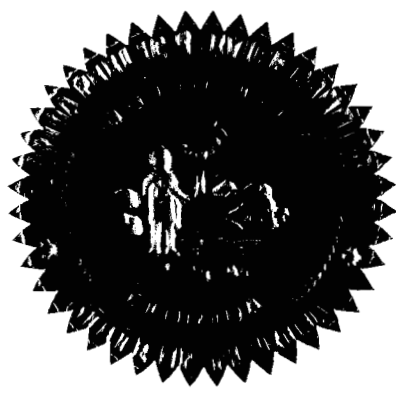


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060745-EI

In the Matter of:

Complaint of Danielle Dobbs against  
Progress Energy Florida, Inc. and  
request for reconfiguration of overhead  
distribution facilities to serve  
Dommerich Hills neighborhood in Maitland.



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PROCEEDINGS:           AGENDA CONFERENCE  
                          ITEM NO. 6

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

DATE:                    Tuesday, December 5, 2006

TIME:                    Commenced at 9:30 a.m.

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

REPORTED BY:            JANE FAUROT, RPR  
                          Official FPSC Reporter  
                          (850) 413-6732

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 JOHN T. BURNETT, representing Progress Energy  
3 Florida, Inc.

4 DANIELLE and CHARLES DOBBS

5 NOHEMI MENESES

6 VAN K. STOBER

7 ALBERT W. PFLUGER

8 MARTHA BROWN, ESQUIRE, representing the Florida  
9 Public Service Commission Staff.

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

1  
2 CHAIRMAN EDGAR: We will go back on the record. As I  
3 said at the beginning of our agenda conference this morning, we  
4 had set a time certain of 1:30 for Item 6, and so I'll ask our  
5 staff to present Item 6.

6 MS. BROWN: Commissioners, Martha Brown with the  
7 Commission legal staff.

8 Item 6 is staff's recommendation on Mrs. Danielle  
9 Dobbs' complaint against Progress Energy Florida. Staff has  
10 recommended that the complaint be dismissed. Progress did not  
11 violate any statutes, Commission rules, or company tariffs in  
12 the way it reconfigured its distribution system to serve Mrs.  
13 Dobbs' neighborhood after it released adjacent facilities to  
14 the new Winter Park utility.

15 Staff is here to answer any questions you have and  
16 Mrs. Dobbs and several of her neighbors are here to address the  
17 Commission. Progress is here, also.

18 CHAIRMAN EDGAR: Thank you.

19 Mrs. Dobbs.

20 MRS. DOBBS: My name is Danielle Dobbs. We have  
21 noticed that my name only appears on the papers, and this is  
22 not, this is not the case. The whole neighborhood is behind  
23 us. We have signatures. We collected signatures last year to  
24 that regards. Everybody, we don't -- we didn't even get all  
25 the signatures because we just went and just collected the

1 signature right then when people happened to be home. But,  
2 everybody, every single person wanted to sign because everybody  
3 was appalled. Not only on the Seminole County side, but also  
4 Orange County.

5 CHAIRMAN EDGAR: Mrs. Dobbs, would you like to go  
6 ahead and take a few minutes to describe your complaint to us?

7 MRS. DOBBS: Sure. In April of 2005, Progress  
8 Energy, following a -- Winter Park, the City of Winter Park  
9 acquired the right to serve the people of Orange County.  
10 Progress Energy didn't notify anybody, and in April 2005 on a  
11 Saturday when all the offices were closed, we saw the trucks  
12 hauling in with 50-foot poles in our neighborhood.

13 And we stopped them. And they said, well, we are not  
14 Progress Energy, we were hired by Progress Energy. We are  
15 supposed to do this. On Monday you can call them. So  
16 basically that's what we did. On Monday morning we called  
17 them. And Mr. Matthews and Mr. Hodges from Progress Energy met  
18 us in the street, and we asked, you know, why they were doing  
19 that, and why we were not notified. And they said, well, we  
20 notified some people. And we said, no, nobody did. Nobody  
21 knew about it.

22 So after that we also met Mr. Randy Williams from  
23 Seminole County. Mr. Williams issues permits. And he happened  
24 to be driving in the neighborhood, and we asked him, you know,  
25 what's going on. And he said, well, Progress requested the

1 permit for the right-of-way to place the poles, and we issued  
2 the permit after they told us that they had sent notices to all  
3 the residents. And nobody received anything.

4 Shall I continue?

5 CHAIRMAN EDGAR: You may.

6 MRS. DOBBS: All right. What I would like to do is  
7 you have on your desk -- we wanted to do a PowerPoint  
8 presentation, but we were told that a paper copy would be  
9 better. So, it's entitled, "Our Neighborhood Dommerich Hills."  
10 The second page, this is the neighborhood. The neighborhood  
11 has two entrances, one on Waumpi Trail, which is the Seminole  
12 County side on the right, and on the left, the Winter Park  
13 entrance, which is called Rapidan Trail. It's an oak wood  
14 neighborhood because half of it is in Seminole County and half  
15 is in Orange.

16 Right in the middle here is the Seminole/Orange  
17 County line, and right in the middle, before anything happened  
18 with Progress Energy, we had a power line right in the middle.  
19 And from that central line we had a transversal line on both  
20 sides to service both sides of the neighborhood.

21 You can turn to the next page. It says results of  
22 the Winter Park utility acquisition. The next page. A new  
23 power infrastructure was imposed on one side of our  
24 neighborhood creating many problems. Lack of due process - no  
25 notification by nobody, by anyone; the City of Winter Park,

1 Seminole County, or Progress Energy.

2 We feel that there was right-of-way abuse.  
3 Right-of-ways are not an open invitation to cities, counties,  
4 and power companies to destroy neighborhoods and people's  
5 properties.

6 Safety, esthetic, and environmental concerns.  
7 Doubling the number of power poles tremendously increases  
8 safety concerns. Fifty foot power pole are unsafe in a  
9 subdivision. It is ugly also at the entrance and on people's  
10 front lawns. The power poles destroy magnificent trees.

11 Property value depreciation. Before Progress Energy  
12 did anything we had -- all the power poles were in our  
13 backyard. Nothing was showing on front lawn. So property  
14 value depreciation. Improper pole location, which is against  
15 conventional wisdom and etiquette set forth by the City of  
16 Winter Park. Page 7, the feasibility update for electric  
17 distribution system, municipalization. This is dated  
18 July 2003.

19 I have the complete update, and it basically says  
20 that if you have a power pole on your property, you should get  
21 the power from it, not your neighbor, okay. And what happened  
22 in this case, as you will remember, we had one line right in  
23 the middle; Winter Park acquired, we don't know how, but the  
24 line in the middle was on the property of Seminole County  
25 residents. When Winter Park acquired the right to service

1 Orange County, the line went to them, and so this is against  
2 this feasibility update.

3           So the neighborhood conflicts created by the careless  
4 action of business players, the City of Winter Park and  
5 Progress Energy. Then we have pictures there. On April 16th  
6 we had the truck come in without notifying anyone. You can see  
7 that those poles are -- and I saw and they are very unsafe  
8 because not only at times of the hurricane, but when you have a  
9 power pole and you have trees around it, you can have fire,  
10 which has happened. Shortly after Progress Energy had all of  
11 those poles planted, there was a lady who had a fire and she  
12 wasn't home, and she's a single mother with two children.  
13 Nobody was home, but a neighbor saw the fire and called  
14 Progress Energy and the fire department.

15           And then it says this resident now has two 50-foot  
16 pole on his front lawn. Number one, and you turn the page and  
17 number two. This resident is Mr. Van Stober, and he's here  
18 today.

19           We have a new skyline which we never had before. I  
20 want to mention also that we had this infrastructure for  
21 40 years in the neighborhood in the backyard. All the poles  
22 were in the backyard. There is a picture here, it says  
23 magnificent tree before and after. And another tree before and  
24 after. And you can see that this one really, they did a real  
25 number on that one. And then it shows the scenery at the

1 county line. I mean, we have poles everywhere.

2 And continue. And this is the page where I mentioned  
3 the feasibility update for electric distribution system. And  
4 Page 7, we will read what it says. "When a city, such as  
5 Winter Park, acquires the utility company's facilities to form  
6 a municipal utility, the lines and substations generally have  
7 to be reconfigured in a fashion such that the power lines  
8 located inside the city serves city customers, and the lines  
9 located outside the city serves the company's customers. The  
10 process of reconfiguring these power lines involves separating  
11 the city customers from the power lines that serve the power  
12 company's customers." What has actually been done is contrary  
13 to the above.

14 Also, by keeping the power line on the Seminole  
15 County resident's property, those people had to have another  
16 pole added, you know, to serve them without counting all the  
17 other poles that we have in the backyard.

18 Improper power pole configuration. Before the  
19 separation of the two utility companies, the Seminole County  
20 residents along the county line has power pole on their  
21 property that served both sides of the neighborhood. Now those  
22 powers poles have remained on their properties and they now  
23 serve only Winter Park residents. And on top of that, Progress  
24 Energy has installed a second set of poles on their property to  
25 provide them with electricity.



1           On the next page we see the lines and power poles  
2 everywhere now. And we say, otherwise, this is a very nice  
3 neighborhood. No poles, you know, on the front lawn except on  
4 Waumpi Trail. And a solution must be found. A better plan  
5 must be found to exist to separate the two power companies.

