponsor."

14 **MR. LUDINGTON:** There's a lot of noise here.
15 I cannot hear you.

16 **MS. BRUBAKER:** I'm speaking about as loud as
17 I can, but I'll try to speak a little louder. Is this
18 better?

19 **MR. LUDINGTON:** Yes.

20 **MS. BRUBAKER:** I'll repeat that first
21 sentence. "Each party shall prefile, in writing, all
22 testimony that it intends to sponsor." Down to the
23 third paragraph in that section, Prefiled Testimony
24 and Exhibits it states, "failure of a party to timely
25 prefile exhibits and testimony from any witness in

1 accordance with the foregoing requirements may bar
2 admission of such exhibits and testimony."

3 **MR. LUDINGTON:** That's the word "may" that I
4 was looking for. It does not say "shall."

5 **MS. BRUBAKER:** Okay. And continuing to the
6 section labeled Prehearing Statement, first sentence,
7 "All parties in this docket shall file a prehearing
8 statement."

9 In that same section, towards the end of
10 that paragraph, "failure of a party to timely file a
11 prehearing statement shall be a waiver of any issue
12 not raised by other parties or by the Commission. In
13 addition, such failure shall preclude the party from
14 presenting testimony in support of its position."

15 I believe those to be the applicable
16 sections from that order.

17 **COMMISSIONER JACOBS:** If I can boil that
18 down for you. Essentially it does allow discretion as
19 to your opportunity to participate and to bring
20 exhibits. However, the subject matter upon which you
21 may present those exhibits and participate is directly
22 guided by whether or not you file a prehearing
23 statement raising your particular issues.

24 **MR. LUDINGTON:** So it's only new issues then
25 that can be spoken of?

1 **COMMISSIONER JACOBS:** No. If you don't
2 raise issues then you take the issues as you find
3 them. Whatever issues that have been raised by the
4 parties are the only ones that you can address and you
5 are limited in the manner by which you may deal with
6 those issues as well.

7 **MR. LUDINGTON:** Thank you, Mr. Chairman.

8 **COMMISSIONER JACOBS:** Very well. Staff, did
9 you have a response to the motion?

10 **MS. BRUBAKER:** Just a few quick comments, if
11 I may, Commissioner. I'd like to just refer as a
12 matter of guidance an order, PSC-94-1069-FOF-WU, which
13 was issued on August 30, 1994 in Docket No. 921206.

14 Although the case is a little different, it
15 did involve some pro se litigants who eventually were
16 represented by counsel. After they had obtained the
17 services of counsel they, nevertheless, did not file
18 testimony or prehearing statements. Noting that a
19 party's exercise of legal rights necessarily invoke
20 certain tentative obligations, including complying
21 with the requirements of the forum, those objections
22 were stricken for failure to comport with the rules
23 which required the filing of those documents.

24 However, Staff notes that the circumstances
25 are a little different in this case since Messrs.

1 Gill, Ludington and Devine did not obtain the
2 assistance of counsel directly to assist them in this
3 matter.

4 I would note that if these parties are not
5 to be stricken, their objections are not to be
6 stricken, then Staff believes a ruling would be
7 appropriate regarding their status and rights as
8 parties just as a matter of clarification for the
9 continuance of the proceeding. And Staff believes
10 that that would include that these parties cannot
11 raise issues other than those raised by the parties,
12 that they cannot present their own witnesses,
13 testimony, and exhibits, nor could they make a
14 statement during the customer testimony portion of
15 that hearing.

16 And as Mr. Friedman himself says,
17 essentially by failing to comport with the
18 requirements of the orders, rules and statutes, that
19 what they are limited to is cross examining the
20 witnesses of the other parties on the testimony,
21 exhibits and issues that are presented by those
22 witnesses.

23 **COMMISSIONER JACOBS:** Thank you.
24 Essentially, this order asks that the parties be
25 stricken because their opportunity to participate is

1 going to be so limited that it would be of no real
2 benefit. While I understand the status of the parties
3 and I understand the limited nature by which they
4 potentially might participate, I do not agree that as
5 long as they feel it's useful that we should foreclose
6 that right, so to that extent I'm going to deny the
7 motion to strike the parties and I will, in accordance
8 with the recommendation of Staff, state the scope of
9 participation that these parties should have. It
10 should be as the order establishing procedure says.
11 And let me be very clear on this for your benefits
12 Mr. Ludington, Devine and Gill.

13 **MR. DEVINE:** Could you speak up,
14 Mr. Chairman?

15 **COMMISSIONER JACOBS:** Okay. I'm sorry. I
16 moved away for a moment.

