

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20190131-EU

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

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

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

DATE: Thursday, October 3, 2019

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

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

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

2 CHAIRMAN GRAHAM: All right. So, we are going
3 to go back around to the top of the agenda. I
4 think we should take, like, a five-minute break.

5 (Brief recess.)

6 CHAIRMAN GRAHAM: I think my staff has now
7 solved the problems of the world and we'll be in
8 and out of here in about five minutes.

9 Staff.

10 MS. HARPER: Good morning, Commissioner. I'm
11 Adria Harper with the General Counsel's Office.
12 And I'm here for Item 3, which -- in which staff is
13 proposing new rules.

14 The 2019 Florida Legislature enacted
15 Section 366.96, which requires each electric IOU to
16 file a storm-protection plan with the Commission.
17 The statute also directs the Commission to hold an
18 annual proceeding to determine the IOU's prudently-
19 incurred costs to implement that plan and to allow
20 recovery of those costs through a storm-protection
21 plan cost-recovery clause.

22 The statute requires that no later than 180
23 days after an IOU files a storm-protection plan
24 that contains all the elements required by the
25 Commission rule that the Commission must determine

1 whether it is in the public interest to approve,
2 approve with modification, or deny the plan.

3 The Commission is required to adopt rules to
4 specify the implementation and how the storm-
5 protection plan and clause will be administered no
6 later than October 31st, 2019.

7 Staff is recommending that the Commission
8 adopt two new rules: Rule 25-6.030, which would
9 specify the elements that must be included in IOU
10 storm-protection plan; and Rule 25-6.031, which
11 would establish the clause-recovery process for the
12 storm-protection plans.

13 Staff is available to answer questions.

14 CHAIRMAN GRAHAM: Thank you. Staff.

15 Mr. Rehwinkel, I'll let you go first and then
16 they can respond to it.

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

18 I -- I think Ms. Harper said "adopt," but
19 you're here to propose a rule today, I believe.

20 MS. HARPER: That's correct. We're retired --
21 we're required to propose rules by October 31st.

22 MR. REHWINKEL: Yes. My name is Charles
23 Rehwinkel. I am here with the Office of Public
24 Counsel, and I'm appearing on behalf of the
25 ratepayers of the util- -- the five investor-owned

1 utilities, who are the subject of the rule today.

2 Commissioners, you're here today by
3 legislative decree to adopt -- or to propose a
4 rule, as required by statute, that in -- in my 34
5 years of practice before the Commission is, I
6 think, perhaps the most-significant rulemaking
7 that -- that this agency has ever engaged in. It's
8 certainly the most-significant in a generation.

9 This rule has a potential to pass hundreds of
10 millions, if not billions, of dollars of new costs
11 to ratepayers. And the Public Counsel isn't here
12 to take issue with the magnitude of the costs that
13 are before you today and down the road.

14 This is what the Florida Legislature has
15 decided, and it's now our job to decide what's the
16 best way to implement this legislative
17 determination for the best interest of the
18 customers of Florida and for the state of Florida.

19 The rulemaking that you have before you should
20 result in large costs on a clause portion of a
21 bill, but I believe that it is the Legislature's
22 intent, I think it should be your intent, and I
23 believe it is probably the hope and intent of the
24 utilities who are concerned about the level -- the
25 overall level of the bill that they charge their

1 customers that comes in the mail; that that be as
2 low as possible, so that, hopefully storm-
3 restoration costs, O & M costs, and base-rate costs
4 will -- will be lower, so that the bills can stay
5 the same or, perhaps, even be lower in the long,
6 long run. But in the short run, you're going to
7 see, we believe, increases in bills.

8 We are encouraged by what your staff has given
9 you as a rule to propose. We think that it is
10 directionally correct, and the Public Counsel can
11 support the core of this proposal, which requires
12 detailed information to allow the Commission to do
13 your job, and for the rate-paying public to have
14 transparency and visibility into the costs and
15 benefits and bill impacts. So, there's a lot about
16 this bill -- this rule proposal that we like and we
17 think staff has done a good job in.

18 Now, having said that, there are some items
19 that we -- I ask you to take serious note of and to
20 consider. There -- there's a lot of things in here
21 that, if we were the decision-maker, we would do
22 differently, but I'm just going to pick two or
23 three things and -- and let you know how we feel
24 about it because I think these two or three things
25 are going to -- they're going to bear upon how the

1 Public Counsel will further engage in this
2 rulemaking.

3 The number-one thing that we have a concern
4 about that we want to bring to your attention is
5 the scope of what is considered in transmission and
6 distribution facilities. What staff has put
7 forward, we think, on its face is a reasonable
8 definition.

9 There are two items that are of concern to us
10 that we are not certain how the Commission intends
11 to proceed on them or whether they're going to
12 leave the door open on them, but they are batteries
13 and meters.

14 Now, meters are generally, in the definition
15 of transmission and distribution facilities, in the
16 USOA, they're considered part of the distribution
17 facilities. We -- I haven't actually gone back to
18 the orders and added them up, but I think if you
19 add up the AMI meters that FPL, Duke -- Tampa
20 Electric is in the process of putting in, Duke is
21 in the process of putting in, and Gulf has already
22 put in, I believe the investment for those meters
23 is about a billion dollars, give or take a hundred
24 million or two.

25 You had analogue meters, you had AMR meters,

1 and now you have AMI meters; analogue 30-plus-year
2 life; AMR meters, about half of that; AMI meters --
3 who knows how long they're going to be, but you can
4 see, the trend for life of these -- these meter
5 generations has been declining.

6 We don't want to see, in the guise of a storm-
7 protection-plan rulemaking, that type of investment
8 added onto a bill when they're clearly base-rate
9 items. And certainly, while resiliency or speed of
10 restoral in everyday outage circumstances can be
11 enhanced by smart meters, that's not the primary
12 reason why smart meters are put in. And we would
13 be -- we would ask you to be very reluctant to add
14 that into the list of things that people can ask
15 for storm-cost recovery for.

16 I'm not certain how strongly the utilities, as
17 a whole, are advocating for that, but I think they
18 want the door left open. And we would like the
19 door shut on that because there is a recovery
20 mechanism in place in terms of base rates where
21 meters can be considered.

22 Batteries are another thing. There are
23 different functions that batteries perform. Right
24 now, there -- the -- FPL has one of the largest
25 battery projects in the nation, if not the world,

1 that they're proposing to pair with solar to make
2 solar more cost-effective.

3 Batteries, by themselves, are not cost-
4 effective. Small batteries that are adjacent to or
5 related to facilities with a substation might give
6 you some resiliency benefits, if the rest of the
7 grid is intact to take that energy out to homes.

8 So, yes, you could probably come up with a
9 theoretical basis for why batteries should be
10 included in this investment, but again, these are
11 long-term investments that take a lot of planning.
12 They're pilot projects right now for batteries.
13 There's no reason to rush into putting batteries
14 into this.

15 There are plenty of opportunities to enhance
16 protection of storm-related facilities in extreme
17 weather conditions through undergrounding and other
18 hardening and vegetation-management activities
19 without throwing batteries into the mix.

20 Batteries -- we would hate for the -- this --
21 specifically, we would hate for this clause to be
22 an end run around the cost-effectiveness test that
23 one would have to do to put batteries in as a
24 generation resource under the -- the least-cost
25 reliability-planning standards. So, that's our

1 number one concern.

2 Adja- -- adjunct to that concern is in the 31
3 rule, the clause rule, Provision 8J, where --
4 perhaps, this is where batteries and meters and
5 other exotics would come in -- is there is the --
6 the statement that utilities, in their plans, can
7 ask you to consider any other factors the utility
8 requests the Commission to consider.

9 That's kind of open-ended and, in our mind,
10 we've -- we've listened to your staff admonish you
11 to -- don't put "including but not limited to" in
12 your rules because the JAPC will kick that out.
13 Well, this is open-ended and vague, and I think
14 this has some -- some frailty in the rulemaking
15 context.

16 We ask you to -- to tie that to factors that
17 are directly related to the purposes of the
18 statute. And I think, if you do that, you kind of
19 tether it to the statute and don't leave it so
20 open-ended where people can be creative and
21 mischief can ensue, but that would be -- that kind
22 of closes the loops on batteries and meters as --
23 as a concern that we have.

24 If that stays in and batteries and meters are
25 in, I think what you're asking for is a need in the

1 rulemaking process to do fact-finding to understand
2 what batteries and meters are all about and how
3 they relate to storm hardening, and that -- that
4 could induce some delay in this overall process.
5 So, we urge you to maybe stay away from that.

6 Our other significant concern is this concept
7 of simultaneous consideration of the plan and
8 the -- the clause petitions. We have a concern
9 about that because, I think as the -- the rule is
10 worded -- if you were to propose it, it may be
11 unlawful.

12 We've -- read in the staff recommendation on
13 Page 14 that the rationale for -- for running these
14 in tandem would be administrative efficiency and
15 to re- -- and reduce regulatory lag. Those six
16 words are it, as far as the justification. We
17 think this is insufficient.

18 And I'd like to take you to the specific
19 language in the 31 rule, the clause rule, on
20 Page 27. This is the way the rule is proposed.
21 And this is in the con- -- this is, I think, the
22 mechanism that lets you run these -- these
23 proceedings in tandem.

24 The first phrase: After a utility has filed
25 its transmission and distribution storm-protection

1 plan -- that says you can come in with a petition,
2 and that the petition shall state, with respect to
3 the costs for recovery, how those activities and
4 costs are consistent with its storm-protection
5 plan.

6 Well, the way I read this in a -- in a timing
7 and temporal standpoint, they're going to file a
8 plan that's going to be under consideration, and
9 they are also going to file a petition. This plan
10 hasn't been approved.

11 I think it's clear that the Legislature
12 intended that you review the plans, adjudicate the
13 plans -- approve them, modify them, or reject them,
14 and then, sequentially, there be a proceeding to
15 recover costs that are consistent with that plan.

16 The way that is now, I read this that they
17 file the plan as they see fit, and then they file
18 for cost recovery consistent with that plan -- that
19 that could well be unapproved or you haven't had an
20 opportunity to modify it.

21 I don't believe that's a proper -- I think
22 that's an unlawful delegation to the utilities of
23 the authority that emanates from the plan, at least
24 the way it's worded right now.

25 We think -- in addition to that kind of legal

1 objection, we think it's not smart the first time
2 out of the gate on a rule that affects everybody
3 and -- and the -- to the magnitude that it could,
4 to run these in tandem.

5 We think that, in 2021, utilities will be
6 filing rate cases that will have a 2022 test year
7 and maybe other test years.

8 That's the time, I believe, it's the smartest
9 for the Commission to consider cost recovery. So,
10 we would suggest that the right thing to do is have
11 the plans done in '20; and then, in '21, we can get
12 on with the business of cost recovery, pursuant to
13 the plans that you have approved, not that you are
14 considering.

15 So, from the public standpoint, administrative
16 efficiency is out the window. We would be charged
17 with evaluating and litigating five plans while
18 simultaneously litigating and considering five
19 cost-recovery petitions, all in the same first six
20 to eight months of -- of 2020, all something that's
21 very new.

22 And that has the real problem of double
23 recovery. The statute says you can't recover in
24 the pl- -- in the -- in your clause, what's in base
25 rates. And there's some dispute about what's in

1 base rates today. So, we're going to have to sort
2 that all out.

3 To have those done in tandem, I think, is an
4 inordinate burden on the customers of -- of
5 Florida. And so, we would urge you to reject that
6 concept, at least for the first round.

7 Once you get through this and get some miles
8 under -- under your wheels and we have a base-rate
9 case, I don't think we would be concerned with
10 having these done in tandem on the next cycle, the
11 next three-year cycle of -- of a plan.

12 Finally, Commissioners, as you are all
13 aware -- and I know that -- that we have taken the
14 opportunity to -- as the statute allows, to talk
15 to -- to the Commission about this, and to staff
16 and to the other companies.

17 We still -- we have raised a concern about the
18 statutory interpretation of -- of the statute. It
19 doesn't contain the word "projected" in it, like
20 the ECRC clause, the -- I always get these "E"s
21 mixed up -- the Energy Conservation Cost Recovery
22 Clause, and the NRC, the Nuclear Cost Recovery
23 Clause, had. Those last three pronouncements of
24 the -- of the Florida Legislature have the term
25 "projected" in them. This one does not.

1 Now, I know your staff has urged you to reject
2 our notion of -- of the -- what we think is some
3 very crystalline legislative history about that
4 language being in and being out.

5 But even putting that aside, we think that
6 reviewing courts -- you look at contrasting
7 language in a prior enactment with the most-recent
8 enactment that, and if there is an omission that --
9 in the fourth one that's not in the third one,
10 they -- they tend to find that an agency cannot
11 imply such a term.

12 And remember, the Florida Constitution changed
13 on January 8th of this year that doesn't give the
14 agency deference in interpretation of the statutes;
15 even these statutes that you're specifically
16 charged with interpreting.

17 So, we feel like an ALJ at DOAH might struggle
18 with the contrast between the lack of the term
19 "projected" in the -- in the ECR- -- in the SPP
20 clause, statute, and the other three.

21 But that's a decision you can make. I -- we
22 just feel like that it is something that we're
23 continuing to look at. And what we're going to do
24 is we're going to factor in the -- what we think is
25 the best legal view of that outcome with the

1 overall picture of how this rule turns out to make
2 the determinations we make after October 31st.

3 So, with that, Commissioners, I want to end by
4 thanking you for the two rounds of workshops that
5 you gave us. We had plenty of opportunity to have
6 input. Your staff has been outstanding, in our
7 view, in capturing the essence of what's important
8 here, and requiring the detailed information for
9 those first three years. And we urge you to hold
10 the line on that.

11 And we look forward to -- to engaging in this
12 process as we go forward. Thank you very much.

13 CHAIRMAN GRAHAM: Thank you, sir.

14 Utilities -- now, I know a lot of you have got
15 a lot of the same issues, so let's try not to be
16 duplicative.

17 MR. RUBIN: Yes, sir.

18 CHAIRMAN GRAHAM: You can just say, I agree
19 with Mr. Rubin, but -- or add onto.

20 Mr. Rubin.

21 MR. RUBIN: Thank you, Mr. Chairman and
22 Commissioners. I also want to begin by thanking
23 your staff. We had two very, very productive
24 workshops. Your staff considered the positions
25 that all of the utilities and the other parities

1 submitted. They adopted some; they chose not to
2 adopt others, but it -- it's been an excellent
3 process. They facilitated the -- the document that
4 we have here today to -- to consider here. And so,
5 we wanted to express our thanks. I think I can
6 speak for everybody when I say that.

7 The staff has identified a number of issues in
8 the recommendations where the utilities made
9 proposals. Some were incorporated; some were not,
10 but from FPL's perspective, we're only going to
11 address one of them today, and while we raised
12 other issues at the workshops, the only issue we're
13 going to address today is the one that's in the
14 handout, which I will address shortly.

15 The single point that FPL would -- would like
16 to address today is what staff has identified as
17 the second overarching theme that came up during
18 the workshop sessions and in the comments. And
19 that relates to the level of detail that will be
20 required in the storm-protection plan for years two
21 and three of the plan.

22 It's really a distinction between whether
23 there's a need to identify project-level
24 information for years two and three as opposed to
25 program-level information for the three years.

