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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 20190131-EU

PROPOSED ADOPTION OF RULE
25-6.030, F.A.C., STORM
PROTECTION PLAN AND RULE
25-6.031, F.A.C., STORM
PROTECTION PLAN COST
RECOVERY CLAUSE.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 6A

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, November 5, 2019

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

REPORTED BY: ANDREA KOMARIDIS WRAY
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
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TALLAHASSEE, FLORIDA
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IN ATTENDANCE :

PSC - KEITH HETRICK, SAMANTHA CIBULA, MARK FUTRELL,
ADRIA HARPER, ANDREW KING, JAMES BREMAN,
ROBERT GRAVES, BART FLETCHER
OPC - CHARLES REHWINKEL and MARSHALL WILLIS
FIPUG - JON MOYLE
GPC - RUSSELL BADDERS
FPL - KEN RUBIN and DAVE BROMLEY
TECO - MALCOLM MEANS
PCS PHOSPHATE - JAMES BREW
FRF - ROBERT SCHEFFEL WRIGHT
FPUC - BETH KEATING
DEF - MATT BERNIER

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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. Item No. 6 -- 6A.
3 Staff, please read the notice.

4 MS. HARPER: Pursuant to notice appearing in
5 the October 29th, 2019, edition of the F.A.R.,
6 Volume 45, No. 211, this is a rule hearing at which
7 the Commissioners of the Florida Public Service
8 Commission will decide whether to make changes to
9 the proposed rules as requested by the Office of
10 Public Counsel.

11 CHAIRMAN GRAHAM: Ms. Harper, please explain
12 where we are on this process.

13 MS. HARPER: Yes, sir. Andrew King of our
14 legal staff will provide a brief overview of the
15 rules. Other staff members will be here, available
16 to explain the Agency's proposal and to respond to
17 questions or comments regarding the rules, as
18 required by Section 120.543(c)(1), Florida
19 Statutes.

20 OPC requested this rule hearing and should be
21 allowed to present first. This hearing is OPC's
22 opportunity to present evidence and argument on why
23 it believes the Commission should make changes to
24 the proposed rules.

25 The Commission, Commission staff, and any

1 interested persons should be allowed to provide any
2 response or comments to OPC's evidence and argument
3 that they may have.

4 Any written evidence offered today and
5 considered by the Commission will be made a part of
6 the record of this hearing.

7 CHAIRMAN GRAHAM: All right. Mr. King, please
8 give us your synopsis of this rule before us.

9 MR. KING: Yeah, I'll try to be short. Rules
10 25-6.030 and .031 are the two rules that are --
11 we're here for today. These rules are designed to
12 implement Section 366.96 of the Florida Statutes,
13 which became law earlier this year.

14 The law requires that utilities design ten-
15 year plans to harden Florida's electrical
16 infrastructure from storm damage and submit these
17 plans to the Commission at least once every three
18 years. The law also sets out criteria for the
19 Commission to consider these plans and approve
20 them.

21 So, the first rule, .030, is designed to set
22 forth kind of the procedure for the submission and
23 approval of the plans. It sets out the information
24 that has to be in the plans so that the Commission
25 can fulfill its duty to consider the criteria

1 listed in the statute to approve the plans.

2 The statute also allows the utilities to
3 recover the costs to implement these plans. And
4 so, the second rule, .031, is designed to set out
5 the cost-recovery-clause process. And that process
6 is set out to mirror our other cost-recovery
7 clauses.

8 CHAIRMAN GRAHAM: Okay. Mr. Rehwinkel, the
9 floor is yours. Please remember -- well, I -- I'm
10 hoping we're hearing stuff that's new, not stuff
11 that we heard last month on this issue.

12 MR. REHWINKEL: Thank you, Mr. Chairman.

13 My name is Charles Rehwinkel, Deputy Public
14 Counsel. And I'm here to provide the comments for
15 the Office of Public Counsel. With me today will
16 be Marshall Willis. I will present legal comments
17 and Mr. Willis will present technical comments,
18 following me. And then I will need 30 seconds
19 after Mr. Willis has concluded to make a closing
20 statement or request.

21 CHAIRMAN GRAHAM: Wait a minute. Wait a
22 minute. My heart almost stopped. You said 30
23 seconds to close?

24 MR. REHWINKEL: After Mr. Willis. After
25 Mr. Willis.

1 (Laughter.)

2 CHAIRMAN GRAHAM: I apologize. Please
3 continue.

4 MR. REHWINKEL: That's quite all right.

5 Commissioners and Mr. -- and Chairman Graham,
6 I will provide comments in three areas. I have
7 some legal objections to make for the record and
8 then I have comments on the rule. And then I will
9 make some -- I will raise some objections to your
10 exercise of delegated legislative authority, near
11 the end. And Mr. Willis will go after that.

12 On behalf of the rate-paying members or
13 customers of the five IOUs, the Public Counsel
14 objects in the strongest possible terms to this
15 rule-making proceeding being held on inadequate
16 notice and being squeezed into agenda on four
17 business days' notice on a day that is reserved for
18 many other activities and which had been reserved
19 for a two-day hearing until a decision was made to
20 move that hearing to the Department of
21 Administrative Hearings on the very day the OPC
22 filed its rule-hearing request, October 25th.

23 I and others working on this rule proceeding
24 were also in the final stages of preparation of
25 that case, with no reasonable expectation that

1 substantial preparation for this proceeding would
2 be required with little or no time to do so.

3 Commissioners, I'm not aware of any tribunal
4 that would schedule such a significant proceeding
5 on four days' notice without making some effort to
6 accommodate counsel.

7 The Public Counsel is here today because we
8 have an obligation to represent the nine million
9 customers of the IOUs who face inflated costs on
10 their bills if you rush forward in this rule-making
11 proceeding without the necessary facts.

12 It would not be fair to say that I, and we,
13 are fully prepared for this hearing, but it would
14 be correct to say that we will do the best we can
15 in spite of the non-existent preparation time and
16 because we put in time after hours and on the
17 weekend in the seven calendar days we were
18 afforded.

19 We renew our request -- I know that was denied
20 in the -- in the orders that came out on
21 October 31st and on November 4th -- to continue
22 this proceeding on the basis of fundamental
23 unreasonableness and unfairness in the event that
24 you do not agree to a draw-out to protect our
25 interests.

1 I also need to state, Commissioners, that one
2 of the IOU customers received notice through the
3 F.A.R. on or after October 29th. She was unable,
4 in the extremely short time, to secure
5 transportation to Tallahassee to participate in the
6 hearing and asked if we could par- -- if she could
7 participate by phone. She told us yesterday that
8 the Commission told her it does not allow
9 participation by phone, and her request was denied.

10 Commissioners, this is further evidence that
11 this hearing and the procedure is flawed and does
12 not afford the affected persons basic rights to
13 participate guaranteed in the APA in
14 Section 120.54.

15 This customer, Kelly Cisarik, called Mr. Kelly
16 yesterday and asked that the e-mail that was placed
17 in the correspondence side of the hearing be
18 introduced as an exhibit, and I have that e-mail
19 with me. And I would offer it now or at the
20 appropriate time, before the record closes, on
21 behalf of Ms. Cisarik.

22 She has asked that it be read into the record
23 at the -- and, at the end of our comments, I will
24 raise this issue with you so you can consider
25 whether to accept a reading of it.

1 The failure to accommodate this affected
2 person, who is a citizen, is further basis to
3 continue this hearing. And on that basis alone, I
4 renew our motion, on behalf of her and, perhaps,
5 others similarly-situated that did not even try to
6 come to Tallahassee. And accordingly, I ask you to
7 reconsider the decision not to continue the hearing
8 with a more reasonable time to gather and present
9 evidence.

10 We also renew our request for you to suspend
11 the hearing in order to take evidence on missing
12 essential and necessary facts. And thus, for the
13 record, we ask -- and for any reviewing tribunal,
14 we ask that this rule hearing be suspended and that
15 a very brief period for evidentiary hearing be
16 allowed.

17 Commissioners, this process that we are here
18 with today does not pass the red-face test, the
19 smell test, or the legal test set out in the APA,
20 and we do not abandon our motions in the face of
21 your denial by order and your expected denial
22 today. And for the record, we continue to renew
23 them throughout our proceeding.

24 Our obligation to represent the customers and
25 the fact that we have no choice but to proceed in

1 this unfair hearing is not a waiver of the
2 fundamental defects in this proceeding. We are
3 proceeding here essentially under protest.

4 We also separately object to this hearing
5 being conducted as an agenda item. We think that
6 is an inappropriate forum to have a rule hearing
7 that is con- -- required and allowed by the APA.

8 This is a \$50-billion rule and it should not
9 needlessly be a \$54-billion proposed rule, but
10 without the needed information, you are on the cusp
11 of making it one. This proposed rule should not
12 put the burden on you or the customers to try to
13 figure out what costs are being recovered through
14 base rates.

15 As it is, without the risk -- these risks of
16 increased costs, the statute, passed by the
17 Legislature in its exercise of its prerogative to
18 set public policy, will impose more costs in ten
19 years with more certainty and with the rule in this
20 forum, less information than the Nuclear Cost
21 Recovery Clause and statute, which, with two
22 nuclear units and five nuclear unit uprates, has
23 passed through less than \$10 billion in its 12
24 years of existence.

25 Again, it cannot be said enough, the OPC is

1 not here objecting to the laudable goal of
2 undergrounding and storm hardening. The Florida
3 Public -- the Florida Legislature has decided that
4 it is in the public interest that these activities
5 occur and that they be afforded clause cost
6 recovery.

7 Our objection is that you are proposing rules
8 that are unlawful in their legal basis and that
9 they exceed your grant of legislative authority in
10 large or modified specific provisions of the law,
11 and contravene the specific provisions of the
12 statute that you're attempting to implement.

13 In some respects, they are vague and they fail
14 to establish adequate standards for your decisions
15 in clause and plan proceedings in the future and,
16 with respect to the denial of the suspension,
17 continuation, and draw-out request, violate the
18 rule-making procedures established in the APA.

19 Commissioners, our objections today with
20 respect to continuation and suspension is that you
21 are lacking in the necessary facts to understand
22 how you will comply with the statutory mandate to
23 bar any clause recovery for costs that are being
24 recovered through base rates.

25 At some point in the proceeding, I will be

1 requesting that the Commission provide a list of
2 all documents, per Section 120.54(1)(h), of
3 materials that you intended to jud -- to judicially
4 notice. And if there are none, I would like for
5 you to so state.

6 I have had a brief conversation with your
7 general counsel's office and they have indicated to
8 me that the rule-making record for purposes of
9 appeal and any rule challenge will constitute all
10 of the comments, the transcripts from the
11 June 25th, August 20th, and October 3rd
12 proceedings. And I will ask that we get
13 confirmation of that before the record closes here
14 today.

15 Commissioners, I don't know what the process
16 is with respect to reconsideration of Orders
17 20190468 and 20190469 -- those are the October 31
18 and November 4th orders. We're kind of in
19 uncharted territory here. The -- the ruling was
20 made by the Chairman and not the prehearing
21 officer. We're in a rule hearing, but I am asking
22 the Commission to reconsider that.

23 And in support of that, I would state that, in
24 our request for the draw-out, the request to
25 suspend and go to an evidentiary hearing, we erred

1 in citing to Rule 28.103, but it's interesting,
2 that error was one that -- that actually supported
3 our position.

4 Your staff has pointed out -- or you pointed
5 out in your order, that that order was -- that rule
6 was repealed. Well, we looked at the repeal record
7 for that -- and I have an exhibit that I can hand
8 out at some point in this process -- that states
9 that the basis for the repeal of this rule is
10 that -- was that the rule was a restatement of the
11 statute.

12 So, to the extent that that rule is a basis
13 for allowing a timely request for a draw-out at any
14 time before the hearing is concluded, the fact that
15 it was repealed does not support the Commission's
16 contention that we were untimely. And in that
17 degree -- in that respect, your order is incorrect.
18 It is a legal matter.

19 That timeliness assertion in the order is an
20 invalid basis for your assertion that the lack of
21 the rule means that the Balino standard is no
22 longer good law. Balino is still good law and
23 Balino has not been overruled. And to the extent
24 that it is based on a statute and the fact that the
25 rule restated the statute, it supports the

1 timeliness of our filing.

2 The requirement for a timely request for an
3 evidentiary hearing was intended in the APA to stop
4 abusive, dilatory rule-hearing requests made at or
5 after the conclusion of lengthy hearings.

6 We're here in the first 15 minutes of this
7 rule proceeding. The proposed rule proceeding
8 started at 12:20 today. It didn't start when the
9 rule-development process started. And your order
10 has made it clear that we have no discovery rights
11 in the rule-development process.

12 Our discovery rights would only be available
13 if there is a draw-out. And we could not have
14 asked for a draw-out until this proceeding was
15 established. And this proceeding was established
16 on October 29th, by notice.

17 We did not act with any delay. We filed our
18 request for a hearing three days before it was
19 actually required, on the 25th of October. That
20 was the first point, on October 25th, at which a
21 suspension of the rule-making proceedings could
22 even be considered.

23 The OPC asked, on October 30th, for these
24 proceedings to be continued, and then, within 24
25 hours, on October 31st, required -- we filed a

1 request for the evidentiary proceeding that you
2 should be considering now before this proceeding
3 was -- that you could not be considering before
4 this proceeding was -- was even noticed or begun.

5 We also began the ser -- the process of
6 serving discovery to demonstrate the inability or
7 inadequacy of this rule-making proceeding to -- to
8 protect the substantial interest of the customers.

9 The right time to make the request is now,
10 during this proceeding. You have ruled, and it is
11 the law, that discovery is not available before or
12 during this proceeding that started at 12:20 today.

13 Mr. Willis will be able to explain the
14 discovery request and the -- and that they are
15 asking -- seeking necessary facts that you do not
16 have that you need to implement the rule. And we
17 have and we will continue to make our affirmative
18 showing that the rule is insufficient to protect
19 our interests because you lack the necessary facts.

20 With all due respect, Commissioners, you are
21 improperly seeking to establish a standard that is
22 unknown in Florida law that there is only one day
23 that a request for an evidentiary hearing can be
24 made; and that is between the hours of 8:00 and
25 5:00 p.m. on the exact date that the rule-hearing

1 request is made, even if it was made earlier than
2 the time for making -- the last date for making the
3 rule-hearing request.

4 If that were the standard in the APA, in
5 Section -- in Chapter 120, the law would simply
6 have said it. It's no different than your -- your
7 procedural rule that says, when reconsideration is
8 requested, the reconsideration request needs to be
9 accompanied by a request for oral argument.

10 And if you file the oral-argument request the
11 day after, you're out of luck, but the rule says
12 that. The Legislature knows how to say
13 specifically when a requirement to make a certain
14 request is made. This statute only says it must be
15 timely. If it meant it had to be made when the
16 rule request -- hearing request was made, it would
17 have said that.

18 Now, while I believe it's factually -- it's --
19 it's facially creative, your staff is simply wrong
20 in this advice to you. There is no legal support
21 for this notion that the draw-out request can't be
22 made one minute after 5:00 p.m. on the day you ask
23 for the request.

24 You also included a -- an innovative legal
25 standard in your rule that we believe is

1 unauthorized. And I'm making these objections
2 because these go straight to the -- the invalidity
3 of the rule-making process that you are following
4 here today, which is a basis for overturning a rule
5 adoption as an invalid exercise of delegated
6 Legislature authority.

7 There is no threshold showing for unique
8 circumstances. That is something not found in the
9 law. The statute sets out the standard that we
10 must affirmatively demonstrate, that the customers'
11 substantial interests are not adequately protected
12 in this rule-making proceeding.

13 Our showing in that regard is found both in
14 our October 31st motion to suspend, in our
15 discovery, and in your Halloween order, 22 --
16 20190468, that says discovery is not available in
17 this proceeding, and the evidence we will introduce
18 here today. We intend to put on additional
19 evidence today that demonstrates that you lack the
20 necessary facts to lawfully implement
21 Section 366.96.

22 We will also demonstrate that new information
23 related to AFUDC was filed with the Commission, not
24 in this docket, but in another docket, nearly two
25 weeks after your proposed rule and that you did not

1 have this crucial information or the necessary
2 underlying facts related to it or that are
3 compelled by it in your possession to implement the
4 rule.

5 We also submit that your November 4th order,
6 20190469, denying the evidentiary hear --
7 proceeding, is impermissibly vague and arbitrary in
8 that it contains no standard for what you believe
9 require -- is the required showing to demonstrate
10 that the rule proceeding is inadequate to protect
11 the customers' interests. Your two orders, 468 and
12 469, seem to indicate that the standard is just a
13 flat, no, we're not going to have a draw-out
14 proceeding.

15 We ask you to remedy this error by suspending
16 this hearing now and conven -- convening an
17 evidentiary hearing. And before I get into my
18 comments on the rule, I would ask you to consider
19 our request for a -- for a suspension of the
20 hearing and, in the absence of suspending the
21 hearing, continue the hearing so that we may have
22 more time to prepare and other affected persons can
23 participate.

24 CHAIRMAN GRAHAM: I guess this question goes
25 to either Samantha or Keith. Right now we're

1 listening for if we've heard something that's error
2 of -- of facts or law.

3 MS. CIBULA: Correct, that's the standard.

4 CHAIRMAN GRAHAM: And I guess the question I
5 have to you, before I go to Commissioners for their
6 reconsideration, have we heard an error, fact, or
7 law?

8 MS. CIBULA: I have not.

9 MR. HETRICK: Commissioners, you went
10 through -- the Commission has gone through --
11 you've gone through -- issued two orders, which
12 went into great detail about why those motions were
13 denied. And they set out what our view of the law
14 is, what the law is in those orders. And what we
15 have here is a disagreement with the Office of
16 Public Counsel.

17 But what -- according to the standard of
18 review now for the motion for reconsideration, I've
19 heard nothing but reargument of the same -- same
20 arguments that they have made in their motion for
21 continuance and motion to suspend. And those have
22 already been ruled on.

23 So, I -- I don't believe that I've heard any
24 new point of fact or law that the prehearing
25 officer overlooked or failed to consider in

1 rendering those orders.

2 CHAIRMAN GRAHAM: Actually, it was done by the
3 chairman, but -- so, now it's before the
4 Commission. We have to rule on the -- the question
5 for reconsideration. And you can take it as one
6 motion or two motions, but I do need a motion.

7 MR. HETRICK: I -- if I could also point out,
8 I want to make clear for the record that it is
9 entirely appropriate for the prehearing officer or
10 the Chairman to enter these orders.

11 CHAIRMAN GRAHAM: Commissioners.

12 Commissioner Brown.

13 COMMISSIONER BROWN: Thank you.

14 Well, you know, I -- I'm always sensitive to
15 time requests. And so, I can understand your --
16 your need here.

17 This -- this is a rule that we un --
18 legislatively, we're under very tight time frames
19 to adopt, per the Legislature, specific -- at least
20 to propose to adopt -- pardon my language -- my
21 speech. The Commission considered all of this. I
22 think the orders were very-well-written.

23 I do want to ask our legal staff, some
24 questions about the discovery in an evident -- in a
25 rule-making proceeding. So, I -- I read the -- I

1 read the motions, I read the orders, both very-
2 well-drafted.

3 It -- this is an issue that I wish it
4 wasn't -- I wish we didn't have to -- you know,
5 you're asking for time. I don't know how much time
6 you're asking for, but we're in a posture right now
7 just to reconsider whether there was a mistake of
8 fact or law. So, that being said, that's what we
9 have to look at right now.

10 Samantha --

11 MS. CIBULA: Yes, discovery is for
12 substantial-interest proceedings, the 120.569, .57
13 proceedings, and this is not that proceeding. This
14 is a more legislative-type proceeding --

15 COMMISSIONER BROWN: Right.

16 MS. CIBULA: -- where we're gathering
17 information and we don't have the same trappings of
18 a trial-like proceeding.

19 COMMISSIONER BROWN: It's hard to argue with
20 that. I mean, that was really the only area that I
21 was -- that I thought maybe there was some --
22 something persuasive by Mr. Rehwinkel, but hearing
23 legal staff say that there is no mistake of fact or
24 law, it's kind of hard to overturn the presiding
25 officer's orders.

