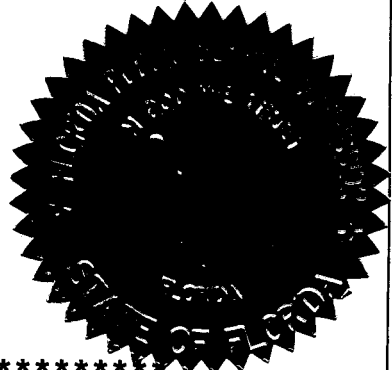


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 981781-SU
Application for amendment of :
Certificate No. 247-S to :
extend service area by the :
transfer of Buccaneer :
Estates in Lee County to :
North Fort Myers Utility, :
Inc. :



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PROCEEDINGS: CONTINUATION OF PREHEARING CONFERENCE

BEFORE: COMMISSIONER E. LEON JACOBS, JR.
Prehearing Officer

DATE: Wednesday, September 8, 1999

TIME: Commenced at 10:05 a.m.
Concluded at 11:17 a.m.

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

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

DOCUMENT NUMBER - DATE
10829 SEP-99
FPSC-RECORDS/REPORTING

1 **APPEARANCES:**

2 **MARTIN S. FRIEDMAN**, Rose, Sundstrom &
3 Bentley, 2548 Blairstone 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**, **ROSANNE GERVASI** and
13 **SAMANTHA CIBULA**, Florida Public Service Commission,
14 Division of Legal Services, 2540 Shumard Oak
15 Boulevard, Tallahassee, Florida 32399-0870, appearing
16 on behalf of the **Commission Staff.**

17 **BILLIE MESSER** and **RICK REDEMANN**, FPSC Division
18 of Water and Wastewater.

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

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1 APPEARANCES CONTINUED:

2 JOSEPH DEVINE, 688 Brigantine Boulevard,
3 North Fort Myers, Florida 33917, appearing telephonically
4 on behalf of Joseph Devine.

5 DONALD GILL, 674 Brigantine Boulevard, North
6 Fort Myers, Florida 33917, appearing telephonically on
7 behalf of Donald Gill.

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P R O C E E D I N G S

(Hearing commenced at 10:05 a.m.)

COMMISSIONER JACOBS: Hearing come to order.

We'll resume the prehearing that originally occurred, what was it? Last Wednesday. Counsel, read the notice.

MS. BRUBAKER: By Notice provided to the parties at the August 30, 1999, prehearing conference in this docket, this time and place was set for the continuance of the prehearing conference in Docket No. 981781-SU, application for amendment of certificate No. 247-S to extend service area by the transfer of Buccaneer Estates in Lee County to North Fort Myers Utility, Inc. The purpose of the conference is set forth in the Notice which was issued August 17th, 1999.

COMMISSIONER JACOBS: Take appearances.

MR. FRIEDMAN: Martin Friedman of the law firm of Rose, Sundstrom & Bentley on behalf of North Fort Myers Utility, Inc.

MR. REILLY: Jack Shreve and Steve Reilly with the Office of Public Counsel on behalf of the Citizens of the State of Florida.

MR. LUDINGTON: Ludington, pro se litigant.

MR. GILL: Don Gill.

1 **MR. DEVINE:** Joe Devine.

2 **MS. BRUBAKER:** Jennifer Brubaker and
3 Samantha Cibula, on behalf of Commission Staff.

4 **COMMISSIONER JACOBS:** Okay. Are there any
5 preliminary matters?

6 **MS. BRUBAKER:** Commissioner, a proposal was
7 discussed off the record prior to the commencement of
8 the prehearing conference. The parties did not reach
9 agreement. If the parties wish to bring it up as a
10 preliminary matter, they may make an oral motion to
11 that effect.

12 **MR. DEVINE:** This is Mr. Devine. I make a
13 motion Mr. Ludington's motion be offered again.

14 **COMMISSIONER JACOBS:** Could you restate
15 that? I didn't understand you.

16 **MR. DEVINE:** This is Mr. Devine and I
17 request that Mr. Ludington be allowed to read his
18 proposal once again for the record.

19 **COMMISSIONER JACOBS:** The purpose of the
20 prehearing conference is to review the draft
21 Prehearing Order, to determine whether or not parties
22 have revisions or updates to their prefiled positions
23 and the testimony list, and to confirm that Final
24 Order. It is not a purpose of the prehearing
25 conference to discuss or deliberate on any proposals

1 of settlement. And particularly in this instance I do
2 not think it would be worthwhile of my time because I
3 thought we were to begin that process earlier this
4 morning and give you an opportunity to do that.

5 This is not the -- this does not, I should
6 say, preclude you from bringing that into the record.
7 If at the time of hearing the presiding officer so
8 deems, or the panel chooses to allow it, you can enter
9 it into the record at the time of the formal hearing
10 on the 14th and 15th.

11 **MR. LUDINGTON:** Very good, Mr. Chairman.
12 Very good.

13 **COMMISSIONER JACOBS:** Okay? What I'd like
14 you to do right now is to go through the draft
15 Prehearing Order, allow any revisions that might be.

16 Now, there were motions that were filed. Do
17 we need to take those motions up or have they been
18 withdrawn or do we defer them?

19 **MS. BRUBAKER:** Unless the parties intend to
20 withdraw them, my understanding is that they would be
21 deferred until the hearing.

22 **MR. GILL:** This is Tom Gill. I'm not
23 withdrawing my motions.

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

25 **MR. LUDINGTON:** And Ludington has a motion,

1 too, and he will not withdraw it.

2 **COMMISSIONER JACOBS:** I'm sorry, you're
3 saying you will not withdraw?

4 **MR. LUDINGTON:** He will not withdraw it.

5 **COMMISSIONER JACOBS:** Okay. Thank you.

6 **MS. BRUBAKER:** I just wanted to provide as a
7 matter of clarification that the time to allow the
8 other parties to respond to those motions has not run,
9 so it would not be appropriate to take them up at this
10 time.

11 **COMMISSIONER JACOBS:** Very well. Okay.

12 **MR. FRIEDMAN:** And I'm not sure what motions
13 those are. I received one motion by fax on Monday,
14 but that's the only motion I've gotten since the last
15 time we started this prehearing conference. So if
16 there's somebody else that has filed a motion, I
17 haven't seen it.

18 **MS. BRUBAKER:** I would also like to remind
19 the parties that the Commission does not recognize
20 filings by fax, so to the extent that motions intend
21 to be filed -- I understand Mr. Ludington, I believe,
22 did mail one to legal. Legal, as part of its
23 procedures, did file that with the Division of Records
24 and Reporting. Any other motions must be filed with
25 the Division of Records and Reporting for it to be

1 recognized as a motion.

2 **COMMISSIONER JACOBS:** Very well.

3 What we'd like to do now, gentlemen, is
4 we're going to go through the draft Prehearing Order
5 section by section. And I'd ask for any revisions
6 that you may have, and then we'll resolve any final
7 matters and then we're done.

8 So we'll begin with the Background Section.

9 **MS. BRUBAKER:** Staff will make some
10 modifications to the Background Section, and also with
11 regard to the appearances to reflect accurately what
12 happened -- has happened at this prehearing, and also
13 to reflect the attendance and participation by the pro
14 se customer litigants.

15 **COMMISSIONER JACOBS:** Very well.

16 Section III has to do with the Procedures
17 for Confidential Information, is pretty much
18 boilerplate procedures, as is Section IV having to do
19 with Post-hearing Procedures. And Section IV having
20 to do with the Prefiled Testimony, Exhibits and
21 Witnesses.

22 **MR. FRIEDMAN:** Commissioner, if I recall
23 correctly, at the agenda conference yesterday there
24 was some reference we should put in the Prehearing
25 Order the possibility of the panel ruling from the

1 bench.

2 COMMISSIONER JACOBS: Yes.

3 MR. FRIEDMAN: It seems like maybe in that
4 Post-hearing Procedure section might be the
5 appropriate place to put something about that.

6 COMMISSIONER JACOBS: I think that would be
7 appropriate. Yes. We can put a reference in Section
8 IV Post-hearing Procedures, just that basic statement.
9 Any other modifications to Sections III, IV or V?

10 MS. BRUBAKER: Staff has none.

11 COMMISSIONER JACOBS: Then we move to
12 Section VI, Order of Witnesses. Any modifications
13 from any of the parties on their witnesses?

14 MR. DEVINE: Mr. Chairman, this is
15 Mr. Devine. May I speak?

16 COMMISSIONER JACOBS: Say again, this is
17 Mr.--?

18 MR. DEVINE: Devine.

19 COMMISSIONER JACOBS: Yes. Mr. Devine, go
20 ahead.

21 MR. DEVINE: I'm going to ask in that
22 section that the Commission have all of the folks who
23 have given written, or depositions, to the Commission
24 be present at that hearing in North Fort Myers, and
25 that would include Kimberly Dismukes, "Dis-muk-ez,"

1 Mr. John Williams, Mr. John Floyd, Mr. Ted L. Bidy
2 and others so that their testimony can be taken as
3 part of a fair solution to this question.

