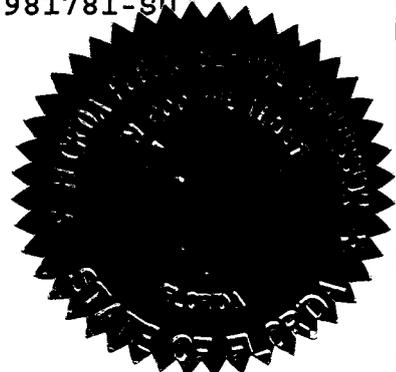


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of
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.

DOCKET NO. 981781-SW



*
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PROCEEDINGS: AGENDA CONFERENCE, ITEM NO. 38

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS, JR.

DATE: Tuesday, September 7, 1999

TIME: Commenced at 1:30 p.m.
Concluded at 2:35 p.m.

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

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

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1 **APPEARANCES:**

2 **MARTIN S. FRIEDMAN**, appearing on behalf of
3 **North Fort Myers Utility, Inc.**

4 **JACK SHREVE** and **STEVE REILLY**, appearing on
5 behalf of the **Citizens of the State of Florida.**

6 **JENNIFER BRUBAKER, ROSANNE GERVASI** and
7 **SAMANTHA CIBULA**, appearing on behalf of the **Commission**
8 **Staff.**

9 **BILLIE MESSER** and **RICK REDEMANN**, FPSC Division of Water
10 and Wastewater.

11 **RONALD LUDINGTON**, appearing telephonically.

12 **JOSEPH DEVINE**, appearing telephonically.

13 **DONALD GILL**, appearing telephonically.

14 **TOM GAYLORD**, appearing telephonically.

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P R O C E E D I N G S

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

COMMISSIONER DEASON: We're now on Item 38.

UNIDENTIFIED SPEAKER: Yes. Hello. Hello?

COMMISSIONER DEASON: Can you hear me?

UNIDENTIFIED SPEAKER: Yes, I can hear you.

I believe one party is missing yet, though.

COMMISSIONER DEASON: Okay. We're just beginning Item 38. Our Staff will introduce this matter. We may hear some opening comments. And in an appropriate time, we'll ask you to provide your comments and to identify yourself at that time. But right now our Staff is going to introduce the item to the Commission.

MS. BRUBAKER: Commissioners, Item 38 is Staff's recommendation that the Commission approve the stipulation between North Fort Myers Utility and the Office of Public Counsel as modified in Staff's recommendation with respect to two sections of that stipulation. Marty Friedman is here to speak on behalf of North Fort Myers. Steve Reilly, for Public Counsel. And I believe there are three pro se customers: Mr. Ludington, Mr. Gill, and Mr. Devine who are also parties to this docket, who intend to participate by telephone.

1 Staff would like to bring to the
2 Commission's attention that subsequent to the filing
3 of this recommendation, Legal Staff received late on
4 September 3rd a Motion for Dismissal of Settlement
5 Agreement which was filed by Mr. Ludington.

6 **COMMISSIONER DEASON:** I'm sorry. Say that
7 again. The door slammed. I didn't hear you.

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

9 Late on September 3rd a Motion for Dismissal
10 of Settlement Agreement signed by Mr. Ludington was
11 received by Legal Staff late on September 3rd. Staff
12 has since filed Mr. Ludington's motion with the
13 Division of Records and Reporting.

14 On September 6th, Monday, Mr. Gill faxed a
15 document to Staff captioned as a Motion to Strike
16 Settlement Agreement, and copies of both of these
17 documents have been distributed to the panel for your
18 reference.

19 **COMMISSIONER DEASON:** Let me ask a question
20 at this point.

21 **UNIDENTIFIED SPEAKER:** Hello. I was --

22 **COMMISSIONER DEASON:** I'm sorry, I'm still
23 talking to Staff.

24 We have a Motion to Dismiss and a Motion to
25 Strike; is that correct?

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

2 **COMMISSIONER DEASON:** Okay. Do the parties
3 have a opportunity to respond to these motions?

4 **MS. BRUBAKER:** Given that the recommendation
5 itself was filed by two o'clock on Friday the 3rd, the
6 Motion to Strike the Settlement Agreement, which was
7 faxed to Staff yesterday, deals with that
8 recommendation. Given the holiday, it was just
9 received, I believe, by the parties today, Tuesday
10 morning. So I don't believe a significant time has
11 been allowed to respond to say. Also, the Motion to
12 Dismiss Settlement Agreement, which appears to be in
13 essence a Motion to Strike the Settlement Agreement,
14 was received by Staff late on Friday, September the
15 3rd. So, once again, I don't think a significant
16 amount of time has passed to allow the parties to
17 address this.

18 **COMMISSIONER DEASON:** I'm just trying to
19 understand where we are. Do we need to defer this
20 whole matter to allow parties time to respond to these
21 before we take this matter up today?

22 **MS. BRUBAKER:** Staff has no objection in and
23 of itself. However, I believe, the parties may wish
24 to address the continuance of the matter.

25 **COMMISSIONER DEASON:** Mr. Friedman, I'm

1 going to allow you to --

2 **MR. FRIEDMAN:** Just don't --

3 **COMMISSIONER DEASON:** -- where we are
4 procedurally with this matter with the fact that these
5 motions have just been filed within the last few days.

6 **MR. FRIEDMAN:** I would suggest they are
7 untimely. Although if the parties want to argue it
8 today -- I haven't seen two of them, but I'm sure I
9 could wing it and respond to them.

10 My problem is certainly that we've got a
11 hearing date next week, and worst comes to worst,
12 we're ready to go to hearing next week. And nothing
13 should delay that action except for this Commission to
14 take an action on the Staff's recommendation today.
15 And obviously I have further comments on the merits
16 of -- and substantive arguments. But as far as
17 procedurally, that's where our position is, that
18 continuing this is not an acceptable alternative.
19 Thank you.

20 **COMMISSIONER DEASON:** Mr. Reilly.

21 **MR. REILLY:** Nothing.

22 **COMMISSIONER DEASON:** Mr. Shreve.

23 **MR. SHREVE:** Mr. Chairman, this has turned
24 out to be a very unusual situation. We have one group
25 representing to the Office of Public Counsel that they

1 have a very clear majority of the customers. We have
2 another group representing the fact that -- to the
3 Public Counsel at this point -- and probably to others
4 too -- that there's not a majority of the customers
5 down there. This is the first time I've run into this
6 type of situation. We'll just go ahead and see what
7 everybody has to say on it.

