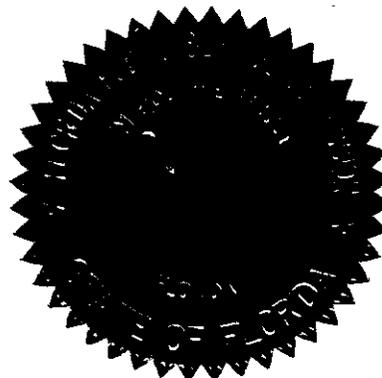


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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



PROCEEDINGS:           **AGENDA CONFERENCE**  
  **ITEM NO. 48**

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

DATE:                     **Tuesday, February 16, 1999**

TIME:                     Commenced at 9:30 a.m.

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

REPORTED BY:            H. RUTHE POTAMI, CSR, RPR  
  Official Commission Reporter

DOCUMENT NUMBER - DATE  
**02035** FEB 23 99  
FPSC-RECORDS/REPORTING

1 **PARTICIPATING:**

2 **LILA JABER and CLEVELAND FERGUSON, FPSC**

3 Division of Legal Services.

4 **BILLY MESSER, FPSC Division of Water &**

5 Wastewater.

6 **MARTY FRIEDMAN, North Fort Myers Utility,**

7 Inc.

8 **STEVE REILLY, Office of Public Counsel.**

9 **RONALD LUDINGTON, pro se, participating**

10 telephonically.

11 **STANLEY DURBIN and JACK COLVIN, customers.**

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1 territory and to grant in part and deny in part North  
2 Fort Myers Utility, Inc.'s emergency motion to  
3 implement rates and charges.

4 And, Commissioners, we do have parties as  
5 well as two customers, Mr. Jack Colvin and Mr. Stanley  
6 Durbin, who will be speaking on behalf of customers  
7 who wish to be represented by the Office of Public  
8 Counsel as well as Mr. Ronald Ludington, who also will  
9 be speaking on behalf of customers who do not wish to  
10 be represented by the Office of Public Counsel.

11 We also do have the utility's representative  
12 and attorney, as well as the Office of Public Counsel.

13 **COMMISSIONER DEASON:** Okay. This is the  
14 utility's application. Should we hear from the  
15 utility first? Mr. Friedman, are you here just to  
16 answer questions or make a --

17 **MR. FRIEDMAN:** No, I'm not. I'm here to  
18 address one particular -- of the issues.

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

20 **MR. FRIEDMAN:** Commissioners, my name is  
21 Martin Friedman of the law firm of Rose, Sundstrom and  
22 Bentley, and we represent North Fort Myers as we have  
23 for about 20 years. And we take strong exception with  
24 the Staff's recommendation on Issue 1, which is that  
25 the Commission issue a show cause order against North

1 Fort Myers.

2 It seems to me in reading the Staff's  
3 recommendation, that they've bought -- swallowed the  
4 Public Counsel's rhetoric hook, line and sinker.

5 Let me give you some background. Back in  
6 1987, North Fort Myers filed an application to amend  
7 its service area to encompass most of North Fort Myers  
8 west of I-75, north of the Caloosahatchee River, and  
9 east of 41; and in doing so, they excluded -- y'all  
10 excluded in that order the other PSC certificated  
11 utilities that already existed in -- that encompassed  
12 that.

13 So basically if you view North Fort Myers,  
14 you have little -- their service area as being a large  
15 area -- you had pockets in here that were the other  
16 PSC certificated utilities and Buccaneer. Buccaneer  
17 was the only pocket in there that was not already a  
18 PSC certificated utility.

19 You'll recall that over the last several  
20 years North Fort Myers has had three applications  
21 where we have gone in and taken over those, and these  
22 are almost all mobile home parks. These little  
23 pockets of customers are mobile home parks.

24 And you'll recall, that over the last couple  
25 of years, North Fort Myers has filed applications and

1 has interconnected at least three of those previously  
2 certificated utilities. We have also taken over a  
3 number of other parks within North Fort Myers' service  
4 area that were previously being served by the park  
5 owner, and thus exempt from PSC jurisdiction, which is  
6 what you have here in Buccaneer.

7           The same situation existed in several other  
8 utilities -- several other mobile home parks, and we  
9 went in and served those. We didn't have to get PSC  
10 approval, because they were already in our service  
11 area.

12           Well, when we began -- one of my partners  
13 and I began negotiation with the owner of the -- the  
14 mobile home park owner at Buccaneer, frankly, we  
15 believed that the service area for that mobile home  
16 park was already in North Fort Myers' service area.  
17 Because they were not separately certificated by the  
18 Commission, frankly, we forgot.

19           Now, apparently the park also didn't recall  
20 that, because the park never -- the park itself who  
21 filed the objection that led to the park being  
22 excluded did not recall that they had done that  
23 either.

24           We filed a copy of the developer agreement  
25 with the Commission as required by the rules, and it

1 wasn't something that was picked up by the Staff  
2 either. Now, whether they're supposed to do that or  
3 not is irrelevant. I'm just telling you what we've  
4 done.

5 I didn't believe that Buccaneer Estates was  
6 within North -- was exempt from North Fort Myers'  
7 service area until Steve Reilly called me one day to  
8 ask me about this situation, and I told Steve that I  
9 thought they were in the service area. He read to me  
10 something that I had filed 11 years ago which seems  
11 that I said, no, we were taking it out of our service  
12 area.

13 And so I think that Steve is probably right,  
14 it was not in our service area; something that I had  
15 just overlooked because it occurred 11 years ago. And  
16 it was kind of an anomaly to what is going on in North  
17 Fort Myers, because it was a non-PSC area, and it was  
18 my belief that all the PSC -- non-PSC areas were  
19 already included in our service area.

20 When Steve brought that to our attention, we  
21 very shortly thereafter filed the application, and  
22 that's what we've got here today.

23 It's clearly an oversight. It wasn't  
24 something we intended to do. There's no reason --  
25 there's no benefit that we got or that we would have

1 gotten by not filing it versus filing it earlier. If  
2 we would have filed this four or five months ago, the  
3 same -- nothing that you're going to hear today from  
4 any of these people, from the customers or from the  
5 Public Counsel, nothing is going to be any different  
6 had we filed this application three months ago.

7           They're going to have the same objections  
8 about, gee, we don't want to get service from North  
9 Fort Myers, and its bottom dollar is because it's  
10 money. The bottom line of this, as it was in those  
11 other cases that y'all have heard, is money. Because  
12 what happens is that under Chapter 723 -- and this is  
13 one of those cases where the legal issues of Chapter  
14 723, which is the mobile home landlord/tenant act, the  
15 jurisdiction, y'all's jurisdiction and that are kind  
16 of intertwined.

17           The issue is that under Chapter 723, a  
18 mobile home park owner can cease providing a service  
19 to their residents, such as sewer service, upon giving  
20 of 90 days' notice, and then the mobile home park  
21 owner is required to reduce the lot rent by some  
22 amount, the pro rata share of what it cost that park  
23 to provide that service. Now, that's an issue that  
24 can be argued about, and that's a Chapter 723 issue  
25 that's not relevant here.

1           But what happens is that the lot rent gets  
2 decreased, and in every situation throughout the state  
3 that I'm aware of, every time the lot rent gets  
4 decreased, it's never decreased the same amount as the  
5 outside utility is going to charge. And that's  
6 wherein lies the problem, but that's a Chapter 723  
7 problem and not a PSC problem.

8           I would point out to you -- you know, you  
9 look at how does the Commission address these sort of  
10 situations where somebody inadvertently serves outside  
11 their service area; you know, what have you all done  
12 in the past.

13           Last year Florida Water -- I mean, Florida  
14 Cities served a customer outside its service area for  
15 10 years before it was discovered. This Commission  
16 declined to issue an order to show cause against  
17 Florida Cities. In 1992 Southern States Utilities  
18 advised the Commission that in 49 of its systems in 13  
19 different counties they were serving customers that  
20 were not within their PSC certificated service areas.

21           What the Commission did in that case was the  
22 Commission gave Southern States two years to file  
23 applications and get that error, or those 49 errors,  
24 corrected. Specifically --

25           **COMMISSIONER CLARK:** Let me ask you a

1 question on Southern States. Were they inherited  
2 errors or were they errors that they had made?

3 **MR. FRIEDMAN:** Well, there were 49 of them.  
4 There was a long explanation --

5 **COMMISSIONER CLARK:** So you don't know?