4 **MR. FRIEDMAN:** I point out that none of
5 those are his witnesses and I don't think he has got a
6 right to force those people to show up. I'll let
7 whosever witnesses they are address it. He didn't
8 mention my witness in there.

9 **COMMISSIONER JACOBS:** Right. Right. Here's
10 what we're going to do. It's my understanding that
11 there may be some restatement of the issues?

12 **MR. FRIEDMAN:** That's correct.

13 **COMMISSIONER JACOBS:** And that there may be
14 some modification of the testimony?

15 **MR. FRIEDMAN:** That's correct.

16 **COMMISSIONER JACOBS:** Why don't we go
17 through that, Mr. Devine. Let's figure out what the
18 final issues will be in the Final Order of Witness
19 will be, and then we'll come back and address who
20 should show up at the hearing.

21 **MR. DEVINE:** Very good.

22 **COMMISSIONER JACOBS:** Okay. In fact, why
23 don't we proceed to positions and issues and then come
24 back to witnesses, in that regard. We'll come back to
25 Section IV -- I'm sorry, Section VI -- let's go on to

1 Section VII. Are there any modifications to the
2 parties' basic positions?

3 **MR. FRIEDMAN:** Yes. With regard to North
4 Fort Myers, it's got a typo in there and it puts water
5 and wastewater in there and we're only talking about
6 wastewater, so that's a technical change.

7 **COMMISSIONER JACOBS:** So it should state to
8 provide wastewater service.

9 **MR. FRIEDMAN:** "Directly ot the residents of
10 Buccaneer Estates."

11 **COMMISSIONER JACOBS:** We should strike
12 "water and."

13 **MR. FRIEDMAN:** Yes. At the end put "in
14 accordance with the Settlement Agreement." That
15 concludes the basic position of North Fort Myers
16 Utility.

17 **UNIDENTIFIED SPEAKER:** Mr. Commissioner --

18 **COMMISSIONER JACOBS:** I'm going to let
19 Public Counsel address their basic statement, then
20 I'll have your comments.

21 **MR. REILLY:** We do have a restatement of our
22 basic position and it would be as follows: "The
23 Commission should resolve the issues presented in this
24 docket by issuing a Final Order consistent with the
25 Settlement Agreement between North Fort Myers Utility

1 and OPC."

2 **COMMISSIONER JACOBS:** Do you want them to go
3 first before you?

4 **MS. BRUBAKER:** Yes.

5 **COMMISSIONER JACOBS:** Okay. Someone had
6 asked to speak. Was that Mr. Devine?

7 **MR. LUDINGTON:** Yeah. Mr. Ludington here.

8 **COMMISSIONER JACOBS:** Go ahead.

9 **MR. LUDINGTON:** Okay. What is the final
10 Settlement Agreement? I'm 1500 miles away. I have
11 not seen any final Settlement Agreement. I have to
12 leave tomorrow morning sometime to head for Florida.
13 I'll be on the road for two or three days. There's no
14 opportunity to get my hands on this. It puts me in a
15 very disadvantaged position.

16 **COMMISSIONER JACOBS:** We're resolving
17 nothing with regard to the merits of that agreement,
18 but I would ask, though, is that I'm directing Staff
19 to make sure that you get in your hands by the end of
20 this week a copy of whatever agreement is on the
21 table. Is that fair enough?

22 **MR. LUDINGTON:** I'll be on the road. I
23 won't be able to get it.

24 **COMMISSIONER JACOBS:** Can you give us an
25 address where you will be? Hold on just a minute.

1 **MR. FRIEDMAN:** Commissioner Jacobs -- yeah,
2 this is Marty Friedman. I faxed Mr. Ludington --
3 although the copy I faxed probably was not signed -- I
4 faxed Mr. Ludington two weeks ago a copy of the
5 Settlement Agreement. The copy that I faxed him two
6 weeks ago is, in fact, the same one we're dealing with
7 today.

8 **COMMISSIONER JACOBS:** Mr. Ludington, do you
9 have that?

10 **MR. LUDINGTON:** Yes, I do, and that's the
11 one that I dispute. I understand that Legal has
12 forwarded some changes to this Settlement Agreement;
13 is that right?

14 **MS. BRUBAKER:** No, sir, that's not correct.

15 **MR. LUDINGTON:** That's not correct. Okay, I
16 misunderstand then.

17 **COMMISSIONER JACOBS:** So that we're
18 absolutely clear, although you may not have the final
19 executed copy of that, you do have the final text of
20 that? How about you Mr. Devine and Mr. Gill?

21 **UNIDENTIFIED SPEAKER:** Would you please
22 restate that?

23 **COMMISSIONER JACOBS:** Would you need a
24 copy -- first of all, do you have a copy of it?

25 **MR. DEVINE:** Of the final one?

1 **COMMISSIONER JACOBS:** Of the one that was
2 mailed two weeks ago.

3 **MR. DEVINE:** Yes, yes, I do.

4 **COMMISSIONER JACOBS:** We're clear on that.
5 You have that and you don't need to receive it.

6 **MR. LUDINGTON:** No, sir.

7 **COMMISSIONER JACOBS:** Great. Going back to
8 your point, Mr. Ludington, we're not resolving
9 anything on the merits of that, of that agreement
10 today. That will be resolved on the date of the
11 hearing. So if you -- even if you didn't have it
12 today, it would not disrupt any rights for you.

13 **MR. LUDINGTON:** All right. Thank you.

14 **COMMISSIONER JACOBS:** So we have the
15 revised -- I didn't get the full context -- but you
16 have the context of the Public Counsel's revision?
17 Staff?

18 **MS. BRUBAKER:** Just as a matter of
19 clarification, the three per se customers were allowed
20 at the commencement of the prehearing on August 30th
21 to provide a brief statement of their position. Do
22 they wish to enter that into the record at this time?

23 **MR. LUDINGTON:** I certainly do. Ludington
24 here.

25 **COMMISSIONER JACOBS:** Okay. I would

1 entertain, though, your position, but I would
2 emphasize it's brief and concise and very pointed to
3 the issue of the case.

4 **MR. LUDINGTON:** Well, I object to the
5 Settlement Agreement. The fact the billing of the --
6 (voice breaks up over phone line) -- be billed to the
7 wrong person, wrong individuals, word that properly.

8 **MS. BRUBAKER:** I'm sorry, the court reporter
9 didn't get --

10 **COMMISSIONER JACOBS:** It directs that the
11 charges be billed to the wrong person, the wrong
12 individuals or -- word that properly.

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

14 **MS. BRUBAKER:** Could you restate that so the
15 court reporter can get a clear transcription, please?

16 **MR. LUDINGTON:** All right. I object to the
17 Settlement Agreement on the grounds that it directs
18 the payment for the sewer charges to the wrong people.

19 **MS. BRUBAKER:** Thank you.

20 **COMMISSIONER JACOBS:** I'm sorry, who was
21 that?

22 **MR. LUDINGTON:** Ludington.

23 **COMMISSIONER JACOBS:** Okay.

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

25 I object to the same agreement because it

1 lacks all of the necessary parties, namely, the
2 Manufactured Homes Community, who is part of this
3 whole matter. And being an indispensable party, I
4 cannot see how we can proceed without being able to
5 involve them in the settlement. That's essentially
6 it.

7 **COMMISSIONER JACOBS:** Okay. And Mr. Devine.

8 **MR. DEVINE:** Yes, I'd just like to say that
9 in the written document in front of me that North Fort
10 Myers Utility acknowledges the fact that they violated
11 the territory in question, but still claim in this
12 response that it was done in all innocence; that they
13 just plain forgot.

14 I don't think that's a reason that now
15 people's right should be violated because somebody did
16 something illegal and the poor homeowners who have a
17 contract with a third party now are subject to this
18 fine, as I call it.

19 **COMMISSIONER JACOBS:** Excuse me, Mr. Devine.
20 I want to remind you that what we need from you right
21 now is a very short and concise statement of your
22 position, your basic position.

23 **MR. DEVINE:** I'll object on the same grounds
24 as my two pro se litigants.

25 **COMMISSIONER JACOBS:** Thank you. Staff, do

1 you have a revision to your basic statement?

2 **MS. BRUBAKER:** Staff has some modifications.
3 I'll just read it from start to finish so there's no
4 problem following continuity.

5 Staff's positions are preliminary and based
6 on materials filed by the parties and on discovery.
7 The preliminary positions are offered to assist the
8 parties in preparing for the hearing. Staff's final
9 positions will be based upon all of the evidence in
10 the record and my differ from the preliminary
11 positions. The information gathered through the
12 prehearing process and prefiled testimony indicates
13 that NFMU has the financial ability, technical ability
14 and capacity to serve the customers of
15 Buccaneer Estates. It also appears at this point that
16 the transfer of the wastewater utility operations of
17 Buccaneer Estates to NFMU would be in the public
18 interest. The proposed Settlement Agreement is
19 reasonable and should be approved. The appropriate
20 monthly service rates should be as set forth in the
21 proposed Settlement Agreement.

