

1
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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OFFICE OF PUBLIC COUNSEL,

FILED 1/2/2020
DOCUMENT NO. 00021-2020
FPSC - COMMISSION CLERK

Petitioner,

vs.

DOAH CASE NO. 19-6137RP

FLORIDA PUBLIC SERVICE
COMMISSION,

Respondent,

and

FLORIDA POWER & LIGHT
COMPANY and GULF POWER
COMPANY,

Intervenors.

_____ /

PROCEEDINGS: Administrative Hearing
Volume 2, Pages 175 - 328

BEFORE: Honorable James H.
Peterson, III

DATE: December 20, 2019

TIME: Commenced: 1:00 p.m.
Concluded: 4:12 p.m.

LOCATION: 1230 Apalachee Parkway
The DeSoto Building,
Hearing Room 3
Tallahassee, Florida

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

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15
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17
18
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20
21
22
23
24
25

INDEX TO WITNESS

WILLIAM COSTON	PAGE
Examination by Mr. Moyle	180
Examination by Mr. David	212
Examination by Mr. Harper	212
Examination by Mr. Nordby	215
Further examination by Mr. Moyle	219
ROBERT GRAVES	PAGE
Examination by Ms. Harper	231
Examination by Mr. Means	249
Examination by Mr. Nordby	250
Examination by Mr. David	252
Further examination by Ms. Harper	257
JAMES BREMEN	PAGE
Examination by Mr. King	260
Examination by Mr. Nordby	274
Examination by Mr. Means	277
Examination by Mr. David	279
Examination by Mr. Moyle	282
Further examination by Mr. King	284
BART FLETCHER	PAGE
Examination by Mr. King	285
Examination by Mr. David	288
DAVID BROMLEY	PAGE
Examination by Mr. Nordby	290
Examination by Mr. David	311
Examination by Mr. Moyle	315

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO EXHIBITS

NO.	DESCRIPTION	ADMITTED
FIPUG 1A through 1D	Discovery exchanged between PSC and FIPUG	196
FIPUG 2	Interrogatory response of Jeffrey Pollock	229
FIPUG 3	South Florida Sun Sentinel News Article	326
FIPUG 4	House of Representatives staff analysis of the legislation in question	208

*Huh-uh is a negative response

*Uh-huh is a positive response

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

2 THE COURT: Mr. Moyle, you're ready to
3 proceed, right, with a SERC --

4 MR. MOYLE: Yes, sir.

5 THE COURT: PSC SERC witness.

6 MR. MOYLE: That's right. And we would -- we
7 would call Mr. William Coston to the stand.

8 THE COURT: Mr. William --

9 THE WITNESS: William Coston.

10 THE COURT: Coston?

11 THE WITNESS: Yes, sir.

12 THE COURT: Coston. Okay.

13 Would you raise your right hand, please.

14 Whereupon,

15 WILLIAM COSTON

16 was called as a witness, having been first duly sworn to
17 speak the truth, the whole truth, and nothing but the
18 truth, was examined and testified as follows:

19 THE COURT: Okay. And your name?

20 THE WITNESS: William Coston, C-o-s-t-o-n.

21 THE COURT: Perfect.

22 EXAMINATION

23 BY MR. MOYLE:

24 Q Good afternoon, Mr. Coston.

25 A Good afternoon, Mr. Moyle.

1 Q Just for the record, give the Court a little
2 bit of information about the position that you hold
3 presently and what your duties and responsibilities are
4 in that position.

5 A Yes, I am an economic supervisor in the
6 Division of Economics for the Florida Public Service
7 Commission. And in that role -- role, I supervise
8 the -- what is called the Economic Impact Section.

9 And that section -- what we look at is -- we
10 handle electric and gas rates and tariffs. We do
11 territorial agreements, territorial disputes, look at
12 some special contracts, at times, and also complete the
13 SERCs.

14 Q Okay. And how long have you been in that
15 role?

16 A I have been an economic supervisor for a
17 little over four years in the Division; in this
18 particular role, I believe it was in April of this year.

19 Q And the -- the disclosure that was provided
20 lists you as a -- as an expert in the development of the
21 Commission's statement of estimated regulatory costs.
22 Is that maybe an overstatement or are you comfortable --
23 comfortable --

24 A I'm comfortable answering the questions.

25 Q Okay.

1 A I was a supervisor over the SERC.

2 MR. MOYLE: Okay. All right. I'm going to
3 ask you a few questions. And I assume that, given
4 that you're the supervisor -- I have some documents
5 that were produced to us under the discovery
6 requests. I'll show these to you and we'll just
7 kind of walk through some of these, if -- if we
8 can.

9 So, Your Honor, if I could -- I have copies of
10 the document.

11 THE COURT: Sure. Sure.

12 MR. MOYLE: And I don't think this is in.
13 It's a document that was --

14 THE COURT: If it's one of yours -- I don't
15 have any of yours yet. You didn't -- we decided to
16 wait.

17 MR. MOYLE: That's right.

18 THE COURT: So, let me see these.

19 BY MR. MOYLE:

20 Q All right. I've handed you four -- four
21 documents that have been marked as FIPUG's 1A, 1B, 1C,
22 and 1D. I'll represent to you that they were produced
23 in response to discovery requests, but the first one
24 is -- can you just tell me about who it's to and from,
25 who those people are and what it relates to?

1 A Yes, this is from Sevini Guffey. She is one
2 of the analysts within our section. And this is an
3 e-mail to Elisabeth Draper, who is bureau chief over our
4 group as well. And it appears that this is a -- a draft
5 copy of the original questions for the SERC.

6 Q Okay. And in this -- given the SERC
7 involved -- and this is something you have oversight and
8 responsibility for, and expertise in, right?

9 A Yes.

10 MS. HARPER: Your Honor, we'd like to object
11 to any draft documents of the SERC. We have the
12 final SERC that's available, but we question the
13 relevance of any of the draft copies.

14 THE COURT: Is that your only objection,
15 relevance?

16 MS. HARPER: Well, hearsay, probably, as well.
17 I haven't looked at all of these yet, but -- this
18 is between Sevini and Elisabeth, Sevini Guffey and
19 Elisabeth Draper, and they're not available.

20 THE COURT: Well, he's identified it as a
21 draft. I don't -- I don't need to hear argument.
22 Overruled.

23 Go ahead.

24 BY MR. MOYLE:

25 Q So -- so, sir, given -- given your expertise

1 in -- in a SERC -- to go to Page 2 of the documents,
2 there -- there are a host of questions here; are there
3 not?

4 A Page 2 starts with Question 9 and ends with
5 15; is that correct?

6 Q No, I'm --

7 A I'm sorry.

8 Q I'm counting the first --

9 A Page --

10 Q -- page --

11 A Oh, Page 2 --

12 Q -- 1 to -- 1 to 8 --

13 A Page 1 of 5. Thank you.

14 Q You with me?

15 A I am.

16 Q Okay. And so, the -- these questions --
17 I'll -- I know it's Friday afternoon, here. I'm not
18 going to necessarily walk through each one.

19 THE COURT: Just read them slowly, if you
20 would.

21 (Laughter.)

22 THE COURT: No, I --

23 BY MR. MOYLE:

24 Q But -- but it -- in my review of this, it
25 appears that these questions are ones that are culled

1 from the statute regarding SERC. Is that -- is that
2 fair, generally?

3 A Generally, yes, that -- fair assessment.

4 Q Okay. And -- and the reason you put these
5 together, the group puts these together, is because
6 you're aware that there is a SERC statute out there, and
7 you have to comply with the SERC statute, correct?

8 A Correct.

9 Q Okay. And so, things like -- like -- let me
10 just call your attention to No. 2. That -- that -- what
11 is your understanding of No. 2, what you're supposed to
12 try to figure out on -- on No. -- No. 2? And maybe,
13 just so the record is clear, would you --

14 THE COURT: No, I mean, I see it: Does your
15 utility propose to increase its current level of
16 storm protection.

17 THE WITNESS: Yeah.

18 BY MR. MOYLE:

19 Q And -- and you've also asked, if it does, do
20 you anticipate that there's a direct or indirect
21 increase to regulatory costs in excess of 2- -- 200,000
22 per year, or one million in aggregate, within five years
23 of the -- of amending the new rule.

24 That was a question that you put together, at
25 least initially, correct?

1 A That was a draft question, correct.

2 Q Okay. And then there's a question about the
3 million dollars in aggregate, No. 4. That's also a
4 draft question that -- that you had.

5 A Correct.

6 Q Right. And then you go on to the next page,
7 and there's a whole host of other -- other questions.

8 Let me just call your attention to No. 9,
9 which is: What is the average cost to your utility to
10 convert one mile of overhead transmission and one mile
11 of overhead distribution lines to underground lines for
12 each type?

13 What percent of T and D lines does your
14 utility plan to convert from overhead to underground, on
15 average, per year?

16 And then No. 10 is: What is the average cost
17 to your utility for one year for overhead hardening and
18 vegetation-management activities, if the new rule is
19 implemented?

20 Why were you contemplating asking these --
21 these questions?

22 A I think, looking at it from the perspective of
23 this is an analyst who was drafting the first draft --
24 they were drafting some questions for this particular
25 SERC -- having had experience working in that, based on

1 this rule -- and those were her initial draft questions
2 and what she thought was maybe covering all the aspects
3 of what should be looked at when you look at the actual
4 statute and looking at the actual statute from the
5 storm-protection-plan statute, recognizing that some of
6 these questions may not be in line to what we need to
7 look at.

8 So, those were just kind of an initial draft,
9 if you will, kind of looking at what to include.

10 Q So, the initial draft, you had 15 -- 15
11 questions; is that right?

12 A There's 15 questions on this draft, currently.

13 Q All right. So, let's go to the next document,
14 1- -- 1B.

15 THE COURT: 1B -- it's together with this one?

16 MR. MOYLE: That's right.

17 BY MR. MOYLE:

18 Q And -- and you're copied on this document; are
19 you -- are you not, sir?

20 A Yes, I'm one of the recipients.

21 Q And this document only has four questions; is
22 that right? There's some subparts on it?

23 A Four with subparts, correct.

24 Q And a lot of the detail questions that were
25 culled from the statute, from the SERC statute, are --

1 are dropped in this document, correct?

2 A The -- there are different questions here.
3 They're more streamlined, correct.

4 THE COURT: Was the first one culled from the
5 statute?

6 THE WITNESS: I think it was -- a combination
7 prob- -- a better way to say that -- excuse me. A
8 better way to say that is I think that there was
9 probably a looking at the statute because that is
10 part of the component, but what we were doing was
11 doing a SERC on the two proposed rules that were
12 presented to us to complete the SERC upon.

13 THE COURT: So, you were looking at the draft
14 rules or the statute when --

15 THE WITNESS: We were looking at the draft
16 rules. As a whole, that was our charge. Certainly
17 the statute was part of that, but our -- what we
18 are charged with looking at is the proposed rules.
19 And that's what we were doing as we went through
20 this process.

21 BY MR. MOYLE:

22 Q Right. But I think you already testified --
23 you said, well, this first thing was done by an analyst,
24 and the analyst went to the statute and put together a
25 host of questions as part of what -- what she was doing.

1 And -- and there's references to the statutes in here,
2 in a number of places as well, right?

3 A Correct.

4 Q All right. So -- so, let's -- let's look at
5 the next document, 1B. A number -- a number of the
6 questions have been dropped from 1A, correct?

7 A Yeah, they're different questions. Some of
8 them are dropped, correct.

9 Q But let me -- let me focus you on Question 4.
10 And it says: Please discuss any economic impacts to the
11 utility and its customers that may incur as a result of
12 Section 366.96, Florida Stat- -- Statutes, and the
13 attached draft rules.

14 I don't need to read them, but that -- that
15 was your Question 4 that you ultimately sent to the
16 utilities, correct?

17 A Correct.

18 Q And you were asking for impacts on the utility
19 customers, correct?

20 A Correct.

21 Q Okay. And why -- why were you asking for --
22 for impacts on the utility customers?

23 A There's a recognition that, while the utility
24 is the entity that is impacted by the actual statute,
25 the regulated electric investor-owned utilities, the --

1 there is a secondary component, from their customer
2 perspective.

3 So, we were just looking at it just from a
4 collection perspective to see how the utility kind of
5 categorized what were costs associated with the statute
6 as well as the costs that potentially were associated
7 with the regulatory implementation of the rule.

8 Q Okay. So -- so, you're asking for impacts on
9 the customers there.

10 The next document, 1- -- 1C -- you received
11 this document. It's from Elisabeth Draper, correct?

12 A It is.

13 Q All right. And does this document accurately
14 describe on the third paragraph why the questions
15 were -- were pared down when it states, "I cut out the
16 questions on impacts since the statute already finds
17 that the storm-protection plan will provide benefits"?