1 The handout that we've provided to the parties
2 and to the Commission staff accepts all of the
3 changes that your staff put together. And the only
4 exceptions and -- and FPL's proposal is shown in
5 red line. So, nothing else has been changed in
6 terms of FPL's proposal.

7 We're prepared to -- obviously, to work -- you
8 know, work through the storm-protection plan and
9 the clause through all of those other items that
10 your staff has put together. There's a couple of
11 other minor issues in red line, which are
12 essentially fallout issues, if the Commission
13 considers adopting the FPL approach.

14 The statute, as Mr. Rehwinkel might have
15 mentioned, is Chapter 366.94 -- I'm sorry -- 96.
16 And it does require the Commission to consider the
17 rate impact of the storm-protection plan.

18 We completely agree with staff that that is an
19 absolute necessity in the storm-protection plan.
20 You all need to have the information that will
21 allow you to consider the rate impact for the first
22 three years of the plan. It's -- it's what you
23 need to do to meet your statutory obligation.

24 FPL believes a different approach will provide
25 the same data to you, but will avoid the

1 administrative work that will be required of staff,
2 of the Commission, of the parties if Rule 25-6.030
3 is adopted in its current recommended form.

4 Further, the Commission does not need that
5 type of project-level information for years two and
6 three to meet your statutory obligation of
7 estimating or projecting the rates that will be
8 likely from the year-two and year-three projects.

9 The -- the analysis really -- it's important
10 to understand the difference between a project and
11 a program. So, from an FPL perspective -- and I
12 think other utilities have different programs. The
13 example I use is the lateral undergrounding
14 program. FPL is in the process of and will
15 continue to underground laterals. That's the
16 program.

17 The project might be we're going to
18 underground Lateral 101 in Daytona Beach between
19 Elm Street and Maple Street. So, there's a number
20 of projects that make up the program, that go into
21 the program.

22 And the way FPL prioritizes the projects that
23 it undertakes in each program is to rely upon the
24 most-recent reliability and performance data,
25 which, in the context of this proceeding, would be

1 developed just before the storm-protection plan has
2 been submitted to the Commission.

3 So, for year one, which is -- assume we file a
4 storm-protection plan early in the year, year one,
5 we will provide the Commission and staff and the
6 parties with a very specific list of projects. It
7 will be Lateral 101 in Daytona Beach, Lateral 603
8 in Melbourne, et cetera, for year one, along with
9 the costs that will be associated with executing
10 that program in the first year.

11 As the handout indicates, what we would
12 propose for the second and third year would be to
13 advise in our filing and our storm-protection plan
14 filing -- for example, FPL will undertake 100
15 underground lateral projects as part of its program
16 without identifying where they would be because we
17 don't have the reliability or performance data yet,
18 at a cost of, let's say, \$500,000 per project,
19 which would allow the Commission to understand that
20 FPL would project to spend \$50 million on that
21 program in year two.

22 We would do the same thing for year three.
23 And from -- Mr. Rehwinkel mentioned the
24 transparency issue and -- and, you know, the
25 information being out there.

1 When we file our first clause filing the
2 following year, in year two -- and this is
3 indicated in the second rule that your staff has
4 proposed -- we would provide that list of specific
5 projects in year two with our first clause filing.

6 So, the Commission, staff, the public, the
7 parties would all have information that would allow
8 them to look at the very-specific projects in year
9 two when we make our clause filing early in year
10 two.

11 It's important to understand that when we
12 prioritize undergrounding of laterals, there's a
13 lot of things that can change year two, year three.
14 There is, you know, weather, there's storms,
15 change-out of equipment, customer acceptance, load
16 changes -- there's all kinds of things that can
17 change what becomes a priority, what moves to the
18 top of the queue in years two and three.

19 And another thing that I -- I started to think
20 about the customer impact as I was preparing for --
21 for this agenda. And there's another significant
22 issue that, unfortunately -- and in fairness to
23 your staff, we didn't raise this in our comments.
24 We didn't raise it in the workshops -- and it
25 really struck me, as I was sitting down to go

1 through these rules and think about customer
2 expectations -- if, in fact, we have to provide
3 project-level detail for years two and three that
4 we know is going to change -- we know that
5 circumstances will require that list to be
6 changing. Our local governments, our customers
7 will expect that. They will expect that year --
8 you know, two years from now, three years from now,
9 my lateral is going to be undergrounded.

10 And you know, with -- with circumstances that
11 change, we will, then, be responding to customers,
12 and your staff will be responding to customers.
13 And you'll probably have customers intervene in --
14 in the annual clause hearings because they will --
15 you know, they'll have a reasonable expectation
16 that their lateral is going to be undergrounded.

17 And now we come in year two, it's not on the
18 list anymore because reliability data has changed,
19 performance data has changed, weather has impacted
20 things, maybe we went out and trimmed a lateral,
21 and vegetation-management changes have occurred.

22 So -- so, as I started thinking about this
23 customer-satisfaction issue, it seemed to me that
24 the FPL proposal where we don't require
25 identification of specific projects, but we do say,

1 we're going to do a hundred of those projects
2 within the program, will eliminate that customer
3 dissatisfaction, will eliminate those complaints,
4 and -- and will eliminate the expectations of
5 customers that they are next up on the -- on the
6 queue.

7 And as an aside, the current storm-hardening-
8 plan process, we are all required to provide detail
9 for year one, and that's what we do, but not for
10 the years beyond that.

11 So, from FPL's perspective, we believe that
12 our proposal avoids two unattractive alternatives
13 that will arise under the current recommended
14 approach: One is that the project-level detail for
15 years two and three will, by definition, be stale
16 by the time we get to the point of undertaking
17 those projects.

18 It will require sort of, you know, reinventing
19 each list each year, understanding why a certain
20 project was taken off the list and was replaced by
21 another project. That's going to create a lot of
22 work and a lot of discovery and a lot of
23 unnecessary work, from -- from FPL's perspective.

24 The other alternative, which nobody wants, is
25 to have to execute on a suboptimal plan. We

1 certainly don't want to be locked in for years two
2 and three because we identified certain projects in
3 year one.

4 So, to conclude, FPL supports the staff
5 recommendation as it's currently written with the
6 sole exception of the red line regarding the
7 project-level detail for years two and three.

8 In terms of the proposal of a rule, we would
9 respectfully ask the Commission to consider
10 inserting that language into the rule. And really,
11 that's all that FPL wants to propose at this point
12 in time.

13 I think the other utilities have some other
14 issues, but for -- from FPL's perspective, I thank
15 you for your time and for your attention.

16 CHAIRMAN GRAHAM: Thank you, sir.

17 MR. BERNIER: Good morning, Commissioners.
18 Matt Bernier for Duke Energy. I won't reiterate
19 everything that Mr. Rubin just said, in the
20 interest of efficiency, but we completely agree.
21 The only part I will reiterate is the thanks to
22 your staff for all the hard work they've put into
23 this. They've come out with a good product.

24 We -- we do have one other issue that we
25 wanted to discuss here today, and it's not found in

1 the text of the rule; it is actually in staff's
2 recommendation. And that has to do with the idea
3 of opening separate dockets for each company and
4 then having a uniform or a -- a hearing date for
5 everybody at the same time.

6 I certainly understand the desire for
7 administrative efficiency. I'm all for it. We are
8 concerned -- and I think the issue is that we might
9 all be in different places when it comes to
10 developing a plan, and we're concerned that the
11 one-size-fits-all paradigm there could end up with
12 a situation where somebody is trying to, you know,
13 meet a filing date that they wouldn't otherwise be
14 able to, just to -- just to hit that date.

15 I think it would be a better approach to allow
16 each individual company to get their plan to where
17 they really need it to be to have a filing that
18 they're really comfortable with. And I think that
19 will, in the end, promote efficiency.

20 That said, we will, of course, abide by the
21 Commission's orders when it comes to that and meet
22 any date -- or do our best to -- but we just think
23 that the Commission should be open to some
24 flexibility on that -- on that front.

25 And with that, we're available to answer any

1 other questions, but thank you for your time.

2 CHAIRMAN GRAHAM: Thank you, sir.

3 MR. MEANS: Good morning, Commissioners.

4 Malcolm Means with Ausley McMullen, on behalf of
5 Tampa Electric. And I'd also like to make an
6 appearance for Jim Beasley with Ausley McMullen.

7 And before I offer any comments, I want to
8 thank staff for their diligence and attention to
9 detail throughout this rulemaking process. While
10 we don't agree with every aspect of the rules, we
11 believe that staff took the appropriate approach in
12 modeling the rule after existing cost-recovery
13 clauses.

14 And we believe that, except for our comments
15 made here today, the draft rules generally
16 establish a fair, rational, and readily-
17 understandable method for implementing the statute
18 and achieving the Legislature's goals.

19 And just as a preliminary matter, I won't
20 repeat anything that Mr. Rubin said, but we'd like
21 to adopt those comments as well, and we agree with
22 those, but I -- as I circulated before here -- we
23 circulated one small modification to the -6.031
24 rule.

25 And under staff's recommended rule language,

1 costs incurred before a storm-protection plan is
2 filed are not recoverable through the clause. And
3 Tampa Electric respectfully disagrees with this
4 approach and believes that costs incurred in
5 preparing a storm-protection plan should be
6 eligible for recovery.

7 Just for clarity's sake, these are plan-
8 development costs, as distinguished from plan-
9 implementation costs, and we believe that the
10 Commission has authority to allow for recovery of
11 these plan-development costs.

12 On Page 17 of the recommendation, staff point
13 to Sections 2C and 7 of the statute, and they say
14 that the -- the statute only mentions plan-
15 implementation costs. Section 2C simply defines
16 transmission-and-distribution storm-protection-plan
17 costs. It does not authorize or disallow recovery
18 of any type of costs.

19 Section 7 of the statute authorizes the
20 recovery of prudently-incurred storm-protection
21 plan costs, but does not preclude the Commission
22 from authorizing recovery of plan-development
23 costs.

24 And regardless of the statute -- the language
25 in the statute -- we wanted to point out that

1 Florida courts have consistently recognized that
2 this Commission has considerable discretion and
3 latitude in the rate-making process.

4 In *Floridians United for Safe Energy, Inc. vs.*
5 *Florida Public Service Commission*, an order from
6 this Commission granting a subsequent-year rate
7 increase was challenged on appeal, and the
8 challengers argued that a newly-enacted statute
9 regarding subsequent-year rate adjustments,
10 Section 366.076, Florida Statutes, was
11 unconstitutional.

12 In affirming this Commission's order to grant
13 a subsequent-year adjustment, the Florida Supreme
14 Court said that the Commission's authority to grant
15 subsequent-year adjustments predated the enactment
16 of Section 366.076 Florida Statutes as part of the
17 Commission's general rate-making authority. So, in
18 other words, the Court did not find it necessary to
19 even reach or address the constitutional challenge
20 to the new statute.

21 And similarly, we believe that your rate-
22 making authority authorizes cost recovery of plan-
23 development costs, and that that authority
24 similarly predated the enactment of Section 366.96,
25 Florida Statutes. And we believe you have broad

1 authority under Chapter 366 of the Florida Statutes
2 to authorize this recovery.

3 As for why you should do so, we think allowing
4 recovery of these costs would further the purposes
5 of the statute for several reasons. First, plan-
6 development costs are incremental costs that
7 necessarily must be incurred in order to produce a
8 viable storm-protection plan.

9 These costs include, for example, hiring
10 outside consultants to develop the plan, hiring new
11 permanent salaried employees dedicated to storm-
12 protection activities, establishing a methodology
13 for selecting and ranking projects, and
14 establishing specific programs that will be
15 included in the plan.

16 For example, Tampa Electric does not have an
17 existing overhead-to-underground conversion
18 program, so the company will incur costs to develop
19 procedures in a framework for that program. These
20 are all incremental costs that Tampa Electric will
21 incur as a direct result of Section 366.96, Florida
22 Statutes.

23 Second, authorizing recovery of these costs
24 through the clause will encourage the development
25 of robust and well-considered storm-protection

1 plans. We believe that appropriate plan
2 development is at least as important, if not more
3 important, than appropriate plan execution.

4 If the plan isn't any good, the execution
5 won't matter. As Yogi Berra once said, "If you
6 don't know where you're going, you'll end up
7 somewhere else."

8 Finally, the Commission will not relinquish
9 any control by saying a utility can seek approval
10 of plan-development costs. You will still have the
11 final say on whether those costs were incremental,
12 prudent, and recoverable through the clause
13 proceedings.

14 We respectfully urge you to include the
15 proposed language that we circulated that will
16 allow utilities to seek clause recovery of their
17 prudently-incurred, plan-development costs.

18 Thank you for your time and attention.

19 CHAIRMAN GRAHAM: Thank you, sir.

20 MR. BADDERS: Good morning, Commissioners.

21 Russell Badders on behalf of Gulf Power. First,
22 I'd like to thank staff. They've pulled together a
23 lot of information, very short period of time, a
24 very comprehensive rule. Typically, it would take
25 two to three times as long to pull something like

1 this together, but they've done a very good job and
2 worked with all the parties on this.

3 I will not go back through all of the comments
4 that those to the right of me have said, but we
5 support the comments Mr. Rubin made with regard to
6 the project- versus program-level of detail.

7 I think there would be a lot of changes that
8 would have to be made in year-two and -three
9 filings that, I think, we could avoid if we don't
10 include the project-level of data.

11 With that, I'll -- I'll pass it to
12 Ms. Keating, on behalf of Florida Public Utilities.

13 MS. KEATING: Thank you, Mr. Badders.

14 Thank you, Mr. Chairman, Commissioners. Beth
15 Keating with the Gunster Law Firm here today for
16 FPUC. I have the good fortune and benefit of being
17 last of the utilities to speak on this issue. So,
18 obviously, I will be exceedingly brief, but like
19 the others, I want to commend staff for their
20 efforts. They have absorbed a lot of information
21 and come up with a good draft in the amount of time
22 that they were allowed, and we -- we support the
23 comments of the other utilities.

24 The main point that I was going to speak on is
25 the issue of cost recovery for preparing the plan,

1 which Mr. Means very thoroughly addressed. If I
2 could, I just, on that point, want to reemphasize
3 two very small, additional points.

4 The only provision in the statute that
5 specifically precludes any costs from recovery is
6 Section 8E. And it spec- -- specifically precludes
7 recovery of costs that are already in the company's
8 base rates. So, to the extent costs to develop a
9 plan are incremental, those are costs that the
10 utility should be able to recover.

11 And then the second point that I just wanted
12 to note is that the statute expressly recognizes
13 that developing a plan to mitigate restoration
14 costs and outage times to utility customers is in
15 the state's interest. And that suggests that the
16 Legislature had no intent to preclude recovery of
17 costs incurred in developing the plan.

18 So, with that, again, we -- we'd echo TECO's
19 comments in that regard, and support the comments
20 of the other utilities. Thank you.

21 CHAIRMAN GRAHAM: Mr. Wright.

22 MR. WRIGHT: Thank you, Mr. Chairman,
23 Commissioners. Good morning. Schef Wright on
24 behalf of Florida Retail Federation. I, too, would
25 like to join my colleagues in thanking you for

1 setting up the process of workshops and comments
2 and thank your staff for the hard work they put in,
3 in a compressed time frame due to the legislative
4 mandates. You guys did a great job. Thank you.