22 That concludes Staff's prehearing position.

23 **COMMISSIONER JACOBS:** Very good. Now, let's
24 move to the issues and positions.

25 **MS. BRUBAKER:** Commissioners, as a matter of

1 ease, and if it's agreeable to the parties, Staff
2 would propose listing forth its issues, and I believe
3 that there is some consensus among the parties, just
4 as a matter of organization, just to allow Staff to
5 list off its issues -- if there's some concern about
6 the order of those issues, Staff would be happy to
7 discuss it. Just as a matter of convenience and ease.

8 **COMMISSIONER JACOBS:** Okay. Now, what's the
9 procedure -- the parties can modify their prehearing
10 statement right here, right now and that's proper.

11 **MS. BRUBAKER:** Their position on his those
12 issues, yes.

13 **COMMISSIONER JACOBS:** Okay. Go ahead.

14 **MS. BRUBAKER:** Okay. Issue 1. Should the
15 stipulation between the Office of Public Counsel and
16 North Fort Myers Utility be approved? (Pause)

17 **MR. FRIEDMAN:** Do you want to take our
18 position? Marty Friedman, North Fort Myers. We would
19 answer in the affirmative.

20 **MR. DEVINE:** This is Mr. Devine. I object.

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

22 **MR. LUDINGTON:** Ludington objects.

23 **COMMISSIONER JACOBS:** Can I simply indicate
24 that your positions would be no?

25 **MR. LUDINGTON:** Yes, correct, sir.

1 **MR. GILL:** Certainly.

2 **COMMISSIONER JACOBS:** Now, I need you to
3 understand something, gentlemen, and I want you -- I
4 want to be very clear on this. I'm allowing you today
5 to state your basis, but I want to step back for a
6 moment to the ruling that we made at the first
7 prehearing conference. That was that you could not
8 take up positions, okay, on the issues as they had
9 been rendered, okay? And you could not bring
10 witnesses to support any positions because you had
11 not -- and we've discussed that already, that the
12 process had not been met. Okay?

13 Now, these issues are being restated today.
14 I'm going to allow you to give your positions, okay?
15 However, I want you to understand that the process
16 must still be followed and you cannot bring new
17 issues; is that clear?

18 **MR. LUDINGTON:** That's clear. One question
19 I have is that I do not have this latest stipulation
20 in front of me, so how can I argue against it?

21 **MS. BRUBAKER:** Who is speaking, please?

22 **MR. LUDINGTON:** Ludington.

23 **COMMISSIONER JACOBS:** Understand, Mr.
24 Ludington, today is not the time to argue against it.

25 **MR. LUDINGTON:** Well --

1 **COMMISSIONER JACOBS:** That's the purpose for
2 the hearing on September 14th and 15th.

3 **MR. LUDINGTON:** Okay.

4 **COMMISSIONER JACOBS:** Today -- now, if you
5 can't formulate -- what I understood you to say that
6 you simply object to the settlement and I think that's
7 an adequate and proper position to take today. And I
8 think it affords you what you need to know to proceed
9 on the 14th and 15th.

10 **MR. LUDINGTON:** All right. Thank you.

11 **MR. REILLY:** Public Counsel's position is
12 yes to that first issue.

13 **MS. BRUBAKER:** Staff's position is yes.

14 Issue 2. Does NFMU have the financial
15 ability to provide wastewater service to
16 Buccaneer Estates?

17 **MR. FRIEDMAN:** North Fort Myers' position is
18 yes.

19 **MR. REILLY:** Public Counsel, yes.

20 **MR. LUDINGTON:** Ludington's position is
21 "perhaps."

22 **COMMISSIONER JACOBS:** Now, if you would hold
23 for a moment, Mr. Ludington. Now, let me ask Staff
24 this: These issues were there already and were in the
25 record. Should the parties -- because they didn't

1 prefile, should they be able to offer positions to
2 these?

3 **MS. BRUBAKER:** The Staff believes that yes,
4 they can provide positions to issues.

5 **COMMISSIONER JACOBS:** Okay. Mr. Ludington,
6 your position again was?

7 **MR. LUDINGTON:** Perhaps I'm not privy to the
8 financial information of North Fort Myers Utility so I
9 cannot render a honest decision on it.

10 **COMMISSIONER JACOBS:** It may be better that
11 you say "no position at this time." That reserves it
12 for you to address it at hearing.

13 **MR. LUDINGTON:** All right. I'll use that.
14 No position at this time.

15 **MR. DEVINE:** Mr. Devine. No.

16 **MR. GILL:** Mr. Gill. No.

17 **COMMISSIONER JACOBS:** Now, understand that
18 if you're going to address this, you won't be able to
19 offer your own witnesses; is that clear?

20 **MR. LUDINGTON:** I won't have time to get
21 them together.

22 **COMMISSIONER JACOBS:** Okay. I want to be
23 clear you understood that. Okay. Go ahead.

24 **MS. BRUBAKER:** Staff's position would be
25 yes.

1 **COMMISSIONER JACOBS:** I'm sorry, Mr. Gill,
2 do we have your position on that as well? Was it "no
3 position at this time."

4 **MR. GILL:** I don't know if you heard me. I
5 said no.

6 **COMMISSIONER JACOBS:** Okay. And the next
7 issue.

8 **MS. BRUBAKER:** Issue 3. Does NFMU have the
9 technical ability and capacity to provide wastewater
10 service to Buccaneer Estates?

11 **MR. FRIEDMAN:** North Fort Myers Utility's
12 position is yes.

13 **MR. REILLY:** OPC's position is yes.

14 **MR. DEVINE:** Mr. Devine. No.

15 **MR. GILL:** This is Mr. Gill. I have no
16 information to base an opinion on.

17 **MR. LUDINGTON:** Ludington takes the same
18 motion that he took the last issue.

19 **MS. BRUBAKER:** Staff's position on that
20 issue is "Yes. NFMU is presently serving the
21 customers of Buccaneer Estates and still has excess
22 plant capacity."

23 **COMMISSIONER JACOBS:** Okay.

24 **MS. BRUBAKER:** Commissioner, if I may, as a
25 matter of clarification, Mr. Gill, Ludington and

1 Devine have all, at various points on these issues,
2 stated their position is no. I just need some
3 clarification; is that you have no position or is it
4 no, you do not believe the affirmative to that issue.

5 **MR. DEVINE:** No, I do not believe.

6 Mr. Devine.

7 **MR. LUDINGTON:** Ludington has no position at
8 this time.

9 **MR. GILL:** This is Mr. Gill. Certain
10 positions I said no, and certain positions I said I
11 didn't have adequate information. I do know that
12 North Fort Myers Utility had a problem with a little
13 flooding in the park ten days or so ago. I would need
14 to look at this kind of information to make a final
15 determination of that question.

16 **MS. BRUBAKER:** Perhaps if I might take it
17 issue by issue. The first issue being should the
18 stipulation be approved. Your answer to that was?

19 **MR. GILL:** No.

20 **MS. BRUBAKER:** And that's no as in -- or is
21 it no position?

22 **MR. GILL:** I do not believe that the
23 stipulation should be approved.

24 **MS. BRUBAKER:** Thank you for that
25 clarification.

1 For Issue 2, does NFMU have the financial
2 ability to provide wastewater service?

3 **MR. GILL:** Based on the need for North Fort
4 Myers Utility to have money put into escrow, I really
5 don't have enough information to give an affirmative
6 or negative response to that.

7 **MS. BRUBAKER:** So your response would be no
8 position at this time?

9 **MR. GILL:** No position at this time.

10 **MS. BRUBAKER:** Thank you. And for Issue 3,
11 does NFMU have the technical ability and capacity to
12 provide wastewater service?

13 **MR. GILL:** I can only go on the assumption
14 that it has. I have not had the opportunity until I
15 get to Florida to look at the number of complaints
16 filed with the North Fort Myers -- I mean, Fort Myers
17 Environmental Department.

18 **MS. BRUBAKER:** So you take no position at
19 this time?

20 **MR. GILL:** No position at that time.

21 **MS. BRUBAKER:** Thank you for that
22 clarification.

23 **COMMISSIONER JACOBS:** Okay. That's Issue 3.
24 Next issue.

25 **MS. BRUBAKER:** Issue 4. What is the net

1 book value of the assets proposed to be transferred to
2 NFMU?

3 **MR. DEVINE:** What kind?

4 **MS. BRUBAKER:** I'll repeat it if it wasn't
5 clear. What is the net book value of the assets
6 proposed to be transferred to NFMU? That's Issue 4.

7 **MR. FRIEDMAN:** North Fort Myers' position is
8 \$146,119.68.

9 **MR. REILLY:** OPC's position is no position
10 at this time.

11 **MR. DEVINE:** Mr. Devine. No position at
12 this time.

13 **MR. GILL:** Mr. Gill. No position at this
14 time. I know of no -- I know -- I have no information
15 to base something on at this time. Appraisal.

16 **MS. BRUBAKER:** Staff's position is no
17 position pending further development of the record.

18 **MR. LUDINGTON:** Nobody asked Ludington what
19 position he had yet.