6           Plan A is adding a power line on the Orange  
7 County/Winter Park side of the county line to serve Winter Park  
8 residents and require Winter Park residents to agree to have an  
9 easement on their property and Progress Energy is willing to  
10 install it at no charge. Or Plan B, underground the newly  
11 installed system on Waumpi Trail at Progress Energy's expense  
12 at a cost of 43,000, we were told, and remove extra power poles  
13 on people's front lawns and any other newly installed poles.

14           As you remember, we had a power line in the middle.  
15 In April 2005, we talked to Mr. Matthews and Mr. Hodges, and we  
16 said, well, you know, don't do this on our street. Why not  
17 simply just add another line next to it to serve Orange County  
18 residents. It was very logical. And he said, well, we  
19 couldn't put it next to each other because it would be unsafe.  
20 I said okay, fine, put it one house over so that now we have  
21 one power line -- one power line to serve Orange County, City  
22 of Winter Park residents, and the other one where the poles  
23 would stay on the Seminole County resident to serve Seminole  
24 County residents. It was very logical.

25           And he said, well, I don't think we could get -- it's

1 not the right-of-way, the easement from those people. But he  
2 said you can try, and if they say yes, we can do it. And I  
3 said this is not our doing, this is not our responsibility to  
4 do anything like that.

5           The City of Winter Park may have been the winner of  
6 the deal between itself and Progress Energy, but the people of  
7 the entire neighborhood are the losers. The welfare of the  
8 people and uniformity of the neighborhood has been completely  
9 ignored. The residents feel that Progress Energy has a moral  
10 obligation to underground all newly installed power lines in  
11 the neighborhood. All the residents would appreciate your help  
12 in restoring our neighborhood to the way it was prior to  
13 Saturday, April 16, 2005, so as to minimize the impact of the  
14 utility acquisition by Winter Park.

15           Rules, regulations, and tariffs pertaining to the  
16 underground of a system should be amended to include Progress  
17 Energy as the applicant whenever it decides to unilaterally  
18 change the power infrastructure for its own gain at the expense  
19 of the residents. And the last page is where -- it's black and  
20 white, but you can see the original line in the middle that is  
21 on Seminole County property residents, and the proposed line  
22 that should have served Orange County residents, you know, one  
23 house away.

24           Now I'm going to let my husband read. We have read  
25 what Attorney Brown sent us, and we have written something to

1 respond to the comments made. So my husband is going to read  
2 that.

3 MS. BROWN: Mr. Dobbs.

4 MR. DOBBS: Hi. My name is Charles Dobbs. I'm  
5 reading this. I am going to read it as my wife wrote it.

6 Danielle Dobbs, a resident of Dommerich Hills  
7 Subdivision, has been the spokesperson for the neighborhood in  
8 lieu of a formal association. Even though the neighborhood  
9 lies in two counties, Orange County, City of Winter Park, and  
10 Seminole County, all the residents are united and were appalled  
11 by the action of Progress Energy when in April/May 2005 it  
12 imposed a reconfiguration of the power infrastructure without  
13 consulting the residents. Let it be known that all of the  
14 residents in that subdivision in both counties are behind this  
15 fight. When in 2005 we went from house-to-house to collect  
16 signatures, every residents who was at home signed the petition  
17 and the signatures are attached in this package.

18 We contend that Progress Energy, a for-profit  
19 publicly held company traded on the American Stock Exchange,  
20 has abused its power as a monopoly when as a result of a  
21 business deal with the City of Winter Park it reconfigured the  
22 infrastructure of Dommerich Hills Subdivision by adding 50-foot  
23 poles on people's front lawns without conferring with the  
24 residents. Progress disregarded peoples welfare by, one,  
25 changing the character of a 40-year-old neighborhood by adding

1 50-foot power poles on front lawns, which for 40 years had been  
2 hidden from view in back yards. Progress admitted it chose  
3 this route because it was -- number two. (Inaudible comment by  
4 Mrs. Dobbs.) I haven't there yet.

5 Progress disregarded people's welfare by, one,  
6 changing the character of a 40-year-old neighborhood by adding  
7 50-foot power poles on front lawns which for 40 years had been  
8 hidden from view in back yards. Two, increasing safety hazards  
9 by doubling the number of power poles. And, three, decreasing  
10 property values.

11 Progress admitted it chose this route because it was  
12 easier to pay for a right-of-way permit that allowed it to  
13 install 50-foot power poles on people's front lawns than to  
14 choose a better alternative that would have kept all poles  
15 hidden from view in back yards. Progress Energy Company was  
16 able to impose their will on the people under the present  
17 statutes that failed to protect the people/customers because  
18 even though the rules of the Florida Public Service Commission,  
19 Rule Number 25-6.002(1) mentioned both the rights of the  
20 utility and the customer. Nowhere in the 86 pages of the  
21 statutes do they define or mention the rights of the customer  
22 except in that one line. Thus, the customer possesses no  
23 rights in the statutes as opposed to a monopoly like Progress  
24 Energy Utility Company.

25 We have outlined herein relevant commentaries citing

1 present statutes to rebuke Progress Energy's arguments as well  
2 as stating comments made by the PSC staff. We have also  
3 outlined certain deficiencies in the statutes that could  
4 prevent abuses by monopolies such as Progress Energy. We ask  
5 the Public Service Commission to review the merit of our  
6 arguments, and should the Commission agree that people should  
7 have rights against a monopoly, then the Commission should  
8 force Progress Energy to do the right thing, mainly to either  
9 underground the new system at their cost or to install a  
10 parallel power line near the county line to serve Orange  
11 County/City of Winter Park residents so that the residents of  
12 Dommerich Hills Seminole County keep their original power line  
13 grid that is still on Seminole County properties.

14 Our arguments and commentaries show that Progress  
15 Energy has done the following: Has abused its power as a  
16 monopoly. It hides behind the present statutes that fail to  
17 protect customers' rights. It disregarded safety concerns of  
18 the residents, and cites a tariff that does not apply in this  
19 case.

20 Number one, Progress abused its power as a monopoly  
21 by not informing or consulting with the residents. The PSC  
22 staff states, "Mrs. Dobbs states in her complaint and Progress  
23 confirms that no one in the neighborhood was notified that the  
24 changes were to occur until the trucks arrived and started  
25 installing the poles." The residents feel that Progress has

1 violated their rights by not consulting with them prior to  
2 installing a system that alters the character of the  
3 neighborhood and increases safety hazards.

4 Point two, making untrue remarks and statements to  
5 the Commission to justify the 50-foot poles. Progress also  
6 stated that it installed 50-foot poles rather than shorter ones  
7 to accommodate Mrs. Dobbs' concern about having to trim too  
8 much from the large trees along the entrance to Dommerich  
9 Hills. This is totally false. Mrs. Dobbs never heard or met  
10 with anyone from Progress Energy before the company barged into  
11 the neighborhood on a Saturday morning to install the 50-foot  
12 poles. She, along with other residents, met Mr. Matthews and  
13 Mr. Rogers in the street the following Monday after the poles  
14 were already planted in the ground.

15 2.2, to Mr. Randy Williams, permit coordinator for  
16 Seminole County. On April 19th, 2005, at 3:30 p.m., while  
17 waiting for Mr. Rogers and Mr. Matthews to arrive to talk to  
18 us, we saw Mr. Randy Williams driving in the neighborhood. We  
19 flagged him down and spoke to him. He admitted that he had  
20 issued a permit to Progress Energy without informing us. Us  
21 being the neighborhood. He said that he has been told by  
22 Progress Energy that all the residents had received notices.  
23 Naturally, we know that Progress' statement made to Mr.  
24 Williams is untrue. Nobody has received notices.

25 Three, choosing an easier route at the expense of

1 people's welfare. Progress failed to confer with the City of  
2 Winter Park about the proper way to reconfigure the system.  
3 Page 7 of the feasibility update for electric distribution  
4 system municipalization done by First Southwest Company on  
5 behalf of Seminole Park states, "Lines have to be reconfigured  
6 in a fashion such that the power lines located within the city  
7 served city customers and the lines located outside the city  
8 limits serve the company's customers that are located outside  
9 the city limits."

10           The original power line that was used to serve  
11 resident of both Orange County and Seminole County happens to  
12 reside with Seminole County residents' properties. Instead of  
13 leaving that line in place to continue to serve Seminole County  
14 residents, the line still in Seminole County now serves Orange  
15 County residents exclusively. Progress Energy had to install a  
16 second set of power poles in these residents, the Seminole  
17 County residents' backyard to serve them, the Seminole County  
18 residents.

19           Should Progress Energy had explained to Winter Park  
20 that a new parallel line would need to be installed one house  
21 away to serve Orange County/City of Winter Park residents, the  
22 City of Winter Park would have seen to it that it obtained an  
23 easement from seven residents who would benefit from the new  
24 line, especially because their study, their own study demands  
25 it.

1           3.2, Progress failed to confer with the residents.  
2 Instead of conferring with the residents to come up with an  
3 agreeable solution, Progress presented the residents with a  
4 fait accompli. In May 2005, Mr. Matthews, Progress presented  
5 the residents -- I'm sorry, in May of 2005, Mr. Matthews, chief  
6 engineer, and Mr. Rogers both admitted to Mrs. Dobbs and other  
7 residents while standing in the street that adding a parallel  
8 line would have been possible if placed one house further away  
9 into Orange County, which would have served Orange County  
10 residents and according to them would have been safe. The  
11 reason why they did not choose this course of action was stated  
12 by the PSC staff as follows: It, Progress, did not believe it  
13 could acquire easements from the Winter Park customers, but it  
14 was able to acquire permits to install facilities in the  
15 Seminole County right-of-way along Waumpi Trail.