17 As indicated in the order establishing
18 procedure, by virtue of the fact that you did not file
19 a prehearing statement, a timely filed prehearing
20 statement, nor did you file prefiled testimony, as I
21 just indicated you essentially come to this case and
22 take the issues as you find them.

23 Now, that also limits the manner by which
24 you may participate in that you are not allowed to
25 present your own witnesses or add new exhibits. You

1 can -- for those witnesss that do testify at hearing,
2 you are able to come and ask them what are termed
3 cross examination questions. If you do proceed to
4 that level, I would highly encourage you to understand
5 what the scope of those questions might be in advance
6 of the time for hearing.

7 Now, I will -- I'm on shaky ground with
8 this, but I'm going to allow you to have a statement,
9 a general statement. I don't know whether we call it
10 a customer statement or whatever, but I will allow you
11 to have essentially a brief statement to state why you
12 would like to contest the proceedings as they exist
13 thus far. And I would really encourage that it be
14 very concise, direct and to the point.

15 **MR. LUDINGTON:** Right now?

16 **COMMISSIONER JACOBS:** No. This is at the
17 time of hearing.

18 **MR. LUDINGTON:** Oh, okay.

19 **COMMISSIONER JACOBS:** Now, I will be quite
20 honest with you, gentlemen. I'm going to leave open
21 the option for -- there are several options here. I
22 want to be very clear and make sure you understand
23 this is what I say now.

24 Even if you never agree to the terms of
25 settlement that have been proposed, the Commission can

1 consider that offer of settlement. I can't remember
2 which party stated this, but you were correct in that
3 it is not an official settlement of the case so long
4 as you don't sign off on it, but it can be presented
5 by the parties as an offer of settlement and the
6 Commission can consider, vote on and approve that
7 offer of settlement as a resolution of this case.
8 That is an option that we have, and Staff can choose
9 to do that, to write a recommendation that will come
10 to agenda. I would encourage you to monitor the case
11 so that if that does occur, you would be aware of it.

12 Now, additionally, we can come to -- if we
13 get here on the 14th and that has not occurred, at
14 that time the parties can again make that offer of
15 settlement at the beginning of that hearing and the
16 Commissioners, as a preliminary matter, can consider
17 it as an offer of settlement even in the face of your
18 objections and vote on and choose whether or not to
19 approve that settlement at that time. Is that clear
20 to everyone?

21 **MR. LUDINGTON:** Yes.

22 **MR. DEVINE:** Mr. Devine, Mr. Chairman. You
23 just mentioned that the meeting was going to be here.
24 Did you mean in Tallahassee or here in Fort Myers?

25 **COMMISSIONER JACOBS:** The hearing is

1 scheduled for Tallahassee if I'm not mistaken. I'm
2 sorry. North Fort Myers.

3 **MR. DEVINE:** Thank you very much, Mr.
4 Chairman.

5 **COMMISSIONER JACOBS:** I'm glad you mentioned
6 that.

7 **MR. LUDINGTON:** You're referring to the
8 hearing on September 14th and 15th?

9 **COMMISSIONER JACOBS:** That's correct.

10 **MR. LUDINGTON:** Now, will the Commission be
11 made fully aware of this settlement agreement before
12 that time?

13 **COMMISSIONER JACOBS:** I would expect that if
14 it comes to an agenda conference -- I don't know if we
15 have one before then, do we?

16 **MS. BRUBAKER:** Commissioner, the only agenda
17 conference is that which takes place -- well, there's
18 one tomorrow on the 31st. I don't believe that would
19 provide Staff sufficient time to prepare
20 recommendations, let alone file it.

21 There is one on the 7th. In order for us to
22 file a recommendation on the 7th we would have to
23 obtain permission of the Commissioner and the Chairman
24 to do essentially a late item to that agenda.

25 **COMMISSIONER JACOBS:** Well, if it does

1 appear on an agenda conference, it would be on the
2 7th. Otherwise, it won't occur until the 14th.

3 **MR. LUDINGTON:** That's the problem,
4 Mr. Chairman, because I'm 1,500 miles away. My mail
5 takes about eight to nine days to get to me. I have
6 very little opportunity even to respond. The 7th is
7 only eight days away. I probably will hear about the
8 agenda conference after it's happened.

9 **COMMISSIONER JACOBS:** I can tell you this.
10 If the decision is made to go forward on the 7th
11 agenda, we will make sure that you get an overnight on
12 that. Is that okay?

13 **MR. LUDINGTON:** I don't even know if they
14 have my northern address or not.

15 **COMMISSIONER JACOBS:** Would you please make
16 sure that you give it to the counsel after the
17 hearing?

