

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

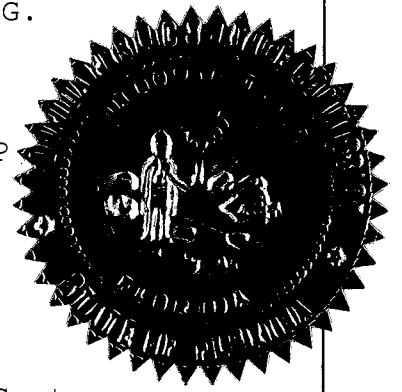
In the Matter of: DOCKET NO. 060172-EU

PROPOSED RULES GOVERNING PLACEMENT OF
NEW ELECTRIC DISTRIBUTION FACILITIES
UNDERGROUND, AND CONVERSION OF EXISTING
OVERHEAD DISTRIBUTION FACILITIES TO
UNDERGROUND FACILITIES, TO ADDRESS
EFFECTS OF EXTREME WEATHER EVENTS.

PROPOSED AMENDMENTS TO RULES DOCKET NO. 060173-EU
REGARDING OVERHEAD ELECTRIC
FACILITIES TO ALLOW MORE STRINGENT
CONSTRUCTION STANDARDS THAN REQUIRED
BY NATIONAL ELECTRIC SAFETY CODE.

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P R O C E E D I N G S

1
2 MR. HARRIS: Good morning. Welcome to a staff
3 development rule workshop for Dockets 060172 and 060173.
4 We did publish an FAW notice that was published May 5,
5 2006.

6 There is an agenda that has been floating
7 around. We had a bunch of copies. I don't know if
8 there are any left, but hopefully enough of you have
9 them that there's sort of a general sense of what we're
10 going to be doing.

11 As I said, this is a staff rule development
12 workshop. Really, for those of you who aren't familiar
13 with our rulemaking process, this is the process by
14 which we gather information that the staff will use in
15 order to provide a recommendation to the Commissioners
16 as to whether they should propose rule amendment
17 language. It's somewhat an informal process. We are
18 trying to gather information. This is for the staff's
19 use. There may be Commissioners present in the room
20 listening, but really it's for us to take your comments
21 to the language we've got out there, consider it, and
22 use it in formulating our recommendation to the
23 Commissioners as to what we recommend they should
24 propose down the road. It is somewhat informal.

25 We have a court reporter here, and we'll be

1 transcribing everything you all say. I'll ask you all
2 to identify yourselves, and the first time you speak,
3 spell your name. There are a lot of people here, and
4 the court reporter needs to keep track, so every time
5 you go to speak if you speak more than one time, could
6 you repeat your name so that she can get it. That would
7 be very helpful.

8 The transcription will be posted on our
9 website at some point in the future. We don't have a
10 firm date. There's a lot of stuff going on at the
11 Commission that's taking our transcription resources.

12 There will also be an opportunity to file
13 post-workshop comments. These will be written comments.
14 We'll be announcing the date for those at the end of the
15 workshop. I would encourage all of you to take
16 advantage of that. Written comments are a way to flesh
17 out your comments to make sure that the points are made,
18 and it's something that we can then look at in addition
19 to the transcript to make sure we capture all the views
20 correctly.

21 With that, we do have an agenda, and -- oh, by
22 the way, I'm sorry. I should introduce myself. I'm
23 Larry Harris. I'm the attorney who's assigned to lead
24 on this case. I'm one of the staff counsel here at the
25 Public Service Commission. We also have Chris Moore,

1 one of our staff counsel, Connie Kummer, Bob Trapp, and
2 Jim Breman, who are technical staff. We have some more
3 technical staff in the audience, and some of them will
4 be participating later on, and we'll introduce them when
5 they come up.

6 The first part of the agenda today I think
7 will be some public comments. My understanding is we
8 have a fair number of persons who don't work for any
9 particular company that's directly regulated by these
10 rules, but are members of the public and are concerned
11 as to the Commission's actions in this case.

12 Before we start with those, I believe one of
13 our Commissioners, Commissioner Arriaga, is here and has
14 a few brief comments he would like to make as part of
15 this introduction phase, and then we'll get to the
16 comments from members of the public.

17 One thing I did forget to mention, we have a
18 sign-up sheet toward the back at the second table in the
19 corner. I would encourage everyone to sign that sheet.
20 That's what we use to see the participation.

21 Once we have Commissioner Arriaga and the City
22 of Coral Gables delegation, those other members of the
23 public who want to speak, I'll ask you all to identify
24 yourselves and come to a microphone.

25 With that, Commissioner.

1 COMMISSIONER ARRIAGA: Thank you, Mr. Harris.
2 It's really not a comment regarding the workshop. It's
3 basically a point of personal privilege that I wanted to
4 take, and thank you so much for the opportunity.

5 Just a few days ago, about a week ago or so, I
6 had an invitation by the mayor of Coral Gables, the City
7 Beautiful in Miami, to meet with them. And at the same
8 time, I met with the Utility Service Reliability Task
9 Force, which is a task force comprised of volunteers
10 appointed by the City Commission. We had the
11 opportunity to go over within the precepts of the law a
12 lot of issues that the City Beautiful has pending and
13 would like to discuss with you today.

14 You all know that we're very open and we
15 promote involvement by municipals, cities, and their
16 city councils, and the citizens regarding what we do
17 here in the Commission, especially with these two
18 dockets that are open now that have a lot of influence
19 in what the people in South Florida are expecting. So I
20 really appreciate the fact that three members of the
21 volunteer task force are here today.

22 I met with the whole task force for about two
23 and a half hours answering their questions, some of them
24 really difficult. And I did encourage them to come back
25 to our workshop today, because I think what they have to

1 say is important, and I think that the staff will be
2 really interested in the issues that they will be
3 discussing today and the proposals that the City has as
4 one of the elements to be considered in the workshop and
5 in our potential rulemaking.

6 So with that, I would like to really welcome
7 to Tallahassee and to the Commission Mr. Enrique Lopez,
8 the chair of the task force, Mr. Peter Martin, and
9 Mr. Thor Bruce, three volunteer citizens of the City
10 Beautiful that are here today, and I'm really proud and
11 glad that you took my invitation to come. This is where
12 you can really make a difference, and this is where your
13 issues will be heard and considered. Thank you for
14 being here.

15 Thank you, Mr. Chairman.

16 MR. HARRIS: All right? Mr. Lopez.

17 MR. LOPEZ: Yes. Good morning. And thank
18 you, Commissioner. We're very pleased and privileged to
19 be here this morning. Good morning, members,
20 Commissioners and members of the Florida Public Service
21 Commission, government officials, members of the
22 utilities community, and residents of our state here
23 today.

24 I am Enrique Lopez, E-n-r-i-q-u-e, L-o-p-e-z,
25 a resident of the City of Coral Gables, one of the

1 oldest municipalities in Miami-Dade County. I'm here
2 today in my capacity as chairperson of the City of Coral
3 Gables Utility Service Reliability Task Force. I am
4 joined by two of my fellow task force members, Mr. Peter
5 Martin and Dr. Thor Bruce, as well as a member of our
6 city manager's office, Ms. Maria Alberro-Jimenez, our
7 assistant city manager.

8 I wish to also reciprocate and formally thank
9 Commissioner Arriaga and his staff for having
10 participated in a recent meeting of our task force.
11 Commissioner, your participation was very insightful and
12 extremely welcome. Thank you, Commissioner.

13 I would like to address some observations for
14 possible consideration by staff specific to both dockets
15 that are in front of you today.

16 As we work on this issue of underground,
17 specifically 0172, I think significant consideration is
18 required to ensure that as these undergrounding
19 projects, whether they be conversions from overhead to
20 underground or an initial underground, as they are
21 considered and implemented, that consideration be given
22 to the back end or the serving feeders and components or
23 grid components that serve these potential communities
24 that would be undergrounded and to ensure that they're
25 up to par with new underground -- with new facilities.

1 Excuse me.

2 Why I share this, our City specifically during
3 Wilma, we had approximately 45 of 47 serving feeders
4 that encountered one or more outages during the storm
5 and post-storm recovery period. These were served,
6 these 45 out of 47 were served or originate in
7 approximately nine different substations. One of the
8 advantages of underground, obviously, is hopefully
9 increased reliability. However, not to say that these
10 45 feeders had any deficiencies or possible
11 deficiencies, but if we were to look at undergrounding
12 from a cost component, cost-benefit area, we would
13 definitely like to think that we would not have that
14 possibility of 47 out of 45, that we would see a
15 decrease in the number of potentially failing feeders or
16 substations so that the benefits of undergrounding are
17 maximized and realized.

18 Specifically the construction standards, a lot
19 of thought has been given by our task force, and some of
20 our fellow members will be addressing with more
21 specificity, is to consider the elimination, or at least
22 find an alternative to the exemption that is presently
23 granted the utilities under the Florida Building Code.
24 And the intent here is really -- and that is point of
25 view that was developed by one of our fellow members who

1 is not here today, Mr. John Anderson. And the intent is
2 not to really impose, but basically step up or bring up
3 to the real environments of the severe weather
4 conditions of our State of Florida that we do require
5 and demand of all entities except the utilities.

6 Now, how we do this, whether it's an
7 incorporation into the Florida Building Code or there
8 are certain sections of the national code, I think it's
9 more of a process. But the intent is to really ensure
10 that any building, any structure, any facilities that
11 are installed within our state are also prepared to meet
12 the extreme wind and extreme weather conditions that we
13 all in this room recognize exist. In conjunction with
14 the above, we would request that consideration be given
15 to construction requirements that address these unique
16 climate environments.

17 One thing that we did notice is that as we
18 look at national codes, we have to share, and I say
19 share or be exposed to charts and graphs and engineering
20 studies that bring up such issues as ice and wind
21 loading. Well, we all know what wind does in our state.
22 However, I think we have an opportunity here to bring up
23 what is specific to our state, which is wind. And every
24 so often there's a frost here in Tallahassee, but not
25 any significant to be called ice. I think we need to be

1 sensitive to the climate conditions.

2 This sensitivity to climate conditions should
3 be extended to the maintenance component of this docket.
4 Florida is very humid. We do have a tremendous --
5 different types of insects that can impact wooden poles,
6 equipment, rust, corrosion, et cetera. So I think as we
7 look at the extreme weather that we not only limit it to
8 the construction component, but also to the maintenance
9 and operations component that does impact reliability of
10 service.

11 One thing that we have been exposed to is that
12 there is no formal coordination. And even though it's
13 not specific to construction, within utilities today, in
14 the areas of vegetation management and pole construction
15 and maintenance, whereas they do have their individual
16 vegetation management and maintenance plans as well as
17 pole inspection plans, we have been found, at least what
18 we've been exposed to, that A doesn't talk to B doesn't
19 talk to C. And I think it's very important, because we
20 are looking at the reliability of service. And as I
21 always say, a palm frond can impact a power line, a
22 cable company, or a telephone utility service. So to
23 ensure and require that whatever plans actually are
24 developed for the vegetation management and pole
25 maintenance, that it be formally coordinated as you all

1 would deem acceptable.

2 I think as I looked at the docket, also there
3 were also references to generally accepted engineering
4 practices. I am an engineer, and I also serve in a
5 consulting capacity in the area of telecommunications as
6 my profession, and that leaves room for tremendous
7 interpretation. Even though I'm very proud of being in
8 the profession, engineering profession, that is always
9 very sensitive and a stickler for detail, generally
10 accepted engineering practice is going to leave room for
11 interpretation. I would ask that consideration be given
12 by all parties that we define as much as we can what
13 that all means with respect to construction and
14 maintenance of service.

15 Hurricane Wilma will be remembered for the
16 impact it had in our state. It will also be remembered
17 as the storm that sensitized all of us to take a hard
18 look at all our past practices and how to correct our
19 possible wrongs. This hearing today is an example of
20 what this effort entails.

21 This Commission's recent actions and rulings
22 also reflect prudent and responsive review and analysis
23 of many issues. It is a gargantuan task. It is a
24 difficult task. It is not an overnight magical wand
25 task. It is a new day in the regulatory landscape for

1 our state. All of us have embarked in a new era of
2 utility management. Your actions and decisions will
3 have a far-reaching impact on the overall economic
4 growth and sustainability of our state. Let us be
5 creative and look down the highway.

6 We wish you continued success in this much
7 needed endeavor. Thank you.

8 At this time, I would like to introduce
9 Mr. Peter Martin, a member of our task force. Thank
10 you.

11 MR. MARTIN: May it please the Commission and
12 its staff. My name is Peter Martin. That's P-e-t-e-r,
13 M-a-r-t-i-n.

14 I was appointed to this Coral Gables Utility
15 Service Reliability Task Force by Mayor Don Slesnick in
16 part because of my background in regulated industries.
17 I've appeared before this Commission in more than 30
18 rate filings over the years and related matters,
19 primarily involving water, wastewater, and natural gas,
20 and I've also appeared and testified in numerous similar
21 matters in regulated proceedings where counties were the
22 utility regulators, including Miami-Dade and Sarasota
23 County.

24 In the interest of full disclosure, I also
25 serve on the board of directors and as a member of the

1 Audit Committee of Chesapeake Utilities Corporation,
2 which has regulated natural gas operations in Delaware,
3 Maryland, and Virginia, and operates here in Florida as
4 Central Florida Gas, which this Commission regulates.

5 The residents of Coral Gables have suffered
6 outages from last season's storms of up to three weeks,
7 in part because of the city's extensive tree cover. The
8 oldest areas of the city were developed in the 1920s,
9 and much of the electric, telephone, and cable service
10 is provided by poles located in very narrow rear lot
11 easement areas behind the homes served. And as you
12 might imagine, these areas have become overgrown with
13 vegetation, and in some cases, even large trees.

14 So there's a great amount of tension among
15 city residents between the desire for an extensive tree
16 canopy and the obvious interference that such a tree
17 canopy has with utility poles. And so the City is
18 seriously considering some sort of undergrounding
19 program, perhaps initially on a pilot basis.

20 Also, the City's rights-of-way in front of
21 these older homes are largely covered by large trees,
22 and tree roots can extend beneath sidewalks and even
23 beneath streets. To install underground utility
24 services in Coral Gables may require street excavations
25 and even sidewalk removal and replacement. And, of

1 course, as a result of all this that I've described to
2 you, the problem the City faces is the extreme cost.

3 I believe that one way that the cost could be
4 reduced would be if the City could work in a cooperative
5 fashion with our utility, Florida Power & Light, whereby
6 the City could issue tax-exempt industrial development
7 revenue bonds. Clearly, this is a development impact
8 that would improve things for the City in every way
9 possible. Interest rates on such bonds could be much
10 lower than FPL's corporate rates, and the proceeds would
11 then become tax-exempt loans to the utility, in this
12 case, to Florida Power & Light, and those proceeds could
13 be used to finance the hardening and the undergrounding
14 needed to improve service reliability in the City.

15 The addition of a material amount of
16 tax-exempt financing to the utility's balance sheet
17 would ultimately reduce the utility's cost of capital,
18 so that instead of a cost of capital of 11 percent, it
19 could be mitigated by the addition of tax-exempt
20 financing that might be obtainable at 5 or 6 percent,
21 and this alone could mitigate the need for future rate
22 increases.

23 The facilities that would be constructed with
24 the proceeds of tax-exempt financing would obviously
25 increase the utility's rate base, and that could have a

1 potential impact on all of the utility's ratepayers,
2 which we agree would be totally unacceptable. We're not
3 proposing something that would benefit Coral Gables and
4 in turn would cause an impact to the other ratepayers of
5 the utility. That would be unacceptable. However, a
6 modest surcharge on the electric bills of city residents
7 could be designed to eliminate any impact that
8 investments in Coral Gables would have on the utility's
9 other ratepayers, and I'm aware that such
10 community-specific surcharges have been authorized by
11 the Commission in the past. For example, the surcharge
12 that we pay in Dade County for BellSouth as a result of
13 the Dade County manhole ordinance is an example of such
14 a surcharge.