16           Apparently Progress never attempted to ask either the  
17 residents or the City of Winter Park about getting the  
18 easements. It shows that Progress took the easiest route at  
19 the expense of the welfare of the people.

20           It abused its right-of-way privileges by erecting  
21 50-foot poles at the entrance of the neighborhood and all along  
22 Waumpi Trail because it was easier to pay for a permit than  
23 obtaining an easement from Orange County residents. They  
24 didn't even ask. This alternative would have kept the poles  
25 hidden from view in backyards as they have been for the past



1 40 years.

2 Progress asked Mrs. Dobbs and the residents an  
3 impossibility knowing full well that no Orange County/City of  
4 Winter Park resident would agree after the fact. When  
5 Mrs. Dobbs and other residents heard from Mr. Matthews and  
6 Mr. Rogers that a parallel line could have been installed and  
7 would have been safe, they asked that it be installed instead  
8 of the 50-foot poles in front lawns. They responded as  
9 follows: That it would place the lines across the Seminole  
10 County line if Mrs. Dobbs and her neighbors could persuade the  
11 residents to grant Progress easements to install the lines.

12 It is not up to us, the residents, to get into the  
13 business of requesting an easement from Orange County residents  
14 after their business deal was over and the poles were already  
15 on people's front lawns. It was the responsibility of Progress  
16 only. Progress should have presented the case to the City of  
17 Winter Park and its residents as the most logical setup that  
18 would keep the poles hidden from view and preserve the  
19 uniformity of the neighborhood.

20 Progress hid behind present statutes. The present  
21 statutes fail to define or protect the rights of the customer.  
22 Thus, Progress is allowed to act as a monopoly and do as it  
23 pleases at the expense of customers' welfare. In the words of  
24 PSC staff, Progress stated that it is not required by any  
25 statute or Commission rule to notify customers when it makes

1 changes to its distribution system to serve those customers.  
2 Such a requirement would be burdensome and inefficient. And  
3 PSC staff agrees that Progress is not required to notify its  
4 customers every time it makes a change to its distribution  
5 system. While under some circumstances it might be advisable  
6 to do so, as it might have been in this circumstance, any such  
7 requirement to notify customers every time a change is made to  
8 an electric utility's system would be unworkable.

9           The above two paragraphs show arrogance and total  
10 disregard for the rights of the customer. Both Progress and  
11 PSC staff agree that it would be burdensome and inefficient to  
12 notify customers every time a change is made to an electric  
13 utility's system and it would be unworkable. Conferring with  
14 its customers once in 40 years on reconfiguring the  
15 infrastructure for the benefit of Progress Energy's business  
16 deal would not be burdensome or inefficient or unworkable, just  
17 and equitable. So, once in 40 years, they should confer with  
18 us.

19           PSC staff supports Progress by declaring that  
20 customers do not possess due process rights. I'm quoting,  
21 "Customers do not have a due process right to a hearing  
22 regarding Progress' configuration of its electrical system."  
23 This is true. According to the present statutes and the rules  
24 of the Florida Public Service Commission Rule 25-6.002, the  
25 first paragraph mentioned both the rights of the utility and

1 the customers, but nowhere in the 86 pages of the statutes does  
2 the statute define or mention the right of the customer. Thus,  
3 the statute means nothing. Thus customers have no rights  
4 against a monopoly like Progress Energy.

5 In regards to the statement made by staff, there is a  
6 big difference in the configuration of the system and  
7 reconfiguration of the system. Progress should have no right  
8 to reconfigure a system that has been in place for 40 years  
9 without conferring with the residents it serves, especially  
10 when that reconfiguration was a result of their own business  
11 deal and the residents had nothing to do with it, and that  
12 reconfiguration changed the character of the neighborhood,  
13 increased safety hazards, and decreased property value.

14 C, Progress disregarded safety concerns of its  
15 customers. The rerouting has doubled the number of power  
16 poles. Doubling the number of poles doubles the safety hazard.  
17 I'm quoting, "A Commission safety engineer inspected the new  
18 facilities installed to serve Mrs. Dobbs' neighborhood and  
19 found them to be in compliance with the National Electric  
20 Safety Code. The Commission has jurisdiction over this matter  
21 pursuant to Section 366.03, Florida Statutes."

22 Although the placement of the poles may comply with  
23 the National Electrical Safety Code, in practice trees and  
24 poles do not mix and accidents do occur. Doubling the number  
25 of poles doubles the safety hazards. It is a fact that

1 electric poles can create safety hazards during hurricanes, and  
2 it can create fires at times of hurricanes and at any other  
3 time.

4           The following incident happened within a few weeks  
5 after the new poles were in place at the house of Peggy  
6 Stevens, who my wife mentioned earlier, who resides at the  
7 corner of Waumpi Trail and Tuscaloosa. The fire started in one  
8 of her oak trees caused by the new power line. A driver from  
9 the neighborhood happened to see the fire and called 911.  
10 Progress Energy and the fire department responded immediately  
11 to extinguish the fire. Mrs. Stevens and her two children were  
12 not at home at the time.

13           Another resident now has two 50-foot poles in his  
14 front yard. Those poles could topple onto his house in the  
15 event of a hurricane. We want our concerns to be on record  
16 that the residents have warned Progress Energy that increasing  
17 the number of poles has increased safety hazards for the  
18 residents of Dommerich Hills Subdivision. Should an accident  
19 happen as a result of the new infrastructure, the residents  
20 will hold both Progress Energy and the Public Service  
21 Commission responsible.

22           D, Progress Energy made the residents think that it  
23 was paying for the separation and reconfiguration costs.  
24 According to Page 8 of the feasibility update for electric  
25 distribution municipalization of July 2003, it appears that the

1 separation and reintegration costs would be paid by the City of  
2 Winter Park. It stated quoting, "The arbitrators ordered if  
3 the municipalization, in fact, occurs, Florida Power  
4 Corporation, now Progress, should do the disconnection and  
5 reconnection work as efficiently as reasonably possible and  
6 keep careful track of all its separation and reintegration  
7 costs. And the actual amount to be paid for this item will be  
8 determined pursuant to the true-up mechanism." It makes you  
9 wonder.

10 E, Progress continues to erroneously cite the tariff  
11 when it knows full well that this particular situation does not  
12 apply to the residents. And quoting staff, "The tariff shall  
13 include the general provision and terms under which the public  
14 utility and applicant may enter into a contract for the purpose  
15 of new construction or conversion of existing overhead electric  
16 facilities to underground electric facilities. And, for the  
17 purposes of this rule, the applicant is the person or entity  
18 seeking the undergrounding of existing overhead distribution  
19 facilities.

20 We contend that the tariff does not apply to the  
21 residents of Dommerich Hills because, number one, we were happy  
22 with the existing overhead facility in our backyards. The  
23 rerouting was done for the benefit of Progress Energy as a  
24 result of a business deal with the City of Winter Park. We  
25 never asked for anything to be changed. And, two, we are not

1 applicants because we never asked for our existing  
2 infrastructure to be changed because we were happy with the  
3 power poles in the backyards hidden from view. The applicants  
4 should be Progress Energy because it is Progress that decided  
5 to change the infrastructure.

6 Page 6. The demands of the residents from Dommerich  
7 Hills Subdivision. Our demand has remained the same since  
8 April/May 2005 when Progress Energy unilaterally decided to  
9 change our infrastructure and character of the neighborhood as  
10 a result of a busy deal between Progress Energy and the City of  
11 Winter Park and imposing 50-foot poles on people's front lawns  
12 without conferring with the residents. In doing so, Progress  
13 disregarded people's welfare by, one, changing the character of  
14 a 40-year-old neighborhood by adding 50-foot poles in the front  
15 yards, which for 40 year had been hidden from view in  
16 backyards, increasing safety hazards by doubling the number of  
17 power poles and decreasing property values.

18 We ask that, A, Progress Energy underground the new  
19 infrastructure at its expense and remove the new poles that  
20 were added in people's backyards and all the new power poles  
21 placed at the entrance of the subdivision and all along Waumpi  
22 Trail, or, B, Progress remove all the new poles and install a  
23 parallel power line on the Orange County side to serve Orange  
24 County/Winter Park residents, so that the residents of  
25 Dommerich Hills in Seminole County keep their original power

1 line which presently resides on their property, but serves  
2 exclusively Orange County residents.

3           And our recommendation to the Public Service  
4 Commission, we have shown in this report that Progress Energy  
5 has abused its power as a monopoly at the expense of the  
6 people. We have shown that Progress Energy has cited various  
7 statutes that do not apply in our case, and Progress Energy  
8 made untrue statements. We have pointed out that in the  
9 86 pages of the statutes the rights of the customers are not  
10 defined or even mentioned except to say in the first paragraph  
11 that the purpose of the statutes is to establish the rights and  
12 responsibilities of both the utility and the customer. Thus,  
13 we have outlined concern deficiencies in the statutes. We are  
14 suggesting three amendments to the rules of the Florida Public  
15 Service Commission, Chapter 25-6, that would help prevent  
16 abuses by a monopoly, such as Progress Energy, and protect the  
17 customers.