18 A That's how it reads, correct.

19 Q Right. And is that why you cut off those
20 questions, the questions from the first document we
21 looked at, compared to the ones that went out?

22 A Based on that statement, yes.

23 Q Okay. Are you aware, with an ex- -- being an
24 expert in SERC, is there any statute or authority that
25 says, you know, if a piece of legislation provides

1 benefits, that you don't have to consider impacts, cost
2 impacts, when preparing a SERC?

3 A Not to my knowledge.

4 Q Okay. And you know, most legislation is
5 ostensibly offered to provide benefits; is it not?

6 A Potentially. I'm not familiar with how that
7 process works.

8 Q The last -- the last document, which is
9 identified as FIPUG 1- -- 1D -- what is this document?

10 A This is the cover memo that is included when
11 we complete a SERC form. And that is provided to the
12 division that is in charge of the overall recommendation
13 that it would be attached to.

14 Q Okay. Let me -- let me direct you --

15 THE COURT: Are you familiar with this
16 document --

17 THE WITNESS: I am familiar with this
18 document.

19 THE COURT: -- for this rule?

20 THE WITNESS: Yes.

21 BY MR. MOYLE:

22 Q Let me -- let me direct you down, on the -- on
23 the second page of this document to the fourth paragraph
24 that starts: On August 27th, 2019, staff issued a SERC
25 data request to the electric utilities, which responses

1 were received.

2 A I'm sorry. Could you point me to that
3 paragraph again?

4 Q Sure. The last paragraph --

5 A Okay.

6 Q -- on the -- on the cover memo. It starts,
7 "On August 27th, 2019" --

8 A Yes.

9 Q Did you -- do you recall, as you sit here
10 today, whether you got information back from the
11 utilities about -- about what the cost impact on -- on
12 customers would be?

13 A The cust- -- we did receive the responses to
14 the utilities' data request that we submitted. I don't
15 recall there was any specific impact on customers and
16 that -- I don't believe there was.

17 Q And do you know, did the utilities -- in your
18 memo here, you state, "However, the IOUs stated that any
19 incremental costs will be incurred as a result of the
20 enactment of the Section 366.96 Florida Statutes, rather
21 than the adoption of the proposed rule, 25-6.030,
22 Florida Administrative Code."

23 Is that -- is that a true statement?

24 A Yes, I believe that's a true statement.

25 Q And do you know, as an expert in SERCs,

1 whether there is a provision of law anywhere that says,
2 if something is the result of a statute, that it
3 relieves an agency from preparing a SERC when it comes
4 time to looking at costs?

5 A It is my understanding, from the statute --

6 Q Just -- if you could just --

7 A I'm sorry.

8 Q -- answer yes or no, if you're aware of
9 there's a statute that says --

10 A Not that I'm aware of, no.

11 Q Okay.

12 THE COURT: Let me ask you this: Have you
13 done that in the past? If they -- if they say the
14 source of the impact is a statute, as opposed to
15 the rule implementing the statute, do you exclude a
16 SERC for the rule as to that impact?

17 THE WITNESS: I believe, yes, that has been
18 done in the past, within our agency, recognizing
19 that that's where the cost work derived from.

20 BY MR. MOYLE:

21 Q And in this -- in this rule -- we'll talk
22 about it, but there -- there is a lot of variability
23 with respect to what -- what costs may -- may be,
24 correct? Because it may depend on whether a utility is
25 going to underground one mile or underground, you know,

1 a hundred miles or a thousand miles.

2 A That relates to the work that is authorized
3 under the statute and not specifically to the cost
4 associated with implementing the regulatory aspects of
5 the rule.

6 Q Okay. Let's -- the last -- the last paragraph
7 of the documents says that y'all concluded
8 that: There's not likely to be an adverse impact on
9 economic growth, private-sector job creation or
10 employment, private-sector investment, business
11 competitiveness, productivity, or innovation in excess
12 of one million in the aggregate within five years of
13 implementation; is that right?

14 A That is correct.

15 Q And if -- if you -- if that was not a true
16 statement, there would be a consequence of that, in that
17 the Legislature would have to consider whether to ratify
18 the rule, correct?

19 A That is correct.

20 Q And that's what you cite here in the next
21 sentence that you talk about.

22 A Uh-huh.

23 Q You said it doesn't require legislative
24 ratification because those spending caps are -- are not
25 exceeded?

1 A Correct.

2 Q Is that right?

3 A Correct, yes.

4 Q All right. And in terms of doing any
5 independent research, did you all look at costs that --
6 that might be out there, any -- any Google searches to
7 say, what does it cost per mile to underground a
8 tran- -- a distribution line or anything like that? Or
9 did you just rely on what utilities provided you? Or
10 was it something in between?

11 A Based on the types of costs we were looking
12 at, from a regulatory perspective, we did not look at
13 what costs would be incurred by the statute or by the
14 work the statute allows to incur. We looked at the
15 costs that this particular rule and the implementation
16 of this rule may have an impact on the electric
17 utilities.

18 MR. MOYLE: All right. I -- I have another
19 document that I'd like to ask the witness a few
20 questions about, if I could.

21 THE COURT: Have you moved -- you know, I know
22 I ruled on an objection, but I don't know that
23 the -- that the 1A through D were moved. Are you
24 moving those?

25 MR. MOYLE: No, I haven't -- haven't moved

1 them.

2 THE COURT: Okay.

3 MR. MOYLE: I'd like to move them into
4 evidence, please.

5 THE COURT: Okay. Any objection, other than
6 what's already been stated? Okay.

7 I'll receive them, 1A through 1- -- through 1D
8 of Florida Industrial's exhibits.

9 (Whereupon, FIPUG's Exhibit Nos. 1A through 1D
10 were admitted into evidence.)

11 MR. MOYLE: The next document is -- just for
12 everybody's tracking is -- is the statement of
13 estimated regulatory costs data requests that was
14 sent out. I'll give that to you and ask you to
15 identify it, but I --

16 THE COURT: Is that -- do you have it
17 premarked?

18 MR. MOYLE: I have it noted as already being
19 in the record as a series of exhibits, but I can
20 enter this as well. We can have it in.

21 THE COURT: Series of exhibits -- you mean,
22 it's in joint exhibits?

23 MR. MOYLE: That's right. It's J22, J25, J26,
24 J27, and J29.

25 THE COURT: Okay. If it's already in, we can

1 just use these as --

2 MS. PUTNAL: Shorthand.

3 THE COURT: -- examples, I think.

4 MS. PUTNAL: Yeah, it's a shorthand.

5 THE COURT: Same as -- same as "J" -- I'll
6 just put at the bottom, so I'll know, same as
7 "J" -- Joint Exhibits -- what, 25 through -- what
8 was it?

9 MR. MOYLE: Yeah, 20- -- 22, 25, 26, 27, and
10 29.

11 BY MR. MOYLE:

12 Q Sir, this is the document that -- that you all
13 sent out to the utilities asking for information; is
14 that right?

15 A The first portion is.

16 Q Okay. And then the -- the second portion is
17 the actual rule that you're proposing; is that right?

18 A Yes.

19 Q And then it also -- it has all of the answers
20 from the utilities about the -- the SERC, does it not,
21 attached to it?

22 A It appears to, yes.

23 Q All right. So, just a -- a walk through this,
24 but again, the question you asked -- you did ask for
25 economic impacts to the utility and its customers,

1 correct?

2 A The specific question?

3 Q Question 4.

4 A Yes.

5 Q And to -- to go to the rule, there's a
6 provision on the -- let me just ask you about this. On
7 Page 4, on Attachment A, the -- the rule asks for
8 estimated costs and rate impacts associated with
9 programs and projects planned for completion during the
10 next year of the storm-protection plan; does it not?

11 A It does.

12 Q And with respect to the responses that you got
13 from the utilities, none of the utilities were able to
14 provide any projections of -- of cost in response to the
15 question you asked about impacts on customers; am I
16 right?

17 A They did not provide that. Based on the
18 information and how we were gathering the information,
19 we did not provide that. The direct costs to the
20 customers would not be identified. The cost of the
21 regulatory oversight of this particular -- these two
22 particular rules have the costs that they provided for
23 that. The amounts would not have a real impact on the
24 customers. And that's what we noted in the SERC.

25 Q But you -- but we don't have a disagreement

1 that, if the judge takes a view that -- that should have
2 been information included about rate impacts, that
3 that -- that would have an impact on -- on customers,
4 correct?

5 A If the -- if the utilities had the information
6 available, I believe that they would have provided it,
7 but based on the -- the rules that were presented and
8 the impact that they will undertake or be obligated to
9 absorb -- based on implementing these rules, from the
10 cost perspective, the amounts they gave, there was not,
11 again, a material impact.

12 Q Do you view, as an expert in SERC, that you
13 have a bit of an independent obligation to try to
14 provide costs pursuant to a SERC statute, as compared to
15 just relying on information that a third party, the
16 utility, could -- would provide to you?

17 A I believe that's part of the an- -- the
18 analysis that we are doing. When we complete the SERC,
19 it's to look at the information that we gather and look
20 at how that applies to the -- the way that the proposed
21 rules are written, and then we make that assessment.
22 And that's what we've done here. So, yes.

23 Q Okay. So -- so, you're -- you don't think
24 you're limited just to looking at the things that the
25 utilities provide; you have an independent obligation to

1 go beyond that, correct?

2 A It depends on what we are charged with looking
3 at from the position of the SERC. We are charged, in
4 this particular case, to determine what the regulatory
5 costs would be to the entities that are impacted by
6 these particular statutes. And that's what we started
7 with and that's what we did by -- by sending our data
8 requests out to the utility companies.

9 They provided us data stating what they
10 believe the incremental costs would be to implement
11 these two particular rules. And based on that
12 information and the information that they provided from
13 their perspective, we recognize that there was not a
14 need to move forward in any way because the costs that
15 they said these rules -- these rules would incur, they
16 would incur because of these two rules, would not have
17 an impact on the customer base.

18 Q Okay. Did you look at anything besides what
19 the utilities sent you or -- when you were gathering
20 information?

21 A No, the -- the utility companies would
22 understand what the regulatory impact would be.

23 Q Okay. So, you ask for the cust- -- impacts on
24 the customer information and you relied on the utilities
25 to give you that information.

1 A Well, the way the statute is established
2 and -- and the cost-recovery aspect of the statute -- or
3 excuse me. I said statute. Let me rephrase.

4 The way the rules are written, rather, and the
5 cost-recovery clause rule is written and how the cost --
6 the administrative costs, if you will, from the
7 regulatory oversight, based on these rules, the -- that
8 is going to be spread across the entire customer base of
9 that utility.

10 And based on the amount that the utilities
11 provided us, when you look at that amount of money being
12 disseminated across their customer base through this
13 process, there would be no, again, impact to the
14 customers.

15 MR. MOYLE: I have another document, if I
16 could hand it out.

17 THE COURT: Are you moving this one in?

18 MR. MOYLE: Yeah, this will be FIPUG
19 Exhibit --

20 THE COURT: No, it's already moved. I'm
21 sorry. It's moved. It's in.

22 MR. MOYLE: -- 4 -- yeah.

23 THE COURT: It's just --

24 MR. MOYLE: Right. The one I just was talking
25 about was the compilation of a number of exhibits

1 that are already in the record.

2 I'm handing out a new exhibit that will be
3 identified as FIPUG No. 4 --

4 THE COURT: Okay.

5 MR. MOYLE: -- which is a -- which is a House
6 of Representatives staff analysis of the
7 legislation in question.

8 THE COURT: It's not this one we were
9 discussing. We were -- this is already in the
10 record.

11 MR. MOYLE: That's correct.

12 BY MR. MOYLE:

13 Q So, let me just use this document. On Page 4,
14 down toward the bottom, the document states: For
15 Florida's three largest IOUs, approximately 40 percent
16 of all distribution lines of underground, the majority
17 of recent undergrounding projects were for new
18 construction rather than conversion of overhead lines to
19 underground installation.

20 And the next paragraph talks about two Florida
21 IOUs had begun targeting underground programs. And it
22 goes on and talks about some of the costs associated
23 with the targeted underground programs. And it says
24 that one utility had a three-year term, and it's
25 estimated cost of a hundred million dollars to convert

1 158 miles of overhead lines.

2 As part of your SERC effort to try to find out
3 about impacts upon costs to ratepayers, did you consider
4 the undergrounding pilot programs?

5 A No, that information was considered by the
6 Legislature during its decision-making on whether to
7 pass the statute.

8 Q Okay.

9 MR. BERNIER: Your Honor, just -- just for the
10 record, I'd like to object to this exhibit. This
11 appears to be -- on the basis of relevance and
12 hearsay. This appears to be a bill analysis of a
13 pretty early version of the statute, not the final
14 version of the statute. So, I'm not sure what
15 relevance it has, but -- thank you.