15 Another area that I would like the Commission
16 and its staff to explore is the greater use of
17 contributions in aid of construction in the electric
18 industry. FPL, for example, adds approximately 100,000
19 new connections a year within its service area. If as
20 little as \$1,000 were collected from each of these new
21 customers, 100 million annually could be used to finance
22 storm hardening and other improvements to the utility's
23 existing infrastructure. The expected flow of funding
24 from such sources could also be used to finance bonding
25 by the utility, and the amount could be up to a billion

1 dollars to pay for the immediate hardening and
2 infrastructure improvements that are needed.

3 The existing core infrastructure in the older
4 areas of communities like Coral Gables is typically
5 where the hardening is the most needed. These are the
6 older facilities that in many cases have been largely
7 depreciated. But without that existing infrastructure,
8 service could never be extended to the new businesses
9 and homes that are built in the outlying newly developed
10 areas, which again is why I believe that the collection
11 of contributions from the outlying newly developed areas
12 should and could be used to improve and harden the
13 facilities in the central core system.

14 Now, I'm aware that there's an existing
15 statutory limitation in Chapter 366 that would
16 essentially require CIAC payments to electric utilities,
17 except for undergrounding, to be made by the ultimate
18 consumer. However, this could be a minor addition to
19 the closing statement on any new home or business built.

20 This concludes my testimony. I would be
21 pleased to answer any questions.

22 MR. HARRIS: I don't believe we have any
23 questions, if we want to go on to the next presenter.

24 MR. BRUCE: Members of the Commission and
25 staff, my name is Thor W. Bruce, T-h-o-r W. B-r-u-c-e.

1 I've been appointed to the Coral Gables Utility Service
2 Reliability Task Force as the member appointed by the
3 commission, the committee itself.

4 I would like to thank the Commission for
5 sharpening its focus on hurricane hardening of
6 utilities, and I would like to point out that the City
7 of Coral Gables Utility Service Reliability Task Force
8 would not exist today if it wasn't for the concern of
9 our citizens for the speed of storm restoration.

10 We appreciate the complexity of the problem
11 and the balancing act required between, one, the cost to
12 harden -- and I would like to point out here that it's
13 known through the market economy that people are willing
14 to pay for reliability. We see how cars that are
15 reliable sell well and sell for higher prices, and
16 probably people are going to be willing to pay a little
17 bit more for electricity to have a reliable source of
18 power.

19 But that cost of hardening needs to be
20 balanced against the economic impact. The cost of the
21 economic impact to businesses and individuals is so
22 great, it's almost impossible to measure. It's
23 staggering.

24 And if we had a real storm, not a weak storm
25 like Wilma, a real storm hit and sit over South Florida

1 for 24 hours, as we've seen happen, at a category 5
2 level, this may actually end the economic history of
3 South Florida. This is a very, very serious problem.

4 So it's a balancing act between the cost to
5 harden and the possibility that people may be willing to
6 pay for this cost to harden through higher rates against
7 the immense economic impact, and then against some minor
8 aspects, like we like our tree canopy. And we like to
9 have our tree canopy in Coral Gables, the City
10 Beautiful, as well as have reliability, and we do like
11 the esthetics of underground as opposed to overhead
12 wires and transformers sitting on poles. But the most
13 important thing here is the cost to harden versus the
14 economic impact.

15 Now, a member of our task force, Jorge Otero
16 -- that's J-o-r-g-e, O-t-e-r-o -- had a previous
17 commitment and was not able to come today, but he had an
18 interesting comment that he wanted me to pass on, and
19 that is, he believes that we need to decide early on
20 which portions of the distribution network should be
21 underground versus overhead.

22 And the reason for that is because of the
23 contribution in aid of construction. The CIAC formula
24 spells out that when you decide to pay for
25 undergrounding, you have to add back the net book value

1 of the removed facilities, and you have to pay for the
2 cost of removing the old overhead facilities. And if we
3 go forward on a hardening system that spends money on
4 overhead utilities, it's going to become more and more
5 expensive to then convert to underground utilities, and
6 we don't want to be paying twice.

7 So there's a need to decide early on which
8 portions of the distribution network should be overhead
9 versus underground, and it probably should be hybrid.
10 There's probably places where it's cheaper to go
11 underground than others and probably places where it's
12 more effective to go underground than others, and that
13 decision needs to be made early on.

14 And probably there needs to be study, as we
15 understand the Commission -- Commissioner Arriaga has
16 pointed out to us that maybe some of the state
17 universities should study the relative benefits of
18 overhead versus underground. But this decision should
19 be made early on, because the impact in cost later on of
20 conversion will be higher if you spend a lot of money
21 hardening overhead that subsequently you're going to go
22 underground. So Jorge wanted to make that comment quite
23 clear.

24 One of the things Jorge also pointed out is
25 that when you go underground, of course, you'll have

1 lower maintenance costs, as well as perhaps as much as
2 seven times more reliability.

3 So I think these are important issues that our
4 task force had been discussing. Our report is getting
5 near completion, and we'll be happy to submit it
6 shortly. Thank you.

7 MR. HARRIS: Does the City of Coral Gables
8 contingent have any more comments, Mr. Lopez, any of
9 the --

10 MR. LOPEZ: No, Mr. Harris. We have completed
11 our presentation and testimony. Thank you, sir.

12 MR. HARRIS: Wonderful. Thank you. I really
13 appreciate you all being here. I do think we have some
14 other representatives of public groups.

15 Hold on for a second. Excuse me.

16 I'm sorry. Mr. Trapp has a question, I
17 believe.

18 MR. TRAPP: Mr. Bruce, you mentioned in your
19 comments there that the City of Coral Gables is
20 preparing a study report. Do I understand that you'll
21 have some of these recommendations drawn up in a formal
22 report?

23 MR. BRUCE: Yes, sir. We have organized our
24 report into short-range, intermediate, and long-term
25 considerations, with suggestions that we're directing to

1 different utilities, to the Public Service Commission,
2 to the citizens of our community, and to our city itself
3 for things that we can do with regard to vegetation and
4 other important aspects. We plan to review this report
5 with the various utilities before submitting it, because
6 we don't want to not consider all sources of reliable
7 information. And as soon as we have an opportunity to
8 review this with the utilities in our area, we will be
9 submitting it to your Commission.

10 MR. TRAPP: Did you have an idea of the time
11 frame for that?

12 MR. BRUCE: It will be very shortly. In fact,
13 Chairman Enrique Lopez probably should answer that
14 question.

15 MR. LOPEZ: We're looking for the conclusion
16 of our report to our City Commission and city management
17 within the mid-June time line, within the next -- no
18 later than next month.

19 MR. TRAPP: Next month?

20 MS. KUMMER: Mr. Bruce, going back to the
21 report again, is the report for all utilities, or is
22 directed only at electric?

23 MR. BRUCE: It's for all utilities. But the
24 biggest problem we had, because of the economic impact,
25 was the electric utility problems, and to follow it up,

1 perhaps by Comcast because of the Internet connections.
2 And we had very, very little problems with telephone,
3 which is a very interesting thing, because the telephone
4 services come on the same utility poles, which leads us
5 to sort of suspect that for this storm, utility poles
6 were not the problem.

7 MR. BREMAN: When you say utilities, does it
8 include gray water and other issues like that, or is it
9 just pole-mounted utilities?

10 MR. BRUCE: We did not discuss any water
11 utilities, because we didn't have any failure in our
12 water. Again, this is an ad hoc committee that was
13 assembled because of the failure to restore the power
14 quickly and because of the economic impact. And we
15 didn't have any failure in our water or our sewage
16 utilities.

17 MR. HARRIS: Do you have any more questions?

18 Does anyone out in the audience have any brief
19 questions they would like to ask? I'm going to suggest
20 that after people make comments, they're free to leave
21 if they choose to, and so now might be a good time to
22 sort of state that. And before I extend that offer to
23 the City, they're welcome to stay or go as they choose,
24 I wanted to ask if anyone out there might have any
25 questions, brief questions. This isn't a debate or

1 anything.

2 No? Okay. Thank you. You all are welcome to
3 stay for the remainder of the day, or you're welcome to
4 go, whatever works for you. Thank you for your
5 participation.

6 And I've been given to understand we're going
7 to have other members of the public here who wish to
8 speak. If there are anyone, we have a microphone over
9 here, and we have another at this main table. If could
10 ask you all to sort of come forward, if there is
11 anybody.

12 Okay. Do we -- great. We have a taker.
13 Fantastic, I think. And you'll need to push the little
14 white button there by the microphone in order to use it.

15 MR. PLATNER: Thank you. My name is Alan
16 Platner, P-l-a-t-n-e-r. I'm from Boca Raton, Florida.
17 I am the chairman of our Emergency Power Committee for
18 Boca Woods Country Club, which is a private residential
19 community of 645 homes.

20 We suffered very substantially during the
21 Wilma outages, and over the last several years have had
22 many, many outages. Power is an important
23 consideration. It has become -- with the lack of
24 reliability of power, has become a substantial issue
25 both to our residents and to potential sellers and

1 purchasers of homes in our community, because we do not
2 have a reliable power circumstance.

3 We appeared at a Commission hearing on the
4 FP&L bond issue which was held in early March, at which
5 time we pointed out what we consider to be a very
6 substantial problem for those of us who live in
7 unincorporated areas of the state or county. The
8 portion of Boca Raton that we live in is in Palm Beach
9 County, but it is not within the municipality.

10 The regulations as proposed by FP&L require
11 that any activity towards burying the lines be supported
12 by or required by a municipality. As long as that
13 language exists, we are disenfranchised, as are many,
14 many other people in the state.

15 At that meeting, the Commissioners seemed to
16 take substantial interest in our comments and directed
17 FP&L to, quote, work with us to solve the problem. FP&L
18 responded immediately. Where we had not been able to
19 get attention for the previous six months, the following
20 day we had attention. And they have been very gracious
21 and attentive in providing us with an estimate of what
22 the cost would be, how it could be done, and so on.
23 We've had three or four meetings with them. They've had
24 their engineers out to survey us. However, after they
25 had given us a price, they haven't clearly identified

1 how this CIAC or CAIC works.

2 Because the innervation of our property is on
3 wooden poles, which we are told were built to the
4 standards of 25 years ago, they are probably not
5 suitable for more than 100 miles an hour. As you've
6 heard from some of these other gentlemen and as I'm sure
7 everyone is aware, the need in South Florida is to
8 increase our coverage levels to 150 miles per hour, and
9 an important part of that is burying the lines. It's an
10 imperative for us for many reasons to get our lines
11 buried.

12 We understand that there is a necessity for an
13 investment to be made, and given the right
14 circumstances, we're prepared to make such an
15 investment. However, under the current wording, we
16 don't have that opportunity. We have received again
17 several communications from FP&L telling us how much it
18 will cost, but that very specifically the rule has not
19 been approved for the 25 percent reduction in cost, and
20 even if it was, in its current form, we would not
21 qualify.

22 We have gone before, or we've had a
23 conversation, I should say, with a member of our Palm
24 Beach Commission staff, because they potentially could
25 be the municipality. Their position is quite clear and

1 well understood. They said, "we're very much in
2 sympathy with you, and we believe that burying the lines
3 in your area would benefit our entire community.
4 However, the likelihood that we could raise the money
5 for our share is somewhere between slim and none, and
6 therefore, we cannot direct the burying of lines,
7 because we would have to direct it for the entire
8 community, or for at least the district, and we don't
9 have the money for it." They have said that they would
10 support us in any other way, if we need a letter from
11 them indicating that they believe it should be done and
12 so on and so forth.

13 But I'm here today to appeal to you to change
14 the way the regulation is being written so that any
15 reasonable group -- and we are a community of 645
16 homes -- any reasonable group who is willing to invest
17 with FP&L to bury lines should have the opportunity of
18 such participation. If that is not the case, one must
19 question whether the offer of the 25 percent is a real
20 offer.

21 As the gentlemen before me have said, the
22 financing is a very difficult circumstance. The need
23 for governmental help for bond issues and so on and so
24 forth is imperative, more imperative now because
25 relatively little has been done to harden appropriately

1 during the last 15 or 20 years. I don't believe that is
2 the fault of the public. I don't believe the public is
3 aware, indeed, of what its stockholder-owned utilities
4 take responsibility for or are held responsible for.

5 The question of burying lines is very clearly
6 the best opportunity we have to provide reliability in
7 South Florida. The housing market in South Florida is
8 now quite soft. One of the important reasons is people
9 are afraid of hurricanes.

10 An interesting sidelight to this is that
11 communities such as ours are aggressively pursuing the
12 introduction of natural gas, which is a noninterruptible
13 technique of energy, because all of the new communities
14 or almost all of the new communities being built in
15 South Florida today have natural gas. They have that
16 because residents moving into the state, almost all of
17 whom come from the somewhere north of here, say, "I
18 don't want to be subjected to the power outages that we
19 hear so much about."

20 I believe it is incumbent to the economy of
21 the state that lines be buried as quickly as possible
22 and that we understand that that is by far the preferred
23 technique of hardening our structure.

24 Additionally, I would point out, referring
25 back to this CAIC, that comments made to us indicate

1 that while our current lines are 100-mile-an-hour lines,
2 more than likely, in some relatively short period of
3 time, as that standard changes to 150 miles an hour, the
4 wooden poles that we have now at 230-foot centers will
5 be increased to 150-foot centers, creating a veritable
6 forest of these wooden poles, hardly appropriate for the
7 level of residential homes in the area, more like Russia
8 in the 1930s.

9 To spend the money to do that will be very
10 substantial. When that money is spent, it will be paid
11 for by everybody in the community. We as a community
12 are prepared to in partnership with the utility bury the
13 lines at a reasonable price and remove the necessity for
14 doing what can only be called something less than a half
15 measure by trying to harden using additional poles.

16 Again, our message is, we need not be
17 disenfranchised. We need the wording to be changed so
18 that any community or group such as ours who is capable
19 be allowed to have the same discount or rebate that is
20 available to a municipality, because under the current
21 structure, most larger municipalities will not be able
22 to finance this unless there are some major changes.

23 Thank you very much.

24 MS. KUMMER: Mr. Platner, a city has the legal
25 authority to tax its citizens to pay for these types of

1 projects. Does your homeowners association have a
2 similar right or legal ability to tax or place liens on
3 property if your residents didn't --

4 MR. PLATNER: I'm sorry. I didn't clearly
5 understand your question.

6 MS. KUMMER: I'm sorry. A municipality, if it
7 chooses to underground, it has a legal right to tax its
8 residents to pay for that.

9 MR. PLATNER: Yes, they do.

10 MS. KUMMER: Does your homeowners association
11 have a similar right that it can tax or place liens on
12 property to pay for undergrounding if that were to be
13 the case?

14 MR. PLATNER: Yes. Through our property
15 owners association, we have the opportunity. And, of
16 course, we do vote on this. Your members each have a
17 voice in the property owners association.

18 But we have very substantial interest in this,
19 and we have, frankly, some very strong indications for
20 another reason. Our community, because of the -- I'm
21 going to say outrage over the outages, has indicated by
22 survey that they would like us to put a generator in our
23 community clubhouse so that in case of another
24 circumstance like what we had, we would have at least
25 someplace in the community that had light, water, the

1 potential for some food service, and air conditioning.
2 And the pricing for that, as we have looked into it, is
3 relatively similar to the cost of burying these lines,
4 as we can see it. If the lines were buried -- and all
5 the lines in our community are required to be buried, so
6 just this one strip, if those lines were buried, we
7 would have not a guarantee, but a fairly substantial
8 warranty that we would have power in our community
9 clubhouse, and we would have at least the minimum
10 coverage that our community requires.