18           Now, on the next page we have the people of Dommerich  
19 Hills subdivision suggest the following amendments, and just  
20 turn the page again. We proposed amendment number one. The  
21 purpose of the amendment would define the rights of the  
22 customer not presently defined. Current statutes, Rule  
23 25-6.002 asserts that both the utility and the customer have  
24 rights. And quoting the statute, "These rules and regulations  
25 shall apply to all electric public utilities operating under

1 the jurisdiction of the Florida Public Service Commission.  
2 They are intended to define and promote good utility practices  
3 and procedures, adequate and sufficient services to the public  
4 at reasonable costs, and to establish the rights and  
5 responsibilities of both the utility and the customer.

6 Deficiencies, as was stated. The statute declares  
7 customers have rights. According to the above rule, the  
8 statutes are intended to establish the rights and  
9 responsibilities of both the utility and the customer. Yet in  
10 the 86 pages of the statutes the words rights appears only five  
11 times. The only time it pertains to customers is in  
12 Section 25-6.0442 about territorial disputes with the electric  
13 utilities. It reads, "Any substantially affected customer  
14 shall have the right to intervene in such proceedings."

15 The other aforementioned rights that I mentioned are  
16 used in matters of rights-of-way. Nowhere does the statute  
17 define or even mention the rights of customers. PSC staff  
18 declares that customers do not possess rights. The Public  
19 Service Commission staff stated, "Customers do not have a due  
20 process right to a hearing regarding Progress' configuration of  
21 its electrical system." We contend that due process rights are  
22 inherently held by the people when any action by a utility  
23 company or a municipality will affect either the character of  
24 the neighborhood, people's safety, or property values.

25 This next one, it says rights of customers.



1 Specifically, due process. Any time that a neighborhood shall  
2 be affected with respect to the character, safety, or property  
3 values of the neighborhood as a result of a utility system  
4 reconfiguration, the utility company/municipality has an  
5 obligation to send a written notice to the residents who would  
6 be affected by such a change. The written notice must mention  
7 a time and place for a hearing within two miles from the  
8 neighborhood in question. The purpose of such a hearing would  
9 help the utility receive input from residents so that an  
10 acceptable utility reconfiguration can be implemented.

11           The second amendment. The amendment would establish  
12 obligations of a utility toward its customers when it decides  
13 unilaterally to change the character of the service, i.e.,  
14 reconfigure the electrical system. The current statute,  
15 25-6.038, "If any changes are made by the utility in its  
16 existing service characteristics which would impair the safe  
17 efficient utilization of energy by the customers' equipment,  
18 the utility shall bear the cost of all changes necessary to  
19 adapt the customer's equipment to the new service condition so  
20 that such equipment will perform to the same degree of  
21 effectiveness as therefore unless such change is necessitated  
22 by a change in the customer's requirement."

23           Progress stated that it did not require -- it is not  
24 required by any statute or Commission rule to notify customers  
25 when it makes change to its distribution system to serve those

1 customers.

2           Deficiency. The above statute talks about change of  
3 character of service, but only insofar as the new configuration  
4 would affect a customer's equipment. It does not, however,  
5 protect the customers from the utility reconfiguring at will  
6 the infrastructure of a neighborhood while affecting the  
7 character of the neighborhood, the safety of the residents, and  
8 their property values.

9           A second statute becomes necessary to protect the  
10 people from the utility placing undue negative effects on the  
11 neighborhood. Proposed amendment. If the utility decides  
12 unilaterally to make changes in its existing service  
13 characteristics, the utility is required to have a hearing with  
14 the residents of such neighborhood or the residents of that  
15 subdivision who will be affected by such a reconfiguration.  
16 The purpose of such a hearing is to find an acceptable  
17 reconfiguration that will not affect the character of the  
18 neighborhood in a way that could either make it unsafe for the  
19 residents or depreciate the property values. The costs of such  
20 a reconfiguration shall be borne by the utility.

21           Proposed amendment number three. This amendment will  
22 clarify the obligations of a utility toward its customers when  
23 it decides unilaterally to reconfigure an electrical system  
24 already in place. The current statute reads -- Rule 25-6.115,  
25 "Each public utility shall file a tariff showing nonrefundable

1 deposit amounts for standard applications addressing new  
2 construction and the conversion of existing overhead to  
3 underground facilities excluding new residential subdivisions.  
4 For the purpose of this rule, the applicant is the person or  
5 entity seeking the undergrounding of existing overhead  
6 electrical distribution facilities."

7           Deficiencies. Rule 25-6.115 pertains to the tariff  
8 of undergrounding a new utility construction or undergrounding  
9 an existing overhead electric distribution system. Rule  
10 Section 2 pertains to applicants seeking to underground  
11 existing overhead electric distribution facilities. In their  
12 arguments Progress Energy and PSC staff stated Rule 25-6.115,  
13 however, that rule does not apply in our situation because we  
14 are not applicants. We never asked for our system to be  
15 changed. We were happy with the poles, with our poles in  
16 backyards hidden from view. It is Progress Energy that  
17 unilaterally decided to reconfigure our system. Thus, they are  
18 the applicants, not us.

19           Since the reconfiguration has altered the character  
20 of the neighborhood and increased safety hazards and  
21 depreciated property values, Progress should have the  
22 responsibility to underground the system at their cost. Rule  
23 25-6.115 does not provide for the utility company to assume the  
24 cost of undergrounding an existing system when it unilaterally  
25 decides to change the infrastructure of the neighborhood and

1 undergrounding the system may become necessary to preserve the  
2 character of the neighborhood and ensure the safety of  
3 residents and avoid depreciating property values.

4           We propose, in Paragraph 2, for the purpose of this  
5 rule the applicant is the person or entity seeking the  
6 undergrounding of existing overhead electric distribution  
7 facilities. However, Rule 25-6.115 does not apply in instances  
8 when the utility has decided unilaterally to reconfigure an  
9 existing system and that undergrounding a portion or an entire  
10 system may become necessary to preserve the character of the  
11 neighborhood, ensure the safety of the residents, and avoid  
12 depreciating property values. In this instance, the utility  
13 will bear the cost of undergrounding the system.

14           CHAIRMAN EDGAR: Thank you, Mr. Dobbs.

15           Would any of the other residents that have traveled  
16 here like to make a comment at this time?

17           MS. MENESES: My name is Nohemi Meneses. I am a  
18 resident of 2909 Waumpi Trail. And I came, I made a big effort  
19 to be here because my family has gone through four hurricanes  
20 in Florida, and I find it that this country should start  
21 burying lines. There is no reason why when they put new lines  
22 to have them overhead. It causes great, great distress. And  
23 when you have asthma, people with asthma attacks and you lose  
24 electricity they cannot use their nebulizers, believe me,  
25 people die. I am a nurse anesthetist by profession, and I know

1 how detrimental it is to lose electrical services. And since  
2 the electrical company has that responsibility and obligation  
3 to give service to the customers, especially during those  
4 stressful times, I find it very appalling that they are just  
5 ignoring these needs at this point. Thank you.

6 CHAIRMAN EDGAR: Thank you.

7 Gentlemen, would you like to make a statement?

8 MR. PFLUGER: My name is Al Pfluger. I live across  
9 the street from Mr. Stober who has the poles on his lawn. When  
10 you enter our development, as I did 22 years ago, I got an  
11 impression of the neighborhood by the view that I see as I  
12 enter. And that view is Mr. Stober's home, which was always  
13 well kept. A few palm trees on the lawn, nice shrubbery. And  
14 I used that impression to view the homes in the neighborhood,  
15 and I selected this home because it's a nice home and it's a  
16 very nice neighborhood.

17 I'm afraid that that's not going to be there anymore.  
18 Because now when you enter the neighborhood, there is this big  
19 pole sitting directly in front of you as you come in and you  
20 make a slight turn onto Waumpi Trail. I'm afraid people will  
21 just keep going and not view the Waumpi side of our  
22 neighborhood as valuable as it had been. And I have a five  
23 bedroom, three bath home. It's not a small neighborhood. And  
24 I would just appreciate your concern, as I have a concern that  
25 this actually changes the character of our neighborhood.

1 Thank you.

2 CHAIRMAN EDGAR: Thank you.

3 Mr. Stober.

4 MR. STOBER: I'm the infamous Van Stober that lives  
5 on the corner of Waumpi and Sweetwater with the two poles in my  
6 yard. I didn't know Al liked by yard that well, but that's  
7 great to hear.

8 What bothers me, I guess, most is that Mrs. Dobbs and  
9 a bunch of us, it's a small group, as you might expect, have  
10 been to the Seminole County Commission, the Winter Park County  
11 Commission, and I'm not so sure how many other places we have  
12 been, and we have finally gotten here, which it seems the PSC  
13 has some clout to make Progress Energy do the right thing. And  
14 this is kind of, I think, our last hope of resort, because I  
15 don't know where else we can go to resolve this issue. And I  
16 think the right thing is really what you need to decide to do.

17 It would have been a lot different if Bob Matthews,  
18 and I know Bob and he is a fine guy, would have talked to us  
19 before this all started. That didn't happen. That didn't make  
20 it any easier, but what they did was not right. They put stuff  
21 down the right-of-way which I know legally they can do, but it  
22 is not right. They could have done an alternative, as Mrs.  
23 Dobbs has said, or they can underground.

24 And it is not that big an expense to underground what  
25 they have put overhead, and it does not affect any of the

1 houses on how we are connected to the grid if they do  
2 underground it. It is simply taking their lines and stuffing  
3 them under the earth. And I ask you to consider this, because  
4 I think this is really our position of last resort. We don't  
5 know where else to go to resolve this issue. Thank you.