1 So, with -- with that, I would move denial of
2 the motion for reconsideration.

3 CHAIRMAN GRAHAM: For both the suspension and
4 the continuation?

5 COMMISSIONER BROWN: Yes, sir.

6 CHAIRMAN GRAHAM: Is there a second?

7 COMMISSIONER FAY: Second.

8 CHAIRMAN GRAHAM: It's been moved and second.
9 Any further discussion?

10 Seeing none, all in favor, say aye.

11 (Chorus of ayes.)

12 CHAIRMAN GRAHAM: Any opposed?

13 By your action, reconsideration failed.

14 Mr. Rehwinkel.

15 MR. REHWINKEL: Thank you, Mr. Chairman.

16 And -- and -- and thank you for your consideration
17 of our request.

18 And -- and I agree with Mr. Hetrick. I was
19 not objecting to the Chairman making the -- the
20 motion. I just was saying that it --

21 CHAIRMAN GRAHAM: Oh, I just want --

22 MR. REHWINKEL: -- created some level of
23 uncertainty about --

24 CHAIRMAN GRAHAM: I just want to be clear on
25 the record because he said it was a prehearing

1 officer --

2 MR. REHWINKEL: Yeah.

3 CHAIRMAN GRAHAM: -- and I just want to make
4 sure who it was.

5 MR. REHWINKEL: Commissioners, at this time, I
6 don't know if it is appropriate for -- when your
7 intention was to have staff, subject to, explain
8 the rule and -- and answer questions. I'm happy to
9 do that now or I'm happy to -- to do that at the
10 conclusion of all the comments. I just don't know
11 what your intention is.

12 CHAIRMAN GRAHAM: Let's -- let's hear the
13 letter from the woman that could not make it.

14 MR. REHWINKEL: Okay. Do you want me to read
15 it?

16 CHAIRMAN GRAHAM: Yes.

17 MR. REHWINKEL: Okay. And I have 25 copies of
18 this, if -- if you want it passed out.

19 CHAIRMAN GRAHAM: I don't think it's necessary
20 to pass out.

21 MR. REHWINKEL: Okay. All right.

22 CHAIRMAN GRAHAM: But we are going to make it
23 part of the record.

24 MR. REHWINKEL: Okay. This is a letter -- and
25 I think her name is Kelly Cisarik, C-i-s-a-r-i-k.

1 And this is an e-mail that was sent Monday,
2 November 4th, 2019, at 4:52 p.m., to Commissioner
3 Graham, and it has a -- CCed the other four
4 Commissioners, it appears.

5 And the subject is: Public comments on PSC
6 hearing, November 5, Docket No. 20190131:

7 "Dear Chairman Graham and PSC Commissioners, I
8 had hoped to come before you personally to address
9 the Commission or to be allowed to participate by
10 phone to read these comments, but that was not
11 permitted. I am requesting that one of you please
12 read my comments into the record of the meeting to
13 reconsider Rules 25-6.030 and 25-6.031, FAC.

14 "The Public Service Commission was charged
15 with proposing new rules to enact new storm-
16 protection-plan legislation and to accomplish that
17 by October 31, 2019. You have done that; however,
18 I am concerned that these rules" -- "those rules
19 are not fully developed and" -- "and don't provide
20 adequate transparency so that the PSC staff and the
21 Commission will know what projects they are
22 actually approving after year-one in the storm-
23 protection plans.

24 "As ratepayers, we need protection from double
25 billing. We also need to know that the projects

1 prudently approved in year-one of the plans stay in
2 those plans.

3 "We also need protection from the unverified
4 and potentially ill-advised projects from being
5 substituted in years two and year thr -- "year-two
6 and year-three of these storm plans.

7 "Indeed, your own staff recommended that they
8 may be provided info on what each utility
9 proposes" -- commissioners, let me restart that. I
10 misread that sentence.

11 "Indeed, your own staff recommended that they
12 be provided info on what each utility proposes to
13 construct for the first three years of each plan.
14 How can you protect the ratepayers from writing a
15 blank check without having that detail up front?

16 "The new rules you have approved encourage
17 utility undergrounding in agreement with the intent
18 of the legislation, but as you know, there are
19 serious considerations around undergrounding that
20 you have yet to address.

21 Undergrounding can make the grid more secure
22 and reduce post-storm restoration times in many
23 areas, but it can do the opposite in flood-zone
24 areas prone to storm surge.

25 "I am concerned with two issues: Location

1 suitability and cost. I have yet to see anything
2 in the new PSC rules to address location
3 suitability or excessive cost of undergrounding.

4 " In my county, we have a \$3.5-million-per-mile
5 proposal under consideration to underground a 13-
6 mile stretch of coastal road that is in a flood
7 zone. I am concerned that utility ratepayers
8 system-wide may be asked to pay for local
9 sandcastle proposals like ours in future storm-
10 protection plans, which are too expensive and are
11 at risk of being destroyed by storm surge.

12 "I am not qualified to give you future sea-
13 level projections and will tell you" -- "and tell
14 you what areas are in greatest risk of either storm
15 surge or sea-level rise, but I can tell you that
16 people along the coast are a lot more concerned
17 about future intensity of hurricanes after Irma in
18 2017 and Michael in 2018, and you should be, too.
19 We have to think now about what storm surge can do
20 before a major storm or sea-level rise inundates
21 our coastal areas.

22 " My utility, Duke Energy, utilizes some
23 transformers in coastal areas that are supposed to
24 have a 30-year life span, but I wonder how many
25 will make" -- "will make it that long, particularly

1 if submerged in saltwater.

2 "It is alarming to see placement of this
3 equipment at ground level in coastal areas, and I
4 want the Commission to come up with some guidelines
5 to address that.

6 "The PSC must develop rules that mandate when
7 equipment must be elevated when placed in flood
8 zones. The PSC is the only body with the power to
9 make rules for utilities. This should not be left
10 to each individual company.

11 "I would add that, in coastal flood-zone areas
12 of our state, the Florida Building Code mandates
13 that even individual electric meters and air
14 conditioning equipment be elevated.

15 "Now that the ratepayers will be asked to pay
16 up front for storm-hardening projects, there has to
17 be more carefully consideration of where
18 undergrounding should be used and find ways to
19 elevate the most-expensive equipment when it is
20 used in flood zones.

21 "The current rules passed on October 3 don't
22 require enough detail be in the programs in year-
23 two and year-three even" -- "to even know which
24 projects will be in flood zones.

25 "I would urge you to go back to staff's

1 original recommendation for project-level detail in
2 years one-three of storm-protection plans and
3 specifically identify all proposed projects that
4 are in flood zones.

5 "The PSC is placing too much trust in
6 investor-owned utilities/companies to bring forward
7 projects that benefit the ratepayers. I am asking
8 the Commission to instead rework the storm-
9 protection plan rules and substitute verification
10 for that trust.

11 "Thank you for considering my comments. Kelly
12 Cisarik, ratepayer, Indian Rocks Beach."

13 CHAIRMAN GRAHAM: Let's make sure we get two
14 copies of that; one for the court reporter, one for
15 the clerk.

16 MR. REHWINKEL: Thank you.

17 CHAIRMAN GRAHAM: Thanks.

18 Okay. Now -- so, you said you have questions
19 of staff? We're supposed to make staff available?

20 MR. REHWINKEL: I have comments and/or
21 questions, whichever you prefer to -- to go in what
22 order.

23 CHAIRMAN GRAHAM: Let's continue with the
24 comments --

25 MR. REHWINKEL: Okay.

1 CHAIRMAN GRAHAM: -- before the questions.

2 MR. REHWINKEL: Mr. Chairman, I can -- I know,
3 when we have normal contested hearings, we pass out
4 exhibits ahead of time. I can do that now or we
5 can do them as -- as we go or do it at the end. I
6 don't --

7 CHAIRMAN GRAHAM: Let's do it as we go.

8 MR. REHWINKEL: Okay.

9 CHAIRMAN GRAHAM: I've got some staff people
10 back behind you.

11 MR. REHWINKEL: Okay. Very good.

12 CHAIRMAN GRAHAM: Have you got the first one
13 you want to pass out?

14 MR. REHWINKEL: I don't have one right at this
15 point. I was just at a point --

16 CHAIRMAN GRAHAM: Okay.

17 MR. REHWINKEL: -- where I was going to put
18 them all out there. Okay -- well, actually, I take
19 that back. I do have -- I do have an exhibit that
20 has a -- a red line. And I -- I would ask -- I
21 numbered these already with my internal numbers.
22 This happens to be our Exhibit 6 and I Bates-
23 numbered them at the bottom.

24 CHAIRMAN GRAHAM: Okay.

25 MR. REHWINKEL: So, this is -- it's an exhibit

1 that says: OPC Revised Proposed Rules 25-6.030 and
2 25-6.031, red line. And...

3 CHAIRMAN GRAHAM: Can we get somebody else to
4 help her so we get this out?

5 MR. REHWINKEL: Yeah, I can speak while --

6 CHAIRMAN GRAHAM: Sure.

7 (Whereupon, Exhibit No. 1 was marked for
8 identification.)

9 MR. REHWINKEL: I don't really need to -- I
10 just wanted to state the Pub -- the OPC,
11 Commissioners, has submitted a red-line exhibit,
12 numbered six, for us -- this exhibit contains our
13 alternative proposal for Rule 25-6.030 with what
14 I'm going to call two-plus annual amendment
15 proposal.

16 Our primary proposal is to use the staff rule
17 language proposed for Rule 25-6.030, Section 3E, as
18 contained in the September 20th, staff
19 recommendation memorandum.

20 For Rule 25-6.031, we have essentially
21 resubmitted the August 20th amendments that take
22 out the projected recovery concept, consistent with
23 our legal objection.

24 Just some predicates in the language that I'm
25 going to use in my comments. When I refer to "the

1 rule," I am referring to the proposed rule, whether
2 I use the term "proposed" or not, and I am not
3 conceding that the rule is lawfully in the final
4 form or has been adopted.

5 And also, Commissioners, my comments and --
6 and Mr. Willis' comments -- I'm going to submit to
7 you that these are arguendo in the sense that we
8 are assuming that you're allowed to proceed with
9 the projection, the fuel-clause-projection-style
10 approach to considering costs instead of our
11 historical approach. So, we're making that
12 assumption when we make our objections and
13 considerations in these comments.

14 When I say "SHP," that refers to storm-
15 hardening plans that you approved on July 9th, that
16 we are operating on the assumption that those costs
17 are included in base rates. And "SPP," or storm-
18 protection-plan costs, are those that are recovered
19 in the future SPPRC or -- or Storm-Protection Plan
20 Recovery Clause. Those would be new costs and
21 clause rates.

22 Commissioners, our most fundamental objection
23 to the rule is that you're failing to meet the
24 bedrock statutory mandate to prevent double
25 recovery by proposing to allow the second and third

1 year of a ten-year plan to contain only aggregated
2 program information.

3 We fully appreciate that the Commission had an
4 onerous deadline, as Commissioner Brown mentioned,
5 and that your efforts to propose a rule was made in
6 good faith.

7 We are not trying to slow down this process.
8 We have made extensive efforts to reach compromise
9 as we were requested to do by Mr. Hetrick, on
10 June 25th, as reflected in Pages 126 and 127 of the
11 transcript of that workshop.

12 And Commissioners, to some degree, with our
13 alternative that is included in -- in this exhibit,
14 what I'll call the two-plus-one approach option, we
15 are still offering an olive branch.

16 We commend your staff for getting it largely
17 right from a consumer-protection view, in spite of
18 some relatively-minor differences we have. We do
19 not, as I state, seek a lengthy suspension. We
20 think a very short accelerated evidentiary process
21 can be undertaken and that potentially both plan
22 and clause proceedings can be conducted in 2020, if
23 we get that opportunity.

24 Nevertheless, as discussed later in my
25 comments and in Mr. Willis' comments, it will be

1 impossible for the Commission to ensure that
2 customers are not paying twice for the same
3 undergrounding projects if program-level detail --
4 if project-level detail is not required for at
5 least the first two years, in combination with a
6 requirement that the plan be updated every year.
7 That annual updating is per -- is allowed under the
8 statute because you're required to -- they're
9 required to amend at least every three years.

10 This approach of two years, with the up --
11 annual updating is a new compromise alternative
12 that the OPC is recommending in lieu of the
13 requirement that the IOUs file project detail in
14 each of the three years.

15 We continue to assert that the existing SHP
16 plan should be supplemented with project-level
17 detail to allow an -- an accurate comparison to
18 assure customers and the Legislature that no double
19 recovery is occurring.

20 Discovery in clause proceedings to get this
21 information is possible, but with a very tight --
22 tight time frame and five utilities and the plans
23 being considered all at the same time, it makes
24 more sense to require this historical information
25 in the SHPs up front in the rule, and it prevents

1 the burden of proof from being shifted to the
2 customer and to your staff.

3 It is our understanding that your staff has
4 stated in the workshops and recommendations in the
5 rule-development process that they, and you, need
6 the project-level information in order to determine
7 whether clause recovery includes costs that are
8 being recovered through base rates and to determine
9 whether to make modifications to a plan as they
10 affect rate impacts, for example.

11 You need this information. The companies have
12 it and have not provided necessary facts to show
13 why the project-level information is unavailable.
14 We are seeking those facts by -- in discovery. And
15 Exhibit 3 contains that discovery and is part of
16 our showing.

17 Mr. Chairman, I have an exhibit. My question
18 to your staff would be: Is this exhibit part of
19 the record that you will be making a determination
20 on. This is the discovery that we served.

21 I have an exhibit I can pass out and enter
22 into -- as part of the record unless I have
23 agreement that it is part of the record that you
24 will consider in your de -- your deliberations.

25 CHAIRMAN GRAHAM: Staff?

1 MS. CIBULA: This document you just handed
2 out?

3 MR. REHWINKEL: No. No. All of the discovery
4 that we served for each of the five utilities.

5 MS. CIBULA: If you want to provide it to us
6 today.

7 MR. REHWINKEL: Okay. I have a copy -- I
8 have --

9 CHAIRMAN GRAHAM: Just so we can keep track of
10 what's in front of us, we are just going to give
11 these simple numbers, like 1, 2, 3 and 4, just so
12 if we have to refer back to them, we will know.

13 MR. REHWINKEL: So the first one will be 1.

14 CHAIRMAN GRAHAM: The first one is 1.

15 MR. REHWINKEL: Okay. So this will be No. 2.
16 And this is entitled OPC October 29, 2019, Fact
17 Discovery.

18 CHAIRMAN GRAHAM: So this one, OPC,
19 October 29, 2019, Fact Discovery is going to be No.
20 2.

21 (Whereupon, Exhibit No. 2 was marked for
22 identification.)

23 MR. REHWINKEL: Thank you.

24 Commissioners, I am not going to go through
25 this document. Mr. Willis may have some comments

1 to make on it as part of our showing, but just --
2 it's just for the record that --

3 CHAIRMAN GRAHAM: Okay.

4 MR. REHWINKEL: -- we have asked these
5 questions, and we submit to you as part of our
6 showing.

7 Section 366.96 is unequivocal, Commissioners,
8 that double recovery shall not occur, even in a
9 year where a projection, if allowed by law, is made
10 and recovered subject to final true-up in future
11 years.

12 The SPC statute doesn't say you can include in
13 the SPPRC costs that are being recovered through
14 base rates so long as two years later a different
15 set of customers gets the benefit of a refund in a
16 circumstance when the error is discovered after
17 project information is finally provided and when
18 discovery on SHP costs reveal detailed project
19 information that is comparable to the later
20 provided SPP final project information.

21 Section 366.96(8) states that the annual
22 transmission and distribution storm protection plan
23 costs may not include costs through the public --
24 recovered through the public utility's base rates.

25 I may have misread that. Let me make sure I

1 had it right. Yeah.

2 The statute does not say that you can put it
3 in and then later adjust it out. This language, in
4 fact, supports our principle legal objection to the
5 proposed rule that only historical information can
6 be approved for clause recovery.

7 To the extent that the Commission fully avails
8 itself of the project level detail for at least two
9 years, if not all three years, at least up until
10 base rates are reset, our concerns about the
11 Commission's proposed fuel or ECRC style projection
12 based recovery can be minimized if, again, it is
13 allowed.

14 The current proposed language of the rule
15 prohibits staff and customers and you from
16 requiring project -- project level detail even if
17 available to be provided for years two and three of
18 the plan.

19 All you have in the record of this proceeding
20 are claims and the assertions by the companies
21 where they raise some concerns about potential but
22 normal and expected changes in projects. But,
23 Commissioners, you have no evidence that the IOUs
24 cannot provide project level information for at
25 least the first two years. Your staff believes

1 that the IOUs can provide it for all three years,
2 and it has throughout this rule development process
3 been unwavering in insisting on three years of
4 project level detail throughout. This was true-up
5 two, and after the FPL proposal was accepted at the
6 end of the October 3rd agenda.

7 As it stands today, this agency does not know
8 whether the IOUs can provide at least two years of
9 project level information. The customers' interest
10 will not be protected in this rule proceeding
11 unless you receive some form of proof in the form
12 of tested and sworn evidence that is -- that is a
13 necessary fact that you don't have and that you
14 need to implement the statute.

15 Without this information, you cannot protect
16 the customers from double recovery when the clause
17 rates go into effect. Without it, you cannot meet
18 your obligation to implement the statutory mandate
19 to not allow costs being recovered through base
20 rates in the SPPRC, or to reasonably have an
21 opportunity to modify plans for rate impacts in the
22 public interest. Without this information,
23 Commissioners, you are hamstrung.

24 As Mr. Willis' comments will discuss from an
25 accounting and technical perspective in more

1 detail, in the very first two years of implementing
2 the statute after the rule becomes final, the
3 Commission will face an enormous challenge of
4 reviewing plans, and if the rule is not modified,
5 simultaneously undertaking to determine clause
6 recovery allowances, making plan modifications and
7 meeting the strict requirement of the SPP statute
8 that forbids double recovery.

9 As he will demonstrate, the customers'
10 interest will not be protected unless you receive
11 some form of proof in the form of tested and sworn
12 evidence that is nec-- that is a necessary fact
13 that is missing, and the discovery in Exhibit 3
14 contains an element of that proof.

15 There have been some discussions in this rule
16 development and proposal process about rolling this
17 rule out now, learning as we go, and then perhaps
18 coming back and amending the rule.

19 CHAIRMAN GRAHAM: Mr. Rehwinkel, I hate to cut
20 you off, but you have hit more than once Exhibit 3,
21 are you talking about this one we just passed out
22 and called 2?

23 MR. REHWINKEL: I apologize. Thank you,
24 Commiss --

25 CHAIRMAN GRAHAM: I just want to make sure.

1 MR. REHWINKEL: Exhibit 2, yes. When I said
2 Exhibit 3 for the record, I meant Exhibit 2. And I
3 will --

4 CHAIRMAN GRAHAM: I just want to make sure.

5 MR. REHWINKEL: Thank you.

6 We believe this is ill-conceived and it does
7 not meet the requirements of the APA. The
8 Legislature required you to develop a rule to
9 implement the statute. They did not say adopt a
10 final rule that says we will make it up as we go
11 and figure out what we are doing along the way.
12 That approach is impermissible under Section
13 120.54(8)(e). There is no incipient rule-making
14 allowed here.

15 In addition, there is peril in being unable to
16 refund -- to require refunds of what would
17 otherwise be adjustments to costs that are
18 otherwise prudently incurred. This peril,
19 Commissioners, is found in subsection (7) of the
20 statute, the SPP statute.

21 Once you have approved a cost, even if you
22 later amend the rule to fix an oversight, it is too
23 late. The better and legally required option is to
24 require more information now in this version of the
25 rule at the start of a very difficult and unknown

1 process, and then reduce the requirements for
2 documentation after you gain knowledge and after
3 base rates are reset in 2021 for 2022
4 effectiveness. We assert that the role now and
5 amend later approach is exactly backward.