11 MS. KUMMER: Thank you.

12 MR. TRAPP: Hi. I'm Bob Trapp. I think we
13 missed each other on the phone a couple of times.

14 MR. PLATNER: Yes.

15 MR. TRAPP: I wanted to clarify what we're
16 talking about here. As I understand it, your community
17 is an underground community, in that the homes
18 themselves are underground, and --

19 MR. PLATNER: That is correct. That was
20 required of us. So we paid for that, and that was done.

21 MR. TRAPP: And what you're really talking
22 about is the feeder line that --

23 MR. PLATNER: The perimeter line.

24 MR. TRAPP: The perimeter line.

25 MR. PLATNER: The perimeter line on Highway

1 441, between -- where we have approximately 3,100 feet,
2 is on wooden poles. They're on wooden poles in an area
3 where -- which abuts on one of our golf courses. And we
4 had tremendous damage there. We had many, many outages.
5 We believe we had over 60 percent of our outages from
6 that one perimeter.

7 So because of our storm damage, we took down
8 all the trees, and we're now rebuilding that entire
9 perimeter. As we rebuild it, it would be an ideal time
10 for us to bury these lines.

11 MR. TRAPP: So your primary issues, as I
12 understand it, is over the apparent discriminatory
13 application of the 25 percent reduction that Florida
14 Power & Light has proposed.

15 MR. PLATNER: That's right. That's right. We
16 approach the utility and say, "We would like to do this
17 based on the advertisements that you ran strongly in the
18 newspapers saying that you would help us with at least
19 25 percent," and they say, "Well, you don't qualify."

20 MR. TRAPP: You indicated that you've been
21 working with the company. And perhaps I should ask
22 Mr. Butler this from Florida Power & Light. To what
23 extent are you willing and able to work with the
24 homeowners association in order to secure an underground
25 CIAC?

1 MR. BUTLER: Well, I'll probably let Mr. Koch
2 talk to this as well in just a second, but our concern
3 has been really the ones of enforceability and access to
4 the property for the undergrounding that Ms. Kummer had
5 sort of alluded to.

6 Frankly, though, this situation is one that
7 sort of falls outside the box of what we are normally
8 thinking of as the issue here where you have a community
9 that currently has all of its facilities being overhead
10 and you're wanting to convert that community to
11 underground. If I'm understanding correctly, really
12 we've got an issue of some limited segment of a feeder
13 that serves into this community being undergrounded, and
14 then whether any sort of special treatment ought to
15 apply to that.

16 And obviously, as Mr. Platner had indicated,
17 the advice to this point is that our proposal wouldn't
18 apply to them for providing the 25 percent investment.
19 There has been, as he indicated again, significant
20 discussion about what the normal CIAC cost would be for
21 undergrounding that section of feeder.

22 I'm not sure if that responds to your
23 question. What are you looking for, Bob, as to FPL's
24 response?

25 MR. TRAPP: Well, you've made a proposal and

1 are even asking that it be included in our rules for a
2 25 percent reduction for government-sponsored
3 undergrounding. And I think the issue is a matter of
4 ability to pay, ability to hold responsible for the
5 payment of the CIAC and everything. I'm just wondering
6 how a homeowners association fits in the scheme of
7 things.

8 I mean, if these people are willing to commit
9 to, you know, the mortgage or whatever that's
10 necessary -- and I have a picture here that we pulled of
11 the Boca Woods border, and it looks like a very nice
12 clean, open, road right-of-way situation where the
13 supply lines are next to the sidewalk, which is next to
14 a fairly large road right-of-way, it appears, and then
15 the road. It doesn't look like it would be very hard to
16 do the project.

17 How do you address questions of easement? How
18 do you address questions of securing the payment of the
19 CIAC? Have you explored the same thing that was being
20 offered earlier this morning of attaching bill
21 surcharges or -- I don't know if the homeowners
22 association has the ability to bond or not, but what
23 type of financing avenues have you explored with these
24 people?

25 And again, I don't really want to get into the

1 merits of the 25 percent reduction at this point in
2 time. But just from a basic underground CIAC, these
3 people appear to be willing to work with you. They've
4 done some cost analysis showing that this may be the
5 most economic thing for them to do. How are you working
6 with these people?

7 MR. BUTLER: Well, again, what I had
8 understood is that we are working with them very closely
9 and have given them the information that would
10 ordinarily be given. The rub is whether some sort of
11 reduction in the ordinary charge that would be
12 calculated ought to apply to them. And at this point,
13 (1) we don't have a rule to do it, period, and (2) if we
14 had our proposal, the way we understand it, it wouldn't
15 end up applying to their circumstance.

16 So the working with them to make the ordinary
17 functioning of the CIAC mechanism available is something
18 that has already happened. The doing something above
19 and beyond that that would reduce the cost to them is
20 the rub.

21 MR. TRAPP: Okay.

22 MR. BUTLER: And a couple of observations
23 there. One, FPL actually already has a tariff available
24 that could would contemplate and sort of facilitate a
25 surcharge to be applied, but again, it is within a

1 government area, something that would be applied by a
2 local government. We would have some questions about
3 how that would work with respect to --

4 MR. TRAPP: What question specifically, John?
5 What problems do you have dealing with a homeowners
6 association to do this?

7 MR. BUTLER: I think that the -- one of the
8 things that first comes to mind to me -- and I have not
9 seen the homeowners association's contracts with its
10 members, but it's one of enforceability and sort of
11 unanimity. Is this something indeed where, if the
12 homeowners association by some sort of majority vote
13 decides that it wants to do something, that they can and
14 then we can require everybody who is within that area to
15 participate, even if they didn't like the idea and were
16 in the minority who had not agreed with the proposal in
17 the first place?

18 That's something that pretty clearly local
19 governments have authority to do. It's not something
20 that necessarily a homeowners agreement is going to
21 facilitate. It may, but that's something that I think
22 needs to be reviewed on a case-by-case basis with the
23 specifics of how broad and how much teeth there is in
24 each homeowners association agreement. So that's
25 certainly a significant issue.

1 Another one where this doesn't fit in really
2 the box, frankly, that we are conceiving of this right
3 off the bat is the fact that one of the reasons we are
4 looking to limit this proposal to some sort of
5 government sponsored facilities didn't have to do with
6 enforceability, but had to do really with trying to get
7 areas where you would really have an impact on storm
8 restoration costs if you undergrounded the facilities.

9 And one of the things we thought was important
10 and continue to think is important is, you have some
11 substantial contiguous area currently served -- all the
12 facilities in it are overhead. It's a pain in the neck
13 to go in there and restore house by house the overhead
14 service if you have a storm. And therefore, if you get
15 all of that facility undergrounded down to the lateral
16 level, then you have a significant reduction in storm
17 restoration costs, and therefore can justify having some
18 sort of investment in, some sort of reduction in,
19 whatever you want to call it, the CIAC that the
20 community would end up paying.

21 You know, the circumstance here where it's
22 already undergrounded and a lot of the types of cost
23 savings we're envisioning really wouldn't exist, because
24 you're not making a change from the overhead laterals to
25 underground. Really, all you're talking about is the

1 difference in cost of restoration for this segment of
2 feeder that's running along adjacent to their property
3 versus maybe not having to restore that one segment of
4 feeder. You know, there may not be nearly the sort of
5 cost savings that would justify the investment for them,
6 at least by our model.

7 That is our model, save money based on the
8 storm restoration cost reductions of having this
9 contiguous area that you no longer have to go in and
10 sort of do the hand-to-hand combat of getting back to
11 service on an overhead basis, and you can justify making
12 some sort of investment for that community, and this
13 doesn't seem to fit that model very closely.

14 MR. TRAPP: Are you suggesting that even in
15 the overhead case that this neighborhood would not
16 qualify for the pole hardening?

17 MR. BUTLER: I'm sorry. Would not qualify for
18 pole hardening?

19 MR. TRAPP: Yes. I mean, you just said that
20 it doesn't appear to qualify for your 25 percent
21 reduction for the purposes of underground hardening.
22 Would it qualify -- do you anticipate a neighborhood or
23 a project of this nature qualifying for pole hardening?

24 MR. BUTLER: For the overhead feeder lines
25 that are currently running adjacent to it is what you're

1 referring to?

2 MR. TRAPP: Yes.

3 MR. BUTLER: I think it would. I don't think
4 that there's an intent to look at that on sort of a
5 neighborhood-by-neighborhood basis if these were lines
6 -- now, again, what I think your rules and what our
7 proposal envisions is that, you know, it's basically new
8 construction, major planned work, and critical
9 infrastructure. I have no idea whether this particular
10 segment of line would fit into any of those three
11 categories in the near future. So it may not be
12 something that would be in any short or intermediate
13 term slated for the overhead hardening. But if it did,
14 if it was feeding a critical infrastructure or if there
15 was going to be some major rework on it, then, yes, it
16 would end up being built to the extreme wind standards.

17 MR. TRAPP: And therein lies my rub, because
18 the staff's proposed rules, rather than address 25
19 percent reductions that are discriminatorily spread here
20 and there, address to the extent that you are going to
21 harden overhead facilities, that that be taken into
22 consideration in the calculation and determination of an
23 underground, whether it be a conversion case or a new
24 case --

25 MR. BUTLER: And we don't disagree with that.

1 MR. TRAPP: -- cost differential. When, how
2 best are you going to coordinate on projects such as
3 this to ensure that they have the opportunity to take
4 advantage of that credit that comes from the overhead
5 hardening effect on the URD? I mean, are you -- I don't
6 know if it's feasible to coordinate at a
7 subdivision-by-subdivision level or by county level.

8 MR. BUTLER: We're already proposing --

9 MR. TRAPP: Are you working with Palm Beach to
10 coordinate these types of things?

11 MR. BUTLER: Well, first of all, just to
12 answer your question, in our proposal, which would be
13 similar to yours, as I understand it, we would be taking
14 that into account in looking at the CIAC that they would
15 be asked to pay. So, in other words, if they want to
16 underground this segment of lateral, you know, sort of
17 the deduction from the underground cost that you have
18 for the overhead facilities would reflect the hardening
19 costs for the overhead facilities. That's already
20 there. You and we agree on that.

21 The 25 percent we're talking about and
22 something that you handle somewhat differently, and I'm
23 sure we'll talk about it more later, but of also taking
24 into account something like operating and maintenance
25 expense and storm restoration cost differentials in

1 looking at the CIAC, that's the thing where in our mind
2 it needs to be targeted. And one of the big reasons it
3 needs to be targeted is that how much that differential
4 really would be is going to be very dependent on whether
5 you get this big footprint that you no longer have to
6 bring all your trucks in and restore it to service on
7 the one hand, or if you're talking about sort of
8 isolated one-off customers or one-off segments of line,
9 where that's the only thing being undergrounded, and you
10 don't really have a whole lot of impact on the overall
11 storm restoration costs, because you've still got your
12 overhead crews in the same area having to deal with all
13 the other stuff that hasn't been undergrounded. That's
14 really what drives our proposal.

15 MR. TRAPP: I look forward to getting involved
16 with that discussion later on, because I think there's a
17 lot that needs to be said here, and I'll just put one
18 last thought in your mind before we move on. In that
19 discussion, I want you to think about, if we go the
20 approach of targeted hardening as opposed to mandatory
21 hardening, I think we need to know how that information
22 is going to be shared with the public so that the public
23 can plan as you plan to maximize the cost-effectiveness
24 of when to underground. I think that's an essential
25 part of that shift, if we take it, from mandatory to

1 targeted hardening.

2 Thank you very much.

3 MR. PLATNER: May I make one additional
4 comment, please?

5 MR. HARRIS: Go ahead.

6 MR. PLATNER: I want to say clearly that the
7 people at FP&L at the staff level that we have worked
8 with have been extremely cooperative. They have been
9 very helpful, and they have discussed with us all kinds
10 of opportunities. But there has never been any
11 disagreement anyplace along the line that burying the
12 lines would not be absolutely the best thing, not only
13 for our community, but for the area in which it exists.

14 Secondly, as per the picture that your staff
15 took when they visited us, it's very clear that this
16 installation is a very easy one to do and could be done
17 at probably much lower cost than some other areas.
18 There are no roads to go over. It's in soft earth.
19 We're doing a lot of the work ourselves because we're
20 doing landscaping in the area and wanted to put this at
21 the same time as we were doing that. We have all the
22 equipment there to do these kind of things.

23 It speaks out, it cries out for a partnership
24 effect, and that's all we're looking for. But we
25 clearly feel that a community of 645 homes cannot be

1 disposed of as being unimportant. We reject that view.

2 MR. HARRIS: Thank you, sir. We appreciate
3 your comments. As I -- I believe you were in the room
4 earlier. There will be an opportunity to provide
5 written comments if you would like to take advantage of
6 that also. I wanted to make sure you heard that.

7 MR. PLATNER: Thank you.

8 MR. HARRIS: Do we have anyone else who would
9 like to provide public comments before we actually get
10 into the technical discussion of the rule language that
11 we have out there?

12 No? Okay. With that, I believe we're going
13 to go ahead and move on then.

14 According to the agenda that some of you all
15 have had a chance to pick up, we wanted to break this
16 down by rule and sort of go through each one and try to
17 get sort of an idea on one and sort of get it tied up
18 before moving on to the others. I understand there's a
19 lot of overlap between them, but we really do want to
20 sort of try to focus for our purposes so we can get a
21 handle on where we are with the specific rule language
22 we've proposed of going sort of rule by rule.

23 And so the first in the packet is 25-6.034,
24 Standard of Construction. I believe it's the first four
25 pages in the staff-proposed rule language.

1 Mr. Trapp, do you want to go ahead and give
2 sort of a summary of how this has changed from the
3 earlier version?

4 MR. TRAPP: Sure. First of all, let me say
5 thank you very much for the written comments that were
6 provided. I think they were very helpful to staff, as
7 was the discussion that we had at the last workshop. I
8 think it was a productive workshop, and I hope this one
9 is the same.

10 We took many of your comments to heart and I
11 guess have reframed this construction standard rule to
12 be more of a "it's the utility's responsibility to come
13 up with standards and to identify areas of hardening."
14 As I said earlier, it's kind of the difference between
15 the mandatory approach and the "you all do a good job"
16 approach.

17 That pretty much is an overview. We tried to
18 identify in the agenda some of the remaining issues that
19 we want to really touch on today.

20 And I have to, as we did in the first
21 workshop, turn first I guess to the munis and co-ops and
22 ask about jurisdiction. We read your comments. They
23 seemed to say that while you appreciated what we were
24 doing, you didn't really want our help, but you might be
25 able to live with it if we wrote the rules right. And

1 here we have a rule that only requires you to identify
2 what you need to do to get your services right and your
3 customers happy and submit those standards and plans to
4 the Commission on an informational basis, and an action
5 basis only if something is wrong. Does that make you
6 all feel any better?

7 MR. WILLINGHAM: My name is Bill Willingham --
8 that's B-i-l-l, W-i-l-l-i-n-g-h-a-m -- with the Florida
9 Electric Cooperative Association.

10 Bob, we think you've come a long way with the
11 rule, but again, we're going to have a problem just
12 conceding jurisdiction just for the precedence that it
13 sets.

14 And we're struggling with a lot of things too.
15 There are some things in the rule, particularly
16 subsection (5) with the overhead, where there seem to be
17 somewhat conflicting directions that we're getting
18 there. As we said in our comments, our real problem
19 with poles and things coming down has been the tornadic
20 winds, whether microburst, tornados, we're not sure, and
21 also trees. And we've had the experience where the
22 hurricanes hit the same area twice, and the second time
23 it hits it, there's very few tree limbs coming down, and
24 our poles are staying up, it's just the wire coming
25 down.

