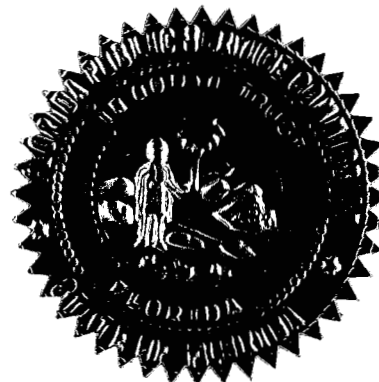


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED RULES GOVERNING PLACEMENT OF DOCKET NO. 060172-EU
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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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER J. TERRY DEASON
COMMISSIONER ISILIO ARRIAGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW

DATE: Tuesday, June 20, 2006

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1 PARTICIPATING:

2 LEE L. WILLIS, ESQUIRE, representing Tampa Electric
3 Company.

4 JOHN T. BUTLER, ESQUIRE, representing Florida Power &
5 Light Company.

6 MICHAEL GROSS, ESQUIRE, representing FCTA.

7 GENE ADAMS, ESQUIRE, representing Time-Warner
8 Telecom.

9 FRED BRYANT, ESQUIRE, representing Florida's
10 Municipal Electric Utilities.

11 SCHEFFEL WRIGHT, ESQUIRE, and LINDA SAUL-SENA,
12 representing the towns of Palm Beach and Jupiter Island.

13 MICHELLE HERSHEL, representing the Florida Electric
14 Cooperatives Association.

15 MICHAEL COOKE, ESQUIRE, LARRY HARRIS, ESQUIRE, BOB
16 TRAPP, and CONNIE KUMMER, representing the Florida Public
17 Service Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: We will begin our discussions on
3 Item 3, and I'll look to staff for an introduction.

4 MR. TRAPP: Good morning, Chairman Edgar and
5 Commissioners. Boy, have we had a good time. From April to
6 June we've had --

7 COMMISSIONER CARTER: Speak a little louder.

8 MR. TRAPP: We've had a real good time with this
9 rulemaking. From April to June we have had serious discussions
10 with the utilities, give and take, and with your indulgence I
11 have a little bit longer than usual introduction, and I'll get
12 right to it.

13 The hurricanes of 2004, as we all know, wreaked havoc
14 on Florida's electric transmission and distribution grids. The
15 back-to-back onslaught of Charley, Frances, Ivan, and Jeanne in
16 2004 and Dennis, Katrina, Rita, and Wilma in 2005 has raised
17 our awareness of what a powerful force mother nature can be.

18 While we may not be able to control the weather, this
19 Commission has undertaken a comprehensive review of ways the
20 state's critical electrical infrastructure can be improved to
21 withstand and recover from severe weather events. In 2004 and
22 2005, at the request of the legislature, the Commission studied
23 the cost of undergrounding electric facilities in Florida.
24 Based on a preliminary study done at that time and released in
25 March of 2005, it was estimated to cost approximately \$95

1 billion to place all existing overhead distribution lines and
2 feeders underground. This compares to the \$7 billion current
3 net book value of these facilities. Because of these costs,
4 the Commission directed staff to explore other alternatives,
5 too, specifically hardening, a more targeted approach at
6 strengthening both overhead and underground facilities,
7 including but not limited to improved maintenance, more
8 aggressive tree trimming, increased wind loading standards,
9 enhanced flood and storm surge protection for elements of the
10 Florida electrical grid.

11 On January 23rd, 2006, hardening was explored at a
12 public workshop. Subsequently, at the February 27th, 2006,
13 Internal Affairs, the Commission approved a multi-pronged menu
14 of specific short-term and long-term actions to address the
15 hardening of Florida's electric infrastructure. The actions
16 directed by the Commission included the requirement for pole
17 inspections, short-term and long-term storm preparedness plans,
18 increased research data collection and community outreach and
19 rulemaking.

20 We are here today to address the rulemaking segment
21 of the Commission's overall hardening strategy. Staff is
22 proposing a six-year approval of rules which require all
23 electric utilities to establish standards of construction which
24 go beyond the minimum requirements of the National Electric
25 Safety Code to ensure that new and critical existing electric

1 facilities can better withstand extreme wind loading, storm
2 surges and floods, encourage electric utilities to maximize
3 their use of easements and road right-of-ways to locate their
4 distribution facilities in readily accessible locations to
5 facilitate maintenance and storm restoration, require safety,
6 reliability, pole-loading capacity and engineering standards
7 for third-party attachments to electric facilities, and require
8 investor-owned utilities to track and account for operational
9 and storm-damage costs affecting overhead and underground
10 facilities, and to include these costs in the cost differential
11 estimates that they use for new underground installations and
12 conversions.

13 The proposed rules were developed in public workshops
14 held on April 17th and May 19th, 2006. Post-workshop written
15 comments were also solicited and received. The workshops were
16 legally noticed, all interested parties were afforded the
17 opportunity to participate and contribute their thoughts and
18 opinions. I'm happy to report that input in one form or
19 another was received from city officials and citizens of
20 Florida, the investor-owned electric utilities, municipal
21 electric utilities, rural electric cooperatives, the wood pole
22 industry, the cable industry, and the telecommunications
23 companies. To the extent deemed appropriate, these comments
24 that were received by Staff have been reflected in the proposed
25 rules.

1 In some areas the parties and Staff agree. In other
2 areas we have agreed to disagree, and in a few areas we have
3 agreed to strongly disagree. In order to better address some
4 of the concerns raised by the telecommunications companies, for
5 instance, staff has revised its originally-filed recommendation
6 to include rule language clarifying that as electric utilities
7 develop their hardening standards they are expected to
8 communicate and seek input from other entities that attach to
9 their facilities.

10 With regard to the overall topic of construction
11 standards, there were three main areas where consensus could
12 not be reached. They pertain to the location of distribution
13 facilities, standards for pole attachments, and the
14 Commission's jurisdiction over municipal electric utilities and
15 rural electric cooperatives. In order to keep the rulemaking
16 process going forward, staff has attempted to address this lack
17 of consensus in these areas by breaking the original proposed
18 standards of construction rule into four separate parts, these
19 are addressed in Issues 1 through 4. In Issues 2 and 3, Staff
20 has recommended that an additional workshop be held to collect
21 data to identify the costs alleged by third-party attachers
22 associated with these rules. In Issue 4, staff addresses the
23 jurisdictional issues over munies and co-ops.

24 Issue 1, however, staff strongly recommends that the
25 Commission take action on. We believe that Rule 25-6.034,

1 which is our standards of construction rule now, and which has
2 basically been stripped down to a basic core rule of necessity,
3 is needed at a minimum to allow the electric utilities to move
4 forward with the basic hardening decisions they need to make to
5 ensure safe, adequate, reliable, and affordable electric
6 service taking into consideration the increased risk of
7 hurricane activity that we currently face.

8 Equally important, the staff has proposed certain
9 changes to the rules pertaining to electric safety,
10 contribution in aid of construction calculations, and
11 undergrounding. These are addressed in Issues 5 through 8. We
12 believe that these rules should also be proposed for adoption.

13 I believe that many other parties are here to discuss
14 this with us today, otherwise staff is prepared to answer any
15 questions.

16 CHAIRMAN EDGAR: Thank you, Mr. Trapp, and I
17 appreciate the way you have outlined where we are and what
18 brought us to where we are today. As Mr. Trapp has said, we
19 have a number of people who have indicated an interest to speak
20 on this item. We will try to move through and give everybody
21 the opportunity to speak and, of course, the opportunity for
22 all Commissioners to ask questions.

23 Before we do that, though, I would like to go ahead
24 and start by saying thank you to our staff because we have
25 asked them to do a lot of work in these last few months and to

1 do thorough yet timely analysis, and I'm pleased that we are at
2 the point that we are today so we can have this discussion and
3 talk about these issues. And I also want to thank everyone who
4 has worked with our staff. I'm very pleased at the
5 collaboration and the discussions that we have had also to
6 bring us to this point. So, again, we have a number of people
7 who would like to speak, and I want to be sure that we get to
8 everybody, and so we will begin, Mr. Butler, with you.

9 MR. BUTLER: Thank you, Madam Chairman. John Butler,
10 Florida Power and Light Company.

11 FPL appreciates staff's hard work in developing the
12 infrastructure hardening rules. The two workshops that staff
13 held proved very useful in airing the different interests and
14 concerns of the participants. And we're pleased to support the
15 proposed rules that staff has recommended to you today, which
16 we believe are compatible with the objectives of FPL's storm
17 secure plan and will help facilitate our implementation of
18 storm secure.

19 In reviewing staff's recommendation, we have noted a
20 couple of minor glitches that we would ask you to consider
21 correcting, and I would like to run through those with you very
22 briefly here. I'm going to refer to, as page references, to
23 staff's June 8 recommendation, Attachment A. It will hopefully
24 make it a little easier to follow.

25 The first of these items is on Page 56. It's in

1 Rule 25-6.0642, and it is the formula that appears at the top
2 of the page on Page 56. And FPL would ask that the word "base"
3 be inserted into the, I guess, right-hand most box there so
4 that it would read, "Four years expected incremental base
5 demand revenue, if applicable."

6 And the reason for that, I think this is something
7 we're maybe just -- it fell through the cracks. FPL has the
8 circumstance of there being actually clause revenues that are
9 collected on a demand basis. And the intent of this is to only
10 pick up and show us an offset to the CIAC, the revenues that
11 would be collected as base revenues, so we wanted to clarify
12 that point.

13 The next item is also on Page 56, it shows up on
14 Lines 8 and 9, it would be a revision to Rule 25-6.0642(c), I'm
15 sorry, 2(b), and in the determination of the amount that would
16 be included in the calculation of CIAC, there is not a
17 reference to the net book value of replaced facilities in an
18 upgrade situation. And this is an appropriate amount to
19 collect as part of the CIAC, whatever is left of the value of
20 the facilities that are no longer used. And I would note that
21 it is consistent with what the -- what Staff's rule shows in
22 Rule 25-6.115(8)(b) with respect to conversion. So it would
23 just be making the formula for upgrades under this extension,
24 and upgrade rule consistent with what is done on conversions.

25 And, the final one is -- excuse me -- I'll refer you

1 to Page 61, and this would be a change to Rule 25-6.0784, and
2 specifically looking at Lines 15 and 16. We had discussions in
3 the workshop of the fact that in looking at the cost
4 differences between underground and overhead systems, it's hard
5 to make an apples-to-apples comparison if you look only at
6 operating and maintenance expenses, or only at capital
7 expenditures, because some of the things that would be treated
8 as repairs for overhead might be treated as capital for
9 underground, vice versa, and that distinction is reflected
10 throughout the rules staff is proposing here in doing this cost
11 differential calculation where they use the phrase operational
12 costs instead of operating and maintenance costs. But in
13 Subsection 4 here where it is talking about collecting the data
14 on the types of cost differentials that one would need to
15 reflect, it uses the term operating and maintenance costs.

16 My understanding from talking to staff is that this
17 is because they are -- or were of the impression that the
18 capital costs are already clearly divided between underground
19 and overhead. And I am advised that at least for FPL that
20 isn't the case, so it would really be better for this term to
21 refer to operational costs instead of operation and maintenance
22 costs as well. Those are the three -- again, I consider very
23 minor items.

24 Once again, congratulate staff on the excellent job
25 that they have done, their willingness to work with us and

1 their willingness to find ways of accommodating all of the
2 parties' interests as well as they have done.

3 Thank you.

4 CHAIRMAN EDGAR: Thank you, Mr. Butler.

5 Commissioners, any questions at this point? No.

6 Mr. Trapp, can you respond to the suggestions that
7 Mr. Butler has made?

8 MR. TRAPP: Yes, Ms. Kummer is going to respond.

9 MS. KUMMER: Staff can accept the changes.

10 CHAIRMAN EDGAR: Commissioners, any questions for our
11 staff or for Mr. Butler?

12 COMMISSIONER CARTER: I didn't hear what she said.

13 CHAIRMAN EDGAR: I believe she said that the changes
14 that Mr. Butler has suggested are acceptable to Staff.

15 Ms. Kummer, did I say that correctly?

16 MS. KUMMER: Yes, that's correct.

17 CHAIRMAN EDGAR: Mr. Willis.

18 MR. WILLIS: Thank you, Madam Chairman. I'm Lee
19 Willis, I represent Tampa Electric Company. I want to commend
20 staff and thank them for the way that they have conducted this
21 proceeding to date. We have had two very productive workshops.
22 We have had good dialogue in and around those workshops. We
23 have had post-hearing comments that have been made following
24 the workshops, and staff has been responsive to the various
25 points that different parties have made.

1 And as a result, I think that you have a good product
2 before you. It is one that we can support, and it is one that
3 we urge you to adopt today and to continue your momentum that
4 you have achieved from the very beginning of this year in the
5 multiple dockets and proceedings that you have had to study
6 this area. And we urge that you proceed to adopt these rules.

7 I would like to reserve time to respond if there are
8 those that make comment that would tend to undermine the
9 proposal, and I would like to come back and make a response as
10 necessary. Thank you.

11 CHAIRMAN EDGAR: Thank you, Mr. Willis.

12 Mr. Gross.

13 MR. GROSS: Thank you, Madam Chair. And good
14 morning, Commissioners. I'm Michael Gross here on behalf of
15 the FCTA. And, once again, I thank you very much for giving me
16 an opportunity to speak this morning.

17 I'm here to address Issues 1 and 3; 1 deals with the
18 construction standards and 3 deals with the third-party
19 attachment standards and procedures. We would like to reserve
20 any comments, if there is a future workshop, on Issue 2 dealing
21 with location of facilities. We appreciate the additional
22 subsection that staff inserted that allows for the parties to
23 cooperate in construction of new facilities, and we thank the
24 staff for that accommodation.

25 But we concur with the parties who have already

1 spoken that we completely support the effort of this Commission
2 to improve the safety and reliability of the electric plant to
3 prevent the kind of damage and power outages in the future, in
4 future storms that we have experienced in the last two years.

5 I would also like to recognize the attention that
6 staff has given to the FCTA's concerns and suggested rule
7 revisions. That attention is apparent from the accommodations
8 and amendments that staff has made in its staff recommendation
9 and in its amended recommendation, including the latest version
10 of the proposed rules. And while these amendments represent a
11 step in the direction of allaying all of the FCTA's concerns,
12 we believe that there are some further modifications that may
13 be appropriate.

14 And the FCTA is not here today solely to ask for a
15 deferral, although we are still urging that request that we
16 have already made. But also to take advantage of this
17 opportunity to persuade this Commission as to the modifications
18 that we would deem appropriate. And as I said earlier, that
19 has to do with 25-6.034, standards of construction, 25-6.0342,
20 third-party attachment standards and procedures.

21 The FCTA initially understood that this rulemaking
22 was intended to pursue pole hardening as a way to reduce
23 restoration costs and outage times resulting from extreme
24 weather conditions, and we applaud the Commission for taking
25 action to remedy this situation. However, we noticed that the

1 proceeding has evolved into one that may have a serious impact
2 on other industries, including the cable and telecommunications
3 industries, who are third-party attachers to poles owned by
4 electric companies. In effect, this proceeding has progressed
5 from an electric issue that focused solely on electric
6 companies with the intent to improve hurricane preparedness,
7 and now has resulted in what we believe are unintended and
8 unanticipated consequences that substantially affect
9 third-party attachers.

10 As a matter of the relevant policies, I would just
11 like to make a brief quote from the FCC's 1996 local
12 competition order. We recognize that the public welfare
13 depends on safe and reliable provision of utility services, yet
14 we also note that the '96 Act reinforces the vital role of
15 telecommunications and cable services. We believe that both of
16 these policies can be achieved without compromising either,
17 and, in particular, without compromising safety and
18 reliability. And we agree this morning that this Commission
19 does have authority to set safety and reliability standards,
20 and I think that has been recognized by the FCC.

21 Further, we have concerns arising out of the fact
22 that there is a long history of conflict between the electric
23 industry and the cable industry. And an adversarial
24 relationship with respect to pole access and pole rates, and
25 that is a relationship that we believe should be taken into

1 consideration in crafting these rules and can't simply be
2 disregarded. The rules should not be proposed in a manner that
3 gives an anticompetitive advantage to the electric industry,
4 especially in light of the changes in the competitive landscape
5 where the cable and electric industry will be competing with
6 the same services. In some places it is already happening, and
7 in other places that will occur in the very near future.

8 And the FCC has also said in its local competition
9 order that it is sensitive to the concerns of cable operators
10 and telecommunications carriers regarding utility-imposed
11 restrictions that could be used unreasonably to prevent access.
12 And that's what we're concerned about. The FCTA acknowledges
13 that the state of Florida through this Commission has authority
14 to set safety and reliability standards.

15 If you'll bear with me.

16 And the FCC has said that -- the FCC has made equally
17 clear that state and local safety requirements apply only if
18 there is no direct conflict with federal policy. And where a
19 local requirement directly conflicts with a rule or guideline
20 that the FCC adopts, the FCC rules will prevail. And the FCC
21 has indicated that it would consider the merits of any
22 individual case alleging safety, reliability, or engineering as
23 a basis for denial.

24 The construction standard rule and third-party
25 attachment standard rule, we believe, effectively delegate

1 unilateral authority to the utility, cable's perennial
2 adversary, to set construction standards and attachment
3 standards and unilateral authority to denial access for
4 noncompliance with those standards. And we think that this is
5 inappropriate and that there is some additional safeguards that
6 could ameliorate that situation.