5 Generally speaking -- I'll be as brief as I
6 can, which is pretty brief today. Generally
7 speaking, we are supportive of the comments made by
8 Mr. Rehwinkel, on behalf of the Office of Public
9 Counsel and the citizens of the state. We agree
10 with the staff's proposal to require project-
11 specific data, as discussed in the recommendation
12 and the plan filings, not program data.

13 We agree with allowing recovery only of costs
14 pursuant to filed plans after those plans are
15 filed. Mr. Rehwinkel did not touch on this, but we
16 also agree with Provision 3H in the rule that
17 requires the utilities to provide projected rate
18 impacts on customers.

19 We said in our comments, we -- we would like
20 to see a line item, but staff believes that the
21 billing cost might exceed the benefits there. It's
22 hard to say what benefit customer information is.
23 We think more is better than less, but that's not a
24 deal-killer for us.

25 With respect to a few of the provisions that

1 we don't agree with, we don't agree with the
2 staff's proposal to allow simultaneous litigation
3 of the plan approval and cost recovery. At that, I
4 think -- I agree strongly with Mr. Rehwinkel that
5 that's putting the cart before the horse.

6 This would really, I think -- as
7 Mr. Rehwinkel, clarified, this really would apply
8 in the first cycle. We think you ought to put the
9 horse before the cart, as is the usual case, in the
10 first cycle, get the plan get approved, then have
11 the -- the SPP CRC cost-recovery process continue
12 from there.

13 I agree with Mr. Rehwinkel -- we agree with
14 Mr. Rehwinkel that 3J is too broad. You know,
15 it may -- may have a legal defect, as he pointed
16 out, but I think it's too broad to put in there.

17 On a somewhat-related point, he mentioned
18 batteries, in passing. I would -- I would make
19 this point in passing: I don't think batteries can
20 qualify as transmission or distribution. The
21 statute clearly applies to transmission and
22 distribution. That's something for y'all to
23 consider.

24 Finally, I will say to you that I don't agree
25 with the -- the characterization of violations of

1 this proposed rule as being minor violations.
2 The -- the statute and the rule are designed to
3 protect the public interest, to promote reliability
4 of service to customers after hurricanes. This is,
5 on its face, protection of the public health,
6 safety, and welfare, which is supposedly the
7 criterion to -- to qualify as -- as a minor rule
8 violation.

9 I don't see how a violation of a plan -- a
10 violation of this rule, violation of a utility's
11 plan, promulgated pursuant to this rule, can, under
12 these circumstances, qualify as a minor violation.

13 I did want to respond very briefly to comments
14 my friend Mr. Rubin made. I think the -- his idea
15 that they would file specific projects for year two
16 is a nice idea, but there's no point of entry for
17 action on those, that I can see. And that's really
18 the problem.

19 The utilities' reliability-evaluation
20 processes for all these projects are ongoing. I've
21 been dealing with undergrounding for literally 30
22 years. These processes take a long time. Project
23 development takes a long time. Engineering takes a
24 long time. They know what's going on. Changes are
25 not likely to be great.

1 We believe they can and should, as the staff
2 con- -- contemplate -- file project-specific data.
3 Thank you, again. Thank your staff, again. Thanks
4 for letting me speak this morning.

5 MR. MOYLE: Thank you, Mr. Chairman. Jon
6 Moyle on behalf of the Florida Industrial Power
7 Users Group, FIPUG. And we will not take up a lot
8 of your time. A lot of comments have already been
9 made. We support the consumer comments made
10 prior to -- to us addressing you, but there are two
11 points that we want to make.

12 Before hitting those, let me join everyone
13 else in thanking your -- your staff and you all
14 for -- for working on this. Two -- two workshops
15 were held. They received comments. Every
16 opportunity was provided to -- to make comments,
17 and it was a good -- a good process.

18 There -- the two points that we would urge you
19 to focus on -- and some of it may be even further
20 down the road when -- when a rule is in place, but
21 transparency is very important to consumer parties
22 and -- and members of the Industrial Power Users
23 Group.

24 We want to know what -- what our future costs
25 are going to be. And during the legislative

1 process, we were engaged in that. There was a lot
2 of discussion about that, and there was a lot of
3 discussion about well, what -- what does this look
4 like. You know, you are all -- already have a
5 process in place, and a rule, and you're -- you're
6 doing a good job with respect to hardening.

7 You know, this is something that is new, a
8 clause recovery, but the potential numbers that
9 were tossed around were -- were -- were
10 significant. I don't know, at the end of the day,
11 if anybody knows for sure because, as the point has
12 been made, things change, but, you know, billions
13 of dollars, tens of billions of dollars in costs,
14 potentially, will be at issue here.

15 So, for people in business, they want to know,
16 what are my rates going to be, what are the rates
17 going to look like. And I think the Legislature
18 heard that message and said to the Commission,
19 please give us good information about rate impacts,
20 about the costs going forward.

21 And as you do that -- and I commend you on
22 your rule because you -- you don't just say, give
23 us rate information, you say, give us rate
24 information on residential, on commercial, and
25 industrial.

1 And I think all those are important groups
2 of -- of customers, and I think that, as you move
3 forward, you know, we expect to see information
4 that is broken down in that way, so -- so that
5 people can make business decisions about what their
6 large, variable cost of electricity is going to be
7 based upon these hardening efforts. So, I think
8 the rate-impact piece is one that we would -- we
9 would urge you to keep an eye on.

10 You know, Mr. Rubin's idea about not putting
11 project-specific information in -- you know, I
12 think it's probably fairly debatable because
13 project information give you better rate impacts
14 because I think undergrounding in Miami Beach is
15 going to be a lot more expensive than
16 undergrounding in -- in Live Oak.

17 So, I think you probably would get a little
18 better information on that, but I think if, you
19 know, they make the representation to say, you
20 know, it's not going to impact the budget,
21 materially, we want to move projects around, then
22 that's probably a discussion or debate -- not for
23 today -- but I think it underscores, from our
24 perspective, the need to get good information about
25 potential rate impacts.

1 And I think the Legislature also -- you know,
2 as, I think, Ms. Keating pointed out, the
3 Legislature wants that information as well. So,
4 that's the one point we wanted to make.

5 And the other point is the -- the Legislature
6 also says, we don't need to recover things that are
7 already being recovered. And I'll use the example
8 of vegetation management. All the utilities are
9 doing vegetation management today, right? And
10 that's part of what -- what has, I think, been
11 brought forward. That's usually something that's
12 seen in rate cases.

13 So, you -- you're picking up vegetation
14 management today. In the implementation process, I
15 think it's incumbent on -- on the utilities and the
16 Commission to make sure that you're not having
17 recoveries being made through the clause that are
18 already being picked up in the -- in the base
19 rates.

20 I mean, I think the term "double recovery" was
21 used by a prior speaker, but that's an important
22 implementation issue that we want to make sure
23 is -- is done right, in a way that you're not
24 charging ratepayers for services that are already
25 being provided or have been authorized in -- in

1 base rates.

2 So, as this rule gets implemented and moves
3 forward, we would urge you to keep those two key
4 points in mind. And -- and that will conclude my
5 remarks. Thank you.

6 CHAIRMAN GRAHAM: Thank you.

7 Staff, two questions for you. The two
8 handouts that were handed out -- did you have any
9 comments about the Florida Power & Light handout or
10 the TECO handout?

11 MR. GRAVES: Commissioner --

12 MS. HARPER: Yes, I think we do -- I'll turn
13 it over to Mr. Graves for the plan rule and then
14 Shelby can handle the clause rule.

15 MR. GRAVES: Commissioners, I think I can tie
16 my discussion about the handout in with some of the
17 comments that were provided by the -- the parties.
18 And I do want to -- I guess, similar to the
19 parties, I want to express our appreciation for
20 their input during this process because there was a
21 lot that went into this.

22 To Mr. Rehwinkel's first point, regarding the
23 batteries and meters being included in the
24 definition --

25 CHAIRMAN GRAHAM: Let's back up. We're

1 talking about the Florida Power & Light handout.

2 MR. GRAVES: Correct, and it's going to tie
3 into that.

4 CHAIRMAN GRAHAM: Okay.

5 MR. GRAVES: That is not included in staff's
6 recommendation, and it was prior in some of the
7 utilities' suggestions. And based on this handout
8 this morning, that's no longer in there. So, we
9 think that should relieve Mr. Rehwinkel of those
10 concerns regarding what's considered in that list.

11 CHAIRMAN GRAHAM: Okay.

12 MR. GRAVES: With respect to the years two and
13 three, this is largely the same as what the utility
14 had proposed prior to staff's recommendation. So,
15 it's not whole cloth.

16 The one thing that they did previously -- they
17 had excluded the statement, "... and how this data
18 was used to prioritize the proposed storm-
19 protection project." That was previously excluded.
20 It's back in there now. So, that was one concern
21 that staff had.

22 And I can talk about the two and three years,
23 if you'd like, now, or we can wait on that one.

24 CHAIRMAN GRAHAM: We'll wait on that one.

25 What about the TECO handout?

1 MS. EICHLER: Do you want me to go over the
2 FPL one first, though?

3 CHAIRMAN GRAHAM: TECO.

4 MS. EICHLER: Just the TECO one?

5 CHAIRMAN GRAHAM: Go over the Florida Power &
6 Light one. Go ahead.

7 MS. EICHLER: Okay. For the Florida Power &
8 Light recommendation, in the projected costs for
9 subsequent years, they'd like to strike out the
10 verbiage "and projects," and only provide program-
11 level data for projected cost filings.

12 And it's pretty simple. If the utility wants
13 re- -- cost recovery on projections, then we must
14 have that project-level data. Providing only the
15 program data is -- gives a partial picture or a
16 snapchat -- snapshot, if you will. And we need
17 that full picture to make a prudence determination,
18 for example, what changed and why.

19 I also don't feel that we can fully,
20 sufficiently distinguish between base-rate
21 activities and -- that are being recovered and
22 whether they're trying to run through the clause
23 without that level of detail being provided through
24 the clause. So, I would recommend we don't strike
25 those words.

1 CHAIRMAN GRAHAM: Okay.

2 MS. EICHLER: For the TECO suggestions, in the
3 statute and Subparagraph 2C, there's an explicit
4 definition provided for what storm-protection plan
5 costs are. And quoting that description is, "...
6 costs to implement an improved transmission and
7 distribution storm-protection plan." So, we don't
8 feel comfortable including that language because
9 the statute specifically uses that word,
10 "implement," and not "develop."

11 Also, I just want to clarify that we are not
12 saying that those development costs are not
13 recoverable at all. We are just writing the rule
14 to say that they are not specifically clause-
15 recoverable.

16 CHAIRMAN GRAHAM: Okay. Thank you.

17 Commissioner Clark.

18 COMMISSIONER CLARK: Thank you, Mr. Chairman.

19 Again, thanks to everyone that's done a lot of
20 work on this. I -- I've got a couple of questions
21 and, I guess, a couple of comments. I'll kind of
22 go through each one of the ones I heard and I'll
23 share my thoughts and opinions.

24 You know, we talk about storm-protection plan,
25 and we talk about recovering these costs. And we

1 kind of pretend like this is a new concept and a
2 new idea. We've been doing this for a hundred
3 years. We just recovered it another place. We
4 recovered it in the base rates.

5 And what we're now looking at is how do we
6 separate these costs out and what actually define
7 these costs. Do they meet the statutory
8 requirements for storm-protection plan recovery or
9 do they still remain in the base rates. I think
10 that's where a couple of these things go.

11 I want to go back to the -- the question that
12 our TECO folks asked about recovering your -- as
13 you begin to look at your development costs for
14 your storm-protection plan and you're looking at,
15 okay, can we recover that in this clause.

16 Well, my question is: If you're putting
17 together a ten-year storm-protection plan, you'd
18 get to a point where you'd say, okay, this is going
19 to continue to remain in our base rates. This is
20 going to come into the storm-protection cost
21 recovery. Where do your plan -- can't you keep
22 your plan costs in your base rates?

23 MR. MEANS: I think what we're talking about
24 here, and our primary focus here with this -- with
25 this change is Tampa Electric is going to have to

1 incur incremental costs in the front end to put
2 together its -- its plan that we'll be filing next
3 year.

4 And as I mentioned, for example, Tampa
5 Electric doesn't have an existing overhead-to-
6 underground conversion program. So, there's a lot
7 of front-end costs associated with developing that
8 program and coming up with the -- the framework for
9 it, as we go into this first plan filing.

10 And so, our hope -- or our request here today
11 is that those should be recoverable through the
12 clause the first time around.

13 COMMISSIONER CLARK: If the clause
14 specifically prohibits that, are they recoverable
15 at some point through the base rate?

16 MR. MEANS: I think, yes, they would be
17 recoverable through base rates, but again, these
18 are costs we're going to incur now on the front end
19 to put together our plan for filing next year.

20 COMMISSIONER CLARK: Okay. I want to go back
21 to Mr. Rehwinkel's original, I guess -- what I got
22 out of -- Mr. Rehwinkel, your most-pressing concern
23 seemed to be, to me, the simultaneous-filing issue
24 and how that's going to be a problem. I -- I don't
25 necessarily disagree with you there. I think

1 that's -- it's a valid point.

2 Can staff address for me what your intention
3 is as to how we handle it? How are you going to
4 approve a cost recovery when you haven't approved a
5 plan yet?

6 MS. HARPER: From a legal perspective, we
7 believe that we can -- they can file the petition
8 under the statute --

9 COMMISSIONER CLARK: That's not --

10 MS. HARPER: -- for cost recovery. We are not
11 suggesting that we approve it at the same time just
12 because they file it simultaneously with the plan.

13 Shelby can explain that a little more.

14 MS. EICHLER: So, in the statute, it has that
15 phrase, "only after approval," but that's only
16 after we approve a plan that we can, then, approve
17 a petition. So, that doesn't prohibit a filing of
18 a petition before the approval of a plan.

19 So, just having a cost-recovery petition does
20 not mean we're going to dive right in, start
21 analyzing. We will, obviously, wait until we have
22 that decision from the Commission.

23 So, also, I don't think we should inhibit a
24 utility from submitting these plans in a timely
25 fashion, if it's easiest for them, because it will

1 not have a negative impact on our processes here
2 within the Commission.

3 COMMISSIONER CLARK: So, there's no clock
4 running on when these get approved simply because
5 they file them both at the same time.

6 MS. EICHLER: The plan has a clause. The
7 clause will be pursuant to the OEP.

8 COMMISSIONER CLARK: I understand, the -- the
9 plan has a clock, but if you file a clause
10 recovery, there's no clock running there.

11 MS. EICHLER: No.

12 COMMISSIONER CLARK: Mr. Rehwinkel, does that
13 address -- I mean, I realize we're not
14 memorializing that in writing here, but that does
15 kind of address the --

16 MR. REHWINKEL: Well, I still -- first of all,
17 I'm not certain what the contemplated process is.
18 I understand the answer that you got that, in
19 theory, you can do this, but here's our -- here's
20 our fundamental concern -- and I'm making up dates
21 but let's say January 31st, you get a plan from all
22 five utilities; and then, on February 1st, you get
23 a clause -- a clause filing from all five
24 utilities, and the plan has got the clock on it.