6 **MR. FRIEDMAN:** Some were -- some of both. I  
7 know --

8 **COMMISSIONER CLARK:** Some of both.

9 **MR. FRIEDMAN:** I think a lot of them were  
10 inherited where they said --

11 **COMMISSIONER CLARK:** Do you know?

12 **MR. FRIEDMAN:** -- we think -- we thought it  
13 was included in that when we bought the system.

14 **COMMISSIONER CLARK:** Do you know whether  
15 they were all inherited, or some of them were  
16 inherited?

17 **MR. FRIEDMAN:** Well, I'd suggest to you not  
18 all 49 of them were inherited, but I've got --

19 **COMMISSIONER CLARK:** Okay.

20 **MR. FRIEDMAN:** -- the order here and I'd be  
21 glad to peruse it for you and advise you in a little  
22 while.

23 Certainly the Florida Cities, I don't  
24 believe, was an inherited problem, and --

25 **MR. LUDINGTON:** Commissioners, is it

1 possible to have Mr. Friedman speak into the  
2 microphone?

3 **MR. FRIEDMAN:** I do that. I just don't talk  
4 as loud as Jack Shreve does.

5 **MR. LUDINGTON:** We cannot hear your  
6 arguments.

7 **COMMISSIONER CLARK:** Mr. Friedman, you don't  
8 need to look at them. I'll find out from Staff  
9 whether they were inherited or --

10 **MR. FRIEDMAN:** All right. Then -- and  
11 Southern States in the next two years did exactly what  
12 you all had asked them to do.

13 Last year the Commission declined to issue  
14 an order to show cause against Rainbow Springs  
15 Utilities, which was serving 579 customers outside of  
16 its service area; just, you know, an oversight.

17 Last year the Commission declined to issue  
18 an order to show cause against Placid Lakes Utilities  
19 for serving 44 customers for 15 years outside of their  
20 service area. It was an oversight.

21 In 1997 the Commission learned that Mad  
22 Hatter Utility was serving outside of its service  
23 area, and it declined to issue an order to show cause  
24 if the utility would file an application to correct  
25 that.

1 Ditto in 1996 regarding Spruce Creek serving  
2 outside its service area. Ditto regarding Sun  
3 Communities in 1996 that was serving outside its  
4 service area. Ditto requiring that -- regarding a  
5 company called Residential Water Systems in 1996 that  
6 was serving outside their service area. The same with  
7 Florida Cities in 1995. It was serving 93 water ERCs  
8 and 61 wastewater ERCs outside its service area. This  
9 Commission declined to issue an order to show cause.  
10 The same with Sebring Ridge in 1995.

11 In 1989 the Staff in a Staff assisted rate  
12 case for Holiday Gardens Utilities discovered that the  
13 utility was serving 44 customers outside its service  
14 area and had been serving those for about 10 years.  
15 Brought that to the utility's attention in that Staff  
16 assisted rate case.

17 In the next Staff assisted rate case two  
18 years later, the Staff discovered the utility still  
19 hadn't corrected its service area to reflect that and  
20 wrote a letter to the utility saying they had to file  
21 an amendment. They filed an amendment and no show  
22 cause was issued. In 1991, the Commission refused to  
23 issue a show cause against Homosassa Utilities for  
24 serving outside its service area.

25 The bottom line is that in the cases that I

1 looked at from 1989 to today, in not one case, not one  
2 single case, did this Commission issue an order to  
3 show cause for a utility serving outside its service  
4 area. The facts and circumstances of this case are no  
5 different.

6 Admittedly, it was an error. I'm telling  
7 you that. It was inadvertent, and it's a mistake that  
8 we corrected as soon as it was brought to our  
9 attention very expeditiously. There's no benefit that  
10 North Fort Myers gained or could have gained by doing  
11 this. It's not like we did something surreptitiously  
12 to beat the competition. North Fort Myers completely  
13 encircles this mobile home park, as it did those other  
14 ones that y'all dealt with in years past.

15 So it's not like -- I mean, from a practical  
16 standpoint, think about it. What would have been the  
17 reason for North Fort Myers to intentionally try to do  
18 this? Absolutely none. It's clear that it was an  
19 error, and in the past, I haven't found one case where  
20 the Commission ordered the show cause to a utility for  
21 making an error.

22 Now, we're not talking about even going to  
23 the next step about answering an order to show cause;  
24 we're talking about the Commission never issued one in  
25 the first place, and we would suggest to you that it's

1 not appropriate to do so in this case.

2 **COMMISSIONER DEASON:** Mr. Reilly?

3 **MR. REILLY:** The citizens do concur with  
4 Staff's recommendation to order the utility to show  
5 cause in writing why it shouldn't be fined.

6 Now, understand, this recommendation does  
7 not recommend that the fine be asserted at this time.  
8 It's just that the facts of this case do warrant  
9 requiring this utility to come before this Commission  
10 and explain how this all came about.

11 And I don't believe the Staff was responding  
12 to the rhetoric of Public Counsel. I believe Staff  
13 was responding to a number of hard copy documents that  
14 evidence a keen awareness of this utility about this  
15 particular park, an awareness this park had  
16 specifically objected to North Fort Myers' extension  
17 of service into the park.

18 As a direct result of that objection, these  
19 record documents reflect that North Fort Myers  
20 actively -- or agreed to delete this particular park  
21 from its service territory. There's some question as  
22 to whether that was artfully done. And even after all  
23 that transpired, a letter was even written by the  
24 utility once again clarifying to Staff, be sure to  
25 delete from our maps of our service territory this

1 particular park, Buccaneer Mobile Estates. So that  
2 the hard copy evidence that relates to this particular  
3 utility is just so focused that I think it  
4 distinguishes itself from these oversights and these  
5 over -- on the part of other utilities.

6 Now, further, the utility suggests there's  
7 no benefit; why would we go ahead and do this. And we  
8 suggest there's a substantial benefit. We feel very  
9 much prejudiced and very much at a disadvantage going  
10 into this hearing, which has been set for September 14  
11 and 15 as to whether it is or is not in the public  
12 interest to dismantle this package treatment plant and  
13 to begin allowing North Fort Myers to serve these  
14 customers.

15 It's a fait accompli. I mean, with them  
16 already going in there and starting to dismantle the  
17 plants before getting approval, before we go through  
18 the process of deciding whether it's in the public  
19 interest, it just creates a momentum in this docket  
20 that is irresistible for the Commission to respond to.

21 Secondly, to say that it has no impact,  
22 that's going to be the thing that I really -- why I'm  
23 here today talking vehemently on this issue of  
24 asserting the rates and charges of North Fort Myers  
25 immediately during the pendency of this case. We feel

1 strongly on that issue, because these customers are  
2 currently paying -- well, according to the park owner  
3 he has evaluated that they're paying about -- that his  
4 costs are about \$6.07 per month to provide wastewater  
5 with the package treatment plant. And the tariffed  
6 rates of North Fort Myers are -- I've got them here --  
7 it's \$10.00 and -- \$10.98 base facility charge, \$3.98  
8 gallonage charge per thousand gallons.

9           Even a minimum 3,000 bill will generate \$16  
10 and -- excuse me -- \$22.92. When you subtract the  
11 \$6.07 from the amount of this minimum bill, you have a  
12 difference of nearly triple the bill on these  
13 customers. And so it's very material, because the  
14 issue -- that's issue one as a show cause issue.

15           But issue two is, they're coming in, they're  
16 saying, because it's an emergency, an emergency  
17 created by North Fort Myers in conjunction with the  
18 park owner to circumvent Chapter 367.045 to come in  
19 there and just start dismantling the plant without  
20 public -- without proper approval from this  
21 Commission.

22           Now they're saying, we want, during the  
23 pendency of this case, to impose our rates and charges  
24 on the customers. Well, in response to this  
25 emergency -- quote, unquote, emergency motion, Staff

1 bifurcated that request and said, well, as to the  
2 connection charge, we are not recommending this  
3 Commission to allow them to begin to try to collect  
4 this from these customers of Buccaneer; and they give  
5 all the reasons. And we share those reasons and we  
6 believe that there's a substantial amount of evidence  
7 that will need to be presented at the hearing before  
8 you decide what is or is not appropriate as it relates  
9 to the connection charge.

10 But as to the current monthly charges, Staff  
11 is recommending to this Commission that you, during  
12 the pendency of this case, immediately start  
13 charging -- authorize this utility to start charging  
14 to these customers these almost three times higher  
15 rates.