18 **MR. LUDINGTON:** Yes, could do.

19 **COMMISSIONER JACOBS:** Now -- so, is there
20 anything else we need to cover on that, counsel?

21 **MS. BRUBAKER:** No.

22 **COMMISSIONER JACOBS:** Anything else on the
23 motions?

24 Now, then, having covered those, what I'd
25 like to do now is to proceed to the agenda for today,

1 and that is to go through the prehearing order --

2 **MR. LUDINGTON:** Cannot hear.

3 **COMMISSIONER JACOBS:** I'm sorry. The normal
4 purpose for a prehearing conference is to review the
5 draft prehearing order, as I indicated earlier;
6 determine if there are any corrections or revisions
7 that are necessary; and then document those
8 corrections or revisions in preparation for the final
9 issuance of that prehearing order. That is what we'll
10 do right now. We will go section by section to
11 determine if there are any revisions or corrections to
12 this draft prehearing order.

13 **MR. SHREVE:** Commissioner, would it be
14 possible to take break for a few minutes? Mr. Reilly
15 and I need to talk over our positions since, up to
16 this point, we had thought we were going to have a
17 settlement. I mean, we're in a different situation
18 now.

19 **COMMISSIONER JACOBS:** How long you need?

20 **MR. SHREVE:** Ten minutes.

21 **MR. LUDINGTON:** I'm calling long distance
22 from 1,500 miles away. Could they call me back?

23 **COMMISSIONER JACOBS:** Yes, we can arrange
24 for that.

25 **MS. BRUBAKER:** We cannot call them back.

1 **COMMISSIONER JACOBS:** You have to call us
2 back I'm informed. I'm sorry. Who is speaking?

3 **MR. LUDINGTON:** Well, how am I going to know
4 when to call you back?

5 **COMMISSIONER JACOBS:** Three o'clock you can
6 call back.

7 **UNIDENTIFIED SPEAKER:** What time?

8 **COMMISSIONER JACOBS:** 3:00 p.m. Eastern
9 Time. I'm not sure what time zone you're in.

10 **UNIDENTIFIED SPEAKER:** 2:00 p.m.?

11 **COMMISSIONER JACOBS:** 3:00 p.m. Eastern
12 Time.

13 **MR. DEVINE:** Mr. Chairman, we can't
14 understand you.

15 **COMMISSIONER JACOBS:** I'm sorry. We're
16 going to take a temporary recess and we will resume at
17 3:00 p.m. Eastern Standard Time.

18 **UNIDENTIFIED SPEAKER:** And we will call
19 back.

20 **MR. LUDINGTON:** Eastern Daylight Savings
21 Time or Eastern Standard Time?

22 **COMMISSIONER JACOBS:** I believe it's
23 Daylight.

24 **UNIDENTIFIED SPEAKER:** Call back at 3:00
25 o'clock.

1 **MR. LUDINGTON:** Okay. That's what I wanted
2 to hear.

3 **COMMISSIONER JACOBS:** Okay. Thank you.
4 (Brief recess.)

5 - - - - -

6 **MS. BRUBAKER:** This is Jennifer Brubaker for
7 Staff counsel.

8 **MR. DURBIN:** This is Stanley Durbin. Hello?
9 Jennifer?

10 **MS. BRUBAKER:** Yeah, I just wanted to remind
11 everybody who's on line right now not to put us on
12 hold, otherwise we get some very pleasant but a little
13 distracting elevator music.

14 **MR. DURBIN:** You have a little echo.

15 **COMMISSIONER JACOBS:** Do we have everyone on
16 line yet?

17 **MR. DEVINE:** Hello? Hello?

18 **COMMISSIONER JACOBS:** Hi. Who's speaking?

19 **MR. DEVINE:** Devine.

20 **COMMISSIONER JACOBS:** I'm sorry. Who is
21 this?

22 **MR. DEVINE:** Mr. Devine.

23 **COMMISSIONER JACOBS:** Thank you.

24 **MS. BRUBAKER:** If everybody could announce
25 themselves as they come on line, please.

1 **MR. DURBIN:** This is Stanley Durbin of the
2 Homeowners Association.

3 **MR. GILL:** This is Don Gill.

4 **COMMISSIONER JACOBS:** Mr. Devine?

5 **MR. DEVINE:** Yes.

6 **COMMISSIONER JACOBS:** Okay. Mr. Ludington,
7 are you on? Mr. Ludington is not on yet.

8 **MR. GILL:** Doesn't appear so.

9 **COMMISSIONER JACOBS:** We'll give him a
10 couple more minutes.