6 CHAIRMAN EDGAR: Thank you, Mr. Stober.

7 Mr. Burnett, you seem to have drawn the short straw.

8 MR. BURNETT: Thank you, Madam Chairman. John  
9 Burnett on behalf of Progress Energy Florida. Commissioners, I  
10 have with me today Bob Matthews, who was the engineer on the  
11 project in question. Progress Energy Florida supports the  
12 staff recommendation and is here to answer any questions that  
13 the Commission may have. Thank you.

14 CHAIRMAN EDGAR: Commissioners.

15 Commissioner Carter.

16 COMMISSIONER CARTER: Thank you, Madam Chairman. To  
17 Progress. In the process of going through this change of  
18 circumstance here, did you guys go out and maybe just have a  
19 little meeting and inform the neighborhood association about  
20 this change?

21 MR. BURNETT: No, Commissioner. And if I may tell  
22 you why. Our company, as I'm sure you know, has a customer  
23 notification policy that pursuant to the Florida Administrative  
24 Code rules we keep on file at the Commission here. It is a  
25 well thought policy. And part of the reason why we do not

1 notify customers in situations where their actual service is  
2 not impacted is because we found in many instances that incents  
3 customers to think that they have rights or votes that they do  
4 not have. It suggests to them that they may have some sort of  
5 say in the matter, which they do not. So, almost  
6 counterintuitive it seems to have a negative process when you  
7 inform a customer that you are about to do something, again  
8 implying that they have the right to veto or bring a challenge  
9 such as this one.

10 So we have found that unless the service of the  
11 customer is directly impacted, or a safety concern is impacted,  
12 or there is something operationally that a customer should know  
13 about for their welfare, we do not notify. Not to mention the  
14 expense, of course, of notifying that would have to be borne by  
15 the body of the ratepayers.

16 COMMISSIONER CARTER: In this context where you have  
17 multiple jurisdictional -- different counties, this was not an  
18 unusual set of circumstances where you may just kind of err on  
19 the side of caution.

20 MR. BURNETT: Actually, Commissioner, it was almost  
21 the opposite. Given sort of the high visibility in the area,  
22 the awareness of this going on with multiple jurisdictions with  
23 the extensive permitting and the arbitrations and all the bells  
24 and whistles, if you will, that we had to actually go through  
25 to make this happen, as well as the expedited time frame that



1 we had to make the separation and reintegration happen under  
2 the arbitration order, it was actually a process where we  
3 really barely had time to even make it happen much less engage  
4 in notification. Especially in light, again, of all the  
5 permits and implicit notification and high exposure that this  
6 was given.

7 CHAIRMAN EDGAR: Mr. Burnett, could you speak to a  
8 statement that is in the staff write-up, and I am looking in  
9 the item in my copy at the top of Page 4. I guess it would be  
10 the first full sentence, and it says, "Progress also stated  
11 that it installed 50-foot poles rather than shorter ones to  
12 accommodate Mrs. Dobbs' concern about having to trim too much  
13 from the large trees along the entrance to the neighborhood."

14 If, indeed, a decision as to the height of the pole  
15 was made as an accommodation to consumer concerns, that seems  
16 to me to be somewhat counter to what you have just said, so if  
17 you could speak to that for me.

18 MR. BURNETT: Certainly, Madam Chairman. Actually, I  
19 believe that this, as it is reflected here, may be able to be  
20 read somewhat out of context. I believe what staff is trying  
21 to say, since I actually participated in the call that led to  
22 this, was the fact that Mrs. Dobbs on the call raised the fact  
23 that the tree canopy was impacted and some of the trees were  
24 not as esthetically pleasing as they used to be.

25 We made a responsive comment to suggest that one of

1 the reasons that we did have to use the 50-foot poles, in fact  
2 the principal reason why we had to use it there is because of  
3 the vegetation canopy. With the more restrictive tree trimming  
4 ordinances that we face in Orange and Seminole County, and the  
5 significant pushback that we get from the counties and  
6 municipalities there with some of our tree-trimming practices  
7 at the time, we were really not able to trim those trees as we  
8 would need to do with 35 and 40-foot poles. So we made an  
9 operational decision beforehand to use the higher poles, I  
10 believe. So the decision to use the higher poles was made as  
11 an operational decision prior to any contact with Mrs. Dobbs.

12 I believe what this is trying to say is during the  
13 actual informal conference in an effort to resolve this matter,  
14 Madam Chairman, we responded and made her aware of that  
15 operational concern that we had in response to the reason why  
16 her trees were impacted by the taller poles and not as  
17 esthetically pleasing.

18 CHAIRMAN EDGAR: Commissioner Arriaga.

19 COMMISSIONER ARRIAGA: Mr. Burnett, neighbors have  
20 stated in two or three opportunities the issue about a business  
21 deal between the company and the city, and that you did what  
22 you did because of some beneficial gain in dollars. Would you  
23 speak to that for me, please.

24 MR. BURNETT: Yes, Commissioner. If you would allow  
25 me a colloquialism, this was so far from a business deal.

1 Actually, Progress Energy Florida was dragged kicking and  
2 screaming, if you will, into this arbitration. We had to  
3 engage in the sale of these assets with Winter Park pursuant to  
4 a court order from the Florida Supreme Court, which found a  
5 right to purchase option in our franchise with Winter Park  
6 enforceable, which we protested, so we were court ordered to  
7 make this sale.

8 COMMISSIONER ARRIAGA: So you were forced into this  
9 negotiation with the city, this is not something you entered  
10 out of free will because you were going to make some money?

11 MR. BURNETT: That is correct, sir.

12 COMMISSIONER ARRIAGA: Let me ask another question,  
13 please.

14 CHAIRMAN EDGAR: Commissioner Arriaga.

15 COMMISSIONER ARRIAGA: I think you have heard me  
16 several times speaking about undergrounding and the benefits of  
17 undergrounding and all of that. And I know that we are going  
18 here, the Commission, through a very difficult process trying  
19 to define, and I think we got one step closer this morning when  
20 we approved the rules that we did. Out of common sense, and I  
21 understand that what you did you have the legal right to do,  
22 but there is also the issue of common sense. And I'm going to  
23 put my point of view here.

24 Sometimes I'm told that in ethic issues, complying  
25 with the law may not be enough, that that it may be necessary

1 to take into consideration perception of my actions. So  
2 bringing that -- not an ethical issue, but just a common sense,  
3 did you consider undergrounding? And I know there was going to  
4 be an additional cost and all that, but didn't it make sense?

5 MR. BURNETT: Commissioner, I will address this until  
6 I hit that delicate point to where I start to go out of my  
7 competency, and I will refer to the engineer here, but I can  
8 speak. Yes is the answer to your question. I think every  
9 option in separating and reintegrating the system, especially  
10 on the Progress side where we had control of what happened on  
11 the Progress side we did consider those options.

12 What we found, of course, and almost ironically you  
13 mentioned that moving these assets from the rear lot now to the  
14 front lot where they exist is consistent with the rule we even  
15 talked about earlier today. With the higher poles outside of  
16 the tree canopy, and this is where I would defer to Mr.  
17 Matthews, I don't think we found anything that would justify an  
18 undergrounding in that situation to where it could be  
19 considered, quote, unquote, a critical infrastructure where  
20 would have been justified at that place and time. Especially  
21 in light of the fact that we would have had to consciously  
22 depart from existing tariffs and statutes and justify to this  
23 Commission why we felt it would be fine to have that  
24 undergrounding cost borne by the body of the ratepayers for  
25 this particular neighborhood. So a long-winded way of saying

1 yes, sir, we did.

2 CHAIRMAN EDGAR: I think I've gotten a little  
3 confused on the point of notification to the neighborhood.  
4 There has been some discussion about the customers not being  
5 notified, some discussion that maybe some notification was  
6 given and maybe, as you mentioned, although some of this  
7 predates my tenure, I do understand from some of your comments  
8 and otherwise that the issue between the city and the company  
9 would have received, I'm sure, a lot of press coverage and  
10 attention generally, but yet to follow along, every step of  
11 what that means for one particular street or neighborhood is  
12 taking that a little bit further, I think. So could you speak  
13 to the notification discussion that we have had and clarify for  
14 me what notification was or was not given.

15 MR. BURNETT: Yes, ma'am. Of course, at all times  
16 Mr. Matthews can correct me, but we don't dispute the fact that  
17 there was no prior notification given to the residents here in  
18 question when we brought the assets out to replace them. As  
19 the residents have made clear today, and they are correct, it  
20 is my understanding that they engaged our contractors who were  
21 doing the work and then subsequently contacted the company. At  
22 that time, then Mr. Matthews did engage in several  
23 conversations with some of the residents here, and we opened up  
24 a conversation there to help them understand what our options  
25 were and were not. So at that point we did communicate, Madam

1 Chair, but there was no advance notice given as they suggest.

2 CHAIRMAN EDGAR: Commissioner Carter.

3 COMMISSIONER CARTER: Madam Chairman, you know, great  
4 minds think alike. I was on the same wavelength that you were.  
5 Obviously if you have a serious issue of this nature that went  
6 all the way to the Florida Supreme Court, somebody in the  
7 neighborhood somewhere would have read it even in a briefing or  
8 something like that, and that was kind of -- and I'm glad you  
9 raised that issue, because the notification issue was kind of  
10 running around in my mind. But it seems to me something that  
11 as significant as a municipality allowing or causing the  
12 utility infrastructure to be transferred from a municipality to  
13 an IOU seems like to me that would have raised some level of  
14 awareness somewhere in the community before it got to this  
15 level here.