16 Now, I believe that clearly the Commission  
17 has the authority to order that today, but I think  
18 just as clearly as you should order the show cause,  
19 just have this utility explain why it did what it did  
20 in this case. It, likewise, would be sending a very  
21 wrong message and a very bad precedent to award the  
22 wrongdoer and to allow him to reap the rewards of his  
23 deeds -- of its deeds. And I say this because -- and  
24 at great substantial detriment to the customers having  
25 to pay these higher rates.

1           If the utility had come in as it should have  
2 come in during the pendency of this case, it would not  
3 have been interconnected. The wastewater package  
4 plant would not have begun to have been taken apart.  
5 We would have had the luxury of considering this  
6 issue, and in -- during the time of that  
7 consideration, the park owner would have continued to  
8 meet his obligations of providing wastewater service  
9 until such time as it was determined it was in the  
10 public interest to have North Fort Myers connect them.

11           So it's --

12           **COMMISSIONER CLARK:** Mr. Reilly, let me ask  
13 you a question. There is an indication in Staff's  
14 recommendation that it was pretty clear, at least from  
15 what DEP was doing, that this was not going to be  
16 allowed to continue; the plant was not going to be --  
17 let me finish -- be allowed to continue.

18           My question to you is, suppose we agree with  
19 you and the result of the hearing is that they needed  
20 to interconnect; it was appropriate for North Fort  
21 Myers to serve. Do we surcharge your customers?

22           **MR. REILLY:** I don't believe there's any  
23 provision for interim rates or surcharging under  
24 367.045. I think even Staff admitted --

25           **COMMISSIONER CLARK:** Well, you know what: I

1 have some trepidation about that, because it seems to  
2 me there have been -- we've had a case from the  
3 Supreme Court that says when you don't get your  
4 expenses right, you do a surcharge.

5 **MR. REILLY:** Well, there's no --

6 **COMMISSIONER CLARK:** That way your customers  
7 are going to --

8 **MR. REILLY:** I -- that's --

9 **COMMISSIONER CLARK:** -- comfortable with --

10 **MR. REILLY:** That's a good point, and that  
11 point was raised by North Fort Myers and it was bought  
12 by Staff, and it shows up in the recommendation; oh,  
13 we want to be -- we're concerned about the customers  
14 and we're concerned they might be subjected to some  
15 large surcharge at the end of this proceeding. And I  
16 strongly contend that is not so in the facts of this  
17 case.

18 **COMMISSIONER CLARK:** But what if it is,  
19 Mr. Reilly?

20 **MR. REILLY:** Well --

21 **COMMISSIONER CLARK:** What if it is? Are you  
22 prepared to inform your customers that a possible  
23 outcome is that you will have a significant surcharge?

24 **MR. REILLY:** I certainly am, and I'll tell  
25 you why. We'll take it all the way to the district

1 court because this is not a certificate -- this  
2 utility has no authority to even serve these  
3 customers.

4 I beg to ask you if you can find a case --

5 **COMMISSIONER CLARK:** That goes to the  
6 merits. I'm just asking you, are you --

7 **MR. REILLY:** Yes. I --

8 **COMMISSIONER CLARK:** -- prepared --

9 **MR. REILLY:** I am prepared.

10 **COMMISSIONER CLARK:** All right.

11 **MR. REILLY:** I think there is no legal  
12 authority for this. If -- but for their wrongful  
13 deeds, we would have been in here; these customers  
14 would have continued to pay their current -- would  
15 have received wastewater service and made payment for  
16 that service in their lease arrangements with the park  
17 owner all during these several months that this would  
18 have gone on.

19 When and if it was decided that North Fort  
20 Myers would take over, only then would these customers  
21 have been subjected to the higher rates by North Fort  
22 Myers.

23 **COMMISSIONER DEASON:** What should the  
24 customers be billed now, Mr. Reilly?

25 **MR. REILLY:** I suggested this: I suggested

1 that in all fairness and practicality, since we now  
2 have this fait accompli and this connection has  
3 occurred, that what we suggested in our response to  
4 their motion was that North Fort Myers could charge  
5 and collect its bulk rate, its bulk wastewater rate  
6 that it is actually providing to the park from the  
7 park owner, that the park owner has not yet been  
8 abrogated from his responsibilities to provide service  
9 to its customers.

10           So I was just suggesting that once that bulk  
11 rate -- that would fairly compensate North Fort Myers.  
12 That avoids the problem with the surcharge, because it  
13 is a bulk customer during the pendency of the case.  
14 Then the park owner would continue to charge whatever  
15 he could legally charge under Chapter 723, which has  
16 lease arrangements which he estimated at \$6.07, which  
17 once we get to the hearing you'll find out a lot more  
18 about that figure and what really is or is not his  
19 actual cost.

20           But if and when he can pass on to those  
21 customers any additional charges that he is incurring  
22 by virtue of this bulk charge, that's for him to  
23 resolve in other forums, not even this one. But  
24 that's what we've suggested.

25           Now, in response to the suggestion, Staff

1 said, well, that sounds pretty good. They said, that  
2 sounds fair and reasonable, but it's not very  
3 practical. They said, you've got the problem of  
4 the -- whether the bulk meter would really operate  
5 effectively or whether it's practical to set one of  
6 those up. Well, obviously that can be done.

7           But even in lieu of putting a bulk meter to  
8 measure the bulk wastewater service, I think a  
9 surrogate to that that would -- that we think would be  
10 reasonable would be to merely analyze the -- a year's  
11 worth of prior service; and all you have to do on one  
12 side is analyze the -- all the billed water that was  
13 made over that year, and then you've measured the  
14 out -- total flows of the package treatment plant  
15 during the same period. You could even make it  
16 seasonal and develop a relationship between billed  
17 water to treated wastewater. And I suggest it being  
18 done in as seasonal, because you could have your wet  
19 and dry season.

20           By having that relationship, you could on a  
21 going-forward basis evaluate the actual water's bill,  
22 apply that percentage, and you would know an accurate  
23 monthly wastewater -- approximation of a wastewater  
24 that could be billed on a bulk basis to the park  
25 owner.

1           That would shelter at least, and not send a  
2 wrong signal to this -- that would really cause a  
3 serious detriment to our clients because of the way  
4 this proceeding -- we'll still have to overcome this  
5 fait accompli. We'll still have to overcome this  
6 tremendous momentum that has been caused by them going  
7 in and serving these people, but at least we will not  
8 be assessed a \$200,000 penalty on our customers.

9           Now, how much of two -- and the \$200,000 is  
10 basically the 971 customers divided -- or times the  
11 16 -- you know, the 16,000 a month. That's the total  
12 effect of the difference. That's coming out of the  
13 pockets of my clients.

14           Now, to the extent that the bulk rate costs  
15 that park owner more than what he can -- what he  
16 actually collects from the customers, that's something  
17 that he can legally work out and would have had to  
18 work out anyway, but for the violation of 367.045.

19           So in closing, we do support -- we think the  
20 facts of this case are very different than the facts  
21 presented by the attorney for the utility. They  
22 certainly rise to the level of requiring the utility  
23 to provide written explanation of how and why this  
24 circumstance occurred.

25           Now, when that all plays out and when Staff

1 does or does not recommend a \$500,000 fine, that's  
2 something to be visited later, but clearly the facts  
3 of this case require a show cause to be opened.

4           Secondly, as to allowing the utility to  
5 connect this connection charge immediately, that's  
6 ridiculous. By the way, that's one thing that Public  
7 Counsel also disagrees with Staff; on the  
8 jurisdictional issue.

9           Please remember that when this wastewater  
10 agreement was entered into, the connection charge,  
11 North Forth Myers' \$462 connection charge, was billed  
12 and fully paid by the park owner. It's over. It's  
13 done. The only thing that's left out there is a thing  
14 called a 723 pass-through, which has very little to do  
15 with this Commission, in our humble opinion. And as  
16 counsel for the utility suggests, these statutes are  
17 hopelessly intertwined.

18           I don't think they're very intertwined at  
19 all. It's very clear. I mean, every rate and charge  
20 this Commission has a right to assess; what that  
21 charge should be and who should pay it. But once it's  
22 been paid, it's the Public Service Commission's duty  
23 to go around and see to it that whoever paid it has a  
24 right to collect it from person B or C or D. That  
25 is -- because just as you have a supremacy clause in

1 367, there's a similar clause in 723 that this shall  
2 take supremacy in matters of landlord/tenant and  
3 mobile home parks and the relationship between those  
4 landlords and tenants.

