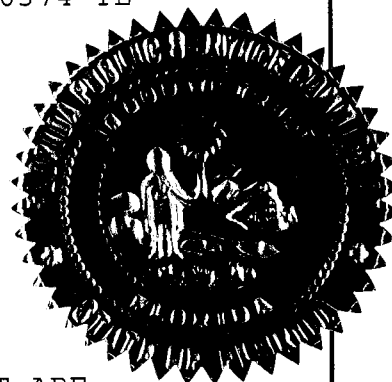


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050374-TL

In the Matter of:

PETITION FOR APPROVAL OF STORM COST
RECOVERY SURCHARGE, AND STIPULATION
WITH OFFICE OF PUBLIC COUNSEL, BY
SPRINT-FLORIDA, INCORPORATED.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 8

BEFORE: CHAIRMAN BRAULIO L. BAEZ
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER RUDOLPH "RUDY" BRADLEY
 COMMISSIONER LISA POLAK EDGAR

DATE: Tuesday, September 20, 2005

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

REPORTED BY: LINDA BOLES, RPR, CRR
 Official FPSC Hearings Reporter
 (850) 413-6734

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1 APPEARANCES:

2 CHARLES J. REHWINKEL and J. JEFFRY WAHLEN, ESQUIRE,
3 representing Sprint-Florida, Incorporated.

4 PATRICIA CHRISTENSEN, ESQUIRE, appearing on behalf of
5 the Citizens of the State of Florida.

6 RICHARD MELSON, GENERAL COUNSEL; and JASON ROJAS,
7 ESQUIRE; ADAM TEITZMAN, ESQUIRE; BETH SALAK; BOB CASEY and
8 CHERYL BULECZA-BANKS, representing the Florida Public Service
9 Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN BAEZ: Call the agenda conference back to
3 order.

4 Commissioners, we are on Item 8.

5 MR. ROJAS: Jason Rojas on behalf of Commission
6 staff.

7 Commissioners, Item 8 is staff's recommendation on
8 Sprint's petition for approval of storm cost recovery surcharge
9 in Docket 050374.

10 Staff recommends that the Commission find that the
11 costs incurred by Sprint as a result of the 2004 hurricanes
12 constitute a compelling showing of substantial change in
13 circumstances pursuant to Section 364.051(4) of the Florida
14 Statutes.

15 Furthermore, staff recommends the Commission
16 authorize Sprint to impose a surcharge of 50 cents per access
17 line for a period of no more than 12 months. If approved,
18 Sprint would recover approximately \$9 million of its
19 storm-related costs.

20 Furthermore, although noticed originally as
21 participation by staff and Commissioners only, Sprint has filed
22 a letter with the Commission Clerk requesting an opportunity to
23 address the Commission on this item. Although staff believes
24 it would have been appropriate to request oral argument upon
25 the filing of briefs, staff does not believe oral argument is

1 prohibited at this time. Consequently, staff believes it is
2 within the Commission's discretion to allow the parties to
3 address the Commission on this matter.

4 Staff would like to further note that OPC has
5 objected to Sprint's request to speak.

6 CHAIRMAN BAEZ: Commissioners, what's your pleasure?
7 There's a, there's at least a request for oral, to make oral
8 statements by the parties. You've heard staff. You know, it
9 would have been nice to have known ahead of time. I actually
10 did have staff go back and check the transcript of when we did
11 consider the stipulation because I, for some reason I had, I
12 had, I had it in my mind that there had been some, some
13 discussion of oral presentations even though it was a
14 brief-only hearing, but it turns out that it wasn't discussed.
15 It's your pleasure whether you would like to hear from the
16 parties or not.

17 COMMISSIONER DEASON: Mr. Chairman, let me kind of
18 express my concern. From a point of personal preference, I
19 would like the opportunity to be able to at least ask
20 questions. But at the same time, if there was an understanding
21 either expressed or implied or whatever that, that the parties
22 were just going to rely on briefs and that were going to be
23 it -- I don't want to give unfair advantage to one party that
24 comes prepared and another party that thought we were just
25 going to consider the briefs. So that's the kind of quandary I

1 find myself in. So if we can just ask questions, I suppose,
2 maybe that -- at least that would be -- I mean, I'm not, I'm
3 not opposed to having the parties address us. Don't get me
4 wrong. I'm not opposed to that, unless one party represents
5 that that would, you know, unfairly, put them in an unfair
6 position because they were relying on some understanding that
7 there was not going to be presentations. So if there's not
8 going to be presentations, then can we at least ask questions?
9 Is that permissible, I guess, would be the secondary position?

10 CHAIRMAN BAEZ: Well, I don't think that there's
11 anything -- that's always sort of a standing rule. I mean,
12 we -- if a Commissioner has a specific question of a party, I
13 mean, that's okay to do; correct?

14 MR. MELSON: Ordinarily in a posthearing context you
15 don't have the parties address, but we don't ordinarily deal
16 with 120.57(2) hearings where it's been on paper. And so I
17 think in this situation either an oral presentation or
18 questions would be permissible.

19 CHAIRMAN BAEZ: But at the same time, taking into
20 account Commissioner Deason's good comments, Ms. Christensen,
21 what's the nature of your objection just so that we can get it
22 on the record?

23 MS. CHRISTENSEN: Well, I think you've rightly stated
24 it. I think when we entered into the agreement to do a
25 120.57(2) hearing, it was our understanding that this would be

1 a stipulated record in lieu of live testimony. And then we
2 would follow the normal posthearing procedures whereby the
3 parties would file briefs and nobody would be placed in a
4 greater or a lesser advantage, and that we would follow, of
5 course, the Commission's participation rules for agenda
6 conference, 25-22.0021(2), that talks about when a
7 recommendation is presented and considered in a proceeding
8 where a hearing has been held, and in this case we realize
9 there wasn't a live hearing but there was a stipulation in lieu
10 of a live hearing and briefs filed, that no person other than
11 the staff and the Commissioners would participate at the agenda
12 conference, and that the Commission would not consider oral or
13 written argument on anything other than new matters related to
14 the subject matter. So we were not -- we had not contemplated
15 addressing the Commission on the issues that were raised in the
16 staff's recommendation, and, you know, we believe that probably
17 it is in everyone's interest to just follow the normal course
18 of proceeding. I don't think that merely because it's a
19 120.57(2) hearing, it's still a hearing, and we believe that we
20 probably should just handle it through the normal course. And
21 we're prepared to allow the Commissioners to address staff and
22 proceed as normally. And I think there is recourse if anybody
23 feels that their rights -- if there's problems, that they still
24 have the recourse of reconsideration or any other posthearing
25 motions, but --

1 CHAIRMAN BAEZ: So what you're saying is even, even
2 if any of the Commissioners would have a question of one of the
3 parties, including Public Counsel, that still maintains --
4 you'd be opposed to that, too.

5 MS. CHRISTENSEN: Well, I think in keeping consistent
6 with how the Commission normally deals with posthearing
7 matters, that it would be limited to the Commissioners and
8 staff.

9 COMMISSIONER DEASON: Mr. Chairman, I'm willing to --

10 MS. CHRISTENSEN: You know, obviously there's some
11 discretion, but that's, that's the normal course that's held
12 and that was our expectation.

13 COMMISSIONER DEASON: I'm willing to abide by that.
14 I guess the request I would have in the future, if we have a
15 similar stipulation, I would just request that, put it up front
16 that the Commission reserves the right to have oral argument or
17 even indicate that we will have oral argument. Because it's a
18 little -- we've not had the benefit of a live hearing, and I
19 know that the, the facts have been stipulated and it's strictly
20 legal argument. But I've always found it very helpful to be
21 able to ask questions of the attorneys when it comes to legal
22 arguments as well as questions about factual things during the
23 course of a hearing, so.

24 CHAIRMAN BAEZ: And I've got to, I've got to tell you
25 then I must have fumbled that because I was thinking of it.

1 This morning at 9:00 in the morning I could have sworn that we
2 actually contemplated, yes, the fact that it's a, that it's a
3 paper hearing after all, but what kind of access to questions
4 or comments the Commission would have. And I apologize to the
5 Commissioners if, in fact, it never happened, and apparently it
6 didn't. So that was my, my bad.

7 COMMISSIONER BRADLEY: And I -- you know,
8 stipulations always present a very special situation in that in
9 most instances nothing changes, but there's always the
10 possibility that, that the agreement might, might not be what
11 all parties thought it was going to be when it was agreed upon.
12 And I was prepared to allow for some, some limited testimony,
13 at least for some questions because --

14 CHAIRMAN BAEZ: I --

15 COMMISSIONER BRADLEY: Well, because it's a
16 stipulated agreement. You know, I'm just wondering how we can
17 take it at its face value without asking some, at least some
18 questions to clear things that might be in our minds. But if
19 legal says that, that this would set a new precedent, that it
20 might create some future concerns, I, by all means, will adhere
21 to it. But I just -- by the fact that it's a stipulation and
22 we were not a party to it --

23 CHAIRMAN BAEZ: Commissioner, I share your desire to
24 have been able to ask the parties some questions, but I think
25 some of the points taken -- and I guess my concern as well is

1 this: You know, Public Counsel also strenuously believes that
2 that was the agreement, and certainly they are somehow
3 confessing some disadvantage to us opening it up, and I don't
4 have a problem with that. I think it's fair. It's a fair
5 objection that they make, and that gives me pause for concern.

6 I will try and comfort you, Commissioner Bradley, by
7 reminding you that, you know, staff has intimate knowledge and
8 understanding of the, of the briefs and has stated, has
9 approved it as for its recommendation, so they are, of course,
10 always available for us to ask questions to. And, as always,
11 they will do their best to give us the responses that we, that
12 we need.

13 Commissioners, I'm detecting some consensus. I mean,
14 unless everyone -- unless anyone has any real strong feelings
15 in going forward with this, if we -- to limit it.

16 COMMISSIONER EDGAR: Yeah. Mr. Chairman, I certainly
17 defer to your call on it. I do, however, would like to share
18 that I do have some discomfort. I was not clear that, that
19 oral argument would be prohibited when we had the discussion
20 for the stipulation. And I understand Ms. Christensen's
21 comments about usual practice and -- however, this item is
22 somewhat unusual. We have some issues coming before us for
23 the, for the first time. It is somewhat unusual, at least in
24 my limited experience --

25 CHAIRMAN BAEZ: No. No. This is, I think, a case --

1 COMMISSIONER EDGAR: -- to have a stipulation in lieu
2 of hearing and then to come back at a later time for further --
3 so I would just like to say I have some, a little discomfort.

4 CHAIRMAN BAEZ: It's a case of first impression. I
5 don't think the statute has ever been -- I don't think we've
6 ever had to deal with the statute, have we, Mr. Melson?

7 MR. MELSON: I don't recall if you've faced this
8 precise question. If you look at 120.57(2), it does
9 contemplate written submissions or oral submissions. So I
10 think the statute contemplates it in the context of a
11 120.57(2) hearing. You could have an oral component to it.

12 I have looked back at the parties' procedural
13 stipulation, and it talks about filing of briefs followed by a
14 staff recommendation and agenda, and it's sort of silent as to
15 what the parties contemplated that agenda would involve.

16 CHAIRMAN BAEZ: I'm not -- I tell you for my, for my
17 money, I'm not convinced, I'm not convinced that we couldn't
18 entertain -- that we don't have that discretion. I would agree
19 with Mr. Melson.

20 However, I think, I think, you know, Commissioner
21 Deason's point is well taken. If, if you've got a silent
22 stipulation and, and no, no other evidence of, of having
23 contemplated, you know, something other than -- well, I guess I
24 have to be comfortable, and I am, you know, asking my questions
25 to staff. It's really not a --

1 COMMISSIONER BRADLEY: Well, and to further
2 complicate the matter, we have, and correct me if I'm
3 incorrect, I think we have a stipulation here and a staff
4 recommendation that's -- I don't know if it's in line with the
5 stipulation or not.

6 CHAIRMAN BAEZ: The stipulation never reached us,
7 this one.

8 MS. CHRISTENSEN: Commissioner, may I just briefly?

9 CHAIRMAN BAEZ: Ms. Christensen, sure.

10 MS. CHRISTENSEN: Maybe we can reach some level of
11 comfort. We would -- our concern is opening it up to argument
12 in an oral presentation and being allowed to argue it. But I
13 think we would have less concern if we were just to address
14 Commissioner-specific questions, and I think that's something
15 that --

16 CHAIRMAN BAEZ: And that's really everything that
17 was, that was being, that was being suggested. And, again,
18 this is not -- we're not twisting anybody's arm, and I for one
19 don't feel comfortable going forward if there's any discomfort
20 among the parties.

21 I will point out the recommendation says what it
22 says. I think we -- you know, any, anyone, any of the parties
23 can, you know, make their own determinations as to whether in
24 theory they would be arguing for it or against it, and this
25 becomes an opportunity that is either taken or passed up to do

1 just that. If you're comfortable with just the Commissioners
2 asking directed questions and you're comfortable with
3 responses, that's fine. I'm not, I'm not belaboring this point
4 in order to compel you to, to do anything. I know what the
5 stipulation says. It's clear that it was silent. And we can,
6 you know, read whatever intent we want into it. We do have
7 that discretion. But, again, I will say again, I share
8 Commissioner Deason and certainly the rest of the
9 Commissioners' concerns. We don't want to put anybody at a
10 disadvantage. So it really is -- I hate to punt to you, but --

11 COMMISSIONER BRADLEY: Well, let me ask this
12 question. In order to allow us to ask specific questions that
13 we might have but to not -- to establish some rule so that we
14 don't have a situation where parties put on their case, should
15 we maybe limit, try and limit response time? Is that what the
16 concern is?

17 CHAIRMAN BAEZ: To harken back to a, to a previous
18 item, that's a feel thing. I think it's -- you know,
19 Commissioner Bradley, you, you, I'm sure you've been here long
20 enough to appreciate that when the lawyers are involved, you
21 can't just open the spigot and turn it off whenever you want.
22 It just kind of all gets stuck together. But I do appreciate
23 your sentiment. I'm sure everybody else is going to take it
24 into consideration as well.

25 Ms. Christensen, I'm sorry. You --

1 MS. CHRISTENSEN: I think our main concern was
2 allowing arguments to be presented, and I think we're --

3 CHAIRMAN BAEZ: And, again, I think --

4 MS. CHRISTENSEN: And I think that was what they
5 were, Sprint's request was, whether or not that was what the
6 Commission was contemplating this morning. But I think
7 responding to the Commissioners' specific questions is
8 something that the Office of Public Counsel can be satisfied
9 with.