16 CHAIRMAN EDGAR: There again, I do not live in the  
17 area, but my understanding is that there was a lot of  
18 attention. However, again, I'm not sure that is the same thing  
19 as knowing at what point in time something is going to occur  
20 one street over or something comparable. Yes, ma'am.

21 MS. MENESES: The decision -- as he said they went to  
22 court kicking and screaming about this deal, and it was not  
23 about, in his perception, profit. But they had to give up the  
24 electrical supply to a city, so that is why they were fighting.  
25 So they did have financial interests here nonetheless.

1           Second, once the deal was done we have no idea how it  
2 was going to impact us. As Mr. Arriaga said, the common sense  
3 would have applied. If they are going to get reconfigured you  
4 would have thought that a neighborhood that went three  
5 hurricanes in 2004, that it would be common sense to bury the  
6 lines. Because there were five homes in our neighborhood that  
7 were affected with trees falling on top of their homes. And  
8 this is why we were so afraid and concerned about those 50-foot  
9 poles, because my yard is still a mess from a beautiful tree  
10 that I lost in the hurricane. So, we have no idea how it was  
11 going to impact us.

12           Nobody told us how it was going to impact us. And if  
13 there had been a notification that you are going to have lines  
14 on your street, that would have been different. But everybody  
15 knew about the deal in the court. It was in the news. As a  
16 matter of fact, there are several cities, Apopka I think is  
17 one, that is also trying to get their own company. There are  
18 several cities that are considering having their own electrical  
19 company. We are aware of it. What they do not know is how the  
20 neighborhoods, some neighborhoods are going to be affected.

21           The boundaries, they don't know how they are going to  
22 be affected. Neither did we. That is not a notification. The  
23 news media is not a notification. We knew about the deal, but  
24 we don't know how it is going to affect us.

25           CHAIRMAN EDGAR: I understand. Mrs. Dobbs.

1 MR. DOBBS: Mr. Burnett mentioned that the customers  
2 have no rights. The statute declares that customers have  
3 rights because they mention that the statutes are there to  
4 define the rights of both the utility and the customer. So, if  
5 customers have no rights, you should strike this word, rights,  
6 from the statutes. And so this way it would be very clear,  
7 this is a monopoly and they can do anything they want because  
8 this is what is happening right now.

9 CHAIRMAN EDGAR: I'd like to, if we can for a moment,  
10 come back to maybe the engineering, and recognizing that I am  
11 not an engineer, if you could try to keep it in plain terms.  
12 But I understand that one of the many responsibilities of the  
13 utility in making these types of decisions is to look at  
14 concerns of reliability, cost-effectiveness, economic  
15 efficiency, redundancy, safety, and similar considerations. So  
16 could you speak a little bit as to some of the thought process  
17 that went into this particular configuration and the decision  
18 for that.

19 And, again, as a nonengineer, but yet recognizing the  
20 considerations that I have just listed and that there are  
21 others, yet again, just as Commissioner Arriaga said, kind of a  
22 common sense it would seem that perhaps the concern about a  
23 pole right at the entrance, that there would maybe be an  
24 alternative to right at the very entrance or two in front of  
25 one home, and those sorts of things, when you are looking at



1 trying to balance a variety of, I'm sure at times, competing  
2 factors.

3 MR. MATTHEWS: Yes, ma'am. If I may just step back  
4 and digress just for a moment and maybe just kind of walk  
5 through some of the things that I looked at when I looked at  
6 this. This is one of many situations I looked at. This is  
7 maybe -- there were over 60-plus work orders all the way from  
8 the service level all the way up through feeders when we  
9 reconfigured the system. A very complicated process.

10 Basically, if you think about it, you are tearing the  
11 system apart and then trying to put it back together as two  
12 separate entities, if you will. I put it akin to, and putting  
13 it in layman's terms, is if I've got a four bedroom, three bath  
14 house, I'm going to rip one of your bathrooms out and make it  
15 as a stand-alone entity and not part of the rest of the home,  
16 if you think about it that way. So that was the process that  
17 we had to go through in very short order, and all around the  
18 city, the arbitrated boundary limits of the City of Winter Park  
19 and their new utility.

20 When it comes specifically to the Dommerich Hills  
21 situation, as has been shown, you can see from the map there is  
22 an existing overhead primary line, three-phase line that runs  
23 along the Seminole County and Orange County line. It bisects  
24 those roads, it goes in between houses. In one area the  
25 primary goes across streets, out in front of houses, and

1 continues all the way to the back end of the development and so  
2 forth. Again, one side of that primary line feeds the homes on  
3 the Orange County side, the other side of that line feeds the  
4 Seminole County residents there. Because of the arbitration  
5 and how the arbitration was done, that line and the facilities  
6 going to the Orange County side was going to go the City of  
7 Winter Park. So that gave me -- I had to figure a way, okay,  
8 if I don't have this source anymore which bisects the  
9 development, that's not mine anymore, how am I going to source  
10 these different customers.

11           And if I may address, one thing I could do, could I  
12 move over one lot, if you would, and place facilities from --  
13 again, between homes and stuff like that, just like this of one  
14 lot over, I could. Technically, I could do that. But the  
15 issue is is that I would have to go to each and every customer,  
16 and there is probably ten or twelve of them, homes down through  
17 there and make sure I had easements with each one of those  
18 customers. I could not do it.

19           All I had to have was one person say no, and I would  
20 not be able to do that on either side. Be it on the Orange  
21 County -- I mean, either side of the line. I would have to  
22 have just one person say no and then that option goes away very  
23 quickly.

24           I have gone a great deal of undergrounding for  
25 Florida Power in the central Florida area. The City of

1 Maitland, Winter Springs, and so forth. One of the biggest  
2 things, especially when people are wanting to pay for it, the  
3 biggest hassle that we have with the cities that I have dealt  
4 with, and as far as getting the actual process going, is  
5 getting the easements from the people just to set a simple  
6 transformer in their front yard.

7           So now I'm going to come in here and build an  
8 overhead line between these homes. From my experience and what  
9 have you, it is going to be very, very unlikely that they would  
10 allow me to do that, to build another line parallel to the line  
11 that we already had there.

12           The only other option because of how it was laid out  
13 within Waumpi Trail was to come on the other side of where the  
14 primary stopped, behind the houses and what have you, the only  
15 place I could come was to come off of Waumpi Trail, off of my  
16 facilities that were out in front of the development, to be  
17 able to get back and serve these customers back in through  
18 here.

19           I went in there and said, yes, could I put it  
20 underground; yes, I could, but it is going to have a cost  
21 associated with that to be able to do that. And somebody will  
22 have to pay for that. I am bound by the tariff. The tariff  
23 tells me what I have to do. As an engineer, I have to do that.

24           The other issue is, well, could I do it overhead?  
25 Yes, I could. There are some trees through there. Yes, I went

1 with the 50, taller poles just to mitigate the impact of the  
2 trees associated with down through there. I made that decision  
3 as an engineer. This will be able to stay within the tariff  
4 rules, the rules that I'm governed by, as well as to serve our  
5 customers in a cost-effective by code and reliable fashion. I  
6 could build these facilities down here on these 50-foot poles  
7 with a three foot neutral, and I won't get into all the  
8 technical aspects of that and be able to do that by code and  
9 adequately pick these customers back up.

10 But, yes, undergrounding was looked at, but then  
11 again somebody has to pay for that and has to do that. And the  
12 other issue was we end up having to -- if we did do the  
13 undergrounding, there would be a lot of tearing up of  
14 right-of-ways and roadways and stuff of that nature. I also  
15 want to reiterate that I did go to Seminole County and did  
16 permit with them for me to do that, and let them know what I  
17 was going to do upfront. I permitted through them. It isn't a  
18 county right-of-way. I made them aware.

19 As a matter of fact, if you look at -- I even talked  
20 about the trees and so forth and why I was going with those  
21 poles. And, again, they had no problem with that. Because  
22 that is the only place I can go as a utility. I can't force  
23 people to go on their private property.

24 Does that kind of answer your question?

25 CHAIRMAN EDGAR: Yes, sir. Thank you.

1 Commissioner Arriaga.

2 COMMISSIONER ARRIAGA: I want to follow up a little  
3 bit on what the Chairman started. And I understand your  
4 arguments very well, but you are making one assumption that  
5 confuses me, which is that undergrounding is not  
6 cost-effective. I would probably say that comparing overhead  
7 versus undergrounding, overhead is less expensive, but to  
8 assume that undergrounding is not cost-effective troubles me,  
9 because that may affect the future plans for undergrounding.

10 MR. BURNETT: Commissioner, from a nonengineering  
11 perspective, may I address that? I know the company as a  
12 general matter, and certainly not here, I don't think we made  
13 any assumptions as to cost-effectiveness or not with respect to  
14 whether, for instance, in a storm hardening context there can  
15 be any mitigation of future outages or any cost savings there.  
16 I don't think we have any predispositions there, and we  
17 certainly evaluate these on a case specific.

18 But I think simply here, if I am interpreting  
19 Mr. Matthews correctly, is here there would have been a  
20 situation that the only reason to underground would have been  
21 esthetics, and certainly for esthetic reasons, again, when we  
22 couldn't -- or namely I couldn't come before this Commission  
23 and explain to you why in one neighborhood in one area of our  
24 service territory we had decided to underground for no real  
25 reliability based reasons, only for esthetics or to avoid a

1 process like this from happening. I don't think I could do  
2 that with a straight face and tell you that was cost justified  
3 to put that burden on the other ratepayers.