7 The FCTA in its comments and proposed rule revisions
8 suggested that the development of these standards could be a
9 collaborative effort, and only failing an agreement could be
10 resolved by the Commission. And we think the staff
11 recommendation has made some positive changes in that
12 direction, but has not quite gone far enough.

13 Just merely giving third-party attachers input into
14 the discussion is not effective, because input can be summarily
15 disregarded. So the FCC has suggested that in cases of
16 reliability and safety that the electric companies do not have
17 unfettered authority and that they are not the primary arbiter
18 of these decisions. And the implication is that both parties
19 have equal input. And if there is no agreement, there is
20 recourse at the FCC, and also in these rules there would be
21 alternative recourse at the Commission, to seek resolution at
22 the Commission.

23 Moreover, there was a specific case dealing with
24 insufficiency of capacity which is one of the grounds on which
25 a utility can deny access. And when there is a denial based on

1 insufficient capacity, the 11th Circuit Court of Appeals in
2 Southern Company vs. FCC, 293 F.3d 1338, in 2002 held that only
3 when all parties agree can a utility deny access on the basis
4 of insufficient capacity.

5 And the point I'm trying to make from these case law
6 decisions and FCC statements of policy is that third-party
7 attachers should have somewhat more of a role in the
8 development of these standards than the rules currently afford
9 them. And there's no reason why this Commission's rules for
10 which it does have authority, and I will just repeat that
11 because I want to make sure that that's clear, there's no
12 reason why these safety and reliability rules cannot be in
13 complete harmony with FCC policy. And there does not have to
14 be a conflict.

15 And while we appreciate that the Staff rec would
16 permit input, I think I just mentioned that we feel it is
17 inadequate because it can be cast aside or ignored. Also, the
18 Staff rec provides for resolution by the Commission in the
19 event of a dispute over the standards, but while the staff rec
20 itself spells out that the resolution includes a right to a
21 hearing, the proposed rule omits that provision. And it may be
22 implicit in the right to a resolution by the Commission, but we
23 would suggest that that is mentioned in the Staff rec, that it
24 ought to also be mentioned in the rule, the right to a hearing
25 in the case of a matter where it is brought to the Commission

1 for resolution.

2 Now, our concern is with only cases where the utility
3 might set unreasonable standards calculated to prevent access
4 to its poles. And Section 224 as construed by the FCC requires
5 that the utility must justify any conditions placed on access,
6 and that the conditions must be nondiscriminatory, just, and
7 reasonable. And we are just suggesting that those terms be
8 incorporated into the rules. And then there will be no
9 disharmony with -- I don't know if that's a word -- but no lack
10 of harmony between the rules and FCC policy and pronouncements.

11 The FCTA believes that these requirements should
12 be -- excuse me, I've already covered that. As stated earlier,
13 the state does indeed have the authority to set safety and
14 reliability standards, but we are concerned that that may not
15 be what these rules are doing. That what they are doing is not
16 the state setting these standards, that the rules may be
17 abdicating the state's authority and delegating the state's
18 legislative authority to the utilities. In this respect --
19 well, I'm going to just skip one argument I was going to make.

20 CHAIRMAN EDGAR: Mr. Gross, can you kind of wrap up.
21 I want to be sure that we get to everybody, and then there will
22 be the opportunity for comments, and response, and further
23 discussion, I assure you.

24 MR. GROSS: Okay. I'd like to talk about the
25 workshops and hearing that the staff is recommending. And the

1 staff is recommending a workshop for the pole attachment
2 standards rule, and the location of facilities rule, and some
3 other rules that we are not addressing this morning, but it
4 excludes the construction standard rule from the workshop and
5 hearing opportunity. And we believe that construction
6 standards are inextricably intertwined with the attachment
7 standards. And for this reason, the FCTA is formally
8 requesting that the construction standard rule be included in
9 the additional workshop and hearing.

10 The FCTA also considers that the proposed dates, July
11 13th for the workshop, and especially August 22nd for the
12 hearing, may not allow sufficient time to prepare for the
13 hearing in particular, and would ask for those dates to be set
14 farther out into the future. Once again, we think -- and I'm
15 going to conclude now -- we believe that a deferral would have
16 a positive impact in that the Commission will have the benefit
17 of additional input on these issues before issuing proposed
18 rules. And we believe that if there is no deferral, the
19 proposed rules will carry a presumption heading into the staff
20 workshop and hearing, which can be avoided. And with more
21 information and data the hearing may be more focused, and there
22 would also be more time for the staff and the parties to try to
23 work out their differences.

24 Thank you very much, and I appreciate the
25 opportunity.

1 CHAIRMAN EDGAR: Thank you, Mr. Gross.

2 Mr. Adams.

3 MR. ADAMS: Thank you, Madam Chairman. I'm Gene
4 Adams with the law firm of Pennington, Moore, Wilkinson, Bell
5 and Dunbar, and I'm here today representing Time Warner
6 Telecom. I would like to also compliment the staff and the
7 Commission. They're doing an excellent job, we feel, in
8 attempting to enhance current rules and make our state a safer
9 place for hurricane preparedness and for those emergencies that
10 come with these high wind storm events. We had the opportunity
11 and did participate both in the rule workshops and in providing
12 written comments, as well.

13 I want to just briefly touch on about three things
14 today that we remain concerned about. We remain concerned that
15 the rules being developed by the Commission may, in fact, give
16 too much authority to the electric utilities to determine pole
17 attachment regulation through the exercise of the National
18 Electric Safety Codes. Specifically, and it was a little
19 confusing, Rule 25-6.034(2) provides that each utility will
20 establish those construction standards and a plan on how to
21 implement the safety code rules regarding pole attachments.
22 But we don't feel the rule provides a mechanism for the PSC to
23 utilize oversight and correction and coordination of all those
24 plans among all the utilities. We feel that it leaves the
25 ability to interpret those rules to each utility when, in fact,

1 we believe there should be a standard set by the PSC. We
2 believe that that delegation may, in fact, allow utilities to
3 then deny rights given under the Federal Communications Act to
4 communications carriers such as Time Warner Telecom for pole
5 attachment.

6 We generally agree with the comments of the Cable
7 Telecommunications Association that the proposed rules could
8 also cause cost shifting to the detriment of competitive
9 carriers such as Time Warner Telecom. We think we will find it
10 difficult in the future to cover those capital costs where
11 their interpretation of standards might result in increased
12 costs to us as a competitive carrier.

13 We also would state that we are in agreement with the
14 comments of the Cable Telecommunications Association with
15 regard to the pole attachment and construction standards which
16 are in Rule 6.0342, no parens there on the 2. We, again,
17 believe that the utilities would have the ability to deny
18 attachments that they interpret are not in compliance with the
19 standards established and enforced by the utilities themselves.
20 Again, we remain concerned that a broad grant of authority to
21 the utilities may, in fact, preempt the FCC regulation and
22 control of pole attachments and costs.

23 Finally, I would say that Time Warner Telecom, we
24 agree with the staff recommendation that the Commission hold
25 further hearings and a workshop to allow the third-party

1 attachers to present further evidence of the impact caused by
2 Commission Rule 6.0342. We believe this will be informative to
3 the Commission and will help demonstrate the concerns that the
4 competitive telecommunication services may be disadvantaged by
5 these rules as currently scheduled for adoption.

6 Again, thank you for the opportunity to provide those
7 comments. And I'll be glad to answer any questions.

8 CHAIRMAN EDGAR: Thank you, Mr. Adams.

9 Mr. Bryant.

10 MR. BRYANT: Thank you, Madam Chairman.

11 Commissioners, I'm Fred Bryant on behalf of Florida's
12 34 municipal electric utilities. I wish to compliment staff
13 and this Commission to recognize the differences between the
14 investor-owned utilities and the municipal electric utilities
15 and the jurisdiction of the Commission which is total over the
16 investor-owned utilities, and somewhat less than total over the
17 municipal electric utilities.

18 In addition, the Commission and staff has recognized
19 that we have wide diversity in geography between the municipal
20 electric utilities stretching from Blountstown to Key West as
21 well as significant differences in the size of our municipal
22 electric utilities ranging from 1,100 customers to over 400,000
23 customers. For the staff and this Commission to try to craft a
24 rule that fits all sizes and meets all needs is difficult at
25 best, and I think the Commission and staff is almost there.

1 I have a few comments that I think will hopefully
2 help clarify some of the language and some of the procedure
3 that the Commission and staff will have to address in the
4 implementation of these rules as to the municipal electric
5 utilities and the difficulties and the differences in the
6 jurisdiction.

7 However, as an introductory comment, let me state
8 that the reliability and the protection of a customer of an
9 investor-owned utility and a municipal electric utility should
10 be no different. Each customer desires the same thing, to make
11 sure that their utility has built their system to withstand
12 events that no one wishes upon them, but all must plan for.

13 Having said that, if you would please turn your
14 attention to Page 52 of the rule, and I'm going to jump around
15 a little bit simply because of the ordering of my comments.
16 This is the stand-alone rule that the staff has proposed for
17 the municipal electric utilities and the rural electric
18 cooperatives. And the main part of this rule simply adopts the
19 rules that are applicable to the investor-owned utilities
20 verbatim into the stand-alone municipal and cooperative rule.

21 I would suggest as a procedural matter that you not
22 incorporate by reference, but whatever the final rules, final
23 language, that the Commission and the staff recommend as to the
24 municipals that you print out, if you will, state those words,
25 those rules in their totality. And the reason is very simple.

1 I can imagine that from time to time the rules dealing with the
2 investor-owned utilities probably will have a word or two that
3 will be different in application than the municipal electric
4 utilities, and I would suggest then what happens then if you
5 have a rule change as to an investor-owned utilities or even
6 something as simple as a word change to their rule then that
7 makes its cumbersome, if not difficult, to incorporate by
8 reference into the municipal stand-alone rule. Therefore, I
9 think that it's simply a matter of cutting and pasting, if you
10 will, on your current rules to put those rules in their
11 totality into the municipal sector. It's not a criticism, it's
12 just a procedural suggestion that I think will make life easier
13 for all concerned.

14 As to substantive comments, if you will turn to Page
15 48 of your handout, Subsection 2, Line 19, you have the words
16 at the very beginning of Line 19 offices in Tallahassee, at the
17 utility's offices in Tallahassee. I don't know if this is a
18 typo or not, but obviously Key West does not have an office in
19 Tallahassee, nor does Blountstown have an office in
20 Tallahassee. So I don't know exactly what the staff's
21 intention was there, but I believe it's a typo not to require
22 the standards of construction of Key West to be brought to
23 Tallahassee where there are no offices. I think it is a typo
24 and nothing that we have any great problem with from a
25 substantive standpoint.

1 You also have language in this section that talks
2 about any dispute or challenge to the utility's construction
3 standards by a customer, applicant for service, or attaching
4 entity. I question whether or not the staff intends as to the
5 municipal electric utilities that the Commission hear customer
6 complaints between a municipal electric utility and a customer
7 as to an attachment, or a safety standard, or a construction
8 standard because there is no place in the jurisdiction of the
9 Commission, statutes or the rules, that confer to the
10 Commission jurisdiction to hear that type of customer complaint
11 as opposed to our rate structure, territory, and other things.

12 So I suggest some wordsmithing in this area to
13 recognize the differences between the Commission's jurisdiction
14 over customer complaints, which is total as to the
15 investor-owned utilities, and very limited as to the municipal
16 electric utilities. And that is one of the reasons why a
17 simple reference adoption to the investor-owned utilities'
18 rules as applicable and applying to the municipal utilities
19 does not work.

20 If you will turn to Page 51, Line 9, the word
21 transmission at the beginning of the line I think is an
22 inadvertent usage of a word here, because clearly this
23 Commission does not have jurisdiction over attachments of one
24 electric utility with another electric utility at the
25 transmission level. That is exclusively within the

1 jurisdiction of the Federal Energy Regulatory Commission.

2 For example, when we build a new power plant and we
3 run our transmission line to the nearest substation or the
4 nearest transmission line of an investor-owned utility, that is
5 our attachment to their transmission line. Those attachment
6 standards and conditions are clearly exclusively -- have been
7 and continue to be regulated by the Federal Energy Regulatory
8 Commission. And again I think it is an inadvertent usage of a
9 word here which we do not quarrel with where the staff is
10 trying to get to, but I think it is inappropriate the way it is
11 worded at this point.

12 Those are the main gist of the comments that we have
13 on this rule. I compliment all who have been involved trying
14 to achieve a common goal with divergences of background and
15 jurisdiction. We will participate in the future rulemaking
16 with additional clarifications, if necessary, to the rules.
17 But with those changes, that will primarily resolve the
18 problems that our 34 municipal electric utilities have with the
19 rulemaking as we see it today.

20 Thank you very much. If there are any questions, I
21 will be happy to respond.

22 CHAIRMAN EDGAR: Thank you, Mr. Bryant.

23 Mr. Trapp or Ms. Kummer, can you give us any comments
24 in response to the suggestions that Mr. Bryant has made?

25 MR. TRAPP: Well, first of all, I think many of his

1 arguments are embedded in the jurisdictional, the basic
2 jurisdictional argument. But from a policy standpoint, by
3 means of clarification, we want the munies and the co-ops to
4 provide this Commission access to their construction standards,
5 and we want that access in Tallahassee. Offices in
6 Tallahassee, it came up as a result of the concern about the
7 Commission having to process massive confidential files. So as
8 a compromise in the workshop process, the words or you can send
9 it to your offices in Tallahassee, and we will review it there.
10 Mr. Bryant has an office in Tallahassee. Mr. Bryant represents
11 the municipals. It is perfectly appropriate, in my mind, for
12 the City of Key West to send their materials to Mr. Bryant's
13 office and staff will make an arrangement to go over there and
14 review and do our regulatory function there.

15 MR. BRYANT: I don't quarrel with that. And if you
16 would add "or in Tallahassee" I think that will accomplish what
17 he is speaking to. That is why I say I believe it was a typo,
18 nor quarreling with the intent.

19 CHAIRMAN EDGAR: Okay, we can have --

20 MR. TRAPP: We could accept that language "or in
21 Tallahassee".

22 CHAIRMAN EDGAR: We will have some further discussion
23 here in a few minutes.

24 Commissioner Carter, did you have a question now, or
25 did you want to go ahead and hear from the remaining speakers?

1 COMMISSIONER CARTER: I wonder if Mr. Trapp, if it's
2 appropriate, could he finish -- were you finished?

3 MR. TRAPP: If you are ready to discuss Mr. Bryant's
4 points now, I'm willing to continue the discussion.

5 COMMISSIONER CARTER: I'll wait.

6 CHAIRMAN EDGAR: Let's hold off, Commissioner Carter,
7 and we will get to that here shortly. We've got at least two
8 other people who have asked to speak, and I want to make sure
9 that we hear from them before we go into further discussion.

10 COMMISSIONER CARTER: Thank you, Madam Chairman.

11 CHAIRMAN EDGAR: Mr. Wright and Commissioner Saul
12 Sena from Tampa. Welcome.

13 MR. WRIGHT: Thank you, Madam Chairman and
14 Commissioners. My name is Schef Wright, and I have the
15 privilege to be before you this morning representing the Town
16 of Palm Beach and the Town of Jupiter Island. I want to begin
17 by saying that we, the towns who have participated in this
18 process since before January, agree with and support many
19 elements of the staff's proposed rule, and I would like to
20 start -- I have some brief comments to make to you. I would
21 like to start by telling you what we do agree with, and telling
22 you where we think there is some room where we think you need
23 to go further. It may or may not be in the rule docket, we
24 will sort that out.

25 First, we agree with and support the staff's

1 recommendation that encourages the use of rights-of-way for
2 overhead facilities and for the location of underground
3 facilities and governmentally sponsored and supported
4 conversion projects. We generally agree with and support the
5 proposed amendments that would require that distribution
6 facilities comply with the then current version of whatever
7 standards are to be applied.

8 We are concerned, with regard to that particular rule
9 component, that there does need to be some clarity as to when
10 the current standards apply. The question is when does it stop
11 being a repair job and when does it start being a replacement,
12 relocation, rearrangement, refurbishment that requires the
13 applicability of the new standards. You know, I think it's
14 pretty easy, a utility worker goes out and replaces a 40 kVA
15 transformer on a pole, that is a simple repair, but if there is
16 major work being done, or maybe even minor work,
17 reconductoring, perhaps, of two or three spans, the question is
18 should that be built to the new standards.

19 In this regard, also, we think you need to consider
20 how far away whatever is being worked on is from the current
21 standard. If it's 50 years old, it's probably pretty far away
22 from the current standards. If it's five years old, it
23 probably is meeting the, whatever it was, the 97 version of the
24 NESC. It's something to consider.

25 We are very grateful to the staff for recommending

1 and strongly support the inclusion of the differential O&M
2 costs and the inclusion of differential storm restoration costs
3 in calculating CIACs. We probably will have issues at the
4 implementation phase regarding what those costs are and how
5 they should be considered.

6 Finally, and this really goes to the guts of this,
7 and that is what I perceive as being the guts of it, and that
8 is the recommendation that the utilities be guided by the
9 National Electrical Safety Code extreme wind loading criteria.
10 We have all learned rather the hard way that our system has not
11 been built strong enough to withstand Category 1 or weak
12 Category 2 storms to a degree that we might have liked. The
13 utilities in Florida have incurred rather extraordinary
14 expenses, in the billions of dollars, over the last two years.
15 Many of those costs, a great deal of those costs were incurred
16 through the impacts of storms that were Category 1 storms.