20 **MS. BRUBAKER:** I beg your pardon,
21 Mr. Ludington, I'm sorry.

22 **MR. LUDINGTON:** I have no position at this
23 time.

24 **MS. BRUBAKER:** Thank you.

25 **COMMISSIONER JACOBS:** Okay. That's Issue 4.

1 Issue 5.

2 **MS. BRUBAKER:** Issue 5. Is the transfer of
3 the wastewater operations of Buccaneer Estates to NFMU
4 in the public interest?

5 **MR. FRIEDMAN:** North Fort Myers' position is
6 "Yes, it is in the public interest for North Fort
7 Myers Utility to provide wastewater service directly
8 to the customers of the Buccaneer Estates in
9 accordance with the Settlement Agreement."

10 **MR. REILLY:** This is OPC. We've not written
11 down our position on that yet but it would be
12 basically that it is in the public interest if the
13 transfer is carried out in accordance with the
14 Settlement Agreement. And I'll get you the exact
15 wording today, by this afternoon.

16 **COMMISSIONER JACOBS:** Okay.

17 **MR. DEVINE:** This is Mr. Devine. My answer
18 is a definite no.

19 **MR. GILL:** This is Mr. Gill. In this matter
20 the term "public interest" has been used in a very
21 broad and generic term. While the term "public
22 interest" has been used over and over, the term has
23 never been specifically defined as what the public
24 interest is that is being served. Thank you.

25 **MR. LUDINGTON:** Ludington says no, and would

1 make the comment that as a member of the public, it is
2 not serving him.

3 **COMMISSIONER JACOBS:** Okay. Very good.

4 **MS. BRUBAKER:** Staff's position is "Yes.
5 Pursuant to the Settlement Agreement, the transfer is
6 in the public interest."

7 **COMMISSIONER JACOBS:** Okay. That's Issue 5.
8 Issue 6.

9 **MS. BRUBAKER:** Issue 6. Should NFMU be
10 fined for violation of Section 367.071 Florida
11 Statutes?

12 **MR. FRIEDMAN:** North Fort Myers' position is
13 no.

14 **MR. REILLY:** OPC's position is "No. North
15 Fort Myers Utility's forfeiture of any compensation
16 for providing wastewater service to Buccaneer Estates
17 from December 1, 1998, through August 31, 1999, is
18 sufficient punishment for North Fort Myers Utility's
19 premature and improper interconnection with
20 Buccaneer Estates Manufactured Home Community."

21 **MR. DEVINE:** This is Mr. Devine. A definite
22 yes.

23 **MR. GILL:** Mr. Gill. I say yes. I think
24 that the fine should be levied pursuant to law and
25 should not be substituted with other means.

1 **MR. LUDINGTON:** Ludington says yes.

2 Definitely yes.

3 **MS. BRUBAKER:** Staff's position. Agree with
4 OPC.

5 **COMMISSIONER JACOBS:** Okay. That's Issue 7.

6 **MS. BRUBAKER:** Staff has no more issues.

7 If counsel for NFMU or OPC have any
8 additional issues, they should bring them, I suppose,
9 at this time.

10 **MR. FRIEDMAN:** North Fort Myers doesn't have
11 any other issues.

12 **MR. REILLY:** OPC. No further issues.

13 **COMMISSIONER JACOBS:** Those are the issues.
14 I'll restate Issue 1. Should the stipulation be
15 approved? I mean, I haven't the exact wording. I
16 take the wording that the esteemed court reporter has.

17 Issue 2. Does NFMU have the financial
18 ability to provide wastewater service?

19 Issue 3. Does NFMU have the technical
20 ability and capacity to provide wastewater service?

21 Issue 4. Is the net book value of the
22 assets proposed to be transferred? What is the net
23 book value of assets?

24 Issue 5. Is the transfer of the wastewater
25 operation of Buccaneer Estates to NFMU in the public

1 interest?

2 Issue 6. Did I -- Issue 6 is should NFMU be
3 required to show cause -- to be fined? Is that 6?
4 Okay. And that's it. Six issues.

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

6 **COMMISSIONER JACOBS:** Now, what I'd like to
7 do is to go back then to Section VI. Let's figure out
8 the witnesses and the issues that they'll address.

9 **MR. FRIEDMAN:** This is Marty Friedman for
10 North Fort Myers.

11 Mr. Reeves will be our only witness. We
12 will not have Mr. Morrison as a rebuttal witness.

13 **COMMISSIONER JACOBS:** Okay.

14 **MR. FRIEDMAN:** And Mr. Reeves will address
15 all six of the issues.

16 **COMMISSIONER JACOBS:** Okay. Thank you.

17 **MR. REILLY:** And Public Counsel's
18 withdrawing its direct witnesses and its rebuttal
19 witnesses. Both of them.

20 **COMMISSIONER JACOBS:** Okay.

21 **MR. REILLY:** And their exhibits.

22 **COMMISSIONER JACOBS:** And testimony. Okay.

23 **MR. LUDINGTON:** I could not hear that last
24 statement.

25 **COMMISSIONER JACOBS:** That was counsel for

1 Public Counsel and they indicated that they are
2 withdrawing the testimony and exhibits for their
3 witnesses.

4 **MR. LUDINGTON:** All of their witnesses?

5 **COMMISSIONER JACOBS:** Yes.

6 **MR. REILLY:** Yes. For the purpose of this
7 hearing, yes.

8 **COMMISSIONER JACOBS:** And the counsel for
9 the utility indicated they are withdrawing the
10 testimony and exhibits for their rebuttal witness,
11 Steven Morrison. Okay. Staff.

12 **MS. BRUBAKER:** Staff is withdrawing its
13 witnesses and exhibits, all three. However, reserving
14 the right to present cross for purpose of cross
15 examination exhibits at hearing I believe would
16 probably hold true for all of the parties.

17 **COMMISSIONER JACOBS:** Okay.

18 **MR. DEVINE:** Mr. Chairman?

19 **COMMISSIONER JACOBS:** Sorry?

20 **MR. DEVINE:** Mr. Chairman? Mr. Devine. May
21 I speak?

22 **COMMISSIONER JACOBS:** Yes.

23 **MR. DEVINE:** I'm going to request that the
24 Commission, in conjunction with the PSC Staff, ask all
25 of the people who have given depositions to appear in

1 North Fort Myers next Tuesday for the purpose of
2 explaining both sides of this argument to the
3 residents of Buccaneer Estates so they can make a fair
4 and equitable decision on this.

5 Now, I realize that the Commission has the
6 authority to do this, and I know that because of a
7 misunderstanding we are kind of at the short end, but
8 because all of the Citizens of Florida are represented
9 by the PSC, I think that they speaking for all of
10 those citizens should bring the testimony and the
11 witnesses here so that everything can be put on the
12 table that affects the people of Buccaneer, which in
13 ten years will take \$10 million, in my estimation,
14 from the folks in this park. And I ask that you
15 intervene and possibly make that stipulation.

16 **COMMISSIONER JACOBS:** I'll take that as a
17 motion.

18 Now, let me step back for a moment and
19 please forgive me if I digress too much. I see the
20 role of the Commission here as a tryer of fact. What
21 that means is we take the issues as we find them. We
22 generally do not create issues in a dispute or in a
23 matter that is to appear before the Commission. That
24 is the whole purpose for the prehearing process, is
25 for the parties to essentially identify and legitimize

1 the issues that should be litigated and for which
2 evidence should be presented in an official record.
3 And the Commission can only then make its decision
4 from the official record in a proceeding.

5 Now --

6 **MS. BRUBAKER:** Commissioner, if I may, just
7 as a matter of clarification.

8 **COMMISSIONER JACOBS:** Yes.

9 **MS. BRUBAKER:** Just to note that pursuant to
10 the prehearing that occurred on August 30th, 1999, it
11 was ruled that the customers do take the issues and
12 positions and what not as they find it, and it's
13 certainly within the discretion of the parties to
14 present what witnesses and testimony and exhibits it
15 chooses. If it chooses to withdraw the parties, then
16 that is the case.

17 **COMMISSIONER JACOBS:** Right. We want to
18 affirm that motion out. But I want to give the pro se
19 parties the benefit of the rationale here.

20 **MR. DEVINE:** Excuse me, Mr. Chairman. I
21 believe that issue should be put out there today.

22 **COMMISSIONER JACOBS:** I'm sorry. Excuse me,
23 I did not understand your statement.

24 **MR. DEVINE:** I thought that that issue of
25 witnesses was going to be discussed among the

1 Commission, OPC and the pro se litigants today.

2 **COMMISSIONER JACOBS:** That is a function of
3 this process. The prehearing process is to identify
4 the witnesses that are to be presented. However, let
5 me make sure you understand, that it is among the
6 parties to exercise their rights under the prehearing
7 process to identify that. The Commission generally is
8 not the party that imposes issues on a proceeding, and
9 dictates the manner of proof on the issues that are
10 before it. It received that information from the
11 parties as they've done it in the prehearing process.

12 Now, Mr. Ludington, I am receptive to your
13 idea that where there is a issue of fairness there
14 probably is some discretion on behalf of the
15 Commission to look at particular issues, okay.