25 So, we're not going to know until you vote and

1 issue an order -- and I don't know anything
2 about -- I'm not considering whether there's
3 appeals or reconsideration. Let's just assume it
4 goes through and it -- and then, two months later,
5 there's a -- a hearing scheduled on these five
6 clause recoveries.

7 Well, so, we -- all the time, we're litigating
8 the plan and we're trying to guess how the plan
9 outcome is going to manifest itself while we're
10 doing discovery and filing testimony on this clause
11 recovery and -- and that's sort of in a netherworld
12 that I don't know how to gauge right here today.

13 If the idea is, well, they can file them and
14 then they're going to be voted on in '21, I don't
15 have a problem with that, but I do have a problem
16 with it just being a little bit of an overhang
17 after the plans are approved, and then you've just
18 got maybe 30 or 60 days to decide whether the
19 filings that you're -- you know, by the time you
20 get to that point, the discovery period is over.
21 You're -- you're at the prehearing conference.
22 You're about ready to go to a hearing. I just
23 don't know how it would work, so --

24 COMMISSIONER CLARK: I -- I don't disagree.

25 MR. REHWINKEL: Yeah.

1 COMMISSIONER CLARK: I think it's a very valid
2 concern.

3 And let me ask staff: Can we -- how can we
4 address that? I mean, other than saying, okay,
5 we're going to expand the time lines during these
6 periods -- I assume we can do that.

7 MS. HARPER: Well, I would say the way the
8 rules are written now, we have the flexibility to
9 address that because we are not mandating a
10 specific mechanism; we're just allowing
11 simultaneous filings -- again, not simultaneous
12 approval, but simultaneous -- simultaneous filings.

13 And we are understanding and sensitive to
14 OPC's concerns about the first time this goes
15 through because we -- we also contemplated how
16 we're going to deal with other costs that are
17 similar that may be in other locations and base
18 rates.

19 So, we understand, the first year, we're going
20 to -- we are going to have to get together, all of
21 us, as -- you know, when -- when these plans --
22 when these rules become effective, and figure out a
23 system that works for everybody so we can get on
24 the same page with that.

25 And of right now, the rules give us

1 flexibility to do that.

2 COMMISSIONER CLARK: Mr. Rehwinkel, are you
3 willing to take our word for this?

4 (Laughter.)

5 MR. REHWINKEL: Again, Commissioner, it's --
6 it's very difficult. I mean, you -- you heard
7 some -- some -- I don't -- you know, like I said,
8 we've got to kind of look at -- at the whole puzzle
9 as it comes together.

10 Duke asked you to allow disaggregated filings.
11 Well, that sort of puts another whole wrinkle in
12 there. And I don't know how that would be dealt
13 with. As staff rightly suggests, you deal with
14 that in OEP.

15 Well, also, if -- if people are saying, well,
16 you'd have flexibility on how the -- the clause
17 process is going to happen -- well, in the very
18 first workshop, we voiced a concern, is -- and it's
19 in your staff recommendation.

20 We think this should be separated from the
21 annual clause festival that you have in the fall
22 where you do one, two, seven, and used to do nine,
23 but now -- well, nuclear was -- was in the August
24 time frame. And we think that's probably a
25 reasonable place for that to land.

1 But if you're going to say, you should --
2 y'all should have flexibility to maybe move the
3 clause considerations out, well, then we're right
4 back into the old rut of -- of just putting SPP in
5 with the other numbered clauses.

6 And we think it's important to keep them
7 separated because there's going to be plenty of
8 work to do, at least at the beginning. You might
9 get to a point, after these become rote, you know,
10 where you can start mixing them in, but this is a
11 significant thing you guys are going to undertake.

12 And I would urge you to separate them. Take
13 your time. Make sure you get it right. Pull out
14 base rate and incremental, and then modify the
15 process down the road. But to put it in the rule
16 that we're going to jam them together the first
17 time, I think, is a mistake. And I urge you to
18 reject it.

19 Thank you.

20 COMMISSIONER CLARK: Thank you.

21 MS. EICHLER: I just want to also point out
22 real quick that this is going to happen every three
23 years. So, they've got to file these plans every
24 three years. So, every third year, we're going to
25 have these going on in the same year.

1 And understand, the first year is kind of
2 unknown, a little scary, may give us some
3 heartburn, but it's going to happen again. So, I
4 think we should keep with what we're recommending.

5 COMMISSIONER CLARK: Well, I think that -- my
6 next question may make that even worse. So, let me
7 go to it.

8 Looking at FPL's proposal, if you -- and --
9 and up front, I agree, I -- I think that having
10 specific data in years two and three is very
11 difficult to do. I think it ties you into a -- an
12 agreement and -- a cost-recovery mechanism that's
13 tied to a specific plan that I don't think may be
14 in the best interest of the consumer in the long
15 run.

16 I think that the flexibility to adjust that is
17 important. I think that -- and I think it --
18 Mr. Moyle's point was so on target with me -- is an
19 undergrounding project in Miami is not the same
20 price as an undergrounding project in Live Oak.

21 And if you have this one on your projected
22 plan and it's locked in and you've got millions of
23 dollars that you have begun cost recovery on for
24 these particular projects and you get to day of
25 construction and now we don't need to do this one

1 and -- and we're able to substitute a million-
2 dollar project for a half-a-million dollar
3 project -- you know, what are your -- what does
4 your cost recovery look like now.

5 Why would we -- why would we not just take a
6 look and say, okay. If you're going to have \$50
7 million worth of undergrounding projects -- and
8 then my question comes back to you: What happens
9 in year two.

10 You file a detailed plan in year one. You
11 file program information in years two and three.
12 Do you come back in year two and give me your
13 detailed plan for that year; which, that takes into
14 consideration now you don't just have a three-year
15 filing; you have someone coming back every year
16 with an update to that plan, and we're truing up
17 the actual cost recovery. Is that a correct
18 assessment?

19 I'll start at FPL.

20 MR. RUBIN: Yes -- yes, sir, precisely. We
21 would come in with the first clause filing in year
22 two, and we would identify the specific projects
23 within the program that we are planning for year
24 two.

25 And if I can expand a little bit on that --

1 because I know Shelby mentioned the -- you know,
2 the change in Subsection (b) of the -- of the
3 clause rule, the removal of projects for projected
4 costs for subsequent year is -- it really isn't
5 going to change anything because we're not asking
6 for a prudence determination at that point.

7 COMMISSIONER CLARK: That's right.

8 MR. RUBIN: We're not asking for a prudence
9 determination until we have, in the clause filing,
10 identified the projects. And then the following
11 year, we would come in for the prudence
12 determination when the actual costs are -- you
13 know, we know exactly what the costs are. So --
14 so, I think that's im- -- that's an important -- an
15 important piece of that.

16 In terms of the other question -- if I can
17 kind of pivot to the question about the schedule,
18 if you were to adopt what OPC suggests, every third
19 year, your schedule gets thrown off. And that's
20 something that can be handled through the
21 Commission's procedure of scheduling the OEP.

22 So, if you -- if you believe that the storm-
23 protection plan that's filed in year one and year
24 four is going to take a little bit longer for the
25 Commission to consider and either approve or

1 modify, you can set the hearing a little bit later
2 for the clauses.

3 So, that's really a procedural issue. And
4 if -- if you adopt what OPC has suggested, every
5 fourth year, your schedule is completely thrown
6 off.

7 You don't have any consistency in terms of how
8 it's done. And it's not necessary because you have
9 the power, from an administrative perspective, to
10 set your -- your schedule however you want to for
11 that year.

12 So, if you think that the year that the storm-
13 protection plan is filed requires a slightly-later
14 hearing date for the clause recovery, so be it.
15 That's within your discretion, and you can -- you
16 can determine that each time a storm-protection
17 plan is filed.

18 So -- and I heard in the initial comments that
19 Mr. Rehwinkel said, at least for year one, that's
20 what he would like and, after that, it might work
21 itself out. So, then we would be coming back for
22 another rulemaking because then you'd be changing
23 how we're going into this rule.

24 It just doesn't seem -- it's, number one, not
25 necessarily -- not necessary, and it just doesn't

1 seem like it makes sense, from an administrative
2 perspective.

3 COMMISSIONER CLARK: So, you're saying we
4 could operate, as you've outlined, under the
5 existing rule. If we adopted Mr. Rehwinkel's
6 concept, we would actually have to do a rule change
7 in there as well?

8 MR. RUBIN: I -- I think you would because, if
9 the rule currently says it's going to be handled a
10 particular way, different from the way it's
11 drafted -- the way it's drafted now, you can do
12 what Mr. Rehwinkel is asking or you can do whatever
13 the -- the staff and the Commission decides is
14 appropriate.

15 And one other thing that's come up a number of
16 times, people have used the term "double recovery,
17 double recovery." It's very clear in the staff's
18 rule that storm-protection-plan costs recoverable
19 through the clause shall not include costs
20 recovered through the utilities' base rates or any
21 other cost-recovery mechanism. And it will be our
22 burden to come in and -- and prove that to you.

23 So, this talk about double recovery is, I
24 think, completely inappropriate under the way this
25 rule has been drafted. We will not have the

1 opportunity, nor would we do that -- if we are
2 recovering through base rates, we will not seek
3 recovery through the clause.

4 COMMISSIONER CLARK: So, let -- let me ask
5 you -- and Mr. Rehwin- -- Mr. Chairman, with your
6 indulgence, please --

7 CHAIRMAN GRAHAM: No. No.

8 COMMISSIONER CLARK: I'll come back to
9 Mr. Rehwinkel on that, but let me ask a question
10 there. So, do you still have the ability, if you
11 decide something is not recoverable, or -- or the
12 Commission decided anything is not recoverable --
13 through the storm-protection plan, could you go
14 back and ask for recovery in your base rates for
15 it?

16 MR. RUBIN: The -- the storm-protection plan
17 that we will file will provide our total storm-
18 protection plan. It doesn't mean we come in and
19 ask for recovery of el- -- of every element of that
20 plan. That's -- I think that's something that can
21 change from time to time, from plan to plan.

22 COMMISSIONER CLARK: Okay. Mr. Rehwinkel,
23 back on the timing issue --

24 MR. REHWINKEL: Yeah, just to be clear, you
25 can write in the rule that the first time out of

1 the gate, you don't have simultaneous recovery, and
2 then you can have it the rest of the time. You
3 don't have to change the rule in three years.

4 We're only -- our on- -- our concern -- and
5 that's just a matter of wordsmith-ing, but our
6 concern is this first time. We're willing to roll
7 the dice and say, you know, you go through -- you
8 should go back and look at 1984 -- 1994.

9 COMMISSIONER CLARK: I was in tenth grade,
10 Mr. Rehwinkel --

11 MR. REHWINKEL: -- when they pulled out --
12 when they pulled out the ECRC costs from base
13 rates. That was a -- that was a very difficult
14 process. It's -- it's not easy. Gulf Power was
15 the guinea pig on that, and they went through that,
16 and that was where all of the kind of testing was
17 done.

18 After that, it got sort of rolling. So, we're
19 happy with rolling the dice on that in the fourth
20 year and the seventh year and all that because I
21 think you guys are going to have a lot of
22 experience. So, I reject that you'd have to change
23 the -- the rule about that.

24 COMMISSIONER CLARK: Okay. And my last
25 question, Mr. Chairman, is -- Mr. Bernier, I want

1 to talk about separating the companies out. And
2 I'd like the staff's opinion on how that affects
3 us. That seems to me like that makes it easier.

4 Are you talking about some sort of
5 condensed -- not a condensed time line, but if you
6 wanted to file at a later point in time -- you've
7 got to file your plan -- but your recovery at a
8 later point in time --

9 MR. BERNIER: I think I --

10 COMMISSIONER CLARK: -- would you be willing
11 to just wait a year and catch the next cycle?

12 MR. BERNIER: I think I'm contractually barred
13 from agreeing to a condensed time line on anything.

14 (Laughter.)

15 MR. BERNIER: No, I -- I think the -- the
16 point that we were trying to -- and I've heard the
17 word said multiple times by staff, I think Public
18 Counsel, and yourself -- is flexibility.

19 And I -- I don't know -- there's nothing in
20 staff's recommendation that says, hey, we're going
21 to open all these dockets and we're all going to
22 have a filing made January 31 or March 1 -- I don't
23 know what the date is.

24 I just know that, during the workshop, there
25 were comments made by different companies about,

1 oh, it might take this long to do. It might take
2 this long. And we're just advocating for
3 flexibility to allow it.

4 Now, I agree with what staff has said that you
5 can file -- I like -- we agree you should be able
6 to file for recovery at the same time you're filing
7 for your -- your plan. I don't see a problem there
8 with that, but I would agree that, if you haven't
9 filed a plan, you can't file for recovery. I think
10 that's probably self-evident.

11 So, I think if you missed the schedule for the
12 clause, then you miss the schedule for the clause.

13 COMMISSIONER CLARK: So, what we're saying is,
14 if, in this first round -- of course, each
15 utility -- it would be incumbent upon each utility
16 to meet the deadlines for future rounds, but in the
17 first round, could we offer flexibility -- okay,
18 whenever you get ready, file it, you don't have to
19 meet that hard date.

20 MR. BERNIER: I love any --

21 COMMISSIONER CLARK: That's what you're asking
22 for?

23 MR. BERNIER: I love any date that is
24 whenever, yes, but no, I would agree that a -- a
25 date would have to be set. I just don't know what

1 that date is right now, and I --

2 COMMISSIONER CLARK: How does that --

3 MR. BERNIER: It's something we're working on.

4 COMMISSIONER CLARK: How does that work,
5 Ms. Harper?

6 MS. HARPER: Well, I don't -- I don't want to
7 keep repeating myself, but again, the rules give us
8 the flexibility to do what we need to do or how we
9 decide to do it, this first go-round or in the
10 years future.

11 So, I -- I think what we put in the rec was
12 how we envisioned the first time going on. And we
13 did not put any specific dates or timing in the
14 rule, purposely. That has not worked out for us
15 before.

16 COMMISSIONER CLARK: And I think that's
17 what -- excuse me -- trying to get con- -- trying
18 to get consensus here that -- and kind of on the
19 record that we really do want to be flexible. We
20 want to see these things move in the right
21 direction and -- and we're not going to lock
22 anybody down and give those assurances to -- to the
23 utilities, to staff, and to the OPC as well, that,
24 you know, we're willing to work through this first
25 time.

1 I appreciate the EC- -- I do remember a little
2 bit about the ECRC recovery time and I do
3 understand how difficult this is to untangle, and I
4 want to make this successful. I want us to do this
5 and do this right and get it right for the people
6 of the state of Florida. So, I really want to have
7 that flexibility built into our rule. And I
8 appreciate staff's considerations there.

9 Mr. Chairman, that's pretty much -- winds me
10 up. Thank you.

11 CHAIRMAN GRAHAM: Okay. Commissioner Brown.

12 COMMISSIONER BROWN: Thank you.

13 And I think the essence of this rule actually
14 is very forward-thinking, innovative towards the
15 future. It's going to allow prioritization and
16 acceleration of storm-hardening projects here. So,
17 I'm ecstatic with the essence. Although, I think
18 the rule is not perfect, I don't think it's
19 invariably flawed either.

20 Again, there -- there are some areas of
21 concern that I have that, primarily -- and I want
22 to get a little comfort here -- is the checks and
23 balance. I mean, we do have -- when it comes to
24 that -- the level of detail, I think we're going to
25 be looking at the financials three different times.