17 We agree that requiring moving to the NESC extreme
18 wind loading criteria for overhead facilities is a step in the
19 right direction. However, as we have been commenting all
20 along, we believe that you need to do an appropriate full-blown
21 cost/benefit type analysis of all of the reliability impacts,
22 all of the costs, and all of the benefits of building to
23 different standards.

24 The real question is what is the most cost-effective
25 way to ensure reliable delivery of electricity in the public

1 interest, taking all appropriate costs and all benefits into
2 account. Different configurations; standard overhead, hardened
3 overhead to extreme wind criteria, overhead hardening to meet
4 Category 4 or Category 5 conditions, standard underground, what
5 you might call partially hardened underground which includes,
6 for example, conduit, waterproofed switch gear, waterproofed
7 fuse boxes, the technology for which does exist and is
8 supported by at least two substantial manufacturers in the
9 industry, or maybe even some sort of super-hardened
10 undergrounding. The point is that you need to evaluate this
11 and you need to consider all costs and all benefits to make an
12 informed decision. And, you know, we have advocated that
13 studies be done as to the cost-effectiveness to meet Category 4
14 and Category 5 conditions.

15 We have further advocated that the true economic
16 value to all Floridians be considered. We believe that an
17 expected unserved energy, or unserved energy type analysis gets
18 very directly and appropriately. This is a known methodology
19 that has been in the utility literature for many years. If you
20 Google expected unserved energy, you will get a very long list
21 of articles that will show you that utilities believe that
22 customers value not being blacked out at very great amounts.
23 They range from \$5 a kilowatt hour to 30-odd dollars a kilowatt
24 hour, depending on the study and the application.

25 Historically -- just very quickly, historically, most

1 of those applications have been in connection with generation
2 plant and transmission lines. And for the rest of the world
3 and for even Florida, maybe, before 2004, that was okay. But
4 what we have learned in Florida since the summer of 2004 is
5 that distribution is critically important to the reliability of
6 our system. And there is just no reason on Earth not to use
7 the same reliability evaluation, the same valuation tool that
8 is used for generation and transmission in evaluating
9 distribution, particularly in the world in which we live.

10 I want to address -- you may ask the question, and I
11 will anticipate it, why should we look at Category 5, why
12 should we consider a Cat 5 standard. Well, one, err on the
13 side of more protection for customers. Two, the utilities will
14 tell you they practice for direct hit Category 4 and Category 5
15 storms. What we are saying is they ought to plan for
16 Category 4 and Category 5 storms. The analysis may show that
17 it's not cost-effective to build overhead to a Category 5
18 standard. It may well show that.

19 The staff's discussion of this, citing to the
20 comments of the wood pole industry folks in these rulemaking
21 proceedings, seemed to indicate that they don't believe you can
22 build an overhead system to withstand Category 4 or Category 5
23 conditions. My engineers with whom I'm consulting on behalf of
24 the towns and cities seem to believe the same thing. If that's
25 true, then it's true, and we need to do a full evaluation and

1 go forward accordingly. As Mayor Charles Falcone, who
2 unfortunately could not be here today, he's the Mayor of
3 Jupiter Island said to me yesterday, analysis is far less
4 expensive than construction.

5 Finally, we did have a proposed rule that staff
6 recommends you not go forward with, and that is to require the
7 utilities to share planning information so that all interested
8 towns and cities, and perhaps even neighborhood associations,
9 can take advantage when we know there is a replacement of a
10 worn-out system, or a replacement of a system that's going to
11 be undertaken anyway, a replacement in connection with a road
12 widening or something like that. We'd like to know that two,
13 three years in advance, or as far in advance as the utility
14 knows it so that we can take advantage of it, so that we
15 minimize the loss of a net book value that would otherwise have
16 to be paid for, so that there is really no net removal cost
17 because the stuff is going to be taken out anyway.

18 And we would ask that you consider that as well.
19 I'll be happy to answer any questions. And we have another
20 speaker on behalf of the municipality.

21 CHAIRMAN EDGAR: Thank you, Mr. Wright.

22 Commissioner, you're recognized.

23 MS. SAUL-SENA: Thank you. Good morning. My name is
24 Linda Saul-Sena and I'm a native Floridian who has spent her
25 entire professional life in public service. I'm in my fourth

1 four-year term as an at large member of the Tampa City Council.
2 During a hiatus from council service, I became co-chair of the
3 utilities task force, consisting of representatives from our
4 electric, phone, and Internet providers, city, staff and
5 neighborhood representatives. We spent over ten years
6 examining the costs and benefits of converting overhead
7 utilities to underground. We received funding from the
8 Department of Community Affairs to conduct a beneficiaries
9 analysis, and hired engineering professors from the University
10 of South Florida for the study.

11 During this time, the utilities task force worked
12 with your staff, both in Tallahassee and at a conference in
13 Tampa, and they have been most helpful. Our task force
14 concluded that the benefits of conversion justified the
15 additional investment in infrastructure by increasing property
16 values for homeowners, increased savings in O&M costs and
17 reliability for utilities, and increased public safety for
18 local, state, and federal governments.

19 Currently, the City of Tampa is negotiating with
20 Tampa Electric Company toward a new franchise agreement, and
21 that is why I stand before you today. This issue of creating a
22 safe and reliable system for my constituents and all Floridians
23 is hugely important.

24 You all, sitting as the Public Service Commission,
25 have the power to protect us. Creating rules which require

1 clear information on O&M costs, restoration costs, and
2 reliability of overhead and underground that will ensure that
3 utilities and governments make decisions which promote the
4 public interest by wise infrastructure investment. You all
5 know that we don't have factual information on these cost
6 differentials, but I want to share some anecdotal evidence with
7 you.

8 Davis Islands and Harbor Island are two residential
9 communities adjacent to downtown Tampa. During the storms of
10 the last two years, although Tampa received no direct hits,
11 Davis Islands, which has overhead lines, experienced several
12 outages each of which lasted several days. Harbor Island with
13 underground lines had nary a flicker. Tampa Electric Company
14 does not collect data which tracks O&M and reliability issues
15 separately, but my constituents do.

16 Since 1986 the utility landscape has been radically
17 altered by changes in technology and our environment. The
18 dramatic increase in hurricane activity has challenged the
19 safety and reliability of overhead lines. The shift to
20 home-based business and home-based employees from large
21 corporations is built upon a reliable and sustainable power
22 grid. New technology offers more trustworthy methods for
23 placing lines underground in conduit and underground switch
24 cabinets with waterproof switch gear which is repairable.

25 Please act on these concerns by changing your rules.

1 Please give us the tools for safe and reliable electric
2 service. Please create a level playing field for underground.

3 Thank you.

4 CHAIRMAN EDGAR: Thank you. And, Commissioner, I
5 believe and I know my colleagues believe that the participation
6 of local governments is critical to the success of the things
7 that we are trying to do, so I appreciate you joining us today.

8 MS. SAUL-SENA: I appreciate being here. Thank you
9 very much.

10 CHAIRMAN EDGAR: Any questions for Commissioner
11 Saul-Sena at this time? No.

12 Thank you.

13 Is there anyone who would like to address the
14 Commission on this item that I have not yet called upon?

15 MS. HERSHEL: Chairman Edgar.

16 CHAIRMAN EDGAR: Okay. You're recognized.

17 MS. HERSHEL: Good morning. I'm Michelle Hershel,
18 I'm with the Florida Electric Cooperatives Association. I'm
19 going to speak just to Issue 4.

20 And we actually agree with the staff that we should
21 have a separate municipal and cooperative rule. We cannot
22 agree at this time with the proposed rule as written or the
23 staff analysis on jurisdiction, but we would like to take the
24 opportunity to work with staff to come up with a rule that
25 hopefully skirts the jurisdictional question and protects the

1 governance and authority of each co-ops board of trustees to
2 make the final decision on whether or not to upgrade their
3 systems. And we look forward to working with staff at future
4 workshops. Thank you.

5 CHAIRMAN EDGAR: Thank you. Is there anybody else
6 that I have missed? No.

7 Mr. Willis, I know that you had asked for the
8 opportunity to respond, so let's begin with you.

9 MR. WILLIS: Thank you very much.

10 Commissioners, as a result of the 2004/2005 hurricane
11 season, this Commission has undertaken a multi-pronged approach
12 and review of electric infrastructure. You have had an overall
13 review, you have had a workshop at the beginning of the year,
14 you have had a pole inspection docket, and you have had a storm
15 plan docket that required the utilities to present their plans
16 to you, and those plans have been presented pursuant to that
17 order, and that you have opened this rulemaking docket as part
18 of a plan.

19 Now, in each one of these various venues you've
20 considered the various factors which would cause a pole to fail
21 and have considered ways to avoid that failure. And pole
22 attachments have emerged as a significant concern in each step
23 of the way, in each one of these venues and dockets and
24 separate reviews that you have made. For example, in your pole
25 inspection order issued February 27th, you found that

1 nonelectric attachments impose additional strength requirements
2 on a pole, and that many pole attachments occur well after the
3 date of the pole installation. And it's quite obvious that the
4 National Electric Safety Code requires a pole to be strong
5 enough to support the facilities that are attached to it. And
6 you also found that third parties have completed pole
7 attachments to electric IOU wood poles that were done without
8 full consideration of the National Electric Safety Standards,
9 and that wood poles strength inspections require remaining
10 strength assessment as well as a pole attachment loading
11 assessment.

12 Your storm plan order likewise required a number of
13 initiatives to report on. One of these was an audit of joint
14 use attachment agreements that would show the locations of the
15 poles, the attachments to it, and the verifications that the
16 attachments are pursuant to a joint use agreement and that
17 stress calculations are made to assure that the pole will not
18 be overloaded.

19 Now, your basic theme in all of this is that nothing
20 should be attached a pole that is not engineered to be there.
21 And you have recognized that pole attachments can have
22 significant wind loading and stress effects on a pole and can
23 cause overloading, and that some attachments are being made
24 without notice or prior engineering before they are attached,
25 and that steps should be taken to assess the pole attachment

1 effect on individual poles to protective overloading.

2 Now, in view of your concerns that you have raised at
3 the various steps before here, the electric utilities jointly
4 proposed rules that would, in essence, require a utility to
5 establish, file, and maintain safety and engineering standards
6 and procedures for attachment of others to its poles, and that
7 no attachment would be allowed on the pole that didn't meet
8 those requirements.

9 Now, through the interaction of your workshops and
10 post-hearing comments, the staff has modified our proposal,
11 considered the input of others, and have come up with a fair
12 and balanced rule that is before you today, and it captures the
13 essence of what you have been concerned with from the outset
14 and what we have been concerned with as well. Mr. Gross in his
15 comments conceded that you have jurisdiction, because it's very
16 clear that you do have such jurisdiction.

17 I think the legislature in 1986 very clearly gave you
18 jurisdiction over safety and reliability and has repeatedly
19 reenacted the grid bills which without any doubt provides you
20 safety and reliability jurisdiction. And where you exercise
21 it, it rests with you. And that makes a whole lot of sense.
22 Because the local entity, in the place where the service is
23 being provided is much more attuned to the needs of the
24 community for safety and reliability, and the jurisdiction
25 obviously makes sense that way.

1 The time is now for you to act. You have recognized
2 a serious issue that affects the safety and reliability of
3 electric service, and now it's critical for the Commission to
4 help utilities deal with this threat to its electric
5 distribution facilities in a fair and reasonable way.

6 And part of that solution is the establishment of
7 attachment standards. And you have built in now, as a result
8 of the comments, that the utilities are required to seek input
9 from others that attach to the poles in developing these
10 standards, and that any dispute arising from the implementation
11 is resolved by this Commission. Now that is not delegating the
12 authority to utilities. It's just like you do in many other
13 instances, you will tell the utility to conduct itself in a
14 particular way, and then you have very strong oversight over
15 how it is actually done.

16 And I think that it is unfair at this juncture to
17 make an assessment and a determination that the utilities won't
18 be fair in this process. We are dedicated to receive that
19 input, to consider it, but not to engage in a process that
20 results in grid lock where nothing happens. So we think that
21 the rules have been carefully crafted and that they provide the
22 balance that you need.

23 Now, the concern about pole attachments is obviously
24 particularly strong and acute in Florida. It's critical that
25 the proposed attachment rules be added as another means of

1 Florida's defense against hurricanes and extreme weather. The
2 Commission, as we indicated, in 1986 gave you jurisdiction over
3 safety. It has reenacted the grid bills over and over again
4 with respect to liability, and these rules will be an important
5 part of the overall plan. And to defer this process would
6 significantly undermine the momentum that this Commission has
7 and the things that you are trying to do, so we urge that you
8 adopt the rule today as it is before you and as staff has
9 recommended to you.

10 CHAIRMAN EDGAR: Thank you.

11 Commissioner Carter, I believe you had some questions
12 earlier that I asked you to hold. Are you ready to jump in?

13 COMMISSIONER CARTER: Thank you, Madam Chair. If I
14 may be permitted to just make a statement beforehand?

15 CHAIRMAN EDGAR: Absolutely.

16 COMMISSIONER CARTER: Is that as I was sitting here
17 listening, and as I was going through my documents on this
18 various and sundry issues before us, I thought aloud from the
19 question if not now when, then the answer being never, and I
20 thought about, you know, we don't have the opportunity to
21 defer, delay, or deny the fact that we are moving.

22 But I do think that our staff has gone above and
23 beyond the call of duty in working with all interested parties.
24 Significantly is that all interested parties have had an
25 opportunity to make their voices heard regardless of whether

1 you are a co-op, a muni, or a telecommunications entity with
2 the attachments, or a utility. All parties have had an
3 opportunity to make their voices heard. And I think we have
4 had a very comprehensive perspective here. I just wanted to
5 say that, but I would like to hear the rest of what Mr. Trapp
6 had, because I was on a mind -- is it appropriate, Madam Chair,
7 for him to finish?

8 CHAIRMAN EDGAR: Mr. Trapp.

9 MR. TRAPP: Well, I think I was responding to the
10 policy aspects of Mr. Bryant's suggested changes to his rule,
11 and then I was going to ask Mr. Harris to address the legal
12 aspects of his proposed changes to his rule.

13 If I can read my notes, again, I think the office in
14 Tallahassee, if we want to -- let me find the language. It
15 makes sense to me either way, either to strike the word
16 utility's offices, at offices in Tallahassee, or at the
17 utility's office or offices in Tallahassee.

18 CHAIRMAN EDGAR: Mr. Trapp, for all of our benefit,
19 can you go ahead and identify, again, the page and line you are
20 at.

21 MR. TRAPP: I'm sorry.

22 CHAIRMAN EDGAR: That's okay.

23 MR. TRAPP: I'm on Page 48 of the recommendation, and
24 I'm at Line 18 and 19.

25 CHAIRMAN EDGAR: Thank you.

1 MR. TRAPP: The current rule proposal is to provide a
2 copy of its construction standards for review by the Commission
3 staff at the utility's offices in Tallahassee. I think the
4 intent is still preserved in my mind if we could eliminate the
5 word utility's and just say at offices in Tallahassee.

6 Because, again, the intent is within two-days notice
7 staff wants access in Tallahassee. Under normal practice, the
8 way we do that is the utilities send it to their lawyer's
9 office here in Tallahassee. So I think if we just remove the
10 words "the utility's" in that line, then I think we still
11 preserve the same intent from a policy standpoint.

12 With respect to the issue about FERC having
13 jurisdiction over transmission, I think that is correct with
14 respect to interconnection. But, again, and I'm going to have
15 to defer to my counsel, what we are talking about in these
16 rules is safety jurisdiction and reliability jurisdiction and
17 pole attachments. And I think we are exerting jurisdiction in
18 those areas by adopting these rules. So I would not propose
19 any change to that word transmission that he had suggested.

20 And with regard to customer complaints, we have often
21 heard customer complaints. We try to refer them back to the
22 municipality involved for them to resolve. Again, since we are
23 exerting a different approach to our jurisdiction here, I think
24 staff would accept customer complaints pertaining to these
25 construction standards. And any complaint pertaining to the

1 safety, the reliability, the engineering design of our
2 facilities, the staff would entertain a complaint. And if we
3 have got jurisdiction to impose this rule, we have jurisdiction
4 to listen to the complaint. But, again, I need to defer to my
5 counsel.

6 CHAIRMAN EDGAR: Mr. Harris.

7 MR. HARRIS: I find myself in agreement with
8 Mr. Trapp, which is something I find myself often agreeing
9 with. Essentially, as I see it, you all have jurisdiction.
10 It's that simple. If you have jurisdiction to tell them or ask
11 them to participate in developing standards, I think you should
12 have some jurisdiction to review those standards. And that's
13 really the nub of it.

14 You have heard some terms thrown around about
15 delegation. This is not a subdelegation issue. You all have
16 jurisdiction, you are doing what you are supposed to do, which
17 is telling utilities to go off and manage themselves, and then
18 you are looking over their shoulder to make sure they're doing
19 it right and they're doing what they need to be doing, and
20 fixing it if they do something wrong. If you all extend that
21 authority to the munies and co-opes and say go off and develop
22 some standards, and we are going to look at them, and, oh, by
23 the way, there is a bunch of exceptions built in so if you all
24 can prove to us that what you are doing now is good or better,
25 then we don't need this stuff.