8 **COMMISSIONER DEASON:** Well, I guess the
9 problem that I have is that I have been presented two
10 motions. I've seen them for the first time about two
11 minutes ago and I'm expected to do something with them
12 today. I say no, I can't do that. You can't expect
13 to stick this in front of the noses of the
14 Commissioners two minutes before an agenda item starts
15 and expect us to read this and make a determination,
16 even if this is before us correctly because the
17 parties haven't had an opportunity to respond.

18 I know there's a hearing next week and that
19 we do have a proposed settlement. I need a
20 recommendation as where we are procedurally and how
21 we're going to go forward with this. If I'm going to
22 be asked to make a decision on these, I say I'm sorry,
23 I can't do it. If there's -- -- we can come back
24 sometime later today, after Internal Affairs or some
25 time, to read these and make a decision. But just

1 giving this to us does not mean then that we
2 understand and comprehend it and can make a decision
3 on it.

4 **COMMISSIONER JACOBS:** If I may, Commissioner
5 Deason. We had a prehearing conference in this docket
6 last week, and at that time we entertained motions
7 from the parties. And at that time, as Prehearing
8 Officer, I ruled on those motions.

9 Today the effort was, as I understood it,
10 for the parties to have discussions, further
11 discussions; that the homeowners who had concerns
12 outstanding, to have further discussions to see if
13 they could come in agreement with the settlement. At
14 that time the Utility and Public Counsel had come to
15 an agreement on a settlement offer and it was my
16 understanding that the majority, as represented to
17 Mr. Shreve, of homeowners had come into agreement on
18 that. However, the parties -- Mr. Gill, Mr. Devine
19 and Mr. Ludington had expressed their objections to
20 the settlement offer that was outstanding. That it
21 was unclear at that time if they were the only
22 homeowners that objected to the settlement offer. But
23 it was clear from the statement of the president of
24 the homeowners association that the vast majority of
25 the homeowners there -- as he could represent had

1 signed off on that. So the attempt today was to see
2 if these three gentlemen could come to an agreement on
3 this settlement offer. And as indicated by these
4 documents, it appears that these three gentlemen have
5 not. So it is -- it is to your discretion as to
6 whether or not to take these motions up today.

7 I can tell you that the motions that we
8 looked at at the prehearing conference were
9 substantially similar, although not exactly, to these.
10 They raised issues specifically regarding a settlement
11 offer that were not dealt with there. However, the
12 essence of those motions was that because they hadn't
13 had enough time to look to the main body of the
14 homeowners, and to look to the main body of the
15 contractual agreements, that they weren't prepared to
16 sign off on that agreement. I indicated to them at
17 that time that the Commission, if it so chose, could
18 take that settlement offer, consider it and choose to
19 approve it or not in the face of their objections, and
20 I assume these are their motions again on that note.

21 **MR. SHREVE:** Commissioner, we represented to
22 you that we would have a conference call, and we did,
23 with the three customers; had a lengthy one. And
24 there is no agreement with the three intervenors.

25 **COMMISSIONER DEASON:** Staff, I need to know

1 what we need to do at this point. Do we need to
2 proceed?

3 **UNIDENTIFIED SPEAKER:** Hello?

4 **COMMISSIONER DEASON:** Do we need to
5 temporarily pass this matter? Do we need to defer it
6 and just go to hearing? What do we do?

7 **UNIDENTIFIED SPEAKER:** I cannot hear the
8 remarks. Could you speak louder, please?

9 **COMMISSIONER DEASON:** I'm asking Staff where
10 we are procedurally. Given the fact that we've gotten
11 these motions within the last few days, how do we
12 proceed.

13 **MS. GERVASI:** The parties under the rule
14 have seven days in which to respond to these motions.
15 I'm not even clear on whether or not both of them have
16 been filed yet. We're here today on the
17 recommendation that has been filed. And I think that
18 we can certainly move forward with a decision on that
19 recommendation.

20 If you approve the recommendation, we're
21 recommending that it be issued as a Proposed Agency
22 Action. The pro se litigants can protest that
23 decision if they disagree with it and they can make
24 any kind of arguments in their petition that might
25 mirror what is in their motions that they may or may

1 not have filed, but I don't think that the time is
2 ripe right now to rule on those.

3 **COMMISSIONER DEASON:** So I can disregard
4 these because they're not in front of us.

5 **MS. GERVASI:** Yes, sir, I think that's true.
6 If they are, the response time has not run.

7 **COMMISSIONER DEASON:** Okay. At this point
8 we need -- is Staff finished introducing the matter?
9 Go ahead.

10 **MS. BRUBAKER:** Perhaps it would be
11 appropriate to simply have each party announce
12 themselves. Who is present on the telephone, please?

13 **MR. LUDINGTON:** Ronald Ludington.

14 **MR. GILL:** Donald Gill.

15 **MR. DEVINE:** And Joe Devine.

16 **COMMISSIONER DEASON:** We have Mr. Ludington
17 and Mr. Devine.

18 **MR. GILL:** And Gill.

19 **COMMISSIONER DEASON:** And Mr. Gill. Okay.

20 **MR. GAYLORD:** This is Tom Gaylord, president
21 of the Buccaneer Homeowners Association.

22 **COMMISSIONER DEASON:** I'm sorry. Could you
23 repeat that?

24 **MR. GAYLORD:** This is Tom Gaylord, president
25 of the Buccaneer Homeowners Association.

1 **MR. LUDINGTON:** Incorporated.

2 **COMMISSIONER DEASON:** Tom Gaylord.

3 Mr. Friedman, I'm going to let you go first
4 on this matter.

5 **MR. FRIEDMAN:** Thank you, Commissioners.

6 My name is Martin Friedman of the law firm
7 of Rose, Sundstrom & Bentley. Our firm represents
8 North Fort Myers in this proceeding.

9 We generally concur in the Staff's
10 recommendation with several points. One is that we
11 would suggest, and believe it appropriate, that the
12 Commission issue the Order as Final Agency Action
13 instead of Proposed Agency Action, and I'll explain to
14 you the reasons for that recommendation.

15 Although the Public Counsel intervened in
16 this case, Mr. Gill, Mr. Ludington and Mr. Devine
17 chose to proceed on their own and represent
18 themselves. In doing so, they're under the same
19 obligation as the rest of us parties are. Mr. Gill,
20 Mr. Ludington and Mr. Devine have failed to file any
21 prefiled testimony; they failed to file any exhibits;
22 they failed to file any prehearing statement. They
23 didn't even file a written document saying "We adopt
24 the prefiled testimony exhibit and/or Prehearing
25 Statement that was filed by the Public Counsel," which

1 you see sometimes done when we have parties who are
2 coattailing Public Counsel.

3 And what they've done is now the Public
4 Counsel exerts its time and energy in negotiating a
5 settlement, and we have three individuals who did
6 absolutely nothing for the nine months this case has
7 been -- or eight months this case has been pending and
8 now want to blow up the Settlement Agreement.