16 **MR. DEVINE:** Excuse me.

17 **COMMISSIONER JACOBS:** Excuse me. Let me
18 finish.

19 Having heard the issues that I think are at
20 the core of the dispute that you have in this
21 process -- and I think you stated those very well and
22 I congratulate you on your ability to convey, with
23 some vigor, your concerns about this arrangement. And
24 I want to make sure that you know that I understand
25 that. Your concern has to do with the arrangement

1 under which charges for wastewater service are paid.
2 Which party would be the responsible party to pay
3 those charges? I understand that very well. And what
4 I want to convey to you is that even understanding
5 that, I think it is appropriate to proceed with the
6 issues as they have been identified here today.

7 In addition, I think you are not foreclosed
8 from addressing those issues, whether you should do it
9 in a form that's outside of this process, or if you
10 should want to raise those issues on your own, you
11 have that opportunity to do that. I believe, however,
12 that in the context of the process and the proceedings
13 that we have before us at this point, it is fair and
14 reasonable to proceed with the issues that they have
15 been identified to date.

16 Now, I want to make sure you understand your
17 rights here. The Prehearing Order is available for
18 reconsideration. I would suggest to you, however,
19 that the hearing will probably occur on the 14th as we
20 originally said; that if you have additional issues or
21 you want to address the Prehearing Order, you could
22 bring them at that time before the panel that will be
23 sitting for that hearing.

24 **MR. DEVINE:** Very good.

25 **MR. LUDINGTON:** Thank you, sir.

1 **MS. BRUBAKER:** I'm sorry.

2 **COMMISSIONER JACOBS:** Excuse me. If we
3 could get just one to speak at a time.

4 **MS. BRUBAKER:** And also identify yourself,
5 please, before you speak. Thank you.

6 **MR. DEVINE:** This is Mr. Devine. And I
7 thank the Chairman.

8 **MR. LUDINGTON:** Yes, I also want to thank
9 the Chairman. Ludington here. I have one question
10 for the Chairman.

11 **COMMISSIONER JACOBS:** Yes.

12 **MR. LUDINGTON:** In my mind I am not sure
13 that OPC and North Fort Myers Utility, if I can use
14 information that they have supplied to me in writing
15 over a period of time, am I precluded from using that
16 information? It was presented to me in the form of
17 testimony by expert witnesses. They have withdrawn
18 those witnesses but they have made that information
19 known to me. Am I precluded from using that to my
20 cross examination at the upcoming hearing?

21 **COMMISSIONER JACOBS:** Let me make sure
22 that -- let me explain to you -- and, again, forgive
23 me if I digress a bit too much. In the process of
24 cross examination you are limited to the scope of the
25 testimony of that witness. So to answer your

1 question, the only witness we have now testifying here
2 is a Mr. Reeves. If in the scope of the testimony of
3 Mr. Reeves you can raise that information that you
4 have, then you're free to do so, whether it was
5 brought by Mr. Reeves or one of the other witnesses.

6 **MR. DEVINE:** Thank you very much.

7 **MR. LUDINGTON:** That's clear.

8 **MR. DEVINE:** Thank you very much,
9 Mr. Chairman. Mr. Devine speaking.

10 **COMMISSIONER JACOBS:** Okay.

11 **MS. GERVASI:** Commissioner, this Rosanne
12 Gervasi appearing also on behalf of Commission Staff.

13 For clarification purposes just so we
14 understand what your explanation was just a moment ago
15 to the pro se customers, did you intend to reconsider
16 the decision that you made at the prior prehearing,
17 which was that the customers were not permitted to
18 raise new issues for the purposes of this prehearing?
19 Or did you mean -- or was that explanation in terms of
20 what their rights are on reconsideration of the
21 Prehearing Order?

22 **COMMISSIONER JACOBS:** Of the Prehearing
23 Order.

24 **MS. GERVASI:** Okay.

25 **COMMISSIONER JACOBS:** No. No. I was not

1 reconsidering any of those rulings at the
2 prehearing -- no, of the Prehearing Order itself.

3 **MS. GERVASI:** So the customers must take the
4 case as they find it.

5 **COMMISSIONER JACOBS:** Correct.

6 **MS. GERVASI:** They can cross examine on
7 issues raised by other parties but they do not have a
8 right to raise issues themselves.

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

10 **MS. GERVASI:** Thank you, sir.

11 **MR. DEVINE:** Mr. Chairman, Mr. Devine
12 speaking. Will -- I'm sorry, the PSC, Mr. Shreve or
13 Mr. Reilly, will they be making an opening statement
14 in this hearing? For the benefit of the customers?
15 To state their position?

16 **MR. SHREVE:** That really hasn't been decided
17 but it's possible we will.

18 **MR. DEVINE:** Excuse me, I can't hear.

19 **COMMISSIONER JACOBS:** I'm sorry. Go ahead.

20 **MR. SHREVE:** This is Jack Shreve.

21 **MR. DEVINE:** We cannot hear you, Mr. Shreve.

22 **MR. SCHIEFELBEIN:** This is Jack Shreve. We
23 have not decided on that. We haven't discussed it.
24 It's quit possible we will.

25 **MR. DEVINE:** Thank you, sir.

1 **COMMISSIONER JACOBS:** Okay. So that
2 resolves Section VI, Order of Witnesses.

3 **MR. DEVINE:** Mr. Chairman, Mr. Devine again.
4 When will we know whether Mr. Shreve or Mr. Reilly
5 will making an opening statement?

6 **COMMISSIONER JACOBS:** Well, actually
7 sometimes that is noted in the Prehearing Order but
8 it's not necessary. They can choose to do so or
9 choose not to do so according to their preferences at
10 hearing.

11 **MR. DEVINE:** In fairness to the residents of
12 the park, they should state their position as they are
13 the representatives of the people of Florida.

14 **COMMISSIONER JACOBS:** Well, actually they
15 have done so in the Prehearing Order, when it's
16 finally issued, is the official statement of that. So
17 that's why I said it's at their discretion whether or
18 not they want to make one. But for terms of what's
19 official in their position, the final issued
20 Prehearing Order is the official statement of that.

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

22 **COMMISSIONER JACOBS:** And if anyone would
23 like to get that, it's available both from counsel but
24 it's also available, I believe, on our website.

25 So there are no other revisions to Section

1 VI. Let's move to Section IX, Exhibit List.

2 **MR. FRIEDMAN:** Yes, Commissioner Jacobs.
3 This is Marty Friedman on behalf of North Fort Myers
4 Utility. The exhibits which Mr. Reeves will sponsor
5 will be his resume, the application, and the
6 amendments to the application.

7 **COMMISSIONER JACOBS:** Could you identify
8 that by its ID? I guess that doesn't have -- his
9 resume doesn't have one, does it? Let's --

10 **MR. FRIEDMAN:** We left the exhibit numbers
11 blank so I don't know what exhibit -- whether we want
12 to do it by numbers or letters.

13 **COMMISSIONER JACOBS:** Can we just make it
14 AAR-1. Resume would be AAR-1.

15 **MR. FRIEDMAN:** The application and
16 amendments is a composite of the application.

17 **COMMISSIONER JACOBS:** I don't see that
18 listed.

19 **MR. FRIEDMAN:** No. It's attached to his
20 prefiled testimony. It just wasn't listed in the
21 draft here.

22 **COMMISSIONER JACOBS:** Okay.

23 **MR. FRIEDMAN:** That would be AAR-2. And
24 then the Settlement Agreement would be AAR-3.

25 **MR. LUDINGTON:** Question.

1 **COMMISSIONER JACOBS:** Yes. Who is speaking?

2 **MR. LUDINGTON:** This Settlement Agreement --

3 **COMMISSIONER JACOBS:** Excuse me. Is this
4 Mr. Ludington? Excuse me, is this Mr. Ludington?

5 **MR. LUDINGTON:** Ludington here, yes.

6 **COMMISSIONER JACOBS:** Go ahead.

7 **MR. LUDINGTON:** I'm totally confused. Is
8 this Settlement Agreement that Mr. Friedman referred
9 to, is that the same agreement that Madam Brubaker
10 refers to as a stipulation?

11 **COMMISSIONER JACOBS:** That's the same.

12 **MR. LUDINGTON:** All right.

13 **COMMISSIONER JACOBS:** And I assume this will
14 be the final executed copy or has it be finally
15 executed?

16 **MR. FRIEDMAN:** The original is -- I believe
17 Ms. Brubaker has the original.

18 **MS. BRUBAKER:** The original has been filed
19 with both signature pages with the Division of Records
20 and Reporting.

21 **COMMISSIONER JACOBS:** And that has no
22 further modification. So what you have is the one and
23 same as this exhibit. Are you clear, Mr. Ludington?

24 **MR. LUDINGTON:** Yes.

25 **COMMISSIONER JACOBS:** Okay. Do I take it

1 then that all other exhibits are withdrawn?

2 **MR. REILLY:** Public Counsel. We're
3 withdrawing the nine exhibits attached to Mr. Bidy's
4 testimony.