1 But once you get to the bottom line, if some
2 standards are developed, you need to review them and make sure
3 they are right. They are right for Florida, they are right for
4 the electrical grid. If a customer wants to come in and say I
5 disagree with this standard, for whatever reason, its too high,
6 its too low, it doesn't meet the needs, you all need to be able
7 to look at that. Because it doesn't, in my mind, make a lot of
8 sense to say go off and do these standards, but we're not going
9 to go ahead and -- you know, we're going to review them to make
10 sure they are in place, that's our jurisdiction, that's our
11 authority. But then a customer can come along and challenge
12 it, and the muni could, outside of your review process then
13 say, oh, because we had this customer complaint, we're going to
14 go ahead and undo everything we were told to do under our
15 complaint process. So I think you all have to have that sort
16 of jurisdiction.

17 I'm not saying that you need to exercise it, it might
18 be that the munies and co-ops, or a muni, or a co-op, or
19 somebody could come in and say, hey, there is this customer
20 complaint, we have got a process for dealing with it, and we
21 are going to deal with it in a way that will resolve everyone's
22 concerns, the Commission's, ours, and the customer's. It might
23 be appropriate then for you all to say, okay, well, go ahead
24 and deal with it. But I think you all need to be in a position
25 to accept those complaints, review them and make sure that the

1 policy that you are trying to set, which is increasing
2 reliability in the state of Florida for extreme weather events,
3 is met. Which is a long way of saying I agree with Mr. Trapp.

4 One thing I did want to mention, the first comment
5 that Mr. Bryant made was that he would like to pull out the
6 language of .034, .0341, and .0342 and make that a separate
7 text in .0343. And if we do that, I noticed we were making --
8 you know, he wants to make some language changes in 25-6.034,
9 Page 48, Line 19. I would not suggest we make that change to
10 25-6.034 if we are going to cut that language out and paste it
11 into a separate rule. We can leave it in place in .034, and we
12 can make that change in the rule that we are going to -- that
13 you all would propose for the munies and co-ops, if that makes
14 sense. And the same with the part, you know, Mr. Trapp said we
15 could take out the word the utility law. I think we should
16 leave it in in .034. We can change it for the muni and co-op
17 rule, .0343, if that's you all's decision. That is something
18 you have to decide.

19 MR. BRYANT: Might I respond?

20 CHAIRMAN EDGAR: Mr. Bryant.

21 MR. BRYANT: Never have I been in such a cooperative
22 mood and met with such resistence, and I guess I did not
23 articulate myself clearly enough for the benefit of staff, and
24 for that I apologize. Let's take the easy one, transmission.
25 The only thing I was trying to point out is attachments by one

1 electric utility or an independent power producer to the
2 transmission facilities of another electric utility are
3 governed solely, exclusively by the Federal Energy Regulatory
4 Commission. An example, three ring bus bar. That's a clear
5 standard that has been adopted by the investor-owned utilities
6 for connection into their substations. It's in their FERC form
7 tariff for transmission as promulgated under Order 888 of the
8 Federal Energy Regulatory Commission.

9 I was simply trying to point out we must be careful
10 in the language we use in the drafting of a rule to make sure
11 we don't inadvertently create a jurisdictional issue that some
12 might seize upon to torpedo the rule. I was just trying to
13 clarify the language. Everyone would agree that is not within
14 the jurisdiction of the Commission. That was the only reason I
15 was pointing that out.

16 I want the Commission to think long and hard about
17 accepting jurisdiction that is not clearly articulated in the
18 Commission's rules or statutes between a complaint between one
19 who wants to attach to our distribution poles and the standards
20 and conditions that a sovereign government, a municipal utility
21 has made, implemented by ordinance applicable to attaching to
22 their poles. Unless this Commission is convinced it clearly
23 has jurisdiction to resolve the complaint between one who wants
24 to attach and the jurisdiction of the municipal utility
25 traditionally, historically, always to govern that.

1 I think we ought to be cautious of that so as not to
2 create an entry point for appealing a rule that we have said we
3 support. That was simply the gist of the thrust of my comments
4 is to be careful in what we are trying to craft to avoid
5 undoing what we are all trying to achieve, and that is a rule
6 dealing with safety and reliability that protects customers of
7 Blountstown and customers of Florida Power and Light. And we
8 are supportive of the thrust of the Commission's rules because
9 we believe that is accomplished in the vast majority of the
10 language. That's all I was trying to achieve.

11 CHAIRMAN EDGAR: Mr. Trapp, did you have further
12 comment?

13 MR. TRAPP: My response to Fred's eloquent legal
14 analysis is this language was separated from the construction
15 standard rule that was discussed at the last workshop, and this
16 is the first time that we have heard these comments. My
17 concern is over removing the word transmission. Certainly when
18 the utilities put together their attachment standards, they
19 have got to reflect the current relationships and jurisdictions
20 that exist, current contracts that exist with respect to the
21 joint use facilities. That applies to the FCC jurisdiction,
22 the Florida Public Service Commission's jurisdiction, the
23 FERC's jurisdiction, and anybody else's jurisdiction that may
24 be out there. All of that has to be reflected properly in
25 their construction standards that they propose to us.

1 Having said that, that does not negate the need, in
2 my mind, from a policy standpoint for the electric utilities to
3 develop those attachment standards and for this Commission to
4 review those standards. Maybe the fight is when we try to
5 implement the standards. Maybe the fight is in the review of
6 those standards. The fight is not now. You know, we need to
7 ensure that all poles, transmission and distribution poles, are
8 going to stand up to whatever load is put on them, whether they
9 be third-party attachment loads, electric, or
10 telecommunications, or cable, or whether it be wind load from
11 hurricanes and storms. To the best of our ability we need
12 standards that ensure the transmission and distribution poles
13 stand up as long as they can. And that's just my position.

14 CHAIRMAN EDGAR: Commissioner Arriaga.

15 COMMISSIONER ARRIAGA: Madam Chair, is it your
16 pleasure for us to be able to jump from one issue to another at
17 this time?

18 CHAIRMAN EDGAR: You may. This is discussion time.

19 COMMISSIONER ARRIAGA: Okay, good. I want to change
20 the pace away from municipals and co-ops, and I would like
21 discuss some issues brought up by the pole attachers. And my
22 questions are going to go to Mr. Harris, please, because they
23 are basically legal questions that are in my mind right now.

24 Number one, the issue of deferral, which has been
25 brought up, and it is sort of like reminds me, and I always

1 give this example, of legislative action and sending things to
2 committee to be reviewed in committee forever. But,
3 nevertheless, I'm open to any kind of suggestion regarding
4 deferral or not. But I would like for you to point out to me
5 what are the consequences of deferring as requested time-wise,
6 that would be the first question.

7 The second one, the issue of potential delegation of
8 our authority by supposedly granting the investor-owned
9 utilities the potential power to deny access and therefore
10 violating FCC's mandates. Could you kindly address that for
11 me, also, so I can clear these things up in my mind?

12 MR. HARRIS: Yes, sir. To begin with, your first
13 question regarding deferral. Staff is not recommending that
14 you grant any of the requests for deferral today. We are
15 strongly recommending that you all propose rules, propose
16 language. We believe that the language that is out there has,
17 as far as we were able to, balanced all the interests. That is
18 your decision, of course, but we believe we brought you a good
19 proposal.

20 If you vote to propose rules today, any party, any
21 affected person can go ahead and file written comments. If
22 written comments are filed, they have to be brought back to you
23 for you all to consider. They can request a hearing. If they
24 request a hearing, presumably it would be granted and you all
25 have a hearing on that. It's going to take some time on the

1 Commission calendar to get that scheduled.

2 The potential consequences of deferral today are
3 realistically 60, 90, 120 days before you can get back to this
4 and get language out there. By proposing language today, it's
5 staff's intent that there will be something out there. If
6 someone has a large enough problem with it that they choose to
7 request a hearing, then that's fine and you guys can deal with
8 that. But at least it's out there, it's a basis for
9 negotiation, it's a basis for a workshop on July 13th, it's a
10 basis for a hearing on August 22nd, it's a basis for someone
11 to say we can't live with Line 16 of Page 22. If you can
12 substitute words X, Y, and Z for P, D, Q, we can live with
13 that. It gives everybody a target to shoot at.

14 If you all defer something today, then we are right
15 back to we don't like any of your rule, we don't think it takes
16 care of our interests, draft something else and we will look at
17 it. And staff can say, well, why don't you bring us a
18 proposal. Well, we have got to look at it, and we've got to
19 review it, and it has got to go through 30 layers of
20 management, and we'll try to get you something within six to
21 eight weeks.

22 I'm making up all of these times, the six to
23 eight-week time that is, but essentially by proposing language
24 today you put something out there, and everybody knows what it
25 is, and they can agree with it, they can disagree with it. If

1 they disagree with it, they can decide how much they disagree.
2 Did they disagree enough to file written comments, did they
3 disagree with it enough to file a request for a hearing, it's
4 that simple.

5 If you defer it today, you putting it off by a
6 significant amount of time. Your next agenda conference is
7 July 18th. That's essentially a month from now before you can
8 reconsider it. There is an agenda conference early August, and
9 one in late August. That's 60 days. But the bottom line is,
10 Commissioner, it's you all's decision. We do not recommend a
11 deferral, and we think there are some fairly significant
12 consequences time-wise to deferring.

13 The second question you asked me, the potential for
14 subdelegation, I can't see that. I have been working on that
15 for about a week now in my mind. I cannot, in my mind,
16 understand how this is a subdelegation issue. Delegation in my
17 mind takes place when you Commissioners say, Party X go out and
18 develop something and then apply it, or, Party X go out and
19 develop something and then we are going to apply it to everyone
20 without reviewing it, without approving it, without exercising
21 our authority. Just go out and do something, and we're going
22 to lend our authority, our statutory authority to make it
23 happen.

24 That's not happening here. You all are doing what
25 you always do on not micromanaging utility operations. You're

1 saying go out and develop some standards, put them together,
2 our staff is going to look at them, they're going to bring us
3 complaints they have, other parties are going to -- interested
4 persons, parties, customers are going look at them. If they
5 have problems, they are going to bring them to your for
6 resolution.

7 You all have the power to require the utilities to
8 come in any time you want to and give you a status report or an
9 overview or provide copies. You are reviewing what the
10 utilities are putting together and making sure that it's what
11 you want policy-wise, legal-wise, standard-wise, and then you
12 are saying go and do that under our supervision. I just can't
13 see how this is a delegation.

14 What are you delegating? You're delegating the task
15 of actually putting together page after page after page after
16 book of detailed engineering standards. I'm not aware of any
17 time or any example where your staff or you developed these
18 kind of very detailed standards. And maybe I'm inexperienced,
19 but I just can't see that. So when I think about delegation, I
20 can't in my mind figure out this delegation issue from a legal
21 standpoint. It doesn't commute for me. But I have only been
22 with you all for five years, so -- I hope that has answered
23 both of your questions, Commissioner, I can try to follow up.

24 CHAIRMAN EDGAR: Commissioner Tew.

25 COMMISSIONER TEW: I have a question, maybe a couple

1 for Michael Gross, and I just want to understand your position
2 better. What are your concerns regarding the rule proposal in
3 Issue 1 that cannot be addressed through the proposed hearing
4 process for the proposed rule in Issue 3? And maybe as a
5 follow-up, what specifically is the language that is missing or
6 that you see a need for in Issue 1?

7 MR. GROSS: Our proposal for Issue 1 and 3 would
8 probably parallel each other. There is some symmetry there as
9 far as the process that the rule provides for. And our concern
10 is even if we got relief, well, at a hearing on Issue 3 that
11 would have no impact on Issue 1. And we have the same concerns
12 for Issue 1. We don't think you can separate the construction
13 standards from the attachment standards, that they are
14 intertwined, and that there are many issues just in the
15 construction standards themselves that go into pole rate
16 calculations and that would impact pole attachers.

17 And I'm not sure, did I answer your question?

18 CHAIRMAN EDGAR: Commissioner Tew.

19 COMMISSIONER TEW: I think so, but I wanted staff to
20 follow up on that, either Bob or Larry, about what is your
21 understanding? Because I know that you carved out some of
22 these issues to allow for people to have a hearing set up on
23 particular issues of concern, so I wanted to understand how you
24 think Issue 1 and Issue 3 relate, given his comments?

25 MR. TRAPP: Mr. Gross on behalf of FCTA made comments

1 both verbally at the workshops and in writing, and he was very
2 clear, I think, in his position at the workshop. The problem,
3 and we have addressed it in the write-up of our recommendation,
4 the problem as we see it is what they are requesting is
5 basically veto rights, absolute veto rights of the utilities'
6 construction standards, we thought mainly in the area of
7 attachments and in the location of facilities, thus the attempt
8 to separate the rules and allow some further discussion in the
9 area of attachments. This is the first I have heard that it
10 really applies to the overall standards of construction, but I
11 have the same concern.

12 If he wants veto rights over standards of
13 construction, to me that is not acceptable. This is not the
14 cable industry. This is the electric industry. We are talking
15 about electric reliability. We are talking about a very
16 essential service. And we are talking about a process that we
17 think we have put checks and balances in with respect to the
18 responsibility of the electric utilities to communicate with
19 the people that attach to them and then have to work with, and
20 to have an opening in the complaint process. If there is
21 anything they object to in the standards as they are being
22 developed as they are, you know, brought to this Commission for
23 initial review and subsequent implementation, anywhere along
24 that line they can file a complaint with this Commission and it
25 can be aired. So we thought that we were addressing his

1 concerns in a more fair fashion for all parties as opposed to
2 just his position.

3 MR. GROSS: Madam Chair?

4 CHAIRMAN EDGAR: Mr. Gross, I did say earlier I would
5 give you the opportunity to respond. You may.

6 MR. GROSS: Thank you. In our initial comments when
7 construction standards and attachment standards were
8 incorporated in the same rule, we did express concerns with
9 each aspect of it, we didn't separate it, and the point we are
10 making now is while it is a laudable effort to let one rule
11 move forward and just focus on the controversial rule, and I
12 respect that effort to do that. In this case I don't think
13 that that is possible and at least we think it should be -- we
14 should have the opportunity for a workshop and a hearing on
15 that construction standard rule, as well.

16 MR. HARRIS: Chairman -- I'm sorry.

17 CHAIRMAN EDGAR: Mr. Harris, did you have a --

18 MR. HARRIS: I was going to make a simple comment,
19 which is we are really talking about a procedure here. Mr.
20 Gross can request a hearing in writing, if he wants to request
21 it today and you all decide to vote on it and set it for
22 hearing it gets us to the same place, I think. So I'm not sure
23 that it's -- unless you all are seeing something that I'm not,
24 that it's a big deal. If you don't vote to set it directly for
25 hearing, he can request it in writing and we get there. If you

1 all set it for hearing today, it just saves him having to send
2 a letter in to the Clerk's Office saying I would like to
3 request a hearing. I don't see that it's a huge decision.

4 CHAIRMAN EDGAR: Commissioner Arriaga.

5 MR. HARRIS: I'm sorry for interrupting you.

6 COMMISSIONER ARRIAGA: Mr. Gross, this is like a
7 chain of questions, and you can answer just at the end, but I
8 would say have you had access to these proceedings; have you
9 been denied access to the proceedings; has this Commission been
10 open to your suggestions and your written comments; has the
11 staff collaborated with you through the process? And if the
12 answer to this is yes, why request a deferral? First the
13 answer.

14 MR. GROSS: Okay. I tried to point out in my
15 presentation earlier that we really didn't get a direct notice
16 as we do on telecom matters. We usually get an 8-1/2 by 11
17 notice. And I went back to reconstruct the process that we
18 were not aware, until we became aware of it, and that was only
19 fortuitously that we became aware of the fact that pole
20 attachment standards were being addressed. Because there is
21 nothing in the labels of the existing rules that were listed in
22 the notice, even if we had gotten the notice, which we did not,
23 that would have indicated to a telecom attorney who is not
24 familiar with the specialized utility rules.

25 If it had been a rule under Chapter 364, I would have

1 noticed that it was something that was critical or not to our
2 industry. And I know when the docket was opened the parties
3 were listed as just electric companies. So it was just
4 fortuitous that at a certain point we became aware of it. And
5 we immediately took action and we did file comments and I think
6 staff did read and evaluate our comments. And we appreciate
7 that. We are grateful for that. And there are several
8 accommodations that staff has made in its rule revisions.

9 So we are just saying that, for example, maybe if we
10 had gotten in earlier. Mr. Willis has made a lot of comments
11 blaming the pole failures on pole attachments. And we have not
12 had an opportunity to point out that there is another point of
13 view on that. Both our expert, and I noticed in Gulf Power's
14 answer to one of the Commission questions, one of the staff
15 questions about whether NESC standards should be elevated
16 above, whether the standards should exceed the standards, said
17 that it is not necessary because it is really falling trees and
18 flying debris that caused most of the poles to fall.

19 And I could come up with four photos -- with all the
20 probably a million pole attachments in this state, four
21 examples of pole attachments dragging a pole down. But in the
22 power space, the power company's equipment is much more
23 elaborate, takes up much more space and is much heavier than
24 the equipment that is placed in the communications space. This
25 is stuff that is not in the record. And it is hard for me to

1 sit here -- and I could come up with four pictures showing
2 other reasons for poles falling down, including the power
3 company's own equipment. So --

4 CHAIRMAN EDGAR: Mr. Gross, I have two comments. The
5 first is that it is my impression that you and your client, and
6 there are other representatives, follow our deliberations,
7 discussions, and actions very closely. And my second comment
8 is that nobody here is here to place blame. We are here to try
9 to, in a very open manner, as I hope is evidenced, in a very
10 open manner address the issues that have come before us.