6 As Mr. Willis will explain, based on his 35
7 plus years of experience in utility accounting and
8 rate-making, the intersection of the 2021 clause
9 hearings, with the expected 2021 rate cases will
10 create a factual morass that must be sorted out in
11 the rule upfront now in order to give future
12 Commissioners standards against which to measure
13 compliance with the statute. He will demonstrate
14 that, in several instances, the need for project
15 level information is essential. He will also
16 demonstrate that you are lacking in the necessary
17 facts needed to implement the statute.

18 Your lack of understanding the necessary facts
19 to -- is -- to avoid adopting an invalid rule
20 extends beyond the failure to know whether the IOUs
21 can provide project level detail in the SPP, as
22 your staff believes they can. This deficiency
23 extends to the costs of actual projects that are
24 included in the SHPs and, thus, recovered through
25 base rates. Your proposal to only require broad

1 generalizations of undergrounding expenditures in
2 any of the first three years of the SHPs and in the
3 second and third year of the SPPs prior to allowing
4 clause recovery will pre -- will render you unable
5 to implement the statute because you won't know
6 today what dollars are included in base rates. You
7 don't know today what dollars are included in base
8 rates, and you will have no ability through the
9 SPPs in years two and three to fulfill the
10 statutory mandate of not allowing clause recovery
11 of costs being recovered through base rates.

12 This inability to meet your statutory
13 obligation fundamentally has its roots in the lack
14 of knowing if companies can provide project level
15 detail in the first two years. Your lack of actual
16 factual knowledge about the actual ability of the
17 company to produce project level information has a
18 further compounding impact on your ability to
19 understand whether the IOUs will be able to elevate
20 form over substance to artificially increase
21 recoverable costs by bundling enough projects to
22 meet the cost threshold of the AFUDC rule, or to
23 simply call a bundle of projects a program.

24 Commissioner, I have an exhibit that is the
25 AFUDC rule. I am willing to make that an exhibit

1 or this -- because there is a provision in the
2 statute about taking judicial notice that may be
3 problematic. I don't know what you would prefer to
4 do.

5 CHAIRMAN GRAHAM: Ms. Cibula.

6 MS. CIBULA: We can -- it's our rule, so we
7 can take judicial notice of our rule --

8 MR. REHWINKEL: Okay.

9 MS. CIBULA: -- that's existing.

10 MR. REHWINKEL: All right. So I just would
11 reference you to -- I just referenced the rule, so
12 that rule is 25-6.0141.

13 CHAIRMAN GRAHAM: Duly noted.

14 COMMISSIONER FAY: I am sorry, Mr. Chairman,
15 can you repeat it one more time?

16 MR. REHWINKEL: 25-6.0141.

17 There is some strong evidence, Commissioners,
18 that FPL, at least, intends to do this based on its
19 own internal procedures and in a way that increases
20 project costs, but that evidence was not provided
21 to you or the OPC until October 14th.

22 And I have an exhibit, this would be I guess
23 Exhibit 4.

24 COMMISSIONER BROWN: 3.

25 CHAIRMAN GRAHAM: 3.

1 MR. REHWINKEL: 3, I am sorry. Okay.

2 (Whereupon, Exhibit No. 3 was marked for
3 identification.)

4 MR. REHWINKEL: Exhibit 3, and it just -- it's
5 entitled AFUDC exhibit, but for the record, it is a
6 discovery -- there is a series of discovery
7 responses in docket 20190061, and I would ask that
8 this be passed out.

9 Mr. Willis is going to address this from an
10 accounting perspective, but Exhibit 3 that I am
11 passing out, we Bates numbered them, but our Bates
12 numbers sort of intermingled with FPL's Bates
13 numbers. So at Bates 44, our Bates 44 or FPL's
14 303, this documentation, which is an internal FPL
15 AFUDC procedure, points to provisions that allow
16 the utility to determine artificially if projects
17 can be bundled to qualify for AFUDC.

18 This exhibit itself is not the factual basis
19 that you need, but, instead, is the -- is the
20 evidence that there is something about the use of
21 program level information that's embedded in your
22 proposed rule that you don't know or understand,
23 and that lack of understanding means that you don't
24 know what costs you will be required to allow in
25 SPPRC petitions.

1 We have issued discovery to acquire these
2 facts, and that is shown in Exhibit -- I forget
3 what it is -- 2. Without this knowledge, you
4 cannot reasonably adopt a rule and that implements
5 the statute because you don't have necessary facts
6 about how AFUDC will be calculated in a program
7 versus a project environment. You did not know
8 this when you passed the rule, and this simple,
9 what we consider semantic device, calling a group
10 or projects a program, could add perhaps \$2.8
11 billion in extra costs to what is already a
12 staggering number of \$35 billion that FPL has
13 estimated and publicly announced that it will pass
14 through the rule in the next decade or so. That
15 announcement, however, was only made after you
16 voted to propose the rule.

17 And it's possible that the \$35 billion number
18 already included an escalation for AFUDC, but that
19 would even be more problematic in that it would be
20 a hidden cost that you are not and could not be
21 aware of.

22 The statute says you have to specify the
23 elements that must be included in the filing.
24 Allowing a major cost increase of about eight
25 percent grossed up of a WACC to be put in to or

1 hidden in cost recovery through a semantic device
2 should not be the goal of the rule, and it
3 certainly doesn't appear to be the goal of the
4 statute. But you couldn't have known this because
5 you didn't know that FPL had an internal and
6 self-serving policy that allows them to increase
7 rate base based solely on what they call a group of
8 projects, and Mr. Willis will address this in some
9 detail.

10 The entirety of the rule development process
11 that has led to this point today also has revealed
12 to us recently a potential serious fault in
13 interaction and operation of the two rules based on
14 the express language of the statute as proposed,
15 and as we understand the representations and your
16 apparent adoption of that logic, the initial
17 projected cost recovery through the clauses, if
18 allowed by a court, will be based largely on
19 program level information that, as they tell you
20 and as you accept, will be trued up in, say, a
21 third year. At that point, you would hopefully
22 expect to see the final detail produced despite the
23 customers having paid for the projects without
24 seeing them described in detail.

25 Section 366.96(7) of the SPP statute states

1 that if the Commission determines that costs were
2 prudently incurred, those costs will be subject --
3 will not be subject to disallowance or further
4 prudence review except for fraud, perjury or
5 intentional withholding of key information by the
6 public utility.

7 We contend, Commissioners, that you failed to
8 consider this provision in the context of allowing
9 program level aggregated dollars to be recovered
10 without knowing if any of the project specific
11 costs are being recovered through base rates.
12 Perhaps it would be your position that you could
13 fix that when you see the true-up filing in a
14 couple of years, or perhaps -- and perhaps happen
15 to uncover an instance of double recovery in the
16 rate case MFRs, or even where you don't see double
17 recovery, you might have a question about whether
18 there was a true benefit of extreme weather
19 resiliency benefit. But we believe there is a
20 substantial risk that as long as the utility
21 incurs, as the statute says, these costs prudently,
22 you would be prohibited from going back and
23 adjusting those costs in customer rates.

24 This means that if the IOU shows they didn't
25 overspend and the costs were not otherwise

1 improperly incurred, or spent, they may well get to
2 keep the money. Customers don't get it back even
3 if it was also recovered through base rates. The
4 law says you cannot -- you can adjust -- you cannot
5 adjust the clause after a prudence determination is
6 made, and it does not authorize you to adjust base
7 rates.

8 I want to point out that by contrast, the ECRC
9 statute that is assumedly your model for
10 implementing this section states in 366.8255(2)
11 that an adjustment for the level of costs currently
12 being recovered through base rates or other rate
13 adjustment clauses must be included in the filing.

14 The SPP statute does not have a similar
15 requirement or authorization to adjust base rates.
16 The ECRC statute clearly has a mandate to reduce
17 them. There is no such symmetrical concept in the
18 SPP law. It is asymmetrical. Likewise, the ECRC
19 statute does not have a finality trap provision
20 like the one I read in subsection (7) of the SPP
21 statute that forbids adjustment to clause recovery
22 in the absence of fraud, perjury or intentional
23 concealment.

24 We would also point out that currently, three
25 IOUs have base rate freezes. So your ability to

1 adjust base rates for errors in the clause recovery
2 is limited or nonexistent. The main point here is
3 that it is imperative that you have the project
4 level information on the front end before you allow
5 clause recovery, because in addition to the
6 unfairness of potentially allowing double recovery
7 for up to two years, you may be legally prohibited
8 from adjusting either clause rates or base rates
9 under the SPP statute.

10 Absent the assurance of preventing double
11 recovery, the proposed rule is an invalid exercise
12 of delegated legislative authority under Section
13 120.52(8)(c) in that it contravenes the statutory
14 mandate to not allow double recovery without -- and
15 without the project level information, you cannot
16 adequately protect the customers because you will
17 have no way of knowing if you are meeting the
18 statutory test, and you may be powerless to remedy
19 the error if the utility prudently incurs or spends
20 the dollars in the program.

21 The customers we represent should benefit from
22 the undergrounding and storm hardening efforts
23 incented by the legislation, but that incentive is
24 not one that was to allow utilities to double
25 recover costs. You need to understand both buckets

1 of dollars, and the first step to understanding
2 that is the degree to which utilities have the
3 ability to give you the detailed information about
4 the projects they have planned and the projects
5 that they are already undertaking pursuant to their
6 commitment to you and the customers of the S -- in
7 the SHPs.

8 A few brief remarks about some other elements
9 of the proposed rule. I will not go into
10 reiterating our objection about the proposed versus
11 historic, but we believe that's a violation of
12 Section 120.52(8)(b) and (c). We believe that the
13 rule is impermissibly vague in contravention of
14 Section 120.52(8)(d), where you allow IOUs to add
15 costs and programs under the provision of rule --
16 proposed Rule 25-6.030(3)(j), which is what I call
17 the catchall provision that does not contain a
18 requirement that the factor be directly related to
19 the purpose of the statute.

20 We have in our Exhibit 1 proposed to remove
21 that provision. So I will just leave it at that.
22 Without that removal, we think that items like
23 batteries and meters and maybe AFUDC costs that
24 were not contemplated by you could be -- could be
25 included in program level detail.

1 Commissioners, the proposed rule we believe is
2 also impermissibly vague in contravention of
3 section 120.52(8)(d), where you allow the IOUs to
4 add costs in the program under the provision of
5 Rule 25-6.30 -- 30(3)(e)(2). That rule has a term,
6 project related information, that is undefined in
7 standard lists. It is not reasonably related to
8 the purpose of the statute, and it gives no
9 guidance to a future commission as to what that
10 means. The OPC proposes that this phrase be
11 amended and the word "related" be removed.

12 We also believe that the use of this phrase
13 that you added in may have been added without
14 knowing whether it was going to allow the utilities
15 to add AFUDC under their own internal guidelines
16 about AFUDC and whether projects were related or
17 not. So we believe that based on the new
18 information that was provided in Exhibit 3, that
19 that information -- that that provision is
20 problematic, and it is vague in terms of not
21 letting you or future Commissioners know whether
22 you are allowing AFUDC to be added to rate base
23 costs.

24 Mr. Willis is available now to provide some
25 technical and accounting comments. He has an

1 exhibit that --

2 CHAIRMAN GRAHAM: Before we bring up Marshall,
3 did you want to ask staff questions or do you want
4 to did that after Mr. Willis?

5 MR. REHWINKEL: At this point, I would prefer
6 just to let us finish and then ask questions at
7 that point, if that's --

8 CHAIRMAN GRAHAM: Okay.

9 MR. REHWINKEL: -- if that meets your
10 pleasure.

11 CHAIRMAN GRAHAM: Sure.

12 MR. REHWINKEL: Okay. All right. So I have
13 an exhibit for Mr. Willis that I -- it says
14 Mr. Willis on the exhibit, but I don't know where
15 it is.

16 CHAIRMAN GRAHAM: You passed out one, the
17 AFDC -- the AFUDC exhibit. You said he was going
18 to ask questions about that.

19 MR. REHWINKEL: I said he was going to -- oh,
20 here it is. I said he was going to address some
21 issues in that.

22 CHAIRMAN GRAHAM: Okay.

23 MR. REHWINKEL: And this is -- it says
24 Marshall Willis timeline. So this will be 4?

25 CHAIRMAN GRAHAM: 4.

1 MR. REHWINKEL: Okay.

2 CHAIRMAN GRAHAM: Welcome home.

3 MR. WILLIS: Thank you. It's been a while
4 since I have been up here to talk to you like this.
5 Let me get rid of all of Charles' stuff here.

6 Chairman Graham, Commissioners, my name is
7 Marshall Willis, and I will be presenting comments
8 on behalf of the Office of Public Counsel and the
9 customers of the electric investor-owned utility
10 companies.

11 For those Commissioners not familiar with me,
12 as well as Commissioner Graham and Commissioner
13 Brown, I served as the Director of the Division of
14 Accounting and Finance before 2015, and before
15 that, I was the Director of the Division of
16 Economic Regulation. I served this commission for
17 well over 38 years, and I believe have a lot of
18 knowledge in electric utility regulation.

19 Commissioners, I would like to address you
20 today on four issues concerning proposed rules
21 25-6.030 and 031. The four issues are, first, the
22 level of the project detail required by the
23 proposed rules. Two, the application of AFUDC
24 within the proposed storm protection plan cost
25 recovery clause. Three, problems with proposed

1 rule 25-30(3)(j). And, four, the use of the
2 weighted average cost of capital on expenses
3 included in the proposed clause.

4 Part of my comments, you hopefully have a
5 legal sheet that's just been passed out to you,
6 which I forget what exhibit it is right now. It
7 has yellow highlighting across the top. Let me
8 grab my copy.

9 What I tried to do to present with this single
10 page is how the storm hardening plan, the storm
11 protection plan and the storm protection plan cost
12 recovery clause will interact in the very near
13 term, especially since the expiring settlement
14 agreements indicate that all five electric
15 utilities will most likely file rate cases in 2021,
16 and almost certainly use a 2022 projected test
17 year.

18 For the use of this one page, I hope to
19 demonstrate why it is my professional opinion that
20 you must modify your proposed rule and ask for
21 three years of projected level detail information
22 as your staff had originally recommended to you in
23 their September 20th, 2019, recommendation.

24 Alternatively, you could modify the rule to
25 require annual updates to the plan requiring

1 project level details for only two years, which
2 would be for the clause year and the projected
3 year, which I think Mr. Rehwinkel has already
4 explained.

5 Now, if I can direct you to -- your attention
6 to that legal size piece of paper.

7 First, if you look at the very left side under
8 the very top, the highlighted in yellow, you will
9 see the word storm protection plan filing, with
10 arrows pointing to the next two boxes to the right
11 under the column headings.

12 The Commission's proposed rule 25-6.030 does
13 not contain any language that requires the
14 companies to separate storm hardening plan costs
15 currently being recovered through base rates from
16 those costs that would be in addition to or above
17 and beyond the amounts already being recovered
18 through base rates.

19 You do not know whether the companies will
20 file a storm protection plan with both of these
21 costs included or just the amount they claim is
22 above those costs being required -- or being
23 recovered today in base rates.

24 I do not read the rule to require such an
25 important separation. Why is that important? To

1 prevent double recovery and customers from paying
2 more than the prudent and reasonable costs being
3 incurred in the storm protection activities.

4 If you look at the next row, I have
5 demonstrated how the storm protection plan cost
6 recovery clause will likely work over the next five
7 years.

8 In the next row, I depict, based on my
9 experience with rate-making process, your MFR rule
10 and the way the electric IOUs file their cases, the
11 anticipated rate case financial baseline and
12 projected filings for the five companies. Again,
13 the purpose is to show you how these four filings,
14 the SHPs, the SPPs and the SPP cost recovery clause
15 filings in the MFRs are going to interact and why I
16 believe you need to require detailed project
17 information in the plan filings for not just the
18 first year, but all three, at least until base
19 rates have been reestablished, the SPP costs either
20 clearly delineated or completely removed and
21 included in the SPP cost recovery clause.

22 Now, if I can direct you back to the first row
23 of the SHP.

24 Commissioners, you just approved storm
25 hardening plans in July of this year for the years

1 2019 through 2021. These plans were filed by the
2 investor-owned utilities prior to the legislative
3 session and approved prior to the legislation being
4 signed into law.

5 These SHP costs were filed every three years
6 for your approval, and are the amounts that the
7 companies have indicated to you and your staff that
8 they will be spending and are currently recovering
9 through base rates for storm enhancements and
10 improvements.

11 The majority of the costs and activities
12 presented for your approval in the most recent SHP
13 filing are program level costs. The SHP will no
14 longer be required in 2022, as it will be replaced
15 completely by the storm protection plan and
16 rendered moot by the complete separation of costs
17 between base rates and the storm clause due to the
18 anticipated rate case filings. It is vitally
19 important that the SHP costs that are currently
20 being recovered from customers through base rates
21 be identified to ensure no double recovery will
22 occur.

23 So let's look where we are today. 2019 is
24 about to draw to an end. Therefore, there will be
25 no storm costs protection plan allowed for 2019.

1 Under the years 2020 through 2021, I have used a
2 different shade of color to note that these would
3 be the first three years of the storm protection
4 plan filing. 2023 will be the first update
5 required by the SPP rule.

6 If you would now look at the column under the
7 year 2020. 2020 is the first year that a storm
8 protection plan can possibly be filed under the
9 uncontested proposed rule language, and because the
10 rule allows it, a request to implement a storm
11 protection plan cost recovery clause application
12 will likely be filed in that same timeframe.

13 Now for the first year of the proposed rule.
14 The storm protection plan must be filed with
15 project level information, but there is no required
16 separation between those projects included in the
17 SHP and recovered through base rates, and those
18 projects not included in base rates.

19 The SHP costs for 2020 are just dollar values
20 with no or very little project detail. You will
21 not be able to compare the projects in those
22 buckets of dollars to the single year or project
23 detail that you receive in the SPP. You will not
24 know if you are allowing double recovery even for
25 the 2020 without extensive, voluminous discovery to

1 attempt to determine the projects included within
2 the SHP so that they can be compared to those being
3 requested in the SPP.

4 Now, if I can get you to look at the next row
5 for the SPP cost recovery clause.

6 For any 2020 SPP cost recovery clause filings
7 that are allowed, you see that the SPPCRC filings
8 should not include any actual costs for 2019
9 because, as I said before, that year is prior to
10 the filing of the plan. To the extent that a court
11 rules that you could allow projected cost filings,
12 that filing will likely include actual and
13 estimated costs for 2020, and projected costs for
14 2021. The SPP cost recovery rates approved will be
15 effective for January 1, 2021.

16 For the next year of 2021, the SPP cost
17 recovery clause will include actual costs for 2020
18 as part of a true-up, actual estimated costs for
19 '20 and '21, and projected costs for the year 2022.

20 If you continue down to the next row on my
21 sheet that says utility company rate filings, I
22 visually laid out the rate case filings that I
23 anticipate for the investor-owned utilities.

24 The year 2020 will, in all probability, be the
25 historic test year that each company's rate case

1 filings would be built off of. Staff and the
2 intervenors will have to, through very voluminous
3 significant discovery, attempt to separate the
4 projects included in the SP -- or SHPs and recover
5 through base rates from those that the companies
6 want to recover through the SPP cost recovery
7 clause. This true-up effort will be aided somewhat
8 by the fact that the SPP proposed rule currently
9 requires the project specific information for the
10 first year, 2020.

11 As I discussed previously, however, the storm
12 hardening plan, or SHP, information you currently
13 have for the years '19, '20 and 2022 -- or 2021, is
14 only in gross dollar amounts with no project detail
15 at all.

16 To the extent that the 2020 MFR base year is
17 inconsistent with the 2020 SHP filings, you will be
18 hamstrung ensuring that the new SPP dollars do not
19 include base rate dollars in 2020 and years beyond
20 that.

21 Commissioners, proposed rule -- the
22 Commission's proposed rule does not require project
23 detailed SPP cost information for the second and
24 third years of the plan, which is what we've
25 already talked about. For the year in this case,

1 it would be 2021 and 2022.