1 So we know that the trees are a big problem,
2 and we think a lot of that has been taken care of, both
3 by the hurricane and by the customers now letting us cut
4 a lot more than we used to. And building to the extreme
5 wind standard we feel is really going to do very little.
6 One of our co-ops basically said it's going to be a
7 matter of hours, not a matter of days, the difference
8 that it's going to make, but the cost is tremendous.

9 So to the extent that we're willing to go
10 along with the rule and say we're under the rule, I
11 think we're going to object to that just on a
12 jurisdictional basis. But we definitely are looking at
13 the rule. We're struggling with the same things
14 everybody else is, and we're looking at all this.

15 MR. TRAPP: I would like to point out that
16 section (5) now only requires you to establish
17 guidelines and procedures whereby you will consider
18 extreme wind conditions. That to me is a considerable
19 difference between, you know, mandating that all poles
20 be traded out for the extreme winds. It makes you do a
21 critical assessment of your system and determine areas
22 where you feel that pole replacement is necessary, but
23 it does not mandate it as such on a systemwide basis.

24 MR. WILLINGHAM: What I was really getting to
25 was what seem to be competing interests. You know, if

1 we build to the extreme -- for example, Withlacoochee
2 has determined they've got some 130 extreme wind areas,
3 and to meet that standard, they're going to have to put
4 in about 50 percent more poles on every line that
5 they've got there. So the problem is, by putting in all
6 the extra poles, your restoration time when you get hit
7 by a tornado is going to be a lot higher because you've
8 got to build another 50 percent of the poles back up.

9 So what I was getting to, these are kind of
10 competing things, and we really don't necessarily want
11 to give the PSC the authority to second-guess our
12 judgment that we've done, and that's what this rule
13 seems to do.

14 MR. TRAPP: Okay. And Bill Peebles. Where is
15 Fred, Bill?

16 MR. PEEBLES: Fred is in Orlando. I'm not
17 sure what he's doing.

18 I'm Bill Peebles, P-e-e-b-l-e-s. I represent
19 today the Florida Municipal Electric Association, and as
20 Bob knows, I'm sort of a newcomer to this party.

21 But we appreciate the progress, in our view,
22 that you've made in the rule and understand the
23 difference in approach. But as you will understand, we
24 remain unable to concede jurisdiction, and I don't think
25 there's any need to go into that argument again. We've

1 provided post-workshop written comments that I'll say,
2 since I didn't write them, I found persuasive, and we'll
3 stand by those comments.

4 MR. TRAPP: Tell Fred we really missed his
5 story.

6 MR. PEEBLES: He might come back.

7 MR. TRAPP: Well, I think you owe us a story.

8 MR. PEEBLES: Anything in particular?

9 MR. TRAPP: Never mind.

10 Okay. Moving right along.

11 MR. BUTLER: Excuse me, Larry. How do you
12 want to proceed with comments on .034? We have -- I
13 guess they fall into probably two categories, in part
14 because it's two different groups of people who will be
15 making them. One is on the nonpole attachment. We have
16 three or four sections we would like to make comments
17 on, and then we have some comments that we'll make on
18 the pole attachment provisions that you've added at the
19 end. Are you going to go through subsection by
20 subsection, or shall we now just give you whatever we've
21 got on nonpole attachment?

22 MR. TRAPP: I think that's a good suggestion,
23 John. We were kind of struggling with that ourselves up
24 here, whether to go line by line, rule by rule. But as
25 we've set out the agenda, we've pretty much -- okay.

1 It's the difference between mandatory versus somewhat
2 discretionary targeted, and I think we can address that
3 as one topic. If you would like to address that first,
4 we'll do that, and then let's reserve a section of time
5 just to talk about the pole attachments, because that's
6 something that you all brought up to us at the last one
7 that's kind of new. So if you want to start out, go
8 ahead.

9 MR. BUTLER: Okay. We have comments on three
10 or four of the subsections. I'll just go through them
11 in the order that they appear.

12 You've added section (2) to what we were
13 looking at in the April 17 version. This is the
14 provision for making copies of the construction
15 standards available and having them on file within a
16 90-day period, and we've got a couple of concerns with
17 that.

18 One -- and this applies particularly with
19 respect to the transmission more so than the
20 distribution, although it's not a complete stranger to
21 the distribution standards either. But there is
22 something of a security concern, and any of you who
23 participated in the storm securitization hearing will
24 remember some of the sensitivity there. There really is
25 a desire not to make conveniently accessible to people

1 who would like to do the system wrong detailed
2 information about how it's built. And so we do have
3 some concerns about just a general public accessibility
4 of all of these standards and would want to work with
5 you in some manner to try to make the accessibility of
6 them limited to what's appropriate.

7 We're a little concerned, at least in
8 principle, of how much sheer volume of paper and the
9 cost of it if people really started getting enthusiastic
10 about taking copies of these standards, because they are
11 voluminous and expensive to produce, although I have to
12 say my expectation is there won't be a huge run on them.

13 Probably the biggest concern we have there is
14 just that we think your time frame of 90 days is short.
15 Our estimate is we're probably looking at several
16 months, on the order of six months, something like that,
17 from the time that we end up agreeing on what's got to
18 be changed to where all of these standards with all of
19 the detailed revisions running through all of the
20 sections would end up being finalized. And so we really
21 do have a concern with the time period that you are
22 proposing for making the sort of final version of the
23 revised standards available.

24 So that's pretty much what we've got on
25 section (2). Our next comment we have is on --

1 MR. TRAPP: Let me just go ahead and ask you
2 some questions as we go along, if I could. On the
3 security concerns, what do you propose? I mean, should
4 we hold these things confidential? Should we review
5 them only in your offices? Should we make you come give
6 us a showing every six months? I mean, how do we
7 address that?

8 MR. BUTLER: I think probably that providing
9 them to you on a confidential basis, and that we would
10 work with you to provide access to people who have any
11 sort of legitimate interest in seeing them through your
12 office as confidential documents, where we would agree
13 to waive it for particular purposes, is probably a
14 pretty good start.

15 MS. KUMMER: Can I just jump in here, because
16 this is at least partly my language. And maybe I didn't
17 call it the right thing. But years ago, all the
18 utilities used to file builders' handbooks. I called
19 them construction manuals. Maybe that's not the right
20 term. But I kept them with my tariffs. And it was my
21 understanding that you gave those out to contractors.
22 That, I think, is what we're talking about. Is that
23 what you object to providing?

24 MR. BUTLER: That's not what we were talking
25 about. We're envisioning that there is a telephone book

1 sized set of standards, one for distribution and one for
2 transmission that have all of the detail. I guess on
3 the transmission side, it's the thing that was being
4 referring to as the DERM during the storm securitization
5 hearing, and that's how we were reading your rule
6 proposal.

7 MR. BREMAN: This is Jim Breman. Isn't your
8 contractor package already available online on your
9 website?

10 MR. SPOOR: This is Mike Spoor, S-p-o-o-r,
11 with FPL. Again, I think, Jim, the document you
12 referenced, and, Connie, the one you referenced are
13 subsections of ultimately the overall construction
14 standards, one that we have already screened to ensure
15 again that there's nothing there that we would want
16 getting into the hands of the general public.

17 MR. BREMAN: And while I'm on the topic, I'm
18 just going to go down the row here. Gulf Power, is
19 yours publicly available already?

20 MR. STONE: Again, what --

21 MR. BREMAN: The contractors' package only.

22 MR. STONE: What we're talking about there is
23 a very small portion of the distribution side of the
24 house. It does not get into the transmission
25 construction standards. And we share some of the

1 similar concerns about both from a security standpoint,
2 but other aspects of why we think that broadening this
3 to more than just what you're talking about in terms of
4 a contractor, builders' guide, that kind of thing, where
5 the public needs to be able to know what they have to do
6 in order to interconnect with our system. That's --
7 those are two different subjects.

8 MR. BREMAN: But just the contractor package,
9 isn't that already published and made available on the
10 Web?

11 MR. TRUMP: It's published and made available,
12 but we don't have it on the Web at this time.

13 MR. BREMAN: Okay. Progress?

14 MR. BURNETT: John Burnett, B-u-r-n-e-t-t,
15 with Progress Energy Florida. Jim, you're correct. Our
16 construction package, as you stated, is available. And
17 I think we call it our orange book, and I believe,
18 Connie, that that's what you were speaking about
19 earlier. It is available to the public.

20 MR. TRAPP: But again, let me clarify, what
21 you all are talking about is basically what you give
22 contractors to make sure they can interconnect with you
23 properly. It's not necessarily all your internal -- in
24 other words, if I had Jim Breman evaluate those, could
25 he tell whether or not you had appropriately hardened

1 Boca Raton?

2 MR. BURNETT: No.

3 MR. HAINES: Regan Haines, TECO, R-e-g-a-n,
4 H-a-i-n-e-s. Similar to the other utilities, we have on
5 our website what we call our SESR, Standard Electrical
6 Service Requirements, and it's for contractors to
7 understand how to interconnect with the system. So it's
8 not the entire distribution system or anything about the
9 transmission system.

10 MR. BREMAN: And Mark Cutshaw with Florida
11 Public Utilities. I saw you here earlier, and I'm not
12 going to let you get away without answering something in
13 the microphone.

14 MR. CUTSHAW: Mark Cutshaw, C-u-t-s-h-a-w. We
15 do have a builders' package available. It's not on the
16 Web, but we do have it available, and it contains just
17 the information you talked about, just how does the
18 builder connect to our system.

19 MR. BREMAN: The munis, do you all publish
20 this? Co-ops?

21 MR. WILLINGHAM: I honestly can't tell you.
22 I've never looked to see.

23 MR. PEEBLES: I don't know.

24 MR. BREMAN: Thank you.

25 MR. STONE: May I add -- this is Jeff Stone on

1 behalf of Gulf Power Company. It's also my
2 understanding that not only is it not available on the
3 Web from our perspective, but that we also routinely
4 sign confidentiality agreements with contractors when
5 they get access to some of this material.

6 MR. TRAPP: Well, again, while we're on the
7 subject, and to try to save time, so we don't get a
8 bunch of repeats in here, does everybody agree that if
9 we require this, that we can treat it as confidential
10 information under the confidentiality rules and keep it
11 in the locked vault and all that kind of stuff, and have
12 limited access even among staff?

13 MR. BUTLER: That would be fine for FPL. We
14 certainly don't have any objection to that. The only
15 other thing we would have is just reminding you that I
16 think we're going to need more than 90 days to be able
17 to get it to you.

18 MR. TRAPP: Does everybody else need six
19 months?

20 MR. STONE: Bob, this is again Jeff Stone on
21 behalf of Gulf. I'm not sure exactly the time frame,
22 but we do know that it's big. It's a large volume of
23 material. To the extent that there was some way to
24 limit the scope of what it is you want filed, that would
25 be beneficial I think both in terms of the Commission in

1 terms of record keeping. It may be that access at the
2 utility may be more beneficial from that standpoint and
3 something to consider.

4 MR. TRAPP: And I guess that's where we're
5 struggling. As regulators, you know, I can't totally
6 trust you. I've got to come look over your shoulder
7 some. It's a lot easier with our budget constraints,
8 travel constraints, monetary constraints, staff
9 constraints, for to us do that here in Tallahassee as
10 opposed to sending a bunch of people down to Pensacola,
11 Miami, wherever, Juno Beach or wherever. So I don't
12 know. We would rather have it in Tallahassee, Jeff. Do
13 you have a big heartburn?

14 MR. STONE: Well, again, it's more of a
15 logistical issue. You know, once -- we've already
16 expressed our expressed our concern about the public
17 access, and I just know that logistically, it becomes
18 much more of a management issue from the Commission
19 standpoint for confidential documents. It is easier to
20 manage if it's viewed at the utility site.

21 We certainly want to work with staff to make
22 sure you have as much access as you need to look over
23 our shoulder and ensure that we're going what the rule
24 requires.

25 MR. TRAPP: John?

1 MR. BURNETT: John Burnett, Progress Energy
2 Florida. Bob, we don't have a problem with a copy being
3 on file in Tallahassee. We would try to be judicious in
4 identifying anything that was sensitive or confidential
5 and marking only that, but otherwise, it's not a problem
6 for staff to have a copy.

7 MR. BRYANT: Howard Bryant, Tampa Electric,
8 B-r-y-a-n-t. We would be able to work with you on
9 confidentiality and provide it up here.

10 Your question on whether 90 days is
11 appropriate or not, we struggled with 90, but we're not
12 sure 180 is the number, but we'll get started.

13 MR. TRAPP: And y'all are just got going to
14 give us anything, are you?

15 MR. WILLINGHAM: Bob, I could tell you that
16 for the co-ops, the ones that are under RUS regulation,
17 their standards are online. They're on the RUS website.
18 They've been modified somewhat, but generally, that
19 would be the basic --

20 MR. TRAPP: Those are -- the RUS standards
21 that they adhere to are online?

22 MR. WILLINGHAM: Correct.

23 MR. TRAPP: But do you have interpretations of
24 that that you have to translate into line diagrams and
25 things of that nature?

1 MR. WILLINGHAM: Well, when you look at the
2 RUS standards, the line diagrams are there. Now, co-ops
3 will modify it to some extent, so it's not going to be
4 exactly that standard for every single RUS borrower, but
5 it will be close.

6 MR. TRAPP: Okay.

7 MR. GROSS: Bob, Michael Gross. I'm here on
8 behalf of the Florida Cable Telecommunications
9 Association.

10 A little bit down the road today, I had
11 intended to address a different aspect of this issue
12 dealing with the right to challenge the construction
13 standards that are filed. And I don't think that we
14 would be willing to just accept wholesale that all this
15 information would be confidential information. But to
16 the extent that it would be, since we would like to be
17 able to participate and have some input in this process
18 with some Commission review, then we would sign a
19 protective agreement. That's what we would suggest, in
20 order to have the access necessary to participate in
21 that process.

22 MR. WRIGHT: Bob, Larry, Schef. I just wanted
23 to add that -- I represent -- Robert Scheffel Wright,
24 R-o-b-e-r-t, S-c-h-e-f-f-e-l, W-r-i-g-h-t. I go by
25 Schef, which I spell S-c-h-e-f. I represent the Town of

1 Palm Beach and the Town of Jupiter Island in these
2 proceedings.

3 And I just wanted to state that I
4 fundamentally agree with what Mike just said. I can
5 conceive of a scenario where we would get into a dispute
6 on the computation of the CIAC, where we would want to
7 know whether they were calculating the hardening costs,
8 as Bob was talking about a few minutes ago, calculating
9 the hardening costs properly, and we would want to see
10 it. In such an instance, like we do in much more
11 contentious cases than these, we would be happy to sign
12 a confidential protective agreement and limit access to
13 counsel and appropriate engineers.

14 MR. TRAPP: Some of that is going on already,
15 I gather. Are you having trouble accessing information
16 at Florida Power & Light?

17 MR. WRIGHT: I would say -- generally
18 speaking, these days, Bob, I would say we are not having
19 problems getting information from FPL.

20 MR. TRAPP: And are you entering into --

21 MR. WRIGHT: We historically had some problems
22 along those lines, but for the last year or so, FPL has
23 been relatively forthcoming with information. As far as
24 I know, we're not having any problems right now.

25 MR. TRAPP: And that level of information, has

1 that been held confidential? Have you had to enter into
2 a confidential agreement on that type of information?