10 CHAIRMAN BAEZ: And let me, let me say this.
11 Argument with a capital A we're not going to entertain for all
12 the good reasons. Argument with a small a, see my prior
13 comment about lawyers being involved. But I think if, if
14 you're comfortable with having the Commissioners direct
15 questions to the parties, if that's a yes, then maybe we can
16 get on to the good stuff.

17 COMMISSIONER BRADLEY: Does that mean we direct
18 questions at specific parties or --

19 CHAIRMAN BAEZ: Yeah. Yeah.

20 MS. CHRISTENSEN: That would be a yes. And we do
21 understand this is obviously an argument on both, you know --
22 there's a recommendation, but what -- I think we all
23 understand.

24 CHAIRMAN BAEZ: I know what, I know what you mean and
25 you know what I mean. Good.

1 COMMISSIONER BRADLEY: What do y'all mean?

2 CHAIRMAN BAEZ: And, well, I think the Commissioners,
3 we can, of course, ask questions to the staff, we can direct
4 questions to the parties, and they'll do their best to respond
5 directly to the Commissioners.

6 Now, after getting that over, I'm not sure how to
7 proceed at this point.

8 COMMISSIONER BRADLEY: Well, what have they agreed
9 to?

10 CHAIRMAN BAEZ: Commissioners, we can ask questions
11 to anyone, any of the parties.

12 Mr. Rojas, can you tee up the issues for us briefly?

13 MR. ROJAS: Certainly.

14 CHAIRMAN BAEZ: Don't, you don't have to get too deep
15 into it, but just sort of to kick us off.

16 MR. ROJAS: Commissioners, the first issue reads, "Do
17 the costs incurred by Sprint as a result of the 2004 hurricanes
18 constitute a compelling showing of a substantial change in
19 circumstances pursuant to Section 364.051(4) of the Florida
20 Statutes?" And staff recommends that, yes, the facts as
21 stipulated to by Sprint and OPC show a compelling change in
22 circumstances.

23 CHAIRMAN BAEZ: Commissioners, questions?
24 Commissioner Deason.

25 COMMISSIONER DEASON: Mr. Chairman, I have, I have a

1 few questions. And I'll direct the first question to, to
2 staff, and then we'll take it from there.

3 You are obviously looking at the statutory language
4 in making your determination. But you also in your
5 recommendation, you looked to the new statutory language that
6 was just passed and indicate that that supports your position,
7 gives clarification to the Legislature's intent that the events
8 that we saw in the 2004 hurricane season certainly meet the
9 statutory provision of, of -- what is the terminology --
10 substantial changes in circumstances; correct?

11 MR. ROJAS: Correct.

12 COMMISSIONER DEASON: Okay. And can -- what is the
13 exact language in the new statutory provision which gives you
14 that reassurance?

15 MR. ROJAS: The exact language --

16 COMMISSIONER DEASON: Can you direct me to the
17 recommendation where that is?

18 MR. ROJAS: In the recommendation -- it's going to
19 take me one second, Commissioner.

20 CHAIRMAN BAEZ: Commissioner Deason, are you
21 referring to the, to the new statute, 364.051?

22 COMMISSIONER DEASON: The new statute, yes. The
23 language in the new statute --

24 MR. ROJAS: I'm working with one hand here, so I'm
25 flipping as fast as I can. I believe it's Page 13. And if you

1 look at Page 13, we cite the portion of the new statutory
2 language.

3 COMMISSIONER DEASON: Okay. That's on Page 13.

4 COMMISSIONER BRADLEY: Under legislative guidance?

5 MR. ROJAS: Yes, sir.

6 COMMISSIONER DEASON: Okay. Give me a moment to look
7 at that.

8 So according to this language, if there is a named
9 tropical system that is named by the National Hurricane Center,
10 that in and of itself, assuming that that particular system did
11 impact the system of the company, the company in question, that
12 that would constitute a compelling showing of changed
13 circumstances.

14 MR. ROJAS: That combined with showing --

15 COMMISSIONER DEASON: A magnitude of, was it
16 1.5 million or something?

17 MR. ROJAS: Yes, sir.

18 COMMISSIONER DEASON: Now was there any expression
19 that that language was intended to provide clarification to
20 previous statutory language or is there any discussion or are
21 you aware of that?

22 MR. ROJAS: None that I'm aware of.

23 COMMISSIONER DEASON: Okay. Mr. Chairman, maybe now
24 is a good time to ask a question procedurally. I don't want to
25 do anything inappropriate.

1 I was provided with two sheets of paper. One was
2 a -- the first sheet is a copy of 364.051 statutes entitled
3 "Price Regulation," and there's some highlighted sections
4 there. And then there's a second page with some quotes from
5 some senators. Now if that's something I'm supposed to
6 consider, I will. If not, I'll just put it right back up here.
7 What do we do with this?

8 MR. WAHLEN: Commissioners --

9 CHAIRMAN BAEZ: Mr. Wahlen.

10 MR. WAHLEN: Thank you. Jeff Wahlen on behalf of
11 Sprint. We handed that out. Those are materials that are in
12 the briefs.

13 COMMISSIONER DEASON: This is not new material.

14 MR. WAHLEN: This is not new material.

15 COMMISSIONER DEASON: Okay.

16 CHAIRMAN BAEZ: Ms. Christensen, do you have any
17 objection to parts of it anyway?

18 MS. CHRISTENSEN: Certainly not the legislation. And
19 in looking at Sprint's reply brief, it does appear that the
20 conversation itself, I'm not sure about the, the additional
21 comments, the remarks on the debate were part of it, but
22 certainly the actual comments themselves were in a footnote in
23 the reply brief, so I have no objection to that extent.

24 CHAIRMAN BAEZ: And the Exhibit B, obviously that's
25 part of the record.

1 MR. WAHLEN: That's the stipulation, yes, sir.

2 CHAIRMAN BAEZ: It's a stipulated exhibit. Okay.

3 Commissioners, I guess the short answer is you can go
4 ahead and refer to it, if you'd like, yes.

5 COMMISSIONER DEASON: I can refer to this? Okay.

6 Well, then at this point I'll direct a question then
7 to Mr. Wahlen or Mr. Rehwinkel, and I'm referring to the, the
8 quotes from Senators Constantine and Fasano. What, what do you
9 take from this as far as legislative intent? What am I
10 supposed to take from this in your opinion?

11 MR. WAHLEN: I think two things. The first thing the
12 Legislature did when they enacted this new statute was include
13 a savings clause. And the savings clause said nothing in this
14 new law should affect a petition that's filed for recovery of
15 hurricane costs as of the time this law is enacted. Now if the
16 Legislature didn't intend for those kinds of costs to be
17 recovered, it would have been a meaningless exercise for them
18 to include a savings clause. So we think that the fact that
19 the Legislature included a savings clause in the new statute is
20 legislative, evidence of legislative intent that the old
21 statute allows recovery of hurricane costs.

22 Now in terms of the language that's quoted from --

23 COMMISSIONER DEASON: Let me interrupt you just a
24 second.

25 MR. WAHLEN: Yes, sir.

1 COMMISSIONER DEASON: And I'll give you an
2 opportunity to continue. But does that give statutory
3 interpretation and guidance in terms of the previous statute
4 that just because there was a named storm, that that meets the
5 circumstances, or are there other requirements that have to be
6 met as well or is it silent?

7 MR. WAHLEN: I guess I would disagree a little bit
8 with staff counsel. I'm not sure that the named storm portion
9 of the new statute is really what provides the strongest
10 evidence of legislative intent. I think the strongest evidence
11 of legislative intent in the new statute is the savings clause,
12 which wouldn't have been put in there if the Legislature wasn't
13 going out of its way to make sure that the new statute didn't
14 impair a petition filed under the old statute for hurricane
15 cost recovery.

16 And I think if you look at the Q and A involving
17 Senator Constantine going to the second point, I think what
18 that shows is that the Legislature understood when they enacted
19 the new law that it was permissible under the old law to seek
20 recovery of hurricane costs, and that was a compelling showing,
21 that would be a changed circumstance. So I think that's what
22 the discourse shows.

23 The other thing I think it shows is that
24 Senator Constantine specifically recognizes, when he's
25 discussing the new statute, that the 12-month and 50-cent

1 limitation that the staff has recommended under Issue 2 is
2 simply not in the old statute. His language says, "This bill
3 gives the PSC the ability to look at the cost of the losses
4 from the storm infrastructure recovery, which, by the way,
5 ladies and gentlemen, today under the change of circumstances
6 without any regulation, without any limit of one year and
7 without any limit of 50 cents." So I think that language is a
8 clear expression of legislative intent from the sponsor that
9 the old statute allowed recovery of hurricane costs, that that
10 was a substantial change of circumstance, and that, unlike the
11 new statute, the old statute does not contain a 12-month or
12 50-cent per access line limitation.

13 COMMISSIONER DEASON: Well, does it say that it
14 allows a company to file or does that mean that it allows, that
15 this clarifies the legislative intent that, that a named
16 tropical storm meets the criteria and there has to be recovery?
17 Do you see the distinction I'm trying to draw?

18 MR. WAHLEN: I think so. And let me try to answer it
19 this way. I think going forward it had to be a named tropical
20 storm and it had to reach a certain threshold. But I think
21 that standard doesn't apply to the petition filed in this case.
22 I think that the staff's recommendation on Issue 1 that the
23 combination of these four storms which have no historical
24 basis, were not foreseeable and were well beyond what anybody
25 could have ever anticipated ever in the history of Florida is

1 certainly a compelling showing that under the old law would
2 satisfy the standard for application of the new statute.

3 COMMISSIONER DEASON: Well, let me ask you, under the
4 old law is it your position that if changed circumstances can
5 be demonstrated, that that means there has to be a cost
6 recovery, or is there a required showing that there are changed
7 circumstances and that adversely affects the company's
8 financial picture to the extent there needs to be additional
9 revenues generated?

10 MR. WAHLEN: Well, I don't think cost recovery is
11 ever automatic. I think if you look at the price regulation
12 statute, when the Legislature enacted it there were two parts.
13 There was the regular part where every year you can come and
14 you can get a little increase, and I think that was intended to
15 cover ordinary cost increases. Then I think the Legislature
16 put in something that said if something really bad happens, you
17 can come in and make a compelling showing of changed
18 circumstances and then you can get cost recovery.

19 Now if, if the question is what's the level of cost
20 recovery, I think the stipulation shows you and it's agreed on
21 the record in this case that Sprint spent \$148 million, and
22 then through a process of discussions with Public Counsel
23 reduced that to a request of about \$30 million.

24 So I don't think it's fair to say that Sprint is
25 getting all of its costs recovered in this request. There's

1 already been a winnowing process here before this was presented
2 to you. So I'm trying to abide Commissioner Bradley's
3 admonition to not get too far into this, but I think under the
4 statute the Commission has an opportunity to go in and look at
5 certain kinds of costs and saying, no, you can't recover these
6 and you can't recover these. But I think the parties have
7 already done that by virtue of the stipulation, and that's what
8 took the number from \$148 million to \$30 million. And you can
9 see in the stipulation in Paragraphs 19 and 20 exactly which
10 categories of costs were taken out, and you can see in the
11 comments that Public Counsel made at the agenda conference on
12 the stipulation that Sprint went above and beyond what the
13 other utilities have done in this state to be very conservative
14 and take out more costs.

15 So to the extent there's an urge to further reduce
16 the \$30 million, it's already been reduced substantially. And,
17 you know, if we had come in and asked for \$148 million, we'd be
18 having a whole different discussion here.

19 COMMISSIONER DEASON: Let me rephrase my question.
20 Is there an earning standard implicit in previous legislation?

21 MR. WAHLEN: No.

22 COMMISSIONER DEASON: Ms. Christensen, what's your
23 position?

24 MS. CHRISTENSEN: Commissioner, I would respectfully
25 disagree. I think there has to be a showing that the sum total

1 has a financial impact on the company regarding whether or not
2 they've made a compelling showing of changed circumstances.
3 Whatever the change is has --

4 COMMISSIONER DEASON: Now where in the statute, where
5 in the statute then do we get the, do we get the earnings
6 standard? Is it -- I mean, it's not there expressly, but where
7 is it implied?

8 MS. CHRISTENSEN: Well, I think when you're talking
9 about the first part of the sentence, "Any local exchange
10 telecommunications company that believes circumstances have
11 changed substantially to justify any increase in the rates for
12 basic local telecommunications service," well, you have to have
13 some reason for justifying a rate increase, and that's that
14 whatever is causing the substantial change in circumstances has
15 caused you to have a need to increase your rates. Otherwise,
16 why are you in there asking? I mean, this is under the price
17 capped regulation portion of the statute. It sets forth a
18 scheme that allows for the price capped telecommunications
19 companies to essentially manage their finances either by
20 raising the baskets a certain price every year or the vertical
21 services certain levels each year. This was put in there, as I
22 think we've, the company and myself have agreed, as a safety
23 net for when there is an adverse financial impact to the
24 company caused by something.

25 I don't think necessarily because there's a change in

1 circumstances maybe -- you know, if the company has a change in
2 technology but it doesn't create a financial impact to the
3 company, why would they be in asking for a basic rate increase?
4 I mean, there has to be some tie to the financial. I think
5 that's implicit in the way this mechanism works. And that's
6 why we have presented that there should be some sort of
7 financial test for this. I think it is implicit, and I think
8 even under the new legislation where you see it's not just the
9 fact that there's a named storm that hits, but there has to be
10 a certain threshold of damage that occurs in a provider's
11 territory before they can get any recovery. And if you look
12 under the new legislation, that's capped at 50 cents per access
13 line for a year. Because there is some recognition by the
14 Legislature that these are price capped regulated companies and
15 that they have more flexible financial treatment and that they
16 can raise their prices or they have to respond to competition,
17 that they are not a price capped regulated company where a
18 dollar-for-dollar analysis is appropriate. But these companies
19 have flexible treatment, they can earn 20, 30, 40 percent ROE
20 in a given year. But, likewise, before they have come in and
21 asked for a safety valve from the Commission, they really need
22 to show that there's some financial impact because they have
23 the benefit of earning higher profits, if they can. And so
24 this should be a disfavored provision. And that's -- I think
25 reading it all in context, that's where we came to the

1 conclusion there should be some financial analysis.

2 COMMISSIONER DEASON: Mr. Wahlen, I'm going to direct
3 your attention to Page 11 of the staff recommendation at the
4 bottom of that page, and there you find 364.051, Florida
5 Statutes. And I'd direct your attention to the fourth line and
6 the phrase "may petition the Commission for a rate increase."
7 Is there any burden associated with that petition, and what is
8 that burden?