2 The separation of the 2021 costs between that
3 included in the SHP and recovered through base
4 rates and the excess costs not recovered through
5 base rates will be virtually impossible for your
6 staff and the intervenors to determine when
7 specific detailed projects are not submitted with
8 the filing of the plan.

9 This is especially true to the extent that the
10 intermediate MFRs, which would reflect the
11 financial information for the intermediate year --
12 because all these companies will file a projected
13 test year, and that year would probably be 2021 --
14 will have no correlation to the dollars included in
15 the 2021 storm hardening plans.

16 Several of the companies have told you at
17 previous workshops and at the September 20th Agenda
18 that they did not have project -- or project level
19 detail to file for the years two and three.
20 Commissioners, you don't know that for a fact that
21 the companies don't have this detail.

22 This information that needs to be -- this is
23 actual information that needs to be validated
24 through this rule process is part of the discovery
25 that I wrote and we actually submitted for the

1 companies to respond to. It's hard for me not to
2 believe that you do not, at least for the first two
3 years, have that information, especially for
4 companies who budget forward for two to three years
5 and these companies would not know where they are
6 going to be in years two and three, and what they
7 are going to be doing.

8 The new legislation enacting the environmental
9 cost recovery clause was designed to start
10 recovering environmental costs already recovered
11 through base rates. As you have already heard from
12 our comments before, the Commission had to decide
13 what already was included in base rates at the time
14 versus what Gulf Power was requesting in its first
15 ECRC filing.

16 It was my understanding in 1994 that that
17 process was not entirely the same as here, because,
18 as Mr. Rehwinkel discussed earlier, the clause
19 recovery had to be accompanied by a base rate
20 reduction. I am not aware of a similar
21 requirement, or even having the ability to at least
22 reduce rates for SPP costs. Additionally, at least
23 two companies have base rate freezes that do not
24 allow reductions in base rates before January 1,
25 2022.

1 Commissioners, in 1994, the project level
2 detail was properly required by the Commission when
3 the environmental cost recovery clause was
4 implemented, just as it should be in the proposed
5 rules for the implementation of this clause. As a
6 result in 1994, the Commission was able to find
7 through evidence that the company was already
8 recovering a portion of costs in base rates and
9 appropriately made an adjustment to the clause
10 filing to only include the increased costs due to a
11 scope change in a particular project. The
12 Commission made their final -- or finding based on
13 a project by project analysis.

14 Commissioners, the magnitude of the projects
15 to be included in the storm protection plan cost
16 recovery clause and the anticipated costs are much,
17 much higher than those originally dealt with in the
18 implementation of the ECRC and the incremental
19 environmental compliance costs.

20 The SPP costs, on the other hand, will touch
21 almost every aspect of the company's business
22 outside of generation; and if you allow battery
23 storage and meters to be included, then, perhaps,
24 every part of their business will be included.

25 This will make it vital and urgent that you get the

1 separation right, and that starts with the project
2 level detail before the recalibration that occurs
3 in 2021 through rate case. If the separations are
4 not done correctly in 2021, it cannot easily be
5 rectified, if at all, afterward.

6 The next year's SPP cost recovery clause
7 hearing cycle 2021 becomes even more difficult for
8 all because, as I stated before, I anticipate all
9 five companies will be in all probably filing base
10 rate cases, all filing for a projected test year
11 for 2022.

12 As you recall, 2021 is the last year covered
13 by the SHPs. As you can see by the red arrows I
14 have drawn on the map, or the sheet I handed out,
15 2021 SPPCCR or CRC costs will include the actual
16 2020 costs, the actual and estimated 2021 costs,
17 and the estimated 2022 costs.

18 The year 2022 is what we all will be working
19 to get to, because that will be the first year that
20 all SPP and SHP costs combined should be completely
21 separated from base rates and recovered through the
22 SPP cost recovery clause.

23 As you can see in the column titled 2021, the
24 Commission will probably have all five SPPCRC
25 filings and probably five rate cases to deal with.

1 Without the project detail being required now, as I
2 stated earlier, it will be monumental if not nearly
3 impossible task to accurately separate out these
4 costs.

5 The rate case MFRs will be filed by March of
6 2021 with commission hearings to follow. All SPP
7 costs and projects must be separated completely
8 from base rates in not only the SPPCRC as well as
9 the MFR filings.

10 If the Commission does not get the proper
11 separation of costs in 2020, the first year of the
12 clause, correct, a domino effect of sorts can
13 happen. In 2021 and 2022, to the extent it is
14 built off the two historical bases, will be even
15 more problematic for all involved, especially the
16 staff and the intervenors.

17 This is why I am strongly urging you to amend
18 the proposed rule to require project specific
19 information for the first three years. This would
20 get project information through the anticipated
21 base year of 2020 through the projected year of
22 2022.

23 This information should be available to -- or
24 available to a large degree, which would be
25 necessary to perform the proper separations in '21

1 between base rates and the SPP cost recovery
2 clause.

3 Alternatively, as I stated in the very
4 beginning, you could modify the rule to require
5 annual updates to the plan for project level
6 details for two years, which would be for the
7 clause year and a projected year. To be clear,
8 that information would need to be updated each
9 year.

10 The last section of the proposed rule 25-6.030
11 deals with vegetation management by the companies.
12 At this time, it would be difficult to
13 affirmatively demonstrate what level of vegetation
14 removal costs are currently being recovered through
15 base rates. As we explained in our previous
16 comments, the SHPs approved by you in July of this
17 year for the '19 through '21 storm hardening plans
18 indicated increasing levels of vegetation
19 management for FPL, Duke and TECO, while Gulf
20 showed a slight decline, perhaps as a result of the
21 widespread tree stripping actions of Hurricane
22 Michael.

23 With respect to the vegetation management
24 costs, I recommend to you that there be no specific
25 SPP cost recovery clause recovery until base rates

1 have been reset for each company. These companies
2 have already told you that the levels of vegetation
3 removal that each company is currently pursuing is
4 appropriate, and it is already recovered through
5 base rates as reflected in the SHP. It would be
6 hard to imagine that an increase in this cost would
7 now be needed.

8 If a company were to request recovery of
9 vegetation removal costs through the SPP cost
10 recovery clause, the Commission would have to be
11 vigilant about changes in scope for these projects.
12 This can only be done by requiring, again,
13 project by project level detail in the SPP.

14 Commissioners, just like your professional
15 staff, including senior management, did in a
16 recommendation on September 20th, 2019, if I were
17 still one of your directors, I would have
18 absolutely recommended to you that you and your
19 staff needed this three years of project detail
20 information that I am asking you to reconsider
21 requiring today, or in the alternative, the two
22 years.

23 Turning now to my second issue. This issue
24 deals with the application of an allowance for
25 funds used during construction or AFUDC on capital

1 projects being requested for recovery through the
2 proposed storm protection cost recovery clause.
3 The current AFUDC rule has two requirements for a
4 project to be eligible for inclusion.

5 First, the project has to meet a dollar
6 threshold of a half of a percent of the sum of the
7 total balance in account 101, electric plant in
8 service, and account 106, completed construction
9 not classified at the time the project commences.

10 Second, the project must take no more than 12
11 months to complete after commencement of
12 construction.

13 Based on recent discovery, which Mr. Rehwinkel
14 has already discussed, and I have reviewed, which
15 came in through another docket, at least one
16 company, which is FPL, currently believes that it
17 can bundle projects that are contracted for to be
18 built under one contract, or are part of one
19 program, or have one project manager.

20 By bundling these projects together that may
21 not bear any substantive relationship, they would
22 appear to superficially meet the two tests for
23 inclusion of AFUDC in a way that it adds extra
24 costs into the SPP cost recovery clause for
25 recovery at an artificially inflated cost.

1 If these projects had been actually contracted
2 for separately, had different project managers or
3 broken out into separate projects instead of being
4 presented together as one program, under that
5 company's AFUDC internal practice or policy, they
6 would not have met the threshold test for AFUDC
7 inclusion.

8 Commissioners, this is the fact that I believe
9 you are not aware of. It needs to be properly
10 vetted through this rule process. And I stated
11 before, we have passed out an exhibit that shows
12 you what we have discovered in another docket.

13 Commissioners, I believe this bundling of
14 projects could also occur through the proposed
15 clause, and that the proposed rule should address
16 this issue by only allowing the application of
17 AFUDC on a project by project basis as the
18 Commission's rule was originally intended.

19 Likewise, these individual projects should not
20 be allowed to be bundled into a program basis as
21 IOU's have requested. By not allowing this project
22 bundling into programs, a company would not be able
23 to artificially meet the threshold test of the
24 AFUDC rule and materially inflate the costs to be
25 passed on to the customers through the SPP cost

1 recovery clause.

2 Commissioners, my third issue relates to the
3 proposed rule section 25-030(j), which allows a
4 utility to include any other factors the utility
5 request the Commission to consider. Fairly vague.

6 At the August 20th, 2019, rule development
7 workshop, Mr. Rubin of FPL talked about the types
8 of equipment, such as battery storage, that were
9 not included earlier in the rule in the definition
10 of transmission and distribution facilities.

11 I would caution the Commission against
12 including section (3)(j) as it could open the door
13 to the inclusion of such items as battery storage.
14 If this section is truly necessary, then such items
15 as battery storage should only be included if its
16 main sole purpose is for reducing restoration costs
17 and reducing outage times due to extreme weather
18 conditions.

19 I believe in the near future this Commission
20 will see billions of dollars being spent for
21 battery storage, not specifically for the purposes
22 of this rule, but to enhance the value of solar
23 generation facilities to provide electricity to the
24 grid 24 hours a day, or during peak hours when the
25 sun isn't shining and the panels are not producing.

1 Because of the large dollars that will be spent on
2 battery storage facilities, I believe that the
3 incentive is to push the recovery of these costs
4 through this clause. This section of the rule
5 should either be removed or amended to tighten the
6 requirements for what a company can request under
7 this particular section of this rule.

8 Now, Commissioners, for what you have been
9 waiting for, I am going to turn to my last issue.

10 CHAIRMAN GRAHAM: Marshall --

11 MR. WILLIS: This --

12 CHAIRMAN GRAHAM: -- question for you from
13 Commissioner Brown.

14 COMMISSIONER BROWN: Mr. Willis, could you
15 just restate some of that language you said?

16 MR. WILLIS: Absolutely.

17 COMMISSIONER BROWN: You said it's under
18 section J, and then you went on to say the reasons
19 for tightening the rule with the requirements with
20 regard to battery storage. Can you just say what
21 you -- your proposal was on that two points?

22 MR. WILLIS: Absolutely, I think -- well, my
23 first proposal was to actually strike section J off
24 of (3)(j) out of the rule, but if the Commission
25 believes that it needs to actually be in the rule,

1 then the rule needs to be specific in that one
2 section that basically says that anything the
3 Commission, or the companies, or the IOUs desire to
4 bring forward under that section has to be for the
5 sole primary purpose -- now, there may be other
6 purposes for it -- but the sole primary purpose for
7 the addition of that asset, not included in the
8 distribution transmission definition, should be for
9 the enhancement improvement of the assets to the
10 company, the distribution and collection system of
11 the company pursuant to the statute. That's where
12 I would tighten -- I would absolutely tighten that
13 section of the rule.

14 Does that answer your question, Commissioner
15 Brown?

16 COMMISSIONER BROWN: Kind of.

17 MR. WILLIS: Kind of. Is there something else
18 I could add that would --

19 COMMISSIONER BROWN: You -- you stated it
20 better earlier, from whatever document you are
21 reading, you -- you talked about tightening the
22 requirements, and you actually used two measures to
23 tighten it, and it wasn't really -- it -- I
24 didn't -- I couldn't write it down quick enough.

25 MR. WILLIS: Oh, well let me go back.

1 What I actually talked about there was -- and
2 let me get the exact language for you. Basically
3 what I -- what I tried to explain to you before was
4 what I said there. The section should be tightened
5 up to say that it should only be included if its
6 main sole purpose is for reducing restoration
7 costs --

8 COMMISSIONER BROWN: That was it.

9 MR. WILLIS: -- and reducing outage times due
10 to extreme weather conditions, which ties it better
11 to the statute, I believe.

12 COMMISSIONER BROWN: Thank you.

13 MR. WILLIS: Going to my last issue. This
14 issue deals with the application of the weighted
15 average cost to capital, or what commonly is
16 referred to as WACC, on the expenses being included
17 for recovery through the proposed clause.

18 The multiyear true-up being proposed from Rule
19 25-6.031 is no different than the process used by
20 the Commission in the current clause processes that
21 you currently have on a yearly basis. Therefore,
22 just like these other clauses, the proposed storm
23 protection plan cost recovery clause should not
24 include WACC on expenses requested for recovery.

25 I would request that you amend the proposed

1 rule to include this specific language also, so
2 that it tracks the way you process your other cost
3 recovery clauses.

4 And, Commissioners, with that, that includes
5 my comments -- or concludes my comments. I would
6 be happy to answer any questions you might have.

7 CHAIRMAN GRAHAM: Let's -- so you made your
8 comments, and Mr. Rehwinkel has made his comments.
9 He has got some questions of staff. So let's take
10 a five-minute break so staff can go over some of
11 the stuff.

12 Mr. Wright.

13 MR. WRIGHT: Can I just slide in here?

14 MR. WILLIS: Sure.

15 MR. WRIGHT: Thank you, Mr. Chairman.

16 We -- we -- the Retail Federation, FIPUG and
17 PCS Phosphate are also here today to make comments.
18 We will follow whatever process you choose. My
19 comments aren't lengthy. I believe Mr. Brew's
20 aren't lengthy. I am not going to vouch for my
21 friend Mr. Moyle, but it seems to me that it might
22 be more orderly if you heard from us before getting
23 into the staff's explanations, per Mr. Rehwinkel's
24 request, but that's your call.

25 CHAIRMAN GRAHAM: Thank you.

1 MR. WRIGHT: Thank you.

2 CHAIRMAN GRAHAM: Okay. So we will take a
3 five-minute break, and, Mr. Rehwinkel, we will
4 start back you with asking questions of staff.

5 MR. REHWINKEL: Okay.

6 (Brief recess.)

7 CHAIRMAN GRAHAM: This is new for all of us,
8 so let me give you kind of a heads-up what we are
9 doing from here.

10 We heard from OPC and from OPC's witness. Now
11 OPC is going to be allowed to ask questions of
12 staff. And then after OPC is done asking his
13 questions, I will just start over here with the
14 utilities and intervenors, and basically start from
15 one end to the other, everybody give three to three
16 five minutes to give a statement, or whatever it is
17 you have to add to this public hearing, and then
18 the Commissioners will ask questions or make a
19 determination, and we go from there. Are we good?

20 All right. Mr. Rehwinkel, you have the floor,
21 sir. And my understanding is you need to ask
22 questions through the Chair. You know how that
23 works.

24 MR. REHWINKEL: Yes, sir, I do. I appreciate
25 that. This is -- this is somewhat new to me. I

1 think I did this one time in the 1980s, when I was
2 just a kid. So I have -- I have forgotten a lot,
3 so --

4 Mr. Chairman, just -- I think what you have
5 laid out is -- is appropriate. I have stated that
6 I want 30 seconds to close. I would ask, because
7 my closure is going to be related to the burden
8 that we have to demonstrate the draw-out
9 requirement. So with your permission, I would make
10 my 30 second pitch at the end of every -- of
11 everything --

12 CHAIRMAN GRAHAM: Of it all.

13 MR. REHWINKEL: Okay.

14 CHAIRMAN GRAHAM: I would give you twice as
15 long as that.

16 MR. REHWINKEL: I think there is a possibility
17 they can address it when they make their comments,
18 some of the intervenors wanted to join in with my
19 reconsideration. I know that you handled it the
20 way you did, and I think they may want to join in
21 if I make such a renewal at the end, so I just want
22 to alert you to that.

23 CHAIRMAN GRAHAM: Okay.

24 MR. REHWINKEL: Thank you.

25 Mr. Chairman, I have -- my first question I

1 would -- I would put to a staffer, and it would be
2 related to the 25-6.030 rule, subsection (1)(a) on
3 line eight.

4 So my first question is: Was it the intent by
5 the use of the word "related" on line eight that
6 the utility would be allowed to bundle projects in
7 a way that would allow them to accrue AFUDC on an
8 aggregated basis or bundled basis when, on an
9 individual basis, they would not be entitled -- an
10 individual project basis, they would not be
11 entitled to record AFUDC under the Commission's
12 rule? That's my question.

13 CHAIRMAN GRAHAM: Now, Bart, are you going to
14 handle these.

15 MR. FLETCHER: Yes --

16 CHAIRMAN GRAHAM: Okay.

17 MR. FLETCHER: -- well, this one.

18 Bart Fletcher, Commission staff.

19 With regarding that definition, just similarly
20 as it's done in the fuel clause and the
21 environmental cost recovery clause, you have the
22 AFUDC, once you meet the eligibility requirements
23 under the AFUDC rule, then you are entitled to that
24 AFUDC.

25 Now, in the AFUDC rule that was actually -- it

1 was Item 3 on this morning's agenda, the rule
2 speaks to project. It doesn't speak -- in the
3 AFUDC rule, it doesn't consider -- this is the
4 first I am aware of where there has been a
5 proposition put forth regarding bundling in order
6 to basically make a project that was maybe on a
7 singular basis would not be eligible based on the
8 eligibility requirements in the rule, AFUDC rule.

9 So this was -- that is an issue -- that is an
10 issue that would need to be addressed when you --
11 similarly in rate cases, when they seek recovery,
12 that would be an issue in the case, that this
13 doesn't meet the AFUDC rule because you bundled it,
14 and if it was treated separately, it would not be
15 eligible under the AFUDC rule.

16 Similarly in this situation for capital items,
17 it was mentioned earlier -- if I can tag along
18 tangentially related -- only projects that meet
19 those eligibility, that will be an issue in the
20 storm cost recovery clause, just like it would be
21 in a rate case proceeding, and that would be for a
22 party would put forth testimony to say if this was
23 unbundled, it wouldn't be eligible, and that would
24 be for the Commission to decide.

25 CHAIRMAN GRAHAM: Okay.

1 MR. FLETCHER: So that was not our intent, if
2 that answers your question.

3 MR. FUTRELL: And, Mr. Chairman, to also to
4 add on to the notion of a related, to get away from
5 the technical question about the AFUDC, was to
6 distinguish what they would provide us something
7 that was made -- some logical plain apparent sense.
8 For example, distinguishing between vegetation
9 management type activities versus undergrounding.

10 So related would be something underneath, say,
11 for example, the undergrounding rubric that would
12 be distinguishable from vegetation management.
13 That's the kind of where I believe staff's thinking
14 was, as far as what related meant.

15 CHAIRMAN GRAHAM: Okay.

16 MR. REHWINKEL: Mr. Chairman, if you would
17 give me one second, if I may.

18 CHAIRMAN GRAHAM: Sure.

19 And, Commissioners, if you need to ask a
20 clarifying question when staff is answering, feel
21 free. Sure.

22 COMMISSIONER BROWN: Mr. Fletcher, regarding
23 the AFUDC, so are you saying that the Commission
24 has the discretion to look at approving it on a
25 project by project basis, or as a bundled package

1 to get the AFUDC -- blah, blah, blah?

2 MR. FLETCHER: The rule -- the AFUDC rule,
3 25-6.0141, it doesn't define what a project is. It
4 does define eligible projects and ineligible
5 projects. And the first -- I haven't seen an issue
6 in a rate case where there has been an argument
7 broached regarding a request for recovery of AFUDC
8 regarding this bundling that was mentioned here
9 today.

10 COMMISSIONER BROWN: Do you think that there
11 needs to be clarification in the rule?

12 MR. FLETCHER: I guess that would be a
13 question for OPC, because it was on an item for
14 Item 3 this morning, and that was AFUDC rule, and
15 it doesn't -- they made statements here today that
16 it doesn't define project. It says, eligible and
17 ineligible projects, but that wasn't brought up on
18 Issue 3 regarding the rule itself, the AFUDC rule.

19 COMMISSIONER BROWN: Okay.

20 CHAIRMAN GRAHAM: OPC.

21 MR. REHWINKEL: Yes. Mr. Chairman, I would
22 ask to staff witnesses if they were, in drafting or
23 recommending the rule, aware of the FPL policy that
24 is shown in Exhibit 3?