3 MR. WRIGHT: No. To the best of my knowledge,
4 and they'll tell me if I'm wrong, I think that all we
5 have -- what we have gotten is a binding cost estimate
6 in the case of Jupiter Island, ballpark cost estimates
7 in the case of both Jupiter Island and Palm Beach. And
8 we did get specs with engineering drawings, the great
9 big whole thing of whatever they were, 24-by-36 or
10 30-by-48, engineering drawings associated with the
11 binding cost estimate that FPL furnished to us in
12 Jupiter island. We did not get into -- we haven't asked
13 for -- to my knowledge, we have not asked for, nor have
14 we been furnished a copy of the DERM, but like I said,
15 we haven't asked for it.

16 MR. BUTLER: That's what I was just going to
17 follow up. FPL pretty routinely shows, discusses with,
18 whatever you want to call it, various limited aspects of
19 its construction standards with people where there is a
20 need to have that discussion, and we would continue to
21 do so and don't see that as something that has to be
22 coming to the Commission and seeing your copy that's
23 kept confidential.

24 The big concern is people having access to the
25 document in its totality that just -- you can use that

1 for purposes that are much different than Mr. Wright's
2 client seeing some particular provision that applies and
3 defines something about the estimate that's being given
4 to them, and it's that potential for the document being
5 accessible in its totality that we are concerned about
6 and why we would like to have the procedure that we've
7 just been discussing.

8 MS. KUMMER: Can I hop in here just a minute?

9 MR. TRAPP: Yes, jump right in, Connie.

10 MS. KUMMER: This is a question for Mr. Gross
11 and Mr. Wright. In terms of -- I think you mentioned
12 particularly challenging an assumption, and I think,
13 Schef, you also mentioned challenging CIAC. Would you
14 envision challenging -- for example, we've left the
15 hardening on a targeted basis. Would you envision
16 challenging whether or not facilities should be hardened
17 or the degree to which they would be hardened? Would
18 that be the type of thing you would be looking for in
19 challenging the CIAC?

20 MR. WRIGHT: Connie, I would say that that's
21 possible if it was a discretionary targeting issue as
22 opposed to a mandate and we wanted to convert, say, the
23 south half of Palm Beach or all of Jupiter Island.

24 You know, this is all very hypothetical, but
25 with that caveat, I would say if FPL says, "Well, we

1 don't view this as critical to be targeted for
2 hardening, and accordingly, we're only going to allow
3 you X as the estimated cost of the overhead facilities
4 that would otherwise be installed," we might say, "Well,
5 no, it really ought to be hardened, and the cost ought
6 to be 2X," or 3X or whatever, yes, that is something
7 that might become an issue in our negotiations.

8 On the other hand, FPL might say, "Sure, we'll
9 agree with you that that's critical, and have your
10 engineers talk to our engineers, and we'll all sit down
11 and figure it out." And if we have a remaining dispute
12 after that as to whether the cost is 1.8X or 2.1X, then
13 we might have to come to you on that.

14 MS. KUMMER: Mr. Gross, would you have similar
15 concerns?

16 MR. GROSS: I think I would concur with what
17 Mr. Wright has said. But our primary concern is -- I
18 mean, our understanding is that the power companies all
19 have construction standards now, but that the Commission
20 by rule is now requesting some modified or enhanced
21 construction standards to meet the goals of this rule.
22 And while there is -- and it's something that's going to
23 be done unilaterally by the power companies, according
24 to this rule. There's a right to challenge mentioned,
25 but it's not at all clear whether a third-party

1 attacher -- I mean, cable is here as a third-party
2 attacher. Those are parties who seem to have been left
3 out of this discussion, so I'm here to assert our
4 position throughout the day today.

5 But it's not clear whether a customer or an
6 applicant who has the right to challenge would include a
7 third-party attacher, number one. We would like the
8 right to challenge, but also to maybe avoid a challenge
9 if we could participate in the process and give our
10 input.

11 And also, the mechanism for challenging the
12 construction standards is the customer complaint rule.
13 And I took a look at it, and I was a little concerned
14 about whether -- it wasn't really designed, for example,
15 for a third-party attacher to challenge construction
16 standards, and we might do well to look at a different
17 procedure than the customer complaint rule.

18 MR. TRAPP: What procedure would that be?

19 MR. GROSS: Well, I haven't come up with that
20 yet. We kind of got into this midstream, and --

21 MR. TRAPP: We're on a tight time frame, Mike,
22 and if you don't have a suggestion now, I mean, it's
23 going to get passed over. I need to know what procedure
24 you're --

25 MR. GROSS: Well, with all due respect, we

1 found out about this rule development through notice by
2 rumor. And I went back to find out how that could
3 happen, and when I looked at the docket, it appeared
4 that only power companies were notified about this. So
5 we just got involved in it very recently, and we only
6 got this latest version of the rule Monday, so we're
7 really scrambling right now to address these rules.

8 Now, I will go back and work on that, but I
9 don't have a suggestion as we speak.

10 MS. KUMMER: Well, perhaps if we allow for
11 written comments afterwards, you could come up with some
12 generalized suggestions. That might be a better
13 approach.

14 MR. GROSS: Yes. We might be able to go into
15 more detail in our post-workshop comments.

16 MR. BREMAN: Last but not least, FPC regarding
17 the six months or 90 days.

18 MR. CUTSHAW: This is Mark Cutshaw. We can
19 provide them, but we will need the six-month time period
20 before we can get them updated and provide them to you
21 in a confidential manner.

22 MR. TRAPP: I think we covered most of Florida
23 Power & Light's comments. Can we move to -- are there
24 additional comments? I guess Gulf, or John, do you
25 additional comments?

1 MR. BUTLER: I'm sorry. We have other
2 comments on later subsections in .034. Do you want us
3 to go ahead and make those now, or do you want to move
4 through sort of subsection by subsection?

5 MR. TRAPP: Well, I'll tell you what. We've
6 been so productive just going subsection by subsection,
7 maybe we ought to stick there. That way we'll make sure
8 at the end we're through with the rules.

9 MR. BUTLER: Okay.

10 MR. TRAPP: Any other comments on section (2),
11 subsection (2) of the proposed .034?

12 No, no, no, no, no. I don't see any takers,
13 so can we move to section (3)? This is just reiterating
14 the generic language that's in our existing rule kind of
15 as a starting point to frame the thing, and then we go
16 there.

17 Section (4), we recognize now that the
18 National Electric Safety Code is not a construction
19 standard, but it's something to be adhered to at a
20 minimum, which implies you can go beyond it. Section
21 (4), we spell out the specificity of the code, put the
22 grandfathering provision in.

23 Section (5).

24 MR. WRIGHT: Bob, I have some questions that I
25 would like to ask in connection with subsection (4).

1 Would this be the right time for that?

2 MR. TRAPP: Yes.

3 MR. WRIGHT: Okay. You all proposed the rule
4 to adopt the 2002 edition of the NESC, which is
5 certainly the current edition. I think everybody, or if
6 they're not, they should be, in the room is aware that
7 the NESC is presently undergoing revision and there is
8 scheduled to be a new edition published next year, the
9 2007 edition. It's not a big deal to me at this point,
10 I don't think, but do you intend to just write the rule
11 to say the then current edition of the rule, or do you
12 want to come back for new rulemaking next year?

13 MR. TRAPP: We've gone through this struggle
14 with our past jurisdiction the last 20 years with the
15 National Electric Safety Code pursuant to statute, and
16 what the lawyers -- what I understand the lawyers to be
17 saying is we can't delegate our authority to the IEEE.

18 MR. WRIGHT: Thank you.

19 MR. TRAPP: And quite frankly, Schef, I in
20 good faith can't put that we've reviewed the 2007 code
21 at this point in time, so we're going to have to adopt
22 the 2002 code.

23 MR. WRIGHT: And if we need to come back next
24 year, we can come back next year.

25 MR. TRAPP: Yes. The timing may be that we'll

1 immediately turn around and then say we have reviewed
2 the 2007 code and we adopt it, but it's our intent, as
3 we've done in the past in our safety jurisdiction, to
4 keep the rules current with respect to the code
5 versions.

6 MR. BREMAN: About every five years.

7 MR. TRAPP: About every five years?

8 MR. WRIGHT: That's great. I have a couple of
9 further questions about subsection (4). (4)(b) states
10 that facilities constructed prior to the effective date
11 of the '02 edition would be subject to whatever
12 standard, NESC minimum standards were required. My
13 question is, have you all thought about and do you
14 intend to do anything about what would trigger
15 refurbishment, relocation, rebuilding, whatever, what
16 would trigger the applicability of the 2002 edition to
17 facilities that were initially constructed in, say,
18 1996, just for example?

19 MR. TRAPP: I'm open to a suggestion, but so
20 far have not heard a precise definition of when that
21 occurs, and therefore would leave it to a rule
22 interpretation on a case-by-case complaint basis.
23 That's my opinion.

24 MR. WRIGHT: Thank you. That's all my
25 questions on number (4).

1 MR. TRAPP: Can we move to (5)? Okay. (5)
2 acknowledges extreme wind loading and suggests utilities
3 should take it into consideration and develop their own
4 policies with regard to their standards for new
5 construction, major changes, and targeted
6 infrastructure. Does everybody understand what we tried
7 to say? John?

8 MR. BURNETT: Thank you, Bob. John Burnett,
9 Progress Energy Florida.

10 Bob, one minor suggestion that my company
11 would have with (5) is on line 19 in subsection (5)
12 after the words "reasonably practical." We would
13 suggest that the words "cost-effective or economic" be
14 added there. And, Bob, the intent by that was, we
15 wanted to make sure -- while in the words "reasonably
16 practical," staff may have intended to capture a
17 cost-effective analysis, and I think that could be
18 interpreted in there, we would like it more clear that
19 in our plans we could take a look at cost-effectiveness
20 as well.

21 And to give an example, there may be an
22 instance where a grade B pole may provide just as much
23 incremental benefit as a pole that wasn't necessarily up
24 to the extreme wind standard, and for cost-effectiveness
25 analysis, we could look at that and say we could get the

1 same bang for our buck out of a grade B pole, but not
2 necessarily a grade A or a concrete.

3 MR. TRAPP: And your precise word additions
4 were just the word "cost-effective"?

5 MR. BURNETT: Cost-effective, yes, sir.

6 MR. TRAPP: So reasonably practical,
7 cost-effective, and feasible?

8 MR. BURNETT: Yes, sir.

9 MR. TRAPP: And you'll put that in your
10 written comments as well?

11 MR. BURNETT: Yes, sir.

12 MR. BREMAN: Is that with the understanding
13 that it's "and," or "or"? Do you understand what I'm
14 saying?

15 MR. BURNETT: Yes, sir. I think it could be
16 all of the -- I think would have to be practical, I
17 think would have to be cost-effective, and feasible.

18 MR. BREMAN: And, and, and, not or?

19 MR. BURNETT: Yes, sir.

20 MR. TRAPP: Is anyone disturbed by those
21 words? Mike?

22 MR. GROSS: I'm not disturbed by that. I just
23 have a question. The types of construction described in
24 (5)(a), (b), and (c), would that require the utility to
25 bring all existing poles into compliance?

1 MR. TRAPP: My understanding, it says as part
2 of its construction standards, each utility shall
3 establish guidelines and procedures relative to these
4 types of construction, so it would be -- the utility
5 would have to prudently determine how to harden their
6 overhead facilities, is the intent.

7 MR. GROSS: Thank you.

8 MR. TRAPP: Any more on (5)?

9 Moving to (6), location, here we're struggling
10 with where to put things, preferably front lot,
11 preferably in easement, road right-of-way. We adopted
12 pretty much, I think, John, your language from Florida
13 Power & Light.

14 MR. BUTLER: Except I think you're talking
15 about (7).

16 MR. TRAPP: Oh, did I skip one? I skipped
17 one.

18 MR. BUTLER: And I have a comment. That's the
19 reason I noticed.

20 MR. TRAPP: Larry gave me a note here saying
21 that we're to take a break after this rule, and so I'm
22 overanxious to get on break. I'm sorry. (6) has to do
23 with addressing underground with respect to flood zones.

24 MR. BUTLER: We would -- we like what you've
25 done. The revisions to it are a lot more what we would

1 like to see on (6). The only thing we would suggest is
2 to end it after the word "storm surges" in the next to
3 the last line, instead of the "in areas designated as
4 surge zones by the DCA."

5 And the reason for that mainly is wanting to
6 avoid even an implication of something that -- I like
7 the metaphor I've heard of creating the anthill
8 phenomenon, whereby construction is to the flood zone
9 elevations that various building codes end up
10 specifying, and if there is a suggestion that some
11 different designation is used, what you could end up
12 having is the potential for construction of utility
13 facilities to a different elevation than the
14 construction of the homes, you know, nearby, so the
15 transformer pads are little anthills located up several
16 feet higher than what the rest of the construction in
17 the community would be. So to avoid that potential
18 misunderstanding, we would like to eliminate the
19 reference to the surge zone.

20 MR. TRAPP: Those maps are so pretty, though,
21 I assume that you'll continue to use them in your
22 judgment and guidance as to how you set your standards.

23 MR. BUTLER: We would.

24 MR. TRAPP: And we've thought about that too,
25 because there are certainly areas interior to the state

1 that aren't affected by surge zones that are subject to
2 river flooding or creek flooding or what have you.

3 MR. BUTLER: Yes. That's sort of the opposite
4 problem, but you're right. There you have it that you
5 have a potential for a significant flooding problem, but
6 it's not a surge problem, and this would be heading it
7 in a direction doesn't apply.

8 MR. TRAPP: Point taken. Any more comment on
9 (6), John?

10 MR. BUTLER: No.

11 MR. BURNETT: Yes, sir. Thank you, Bob. John
12 Burnett again, Progress Energy Florida.

13 Bob, on subsection (6), line 5, we would offer
14 the same suggestion, adding the words "cost-effective"
15 after "reasonably practical" there. And again, the
16 intent is if, of course, there was a new technology that
17 was brought about that would help in these efforts, it
18 may be technically feasible and practical, but could be
19 \$50 million per unit, so we would just like that ability
20 to also look at cost-effectiveness.

21 MR. TRAPP: Other comments on (6)?

22 Going now to (7), again, I think we picked up
23 Florida Power & Light's language with respect to the use
24 of easements and road right-of-ways. Is there any
25 heartburn here? Mike?

1 MR. GROSS: Yes. One of our members sent me
2 some comments expressing some concern about (7)(b). And
3 I apologize if this -- I missed the earlier discussions
4 about how this language was arrived at. But the concern
5 really is not so much about new construction being
6 placed streetside, but this language suggesting when
7 upgrading the plant, to move it to streetside. This is
8 not a common practice and would substantially increase
9 the cost of upgrading the network.

10 Since the rules are directed to the power
11 companies, it's really not cable's direct issue as an
12 attacher, but if the power companies vacate the poles in
13 the rear easements, it would force us to move as well,
14 and I don't know what the rationale was for this
15 provision.

16 MR. TRAPP: In section (b), you say?

17 MR. GROSS: (7)(b).

18 MR. TRAPP: (7)(b), for initial, expansion,
19 rebuild, or relocation. Okay.

20 Well, I think it was my intent at least to be
21 governed more by (7)(a), line 13, where it starts, "To
22 the extent practical and feasible, facilities shall be
23 placed."

24 We want to be conscious of cost-effectiveness,
25 but at the same time, we've heard innumerable,

1 innumerable stories about where the cost lies, and where
2 the impacts are are in these tangled rear lot easements
3 where vegetation is consuming and where fences have been
4 put in to block access roads and things of that nature.
5 So our intent, staff's intent is to try to encourage
6 utilities, to the extent they can, to abandon the rear
7 lot and get to the front lot. But as you can tell,
8 Mike, we're struggling with how to do that in the
9 language, so can you help us out with the language?