1 I think we have a substantial opportunity --
2 there's a lot of transparency. And I appreciate
3 the additional detail that Public Counsel and the
4 other parties have asked for. We're going to see
5 these numbers, inevitably, three different times to
6 make sure they are prudently incurred, so -- but
7 that is not my area of concern.

8 My area of concern is to ensure that there are
9 adequate protections in place to verify the
10 measures in the plan are not in the utility's rate
11 base. I'm not really clear that the rule
12 encapsulates that.

13 I think we put the burden on the utility to
14 verify that, but I want to get an understanding of
15 how is that process going to occur. We don't
16 anticipate an audit every time the utility comes in
17 and files a plan.

18 MR. GRAVES: I guess I'll start. It -- it
19 wouldn't start in the plan, that review process of
20 what's in base rates and what's, you know, going to
21 be recovered through the clause. That -- that
22 would take place during the clause.

23 The other concern is that, with the utilities
24 currently under settlements, there's not really
25 optics for staff to see what is included in that.

1 That would be more up to the signatories to just
2 discern what's already included in base rates.

3 COMMISSIONER BROWN: So, you're saying, then,
4 the burden is on the signatories and not staff to
5 verify whether the project -- the projects are in
6 base rates.

7 MR. GRAVES: I think that ver- -- that
8 verification process would go through. At the
9 current state, as it is, I don't see how staff
10 would have that ability to see what's in that
11 settlement, which was a black-box settlement.

12 COMMISSIONER BROWN: I mean, it's pretty vague
13 right now in the rule how that process is going to
14 occur. We've got storm-hardening plans that have
15 been approved. We have utilities with robust
16 vegetation management. You know, we're -- I think
17 we are the leading country -- leading state in the
18 country in terms of grid resiliency.

19 So, how can we verify, though, that those
20 measures are not going to ultimately end up in the
21 projects/plans?

22 Jim -- I want to hear Jim.

23 MR. BREMAN: I was slightly nudged by Cayce.

24 (Laughter.)

25 MR. BREMAN: One thing that we need to be

1 aware of, as we're writing a general rule that
2 we -- that will be applicable after the next series
3 of rate cases -- that's our intent.

4 So, whatever concerns we have with
5 interpreting what is, or deciphering what is, or
6 litigating what is in current base rates -- that
7 will have to be addressed in the next clause
8 proceeding, the very first one.

9 Subsequent to the next rate case, I think the
10 racetrack will be very clear and a lot of the mud
11 will be removed and it will be a smoother process.
12 So, a lot of the angst that you're hearing is the
13 learning curve that everyone is going to have to
14 experience as we go forward.

15 So, we don't want to set in stone what the
16 checks and balances are. The due diligence has to
17 be brought forward by the utility. FPL made that
18 very clear.

19 COMMISSIONER BROWN: How do -- and I'm going
20 to turn to the utilities and see how they feel, but
21 first getting back to other programs, storm-
22 hardening programs like vegetation management --
23 how does the staff see -- let's say, you know --
24 obviously, we're going to be looking at some of our
25 other rules and see whether they're still

1 applicable after this rule has rolled out. How do
2 we see that all combining with this?

3 MR. BREMAN: Well, eventually, we expect the
4 utilities to be able to identify how the programs
5 and the projects are doing, are resulting in costs
6 that are incremental to current base rates. Scope
7 of activity has to be identified and so forth and
8 so on.

9 So, it's not just the total level of expense.
10 So, these are concepts and topics and methods that
11 were first explored, as Rehwinkel indicated, in the
12 Environmental Cost Recovery Clause, back in '94.

13 COMMISSIONER BROWN: Do you ultimately see
14 vegetation management, though, being a potential
15 project as part of -- and recoverable under this --
16 this clause? I do.

17 MR. BREMAN: Certainly, on a forward basis,
18 perhaps after the next rate case, the utility would
19 have a hard time showing that whatever vegetation
20 management it is currently doing would be
21 recoverable through the clause today.

22 It's possible that they could identify scope
23 changes and activities, and -- you know, I don't
24 want to say, no, never, because --

25 COMMISSIONER BROWN: Uh-huh.

1 MR. BREMAN: -- absolutes are hard to
2 establish.

3 COMMISSIONER BROWN: You know, I know
4 Mr. Rehwinkel brought up battery storage and the
5 meters. I -- I understand the meters, but battery
6 storage can -- I see the future of battery storage
7 and the promising future of battery storage and how
8 it relates to the transmission and distribution.

9 I don't want the Commission to be precluded,
10 under this rule, from not allowing the potential
11 to be incorporated in the plans. I don't think
12 that we should limit ourselves here.

13 MR. BREMAN: Correct. The definition that
14 staff has proposed in the transmission-and-
15 distribution area of the plan rule is indicative of
16 the nature of assets. It is not proscriptive and
17 it is not limiting.

18 COMMISSIONER BROWN: And I want to thank -- I
19 want to thank the -- all the parties here, by the
20 way. You guys did an excellent job in your
21 comments the first go-round.

22 The second go-round, we've got a binder this
23 big of all of them. You -- you did such a thorough
24 job. And staff, thank you. You've gone above.
25 It's really helpful and kind of refining a rule

1 here.

2 But I -- just a few more questions. Could you
3 elucidate the -- how the utility is going to --
4 what material are you going to provide?

5 MR. RUBIN: Sure. I think -- to Mr. Breman's
6 point, I think that, for example, if we chose to
7 submit vegetation management, for example, through
8 the storm-protection plan, you know, one
9 methodology might be what was the incremental spend
10 after the test year. There's probably a
11 different -- a few different ways to look at it.

12 And then, going forward, as Mr. Breman said,
13 in our next rate case, the MFRs will determine
14 that. If we put vegetation-management costs in
15 there, it's in base rates, if approved. And if
16 not, then we would come -- come to the storm-
17 protection plan.

18 To your other point, though, if I can respond,
19 on the batteries -- not that we've asked for this
20 to be put into the rule, but I'm told by our staff
21 that PSC Order No. 20170359, issued September 20,
22 2017, confirms that ener- -- energy-storage
23 batteries are part of T and D. So, they handed
24 that to me, and I wanted to make sure that was on
25 the record because you asked about that.

1 COMMISSIONER BROWN: Okay. That's great.

2 I do have questions for you, just to follow
3 up, then.

4 MR. RUBIN: Okay.

5 COMMISSIONER BROWN: You made -- you were
6 giving an example of information that would be
7 included in detail for projects.

8 MR. RUBIN: Yes.

9 COMMISSIONER BROWN: And -- and then you kind
10 of went on to years two and three, too.

11 Two questions: If -- because the language
12 that you have here -- it -- it talks about, for the
13 second and third years of the plan, project-related
14 information in sufficient detail. Obviously,
15 "sufficient detail" is kind of a subjective
16 adjective here.

17 If staff or the Commission requested
18 additional information to be considered sufficient
19 detail under your proposal for years one -- two and
20 three, what kind of language -- how far does that
21 go?

22 MR. RUBIN: You know, I would have to talk to
23 the operational folks, but from -- from our
24 perspective, sufficient detail would be a number of
25 projects and average costs of those projects,

1 which, of course, would be, in the second year,
2 made more clear because then we have the identified
3 projects with the particular costs that -- that
4 would be attributable to those projects.

5 And then the true-up happens in the third
6 year, but the detail that we are referring to would
7 be the number of projects and the cost of those
8 projects.

9 COMMISSIONER BROWN: Okay. And I do
10 understand -- I think you raised really good points
11 about the speculative nature of those years and how
12 they are subject to change and the customer
13 sentiment, once you get those -- that information
14 out there. And what we care about is making sure
15 the rate -- well, first, the projects are sound,
16 but also, we care about the rate impact.

17 MR. RUBIN: Sure.

18 COMMISSIONER BROWN: So, that's an important
19 thing. And we're going to have every opportunity
20 to look at that three times, so --

21 MR. RUBIN: Yes.

22 COMMISSIONER BROWN: I -- I understand that.

23 Can you talk about the detail that you
24 envision for the plan? You talked about the detail
25 for the project. What -- it -- I really want to

1 get a sense of what we're going to see for each
2 plan that is proposed.

3 MR. RUBIN: So, for the plan, we would
4 identify programs, vegetation-management program,
5 upgrades, hardening, undergrounding. And within
6 each of those programs for year one, we would have
7 very specific information -- as I've indicated
8 again, I keep using that example of undergrounding
9 laterals. We would tell you where those are. We
10 would tell you what the costs associated with those
11 are.

12 With, for example, vegetation management, we
13 would tell you how many miles we plan to trim on
14 laterals, how many miles we plan to trim on
15 feeders.

16 COMMISSIONER BROWN: What we get currently.

17 MR. RUBIN: Exactly. And that would be in the
18 plan. So, the first year would have, you know,
19 complete detail regarding the programs that will be
20 undertaken in year one, and then that second level
21 of detail, if you will, for years two and three.

22 And then going out, sort of like the storm-
23 hardening plan now, going out to future years, it
24 will have to be very general. We'll have to see
25 what happens year one, year two, year three because

1 our plan has to cover a ten-year planning horizon.
2 And it's, as you can imagine, very difficult to
3 foresee what ten years from now looks like.

4 So, the detail will really be in year one; a
5 little less detail in year two, but still the
6 number of projects within each program and the
7 costs associated with those. And then years four
8 through ten is probably, you know, this is what we
9 potentially foresee happening in those out years.

10 COMMISSIONER BROWN: Well, and under the
11 current rule, it does provide for an annual status
12 report, too. So, we will get that information --

13 MR. RUBIN: Yes.

14 COMMISSIONER BROWN: -- annually of what has
15 been completed, et cetera.

16 MR. RUBIN: Yes.

17 COMMISSIONER BROWN: Cool. All right.

18 One more question, staff: TECO and FPUC made
19 a few good points, I think, about cost recovery for
20 developing programs. The statute, itself -- I
21 don't know if it precludes it, just implementing
22 the program. I can interpret that a few ways.

23 I'm curious about the other clauses and how we
24 treat the development of programs and the filing in
25 the other clauses. Do we allow potential recovery

1 on prudent costs incurred for the other clause --
2 some of the other clauses?

3 MR. BREMAN: Well, using the Nuclear Cost
4 Recovery Clause as -- as an example, the answer is
5 yes.

6 COMMISSIONER BROWN: I thought so.

7 So, why -- why is the language that Tampa
8 Electric and FPUC is proposing objectionable? I
9 don't -- I think it would be consistent with what
10 we do already.

11 MR. KING: So, I think Shelby made it clear
12 earlier -- if I can take you to the text of the
13 statute, it says, in Subsection 7: The Commission
14 shall conduct an annual proceeding to determine the
15 utilities' prudently-incurred transmission and
16 distribution storm-protection plan costs.

17 That term is defined in the statute, in 2C,
18 and it says --

19 COMMISSIONER BROWN: I go back to that word,
20 "implementing," though. Isn't imp- -- part of
21 implementing a -- a plan the development of -- I
22 mean, you can't implement the plan without
23 developing the plan.

24 MR. KING: Well, it says to implement an
25 approved transmission-and-distribution plan. So,

1 it's -- it envisions that the plan is already
2 im- -- approved and you are implementing it.

3 COMMISSIONER BROWN: Do any of the parties
4 want to opine or -- I know you all were really
5 active in this legislation and -- and the rule
6 process here. I'd be curious to hear from any of
7 the parties here on this because we do allow cost
8 recovery in the clauses on the development of the
9 programs and -- and the filing, itself.

10 I just see -- this is inconsistent with what
11 we do today.

12 COMMISSIONER CLARK: Mr. Chairman, if -- if I
13 may ask -- that's kind of the same question I
14 asked. If you didn't get this cost recovery
15 here --

16 COMMISSIONER BROWN: You've got to wait.

17 COMMISSIONER CLARK: -- are you still eligible
18 to --

19 CHAIRMAN GRAHAM: Yeah.

20 COMMISSIONER CLARK: -- recover it through the
21 base rate, and your answer was --

22 COMMISSIONER BROWN: Right.

23 MR. KING: Yes.

24 COMMISSIONER CLARK: -- yes; am I correct?

25 MR. MEANS: Yes, but only prospectively.

1 COMMISSIONER BROWN: Yeah.

2 MR. MEANS: And this would be a -- as I
3 mentioned, the primary costs we're concerned about
4 here are the costs for developing our first storm-
5 protection plan. We're going to have to do studies
6 and some engineering evaluations and come up with a
7 methodology for ranking and selecting projects.

8 And those are one -- for the most part, one-
9 time costs on the front end that we're going to
10 incur now to develop our first storm-protection
11 plan. And those are not already recovered in the
12 current base rates, as they're incremental costs.

13 COMMISSIONER BROWN: Typically all of our
14 rate-making processes allow for reasonable costs
15 associated with preparing. So, that's why I find
16 excluding that from really a practice -- on every
17 aspect, we allow recovery. So, I find it really
18 goes against what we allow. And -- and not just
19 us, the state of Florida, but the country.

20 Charles.

21 MR. REHWINKEL: First of all, I -- I did
22 participate in the legislative process.

23 COMMISSIONER BROWN: I know you did. I
24 watched you.

25 MR. REHWINKEL: I -- I would say this: As,

1 you know, I -- I made an argument about the
2 projected -- the language, the absence, and the
3 statutory-interpretation principles, the statutory-
4 construction principles that would apply. And I
5 would urge you about being very careful about going
6 down this road.

7 The language that -- that Mr. Hinton read, I
8 think, creates a problem to imply the development
9 language in there because the Legislature used
10 specific language here. So, it's just --

11 COMMISSIONER BROWN: By the way, it was
12 Mr. Breman, just so you know.

13 MR. REHWINKEL: It's just one of those things,
14 that -- that I would urge you to weigh. I do find
15 it somewhat concerning that, on one hand, they want
16 cost recovery for the cost of developing the
17 details of these plans, but you should shy away
18 from the detailed project information that these
19 plans would be providing because there's a cost to
20 them.

21 I -- and, you know, again, I -- I think you
22 could do this -- like what I've been urging
23 Commissioner Clark about the schedule -- is get the
24 detailed information this first round. If you want
25 to give yourself the flexibility in the next round

1 to dial it back, dial it back, then, but don't
2 foreclose yourself the opportunity to get that
3 information now, when you're trying to, as the
4 staff correctly pointed out -- Shelby pointed
5 out -- to pull out what's incremental from what's
6 embedded in base rates.

7 So, that -- I'll -- I'll stop there, but I --
8 I, philosophically, don't have a problem, if TECO's
9 language had "incremental" --

10 COMMISSIONER BROWN: Uh-huh.

11 MR. REHWINKEL: -- in front of "costs." If --
12 if you want to gamble and it's not going to imperil
13 the -- the rule in some kind of rule challenge
14 to -- to go out and read that in there, that
15 wouldn't bother me, if you left in the three years
16 of detailed information.

17 I -- I -- I think that might be a reasonable
18 compromise, but --

19 COMMISSIONER BROWN: So, if it said "an
20 incremental cost incurred by the utility in
21 developing its storm-protection plan" --

22 MR. REHWINKEL: Yeah, as -- as long as we got
23 the project information that went along with all
24 that, I -- I -- I'm just kind of winging it --

25 COMMISSIONER BROWN: That's a different

1 question.