5 **MS. BRUBAKER:** Staff withdraws all of its
6 exhibits.

7 **MR. DEVINE:** This is Mr. Devine. I would
8 request that I get those exhibits. The Public Service
9 Commission last week said they would work with us very
10 closely on this issue, so I'm asking that the exhibits
11 be turned over to the three of us.

12 **MS. BRUBAKER:** Copies of exhibits typically
13 are made available at the hearing.

14 **MR. LUDINGTON:** Ludington here. I would ask
15 that any exhibits that have been sent to me be
16 available for my use at the hearing.

17 **COMMISSIONER JACOBS:** Excuse me just a
18 moment, would you, gentlemen?

19 **MS. GERVASI:** This is Rosanne Gervasi again.
20 The exhibits that the parties have chosen to withdraw
21 will not be entered into the record, and, therefore,
22 will not be available for cross examination at the
23 hearing. Only those exhibits that will be offered and
24 entered into the record will form the basis for any --
25 any basis for cross examination. Now, prefiled

1 exhibits have been filed in Records and Reporting,
2 along with testimony. And they are available if you
3 want to review them. If you don't already have
4 copies, you should as parties have already been served
5 copies of all of them. If you want another copy you
6 could get a copy at our Division of Records and
7 Reporting, but they will not be made part of the
8 record unless the offering party --

9 **MR. LUDINGTON:** Makes a mistake.

10 **MS. GERVASI:** -- offers them into the
11 record.

12 **MR. LUDINGTON:** That's correct.

13 **COMMISSIONER JACOBS:** Are you gentlemen
14 clear on that?

15 **MR. LUDINGTON:** Yes.

16 **MR. DEVINE:** We can offer them in the record
17 at any time between now and the hearing?

18 **COMMISSIONER JACOBS:** No. Only during your
19 opportunities to cross examine and for the purpose of
20 supporting any questions on cross examination would
21 that exhibit then be proper.

22 **MR. LUDINGTON:** Thank you.

23 **MR. DEVINE:** Thank you.

24 **COMMISSIONER JACOBS:** Let me do this: I'll
25 leave this to the parties and I would ask you to

1 reconcile this with Staff. If there's overlap from
2 any one of these witnesses, in Mr. Reeves testimony,
3 for the purposes of expediting this matter -- let's
4 make sure that's clear, where there's overlap and as
5 need be, to make sure that's available to these pro se
6 litigants, and make sure that's available, okay? It
7 does not appear that there is -- there's some part of
8 the testimony of Mr. Bidy or Mr. Barienbrock, which
9 is -- which is overlap of Mr. Reeves' testimony. In
10 other words, where they have common elements of their
11 testimony, I want to make sure that these parties have
12 access to whatever that is. Are we clear?

13 **MS. BRUBAKER:** I don't believe there is any
14 but I'll look into it.

15 **COMMISSIONER JACOBS:** Anything else?

16 **MR. SHREVE:** One thing, I wanted to do it at
17 the end. I didn't know if you were completed. I
18 didn't want to interrupt.

19 **COMMISSIONER JACOBS:** We're done with
20 witnesses. Did you want to do it at the end of that
21 or at the very end of the Prehearing Order?

22 **MR. SHREVE:** Well, I think probably one
23 thing we probably should discuss, with the issues that
24 we have right now there, you have really proposed
25 settlements. I think Mr. Ludington plans to offer a

1 proposed settlement. I believe you discussed that
2 earlier.

3 **MR. LUDINGTON:** Yes.

4 **MR. SHREVE:** And I did not understand who
5 the other gentlemen -- there was another proposed
6 settlement, either Mr. Devine or Mr. Gill.

7 **MR. GILL:** Mr. Gill has a --

8 **MR. SHREVE:** Mr. Gill had a proposed
9 settlement he was going to try and offer at the
10 hearing. And you have another proposed settlement
11 from the parties. And they are proposed settlements
12 since all parties are not in agreement. Otherwise,
13 we'd have a total settlement.

14 It's my understanding that if one of the
15 settlements is not accepted, then certain issues would
16 be finalized here, the ones that you could finalize.
17 But if the Settlement Agreement is not accepted, then
18 there would be a hearing on the remaining issues that
19 have not been disposed of. At that point we'd use the
20 witnesses and everything. That was my understanding.

21 **COMMISSIONER JACOBS:** In other words, for
22 Issues 2 through 6 there could be a settlement offered
23 at hearing, and to the extent that settlement is
24 accepted, then those issues would be resolved. Is
25 that what you're asking?

1 **MR. DEVINE:** Who is speaking, please? This
2 is Mr. Devine.

3 **COMMISSIONER JACOBS:** This is Commissioner
4 Jacobs and we just had Public Counsel Shreve.

5 **MR. SHREVE:** All I'm really pointing out is
6 at least a large part of the interest of the customers
7 is going to be based on whether or not any one of the
8 three proposed settlements is accepted.

9 **COMMISSIONER JACOBS:** I see.

10 **MR. SHREVE:** And if it is not, if none of
11 the proposed settlements are acceptable to the Public
12 Service Commissioners, then there are decisions that
13 have not been made, and it's my understanding at that
14 point -- I don't mean at that hearing, but there would
15 be a future hearing to present witnesses, all bets
16 would be off and everybody would take their best
17 positions and put the witnesses on at that point.

18 **MR. DEVINE:** This is Mr. Devine. I would
19 agree with that.

20 **MS. BRUBAKER:** Commissioner, if I may?

21 **COMMISSIONER JACOBS:** Yeah. Go ahead.

22 **MS. BRUBAKER:** Several of the issues that
23 were presented pursuant to this prehearing today were
24 made with the -- contemplating that the Settlement
25 Agreement between NFMU and OPC would be approved at

1 hearing. If it is not approved at hearing, I'm
2 assuming the parties would like to reserve their right
3 to revise the issues as they stood prior to the
4 modifications made today. I would assume that would
5 make for a continuance of the hearing.

6 **COMMISSIONER JACOBS:** Would you then be
7 asking for a bench ruling on Issue 1 then, at hearing,
8 and pending that you would --

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

10 **COMMISSIONER JACOBS:** Let's put that --

11 **MR. SHREVE:** Bench ruling, yes. And if the
12 settlement were not to be accepted, there would be a
13 ruling on that, and then everybody would have to take
14 their additional positions and everything and go
15 forward at that point. I think it's the only way that
16 really makes sense. And I think this is really where
17 Mr. Ludington, Devine and Mr. Gill have been trying to
18 go all along. So that if their settlement proposals,
19 the two of them, are the one -- from the parties at
20 the table here are not accepted, then there would
21 probably have to be another hearing, because there's
22 really no other way to proceed at that point. Because
23 the parties have taken their position based only on
24 the Settlement Agreement at this point.

25 **COMMISSIONER JACOBS:** Mr. Devine, Ludington

1 and Gill, do you all understand that?

2 **MR. DEVINE:** Again, Mr. Chairman, who was
3 that speaking?

4 **COMMISSIONER JACOBS:** That was Jack Shreve.

5 **MR. DEVINE:** I thank Mr. Shreve.

6 **COMMISSIONER JACOBS:** Do you understand what
7 he's proposing?

8 **MR. DEVINE:** Yes.

9 **MR. LUDINGTON:** Ludington here. My
10 understanding of this is at the beginning of the
11 September 14th hearing we will be allowed, or at some
12 time during the hearing, to offer a Settlement
13 Agreement. And that Settlement Agreement has to be
14 discussed before the issues are taken up. Is that the
15 gist of what he's saying?

16 **MR. SHREVE:** This is Jack Shreve again.

17 It was my understanding earlier that the
18 Prehearing Officer ruled that you could offer your
19 settlement to the full panel at that time and whatever
20 rulings they make is whatever rulings they are going
21 to make.

22 **COMMISSIONER JACOBS:** Understand that what
23 you would have at that point is an offer of
24 settlement.

25 **MR. LUDINGTON:** Right.

1 **COMMISSIONER JACOBS:** Which the panel has
2 the discretion of accepting or rejecting. But yes,
3 the answer your question is yes.

4 **MR. LUDINGTON:** All right. Thank you.

5 **MS. BRUBAKER:** May Staff request that copies
6 of the propose settlement be forwarded to all parties
7 as expeditiously as possible, faxed, mailed, whatever
8 is the quickest?

9 **COMMISSIONER JACOBS:** Is that acceptable to
10 you all, Mr. Gill, Devine and Ludington?

11 **MR. DEVINE:** This would only pertain to
12 Mr. Gill and Mr. Ludington.

13 **MR. LUDINGTON:** Ludington here. I'm at a
14 disadvantage as that it's now Wednesday. I'm in
15 Canada. I have to make plans to get to North Fort
16 Myers, open up my home. Spend the weekend trying to
17 put this stuff together in the legal and proper
18 thought-out form. I don't think I'm in a position to
19 be able to get this forwarded in time.

20 **MR. GILL:** Why don't you just fax what you
21 read earlier to Ms. Brubaker.