11 Commissioner Arriaga, did you have a follow-up?

12 COMMISSIONER ARRIAGA: Yes, Madam Chairman. Thank
13 you for your comments. It is right to the point. Because the
14 point I'm trying to make, Mr. Gross, is that isn't it a fact
15 that this Commission holds its business in the open sunshine as
16 law prescribes? Is that a fact?

17 MR. GROSS: Yes, that's a fact.

18 COMMISSIONER ARRIAGA: Well, if that is a fact, any
19 interested party that feels that its rights have been violated
20 has the opportunity to participate at any time in any
21 proceeding without a particular invitation. You have claimed
22 that your rights may be violated, and you have participated,
23 because I have seen you in the workshops, I have been here.
24 And so I think that -- you know, and I understand, and I want
25 to make sure that we are not violating any of your rights by

1 negating your desire for a postponement or a deferral. Only if
2 you feel that your rights have been violated, I'm willing to
3 consider it, but I don't see that your rights have been
4 violated.

5 MR. GROSS: No, in fact, I didn't really, even in my
6 presentation earlier this morning, claim that our rights have
7 been violated. I just pointed out how this proceeding evolved
8 into one that did more specifically address pole attachments,
9 and when we became aware of that we participated, and we have
10 had an opportunity to participate from that point forward. But
11 we feel that there could be some benefit from a deferral, if
12 there were a little more time to perhaps sit down with the
13 electric companies and/or staff and try to close the gap. I
14 don't think we are that far apart on this. But I'm not
15 claiming that our rights were violated.

16 CHAIRMAN EDGAR: Commissioners? Commissioner Carter.

17 COMMISSIONER CARTER: Madam Chairman, I just want to,
18 for the record, state that in October when Commissioner Arriaga
19 was appointed he spoke of -- I believe it was later on in
20 December about a new Commission, myself, Commissioner Tew, him,
21 about it's a new Commission, give us an opportunity. And he
22 said it so eloquently. The three of us, in each one of our
23 deliberations, we spoke of the commitment we made to the
24 Governor and to the Legislature about the health, safety, and
25 welfare of our constituents in Florida, our Florida citizens,

1 as well as having an efficient operation for the regulated
2 entities.

3 Commissioner Arriaga later on in, I believe it was in
4 either January or February, spoke most forcefully about the
5 protection, remember the issue we dealt with about the pole
6 inspection? He said we need to have -- a pole is a pole is a
7 pole, regardless of whether it is a municipal pole or a co-op
8 pole or an investor-owned, a pole is a pole is a pole. And I
9 think everybody watched that.

10 And the train has left the station. We are serious
11 about protecting Florida. We are in the middle of hurricane
12 season, ya'll. We are talking about stuff -- we don't have
13 time to delay. It's time -- I mean, we have set the standards.
14 We have got the eight-year pole inspection regimen in place.
15 We have set the standards. We told people up front, look, this
16 is what we are doing. This is not your father's Oldsmobile.
17 It is a new Commission. And we are trying to protect the
18 interests of Florida's citizenry. And we are doing it in the
19 best way possible, a transparent process.

20 I was over in St. Augustine this weekend talking to
21 people who -- I didn't think anybody watched us on TV, but
22 people from Jacksonville, Nassau County, St. Johns County was
23 talking about, you know -- and they don't care, they don't know
24 the difference between investor-owned utilities or
25 municipal-owned, co-op, they said you need to do something

1 about my utility rates. I mean, that was one of the nicer
2 things they said. But it's time now for us to move forward.

3 And I think that we have a fantastic staff, we have a
4 transparent process, everybody is involved, everybody knows
5 where we are headed, the Governor knows where we are headed,
6 the legislature knows where we are headed, the citizens know
7 where we are headed. And the deliberations here, everybody has
8 had an opportunity to participate, and it's time -- we've just
9 got to move, ya'll, we are in hurricane season. We're not
10 talking about hurricane season, we're in hurricane season. And
11 if we keep doing what we have always done, we are going to keep
12 getting what we have always gotten.

13 You know, that's insanity. To do the same thing and
14 expect a different result is insanity. So it's time. We've
15 got some good recommendations here, and I think we need to move
16 on through issue-by-issue, if that's appropriate, Madam
17 Chairman.

18 CHAIRMAN EDGAR: Further questions at this time? No.
19 When I convened this meeting I said that we would be taking a
20 short break in about an hour and a half, and that time has
21 passed, and I'm drinking a lot of water. So we are going to
22 take an approximate eight to nine-minute break. We will come
23 back at 11:30 on the wall, and then we will move through the
24 remainder of this item and move on to the rest of the agenda.

25 (Recess.)

1 CHAIRMAN EDGAR: Thank you all for your patience. I
2 think we're ready to get back to it.

3 Commissioners and interested parties, when we took a
4 short break we had had some questions and some discussions. I
5 think we are getting to the point to begin to move through the
6 issues, but before we do that are there any comments or further
7 questions that we would like to take up?

8 COMMISSIONER DEASON: Madam Chairman, if I may.

9 CHAIRMAN EDGAR: Commissioner Deason.

10 COMMISSIONER DEASON: First of all, just let me echo
11 what has been said previously about the hard work of the staff
12 and all of the parties that have participated in this open
13 process. There has been much accomplished in a short period of
14 time, and it has been out of necessity because we are, once
15 again, facing another hurricane season, the extent of which we
16 are not really sure at this point. We are hopeful, but we are
17 hopefully preparing for what could be a repeat.

18 And in that vein, just let me say that I not only
19 appreciate all of the hard work that has gone on here recently,
20 but let me say that historically I think that our utilities in
21 this state, the investor-owned, the municipals, and the
22 cooperatives have all strived very hard to provide a high
23 quality of service to its customers. And I think this has been
24 evidenced by not only the continuous review that our staff
25 conducts on quality of service matters, but just on national

1 standards as well. I think our utilities have always been
2 considered to be utilities that provide a high quality of
3 service, very reliability service, even though we are prone to
4 hurricanes in this state.

5 But the fact remains that we have been inundated, hit
6 by extreme weather conditions the last two years, which
7 presents challenges and opportunities. And, Madam Chairman, I
8 look at this as an opportunity for us to react accordingly. I
9 think that unprecedented events means that we need to take a
10 rethink, a relook at where we have been in the past, and to ask
11 the questions can do things better than we have done in the
12 past, can we improve upon things? And I think this is the vein
13 of this rule. This is the intent. And for those reasons I can
14 support it.

15 I am willing to go issue-by-issue. I think that we
16 need to clarify in whatever we vote out as a proposal today, to
17 make sure that those things that we have discussed here today
18 that they get incorporated. I know that our staff has agreed
19 to some modifications, and I think they are really more
20 clarifications than modifications. But having that said, Madam
21 Chairman, I look forward to taking these matters
22 issue-by-issue.

23 CHAIRMAN EDGAR: Thank you, Commissioner Deason. And
24 I also want to say, again, that my personal thanks to our staff
25 and to all of the interested parties. We have noted also that

1 it has been good to have the local governments involved. And I
2 hope that we will continue to have local governments and other
3 stakeholders involved as we work with the municipals, the
4 co-ops, and the investor-owned utilities to together position
5 this state to be stronger as we move forward.

6 Commissioners, any comments? Then let's move through
7 the issues that are before us, and we will begin with Issue 1.

8 COMMISSIONER DEASON: Madam Chairman, may I ask --

9 CHAIRMAN EDGAR: Commissioner Deason.

10 COMMISSIONER DEASON: And maybe our staff, Mr. Trapp,
11 whomever, when we make motions on these issues, if there are --
12 I know that you have made some amendments to your initial
13 recommendation. There were some proposals made, I believe, by
14 Mr. Butler that staff has agreed to, that perhaps there is some
15 wording change as a result of Mr. Bryant's presentation as
16 well. I would just like it to be clear in the record exactly
17 what we are proposing so there is no question when it comes
18 time to actually issue that order proposing the rules as to
19 exactly what language is in or out.

20 MR. HARRIS: I appreciate that. Thank you,
21 Commissioner.

22 MR. TRAPP: The two that I have on Issue 1 that I
23 have noted are, first of all, the amended recommendation that
24 the staff submitted on June 15th affects Rule 6034. And we
25 have added a new Section 7, I believe, to that that requires

1 input from other entities attaching. That's one change.

2 The second change was the one we agreed to with Mr.
3 Bryant with respect to Page 48 of the recommendation, Line 18,
4 the removal of the two words "the utilities," so that it now
5 says "at offices in Tallahassee." And as we move into the
6 other issues, there was a suggestion from Mr. Harris that if we
7 reiterate this rule in toto in the municipal section, that that
8 change only be made there. So there may be some interplay
9 between the issues, but we will try to catch them up as we go.

10 CHAIRMAN EDGAR: Commissioner Carter.

11 COMMISSIONER CARTER: Thank you, Commissioner Deason.
12 Along these lines, is it all right if I follow-up?

13 CHAIRMAN EDGAR: Yes, absolutely.

14 COMMISSIONER CARTER: Then your recommendation is to
15 do the municipal rule in a separate area, is that what you're
16 saying?

17 MR. TRAPP: It's Issue 4, yes.

18 COMMISSIONER CARTER: Thank you.

19 MR. HARRIS: And perhaps, Commissioners, given that,
20 it might be something for you to consider to take, perhaps,
21 issues out of order, to decide Issue 4 first. Are you going to
22 adopt some municipal and co-op language? If so, what will it
23 be? And then you can circle back to 1 if you, of course,
24 choose not to adopt it or whatever, you can consider that
25 utility language in Line 18 of Page 48. But that might be an

1 easier way to do it. If you make a change here, go to Issue 4,
2 you might have to reconsider your vote in Issue 1 to do or undo
3 whatever it is, if I'm not confusing you all.

4 COMMISSIONER DEASON: May I ask a question?

5 CHAIRMAN EDGAR: Commissioner Deason.

6 COMMISSIONER DEASON: Let me ask this threshold
7 question. Do you agree that if there is to be a separate
8 section of the rule addressing municipals and co-ops, do you
9 agree with Mr. Bryant's suggestion that other aspects of the
10 rule be incorporated into that section as opposed to merely by
11 reference?

12 MR. HARRIS: Yes, we can agree to that. I mean, I
13 don't see that it makes much difference. If he does, we don't
14 have any objection to, basically, as he suggested, cutting
15 25-6.034, .0341, .0342, and pasting those into the new .0343.
16 I don't have any objection, and I don't think the technical
17 staff do.

18 MR. TRAPP: No, I think it is six of one, half a
19 dozen of the other.

20 COMMISSIONER DEASON: And then it is just a question
21 of making sure that if there needs to be some more precise or
22 clarifying language as it pertains to the co-ops, that when we
23 incorporate that into that section that it is clear as to which
24 language we are using, is that correct?

25 MR. TRAPP: Yes, sir.

1 MR. HARRIS: Yes, sir.

2 COMMISSIONER DEASON: Madam Chairman, is there a
3 desire to go ahead and take up Issue 4?

4 CHAIRMAN EDGAR: Well, I was just going to ask. I
5 have been looking this way, so let me look this way.

6 Commissioners, any questions before we move on?
7 Okay.

8 Commissioner Carter.

9 COMMISSIONER CARTER: I can move staff recommendation
10 on Issue 4, based upon the clarification that we have gotten
11 here.

12 CHAIRMAN EDGAR: Okay. Commissioners, we have a
13 motion on Issue 4 for the staff recommendation based on
14 clarification and discussion that we have had here at the bench
15 with our staff.

16 COMMISSIONER DEASON: Second.

17 CHAIRMAN EDGAR: I have a motion and a second. Is
18 there a discussion?

19 Seeing none -- seeing a question, that's okay.
20 Commissioner Arriaga.

21 COMMISSIONER ARRIAGA: I just was thinking while you
22 were asking the question, I'm sorry.

23 Mr. Bryant -- and I really appreciate the mood, the
24 comprehensive mood in which you came in today. You always do
25 anyway.

1 CHAIRMAN EDGAR: That was conciliatory.

2 COMMISSIONER ARRIAGA: Conciliatory is the word. I
3 appreciate that, too. I'm always learning the English
4 language.

5 You sort of like hinted, or maybe you were direct,
6 the issue of transmission and the issue of customer complaints
7 may prompt you to question this rule in the courts. Is that
8 your contention?

9 MR. BRYANT: No, sir, and let me clarify. First of
10 all, as you can appreciate, I can only represent what my
11 clients tell me to say. And certainly none of my clients at
12 this point in time have said that they want to stand in the way
13 of this rule and take it any further than the Commission's
14 proceeding. However, my clients can only make decisions as to
15 the future, not I, in that aspect.

16 Secondly, the transmission, the only thing I was
17 trying to say on the transmission is a clear statement from the
18 Commission and/or the staff that this is not intended to be
19 applicable to the interconnection standards between electric
20 utilities. Interconnection standards, that's a buzz word.
21 That is intended to mean when I apply as a municipal utility to
22 interconnect to an investor-owned utilities' transmission
23 facilities, they have published FERC tariffs that set forth
24 those standards, and that has worked well. We have no
25 complaints with that.

1 I would hate for sometime in the future someone far
2 removed in time to say, oh, but you must also apply to the
3 Public Service Commission because the rule says that is an
4 attachment to our transmission system. That's all I was trying
5 to avoid in that is being whip-sawed between two jurisdictions.
6 I'm sure that would never happen under the current
7 administration of the investor-owned utilities, but that might
8 happen in the future. That was all I was trying to say, sir.

9 On customer complaints, I was trying to caution staff
10 that we must not go in a trap of jurisdiction for someone to
11 argue at some point in time, unless that jurisdiction on a
12 complaint between a telephone company and a municipal as to an
13 attachment to a municipal facility is clearly articulated in
14 the Commission's jurisdiction. I don't think it's clearly
15 articulated. That is the only thing I was trying to point out.
16 That's why it is a little bit different as to the municipal
17 utilities, thus a standalone rule as to municipal utilities is
18 the safer more judicious way of handling that situation because
19 there is a difference.

20 CHAIRMAN EDGAR: Commissioners, further discussion?

21 MR. COOKE: Chairman Edgar? I'm sorry to interrupt.

22 CHAIRMAN EDGAR: Mr. Cooke.

23 MR. COOKE: I just want to be certain that staff
24 understands exactly the language that the Commission would like
25 to use at this juncture, and I'm not sure if we do have a clear

1 understanding of that. What staff is recommending at this
2 stage is that proposed rule language be noticed as a proposed
3 rule amendment, and therefore we need to know exactly the
4 language that you want us to use for that purpose. And I know
5 that there is a question about the splitting out of some of
6 this on Issue 4. I think it might be worth spending just a
7 little bit of time making sure we clearly understand that.

8 MR. HARRIS: And I have a specific question for the
9 motion, I guess. Currently the staff proposal is on Page 52
10 and it consists of about eight lines. Lines 8 through 12 on
11 Page 52 contain what we thought was a fairly significant waiver
12 provision for the electrics and the municipal and rural
13 electrics. And basically it gives them the opportunity to come
14 in and demonstrate to you that what they are doing today meets
15 the standards of construction and sort of saves everybody some
16 trouble.

17 My concern is what exact motion are you -- are you
18 suggesting we delete the entire 25-6.0343 language and,
19 instead, cut and paste in .034, .0341, and .0342, or do we want
20 to basically just tinker with Lines 6 and 7, which is the
21 adoption of those to this and then keeping Lines 8 through 11.
22 So if I could have some clarification or some guidance from the
23 Commission as to what exact intent it is, it would help me with
24 putting the FAW notice together.

25 CHAIRMAN EDGAR: Commissioner Carter, your motion.

1 COMMISSIONER CARTER: Madam Chair, what I was going
2 on was staff's recommendation that they could take and set
3 aside some language for the municipals. But, I mean, if that
4 is not doable, we'll go back to the original motion, it's okay
5 with me. I was just -- based upon your representations to me
6 that that was the case. If that's not the case, then let's go
7 on and just don't get creative then.

8 MR. TRAPP: If I can suggest a way out through this
9 maze.

10 COMMISSIONER CARTER: Okay.

11 MR. TRAPP: I don't know Larry feels about it, but
12 staff is recommending the language on Page 52, which includes
13 the exemption language. I'm not sure that it harms anything to
14 maintain that language. I would simply start with the language
15 on Page 48. In Line 7 on Page 48, I would change that to say
16 this rule applies to municipal electric utilities and rural
17 electric cooperatives. I would change that word on Line 18 to
18 remove "the utilities," as we agreed, and then I would include
19 the language that is in the amended staff recommendation with
20 respect to communicating with others at the appropriate place,
21 and then at the end of the rule I would just pick up a new
22 Section 7 --

23 MR. HARRIS: Section 8.

24 MR. TRAPP: Oh, is it 8?

25 MR. HARRIS: It would be Section 8.

1 MR. TRAPP: I'm sorry.

2 MR. HARRIS: Your recommendation adds a new Section
3 7. You would add a new Section 8.

4 MR. TRAPP: I'm on the wrong one. You're right.

5 Section 8 that would pick up the language on Line 6
6 of Page 52 that says if the Commission finds that a municipal
7 or rural electric cooperative has demonstrated standards will
8 not result -- that they can seek a waiver from the main body of
9 the rule. I don't think that does any harm, but that is just a
10 suggestion.