25 CHAIRMAN GRAHAM: Do you have a specific page?

1 MR. REHWINKEL: Yes.

2 CHAIRMAN GRAHAM: And I know you have both
3 your Bates page and FPL's Bates page, either one is
4 fine.

5 MR. REHWINKEL: Did we call a AFUDC exhibit?
6 That's 1, right?

7 CHAIRMAN GRAHAM: That's 3.

8 MR. REHWINKEL: Is that No. 1?

9 CHAIRMAN GRAHAM: That's No. 3.

10 MS. CIBULA: It's 3.

11 MR. REHWINKEL: 3, okay. I am sorry.

12 All right. So this would be -- the reference
13 would be if you just turn to the next -- the last
14 two pages.

15 CHAIRMAN GRAHAM: Now, please ask that
16 question again.

17 MR. REHWINKEL: Yes. The question would be:
18 Was this internal FPL policy, was it something that
19 the staff was aware of in the rule development
20 process?

21 CHAIRMAN GRAHAM: Staff.

22 MR. FLETCHER: I just addressed this. The --
23 this discovery response to this other docket came
24 in on October 14th, and we did the workshops in
25 July and August, so definitely wasn't aware of it

1 at that point, and this was highlighted here today.
2 I have been following and monitoring that other
3 docket, but -- and was aware of this response on
4 the 14th, but as far as incorporating into any of
5 my comments for the -- this rule, no.

6 MR. FUTRELL: And also the Commission's voted
7 on October 3rd to propose the rules that we are at
8 hearing about today, so well prior to the
9 submission of this discovery response.

10 CHAIRMAN GRAHAM: Commissioner Polmann, did
11 you have a question?

12 COMMISSIONER POLMANN: Thank you, Mr.
13 Chairman, I actually had a follow-up for
14 clarification on the AFUDC and projects and
15 programs.

16 CHAIRMAN GRAHAM: Do you want to ask it now
17 from staff, or do you want to ask it later?

18 COMMISSIONER POLMANN: At your pleasure. I
19 mean, if Mr. Rehwinkel was going on to another
20 subject, that's fine.

21 MR. REHWINKEL: Mr. Chairman, those are all
22 the questions I have for your staff witnesses.
23 Thank you.

24 CHAIRMAN GRAHAM: Okay. Go ahead and ask your
25 question since we are on AFUDC right now.

1 COMMISSIONER POLMANN: Thank you, Mr.
2 Chairman.

3 I think we addressed, Mr. Fletcher, the issue
4 of AFUDC being on a project by project or program
5 basis, is that --

6 MR. FLETCHER: The AFUDC rule states that you
7 can -- it's eligible if it's on a project.

8 COMMISSIONER POLMANN: And it doesn't define,
9 if I understood your response, what is a project or
10 is it program -- you said it defines what's
11 eligible or ineligible, is that --

12 MR. FLETCHER: It defines ineligible and
13 eligible projects in the rule only. It doesn't
14 specifically define the meaning of project in the
15 rule.

16 COMMISSIONER POLMANN: Okay. Do you have a
17 comment, sir, on -- on the notion of what's been
18 discussed here particularly by Mr. Willis about the
19 projections, or the year one, year two, year
20 three --

21 CHAIRMAN GRAHAM: Mr. Polmann, I don't mean to
22 cut you off. I just thought you were going to do
23 AFUDC. We will come back to Commission questions
24 after those guys give their opening -- give their
25 statements, if that's okay.

1 COMMISSIONER POLMANN: That's fine. I -- I --
2 i was trying to relate back to whether Mr. Willis
3 was tying those year by year into the AFUDC, and if
4 there was an understanding of staff and whether
5 they were related.

6 CHAIRMAN GRAHAM: Go ahead. I apologize. Go
7 ahead.

8 COMMISSIONER POLMANN: And I am just asking
9 staff if they made a connection between a project
10 level detail year by year and the AFUDC from an
11 accounting perspective.

12 MR. FLETCHER: Right. Well, I believe what
13 Mr. Willis was saying is that in the projected, you
14 have your actual and the projected, and having at
15 the program level, that was something he mentioned
16 earlier about bundling and his concern regarding
17 bundling. However, whenever it gets to recovery of
18 AFUDC, that's -- you get that whenever you -- the
19 project is completed.

20 So in the projected cost, I wouldn't think
21 that they would be AFUDC in there, in the projected
22 costs; because in order to get AFUDC, you get it at
23 the end and capitalize it in the plant once the
24 project is completed.

25 So I didn't see that as a concern regarding

1 the accounting aspect there. And that will be an
2 issue -- a secondary issue regarding bundling or
3 unbundling of whether it met the eligibility
4 project under the AFUDC rule, that would be an
5 issue in the clause proceeding.

6 COMMISSIONER POLMANN: Thank you. That helps
7 me a lot.

8 And, Mr. Chairman, that was what I was --

9 CHAIRMAN GRAHAM: Okay.

10 COMMISSIONER POLMANN: -- I was struggling
11 with is the projection versus the recovery, and the
12 if the project is ongoing or at the end of the
13 project. So, thank you, Mr. Fletcher.

14 CHAIRMAN GRAHAM: Okay. Let's start on the
15 end. Florida Power & Light.

16 MR. RUBIN: Thank you, Mr. Chairman.

17 I heard the three to five minutes. If I could
18 beg your indulgence for perhaps 10. We have been
19 here quite a long time listening to those
20 arguments. I will be as quick as I can.

21 CHAIRMAN GRAHAM: Let's just try not to be
22 repetitive of what --

23 MR. RUBIN: Yes, sir.

24 CHAIRMAN GRAHAM: -- we went through last
25 time.

1 MR. RUBIN: Thank you.

2 Ken Rubin, for the record, for Florida Power &
3 Light Company.

4 In June of this year, after the three past
5 very destructive hurricane seasons, our Legislature
6 passed by an overwhelming majority, and the
7 Governor signed into law, the bill that gives rise
8 to this riding.

9 Section 366.96 of the Florida Statutes, which
10 is called the Storm Protection Plan Cost Recovery
11 law, or SPP law, included very clear expressions of
12 legislative intent. Our elected representatives
13 found, and expressly stated in the law, that it's
14 in the State's interest to strengthen the electric
15 infrastructure to withstand extreme weather
16 conditions by promoting the overhead hardening of
17 transmission and distribution facilities, the
18 undergrounding of certain distribution lines and
19 vegetation management.

20 Our elected representatives found and
21 expressly stated in the law that doing so can
22 effectively reduce restoration costs and outage
23 times.

24 Our elected representatives found and
25 expressly stated in the law that it's in the

1 State's interest to mitigate restoration costs and
2 outage times.

3 And our elected representatives specifically
4 concluded an expressly stated in the law that all
5 customers, including those that OPC is representing
6 here today, benefit from the reduced costs of storm
7 restoration.

8 The SPP law directed this commission to adopt
9 rules to implement and administer the dictates of
10 the statute and to propose the rules for adoption
11 no later than October 31st of this year. The
12 statute requires the rules to provide a process for
13 Commission approval of storm protection plans
14 submitted by Florida's investor-owned utilities,
15 and a mechanism for clause recovery of costs
16 prudently incurred, and only those prudently
17 incurred, by the utilities to implement approved
18 plans.

19 Commissioners, the rules you have proposed
20 have been thoroughly vetted, and they will
21 appropriately and efficiently implement the
22 statutory requirements.

23 Even before the Governor signed this bill into
24 law at the start of the 2019 hurricane season, your
25 staff began an open and transparent process that

1 gave all interested parties the opportunity to
2 offer their views on the new rules that would
3 implement this law.

4 Staff conducted two comprehensive workshops,
5 the first in June, the second in August. And after
6 each workshop, detailed comments, including various
7 alternative rule proposals, some of which you've --
8 you've heard about today, were submitted by Public
9 Counsel, by the utilities and others.

10 On September 20th, your staff issued its
11 recommendation. And at the October 3rd Agenda
12 Conference after debate and still more discussion,
13 particularly including the project versus program
14 level detail, the Commission voted to propose the
15 rules that are the subject of this public hearing
16 today.

17 After five months of intensive work on these
18 rules, and as we approach the end of the 2019
19 hurricane season, it's time to move forward to
20 allow the Commission and the parties to begin the
21 work mandated by the legislation, work that the
22 Legislature found will be in the State's interest
23 and which will benefit all customers.

24 We've heard a lot today about project and
25 program level detail. Let me just comment on that.

1 The level of detail that could realistically
2 be provided by utilities for hardening projects in
3 years one, two and three of a storm protection plan
4 seems to be at the heart of OPC's objections to the
5 proposed rules that we are here discussing today.

6 Your staff and those who attended the second
7 workshop heard directly about this issue from Dave
8 Bromley, FPL's manager of regulatory services for
9 our power delivery business unit. And I also
10 discussed this in detail at our October 3rd Agenda
11 Conference.

12 To answer some of the questions we've heard
13 today, and to provide the Commission to hear
14 directly from Mr. Bromley at this public hearing at
15 the conclusion of my remarks, I would like to ask
16 him to just spend a minute or two to explain to you
17 this concept of project versus program level
18 detail. He will explain the challenges that you --
19 that FPL faces, and most likely the other
20 utilities, in trying to accurately provide project
21 level detail for more than one year ahead.

22 He will address why identification of years
23 two and three projects, if required projected at
24 the outset, will, by definition, change, and the
25 customer confusion and dissatisfaction that this

1 will cause.

2 And as Mr. Bromley will explain, the rework
3 necessitated by reordering projects based on the
4 most recent reliability and performance data, and
5 the challenges we will all face when trying to
6 explain these changes to customers, would render
7 illusory any presumed benefit from requiring
8 project level detail for years two and three.

9 The issue was thoroughly vetted by the
10 Commission through the workshop process and at the
11 Agenda Conference, as Commissioner Fay noted at our
12 October 3rd meeting.

13 We've also brought here today Liz Fuentes, who
14 is our senior director of regulatory accounting.
15 She is available to answer any questions you may
16 about the application of AFUDC to storm protection
17 projects.

18 I think it's fair to say that what OPC has
19 raised today is not a rule-making issue that's
20 appropriate for this rule. It may well be an issue
21 in a litigated case down the line. And as your
22 staff has indicated, there is a specific rule on
23 AFUDC. We are prepared to answer any questions you
24 have on that. We are not going to present
25 Ms. Fuentes with any kind of prepared remarks, but

1 I wanted to make sure that she was here and
2 available to answer your questions.

3 And these are the -- these two subjects, the
4 project versus program level detail for years two
5 and three and AFUDC seem to be at the center of
6 OPC's concerns.

7 There is a couple of things that I would like
8 to respond to statements that were made here today
9 and statements in -- in the pleadings that were
10 filed by Public Counsel. The first is the
11 assertions regarding double recovery and the burden
12 of proof. We've heard a lot about that here today.

13 At page three of their October 31st motion,
14 OPC argued, and they said again today, that without
15 three years of project level detail, the Commission
16 won't be able to distinguish between costs already
17 in rates versus new costs under the storm
18 protection plan, and that somehow this is going to
19 shift the burden of proof.

20 Agency rules do not address and, in fact,
21 cannot alter judicial principles about burdens of
22 proof. It's swell established under the case law
23 that, and, in fact, it's clear in this particular
24 case, that each year in the clause proceedings, the
25 utilities will provide project level detail for

1 that year, and we will have the burden to prove to
2 the Commission that the activities were prudent,
3 the costs reasonable, and that we are not already
4 recovering those costs in base rates.

5 This is entirely consistent with the statute,
6 Section 366.96(8), which states, and I quote, the
7 annual transmission and distribution storm
8 protection plan costs may not include costs
9 recovered through the utility's base rates.

10 And if this left any doubt, though I am not
11 sure how it could, this principle couldn't be more
12 clear than the statement in the rule that you have
13 proposed at 25-6.031(6)(b), which reads as follows:

14 Storm protection plan costs recoverable
15 through the cause shall not include costs recovered
16 through the utility's base rates or any other
17 recovery mechanism. You have made that very, very
18 clear in your rule.

19 CHAIRMAN GRAHAM: Sir, if I can get you to
20 move on. This is still stuff that we heard last
21 time.

22 MR. RUBIN: Okay. Let me just point out one
23 other -- one other point that's been made a number
24 of times, and this has got to do with the storm
25 hardening plan costs under the current

1 infrastructure storm hardening rule.

2 I have heard over and over again that these
3 costs are already in base rates. I need to just go
4 back to that order and remind you that when you
5 entered those orders July 29th of this year
6 approving all the plans of the -- of the utilities
7 for storm hardening, it was emphasized in those
8 orders that plan approval does not mean approval
9 for cost recovery. I heard it time and again. I
10 have seen it in the pleadings. It's very clear
11 from your order that you ruled to the contrary.

12 There is a couple of things also that I just
13 want to -- that I want to mention. Commissioner
14 Brown, you asked about some language that was
15 suggested by Mr. Willis. If we look at the rule
16 itself in terms of the level of detail and what the
17 proposed programs and projects are intended to do,
18 if we look at 25.6-030, the very first section
19 in -- I am sorry, Section 2, in the definitions, it
20 says: Storm protection program is a category type
21 or group of related storm protection projects that
22 are undertaken to enhance the utility's existing
23 infrastructure for the purpose of reducing
24 restoration costs and reducing outage times
25 associated with extreme weather conditions.

1 The same for storm protection projects. So
2 there is really no need for any additional
3 language. It's covered right there in your
4 definitions.

5 Commissioners, your staff's recommendation
6 proposes three alternative courses of action that
7 you may choose to take today. And we respectfully
8 request that the Commission follow the second
9 option. That's to make no changes. To maintain
10 the rules as proposed. And at the appropriate
11 time, to file the rules with the Department of
12 State for adoption.

13 And with the Commission's permission, I would
14 like to just introduce Mr. Bromley so that he could
15 speak for a minute or two on --

16 CHAIRMAN GRAHAM: Let's just go down the
17 row --

18 MR. RUBIN: Okay.

19 CHAIRMAN GRAHAM: -- and we will bring him up
20 afterwards.

21 MR. BERNIER: Thank you, Mr. Chairman. Matt
22 Bernier for Duke Energy.

23 I will just go ahead and say ditto to what I
24 heard Mr. Rubin say, and I refer to our comments
25 that are already in the record. I haven't heard

1 Mr. Bromley yet, but I probably will agree with him
2 as well.

3 CHAIRMAN GRAHAM: Okay. Mr. Moyle.

4 MR. MOYLE: Thank you, Mr. Chairman. I
5 actually was hoping to be able to make comments
6 after asking questions, because I think some of the
7 answers to the questions would inform the comments,
8 so if I could have that latitude --

9 CHAIRMAN GRAHAM: You don't get to ask any
10 questions.

11 MR. MOYLE: Of Mr. Bromley and some of our
12 staff?

13 CHAIRMAN GRAHAM: All you get to do is give
14 comments today.

15 MR. MOYLE: Well, I have attended many rule
16 workshops over the years with a lot of agencies,
17 and my understanding of that practice has been that
18 when someone asks for a public rule hearing, that
19 that opens it up, and anyone who has an interest in
20 the rule could come and ask questions. So I would
21 respectfully ask to be able to ask questions.

22 CHAIRMAN GRAHAM: General Counsel.

23 MR. MOYLE: I don't think the due process is
24 being complied with if you shut us down from asking
25 questions. This is -- as Mr. Rehwinkel said, this

1 is -- this is when you guys are on. I mean, you
2 have had all these workshops, now you proposed the
3 rule. This is the time for us to engage and ask
4 questions.

5 MR. HETRICK: Commissioner, I think you have
6 the discretion in which to allow him to ask some
7 questions if you want, give him a little latitude
8 on that, but this is OPC's request for the hearing.
9 At the same time, Mr. Moyle is certainly free to
10 make comments on the rule, and we are here to hear
11 anything he has to say.

12 CHAIRMAN GRAHAM: Well, that's why I said he
13 can make comments. But there is no -- the only
14 person that's asking any questions is OPC and the
15 Commissioners.

16 MR. MOYLE: Well, I would object to that just
17 because I don't think that's consistent with -- at
18 least I know in my practice from agencies
19 throughout the years when I thought the
20 understanding was and the obligation of the agency
21 was to produce someone at the public rule hearing
22 that could answer questions on the rule. And I
23 have questions on the rule that I want to ask.

24 I don't think it's a huge voluminous amount,
25 but it's consistent with my understanding of the --

1 of the way these public rule hearings work, because
2 this is when you guys say, here's the rule we are
3 going to put out. It's not, you know, here's a
4 draft. Here's that. You are taking action and
5 this is the first time, I think Mr. Rehwinkel said,
6 that the public can come in and ask these
7 questions.

8 So I think Mr. Hetrick said you have
9 discretion. I would ask that you exercise it in a
10 way to permit some questions of your -- of your
11 staff. And I am -- you know, notwithstanding the
12 little bit of a jive about my questions. I'll --
13 what I plan to do is go through the rule and ask
14 some questions about what's in the proposed rule
15 that you all proposed. So I would respectfully ask
16 that I be given permission to do that, and would
17 object if I don't.

18 And also, rather than waste time giving you
19 comments now, some of the comments will be informed
20 by what -- what the answers to questions are.

21 CHAIRMAN GRAHAM: I will allow you to ask some
22 questions of staff, only staff.

23 MR. MOYLE: Well, thank you.

24 CHAIRMAN GRAHAM: What questions do you have?

25 MR. MOYLE: Well, I can go through now. Are

1 you okay on me holding on to my comments, just
2 going ahead and ask them now?

3 CHAIRMAN GRAHAM: Go ahead and ask them now.

4 MR. MOYLE: Okay. So I want to go back on the
5 discussion with AFUDC. Is it -- is it clear that
6 my understanding of whether AFUDC will be something
7 applied in this rule, that there is nothing in this
8 rule that authorizes AFUDC to be applied to
9 projects in this rule; is that correct?

10 CHAIRMAN GRAHAM: Mr. Fletcher.

11 MR. FLETCHER: If it's eligible, just like in
12 the fuel clause in the environmental cost recovery
13 clause, if it's deemed eligible under the AFUDC
14 rule, then they are able to capitalize that and get
15 recovery.

16 MR. MOYLE: Okay. But wouldn't you agree that
17 the best place to put it might be in this rule,
18 that if you are dealing with storm hardening
19 projects, that what's eligible for recovery should
20 be in here rather than another rule?

21 MR. FLETCHER: I think the AFUDC rule is
22 sufficient, and that tells you what is an eligible
23 project, ineligible, and gives you the thresholds;
24 and I don't think you need another rule, or it be
25 restated in this rule.

1 MR. MOYLE: Okay. With respect to the AFUDC
2 rule, which I guess was amended today, right, you
3 all have never allowed bundling of projects
4 previously, have you?

5 MR. FLETCHER: Not to my knowledge.

6 MR. MOYLE: Right. And isn't the purpose of
7 the AFUDC is to put a number out there, and if you
8 go over it, you get AFUDC, and if you are under it,
9 you don't?

10 MR. FLETCHER: That's part of that half
11 percent threshold, yes.

12 MR. MOYLE: And wouldn't it defeat the, sort
13 of the underlying purpose of the AFUDC rule, is if
14 you allowed people to aggregate and put all the
15 projects together to get over a level, that sort of
16 seems counterintuitive to what you just answered
17 with respect to the purpose of the rule, correct?

18 MR. FLETCHER: I think that that is an issue
19 in the case that IOUs can put port in their clause
20 recovery petitions what they are asking for, and
21 the Commission, Commission staff, through the
22 hearing process, will look at the AFUDC rule.

23 And you have -- as mentioned earlier, you have
24 the storm project program defined, storm project or
25 storm protection project defined. And with those

1 two definitions in the AFUDC rule, it's teed up for
2 vetting and a hearing in the clause.

3 MR. MOYLE: Okay. Let me move on.

4 And what -- I have some questions that's based
5 on the notice of proposed rule that the Commission
6 adopted. It was filed October 4, 2019. Do you
7 have a copy of that in front of you? And I can
8 give you one if you don't.