10 MR. GROSS: I'll take a shot at it.

11 MR. TRAPP: Okay.

12 MR. BUTLER: Bob, you have, as you said, used
13 a lot of the format of what we had proposed. There are
14 a couple of things different here that I do need to
15 bring to your attention.

16 One is, in (a), you've used the word "shall"
17 where we had "may" in the first sentence. And the main
18 concern, what we were trying to avoid there is that this
19 is probably a 99 percent complete list of where the
20 facilities would be located, but if for some reason
21 there was some location that we needed to use and the
22 customer wanted to use that didn't fit within this
23 category, we didn't want to be constrained by that.

24 We had suggested wording that I think would
25 deal with that at the end of this sentence, "as deemed

1 necessary by the utility," or something like that. But
2 somehow we need some flexibility where this isn't a
3 completely prescriptive list of where the facilities
4 could be located.

5 MR. TRAPP: Well, I think our intent, John,
6 was to put that flexibility in the opening phrase, "To
7 the extent practicable and feasible." And again, we may
8 want to talk about cost-effective.

9 MR. BUTLER: But I'm talking about the first
10 sentence.

11 MR. TRAPP: You're talking about the first
12 sentence, for initial -- line 11?

13 MR. BUTLER: And maybe a fix would be to have
14 the same sort of exception in there, you know,
15 reasonable and practical and feasible.

16 MR. TRAPP: I'll tell you what. We feel
17 pretty strongly about using easements and public road
18 right-of-ways. Where else do you put it? Illegally on
19 somebody's property without telling them?

20 MR. BUTLER: No, certainly not. But the
21 concern is just that I don't know that this is a
22 completely inclusive list of where the stuff would go.
23 And what we thought you were trying to achieve and the
24 reason we had used the word "may" was to make it clear
25 that these are all places that are okay for the

1 utilities to be putting the facilities. And the use of
2 the word "shall" flipped it around to at least raise the
3 potential concern that if there's something else in a
4 particular circumstance that is the right place to put
5 it and it's not within these categories, that we will
6 end up being precluded from doing so.

7 MR. TRAPP: And that may be a regulatory
8 difference where the utilities like "may" and we like
9 "shall."

10 MS. KUMMER: And I'll tell you what. If you
11 can come up with an example that doesn't fit into these,
12 we'll think about it a little harder.

13 MR. TRAPP: Yes. But if there is a need to
14 put a caveat, an out clause in there, "unless good cause
15 is shown" or some kind of language like that, certainly
16 I think we'll consider it.

17 MR. BUTLER: The other thing that we would
18 like you to consider, the second -- there's three
19 things -- is in the second sentence of that subsection
20 (a). We don't think this should apply to upgrades or
21 rebuilds. We don't think that moving facilities from --
22 you know, typically the example would be a back lot
23 easement out to the front, simply because you're
24 upgrading or rebuilding the facilities is something that
25 is always going to be appropriate, fair, or well

1 received by the customers where it's happening because
2 of both esthetics and their own costs of having to
3 relocate their service drop connection, et cetera, is a
4 good idea. For the new facilities, we think that would
5 be appropriate, but do not think that that's something
6 that ought to be there as a requirement for the upgrades
7 and rebuilds.

8 MR. TRAPP: Staff, I believe, more firmly
9 disagrees with you on that point. First of all, I think
10 the sentence again starts out with some discretionary
11 language, to the extent practical, cost-effective, and
12 feasible. We can put cost-effective in there if you
13 want to.

14 Furthermore, we've limited it not to any
15 upgrade. It has to be a contiguous group of customers
16 served by the same distribution line, where there's a
17 conscious decision made that for purposes of reducing
18 storm outages, increasing reliability, and what have
19 you, and it's cost-effective and it's feasible and it's
20 practical, you're going to move the thing to the front.
21 And the word "shall" is one of those strong words that
22 we like to use to tell the utilities we're serious.

23 MR. BUTLER: In staff's view, if a
24 circumstance arose where there was going to be a rebuild
25 that triggered this and you had a block in which none of

1 the customers wanted this to happen, either for
2 esthetics or cost --

3 MR. TRAPP: I'm sure we would hear about it,
4 and a rule waiver might be applicable.

5 MR. BUTLER: I'm sorry?

6 MR. TRAPP: A rule waiver in those
7 circumstances might be applicable. Now, I speak as an
8 engineer. Maybe I need to turn to Larry, the attorney,
9 and see if we can waive this rule in that circumstance.
10 Do you have a feel for that, Larry?

11 MR. HARRIS: No comment. No comment. It's
12 something that we would need to think about.

13 MR. BUTLER: That really is a concern. I
14 mean, to some extent, there's the old Marxist phrase,
15 the revolution of declining expectations. The people
16 who have the stuff back there and like it there, and
17 suddenly, just because of something out of their
18 control, there is a decision to upgrade the facilities,
19 and now that shunts it into the category where it has to
20 be located at the front of their property, and they may
21 not like the appearance of that, they may have some
22 pretty major investments in their own personal
23 electrical facilities to facilitate the connection to
24 the newly located service drop, et cetera, that's just
25 something that concerns us. And sort of having to do it

1 blanket -- and unfortunately, I'm not sure that the
2 practical, cost-effective, and feasible picks up that
3 concern, so the exception that you've created may not
4 end up addressing it, and we would ask you to consider
5 that.

6 MS. KUMMER: You understand that what we're
7 trying to fix is -- the back lot lines have been
8 trouble, always will be trouble, and we're trying to
9 find a way to migrate gently away from that. And maybe
10 this language doesn't quite do that. But I think you
11 are probably sympathetic at least with the goal, and if
12 you have some better way of accomplishing that, we would
13 certainly be willing to listen.

14 MR. BUTLER: The only other thing there, even
15 if you leave it as it is, you should at least take out
16 the customer, or "affecting a customer." I mean, I
17 don't think anybody would think it would be a very good
18 idea to move, you know, a line or a single pole out to
19 the front where really what you've got is just that a
20 single customer is affected. The contiguous group of
21 customers is the sort of thing where it would make sense
22 to have that sort of line relocation.

23 MR. TRAPP: Again, I would rather think of
24 some creative caveat language for that rather than
25 remove that, because I assume there would be

1 circumstances where an individual customer would
2 benefit, as the system well may too, from a relocation
3 from back to front.

4 MS. MOORE: How about inserting something, a
5 good cause provision, and maybe you could come up with
6 some examples for us of what would be good cause.

7 MR. BUTLER: We can work with that.

8 And the last thing, and I will stop talking on
9 this rule section, we had sort of an ending paragraph on
10 our equivalent to this section that required that the
11 locations where the facilities would be put would be
12 provided by the applicant in a reasonable time and would
13 comply with applicable rules and regulations. We would
14 like to see that included, because we think both of them
15 are important points. It was just sort of a stub
16 paragraph that went after section (c).

17 MR. TRAPP: It reads, "In all cases, the
18 location must be provided by the applicant"? Is that
19 the one you're talking about?

20 MR. BUTLER: That's the one, yes.

21 MR. TRAPP: We'll look at it again.

22 MR. BUTLER: Thank you.

23 MR. TRAPP: (7).

24 MR. STONE: Gulf has some comments we would
25 like to make on subsection (7). First, we think for

1 clarification purposes, it would be useful to add the
2 word "distribution" between "electric" and "facilities"
3 on line 9. It seems like the scope of this particular
4 subsection is devoted to distribution facilities, and it
5 would avoid some confusion if we did that.

6 Secondly, to the second sentence in
7 subparagraph (a), you have restricted yourself to
8 easements and not the --

9 MR. TRAPP: Line 13, is that where you're at?

10 MR. STONE: The first time I was referring to
11 line 9. Now I'm on line 13, 13 through 16.

12 MR. TRAPP: Okay.

13 MR. STONE: And in particular, I'm referring
14 to line 14, where it says "shall be placed in
15 easements." And we would suggest that that needs to be
16 broadened to include other public rights-of-way where
17 the utility has the right to locate. Restricting it
18 strictly to easements would require conveyances that may
19 not be necessary.

20 MR. TRAPP: Okay. Is that it?

21 MR. STONE: That's our comments.

22 MR. TRAPP: Down the line, Power Corp. -- I
23 mean Progress. The munis were --

24 MR. PEEBLES: As long as we're still in, we
25 had, I guess, a question about subparagraph (b),

1 although I think I heard the answer. The way I
2 understand the way subparagraph (b) would work, it's for
3 new underground, and the new underground would have to
4 be on the front of the property unless the utility found
5 essentially an operational reason to go in the back.
6 And -- you're shaking your head like, yeah, that's what
7 you mean?

8 MR. TRAPP: Yes, sir.

9 MR. PEEBLES: I would just encourage you to
10 look around at the development wherein you find yourself
11 today. Southwood is a new urbanism development. There
12 are lots and lots more of these coming, and there are
13 alleys that are the utility easement access areas, and
14 there's probably no operational difference in being in
15 the front and the back. And the way this rule is cast,
16 it would require the utility to find an operational
17 benefit to moving from the front to the back and would
18 prohibit, for example, St. Joe from building this
19 development the way they want to build it and have those
20 facilities as well as alley access in the back of the
21 property.

22 MR. TRAPP: I don't think you want to listen
23 to the comment, the personal comment from me that
24 Southwood is a disaster waiting to happen. My
25 understanding is there are no shrubs, trees, or bushes

1 in Southwood at this point in time because it used to be
2 a cow pasture. And while I'm given to understand also
3 that there are some restrictive covenants about what you
4 can plant and what you can't plant, I know that as a
5 personal property owner, I very rarely listen to that
6 kind of advice. I suspect in another 20 or 30 years,
7 we're going to see trees, bushes, fences, walls, and
8 everything else in those easements back there. And I
9 think that's the problem we're facing now, and I don't
10 see why we should encourage it for the future. That's
11 again my personal Bob Trapp opinion.

12 MR. PEEBLES: Sounds like it.

13 MS. KUMMER: Just along that same point, the
14 other utilities, are you doing rear lot construction on
15 new construction now? Are you doing that today?

16 MR. SPOOR: Mike Spoor with FPL. Connie, I'm
17 not aware of any big projects of any nature that we
18 would be putting anything in the rear of.

19 MR. BREMAN: Connie, can I ask for a
20 clarification of your question? Are you speaking
21 strictly overhead, or both overhead and underground?

22 MS. KUMMER: Either, either, either overhead
23 or underground. Gulf?

24 MR. TRUMP: Ken Trump, Gulf Power. Not in
25 general. There's some commercial applications where we

1 can go in the back, but it's wide open, plenty of
2 access.

3 MR. BURNETT: John Burnett, Progress Energy.
4 Unless we're presented with an operational necessity, we
5 are not.

6 MS. KUMMER: That's what I thought.

7 MR. HAINES: Regan Haines, Tampa Electric.
8 The same. We are not building rear lot, either overhead
9 or underground. It would be a very rare exception if we
10 would do that.

11 MR. CUTSHAW: This is Mark Cutshaw, Florida
12 Public Utilities. We do not do any rear lot line
13 construction. The only exception would be shopping
14 centers that have a wide open access behind the shopping
15 center. That would be the only exception.

16 MR. GROSS: I would just like to reiterate our
17 concern at the outset, which is not involving new
18 construction or upgrades, but moving an existing line
19 from rear to front. And if I heard you correctly, Bob,
20 I thought I heard you just say a moment ago that this
21 was intended to deal with new construction.

22 MR. TRAPP: Which section are you looking at?

23 MR. GROSS: I'm looking at section (7)(b),
24 (7)(b) right now.

25 MR. TRAPP: Oh, I thought we were on (c).

1 Okay.

2 Well, again, our position, or at least my
3 position on this is that we should encourage front lot
4 as much as possible, and that there is that caveat at
5 the end of that particular sentence that gives the
6 utility the discretion to determine an operational,
7 economic, or reliability benefit to another location.

8 MR. WRIGHT: Larry.

9 MR. HARRIS: Schef.

10 MR. WRIGHT: I do have a couple of things on
11 (3) -- I'm sorry, on (7). First, Palm Beach and Jupiter
12 Island agree with Gulf's comments that in, I think it's
13 line 14, it should say, "facilities shall be placed in
14 easements or rights-of-way."

15 I would suggest a similar change in what I
16 guess it would be line 18, where it says, "shall require
17 the applicant for service to provide easements." I
18 would suggest adding the language "or access to
19 rights-of-way," recognizing that (b) may not address the
20 situation of my clients, because (c) appears to address
21 my clients' situation.

22 And my comment on (c) is that -- I guess this
23 is line 22, the second line of subsection (c). I
24 believe that the word "may" should be changed to the
25 word "shall." (1) That is consistent with the purpose

1 of the rule, as articulated particularly in subsection
2 (7)(a); and (2) I cannot envision a scenario wherein the
3 utility could object, given the other qualifications you
4 have set forth in the rule. We have to provide all the
5 necessary permits, and we have to meet the utility's
6 legal, financial, and operational requirements. I think
7 that if we check all the boxes as you have identified
8 them in the rule, then we should be entitled to have
9 them in rights-of-way and not have it left to the
10 utility's discretion.

11 Thank you.

12 MR. HARRIS: Any more comments for section
13 (7)? No? Okay. Well, the next section I believe is
14 going to be a little bit contentious, so let's take
15 five-minute break. We're trying to move this along. I
16 know a lot of people have commitments this afternoon, so
17 we are trying to move it. So let's try for five
18 minutes, please.

19 (Short recess.)

20 MR. HARRIS: All right. We're going to get
21 started up again. I think what we're going to try to do
22 is, we're going to go ahead and finish .034 and try to
23 do .0345 and then take a lunch break. We'll see what
24 kind of progress we make. I am conscious that a lot of
25 people have -- I've been told that several people have

1 commitments this afternoon, so we want to try to move,
2 so we'll see how quickly we get through .034 and .0345
3 and then decide how long to take for lunch. But we will
4 have some type of a lunch break, and then we'll come
5 back and try to get with the further rules.

6 We're on subsection (8) of 6.034, so --

7 MR. WILLIS: My name is Lee Willis, L-e-e,
8 W-i-l-l-i-s. I represent Tampa Electric, but I'm going
9 to make some comments on behalf of not only Tampa
10 Electric, but Florida Power & Light, Progress, and Gulf
11 Power with respect to pole attachments.

12 As a result of the hurricane seasons in 2004
13 and 2005, both this Commission and the companies you
14 regulate have undertaken a very comprehensive review of
15 ways critical infrastructure of the statewide
16 coordinated grid could be improved to withstand severe
17 weather.

18 Now, this Commission has undertaken a
19 multi-pronged approach to that review. You first had an
20 overall review and a workshop. You have had a pole
21 inspection docket and have issued an order with respect
22 to that, you've had a storm plan docket and have issued
23 an order with respect to storm plans, and you've opened
24 this rulemaking. In each of these various venues, you
25 have considered the various factors which have caused

1 poles to fail and have considered ways to avoid such
2 failures.

3 Pole attachments have emerged as a significant
4 concern expressed by this Commission in every phase of
5 your review of critical infrastructure. For example, on
6 in the pole attachment order that was -- pole inspection
7 order that was issued on February 27th, you noted (1)
8 that nonelectric attachments impose additional strength
9 requirements; (2) many pole attachments occur well after
10 the date of the pole installation; (3) the National
11 Electric Safety Code requires a pole must be strong
12 enough to support the facilities attached to the pole at
13 all times; (4) that third parties have completed pole
14 attachments to electric IOU wood poles that were done
15 without full considerations of the requirements of the
16 NESC; and (5) that wood pole strength inspections
17 require remaining strength assessments as well as pole
18 attachment loading assessments.