11 MR. HARRIS: But, Bob, we also need to include
12 Paragraphs 6.0341 and .0342, so we would need to include those
13 also.

14 MR. TRAPP: You are correct.

15 MR. HARRIS: So, essentially, as I understand it,
16 Commissioners, what we would be saying is we would take .034,
17 we would make those changes as Bob just enumerated. This rule
18 applies to the municipals and co-ops, make the change about
19 removing the utility. As our memorandum of June 15th
20 indicated, we would add a Paragraph 7 that indicates the
21 seeking input language. Then Paragraph 8 would be starting
22 with 25-6.0341, and we would put those paragraphs in
23 sequentially numbered, and it might be that we need to make a
24 change there, also, because Page 51, we have a proposal in the
25 recommendation of June 15th to add, again, input language for

1 the third parties. You all may or may not want to include that
2 paragraph, since you are including it above.

3 Then, again, going on sequentially numbering, we
4 would add paragraphs for 25-6.0342 language, so these are all
5 sequentially numbered paragraphs. And, again, in the staff
6 memorandum of 15 June we suggested a new Paragraph 3, which has
7 the seeking input language. So I don't know that we need three
8 separate paragraphs that say the same thing, so I would suggest
9 just one of those. And then at the end of all of that we would
10 pick up the language starting on Line 8 of Page 52, which is
11 the waiver language, and these would all be sequentially
12 numbered paragraphs. So the input I would need from you is is
13 that what your motion, is that what you are instructing us to
14 do, and, if so, what do you want us to do about the seeking
15 input paragraphs?

16 CHAIRMAN EDGAR: Commissioner Carter.

17 COMMISSIONER CARTER: Madam Chairman, if it's all
18 right, I would like to as General Counsel to see if that gets
19 us on the basis for which we need to be based upon -- I mean,
20 you have heard our dialogue and our discourse and you have
21 heard the motion, does that put us where we are trying to get?

22 MR. COOKE: Having heard that, I believe Mr. Harris
23 has outlined a clear explanation of what language would be
24 changed based on your discussion and your understanding, so I
25 believe we have the language we need to make these changes, if

1 that's what the Commission approves.

2 CHAIRMAN EDGAR: Commissioner Carter, you had made
3 the motion. Because we have had some clarification, I will
4 look to you to see if your motion stands, or if you need
5 clarification.

6 COMMISSIONER CARTER: I was following up on a line of
7 questioning from Commissioner Deason that kind of gave me a
8 thought on that. I mean, he seconded the motion, I wanted to
9 make sure that he is comfortable with where staff has us on
10 this issue.

11 CHAIRMAN EDGAR: Commissioner Deason?

12 COMMISSIONER DEASON: It's a question -- I think we
13 are getting there, and this may be a more precise way of
14 getting there. I think it accomplishes the same thing which
15 was what I understood your original motion to be and the reason
16 that I seconded it. I think this is a little different
17 structure which has just been described by Staff, but I think
18 it accomplishes the same thing, so I'm comfortable with it.
19 And if it helps clarify, for purposes of issuing the order, I
20 can support it.

21 MR. COOKE: Madam Chair, I think there was one issue
22 that Mr. Harris was asking which is the language regarding
23 seeking input from the other entities and whether that should
24 be repeated in each of these paragraphs or not. I think we are
25 suggesting it could be done either way without much difference,

1 but we would just like to make sure.

2 COMMISSIONER CARTER: I thought he said just one
3 paragraph would accomplish it.

4 MR. HARRIS: Exactly. I would recommend just one
5 paragraph with that input language, and then we would not
6 include it from --

7 MR. TRAPP: Let me jump in again. I think the
8 language that staff proposed, the three paragraphs that staff
9 proposed in this amendment, there are really two paragraphs.
10 Two are identical and one is different. And let me find that.

11 COMMISSIONER CARTER: What page are you on?

12 DR. BANE: It's at the top of Page 51.

13 MR. TRAPP: On the cover page, the first page of the
14 June 15th memorandum, I think the sections are summarized. And
15 there is a little bit of difference, in my mind, with respect
16 to the Paren 4 there that applies to Rule 6.0341, location.
17 Because we have, in addition to seeking input, but to the
18 extent practicable, coordinate construction where an expansion,
19 rebuild, or relocation of facilities occurs. Because that's a
20 very action paragraph there.

21 With respect to the other two areas where we are just
22 seeking input, those are just in the development of the
23 standards, and there you seek input. But because Rule 341
24 involves actual physical relocation of facilities, staff made a
25 distinction there. Where you are actually out in the field

1 relocating stuff, there has to be not only input but
2 coordination. Because you just can't lift the electric
3 facilities and move the pole with them and leave the telephone
4 and cable on the ground. They have to go with it. So there
5 has to be coordination in that movement. So we would have two
6 instead of just one.

7 COMMISSIONER CARTER: So we've got two paragraphs..

8 MR. HARRIS: Two paragraphs.

9 CHAIRMAN EDGAR: Reiterated coordination.

10 COMMISSIONER CARTER: Three?

11 MR. HARRIS: Just two.

12 COMMISSIONER CARTER: Okay.

13 CHAIRMAN EDGAR: Commissioner Carter is clear.

14 Staff, are you clear?

15 MR. HARRIS: Yes, ma'am.

16 CHAIRMAN EDGAR: Commissioner Deason, does you second
17 stand?

18 COMMISSIONER DEASON: It still stands. But, Madam
19 Chairman, if we are doing something which raises some concern
20 by either the municipals or the co-ops, I guess now is the time
21 to hear that before we vote on the motion, if that's okay.

22 CHAIRMAN EDGAR: Once again, we are all here
23 together.

24 MS. HERSHAL: Chairman Edgar, I do have a comment. I
25 don't want to not be cooperative, since that is our name, but

1 we still do have a jurisdictional question. We do not agree
2 with staff that the Commission adopting construction standards
3 for co-ops is clear, that there is room for discussion on it,
4 and we are hoping that we can come up with a rule that we can
5 all agree on that doesn't go over jurisdictional boundaries.
6 So that issue is still out there. I just want to make you
7 aware of that. And we have been instructed by our Board of
8 Directors to move forward on that, if we need to.

9 COMMISSIONER DEASON: Madam Chair, there will be an
10 opportunity for hearing, if it rises to the level that a
11 hearing is requested, it will certainly be given an opportunity
12 to be heard.

13 CHAIRMAN EDGAR: Absolutely. Thank you.

14 Commissioner Arriaga.

15 COMMISSIONER ARRIAGA: Mr. Cooke, a quick question
16 here, because it looks like whether we like it or not, we may
17 end up with the gentleman in the black robes, you know, at
18 court.

19 CHAIRMAN EDGAR: And ladies. (Laughter.)

20 COMMISSIONER ARRIAGA: Would it be possible to
21 separate this rule into two, one for the municipals, one for
22 the co-ops, so that if one has a question and needs to go to
23 court, maybe the other one doesn't have the same question and
24 doesn't need to go to court and we can move on. Because it
25 looks like we are putting them together in one lump. And one

1 may disagree and the other may agree and we end up holding this
2 whole thing up just because of one. Is that a potential
3 possibility here?

4 MR. COOKE: I would ask Mr. Harris to confirm this,
5 but it is my understanding that we have separated out the
6 language regarding municipals and cooperatives for that
7 potential that there may be some questions regarding
8 jurisdiction, et cetera, that we could address separately.

9 MR. HARRIS: The answer to your question,
10 Commissioner, is yes, it's possible. We do start running out
11 of numbers eventually. But to the extent, if you determine
12 that a separate split should be -- IOUs, munis, and co-ops, if
13 you decide that munis and co-ops should be split into two with
14 identical language for both, that is within your discretion,
15 absolutely. We would not recommend that. We think that the
16 issues are substantially similar enough that if one chooses to
17 protest your jurisdiction, realistically that might be a good
18 opportunity for the Commission to have it resolved once and for
19 all.

20 If you split it, one of the groups requests a hearing
21 and then appeals that decision, it may leave a question in the
22 other party's mind whether it really applies to them or not,
23 and that just creates more uncertainty down the road. So we
24 would suggest not splitting those out. If someone chooses to
25 take this to the gentlemen and ladies in black robes, then the

1 Commission's jurisdiction could get resolved as regards to both
2 of those at the same time.

3 COMMISSIONER ARRIAGA: I'm okay with the motion as it
4 stands, then.

5 CHAIRMAN EDGAR: Okay. And this was supposed to be
6 the simpler way to proceed. We have a motion, we have a
7 second, we have had discussion. Further discussion? Seeing
8 none, all in favor of the motion say aye.

9 (Simultaneous affirmative vote.)

10 CHAIRMAN EDGAR: Opposed?

11 Show the motion adopted.

12 Commissioners, that was Issue 4. We will move back
13 in order and take up Issue 1.

14 Do we have discussion, questions?

15 Commissioner Arriaga.

16 COMMISSIONER ARRIAGA: Mr. Wright, a question for
17 you. Yes. I heard you during your opening statements say that
18 you would like to do hardening and planning to Category 5 kind
19 of storms.

20 MR. WRIGHT: Yes, sir.

21 COMMISSIONER ARRIAGA: And I have also heard you in
22 many proceedings talking about prudent and reasonable costs in
23 this Commission. Have you shown in this whole process that
24 going to a Category 5 planning and hardening is prudent and
25 reasonable? And wouldn't that affect, generally, the whole

1 body of ratepayers? I mean, wind storms in Tallahassee are not
2 the same as in Miami. So if we pass a rule obligating everyone
3 to plan to design to Category 5 wind storms, I don't see that
4 as prudent and reasonable.

5 MR. WRIGHT: Well, our specific recommendation was
6 that that would be the planning evaluation standard a utility,
7 an investor-owned utility could show that that was not
8 cost-effective. Frankly, we believe that you need the
9 information. We believe that the time is long overdue that the
10 utilities should have done the studies to evaluate what would
11 be required to meet Category 3, 4, 5 standards and what the
12 reliability impacts of building that to be would be, and what
13 the total costs of that would be, and what the total benefits,
14 not just the benefits to the utility's ratepayers that could be
15 tracked back through into rates, but also the benefits to all
16 Floridians should be.

17 If such an analysis exists, we haven't seen it yet.
18 The closest study that I am aware in Florida is the Davis
19 Islands study that Councilwoman Saul-Sena mentioned that
20 indicated without even going into the total economic benefit
21 analysis piece of it, but it did consider enhanced property
22 values. It showed that overall it was a good thing and
23 recommended some steps as to how it should be evaluated.

24 Now, my point was that -- I had several points, but
25 you don't -- the ultimate answer to your question is we don't

1 know yet whether it's prudent to build to Cat 3, Cat 4, or Cat
2 5 because we don't know what the total cost and benefits are.
3 Now, I will concede to you that staff made reference to
4 potential subsidization by the general body of ratepayers for a
5 localized benefit. I'll concede to you that if we put my block
6 underground, there is not going to be a widespread benefit to
7 all the ratepayers, assuming that I live in FPL's service
8 territory, there is not going to be a widespread benefit to all
9 of FPL's customers and all the citizens in FPL's service area.

10 However, if you start talking about undergrounding
11 all of Miami-Dade County, all of Broward County, all of Palm
12 Beach County, all of Martin County, say, for starters, the
13 value in terms of -- we believe strongly that the value in
14 terms of differential reliability afforded by undergrounding as
15 opposed to overhead, probably built to any standard, because
16 the staff appear to recognize, and I can quote you the language
17 that appears to go there, that you can't even really build an
18 overhead system to withstand a Category 5 storm. That's on
19 Pages 5 and 6 of the recommendation.

20 But our point is that if you start talking about
21 being able to keep most of the facilities on, and get them back
22 up a lot faster than the 10 to 18 days that much of FPL's
23 southeast Florida service area was out, the total economic
24 value to Floridians is huge. There were a few speakers who
25 came and spoke to the legislative committee hearings that were

1 held in South Florida this year, business people, people who
2 own factories, and they said we couldn't work for 12 days
3 because our power was down. There is real lost value there.

4 It's not just melted ice cream, it's not just lost
5 meat frozen in the freezer, it's not being able to dry out your
6 house, it's not being able to get gas to go to work, it's not
7 being able to buy groceries. There is a tremendous amount of
8 lost economic value. And all I'm saying to you is that you
9 need to take consideration of that very specifically as a value
10 to be considered in the public interest in terms of your
11 overarching mandate to regulate utilities in the public
12 interest.

13 And the other point I made is that the expected
14 unserved energy piece of this goes to the benefit side of a
15 true benefit/cost analysis, which is what it ought to be. I'm
16 not saying that I know today, because I don't, that building to
17 Category 5 is reasonable and prudent. What I am saying is you
18 need to do the full analysis, as I articulated earlier, Cat 3,
19 Cat 4, Cat 5, and the NESC extreme wind criteria are
20 essentially Cat 3 in coastal circumstances, and then compare
21 that to standard overhead, hardened overhead, but hardened
22 overhead to what, underground, partially hardened underground,
23 superhardened underground, whatever. If the study has been
24 done, we haven't seen it yet, and that's what we are
25 advocating.

1 And my question echoing something Commissioner Carter
2 said is, if not now, when? I'm willing to believe that -- and
3 we support going forward with the rule today. But I will also
4 tell you that I don't have a specific representational
5 relationship as of this minute with a group known as the
6 Municipal Underground Utilities Consortium, but there is such a
7 consortium being largely spearheaded by the Town of Palm Beach
8 that now consists of more than 30 cities and towns in the state
9 of Florida who have engaged consultants to go forward and do a
10 study very much like the one that we are here advocating. We
11 expect it to be done probably in September.

12 We think the study should have been done long ago.
13 We are going forward with it now. What we don't want to happen
14 is we get down to October, we have got the study, we are going
15 to give it to you, you can bet on that. We don't want to get
16 here and have somebody say too late, you should have addressed
17 it here. We have been addressing it since January, and we want
18 you to take a look at it. Now, maybe the right way to do it
19 procedurally is let's see what the study says, and maybe the
20 right way to do it procedurally is to come forward with a new,
21 a new petition to initiate further rulemaking with this rule
22 already in place. As far as I'm personally concerned, that
23 would be okay. We just want ya'll to consider all the costs,
24 all the benefits, all the impacts.

25 COMMISSIONER ARRIAGA: Thank you.

1 CHAIRMAN EDGAR: Commissioners? Okay. We are on
2 Issue 1. Is there a motion or a question?

3 COMMISSIONER DEASON: The same question to staff.
4 Are there modifications to the wording of this particular issue
5 that we need to clarify in any motion?

6 MR. HARRIS: Yes, sir, there's one. We do have the
7 June 15th memorandum that you have looked at. It contains a
8 new Paragraph 7 to the language that is in your recommendation
9 before you. So we would ask that you adopt the proposed rule
10 language with the inclusion of the Paragraph 7 as outlined in
11 the June 15th memo. I believe there are no other changes to
12 the text for this one.

13 COMMISSIONER DEASON: And this is the paragraph
14 seeking input?

15 MR. HARRIS: Yes, sir.

16 COMMISSIONER DEASON: I would move staff's
17 recommendation as clarified with the inclusion of Paragraph 7.

18 COMMISSIONER CARTER: Second.

19 CHAIRMAN EDGAR: Commissioner Arriaga for a question.

20 COMMISSIONER ARRIAGA: To staff. The issues raised
21 by Mr. Wright, I can relate them to the undergrounding issue,
22 which I believe is taken a little further down, maybe Issue 2
23 or 3. Which one would it be?

24 MR. TRAPP: It's 6, 7, and 8.

25 MR. HARRIS: Six, 7 and 8.

1 COMMISSIONER ARRIAGA: I want to make sure we don't
2 let these comments go by, and that we can address them at the
3 proper time when the proper issue comes up.

4 MR. TRAPP: I can give you a preview.

5 CHAIRMAN EDGAR: How about we do one thing at a time.

6 COMMISSIONER ARRIAGA: I think I don't agree with Mr.
7 Wright on just planning Category 5 for everywhere, but I would
8 like this issue to be brought back into the discussion when we
9 discuss undergrounding. Would that be okay?

10 MR. TRAPP: If I could comment, briefly. Staff
11 started with Category 3, mandated hardening to Category 3 in
12 the first workshop, and then Mr. Wright went to Category 5.
13 That's not what we are doing now. We haven't specified any
14 category in these standards. What we have said is utility --
15 and we did that because of cost considerations, by the way, on
16 the economic impact material we got after the first workshop.

17 What we are doing now though is saying, utilities,
18 you need to identify in your standards, policies, and
19 procedures those areas that most need it. Whether that is
20 Category 1, 2, 3, 5, I don't know. We are going to see some
21 standards come back to us. So, you know, we haven't limited it
22 to categories.

23 With respect to all the costs, Schef and I had a
24 common tutor, Mr. Joe Jenkins, and he taught us both don't get
25 caught up with paralysis by analysis. These rules set a

1 framework for further action by this Commission. You have
2 also, as my introductory statement said, outlined a network of
3 activities, one of which is Docket 06198 (sic) that has a
4 ten-point plan that also addresses all of these underground
5 costing issues, all of these cooperation with communities and
6 that type of thing. We anticipate further activity there on
7 the subject matter.

8 And to finally answer your question, Ms. Kummer is
9 going to address in the underground rule sections later on the
10 language that we have included with respect to specific cost
11 inclusion, and we will wait to explain that more, if you like.