9 MR. FLETCHER: Was that the AFUDC rule?

10 MS. CIBULA: Is it the one attached to the
11 recommendation?

12 MR. MOYLE: I mean, it's -- it's in the
13 docket. It's just what you filed I think with --

14 MS. CIBULA: Yeah, the rules are the same
15 rules that are attached to the back of the
16 recommendation.

17 MR. MOYLE: Yeah, okay.

18 MS. CIBULA: That's the proposed rule.

19 MR. MOYLE: All right. So if you have trouble
20 following me, I can hand you -- hand you this. But
21 there is a Summary of Statement of Estimated
22 Regulatory Costs and Legislative Ratification,
23 right?

24 MS. CIBULA: That was -- that was part of the
25 recommendation that we did on the rule.

1 MR. MOYLE: Right. And you did -- you did a
2 SERC?

3 MS. CIBULA: Yes.

4 MR. MOYLE: Okay. And you are aware that
5 there is a statute that related to SERCs that is
6 120.541, correct?

7 MS. CIBULA: Yes.

8 MR. MOYLE: Okay. And part of that requires
9 that a SERC be prepared with an economic analysis
10 showing whether the rule directly or indirectly is
11 likely to have an adverse impact on economic
12 growth, private job creation or employment, or
13 private sector investment in excess of \$1 million
14 in the aggregate within five years after the
15 implementation of the rule.

16 MS. CIBULA: Our SERC has that.

17 MR. MOYLE: Right. And that's the correct
18 reading of the statutory provision, correct?

19 MS. CIBULA: Yes, and our SERC contains that.

20 MR. MOYLE: Okay. And it also goes on and
21 says you got to do it if it's likely to have an
22 adverse impact on business competitiveness,
23 including the ability of the persons doing business
24 with the state to compete with persons doing
25 business in other states or domestic markets,

1 productivity or innovation in excess of one million
2 in the aggregate within five years after the
3 implementation of the rule, correct?

4 MS. CIBULA: Yes, our SERC has that.

5 MR. MOYLE: Okay. So could you just
6 explain -- I mean, have you seen recent stories in
7 the press about the cost of this -- of this rule
8 being between 30 and 35 billion for, I think, one
9 utility over the next 30 years or so?

10 MS. CIBULA: We based our SERC on the
11 information that we gathered --

12 MR. MOYLE: Okay.

13 MS. CIBULA: -- from the people we regulate.

14 MR. MOYLE: All right. And -- and did you --
15 did you look and try to do any analysis with
16 respect to what type of adverse impact on economic
17 growth might befall ratepayers?

18 MS. CIBULA: No, we did our SERC based on a
19 data request that we did on the people that will be
20 subject to the rule.

21 MR. MOYLE: Right. But the statute doesn't
22 say that you limit it to the, you know, to the
23 utility, do you?

24 MS. CIBULA: It's based on -- we gather
25 information from the people that we regulate, and

1 then the SERC process is that if people have
2 other -- they want to present other information on
3 their SERC, they can, and the FAR notified people
4 of that. And you could also provide a lower
5 regulatory cost alternative, which we did not
6 receive.

7 MR. MOYLE: Right. And what -- so what you
8 did is you asked the utilities, how much is it
9 going to cost you, utility, to have staff to
10 administer the program? You didn't -- you didn't
11 go in and say, what do you think is going to be the
12 impact on business competitiveness, including the
13 ability of persons doing business in the state to
14 compete with persons doing business in other states
15 or domestic markets, you never asked those
16 questions, did you?

17 MS. CIBULA: No, we asked our utility
18 companies.

19 MR. MOYLE: And am I correct in that the
20 questions asked of the utility companies were,
21 what's it going to cost you, utility company?

22 MS. CIBULA: Yes, to comply with the rule.

23 MR. MOYLE: And do you believe that's --
24 that's the correct reading of the -- of the SERC
25 statute?

1 MS. CIBULA: We did the SERC, and as the FAR
2 notified people, you could provide a lower
3 regulatory cost alternative, or you could provide
4 information on the SERC, and we did not receive any
5 of those within the 21 days.

6 MR. MOYLE: But you would agree that a SERC is
7 a different animal than an estimate of lower
8 regulatory costs, an alternative proposal, right?

9 MS. CIBULA: Yes. That's why the FAR says
10 that you can provide a additional information in
11 regard to the SERC, and we did not receive any of
12 that within the 21 days of our notice.

13 MR. MOYLE: That's right.

14 Did you do any look or estimate with respect
15 to the cost upon the regulated public of -- of the
16 rule?

17 MS. CIBULA: No. We looked at how it would
18 affect the people that are being regulated by the
19 rule.

20 MR. MOYLE: Okay. Let me -- let me move on to
21 another provision. And I think it's easy if I just
22 take these kind of in chronological order from the
23 rule, rather than skipping around, so that's what I
24 am going to do, but whoever is comfortable
25 answering.

1 You made reference to the storm protection
2 program and the storm protection project. And the
3 storm protection program says: A category, type or
4 group of related storm projects.

5 Would -- would something as broad as hardening
6 overhead transmission lines be considered to be a
7 storm protection plan?

8 MR. GRAVES: No. I think it would be
9 something a little more strict. We've seen
10 other -- in some storm hardening plans, where they
11 have a little more definition to them, and that's
12 more of the concept.

13 MR. MOYLE: With respect to granularity, can
14 you describe what additional granularity you would
15 be looking for with respect to a storm protection
16 program?

17 MR. GRAVES: Can you repeat the question? I
18 want to make sure I understand it correctly.

19 MR. MOYLE: Sure.

20 I know during some of the workshops, people
21 were saying, well, a program could be
22 undergrounding or overhead protection. And you are
23 saying, no, it needs to be a little more than that.
24 And I am trying to understand what does little more
25 of that look like?

1 MR. GRAVES: So I think what would be best is
2 to give an example of targeted undergrounding would
3 be an example of a program, and then within that
4 you would have several discrete projects?

5 MR. MOYLE: So if somebody filed something
6 that said targeting protec -- targeted
7 undergrounding of distribution lines, then that
8 would probably be sufficient as a description of a
9 storm protection plan?

10 MR. GRAVES: I mean, we are getting a little
11 bit into hypotheticals, and I don't want to
12 speculate on what the filing may look like. I
13 don't want to prejudge that.

14 MR. MOYLE: I am trying to understand what
15 your intent of the rule is.

16 MR. GRAVES: And I would go back to that
17 example of the targeted undergrounding as a
18 program --

19 MR. MOYLE: Okay.

20 MR. GRAVES: -- and within that, several
21 projects.

22 MR. MOYLE: And in the storm protection
23 project, would that need to then say, okay, well,
24 we are going to do targeted undergrounding in Vero
25 Beach from Oak Street to Elm Street, would that be

1 an example of a -- of a storm protection project
2 or -- you can answer that, or you can just tell me
3 what -- what your understanding of the storm
4 protection project is.

5 MR. GRAVES: What you have described is
6 similar do what we have seen in the storm hardening
7 plans as a project.

8 MR. MOYLE: Okay. Thank you for that.

9 Flipping -- this is on -- on the -- the rule,
10 the provision. It was discussed about -- about the
11 catchall with respect to what can be provided. Any
12 other factors the utility requests the Commission
13 to consider. You are familiar with that provision
14 of the rule?

15 MR. GRAVES: Yes, sir.

16 MR. MOYLE: And I don't mean to -- I mean,
17 whoever is comfortable answering the question, so
18 you guys work it out amongst yourselves if that's
19 all right, but are there any limitations on -- on
20 that provision?

21 MR. GRAVES: As far as what the utilities
22 file? I don't know that we would have the control
23 to tell them not to file something. I think the
24 point that was brought up by Mr. Rubin was an
25 important one that staff discussed. When we look

1 at the filings, we are going to look at what is the
2 purpose of that filing, or the request for a
3 program or project to ensure that it is for the
4 purposes within the definitions.

5 MR. MOYLE: So would it be correct to say that
6 there aren't any limitations on other factors that
7 a utility can request other than that it relate to
8 reliability -- increased reliability?

9 MR. GRAVES: When again, the utility can
10 request that. That does not ensure that it
11 would -- if you will be approved --

12 MR. MOYLE: Right.

13 MR. GRAVES: -- by the Commission.

14 MR. MOYLE: And with respect to rules -- I
15 mean, you know, you have to have certainty set
16 forth in the rules. It can't be, you know,
17 complete discretion provided to the regulated
18 entity as to -- as to what can be provided. You
19 would agree with that, right?

20 MR. GRAVES: Generally, yes.

21 MR. MOYLE: Okay. Flipping down a little bit
22 further, this is under 25-6.031, and let me ask
23 this just from a -- from a broad perspective.

24 As we sit here today, do you contemplate that
25 the -- that the rule, as you are proposing it, will

1 allow for a utility to recover monies based on
2 projected costs for subsequent years?

3 MR. FUTRELL: That's correct. That's -- the
4 rule contemplates that information can be provided
5 by the utilities if they seek to recover costs
6 through the clause.

7 MR. MOYLE: Okay. And one of the distinctions
8 is in your -- in your rule, you require programs
9 and project information for true-ups for the
10 previous year and for the current year, correct?

11 MR. FUTRELL: That's correct.

12 MR. MOYLE: All right. And that provides
13 additional level of detail, right?

14 MR. FUTRELL: Yeah. They will have to provide
15 some level of detail to meet those requirements.

16 MR. MOYLE: But -- but for when you --
17 ratepayers, my clients and others are paying money,
18 they would be paying money that does not include
19 the additional level of detail that would be
20 associated with a project filing, correct?

21 MR. BREMAN: Well -- this is Jim Breman,
22 regardless of the names up here.

23 This is identifying -- the rule only
24 identifies the minimum filing requirements. It
25 does not state with specificity the information

1 that will be vetted or presented to the
2 Commissioners when they deliberate on the company's
3 petition.

4 So the rule itself is simply a guideline for
5 the filing requirements that initiate the
6 proceeding and the process. We would expect
7 discovery to investigate what it is the utility
8 actually is actually asking for.

9 So this is a discovery process that would be
10 initiated once we see their budgeted amounts for
11 their programs.

12 MR. MOYLE: I'm not good with movies, but
13 there as movie where they say, is that a rule? And
14 they said, no, it's more like a guideline. And
15 that is a little bit what your response reminded me
16 of. It might have been Caddyshack, but doesn't --
17 isn't it true that the rule itself, the projected
18 costs for subsequent years -- I mean, this is what
19 people are going to be looking at.

20 It says that -- that the projection filing
21 shall also include information of each of the
22 utility's storm protection plan programs which
23 costs will be incurred during the subsequent year,
24 including a description of the work projected to be
25 performed during such year for each program in the

1 utility's cost recovery petition. That's what
2 25-6.031(7)(c) says in pertinent part, correct?

3 MR. BREMAN: Correct.

4 MR. MOYLE: And if you compare that to (a) and
5 (b), it's -- they say for each program and project,
6 which requires more information be provided, right?

7 MR. BREMAN: Correct.

8 MR. MOYLE: And do you think that it's good
9 policy and that the rule makes sense to have
10 ratepayers pay money on stuff that's not as
11 detailed for program level stuff and not project
12 stuff?

13 MR. BREMAN: All monies will be held subject
14 to refund if the utility does not incur the
15 dollars.

16 MR. MOYLE: Right. But ratepayers like to
17 hold onto their money as long as they can until
18 they have to pay it generally, don't they?

19 MR. BREMAN: But if they -- if they do that,
20 they have to refund it with interest.

21 MR. MOYLE: What's the interest rate?

22 MR. BREMAN: I don't know.

23 CHAIRMAN GRAHAM: Let's move on.

24 MR. MOYLE: The 25-6.031, this is paragraph
25 three, and there is a provision -- let me just read

1 it for the record: An annual hearing to address
2 petitions for recovery of storm protection plan
3 costs will be limited to determining the
4 reasonableness of projected storm protection plan
5 costs, the prudence of actual storm protection plan
6 costs incurred by the utility, and to establish
7 storm protection plan cost recovery factors
8 established by this rule.

9 Who -- who -- who's is best suited to answer
10 questions on that?

11 MR. BREMAN: Go ahead.

12 MR. MOYLE: Okay. In -- in -- in crafting the
13 rule, is there -- is there a difference in
14 determining reasonableness as compared to prudence
15 in this provision that I just read?

16 MR. FUTRELL: I think the Commission has had a
17 historical standard when it looks at prudence as
18 far as what a -- what a reasonable utility manager
19 would determine at the time given the information
20 available to him or her at the moment the decision
21 was made that -- I think it's fair to assume that
22 that type of -- that kind of evaluation will be
23 made when we look at the actual costs and determine
24 prudence.

25 Reasonableness, we again continue to see this

1 is following in line with other cost recovery
2 clauses and the practices the Commission has used
3 in reviewing costs in other clauses.

4 MR. MOYLE: Do they have different meanings to
5 you in terms of different standards? I mean,
6 like --

7 MR. FUTRELL: I think certainly the Commission
8 is in a different posture at the time because one
9 is based on estimated data, estimated activities
10 that will occur in the future. Prudence actually
11 has the benefit of history of looking at actually
12 what happened and being able to ask why -- why was
13 that result -- a result that the customers should
14 ultimately be responsible for paying for.

15 MR. MOYLE: If something was determined to be
16 unreasonable, would it follow that something found
17 to be unreasonable couldn't be found to be prudent?

18 MR. FUTRELL: I guess I would say if it's
19 unreasonable, then it's probably not going to be
20 included in a projection filing, and therefore,
21 probably not subject to a future prudence
22 determination, because it was never included in
23 a -- as a reasonable cost that the customers could
24 pay for as part of a factor.

25 MR. MOYLE: And if there is a finding of

1 unreasonableness or prudence that is made in this
2 clause proceeding as contemplated, you don't -- you
3 don't read the rule, or believe the rule -- and I
4 will reference you the section I am referring to.
5 It's the very last paragraph, eight, recovery of
6 costs under this rule does not preclude the utility
7 from proposing inclusion of unrecovered storm
8 protection plan implementation costs in base rate
9 in a subsequent rate proceeding.

10 If you all make a determination something is
11 unreasonable or imprudent, you don't -- you are not
12 intending that -- that it can come back in a base
13 rate case the same issue and the same request, are
14 you?

15 MR. BREMAN: No.

16 MR. MOYLE: Okay. And then the final -- the
17 final point that -- that I have, and I want to just
18 make a brief comment, Mr. Chair, that -- that the
19 phrase double accounting that OPC has used, I mean,
20 that's kind of a shorthand phrase. And the use of
21 it does not suggest in any way to denigrate the
22 utilities or suggest that they would somehow engage
23 in double recovery.

24 I mean, this is a very complicated situation
25 where you have costs being recovered in base rates,

1 and now we are transitioning into, you know, a
2 clause. And so I think it's a legitimate area of
3 questioning, and because there is a lot of money at
4 stake here, it's worth exploring and best
5 understanding.

6 And the question I have with respect to the
7 language that says: The storm protection costs
8 recoverable through the clause shall not include
9 costs recovered through the utility's base rates or
10 any other cost recovery mechanisms. That -- that
11 is the only thing you have in your rule related to,
12 we'll use the phrase double recovery, correct?

13 MR. FUTRELL: That's correct.

14 MR. MOYLE: All right. And I think
15 Mr. Willis, or maybe Mr. Rehwinkel made the point
16 to say, wouldn't you -- wouldn't you improve on the
17 rule just by saying, when utilities file, they
18 shall file something showing the amounts that they
19 previously recovered for vegetation management in
20 base rates, and what the amount they are seeking
21 recovery for in the clause proceeding is new money?
22 I mean, does that make sense to you in terms of a
23 concept to just say, when you are filing, because
24 you have a lot of filing requirements in here, tell
25 the utility specifically to say, tell us what was

1 in base rates and then tell us what you are
2 recovering now in -- in the clause?

3 MR. FUTRELL: Well, I think the -- the
4 Commission decided on October 3rd the information
5 that it felt was sufficient to require as part of
6 an up-front filing requirement with the plan and
7 with the clause.

8 Certainly, the -- the concept of double
9 recovery was actually memorialized by the Florida
10 Legislature in subsection (8) of the -- of the
11 statute, and that provision will be adhered to by
12 the Commission and by all those seeking recovery of
13 costs.

14 MR. MOYLE: Right. And -- and -- I mean, we
15 are aware that -- I mean, the Legislature sets
16 forth the policy, and they say, here's the
17 direction, and then they gave you all rule-making
18 authority to work through the details, correct?

19 MR. FUTRELL: Correct.

20 MR. MOYLE: And -- and when you are working
21 through the details, wouldn't -- wouldn't it be
22 more clear to require the utilities to file
23 something that says, here's what we've recovered in
24 base rates for undergrounding? I mean, they are
25 all -- those costs are already in base rates to

1 some degree, aren't they?

2 MR. FUTRELL: I think the Commission was aware
3 of this particular standard in the statute when it
4 finalized and when it proposed its rule and the
5 information that was necessary. And these
6 processes will be intensive -- data intensive. The
7 clause will be data intensive to ensure that this
8 standard is met.

9 MR. MOYLE: All right. Well, let me -- let me
10 wrap up with this. You would agree that -- that
11 undergrounding is already in base rates, some level
12 of undergrounding is already in base rates for all
13 the utilities, correct?

14 MR. FUTRELL: Certainly we have tariffs to
15 address undergrounding of particular requests.
16 There are targeted undergrounding projects and
17 pilot programs that some utilities are pursuing
18 that are supported by base rates.

19 MR. MOYLE: So I that as a yes, is that fair?

20 MR. FUTRELL: Yes.

21 MR. MOYLE: And then also vegetation
22 management is in base rates, correct?

23 MR. FUTRELL: Correct. Correct.

24 MR. MOYLE: All right. So -- so with respect
25 to how this commission is going to ferret out the

1 monies that are already in base rates as compared
2 to the monies that are going to be sought for
3 recovery in the clause, how is the Commission going
4 to do that? What's the plan?

5 Do you have any plans to do that, or are you
6 just going to wait and say, we'll see what the
7 utilities file? If you could explain that, that
8 would -- that would be helpful.

9 MR. BREMAN: I believe the best example I can
10 point you to is the 1994 Gulf environmental cost
11 recovery clause proceeding and the order that came
12 out of that, where there was a performance when we
13 looked at the change in scope of what the utility
14 had do, and asked the utility to explain how much
15 was historically spent for the previous level of
16 activity, and we looked for ways to come up with
17 adjustments, because at that time, we were somewhat
18 removed from a rate case.

19 MR. MOYLE: And did you do that in, like, an
20 interrogatory request or was it part of some rule?

21 MR. BREMAN: Oh, no. It was discovery that --
22 Gulf Power's petition was right after the statute
23 was submitted. There is no rule on the
24 environmental cost recovery clause.

25 MR. MOYLE: Don't you think it would be a

1 better thing to do is put it in a rule up front so
2 everybody is on notice of that, so you are not
3 having to then, you know, depend on the utilities
4 filing it?

5 MR. BREMAN: I am not here to make a
6 recommendation on the environmental cost recovery
7 clause.

8 MR. MOYLE: No. I am -- I am referencing the
9 storm hardening rule.

10 CHAIRMAN GRAHAM: Because this is all stuff
11 that should have been done in the first two
12 workshops. What other questions do you have?

13 MR. MOYLE: You know what, I -- I think that
14 wraps it up. I appreciate you giving me the
15 latitude to ask some questions and to whatever your
16 pleasure is, I can make some comments now or I
17 can --

18 CHAIRMAN GRAHAM: Make them now.

19 MR. MOYLE: -- wait and do it later.

20 CHAIRMAN GRAHAM: Make them now.

21 MR. MOYLE: So a couple -- a couple of points.

22 This is a complicated matter, you know, the
23 numbers with respect to what this is going to
24 impact ratepayers is significant. I think during
25 the legislative session, there was some analysis

1 that was done based on -- on some -- a pilot that
2 was done, and I think the number was 15 billion,
3 give or take. I think there has been some recent
4 indications and stories that the number is 30 to
5 35 billion.