19 Now, again, in your storm plan order that was
20 issued April the 25th, you adopted 10 initiatives for
21 the utilities to consider in plans that they would file
22 with the Commission by June 1. These initiatives
23 included an audit of joint use attachment agreements to
24 determine such things as the location of poles, the type
25 of ownership, the age of the pole and attachments, and a

1 verification that the attachments are made pursuant a
2 current joint use agreement. And it said that stress
3 calculations shall be made to ensure that each joint use
4 pole is not overloaded or approaching overloading for
5 instances not already addressed in the pole inspection
6 order.

7 Now, this Commission's basic theme throughout
8 this has been that nothing should be attached to the
9 pole that is not engineered in advance to be there.

10 Pole attachments can have significant wind loading and
11 stress effects on a pole and can cause overloading, as
12 you've recognized, and that some attachments are being
13 made without notice or prior engineering, and steps
14 should be taken to assess pole attachment effects on
15 individual poles to prevent overloading.

16 In recognition of this theme, and in listening
17 to and reading your materials and orders, the four
18 companies for which I'm speaking here, Tampa Electric,
19 Gulf, Progress, and Florida Power & Light, jointly
20 proposed rules that in essence would require utilities
21 to establish, file, and maintain safety and engineering
22 standards and procedures for attachments by others to
23 the utilities' electric distribution poles that must
24 meet the National Electric Safety Code and further would
25 require that no attachment be made to the poles except

1 in compliance with those procedures.

2 Now, the Commission or staff has in your
3 proposed rules that you've circulated prior to this
4 workshop in subsection (8), the rule we're speaking of
5 now, have captured the essence of the proposal that the
6 utilities had advanced. Your rules require that the
7 utility establish and file written standards and
8 procedures for attachments by others and provide that
9 challenges to these procedures can be made by filing a
10 complaint with the Commission. We believe that this
11 approach is both reasonable and balanced.

12 Now, we would make one editorial suggestion.
13 In the first sentence that was on page 4 of your
14 handout, between -- we would suggest that you add the
15 words "safety, reliability, capacity and engineering" in
16 the first sentence between "written" and "standards."
17 And that suggested addition is consistent with the rest
18 of the language that you --

19 MR. HARRIS: Could you give me that again,
20 Lee?

21 MR. WILLIS: Yes. It is in the first
22 sentence, if you look at page 4, line 1, between
23 "written" and "standards," you would add the words
24 "safety, reliability, capacity and engineering."

25 No discussion about pole attachments would be

1 complete without a short discussion about your
2 jurisdiction. We feel very strongly that this
3 Commission has very broad and exclusive jurisdiction
4 over safety and reliability of electric utilities'
5 distribution facilities. This jurisdiction extends both
6 to the utility and to the facility itself. The proposed
7 rules are an appropriate implementation of that
8 jurisdiction.

9 We expect in the course of this proceeding
10 that there may be much said about the FCC's jurisdiction
11 in this area. Please keep in mind that there are two
12 types of issues regarding pole attachments. First,
13 there are issues of access, including the attachments'
14 effects on safety and reliability; and secondly, there
15 are issues of contract, including rates, terms, and
16 conditions applicable to the attachment.

17 Each type of access is handled differently
18 under federal law. Jurisdiction over access issues
19 rests with the state to the extent it in fact regulates
20 such issues, and jurisdiction over the rates, terms, and
21 conditions rests with the FCC unless the state certifies
22 that it has jurisdiction.

23 We believe without question the jurisdiction
24 over safety and reliability does not rest with the FCC
25 unless you fail to exercise that jurisdiction. Now is

1 the time for you to act. You've recognized a serious
2 issue that's affecting the safety and reliability of
3 electric and communications services. It is now
4 critical for the Commission to help utilities deal with
5 the threat to its distribution facilities in a fair and
6 reasonable way.

7 Part of the solution is establishment of
8 attachment standards and procedures that must require
9 that any attachment meet or exceed the National Electric
10 Safety Code before an attachment is made to the
11 facilities. A key provision in these procedures is to
12 require notification before the attachment is made. The
13 utility can then determine if it has a pole attachment
14 agreement with the attaching party and determine whether
15 the proposed attachment will overload the pole before
16 the attachment is made.

17 This rule is also very consistent with current
18 Commission activities. Your draft rules addressing pole
19 safety and reliability, including attachments to poles,
20 are supplemental to the regulations and inspection
21 policies of this Commission. The Commission under
22 existing rules actively inspects utility poles and
23 audits work orders in connection with construction of
24 transmission and distribution facilities to determine
25 whether there are variances with the National Electric

1 Safety Code. The utilities are notified in the instance
2 where there are variances that are observed, and the
3 Commission asks the utility to ensure that the attaching
4 entity remedies any variance.

5 Now, let's review the current situation.

6 There's no question that third-party pole attachments
7 increase wind loading and stress on a pole and can cause
8 the failure of a pole. Each of the utilities has a vast
9 expanse of distribution facilities, making it difficult
10 to police the interaction of third parties with its
11 distribution poles, and there is increasing concern that
12 third-party attachments are being made in the power
13 space. This, we believe, is not only dangerous to the
14 workers that make the attachments, but provides greater
15 wind stress and loading of these facilities toward the
16 top of the pole rather than in the designated
17 communications space.

18 The concerns we raise go beyond the concerns
19 about electric service. Electric distribution
20 facilities represent critical infrastructure both for
21 the provision of electric service and for the provision
22 of communication service. The Commission should take a
23 prospective engineering and safety view of the critical
24 distribution infrastructure which is essential to both
25 services.

1 The concern about pole attachments is
2 particularly acute in Florida. It's critical that the
3 proposed pole attachment rules be added as another means
4 of Florida's defense against hurricanes. The Florida
5 Legislature provided you additional jurisdiction in 1986
6 with respect to safety. You have undertaken and
7 administered that. It is now, as you've recognized, a
8 problem. It's important that you now address this, and
9 we believe that you have a duty to adopt these rules at
10 this time based on the situation.

11 The proposed rules, in essence, are an
12 important additional step in protecting the safety and
13 reliability of critical distribution infrastructure for
14 the provision of electric service and for communication
15 services.

16 We might add that in our comments that we will
17 submit, there may be some additional sections of the law
18 that -- or the law implemented that you should add to
19 your rule, and we'll add those in our comments.

20 Thanks.

21 MR. BREMAN: Can I ask him a question now?

22 MR. HARRIS: Go ahead, Jim.

23 MR. BREMAN: You said something I wasn't sure
24 if I was understanding. Is it part of the companies'
25 proposal that you're going to start reporting

1 unannounced pole attachments to the Commission for
2 review for National Electric Safety Code compliance, or
3 what was that?

4 MR. WILLIS: Well, what we were saying is that
5 we supported your rule with the addition of the words
6 that we added. And, of course, the utilities would then
7 adopt and file with you our written standards and
8 requirements. And then just as your rule provides, any
9 third party that objects to those would bring that to
10 your attention, and it would be adjudicated.

11 MR. BREMAN: Okay. Thank you.

12 MS. KUMMER: Lee, you also said that -- at
13 least what I understood you to say is that one of the
14 cornerstones is to require notification prior to
15 attachment.

16 MR. WILLIS: Yes.

17 MS. KUMMER: And if so, how would you propose
18 to enforce that?

19 MR. WILLIS: Well, we would have that
20 provision in our standards. To some degree, we would --
21 I think the spirit of all of this, Connie, is that every
22 party that interacts with a Commission pole cooperate
23 and work together to implement this. But again, I think
24 the utilities' filed procedures could possibly have some
25 provisions with respect to that, and you would have a

1 chance to review that, as would any third party.

2 MR. TRAPP: Lee, I had a question. Earlier
3 today on section (2) we were discussing whether or not
4 the standards should be filed with the Commission, and
5 if so, how, and confidentiality concerns and that type
6 of thing. We proposed that these pole attachment
7 standards and procedures be part of those standards that
8 would be filed with the Commission. Do you have or does
9 the industry have similar concerns about confidentiality
10 in filing in this section that rises to the level that
11 you did earlier?

12 MR. WILLIS: Bob, I'm not aware that we have
13 concerns about confidentiality of those particular
14 sections. I may not be sensitive to all the concerns of
15 the different companies with respect to that, but I
16 think that we certainly want them to be readily
17 available to all of the attaching parties, that they
18 would have access to them and then be able to follow
19 their full due process rights to challenge it if they so
20 desired.

21 MR. TRAPP: Okay.

22 MR. GROSS: Michael Gross on behalf of the
23 FCTA. I would just like to point out, I think as the
24 representatives of the power companies well know, that
25 most power companies and telephone companies which are

1 pole owners already have procedures for authorizing
2 attachments, and there are penalties for unauthorized
3 attachments, and there's a permitting process. The NESC
4 standards already apply, and if they're not being
5 enforced and inspections are not being done prudently,
6 that's another story, and that's something that needs to
7 be corrected. . But the NESC requirements don't specify
8 how they will be implemented, and the power companies
9 have construction standards for the purpose and
10 procedures and specifications for third-party
11 attachments for the purpose of implementing the NESC
12 standards. So we don't have any problem with that, and
13 that is currently the stats quo.

14 As far as the jurisdictional issue and the
15 suggestion of inserting the word "capacity" between
16 "written standards," or "safety, reliability, capacity
17 and engineering," I would like to make some
18 jurisdictional comments. I think there is some
19 concurrent jurisdiction in this area between the FCC and
20 the states. It's difficult to draw the line and do
21 demarcation except on a case-by-case basis.

22 But I do think that these written standards
23 and procedures for attachments, if they impact access,
24 which is a right under the FCC's jurisdiction, and if
25 they impact the make ready and pole change-out regime,

1 which is what's done when there's not enough capacity on
2 a pole for new attachments and it has to be rearranged
3 or modified or a new pole changed out to accommodate new
4 attachments, there are provisions in place for
5 reimbursement of the pole owners in those situations.

6 So if these written standards go too far, they
7 could start encroaching, and that's why we don't want to
8 just simply challenge these after the fact, but we would
9 like to be involved in the process of developing these
10 written standards and try to avoid litigation over it.

11 Now, the capacity issue is a very hotly
12 contested issue at the FCC right now, and I think it
13 would be inappropriate for this Commission in its rules
14 to inject that word, "capacity." There's a lot of
15 litigation pending now on what capacity means, and a lot
16 of it has to do with safety and engineering and the NESC
17 code. So we would strongly object to putting the word
18 "capacity" in there.

19 MR. TRAPP: I don't understand your position
20 on that. Could you elaborate a little bit?

21 MR. GROSS: Well, there is litigation right
22 now pending at the FCC where one of the key issues is
23 determining when a pole is at full capacity.

24 MR. TRAPP: I guess I don't see how it impacts
25 this rule.

1 MR. GROSS: Well, what I see here is the state
2 trying to step in. And I haven't seen these written
3 standards, but if the word "capacity" is inserted in
4 there, it's not going to surprise me if I see the power
5 companies' written standards regarding capacity
6 resolving that issue in their favor. That's pending at
7 the FCC right now.

8 MR. TRAPP: How do you determine when you
9 attach a cable to an electric pole whether that cable is
10 going to make the pole fall down without assessing
11 capacity?

12 MR. GROSS: I don't think -- "capacity" a term
13 of art. I think you have all the component parts to
14 determine the space between attachments, the NESC
15 requirements, the acceptable engineering practices. All
16 of those components and variables are sufficient to
17 determine whether that pole can accommodate another
18 attachment. And if it can't, under the FCC regime,
19 there are provisions for make ready or even -- modifying
20 the pole, rearranging attachments, or even putting a new
21 pole in there.

22 MR. TRAPP: So you're saying "capacity" is a
23 term of art or has become a term of art beyond the
24 normal meaning of the word.

25 MR. GROSS: Yes.

1 MR. TRAPP: You're saying it has nothing to do
2 with the stress on the pole; it has to do with, well,
3 maybe there's too many wires there, or maybe they're
4 lumped too close together or they're jammed together,
5 and --

6 MR. GROSS: Well, if it's a violation of the
7 safety code, and if it does create wind loading problems
8 or other safety and engineering problems, sure, I think
9 those are all legitimate concerns, and those might all
10 add up to somebody's definition of the pole being at
11 full capacity. But there is a tremendous argument
12 that's being litigated right now as to when a pole is at
13 full capacity, and all those other variables are thrown
14 into the mix of this debate.

15 MR. TRAPP: I hope you'll include that in your
16 written comments, because I think we need to understand
17 that better. The common lay use of the word "capacity,"
18 as I understand it, it doesn't offend me at all, but
19 obviously it offends you.

20 MR. GROSS: Well, I can only say that I sat
21 through five days of hearing two weeks ago with -- Eric
22 Langley, are you still in the room here?

23 MR. LANGLEY: Right here.

24 MR. GROSS: Where we presented expert
25 testimony and legal argument about when a pole was at

1 full capacity.

2 MR. BREMAN: Just so that I understand -- this
3 is Jim Breman. Just so that I understand what this
4 capacity word is, when you proposed it, Mr. Willis, did
5 you intend it to mean pole capacity? What did you
6 intend it to mean?

7 MR. WILLIS: Yes, it's pole capacity, what
8 effect does the attachment have on the pole, will it
9 cause it to fail.

10 MR. TRAPP: Well, let me ask Mr. Gross. As I
11 understood your comments, do you have a basic problem
12 with section (8), or just with that word?

13 MR. GROSS: I don't have a problem with
14 section (8), and I think it memorializes pretty much the
15 procedures and the processes that are already in place,
16 and perhaps an enhanced version of this will come out of
17 this rule, is what I would expect. So we don't have a
18 -- the only concern we have is what I expressed earlier
19 regarding the construction standards. But these pole
20 attachment standards are part of those standards, as I
21 understand that, and it's a question of some point of
22 entry that we would have to be part of the process of
23 developing those. And you had asked me if I could come
24 up with some alternative language on what kind of
25 procedure could efficiently address that, and I will

1 endeavor to do that by the time of our post-hearing
2 comments. But other than that, we really don't have a
3 problem with this, because I think this is consistent
4 with existing law.

5 MR. TRAPP: Now, you're representing cable,
6 but we also had input from Time Warner and T-Mobile.
7 Are you representing them?

8 MR. LANGLEY: No. I'm Eric Langley, and I'm
9 here on behalf of Gulf Power, and I did --

10 MR. TRAPP: That's what I thought.

11 MR. LANGLEY: -- want to address some of what
12 Mr. Gross had raised.

13 MR. TRAPP: Before you get there, could I ask,
14 are there any representatives from T-Mobile or Time
15 Warner that came to the workshop that would like to
16 provide some input on this section?

17 MR. ADAMS: Yes. I'm Gene Adams. I represent
18 Time Warner Telecom.

19 I think Mr. Gross has basically stated the
20 concerns we would have with Mr. Willis's proposal. I
21 think it does largely memorialize what is practice, but
22 there are concerns that we would have, the standards
23 that they adopt and how would we adequately challenge
24 those if we feel they go beyond what is contemplated, we
25 feel, under FCC rules and regulations now.

1 MR. TRAPP: And with respect to the overall
2 section (8), does the section give you heartburn, or is
3 it just the inclusion of those words that Mr. Willis
4 suggested?

5 MR. ADAMS: I don't think overall it gives me
6 any heartburn, but again, I think it's the way -- if
7 they're required to adopt standards and procedures,
8 again, do they go too far as to what we believe the FCC
9 requires.

10 MR. TRAPP: And with respect to this
11 Commission's jurisdiction, I mean, are you comfortable
12 with, to the extent that this Commission is involved
13 with those issues, handling that in our consumer
14 complaint type process?