16 THE COURT: It's an analysis --

17 MR. MOYLE: It's an analysis of one of the
18 bill -- of the bill that ultimately passed. It may
19 have been an earlier version. And I'm not
20 necessarily using it for -- well, what I want to
21 use it for is for the information in here about
22 cost.

23 THE COURT: But this was the --

24 MR. MOYLE: -- mentioned on cost --

25 THE COURT: But this was a cost estimate for

1 the statute and not the rule.

2 MR. MOYLE: That's right.

3 THE COURT: So, this is --

4 MR. MOYLE: Well, you can parse -- parse it
5 that way. I mean, I think some of it flows into
6 the rule.

7 THE COURT: I -- as far as -- you know, as far
8 as relevance -- relevance is not an objection that
9 I often sustain, you know, given -- especially
10 given something that's relating to legislation
11 underlying the rule at issue. So, you're overruled
12 on that.

13 Go ahead.

14 BY MR. MOYLE:

15 Q Okay. So, sir, I thought -- I thought, in our
16 prior conversation, you had indicated that the
17 Commission, when putting together the rule, would have
18 an independent obligation to try to figure out cost.
19 And I'm just trying to understand, the two pilot
20 programs you did not consider with respect to trying to
21 get cost information, correct?

22 A Again, yes, we looked at the regulatory cost
23 of implementing the rule, not implementing the statute.

24 Q Okay. And then go to Page 7 of this document,
25 if you would, down at the very bottom. It says: The

1 costs for specific overhead-to-underground conversion
2 projects will vary by project, depending on specific
3 overhead-to-underground conversion projects included in
4 IOUs' PSC-approved T-and-D storm-protection plan, the
5 cost of rate impacts could be significant.

6 And then it goes on and talks about, for
7 example, in FPL's pilot program, the all-in cost of
8 362,911 per mile for 158 miles to be converted under the
9 program -- it goes on further, but at the end of the
10 day, it -- it suggests on at least the information that
11 was obtained to date, that the per-mile cost indicated
12 by its current program, converting 4 percent of FPL's
13 total overhead distribution laterals each year would
14 cost approximately 577 million per year.

15 Do you -- did you have access to this
16 information when you were preparing your SERC?

17 A Yes, we did review some of the House and the
18 Senate analyses, just for background, but again, that
19 information was considered by the Legislature. It's in
20 their analysis documents and before they passed the
21 statute. So, it was considered at that time and
22 understood that those were the costs. They were known
23 at the time or estimated at the time.

24 Q And -- so, you -- you would say, well, the
25 Legislature considered it. That relieves us of our

1 obligation to -- to take it up in the SERC.

2 A Our SERC is to look at the regulatory cost of
3 the impact of the rule being implemented or the rules in
4 here being implemented.

5 MR. MOYLE: Okay. I have -- I'd like to go
6 ahead and move that document in, the staff
7 analysis.

8 THE COURT: Objection, other than what's
9 already been stated?

10 MR. NORDBY: Judge, if -- if it wasn't stated,
11 we would join in the hearsay objection,
12 understanding that hearsay is admissible to explain
13 or supplement, but I've not heard any -- any of the
14 exceptions to hearsay enunciated.

15 THE COURT: Did you want to raise an exception
16 to hearsay?

17 MR. MOYLE: Well, I -- I mean, I think we
18 could keep -- keep the record open and get a stamp
19 on it with respect to authenticity. I guess you're
20 not really --

21 THE COURT: You're not raising authenticity.

22 MR. MOYLE: -- authenticity; you're objecting
23 on hearsay. It's a business record from the
24 House of Representatives --

25 THE COURT: Business record -- may be a public

1 record. I don't know. I don't know if these
2 things are available as a public record.

3 MR. NORDBY: And this doesn't go to the
4 evidentiary basis. I -- I know the first page says
5 that it doesn't reflect the intent or official
6 position of the House for the -- for what it's
7 worth.

8 THE COURT: It's an analysis and -- you know,
9 as far as whether or not -- it looks as though
10 there's certainly a significant impact by the
11 legisla- -- legislation.

12 MR. NORDBY: It -- Judge, it appears to be an
13 analysis of the bill in its first subcommittee and
14 the fiscal impact of the underlying statute rather
15 than anything related to a rule that, months later,
16 might be proposed by the Public Service Commission.

17 THE COURT: Is that accurate? Do you think
18 that's --

19 MR. MOYLE: No, I would disagree, in that
20 it's -- it -- it relates to the bill. The bill
21 went through some variations and some changes, but
22 at the end of the day, the bill, as filed, you
23 know, with respect to allowing for clause recovery
24 of the undergrounding is what passed. And now
25 there's a rule that's being put in place that

1 relates to -- to that topic, undergrounding and
2 storm hardening. So -- so, I think --

3 THE COURT: You know, I -- I think it's
4 relevant. As far as hearsay, I -- I'm going to
5 allow it in to -- I'm going to allow it. I don't
6 even know if it's hearsay, but I'm going to allow
7 it. And what impact that has on -- on the rule
8 here, I don't know, but I'm going to allow it.

9 MR. MOYLE: Okay. I have --

10 THE COURT: It's in.

11 (Whereupon, FIPUG Exhibit No. 4 was admitted
12 into evidence.)

13 MR. MOYLE: I have one more exhibit. This is
14 already in as J23, but I'm going to pass out a
15 copy --

16 THE COURT: Sure.

17 MR. MOYLE: -- for your convenience.

18 BY MR. MOYLE:

19 Q Sir, I've provided you a document. You're
20 familiar with this document?

21 A Yes.

22 Q Okay. Let me flip you to Attachment B, to
23 the -- to the document and Page 3, or Page 34. This
24 is -- this is the SERC that you prepared; is it not?

25 A It is.

1 Q The Attachment B.

2 On Page 3, 34, there's a statement that
3 says: A general description of the types of individuals
4 likely to be affected by the rule.

5 Would you please read the answer, first
6 sentence.

7 A Yes: The types of individuals likely to be
8 affected by the rule would be customers who are served
9 by the five electric IOUs.

10 THE COURT: That's on Page 33 of Attachment B,
11 identified at the bottom? I just want to make sure
12 I'm reading it correctly.

13 MR. MOYLE: It's on Page 34.

14 THE COURT: Oh, 34.

15 MR. MOYLE: Yes, it's a little --

16 MS. PUTNAL: -- the SERC --

17 MR. MOYLE: It's a little strange --

18 THE COURT: Okay.

19 MR. MOYLE: -- because it has a 34 at the
20 bottom and then Page 3.

21 THE COURT: Correct. Yes.

22 MR. MOYLE: Attachment B.

23 THE COURT: Thank you.

24 MR. MOYLE: This may have come from the
25 petition that OPC filed, but the -- but the

1 question is No. 2: A general description of the
2 types of individuals likely to be affected by the
3 rule.

4 BY MR. MOYLE:

5 Q So, in this -- in this response, you're
6 indicating that the rule -- that the customers would be
7 affected by the -- by the rule, correct?

8 A Correct. And that was from -- the source
9 there was the final bill analysis from 7/10/2019.

10 MR. MOYLE: Right.

11 All right. If I could just have one quick
12 minute.

13 I have no further questions of this witness.

14 THE COURT: Office of Public Counsel, did you
15 have further --

16 MR. DAVID: Yes, Your Honor. One -- one quick
17 question.

18 Good afternoon.

19 THE COURT: Mr. Kelly, is that --

20 MR. DAVID: Mr. David.

21 THE COURT: Mr. --

22 MR. DAVID: Thomas David.

23 THE COURT: Thomas David. I'm sorry.

24 MR. DAVID: Yes, sir.

25 THE COURT: Go ahead.

1 EXAMINATION

2 BY MR. DAVID:

3 Q Mr. Coston, looking back at the -- the last
4 exhibit -- it's actually J23. On the page that
5 Mr. Moyle was referring to, on Page 34, it's -- it's --
6 the part that was highlighted said, you know, these
7 regulatory costs would be recovered from the IOUs'
8 customers through -- through rates.

9 And so, would -- so, the customers would, at
10 least indirectly, end up paying for the costs of these
11 rules; is that correct?

12 A They would -- there would -- the incremental
13 costs that these rules may generate for the utilities to
14 comply with the rules, themselves, the administrative
15 aspect of those -- they would be passed through, in this
16 particular case, the -- the clause, the rates, in that
17 respect.

18 Just based on the amount of information we
19 had, as far as the costs overall, when you look at it,
20 across the rate base, at that point in time, there was
21 no adverse financial impact.

22 Q But those costs would be passed through --

23 A They would be -- they would be, yes.

24 MR. DAVID: Thank you.

25 I -- no other questions.

1 THE COURT: And the regulatory costs, which
2 are a lot less than the implementation of the
3 actual project costs.

4 THE WITNESS: Correct, I'm speaking of
5 regulatory costs here.

6 THE COURT: Okay. Yes.

7 Let's see here. Are we going with Public
8 Service Commission next?

9 MS. HARPER: Thank you, Your Honor.

10 EXAMINATION

11 BY MS. HARPER:

12 Q Mr. Coston, does the Commission prepare a SERC
13 for every rulemaking that it does?

14 A Yes, we do.

15 Q And generally, when you prepare a SERC, who do
16 you request information from?

17 A When we prepare a SERC, we look at the rules
18 and we see who is the impacted entity or individual.
19 And so, that's who we -- when we identify that entity,
20 that -- those are where we ask the questions or where
21 these questions are directed to.

22 Q So, if the utilities are the ones that are
23 impacted by the rules, that's who you provided your data
24 request to?

25 A That's correct.

1 Q And do the utilities have to respond to the
2 Commission?

3 A Yes, they do.

4 Q And is it your understanding of the statute
5 regarding SERCs that it requires you to consider in the
6 SERC the cost of the proposed rule?

7 A That is our understanding, correct. Yes.

8 Q What was the purpose of the SERC in this case?

9 A The purpose of the SERC in this case was to
10 ident- -- to look at the two rules that are being
11 presented, look at what entity or individuals are being
12 impacted, which we identified the five investor-owned
13 electric utilities as who will be under these particular
14 rules. And the purpose was really to determine if there
15 was any adverse economic impact to that entity -- or
16 those entities, rather.

17 Q And what did you conclude, with regards to
18 that?

19 A We concluded there was no adverse economic
20 impact or that there would be any job growth
21 hindrance -- that it would not impact -- the rule,
22 itself, would not impact the business competitiveness,
23 and it would not have a material effect over a million
24 dollars on the aggregate over a five-year period.

25 Q Okay. And as far as the rate impact on the

1 customers or the potential rate impact to the customers
2 that we've been talking about here, is it your opinion
3 that would result from the statute or the rules?

4 A That would be generated from the statute.

5 Q Do you have any reason to believe that the
6 responses the Commission received from its data requests
7 are inaccurate?

8 A No.

9 Q Do you believe -- I'm going to go back to the
10 SERC that you prepared. Did the Commission file public
11 notice that the agency prepared a SERC in this case?

12 A Yes.

13 Q What kind of public notice?

14 A It was the standard rulemaking notice.

15 Q And pursuant to that notice, did anyone file
16 comments on the SERC?

17 A No.

18 Q And pursuant to that notice, was there a lower
19 regulatory-cost-alternative filed?

20 A No.

21 THE COURT: Is there a regular SER- -- I guess
22 it's a legal question -- a regular SERC comment
23 period that's set forth in the statute?

24 MS. HARPER: 21 days.

25 THE COURT: 21 days. That's just like -- as

1 anything. Okay.

2 MS. HARPER: Oh, that's it. Sorry.

3 THE COURT: Is that -- is the -- is the
4 notice, the SERC notice, part of the exhibits?

5 MS. HARPER: Yes, it's in our -- when we did
6 our proposed-rule notice, the F.A.R. notice -- it's
7 all included in that attachment.

8 THE COURT: Okay. And that's part of -- you
9 can point to that in one of these exhibits that's
10 before --

11 MS. HARPER: Yes, and there's language in our
12 F.A.R. notices that says --

13 THE COURT: Sure. Thank you.

14 Yes, Mr. Nordby.

15 EXAMINATION

16 BY MR. NORDBY:

17 Q Hi, Dan Nordby on behalf of FPL and Gulf.
18 Just a couple of brief questions. I'll try not to
19 replot the same ground.

20 You responded to a question earlier that --
21 that you distinguished between costs that were
22 authorized by statute and costs that are imposed by the
23 rule when developing the SERC; is that -- is that
24 accurate?

25 A Yes.

1 Q Why is that?

2 A Our interpretation is that the -- the
3 Legislature, in passing the statute -- we know that
4 there has been analysis that has been completed on their
5 side and recognize or believe that they passed the
6 statute for a reason.