9 By issuing the PAA order, as is recommended
10 by the Staff instead of its Final Agency Action as we
11 would recommend, you're allowing these three gentlemen
12 to be able to protest a second time and require North
13 Fort Myers Utility to incur substantial legal
14 expenses, which it has already incurred one time in
15 defending the proceeding thus far.

16 These people have had their due process.
17 They've chosen not to take advantage of the
18 opportunities that the proceeding affords them to
19 assert their position appropriately, and they are not
20 allowed to any more due process. They are not allowed
21 to have unlimited due process and we think they've
22 gotten theirs.

23 If the Commission does decide to go forward
24 with issuance of a PAA order as recommended by the
25 Staff, I have two requests: The first is that the

1 Commission direct the Staff to expedite the issuance
2 of the order so that it's issued earlier than the 21
3 days that the current policy allows in the issuance of
4 an order, and also in that case to expedite any final
5 hearing.

6 This case has been around since early
7 December of last year, and my experience with current
8 hearing schedules with the Commissioners puts a likely
9 hearing in the spring or early summer of next year,
10 and I would request that that be expedited because
11 that lengthy time is unacceptable.

12 The Staff also proposes that North Fort
13 Myers not begin to charge the rates until the Staff
14 approves the security. And I want to make sure I
15 understand what that means.

16 The Settlement Agreement allows North Fort
17 Myers to begin charging effective for service rendered
18 September 1. And that means that North Fort Myers
19 wouldn't be billing that until the first week or so in
20 October; wouldn't begin collecting until the end of
21 October. What I want to make sure is what the order
22 means is that we cannot physically collect money until
23 we have provided adequate security for a refund and
24 not that we cannot start accruing it effective
25 September 1st, as is the agreement with Public

1 Counsel.

2 Does that not make sense, Commissioner
3 Clark?

4 **COMMISSIONER CLARK:** It does to me.

5 **MR. FRIEDMAN:** You were looking at me like I
6 wasn't getting through.

7 **COMMISSIONER CLARK:** Yes. Before you could
8 accept the money, you would have to have your bond.

9 **MR. FRIEDMAN:** And I think the Staff may
10 agree with me, it's just that I thought it was unclear
11 as to when do we begin the effective date of when the
12 rate would be effective; not when we start collecting
13 money. We certainly would expect to have security
14 before we collected any money.

15 And if the Commission does not agree to
16 accept the settlement offer, then I do have some
17 additional comments and concerns about that issue that
18 I'd like to reserve for a later time, if I might.

19 **COMMISSIONER DEASON:** Thank you.

20 Mr. Reilly. Mr. Shreve?

21 **MR. SHREVE:** Commissioner, if we could, I
22 think, since we have both sides of the customer group
23 speaking and on the telephone it would be interesting
24 to hear from both of them, if that's permissible.

25 I want to make it very clear there is a

1 Circuit Court pending. This settlement was set up in
2 a way that it would not interfere with that case at
3 all, with the exception there is one win on connection
4 charges for the customers that would then be taken out
5 of that case, but that would go the customers' way.
6 Beyond that if you could hear from the two different
7 groups, we would appreciate it.

8 **COMMISSIONER DEASON:** Very well.
9 Mr. Ludington.

10 **MR. LUDINGTON:** First of all, the
11 information that I have pertaining to the PSC Staff
12 motion is very confusing. They keep referring to a
13 "stipulation."

14 I have never received any information on a
15 stipulation. I've received a copy of a Settlement
16 Agreement, but then the word "stipulation" keeps
17 popping up in it and I have no idea what they are
18 talking about.

19 **MS. BRUBAKER:** As a matter of clarification,
20 sir, the two terms are meant to be used
21 interchangeably. The "stipulation" means the same
22 thing as the "settlement agreement."

23 **MR. LUDINGTON:** In the agreement in -- the
24 word "settlement agreement" appears somewhere and in
25 other areas the word "stipulation" appears. If they

1 mean the same thing, it's done nothing but confuse it
2 in my mind.

3 **MS. BRUBAKER:** I apologize for any confusion
4 that may have caused you.

5 **MR. LUDINGTON:** So the gist of the agreement
6 is that North Fort Myers Utility will be allowed to
7 service the Buccaneer facility effective September
8 1st, 1999, and the customers, the residents of
9 Buccaneer, will be billed on a water meter reading
10 schedule, and they will start paying the money when
11 they are billed and the money will be held in some
12 type of an escrow account. But my argument against
13 the whole thing is that you are billing the wrong
14 people in this case. It should be the park owners,
15 not the homeowners that should be billed and we'll
16 fight that until the cows come home.

17 **COMMISSIONER DEASON:** Mr. Ludington, let me
18 ask you a question.

19 **MR. LUDINGTON:** Who is speaking, please?

20 **COMMISSIONER DEASON:** This is Commissioner
21 Deason.

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

23 **COMMISSIONER DEASON:** There is a court case
24 pending; is that correct? And that allegation is
25 being pursued in that venue?

1 **MR. LUDINGTON:** That is correct.

2 **COMMISSIONER DEASON:** Do you agree that
3 that's not within our jurisdiction?

4 **MR. LUDINGTON:** I agree with you and my
5 determination takes it out of your jurisdiction, but
6 it also colors any answers that you have to this
7 question with the wrong color, as far as I'm
8 concerned.

9 **COMMISSIONER DEASON:** Okay. Please proceed.

10 **MR. LUDINGTON:** Hello?

11 **COMMISSIONER DEASON:** Yes, please proceed.

12 **MR. LUDINGTON:** I just cannot believe that
13 you can make a just decision on this matter until such
14 time as the other court renders a decision on the
15 matter pending before that.

16 You have police powers under the statutes of
17 the state of Florida, but the same police powers would
18 give you the ability to direct the billing for this
19 service to the homeowners as well as to the park
20 owners. So in my mind I can't determine whether your
21 answers are going to be right or they're going to be
22 wrong. Thank you.

23 **COMMISSIONER DEASON:** Mr. Gill.

24 **MR. GILL:** First, there's a constant
25 complaint about Devine, Ludington and myself not

1 filing papers for nine months. That is not true.

2 I have adopted the Public Counsel's
3 position, and the only one I missed was the last one.
4 And that's why we put in our motion for a continuance,
5 because Mr. Ludington and myself are approximately
6 1500 miles away from Fort Myers, or Florida. We do
7 not have ready access to the Florida Statutes. We
8 can't look up any case cites. We're at a distinct
9 disadvantage and we ask that this hearing be continued
10 until all of the residents in the park are present.
11 As a matter of fact, I've done extensive research
12 trying to get the Public Commission's rules and
13 regulations. To date, I haven't been able to find
14 those either in the law library in Fort Myers or
15 anywhere else. So when people complain about pro se
16 persons not doing things timely, it would be of great
17 assistance to us if we were given the proper time and
18 location so we could research this.