6 It's a -- it's a -- it's a ton of money. It's
7 a significant amount of money, and you all are
8 tasked with the job of implementing a rule, you
9 know, to make sure that the Legislature's intent is
10 carried out.

11 I think with respect to some of the issues
12 that are of concern to the intervenor group, you
13 know, the -- again, without a loaded term, but the
14 double recovery issue is significant. There is a
15 lot of detail as to how that gets sorted out. How
16 do you make sure? And, you know, we've all seen
17 filings in rates case and others where the
18 documents are really, really thick.

19 And I think that it would be something for you
20 all to consider to say, you know, do we need
21 additional level of detail on that in terms of
22 how -- how we are going to do that? You know, no
23 one -- no one has provided a lot of detail.

24 The answer was appreciated that there was a
25 discovery request in the -- in the environmental

1 clause, but the FPL witness is going to speak, and
2 I would encourage someone to ask him, well, how are
3 you going to do it? How are you going to make sure
4 there is not a double recovery?

5 And this law has been on the books for a
6 number of months now. I think there should be an
7 answer that's understood, you know, by the
8 intervenors and by, you know, you all as the -- as
9 the regulator, as the Commission.

10 So that may be something that warrants a
11 little further -- further attention, you know, that
12 the AFUDC issue that has been brought up, I think
13 that, you know, you all are obligated to adhere to
14 rules, 120 is -- is something that you must abide
15 by.

16 I think that with respect to the AFUDC, it
17 doesn't make sense to, you know, to bundle to allow
18 all the projects to be put together and aggregated.
19 I mean, if you could do that, why couldn't you do,
20 you know, anything with respect to AFUDC to
21 aggregate them? So I think the discussion on that
22 was helpful, and shed -- shed light on that.

23 I think the only other comment is, you know,
24 is related to the SERC. I am not sure that the
25 SERC statute is -- should be read in a -- in such a

1 myopic way where you say, oh, I am only going to
2 look at the cost of, you know, to the utilities. I
3 mean, I think the statute talks about, you know,
4 broad language, competitiveness and other markets;
5 and I think the SERC probably should have thrown a
6 wider net to look at the costs beyond the utility
7 costs. I think I saw a, you know, very low number,
8 which to my mind didn't -- didn't track or follow a
9 lot. I think you all made a legislative
10 appropriations request, I want to say 400,000, I
11 may have that -- that wrong, a little bit to get
12 some extra money to help implement this.

13 So you know, the Legislature has said, SERCs a
14 are important. We want to know the impact on the
15 community of the regulated entities. I think
16 that's the more appropriate reading of the SERC
17 statute, and think you all should have thrown a
18 wider -- a wider net with respect to understanding
19 the cost of this rule.

20 You know, the Legislature is clearly
21 interested in the costs. They have, in the
22 statute, said, please give us rate impacts. So I
23 think the SERC arguably came up short in that
24 regard.

25 So, thank you for -- for giving me the chance

1 to share these comments with you. Thank you for
2 the chance to ask some of the questions. I think,
3 you know, we don't have many rule workshops like
4 this at the -- at the PSC, but I appreciate you
5 exercising your discretion and allowing me a chance
6 to ask some questions.

7 Thank you.

8 MS. CIBULA: Could I just add something about
9 the SERC?

10 CHAIRMAN GRAHAM: Sure.

11 MS. CIBULA: The SERC is supposed to be the
12 impact of the rule on the cost of the rule, and
13 then there is the cost of the statute. And the
14 responses we got from the SERC is that the statute
15 was the cost causer, not the rule itself. And the
16 Legislature did an impact statement themselves
17 about the cost of the statute, so I just wanted to
18 remind everyone about that.

19 CHAIRMAN GRAHAM: Sir.

20 MR. MEANS: Good afternoon, Commissioners. I
21 am Malcolm Means with the Ausley McMullen law firm
22 appearing on behalf of Tampa Electric. I would
23 like to make an appearance for Jim Beasley and Jeff
24 Wahlen, with Ausley McMullen on behalf of Tampa
25 Electric.

1 Tampa Electric has commented extensively on
2 proposed rules 25.6-030 and 25-6.031 throughout the
3 rule-making process, so my comments will be very
4 short.

5 While Tampa Electric does not agree with every
6 aspect of the rules, we can and will abide by the
7 Commission's proposed rule language, and we
8 respectfully request you to proceed with final
9 adoption of these rules so we can begin the
10 important work of delivering increased storm
11 resiliency and reduced restoration time --
12 restoration times to our customers.

13 Thank you.

14 CHAIRMAN GRAHAM: Thank you.

15 MR. BADDERS: Good afternoon, Commissioners.
16 Russell Badders on behalf of Gulf Power. I will
17 just echo the comments that FPL and Duke made
18 earlier.

19 Thank you.

20 CHAIRMAN GRAHAM: Thank you.

21 Mr. Wright.

22 MR. WRIGHT: I thought -- I thought I had
23 pushed it again.

24 Thank you, Mr. Chairman and Commissioners.

25 It's been a long day.

1 Good afternoon. I am Schef Wright, and I am
2 appearing today on behalf of the Florida Retail
3 Federation, who has participated in these
4 proceedings.

5 As you know, the Retail Federation is a
6 statewide organization of more than 8,000 members,
7 pretty much all of -- most of whom are customers of
8 Florida's IOUs. Thank you for the opportunity to
9 speak to you today.

10 I will be pretty brief because Public
11 Counsel's representatives have covered much of what
12 I would have said. I will apologize in advance for
13 being a bit repetitive here and there, but I
14 believe it's important of where I am to protect the
15 record on behalf of my client.

16 I will start by saying that we concur with the
17 Public Counsel's points that the process for this
18 hearing, the short notice leaving barely one
19 calendar week before today's hearing is inadequate
20 to protect the due process rights of the FRS
21 members and the rights of all the IOUs customers.

22 We further agree with OPC that your denial of
23 the Public Counsel's request for a continuance to
24 allow for adequate preparation for this hearing on
25 matters that will involve tens of billions of

1 dollars over the next 10 years does not afford due
2 process.

3 We further agree that your denial of the
4 Public Counsel's request for an evidentiary hearing
5 to take factual evidence on the magnitudes of the
6 costs involved and the interplay between the IOUs'
7 existing storm hardening plans and associated
8 expenditures that are already in base rates, the
9 IOUs anticipated storm protection plans and the
10 expenditures that they will attempt to recover
11 through the surcharges, and the IOU's base rates
12 now and in the anticipated 2021 cycle of rate cases
13 further fails to afford due process to the IOUs'
14 customers.

15 I would like the record to reflect that we
16 support the IOUs' motions for continuance and
17 suspension of this proceeding for an evidentiary
18 hearing.

19 Regarding these procedural issues, I learned
20 Florida admin law from Professor Pat Dore who is
21 widely recognized as the founding mother of our
22 APA. This proceeding and the issues raised here
23 today inspired me to refresh my memory of Professor
24 Dore's views and opinions on rule-making hearings.

25 In her seminal article, Professor Dore wrote

1 as follows regarding the information gathering
2 hearing and rule-making, which is what we are
3 supposed to be doing today:

4 The information gathering hearing has been
5 likened to a fact gathering legislative hearing.
6 It is not intended to be adversarial. Agencies has
7 been reminded by the courts that they have an,
8 quote, affirmative duty to inform themselves to the
9 fullest extent possible of the interests and
10 problems of those who seek to present evidence and
11 argument, unquote.

12 That's a citation to Balino versus HRS.

13 The continuance and the opportunity to develop
14 and present evident -- factual evidence requested
15 by Public Counsel are consistent with Professor
16 Dore's views on the opportunities that are supposed
17 to be afforded in the rule-making process. These
18 processes -- I am cutting a lot of this out --
19 these processes are not.

20 Specifically echoing Mr. Willis' and Mr.
21 Rehwinkel's comments, we don't see how you can make
22 informed decisions on appropriate provisions for
23 the proposed rules which are going to affect
24 roughly three-fourths of all electric customers in
25 Florida without knowing how the cost items relate

1 to each other and without knowing that you are
2 preventing double recovery of costs that are
3 currently in base rates and costs that will be
4 proposed to be recovery through the SPP cost
5 recovery charges.

6 Further, without providing the factual hearing
7 requested by Public Counsel does not protect the
8 risks -- the interests of the FRS members or of any
9 other customers of the IOUs.

10 Moreover, your staff proposed rules and stated
11 in previous discussion here that they believe that
12 the additional project specific information that we
13 have asked to be provided is needed to ensure that
14 there is no double -- no double recovery. We
15 agree.

16 Additionally, we reiterate our pleas -- no one
17 else has talked about this today -- that the rules
18 should include expressed requirements for
19 prioritizing storm protection plan projects on the
20 basis of engineering and cost-effectiveness. The
21 proposed rules contain no such requirements;
22 rather, they delegate the choice of criteria to the
23 IOUs.

24 We believe the rule should include express
25 requirements that the utilities must consider and

1 report to the Commission regarding financing
2 alternatives that could mitigate the rate impacts
3 on customers, rather than just loading everything
4 in at high equity ratios and high ROEs. The rules
5 contain no such provisions.

6 We believe the rules should include expressed
7 requirements for quantification of the economic
8 benefits of storm protection plan projects, and to
9 compare those quantified benefits to their costs,
10 again, through rules like such provisions.

11 Finally, we believe that the rules should
12 include expressed requirements for transparent
13 communication of -- to customers of how much they
14 will be paying for the storm protection projects
15 through the clause. We believe this informa -- we
16 believe this information ought to be a line item on
17 the bills; but if not, it ought to show up at least
18 in periodic bill stuffers that clearly says, this
19 is how much you are paying for this here.

20 Finally, we dispute your decision to designate
21 any and all violations of these rules as minor
22 violations. These rules, like the statute, are
23 designed to promote storm protection plans which
24 necessarily implicate the protection of the public,
25 health, safety and welfare from disruptions that

1 occur from major storms to determine apriori as a
2 blanket finding that violations of these rules and
3 violations of the plans pursuant to the rules are
4 minor is, in our view, unreasonable and contrary to
5 the interest of the customers.

6 Thank you again for the opportunity to address
7 you today.

8 CHAIRMAN GRAHAM: Thank you, Mr. Wright.
9 Ms. Keating.

10 MS. KEATING: Thank you, Mr. Chairman,
11 Commissioners. Beth Keating with the Gunster Law
12 Firm here this afternoon for FPUC.

13 Like some of the others have mentioned, FPUC
14 has its own issues with the rules, but overall,
15 it's a good product, and we agree with the comments
16 of our other IOU colleagues and would ask that you
17 move forward with the rules.

18 CHAIRMAN GRAHAM: Thank you, ma'am.
19 Mr. Brew.

20 MR. BREW: Thank you, Mr. Commissioner. I am
21 James Brew. I am here for White Springs
22 Agricultural Chemicals, PCS Phosphate.

23 We did not file original comments in the
24 rule-making but we followed it very closely. And
25 the final changes in the proposed rule have caused

1 us considerable concern, which is why I am here
2 today. We've covered a lot of ground, so I will
3 try not to go over it too much more.

4 The statute and the proposed rule address
5 enhanced incremental actions that build on
6 established activities that occur and are recovered
7 in base rates. We all know that. Same stuff, more
8 of it.

9 The two basic issues, which we've talked about
10 a lot today are, how do you avoid duplicative
11 recovery for what's in base rates, and what
12 enhanced actions are cost justified. And I would
13 like to focus basically on right now for the first.

14 Taking the specific example of the provision
15 for vegetation management. To the extent that a
16 utility's plan decided to expand on vegetation
17 management by doing ground to sky clearances, which
18 is beyond what they've done on targeted lines, how
19 are you going to determine what's incremental and
20 what's already recovered in rates?

21 My experience is with Duke Energy. We've done
22 several settlements with Duke Energy. The
23 Commission's finding approving those settlements
24 didn't make specific findings of fact with respect
25 to the level of O&M for vegetation management. So

1 you don't have a baseline.

2 And so the problem that we've talked around
3 today for -- for a long time is between now and
4 when base rates are reset, the Commission has a
5 basic problem of how do I comply with the law? How
6 do I determine that the costs I am allowing through
7 the clause are not duplicative of costs that are
8 otherwise provided for in rates? And that's our
9 big concern here.

10 The -- the rule that was proposed initially
11 that staff had proposed had required program
12 details for three years, to try to give us that
13 information. And the proposed rule itself has
14 backed off on that. We think that's a fundamental
15 mistake because it prevents from you complying with
16 the law.

17 So we would consider the recommendation that
18 the Public Counsel has floated, to do a two plus
19 one, or give us more information. But for the rule
20 to past muster, it has got to provide a credible
21 factual basis for making that separation of costs.
22 And right now, in the proposed rule, you don't have
23 it.

24 The proposed rule doesn't require a basis for
25 establishing a baseline for cost recovery, so you

1 don't have -- you don't have an anchor for
2 determining what is incremental, what's new and
3 that applies across the board. When we get to
4 undergrounding, what is new undergrounding for new
5 facilities and what is undergrounding of existing
6 facilities, and what should and should not be in
7 the rule? So it's not just vegetation management.

8 So -- so we would strongly suggest that the
9 rule go back to the earlier language for three
10 years of detailed project information because that
11 will only -- that's what's required to give you the
12 factual foundation in order to make the rule work
13 until you have a basic reset in a base rate case.

14 And it's -- I understand it's a transition
15 issue, but it's a transition issue that will occur
16 over a period of years where hundreds of millions
17 of dollars are going to flow through the clause, so
18 it has to be addressed in the rule.

19 Second, on the legal basis, it's our
20 considered judgment that the finding in the order
21 denying OPC's motions, that their request was not
22 timely as flawed. From our -- from our research,
23 the Balino case is still good law. The -- the rule
24 requires a timely request for a hearing, and it was
25 timely made. So to that extent, the -- the order

1 that was issued, we think, needs to be revised and
2 we would support its reconsideration.

3 Thank you.

4 CHAIRMAN GRAHAM: So I just want to make sure
5 I understand. You think that you need three years
6 of detail, but that's temporary because you are
7 dealing with what's currently in the works, so
8 after a period of five years, then you don't need
9 that kind of detail anymore?

10 MR. BREW: I think there is -- yes, basically,
11 I think there is a world of issues between now and
12 when do you a base rate reset. In a base rate
13 case, the parties will undoubtedly pick up these
14 issues.

15 There are other issues. The statute provides
16 that the cost allocation be done consistent with
17 the allocation approved in the last rate case.
18 Well, that may be fine for overall allocation, but
19 it may not be appropriate when you are just talking
20 about the allocation of costs that may be primarily
21 distribution related. And so we are going to have
22 to get into allocation. We are going to have to
23 split out the costs one way or the other, and the
24 parties will dive into another rate case.

25 So that is, I think, much less of a problem,

1 and it will be a much more systematic approach once
2 you have done that base rate reset. Right now,
3 it's very problematic, and -- and has to be covered
4 somewhere. The proposed rule doesn't do that.

5 CHAIRMAN GRAHAM: Okay.

6 Anybody else back there that didn't get a
7 chance to speak?

8 Mr. Rubin.

9 MR. RUBIN: I was just going to invite Mr.
10 Bromley to come up for just a moment. Before he
11 does, I heard another motion for reconsideration.
12 I just want to point out, I know you already ruled
13 on that. There is also a specific rule, 25-22.060
14 of the Florida Administrative Code that says:
15 Petitions for reconsideration are not authorized in
16 the rule-making process. So it just further
17 supports what you have already done.

18 So if I could introduce Mr. Bromley?

19 CHAIRMAN GRAHAM: Sure.

20 MR. RUBIN: Thank you.

21 MR. BROMLEY: Good afternoon, Commissioners.

22 My name is Dave Bromley. As background, I have
23 been involved in the preparation and filing of all
24 five of FPL's storm hardening plans submitted to
25 date per Rule 25-6.0342, including our first plan,

1 which was filed over 12 years ago.

2 Providing one year of project level data and
3 program level information for years two and three
4 is not a new concept. It's the way we have been
5 filing our hardening plan since 2007. And while
6 we've only provided program level information or
7 plans for years two and three, subsequently, we
8 have provided project level details on March 1 of
9 years two and three respectively in our annual
10 reliability report.

11 Similarly, for SPP we will do the same,
12 providing project level detail for year one in our
13 plan, and then those same details for years two and
14 three will be provided in subsequent cost recovery
15 clause filings. This will provide intervenors and
16 the Commission multiple opportunities to review
17 project level details for those two years,
18 including estimated and actual project level cost
19 details.

20 To date, FPL has not developed and provided
21 project level information beyond one year because
22 we know it will change, since specific projects for
23 the coming years are identified based on the most
24 recent reliability and performance data. Avoiding
25 the creation of inaccurate project level plans

1 eliminates unnecessary efforts and costs for all of
2 us, utilities, intervenors and the Commission.

3 Additionally, unnecessarily creating longer
4 range projections that inevitably will turn out to
5 be inaccurate could result in customer and local
6 government confusion and dissatisfaction and create
7 the potential for increased litigation.

8 For example, projects originally identified
9 for year two disappear when the projects for that
10 year are reprioritized based on the most current
11 reliability data.

12 And finally, providing project level cost
13 detail is not required to calculate estimated rate
14 impacts as statutory estimated rate impacts can be
15 calculated with program level detail.

16 That concludes my comments.

17 CHAIRMAN GRAHAM: Thank you.

18 Anybody else in the audience that came here
19 for this public hearing that wish to speak to this
20 issue, you are welcome to come down here to the
21 podium and speak if there is anybody. Anybody?
22 Anybody?

23 Okay. Mr. Rehwinkel, yours to conclude.

24 MR. REHWINKEL: Thank you, Mr. Chairman.

25 I, for the record, would like to lodge an

1 objection to the testimony that Mr. Bromley gave.
2 I think it sort of illustrates that you kind of
3 half-baked evidentiary testimony that's not subject
4 to cross-examination makes our point that our
5 interests cannot be protected.

6 I am not going to reargue the motion for
7 reconsideration that we made. I would respond to
8 Mr. Rubin's point, I believe that he is referring
9 to motions for reconsideration of the rule itself,
10 not these procedural matters.

11 But in any event, all I wanted to do was,
12 based on the facts that we've heard with respect to
13 the AFUDC and Mr. Willis' testimony, is to renew
14 our motion for -- for suspension and evidentiary
15 proceeding for the record without rearguing that
16 here today, just to say we maintain that objection.

17 I have a couple of procedural matters to
18 address --

19 CHAIRMAN GRAHAM: Sure.

20 MR. REHWINKEL: -- in my 30 seconds.

21 CHAIRMAN GRAHAM: Sure.

22 MR. REHWINKEL: We -- I do have an exhibit
23 that contains our two motions, the 29th and the
24 31st. If the staff can -- can -- we contend that
25 these are part of our demonstration. If these are

1 the materials that the Commission will consider in
2 the rule, your -- however you consider whether to
3 adopt the rule finally. I don't need to offer
4 this, but I would prefer to offer it if there is
5 any doubt.

6 CHAIRMAN GRAHAM: Staff.

7 MS. CIBULA: It's in the docket file, so --
8 and it was filed in between the time between the
9 FAR notice and the --

10 MR. REHWINKEL: Okay.

11 MS. CIBULA: -- final public hearing.

12 MR. REHWINKEL: And I have an exhibit that
13 relates to the repeal of rule 28-103.001,
14 Commissioners. I would like to just put this into
15 the record because it's not something that you have
16 in the docket file, and I would just ask that you
17 accept it as part of the record.

18 CHAIRMAN GRAHAM: Sure.

19 MR. REHWINKEL: So this is -- it just says --
20 the title is Repeal of Rules 28-103.001 through
21 .006.

22 CHAIRMAN GRAHAM: Okay. We don't need to give
23 it a number because we only numbered the other once
24 for simplicity.

25 MR. REHWINKEL: Okay. And with -- with that,

1 I have one other question to -- I just wanted to
2 understand, if the Commission takes action today,
3 is this the final hearing that is considered the
4 last step before triggering the timelines for a
5 DOAH rule challenge? Is that the intent for today?