7 So, what we believe was our charge, based on
8 the -- based on statute, from a SERC perspective, is to
9 look at how implementing that particular statute will
10 have an -- an economic impact on potential entities,
11 individuals.

12 Q And does the SERC statute, itself, refer to a
13 question of whether the proposed rule is likely to
14 impose regulatory costs?

15 A Yes, it does specifically state that.

16 Q You responded to a question earlier about rule
17 ratification. Do you remember that discussion?

18 A Yes.

19 Q What gen- -- what sort of rules, generally,
20 require ratification? What triggers that?

21 A I have not had an experience with that
22 process. I'm not sure when the last time we had that --
23 if we've had that on the Commission. So, I could not
24 speak to what would really trigger that, except for the
25 fact that there is a statute -- statute requires a

1 certain threshold. I believe it's a million dollars
2 over five years. So, that would be, I believe, the
3 trigger for that to occur.

4 Q Is there any sort of statutory-ratification
5 procedure that the statute imposes costs of a million
6 dollars?

7 A Not that I'm aware of.

8 Q I think you also said that there was no lower-
9 cost regulatory alternative provided, as is authorized
10 by the statute; is that right?

11 A That is correct.

12 Q Is it your understanding that the Office of
13 Public Counsel and FIPUG are advocating for changes to
14 the proposed rules that would require additional detail
15 to be provided by the investor-owned utilities on the
16 project-level data?

17 A My understanding, that is -- that is what is
18 being requested.

19 Q Based on your experience preparing SERCs,
20 would a rule requirement for a regulated party to
21 provide greater levels of detail, even more information,
22 increase or decrease the costs as compared to the
23 proposed rules of the Public Service Commission?

24 A I would say, depending on the change, it could
25 have an increase. I will say that this particular SERC

1 was prepared for -- based on staff's original draft,
2 which had different language than -- than what was
3 finally approved.

4 Q And the -- the references -- just to clarify,
5 the references in the SERC that you've put to the -- the
6 types of individuals likely to be affected by the
7 rule -- this is on Page -- well, there's a 34 at the
8 bottom, the last exhibit you have of Attachment B -- are
9 you on that page?

10 A I am. Thank you.

11 Q So, the top of the page talks about the
12 individuals likely to be affected by the rules, the
13 customers who are served by the five electric IOUs and
14 the regulatory costs that will recovered from the IOUs'
15 customers through rates.

16 Those regulatory costs -- just to be sure I
17 have your testimony correct, those regulatory costs are
18 the costs of compliance with the rule by the IOUs; is
19 that correct?

20 A Correct, the rule, itself.

21 Q Okay. And that's where -- what you refer to
22 on the previous page when you discussed the number of
23 individuals and entities likely to be required to comply
24 with the rule?

25 A Correct.

1 Q Do individual customers file storm-protection
2 plans under these rules?

3 A No.

4 Q Does the Office of Public Counsel file storm-
5 protection plans?

6 A No.

7 Q Did they file cost-recovery petitions --
8 customers or the Office of Public Counsel?

9 A That, I -- I don't -- I'm not sure they
10 would -- could or could not. I won't speak to that.

11 Q Okay. Do you have any reason to -- to doubt
12 or question the analysis that's set forth in the SERC
13 that you prepared?

14 A No.

15 MR. NORDBY: Okay. Thank you.

16 MR. BERNIER: No questions.

17 THE COURT: Okay. No from Duke.

18 How about TECO?

19 MR. MEANS: No questions.

20 THE COURT: Okay.

21 MR. MOYLE: A couple of follow-up, if I could.

22 THE COURT: Go ahead.

23 FURTHER EXAMINATION

24 BY MR. MOYLE:

25 Q Did I understand you to say that the SERC that

1 you prepared did not tie to the final rule?

2 A No. What I said is the SERC that we prepared
3 was written with the draft that we were provided at that
4 time. And so, the draft that was provided was in the
5 recommendation to the Commission.

6 There will be -- there was some modification
7 to that particular -- those particular rules. We looked
8 at that change and the changes that were made, and we
9 determined there was not a need to update the SERC. The
10 search results were still -- were still good for what
11 the -- the final product looked like.

12 Q Notwithstanding the subsequent changes in
13 the -- in the rule?

14 A Correct.

15 Q You were asked a question by another counsel
16 about the -- the OPC and FIPUG saying about the -- you
17 know, additional detail, seeking additional detail.

18 I mean, you understand that the reason the
19 additional detail is being sought is, by OPC, that
20 they -- so that they can do their job in terms of
21 analyzing and representing the consumers, correct?

22 A I can't speak to -- the proposed changes to
23 the rule -- from the SERC's perspective, we just looked
24 at the rules that were presented and the costs
25 associated with those rules.

1 Q Okay. And then, just to go back to the
2 exhibit, Exhibit B, the question: A general description
3 of the types of individuals likely to be affected by the
4 rule -- and I thought you answered a question by saying,
5 well, this -- this only relates to the implementing --
6 the utility implementing costs, but -- but isn't it true
7 that your answer here is that the types of individuals
8 likely to be affected by the rule would be the
9 customers --

10 A If you could, point me to --

11 Q -- that were served by the five IOUs?

12 A If you could, point me to the page. I'm
13 sorry. I --

14 Q Yes, it's page of the SERC -- it's Page 3 of
15 your SERC.

16 A Okay.

17 Q You there?

18 A If you could -- I'm here. Thank you. If you
19 could, repeat the question, please.

20 Q You are describing the types of individuals
21 who are likely -- likely to be affected by the rule.
22 Your response says that the type of individuals likely
23 to be affected by the rule would be customers who are
24 served by the five electric IOUs, correct?

25 A Yes.

1 Q And you go on and say, the impact on the bills
2 can't be determined because it will vary for each IOU's
3 Commission-approved storm-protection plans and projects,
4 correct?

5 A Correct.

6 Q And what that means is, is that, well, if a
7 utility is proposing to do a whole lot of
8 undergrounding, it's probably going to be more than if a
9 utility is proposing to do not much undergrounding,
10 correct?

11 A Correct.

12 Q And the term "regulatory costs" -- these
13 regulatory costs is referring back to the rates that
14 customers would pay, depending on whatever the plans the
15 utilities put forward are, correct?

16 A Correct. And again, the source for that is
17 the final bill analysis from July 10th, 2019.

18 Q Right, but these are your -- your -- your
19 words, right? I mean, you -- you reference the bill
20 analysis, but they're -- they're your words, like the
21 use of the phrase "regulatory costs" -- that -- that was
22 something that you all came up with, correct?

23 A That is correct.

24 Q And that tracks what the statute for SERC
25 says, regulatory costs; does it not?

1 A I think in this particular -- the individuals
2 that were --

3 Q Does it track the statute? Does it track the
4 statute?

5 A Yes.

6 MR. MOYLE: That's all I have.

7 THE COURT: Anything else?

8 MR. DAVID: Nothing further.

9 THE COURT: Okay. This witness excused?

10 MR. MOYLE: Yes.

11 THE COURT: Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: Mr. Moyle, any --

14 MR. MOYLE: So, I think -- I think I'm --
15 Florida Power & Light has listed one witness that I
16 am happy to ask a couple of questions of when they
17 put that witness on the stand. If they're deciding
18 not to put that witness on the stand, then --

19 THE COURT: You are --

20 MR. MOYLE: -- call him in my case.

21 THE COURT: Does it have to do -- what's the
22 subject matter?

23 MR. MOYLE: It -- it has to do with cost --
24 representations of cost to this point, about what
25 the cost of this rule is going to be.

1 THE COURT: Who is the witness?

2 MR. MOYLE: Mr. Bromley.

3 THE COURT: Are you going to -- are you going
4 to be calling Mr. Bromley?

5 MR. NORDBY: We will.

6 THE COURT: So, you can do it through cross-
7 examination. Even extended cross a little bit
8 wider, I'll allow it.

9 MR. MOYLE: That's fine.

10 THE COURT: Okay. So, otherwise, you're done?

11 MR. MOYLE: That's right.

12 I -- I do want to put in the interrogatory
13 response that we've been talking about with respect
14 to FIPUG and who the -- who the folks are. So, I
15 can do that now or at the very end.

16 THE COURT: Let's do that so that you maybe
17 avoid a motion.

18 MR. MOYLE: Okay.

19 THE COURT: We'll see. What would that be
20 identified as, if it's premarked?

21 MR. NORDBY: And Judge, we'll -- we'll assert
22 our hearsay objection to them introducing their own
23 interrogatory answers, to the extent that they
24 don't supplement or explain non-hearsay testimony.

25 THE COURT: If it --

1 MS. HARPER: We second that objection.

2 THE COURT: I understand. I understand. Are
3 you -- do you have any other source of who your
4 members are, other than this interrogatory?

5 MR. MOYLE: Well, the -- the testimony has
6 been provided --

7 THE COURT: Yeah, do you have a --

8 MR. MOYLE: -- previously.

9 THE COURT: Do you have the person who did
10 this interrogatory, who --

11 MR. MOYLE: It's verified, but he's not here
12 to testify to it. So, it -- I had it marked as
13 Exhibit B, but it doesn't appear to have found its
14 way on to the docket -- two. I'm sorry.

15 THE COURT: Let me see. Jeffrey Pollock is
16 the person that gave these answers?

17 MR. MOYLE: That's right.

18 THE COURT: Where is he?

19 MR. MOYLE: He -- he's an expert who regularly
20 appears. He's in St. Louis. He's a FIPUG expert.

21 And part of this, Judge, is, you know, we've
22 never had this issue before.

23 THE COURT: I understand.

24 MR. MOYLE: Most of the time, these things
25 come in. We're not being contested. So, this is

1 kind of a little bit of a new issue because --
2 maybe because we're at DOAH, but anyway, most of
3 the time, it's a -- you know, these types of
4 documents come in as a matter of course and we
5 don't have objections, you know, based on -- on
6 hearsay and things like that.

7 And Mr. Pollock is an expert who regularly
8 appears on behalf of FIPUG.

9 MR. NORDBY: Judge, I -- I don't know who --
10 who Mr. Pollock is. Sounds like he's a third
11 party, even to FIPUG, but you -- you understand now
12 the source of our motion that we discussed this
13 morning.

14 And to the extent we need to reassert that
15 motion now, at the conclusion of the petitioner and
16 intervenor's case-in-chief, we'd assert that they
17 have not met their burden -- FIPUG, that is,
18 specifically has not met its burden of coming
19 forward to show that it or its members are
20 substantially affected by this.

21 We have no non-hearsay testimony as to how
22 many members there are, who they are. Mr. Willis
23 testified that they're a mysterious group, and one
24 of which he knows, but can't tell anybody. I -- I
25 don't know what the reason for the secrecy is.

1 But the standards for the associational
2 standing are pretty clearly laid out in the Florida
3 Home Builders case and the NAACP case that when --
4 when standing is questioned, the associational
5 standing is questioned, the association has to come
6 forward with the proof, not just arguments of
7 counsel and -- and conclusory affidavit that it
8 signs for itself.

9 And -- and, Your Honor, of course, recognized
10 that in the order granting the motion to intervene,
11 which should have put FIPUG on notice that they
12 would have the burden to prove their standing at
13 the final hearing. You signed that the 11th of
14 December, a couple of weeks ago.

15 They've come here. They, we would submit,
16 have not satisfied their burden to show standing in
17 a rule challenge.

18 MR. MOYLE: And we would, obviously, take a
19 slightly different view of that. I mean, we think
20 that we put on -- I mean, this is -- is hearsay,
21 but hearsay can be admitted, if it is supplementary
22 to evidence that has already been in.

23 We had two witnesses, Mr. Ballinger and
24 Mr. Willis, who have long experience with the PSC.
25 They talked about their knowledge of FIPUG, that

1 FIPUG is a group of large users of electricity.
2 Mr. Willis had -- had a -- information about a
3 member.

4 And what we would ask is, is that you not rule
5 on this now, but let us address it in briefs.

6 THE COURT: I won't rule on this now. It's
7 kind of a gotcha, but it's a gotcha with notice,
8 so -- so, we'll -- I mean, yours is kind of a
9 gotcha. We don't -- you know, you don't have the
10 evidence.

11 We -- I didn't know that -- I didn't know the
12 extent of this until last night when that last-
13 minute motion to dismiss -- of course, the standard
14 for approving, you know, standing for these types
15 of organizations is what it is, and --

16 MR. NORDBY: Judge, if I could, just on the
17 timeliness of it, we did not know until the day of
18 the prehearing stipulation that FIPUG intended to
19 call the witness at the hearing. We had exchanged
20 e-mails trying to take the deposition of who- --
21 whoever their witness might be.