22 **MR. LUDINGTON:** Well, it's not in the proper
23 form of a settlement agreement proposal. I'd have to
24 change it quite a bit.

25 **COMMISSIONER JACOBS:** Excuse me. If I may,

1 let me suggest to you that we're quite accommodating
2 in terms of formality in that regard. I would suggest
3 that time is of the essence. If you want the
4 Commission to have an opportunity to fully consider,
5 it would be best if you could give as much advance
6 notice of your settlement offer to the panel. It's
7 not so much for parties, but as you heard yesterday,
8 Commissioner Deason was quite concerned that he only
9 got those motions at the time this came up at the
10 agenda conference. I'd expect that he'd have that
11 much, if not more concern, about a settlement proposal
12 that he received at the time of hearing.

13 **MR. LUDINGTON:** Well, if I had Internet
14 addresses or -- this is Ludington here -- Internet
15 addresses or that type of thing, I'm not in a position
16 to send a fax.

17 **COMMISSIONER JACOBS:** We're probably talking
18 about getting an official copy. You're probably
19 talking overnight.

20 **MR. LUDINGTON:** Well, I'm afraid I'm not in
21 a position to do that.

22 **MR. DEVINE:** Please do it.

23 **MR. LUDINGTON:** Well, I could send it down
24 through the Internet to Mr. Devine or someone and he
25 could make it known --

1 **COMMISSIONER JACOBS:** I'll leave you
2 gentlemen to ferret out the details, but I would --
3 and I think it's to your benefit. I'm not trying to
4 take away any opportunity for you. But I think it
5 would be more to your benefit if you could overnight
6 something to the Commission as soon as possible.

7 **MR. LUDINGTON:** I'll try my darnedest to do
8 that.

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

10 **COMMISSIONER JACOBS:** Now, you can fax it to
11 the parties. I don't think there's a problem about
12 your faxing something to Mr. Shreve's office and to
13 Mr. Friedman's office. But I would urge you to get a
14 hard copy of something official to the Commission by
15 overnight express as soon as possible.

16 **MR. GILL:** Hello. This is Don Gill.

17 I assume that this hastily drawn up offer of
18 settlement attached -- a right to amend it attaches
19 with it.

20 **COMMISSIONER JACOBS:** Say again?

21 **MR. GILL:** The offer of settlement that you
22 want hastily drawn up and sent down, I would assume
23 that we will have the opportunity to amend that offer
24 of settlement prior to the hearing.

25 **COMMISSIONER JACOBS:** How so? Normally the

1 purpose of an offer of settlement is that the parties
2 have discussed proposed -- how they propose to resolve
3 the issues, and they are asking the Commission to
4 forgo a formal evidentiary proceeding and accept what
5 they have determined to be a settlement. All of those
6 issues. So normally it's not modified at the time of
7 the decision. But I understand that because of the
8 exigences of your circumstances that there may be some
9 need to adjust it.

10 I would say this to you: I can -- I would
11 suggest to you that you have as much as you can in
12 terms of a final document into the hands of the
13 Commission in advance. And then if you have a revised
14 settlement that you want to bring into the hearing
15 that is essentially as existed with some minor
16 modifications -- I've seen that done and I don't think
17 that's a major problem. So if you want to come to the
18 hearing with a revised offer of settlement, which is
19 some minor extension of your original document, I
20 don't think that's a major problem. Does that answer
21 your question?

22 MR. GILL: Yes, it does.

23 MR. LUDINGTON: I have a question.

24 Ludington here.

25 It's my understanding that a settlement has

1 to be between two parties and they both must agree to
2 it. In this particular position I'm up in Canada. I
3 find it impossible to get to any of these other
4 parties in any reasonable amount of time to put the
5 settlement together. What do we do in a case like
6 that? How can I involve two people without their
7 permission?

8 **COMMISSIONER JACOBS:** We're taking this as
9 an offer of settlement in the hope --

10 (Simultaneous conversation.)

11 Excuse me. Excuse me. Excuse me, let me
12 finish.

13 The whole issue there is that in the same
14 manner as the settlement that has been reached by the
15 Public Counsel and the Utility, there's not full
16 agreement of all of the parties. And in essence, what
17 you're offering is your slant on what this resolution
18 should be, which is not in agreement with all of the
19 parties. Normally -- I agree with you, normally there
20 who have been that full and rich debate that could
21 occur where you have all parties in agreement. But
22 unfortunately in this instance, that doesn't appear to
23 be possible. To answer your question, you will not be
24 precluded from presenting your offer simply by virtue
25 of the fact that the other parties haven't agreed to

1 it. Does that answer your question?

2 **MR. LUDINGTON:** Thank you, yes.

3 **COMMISSIONER JACOBS:** That kind of is our
4 discussion of proposed stipulations, which was the
5 next section, Section X. And I assume that all of the
6 today's proceedings will be adequately recited in that
7 section. Does anybody have anything in particular
8 they'd like to have in there?

9 **MR. REILLY:** One thing to add, all
10 references to the Settlement Agreement between North
11 Fort Myers Utility and OPC, which I think everyone has
12 a true and correct copy of, needs to make this one
13 small change and that relates to Paragraph 2. As you
14 know, these three intervenors have not signed off on a
15 Settlement Agreement, and I think it would be
16 inappropriate to continue to word it that way. So the
17 correct wording, or changed wording of Paragraph 2 is
18 "OPC shall support the granting of the application,
19 subject to the provisions of this Settlement
20 Agreement." So it does withdraw -- you know, it
21 removes references to these three intervenors who
22 obviously have not signed off on the Settlement
23 Agreement.

24 And so any references in this Prehearing
25 Order referring to a Settlement Agreement is, in fact,

1 the true and correct copy with the Staff as modified
2 today.

3 **MS. BRUBAKER:** Staff knows that correction.

4 **COMMISSIONER JACOBS:** Okay. Good.

5 **MS. GERVASI:** Commissioner Jacobs, excuse me
6 just for a moment. This is Rosanne Gervasi again.

7 Because of the fact that only one proposed
8 settlement agreement has been filed, it seems to me
9 that that should be the only one that we should list
10 in the Prehearing Order as being a pending
11 settlement -- offer of settlement between North Fort
12 Myers and OPC with the understanding that the pro se
13 customers, you know, may, at their discretion, offer a
14 settlement proposal at the hearing. But since no
15 other one has been filed, I don't see a need to --

16 **COMMISSIONER JACOBS:** That sounds fine to
17 me.

18 **MS. GERVASI:** -- enter that. Thank you.

19 **UNIDENTIFIED SPEAKER:** I have a question --

20 **COMMISSIONER JACOBS:** I'm sorry, was that
21 someone?

22 **MR. LUDINGTON:** Yes. Ludington has a
23 question on that last matter of striking Paragraph 2.

24 I would like to comment that this changes
25 that Settlement Agreement that was forwarded to us

1 earlier.

2 **COMMISSIONER JACOBS:** Excuse me,
3 Mr. Ludington. I didn't understand that he struck it.
4 He revised it to remove the statement that you all
5 had -- any implication that you and Mr. Gill and
6 Mr. Devine had agreed to the settlement.

7 **MR. DEVINE:** I agree with that.

8 **MR. LUDINGTON:** The problem with that is
9 that it's now an agreement that has been altered from
10 what we said was the final agreement. I was told 15
11 minutes, 20 minutes ago that the final agreement was
12 in my hands. Now it's not.

13 **COMMISSIONER JACOBS:** Well, it is subject to
14 the revision that you just heard. And if need be,
15 we'll get you a finally worded document that reflects
16 those revisions, but for the moment we'll accept that
17 as an official record, okay?

18 **MR. DEVINE:** Yes.

19 **COMMISSIONER JACOBS:** Thank you. Section
20 XI.

21 **MS. BRUBAKER:** Staff would note that there
22 is one pending motion that's been filed as of
23 September 7th. It's a Motion for Dismissal of
24 Settlement Agreement offered by Mr. Ludington. There
25 are no other motions that have been filed with the

1 Division of Records and Reporting, and we would modify
2 the Pending Motions section to reflect that.

3 **COMMISSIONER JACOBS:** Gentlemen, to
4 reiterate counsel for Staff's statement earlier, while
5 you did fax those in, we do need to get an official
6 copy from you, so if you would, stick one in the mail,
7 to the official records office at the Commission.

8 **MR. GILL:** Chairman, this is Don Gill.

9 I've overnighted my motions to Jennifer
10 Brubaker. She has them in her possession apparently
11 and she says they have been sent to the wrong address.
12 I would request that Ms. Brubaker forward those to the
13 proper office.

14 **MS. BRUBAKER:** Mr. Gill, I cannot forward a
15 faxed unsigned motion to the Division of Records and
16 Reporting. We will need a signed copy to be mailed --
17 if you want to mail it to me --

18 (Simultaneous conversation.)

19 **COMMISSIONER JACOBS:** Excuse me. Excuse me.

20 **MR. GILL:** I have a receipt that you
21 received them.

22 **COMMISSIONER JACOBS:** Mr. Gill, I understood
23 you to say that you did an overnight?