11 **UNIDENTIFIED SPEAKER:** That's the way those
12 Canadian telephone companies are, I guess.

13 **COMMISSIONER JACOBS:** Mr. Ludington?

14 **MR. LUDINGTON:** Hello. This is Mr.
15 Ludington, yes.

16 **COMMISSIONER JACOBS:** Thank you. Now, what
17 I'd like to do very briefly is explain to you how
18 we're going to proceed. If you would, please --

19 **MR. LUDINGTON:** Yes.

20 **COMMISSIONER JACOBS:** Hello?

21 **MR. LUDINGTON:** Yes, go ahead.

22 **COMMISSIONER JACOBS:** Okay. I'd like to
23 explain to you how we're going to proceed. Please
24 listen up carefully.

25 During the time of recess, the parties

1 discussed, and I understand there has been some
2 discussion with both of you, and the determination has
3 been made that the Staff would like to pursue taking
4 the offer of settlement for a decision by the
5 Commission on the September 7th agenda conference.

6 In light of that, and as I understand it, it
7 is the agreement of the parties, we will for today
8 defer the continuation of today's prehearing
9 conference. We are going to, I guess, recess or --

10 **MS. BRUBAKER:** Commissioner, we would
11 continue the prehearing conference. Since all parties
12 are present this serves as their notice of that
13 continuance. It will be at a time and place which
14 will be determined hopefully by today, but at the very
15 latest at the close of business tomorrow, and all
16 parties are on notice that they should contact their
17 counsel or Staff counsel, either myself -- I'm
18 Jennifer Brubaker. My phone number is 850-413-6228 --
19 to insure they have that time and place for the 8th of
20 September.

21 **MR. LUDINGTON:** Now, what is to be discussed
22 there? I didn't catch that.

23 **COMMISSIONER JACOBS:** At that time, it's my
24 understanding -- and if I'm mistaken please someone
25 correct me. But at that time it's my understanding

1 that the settlement or whatever form it is at that
2 time will be proposed to the full Commission for their
3 consideration and acceptance.

4 **MR. LUDINGTON:** Will we have full copies of
5 the settlement agreement between then and now? We
6 don't know what's in it.

7 **COMMISSIONER JACOBS:** I would expect that
8 you would. In fact, it is now my recommendation to
9 Staff that they get you a copy of the full settlement
10 in your hands by the close of business on Friday.

11 **MR. LUDINGTON:** Close of business on Friday.
12 That's September 4th and the hearing is on the 7th. I
13 got the weekend to do some work.

14 **COMMISSIONER JACOBS:** Okay.

15 **MR. LUDINGTON:** I mean, if the agreement is
16 drawn up right now and it appears -- it sounds to me
17 like it is, why can't we have a faxed copy of it
18 tomorrow morning.

19 **COMMISSIONER JACOBS:** That's perfectly
20 reasonable. If have you a fax facility I don't think
21 that would be a problem.

22 **MR. LUDINGTON:** They have my fax number,
23 yes.

24 **MR. SHREVE:** Mr. Ludington --

25 **MS. BRUBAKER:** As soon as --

1 **COMMISSIONER JACOBS:** Just a moment.

2 **MR. FRIEDMAN:** I faxed one to Mr. Ludington
3 already.

4 **COMMISSIONER JACOBS:** Okay. Mr. Shreve had
5 a comment.

6 **MR. SHREVE:** Well, one thing I wanted to
7 find out, then who does -- we will make sure that
8 tomorrow this is in the hands of all three of the
9 gentlemen, Mr. Ludington, Mr. Devine and Mr. Gill. It
10 was my understanding -- Mr. Ludington, you have it; is
11 that correct?

12 **MR. LUDINGTON:** I have a copy, but I don't
13 know whether it's the final draft.

14 **MR. SHREVE:** Okay. Mr. Devine does not have
15 a copy; is that correct?

16 **MR. DEVINE:** Excuse me. I have a document
17 in front of me of a settlement, but is that the final
18 document?

19 **MR. LUDINGTON:** Is this the final draft? I
20 mean, I don't know.

21 **MR. SHREVE:** I think it's a final draft.
22 Since I don't know what you have in front of you,
23 we'll have to check on that, but I will make sure that
24 you do have a final draft in your hands tomorrow.

25 **MR. LUDINGTON:** Okay. Very good.

1 **MR. GILL:** This is Don Gill. I do not have
2 a copy of the settlement.

3 **COMMISSIONER JACOBS:** Okay. Gill.

4 **MR. SHREVE:** Mr. Gill, you do not have a
5 copy of the settlement?