22 THE COURT: Right, to challenge it.

23 MR. NORDBY: And you know, we can -- we can
24 introduce the e-mail exchange, if necessary. I
25 don't think e-mails between counsel are

1 particularly --

2 THE COURT: -- need to --

3 MR. NORDBY: -- helpful.

4 THE COURT: What harm does it do to let them
5 stay as a party. That's something you can do. And
6 I can -- you know, I'm going to reserve ruling on
7 this, but you very well may have won the day. I
8 don't know. We're going to see.

9 I'm going to admit this, to the extent it's
10 corroborative. How much am I going to allow it to
11 expand what's already in the record? I don't know,
12 but I'm going to admit it. It is hearsay, but
13 we're going to put it in as Florida Industrial --
14 what number did you have for that?

15 MR. MOYLE: It's No. 2, identified as two.

16 THE COURT: Considering my reserving, I'll
17 probably most likely allow them to do a PFO, which
18 they get -- they get it there anyway. And that's
19 why I'm saying, if you have a change of heart after
20 discussing this and say, hey, let's don't make this
21 an issue, it's just something I won't have to write
22 on, but it's okay because I'll write on it one way
23 or the other. Okay?

24 MR. NORDBY: Thank you, Judge.

25 (Whereupon, FIPUG's Exhibit No. 2 was admitted

1 into evidence.)

2 THE COURT: Thank you.

3 So, you're done now?

4 MR. MOYLE: Yes, sir.

5 THE COURT: Okay. Thank you very much.

6 So, we're now at the Public Service
7 Commission's side of the case. Do you have -- do
8 you want your -- any particular order of the ones
9 I've been -- is the order that I've designated as
10 I've asked these questions -- allowed the parties
11 to ask -- is that fine?

12 MS. HARPER: Yes.

13 THE COURT: Just go PSC first, then -- then
14 FPL and company?

15 MS. HARPER: I think it would be -- yes,
16 that's fine. PSC first.

17 THE COURT: How are we doing as far as time?
18 What do we think?

19 MS. HARPER: I don't know. It depends on how
20 much cross there is, but it should be five, ten
21 minutes for me, Your Honor.

22 THE COURT: Okay. Okay.

23 MS. FALL-FRY: Challenge accepted.

24 (Laughter.)

25 MS. HARPER: Your Honor, the first witness we

1 would like to call is Robert Graves.

2 THE COURT: Mr. Graves.

3 Let's see. That last one was -- let me...

4 MS. HARPER: Please give your name for the
5 record.

6 THE COURT: I'm sorry -- yes.

7 THE WITNESS: Robert Graves.

8 THE COURT: Okay. Mr. Graves, would you raise
9 your right hand.

10 THE WITNESS: Yes, sir.

11 Whereupon,

12 ROBERT GRAVES

13 was called as a witness, having been first duly sworn to
14 speak the truth, the whole truth, and nothing but the
15 truth, was examined and testified as follows:

16 THE COURT: Okay.

17 EXAMINATION

18 BY MS. HARPER:

19 Q Mr. Graves, please explain your educational
20 background.

21 A I received my Bachelor's of Science in
22 mechanical engineering from Florida State University in
23 2007. And prior to that, I received an associate's
24 degree from Tallahassee Community College.

25 Q Please explain your experience at the

1 Commission.

2 A I have been at the Commission for roughly
3 12-and-a-half years. The first eight years, I spent as
4 an engineering specialist in the -- I guess it would be
5 the resource-planning section, mainly.

6 For the last four years, I've been a
7 supervisor over the reliability section and the Division
8 of Engineering. And Tom Ballinger, who spoke earlier,
9 is my director.

10 Q And in that section, do you do work on storm
11 hardening?

12 A Yes, ma'am.

13 Q Is that division primarily responsible for
14 storm-hardening review?

15 A Yes, ma'am. That's correct.

16 Q And what is the purpose of your testimony
17 today?

18 A My -- the purpose of my testimony today is to
19 discuss the validity of Proposed Rule 25-6.030, and
20 specifically, Sections 3D, E, and J, which the Office of
21 Public Counsel has alleged to be invalid. And I'll also
22 discuss the process following up to the proposed rule.

23 Q Okay. And can you just generally tell us what
24 the pur- -- the purpose of the Commission's plan rule
25 is. And speak into the microphone, please. Sorry. I

1 could barely hear you.

2 A I apologize.

3 Q That's okay.

4 A The purpose of the rule is to specify the
5 elements that must be included in a utility's storm-
6 protection plan. And that's following the directive of
7 the Section 366.96 of the Florida Statutes.

8 Q So, when you were developing the rule, what
9 did you use as your guide when trying to determine what
10 the rule needed utilities to file in their plans?

11 A Primarily Subsection 4 of the statute. When I
12 refer to statute number, I'm referring to 366.96.
13 There's four elements that the Commission shall consider
14 under that statute. And that was the primary driver of
15 the information being requested.

16 We also looked at the storm-hardening plan and
17 kind of gleaned from that some information that -- that
18 we thought would be useful.

19 Q Okay. So, how does the proposed rule -- plan
20 rule specify these elements that have to be included in
21 the storm-protection plan?

22 A Those elements are identified in Subsection 3
23 of the rule, the protection-plan rule, with -- and it
24 also has Section -- Subsection 2 of the rule has
25 definitions for terms used in the rule.

1 Q Okay. Can you please explain Paragraph 3J of
2 the proposed rule. And again, we're talking about the
3 plan rule only here.

4 A Yes. And I've turned to it. I have a copy of
5 the rule here. I'll -- I'll go ahead and read 3J. It
6 reads, "... Any other factors the utility requests the
7 Commission to consider." And that's basically an
8 allowance for anything that's not specifically described
9 in the rule prior; that that would give the opportunity
10 for a utility to provide information that it thinks
11 would be relevant to consideration of the plan.

12 Q And what was the purpose for including that
13 paragraph, 3J?

14 A It -- if there was any unique circumstances or
15 situation that a utility saw that should be considered
16 in the plan, that would be their opportunity to provide
17 information on that.

18 Q Okay. So, then, I guess, with that -- does
19 that mean that Paragraph 3J gives the utility just --
20 discretion or an opportunity to file more information?

21 A It gives them that opportunity, yes. And I
22 guess I'll give some context to this. There's a lot of
23 discussion about the definition in 2C and what should
24 belong in there. There was some concern from some of
25 the stakeholders that too much being included in there

1 would open up, you know, the possibility of unintended
2 consequences.

3 So, we kept that definition strict, but we
4 left that opening there, instead, to provide an
5 opportunity so that the utilities weren't restricted
6 from, you know, moving forward with programs or projects
7 that would be following the intent of the statute.

8 Q Let's move on to Paragraph 3D of the plan
9 rule, since you're talking about definitions. Can you
10 explain what -- what a program is.

11 A Correct. That is defined in Subsection 2 -- I
12 guess I'll give sort of a shorter description and then
13 give -- give an example. I think it might be easiest.
14 It's a type or a method of enhancement.

15 And so, the example would be -- and it's kind
16 of been discussed earlier -- overhead-to-underground
17 conversion. So, burying power lines -- that would be --
18 that could be a program, is overhead-to-underground
19 conversion.

20 Q And why would we -- what's the purpose of the
21 rule requiring that type of information about utility
22 programs?

23 A Right. That's the -- to give additional
24 detail, if you will, to the four buckets of -- the four
25 buckets that the Commission is required to consider in

1 the statute and, specifically, Subsection 4A, C, and D.

2 Q What -- what are Sections 4A, C, and D that
3 you're referring to?

4 A So, if you'd like, I can just read them or
5 I -- perhaps, I'll paraphrase. Part A is the extent to
6 which the plan is expected to reduce the restoration
7 cost and outage times; "C" is the estimated costs and
8 benefits of the plan; and "D" is estimated annual rate
9 impact resulting from implem-ation -- implementation of
10 the plan during the first three years of the plan.

11 THE COURT: A, C, and D -- where were you
12 looking?

13 THE WITNESS: Yes, sir, under Subsection 4.

14 THE COURT: Oh, okay. Thanks. Sorry.

15 BY MS. HARPER:

16 Q Now, please explain Paragraph 3E of the
17 proposed rule.

18 A 3E requests information for utility programs
19 that are going forward. Specifically, the first part of
20 that requests a certain level of detail for the first
21 year of the plan. And then years two and three, it
22 requests less detail for the -- the programs that are
23 going to be part of the plan.

24 Q Does it also include project information?

25 A Correct.

1 Q Okay. Can you --

2 A And I apologize if I misspoke. That -- that
3 section is for projects.

4 Q Projects.

5 A Yes.

6 Q Okay. And what are projects, generally?

7 A That would be sort of a --

8 Q An example.

9 A -- discrete application of an enhancement
10 method. So, maintaining with that overhead-to-
11 underground conversion program -- a specific project
12 would be the overhead-to-underground conversion of,
13 let's say, Line 100 between Tennessee Street and
14 Pensacola Street. And that's strictly an illustration.

15 Q So, would you say, then, a project is an
16 element of a program?

17 A Correct. So, underneath a program, you may
18 have multiple projects.

19 Q And so, would you say project-level
20 information is a location, when you mention -- in your
21 example? It's more location information?

22 A Right. I like to call it street-level detail
23 as well.

24 Q And what's the purpose of requiring that type
25 of information about projects?

1 A It's to assist in evaluating those -- those
2 parts of the statute, Subsection 4, specifically looking
3 at the costs and the benefits as well as evaluating the
4 rate impact.

5 Q And what is the purpose of the cost-data
6 requirements in the rule?

7 A Again, to maintain what the -- Parts C and D,
8 evaluating the cost and benefits of the projects as well
9 as the rate impact.

10 Q Will the information obtained by the proposed
11 rule allow the Commission to make this determination, as
12 far as rate impact, I believe you said?

13 A Yes.

14 Q How?

15 A It -- well, I would first state that the rule
16 explicitly requires that the utilities provide three
17 years of rate impact, but also this is really -- what
18 we're getting with this section is getting additional
19 detail under the -- that rate impact as well.

20 Q Okay. And now I'm going to turn a little bit
21 to the development -- the rulemaking development
22 process, if that's okay. Specifically with this same
23 rule, 25-6.030, the plan rule, can you describe your
24 process with the development of the rule?

25 A Yes, ma'am, I was at the -- there was two

1 workshops held. I asked and answered questions at the
2 workshops, received input from the stakeholders. I was
3 also present at the October 3rd agenda conference where
4 the Commission proposed the rule. I was also present at
5 the November 5th public hearing that was held, and I
6 answered questions at that hearing.

7 Q You stated that you heard comments about the
8 rule during the process?

9 A Correct.

10 Q What did most of the comments pertain to, with
11 regards to the plan rule?

12 A I guess there's not a specific metric, but it
13 seemed like the majority of consideration that we gave
14 was to the -- the level of the detail included in the
15 rule.

16 Q Okay. And did you -- as far as the level-of-
17 the-detail comments -- who made comments on level of
18 detail, from your recollection?

19 A My recollection is all of the utilities that
20 were participating, the Office of Public Counsel --
21 those are the ones that I can say with certainty gave
22 comment on that.

23 Q And what were their comments? Just generally.

24 A OPC advocated for more detail. I believe they
25 were supportive of staff's originally-drafted rule that

1 had three years of detail.

2 The utilities were advocating for one year of
3 detail. That's -- that's it.

4 Q Okay. And did you hear OPC's witness,
5 Mr. Willis, testify today? Were you here -- present for
6 that?

7 A Yes, ma'am.

8 Q What's your opinion on his testimony regarding
9 the Commission's ability to estimate rate impact of a
10 storm-protection plan?

11 A I -- generally, I disagree with it. One of
12 the things that -- that hasn't been discussed is the
13 rate impact is actually made up of sort of two
14 components: the revenue requirement as well as the
15 forecast.

16 The additional level of detail, regardless of
17 how many years, doesn't do anything for the forecast of
18 sales -- I think I had said load forecast. I meant the
19 forecasted sales. So, there's going to be inaccuracies.
20 And also, it is just an estimate. So, I think, with the
21 information that's being required in the proposed rule,
22 I believe a reasonable estimate can be determined.

23 Q Okay. Do you believe that the plan rule
24 should require the utility to detail what it may
25 ultimately seek in base rates or through a clause?

1 A No, I don't see that as -- I don't see
2 anywhere in the statute where that's required for the
3 plan. So, no, it should not have a bearing on the
4 determination of whether or not a plan should be
5 approved or denied.

6 Q Okay. And you stated that you heard some
7 comments from the utilities for less detail in the rule?

8 A Correct.

9 Q Do you recall what those reasons were?

10 A Yes. One, it was a -- essentially a work
11 product that they didn't currently use, so it would be
12 something that they were basically creating just for
13 this filing.