24 **MR. GILL:** Yes. It cost me \$11.70-80 cents.
25 And I have a receipt saying that it was mailed and it

1 was received.

2 **COMMISSIONER JACOBS:** Now, was that an
3 official copy -- was a copy of the fax?

4 **MR. GILL:** That was a signed copy. That
5 was. The fax was a copy of the original.

6 **COMMISSIONER JACOBS:** Staff is indicating to
7 me that that has not been received.

8 **MS. BRUBAKER:** I've not yet received the
9 motion. However it would probably go to our mail room
10 first, which accounts for the discrepancy. I will
11 look for it today. If I have received it, I will be
12 happy to forward it to the Division of Records and
13 Reporting.

14 **MR. GILL:** And I also sent you a copy of the
15 First Motion to Dismiss by first class mail, and
16 apparently I also sent that to the wrong party. That
17 I should only send you a copy and the original to the
18 Office of Records. I would respectfully request that
19 you forward that to the proper office.

20 **MS. BRUBAKER:** Yes, I will. That's our
21 operating procedure.

22 **MR. GILL:** So that will be filed. Because
23 as of this moment, I understand the only one on file
24 is Mr. Ludington's motion.

25 **COMMISSIONER JACOBS:** I think we've resolved

1 that.

2 **MR. DEVINE:** Excuse me. Mr. Devine here.

3 May I ask, Mr. Gill, who signed for that
4 package in Tallahassee?

5 **MR. GILL:** I'm looking for the postal
6 receipt that was mailed.

7 **MR. DEVINE:** That's fine. I don't want to
8 hold up the meeting then.

9 **MR. FRIEDMAN:** This is Marty Friedman.
10 I just want to make sure that everybody
11 understands they have an obligation to at least send
12 me copy of whatever they file with Records and
13 Reporting because I have not gotten anything other
14 than one motion by fax on Monday.

15 **MR. GILL:** It was also faxed to your office.
16 The fax was received by the other offices. I don't
17 see what's the problem. But I will refax them to you.

18 **COMMISSIONER JACOBS:** That's the one you
19 got.

20 **MR. FRIEDMAN:** I don't have it in front of
21 me so I don't know which one. I got a motion faxed to
22 me Monday, but I've only got one.

23 **COMMISSIONER JACOBS:** Right. As I
24 understood it, Mr. Ludington had not sent by mail, he
25 only did the fax; is that correct?

1 **MR. LUDINGTON:** No. Mr. Ludington sent by
2 certified overnight mail on September 3rd.

3 **MS. BRUBAKER:** Mr. Ludington's motion has
4 been received. It has been filed with the Division of
5 Records and Reporting. Staff forwarded that motion to
6 that division. Mr. Gill has represented that he has
7 mailed his motion to me. I will look for it. And if
8 I have received it, I will be happy to file it with
9 the Division of Records and Reporting.

10 **COMMISSIONER JACOBS:** Mr. Ludington, counsel
11 for the Utility has requested you fax him a copy of
12 your motion. Could I allow you guys to get together?

13 **MR. LUDINGTON:** I sent my motion to him by
14 regular postal service on September the 3rd. I would
15 suspect you'd have it by now.

16 **COMMISSIONER JACOBS:** When did you mail
17 that?

18 **MR. LUDINGTON:** September the 3rd.

19 **MR. FRIEDMAN:** Friday.

20 **COMMISSIONER JACOBS:** We'll note that for
21 the record. Okay. That sounds like that would take
22 care of --

23 **MR. LUDINGTON:** Mr. Commissioner, Ludington.
24 Would it be possible for Mr. Friedman,
25 counsel for North Fort Myers Utility, to obtain a copy

1 of that from Jennifer Brubaker?

2 **COMMISSIONER JACOBS:** We'll accept that you
3 but it in the mail, and if not, we can work that out.

4 **MR. LUDINGTON:** All right, thank you.

5 **COMMISSIONER JACOBS:** Okay. That takes care
6 of pending motions.

7 **MS. BRUBAKER:** Just one more matter. Just a
8 note. It's not with regard specifically to the
9 Prehearing Order, Commissioner. I would like to note
10 that the facility that the hearing will be held at
11 does not allow telephone participation. We will
12 possibly be able to cover the hearing broadcast of it
13 on the Internet. However, you cannot participate via
14 Internet. So that all parties who intend to
15 participate in the hearing must be present at the
16 hearing.

17 **COMMISSIONER JACOBS:** As I understand that,
18 Mr. Ludington, you're planning on coming down?

19 **MR. LUDINGTON:** Yes. I'll be leaving I hope
20 tomorrow morning.

21 **MR. GILL:** This is Mr. Gill. I will be
22 leaving the day after.

23 **COMMISSIONER JACOBS:** Okay. Very well.

24 **MR. DEVINE:** Thank you, Commissioners.

25 **COMMISSIONER JACOBS:** Any other matters to

1 come before the Commission today?

2 **MR. LUDINGTON:** Ludington has a question.

3 **COMMISSIONER JACOBS:** Yes.

4 **MR. LUDINGTON:** I receive a facsimile from
5 Jennifer F. Brubaker, senior attorney, dated September
6 3rd, '99. And in that fax there was a recommendation
7 that she made that an alteration be made to Paragraph
8 5 in that recommendation. Has that been dropped? Are
9 we not going to discuss that here today? This was a
10 modification she was recommending to the Settlement
11 Agreement.

12 **MS. BRUBAKER:** May I, Commissioner?

13 **COMMISSIONER JACOBS:** Yes.

14 **MS. BRUBAKER:** I think that would be a
15 matter appropriately taken up at the hearing itself
16 since that's when the Settlement Agreement will be
17 discussed.

18 **COMMISSIONER JACOBS:** So what I'm hearing,
19 Mr. Ludington, is that yes, there is a prospect that a
20 modification is being considered. If that -- if the
21 parties agree that that should be incorporated, there
22 will be an officially revised -- as I indicated to you
23 earlier -- that you could do a revised copy. If that
24 is incorporated, then there will be a revised copy of
25 that at the hearing and you will have access to that.

1 **MR. LUDINGTON:** I would just remind the
2 Commissioner that Madam Brubaker stated her position
3 about ten minutes ago on this and she said she had no
4 changes.

5 **MS. BRUBAKER:** That's correct. Actually, we
6 were just discussing I will need to make that revision
7 to Staff's position on Issue 1, that Staff believes
8 the Settlement Agreement should be approved, however,
9 as modified pursuant to what we had discussed in the
10 recommendation. I will be happy to get that final
11 language by today.

12 **COMMISSIONER JACOBS:** Okay. Mr. Ludington,
13 do you understand now?

14 **MR. LUDINGTON:** I hope so.

15 **COMMISSIONER JACOBS:** Let me make sure I'll
16 restate it for.

17 **MR. LUDINGTON:** What a slippery slope we're
18 on here.

19 **COMMISSIONER JACOBS:** You've correctly
20 identified a proposed modification that Staff has
21 offered. Let me make sure you understand. It has not
22 been adopted into the settlement offer. So what is on
23 the table is the same as you have in your hand now.
24 There will be -- I take it that there will be further
25 discussion between now and the time of hearing. And

1 if it is decided that this new proposal should be
2 adopted into the settlement, then at the time of
3 hearing the Commission and you will give notice of
4 that, and we will have then a new revised copy of the
5 settlement. But as of today, and as it stands
6 officially with the offices of the Commission, the
7 records of the Commission as I should say, the copy
8 that you have is the official offer of settlement.

9 **MR. LUDINGTON:** Thank you.

10 **MR. DEVINE:** Thank you.

11 **COMMISSIONER JACOBS:** Okay. Any other
12 matters to come before the Commission today? Yes,
13 Mr. Shreve.

14 **MR. SHREVE:** Jack Shreve. Just so we're all
15 clear, anything, any changes that come forward would
16 be from the Commissioners at that hearing, and should
17 all of the issues not be finalized, primarily the
18 settlement issues, then everyone would back off, there
19 would be a future hearing set, and everyone at that
20 point would bring the witnesses. It's not necessary
21 to bring the witnesses in for the issues as they stand
22 in the Prehearing Order.

23 **COMMISSIONER JACOBS:** Understood.

24 **MS. BRUBAKER:** Staff agrees.

25 **MR. LUDINGTON:** Thank you, Mr. Commissioner.

1 **COMMISSIONER JACOBS:** Thank you. Prehearing
2 is adjourned.

3 (Thereupon, the hearing concluded at
4 11:17 a.m.)

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1 STATE OF FLORIDA)

CERTIFICATE OF REPORTER

2 COUNTY OF LEON)

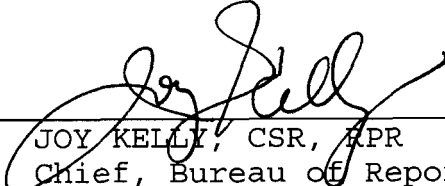
3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing
6 Conference in Docket No. 981781-SU was heard by the
7 Prehearing Officer at the time and place herein
8 stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed by me; and that this transcript,
12 consisting pages 76 through 139, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 9th day of September, 1999.

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