9 MR. WAHLEN: I'm sorry. I was looking at the --

10 COMMISSIONER DEASON: Okay. At Page 11 of the staff
11 recommendation.

12 MR. WAHLEN: Fourth line.

13 COMMISSIONER DEASON: It's at the bottom of the page,
14 there's a quotation from Section 364.051.

15 MR. WAHLEN: Right. I'm with you.

16 COMMISSIONER DEASON: Okay. On Line 4 there's the
17 phrase "may petition the Commission for a rate increase." My
18 question to you, is there any type of burden associated with
19 the, with the petition? And if there is a burden, what is that
20 burden?

21 MR. WAHLEN: Well, I think the burden is to show that
22 there was a changed circumstance, that things were different,
23 that things are different now than they were before the company
24 elected price regulation, that the change is substantial, it's
25 large, and that it resulted in either costs or lost revenues.

1 And I guess I would submit to you that the kind of money we're
2 talking about here does not make this a close question.

3 Sprint incurred \$148 million worth of costs as a
4 result of these four storms. I'm not sure this is the case
5 where you need to draw a precise line about where the burden
6 should lay. Sprint has voluntarily agreed to eliminate almost
7 \$100 million of cost recovery here in this winnowing process
8 that we had with Public Counsel, and so I'm not sure you need
9 to put on your fine pencil and dice this up.

10 It's clear, and the staff in its recommendation on
11 Page, I believe it's Page 9 of the staff recommendation on the
12 stipulation said that the \$30 million -- this is the staff
13 recommendation back in June or July. It's on Page 8. I don't
14 know that you have this in front of you, but I'll be glad to
15 show it to staff.

16 It says the stipulation establishes the total
17 intrastate hurricane-related expenses to be \$33,048,980. Staff
18 agrees that this amount represents a reasonable level of
19 intrastate hurricane-related expenses. The staff has told you
20 it's reasonable. We started at 148, we're down to now 30.

21 COMMISSIONER BRADLEY: Where is that?

22 MR. WAHLEN: That's, that's on Page 8 of the
23 June 24th staff recommendation.

24 I think the costs have to be reasonable, I think they
25 have to be caused by the new event, and I don't think this is a

1 close question. I think this was a catastrophic storm never
2 before seen in the state of Florida, and Sprint has come in
3 with a reasonable request. They could have come in with
4 \$148 million and we'd be sitting here talking about, well,
5 which costs should be excluded; some of these surely don't
6 relate to the storm.

7 And I guess the only other thing I'll say on the
8 return on equity -- Mr. Rehwinkel is reminding me to be short.
9 We did in the stipulation provide information on return on
10 equity not because we think there's an earnings test inherent
11 in this statute, but simply to give the Commission and the
12 Commissioners some comfort that recovering \$30 million through
13 a surcharge like this would not result in a huge windfall to
14 Sprint. \$30 million in the testimony, you can see it, it's --

15 COMMISSIONER DEASON: And I appreciate you providing
16 that information which is confidential and which I have
17 reviewed, and so I know the numbers that you're talking about.

18 But it's your position, regardless of what those
19 numbers show, that if there are extraordinary, if there are
20 additional costs that weren't included in your previous rate
21 setting process and that they were caused by this change in
22 circumstances, that regardless of your earnings level that
23 qualifies for cost recovery?

24 MR. WAHLEN: No, that's not our position.

25 COMMISSIONER DEASON: Okay.

1 MR. WAHLEN: Because I don't think that question is
2 presented on these facts.

3 COMMISSIONER DEASON: Okay.

4 MR. WAHLEN: I think there might be a situation in
5 the future for some other utility where you might have to reach
6 that question. But I don't think you have to reach that
7 question on these facts. I don't think this is close to
8 getting to that question. The \$30 million we're talking about
9 here is not going to result in a windfall. And I think the
10 system is set up that you have to make a showing that it's big
11 and that it's substantial, and the fact that everybody
12 understands that is evidenced by this is the first time in
13 almost ten years that anybody has ever done this. So I think
14 everybody understands it's got to be a really big deal. This
15 was a really big deal. I think the evidence you have shows
16 that. The staff is right, it was a compelling showing. We
17 think we ought to get the \$30 million.

18 COMMISSIONER DEASON: Well, let me ask you a
19 hypothetical question. And I emphasize the term "hypothetical"
20 because, you know, actual numbers are confidential and this
21 has, this is just totally hypothetical numbers.

22 If in 2004 you had been earning 20 percent return on
23 equity and as a result of the hurricane expenses you earned
24 15 percent return on equity, and it was \$30 million of costs
25 and it was because of these extraordinary hurricanes that cost

1 you, and if you can show those changed circumstances and that
2 the hurricane costs were not included in your previous rate
3 setting, if you -- even though you still earned 15 percent ROE,
4 should you still be allowed to have a recovery of the costs?

5 MR. WAHLEN: Well, I'll give you a lawyer answer to
6 that. I think the statute would allow you to make that
7 argument. But Mr. Rehwinkel has been whispering into my ear
8 that Sprint would have never done that. And, again, I don't
9 think you have to decide that question today because that's not
10 the stipulated set of facts before you. I think that's just
11 not the question before the Commission here.

12 But I do think hypothetically you could do that. But
13 I think the way the process works and the way people understand
14 the price regulation statute, Sprint wouldn't, and I'd be
15 surprised if others would.

16 COMMISSIONER DEASON: Well, I think it's the fact
17 that this is the first time that this particular provision has
18 been exercised, and it's been on the books for, since 1995, is
19 that correct, ten years, I certainly think that speaks to the
20 fact that it has not been used --

21 CHAIRMAN BAEZ: Lightly.

22 COMMISSIONER DEASON: -- lightly. Yes.

23 Mr. Chairman, I kind of reserve the right to ask more
24 questions, but I'm kind of at a point now, I'll relinquish it
25 to somebody else.

1 CHAIRMAN BAEZ: I know Commissioner Bradley had some
2 questions along the same route, so.

3 COMMISSIONER BRADLEY: Yeah, of Sprint. I'm looking
4 with interest at Senator Constantine's last comment.

5 MR. WAHLEN: Yes, sir.

6 COMMISSIONER BRADLEY: What is, what is your
7 interpretation of that comment as it relates to not the current
8 statute but the previous statutory authority to, to collect if
9 there's an extenuating circumstance?

10 MR. WAHLEN: Well, Senator Constantine was the
11 sponsor of the bill, and I think this is evidence of
12 legislative intent, that the Legislature understood that local
13 exchange companies, perhaps even Sprint, although I can't say
14 that for sure, were planning to go ahead and seek recovery of
15 2004 hurricane costs under the old statute. And I think this
16 is an expression of legislative intent that they thought that
17 was okay.

18 Now I'll say that you can never tell what a
19 legislator is thinking just by looking, but you can tell -- but
20 he said what he said.

21 COMMISSIONER BRADLEY: Right. It is -- well, right.
22 So my question is, well, to be more specific, you under the old
23 statute had the authority to, to recoup your costs under these
24 circumstances.

25 MR. WAHLEN: We believe so. Yes, sir.

1 COMMISSIONER BRADLEY: And it would seem to me that
2 basically what the Legislature did then was to, after a certain
3 time frame, identify what the specific amount is to be and that
4 basically is what the change is between the two statutes. But
5 under the old statute -- I don't know how to describe it.
6 Under the old statute maybe the cap didn't apply; is that what
7 you --

8 MR. WAHLEN: Our position is that there is no cap
9 under the old statute. The 50-cent limitation, the 12-month
10 limitation doesn't apply.

11 I think what the Legislature was trying to do in the
12 new statute was say, you know, we just got hammered in the
13 state of Florida in 2004. And we may not ever get that again,
14 but we're likely to get some more storms in the future and we
15 need to make sure that utilities who have a carrier of last
16 resort obligation in Florida like Sprint has a streamlined and
17 efficient way to go in and get some help when they're hit by a
18 storm.

19 And so I think they learned a lesson from 2004 and
20 were trying to make provisions for the future. But I think the
21 limitations in the new law clearly under the express language
22 of the statute only apply prospectively.

23 COMMISSIONER BRADLEY: So as a part of the
24 stipulation you all reduced your amount from 148 down to 30?

25 MR. WAHLEN: Yes, sir. And the schedule that you

1 have before you, which is Exhibit B to the stipulation, shows
2 exactly what categories of costs were excluded and in what
3 amount, and there's further discussion of that in Paragraphs 19
4 and 20 of the stipulation. But we -- Sprint on purpose made a
5 decision to not come in here and ask for \$148 million because
6 these proceedings take -- I mean, talking about the prudence of
7 \$148 million would be very difficult in the very short
8 statutory time frame here. So Sprint said let's sit down and
9 see if we can't reach some agreement on which of these costs
10 should be excluded, and that's what they did with Public
11 Counsel. That's the stipulation that's been presented to you.
12 So a substantial amount of the costs have already been excluded
13 by agreement of the parties.

14 COMMISSIONER BRADLEY: Okay.

15 CHAIRMAN BAEZ: Commissioners. Commissioner Edgar.

16 COMMISSIONER EDGAR: I'd like to come at this from a
17 slightly different angle, and this is to OPC. On Page 15 of
18 the staff recommendation -- and I'm looking at the first
19 sentence of the second full paragraph. Okay? The language in
20 here says, "OPC argues further that if the Commission finds a,
21 quote, substantial change in circumstances based on rationale
22 related to the new legislation, the Commission should also
23 apply the remainder of the new legislation."

24 So coming from that language, my first question to
25 you is is that an accurate reflection of your position?

1 MS. CHRISTENSEN: Commissioner, yes. I mean, I
2 believe in reviewing the recommendation from Commission staff,
3 they certainly have used the new legislation as guidance. And
4 it's then OPC's position that, you know, if you're in for a
5 penny, you're in for a pound; that if you're going to rely on
6 the new legislation as guidance for what's appropriate for
7 changed circumstances relating to hurricanes, that they should
8 also be relied on for guidance as to what the appropriate
9 recovery amount is.

10 I think that if you look at the new legislation, I
11 think it does relieve the companies of some burden that they
12 carry under the old legislation where they're required to come
13 in and make that showing of substantial change in
14 circumstances. So in, I guess, OPC's opinion, they're relieved
15 of some of that burden by saying we're just going to make this
16 a clear-cut, bright line interpretation that hurricanes do
17 apply, and that if you have X amount of damage, that's
18 sufficient to show substantial change in circumstances and we
19 won't go into any earnings or financial analysis. So I think
20 they were, in fact, relieved of some burden with that. And I
21 guess in OPC's opinion, I don't believe the Legislature was
22 trying or intending to create some sort of preapproval for any
23 petition that would have been pending before the Commission at
24 the time they adopted the new legislation.

25 COMMISSIONER EDGAR: Okay. And I want to kind of

1 follow that line of thought through.

2 If, and I am saying if, for purposes of discussion
3 the Commission were to look at the '05 language as, for
4 guidance for interpreting the '04 language, and then if we were
5 to see some guidance as far as substantial change in
6 circumstances and then also some guidance as to how to assess,
7 then how, what guidance do you see or how do you read the
8 language finishing out the '05 amendments which refer to not
9 intended to adversely affect?

10 MS. CHRISTENSEN: Well, I think the point I just made
11 was that I don't believe that language was to, was meant to be
12 a preapproval of any petition that was filed. In other words,
13 it wasn't meant to preapprove that if you file a petition, you
14 get the full amount that you're asking for, which I think is
15 sort of underlying Sprint's inherent argument that, you know,
16 that this was meant to say that if you had a petition filed,
17 that you should get the costs related to storm recovery. I
18 think the Legislature and the legislation was intended to allow
19 the Commission to take its due consideration. In fact, I think
20 "adversely affect" modifies the language "Commission's
21 consideration." So I think that this new legislation wasn't
22 meant to adversely affect any of the Commission's
23 consideration.

24 Conversely, I don't think there's any language that
25 prohibits the Commission from taking that as guidance and using

1 that as guidance to interpret what a substantial change in
2 circumstances would mean under the old language. And I think
3 if you look at OPC's arguments, I think they're actually fairly
4 consistent between the old language and the new language, which
5 is that there has to be -- you know, that whatever the event
6 is, it has to cause some sort of financial harm to the company
7 and it has to be something that's beyond the company's control.
8 And I think if you look at the new legislation, that certainly
9 fits the circumstances here, which is you have, you know, a
10 storm which is beyond the company's control and it has to
11 create some sort of financial harm to the company. What we may
12 disagree on is what's the level of financial harm that would be
13 required under the old statute as opposed to the new amended
14 language? But given that the Commission is going to, is
15 considering using the new legislation as guidance, I think it's
16 appropriate if you use that and are going to use the financial
17 criteria of the amount of damage as, as a criteria, then you
18 should also look to the recovery mechanism as the appropriate
19 mechanism.

20 COMMISSIONER EDGAR: Please.

21 MR. WAHLEN: Thank you, Commissioner. We started at
22 148 and we got to 30. The staff in its June recommendation
23 said that's reasonable. They've now taken the standard in the
24 new statute, which by its express terms does not apply to a
25 petition filed under the old law, and they've reduced the

1 amount that we've requested from 30 to nine. Now I'm a simple
2 guy, but I don't see how you can say that applying that
3 limitation to our \$30 million request and changing it to \$9
4 million is not an adverse impact.

5 COMMISSIONER EDGAR: Did the stipulation state that
6 \$30 million is a reasonable amount or did it state that up to
7 \$30 million is a reasonable amount; in other words, that
8 \$30 million isn't a reasonable amount to cap?

9 MR. WAHLEN: Well, the stipulation said on Paragraph
10 20 that, "The parties acknowledge and accept that their
11 agreement to exclude certain charges is reasonable under the
12 circumstances."

13 The staff recommendation in June on Page 9 or 8 --
14 the June 24th staff recommendation on Page 8 says, "Staff
15 agrees that this amount," and we're talking about the
16 \$30 million, "represents a reasonable level of Sprint's
17 hurricane-related expenses." Now what the staff has done is
18 taken a standard, a 50-cent, 12-month standard, that by its
19 express terms is in the new statute but is not in the old
20 statute, and they have further reduced Sprint's already reduced
21 \$30 million number to nine. And I just think in walk-around
22 terms that's an adverse effect.

23 CHAIRMAN BAEZ: Can I squeeze a quick one in there?

24 COMMISSIONER EDGAR: Please.

25 CHAIRMAN BAEZ: What, what was the reason behind the

1 limitation in the statute in your mind?