14 Also, there was concern with the -- you know,
15 as you go out in time, the inaccuracy -- or I shouldn't
16 say the inaccuracy -- but essentially they said years
17 two and three would be stale by the time that it was
18 presented.

19 And there is also some concern with what they
20 had referred to as customer, I guess, satisfaction --
21 one of our Commissioners called it customer confusion --
22 where essentially this list of projects will be put out
23 there. Customers, whether it be a city or a
24 government -- some sort of government, would see this
25 list and then have expectations that those projects

1 would take place.

2 And then if they're removed, that would sort
3 of create a -- I think it would be customer frustration,
4 quite frankly. And there's concern with that.

5 Q Do you believe that there's some merit to
6 those concerns?

7 A Yes, I do, and that's based on my experience
8 of customer phone calls regarding undergrounding
9 specifically, but also -- well, I'll leave it at that.

10 Q Okay. Just to wrap up the process a little
11 bit more, you mentioned the next step, I believe, after
12 the workshops and so forth was the Commission meeting on
13 the rule on October 3rd. Can you please explain the
14 purpose of that meeting.

15 A Yes. That was an opportunity for the
16 Commissioners to hear from the stakeholders, also hear
17 from staff as well as one another. And that was at that
18 agenda conference. Our -- our recommendation was
19 presented with staff's draft rule attached to that
20 recommendation.

21 Q Okay. And when you say agenda conference, do
22 you mean -- what do you mean by that?

23 A That is the Commission's meeting where they
24 vote on items.

25 Q And so, was there a staff recommendation filed

1 prior to this meeting --

2 A Yes.

3 Q -- of the agenda conference?

4 A Correct. I believe that was September 20th
5 that was filed.

6 Q And what's the purpose of the -- was the
7 purpose of staff's recommendation?

8 A It is essentially a memorandum or a document
9 that provides staff's opinion or analysis on an item.
10 And specifically, to this one, it gave staff's opinion
11 on the -- the draft rule and it -- appended to that was
12 staff's draft rule. And it's really a summation of all
13 of staff's views. So, that takes into account legal
14 staff, economists, engineers, as well as accountants.

15 Q Did it also include stakeholder comments on
16 the rules?

17 A That's correct. There was a summary of some
18 of the overarching themes, I think, was the way it was
19 titled in the recommendation and discussed the
20 stakeholder's comments.

21 Q And in its recommendation, with regards to
22 level of detail, what did staff recommend in its draft-
23 rule language for the plan rule?

24 A In going back to what I refer to as the
25 street-level detail, staff recommended three years of

1 street-level detail for projects.

2 Q And I think you stated OPC agreed with staff's
3 recommendation on that?

4 A Correct, they agreed on -- on that point, yes.

5 Q What was the purpose behind staff initially
6 recommending that amount of project-level detail for all
7 three years?

8 A Some of this was touched on by -- by my
9 director, who spoke earlier. Part of the thought there
10 was looking at the Commission's authority to modify a
11 plan. The thought was that there would want to be
12 visibility as to the moving of projects and, as rate
13 impact may be adjusted, what pro- -- projects would
14 slide in and out of a year.

15 Q Could the uti- -- could the Commission still
16 have enough information to modify the plan --

17 A Yes.

18 Q -- the proposed rules? Okay.

19 A Yes, ma'am.

20 Q Okay. Were there other reasons for staff
21 recommending project-level detail?

22 A Yes, there was also a thought that it could
23 create a baseline, once the -- if any cost recovery was
24 sought through the storm-protection cost-recovery
25 clause.

1 Q Does the statute expressly require utilities
2 to file this project-level detail that staff
3 recommended?

4 A No, it does not.

5 Q In your opinion, are there various ways that
6 the rules could have been written and still met the
7 four-bucket criteria that you referred to in the
8 statute?

9 A Certainly.

10 Q And did the Commission make a decision on the
11 rule language at that October 3rd meeting?

12 A Yes, they did.

13 Q And what did the Commission ultimately decide
14 with respect to the level of program and project detail
15 in the plan rule?

16 A The Commission ultimately decided that street-
17 level detail was necessary for the first year. And
18 then, years two and three, it would be information
19 identifying the number of projects expected to be
20 completed and a cost for those projects.

21 Q Okay. So, what's the difference between the
22 Commission's proposed rules and the version that staff
23 recommended, with regards to level of detail?

24 A It's the amount of detail that's contained in
25 years two and three of the plan.

1 Q And your opinion is -- well, first -- okay.
2 With regards to level of detail, does the plan rule
3 still require -- as proposed -- does the plan rule, as
4 proposed, require both program- and project-level
5 detail?

6 A Yes, it does.

7 Q And in your opinion, is requiring the
8 utilities to file the same amount of project-level
9 detail all three years necessary for the Commission to
10 evaluate a plan?

11 A No, it's not.

12 Q So, in your opinion, is the level of detail
13 required by the Commission's proposed rules adequate to
14 implement a plan?

15 A Yes, ma'am.

16 Q Implement this -- is it adequate to implement
17 the statutory criteria?

18 A Yes.

19 Q Do you believe the utilities -- strike that.
20 Does the proposed rule require the utilities
21 to file enough information for the Commission to make an
22 informed decision?

23 A Yes.

24 Q Now I'm going to talk to you about what it
25 means when a plan is actually approved at the

1 Commission. When a utility files the information
2 required by this rule, does it mean a plan is approved?

3 A No, it does not.

4 Q What will happen once all the information
5 required by the rule is filed?

6 A That would, then, be the time that the
7 Commission and any intervening parties would have the
8 opportunity to issue discovery on what's in the plan.
9 You would also have the opportunity to begin review of
10 the plan.

11 Q Will the Commission have a hearing?

12 A That's correct.

13 Q And so, under that -- and in that hearing,
14 you're saying op- -- there will be an opportunity for
15 discovery --

16 A Yes, ma'am.

17 Q -- within the framework of the hearing
18 process.

19 And under the framework of the plan rule, can
20 the Commission staff or a party, such as OPC, conduct
21 discovery on the plan?

22 A Yes.

23 Q And if there was a concern about what a
24 utility was including or not including in its plan,
25 could Commission staff or a party, such as OPC, conduct

1 discovery on that concern?

2 A Yes, ma'am.

3 Q And once the hearing will be con- --
4 concluded, what will happen next?

5 A Assuming that there's not a decision made at
6 the hearing, again, staff would go back, write a
7 recommendation, take in any briefs from the parties, and
8 then present that to the Commission at a -- an agenda
9 conference. And then the Commission would vote upon
10 that.

11 Q So, the Commission will make the ultimate
12 determination on whether a plan is approved?

13 A Yes, they would make the ultimate decision on
14 whether or not the plan should be -- I lost track of the
15 precise words, but whether or not they -- it should be
16 approved, modified, or denied.

17 Q And if a plan is approved by the Commission,
18 what does that mean?

19 A It simply means that they found it to be in
20 the public interest.

21 Q Does it --

22 A -- the plan.

23 Q Sorry.

24 Does that mean that the utility's plan costs
25 are also approved?

1 A No, it doesn't.

2 Q Will customers' rates change at all when a
3 plan is approved?

4 A No.

5 Q Are utilities statutorily required to respond
6 to the Commission's request for information?

7 A I believe so, but I don't know that for
8 certain.

9 Q In your experience, has a utility ever refused
10 to respond to a Commission data request?

11 A It's -- has not been my experience, no.

12 MS. HARPER: No further questions.

13 THE COURT: Then I guess we'll go with
14 Mr. Nordby or --

15 MR. NORDBY: Well, let my -- my friends from
16 the other IOUs go first, if that's all right.

17 THE COURT: Sure. Who else would like to go?
18 TECO.

19 MR. MEANS: I will. Thank you, Your Honor. I
20 just have a few.

21 EXAMINATION

22 BY MR. MEANS:

23 Q Good afternoon.

24 A Good afternoon.

25 Q So, I just wanted to clarify one point. So,

1 under the statute, 366.96, the Commission can approve,
2 modify, or deny a plan; is that correct?

3 A Yes, sir, that's correct.

4 Q And, now, turning to the plan rule, 25-6.030,
5 Paragraph 3 and the Subparagraphs A through J -- those
6 set out the required contents of a plan; is that
7 correct?

8 A Yes, sir, that's correct.

9 Q Does Paragraph 3 of that rule set out the
10 criteria that the Commission will use to approve,
11 modify, or deny those plans?

12 A No, it does not.

13 Q And where are those criteria located, again?

14 A In Subsection 4 of the statute.

15 MR. MEANS: Okay. So -- okay. That's all.

16 THE COURT: Anything else from this side?

17 MR. BERNIER: No, sir.

18 MR. NORDBY: One -- one brief question.

19 THE COURT: Yes, sir.

20 EXAMINATION

21 BY MR. NORDBY:

22 Q Do you have the -- the storm-protection plan
23 rule in front of you?

24 A Yes, sir.

25 Q I'd like you to look at Subsection 4 of the

1 rule. Do you see that?

2 A Give me one second.

3 Q It starts with, "By June 1."

4 A Correct, I see that.

5 Q Okay. If you will, take a moment to read that
6 and then explain what that subsection of the rule is --
7 what's required by that subsection.

8 A That is an annual status report that is to
9 fulfill legislative requirement to provide an update of
10 the utilities' projects.

11 Q Okay. And what sort of information is
12 required in the annual status report?

13 A I'll -- I can just paraphrase real quickly:
14 An identification of all storm-protection-plan programs
15 and projects completed, actual cost and rate impacts
16 associated with the completed activities, and estimated
17 costs and rate impacts associated with the program's
18 plans to be completed in the next year.

19 Q Okay. So, in addition, then, to the level of
20 detail that will be in the prote- -- in the storm-
21 protection plan, itself, and in addition to any details
22 that come out through discovery before the adoption of
23 storm-protection plan, is it accurate to say that the
24 annual report will provide still more detail about the
25 types of programs and projects that are completed by

1 utilities under the plan?

2 A Yes, sir, that's correct.

3 MR. NORDBY: Thank you.

4 I don't have anything further.

5 THE COURT: Cross-examination?

6 MR. DAVID: Please.

7 EXAMINATION

8 BY MR. DAVID:

9 Q Mr. Graves, have you ever developed the
10 revenue requirements for rate impact for -- for a
11 utility or a rate case?

12 A I've not developed one for a utility. No, I
13 have not done that.

14 Q Have you developed one for a rate case?

15 A I have assisted in that. The Division of
16 Engineering is really sort of the starting point for
17 that within the PSC. A lot of times, we'll create a
18 number -- not create a number, but we'll justify a
19 number that will move forward to accountants.

20 We'll work with the accountants to make sure
21 the accounting treatment of that number is correct. And
22 then that goes on to economists, who develop the rates.

23 Q All right. But it's --

24 A So, from that standpoint for, for instance,
25 water cases, staff-assisted water cases, we'll do that

1 work for them.

2 Q Okay. But you -- you have to work with the
3 accountants who, then, give you the -- the revenue
4 requirements --

5 A Yes, sir, that's correct.

6 Q -- in those situations. Okay.

7 You said that, at one of the customer
8 meetings, that you heard from stakeholders, including
9 OPC. Do you remember making that comment?

10 A Yes, sir.

11 Q All right. Does that mean that you have --
12 there were people who have interest in the proposed
13 rules that also spoke? Did you include that in -- in
14 stakeholders, beyond OPC?

15 A Oh, yes, sir. So, for instance, I believe
16 FIPUG was present as well as FRF, if I'm understanding
17 your question.

18 Q And how -- how broadly do you define
19 "stakeholders"?

20 A I -- when I was referring to stakeholders in
21 this instance, I was referring to the people that
22 participated in the rule development.

23 Q Okay. And isn't an approved plan, under the
24 .030 rule, a prerequisite for clause recovery?

25 A They must first receive approval of the plan

1 for cost recovery in the clause.

2 Q Right. And then a recovery through the
3 clause, which is the .031 rule -- that would result in a
4 charge on a -- on a customer's bill, correct?

5 A I would defer to our witness for the .031
6 rule.

7 THE COURT: I think that's beyond the scope,
8 too, or she just --

9 MR. DAVID: Okay.

10 THE COURT: Were you just on the first rule?

11 THE WITNESS: Yes, sir.

12 THE COURT: 6-point- --

13 MR. DAVID: Okay.

14 THE COURT: Yeah.

15 MR. DAVID: I'll withdraw that.

16 BY MR. DAVID:

17 Q And as to -- specifically, you testified as to
18 6.030(3)(j).

19 A Yes, sir, that's correct.

20 Q You said that that -- that one -- the one that
21 states, "... Any other factors the utility requests the
22 Commission to consider," and you said it allowed
23 anything the IOUs thought they should submit and just --
24 anything -- I mean, "anything" is a pretty broad and
25 vague word, isn't it?