5 So you have a very similar language in 723  
6 that tells the Public Service Commission, stay away;  
7 stay away from matters relating to landlords and  
8 tenants in pass-throughs. And we will be making those  
9 arguments at hearing. That's -- we don't need to  
10 decide that today, because Staff I think rightly has  
11 said that's a matter that you should take evidence in.

12 And -- but now in the more immediate thing,  
13 which will have a \$200,000 impact to my customers, I  
14 respectfully suggest that they should not be rewarded  
15 and, more importantly, that my customers should not be  
16 penalized because they saw fit to violate 367.045.

17 Thank you.

18 **COMMISSIONER DEASON:** Thank you.

19 Mr. Ludington?

20 **MR. LUDINGTON:** Can you hear me?

21 **COMMISSIONER DEASON:** Yes, we can. Please  
22 proceed with your statement.

23 **MR. LUDINGTON:** Okay. The undersigned  
24 homeowners of Buccaneer Estates via -- through their  
25 signatures request that this Commission dismiss this

1 application, and in support thereof, we state that:

2           Number 1: Inadequate time has been allowed  
3 the homeowners to properly prepare an adequate  
4 response. Most concerned homeowners never received  
5 this memorandum on this matter until February the 11th  
6 or 12th, 1999, and had virtually no time to research  
7 the laws, the cases mentioned, or even gather any  
8 needed information with which to respond. A weekend  
9 followed by a Monday holiday is not just time to  
10 prepare, and we feel that you should grant us this  
11 much needed time.

12           Number 2: The application itself contains  
13 many inaccuracies; statements which claim the park  
14 owner had been ordered, quote, to interconnect;  
15 statements that claim today's owners are the, quote,  
16 same party which entered into the wastewater  
17 agreement; statements that say although North Fort  
18 Myers Utility has yet to send any residents of  
19 Buccaneer Estates a bill for wastewater service,  
20 quote, as of this application which is dated December  
21 the 7th, 1998, bills were later received indicating  
22 that billed service did begin on December 1st, 1998.  
23 And also one additional statement that says, quote:  
24 There will be no prejudice to anyone if North Fort  
25 Myers Utilities is allowed to collect its tariff.

1           The homeowners in this park know better.

2           Number 3: The Staff report on this  
3 application also contains many errors; Staff's  
4 statements concerning dates of connection. Did Staff  
5 not know that this park was actually connected in late  
6 September of 1998 in order to meet a Florida  
7 Department of Environmental Protection understanding  
8 with the park owners?

9           Staff's use of the word "Buccaneer" to refer  
10 to at least four different entities throughout the  
11 memo does nothing to make their response of this  
12 matter any more understandable to us. They refer to  
13 Buccaneer as the park owner. They refer to Buccaneer  
14 as the homeowner. They refer to Buccaneer as the  
15 wastewater -- sorry -- as the water company owner.  
16 And they refer to the word, "Buccaneer," as the park  
17 itself. Very confusing.

18           Staff's reference also to the park owner as  
19 a quote, utility, when they are not a utility, and  
20 Staff's comparison of this case with other cases  
21 concerning two utilities, which is not the case here,  
22 also leads us to more confusion.

23           Staff's recommendations that appear to make  
24 us party to an illegal act, in Staff's own words they  
25 say they believe, quote, that North Fort Myers Utility

1 has connected illegally, end of quote, yet they wish  
2 us to pay a monthly fee which was illegally concocted.

3 We have many other concerns too numerous to  
4 mention at this time.

5 Respectfully submitted on the 16th day of  
6 February, 1999. The homeowners of Buccaneer Estates,  
7 encompassing about 100 signatures.

8 Thank you, Commissioners.

9 **COMMISSIONER DEASON:** Thank you,  
10 Mr. Ludington.

11 Commissioners, any questions? I assume  
12 Mr. Reilly was speaking --

13 **MR. REILLY:** We'd like to --

14 **COMMISSIONER DEASON:** -- for their -- for  
15 his client.

16 **MR. REILLY:** I think they do want to make a  
17 few comments of their --

18 **COMMISSIONER DEASON:** Let me make one  
19 observation. You took a lot of time, Mr. Reilly, and  
20 I thought you were talking on behalf of your clients.  
21 You've already used as much time or more than  
22 Mr. Friedman did. The hour is 1:00. We're going to  
23 have to come back into this hearing room for a  
24 proceeding that starts at 1:30 and we've not yet had  
25 lunch.

1           So with that, please make your comments  
2 briefly as possible.

3           **MR. COLVIN:** Commissioners, my name is Jack  
4 Colvin. I live at 495 Avanti Way in North Fort Myers,  
5 Buccaneer Estates.

6           And before I start, I am the -- have been  
7 the president for the last year of the Homeowners  
8 Association, and I'd like to -- Stan Durbin is my  
9 first vice-president, and we have on file with the  
10 Bureau of Mobile homes, 680 signatures stating and  
11 giving us the authority to represent them at these  
12 hearings and so I'd like to just make sure that's  
13 clear that we do have the authority of these people.

14           On August the 29th, 1998, a notice was  
15 issued to all homeowners in Buccaneer Estates stating:  
16 Re: Notice of reduction in utilities and notice of  
17 increase in lot rental. (\*Tape change. May or may  
18 not be material missing.)

19           These came into our park in September of  
20 1998, and not November the 24th, and connected our  
21 sewer system to theirs without a governmental mandate  
22 or Buccaneer not being in their territory.

23           After the North Fort Myers Utilities were  
24 notified of this discrepancy, they rushed paperwork to  
25 the Public Service Commission in December of 1998 to

1 correct this situation after the fact.

2           After the hookup, North Fort Myers Utility  
3 came into the park and began to tear our system down  
4 within about two to three weeks after they had already  
5 hooked up, before they ever filed for this  
6 Commission -- permission to hook into us.

7           We, the residents feel that a deal was made  
8 between Mobiles Homes Community and North Fort Myers  
9 Utilities in the closed-door meetings for this sewer  
10 service without permission from anybody. Therefore,  
11 we have to live by the Florida Statutes and feel that  
12 Mobile Homes Community and North Fort Myers Utilities  
13 should also have to live by and abide by the same law.

14           MAC made this deal to hook up to the sewer.  
15 They should be held responsible for all moneys paid to  
16 North Fort Myers Utilities. North Fort Myers  
17 Utilities did pay MAC \$589,589 for the system that we  
18 were using. That couldn't be too bad of a condition  
19 if they paid that much money for it.

20           We protest North Fort Myers Utilities trying  
21 to collect fees from residents, because we do not have  
22 an agreement with them or a lease to pay North Fort  
23 Myers Utilities rent, nor -- MAC and M -- North Fort  
24 Myers Utilities should get their priorities straight.  
25 They say we should pay under Florida Statutes 723, and

1 North Fort Myers Utilities is trying to collect under  
2 Florida Statute 367.

3 It sounds like North Fort Myers Utilities is  
4 trying to get the Public Service Commission to aid and  
5 abet them and to ignore the law. I have all the 723's  
6 listed and the 367's listed where they've broken the  
7 law.

8 This entire action on the part of Mobile  
9 Homes Communities and North Fort Myers Utility sounds  
10 like fraud. This should be pursued to the federal  
11 court. Why does it cost \$22.86 a month for sewer  
12 service when it only costs Mobile Homes Communities  
13 \$6.07 to furnish this same service?

14 That's about all I have to say, and that's  
15 where I feel -- the way I feel right now; that the  
16 Mobile Homes Community should pay this sewer charge.

17 Thank.

18 **COMMISSIONER DEASON:** Thank you, Mr. Colvin.  
19 Mr. Durbin?

20 **MR. DURBIN:** Push the button. I'm on.  
21 Thank you.

22 Sir, I have a question. How can we ask our  
23 residents to pay moneys to a private utility who is  
24 not legally connected to the sewer system and is not  
25 operating under an authorized certificate issued by

1 the Public Service Commission?

2 Certainly you must agree that this is not  
3 allowed in all business practices, and I'm sure if you  
4 were in our position, you would have a problem  
5 explaining this to your fellow associates.

6 MAC, Mobile -- Manufactured Home Communities  
7 and North Fort Myers Utilities entered into an  
8 agreement without consulting the residents.  
9 Therefore, the cost and burden of proof must rest with  
10 them, the cost of doing business until the courts make  
11 a decision; and MAC must bear the cost of doing  
12 business until the courts make a decision.