6 MS. CIBULA: Depending on what the Commission
7 does today. If there is no change to the rule,
8 this will be the final public hearing.

9 MR. REHWINKEL: Okay. Thank you. That's -- I
10 appreciate that.

11 Thank you.

12 CHAIRMAN GRAHAM: Okay. All right. Any
13 comments from staff or General Counsel before I
14 bring it to the Commission?

15 MR. HETRICK: No comments. I think the three
16 options are laid out, unless you have any of
17 questions yourself, Mr. Chair.

18 CHAIRMAN GRAHAM: All right. So
19 Commissioners, it's time now for us to discuss.
20 It's time for us to, if we have any questions of
21 any of the comments you heard earlier, or of staff,
22 or of OPC, then after we have the discussion, we
23 have three options. The three options are:

24 We can decide to change the rule based on
25 evidence and arguments we heard today from OPC and

1 from others. We can decide to keep the rule as
2 proposed, or we can decide to take the comments
3 under advisement and direct staff to come back with
4 a new recommendation.

5 MS. CIBULA: I guess I should add that if
6 they -- if you direct us to come back, then there
7 will be another public hearing. So I guess in --
8 in response to what OPC asked earlier.

9 CHAIRMAN GRAHAM: Okay. So, Commissioners,
10 and I got Commissioner Brown's light on.

11 Commissioner Brown.

12 COMMISSIONER BROWN: So I guess the -- the
13 real crux of the question to the utilities based on
14 Public Counsel and the other interested persons,
15 parties here today, is how did the utilities
16 envision meeting the burden about what is
17 incremental and what is in base rates for all of
18 the projects?

19 MR. RUBIN: Commissioner Brown, I think that's
20 going to vary from utility to utility because some
21 utilities have --

22 COMMISSIONER BROWN: I am just asking FPL
23 right now, and then I am going to go down the line.

24 MR. RUBIN: I think it will be our burden to
25 come in and prove that a cost that is being sought

1 for recovery under the storm protection plan is not
2 already being recovered in base rates.

3 Now, that's going to probably vary depending
4 upon whether it's an undergrounding project,
5 whether it's vegetation management. But I -- you
6 know, there is no question that it will be our
7 burden to come in and prove that to the Commission.
8 And if we are -- if we are unable to provide that
9 proof to the Commission, then we will not be able
10 to recover those costs.

11 It's hard for me to explain today --

12 COMMISSIONER BROWN: The process?

13 MR. RUBIN: The process itself, but I can
14 assure you that, you know, we understand the law,
15 that it is our burden to come in and show you that.
16 If we can't prove it, we can't prove it, and then
17 we are not going to be able to get cost recovery.

18 COMMISSIONER BROWN: And so that's my
19 understanding, too, and I am curious to hear from
20 the other utilities if you have anything different
21 that's obviously not super specific that you are
22 able to answer today, but that seems to be the --
23 the criticism from the parties.

24 MR. BERNIER: Right.

25 COMMISSIONER BROWN: And before I get to you,

1 I am just seeing your head nod, so you are agreeing
2 with what I am saying here.

3 MR. BERNIER: I'm agreeing with what you are
4 saying here, and I would also reemphasize what Mr.
5 Rubin said, that this is going to be program
6 specific, you know, to a degree.

7 I mean, if I have a program that we are
8 putting in SPP that is currently portions of it in
9 base rates, that might be different than a whole
10 new program altogether, and I don't know that, and
11 we haven't developed our plan, of course.

12 COMMISSIONER BROWN: See I have been very
13 comfortable with the proposed rule as we made
14 changes because I know it is the utility's burden,
15 and ultimately we will have those appropriate
16 measures in place, but I wanted to hear to assuage
17 some of the concerns that have been raised here.

18 And I think some of those concerns may cause
19 customer confusion that there is potential for
20 double billing. Public Counsel passionately said
21 that there is absolutely no way to verify that
22 double billing will not occur. And I just want
23 some type of clarity from our accounting folks,
24 from -- from any of the parties here today that
25 that is not the case because that is what customers

1 are hearing from the intervenor -- or the
2 interested parties here today.

3 MR. FLETCHER: Just from staff, that would be
4 addressed in the clause.

5 As far as double recovery, there will be
6 discovery. There will be testimony to vet that.
7 It's no different than what you see in storm
8 restoration cases. You have what's included. You
9 can't recover what's in base -- already embedded in
10 base rates there. So it's similar in that process,
11 and it will be vetted in the clause proceeding as
12 well.

13 COMMISSIONER BROWN: Thank you.

14 So do you have an envision of how the
15 incremental projects -- and Mr. Brew raised a point
16 about a baseline for vegetation management, which
17 of course is different for each utility. Do you --
18 does staff have an envision of how this process
19 will work in the clause proceeding determining for
20 each utility how to distinguish what has been
21 approved by the Commission in terms of vegetation
22 management, and what would be deemed incremental?

23 We have, you know, miles and miles -- we have
24 data for miles and miles of -- of where vegetation
25 management has occurred. We have approved the

1 storm hardening plan.

2 MR. BREMAN: Yes, Commissioner. It's like I
3 said earlier, and other people have said, we will
4 look at the transitive expenditures for similar
5 activities, and then the change and the scope of
6 the activities, and try to watch to see how the
7 dollars change. That's how we would do it up until
8 the next rate case.

9 The next rate case, it's basically hopefully
10 cleaning the ground and we start over again, and
11 there will be a new standard.

12 COMMISSIONER BROWN: So you do not agree with
13 Public Counsel's assessment that there is no way to
14 verify double recovery?

15 MR. BREMAN: The choice of words in this
16 statement is a little bit disturbing to me. I
17 don't think the rule can do that. I don't -- I
18 think the only way to do that is through an
19 evidentiary process.

20 COMMISSIONER BROWN: And that's what's going
21 to occur during the clause?

22 MR. BREMAN: And that's what happens in the
23 clause.

24 COMMISSIONER BROWN: Thank you.

25 CHAIRMAN GRAHAM: Commissioners. Commissioner

1 Polmann.

2 COMMISSIONER POLMANN: Thank you, Mr.

3 Chairman.

4 Follow on to Commissioner Brown's point and
5 whatever your name is, because those things are
6 wrong.

7 CHAIRMAN GRAHAM: Jim.

8 COMMISSIONER POLMANN: Jim. Thank you.

9 I -- I -- I don't want to take issue with Mr.
10 Rehwinkel's -- his presentation. I understand your
11 perspective, and, in fact, I appreciate the
12 thoroughness of your representation for the
13 customers.

14 On behalf of the customers, let me just -- if
15 I understand what the bottom line difference that
16 Public Counsel is seeking between the bath that we
17 are currently on and what you are requesting, the
18 outcome, not with regard to the proceedings here
19 today and your petition, and so forth, if I
20 understand it, you are concerned about the
21 implications of the AFUDC, the so-called double
22 recovery, the double billing, and so forth.

23 Is this about, when you get to the end of the
24 day, it's a cost to the customer? And, Mr.

25 Rehwinkel, I mean, you said a number of things that

1 quite frankly using the words you used we take
2 issue with, but all that aside, the bottom line is
3 about cost to the customer, is that -- is that what
4 I am hearing?

5 MR. REHWINKEL: Yes, Commissioner. You're --
6 that's exactly what we are saying, and we focused
7 on those two issues as being the ones that have the
8 greatest potential to drive unjustified costs in
9 this process. It's not the vast majority of the
10 undergrounding costs that the Legislature has
11 deemed is the right thing to do. We are not taking
12 issue with that.

13 COMMISSIONER POLMANN: I mean, there has been
14 so much discussion about undergrounding and so
15 forth, and it seems to be the point, because I
16 think people understand that, first of all, it's a
17 visible thing, and the wires, and if we put them
18 underground, somehow that's -- but that's just an
19 example. And we talk about it a lot, but, yes,
20 it's expensive, but it's not about that.

21 You are talking about overall costs, and we
22 are talking about very specific things, and we are
23 in a rule, and so forth, but you are focused on
24 certain aspects, and he it's really bottom line
25 costs, and how we get to that, and accounting

1 issues, and a lot of detail, but it's the cost of
2 the customer, is that -- is that fair?

3 MR. REHWINKEL: That's what -- that's our
4 representational objective, yes, Commissioner.

5 COMMISSIONER POLMANN: Commissioner Brown
6 has -- has pointed to it, and Jim has responded,
7 about the fact that it's -- you are suggesting we
8 can't do our job under the proposed rule language,
9 and I am going to take off of that, you are
10 suggesting, and Mr. Willis has pointed to, that we
11 need -- it's required that we have year by year
12 project level detail, and I am going to go to the
13 utilities and ask them.

14 From your perspective, and I know you have
15 said you are committed to provide because it's your
16 burden, and what is your perspective if you were to
17 provide -- let me -- let me back up one step.

18 I understand that's difficult. If you were
19 required to provide year by year detailed project
20 information, that could be done. I mean, I know
21 you could do it. You would be committing to
22 projects in some regard that ultimately, when you
23 got to the field, or when you got to the date of
24 doing them, they wouldn't be the projects you
25 thought they were going to be. They would be

1 changed because of circumstances. The costs would
2 be changed. A lot of things would not be what you
3 thought they were today for year three. That's
4 just the reality of it. If you were required to
5 provide that, that's not what actually would occur.
6 I accept that.

7 So my question is, if you provided annual
8 project details for years one, two and three, would
9 it be your expectation that -- that that would
10 reduce or eliminate what has been described here
11 today as a time-consuming, costly and voluminous
12 discovery process when we got to the cost recovery
13 clause? How much difference would that make if
14 you -- if you provided all that detail up front, we
15 got to recovery, would it be very much more simple?
16 Because it's one or the other the way it's being
17 described here. Can you comment on that?

18 MR. RUBIN: I think I can.

19 If -- assuming, as you just described, that
20 what we would project for year three is not what is
21 going to occur, because it is going to change,
22 there is really no value in that data.

23 COMMISSIONER POLMANN: Well, that's different
24 thing. Just let it be what it is.

25 My question is: When we come to recovery, is

1 it going to be easier, and we are going to save
2 money? Because that -- I think that's kind of
3 what, in our cloudy thinking, in somebody's cloudy
4 thinking in this room, not to characterize how
5 cloudy it is, in my thinking it's -- what would you
6 expect, hypothetically?

7 MR. RUBIN: I think it actually would be
8 harder because what's going to happen is you are
9 now going to have to pull certain projects out, put
10 new projects in and look at the economics of the
11 different projects, so I think it actually would
12 create more work, not less work. I think it would
13 make it more complicated, not less complicated.

14 COMMISSIONER POLMANN: Okay. The other folks
15 at the front here?

16 MR. BERNIER: I agree with that, and I think
17 it also would drive and increase in discovery as
18 well around variance explanations and explaining
19 what's going on and why, and, you know, how -- when
20 it did it move, why did it move then, and -- for --
21 for projects that we know are going to move.

22 COMMISSIONER POLMANN: TECO.

23 MR. MEANS: I would agree with the comments
24 made by Florida Power & Light and Duke.

25 MR. BADDERS: Same here. I mean, explaining

1 the variances would be very difficult, and you know
2 you will have to do that because they will be wrong
3 for years two and three.

4 COMMISSIONER POLMANN: Ms. Keating, do you
5 have any -- anything different?

6 MS. KEATING: I have nothing different to add.
7 We would agree with their comments as well.

8 COMMISSIONER POLMANN: Staff, I mean, what's
9 your perspective on it? I am trying to get a
10 feeling for -- I mean, I am seeing two different
11 ways to do this.

12 MR. BREMAN: I think the forecasting issue is
13 important to keep in mind because we don't want to
14 give a false -- false precision concept here. If
15 a forecast is subject to change, then we need to
16 accept that, and the detail supporting that
17 forecast are really questionable. You can ask
18 about them, but -- so that's why we support the
19 rule as proposed, and we are ready to operate under
20 it.

21 COMMISSIONER POLMANN: Mr. Chairman, you can
22 go to others? I just want to review my notes here.

23 CHAIRMAN GRAHAM: Commissioner Fay.

24 COMMISSIONER FAY: Thank you, Mr. Chairman. I
25 will just have probably some quick, what I think

1 are quick questions for staff.

2 I -- I have been listening intently today
3 looking for that -- that new information that would
4 come up in this type of hearing, not just a new
5 theory that might be applied to it. Is there -- is
6 there a component of what we've heard today that is
7 substantive new information as it relates to this
8 analysis?

9 MR. FLETCHER: The only thing new that I have
10 heard here today was particular concern regarding
11 recovery of AFUDC in the clause and whether,
12 especially the bundling and unbundling are
13 individual projects.

14 But, again, if you are talking about projected
15 costs, the way you capitalize AFUDC is you wait
16 until the project is completed, and then once it's
17 completed -- so that will be actual cost for AFUDC
18 recovery. It should -- to me, it shouldn't be in
19 the projected amount because it's not completed
20 yet. The project is not completed. It's going to
21 remain in construction work in progress, and so
22 that wasn't a concern for me here today because we
23 will have the project level detail for the actual
24 completed projects. And again, if there is a
25 question or concern by parties in the clause

1 proceeding, they can raise it in testimony or
2 through discovery regarding the bundling or
3 unbundling concern that was raised here today by
4 OPC.

5 COMMISSIONER FAY: Okay. I know this has been
6 asked in one -- one shape or another, but based on
7 the requirements set out in Senate Bill 796, the
8 rule that we are implementing, do you believe with
9 the current rule we can fulfill the statutory
10 obligation?

11 MR. FLETCHER: Yes.

12 COMMISSIONER FAY: Okay. I guess the only
13 other question I had, and I apologize, I think
14 FIPUG was the one who mentioned -- Mr. Moyle
15 mentioned the SERC process, and that wasn't
16 something necessarily that was on my radar before.
17 But is there -- when that -- when the bill moves
18 forward, there is an economic analysis done on it,
19 and then once the agency looks to implement a rule,
20 is there some sort of comment period during that
21 time period that interested parties can weigh in
22 that they might be impacted?

23 MS. CIBULA: Yes, the SERC -- there is the FAR
24 notice, and it says that if you have additional
25 information on the SERC, you can provide that

1 within 21 days, or you can provide a lower
2 regulatory cost alternative.

3 And as I -- as I said, the SERC that we did
4 are on the rules that we proposed. It doesn't
5 cover the legislation in general. And the
6 responses that we got in regard to the SERC were
7 that the driver of the costs were the statute, not
8 the rules that we were proposing.

9 COMMISSIONER FAY: Okay. I appreciate that.

10 And I just -- one comment to close from my
11 perspective.

12 Mr. Chairman, I appreciate you allowing some
13 deference for this process. I think we -- we -- we
14 started -- I think the structure of the agency is a
15 little bit different from -- from maybe other
16 agencies, and so when you have the rule out, the
17 procedures might be different, and so we've had two
18 public workshops, and then the -- the previous
19 hearing and now this hearing, and I guess depending
20 on what the future holds, potentially more, and so
21 I just appreciate your deference for allowing some
22 of those questions, and for the information to be
23 heard.

24 That's all I have.

25 CHAIRMAN GRAHAM: Thank you.

1 I guess to sum all this up, this is my simple
2 mind just kind of looking at this stuff. There is
3 two questions in front of us. No. 1 is the idea of
4 double recovery. And I think we've seen and heard
5 enough that double recovery can be decided -- can
6 be -- make -- we can make sure there isn't double
7 recovery through discovery when it comes to the
8 clause hearings. So that handles that issue.

9 Having a detailed plan three years out, I
10 think that would be causing more problems than it's
11 worth, because that plan is going to change. You
12 are going to have -- I can tell, from you local
13 governments, they are going to fixate on something
14 that they thought was going to happen three years
15 out, something comes and it doesn't happen two
16 years out, and then it comes down to the year of
17 and then you run into more problems than it's
18 worth. So I think -- I think you are dealing with
19 a nightmare situation there. So that's No. 1, is
20 the double recovery, and I think we got that
21 handled.

22 No. 2, us overstepping our legislative
23 authority. Well, obviously that's not something --
24 that's not a question we get to answer ourselves.
25 That's a question that goes on to -- to DOAH. That

1 happens to be a DOAH question, and they can answer
2 that.

3 So in my simple mind, those are the two
4 questions we have, and I think those are the
5 answers that we have. And I have no lights on, so
6 I am ready for a motion.

7 Commissioner Polmann.

8 COMMISSIONER POLMANN: There has been a lot of
9 discussion about the sufficiency of the language in
10 the rule. I support the rule as written, and I
11 agree with your comments, that this commission can
12 get all the information that we need through
13 discovery, and we will be fully informed when it
14 comes time to make a decision.

15 I am not advocating that anything be added to
16 the rule, but there may well be some value in
17 further discussion among staff, and maybe working
18 with the parties and the utilities going forward to
19 talk about some kind of guidance that's tagged with
20 the MFRs, and so forth. I don't know how that will
21 be accomplished, but I am just suggesting that I
22 have heard a lot about the sufficiency of the
23 information, and so forth.

24 We will get what we need when the time comes,
25 but just to kind of smooth over that process going

1 forward, I would hope that that kind of discussion,
2 open discussion with the staff and others occurs.

3 I am looking forward to the coming year,
4 coming couple of years with hopefully a very open
5 and full discovery process with regard to upcoming
6 rate cases. That was mentioned here as well. And
7 that may -- may well turn out to be informative to
8 this baseline reset that Mr. Brew referenced.

9 And with those kinds of things anticipated, I
10 am -- I am happy to support the rule as written.
11 And, Mr. Chairman, I would move approval of -- or
12 whatever the right term is, I would suggest that we
13 keep the rule as presented, and whatever the form
14 of the motion is that's appropriate, I am kind of
15 confused as to where we are, but I will look to
16 legal counsel --

17 CHAIRMAN GRAHAM: You got one of three things
18 you can do. One of which -- what I think you are
19 saying is issue, Item 2, the Commission may decide
20 to keep the rule as proposed. Is that what your
21 motion is?

22 COMMISSIONER POLMANN: My motion is to keep
23 the rule as proposed and proceed along the
24 rule-making process as we are.

25 CHAIRMAN GRAHAM: Is there a second for that?

1 COMMISSIONER BROWN: Second -- go ahead.

2 CHAIRMAN GRAHAM: Okay. It's been duly
3 motioned and second.

4 Further comments, Commissioner Brown.

5 COMMISSIONER BROWN: I just want to say that
6 this rule is actually very, very innovative. It's
7 very forward-looking. It is going to be a good
8 thing for the citizens of Florida. We are going to
9 have incremental -- enhanced incremental actions
10 that address reliability, resiliency associated
11 with extreme weather events. This is important and
12 critical to the state of Florida.

13 There will be adequate measures in place -- I
14 assure Public Counsel, I assure the public that
15 there will be adequate measures in place that all
16 costs will be reviewed prudently to make sure that
17 they are reasonable. And I just -- I think it's a
18 great program. I think we are going to see
19 wonderful efforts in our state that really enhance
20 the reliability.

21 CHAIRMAN GRAHAM: Okay.

22 Motion in front us, duly seconded.

23 Any further discussion?

24 Seeing none, all in favor, say aye.

25 (Chorus of ayes.)

1 CHAIRMAN GRAHAM: Any opposed?

2 (No response.)

3 CHAIRMAN GRAHAM: By your action, you have
4 approved that motion.

5 All right. So this public hearing is
6 concluded, and we are still here for Agenda
7 Conference, and that's the end of Agenda. So
8 Agenda is adjourned.

9 Everybody please travel safe.

10 If you are here for IA, we are going to have
11 IA right here in the next three minutes, so you
12 don't have to move far, and then after that, we are
13 going to have the clauses, once again right here.

14 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

WE, DEBRA R. KRICK, and ANDREA KOMARIDIS WRAY,
Court Reporters, do hereby certify that the foregoing
proceeding was heard at the time and place herein
stated.

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

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

DATED THIS 14th day of November, 2019.


DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020


ANDREA KOMARIDIS WRAY
NOTARY PUBLIC
COMMISSION #GG365545
EXPIRES FEBRUARY 9, 2021