19 Mr. Ludington has an unique situation in
20 which he is a Canadian national and he has limited
21 time to spend in the United States. And as far as
22 this present hearing to approve -- to allow rates,
23 you're going to be allowing rates to a party who has,
24 as of yet, been approved for an extension of a
25 territory. So in essence you're approving rates to a

1 party who has no approval for what they are looking
2 for. And essentially that is my position at the
3 moment.

4 **COMMISSIONER DEASON:** Let me ask Staff a
5 question at this point. I thought the settlement
6 addresses the question of the territory? Is that
7 correct?

8 **MR. REDEMANN:** We would have to come back to
9 the agenda to approve the territory, so . . .

10 **COMMISSIONER DEASON:** The settlement
11 recognizes that the -- that matter would have to be
12 resolved and that it would be resolved; is that
13 correct? I'm trying to understand. We're not
14 authorizing rates in a area where we don't expect to
15 address what their appropriate territory is; is that
16 correct?

17 **MS. MESSER:** That's correct.

18 **COMMISSIONER DEASON:** Okay. Mr. Devine.

19 **MR. DEVINE:** Yes, Mr. Chairman. I would ask
20 that you and the other board members thoroughly
21 familiarize yourself with both motions that were sent
22 in in the last five or six days. That sums up my
23 position. And I think if you read it carefully and
24 you understand what we're asking for, it's nothing
25 more than to put this on hold until all, or as many of

1 the homeowners can be present in this park,
2 subsequently to have a vote per home as to whether
3 they agree or disagree. And I feel that a small
4 representation that comes to you and says "We
5 represent the majority" is not correct. And my
6 position is out of the 971 homes, there should be 971
7 ballots with a yes or no for each home and we proceed
8 after the vote is taken.

9 But I would ask you -- all three of you
10 again, please take the time to read those motions and
11 familiarize yourself with them. Thank you.

12 **COMMISSIONER DEASON:** Mr. Gaylord?

13 **MR. GAYLORD:** Thank you. A couple items I
14 wanted to address in their Motion to Strike the
15 Settlement Agreement.

16 Number one, they mention on Item No. 3,
17 "With the exclusion of the Devine, Ludington and Gill
18 the interests of the majority of the Buccaneer
19 Homeowners Association have not, and are not,
20 represented in this matter.

21 I would like to remind them that back in
22 November of '98 we had not 710 people, we had 710
23 homes out of 970, which is certainly a majority under
24 367 and 723. We also, because the people were up
25 north, held an emergency meeting on this agreement,

1 and even with everybody up north we had over 300
2 people in attendance. I think the exact figure was
3 320. We had a total of "ayes" 294, and the ballots
4 were seven nos and six no-votes. I think that tells
5 the Commission and tells us that we know what we want
6 and we know what is fair. We want to settle this
7 business and get on with our lives. He says here in
8 Item No. 4, "The majority of the residents of
9 Buccaneer Estates have proceeded in this matter given
10 the mistaken belief that the Office of Public Counsel
11 is representing them in the capacity as counsel for
12 the Buccaneer Homeowners Association." That's just
13 what the law allows and that's just what the Public
14 Counsel is doing for us. I can't make anything any
15 clearer. I really still don't know why the three are
16 objecting to this. Thank you.

17 **COMMISSIONER DEASON:** Thank you.

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

19 **COMMISSIONER DEASON:** Who is speaking. .

20 **MR. DEVINE:** Mr. Divine. The people a year
21 ago who signed that were to start the negotiation. I
22 think there's a great difference between negotiating
23 an a settlement.

24 **MR. GAYLORD:** Let me just interrupt for a
25 minute.

1 **COMMISSIONER DEASON:** Excuse me. You have
2 to identify yourself, please.

3 **MR. DEVINE:** Excuse me, may I continue?

4 **COMMISSIONER DEASON:** Wait now. Mr. Devine,
5 I'm going to allow you to continue. Mr. Gaylord, when
6 Mr. Devine is finished and he acknowledges that he's
7 finished, then I'll let you proceed.

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

9 The 700-odd people who signed a year ago
10 wanted the negotiations to start. As I said earlier,
11 the point between negotiation and settlement is a wide
12 disparity, and I think those same 700-odd or 2000, or
13 whoever live in this park, have the right to either
14 say what you have negotiated is something we approve
15 or disapprove of. So we have two different things
16 going on here: A negotiation and a settlement. And I
17 thank you, Mr. Chairman.

18 **COMMISSIONER DEASON:** Thank you.

19 Mr. Gaylord.

20 **MR. GAYLORD:** Thank you.

21 I keep hearing they want to have all of the
22 people up here. Well, if they hold this hearing in
23 September, they are not going to have that many more
24 people here. This is not a full park until at least
25 January. As far as us having permission to represent

1 them, they gave us permission back in November and we
2 have kept them up-to-date with monthly meetings
3 telling them every step of the way what has been going
4 on. They are fully aware of what we are doing.

5 Mr. Chairman, Ludington here. May I speak
6 to that?

7 **COMMISSIONER DEASON:** Yes. Please.

8 **MR. LUDINGTON:** The meeting that was held
9 last November, if I recall correctly, the homeowners
10 were asked if they wanted to pursue this matter
11 against the park owner and we voted to do that. We
12 vote to hire a lawyer to represent us in this matter.
13 Later on during the winter period, the homeowners
14 association approached the membership and asked them
15 if they wanted Public Counsel to get involved with
16 this in one way, shape or another. They presented a
17 document for people to sign. And I'm not sure how
18 many of those people signed the document but I'm sure
19 it was nowhere near majority.

20 So what I'm saying is that the meeting that
21 was called last November was there to raise money. It
22 was there to hire a lawyer to fight the park owner.
23 It had nothing to do with this particular case at all.
24 Thank you.

25 **MR. GAYLORD:** May I rebut that?

1 **COMMISSIONER DEASON:** Is this Mr. Gaylord.

2 **MR. GAYLORD:** Mr. Gaylord.

3 Your contention that the people were not
4 aware is just not true, number one.

5 Number two, our court case in Circuit Court
6 has nothing to do with the sewers. It is a rent
7 problem that we're handling in Circuit Court. And
8 let's keep the record straight, Mr. Ludington.

9 **MR. LUDINGTON:** May I rebut that again?