12 CHAIRMAN EDGAR: Yes. Thank you.

13 COMMISSIONER ARRIAGA: I'm okay with the answer.

14 CHAIRMAN EDGAR: Okay. Then, Commissioners, we have
15 a motion and we have a second. We are on Issue 1. All in
16 favor of the motion say aye.

17 (Unanimous affirmative vote.)

18 CHAIRMAN EDGAR: Opposed? Show the motion for Issue
19 1 adopted.

20 COMMISSIONER DEASON: We were on Issue 2. Did we
21 already --

22 COMMISSIONER CARTER: We did 4 first.

23 COMMISSIONER DEASON: That's right, we did 4. I'm
24 sorry. I was just hoping we were on --

25 COMMISSIONER ARRIAGA: Commissioner Deason, are you

1 second-guessing our Chair Lady?

2 COMMISSIONER DEASON: Shouldn't do that.

3 COMMISSIONER ARRIAGA: No. (Laughter.)

4 CHAIRMAN EDGAR: And now we're on Issue 2.

5 Discussion, questions, or a motion.

6 COMMISSIONER CARTER: Madam Chair, if I am in order,

7 I will move staff's recommendation on Issue 2. Again, thanks

8 to Commissioner Deason. Let me just ask staff, are there any

9 updates that we need to add to the language here?

10 MR. HARRIS: Yes, sir. Again, the memorandum of 15

11 June, we recommend adding a Paragraph 4 which would include not

12 only the input from the third party but the coordination as Mr.

13 Trapp explained earlier.

14 COMMISSIONER CARTER: Thank you. That would be my

15 motion for staff recommendation Issue 2.

16 COMMISSIONER DEASON: Second.

17 CHAIRMAN EDGAR: Commissioners, any questions or

18 discussion? Okay. We have a motion and a second on Issue 2.

19 All in favor of the motion say aye.

20 (Unanimous affirmative vote.)

21 CHAIRMAN EDGAR: Opposed?

22 Show the motion for Issue 2 adopted.

23 And, Commissioner Deason, we are on Issue 3. Is

24 there a discussion or a question?

25 COMMISSIONER DEASON: The same question to staff.

1 CHAIRMAN EDGAR: Mr. Harris.

2 MR. HARRIS: Yes, sir. This is the last time, but
3 for the 15 June memorandum we do have an additional Paragraph 3
4 that we would recommend, which is the seeking input language.
5 That is the end of the June 15th memo.

6 CHAIRMAN EDGAR: And for the material before us that
7 is on Page 51.

8 COMMISSIONER DEASON: Move staff as amended.

9 COMMISSIONER CARTER: Second.

10 CHAIRMAN EDGAR: We have a motion and a second.
11 Commissioner Arriaga.

12 COMMISSIONER ARRIAGA: Mr. Harris, would you please
13 clarify to us that we are not -- by approving this issue we are
14 not handing unilateral electric utility authority to deny
15 attachments.

16 MR. HARRIS: That is correct.

17 COMMISSIONER ARRIAGA: How is that? Expand for me,
18 please. I just want to make sure that it is very well
19 articulated, because this is an argument that has been raised
20 over and over and over. I want you to articulate it for us,
21 please.

22 MR. HARRIS: Yes, sir. It is staff's intent in this
23 proposed language that what you all are going to do is order
24 the utilities to develop standards. And what we mean by that,
25 in my mind, and I'm not an engineer and Mr. Trapp may correct

1 me, but in my mind it is something as simple as the pole won't
2 fall down with X conditions. It won't fall down if the wind is
3 less than 200 miles an hour. It won't fall down if there is
4 less than 10,000 pounds loaded on it. Something like that.

5 At that point that's a standard. It has no effect,
6 in my mind, on pole attachments. At some point someone wants
7 to attach and they come to the utility and say we want to add
8 our facilities, and everyone looks -- the engineers look at
9 that and say, okay, with the addition of this facility will the
10 pole still meet that standard, yes or no. To me it is an
11 engineering question.

12 If the answer is yes, then they do whatever
13 commercial -- you know, whatever is required to enter into a
14 contract for the pole attachment. If the answer is no, if the
15 pole will not support that -- under that standard if the pole
16 will not be able to meet the standard with the addition of that
17 attachment, then they negotiate how they are going to get it
18 there. Who is going to pay to upgrade the pole; are they going
19 to change the attachment; is there some engineering that can
20 fix it? That is again for them to negotiate. If they can't
21 negotiate it, it is my understanding that the FCC has a
22 procedure by which the party can file a complaint, and that
23 complaint would be we want to make this attachment and the
24 utility is saying we can't do it. In my mind it would go
25 something like that.

1 The utility would respond. We are not saying no, we
2 are saying it won't meet this construction standard. And we
3 are just saying that once it meets the standard, they can make
4 the attachment. And then the FCC can look at your construction
5 standard, they can decide whether the pole -- whether that's
6 true or not, whether with the attachment the pole meets the
7 standard or not. If it doesn't, they can decide what they want
8 to do about it.

9 I do not believe that what they decide to do could be
10 to override your standard. I think what the FCC would have to
11 decide is who is going to pay for an upgrade. Or instead of a
12 10,000 pound attachment, it can be a 2,000 pound attachment.
13 Or instead of it being at the top of the pole it can be in the
14 middle of the pole. These are engineering things. That's, in
15 my mind what, the FCC would decide. Which is a long way of
16 saying, basically, I think you all have the authority and the
17 responsibility to set those standards. Those standards will
18 not prohibit any pole attachment in staff's mind.

19 COMMISSIONER ARRIAGA: Thank you.

20 CHAIRMAN EDGAR: Commissioner Tew.

21 COMMISSIONER TEW: I probably should have asked this
22 with Issue 2, but by approving these recommendations we are not
23 setting any certain hearing date, so that you all could work
24 with the Chairman's Office in scheduling whatever hearing date
25 that you all feel is appropriate after a workshop, is that

1 correct?

2 MR. HARRIS: Yes, ma'am.

3 CHAIRMAN EDGAR: Commissioners, we have a motion and
4 a second on Issue 3. We have had discussion. All in favor of
5 the motion say aye.

6 (Unanimous affirmative vote.)

7 CHAIRMAN EDGAR: Opposed? Show the motion for Issue
8 3 adopted. We have previously taken up Issue 4, so we are on
9 Issue 5.

10 Commissioner Carter.

11 COMMISSIONER CARTER: I think I remembered --
12 sometimes my brain checks in and sometimes it checks out. Was
13 staff saying we're going to do 5, 6, 7, and 8, or were they
14 just saying those were related issues? Was that what you all
15 were saying? Help me out here.

16 MR. TRAPP: No, 5 is a pretty much stand-alone issue,
17 it is just our safety rule, implementing our safety statute.
18 And there is just some clean up in this rule. And then there
19 is a word change to acknowledge the passage and signing
20 yesterday of the Energy Bill, Senate 888. But it was Issues 6,
21 7, and 8 where we start getting into the undergrounding issues.

22 COMMISSIONER CARTER: Okay. Thank you, Madam Chair.

23 CHAIRMAN EDGAR: Commissioners, may I have a motion
24 on Issue 5?

25 COMMISSIONER DEASON: Is there any additional

1 clarification we need to make at this time?

2 MR. HARRIS: No, sir.

3 COMMISSIONER DEASON: Move staff.

4 COMMISSIONER CARTER: Second.

5 CHAIRMAN EDGAR: Discussion?

6 Commissioners, we have a motion and a second on Issue

7 5. All in favor say aye.

8 (Unanimous affirmative vote.)

9 CHAIRMAN EDGAR: Opposed? Show the motion on Issue 5
10 adopted.

11 We are on Issue 6.

12 MS. KUMMER: There are some clarifications to this
13 rule based on FP&L's comments earlier. On Page 56 of the rule,
14 in the formula at the top of the page, in the last box on the
15 right it will read, "Four years expected incremental base
16 demand revenues." On that same page in Paragraph B, Line 8,
17 that would now read, "The net book value and cost of removal
18 net of the salvage value for existing facilities shall be
19 included in the total estimated work order job costs for
20 upgrades to those facilities." Essentially, what we are adding
21 is the net book value of removed facilities.

22 And we have one more which was not a Power and Light
23 change, it was suggested by someone else and staff thought it
24 was a good idea. On Page 59, Line 9, this is the proration of
25 the CIAC for line extensions. In staff's discussion of the

1 recommendation we make it clear that this is something that
2 would only apply to an end-use customer, not to a developer.
3 It was suggested that we need to make that clearer in the rule,
4 and staff would suggest at the end of Line 9 it would read over
5 the number of end use customers expected to be served to make
6 it clear that it does not apply to developers.

7 COMMISSIONER CARTER: Say that again, please.

8 MS. KUMMER: On Line 9 we are adding the word end use
9 at that line to indicate that the proration would only apply to
10 end use customers not to a developer or someone else doing a
11 mass project.

12 COMMISSIONER CARTER: Excuse me. I'm asking is it at
13 the end of the line or is it the end of the sentence?

14 CHAIRMAN EDGAR: The end of Line 9.

15 MS. KUMMER: The end of the line. Line 9 would read,
16 "By the new or upgraded facilities, the utility shall prorate
17 the total CIAC over the number of end use customers."

18 COMMISSIONER CARTER: Thank you.

19 CHAIRMAN EDGAR: Commissioners, any further questions
20 on Issue 6?

21 COMMISSIONER CARTER: If I may, Madam Chairman.

22 CHAIRMAN EDGAR: Commissioner Carter.

23 COMMISSIONER CARTER: Staff, are there any
24 additional -- is that it, any more from the memo?

25 MS. KUMMER: That is all that we are aware of, yes,

1 sir.

2 MR. HARRIS: Yes, sir, that's it.

3 COMMISSIONER CARTER: I would move staff
4 recommendation on Issue 6.

5 CHAIRMAN EDGAR: With the additional clarification.

6 COMMISSIONER CARTER: Yes, ma'am.

7 COMMISSIONER DEASON: Second.

8 CHAIRMAN EDGAR: Commissioners, we have a motion and
9 a second on Issue 6. Is there further discussion? Seeing
10 none, all in favor of the motion say aye.

11 (Unanimous affirmative vote.)

12 CHAIRMAN EDGAR: Opposed? Show the motion for Issue
13 6 adopted.

14 We are on Issue 7.

15 MS. KUMMER: There is one change to Issue 7, that's
16 on Page 61 of the rule, Lines 15 and 16. Line 15 reads,
17 "Sufficient record-keeping and accounting measures to
18 separately identify operating and maintenance." Operating and
19 maintenance would become operational costs, the same language
20 as used above.

21 CHAIRMAN EDGAR: Ms. Kummer, any additional changes
22 or clarifications?

23 MS. KUMMER: No, ma'am.

24 CHAIRMAN EDGAR: Commissioners, any questions?
25 Seeing none, is there a motion?

1 COMMISSIONER DEASON: I move staff as amended.

2 COMMISSIONER CARTER: Second.

3 CHAIRMAN EDGAR: Thank you.

4 Commissioner Arriaga.

5 COMMISSIONER ARRIAGA: Okay. We are at a point where
6 we can probably address the issues that were brought up by Mr.
7 Wright regarding the need to have access by third parties to
8 the planning processes in the utilities in order to determine
9 data gathering processes, et cetera. Which brings me to one of
10 the workshops before and to the day that the utilities were
11 here presenting their hardening plans for the storm season. At
12 that time we sort of came to an agreement that we do not have a
13 system, a uniform system of data collection. We discussed the
14 possibility of talking to the universities to see if they could
15 design this for us.

16 Could you kindly relate to me, number one, the
17 possibility of taking into consideration Mr. Wright's
18 suggestions about the planning processes and the information,
19 that it should be available to third parties, the feasibility
20 of that; and, number two, how have you advanced with PURC,
21 specifically with PURC regarding the issue of a uniform system
22 of data gathering that we could request from the utilities so
23 that we can have, in a short time, some kind of forecasting
24 methodology to see what is the best?

25 MR. TRAPP: First, I guess staff's position is that

1 it is premature to start listing the information in a rule,
2 because we just have a lack of information, lack of data or
3 understanding of how these relationships should work together.
4 You know, you have externalities associated with utilities
5 being out, but you also have externalities during a storm with
6 houses not being there. And I don't know what is more
7 disruptive to commerce.

8 But, anyway, the long and short of it, staff chose
9 not to propose any rulemaking language to elaborate any more
10 than we did on what has been called externality costs. We have
11 specifically, though, proposed that the utilities be put on
12 notice and be required to separately identify their overhead
13 and underground costs. And to reflect in -- this rule applies
14 only to new facilities by the way -- to reflect in the new
15 facilities' CIACs and conversion case CIACs the effects of
16 historic storm damage. Now, they will have to present that
17 data to us at some point in time and you will have to review it
18 and approve it as being reasonable.

19 Now, with respect to on-going activities, again, this
20 rulemaking is setting the stage for other activities that the
21 Commission has ordered. We met with PURC, or I should say PURC
22 had their kickoff workshop two Fridays ago, and it was very
23 well represented by the utility industry. They had presenters
24 that are experts in modeling. It was only a one-day workshop,
25 so it was fairly brief, but there were some proposals about we

1 can work with these underground models and we would be willing
2 to. Most of the discussion from the utilities that I observed
3 during that workshop were on -- their interest was more in
4 measuring wind speeds, land wind speeds, and looking at
5 vegetation control and that type of thing. Undergrounding was
6 touched on.

7 In a follow-up conversation I had yesterday, though,
8 with Mark Jamison, who is the director of PURC and who is
9 leading this effort, I expressed to him the three points in our
10 rules plus the information that Mr. Wright is pursuing, and he
11 agreed that the university could probably put together a
12 proposal on at least methodology. I don't think the university
13 is in a position to specify what should be considered and what
14 shouldn't, but they can put together a methodology for
15 considering costs. So that is an area that staff does intend
16 to pursue with PURC as part of the university research efforts.

17 There is still the ten point plans out there that are
18 sitting on my desk, quite frankly, and we need to bring you a
19 course of action of how to evaluate what has been submitted
20 there. And I am thinking that we will be coming back with some
21 more action plans, too.

22 CHAIRMAN EDGAR: Perhaps in August? Perhaps.

23 MR. TRAPP: I'm hoping before August, but, yes. So I
24 think we are still working on it, but we just feel like it's
25 premature at this time to include anymore than we have in the

1 proposed rulemaking.

2 MS. KUMMER: And what this rule does, Commissioner,
3 is -- it is a two-pronged attack. First, it says that you
4 shall consider the life-cycle costs. That's to capture the
5 long-term operational cost/benefits that are not being
6 considered today. Today, the differential are primarily
7 initial installation costs. This will require them to look at
8 the long-term benefits of various types of construction. And
9 it also requires them to develop a method, an accounting method
10 to define these costs.

11 A lot of what we have heard, and you have heard Mr.
12 Trapp talk many times about the fact that there is no data out
13 there. The utilities aren't tracking this right now, or if
14 they are they aren't telling us. So we wanted to put in a rule
15 that they will develop a mechanism to track these costs so that
16 we do have a handle on them when we start doing the type of
17 analysis that you are talking about.

18 CHAIRMAN EDGAR: Commissioner Arriaga.

19 COMMISSIONER ARRIAGA: In the traditional -- giving a
20 special deference to our elected officials, we have today the
21 visit here of Commissioner Saul-Sena who has been very vocal
22 about this whole issue of data gathering, and she specifically
23 requested that we consider issues that do not seem to match
24 your recommendation.

25 I would like to ask you, Commissioner, do you feel

1 comfortable with what is being proposed here today? And do you
2 have experience with data gathering, because I think I heard
3 you say that?

4 MS. SAUL-SENA: Thank you. Thank you for asking my
5 thoughts on this. What is being proposed, that of gathering
6 lifecycle costs, is better than what has existed previously.
7 It's a step in the right direction and that's good. I would
8 like to see it go further. I think that, you know,
9 strategically probably the best thing to do today is to adopt
10 what is before you, but not close the door and say, well, we
11 have dealt for the next ten years.

12 What I would love to see you do is ask some
13 university people to define it. And I would offer this,
14 because they're not here to decline, the professors from the
15 engineering department at the University of South Florida,
16 Suresh Kahtor and George Moore, have worked on this for a
17 number of years. They are very knowledgeable. And they would
18 certainly be in a position to in a quick, relatively quick span
19 come up with some criteria.

20 I think one of the things that is underscored today
21 is you need uniform criteria that is very holistic, that's very
22 holistic in terms of capturing these costs. And I would be
23 happy to share with your staff their contact information,
24 although they actually have it, and offer their services to
25 help come up with a template for doing that.

1 COMMISSIONER ARRIAGA: Thank you so much.

2 MS. SAUL-SENA: Thank you.

3 COMMISSIONER ARRIAGA: Can I --

4 CHAIRMAN EDGAR: Commissioner Arriaga.

5 COMMISSIONER ARRIAGA: The waiver of CIAC is another
6 issue that I have concerns with, and it's basically -- there is
7 a tariff request out there placed by Florida Power and Light
8 that specifically addresses this issue of the 25 percent in
9 their territory, which is my territory, South Florida,
10 Southeast Florida. We have had -- well, the town of Jupiter is
11 here, we also had the City of Coral Gables come here seeking
12 some guidance from us, and I will address that a little later.
13 What's going to happen to the tariff? What's going to happen
14 to the 25 percent? By approving this issue here, what are we
15 doing with the 25 percent that FPL offered?