6 **MR. GILL:** No.

7 **COMMISSIONER JACOBS:** So we'll fax each of
8 you copies of the final.

9 **MR. SHREVE:** We will make sure that tomorrow
10 you have those in your hands. Won't have to wait
11 until the end of the week.

12 I also, Mr. Commissioner, think this is the
13 proper way to proceed. I think we should make every
14 effort to make sure that the customers that are
15 opposed to this settlement, which would be Mr.
16 Ludington, Devine and Gill and possibly some others,
17 have their opportunity to make their arguments before
18 the Commission on the 7th and that all of the other
19 customers that in favor of the settlement have an
20 opportunity to make their arguments and tell where
21 they stand on this.

22 **UNIDENTIFIED SPEAKER:** And where --

23 **COMMISSIONER JACOBS:** Excuse me.

24 **UNIDENTIFIED SPEAKER:** Where is this suppose
25 to be held?

1 **COMMISSIONER JACOBS:** Excuse me, sir. Let
2 Mr. Shreve complete his statement, please. Go ahead,
3 Mr. Shreve.

4 **MR. SHREVE:** I've also had a brief
5 conversation with Mr. Ludington and Mr. Devine. I
6 will pursue talking to them. If there's some problem
7 that can be taken care of with them that we may not
8 have been aware of in the settlement, I'm going to
9 pursue that with them to see if we can take care of
10 everyone's problem. We're certainly going to do that.
11 Is that okay with you, Mr. Ludington, Mr. Devine and
12 Mr. Gill?

13 **MR. LUDINGTON:** Certainly is. This will be
14 a telephone conversation or --

15 **MR. DEVINE:** Yeah. Yeah.

16 **MR. LUDINGTON:** After this?

17 **MR. SHREVE:** Yes, sir. I think it probably
18 will be a telephone conversation.

19 **MR. DEVINE:** Will it be on the 7th or the
20 8th? Somebody said the 8th earlier.

21 **COMMISSIONER JACOBS:** Excuse me. Who's
22 speaking? Excuse me. Excuse me. Excuse me. Who's
23 speaking?

24 **MR. DEVINE:** Devine. Is this going to be
25 held on the 7th or the 8th?

1 **COMMISSIONER JACOBS:** Okay. Let me make it
2 clear. On the 7th the Commission will hold its agenda
3 conference. At that time the full Commission will be
4 presented with the settlement offer and will make its
5 decision. On the 8th, if indeed that settlement is
6 not accepted by the Commission, we have notice that we
7 will then resume the prehearing conference that we
8 started today. Is that clear?

9 **MR. LUDINGTON:** Yes, it is.

10 **COMMISSIONER JACOBS:** Okay.

11 **MR. SHREVE:** And this is Jack Shreve, and I
12 will pursue the conversation concerning the settlement
13 with Mr. Ludington, Mr. Devine and Mr. Gill to see if
14 there is some misunderstanding or some accommodation
15 that can be made.

16 **MR. LUDINGTON:** Very good. Can you arrange
17 for a conference call on it?

18 **MR. SHREVE:** We will try.

19 **MR. LUDINGTON:** Okay.

20 **COMMISSIONER JACOBS:** Does that mean --

21 **MR. SHREVE:** I'll work that out individually
22 with the three of you, not here.

23 **MR. LUDINGTON:** Okay.

24 **MR. DEVINE:** Thank you, Mr. Chairman.

25 **COMMISSIONER JACOBS:** Thank you. I would

1 encourage you to take every opportunity to re -- I
2 want to make sure that you understand that at the 7th
3 agenda that you have an opportunity, a very short time
4 limit here to join in and have your input put into
5 this offer because at the 7th, whatever offer is on
6 the table at that moment, the Commission can approve.
7 You understand?

8 **MR. LUDINGTON:** That's exactly why I want it
9 early.

10 **COMMISSIONER JACOBS:** Okay.

11 **MR. LUDINGTON:** Thank you very much.

12 **COMMISSIONER JACOBS:** Great. Thank you all.

13 And with that, if there are no other matters before
14 the Commission today, this prehearing conference is
15 continued until September 8th. Thank you.

16 **MR. LUDINGTON:** Thank you.

17 **COMMISSIONER JACOBS:** Thank you.

18 (Thereupon, the hearing concluded at
19 3:30 p.m.)

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&	9	attended 35/1 attorney 16/5 attorneys 33/22, 38/22 August 1/18, 4/6, 12/11, 13/18, 13/21, 14/2, 49/16, 50/18, 57/13 authorities 34/13 availability 35/24 Avanti 2/17, 5/23, 17/25
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