13 They allowed the system to deteriorate.  
14 Nobody else was involved. And further, under  
15 Chapter 723.022, Mobile Home Park Owners' General  
16 Obligations, Item 4: It must maintain utility  
17 connections and systems for which the park owner is  
18 responsible in proper operating condition.

19 I think in cases of brevity, I will stop now  
20 unless you have any further questions; but I think  
21 we're made our case -- oh; I have one.

22 Mr. Deason and Ms. Clark, at the time we  
23 were here in 1996 for a water rate case, we appeared  
24 before you, and at that time the question of lifetime  
25 leases came up. And, Ms. Clark, I think you defended

1 the actions of the lifetime leases, that they were  
2 the -- they were to continue to be held.

3 And Mr. Dee -- excuse me -- Deterding of MAC  
4 at that time said that MAC would continue to honor the  
5 lifetime leases through perpetuity, or the life of the  
6 leaseholder. And if you wish to check, it was in your  
7 minutes that were gained that day in September, 1996,  
8 when we appeared before you.

9 So the lifetime people that -- we need some  
10 acknowledgment from you folks that they will maintain  
11 their status, and also we need to have some answers  
12 from you on the question before the board right now.

13 Thank you.

14 **COMMISSIONER DEASON:** Thank you, sir.  
15 Commissioners?

16 **COMMISSIONER CLARK:** We might as well break  
17 for lunch before we ask Staff to respond.

18 **COMMISSIONER DEASON:** Okay. That's fine  
19 with me. We're going to --

20 **COMMISSIONER CLARK:** With the understanding  
21 that we will take it up after Seminole, I guess.

22 **COMMISSIONER DEASON:** Yeah. We're scheduled  
23 to proceed with -- I forget the item number, but it's  
24 Seminole oral argument at 1:30, and that will be the  
25 next item that we take up; and when we conclude with

1 that oral argument, then we will revert back to this  
2 item and have Staff address the parties' comments and  
3 then Commissioners will ask questions.

4 I apologize that we cannot conclude this  
5 before the lunch break, but I'm sure you understand,  
6 given the hour, that it's our only recourse at this  
7 time.

8 Thank you.

9 (Thereupon, lunch recess was taken.)

10 - - - - -

11 **MS. MESSER:** Commissioners, I apologize.

12 Can we have just an extra five minutes --

13 **COMMISSIONER DEASON:** Yeah. We're going to  
14 wait a moment to make a telephone connection anyway.

15 (Pause in proceedings.)

16 **MS. MESSER:** You were going to allow us  
17 Staff the opportunity to respond to some of the  
18 comments that have been made.

19 If you would, what I'd like to do is just  
20 briefly hit some of the highlights of what the various  
21 parties have commented on.

22 **MR. LUDINGTON:** I'm wondering if we could  
23 have the volume turned up. We can just barely hear  
24 you.

25 **MS. MESSER:** Can you hear this better?

1           **MR. LUDINGTON:** That's much better.

2           **MS. MESSER:** Okay. The first thing I'd like  
3 to comment on was Mr. Durbin's comment about the  
4 lifetimer lease, and we left -- that's where we left  
5 at when we stopped a little while ago.

6           The lifetimer lease concern was addressed  
7 previously by the Commission in a special assisted  
8 rate case, and in that case it was also -- we brought  
9 it to your attention in the recommendation in a couple  
10 of different places, because the Commission did  
11 recognize that there had been a distinction made by  
12 the owner of the park, who at the time is the same  
13 owner of the utility, with respect to particular  
14 individuals who had lifetime leases.

15           And those -- I think some folks were  
16 receiving service for free or service at a much  
17 reduced -- at differing rate. There were differing  
18 rate offerings by the utility. This is the water  
19 utility, which is regulated by the Commission.

20           And the way that was resolved in the Staff  
21 assisted rate case was that a billing arrangement was  
22 going to be developed by the owner of the utility, and  
23 the utility was authorized to bill the tariffed rates  
24 that were approved by the Commission, but that those  
25 customers who were recognized to have lifetime leases

1 would receive a rebate from the developer itself, so  
2 that the customer, in effect, still maintained the  
3 same level of --

4 **COMMISSIONER CLARK:** What you're saying is  
5 the issue of who pays in that situation, if they have  
6 a lifetime guarantee of no rates increasing, they need  
7 to take that up with the owner of the park. That's  
8 who guaranteed it.

9 **MS. MESSER:** Right.

10 **COMMISSIONER CLARK:** And if they have to pay  
11 to the utility, then it seems to me they have an  
12 opportunity to go against the owner of the park to  
13 enforce that contract.

14 **MS. MESSER:** Right. Right. That would --  
15 that could be possibly be. I'm not aware of whether  
16 or not that type of issue exists with respect to  
17 wastewater for these residents, but that would be an  
18 issue for them in the hearing. But I was just trying  
19 to --

20 **COMMISSIONER CLARK:** Not our hearing, but in  
21 a hearing before a court.

22 **MS. MESSER:** For a court, correct. I was  
23 just trying to refresh your memory as to what the  
24 Commission had done in that case.

25 **COMMISSIONER CLARK:** Okay.

1           **MS. MESSER:** Mr. Colvin made a statement  
2 about service being provided from a utility not  
3 holding a current PSC certificate and how that would  
4 be very difficult to explain to their customers as to  
5 why we would let something -- the Commission would let  
6 something like that happen, and I just wanted to  
7 assure him that North Fort Myers does have a current  
8 certificate from this Commission.

9           **COMMISSIONER CLARK:** I think what he meant  
10 is they didn't validly serve that territory.

11           **MS. MESSER:** Right. I was just going to add  
12 that we're equally concerned about the -- this  
13 interconnection that has occurred and the  
14 circumstances under which it's occurred, and that's  
15 our premise for our recommendation on -- in Issue 1 on  
16 the show cause.

17           Mr. Ludington had indicated that our  
18 recommendation had a number of inaccuracies, and one  
19 of them he pointed out to was the interconnection  
20 date; and he's absolutely correct. We were not aware  
21 that there was a physical interconnection made on that  
22 date, and we appreciate him bringing that to our  
23 attention; and if there are other facts that are  
24 inaccurate, that we appreciate the opportunity to have  
25 those clarified at the hearing.

1           Mr. Reilly made a comment suggesting that  
2 Staff was agreeing with the utility about being  
3 concerned over a possible surcharge scenario. And,  
4 first, we believe that he possibly might have been  
5 referring to an area in the rec where the Staff was  
6 trying to repeat what the parties' positions were as  
7 opposed to advocate any particular rationale; but we  
8 did want to make clear that our recommendation is in  
9 response to the Commission's responsibility to allow  
10 some type of rate recovery for services rendered by a  
11 utility, in this case North Fort Myers, and  
12 Mr. Ferguson has a little more legal support for that.

13           **MR. FERGUSON:** Sure. Commissioners you were  
14 faced with a very similar issue under 367.045 in the  
15 Venture Associates case, and in PSC Order  
16 No. 95-0624-FOF-WU, you did recognize that in cases  
17 such as this the practical outcome of it would be that  
18 the utility may be entitled to those rates, but not  
19 granting those rates could result in an unrecoverable  
20 loss to the utility; and since the rates would be held  
21 subject to refund with interest, the customers would  
22 be protected as well as the utility in a case of  
23 that -- of the circumstance, which is the reason for  
24 our recommendation today.

25           **MS. MESSER:** Mr. Reilly also suggested a new

1 option today with respect to rate recovery, which we  
2 don't really have any other details on other than what  
3 he mentioned here; so it's a little difficult to  
4 respond to. But we would just reiterate that at this  
5 point, you know, acknowledging that perhaps the  
6 interconnection was not handled pursuant to our  
7 Commission rules, that still there is service being  
8 provided by North Fort Myers Utility.

9           The customers are individually metered and  
10 fully capable of receiving a separate bill for  
11 service, and it just seems a much more straightforward  
12 approach to go ahead and bill the wastewater rates of  
13 North Fort Myers, which have been approved by this  
14 Commission, and hold them subject to refund.

15           Finally, Mr. Friedman's comments included a  
16 decision of prior cases where the utilities have been  
17 serving outside their certificated areas but the  
18 Commission chose not to issue a show cause.

19           And we can certainly go back and research  
20 exactly what happened in each of those cases, but the  
21 Commission does evaluate each situation on a  
22 case-by-case basis on the facts of that case.