2 MR. WAHLEN: The new one?

3 CHAIRMAN BAEZ: Uh-huh.

4 MR. WAHLEN: Well, I think, and I don't know the
5 answer for sure, but I just think that what the Legislature was
6 trying to do was say we've realized that storms are going to
7 hit us, we really got clobbered last year, but we're going to
8 be getting storms in these utilities. Sprint has the carrier
9 of last resort obligation. They're working hard to put the
10 service back in. We need to have a streamlined approach for
11 them to get recovery of some of these costs. So we think the
12 standard was put in -- I think the standard was put in to say,
13 okay, in exchange for a streamlined approach, we're going,
14 we're going to limit you. Okay?

15 CHAIRMAN BAEZ: So it --

16 MR. WAHLEN: I think there was a tradeoff there.
17 We're going to make it a little easier for you to get into the
18 door, but once you get in the door, we're going to limit you.
19 And I think that's the bargain that was struck in the
20 legislation.

21 CHAIRMAN BAEZ: If, if -- as probably, probably the
22 same logic to the price cap, period.

23 MR. WAHLEN: Sure.

24 CHAIRMAN BAEZ: I mean, let's assume a world that
25 didn't have price caps. How much of this money would you be

1 trying to make up for?

2 MR. WAHLEN: If we were under rate of return
3 regulation?

4 CHAIRMAN BAEZ: No. If you were under no regulation.

5 MR. WAHLEN: Well, if we were under no regulation --

6 CHAIRMAN BAEZ: I mean, something other than price
7 caps, you know, something north of price caps.

8 MR. WAHLEN: I think that's an interesting question.
9 If we were under no regulation, this was a perfectly
10 competitive market, then Sprint could do what businesses around
11 the state did last year and what businesses in New Orleans are
12 doing now. They're making a decision about whether it's worth
13 spending money to stay in business. And you could make a
14 business decision about whether you're going to spend money to
15 repair the hurricane damage and stay in business.

16 Sprint never even approached that question. Sprint's
17 a carrier of last resort by statute, Sprint knows it has the
18 obligation, and Sprint went to work and spent \$148 million to
19 repair its network and now they're only asking for 30. So, you
20 know, if we weren't regulated, if we didn't have any of that,
21 we could be making independent business decisions about, well,
22 does it really make sense to rebuild here or not? We did not
23 have that ability. And I want to hasten to add, Sprint wasn't
24 looking for a way to not repair. Sprint went about the
25 business just like everybody else did to put their network

1 back, and now we're hoping that we can get some recovery here
2 for what we believe is a very modest, reasonable amount.

3 CHAIRMAN BAEZ: Commissioner Edgar, I'm sorry. I
4 interjected. Do you have any --

5 COMMISSIONER EDGAR: I'm going to come back to this
6 and I'm going to go this way now, okay, to staff.

7 Same general question. On Page 16 in the summary
8 section, the recommendation states that the 2005 legislation
9 specifically provided that it is not intended to adversely
10 affect the Commission's consideration of any petition for
11 recovery pending on the effective date of the legislation. And
12 then it goes on to say that staff believes that using the
13 method of recovery delineated in the '05 legislation does not
14 constitute an adverse effect. And I would like you to
15 elaborate on why you do not consider the use of that limitation
16 would be an adverse effect.

17 MR. ROJAS: Certainly. I think, as Ms. Christensen
18 pointed out, that the adverse effect language really modifies
19 "adversely affect Commission consideration," and it's
20 consideration of the petition for recovery. And that being
21 said, the new law is intended to clarify. It's not -- that
22 language is there to show that recovery under the 2004 for the
23 storm should not be precluded. Nothing, nothing --

24 COMMISSIONER EDGAR: I guess -- I'm sorry.

25 MR. ROJAS: Okay.

1 COMMISSIONER EDGAR: And I realize I'm hearing this
2 now twice, but the point I'm still struggling with is if
3 "adversely affect" modifies "Commission consideration," why
4 that doesn't then also address amount, the Commission's
5 consideration of amount.

6 MR. ROJAS: Nothing in the new law specifies that all
7 costs incurred must be deemed recoverable, quite simply. I
8 think it's, it -- to take away the ability of the Commission
9 to, to take a look at the numbers presented would, would, it
10 would limit the Commission's discretion in awarding what is an
11 appropriate amount.

12 COMMISSIONER EDGAR: So your interpretation is that
13 the '05 language does not limit our discretion.

14 MR. ROJAS: No, it does not. I, I -- the Commission
15 has, has the power to award anywhere from full recovery to
16 nothing at all currently.

17 CHAIRMAN BAEZ: It doesn't limit our discretion as to
18 recovery, as to determining how much is recoverable, that's
19 what you --

20 MR. ROJAS: At this point, no. Correct.

21 CHAIRMAN BAEZ: Right. Any other questions?

22 COMMISSIONER EDGAR: Not at the moment.

23 CHAIRMAN BAEZ: Commissioner Bradley, you had a
24 question?

25 COMMISSIONER BRADLEY: Along the same line, I think,

1 as Commissioner Edgar -- well, I'll go in a different
2 direction.

3 We have a stipulation that says up to \$30 million.
4 Staff is making a specific, a specific recommendation. Based
5 upon what you've heard today, staff, why are you -- is that
6 recommendation still valid in your opinion?

7 MR. ROJAS: Yes, it is, Commissioner. I believe the,
8 the stipulation put before you is assuming that \$30 million is
9 reasonable for recovery. I think, again, that takes power out
10 of the Commission's hands. I think they have -- OPC has said
11 up to \$30 million is reasonable for recovery and any further
12 would not be reasonable by their standard.

13 I believe the stipulation as brought in would, was
14 meant for the Commissioners, to the Commission to interpret
15 whether no recovery up to \$30 million is appropriate. I think
16 that's, that's where the stipulation was aimed. To say it is
17 \$30 million on the dot, the number presented to us, removes the
18 discretion given to the Commission in the statute.

19 COMMISSIONER BRADLEY: And I'll tell you what's hard
20 to me. I mean, generally speaking, when OPC reaches a
21 stipulated agreement with a company, staff does not insert its
22 opinion as to how that stipulation should be interpreted
23 because then that pretty much negates the stipulation if staff
24 starts to dictate -- it turns from a stipulation into a
25 recommendation, and I'm trying to figure out how staff arrived

1 at a recommendation if we went through the stipulation process
2 without the benefit of a hearing. I'm just, I'm just --

3 MS. SALAK: Commissioner, the stipulation was for a
4 maximum amount that could be recovered. I mean, our, our --
5 and OPC's position is that they should get to recover zero, and
6 but as an alternative they offered using the guidance from the
7 statute.

8 We don't believe that we're inserting our opinion in
9 there as far as the amount. We said that we, we -- the
10 Commission approved that stipulation and said that that was a
11 reasonable amount, up to that amount would be reasonable, but
12 that the determination of how much would be determined in this
13 process. So we don't believe we're inserting ourselves into
14 the stipulation, per se. We believe that this is the
15 unstipulated part that we're -- where exactly how much would be
16 recovered today.

17 MS. CHRISTENSEN: Commissioner, perhaps I can add
18 some clarification to that as well. What we were trying,
19 attempting to do, as you well know with the electric dockets,
20 we had very full, complete hearings with a testing of all the
21 costs that were incurred from the storm docket. Our attempt to
22 reach stipulation with Sprint was to eliminate the need to go
23 through that protracted process of examining each cost for
24 whether or not they could be reasonable and prudent. And what
25 we did was we came up with a maximum dollar amount that both

1 parties could agree would be reasonable and prudent if the
2 Commission were to award that amount, or a lesser amount. And
3 it's always been OPC's position that Sprint is not entitled to
4 recovery under the old statute because they haven't satisfied
5 the criteria that they need to show that the substantial
6 changes in circumstances have caused them financial harm. And
7 we believe that was demonstrated by the fact that they earned,
8 their earned ROE went up in the year 2004 despite the
9 hurricanes. That's our primary position.

10 But we also took a secondary position, which was that
11 if the Commission were to determine that the new legislation
12 should be used as guidance because the Legislature has now
13 stated that they believe that named storms going on in the
14 future should be considered a change in circumstances, that if
15 the Commission were going to consider that as guidance for this
16 petition, that they should also consider the financial recovery
17 mechanism as guidance for this petition. In other words, use
18 the whole of the new legislation as guidance for how this
19 petition, this current petition should be treated.

20 Under the new legislation there is no limitation on
21 the Commission's ability to determine an amount anywhere from
22 zero to \$30,000 [sic] as appropriate recovery. In other words,
23 you don't have to pick \$30,000, you could pick 22 --
24 \$30 million, excuse me, you could pick \$22 million,
25 \$15 million, \$9 million or zero. You have the full course.

1 The stipulation only limited or capped the amount that the
2 Commission would, would consider providing recovery to the
3 company. In other words, the company agreed that they would
4 only be seeking \$30 million as a maximum number.

5 COMMISSIONER BRADLEY: So, so basically what happened
6 was that OPC and the company started, and Sprint started at
7 \$148 million. OPC, through the stipulation agreement,
8 negotiated the amount down to up to \$30 million. And the
9 Commission now has to make a decision as to what, what the
10 amount should be up to \$30 million. And you all have saved --
11 well, I don't know how many. What's the difference between --
12 \$118 million, you've negotiated it down \$118 million down to up
13 to \$30 million; is that correct?

14 MS. CHRISTENSEN: Well, that's correct. There were
15 negotiations to bring the amount of reasonable cost to
16 \$30 million as the cap. And I think what's before you now is
17 whether or not you're going to give them anything up to
18 \$30 million. And it could be anywhere in, on that line up to
19 \$30 million, given that this is a price cap regulated company
20 and they have, in our opinion, other methods of recovering that
21 money.

22 MR. WAHLEN: I guess I would disagree to this extent.
23 The regulatory process has worked here. It worked to get this
24 from 148 to 30. Now the Commission is trying to decide whether
25 there's some number between 30 and zero. And I would suggest

1 to you that there's nothing in this record, no evidence in this
2 record that allows you to pick, you know, a number.

3 The costs that have been identified as excluded are
4 the costs that have been identified as excluded. Staff isn't
5 talking about looking at the \$30 million and deciding that some
6 of these costs, we don't think they're the right costs, they
7 shouldn't, they weren't prudently incurred, da, da, da, da, da,
8 da. They're just saying, we think the 50-cent, 12-month
9 limitation applies. And I think that under the old statute
10 that's just an arbitrary number. And I think if you're going
11 to go below 30, there's got to be some rational basis for doing
12 it. And just looking at 30 as the beginning point is the wrong
13 place to look. The regulatory process started at \$148 million
14 and got you to \$30 million, and that's where we think you
15 should stay. We think option two, which the staff is calling
16 full recovery, which we really don't think is full recovery, is
17 the option that you should go with. We think you should adopt
18 staff recommendation on Issue 1, and on Issue 2 go with Option
19 2.

20 COMMISSIONER BRADLEY: So it's Sprint's opinion, even
21 without a record, that full recovery would be \$148 million.

22 MR. WAHLEN: Right. And to be clear, we're, we're
23 not asking for that.

24 COMMISSIONER BRADLEY: Right.

25 MR. WAHLEN: We've -- the process has worked and

1 we're at 30.

2 COMMISSIONER BRADLEY: What is OPC's opinion as to
3 what full recovery would be?

4 MS. CHRISTENSEN: Well, our opinion is that because
5 they're a price capped company that under the old statute
6 they're not entitled to any recovery, given that their profits,
7 their ROE went up in 2004 despite the hurricanes.

8 CHAIRMAN BAEZ: Can I stop you right there? Explain
9 to me what you mean by "financial hardship."

10 MS. CHRISTENSEN: I'm sorry? Oh, financial hardship.

11 CHAIRMAN BAEZ: Explain what you mean by "financial
12 hardship." And I'm talking about the kind of hardship that
13 we're being asked to imply into the 2004 statute.

14 MS. CHRISTENSEN: Well, I would agree, I think we
15 said earlier, that there has to be some sort of cost or
16 financial loss incurred, but the only way that I could
17 reasonably interpret to measure whether or not there's a
18 financial cost to the company is whether or not it impacts
19 their profits. And the way to reasonably interpret whether
20 there's an impact to their profits is to look and see what
21 their return on equity has been. And that's traditionally how
22 the Commission has measured a company's, whether or not they're
23 earning appropriately is to have a range of return. And if
24 you're earning below that, you're entitled to increase your
25 rates, and if you're earning above that, you're not.

1 CHAIRMAN BAEZ: But we're not, we're not, we're not
2 in that realm. So exactly what's the baseline that you're
3 measuring against?

4 MS. CHRISTENSEN: I think that's a question that the
5 Commission would have to decide is whether or not the ROE, an
6 increase in your profits has created a financial hardship in a
7 given year.

8 CHAIRMAN BAEZ: So then there's no, so there's no,
9 there's no validity or there's no water carried to say, you
10 know, yes, in, in a net sense profits were up or ROE was up.
11 It is not, it is not about consideration to say or to speculate
12 as to how up they would have been otherwise, that's not --

13 MS. CHRISTENSEN: I don't think you can look at that
14 and say how much up would they have been despite it? I think
15 you can only say --

16 CHAIRMAN BAEZ: I know it's unquantifiable. I will
17 concede that. Yeah.

18 MS. CHRISTENSEN: I mean, that's an unquantifiable
19 type of analysis. I think what you can do is look at the
20 concrete numbers and go, did they experience an increase from
21 this year to the past year?

22 CHAIRMAN BAEZ: Well, but do you agree, do you
23 agree that -- are you -- would you concede or is there any
24 argument to the fact that whatever growth, whatever growth in
25 ROE this company or any company would have had was done within

1 the statutory, within, within what is permissible under the
2 statutory scheme?

3 MS. CHRISTENSEN: No. I don't think we're arguing
4 that they, that the growth in the ROE --

5 CHAIRMAN BAEZ: I know you're not arguing. I'm
6 asking you do you agree or disagree with that? Whatever,
7 whatever growth, whatever growth -- take Sprint for example.
8 Is there any argument that whatever growth you are pointing at,
9 in the absence of financial hardship under your case, took
10 place within statutory bounds?

11 COMMISSIONER BRADLEY: Is that ROE growth?

12 MS. CHRISTENSEN: I believe that, yes, whatever
13 growth and profits in the ROE, I would assume that they're
14 living within the price cap regulatory scheme. And that's what
15 I'm saying is ---

16 CHAIRMAN BAEZ: There was nothing, there was no
17 unreasonable -- there was no, there was no growth of that kind
18 or benefit to the company of that kind that took place that was
19 outside of whatever is permissible under the law; is that
20 correct?