4 If we had a situation where I could come with a  
5 straight face and back it up with an engineer and say there was  
6 something particular about this neighborhood that would have  
7 made an underground better because we could save X dollars down  
8 the road because of this or why, that may be a different story,  
9 but we didn't see that here, Commissioner. So I didn't want to  
10 leave you with the impression, if I did so, that we make any  
11 predispositions about cost-effectiveness. Simply here it was a  
12 beauty issue, and beauty issues are clearly governed by the  
13 tariff.

14 COMMISSIONER ARRIAGA: Thank you.

15 CHAIRMAN EDGAR: Commissioner Tew.

16 COMMISSIONER TEW: Thank you. To follow along those  
17 lines of someone has to pay for it, I noticed and I heard what  
18 Mr. Stober said, too, that they had been to several  
19 commissions, and I believe he said the City of Winter Park.  
20 And I noticed on Page 5 of 8 of the petitions that were given  
21 to us today there was a paragraph about asking the Mayor and  
22 the City Commission to do the right thing and assume the cost  
23 of undergrounding the new power lines on Waumpi Trail so that  
24 our safety and our property values are not affected by the  
25 business deal that transpired between the City of Winter Park

1 and Progress Energy.

2 I think I know the answer to this question, but I did  
3 want to ask. Was that issue considered by the city commission  
4 and what did they respond?

5 MRS. DOBBS: The chairman said -- I want to say  
6 exactly what he said -- it's not a perfect world. When I said,  
7 you know, the power poles on the Seminole County residents,  
8 even though it serves Orange County residents, this study was  
9 done that says that shouldn't be. And he said, well, Mrs.  
10 Dobbs, its not a perfect world.

11 CHAIRMAN EDGAR: Commissioner Arriaga.

12 COMMISSIONER ARRIAGA: Mrs. Dobbs, neighbors, really  
13 honestly my heart is with you absolutely, but my heart is not  
14 enough. And unfortunately, the law and the rules as they are  
15 written today, and perception, and common sense, and all that  
16 you want do not allow me, at least me in my belief, I'm not an  
17 attorney, I'm just a simple engineer myself, but I don't think  
18 we have the right, the legal right to force anything on this  
19 company the way the laws are today and the statutes are written  
20 and the rules are written.

21 According to the information from our staff, they  
22 haven't violated any rules. And understand something, we could  
23 probably order them -- and I'm not sure we could -- to  
24 underground that. But, you know, somebody has to pay. And if  
25 is not you, your group of neighbors, it will be the general

1 body of ratepayers. And I cannot ask the people in Tampa and  
2 Tallahassee and Miami to share the cost of your undergrounding.  
3 And that's our problem and that is our problem. We are in the  
4 process of defining the issue of undergrounding as you just  
5 heard me say a few minutes ago, and we will come to some  
6 resolution, because this Commission is hearing over and over  
7 and over again that a solution must be provided to the issue of  
8 undergrounding.

9 But, unfortunately, again, my heart is with you and I  
10 truly understand what you are going through, because I face  
11 these problems in south Florida all the time. But, honestly, I  
12 do not think there is anything we can do.

13 MRS. DOBBS: May I say something?

14 COMMISSIONER ARRIAGA: Absolutely.

15 MRS. DOBBS: On Page 5 -- we understand also, and we  
16 do not have any proof of that, but it would be interesting for  
17 us to know that on (d) on Page 5 we said, "Progress Energy made  
18 the residents think that it was paying for the separation and  
19 reintegration costs." And because we read, and this is a quote  
20 here, "The arbitrators ordered if municipalization, in fact,  
21 occurs, Florida Power Corporation should do the disconnection  
22 and reconnection work as efficiently as reasonably possible and  
23 keep careful track of all its separation and reintegration  
24 costs, and the actual amount to be paid for this item will be  
25 determined pursuant to the true-up mechanism."



1           And just reading this, we had -- it was our  
2 impression, also, that this cost of reintegration was not  
3 coming from the Progress Energy's pocket, but that it would be  
4 simply passed on to Winter Park as an expense. And, you know,  
5 instead of telling us that, well, the tariff -- you know,  
6 tariff, tariff, you pay for it. According to this, it's not  
7 even the people, it is not even Progress Energy, you know, that  
8 the cost is not even coming from their pocket. And I would  
9 like to know exactly what transpired there.

10           CHAIRMAN EDGAR: Mr. Burnett.

11           MR. BURNETT: Thank you, Madam Chairman.

12           As a point of reference, I actually litigated the  
13 arbitration in Winter Park, so I am intimately familiar with  
14 that process. Mrs. Dobbs is correct that part of the  
15 separation and reintegration order is that Winter Park would  
16 have to pay the reasonable costs of separation and  
17 reintegration on both our side and theirs, the disconnection  
18 and the reconnection costs. However, of course, that adds  
19 another layer of why we could not underground or do anything  
20 apart from our standard. Because Winter Park, as you may  
21 expect, was zealously monitoring, along with our arbitration  
22 panel, our costs, and looking for what they actually termed  
23 during the arbitration as goldplating.

24           They wanted us to actually do the separation and  
25 reintegration for a flat fee, a number based on our standard of

1 construction as it existed at that time. We, of course,  
2 argued, and successfully, that it should be pretty much a cost  
3 of what it is, whatever it costs is what it should be with the  
4 caveat, of course, that we would follow our standard of  
5 construction. And if we departed, do anything exceptional,  
6 like undergrounding or the like, it would be something we would  
7 either have to justify within the circumstances or pay out of  
8 our own pocket. So there is a small sum that was afforded to  
9 us for our separation and reintegration. But, again, with the  
10 caveat that it had to be under current standard of construction  
11 and monitored and approved by the arbitration panel.

12 CHAIRMAN EDGAR: Commissioners, further questions  
13 either for the customers, for the company, or for our staff?

14 Commissioner Carter.

15 COMMISSIONER CARTER: Just a comment, Madam Chairman.  
16 When municipalities start to get into areas like this,  
17 particularly when you have a preexisting territory done by an  
18 IOU, invariably the people suffer. I mean, I'm not criticizing  
19 the city or anything like that, but this is a direct result of  
20 that.

21 CHAIRMAN EDGAR: Collateral damage.

22 COMMISSIONER CARTER: Yes, ma'am. And that is  
23 unfortunate, because here we are, we find ourselves in a  
24 quagmire. This should have been handled when the transaction  
25 occurred. The city should have said, "We know there is going

1 to be some costs incurred; and we are going to pay Progress for  
2 the transactional costs of moving the lines; we are going to  
3 pay the customers for any inconvenience that they may have gone  
4 through." But when you try to do it on the cheap just because  
5 you have the authority as a local government to go into these  
6 type of enterprises -- this is a business. The city chose to  
7 go into a business and try to go into the business on the  
8 cheap.

9           And telling this young lady that there is nothing  
10 perfect, well, no, when you are going to do it on the cheap,  
11 it's not perfect. It's really unfortunate. I mean,  
12 Commissioner Arriaga and the rest of us, I mean, our hearts  
13 goes out to you. It is just unfortunate. The city should have  
14 considered this, particularly when you have got a  
15 multi-jurisdictional process like this. You are in two  
16 different counties. And, I mean, you can't -- that was a good  
17 analogy about five bedroom house with three baths and taking  
18 one bath and putting it -- that is called an outhouse. That's  
19 an unfortunate set of circumstances that they put these people  
20 in.

21           And then to try to hide behind the Commission so that  
22 we, obviously knowing that our jurisdictional grant is based  
23 upon we have to follow the law and we have to follow the rules.  
24 And based upon the rules and the law is that we can only rule  
25 one way. I mean, it's unfortunate. You can tell that it is

1 tearing at our hearts and all like that. But we took an oath  
2 to uphold the laws of the constitution of the state of Florida,  
3 and we have to do that. I wish there was more we could do, but  
4 I don't see it.

5 MRS. DOBBS: May I respond?

6 CHAIRMAN EDGAR: Mrs. Dobbs, yes, you may.

7 MRS. DOBBS: I understand that you swear to uphold  
8 the law, but as well you want to have -- you want to do things  
9 just an equitably. Obviously it looks like all of you, or most  
10 of you feel by saying my heart goes to you. Well, you said you  
11 followed the law. You see, we have shown here today that there  
12 are some holes here that allow Progress Energy to act as a  
13 monopoly. And you are all here for that particular purpose, to  
14 protect, like the statute says, the rights of both the utility  
15 and the customers.

16 But the statutes, there are holes there. Our rights  
17 are not protected. The word rights is not even there except to  
18 say right-of-way except. Only once did it pertain to customers  
19 where it said in matters of territorial disputes, only once.  
20 And it is six pages. We have no rights. Then you say, well,  
21 we uphold the law. There is nothing we can do. But when can  
22 this law be changed to give customers a little bit of rights so  
23 that when a reconfiguration of a neighborhood is happening, for  
24 whatever reason, we are contacted. You know, we find a way to  
25 be equitable for everybody, not just all Progress Energy. And

1 to hear here today that customers have no rights, what can I  
2 say? The statute says we have rights, but then you all say we  
3 don't have rights. So when and how can we submit suggestions  
4 like we said today, you know, where we show that there are  
5 deficiencies and it needs to be changed.