23           **COMMISSIONER DEASON:** Well, let me ask you,  
24 Ms. Messer, are they being treated differently? I  
25 took from your recommendation that there was reason to

1 treat them differently because they had previously  
2 asserted that this was not within their territory.  
3 It's not like it was overlooked, and my question --

4 **MS. MESSER:** That's correct. That's --

5 **COMMISSIONER CLARK:** -- to you is, is that  
6 what's happened?

7 **MS. MESSER:** That's exactly what --  
8 that's -- that's the essence of our recommendation  
9 there. We do believe there is reason to treat them  
10 differently.

11 **COMMISSIONER CLARK:** Well, I guess I have  
12 some pause, because you've just indicated you would  
13 want to look back at those cases.

14 **MS. MESSER:** Oh, no. No. I -- I said if  
15 you -- if there was a need to have more information to  
16 distinguish those cases, we could do that, but --

17 **COMMISSIONER CLARK:** What is your basis for  
18 distinguishing those cases?

19 **MR. FERGUSON:** Commissioner Clark, if I can  
20 just jump in for a moment. We did go back and look at  
21 the SSU case that you had a question about, and in  
22 this instance, SSU had --

23 **COMMISSIONER CLARK:** You did or didn't?

24 **MR. FERGUSON:** We did. I do have it here.  
25 In that case, Docket No. 900227-WU, Southern States

1 Utilities was -- had a transfer with Silver Lakes  
2 Estates wherein Silver Lakes Estates was serving  
3 territory outside of its certificate.

4 The Commission required Southern States to  
5 file for an extension of that territory, and Southern  
6 States didn't do it for 10 months, didn't file that  
7 application for 10 months.

8 There the Commission ordered the utility to  
9 show cause why it did not timely comply with the  
10 Commission's statutes and, indeed, ordered them to  
11 show cause and to -- for a fine of \$500. In lieu of  
12 responding to the show cause, the utility paid the  
13 \$500 fine. So there are other cases such as Mad  
14 Hatter that we can go to.

15 But the point of the matter, Commissioner  
16 Clark, is that we do review the facts of each case on  
17 a case-by-case basis, and we struggled with this  
18 recommendation to see if there were mitigating  
19 circumstances, and we didn't find any of.

20 As was indicated, the utility had some kind  
21 of communication and interaction with the customers  
22 since 1987 and, in fact, by their own submission, in  
23 that case they specifically stated that they were not  
24 going to serve that territory because there were other  
25 objections.

1           Not only that, but since 1996 the utility's  
2 attorney has been writing letters communicating with  
3 the customers saying that they ought to hook up and  
4 that they were ready, willing, and able to serve.  
5 Again in 1997 they did the same thing, and again in  
6 1998. So it's not a matter of that this utility was  
7 being treated differently.

8           The fact of the matter is, it had a number  
9 of opportunities to comply with the Commission's  
10 statutes with respect to 367.045; come in, file the  
11 application for the amendment of their certificate.  
12 And that was not done, and that's the basis for the  
13 show cause in this case.

14           **COMMISSIONER CLARK:** Mr. Ferguson, let me  
15 ask you one other question. It was just not clear to  
16 me.

17           Look on Page 6 of your recommendation, and  
18 you make a distinction with respect to the possible  
19 responses to the show cause from North Florida --  
20 North Fort Meyers Utilities. In one case you say if  
21 they raise material questions of fact and make a  
22 request for a hearing, a further proceeding will be  
23 scheduled. Alternatively, if they raise questions of  
24 fact and law, they can be in the hearing already  
25 scheduled.

1 I didn't understand the distinction.

2 **MR. FERGUSON:** Well, Commissioner, if the --  
3 the distinction is that if the utility simply  
4 responded to the show cause, we could either identify  
5 that as an issue for the hearing that's already  
6 scheduled; that is, whether or not they, indeed, serve  
7 territory outside of their certificate, or if they  
8 requested a hearing, we could deal with it in -- with  
9 our recommendation, subsequent recommendation.

10 **COMMISSIONER CLARK:** Okay. Well, let me ask  
11 it this way: It doesn't really turn on whether they  
12 raise issues of fact and law; it turns on how we want  
13 to treat it?

14 **MR. FERGUSON:** Sure.

15 **COMMISSIONER DEASON:** Further questions?

16 **MR. REILLY:** Commissioner Deason, there was  
17 a citizen who could not attend today and asked me to  
18 enter into the record his written comments.

19 **COMMISSIONER DEASON:** Do you have a copy of  
20 that?

21 **MR. REILLY:** I have a -- I have only one  
22 copy. The parties have not seen it, but what would  
23 you have me do in that regard?

24 **COMMISSIONER DEASON:** How long is it?

25 **MR. REILLY:** It's -- he has one -- one-page

1 letter to me, and then it's one -- four pages,  
2 four-page letter.

3 **MR. FERGUSON:** Commissioner, he can file it  
4 with Records and Reporting, if that's your pleasure,  
5 and then the parties would be able --

6 **MR. REILLY:** Obviously wouldn't have an  
7 opportunity to consider it before you made a decision  
8 today, but.

9 **COMMISSIONER DEASON:** Well, the choice is  
10 yours. You can either do that, or you can make copies  
11 and give it to the Commission and we'll take Item 48  
12 up as the last item today and we will consider it.  
13 The choice is yours.

14 **MR. REILLY:** In deference to the gentleman  
15 who went to the trouble to prepare it, I think I  
16 better --

17 **COMMISSIONER DEASON:** All right.  
18 Temporarily pass Item 48. We can make copies and  
19 dispense those to the parties and the Commission.

20 **COMMISSIONER JACOBS:** Just before we move on  
21 from this, you seem to attach some relevance to the  
22 idea that this was filed as a developer's agreement  
23 and that there was some indication, because of the  
24 long-term history of this arrangement, that that was  
25 some knowledge or some deviate -- deviate attempt by

1 that. Could you expand on that a little bit?

2 **MS. MESSER:** This utility has filed several  
3 other -- they've styled them as amendments and  
4 amendments and request for limited proceeding in the  
5 past for other mobile home parks, and the reason they  
6 were styled that way was because the utility was -- it  
7 was, in effect, a transfer, and they were asking to  
8 have the system -- the acquired system, the rates of  
9 the acquired system, changed to what its rates were.

10 **COMMISSIONER JACOBS:** I see.

11 **MS. MESSER:** And since there has been that  
12 kind of history, the filing of a developer agreement  
13 in this case was not the appropriate vehicle.

14 **COMMISSIONER JACOBS:** I see. Thank you.

15 **MR. FRIEDMAN:** Might I respond to what  
16 Mr. Jacobs said also, or his question?

17 **COMMISSIONER DEASON:** We're going to  
18 temporarily pass this item. We'll come back at the  
19 end of the Agenda.

20 We will go to item 47.

21 (Pause in proceedings of Item 48.)

22 (Discussion of Item 48 continued as  
23 follows:)

24 **MR. REILLY:** The two other gentlemen that  
25 were here started their trek back south. Is

1 Mr. Ludington on the line.

2 MR. LUDINGTON: Yes, sir. Barely audible,  
3 though.

4 MR. FERGUSON: I'm sorry?

5 MR. LUDINGTON: I say the voices are barely  
6 audible.

7 COMMISSIONER DEASON: We're presently  
8 reviewing a letter that Mr. Reilly has passed out from  
9 one of the customers.

10 MR. LUDINGTON: Mr. Gill?

11 COMMISSIONER DEASON: Yes, a letter from  
12 Mr. Donald Gill.

13 MR. FERGUSON: Commissioners, Staff's  
14 recommendation with respect to this information would  
15 be that -- just to reiterate the fact that the many of  
16 the issues that Mr. Gill has raised and the other  
17 customers have raised will be addressed at the hearing  
18 and that your votes today are only on the order to  
19 show cause and to grant rates subject to refund; and  
20 certainly that will also be addressed at the hearing.

21 So your votes today would not be dispositive  
22 of all of those issues that will be discussed, and all  
23 the customers will have an opportunity to be heard at  
24 the hearing.

25 COMMISSIONER DEASON: Very well.

1 Commissioners, any -- first of all, do you have any  
2 questions about the letter or any final questions?

3 **COMMISSIONER CLARK:** I guess I'm comfortable  
4 with Staff's recommendation on 1, but I do have  
5 concerns with the recommendation on Issue 2.

6 **COMMISSIONER DEASON:** First of all,  
7 Mr. Friedman do you have anything you want to address  
8 with this letter or is this something that will be  
9 taken up at the appropriate time at the hearing if  
10 necessary?