10 **COMMISSIONER DEASON:** I'm going to allow you
11 to say something and then we're going to draw this to
12 a close. And then the Commissioners will then ask
13 questions and we'll deliberate with the Staff.

14 **MR. LUDINGTON:** I believe if Mr. Gaylord
15 checked his records he'll find out I'm right on this.
16 Thank you very much.

17 **COMMISSIONER DEASON:** Commissioners,
18 questions?

19 **COMMISSIONER CLARK:** I'm not sure. Does
20 Public Counsel take the position we should move
21 forward and take up this matter and proceed as Staff
22 has recommended? Or have you -- have you reconsidered
23 that?

24 **MR. SHREVE:** Commissioner, as you probably
25 can tell, this is the first time we've ever had a

1 situation like this in 21 years that I have been doing
2 this and we have had many, many settlements.

3 It is true that Mr. Gill, Ludington and
4 Devine are parties at this point so you cannot have
5 a --

6 **MR. DEVINE:** Excuse me. Can you speak up,
7 please?

8 **MR. SHREVE:** It is true that Mr. Gill,
9 Ludington and Devine are parties, so they probably
10 cannot have a completed settlement but more or less an
11 offer of settlement at this point.

12 **COMMISSIONER DEASON:** Excuse me. They
13 intervened as parties; is that correct?

14 **MR. SHREVE:** They are parties.

15 **COMMISSIONER DEASON:** Okay.

16 **MR. SHREVE:** There is a definite distinction
17 between the court case and this case and it's the type
18 thing we've run into many times where the Public
19 Service Commission generally in rate cases is in a
20 position to go ahead and set rates where there has
21 been a rent agreement or some type of an agreement
22 between the park owner and the customer. And those
23 have generally been taken care of in Circuit Court
24 even by instructions of this Commission.

25 While the Commission maintains the ability

1 to set those rates, who they are eventually paid for
2 by may be a different story. But there clearly is a
3 difference of opinion, at least here.

4 I don't know if the PAA aspect takes care of
5 Mr. Ludington, Gill and Devine's problems giving them
6 a opportunity for anyone in the park, if they ever all
7 get back together and can make a determination as to
8 where the majority or a unanimous decision on the part
9 of the park is going, or each individual even still
10 have a opportunity to protest the PAA. I don't know
11 if they've considered that part of it. Or perhaps if
12 that is going to be considered, I'm sure you'll
13 discuss it with the Staff so they understand what the
14 situation is on that.

15 When we first got into this case, the
16 exposure to the customers was a \$462 connection fee
17 for each customer. That is taken care of in the
18 settlement and not going to be part of it and also
19 eliminated from the Circuit Court case. That's the
20 only part that was eliminated from that.

21 Plus, the exposure at that time was the
22 rates that are going into effect right now, September
23 1, was the exposure that was there in the beginning.
24 Now it's been nine months and I remember Commissioner
25 Deason has mentioned several times when we have had

1 these before that a final decision is at some point
2 going to have to be made as to who is going to pay
3 during that nine months that the customers -- the
4 Utility has not been paid for that service.

5 In this case, under the settlement, they
6 won't be paying that fee for that nine months. But I
7 think if you're going to discuss either the final
8 order, as Mr. Friedman wants, or if you're going to
9 discuss with the Staff the possibility of a PAA and
10 what the options would be for the customers at that
11 point, I think it would be interesting.

12 **COMMISSIONER DEASON:** Mr. Friedman, let me
13 ask you this: How is it that you believe we have the
14 authority to issue -- if we approve the settlement, to
15 issue that determination as a Final Order?

16 **MR. FRIEDMAN:** Because you're effectively
17 dismissing those individuals because number one they
18 didn't file any -- the Prehearing Order is your
19 standard Prehearing Order. It warns all the parties
20 that if you don't file prehearing testimony, you may
21 be out of luck. If you don't file a prehearing
22 statement, then you're not going to be able to raise
23 any issues. The Prehearing Order is very clear on
24 that. Nobody can misunderstand that, whether they are
25 a lawyer or a layman. These three gentlemen did none

1 of those things. They have done nothing to further
2 their case, and now they want to come in at the
3 eleventh hour and make everybody incur a lot of
4 expense of a trial when they can't do anything at that
5 trial. If we decided we're going to pull all of the
6 witnesses off but one of them and have one witness go
7 up and say, "We did the Settlement Agreement. We
8 think it's fair and reasonable," the case is over
9 with.

10 **COMMISSIONER DEASON:** But don't the parties
11 have the opportunity to cross examine witnesses?

12 **MR. FRIEDMAN:** Sure they will. What I'm
13 saying, Commissioner Deason, is that there is no way
14 that they will be able, without having some evidence
15 themselves, to support the kind of claims they make.
16 And look at the claims they make. Because that bears
17 out that they do not understand. These people are
18 trying to say that by you granting this service area
19 that it violates the constitutional restriction
20 against impairment of contracts. You and I know, and
21 all of Commission knows, that's been litigated time
22 and again, and it's clear that this Commission's
23 jurisdiction can supersede those type of contracts.
24 That's one of the things that these gentlemen are
25 banking on. That's just clearly irrelevant.

1 **COMMISSIONER CLARK:** Let me ask a question.
2 They filed that with no prehearing statement, no
3 testimony, and no exhibits.

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

5 **COMMISSIONER CLARK:** And they were aware of
6 the Order on Procedural -- whatever we sent out, they
7 knew that. And there's no opportunity now for them to
8 do anything prior to the hearing on the 14th and 15th.

9 **MS. BRUBAKER:** That's correct. There's a
10 bench ruling made at the prehearing regarding what
11 matters they could discuss at the hearing. They would
12 be restricted essentially to cross examining the
13 witnesses, exhibits, testimony presented by the
14 parties who timely filed.

15 **COMMISSIONER CLARK:** Well, are they
16 precluded from raising -- have they raised any issues
17 in this case?

18 **MS. BRUBAKER:** I would say no based on the
19 fact that no prehearing statement was filed.
20 Typically, that's how issues are raised. The
21 prehearing statements are taken and consolidated into
22 a Prehearing Order.

23 **COMMISSIONER CLARK:** What does the
24 Prehearing Order say? Do they take a position in the
25 Prehearing Order?

1 **MS. BRUBAKER:** The Prehearing Order has not
2 been drafted contingent upon what the outcome of this
3 item is, the recommendation. It was continued until
4 tomorrow.

5 **COMMISSIONER CLARK:** As I understand it,
6 what Mr. Friedman is saying with respect to the Final
7 Order is that if, as a result of this agreement, the
8 two parties that have filed positions and have filed
9 testimony, they can withdraw all of their testimony
10 and submit only the Settlement Agreement, and that
11 will be all we have. And, therefore, there will be no
12 other basis -- there will be nothing else but to
13 approve the Settlement Agreement and we could do that
14 as a Final Order because there is no -- they have
15 foregone any opportunity to present anything in
16 addition.