2 MR. REHWINKEL: -- here, but it -- you know, I
3 think all of this, when the Commission decides
4 whether to propose a rule, you've got to weigh
5 what's going to survive any kind of ru- -- a rule
6 challenge from what's going to work.

7 COMMISSIONER BROWN: I think I'm done. Hold
8 on. I'm done.

9 CHAIRMAN GRAHAM: Ms. Keating --

10 COMMISSIONER BROWN: Oh, Ms. Keating, do you
11 have anything to add?

12 MS. KEATING: I was just going to say that I
13 think, for different utilities, what's incremental
14 is going to be different. I mean, I -- what's
15 incremental for FPU is probably going to be
16 what's -- a different number than it would be for
17 TECO, but I think that lang- -- I don't think FPUC
18 would have a problem with adding "incremental" to
19 TECO's language.

20 MR. RUBIN: And -- and FPL supports the
21 position that the utilities, TECO and FPUC, has
22 made today.

23 COMMISSIONER BROWN: It -- yeah. Gulf --
24 yeah.

25 MR. BADDERS: As does Gulf.

1 And we're back -- one thing that
2 Mr. Rehwinkel -- Rehwinkel said that I want to talk
3 about -- he's tying the three-year data, the
4 two- -- the second- and third-year data to a cost
5 issue. That's not really the driver. It's the
6 validity, the usefulness of that second- and third-
7 year detailed data.

8 COMMISSIONER BROWN: Uh-huh.

9 MR. BADDERS: So, I don't -- I'm not tying the
10 two of those together.

11 COMMISSIONER BROWN: Right. And obviously we
12 want the -- the best information known at the time.
13 That's -- that's our mantra here. So, I
14 understand. That's not my issue.

15 My -- but I do think we need to be consistent
16 with the way we treat other clauses as well, in
17 terms of what Tampa Electric and FPUC has proposed
18 for the clause.

19 Yes, Mr. Breman.

20 MR. BREMAN: If I may add one final word, and
21 I won't say anymore about this. We, internally,
22 had this discussion. We're well aware of what we
23 do in the clauses, but because of the specific
24 language, we were hesitant -- hesitant to add the
25 specific clarity that was asked for by the

1 utilities.

2 Given that, the rule is silent on the matter.
3 It's a potential subject, if the utility feels
4 compelled that they have an ability to demonstrate
5 its incremental cost, recoverable through the
6 clause, and it comports to the statutory
7 limitations.

8 So, adding it to the rule is trying to
9 prejudge a litigation.

10 COMMISSIONER BROWN: Thank you.

11 MR. BREMAN: So, that's sort of where we fell.
12 In the abundance of caution, we were silent on the
13 matter.

14 COMMISSIONER BROWN: Thank you. I rest.

15 CHAIRMAN GRAHAM: Commissioner Polmann.

16 COMMISSIONER POLMANN: Thank you,
17 Mr. Chairman.

18 I, as well, appreciate all the efforts by
19 staff, and conducting multiple workshops and -- at
20 the parties' -- all of your engagement.

21 To make a couple of points, the -- this is --
22 a ten-year plan that requires update at least every
23 three years, and I'm always perplexed when it says
24 at least every three. I think everybody
25 understands that that means submittal at -- at a

1 frequency that's three or fewer years. So, I'm --
2 what -- it could be every year. That -- I don't
3 think anybody is going to be doing that, but it
4 comes back to what's going to happen on an annual
5 basis.

6 And we'll be working through clause hearings,
7 which brings me, then, to the issue of the level of
8 detail that we're looking at on an annual basis,
9 which, of course, we've been talking about here for
10 the last hour or more.

11 Within, then, the first three years of the
12 ten-year plan, there's certain information
13 provided. And since the ten-year plan may not be
14 updated except every three years, under 603 --
15 -6.030(3)(e), there's some possibility that the
16 project detail may not be updated except every
17 three years when the ten-year plan is updated, but
18 then in -- in Subparagraph H, we need rate-impact
19 estimates for the three years, looking ahead, which
20 is going to depend on those projects.

21 Now, reference was made to the clause process.
22 And what was talked about here earlier was the
23 multiple steps in review, looking at --
24 Commissioner Brown brought this up. Ms. Eichler
25 was talking about this. Mr. Graves has addressed

1 it.

2 In the clause part, you've got the previous
3 year, the current year, the subsequent year, the
4 true-up of the variances and so forth. There's a
5 lot of detail within the clause about the costs and
6 the -- and in the multiple years that are in that,
7 but, in fact, there is no absolute requirement, nor
8 in the rule is it required to -- to proceed with
9 the clause by any utility. So, there's nothing
10 that -- that is required by rule that they submit
11 details.

12 So, there's a ten-year plan with three years
13 of information on -- on the program, the project
14 level, an estimate in Paragraph H about rate
15 impacts, and there's nothing that assures that
16 there's going to be a level of detail in terms of
17 what the customer is going to pay, except when you
18 get the clause, and that's for one year.

19 So, there's a logic disconnect here. And I --
20 I don't know how to fix this. And I've heard the
21 discussion -- I've heard the comments from the
22 utilities. And I've heard Mr. Rubin, in fact, say
23 that we're going to provide things every year.

24 Now, I presume you're going to come in every
25 year through the clause and ask for recovery. I

1 mean, I would fully expect that to be the case, but
2 this doesn't require that.

3 It says, in -- in the cost recovery, the
4 utility may file a petition. We can't require you
5 to file -- we -- you may, and quite frankly, I
6 would expect you to, but in that -- in 6.031, it
7 doesn't specify the level of detail, that I can
8 see, for you to provide program and project details
9 on the following years, two and three, or four
10 through ten -- I mean, unless I'm not seeing it.

11 MR. RUBIN: So, if -- if I can respond to --

12 COMMISSIONER POLMANN: Yes, sir.

13 MR. RUBIN: -- to the -- to the issue of
14 project-level detail. If we look at Subsection 7
15 of the -- the clause proceeding, the clause rule --

16 COMMISSIONER POLMANN: Yes.

17 MR. RUBIN: When we come in for the final
18 true-up for the previous year -- and -- and you're
19 right, a utility does not have to come in to seek
20 recovery. I'm assuming that they all will, we all
21 will.

22 In the final true-up for the previous year,
23 the utility is required to provide program and
24 project costs and revenue requirements. So, that's
25 for the -- for the current year. And then in

1 Subsection (b) -- I'm sorry. That's for the prior
2 year.

3 COMMISSIONER POLMANN: Right.

4 MR. RUBIN: In Subsection (b), for the
5 estimated true-up for the current year, we will be
6 required to file projected costs and revenue
7 requirements for each program and project, so --

8 COMMISSIONER POLMANN: So, that's where all
9 the project detail that -- that we're kind of
10 talking about --

11 MR. RUBIN: Yes, sir.

12 COMMISSIONER POLMANN: -- comes forward --

13 MR. RUBIN: That's correct.

14 COMMISSIONER POLMANN: -- and the transparency
15 that was mentioned --

16 MR. RUBIN: Yes.

17 COMMISSIONER POLMANN: -- for the prior year
18 and current year.

19 MR. RUBIN: Correct.

20 COMMISSIONER POLMANN: What about the next
21 year and the year after, which is year two and
22 three, in the language that you've proffered --

23 MR. RUBIN: Correct.

24 COMMISSIONER POLMANN: -- or that -- in the
25 staff proposal, the recommendation is for the first

1 three years, essentially all of the same level of
2 detail.

3 MR. RUBIN: Right. So --

4 COMMISSIONER POLMANN: So, I'm looking in
5 0- -- in .031.

6 MR. RUBIN: Correct.

7 COMMISSIONER POLMANN: You identified (7)(a)
8 and (b). (c) is projected costs for subsequent
9 years. So, how do you interpret that, sir?

10 MR. RUBIN: That would -- so, the following
11 year, that becomes the estimated true-up for the
12 current year. And that's when -- so, in other
13 words, that's kind of a rolling --

14 COMMISSIONER POLMANN: Yeah.

15 MR. RUBIN: Each year, it comes -- it becomes
16 the estimated true-up in the current year, and
17 that's when that project detail -- because it's
18 moved up, now, to year two, or year one, now, it
19 now has the project detail that's filed with our
20 first clause filing, if that's in March or whatever
21 the Commission determines to be the appropriate
22 time.

23 COMMISSIONER POLMANN: My -- thank you, but my
24 disconnect here from approving Rule .030 is that
25 the Commission does not have an opportunity to

1 review and approve the plan pursuant to which you,
2 then, submit in the clause for recovery for the
3 years in which there is detail, other than your
4 proposal, which says detail for year one.

5 The detail that becomes the new year two and
6 three, is only because, in subsequent years through
7 a clause, year two becomes year one eventually, and
8 year three becomes year one, two years subsequent,
9 at which point, year four in the original plan,
10 three years later, becomes year one when the ten-
11 year plan gets updated.

12 MR. RUBIN: I'm not very good with math, but
13 let me see if I --

14 COMMISSIONER POLMANN: Well, everything I've
15 said has already been said.

16 MR. RUBIN: Let me see -- let me see if I
17 can -- if I can kind of track this forward. In the
18 storm-protection plan that we file, the Commission
19 will have the information to approve, reject, or
20 seek -- or tell us to modify our plan.

21 We will provide that project-level detail for
22 year one. And for years two and three, we will say
23 to the Commission, we plan to underground a hundred
24 laterals.

25 COMMISSIONER POLMANN: Sure, I've heard that.

1 MR. RUBIN: Right? Okay.

2 COMMISSIONER POLMANN: Yeah.

3 MR. RUBIN: So -- so, I think that -- to your
4 point, I think that the Commission will have the
5 information needed to approve, reject, or modify
6 that plan.

7 COMMISSIONER POLMANN: Will eventually get
8 their approval somehow.

9 MR. RUBIN: Abs- -- absolutely. And you will
10 get that detail each year based upon the
11 most-current reliability and performance data that
12 will maximize the effect and efficiency of the
13 actual storm-protection plan.

14 COMMISSIONER CLARK: Mr. Chairman, if I may --
15 to -- to help --

16 COMMISSIONER POLMANN: Yeah --

17 COMMISSIONER CLARK: -- Mr. Polmann's --
18 because this kind of goes -- goes back to what we
19 were talking about earlier. As the rule is
20 proposed right now by staff, that's a three-year
21 cycle.

22 If we were to accept a proposed change and go
23 into a second- and third-year preliminary overview,
24 we could, then, put some more qualifications in the
25 rule that that would have to be brought back and

1 reapproved on a yearly basis; is that a fair
2 assess- -- that's kind of --

3 COMMISSIONER POLMANN: Commissioner --

4 COMMISSIONER CLARK: -- what we were --

5 (Simultaneous speakers.)

6 COMMISSIONER POLMANN: -- Clark, I -- I
7 appreciate that because what I'm looking for in
8 this language -- there are so many places, even in
9 the plan section, where -- and Commissioner Brown
10 brought this up, I believe -- I believe she
11 mentioned it.

12 The use of the term "description" -- what is
13 that? I mean, there's no guidance provided here as
14 to what is a sufficient level of detail. And we're
15 relying on staff, which I -- I absolutely respect,
16 and I'm -- I'm not questioning that, but staff will
17 determine what is a sufficient level of detail in
18 the submittal with regard to the term "description"
19 that, then, they will bring to us and recommend.

20 And what is -- what is the responsibility,
21 what is the obligation of the utility to respond to
22 how many rounds of questions, given that there's a
23 time limit for us to approve a plan on an every-
24 three-year time period.

25 I just -- I don't want to burden the -- the

1 rule with too much specificity -- and it may be,
2 outside of the rule, there's some kind of a
3 guidance or something, and -- I'm in a little bit
4 of a conundrum here.

5 I -- I absolutely understand we need to move
6 this thing forward, but I want to -- I want to be
7 certain that it works without coming back next year
8 and saying, well, okay, we got the first round of
9 plans, but it's not quite right and we need to redo
10 this.

11 I -- I don't mean to just keep going,
12 Mr. Chairman, but I -- I think there's -- is there
13 everything here that we need that's necessary, but
14 it may not be sufficient -- which is not to say I
15 don't support it.

16 I'll stand down for the moment and, then,
17 hopefully, it will be to rest.

18 CHAIRMAN GRAHAM: Commissioner Fay.

19 COMMISSIONER FAY: Thank you, Mr. Chairman.
20 I'm -- I'm going to have start buzzing before
21 Commissioner Brown. She keeps stealing all my --
22 my points.

23 COMMISSIONER BROWN: Got to be quick.

24 COMMISSIONER FAY: I appreciate it.

25 I -- I did have -- well, let me start with

1 what everybody else has said, the -- the parties
2 and the staff and everyone involved in this deserve
3 a lot of credit.

4 I sit on a critical infrastructure committee
5 for NARUC, for the national association. And when
6 I go to these meetings, everybody wants to know
7 what Florida is doing.

8 And when I saw the Legislature -- and which I
9 tracked and -- and saw the passage of it. It's a
10 daunting challenge to move rulemaking through this
11 process. And it's probably, in part, why when we
12 go down the line here, everybody says, I don't want
13 to repeat the person before me, but let me add one
14 more thing, right, to the evaluation -- because
15 that's the way rulemaking is, and it becomes very
16 difficult to get it to the finish line.

17 But I think, you know, the Legislature
18 provided a clear directive here and they said they
19 want to improve our -- our hardening or
20 undergrounding or vegetation to reduce costs for
21 restoration. And I think that -- that makes sense.
22 And I think we need to keep that in mind as we move
23 through the rulemaking process.

24 I think we're also at the proposed part, as
25 Mr. Rehwinkel pointed out earlier. And we -- we've

1 got a little ways to go to get it to the end. But
2 for me, similar to what Commissioner Brown said,
3 the -- when -- what items are actually broken out
4 in the recovery -- recovery, related to the base
5 rates -- I think that issue has been discussed a
6 lot. And so, I won't continue on it, but I think
7 that's really key.

8 And the other part that -- and I guess I'll
9 direct my question toward the utilities -- is we've
10 got this debate of the specificity of the language
11 and what's included in year one, two, and three.

12 And honestly, I might be on my own here, but I
13 was -- I didn't really think that specificity was
14 necessary in any of the three years, but I
15 recognize that there's been a lot of input, and the
16 first-year discussion about how that might be
17 valuable has been had through the workshops and all
18 the various parties meeting.

19 So, when you look at the -- the potential of
20 having year two and three as a different
21 specificity, my -- my question is: What in that
22 language allows us to be ensured that we will get
23 some estimate of a -- of a rate impact?

24 Because that's where I think -- when you talk
25 about that specificity, that, to me, on the front

1 end -- that's what's really important. And I
2 understand that might be able to change, but when I
3 look at the language, it -- it talks about that
4 estimate. How do you get there? How -- how do
5 you -- how are we ensured we see that?

6 MR. RUBIN: I -- I think, Commissioner, that
7 what will happen is we will, through the number of
8 projects, time to costs, we will -- we will have a
9 total projected cost. And I think it will, then,
10 be incumbent upon us to determine what that rate
11 impact will be on our customers.

12 I think each utility will have to do that
13 individually for each of our customers. It may be
14 through a discovery request, but -- but I think
15 each utility will have to individually do that to
16 determine what the rate impact will be on its
17 customers.