21 MS. CHRISTENSEN: My understanding from the ROE that
22 they provided us clearly states that it's Florida
23 jurisdictional ROE. It's discounting any of their affiliated
24 companies or anything outside the Florida jurisdiction, and
25 feel free to clarify that. But my understanding was this was,

1 you know, the ROE applicable to the company that was affected.

2 CHAIRMAN BAEZ: So then there is no -- so however
3 we're defining it, it really doesn't -- I think for purposes of
4 my point I don't think it matters how we define it. Define it
5 however you want. Whatever it is and however you've defined
6 it, that growth took place according to Hoyle; right?

7 MS. CHRISTENSEN: I'm sorry?

8 CHAIRMAN BAEZ: That it's all -- that there is no,
9 there is no question that whatever growth took place was
10 permissible under the law. It was a result of a proper
11 functioning of the statutory and regulatory scheme. Is that
12 fair to say?

13 MS. CHRISTENSEN: I would believe that's a fair
14 assessment. And I think that bolsters my argument, which is to
15 the extent that they show a growth in earnings and profit,
16 under the current regulatory scheme there's really no need to
17 come in and ask for an increase under this safety net.

18 CHAIRMAN BAEZ: Wait a second. Hang on a second.

19 MS. CHRISTENSEN: So you may disagree, but --

20 CHAIRMAN BAEZ: There's two parts, there's two parts,
21 there's two parts to -- I've got more questions on that. If,
22 if the growth, if the growth took place according to the -- and
23 maybe I'm not using the right terminology, I'm not casting it
24 the proper way. But if whatever growth took place, whatever
25 objective numbers we're looking at in order to make the

1 determination of their financial position, okay, took place
2 according, in accordance with the way the law in Florida
3 operates and in accordance with the regulations that, that we
4 implement, okay, and you so much as agreed to that, then how
5 can you -- then, then the argument that, you know, they've
6 grown, it is a plus, it is an over zero number, that's enough.
7 Since you've grown, there is no hardship because nothing came.
8 So, so we, we can recognize, we can recognize the financial
9 effect on everyone, because isn't that what we're arguing all
10 the time? My gosh, everybody, this hurricane has affected
11 everyone except for them because their profits grew. Is that,
12 is that essentially what we're saying? Because since they made
13 money, the hurricanes never happened for them, there is no
14 financial hardship?

15 Which goes back to my question, I know you can't
16 quantify it, but if a, but if a financial hardship or if an
17 impact existed for everyone, how can we say it didn't exist
18 just because there was growth?

19 MS. CHRISTENSEN: Well, and I think what we're
20 talking is maybe past each other.

21 CHAIRMAN BAEZ: Maybe.

22 MS. CHRISTENSEN: And I think, I think what you're
23 saying is that there was a cost to the hurricanes. Well, I
24 guess my argument or how I was using "financial harm" was that
25 it had a negative impact on their profitability, their bottom

1 line as a company. Yes, I would agree that they suffered some
2 cost due to the hurricanes. I don't think I'm, I don't think
3 OPC's position has ever been that they did not incur costs from
4 the hurricanes. The question was whether or not those costs --

5 CHAIRMAN BAEZ: No, I know. But the argument is
6 always, well, they can afford it.

7 MS. CHRISTENSEN: Well, the cost is essentially
8 whether or not because of their profits they have incurred a
9 negative impact on their profit.

10 Now whether or not the Commission agrees with that as
11 the appropriate analysis is at the Commission's discretion, but
12 that is certainly OPC's position. It's not that there isn't a
13 cost to the hurricane. I think we all recognize that each one
14 of us has a cost when a hurricane hits our area. It's how much
15 do we get to recover? And, you know, and I guess what we're
16 saying here is if you have experienced a profit and have earned
17 an increase in your profit, the financial harm to the company
18 has not occurred. And you may not agree with that or disagree
19 with that, but that's the way we were using the financial harm
20 status.

21 But we would again remind the Commission that that's
22 our primary position. We've also taken a secondary position,
23 which is if the Commission is going to decide that this is a
24 substantial change in which some recovery should be granted,
25 that you should follow the full panoply of the new legislation.

1 CHAIRMAN BAEZ: And I don't, I don't want to let go
2 of this just yet, but I want to understand something. The, the
3 numbers, which are confidential, but the ROE numbers that are,
4 that support one way or another whether they've been profitable
5 or not, are those calculations made with, with the, with the
6 \$118 million hit or not? Are those calculations done --

7 MS. CHRISTENSEN: My understanding is they are.

8 CHAIRMAN BAEZ: They are?

9 MS. CHRISTENSEN: My understanding is from the
10 footnote in the exhibit that Sprint provided was that that was
11 the profits for 2004 with the hurricane costs included, not
12 including any potential recovery.

13 CHAIRMAN BAEZ: On a one-year, on a one-year basis?

14 MS. CHRISTENSEN: On a one-year basis.

15 CHAIRMAN BAEZ: So you -- if, if within the next 12
16 months you book that, you book that storm loss, is that -- I'm
17 just trying to get a handle on the calculation.

18 COMMISSIONER DEASON: What about capital costs? I
19 need that clarified. How were they treated? I hate to
20 interject, but that's --

21 CHAIRMAN BAEZ: No. No. That's okay. I defer to
22 you. I know I'm asking a lot of questions.

23 COMMISSIONER DEASON: Capital costs, did you -- the
24 118, part of that was capital costs; correct?

25 MR. WAHLEN: Yes.

1 COMMISSIONER DEASON: Okay. Now when you did your
2 rate of return analysis, your ROE, the capital costs, did you
3 expense those all in one year or does that show the effect of
4 expending those monies, putting them in rate base and having
5 that effect?

6 MR. WAHLEN: I'm going to let Mr. Rehwinkel answer
7 that because I think you just got above my pay grade.

8 MR. REHWINKEL: This is Charles Rehwinkel with
9 Sprint.

10 The capital costs were booked per period, and the
11 same with the revenues expenses. So any capital costs that
12 were incurred were booked per gap in the period where the
13 additions were made. Does that answer your question?

14 COMMISSIONER DEASON: Well, you say capital -- they
15 were capitalized.

16 MR. REHWINKEL: They were capitalized, yes.

17 MR. WAHLEN: Yes. I think they capitalized capital
18 items and they expensed expense items and they applied their
19 normal, normal process. But I guess I would like to caution
20 the Commission that those are per book numbers. And in a rate
21 case when we're under rate of return regulation we go through
22 an exhaustive process of we've got to take this out of period,
23 we've got to put this and we've got to take this out. That's
24 just a broad number. That was not litigated by the party and
25 it was put in from Sprint's perspective just to show that we

1 weren't going to have a windfall.

2 COMMISSIONER DEASON: What I want clarified -- I
3 apologize, Mr. Chairman.

4 CHAIRMAN BAEZ: That's all right.

5 COMMISSIONER DEASON: The ROE number that showed up
6 on that confidential exhibit for the year 2004, that did not
7 reflect the expensing of \$118 million in one year, did it?

8 MR. WAHLEN: That's correct.

9 COMMISSIONER DEASON: The capital items of that 118
10 were capitalized.

11 MR. REHWINKEL: That's right. They were put on the
12 balance sheet.

13 COMMISSIONER DEASON: That helps me, Mr. Chairman.

14 CHAIRMAN BAEZ: Okay. Commissioner Bradley, you had
15 a question.

16 COMMISSIONER BRADLEY: Right. We always have this
17 discussion about ROE and ROI and capital markets and rate base,
18 and it always concerns me because companies need to get an
19 appropriate return on its equity in order to remain attractive
20 to the capital market; is that correct?

21 MR. WAHLEN: That's correct.

22 COMMISSIONER BRADLEY: And if they're not attractive
23 to the capital market, then what is the practical impact upon
24 the customer base if the capital markets view a company as not
25 being a good investment?

1 MR. WAHLEN: Well, I'm not sure there's anything in
2 the stipulation that really goes to that. But I think just in
3 walk-around terms, if you're not earning a fair rate of return,
4 you're not going to be able to attract capital. But I guess I
5 want to --

6 COMMISSIONER BRADLEY: If you're not able to attract
7 capital, that means that your customer base has to pay for
8 everything.

9 MR. WAHLEN: You're going to have trouble providing
10 service. Right. But I guess I would like to remind the
11 Commission, you know, we've had this nice discussion about rate
12 of return regulation, but we're in price regulation. And
13 there's nothing in this changed circumstances statute that
14 talks anything about an earnings test. And we -- I will say it
15 one more time, then I'll be quiet. I think it's improper to
16 insert that into the statute because it's not there.

17 CHAIRMAN BAEZ: I understand that. Commissioner
18 Bradley, are you done with your questions?

19 COMMISSIONER BRADLEY: Well -- and I'm still trying
20 to figure out why we're fustigating with a stipulation that OPC
21 and, and the company have arrived at by inserting a number that
22 in my opinion gives us direction or instructions, and I don't
23 know how we -- you know, up to --

24 CHAIRMAN BAEZ: Well, let me ask, let me, let me ask
25 Mr. Wahlen a couple of questions and maybe that'll -- because I

1 think, I think they might help.

2 Mr. Wahlen, how -- Mr. Rehwinkel gave us, before we
3 started consideration of the item handed out, what is, what's a
4 typed and strike (phonetic) that kind of compares and
5 contrasts, so to speak, the 2004 with 2005.

6 MR. WAHLEN: Yes. Yes.

7 CHAIRMAN BAEZ: And also attached to it are some
8 comments, floor comments, I'm assuming, of the sponsor and
9 Senator Fasano as well when they considered, when the Senate
10 considered the amendments to the statute. I can assume because
11 you did this that at least part of your argument is that the
12 statute provides guidance. Is that -- or is that not part of
13 your position?

14 MR. WAHLEN: Well, there's a lot of discussion in the
15 staff recommendation about that statute. We wanted you to have
16 the statute so you could see it and so you could read it and so
17 you could see what the legislators said about it. And we think
18 what we've provided is very clear evidence both in the express
19 language of the new statute and in the floor comments of the
20 senator that this 50-cent, 12-month limitation simply does not
21 apply to a petition like this one that was filed before this
22 new law became effective. And --

23 CHAIRMAN BAEZ: Is there any part, is there any part
24 of this statute as, as it was amended that you would point to
25 on behalf of your client, would have, should have pointed to on

1 behalf of your client to try and bolster whatever it is that
2 your position is before this Commission?

3 MR. WAHLEN: Yes. On Page 975 there's two items
4 highlighted. It's the second one.

5 CHAIRMAN BAEZ: I see them, I see them here, but --

6 MR. WAHLEN: And that's the savings clause.

7 CHAIRMAN BAEZ: Maybe I'm not, maybe I'm not asking
8 my question clear enough.

9 Is there any part, is there any part of this new
10 statute, okay, that, that Sprint is pointing at to say this is
11 clarification, I think Commissioner Deason alluded to some
12 clarifying effect of the statute, that, that the company points
13 to to help this Commission decide whether, whether this is a
14 changed circumstance at all? Do you see what I am saying?
15 That would settle the matter -- okay, we walk in here, 2004
16 statute is applicable.

17 MR. WAHLEN: Right.

18 CHAIRMAN BAEZ: But we have a 2005 statute,
19 fortunately or unfortunately.

20 MR. WAHLEN: Right.

21 CHAIRMAN BAEZ: Okay.

22 COMMISSIONER BRADLEY: And a stipulation.

23 CHAIRMAN BAEZ: You walk in here, when was it,
24 June 1st, 2005. Okay. There is no 2005 statute. And you're
25 before the Commission making an argument that four hurricanes

1 in a year is a changed circumstance.

2 MR. WAHLEN: Right.

3 CHAIRMAN BAEZ: Which is essentially what we're
4 arguing here, whether we have to accept it as a showing of
5 changed circumstances. That's your argument or that's your,
6 that's your point to make; correct?

7 MR. WAHLEN: Right.

8 CHAIRMAN BAEZ: Now we have the 2005 statute. Is
9 there anything, is there anything that you are pointing to in
10 this new statute, because now we all have knowledge of it, is
11 there anything in this new statute that you're pointing to to
12 say, aha, you see, compelling circumstance? This is a changed
13 circumstance clearly because here they are saying named storms.
14 And I know that, I know that there's a point made that it may
15 not have even been named storms beforehand, what your argument
16 would have been, but here is the proof that they meant that all
17 along or that somehow this confirms our argument under the 2004
18 statute that a storm is, in fact, a changed circumstance under
19 which we can come under for a rate increase.

20 MR. WAHLEN: I would say that when you read this
21 whole thing from 10,000 feet, there's, there's some indication
22 here that the Legislature understood that storms could be a
23 substantial change of circumstance.

24 CHAIRMAN BAEZ: And there's confirmation in the 2005
25 statute of that application.

1 MR. WAHLEN: I think so. And, again, I don't want to
2 belabor the point, but if you look at 2004, I don't think it's
3 a close question. The staff's analysis at this point is right
4 on the mark. It's the combination of four storms, never
5 happened in history, all that stuff. But your point is right.

6 CHAIRMAN BAEZ: No. But I guess here's the, here's
7 the difficulty, here's the difficulty that I'm having. If any
8 part of this argument points to subsequent legislation that
9 says, here, you know, the answer, the prior answer should be
10 clear from subsequent actions of the Legislature, how can, if
11 that, if that, in fact, is part of the case or part of the,
12 part of the argument that we're entertaining, in my mind I'm
13 finding it hard saying yes to part of that and no to the part
14 that, that has, that creates, would otherwise create guidance
15 that would limit recovery. I'm not making a judgment on which
16 way it should go and I'm not telling you which way I'm leaning
17 or anything like that. I'm just, I'm having trouble getting
18 guidance from only part of the statute and then having to
19 ignore --

20 MR. WAHLEN: Let me try it this way. We are not
21 saying that because in Part B we have all this language about
22 the tropical named storms that that means that under the old
23 statute we're entitled to this. We are not making that
24 argument. I want to be clear about that.

25 CHAIRMAN BAEZ: Okay.

1 MR. WAHLEN: That is not our argument. We are not
2 relying on the substance of this --

3 CHAIRMAN BAEZ: To conform -- okay.

4 MR. WAHLEN: -- to support what was under the old
5 statute. But there is a savings clause in this.

6 COMMISSIONER BRADLEY: In the new statute.

7 CHAIRMAN BAEZ: Yes.

8 MR. WAHLEN: In the new statute there is a savings
9 clause. Okay. The savings clause is the second part that's
10 highlighted there.