17 So we could essentially go to hearing, take
18 up the order, or the settlement, approve it and issue
19 a Final Order.

20 **MR. DEVINE:** A question, please.

21 **COMMISSIONER DEASON:** I'm sorry. Right now
22 that question is addressed to our Staff and it's from
23 Commissioner Clark. And if she wishes to address a
24 matter to you, she will so identify that.

25 **MS. BRUBAKER:** There are some additional

1 procedural concerns such as the customer testimony
2 that is typically taken up at the beginning of a
3 hearing. In addition, although there is some
4 precedent that the failure to timely file things such
5 as testimony, prehearing statements, is grounds for
6 striking the protest of a party. The cases -- and
7 there's only one that I've actually found -- that
8 case, the party was represented by counsel at the
9 time.

10 **COMMISSIONER CLARK:** I guess I only inquire
11 as to that because it seems to me that what Staff is
12 proposing with respect to a PAA is a good middle
13 ground. You know, I think a good argument can be made
14 that we can issue this as a Final Order, but we want
15 to assure that these individuals have the opportunity
16 to protest. And as Mr. Shreve says, there's a
17 possibility that they can meet again and resolve their
18 differences.

19 **MS. BRUBAKER:** If the parties were to
20 present at hearing nothing but testimony that they
21 have stipulated to their issues -- Staff,
22 nevertheless, believes that the pro se customers would
23 be allowed to cross examine on that testimony to the
24 extent they were able.

25 **COMMISSIONER CLARK:** I guess the only thing

1 I'm concerned about is doesn't it make more sense to
2 go ahead and go to hearing in terms of the time it
3 will take to resolve this issue. Should we just go to
4 hearing next week, get it done and be able to issue
5 our order, because if we issue this as a PAA, allow
6 them to protest it and then subsequently file a
7 Recommendation of Final Order.

8 **MR. FRIEDMAN:** Commissioner, we have dwelled
9 on every possible scenario. Mr. Reilly and I have,
10 like I say, really dwelled on all these scenarios.
11 Our only problem with going to hearing is that this
12 procedure, if we do go to the hearing, and we're not
13 going to be able to start collecting the money during
14 the interim. I don't remember when the CASR has this
15 thing finishing up, but if you go to hearing next
16 month, the proposed briefs are probably due two months
17 later -- you know, it's next year before we get this
18 thing resolved. If I --

19 **COMMISSIONER CLARK:** Let me ask this
20 question of the people who have protested. Would they
21 also protest the notion of an interim rate to allow
22 the issue of collecting the fees and holding them in
23 escrow, in effect, so that when it is finally resolved
24 we will know -- the money will be there to pay
25 whomever is entitled to it?

1 **MR. FRIEDMAN:** Ideally --

2 **COMMISSIONER CLARK:** Wait a minute.

3 **MR. FRIEDMAN:** I thought that was a
4 question.

5 **COMMISSIONER CLARK:** No, that was a question
6 to the customers who are appearing pro se.

7 **MR. DEVINE:** This is Devine. I would
8 protest that.

9 **MR. LUDINGTON:** I didn't catch the question
10 clearly. You intent of question is to ask what?

11 **COMMISSIONER CLARK:** My question is would
12 you object to allowing the collection of interim rates
13 for this service pending the outcome of the hearing?

14 **MR. LUDINGTON:** As long as the money is to
15 be collected from the homeowners I would certainly
16 object. If you wanted to collect it from the park
17 owners, I would have no objection whatsoever.

18 **COMMISSIONER JACOBS:** Who was the one that
19 just spoke?

20 **MR. LUDINGTON:** That was Ludington that just
21 spoke.

22 **COMMISSIONER JACOBS:** You don't disagree
23 that a charge will be due. What you're saying is that
24 you think you should pay it in your rent.

25 **MR. LUDINGTON:** That was exactly right. I

1 have a contract that stipulates that.

2 **MR. DEVINE:** This is Devine. I have a
3 contract that stipulates that.

4 **COMMISSIONER JACOBS:** So whether or not --
5 you don't dispute that you should pay a charge.

6 **MR. LUDINGTON:** I don't dispute that
7 somebody should be paying for it, I'm disputing who --
8 or whom -- whatever the proper word is.

9 **COMMISSIONER DEASON:** Okay. Do you agree
10 that that issue is properly before the Court?

11 **MR. LUDINGTON:** I'm not sure whether it's
12 properly before the Court, because being so far away
13 from the situation, my homeowners association has
14 chosen not to advise me in any way, shape or form as
15 to what the status presently is, so I really don't
16 know.

17 **MR. DEVINE:** Is Mr. Gill on line?

18 **MR. GILL:** Yes, I am.

19 **MR. GAYLORD:** This is Tom Gaylord.

20 I'll be happy to advise Mr. Ludington that's
21 what we have been doing for the last three days. He's
22 well aware of -- we're right up to speed on this.

23 **MR. LUDINGTON:** I beg your pardon, sir?
24 You've never talked to me in the last three days.

25 **MR. GILL:** You've never spoken to me in the

1 last three days.

2 **MR. GAYLORD:** I'm talking to you on the
3 telephone, right here --

4 **COMMISSIONER DEASON:** Gentlemen. Gentlemen.
5 I'm sorry. Wait until this hearing is over, then you
6 all can dispute this between yourselves. Okay?

7 **MR. FRIEDMAN:** Commissioner Clark, one of
8 the things that we had talked about, Mr. Reilly and
9 myself, is that putting on the kind of case I just
10 referenced that we would put on, which is basically
11 the customers could come in and talk, although I'm
12 sure you're aware that the customers -- issues they
13 raise must be within the parameters of the prehearing
14 stipulation in order to be something that you can rely
15 on in entering a Final Order -- is that to indulge the
16 panel to -- at the conclusion of the hearing, rule
17 from the bench effectively and expedite the conclusion
18 of this case. That to me would be probably the
19 cleanest way to get this case over with and give
20 everybody all the due process they can stand.

21 **COMMISSIONER DEASON:** Mr. Shreve, do you
22 have a comment about that?

23 **MR. SHREVE:** What I'm beginning to really be
24 concerned about is the hearing and what is going to
25 take place at the hearing considering where we are.

1 Along the lines of what Commissioner Clark
2 was talking about in interim relief, I would not like
3 to see that, although the same type thing would be
4 accomplished with a PAA, I suppose, but would give the
5 customers, Mr. Gill, Mr. Ludington, Mr. Devine and any
6 other customers that might want to protest the PAA, an
7 opportunity to protest it and go to a hearing at that
8 point.