18 COMMISSIONER FAY: Okay. And --
19 Mr. Chairman --

20 CHAIRMAN GRAHAM: Sure.

21 COMMISSIONER FAY: -- another question. Thank
22 you.

23 My other question -- and I -- I understand the
24 issue about the recovery rates by TECO, and the
25 other parties have now verified that. I -- I do

1 have -- I will express, just publicly, I do have a
2 little bit of a concern. I -- I know there's some
3 discussion about that being recovered in the base
4 rate.

5 I do think there's -- maybe a reasonable
6 person could differ in the interpretation of -- of
7 what the implementation requires in that statute
8 and, because of that debate, I just want to be
9 mindful that we have so many moving parts in this,
10 that I want to make sure the rule that we put
11 forward is consistent and in line with what the --
12 the statute says.

13 And so, I think we need to be very careful
14 about expanding any of those interpretations,
15 potentially, because, like I said, we've -- we have
16 directive from the Legislature to move this
17 forward, and it's a priority of theirs. And I want
18 to make sure we do that.

19 And I know the rulemaking process isn't easy,
20 and I know it's not perfect, and that's probably
21 why nobody here has an exact rule that we want and
22 we're going to keep getting input on that, but I do
23 think seeing this today -- and -- and I apologize
24 if this was raised in the workshops and I missed
25 it, but -- but seeing this today, it's a little

1 concerning to me to make that change, knowing that
2 there's still the potential that it could still be
3 recovered appropriately in base rates.

4 That's all I have. Thank you.

5 CHAIRMAN GRAHAM: Okay. My fellow
6 Commissioners have all been heard -- actually, I
7 think everybody has been heard.

8 I have to agree with Mr. Fay on that last
9 part. That's the one that I had a bit of concern
10 with as well; that I think we need to get as close
11 to -- we need to get as close to what they think
12 they -- the direction they gave us right off the
13 bat, and then, if we need to tweak later, we can do
14 that.

15 I think we should take a lunch break. I --
16 let's go with about 45 minutes. So, that's about
17 ten after, by that clock in the back. Hopefully we
18 can squeeze something out in that period of time.

19 When we come back, we need to make specific
20 decisions on, number one, what we were just talking
21 about, what TECO came -- I mean -- yeah, what TECO
22 came up with, as far as how much detail on years
23 two and three -- we need to come up with specifics
24 of how we want to go with that, and maybe a handful
25 of other things.

1 So, fellow Commissioners, give that some
2 thought. I hate to do this to our aides, but I
3 want to get Matt and John and Robert all over there
4 at the mics. So, you guys are going to have to
5 relocate somewhere and -- for you guys to get over
6 there, and so, when we get back here, we can move
7 this thing along.

8 And we may be able to get to the point where
9 it's done today or we may have to punt it back to
10 two weeks, but know specifically what changes we
11 want to make.

12 So, let's get back here by ten after one, by
13 that clock in the back. Thank you.

14 (Brief recess.)

15 CHAIRMAN GRAHAM: All right. I think we can
16 call this meeting back to order. I -- I think
17 everybody has been given the time -- everybody has
18 been heard. And hopefully, during that lunch
19 break, somebody has come back with some ideas on
20 how to move forward. And I believe Commissioner
21 Fay said that he may have an idea or two.

22 COMMISSIONER FAY: Thank you, Mr. Chairman.
23 I -- I don't know how you could read my happiness
24 here, come back and get -- propose something.

25 So, my -- my thought, Mr. Chairman, is maybe

1 if -- if I could move forward with a motion on a
2 proposed rule with potential modifications as to
3 staff's recommendation for that proposed rule and
4 then allow the body to comment on those.

5 CHAIRMAN GRAHAM: Okay.

6 COMMISSIONER FAY: Okay. So -- let me get my
7 list here. Okay. So, Mr. Chairman, I would move
8 for the acceptance of the proposed rule with the
9 proposed modifications -- I'm going to -- I'm
10 probably going to point to some lines to the
11 attachment that's provided for the rule, if that's
12 the easiest -- everybody have that?

13 CHAIRMAN GRAHAM: If you just give us a page
14 and number -- line number.

15 COMMISSIONER FAY: Okay.

16 MR. BAEZ: Attachment 8, Page 23.

17 COMMISSIONER FAY: It will be -- the first
18 change we have will be on (e) -- but let me see. I
19 think it's (3) -- yeah, (3)(e) -- and let me give
20 you a page number. So, Page 24, I think --

21 CHAIRMAN GRAHAM: Line 20?

22 COMMISSIONER FAY: Yep, Line 20. Exactly.

23 So, this -- this was the issue of specificity
24 that was debated. And there's some proposed
25 language -- and I guess I could probably -- I would

1 make a small modification to the proposed language,
2 but I'll -- I'll read it for the record,
3 Mr. Chairman.

4 So, the -- or actually, to make it easy --
5 whose proposal is this? Do you have a copy of
6 F- -- FPL's proposed changes?

7 CHAIRMAN GRAHAM: I sure do.

8 COMMISSIONER FAY: Let me work off that one.
9 It's probably easier. So, for the -- that (e)
10 there, I would accept those changes, with the
11 understanding that that Section 2 will provide the
12 appropriate information for a rate impact.

13 And I do not have a position on the recovery-
14 clause changes. So, I would leave them as staff --
15 as the proposed rule has been presented, but
16 I'll -- I'll leave that open for discussion.

17 And then let me tell you what other change I
18 have here.

19 CHAIRMAN GRAHAM: Let's -- let's do this
20 change-by-change.

21 COMMISSIONER FAY: Okay.

22 CHAIRMAN GRAHAM: So, on that Section 2 that
23 you have there -- what was it that you were
24 changing there?

25 COMMISSIONER FAY: Sorry. On Section 2 -- you

1 mean (e), No. 2?

2 CHAIRMAN GRAHAM: Yeah.

3 COMMISSIONER FAY: So, that was -- the
4 language as read there would be: For second and
5 third years of plan, project-related information in
6 sufficient detail, such as estimated number and
7 cost of projects.

8 And then the language there says, "under a
9 specific term-" -- "under a specific program." I
10 would say "under every specific program." And then
11 the rest would read as written: To allow the
12 development of preliminary estimates of rate
13 impacts, as required under Subsection (3)(h) of
14 this rule, which is the rate-impact language.

15 CHAIRMAN GRAHAM: Okay. I will second it for
16 discussion.

17 Commissioners, discussion on that motion?

18 Commissioner Clark.

19 COMMISSIONER CLARK: So, we're taking FPL's
20 proposed change under (2)(e) as it is written.

21 CHAIRMAN GRAHAM: Under (3)(e), as it is
22 written.

23 COMMISSIONER FAY: Correct, other than the --
24 the change of "under a specific," I would say
25 "under every specific program." It's a minor

1 change, but the point being that, when that
2 information is presented for the rate impact, it
3 would include each type of program, not just one.

4 COMMISSIONER CLARK: Okay.

5 CHAIRMAN GRAHAM: Staff, comments? It's okay
6 to say you just don't like it.

7 MR. GRAVES: Well, no, we --

8 COMMISSIONER FAY: It would be like my high
9 school years, dating.

10 Go ahead.

11 (Laughter.)

12 MR. GRAVES: Well, no, we -- we continue to
13 support our recommendation, but that is something,
14 I think, that staff could move forward and provide
15 a -- a thorough recommendation to the Commissioners
16 when that time comes.

17 CHAIRMAN GRAHAM: Okay. Other Commissioners?
18 Commissioner Brown.

19 COMMISSIONER BROWN: I would just say that we
20 need to make sure that, elsewhere in the changes
21 that reference "specific program" -- I think
22 they've got another change on Page 3, where it's --
23 where it's projects -- I think we just need to be
24 consistent with the proposal that you are
25 suggesting.

1 COMMISSIONER FAY: Yeah, I agree with that.

2 And then the -- the other one that -- the
3 set -- the recovery -- the storm-protection cost-
4 recovery clause also has its own changes.

5 CHAIRMAN GRAHAM: Mary Anne, is that a
6 sufficient motion?

7 MS. HELTON: Well, let me make sure I
8 understand it. I think Commissioner Fay's motion
9 is to move that you accept the proposed rule as
10 recommended by staff with the exception of
11 Subsec- -- or Paragraph 3(e). And there, you
12 accept Florida Power & Light's changes with the
13 exception of, in the last No. 2, that you change
14 "under a specific program" to "under every specific
15 program."

16 It was unclear to me whether, on (3) -- (4)(c)
17 whether Commissioner Fay was also striking "and
18 projects," as suggested by Florida Power & Light.

19 COMMISSIONER FAY: Yes, I would.

20 And then the last part, I would not -- the --
21 the storm -- the next part that says "storm-
22 protection-plan cost recovery" -- I would not
23 strike "projects" out of there.

24 MS. HELTON: So, you would -- you're
25 suggesting that you approve staff's recommendation

1 with respect to --

2 COMMISSIONER FAY: Everything else.

3 MS. HELTON: -- "project" versus "plans" in
4 the second rule.

5 COMMISSIONER FAY: Yep, correct.

6 Mr. Chairman, I -- I -- I know I might be
7 opening the flood gates, but I would also welcome,
8 I guess, any further comments from the body.

9 CHAIRMAN GRAHAM: OPC?

10 MR. REHWINKEL: Commissioners, if -- if
11 that's -- that's adopted, that kind of guts the
12 rule -- the value we saw in the staff's
13 recommendation on the rule.

14 We feel very strongly about the detailed
15 information in the first round. We really do. And
16 I believe that this is going to create -- create
17 the potential for further proceedings here.

18 There's a -- for -- this could go out on the
19 31st and not -- and that would be the end of it,
20 but that -- that's -- that's a deal-breaker for us.
21 I can tell you that right now. That -- that's
22 just -- I'm being frank about it.

23 CHAIRMAN GRAHAM: No --

24 COMMISSIONER FAY: Yeah, that's fine.

25 MR. REHWINKEL: Yeah.

1 COMMISSIONER FAY: And that's why I -- that's
2 why I asked. I mean, I think -- I think every
3 third year, you'll have that additional detailed
4 information, and I think it will allow for an
5 evaluation that's appropriate.

6 And I -- I have some strong feelings about not
7 zoning in on specific projects that are, then,
8 being changed. It causes a lot of complications in
9 the data, but you know, that's why we'll move
10 forward with my motion and, of course, see who
11 supports it.

12 MR. REHWINKEL: I could also add that -- if
13 I'm -- I could have misunderstood Commissioner
14 Clark because we had a proposal in there -- because
15 I think you have the discretion, under the rule,
16 under the statute to -- it says, at least every
17 three years.

18 You just say update -- you have the discretion
19 to require them to update the plan every three
20 years, and you get to the same spot and that was, I
21 think -- maybe I misunderstood Commissioner
22 Polmann's issue -- but that would be our fix for
23 that, but -- you know, I -- I appreciate
24 Commissioner Fay's perspective on that.

25 I -- I just -- we really -- we feel like the

1 first time around, when -- when you're trying to
2 understand this and tease everything out, it's --
3 it's better to be safe than sorry and get the
4 information.

5 And I think you can retain for yourself the
6 flexibility to go to the more-generic information
7 and not require the level of detail at work, but
8 there's so much money involved that I think the
9 additional effort and cost to give the details
10 is -- is worth it, and I think it overrides any
11 customer confusion, but that's our view.

12 COMMISSIONER FAY: Okay.

13 CHAIRMAN GRAHAM: I mean, I look at it this
14 way: As everybody said -- everybody has been given
15 plenty of time to review this. There's been plenty
16 of open conversations. And we're at an impasse.
17 So, we need to make a decision one way or the other
18 because, if we had gone the other way, then they
19 would be having the same conversation you're having
20 right now.

21 And so, if we need to get something by the
22 30- -- the 30th, 31st, we're going to get something
23 done. And if it needs to go to that next level or
24 to -- to a different building, then that moves us
25 forward.

1 Utilities, any comments?

2 MR. RUBIN: The only comment I would have --
3 this is Ken Rubin for FPL -- is to Commissioner
4 Fay's comment on the -- on the .031 rule, leaving
5 projects in for projected costs for subsequent
6 year -- if the Commission votes on the motion and
7 approves that, that project-level detail will not
8 be provided or available for that subsequent year.
9 So, I just wanted to point that out.

10 COMMISSIONER CLARK: We're strictly discussing
11 the .030 right now; we haven't gotten to .031 -- or
12 are we taking them together? That's my question.

13 CHAIRMAN GRAHAM: No, we're just -- we're
14 doing them separate.

15 COMMISSIONER CLARK: Right. Okay.

16 COMMISSIONER FAY: Yeah. So, we're going to
17 wait on that, but --

18 MR. RUBIN: Okay.

19 COMMISSIONER FAY: Yeah -- thank you.

20 CHAIRMAN GRAHAM: Okay. Any other utilities?
21 Any other Commissioners?

22 We've got a motion on the floor, duly
23 seconded. All in favor, say aye.

24 (Chorus of ayes.)

25 CHAIRMAN GRAHAM: Any opposed?

1 By your action, the motion is carried.

2 Commissioner Fay, do you have another motion?

3 COMMISSIONER FAY: Mr. Chairman, so
4 25-6.031 -- let me make sure I'm on the right page
5 here -- Page 5 -- and I think this is what
6 Mr. Rubin was talking about. So, if you -- based
7 on the -- the changes that were made in the
8 previous rule, to be consistent here, you would
9 strike these two sections because that would be
10 a mod- -- that -- that would be a modification from
11 staff's proposed rule. So, it would be Sections --
12 or (c) there.

13 CHAIRMAN GRAHAM: So, you're just going to
14 be -- you're -- as -- as this handout shows, is
15 striking "and project" on both.

16 COMMISSIONER FAY: Except those two changes,
17 correct.

18 CHAIRMAN GRAHAM: Okay.

19 COMMISSIONER BROWN: Second.

20 CHAIRMAN GRAHAM: It's been moved and second.
21 Further discussion, Commissioner Brown?

22 COMMISSIONER BROWN: I just want to address
23 the -- one of the topics that we talked about was
24 the cost recovery related to developing the plans.
25 I'm comfortable with -- Mr. Breman, I'm comfortable

1 with staff's assertions that the rule is silent
2 with respect to that and feel that the IOUs can
3 request recovery of the incremental costs in the
4 cost-recovery proceeding, and the Commission can,
5 then, weigh in on whether or not they are eligible
6 for recovery.

7 So, I'm comfortable with your assertions. I
8 don't think we need to make any changes.

9 CHAIRMAN GRAHAM: OPC? Utilities?
10 Commissioner Polmann.

11 COMMISSIONER POLMANN: Thank you,
12 Mr. Chairman.

13 As has been mentioned, we are under a time
14 constraint. And also it's been said the -- that no
15 rule is going to end up being perfect. And I am --
16 I am trusting in -- in the implementation process,
17 at this point, and in the expertise of staff to --
18 to be able to apply the rule in its final form, the
19 proposed rule here, and then whatever is finally
20 adopted.

21 So, I'm comfortable moving forward with this
22 particular cost recovery and going through the
23 clause process. And -- and I'm confident that the
24 utilities will be fully cooperative with the staff
25 and -- and be able to provide all the information

1 that's necessary.

2 I -- I do have some concern, which I raised
3 earlier, about the process, but I -- I'll -- I'll
4 simply state my comfort with the staff's ability to
5 get that information and the utility's commitment
6 to provide that.