16 MS. KUMMER: The change that staff is proposing in
17 this rule opens the door to allowing the Commission to consider
18 that tariff. Right now there is a flat prohibition against the
19 company spreading any waive of CIAC over the general body of
20 ratepayers. So the company can waive it, but it has to go
21 below the line.

22 This proposed change allows an entity, a city, the
23 Towns of Jupiter Island and Palm Beach to come in and show that
24 there are benefits to the general body of ratepayers and,
25 therefore, it is appropriate for this waived amount to be

1 collected from the general body of ratepayers. So it opens the
2 door for the Commission to consider that. And we will be
3 bringing that tariff back at a later point with a
4 recommendation.

5 COMMISSIONER ARRIAGA: Okay. Thank you, Madam Chair.

6 CHAIRMAN EDGAR: Commissioners, we have been having
7 discussion on Issue 7. We had a motion and a second.

8 Seeing no further questions, all in favor of the
9 motion say aye.

10 (Unanimous affirmative vote.)

11 CHAIRMAN EDGAR: Opposed? Show the motion for Issue
12 7 adopted.

13 We are on Issue 8. Commissioner Deason.

14 COMMISSIONER DEASON: Any clarification needed?

15 MS. KUMMER: No, sir.

16 COMMISSIONER DEASON: Move staff on Issue 8.

17 COMMISSIONER CARTER: Second.

18 CHAIRMAN EDGAR: Commissioners, we have a motion and
19 a second. Are there questions or discussion?

20 Commissioner Arriaga.

21 COMMISSIONER ARRIAGA: Again, my issue about giving
22 guidance to people, persons, towns, cities that have
23 demonstrated an interest, an honest interest in undergrounding.
24 I think that your proposal, the staff proposal may not go far
25 enough. Because I think we owe it to the cities, to these

1 municipal governments, some kind of guidance as to how to
2 handle themselves in the issue of undergrounding. We are
3 supposed to be the experts. We are supposed to be the
4 regulators. We are supposed to be the body that has the
5 authority to guide and to supervise.

6 I think the way you proposed it you may have left it
7 where there is no real guidance here. You can do it, but see
8 how you stumble along. Like when a baby begins to walk. Maybe
9 we should hold them by the hand and show them how to walk,
10 because we are supposed to be the experts. And I think you
11 proposed possible rule language, it is not taxative or
12 mandatory that would actually in cases in a specific way of
13 doing undergrounding. I think it allows -- it is generally not
14 to allow and to promote the issue of undergrounding where
15 applicable. I'm not saying that we have to underground the
16 whole state of Florida, no. But allow those people that want
17 it, do it, and I think that it is reasonable and prudent, allow
18 them a guidance of how to work it. Would you want to consider
19 that?

20 MR. TRAPP: Again, Commissioner Arriaga, we believe
21 we have gone as far as we can with this set of rulemaking, but
22 this is certainly not the end of the process. There were
23 suggestions made by the towns and Coral Gables during the
24 workshop that we did listen to. And one of the things we
25 listened to with great interest was that Coral Gables itself

1 was preparing a study that was due possibly in the July time
2 frame, time being what it is. We need to see that study as
3 part of this process.

4 We would like to see information from the Tampa Bay
5 area and other areas in the state. I think this is a good
6 start. I don't think it is the end. And I think we need to
7 develop with the research groups and the community groups and
8 the utilities a further development of this plan of action on
9 underground cost impacts.

10 MS. KUMMER: I would second that. And that we just
11 don't have the information we need right now. There are a
12 couple of studies that are going to be available this fall,
13 apparently the one that Mr. Wright is working on, that will
14 give us a much better handle. I'm just a little bit nervous
15 about getting too prescriptive in a rule at this point because
16 we don't have enough information.

17 And what we propose might work for Power and Light
18 and might not work for Progress and might not work for TECO.
19 What we have tried to do is make the language general enough
20 that it can accommodate different types of proposals that meet
21 particular utility's needs. I understand that doesn't give a
22 lot of guidance, but at this point I'm afraid if we go too far
23 down that road we may be telling them the wrong thing.

24 CHAIRMAN EDGAR: Commissioner Arriaga.

25 COMMISSIONER ARRIAGA: See, I come from the other

1 side, which is you are not going far enough. I understand you
2 don't want to go too far, but I think that you are not going
3 far enough. And, basically, because the towns don't have the
4 option right now because they don't have guidance. So what are
5 we going to wait? It is a fact, and I heard the two workshops,
6 it is a fact that the electric utilities apparently have told
7 us that undergrounding is not a silver bullet. I mean, this is
8 standard in all the electric utilities.

9 I will say they are not overly excited about the
10 possibility. So not being overly excited, I'm not saying
11 either that we should impose it on them, but we should open the
12 door to a little more possibilities of discussions between
13 towns or companies or developers with the utilities to go
14 forward on this issue. Not to leave them there in the limbo.

15 MS. KUMMER: Well, Florida Power and Light and
16 Progress Energy both currently have approved tariffs that
17 provide for municipal undergrounding, so the tariff is out
18 there. That's on Page 41 of the recommendation. That possible
19 rule language is simply taken from the existing tariffs. So
20 there is a framework, and I know that Progress has had several
21 projects undergrounding communities, and then clearly Power and
22 Light is working on this one, as well. I understand what you
23 are saying. At this point I'm not really sure how far we want
24 to go.

25 COMMISSIONER ARRIAGA: Okay.

1 CHAIRMAN EDGAR: Commissioners, further questions or
2 discussion?

3 We have a motion and a second on Issue 8. All in
4 favor of the motion say aye.

5 COMMISSIONER CARTER: Aye.

6 COMMISSIONER DEASON: Aye.

7 COMMISSIONER TEW: Aye.

8 CHAIRMAN EDGAR: Aye. Opposed? Commissioner
9 Arriaga.

10 COMMISSIONER ARRIAGA: I am going to have to vote no,
11 Madam Chairman, and I just want to say that the only reason I
12 do -- the whole issue is just okay. I mean, there is no
13 problem with the issue in general terms, I just have a little
14 concern that we should have gone a little further with
15 promoting undergrounding or giving some guidance to
16 undergrounding. I'm not opposed to the motion in itself, I
17 just want it to be more specific, and that is the only reason I
18 need to vote no at this time. Thank you.

19 CHAIRMAN EDGAR: Thank you, Commissioner Arriaga.

20 Commissioners, we are on Issue 9, and I will note
21 that the recommendation before us from our staff is to not
22 propose a new rule on this issue.

23 Is there discussion or questions? Commissioner
24 Deason.

25 COMMISSIONER DEASON: I am looking at Page 44 of the

1 recommendation, and in the middle part of that page as I read
2 it, staff is agreeing that there should be coordination and the
3 sharing of information, and staff even indicates that they
4 believe there is a middle ground to where the sharing of
5 information would not be unnecessarily burdensome, and perhaps
6 it would be adequate for the applicants to facilitate their
7 planning.

8 Where do we get that? Do you think this rule
9 accomplishes that middle ground or do we need to do something
10 more to accomplish that middle ground?

11 MS. KUMMER: Well, as the staff recommendation
12 indicates, part of the ten points was to improve local
13 governmental liaison. And staff is recommending that that is a
14 better place to try to develop the type of information each
15 particular city needs. Not every city may want the same level
16 or same amount of detail or on the same time frame. And we are
17 suggesting that that liaison effort would be a better place to
18 address it to better tailor it without being unduly burdensome
19 to the utility.

20 Or one of my major concerns is that if the utility
21 gives out too much information too early, cities may be making
22 decisions based on preliminary information which costs them
23 money down the road when the utility has to change its plans.
24 So, I'm a little bit afraid of giving them too much too soon,
25 that that might cost the cities money rather than actually help

1 them. And that's why I think the local liaison avenue is a
2 better way to go.

3 COMMISSIONER DEASON: Well, I'm a little concerned
4 that, first of all, the city governments found it necessary to
5 actually propose rule language. To me that indicates that they
6 have endeavored to acquire information and have felt that they
7 have not been successful in those attempts. And it seems to me
8 that the sharing of information is something that we should
9 encourage. And to the extent to whether it may cost the cities
10 money, as long as the information is shared with them with the
11 understanding that it is planning and -- some of these cities
12 may be small, but there are some really smart people that work
13 there, and they can understand that these planning. It just
14 helps with their planning. And maybe, perhaps, with some
15 future coordination perhaps it would save money for all
16 entities involved at some point.

17 I'm just concerned that the message I'm getting is
18 that there has not been a sharing of information that at least
19 some cities and towns felt like they should have gotten, and
20 this, I think, is troublesome. I'm not saying that we should
21 necessarily adopt a specific language that was proposed, but
22 you suggested middle ground, you don't have any proposed middle
23 ground language for us to consider today?

24 MR. TRAPP: Not at this time.

25 MS. KUMMER: But we can certainly pursue that through

1 the review of their ten-point plan and ensure that something
2 is --

3 COMMISSIONER DEASON: But what is the legal status of
4 the ten-point plans? A rule is much more -- well, it's a rule,
5 it's a requirement. A ten-point plan may not reach to that
6 level.

7 MR. TRAPP: Yes, but our ten-point plan does not
8 foreclose, in my mind, that one of the subsequent actions of
9 one of the elements of the plan is to go to rulemaking. I
10 mean, there may be more rulemaking to come. One of the things
11 that has not been addressed in these rules and was expressed
12 many times during these workshops is let's not lose sight that
13 the big one is tree trimming, vegetation management, and that
14 is an area that is being looked at in that ten-point plan.
15 That is one of the elements.

16 There may be need for vegetation rulemaking,
17 depending on what the utilities have proposed and how you want
18 to address it. I think we agree with you, Commissioner Deason.
19 It's communication, communication, communication. These
20 utilities need to be communicating with their customers to meet
21 their needs.

22 MS. KUMMER: And if we find in the analysis of the
23 ten-point plans that there are areas that need to be addressed
24 by rules or could be addressed by rules, we can certainly go
25 that route. Once we get a handle of what is actually going on

1 there, what the cities and towns believe they need, then we can
2 go forward on that basis. At this point we are not really sure
3 what they are doing or where we need to apply the fixes.

4 Staff was concerned with this particular rule
5 language because it was so broad. It basically says anybody
6 who wanted any information anywhere in Power and Light's
7 territory, they were entitled to it. And that I think is
8 overkill, and that was my comment. There is bound to be a
9 middle ground. Cities and counties and other interested groups
10 certainly have a right to know what's is going on, or what is
11 being planned for their area. It's just that do they have a
12 right to know what is being planned halfway across the state,
13 I'm not sure that is really appropriate. But, again, let us
14 look at what they are proposing as a local liaison. As Bob
15 said, it is entirely possible that more rules will come out of
16 that.

17 COMMISSIONER DEASON: Well, I assume that you will be
18 making an effort to extend an invitation to these particular
19 entities and other municipal entities to participate in further
20 discussions on a so-called middle ground approach?

21 MS. KUMMER: Certainly. Workshops may be an
22 approach. You know, rulemaking, workshops, or just simply
23 preliminary workshops on do we need a rule, how should it be
24 phrased.

25 CHAIRMAN EDGAR: Commissioner Carter.

1 COMMISSIONER CARTER: Thank you, Madam Chair, and I
2 beg your indulgence. I was thinking about the line of
3 questioning. I mean, we have sort of modified a few things
4 here today. It just seems -- I mean, the logic in Commissioner
5 Deason's question kind of begs the question that to say no, but
6 we will get back to you, puts us in the posture to where -- I
7 mean, there has got to be some kind of middle ground between
8 0 and 100, wouldn't you agree with that? It just seems that --
9 okay.

10 We all agree, and if I may for a series of questions,
11 we all agree that the municipals are entitled to some
12 information?

13 MS. KUMMER: Certainly.

14 COMMISSIONER CARTER: We all agree that utilities
15 should provide information to their customer base?

16 MS. KUMMER: Yes, sir.

17 COMMISSIONER CARTER: We all agree that this may not
18 necessarily be the best way to do it because you are doing a
19 shotgun approach. We all agree that there should be a rifle
20 approach, right?

21 MS. KUMMER: Yes, sir.

22 COMMISSIONER CARTER: Are you all with me so far?

23 MR. TRAPP: Sure.

24 COMMISSIONER CARTER: And I think that by deductive
25 reasoning we should be able to come to some point where there

1 is a middle ground of sharing of necessary information. I
2 mean, as Commissioner Deason asked the question, I think you
3 answered that it was planning information, is that correct?

4 MS. KUMMER: That was my understanding, yes.

5 COMMISSIONER CARTER: Madam Chair?

6 CHAIRMAN EDGAR: Commissioner Carter.

7 COMMISSIONER CARTER: And planning information by its
8 very nature would tell a municipal or even a utility that by
9 its nature it is not something you want to go out and bet the
10 farm on.

11 MS. KUMMER: One would hope so, yes, sir.

12 COMMISSIONER CARTER: Yes, ma'am, thank you.

13 But it just doesn't -- I mean, here we are -- Madam
14 Chairman -- we're dealing with this issue in terms of
15 rulemaking and we have got this area here where we can back a
16 Mack truck through it, and we don't really have any
17 recommendations on it. I don't know. I mean, I can't feel it,
18 so to speak.

19 CHAIRMAN EDGAR: Feel the love, Commissioner Carter.

20 COMMISSIONER CARTER: Thank you, Madam Chair.

21 CHAIRMAN EDGAR: Commissioners, further discussion or
22 comments?

23 And, Mr. Cooke, I guess we'll look to you. But we
24 have had some discussion on this item, and what I'm hearing is
25 that we've asked staff, and staff has agreed to do more work.

1 Do we need a motion to that effect; do we need to otherwise
2 dispose procedurally of what is before us? Can you help me
3 walk through it.

4 MR. COOKE: Well, the specific issue before the
5 Commission is whether or not to accept the towns' suggestions
6 in terms of language, and staff is recommending no. So I think
7 you need to make a motion regarding that. That doesn't mean
8 that you can't also direct staff to pursue the kind of
9 information that you have talked about in terms of additional
10 planning, sharing of planning information, et cetera.

11 This is an ongoing rulemaking. What is happening is
12 we are getting approval from the Commission, staff is getting
13 approval to propose specific rule language. But it is proposed
14 language, and it is subject to a period of comment. And in
15 some cases there will be actual hearings on some of these
16 issues. So it's possible for staff to further reflect on
17 additional comments that communities like the towns would raise
18 during this process and see if they can craft some additional
19 language. So if you want to direct staff, I think that is
20 appropriate and that's something that could be done.

21 CHAIRMAN EDGAR: Commissioner Carter.

22 COMMISSIONER CARTER: Madam Chairman, does that
23 mean -- if I may direct to our General Counsel -- does that
24 mean we need two motions, one to dispose of the issue before
25 us, but one to direct staff, or just from the bench direct

1 staff? What's your recommendation?

2 MR. COOKE: I don't know that you need a motion,
3 per se, to direct staff to look into information. But you
4 could do so if you wish, and you could do it all as one if you
5 prefer. It is probably cleaner, I think, to -- I don't think
6 it makes a difference.

7 COMMISSIONER CARTER: Madam Chairman, the reason I
8 was asking that is I was going along this line of questioning,
9 as Commissioner Deason had -- and that kind of got me to
10 thinking about the planning issue. If it is appropriate, I
11 would prefer to deal with it in two motions. One would be to
12 accept staff's recommendation on Number 9, but also to direct
13 staff to come up with a proposal on information sharing on this
14 issue.

15 MR. COOKE: I think that's a clean way to do it.

16 CHAIRMAN EDGAR: I think you said two, but it sounded
17 kind of like one motion with a Part A and a Part B.

18 COMMISSIONER CARTER: That sounds better, Madam
19 Chairman.

20 CHAIRMAN EDGAR: Is that okay with you?

21 COMMISSIONER CARTER: Yes, that is what I was trying
22 to do.

23 CHAIRMAN EDGAR: Okay. Then I think we have a motion
24 that has two subparts. Commissioners, do I have a second?

25 COMMISSIONER DEASON: Second.

1 CHAIRMAN EDGAR: Commissioners, we have a motion and
2 a second. Is there further discussion, or do we need any
3 additional clarification? Everybody good? Okay.

4 All in favor of the motion with those two parts on
5 Issue 9 say aye.

6 (Unanimous affirmative vote.)

7 CHAIRMAN EDGAR: Opposed. Show the motion carried.

8 Commissioners, that leaves us with Issues 10 and 11,
9 which I think we can perhaps take up together. Any questions?

10 Commissioner Carter.

11 COMMISSIONER CARTER: I would move the staff
12 recommendations on Issues 10 and 11.

13 COMMISSIONER DEASON: Second.

14 CHAIRMAN EDGAR: We have a motion and a second. Any
15 questions? Seeing none. All in favor of the motion for Issues
16 10 and 11 say aye.

17 (Unanimous affirmative vote.)

18 CHAIRMAN EDGAR: Opposed? Show the motion adopted.
19 Commissioners and those of you that have hung with us through
20 the discussion, we have run over time. Again, I appreciate
21 everybody's patience. I think that we have had some excellent
22 discussion. It's important issues that are before us, and it's
23 good to have the opportunity to take the time to go through
24 them together.

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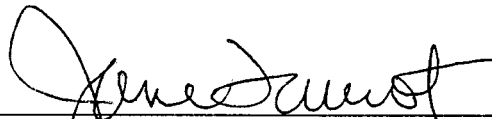
CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 27th day of June, 2006.



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