1 A I would agree. If I could, though, just very
2 quickly follow up. One, it's not been my experience
3 that the utilities sort of flippantly file things. They
4 would file things that make sense.

5 But also, again, this went back to our
6 definition in 2C. And I'm not trying to be cute here,
7 but from one of the workshops, I believe it was OPC's
8 representative there, in part, agreed with staff's
9 position on that, that you didn't want to allow 2C to
10 grow too large, but you wanted to still allow the
11 capability -- you didn't want to restrict the utilities
12 in what they could propose.

13 Q Okay. So, that --

14 A And just because it's offered up for
15 consideration does not mean that it's approved. It
16 would still be evaluated under the -- the statute as
17 well as other parts of the rule.

18 Q Okay. But -- so, are you saying that the
19 language in -- in 2C may need clarification as to how
20 it's currently written?

21 A No, sir. We try to keep that -- the scope in
22 that fairly tight, if you will.

23 And again, it goes back to kind of some of the
24 comments from the stakeholders that, let's keep that
25 tight, that way we don't have any un- -- unintended

1 consequences. And I believe the specific discussion was
2 on batteries.

3 But there's also recognition that, okay, these
4 may have a benefit that is in line with storm-protection
5 plan. So, don't want to restrict the utilities, but
6 also don't want to create too large a bucket of
7 facilities that were included in that definition.

8 Q Okay. And didn't want to -- to modify the --
9 the term "other," in "J" -- "any other." Instead of --
10 a modifier between "any" and "other"?

11 A Can you clarify that?

12 Q "J," as it's written, seems to state that it
13 is any other, and it says "any other."

14 A Correct, and the one that I was providing to
15 you was simply one example. I think there are other
16 instances where the additional information may be
17 considered in evaluating the plans.

18 MR. DAVID: That's all. Thank you.

19 THE COURT: Okay. And for the record, that's
20 Mr. David. I -- some of these parties -- are you
21 okay, court reporter? Sometimes I'm just pointing
22 and say, go. Okay. As long as you're okay -- I
23 have names if you need them.

24 So, Mr. Moyle.

25 MR. MOYLE: No questions.

1 THE COURT: Any -- excuse me.

2 MS. HARPER: I have a -- I have a few
3 questions -- just a few questions for redirect.

4 FURTHER EXAMINATION

5 BY MS. HARPER:

6 Q Mr. Graves, does a utility have to seek cost
7 recovery for the programs and projects it files in its
8 plan?

9 A No, they don't.

10 MS. FALL-FRY: We object to that. It's
11 outside the scope.

12 MS. HARPER: Well, Your Honor, they asked
13 about it.

14 MS. FALL-FRY: And he removed that.

15 THE COURT: Well, it's already -- it's already
16 in the record that they don't. So, you know, it's
17 repetitive, but it -- but -- and he's not the
18 expert on this. You've got someone coming up. So,
19 I'll sustain the objection.

20 BY MS. HARPER:

21 Q Mr. Graves, how many IO- -- how many IOUs are
22 in Florida?

23 A Five, currently.

24 Q And are -- go ahead.

25 A Currently five.

1 Q And are they all the same in terms of size?

2 A No, they're not. And that -- again, that goes
3 to the 3J. There is -- I believe our largest utility
4 provides service to roughly five million customers,
5 where our smallest provides service to roughly 30,000.

6 So, there is a large discrepancy where some --
7 where you want to create an opportunity for either the
8 smaller or the larger utility to present information
9 that's not explicitly provided in the rule.

10 Q And are they the same or different in terms of
11 how they generate power?

12 A Yes, they are. I believe it was talked about
13 earlier, FPUC does not have its own generation.

14 Q So, will their plans, under this rule, likely
15 vary?

16 A Yes.

17 And I -- I guess I do want to clarify. I
18 don't know that FPUC has its own generation. I know
19 that, historically, they've always purchased power.

20 THE COURT: They're not represented here
21 today; is that correct?

22 THE WITNESS: Correct, they're not.

23 THE COURT: They're -- they're the only I- --
24 IOU that's not?

25 THE WITNESS: Yes, sir.

1 BY MS. HARPER:

2 Q Was -- was the fact that the utilities are
3 different part of the consideration in developing 3J?

4 A Yes, ma'am.

5 MS. HARPER: No further questions.

6 THE COURT: Before you leave this witness,
7 were there some specific exhibits that you wanted
8 to put in with this witness, before we move on?

9 MS. HARPER: Not -- not for this witness. We
10 do have an exhibit -- two exhibits for the next
11 witness, Your Honor.

12 THE COURT: Okay. So, there's no --

13 MS. HARPER: No.

14 THE COURT: I mean, some of the stuff that you
15 talked about, the --

16 MS. HARPER: I think we moved in all the joint
17 exhibits --

18 THE COURT: We have.

19 MS. HARPER: -- earlier. So, I think that --
20 and the -- and the PSC exhibits as well, so --

21 THE COURT: Okay.

22 MS. HARPER: Yeah. Nothing he's specifically
23 going to testify to.

24 THE COURT: Okay. Next witness.

25 MR. KING: The PSC calls Mr. James Bremen.

1 THE COURT: Mr. Bremen.

2 And you, Mr. King, are going to be doing the
3 questioning of this witness?

4 MR. KING: I will. Yes, Mr. King will.

5 THE COURT: Okay. Good afternoon. Have a
6 seat.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Your name?

9 THE WITNESS: My name is James Bremen.

10 THE COURT: If you would, raise your right
11 hand, please.

12 Whereupon,

13 JAMES BREMEN

14 was called as a witness, having been first duly sworn to
15 speak the truth, the whole truth, and nothing but the
16 truth, was examined and testified as follows:

17 THE COURT: Mr. King.

18 MR. KING: Thank you.

19 EXAMINATION

20 BY MR. KING:

21 Q Good afternoon, Mr. Bremen.

22 Before we get started, do you have the PSC
23 Exhibits 1 and 2 up there? We're going to be referring
24 to those in your testimony. I just want to make sure
25 you have them.

1 A I do.

2 Q Okay.

3 THE COURT: Do you -- do I have them?

4 MR. KING: I think they're right there.

5 THE COURT: These --

6 MR. KING: Yeah.

7 THE COURT: These are mine? Okay. Thank you.

8 And they're already in, correct?

9 MR. KING: Yes.

10 THE COURT: Okay.

11 BY MR. KING:

12 Q Mr. Bremen, where do you work?

13 A At the Florida Public Service Commission.

14 Q And can you describe your work experience with
15 the Commission.

16 A Briefly, I've worked on electric-utility-
17 regulation matters, pretty much broad-spectrum on
18 everything having to do with distribution, reliability,
19 cost-recovery clauses, certain items in rate cases,
20 territorial disputes.

21 Q Okay. So, you do handle cost-recovery
22 clauses?

23 A Yes, I've worked on the Environmental Cost
24 Recovery Clause and the Nuclear Cost Recovery Clause.

25 Q Okay.

1 A And sometimes on the Fuel Clause, when needed.

2 Q What's the purpose for your testimony today?

3 A I'm here in support of the Commission's
4 adopted -- or proposed rule, 25-6.030.

5 Q Okay. We call that the clause rule, right?

6 A Clause rule.

7 Q Okay. Can you explain to me, at a very high
8 level, how Florida's investor-owned utilities recover
9 the costs to provide retail service to customers?

10 A There are two primary ways for a utility to
11 recover their ongoing cost: one is base rates and the
12 other is clauses.

13 Q And can you give us a very brief, basic
14 explanation of how the Commission sets base rates.

15 A It's a --

16 Q I qualified the question on purpose.

17 A Brief is good. It's a multi-disciplinary
18 effort that is rather intense.

19 THE COURT: That's it?

20 (Laughter.)

21 THE WITNESS: No, sir. I wish it were.

22 It covers a wide spectrum of matters, trying
23 to establish the appropriate revenue requirement
24 that a utility needs in order to recover the costs
25 that are expected. There's been some discussion

1 already in the record regarding test years.

2 What hasn't been discussed is that there's
3 also testimony presented regarding a rate of
4 return, how much would be reasonable. And that's
5 unique to the utility, the appropriate range of the
6 rate of return and the expectation of future costs
7 impacting the potential base rates that are set.

8 BY MR. KING:

9 Q And the other one you mentioned was co- -- did
10 you mention cost-recovery clauses as the second major
11 way to recover costs?

12 A Yes, sir.

13 Q Okay. How has the Commission established
14 cost-recovery clauses for electric utilities?

15 A Simply stated, for every year that the utility
16 wants to recover its incurred costs, it has to submit
17 three filings: a projection, an estimated true-up, and
18 then a final true-up.

19 Q Okay. Has the Legislature created any cost-
20 recovery clauses for the electric utilities prior to
21 2018?

22 A Yes, I believe there's three: the Energy
23 Conservation Clause, back in 1980, I believe. I think
24 it was mentioned earlier today, too.

25 Q Okay.

1 A The Environmental Cost Recovery Clause in
2 1993, and the Nuclear Cost Re- -- what we call the
3 Nuclear Cost Recovery Clause. And that was in 2006.

4 Q And are there similarities in the clauses
5 established by the Legislature --

6 A Yes.

7 Q -- prior to the storm-protection plan?

8 A Yes, they -- they all followed the process I
9 described where utilities have to submit projections,
10 estimated true-ups, and final true-ups for every year
11 they want cost recovery.

12 Q Okay. And when that information gets filed,
13 what happens with it?

14 A When staff receives it, we begin doing our due
15 dil- -- diligence to reassure ourselves and to
16 demonstrate to the Commissioners that what's being
17 requested is appropriate regarding whatever the
18 constraints might exist, whether they be statutory,
19 base-rate conditions, or whatever.

20 Q Okay. And after the consideration of all this
21 information, is there a -- a factor that is developed?

22 A The clause process is a little bit different.
23 It -- it has its own cost-recovery price or price of
24 electricity. It's the ratio of the revenue requirements
25 divided by the sales that are expected for the period.

1 That's -- that's generally what is referred to as the
2 factor.

3 Q As a factor.

4 How would that factor appear on a customer's
5 bill?

6 A Probably doesn't on a stand-alone basis. It's
7 used by the electric utility to -- with the meter-
8 reading. If the meter turns five times, then the factor
9 is multiplied by five in order to determine the billing
10 amount for the month.

11 Q Okay. When you were talking about --

12 A But that's a simplistic presentation of it.

13 Q When you were talking about the filings that
14 are made in cost-recovery clauses, you mentioned
15 projection filings. So, in these projection filings, is
16 there an incentive for utilities to over-project the
17 costs they're going to incur?

18 A I'm not really -- because the true-up process
19 demonstrates the variance. So, the utilities were going
20 to have to refund the money if they under- -- over-
21 project. And if they under-project, they're going to
22 collect the money. So, there's really no incentive to
23 deliberately go about overstating the process.

24 If there is a -- if, in staff's due diligence,
25 there's a review that determines something that is

1 unreasonable, it would be probably a basis for staff
2 proposing an issue for the Commission to address on the
3 matter.

4 Q Okay. Did you participate in drafting the
5 clause rule that's 25-6.031?

6 A Yes.

7 Q Okay. Did you and other staff members model
8 that draft rule on an existing cost-recovery clause?

9 A Yes, primarily, the Nuclear Cost Recovery
10 Clause and the Environmental Cost Recovery Clause.

11 Q Okay. So, you mentioned the Environmental
12 Cost Recovery Clause, which is one we've talked about
13 earlier today.

14 PSC Exhibit 2 -- if you have it there with
15 you -- it's just a copy of that statute, .8255,
16 Environmental Cost Recovery Clause statute. Do you
17 agree with that?

18 A Yes.

19 Q And we've -- we've read this statute many
20 times, but can you read Subsection 2 -- and you can read
21 it to yourself since we've all read it plenty of times
22 now.

23 THE COURT: Are you looking at the statute or
24 the rule?

25 MR. KING: The statute, yes, the 336.8255, the

1 Environmental Cost Recovery Clause.

2 THE WITNESS: Okay.

3 BY MR. KING:

4 Q Can you summarize Subsection 2 for me.

5 A It states the purpose and the objective of the
6 Environmental Cost Recovery Clause.

7 Q Okay. What's the purpose and the objective of
8 that clause?

9 A To establish a process where the utility can
10 recover its prudently-incurred costs.

11 Q Okay. Moving down to Subsection 3 -- if you
12 could, read that one to yourself real quick.

13 A Okay.

14 Q Can you summarize Subsection 3 for me.

15 A That's a description of the clause process.

16 Q Okay. Is that the same clause process that's
17 used in the other, I believe, three clauses?

18 A It is.

19 Q Okay. Were you here when Mr. Willis was
20 testifying earlier?

21 A I was.

22 Q Okay. He mentioned a provision of this
23 statute that deals with removing costs from base rates.
24 Can you explain how that works.