11 COMMISSIONER BRADLEY: But your assertion is that the
12 damage occurred prior to the new statute.

13 MR. WAHLEN: And I think if this is relevant at all,
14 it's relevant because there's a savings clause in there, and
15 the Legislature went out of their way to say whatever this
16 means, it shouldn't affect what was in place under the old law,
17 in a petition filed under the old law.

18 CHAIRMAN BAEZ: Is part of your position, and I
19 don't, I don't think I heard you explicitly say it, but is
20 there an implication in your statements that, that when this
21 Commission in -- was it June that the original recommendation
22 on the stipulation came up -- that the effect of our acceptance
23 of that stipulation effectively settled the number that was --
24 that it became an all-or-nothing, that it became an
25 all-or-nothing proposition in terms of recovery?

1 MR. WAHLEN: No.

2 CHAIRMAN BAEZ: So there was something, so there was
3 something more than the bare legal question of changed
4 circumstances or not?

5 MR. WAHLEN: I don't think it was ever an
6 all-or-nothing question. The only way it's an all-or-nothing
7 question is if you begin your analysis at \$30 million. The
8 stipulation started at 148.

9 CHAIRMAN BAEZ: No. No. I appreciate that.

10 MR. WAHLEN: Okay. Now beyond, beyond the 30 -- you
11 know, if you start at 30, Sprint never looked at that as an
12 up-to stipulation. Okay? And our position would be that if
13 you're going to do something besides 30, there has to be a
14 rational basis in the record, there has to be some evidentiary
15 support for doing it.

16 COMMISSIONER BRADLEY: And that being the case then,
17 is it -- it sounds like I'm hearing that that would be outside
18 of the stipulation.

19 MR. WAHLEN: Someone could have come in and said
20 we've looked at the \$30 million and \$2 million of it shouldn't
21 be recovered. Okay? Somebody could have done that. They
22 didn't. No one came in and ever challenged the substance of
23 the \$30 million.

24 CHAIRMAN BAEZ: Because that was, as to the parties,
25 as to the parties in the docket, it's your contention that was

1 a settlement.

2 MR. WAHLEN: Right. There's no evidence about
3 whether the 30 is prudent or not and should they have spent
4 more or less or any of that stuff. There's no basis in the
5 record to start chipping away at that. Instead, what's coming
6 in from left field is this 12-month, 50-cent limitation that by
7 its express terms isn't in the statute. And we think under the
8 old statute that's just kind of picking a number out of the
9 air. It's arbitrary. You know, parties, people could have
10 gotten in the docket and didn't, and started picking at the
11 \$30 million, but they didn't.

12 But, again, I've said it and I'll say it one more
13 time, the regulatory process started at 148. And \$103 million,
14 \$103.7 million was excluded by the agreement of Sprint and the
15 Office of Public Counsel, which represents the citizens of the
16 state of Florida.

17 CHAIRMAN BAEZ: Commissioners, any questions, any
18 additional questions?

19 COMMISSIONER EDGAR: Mr. Chairman.

20 CHAIRMAN BAEZ: Commissioner Edgar.

21 COMMISSIONER EDGAR: I need to try to come at this
22 from, again, from the other side. I want to make sure I'm
23 clear. It seems that we have three, maybe four options before
24 us: The first option maybe being nothing, no fee, no
25 additional fee imposed; the second option being the

1 recommendation from staff which is basically 50 cents per line
2 for 12 months; third option, a little less than a dollar per
3 line for 24 months; fourth option, perhaps other. So I guess
4 I'm going to direct this to legal, and, Mr. Melson, I may ask
5 you to jump in and guide me here.

6 A number of things that come before us, we are
7 limited to the record. However, we also have general public
8 interest direction and authority. And so I am, in the back of
9 my mind I am, of course, cognizant that there are other fee
10 increases coming to consumers beyond what is before us today.
11 And so I guess my question to our legal staff is how limited
12 are we as to what we take into account before we take action
13 today? Our actions certainly are never in a vacuum, and so are
14 we, are we, are we limited to what is before us or are we able
15 to take into account some of those larger perhaps public
16 interest other circumstances that are, that are occurring?

17 MR. MELSON: I think by and large you're going to be
18 limited to what's in this record before you. You've got a
19 stipulated set of facts that you have approved, and the issues
20 that have been preserved for briefing and preserved for
21 decision today is what action is appropriate under the law
22 given that set of facts, and you've got various views of what
23 the law permits or requires. So I think by and large your
24 judgment today is how do you interpret, how do you, Commission,
25 interpret the old statute, in light of whatever was done in the

1 new statute or not, but how do you interpret the old statute,
2 how do you apply it to this set of facts?

3 You've got an overriding -- I won't say overriding.
4 You've got another consideration, another section of the
5 statute that has not been briefed, which is, it's in the intent
6 section and it was a provision that was argued in the
7 rebalancing case, that you've got to ensure that rates for
8 residential customers are -- it's not just and reasonable.
9 It's affordable, I think, is the test. I'm not sure you've got
10 any facts though in this record that suggest that permitting
11 the entire \$34 million to be recovered over two years would
12 result in unaffordable rates. That simply is not an argument
13 that I'm aware that any party has raised or preserved.

14 So as -- I think you probably should limit yourself
15 to sort of the four corners of this case. And I know I was
16 thinking as I was talking there, but I think that's where I
17 come down.

18 CHAIRMAN BAEZ: Can I ask a quick question?

19 COMMISSIONER EDGAR: Please.

20 CHAIRMAN BAEZ: Mr. Melson, and I don't have the
21 order, I don't have the order in front of me, but there's been
22 some reference to, to what our determination in accepting the
23 stipulation originally in June, what our order said, something
24 to the effect that we accept or that we find the 33 or whatever
25 the number is, \$30 million, I guess is being, is the number

1 that's being substituted, I'm sure it's a much more precise
2 number than that, but that it is reasonable for cost recovery.
3 Can you -- can anybody pull up the language?

4 MR. MELSON: You'll have to get some help from my
5 staff. I don't have, unfortunately I don't have that order in
6 my book here.

7 CHAIRMAN BAEZ: Mr. Casey, if you've got it. Hold
8 on.

9 MR. CASEY: Yes, sir. I have a copy of the order
10 here. The stipulation provides that \$30,319,521 incurred for
11 storm restoration are the maximum costs to be considered for
12 recovery from Sprint-Florida basic customers.

13 CHAIRMAN BAEZ: That's the stipulation language;
14 correct?

15 MR. CASEY: That's right from the order.

16 CHAIRMAN BAEZ: That's from -- is that the
17 stipulation language?

18 MR. CASEY: Oh, okay. I'm sorry. I should go back
19 to the order.

20 CHAIRMAN BAEZ: Go back to the ordering paragraph,
21 and what, what are -- Mr. Teitzman, you seem to be there first.
22 Don't everybody rush to find it at once. Just one person will
23 do.

24 MR. TEITZMAN: I can't -- I don't have the -- well, I
25 have the stipulation in front of me, but I was actually going

1 to read from the transcript at the previous agenda. Part of
2 Mr. Rehwinkel's position, he stated with regard to Phase 1,
3 approving the stipulation, he stated, "It is a cap in this
4 sense, is that if as part of the legal and policy arguments
5 that someone can craft an argument that would disallow a
6 portion of the recovery for some reason other than prudence,
7 factual issues about whether the costs were incurred, yes, it
8 is a cap. But it is intended, by stipulation with the Public
9 Counsel's Office, to preclude the litigation of these costs as
10 part of this 120-day process." So I think at that time
11 Sprint's position was that it was a cap.

12 CHAIRMAN BAEZ: Mr. Casey, did you find what we, what
13 the ordering language is?

14 MR. CASEY: It just states that the Commission
15 approved the stipulation between Sprint-Florida and the Office
16 of Public Counsel.

17 CHAIRMAN BAEZ: So there's no, there's no --

18 MS. BANKS: There's no amount listed.

19 CHAIRMAN BAEZ: Okay. So the language that I heard
20 said that the staff recommended that the number was reasonable
21 for cost recovery or some, some words to that effect.

22 MR. WAHLEN: That was, that was in the staff
23 recommendation. It did not make it into the order.

24 CHAIRMAN BAEZ: That was in the staff recommendation.
25 It did not make it into the order. Okay.

1 MR. WAHLEN: I want to be clear on that. I didn't
2 want to mislead you on that.

3 CHAIRMAN BAEZ: And that was really the nature of my
4 question because I guess that raised a concern as to what, what
5 by our own words became our limitations in this, in all candor.
6 I remember the conversation, I remember the clarification
7 Mr. Rehwinkel said, and I think as a functional matter the 30,
8 again, I struggle for the number, but the 30 odd million
9 dollars by agreement was, was, was the number that we were
10 going to argue over rather than the 148.

11 MR. WAHLEN: That's correct.

12 CHAIRMAN BAEZ: And, and clearly there was some
13 contemplation of an argument being made on a policy basis for
14 some recovery less than, less than that, that upper limit.

15 The reason I'm asking these questions is because I
16 want to, I want to understand if there is a policy reason not
17 to do it. And I guess it all, you know, then it starts pouring
18 over into, in my mind, into the 2005 legislation. Is there a
19 good reason, is there a policy reason for why that, for why
20 those limitations are there and whether we should use them as
21 guidance? Because I guess if the policy, if the policy reason
22 exists, it's probably good in one year or another. Or, as
23 Mr. Wahlen seems to be suggesting, is if it was, if it was
24 reasonable among the parties, then by our accepting the, the
25 stipulation, it became not -- I don't want to say an

1 all-or-nothing proposition, but that all of the sudden that
2 number was validated in some way. Ms. Christensen.

3 MS. CHRISTENSEN: I might be able to clarify from the
4 stipulation itself, Paragraph 27, the second line in the
5 stipulation says, "By stipulating to the relevant costs," which
6 are the \$30 million we've been discussing here, "OPC does not
7 agree that Sprint is entitled to recover that cost through
8 additional customer charges, and OPC is free to advocate that
9 Sprint is entitled to no surcharge or, alternatively, a lesser
10 surcharge than the cost."

11 CHAIRMAN BAEZ: And is that -- and where in the,
12 where in the record are you advocating a, a lesser, a lesser
13 charge, something other than zero? And remember that the zero,
14 zero recovery comes as a, as a result of a, of a legal
15 determination that it's not changed circumstances. It's the
16 only result that can, that can follow.

17 MS. CHRISTENSEN: I think -- right. There are
18 several places that we argue alternative recovery amounts and
19 different methodologies to provide that. I mean, we certainly
20 talk about the new legislation and that if you consider that as
21 guidance for determining what's a substantial change in
22 circumstances, you also should take that as guidance for the
23 limiting purpose, the 50-cents per access line that the
24 legislation determined was appropriate for storm recovery on a
25 going-forward basis.

1 There were several other methodologies that we
2 proposed that did not make it into the staff recommendation in
3 our brief: Talking about partial recovery on Page 14 of our
4 brief; talking about a netting from, you know, looking at the
5 profit; a netting and other sorts of mechanisms. So there were
6 other partial recoveries that were discussed in the Office of
7 Public Counsel's brief, including consideration of the new
8 legislation. So those are part of this record. And --

9 CHAIRMAN BAEZ: A question to legal staff. I'm
10 reading the recommendation, and it seems, and, again, based on
11 Mr. Wahlen's representation from the questions that I asked
12 him, it seems that it's, it's our staff that is actually taking
13 guidance from, from the new statute. Is that a fair --

14 MR. ROJAS: I would say that staff did. But to say
15 Sprint did not take guidance -- I think, I think earlier
16 Mr. Wahlen said that -- he, he quoted the savings clause, and
17 he used that to reach the determination that, that, that he --

18 CHAIRMAN BAEZ: Well, I guess sadly, because we did
19 go with 15 minutes of whether we should allow new argument or
20 not, the whole issue of a savings clause probably comes after
21 the fact, and that, you know, I don't want to get now into a
22 procedural argument here. But I'm not, I'm not sure that the
23 savings clause was part of a brief or, or any of that, or was
24 it?

25 MR. ROJAS: It was.

1 CHAIRMAN BAEZ: It was?

2 MR. ROJAS: Yes, sir.

3 CHAIRMAN BAEZ: Oh, okay.

4 MR. ROJAS: Sprint relied on the savings clause to
5 find a change in circumstances.

6 CHAIRMAN BAEZ: I'm sorry?

7 MR. ROJAS: Or they used it as, as guidance in
8 determining a change of circumstances.

9 CHAIRMAN BAEZ: Okay.

10 MR. ROJAS: That they would not be precluded from
11 bringing this forward and that that was compelling. But staff
12 did rely on the new legislation or used it as guidance to
13 bolster its arguments.

14 CHAIRMAN BAEZ: Okay. Just, just trying to find out
15 who started it.

16 Commissioners, questions?

17 COMMISSIONER DEASON: I have just a couple,
18 Mr. Chair.

19 CHAIRMAN BAEZ: Commissioner Deason.

20 COMMISSIONER DEASON: I'm looking at Page 6 of the
21 recommendation, the second paragraph under the heading "OPC
22 Initial Brief." And I guess I would direct this to Public
23 Counsel. At the end of that paragraph it says that, "OPC
24 argues the Commission should disfavor the imposition of a
25 surcharge for hurricane expenses since in a competitive market

1 a competitive business would be unable to impose such a
2 surcharge."

3 First of all -- well, let me state this: I'm not so
4 sure that a competitive business can't do that. I had a recent
5 experience where I ordered --

6 CHAIRMAN BAEZ: You paid more for gas?

7 COMMISSIONER DEASON: No. I ordered some concrete to
8 be delivered, and that's generally a fairly competitive
9 business, I would like to think anyway. Well, come to find
10 out, there's a diesel charge, surcharge for them to send a
11 truck regardless of how much concrete you get. And now I guess
12 an increase of diesel -- well, it probably resulted from
13 Hurricane Katrina. So, I mean, that's debatable as to whether
14 a competitive company can or cannot. But just for the sake of
15 my question, assume that I accept the argument that a
16 competitive company cannot impose a hurricane-related
17 surcharge. Is Sprint a competitive company?

18 MS. CHRISTENSEN: I think under a price cap regulated
19 scheme they're not completely competitive. I mean, we
20 certainly have some regulation on the company, so I won't go as
21 far as to say they're a completely unregulated competitive
22 market where market forces would take effect. Of course, if
23 they were, we wouldn't be having this discussion today. But
24 they also --

25 COMMISSIONER DEASON: If they were a competitive

1 company and there was no, they were not carrier of last resort,
2 there were no price controls whatsoever, if they felt like they
3 needed to raise their rates \$30 million, could they do that?