11 **MR. FRIEDMAN:** Yeah. I mean, I don't think  
12 it has any bearing on what we're here today on. I  
13 would note, at least my copy is not signed, so I'm not  
14 sure what a typed letter without a signature means.  
15 But I don't think the issues addressed in there really  
16 address anything that we're here today on anyway.

17 **COMMISSIONER DEASON:** Okay. Very well.

18 **MR. LUDINGTON:** May I have the opportunity  
19 to speak for a moment?

20 **COMMISSIONER DEASON:** We're already -- we've  
21 concluded all customer comments. Unless there's a  
22 question from a specific Commissioner directed towards  
23 you, sir, we're going to go ahead and try to conclude  
24 this matter.

25 **MR. LUDINGTON:** Well, I would just like to

1 make one comment to the Commission as a whole, if I  
2 could.

3 **COMMISSIONER DEASON:** No, sir. I've already  
4 indicated to you we have gone to great measure and  
5 length to hear from customers. That time is over now,  
6 sir.

7 If there is a question directed to you, you  
8 will be so notified and you will have an opportunity  
9 to respond. I'm sorry, but we need to get along with  
10 this proceeding.

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

12 **COMMISSIONER DEASON:** Any questions,  
13 Commissioners?

14 **COMMISSIONER CLARK:** Well, I just -- let me  
15 ask Staff, what is the -- what are they being charged  
16 now, and what is likely to be charged under the new --  
17 if we go with Staff's recommendation.

18 **MS. MESSER:** Well, my understanding is  
19 currently there is no charge for wastewater service  
20 because it was included as a portion of the rent.

21 **COMMISSIONER CLARK:** Well, as I understood  
22 it, they had reduced the rent, or they would be  
23 reducing the rent. That's what I -- I need to know  
24 the differential.

25 **MS. MESSER:** Well, the monthly rent has been

1 reduced \$6.07. Unfortunately, I don't have -- I'm  
2 going to have to defer to Mr. Reilly. I think he has  
3 the monthly --

4 **MR. REILLY:** That information -- again, it  
5 depends on usage, but applying North Fort Myers' rates  
6 immediately as opposed to some future date, they would  
7 be subjected to a \$10.98 base charge and a \$3.98 per  
8 thousand; that a gentlemen gentleman that attended  
9 this hearing had about 3,000 gallons.

10 Their usage is not real great in this mobile  
11 home park, so I used that as an average bill which is  
12 actually fairly low consumption, and that would reduce  
13 a bill of \$22.92. That's how I got my figure of the  
14 different costs per customer of approximately \$16.85  
15 for this six or eight or nine months that we would be  
16 engaged until the final order would come.

17 That \$16.85 multiplied times the 700 -- 971  
18 customers worked out to a cost from the customers, if  
19 you go along with Staff recommendation, of  
20 approximately \$16,361 per month; and obviously over a  
21 year that approaches \$200,000. Those are the figures  
22 I used.

23 So that was the substantial prejudice that  
24 was impacted upon the customers as a result of if you  
25 did go with that second part of Staff's

1 recommendation.

2           **COMMISSIONER CLARK:** Why should we grant  
3 their emergency motion? I mean, you know, there's --  
4 I have some appeal for saying, you know, if their rent  
5 is being reduced to \$6.07, then I think the utility  
6 should be able to collect that. It should be subject  
7 to refund. But why should we grant their emergency  
8 motion?

9           **MR. FERGUSON:** Well, the fact of the matter  
10 is, Commissioner Clark, if -- the utility is serving  
11 those customers, and if we do not grant the motion  
12 with respect to the rates, then those rates would be  
13 unrecoverable if you did determine --

14           **COMMISSIONER CLARK:** They could have come in  
15 ahead of this -- ahead of connecting and gotten these  
16 things straight.

17           **MR. REILLY:** That's right.

18           **COMMISSIONER DEASON:** Who has the legal --

19           **COMMISSIONER CLARK:** The emergency they  
20 created is their own.

21           **COMMISSIONER DEASON:** Who has the legal  
22 obligation to serve these customers? Does it still  
23 rest with the mobile home park, and can we just  
24 assume, then, they've contracted with North Fort Myers  
25 to obtain service at a bulk level to continue to serve

1 the customers? Because there's not been the legal  
2 establishment -- North Fort Myers has not gone through  
3 the process to establish themselves as the legal  
4 entity to provide service and have the ability to bill  
5 those customers.

6 **MS. JABER:** Right. You could certainly look  
7 at it this way. But let me tell you the thought  
8 process that Cleveland and Billy went through that I  
9 agree with.

10 The violation that occurred, that being the  
11 transfer without your approval, we are addressing in  
12 the show cause proceeding. The fact of the matter is  
13 the violation has occurred. We do have now this  
14 utility providing service to these customers. And,  
15 you know, the view is that there should be  
16 compensation for the service that's provided, and  
17 correcting the violation should occur in the show  
18 cause process. That's the view.

19 You know, and it's consistent with what  
20 you've done in the past. Venture -- I think,  
21 Cleveland has already talked to you a couple times  
22 about Venture. This is consistent with the decision  
23 you made in that case, which was, we'll go forward,  
24 we'll let them collect money subject to refund,  
25 because if the Commission ultimately finds that

1 transfer is in the public interest, there is no way to  
2 go back and collect the money that the utility was  
3 entitled to.

4 **COMMISSIONER CLARK:** But if they had come to  
5 us initially and done it appropriately, they would  
6 have asked for the rates as part of the transfer.  
7 They didn't do that.

8 **MS. JABER:** Right.

9 **COMMISSIONER JACOBS:** The concern I have is  
10 this sends a pretty distorted signal to other  
11 companies out there that may be in this situation, and  
12 it's a signal that I wouldn't be comfortable sending.

13 **COMMISSIONER DEASON:** Do the customers have  
14 any other recourse? Could they have acquired the  
15 system themselves and contracted themselves to  
16 purchase some type of bulk service from someone?

17 It seems to me that by this process, they've  
18 been ramrodded into a corner with no alternative but  
19 to pay these rates to this utility company. And if  
20 the normal process had been followed and there had  
21 been an application to expand the territory, there  
22 could have been a protest filed.

23 We could have taken testimony under the  
24 public interest standard, looked at alternatives. And  
25 perhaps there would be no alternative, but at least

1 the due process would have been afforded the  
2 customers, and they don't have this here; and that's  
3 what concerns me.

4           And even if there's no alternative but for  
5 North Fort Myers Utilities to serve it and to charge  
6 their rates -- but that would have been the outcome of  
7 a proceeding which would have looked at all of that  
8 and the customers would have been noticed ahead of  
9 time and would have been given the opportunity to  
10 basically presented their side of the case, and maybe  
11 they -- customers oftentimes are very resourceful.  
12 Maybe they would have come up with an alternative if  
13 they didn't want to be served by this utility company.  
14 But we don't have that possibility now, and that's  
15 what disturbs me.

16           **MS. JABER:** I really can't answer that,  
17 because I don't know what the customers are able to in  
18 this scenario, because obviously we've just started  
19 looking into it. I suppose it's not too late.

20           **COMMISSIONER JACOBS:** Commissioner Deason  
21 asked an interesting question earlier. Who does have  
22 the legal obligation to serve here?

23           **MS. JABER:** You have not yet approved this  
24 transfer.

25           **COMMISSIONER JACOBS:** So it's still --

1           **MS. JABER:** So technically, the mobile  
2 home --

3           **COMMISSIONER JACOBS:** -- it's the owner;  
4 it's the park owner that still has that obligation.

5           **MS. JABER:** Right.

6           **COMMISSIONER JACOBS:** What normally would  
7 happen. That park owner wouldn't be -- this would be  
8 an interconnection that the park owner would have to  
9 pay this provider, wouldn't they?

10          **MS. JABER:** We have not acknowledged the  
11 transfer, so technically you could --

12          **COMMISSIONER JACOBS:** No. I mean, outside  
13 of anything we did here. If this transaction were to  
14 have occurred as an interconnection between the park  
15 and this utility, wouldn't the park owner have to pay  
16 them something?

17          **MS. JABER:** Contractually it depends on what  
18 they've agreed to.

19          **COMMISSIONER JACOBS:** Yeah. But logically  
20 they would.

21          **MS. JABER:** Right.

22          **COMMISSIONER JACOBS:** And what I'm hearing  
23 is that the park owner is not -- is still getting the  
24 revenues from the rents with, but not paying the  
25 utility? Is that what I'm hearing.