6 CHAIRMAN EDGAR: Ms. Brown, you have the written  
7 suggestions that the customers have presented, do you not?

8 MS. BROWN: Yes.

9 CHAIRMAN EDGAR: On the rules. Actually my copy is  
10 missing some pages, so I don't think I have that in front of  
11 me. And if you have another copy, I would be glad to get it.  
12 The copy that I have is through -- I don't have that. I do  
13 now, though.

14 So I was listening, since I couldn't read along, but  
15 these are suggestions for additional language for protection or  
16 additional rights as you say for customers to our rules. So I  
17 wasn't sure from listening, Mr. Dobbs, as you were reading,  
18 since I didn't have those pages in front of me, if it was all  
19 of our Rule 25-6, or if there were also some to the statutes.  
20 So, I don't know if you had seen this before, if our legal  
21 staff has, but I would ask that we do take a look very closely  
22 at the suggested language that the customers have brought us,  
23 and review it, and report back to us at some appropriate time  
24 and venue as to their suggestions, or any others that may, with  
25 your expertise, be triggered in your review of that.

1 I'm not aware, Mrs. Dobbs, if there is some of this  
2 that we can incorporate. But what I can tell you is that our  
3 staff will review it and we will discuss that further. And if  
4 there are holes that we have the ability and authority to  
5 consider, we will consider what we can do to try to address  
6 that.

7 MS. BROWN: Madam Chairman, that would be on a  
8 going-forward basis.

9 CHAIRMAN EDGAR: I understand. I understand that it  
10 would need to be.

11 MS. BROWN: Okay.

12 CHAIRMAN EDGAR: Yes.

13 MRS. DOBBS: Could we have the benefits of these?  
14 You know, if indeed there are changes that we actually, since  
15 we suggested it, first of all, that we can actually benefit  
16 from this rather than simple going forward?

17 CHAIRMAN EDGAR: I absolutely appreciate your  
18 question. Unfortunately, I believe that on the advice of our  
19 counsel that that would not be possible for the factual  
20 situation that already exists.

21 Commissioner Arriaga. Excuse me, Commissioner  
22 Carter.

23 COMMISSIONER CARTER: Thank you, Madam Chairman.

24 And in the direction to legal, I don't know if we  
25 have the jurisdiction or not, but somehow or another when these

1 municipalities get into the business, when they start getting  
2 into business, that is what electricity -- this is business.  
3 When they start getting into the business, if we don't have the  
4 authority now we certainly need to ask the legislature to have  
5 the requirement that so they will notify people so that when  
6 you have a situation like this you don't find people here, up  
7 here in Tallahassee when this should been taken care of on the  
8 local level.

9           You are going into a regulated entity, you are going  
10 into a multi-jurisdictional area, and you are taking rights  
11 from people, and you are looking at people talking about it's  
12 not a perfect world. No, it's not a perfect world. But when  
13 you are getting into a process like this, somehow or another  
14 all of these issues should have been resolved. It should have  
15 never gotten to this level. I mean, when you are getting into  
16 the business you take the business as is, whether you are a  
17 municipality, or a co-op, or whatever the case may be.

18           This is an unfortunate set of circumstances. And as  
19 we are going forward, Madam Chairman, we need to look at this  
20 so that it doesn't happen again. Florida is a growing state.  
21 I mean, there are 1,004 people a day moving here. And more and  
22 more people are going to need more and more utilities. And if  
23 these municipalities and local governments are going to get  
24 into the utility business, they need to take the communities as  
25 they are situated so that we don't have people being cast

1   aside, talking about their collateral damage or something.  
2   That is just unfortunate, so somehow or another in our going  
3   forward we need to make this known, that if these local  
4   governments are going to do this, then they have got to take  
5   the bitter with the sweet.

6           Thank you, Madam Chairman.

7           CHAIRMAN EDGAR: Thank you, Commissioner Carter.

8           You know, I always hate to personally just point a  
9   finger at another unit of government, but it certainly does  
10  seem unfortunate, in this instance, that the local government  
11  that is closer to the neighborhoods, to the communities, could  
12  not have perhaps handled it a little more up front and a little  
13  gentler.

14          Commissioner Arriaga.

15          MR. STOBBER: May I say something?

16          CHAIRMAN EDGAR: You may, sir.

17          MR. STOBBER: I appreciate your comment, because I  
18  think the Public Service Commission -- there are going to be  
19  other municipalities that defranchise themselves from Bob  
20  Matthews. That's going to happen somewhere in the state of  
21  Florida. It seems to me the Public Service Commission is a  
22  long ways away from those negotiations. I mean, that happened  
23  in Winter Park and with the lawyer here, but I don't think the  
24  Public Service Commission was any part of that. And how to  
25  resolve an issue like that up here, in that distance, you're



1 assuming people are going to do the right thing. Well, they  
2 don't always do the right thing. They kind of slide over some  
3 things, and that's what happened here.

4 So I think you need to address the issue of how you  
5 are going to handle this defranchising across the state and  
6 probably get more involved, and maybe address some of these  
7 amendments that Mrs. Dobbs has put in place. Because there is  
8 going to be issues like this where neighborhoods are split on  
9 county lines and you are going have the same darn thing. Bob  
10 not only handled our neighborhood, he had other issues that  
11 were like this, but maybe those folks didn't become as vocal  
12 and they didn't end up here. But there were more of those in  
13 the Winter Park surrounding area than just us, and Bob knows  
14 that, okay.

15 You can believe me, there are probably going to be a  
16 lot more. So I think your comments need to really be addressed  
17 by your staff and take a real position as related to these  
18 defranchising moves across the state. They are not easy and  
19 you are a long way from becoming involved in even, you know,  
20 working out the Ps and Qs of something like that.

21 CHAIRMAN EDGAR: Thank you, Mr. Stober.

22 Commissioner Arriaga.

23 COMMISSIONER ARRIAGA: I want to endorse and applaud  
24 the comments made by Commission Carter. Because that has been  
25 an issue that, as all of you Commissioners know, that I'm

1 permanently talking, is the issue of jurisdiction of the  
2 Commission and our relationship to other powers of government.

3 I don't want you to go from here with the impression  
4 that we have a magic wand and we can change these things  
5 automatically. Please do not go away with that. These are due  
6 processes that are complicated. There are powers of government  
7 that are very zealous of their jurisdiction, like the  
8 municipalities. We are part of the state government. And  
9 whenever state government tries to step on the toes of the  
10 municipalities, it gets complicated and very difficult. It is  
11 an issue that needs to be handled by the state legislature.

12 We cannot command the state legislature, and at times  
13 we are even -- not prohibited, but we have to be careful about  
14 the suggestions we make to the state legislature, because we  
15 are an arm of the state legislature, so we have to be  
16 respectful and careful.

17 But, yes, we have a contact, we have a relationship  
18 with them, and we have the obligation to maybe point out  
19 loopholes that are in the laws to see if they wish with their  
20 enlightenment to fix or not. I just want you to understand  
21 that we can try, but I don't want you to go away from here  
22 thinking that this is a done deal. We have been discussing  
23 this and every time we bring it up, the issue of jurisdiction  
24 over municipalities, we get a roomful of people, lawyers and  
25 all kinds of things opposing whatever move we try to make

1 regarding those changes.

2           The next thing is I would appreciate it if staff  
3 could instruct them as to the process of rulemaking and what it  
4 entails to change the rules. That is another difficulty, and  
5 we have to open up the process to the opinion of all kinds of  
6 people whenever we want to change a rule. So please let them  
7 know what this whole thing entails. And all we can guarantee  
8 you is our best will, our goodwill to go ahead and look at all  
9 of these issues.

10           MRS. DOBBS: May I say something, sir? Winter Park  
11 is not here to say anything, so it is easy to say, well, Winter  
12 Park, municipality, et cetera. However, let's not forget that  
13 we are customers of Progress Energy. Progress Energy, just  
14 like any business, should look after their customers. They  
15 have an obligation to tell the municipality, look, my customer,  
16 I cannot just do this to my customer. I need to, you know, if  
17 you want to acquire this, fine, but we will need to underground  
18 it. We cannot do this. They need to look after their  
19 customer, and that is not what's happening here.

20           CHAIRMAN EDGAR: Mr. Burnett, further comment?

21           MR. BURNETT: No, Madam Chairman.

22           CHAIRMAN EDGAR: Commissioners, further questions or  
23 discussion?

24           COMMISSIONER CARTER: Madam Chairman, I move staff.

25           COMMISSIONER DEASON: Second.

1 CHAIRMAN EDGAR: Commissioners, we have a motion and  
2 a second on the staff recommendation.

3 Is there further discussion?

4 Seeing none, all in favor say aye.

5 (Unanimous affirmative vote.)

6 CHAIRMAN EDGAR: Opposed?

7 The staff recommendation is adopted.

8 I would like to thank all of you for the caring that  
9 you have about your neighborhood and for the work that you have  
10 put in to lay out these issues for us. As you have heard from  
11 my colleagues, it is a very unfortunate situation and that is  
12 not lost on us. We will go forward and look at our rules on a  
13 going-forward basis.

14 And with that, our business for the day is concluded  
15 and we are adjourned.

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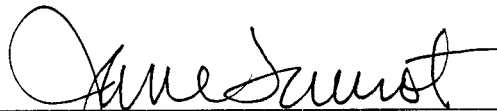
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IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

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 11th day of December, 2006.



\_\_\_\_\_  
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