15 MR. ADAMS: I don't know. I've got to check
16 on that. I don't know the answer to that right now.

17 MR. TRAPP: Gulf.

18 MR. LANGLEY: Eric Langley for Gulf Power. We
19 join, of course, in the comments that Mr. Willis made,
20 and we do think that capacity, that specific word should
21 be included in section (8). It is inextricably
22 intertwined with engineering, safety, and reliability
23 concerns, and so to try to divorce capacity from those I
24 think would be a disservice.

25 The fact that the FCC is currently considering

1 what it means to be at full capacity in no way limits
2 what this Commission can and should do, because in
3 essence, the FCC is attempting to decide this in a
4 vacuum. And if this Commission were to entertain that
5 issue, there are certainly procedures, as Mr. Gross
6 pointed out, by which they can challenge any
7 determinations that this Commission would make with
8 respect to what capacity actually means. But we
9 strongly believe that capacity, along with safety,
10 reliability, and engineering, should be included as set
11 forth by Mr. Willis.

12 MS. KUMMER: I have a question. I guess, Lee,
13 you're probably the best one to answer it. I know that
14 the state commissions don't have jurisdiction over terms
15 and conditions unless they affirmatively take that
16 jurisdiction. Is that also true of capacity? Can the
17 state assume jurisdiction over capacity, or is that
18 exclusively FCC?

19 MR. WILLIS: No. You have that jurisdiction
20 without having to certify it, and all you have to do is
21 exercise it.

22 MR. BREMAN: Would it be wrong for me to say
23 pole capacity, because the word "capacity" means a lot
24 of things to us in the electric industry. Could I just
25 say pole capacity if the language stays?

1 MR. LANGLEY: I think that would make sense.

2 MR. TRAPP: Does that help you any?

3 MR. GROSS: Well, I still take issue with it,
4 because whatever capacity means, it relates to safety,
5 reliability, engineering. And the FCC is going to
6 shortly determine what full capacity is, when a pole is
7 at full capacity, and it would seem to me that that
8 would preempt any state rule that tried to define
9 capacity in a different manner. And that's why I don't
10 think it's necessary to put that word in here, because
11 it's such a volatile word right now, capacity. And it's
12 not just necessarily the common-sense -- it's not simple
13 and a matter of common sense as to what full capacity
14 is.

15 MS. KUMMER: And how long has the FCC been
16 working on this?

17 MR. GROSS: Well, there has been litigation
18 that has been from the FCC up through the Eleventh
19 Circuit Court of Appeals up to the U.S. Supreme Court on
20 related issues, and it has finally come back from the
21 Eleventh Circuit Court of Appeals that upheld the FCC
22 formula as providing just compensation for mandatory
23 access of third-party attachers to the pole owner's
24 poles.

25 But there was an exception in that Eleventh

1 Circuit opinion that if the pole owner can show on a per
2 pole basis that the pole is at full capacity, and either
3 one of the following two conditions are met, that
4 there's another buyer waiting in the wings or they have
5 a higher value than total use.

6 And they're entitled to an evidentiary
7 hearing, which is also a departure from normal FCC
8 practice, to get that determination. And Gulf Power has
9 requested that hearing, and there was a final hearing
10 had. I think it took about a year to get to final
11 hearing on that, but there was an initial proceeding.
12 It went up to the Eleventh Circuit and came back. I
13 don't remember. It's been several years since that has
14 all taken place.

15 But the hearing process is not much different
16 from this Commission's process in terms of the
17 administrative law procedures, post-hearing filings,
18 which are coming due in the next couple of months, and
19 then the ALJ will make a ruling. And then I believe --
20 correct me if you disagree, Eric. That will then go to
21 the full Commission.

22 MR. LANGLEY: That's my understanding.

23 MR. GROSS: And then probably in this case,
24 either or both parties are going to appeal to a federal
25 appellate court regardless of however the ruling comes

1 out.

2 MR. TRAPP: I'm disappointed to hear that.

3 MR. GROSS: I'm trying to be realistic.

4 MS. KUMMER: So I guess we're looking at
5 probably another two or three years down the road before
6 we get anything from the FCC; correct?

7 MR. LANGLEY: That probably is true. But
8 again, I don't think that there's any need for the
9 Commission to wait on the FCC to do something, because
10 the FCC -- and I don't want to turn this into a forum
11 for rehashing through the issues that Mr. Gross and I
12 were on opposite sides of just a few weeks ago.

13 But the principal argument advanced by the
14 cable companies in that case on the capacity issue was
15 an economic one, not a safety one, not a reliability
16 one, not an engineering one, and in our view, not a
17 practical one. So we believe that it is appropriate for
18 the Florida Public Service Commission to include that in
19 the rulemaking and to entertain and define what that
20 means.

21 MS. KUMMER: That was sort of where I was
22 headed. This Commission has often taken the stance that
23 maybe by doing something first, we can guide the federal
24 agencies down what we think is an appropriate path.

25 MR. GROSS: And I agree with Mr. Langley that

1 we probably shouldn't debate the issues that are at the
2 FCC, because I take issue with some of the comments he
3 just made about our position on full capacity. So we'll
4 go back and forth. We've already done that at the FCC,
5 so --

6 MR. HARRIS: Are there any more comments then
7 on section (8), pole attachments? FPL?

8 MR. CUTSHAW: This is Mark Cutshaw with
9 Florida Public Utilities. Just real quick, we agree
10 with this proposed language. We do agree with the
11 capacity issue.

12 Our only concern is the actual implementation,
13 the cooperation between the parties, the cost
14 allocation, the cost sharing. That's our concern.
15 We're a much smaller utility and don't necessarily have
16 the resources some of the others do, but it will impact
17 us in our dealings with the third parties. But we do
18 agree with the language and the capacity issue.

19 MR. HARRIS: Okay. Any other comments on
20 section (8) or on this rule altogether?

21 MR. GROSS: Well, I'm just going to end by
22 saying that I foresee tremendous potential for
23 litigation on -- and I'll have to see it before. I'll
24 have to see these written standards and how they define
25 capacity. But subject to that, I could easily foresee a

1 tremendous potential for litigation here over how that
2 term is defined.

3 MR. HARRIS: Anybody else on section (8) or on
4 Rule 6-25.034?

5 MR. BUTLER: Excuse me, Larry. Not on section
6 (8), but on -- staff's proposal drops what is currently
7 section (2) of the rule, its metering standards, and FPL
8 has raised that and continues to raise it. We don't
9 understand why you're dropping it. It seems like it has
10 some value in providing kind of a common understanding
11 of what are the appropriate standards to be applicable
12 for metering. I don't see how it's related to
13 hardening, and I'm not really sure why it's being
14 dropped.

15 MR. TRAPP: Staff was under the impression
16 that that got covered in the thermal meter -- the rule
17 that came about as a result of the thermal meter dispute
18 with Power & Light, and that those standards were in
19 another section of the rules.

20 Now, if that's incorrect, maybe we can address
21 that. But we just didn't see that a meter rule really
22 belonged here. It belonged someplace else. And if it's
23 deficient, we need to fix it. I agree with you, John.

24 MR. BUTLER: Okay. So we'll check and see if
25 it's covered adequately elsewhere. If it is, we'll --

1 MR. BREMAN: This comes under our meter
2 expert, Sid Matlock, so you might want to have a
3 discussion with him, because he directed us to delete
4 it.

5 MR. BUTLER: Okay.

6 MR. TRAPP: And I need to point out before we
7 leave this rule entirely, I guess on our schedule as
8 part of this rule, we had a subsection on estimated cost
9 impacts. I don't know if you want to try to entertain
10 that now or do it after lunch or whatever.

11 MS. KUMMER: Is it a long one?

12 MR. TRAPP: Well, I just had one comment to
13 make.

14 MR. HARRIS: Make your comment, Bob.

15 MR. TRAPP: Okay. If you'll throw that slide
16 up, please. And maybe we got this a little out of
17 order. Maybe we should have talked about this on the
18 front end rather than the back end, but we attempted to
19 take the -- Jim attempted to take the numbers you
20 provided as cost impacts to the last workshop, and we
21 asked that you all give us some estimates for the rule
22 as it was proposed last time, and then cost estimates
23 for any changes that you wanted to make to the rule.

24 Well, assuming that the new draft of staff is
25 more in line with what you all were proposing at the

1 last workshop, I think we've got a fair comparison of
2 the two cases, one of a mandatory type of approach, and
3 a second one of a more -- you know, the responsibility
4 of the utility approach with targeted, more targeted
5 hardening.

6 What strikes me immediately about this chart
7 is, other than the lack of data -- I think it suffers
8 substantially from the lack of data, because the
9 conclusion I reach from it, there's not a great deal of
10 cost difference between the two proposals. Now, that's
11 not consistent with what I've been hearing, by anyone.
12 And therefore, my comment is to encourage you to look at
13 these numbers, and you may need to revise them, update
14 them, make sure that they're accurate.

15 The only real thing that jumps off the page is
16 Progress Energy's estimate for a 10-year conversion of
17 back lot to front lot, and we didn't even ask that.
18 That was kind of volunteered, I think, on your part. We
19 didn't specify any 10-year turnaround, although that's
20 an interesting project. But that's the only real
21 significant cost I see up there, \$100 million just for
22 that alone.

23 But I'm not seeing a whole lot of cost
24 difference here between the two proposals, which as a
25 staff member puts me in a kind of awkward position,

1 because I'm not sure what to recommend to the
2 Commission. Do I recommend them two alternatives or
3 recommend what we've got on the table today? And I've
4 got to make -- well, we have got to make that decision
5 in the next two weeks. So if you could take a look at
6 that, please.

7 MR. BREMAN: Feel free to call me directly
8 with any changes or revisions. And also Craig Hewitt,
9 he needs to be in the loop.

10 MR. HARRIS: I think we will be talking more
11 about the regulator, the SERC data and the numbers when
12 we close out the session this afternoon, so it will give
13 you a little bit of time to sort of think about this
14 while we're on lunch and then as the afternoon goes
15 along and sort of come back with it.

16 The staff is under a relatively tight time
17 line, we feel, to get something done, and so -- we know
18 it's very difficult for you all to put numbers together
19 and get them to us. We're sensitive to that. We hope
20 you're sensitive to the stress we're under timewise and
21 we can work together to get the best numbers we can so
22 that we can make a decision on what -- we, the staff can
23 make a decision on what to recommend to the
24 Commissioners.

25 Anything else on .034?

1 MR. GROSS: I apologize, but I just noticed
2 something in paragraph (8) that I think needs to be
3 addressed, and I just need to make one comment on it.
4 It's the last sentence, "No attachment to an electric
5 utility's transmission or distribution poles shall be
6 made except in compliance with such utility's attachment
7 standards and procedures as filed with the Commission."

8 And this may just run right up against the
9 FCC's mandatory access provisions if these standards and
10 procedures are manipulated to keep attachers off of
11 those poles. And keep in mind that the electric
12 utilities and the cable companies are going to be
13 competing for communication services and information
14 services, and there is an incentive for the power
15 companies to keep the cable industries and other
16 attachers off their poles.

17 MR. HARRIS: All right. With that, we're
18 going to go ahead and close out the .034 part of today's
19 discussion so we can move on. My intent is to give the
20 staff what we need to move on, so I would prefer that
21 unless there's some serious needs, as we go on, we sort
22 of tie a little bow around .034 for today. Your written
23 comments will refer to this stuff, but I would prefer we
24 don't keep referring back to it.

25 And so we're going to move on cleanly and now

1 move on to .0345. And again, we can go through it
2 either section by section -- I think there aren't that
3 many changes, so I would suggest maybe we just go
4 company by company and see if there are other concerns
5 with it.

6 MR. TRAPP: Let me before you start, because I
7 would like to get an opinion from you. First of all,
8 let me explain that in the last workshop we proposed no
9 changes to this rule because we thought we had a very
10 tight legislative directive on this. Since that time,
11 Ed Mills's group, our safety engineers basically went
12 through it and did some cleanup. So the changes that
13 you see are intended only really as cleanup.

14 Also since that time, however, the Legislature
15 has closed session and acted on that statute, and to the
16 best of my knowledge, Senate Bill 888 that was adopted
17 by the Legislature makes one change to that rule, and it
18 is the "at a minimum" language.

19 So what I need to ask you all is, does that
20 change anything in this proposed rule? Given the fact
21 that I guess the law is not law yet, and probably won't
22 be until July 1st at best, but assuming it becomes law,
23 the statute adds "at a minimum, you must comply"
24 language. We must enforce the National Electric Safety
25 Code at a minimum. Does that change anything in this

1 rule? Do we need to put the words there or something?

2 MR. HARRIS: Somebody has got to have
3 something to say about this. Come on. No?

4 MR. BUTLER: No.

5 MR. HARRIS: Well, that went fast. Great.

6 MR. WRIGHT: Larry, Schef over here. If the
7 question on the table is the question as just posed
8 about whether the "at a minimum" changes, I don't have
9 any comment. I do have one thing I wanted to bring up
10 in connection with .0345.

11 MR. HARRIS: Okay.

12 MR. WRIGHT: This is the time? Okay. It's
13 just -- my question and suggestion is, what is the
14 relationship between the reporting requirements for
15 electric work orders in .0345(2) and the sufficient
16 record keeping and accounting measures to identify
17 storm-related operating and maintenance costs for
18 underground and overhead facilities in 25-6.078? It
19 seems to me that work order information could well be
20 useful there.

21 And as background, and we've made no secret
22 about this, we've been frankly appalled at the inability
23 of the utilities to tell us how much it cost to restore
24 underground and overhead service after storms and their
25 inability to tell us what the relative reliability was.

1 It just seems to me -- and we'll think about
2 submitting post-workshop comments on the subject. It
3 seems to me that it might be possible to further the
4 purposes that you are trying to further in the record
5 keeping requirements of 6.078(4) by expanding what is
6 required in the electric work order information, such as
7 a brief description of -- a notation as to whether it's
8 an underground or overhead job and what the cause is,
9 was it in a storm restoration environment or not, was it
10 because debris flew into the wires or something like
11 that that might be checked.

12 Those are my comments, and I'll work with my
13 clients to give you something more definitive on the
14 back end of this.

15 MS. KUMMER: I think this rule only applies to
16 new construction. Is that correct? It doesn't apply
17 to --

18 MR. TRAPP: Schef, I would encourage you to --
19 if we're going to include something like that, I
20 wouldn't put it in this rule.

21 MR. WRIGHT: Would not?

22 MR. TRAPP: Would not put it here.

23 MR. WRIGHT: Okay.

24 MR. TRAPP: Those work order specifications,
25 as I understand it, were the means by which our safety

1 staff does a random sample of the work orders which to
2 inspect for safety purposes under this law, which limits
3 our inspection capability to vintage after 1986, I think
4 it is, new facilities only. You're going more, as I
5 understand it, to data collection with respect to the
6 performance characteristics between underground and
7 overhead, and I think that's where we talk about --

8 MR. WRIGHT: I missed the applicability to new
9 construction only piece. Sorry.

10 MR. HARRIS: Okay. Any other comments about
11 either what Bob was asking about or .0345 in general?
12 No? Okay. With that, we're going to go ahead and close
13 out .0345.

14 It's my inclination, unless you all tell me
15 differently, that we take a lunch break. And the reason
16 I say that is, I suspect there will be a lot of
17 discussion about 6.064 and .115, the undergrounding CIAC
18 stuff. So unless somebody tells me that it's their
19 impression we'll get through that quickly, I think we
20 probably ought to take a lunch, and I would suggest,
21 given where we are, an hour.

22 My five minutes didn't work earlier. I would
23 hope that we could really try to focus on being back
24 here and everybody sitting down and ready to start again
25 in an hour, which by my clock would be about 12:30 --

1 I'm sorry, it's 12:35 now. Let's say 55 minutes and
2 come back at 1:30 and try to really start at that time.

3 (Lunch recess.)

4 (Transcript continues in Volume 2.)

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