1           **MR. FERGUSON:** No. I --

2           **COMMISSIONER JACOBS:** They've already  
3 reduced the rents.

4           **MR. FERGUSON:** That's part of the --

5           **MS. MESSER:** That's our understanding.

6           **MR. FERGUSON:** Yes. As a part of the  
7 developer agreement situation that was signed on  
8 August 24th, the park owner paid a portion to the  
9 utility -- or the utility paid a portion to the park  
10 owner, rather, for the ability to serve those  
11 customers in that park; and, in effect, got around  
12 367.045 and .071 by not having the Commission look at  
13 the transfer and to make a public interest  
14 determination of that transfer, which is the reason  
15 why we've brought the show cause issue up.

16           **COMMISSIONER DEASON:** Does the park owner  
17 have an obligation under Chapter 723 to see that  
18 service is continually provided?

19           **MS. JABER:** I don't know.

20           **COMMISSIONER DEASON:** Well, as part of his  
21 rent. He was providing it before. It was part of his  
22 rent. Obviously, there should -- I don't know what it  
23 says in Chapter 723, but it seems like he just  
24 couldn't walk away from that, turn it off and say --

25           **MS. JABER:** Well, I --

1           **COMMISSIONER DEASON:** -- I'm not going to  
2 provide it anymore, but I'm going to do you a favor  
3 and reduce your rent \$6 and something a month; go find  
4 your own service.

5           **MS. JABER:** It's my understanding that  
6 pursuant to 723 they do have to notice their tenants  
7 and let them know that water and wastewater would be  
8 provided through other means. I don't know much more  
9 than that about that specific provision. We could  
10 certainly find out for you.

11           **COMMISSIONER DEASON:** And the park owner got  
12 a payment from the utility company for the right to  
13 serve --

14           **MR. FERGUSON:** Yes, and --

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

16           **COMMISSIONER DEASON:** -- the customers.

17           **MR. FERGUSON:** And assignment of any future  
18 payments from the customers to the park owner would be  
19 going to the utility.

20           **MS. MESSER:** Right; directly to the utility.

21           **COMMISSIONER CLARK:** That strikes me as  
22 the --

23           **MR. FRIEDMAN:** (Away from microphone.) The  
24 owner is involved -- they bought the lines for  
25 \$139,000 -- (inaudible comments away from

1 microphone) --

2 Sir, they bought the lines.

3 **COMMISSIONER CLARK:** I think that was ion  
4 the recommendation. Well, then that sorts of strikes  
5 me that it suggests the answer; that if the park owner  
6 has to forward this amount, I think that what should  
7 be due during the pendency of this is just the \$6.07.

8 Whether they -- you know, whether they get  
9 that from the park owner and he doesn't reduce the  
10 rent or whether they pay that directly to the utility,  
11 I'm not sure I -- it matters it me. But I'm just  
12 uncomfortable with increasing the rates in that way.  
13 I think Commissioner Jacobs is right. It certainly  
14 sends a mixed signal on how we are going to handle  
15 situations where a transfer occurred without coming to  
16 us first.

17 **COMMISSIONER DEASON:** Well, see, I think  
18 there's some merit to that, but I'm not so sure that  
19 the park owner is not under an obligation right now to  
20 see there's continued service to the residents of that  
21 park.

22 **COMMISSIONER CLARK:** Well, I'm  
23 comfortable --

24 **COMMISSIONER DEASON:** He was providing the  
25 service before. He's --

1                   **COMMISSIONER CLARK:** Yes --

2                   **COMMISSIONER DEASON:** -- exempted from our  
3 jurisdiction. I assume he had some responsibilities  
4 under landlord/tenant or Chapter 723 or something to  
5 see that service was provided.

6                   **COMMISSIONER CLARK:** So that it continues to  
7 be habitable, right?

8                   **COMMISSIONER DEASON:** Right. So it is his  
9 obligation. It seems to me that the company should  
10 look to the park owner to pay the bulk rate or  
11 whatever is fair and reasonable to make sure --

12                   **COMMISSIONER CLARK:** So we would just --

13                   **COMMISSIONER DEASON:** -- that service is  
14 provided.

15                   **COMMISSIONER CLARK:** We should just deny --

16                   **COMMISSIONER DEASON:** Until we determine  
17 it's in the public interest that this transfer take  
18 place, and then when we decide that, we'll determine  
19 what a just and reasonable rate is.

20                   **COMMISSIONER CLARK:** So you would be  
21 supportive of a motion to grant Staff on Issue 1, deny  
22 on Issue 3, and grant Staff on Issue 3 -- I'm sorry --  
23 deny Staff on Issue 2 and not grant the petition.

24                   **MS. MESSER:** Well, Issue 2 is approve and  
25 deny in part, so you would be denying in total --

1           **COMMISSIONER CLARK:** In total, right.

2           **MS. MESSER:** -- or --

3           **COMMISSIONER CLARK:** And then --

4           **COMMISSIONER DEASON:** Well, I think --

5 you're recommending that there should be not  
6 collection of connection charges. I think we would  
7 approve that.

8           **MS. MESSER:** Correct; right. But you don't  
9 agree with the interim collection of North Fort Myers'  
10 existing rates.

11           **COMMISSIONER DEASON:** Yeah. And I think  
12 then that North Fort Myers would be free to file a  
13 tariff with us to determine what they should charge  
14 the park owner, would they not?

15           **MS. MESSER:** Or did you want the collection  
16 of the \$6.07 --

17           **COMMISSIONER CLARK:** No, let them come back  
18 to us.

19           **MS. MESSER:** -- per customer -- okay.

20           **COMMISSIONER CLARK:** Let them come back with  
21 us -- to us.

22           **COMMISSIONER DEASON:** Well, see, right now  
23 those residents are not customers of the utility  
24 company. They still have -- they're getting service  
25 under the obligation, it seems to me, of the park

1 owner. And the park owner I think had an obligation  
2 to make sure that if he was relinquishing his  
3 obligation to serve, he had an obligation to make sure  
4 that the entity, North Fort Myers, had done everything  
5 necessary to make sure that they not only had the  
6 right to serve, but they had the obligation to serve.

7 **COMMISSIONER CLARK:** So, Commissioner  
8 Deason, you would be supportive of a motion to grant  
9 Staff on Issue 1; deny Staff on Issue 2, and that  
10 would be with the understanding that we would deny the  
11 emergency motion to implement rates in total, but  
12 authorize the collection of connection charges --  
13 no -- but also deny the collection of connection  
14 charges.

15 **COMMISSIONER DEASON:** Yes. Correct.

16 **COMMISSIONER CLARK:** And then grant Staff on  
17 Issue 3.

18 **COMMISSIONER DEASON:** Yes.

19 **COMMISSIONER CLARK:** I so move.

20 **MS. JABER:** Would you like in the order a  
21 sentence or two about permission to file a tariff  
22 regarding some sort of bulk arrangement with the park  
23 owner or --

24 **COMMISSIONER DEASON:** That's fine. I  
25 mean -- well, I'm not making the motion.

1           **COMMISSIONER CLARK:** I don't think it's  
2 necessary, because Mr. Friedman has heard the  
3 discussion, and he can determine what is the best  
4 course of action for his client.

5           **COMMISSIONER JACOBS:** I second.

6           **COMMISSIONER DEASON:** It's been moved and  
7 seconded. Without objection, show that motion passes.

8           All right. That addresses Item 48, and that  
9 concludes today's Agenda. Thank you all.

10           (Whereupon the Agenda Conference concluded  
11 at 4:30 p.m.)

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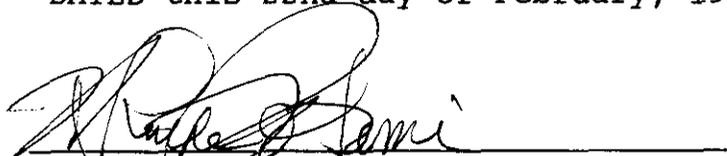
CERTIFICATE OF REPORTER

I, H. RUTHE POTAMI, CSR, RPR, FPSC  
Commission Reporter,

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

CERTIFIED that I stenographically reported  
in part the said proceedings and transcribed them from  
both my stenographic notes and the tape recording of  
said proceedings; and that this transcript, consisting  
of 61 pages, constitutes a true transcription of my  
notes of said proceedings.

DATED this 22nd day of February, 1999.



H. RUTHE POTAMI, CSR, RPR  
Official Commission Reporter  
(904) 413-6734