4 MS. CHRISTENSEN: Well, and I think that's part of
5 the argument that I raise in my brief as well, Commissioner, is
6 that they're under more flexible regulatory treatment. They
7 are obviously under a price cap regulation and they have some
8 flexibility with the way that the price cap scheme is set up to
9 make up revenues how they see fit. They can increase their
10 baskets up to 6 percent, up to 20 on certain items if they need
11 to make up the revenue. And really I guess my point was is
12 before you come in for the safety net, the provision of last
13 resort to raise basic local service --

14 COMMISSIONER DEASON: Let's analyse that just a
15 minute. You say they could make it up on these other services
16 where their basket is 6 percent or 20 percent or whatever? And
17 those are services that are generally more competitive than
18 basic telecom, telephone service. There's a distinction
19 between basic service and other services; correct?

20 MS. CHRISTENSEN: Correct. They still have some
21 ability to raise their basic rates in a year as well. I mean,
22 I'm certainly not --

23 CHAIRMAN BAEZ: Very limited; right?

24 MS. CHRISTENSEN: It's certainly much more limited.
25 And I think you have to look at the pricing scheme overall,

1 which is they should use all the mechanisms at their disposal
2 under this flexible regulatory treatment to make up the amount
3 before they come in for this safety valve last resort type of
4 provision that was allowed in the statute. And I think that's
5 the approach that we took is you've got this flexible
6 treatment, and because you've got this flexible treatment you
7 shouldn't come in and basically ask for the Commission to make
8 up all of your expenses that you could make up under that, the
9 other pricing scheme and --

10 COMMISSIONER DEASON: How much revenue could they
11 increase under the flexible treatment that they receive under
12 the statute?

13 MS. CHRISTENSEN: Commissioner, I tried to come up
14 with a figure for that, but we're, of course, limited with what
15 was in the record. And it was a question that hadn't been
16 raised until after we added the stipulation. Otherwise, I
17 would have asked for that number from Sprint itself and how
18 much revenue they could generate in a year by increasing it
19 1 percent plus inflation. And I guess that was probably
20 information -- I think you can probably find it maybe from
21 their annual surveillance reports, but it was not a number that
22 I have readily available.

23 COMMISSIONER DEASON: Okay. Well, let me change
24 gears just a minute. I've heard your argument, and you
25 repeated it several times, particularly in answer to some

1 questions, I believe, from the Chairman, about the confidential
2 earnings information. And you keep stressing the point that
3 there actually was an increase in ROE from 2003 to 2004;
4 correct?

5 MS. CHRISTENSEN: Correct.

6 COMMISSIONER DEASON: And 2004 was the year that the
7 hurricanes hit. And I think you conclude that since there was
8 an increase, there's no financial harm. Am I paraphrasing
9 correctly or am I missing something?

10 MS. CHRISTENSEN: No. I believe that that's our
11 position. And I think that's, from the best information
12 available, that's the best way to determine whether there's
13 financial harm being distinct from whether or not there were
14 costs.

15 COMMISSIONER DEASON: Okay. So if there's an
16 increase in ROE, there's no financial harm. What if there were
17 a decrease in ROE? Is that a showing of financial harm?

18 MS. CHRISTENSEN: I think certainly, Commissioner, if
19 there were a decrease, then that would be at least a, maybe a
20 prima facie showing. I think there are certainly things that
21 could be --

22 COMMISSIONER DEASON: Do you recall my hypothetical
23 earlier when I asked Mr. Wahlen that hypothetically, and these
24 are not confidential numbers, strictly hypothetical, that if in
25 the year 2003 they earned 20 percent ROE and in the year 2004

1 because of the hurricanes they only earned 15 percent, would
2 that be a showing? Of course, his response was, well, if that
3 were their earnings numbers, they wouldn't be in here anyway.
4 But is that your position that if it were 20 percent in 2003
5 and 15 percent in 2004, that it shows financial harm and that
6 under the statute they would meet the requirements?

7 MS. CHRISTENSEN: Well, I think that's a partial
8 answer. I think you could have some sort of a prima facie. It
9 would at least show that the costs that they incurred from the
10 hurricane had a negative impact on their earnings, and I think
11 that could be a demonstration that there were to a certain
12 degree --

13 CHAIRMAN BAEZ: Maybe they were just a lousy company.
14 Maybe they, maybe they just, maybe they just had terrible, you
15 know, customer service and a good competitor in the territory
16 and that's where their profits fell. I guess --

17 MS. CHRISTENSEN: And I would agree that that's a
18 possibility. The burden is on the company to show that they
19 have some sort of financial impact, one, and that the cause of
20 that financial impact, two, was the hurricanes, that it was
21 something that was beyond their control, which I think is a
22 prong that I set out in my brief that it's got to be something
23 beyond their control. I think lousy customer service or had,
24 you know, had a bad year because they were down in sales and it
25 was something intrinsic within the company that they had

1 control over would not meet that criteria or should not be
2 something that the Commission would consider meeting the
3 criteria of the safety net.

4 To respond to the Commissioner's earlier question
5 about 20 percent --

6 CHAIRMAN BAEZ: I just wanted to say that I said
7 lousy customer service in the context of a hypothetical.

8 MS. CHRISTENSEN: Correct. And I was responding in
9 that vein.

10 CHAIRMAN BAEZ: No. I know.

11 MS. CHRISTENSEN: To respond to the Commissioner's
12 earlier question about 20 to 15 percent, the decrease in
13 profit, I think that would show that it had a negative impact
14 on earnings and that it created some financial harm.

15 Then there's a second prong that I think you would
16 have to look at, which was whether or not they're earning a
17 fair profit and whether or not 15 --

18 COMMISSIONER DEASON: And I'm glad you said that
19 because that's the basis of my question. You looked at those
20 hypothetical numbers and you saw the increase from 2003 to
21 2004. Do you consider 2003 or 2004 results to be excessive?

22 MS. CHRISTENSEN: I almost hesitate to answer that
23 question because we're talking about confidential numbers,
24 Commissioner, and I think that's a decision that the Commission
25 needs to make.

1 COMMISSIONER DEASON: Okay. That's fine.

2 MS. CHRISTENSEN: I don't want to get into a
3 confidential number.

4 COMMISSIONER DEASON: Fair enough.

5 MS. CHRISTENSEN: But I do think when you're talking
6 about a 15 or 20 percent profit, I think we would have to look
7 at the fairness of the profits. And I think that's a decision
8 that the Commission has to make. We certainly put forth our
9 argument that if you have an increase in profit, that that
10 would be, show that there's no financial harm. I think if
11 there were a decrease in profit, that at least makes a prima
12 facie showing, and then you would have to look to see what the
13 levels of the earnings were.

14 COMMISSIONER DEASON: Well, let's go to another
15 extreme hypothetical. Assume they earned 1 percent ROE in 2003
16 and for whatever reason 2003 was just an awful year. 2004 they
17 earned 2 percent ROE because of the hurricanes, and had it not
18 been for the hurricanes, they would have earned something, I
19 don't know, say, assume 10 percent. But the fact that they
20 increased from 1 percent in 2003 to 2 percent in 2004, that
21 means there's no financial harm from the hurricanes.

22 MS. CHRISTENSEN: Let me put it this way. The burden
23 is certainly on the company to show that they would have earned
24 10 percent but for the hurricanes. I'm not sure that you have
25 that evidence in this record, and that would be my first point.

1 I'm not saying that they couldn't make that showing. I think
2 that the burden, however, is on the company to make the showing
3 that when they have an increase in profit, that they would have
4 had more but for the hurricanes. And I think you still have to
5 look at the, the reasonableness of the profits that they're
6 making.

7 Now it's certainly, I think, a 1 percent profit or
8 2 percent profit for any company is probably unacceptable by
9 Wall Street standards, and they're going to have a lot more
10 problems than whether or not they get \$30 million worth of
11 hurricane refund. I think they're going to be looking at new
12 management.

13 But I think those are the considerations that the
14 Commission needs to take into account under that safety net,
15 which is you have to take a look at their finances before you
16 say you can get any recovery under an increase in basic rates.
17 I don't think it's some sort of automatic recovery, and I think
18 that's where you get into that adversely affecting. I think
19 they got relieved of that burden by the new statutory language.
20 And I guess what we're saying is if you believe that they, you
21 know, maybe shouldn't have as stringent of a financial scrutiny
22 because it's a hurricane, we have some clarification on the new
23 legislation from the Legislature saying that we think they're
24 entitled to it if they've suffered X amount of damage, which
25 implies some sort of financial harm, but we're not going to

1 look at any sort of financial earnings test on the company to
2 say that they have to have adversely impacted their profits,
3 then the limitation should also apply.

4 CHAIRMAN BAEZ: Commissioner Deason.

5 Do you, Ms. Christensen, do you -- is it, is it an
6 accurate statement to say -- well, I asked a question and
7 Mr. Wahlen answered -- if we had, if we didn't have any, if we
8 weren't price cap regulated or any regulated, if we were
9 unregulated, the company may well be considering whether to
10 even stay in business. I took that to mean whether we're going
11 to reinvest the money that we have to to keep the facilities,
12 whatever were damaged in Florida, going. Do you agree, do you
13 agree that that is not a, that is not a possibility for this
14 company?

15 MS. CHRISTENSEN: Well, they do have customer of last
16 resort obligations. And I think -- although I think it may be
17 overstated to say whether or not they would be staying or
18 leaving the territory, I think you see that in cell phones,
19 they're out there rebuilding those cell towers as soon as the
20 hurricane passes, and that's unregulated, and that's an
21 unregulated portion of the telephone business. So, I mean,
22 there is -- when there's competition and it's profitable, they
23 go in and they rebuild their infrastructure and they don't
24 necessarily come and charge a surcharge on the customer's bill
25 to --

1 CHAIRMAN BAEZ: But that's a business decision;
2 correct?

3 MS. CHRISTENSEN: It is a business -- correct. It's
4 a business decision. But what they're asking you to do is come
5 in here and step in in place of that business decision.
6 They're that quasi, they're that quasi space between rate base
7 regulated and completely deregulated, and we recognize that.

8 CHAIRMAN BAEZ: I understand. But, but you kind of
9 got ahead of my next question. Do you, do you, do you believe
10 that there is a business decision available under these
11 circumstances with the, with the carrier of last resort
12 requirements and so forth?

13 MS. CHRISTENSEN: Well, I still believe there's
14 business decisions to be made under the price cap regulatory
15 scheme because they still have the option of raising certain
16 baskets whatever they can during a given year. And they have
17 to weigh whether or not they can raise them to make up their
18 revenue before people stop dropping a service or, or not. They
19 can raise them part of the amount, raise them the full amount,
20 raise a combination of things to make up their revenue. There
21 are business decisions that they still have available to them
22 under this flexible treatment, and I guess that's what I was
23 pointing to is they should avail themselves of this flexible
24 regulatory treatment first before they come to the Commission
25 for a safety net.

1 CHAIRMAN BAEZ: Okay. I understand. Commissioners,
2 any other questions? Commissioner Bradley.

3 COMMISSIONER BRADLEY: Well, what was the function or
4 purpose of a stipulation rather than taking this matter to
5 hearing? And this, this is a very strange stipulation. Why
6 did you all put the term "stipulation" on this agreement if it
7 sounds like -- I mean, what did you stipulate to?

8 MS. CHRISTENSEN: Commissioner, it is an unusual type
9 of stipulation.

10 COMMISSIONER BRADLEY: And let me finish. And the
11 reason why I'm asking that question, this question is because
12 you use the term "stipulation" and you're using some very odd
13 descriptive terms to describe what you all agreed to, and what
14 we have before us is the problem of trying to decide what you
15 all have stipulated to.

16 MS. CHRISTENSEN: Maybe I can clarify.

17 COMMISSIONER BRADLEY: What did you all stipulate to?

18 MS. CHRISTENSEN: I think probably the best thing,
19 the thing that's most commonly done that's similar to this
20 stipulation is if we were to have a live hearing and we came in
21 and said people filed testimony and we stipulated to that
22 testimony being entered into the record and said, well, we'll
23 just write briefs based on the testimony that's been entered
24 into the record, let's say the testimony with all their
25 exhibits have been entered into the record, everybody agrees

1 they're not going to have cross-examination and Commissioners
2 didn't have any questions of those witnesses, well, that would
3 be considered stipulating those witnesses' testimony into the
4 record, and that would become the facts on which the Commission
5 would decide, make its decision, and we would brief based on
6 that record.

7 And what we did here was try to circumvent some of
8 the need for filing prefiled testimony. And we sat down and we
9 looked at the facts and we said, okay, this is what OPC
10 believes would be the extent of reasonable costs. And Sprint
11 said, Sprint obviously came -- we came to agreement as to what
12 we believed would be the maximum amount of those reasonable
13 costs that we would argue over. We also agreed to other facts
14 that are in the record: The hurricanes, the nature and the
15 extent of the damage that was suffered in Sprint's system.
16 There were facts that we stipulated to. So rather than have
17 live testimony, we stipulated to what those facts would be that
18 you would decide on, and that included the limitation of the
19 \$30 million.

20 COMMISSIONER BRADLEY: So you all stipulated to the
21 fact that there was a hurricane that affected Sprint.

22 MS. CHRISTENSEN: Correct.

23 COMMISSIONER BRADLEY: You started at \$148 million
24 and you stipulated, you eliminated, I think, \$118 million. And
25 you -- I think I heard Sprint say that their understanding is

1 that \$30 million and your understanding is that it's up to
2 \$30 million. So is that basically what we're trying to
3 determine, is it \$30 million or up to \$30 million?

4 MS. CHRISTENSEN: Well, I think the stipulation
5 itself actually is clear on the point of whether or not we're
6 arguing up to \$30 million. The stipulation itself says that
7 OPC is free to argue about whether they're not, they're
8 entitled to recover the \$30 million or a part of that
9 \$30 million or nothing at all. That was clear in the
10 stipulation that both parties signed and that Sprint signed. I
11 think what they're trying to argue is we went into --

12 COMMISSIONER BRADLEY: Okay. Let me ask this
13 question. OPC is free to argue within which venue, this venue
14 or another one?

15 MS. CHRISTENSEN: Within this venue. Correct.
16 Within the, within the briefs that were presented to the
17 Commission --

18 COMMISSIONER BRADLEY: Okay.

19 MS. CHRISTENSEN: -- we were, made it clear that we
20 were going to be arguing about whether or not they were
21 entitled to any recovery, a partial recovery or wherein we
22 assumed Sprint was going argue that they were entitled to
23 recover the \$30 million that we talked about. The going from
24 \$40 [sic] million, which was what Sprint said its total costs
25 were down to \$30 million was a process of negotiation.