9 **COMMISSIONER DEASON:** Mr. Shreve, it appears
10 fairly obvious that if we issue this as PAA, there's
11 to be a protest. So there's going to be a hearing, it
12 appears, if we go that route.

13 It is suggested -- we have a hearing date
14 set right now. We could go to hearing with the
15 understanding that we're going to rule from the bench
16 either to approve the stipulation or to not approve
17 the stipulation. And if we do not approve the
18 stipulation, then we may have to have some other
19 hearing in the future to explore exactly what we are
20 going to do.

21 **MR. SHREVE:** Basically what you would see
22 happening at the hearing is whether or not to approve
23 the stipulation. And if it wasn't accepted, go from
24 there.

25 **COMMISSIONER DEASON:** Decide where we go

1 from there, to determine if the stipulation is in the
2 public interest. Is that feasible?

3 First of all, let me ask Staff -- and I
4 don't mean to catch you off guard. If you need more
5 time to think about it we'll come back. Is that
6 something that's doable?

7 **MS. GERVASI:** I think it's doable but
8 there's some questions that I guess need to be thought
9 through.

10 Even if at the beginning of the hearing as a
11 preliminary matter you were to approve the
12 stipulation, there would still be the issue of whether
13 the transfer is in the public interest. And there
14 would still be testimony out there that the Utility
15 has filed to show that it, indeed, is in the public
16 interest. And you still have the three pro se
17 litigants who are parties who could still cross
18 examine on the testimony that wouldn't be withdrawn as
19 a result of a stipulation being approved. So there
20 would still be a hearing, I think, on the merits of
21 the application.

22 **COMMISSIONER CLARK:** I guess my thought was
23 that we would go to hearing, we would hear about the
24 stipulation and we'd take the testimony. We would
25 proceed as if this was a -- proposed settlement was

1 never filed. And if we chose we can issue -- we can
2 issue a ruling from the bench. If we decide not to,
3 then it follows the normal course.

4 I'm concerned by doing a PAA that we just
5 prolong this. And we have the hearing dates. Might
6 as well go down there, hear what is submitted as
7 evidence and hear what the protestants have to say,
8 and perhaps make a decision at that time, or just
9 proceed with the case.

10 **MR. LUDINGTON:** Question.

11 **COMMISSIONER DEASON:** Yes. Identify
12 yourself.

13 **MR. LUDINGTON:** Ludington here.

14 I have a question on the stipulation, if you
15 want to call it that, or the Settlement Agreement
16 that's been presented. It appears to me after reading
17 through it that certain areas of this settlement were
18 taken from from a prior case. The information I have
19 in front of me says "If the Utility chooses a bond as
20 security," et cetera et cetera," the Commission
21 approves the rate increase." We're not talking about
22 a rate increase. There's an couple of other areas of
23 the stipulation that are totally wrong. There's a
24 wrong date in it; two or three other things. So if
25 we're talking about the stipulation even going to be

1 brought up, it has to be reworded properly. And we
2 don't have time to do that between now and next week
3 and get it into the hands of all the people who need
4 to see it. So I think the stipulation is poorly
5 worded.

6 **MR. FRIEDMAN:** He was referencing the
7 Staff -- not the stipulation. The issues of escrow
8 would go away. That whole issue would go away once
9 you enter a Final Order hopefully verbally from the
10 bench.

11 **COMMISSIONER CLARK:** Well, it might not go
12 away if we allow the escrow while an appeal may be
13 pending.

14 I would like to know how OPC and the Utility
15 feel about simply proceeding with this case and
16 leaving on the table the offer of settlement.

17 **MR. FRIEDMAN:** Mr. Reilly and I had talked
18 about how to do that. We would restructure our cases
19 to restructure some of our witnesses to zero in on
20 this issue of public interest. If, in fact, we need
21 to deal with public interest, we have a witness to
22 talk about that and along with the stipulation,
23 putting the stipulation in.

24 I think that it could be a very fast
25 proceeding, depending upon how long the public part of

1 the testimony went. I would perceive we could do this
2 with one witness.

3 **COMMISSIONER CLARK:** You know, that's up to
4 you all. But Mr. Chairman, I'm inclined to think we
5 should proceed with the hearing and the settlement or
6 the stipulation can be offered as part of that, and
7 the parties can just decide what they are going to put
8 before us by way of evidence. And put all parties on
9 notice that we may or may not issue a decision from
10 the bench.

11 **COMMISSIONER DEASON:** Mr. Shreve.

12 **MR. SHREVE:** Not directly on point, but the
13 one thing I think is still not clear that I think you
14 tried to clear up is the fact that the Commission is
15 going to set the rates. The Circuit Court is going to
16 decide if there is anything under the contract that
17 would have those rates paid by someone else. That's
18 been done many, many times --

19 **MR. DEVINE:** Excuse me. Could you speak up,
20 please?

21 **MR. SHREVE:** And has been done by customers
22 many, many times. And I think you tried to make that
23 clear but I'm not sure that's really a part. That
24 seems to be probably the biggest holdup in this entire
25 process. And I hope that would be clarified by the

1 attorney for the customers in the Circuit Court case
2 who actually drafted that portion of the settlement.
3 So there's no interference with that court case. You
4 do not have the jurisdiction to say "No, this contract
5 prevails" and the customers don't have to pay it; the
6 park pays it. I just want to make that clear and I
7 think that's one thing that's going to have to be
8 clarified to the customers at some point.

9 **MR. DEVINE:** I didn't quite understand what
10 the gentleman was getting across -- trying to get
11 across.

12 **COMMISSIONER DEASON:** That was Mr. Shreve.
13 He was simply indicating that the Court case is the
14 area where the question will be resolved about who has
15 to pay, but that this Commission has the authority to
16 set the rates. And that the stipulation was in no way
17 intended to interfere with the Court's jurisdiction to
18 make that determination.

19 **MR. LUDINGTON:** Ludington here again.

20 Now I'm questioning what he's saying. In
21 other words, the Commission has the jurisdiction to
22 set the rates. The Commission has the jurisdiction to
23 allow the public utility into the park. But the
24 Commission does not have the authority to direct for
25 these rates to go to; is that what he's saying?

1 **COMMISSIONER CLARK:** I would indicate that
2 that is a legal matter concerning your rental
3 agreement, and yes, that is beyond our jurisdiction to
4 decide. It has to be decided by the Circuit Court.

5 **MR. LUDINGTON:** Ludington here again.