7 Thank you, Mr. Chairman.

8 CHAIRMAN GRAHAM: Any further discussion?

9 MR. FUTRELL: Mr. Chairman?

10 CHAIRMAN GRAHAM: Yes.

11 MR. FUTRELL: Mark Futrell with staff.

12 I just want to just make sure we are clear
13 about -- you know, the staff can -- as Commissioner
14 Polmann mentioned, the staff will work with the
15 rule that the Commission approves and make sure the
16 issues are fully developed and presented to you
17 with a full record of evidence for you to vote on
18 and meet the statutory obligations.

19 I just want to make sure we're -- we're
20 clear -- at least it's on the record -- the
21 consequences of -- of this change and scaling back
22 the detail is that it -- while we can work with it,
23 we see it as a risk of increasing the potential for
24 discovery challenges, lit- -- potential litigation.
25 It just introduces the risk of complicating

1 those -- those clause dockets in the future.

2 But again, we'll be prepared to work with the
3 rule and implement as -- as with the adopted rule
4 that comes out of this process, but I want to make
5 sure we're clear about -- about that was the intent
6 of staff throughout this rule process, and what we
7 presented to you today was to try to give you all
8 the tools and information to make an informed
9 decision, and also to try to make these processes
10 as efficient as possible.

11 But again, it's -- it a lot of unknowns.
12 We're all stepping out into something that's new,
13 and we will be flexible and work with all the
14 parties going forward.

15 CHAIRMAN GRAHAM: I -- I can't speak for
16 everybody else, but I fully agree. I understand
17 where you're coming from, but as I said earlier for
18 the last motion, we need to move forward. And it's
19 not like we're -- we could sit here for another --
20 five more hours and still be back at the same
21 point.

22 Commissioner Brown.

23 COMMISSIONER BROWN: Well, I -- I have to
24 respond to Mr. Futrell. I th- -- I appreciate all
25 of the work that you guys have done and I -- I do

1 feel that there are plentiful checks and balances
2 here of -- in the -- in the public interest that
3 protect -- again, we are going to have so much
4 opportunity to review the projects, the costs
5 associated with the projects. We're going to get
6 annual reports.

7 I think this process and the final product
8 that we are about to vote on is as transparent -- I
9 love detail. I am a big proponent of detail, but
10 the detail has to be accurate. And to throw out
11 projections that are so speculative in nature could
12 cause more confusion to the general public than
13 good.

14 And we will get that necessary information to
15 be as transparent -- I have the utmost faith in
16 staff and the discovery process that -- we'll have
17 two hearings. So, there are so many protections
18 here for all of the parties involved.

19 COMMISSIONER FAY: I just have a few closing
20 comments.

21 CHAIRMAN GRAHAM: Before or after we vote on
22 your motion?

23 COMMISSIONER FAY: We can do it after.

24 CHAIRMAN GRAHAM: Okay. Any further
25 discussions on the motion on the floor?

1 All in favor, say aye.

2 (Chorus of ayes.)

3 CHAIRMAN GRAHAM: Any opposed?

4 By your action, you have approved the second
5 Fay motion.

6 Mr. Fay.

7 COMMISSIONER FAY: Thank you. And I -- and I
8 appreciate all the comments from the staff and --
9 and the parties. I -- I realize the difficulty of
10 doing something when the initial first year is
11 going to be very challenging for everybody, for the
12 staff, the Commission, for the parties that are
13 involved in there. And I hope, through the
14 rulemaking process, if there are areas of
15 improvement to be made, they'll be made.

16 And the one thing about rulemaking is it's --
17 it's never completely done, right? So, there's
18 always a potential of a rule -- rule being reviewed
19 and having different interests to improve what
20 we're going to do forward.

21 But I don't think that those complexities and
22 challenges are worth delaying the implementation of
23 something that the Legislature has directed us to
24 move forward. And, to me, that's a key component
25 of what our obligation is to do here.

1 And I will, for -- for what it's worth, I'm
2 like commissioner Brown. I have details, right --
3 like, I have every comment from everybody that put
4 forward and everything that was added as we went
5 down the line for potentials of improvements.

6 I have a lot of questions about the timing
7 components. I think OPC raised some very
8 legitimate issues that relates to that. I think
9 the flexibility is something that will allow us to
10 navigate that and I -- I don't believe it will be
11 perfect at first. I think it will need a lot of
12 work.

13 I know some people may be -- OPC included --
14 have some scars from the Nuclear Cost Recovery
15 where dates got moved and moved and moved. And I
16 think there's going to take some process to figure
17 out how the -- what the best way is to move this
18 forward.

19 And so, we look forward to continuing hearing
20 feedback as the rule moves forward. And I
21 appreciate all the time that everyone spent
22 because, I believe, without two workshops and
23 without an openness from staff to hear all the
24 different interests, we don't get here today.

25 I've said this before. I meet with a lot of

1 people from a lot of different states that work
2 with utility commissions. I've worked on a lot of
3 litigation and regulation. Moving a rule forward
4 in this time line is very impressive and it's very
5 challenging, and that's why we've had so many
6 comments today about ways to improve it.

7 And I think the Chair may have said it best.
8 We could be here for weeks debating the specifics
9 about it, but at some point, we're going to have to
10 implement this rule and see how we can improve it.
11 So, I appreciate everyone's work on it.

12 Thank you for the time, Mr. Chairman.

13 CHAIRMAN GRAHAM: Mary Anne, do we need to
14 move the rule as proposed twice amended or we're
15 just kind of good where we are?

16 MS. HELTON: I guess I just want -- those will
17 be the only changes to the rule. Then I think you
18 have propo- -- approved staff's proposal with the
19 changes recommended by or moved by Commissioner
20 Fay, and I don't think you need to do anything
21 else.

22 CHAIRMAN GRAHAM: Okay. So, in other words,
23 you're saying we're adjourned?

24 (Laughter.)

25 CHAIRMAN GRAHAM: All right. So, we're

1 adjourned. We're going to start the ten-year site
2 plan here in this room, in ten minutes, which is
3 ten minutes until 2:00.

4 Thank you very much. Thank you all for your
5 time. And thank you for all the pink shirts and
6 ties and dresses.

7 Drive safe.

8 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

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

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

DATED THIS 14th day of October, 2019.



ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
EXPIRES February 9, 2021

25-6.030 Storm Protection Plan.

(1) Application and Scope. Each utility as defined in Section 366.96(2)(a), F.S., must file a petition with the Commission for approval of a Transmission and Distribution Storm Protection Plan (Storm Protection Plan) that covers the utility's immediate 10-year planning period. Each utility must file, for Commission approval, an updated Storm Protection Plan at least every 3 years.

(2) For the purpose of this rule, the following definitions apply:

(a) "Storm protection program" – a category, type, or group of related storm protection projects that are undertaken to enhance the utility's existing infrastructure for the purpose of reducing restoration costs and reducing outage times associated with extreme weather conditions therefore improving overall service reliability.

(b) "Storm protection project" – a specific activity within a storm protection program designed for the enhancement of an identified portion or area of existing electric transmission or distribution facilities for the purpose of reducing restoration costs and reducing outage times associated with extreme weather conditions therefore improving overall service reliability.

(c) "Transmission and distribution facilities" – all utility owned poles and fixtures, towers and fixtures, overhead conductors and devices, substations and related facilities, land and land rights, roads and trails, underground conduits, and underground conductors.

(3) Contents of the Storm Protection Plan. For each Storm Protection Plan, the following information must be provided:

(a) A description of how implementation of the proposed Storm Protection Plan will strengthen electric utility infrastructure to withstand extreme weather conditions by promoting the overhead hardening of electrical transmission and distribution facilities, the undergrounding of certain electrical distribution lines, and vegetation management.

(b) A description of how implementation of the proposed Storm Protection Plan will reduce restoration costs and outage times associated with extreme weather conditions therefore improving overall service reliability.

(c) A description of the utility's service area, including areas prioritized for enhancement and any areas where the utility has determined that enhancement of the utility's existing transmission and distribution facilities would not be feasible, reasonable, or practical. Such description must include a general map, number of customers served within each area, and the utility's reasoning for prioritizing certain areas for enhanced performance and for designating other areas of the system as not feasible, reasonable, or practical.

(d) A description of each proposed storm protection program that includes:

1. A description of how each proposed storm protection program is designed to enhance the utility's existing transmission and distribution facilities including an estimate of the resulting reduction in outage times and restoration costs due to extreme weather conditions;

2. If applicable, the actual or estimated start and completion dates of the program;

3. A cost estimate including capital and operating expenses;
4. A comparison of the costs identified in subparagraph (3)(d)3. and the benefits identified in subparagraph (3)(d)1.; and
5. A description of the criteria used to select and prioritize proposed storm protection programs.

(e) For ~~each of~~ the first three years in a utility's Storm Protection Plan, the utility must provide the following information:

1. For the first year of the plan, a description of each proposed storm protection project that includes:

- ~~i. 1.~~ The actual or estimated construction start and completion dates;
- ~~ii. 2.~~ A description of the affected existing facilities, including number and type(s) of customers served, historic service reliability performance during extreme weather conditions, and how this data was used to prioritize the proposed storm protection project;
- ~~iii. 3.~~ A cost estimate including capital and operating expenses; and
- ~~iv. 4.~~ A description of the criteria used to select and prioritize proposed storm protection projects.

2. For the second and third years of the plan, project related information in sufficient detail, such as estimated number and cost of projects under a specific program, to allow the development of preliminary estimates of rate impacts as required under subsection 3(h) of this rule.

(f) For each of the first three years in a utility's Storm Protection Plan, the utility must provide a description of its proposed vegetation management activities including:

1. The projected frequency (trim cycle);
2. The projected miles of affected transmission and distribution overhead facilities;
3. The estimated annual labor and equipment costs for both utility and contractor personnel; and
4. A description of how the vegetation management activity will reduce outage times and restoration costs due to extreme weather conditions.

(g) An estimate of the annual jurisdictional revenue requirements for each year of the Storm Protection Plan.

(h) An estimate of rate impacts for each of the first three years of the Storm Protection Plan for the utility's typical residential, commercial, and industrial customers.

(i) A description of any implementation alternatives that could mitigate the resulting rate impact for each of the first three years of the proposed Storm Protection Plan.

(j) Any other factors the utility requests the Commission to consider.

(4) By June 1, each utility must submit to the Commission Clerk an annual status report on the utility's Storm Protection Plan programs and projects. The annual status report shall include:

FPL's Proposed Changes – Oct. 3, 2019

(a) Identification of all Storm Protection Plan programs and projects completed in the prior calendar year or planned for completion;

(b) Actual costs and rate impacts associated with completed activities under the Storm Protection Plan as compared to the estimated costs and rate impacts for those activities; and

(c) Estimated costs and rate impacts associated with programs ~~and projects~~ planned for completion during the next calendar year.

25-6.031 Storm Protection Plan Cost Recovery Clause.

(1) Application and Scope. This rule applies to each utility as defined in Section 366.96(2)(a), F.S.

(2) After a utility has filed its Transmission and Distribution Storm Protection Plan (Storm Protection Plan), the utility may file a petition for recovery of associated costs through the Storm Protection Plan cost recovery clause. The utility's petition shall be supported by testimony that provides details on the annual Storm Protection Plan implementation activities and associated costs, and how those activities and costs are consistent with its Storm Protection Plan. If the Commission approves the utility's Storm Protection Plan with modifications, the utility shall, within 15 business days, file an amended cost recovery petition and supporting testimony reflecting the modifications.

(3) An annual hearing to address petitions for recovery of Storm Protection Plan costs will be limited to determining the reasonableness of projected Storm Protection Plan costs, the prudence of actual Storm Protection Plan costs incurred by the utility, and to establish Storm Protection Plan cost recovery factors consistent with the requirements of this rule.

(4) Storm Protection Plan cost recovery clause true-up amounts shall be afforded deferred accounting treatment at the 30-day commercial paper rate.

(5) Subaccounts. To ensure separation of costs subject to recovery through the clause, the utility filing for cost recovery shall maintain subaccounts for all items consistent with the Uniform System of Accounts prescribed by this Commission, pursuant to Rule 25-6.014, F.A.C.

(6) Recoverable costs.

(a) The utility's petition for recovery of costs associated with its Storm Protection Plan may include costs incurred after the filing of the utility's Storm Protection Plan.

(b) Storm Protection Plan costs recoverable through the clause shall not include costs recovered through the utility's base rates or any other cost recovery mechanism.

(c) The utility may recover the annual depreciation expense on capitalized Storm Protection Plan expenditures using the utility's most recent Commission-approved depreciation rates. The utility may recover a return on the undepreciated balance of the costs calculated at the utility's weighted average cost of capital using the return on equity most recently approved by the Commission.

(7) Pursuant to the order establishing procedure in the annual cost recovery proceeding, a utility shall submit the following for Commission review and approval as part of its Storm Protection Plan cost recovery filings:

(a) Final True-Up for Previous Year. The final true-up of Storm Protection Plan cost recovery for a prior year shall include revenue requirements based on a comparison of actual costs for the prior year and previously filed costs and revenue requirements for such prior year for each program and project filed in the utility's cost recovery petition. The final true-up shall also include identification of each of the utility's Storm Protection Plan programs and projects for which costs were incurred during the prior year, including a description of the work actually performed during such prior year, for each program and project in the utility's cost recovery petition.

(b) Estimated True-Up for Current Year. The actual/estimated true-up of Storm Protection Plan cost recovery shall include revenue requirements based on a comparison of current year actual/estimated costs and the previously-filed projected costs and revenue requirements for such current year for each program and project filed in the utility's cost recovery petition. The actual/estimated true-up shall also include identification of each of the utility's Storm Protection Plan programs and projects for which costs have been and will be incurred during the current year, including a description of the work projected to be performed during such current year, for each program and project in the utility's cost recovery petition.

(c) Projected Costs for Subsequent Year. The projected Storm Protection Plan costs recovery shall include costs and revenue requirements for the subsequent year for each program ~~and project~~ filed in the utility's cost recovery petition. The projection filing shall also include identification of each of the utility's Storm Protection Plan programs ~~and projects~~ for which costs will be incurred during the subsequent year, including a description of the work projected to be performed during such year, for each program and project in the utility's cost recovery petition.

(d) True-Up of Variances. The utility shall report observed true-up variances including sales forecasting variances, changes in the utility's prices of services and/or equipment, and changes in the scope of work relative to the estimates provided pursuant to subparagraphs (7)(b) and (7)(c). The utility shall also provide explanations for variances regarding the implementation of the approved Storm Protection Plan.

(e) Proposed Storm Protection Plan Cost Recovery Factors. The utility shall provide the calculations of its proposed factors and effective 12-month billing period.

(8) Recovery of costs under this rule does not preclude a utility from proposing inclusion of unrecovered Storm Protection Plan implementation costs in base rates in a subsequent rate proceeding.

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25-6.031 Storm Protection Plan Cost Recovery Clause.

(6) Recoverable costs.

(a) The utility's petition for recovery of costs associated with its Storm Protection Plan may include costs incurred after the filing of the utility's Storm Protection Plan and costs incurred by the utility in developing its Storm Protection Plan.

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Parties/Staff Handout
Internal Affairs/Agenda
on 10/3/19
Item No. 3

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.