1 COMMISSIONER BRADLEY: \$140.

2 MS. CHRISTENSEN: What?

3 COMMISSIONER BRADLEY: You said \$40 million. \$140
4 million.

5 MS. CHRISTENSEN: \$140 million. I'm sorry. That was
6 what they said their costs were. Rather than go through a
7 protracted litigation about whether or not those costs were
8 double recovery, whether or not they were, you know, things
9 that they already had in the budget, and I think things that
10 you've heard about in other dockets, rather than make all those
11 type arguments, we just came down to a number that we could
12 both agree we wouldn't have to make those types of arguments
13 on. But that's -- we were still free to argue about whether or
14 not zero, part of the \$30 million or the full \$30 million
15 should be recovered, and those arguments are the arguments that
16 are before you today.

17 So the stipulation was limited in trying to set out
18 what the facts of the record would be that we'd be discussing
19 in our briefs and consequently here today.

20 COMMISSIONER BRADLEY: Okay. So you got a super deal
21 as it relates to \$118 million. So the rest of what's left is
22 you all agreeing about \$30 million or up to \$30 million.

23 MS. CHRISTENSEN: Well, I guess -- I think for the
24 customers in the state of Florida we would say that zero is
25 appropriate and that would be the deal that we'd like to see.

1 COMMISSIONER BRADLEY: But that's not a stipulation.

2 MS. CHRISTENSEN: The stipulation was -- set out the
3 things that we did negotiate, negotiate on down to the
4 \$30 million, but I'm not sure that I would say that was a super
5 deal. That was based on certain guidelines. I think, you
6 know, we certainly as the consumers, representatives of the
7 consumers of the state of Florida believe there should be no
8 cost recovery. That's our primary position.

9 COMMISSIONER BRADLEY: Sprint. I think we've
10 probably been over this before, but --

11 MR. WAHLEN: I'm sorry. I was watching what was
12 going on and I lost the question.

13 COMMISSIONER BRADLEY: The basic question was what
14 did you all stipulate to? What's the stipulation?

15 MR. WAHLEN: I think we stipulated -- we're right --
16 I agree with Ms. Christensen about this. We did not want to
17 have a big, drawn-out proceeding about which costs, which
18 categories of costs, what are the costs. We tried to come up
19 with a stipulated set of facts so the Commission could answer
20 the basic question: Are you entitled to recover under
21 364.051(4), which is the changed circumstances provision, the
22 costs of hurricanes when you have four of them in six weeks and
23 it's a big number? We wanted to have a procedural mechanism to
24 get that question to you. So we looked at the 30 and said, you
25 know, we started at 148, we'll not seek recovery of all of

1 these categories of costs, and we think the number is 30. But
2 if somebody can come in and come up with a rational basis based
3 on the law or facts to reduce that in this record, you know,
4 conceivably you could do that. That hasn't happened. There is
5 no record basis or legal basis that I can see in this record
6 for reducing it. The only thing that the staff has done is
7 come in and said, instead of 30 we want you to do nine. And
8 nine is the by-product of the application of the 12-month and
9 50-cent limitation, which by the express language of the
10 statute does not apply here. And I think if you apply that
11 limitation to a petition filed under the old statute, you've
12 done something arbitrary. You've done something that's just as
13 good as picking a number out of the air. Now somebody could
14 have come in and said, well, we think it should be reduced
15 further because of this, this kind of cost shouldn't be
16 recovered and so forth. But the Public Counsel, when they were
17 discussing the stipulation, they explained exactly what we've
18 excluded. They've excluded normal capital project costs and
19 regular time labor and budgeted overtime labor and all this
20 stuff. And then Mr. Beck said, Commissioners, I think what
21 they've agreed to is much more limited and more narrow than
22 other requests the Commission has seen come before it. That's
23 what the Public Counsel said when the stipulation was approved.
24 We started at 148, we're at 30. This \$9 million is not
25 something that's in the existing statute. The staff's right;

1 four hurricanes in six weeks is a compelling showing of changed
2 circumstances, and we're entitled to the \$30 million.

3 CHAIRMAN BAEZ: Commissioners, I don't want to cut
4 any of the questions and answers short, but the court reporter
5 does need a break. So I'm, I'm hesitant to, to break for lunch
6 entirely because I think we can wrap this up, you know, we may
7 be able to wrap this up in short order.

8 COMMISSIONER DEASON: Mr. Chairman, we might be able
9 to wrap this thing up real quickly if I make a motion and we
10 vote on it, and all the questions have been answered.

11 COMMISSIONER BRADLEY: I'm finished.

12 COMMISSIONER EDGAR: I'd prefer five minutes, Mr.
13 Chairman. Thank you.

14 CHAIRMAN BAEZ: Okay. We'll recess for five minutes
15 and let everybody be happy coming back.

16 (Recess taken.)

17 CHAIRMAN BAEZ: We'll reconvene the agenda
18 conference.

19 MR. TWOMEY: Mr. Chairman, I'd like the opportunity
20 to address the Commission briefly before you vote.

21 CHAIRMAN BAEZ: Mr. Twomey, you're not a party here.

22 MR. TWOMEY: Yes, sir, that's correct. But as I said
23 before, Mr. Wahlen -- I have clients that I've indicated before
24 in the previous docket. Mr. Wahlen in his letter to you of
25 September 16th pointed out at Page 2 that the, and I'm quoting

1 him, he says, "Therefore, the posthearing provisions of the
2 Commission's procedural rules," and this is in his request to
3 have oral arguments, "Therefore, the posthearing provisions of
4 the Commission's procedural rules are not strictly applicable
5 to the Commission's decision in this matter. Instead, Rule
6 25-22.002(1), Florida Administrative Code, addressing
7 participation at agenda conferences applies."

8 That rule provides, and it's short, "Persons who may
9 be affected by Commission action on certain items on the agenda
10 for which a hearing has not been held will be allowed to
11 address the Commission concerning those items when taken up for
12 discussion at the conference."

13 CHAIRMAN BAEZ: Mr. Twomey, Mr. Twomey, I'll just cut
14 you short. I'm not going to allow you to address the
15 Commission on the matter. You're not a party. And even if,
16 even as on the basis of you being a customer of Sprint, you're
17 ably represented by Public Counsel.

18 MR. TWOMEY: You're denying me the opportunity to
19 speak even if I wanted to speak for 90 minutes on support of
20 the Public Counsel?

21 CHAIRMAN BAEZ: Sir, that is absolutely right. And
22 you have your headline. Call Lou Hau, call everybody else that
23 you know that works on a newspaper, and put it in big, bold
24 letters that Chairman Baez didn't allow Mike Twomey, who wasn't
25 a party, who had ample time to petition to intervene, was not

1 allowed to speak at a posthearing consideration of this
2 Commission.

3 MR. TWOMEY: Mr. Chairman --

4 CHAIRMAN BAEZ: And that's all I have to say about
5 that, sir.

6 MR. TWOMEY: Yes, sir.

7 CHAIRMAN BAEZ: Commissioner Deason --

8 MR. TWOMEY: I'm going to say, with all due
9 respect --

10 CHAIRMAN BAEZ: No, you don't have all due respect,
11 sir.

12 MR. TWOMEY: I just read you your rule.

13 CHAIRMAN BAEZ: I don't care. Are you going to sue
14 me?

15 MR. TWOMEY: I don't know.

16 CHAIRMAN BAEZ: Think about it.

17 Commissioner Deason, you were about to -- you're
18 prepared to make a comment or make a --

19 COMMISSIONER DEASON: I'm prepared to make a motion,
20 unless there are other questions or unless someone else wants
21 to make a motion. I'll certainly defer to them as well.

22 CHAIRMAN BAEZ: Go ahead, Commissioner.

23 COMMISSIONER DEASON: First of all, let me say that I
24 appreciate the Public Counsel making the accommodation to allow
25 us to ask questions. I understand it was their position that

1 this was a posthearing matter and that it was not normal
2 procedure to allow oral argument or presentations in that type
3 of a proceeding, and it was gracious of Public Counsel to allow
4 us the opportunity to ask questions of the parties and I
5 appreciate that very much. It has been very helpful to me to
6 be able to do that.

7 I also want to express appreciation for the
8 stipulation that was reached in this matter. I feel like there
9 were a lot of concessions made that resulted in that
10 stipulation and that it was very helpful to the Commission,
11 particularly given the, I think it's a 120-day statutory time
12 provision to process one of these changed circumstances
13 petitions. And given the fact that we had many other
14 hurricane-related dockets open, it was very helpful that this
15 accommodation could be reached and that the stipulation was
16 presented. So I congratulate the parties for that and express
17 my appreciation for that.

18 This is a very, for me is a very difficult question.
19 First of all, this is the first time that we've entertained a
20 petition under this statutory provision, and it's been on the
21 books for some ten years. But I think I'll state the obvious,
22 and that is the statute controls. And what the statute says is
23 what we as an agency have to do in taking the facts that have
24 been stipulated and applying the statute. I do believe that
25 the -- I'll refer to the new statute. I think that it gives

1 some guidance to us in terms of what constitutes a showing of
2 changed circumstances. But obviously we've got to follow the
3 original statute, the statute under which this, this filing was
4 made.

5 And reading that original statute, to me it is
6 unclear as to whether there should be some type of an earnings
7 test to determine if, if there are changed circumstances,
8 whether there should be a surcharge imposed as a result of
9 those changed circumstances. I have heard Sprint's arguments.
10 I am not at this point willing to concede that that statute
11 does not envision or allow the Commission to impose an earnings
12 test. But at the same time, I have reviewed the confidential
13 ROE information, and I believe that, even though that
14 information is confidential, I can make a judgment on that as
15 to whether there has been adverse financial impacts as a result
16 of the hurricane season of 2004 and as to whether there would
17 be any type of undue earnings or some type of a windfall as a
18 result of this Commission allowing there to be recovery of
19 hurricane-related costs. So I don't know where that puts us.

20 I'm willing to make a motion that we allow recovery.
21 And -- let me see how I should put this -- the reason I'm
22 willing to make that motion is that I believe that the earnings
23 of this company are not going to be inflated or enhanced to the
24 point that it is not going to result in fair compensation to
25 the company or unreasonable rates to the, to the customers as a

1 result of these hurricane costs.

2 So having said all of that, I think that it's
3 important for us, while we have to follow the statute, that we
4 need to look at what the guiding principle here is, and that is
5 the provision of service to customers. And we have to realize
6 that this is a company that is the carrier of last resort.
7 They do have obligations under that, many, certainly one of
8 those being to provide Lifeline service to those customers
9 least able to afford it. They have that obligation. They have
10 the obligation to provide service to customers that are willing
11 to abide by the tariffs and seek that service.

12 This company is not totally deregulated, neither is
13 it totally regulated, but its revenues are controlled, maybe
14 not regulated, but the revenues are controlled by statute. I
15 think that there are limited means under the statute for there
16 to be revenue enhancement to the extent to recover the type
17 costs that have been incurred as a result of the 2004 hurricane
18 season.

19 So for all of those reasons I would -- I guess we can
20 go issue by issue, if that's okay. I would move staff on
21 Issue 1, which I think is just limited to the finding that
22 there had been changed circumstances.

23 COMMISSIONER BRADLEY: Second.

24 CHAIRMAN BAEZ: Changed circumstances. There's a
25 motion on Issue 1 and a second. All those in favor, say aye.

1 (Unanimous affirmative vote.)

2 COMMISSIONER DEASON: Issue 2 is basically how much
3 of the cost should be recovered.

4 CHAIRMAN BAEZ: 2A.

5 COMMISSIONER DEASON: 2A. That's correct.

6 Mr. Chairman, I see merit in staff's position and it
7 certainly has appeal in the sense that it is kind of a
8 split-the-baby approach. But I think the truth of the matter
9 is, is that there have been substantial concessions already
10 made to get the amount down to \$30 million. And I believe that
11 we need to look at the company's ability to be that carrier of
12 last resort to be able to restore service to make sure that all
13 customers who want it, particularly those on Lifeline service
14 and otherwise, that they get infrastructure restored to them as
15 quickly as possible. And so I think that the \$30 million
16 number that is the subject of the stipulation is the
17 appropriate amount.

18 COMMISSIONER BRADLEY: And I'll second the motion.

19 COMMISSIONER DEASON: And that's what I would move
20 that we allow as cost recovery.

21 COMMISSIONER BRADLEY: I'll second the motion.

22 CHAIRMAN BAEZ: There's a motion and a second. All
23 those in favor, say aye.

24 COMMISSIONER BRADLEY: Aye.

25 COMMISSIONER DEASON: Aye.

1 CHAIRMAN BAEZ: Aye.

2 All those nay.

3 COMMISSIONER EDGAR: Nay.

4 CHAIRMAN BAEZ: And we are on 2B.

5 COMMISSIONER DEASON: 2B. Here we're talking about
6 the means of recovery of the cost. I agree that it should be
7 on a per access line basis. I believe it should be one year,
8 and I believe that that number, whatever that number is that
9 falls out as a result of the \$30 million calculation is
10 something slightly less than a dollar a month, as I recall.
11 Does staff have that number?

12 MS. BANKS: Yes, sir, it is. It's 85 cents.

13 COMMISSIONER DEASON: Okay. That would be my motion,
14 Mr. Chairman.

15 COMMISSIONER BRADLEY: Second.

16 CHAIRMAN BAEZ: Motion and a second. All those in
17 favor, say aye.

18 COMMISSIONER BRADLEY: Aye.

19 COMMISSIONER DEASON: Aye.

20 CHAIRMAN BAEZ: Aye.

21 All those nay.

22 COMMISSIONER EDGAR: Nay.

23 COMMISSIONER DEASON: Issue 3, we need to leave the
24 docket open, which is staff's recommendation. So I would move
25 staff on Issue 3.

1 CHAIRMAN BAEZ: Is there a second?

2 COMMISSIONER BRADLEY: Second.

3 CHAIRMAN BAEZ: All those in favor, say aye.

4 (Unanimous affirmative vote.)

5 CHAIRMAN BAEZ: Thank you all. Thank you to the
6 parties and staff. We're adjourned.

7 (Agenda conference adjourned at 1:46 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

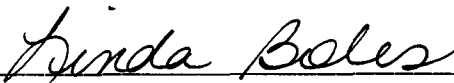
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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 27TH DAY OF SEPTEMBER, 2005.


LINDA BOLES, RPR, CRR
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