6 We have a hearing coming up on the 14th,
7 15th of this month, and really it appears to me that
8 no matter what happens at the hearing, if the
9 Commission decides to go ahead and allow North Fort
10 Myers Utility into the park, which I really have no
11 objection but -- and also set the rates that will be
12 approved, then the hearing cannot -- the Commission
13 cannot determine who is going to pay these rates. So
14 what would be the point of having a hearing if you
15 can't direct the bills to the proper party until
16 sometime in the future?

17 **COMMISSIONER CLARK:** Well, it's because we
18 can provide for maintaining the status quo so that
19 service is paid for, and then the Circuit Court can
20 decide which party is ultimately responsible and allot
21 the monies accordingly.

22 **MR. LUDINGTON:** Question again, ma'am.

23 Ludington here.

24 You're telling me that you have the right to
25 determine which of the person -- who gets the bill.

1 In that case you have the right to send to it MHC or
2 to the homeowners. What basis do you have to make
3 that decision?

4 **COMMISSIONER CLARK:** I'm not sure I
5 understood what your point was. I think we have the
6 authority to decide what the rates should be and
7 require the Utility to charge those rates. Now, the
8 Court may come in and say it's not appropriate for the
9 customers to pay it, or -- and it's appropriate to
10 collect it from the park based on the rental
11 agreements, or the Court may say no, it's appropriate
12 for the customers to pay.

13 **MR. DEVINE:** This is Mr. Divine.

14 Why don't we put everything on hold until
15 that case is resolved?

16 **COMMISSIONER CLARK:** Because I think it's
17 important now to decide what the rates should be and
18 at least get that part clarified, so that when we do
19 have a decision from the court we can move forward
20 from there and there's not a further delay.

21 **MR. DEVINE:** Mr. Devine.

22 You're saying to me whatever the decision
23 is, that no monies will pass hands until the civil
24 court makes their ruling.

25 **COMMISSIONER CLARK:** No, I didn't say that.

1 **MR. DEVINE:** Oh.

2 **COMMISSIONER CLARK:** Mr. Chairman, I'm
3 inclined to believe that we should go down to North
4 Fort Myers and hold the hearing, and proceed to make a
5 decision in this case in large part because we don't
6 have all of the parties agreeing to the stipulation,
7 and to issue the Proposed Agency Action will put us
8 that much further away from a resolution. And I think
9 we should use the time set aside to hear from the
10 parties.

11 **COMMISSIONER DEASON:** There's a motion. Is
12 there a second?

13 **MS. BRUBAKER:** Beg your pardon. Sorry to
14 interrupt.

15 I just wanted to clarify that this matter is
16 essentially deferred to a decision at hearing. That
17 the prehearing has been continued and will be held
18 tomorrow at 9:30. It's at Room 152 of the Easley
19 Building. And any parties who cannot attend in person
20 and intend to participate must call 850-921-5590 in
21 order to participate. If they need that number again,
22 please call me at my office at my number.

23 **MR. LUDINGTON:** Could you say that again
24 right now?

25 **MS. BRUBAKER:** Certainly. 850-921-5590.

1 **MR. LUDINGTON:** Now, what time is that?

2 **MS. BRUBAKER:** 9:30 a.m. eastern standard
3 time.

4 **MR. LUDINGTON:** Tomorrow.

5 **MS. BRUBAKER:** And that all parties would
6 need to be prepared to give their positions on issues.
7 Excuse me, eastern daylight time.

8 **MR. LUDINGTON:** Mr. Chairman?

9 **COMMISSIONER DEASON:** Yes. Could you
10 identify yourself, please?

11 **MR. LUDINGTON:** This is Ludington here.

12 May I be allowed to offer a proposal by
13 telephone for all parties to listen to and take into
14 consideration?

15 **COMMISSIONER DEASON:** I think that may be
16 appropriate to do tomorrow at the prehearing
17 conference if you plan to participate.

18 **MR. LUDINGTON:** This would affect my
19 decision at the prehearing conference tomorrow. I
20 have a motion in front of the Commission right now,
21 although the Commissioners have not seen it,
22 apparently.

23 **COMMISSIONER JACOBS:** Excuse me, Mr.
24 Ludington. If I could suggest that if you parties
25 want to get on the line at 9:30 we can defer the start

1 to 9:45.

2 **MR. LUDINGTON:** Start the hearing at 9:45
3 but be on at 9:30.

4 **MR. FRIEDMAN:** That's fine.

5 **MR. REILLY:** Yes.

6 **MR. LUDINGTON:** And at that time you'll
7 listen to my proposal?

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

9 **COMMISSIONER DEASON:** That's correct. The
10 Prehearing Officer -- you may wish to discuss it with
11 the parties to begin with before the Prehearing
12 Officer actually comes on the line, but after it's
13 been discussed and it's the appropriate time for the
14 Prehearing Officer to come on and listen to the
15 proposal, I'm sure that he'll be glad to do that.

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

17 **COMMISSIONER DEASON:** We have a motion and a
18 second. I just want to clarify that there is the --
19 we're giving notice that there is the possibility of a
20 bench decision at the hearing that is currently
21 scheduled for the 14th.

22 **MR. LUDINGTON:** Okay.

23 **COMMISSIONER DEASON:** And that's also part
24 of the motion that that possibility exists. There's
25 been a motion and a second, all in favor say "aye".

1 Aye.

2 COMMISSIONER CLARK: Aye.

3 COMMISSIONER JACOBS: Aye.

4 COMMISSIONER DEASON: Show then that the
5 motion carries unanimously.

6 MR. LUDINGTON: Good.

7 COMMISSIONER DEASON: That disposes of Item
8 38.

9 (Thereupon, the hearing concluded at
10 2:35 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

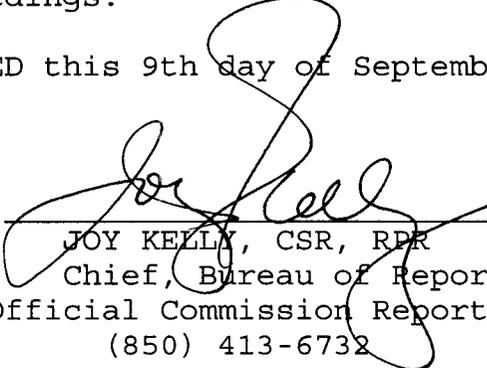
CERTIFICATE OF REPORTER

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

5 DO HEREBY CERTIFY that the Agenda Conference
6 containig Item 38 in Docket No. 981781-SU was heard by
7 the Florida Public Service Commission at the time and
8 place herein stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed; and that this transcript, consisting of
12 48 pages, constitutes a true transcription of my notes
13 of said proceedings.

14 DATED this 9th day of September, 1999.


JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
Official Commission Reporter
(850) 413-6732

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