25 A Well, when I worked on the environmental

1 clause, the -- I guess the sentence you're running --
2 you're focusing on is the last sentence on (2) of
3 366.8255. There's two ways to implement that
4 adjustment. Mr. Willis spoke to one.

5 The one that is a little bit more common to me
6 is the one where we adjust downward whenever we find
7 that something is already being recovered in base rate.
8 So, a utility might ask for five and we find that two is
9 already being recovered through base rates. So, we'd
10 allow the utility to recover only three.

11 Q And we've talked about some of the
12 similarities between the other cost-recovery clauses the
13 Commission runs and this one here. There -- are there
14 any significant differences between any of the cost-
15 recovery clauses?

16 A The differences between the clauses is the
17 nature of the activities and the costs that result from
18 them. The Fuel Clause focuses on fuel; Environmental
19 Clause focuses on environmental-compliance activities;
20 and the Nuclear Clause focuses on the costs to construct
21 a new nuclear power plant.

22 So, it's more of the nature of the action as
23 opposed to anything else.

24 Q Okay. If you will, look at PSC Exhibit 1 and
25 try to maybe simplify some of the testimony you've given

1 on how cost-recovery clauses operate. Let me know when
2 you have that.

3 A I have it.

4 Q Does this exhibit look familiar to you?

5 A Yes, it does.

6 Q Does it accurately reflect your testimony
7 about cost-recovery clauses so far?

8 A Yes, it does.

9 Q Okay. Can you summarize this first column for
10 me.

11 A Yes, these -- first column contains the three
12 filings that I spoke of earlier. The -- the utilities,
13 for year 2020, will be filing projections of what they
14 will be incurring in 2021.

15 They will also be filing an updated estimate
16 of the costs that they're expected to incur, the actions
17 they're supposed to be -- or think they're going to be
18 updating for 2020. And they will be filing whatever
19 level of revenue they collected or expect to collect
20 through 2020.

21 And then the third filing is the actually-
22 incurred costs. It is going to reflect all the costs
23 that the utility undertook. It generally also reflects
24 the actions the utility took, and it also reports the
25 total revenue requirement that they actually gathered

1 for a year. In this case, the example of it would be
2 from 2019.

3 Q So, moving over to that second column -- can
4 you explain that column for us.

5 A Yes, sir. I'm trying to represent what the
6 information on the left column is actually used for
7 and -- and how it's applied to the clause process.
8 Projections are used to assess the reasonableness of the
9 utilities' actions consistent with whatever the clause
10 is. And, for the most part, whatever is approved will
11 be reflected in bills that are set for recovery during
12 that year.

13 The estimated true-up filing is going to show
14 the level of actions the utility did and also the
15 revenue. So, we use that as a true-up of the revenue
16 requirements for the year 2020. And we'll be comparing
17 what the utility expects to finish collecting -- because
18 we're somewhere in the middle of the year for 2020 -- to
19 the costs that it expects to recover in 2020. So, we
20 only considered the difference between those two, and
21 that's why we called it an estimated true-up because the
22 year is not yet complete.

23 And similarly, the third filing is looked at
24 as a final true-up, which is all costs are known, all
25 actions are known. Whatever clauses require prudence

1 reviews -- that's the time prudence reviews are
2 completed.

3 And I will say that, all through this process,
4 we're observing and monitoring the utility's actions,
5 so, if something shows up, you know, there's a timely
6 response to whatever it is to be discovered.

7 And then all this information, all these
8 variances from the projections, the estimated, actual,
9 and final true-up -- they're added together and they
10 come up with a revenue requirement for -- that the
11 utility will be able to collect in the future year. In
12 this case, it will be 2021.

13 And that is, then, applied to the sales
14 forecast to come up with the factors for the billing
15 purposes. And those factors only remain in place for a
16 specified period, typically about 12 consecutive months,
17 to recover the costs that the Commission authorizes.
18 And that's one of the differences between base rates and
19 clauses is the factors expire; base rates don't.

20 Q So, in -- in that explanation you just gave,
21 I -- I heard you use two different terms: one was
22 "reasonableness"; one was "prudence." I know we've
23 talked about how the statute says that a utility can
24 recover its prudently-incurred costs. So, these are
25 terms that are kind of recurring.

1 Can you describe where in this process that
2 the Commission would determine that a cost is prudent.

3 A During the final true-up phase. In this case,
4 the prudence review would only be occurring over matters
5 pertaining to 2019.

6 Q Okay. I think earlier we heard the concept of
7 regulatory lag and -- did you -- do you remember hearing
8 questions about regulatory lag?

9 A I remember hearing that.

10 Q Okay. Would the -- the method that the
11 petitioner is wanting the Commission to engage in for
12 the cost-recovery-clause section -- would that lead to
13 regulatory lag?

14 A Yes, it would.

15 Q Okay.

16 A Because it would defer the timing of recovery
17 of costs from the time that the utility incurs the
18 costs.

19 Q Do customers have to pay for this regulatory
20 lag?

21 A Generally, yes.

22 Q Through --

23 A Well, depends on the nature of the costs. And
24 this is where you want to talk to an accountant, but
25 some costs accrue different carrying charges. One, the

1 capital -- the capitalized costs, for example, that --
2 that would -- the rate would be a little bit higher than
3 maybe a rate that might be assigned to an operating-and-
4 maintenance expense that hopefully doesn't get deferred,
5 but might be.

6 Q I may have asked this question before. I just
7 want to make sure. Are there any significant
8 differences in how the -- the current clauses will run
9 compared to how this new clause will run under the
10 proposed rule?

11 A The process is the same.

12 MR. KING: Okay. That's all I have, Your
13 Honor.

14 THE COURT: The current clauses being the
15 environmental clauses or the nuclear clauses, all
16 those -- is that what you understood that question
17 to be?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay.

20 THE WITNESS: That would also include the
21 Commission cl- -- established clauses, the Fuel
22 Clause and the Capacity Cost Recovery Clause, which
23 we really haven't talked about today.

24 THE COURT: Right. Right. Right, but it's
25 the same concept.

1 THE WITNESS: It's the same concept. All
2 clauses are the same.

3 THE COURT: Okay. I guess -- well, FP&L or
4 Gulf Power -- who's going to be doing the
5 questioning there?

6 EXAMINATION

7 BY MR. NORDBY:

8 Q Good afternoon, Mr. Bremen. Dan Nordby
9 representing FPL and Gulf. I just have a couple of
10 questions. I'll try not to repeat the questions that
11 your lawyers have already asked you.

12 The -- the statute here, 366.96, refers to
13 this proceeding as a storm-protection plan cost-recovery
14 clause; is that correct? I'm looking at Subsection 7 of
15 the statute.

16 A That is the name of this.

17 Q What significance do you attribute to the fact
18 that it is specifically called a cost-recovery clause?

19 A "Cost-recovery clause" is a term of art. It's
20 the process by which utilities can seek ongoing costs
21 that are excluded from base rates.

22 Q And you explained that in response to some of
23 your questions -- some of the questions from your
24 lawyers, right?

25 A Yes.

1 Q So, in the utility-regulatory arena, a cost-
2 recovery clause refers to a specific type of proceeding?

3 A Yes.

4 Q And there's no -- you have no reason to think
5 that a cost-recovery clause for storm-protection plans
6 should be treated differently from other cost-recovery-
7 clause proceedings; is that correct?

8 A That is correct.

9 Q Okay.

10 A Ab- -- absent statutory instruction to do
11 different, I wouldn't recommend doing different.

12 Q There's also been some discussion about
13 projected costs. Did you -- did you hear some of that
14 testimony?

15 A Yes.

16 Q In the -- in the clause proceedings?

17 A Yes.

18 Q When we're talking about projected costs in
19 the context of a cost-recovery clause -- I'll refer you
20 to the -- to the exhibit, PSC 1, the -- the
21 demonstrative exhibit there. Do you have that --

22 A Yeah.

23 Q -- document front of you?

24 A Yes.

25 Q So, this -- this document uses, as an example,

1 a cost-recovery-clause proceeding in the year 2020.

2 That proceeding would involve a discussion of projected
3 costs for the next year, 2021; is that correct?

4 A Yes.

5 Q When would customers start to be charged under
6 this proceeding, af- -- following a cost-recovery-clause
7 proceeding in 2020? When would their rates -- or their
8 bills change?

9 A Beginning in the billing cycle applicable to
10 2021.

11 Q So, the costs would be passed on to them on
12 their bills in 2021 for costs that are occurring in
13 2021?

14 A That's the intent of the clause process.

15 Q And through the remainder of the clause
16 process, any changes that happen along the way will be
17 trued-up, not once, but twice, to be sure that the costs
18 were actually incurred and were prudent?

19 A Yes.

20 MR. NORDBY: Okay. Nothing further.

21 THE COURT: Gulf Power?

22 MR. MEANS: I have a few questions, Your
23 Honor.

24 THE COURT: TECO.

25 Duke.

1 MR. MEANS: Sorry.

2 EXAMINATION

3 BY MR. MEANS:

4 Q Good afternoon. Malcolm Means, here on behalf
5 of Tampa Electric. I've got a few questions for you.
6 I'll be brief. You -- were you here for Mr. Willis'
7 testimony earlier?

8 A Yes.

9 Q Do you recall Mr. Willis' testimony or his
10 concern that the Office of Public Counsel and the
11 Commission may not be able to get all the information
12 they need through discovery to review cost-recovery-
13 clause petitions?

14 A Yes.

15 Q Can the Commission perform inspections and
16 audits of public utilities? Does it have that power?

17 A Yes.

18 Q Can the Commission send data requests to
19 utilities?

20 A Yes.

21 Q Do you know if utilities are required to
22 respond to data requests, by law?

23 A That's my understanding, but I'm not a lawyer.

24 MR. MEANS: Okay. I just had one other
25 question. Your Honor, I wanted to ask him about a

1 statute. And I actually don't have copies of it
2 for everybody because this is something that just
3 came up while I was sitting here, but if -- with
4 your permission, I'd like to ask him about a
5 statute.

6 THE COURT: You can ask him about a statute.

7 BY MR. MEANS:

8 Q Okay. 366.093. And if you could, please just
9 read the second sentence of Subparagraph 2, which I've
10 highlighted there for you.

11 A Out loud?

12 Q I'm sorry?

13 A Did you want me to read it out loud?

14 Q Yes, please.

15 A "Information which affects a utility's rates
16 or cost of service shall be considered relevant for
17 purposes of discovery in any docket or proceeding where
18 a utility's rates or costs of service are at issue."

19 Q Are a utility's rates or cost of service at
20 issue in a cost-recovery-clause proceeding?

21 A In a clause proceeding, yes.

22 MR. MEANS: Okay. No further questions.

23 THE COURT: Mr. Bernier?

24 MR. BERNIER: I have none. Thank you.

25 THE COURT: Okay. If I'm correct, cross?

1 MR. DAVID: Yes, Tad David for OPC.

2 THE COURT: Yes.

3 EXAMINATION

4 BY MR. DAVID:

5 Q Mr. Bremen, you're an engineer, not an
6 accountant, correct?

7 A My education is in engineering, yes.

8 Q Do you have any engineering in accounting -- I
9 mean, do you have any education --

10 A No, I don't have the first --

11 Q Do you have any education in accounting?

12 A Not -- no. So, I rely on the Division --

13 THE COURT: Is there any accounting in
14 engineering?

15 Go ahead.

16 THE WITNESS: We do a little bit of
17 everything, if we stay at Motel 6.

18 MR. DAVID: Exactly.

19 (Laughter.)

20 BY MR. DAVID:

21 Q You've testified that -- that the clause rule,
22 .031, as y'all refer to it, is based on the way the ECRC
23 clause works.

24 A Yes.

25 Q And in -- and you've even reviewed the -- the

1 language from the two statutes, Subsection 7 of 366.96,
2 and then Subsection 2 of 366.825, and -- and actually
3 Subsection 2, 3, and 4 of 366.825. You've addressed
4 those in your testimony, correct?

5 A Yes.

6 Q Doesn't -- and you can take any time you need,
7 but doesn't the language in 366.8255 contain terms and
8 words that are not included in 366.96?

9 A Yes.

10 Q And namely, the term "true-up" never -- it
11 appears in .8255, but does not appear in .96, correct?

12 A Correct.

13 Q Now, you testified about the way a true-up
14 works. And we've got the PSC 1 that lays it out in
15 graphic form. Isn't -- isn't a true-up basically --
16 it -- it will invariably be an assessment of amounts
17 that the customers have already paid; is that correct?

18 A Dol- -- dollar-wise, that's true. In the
19 clauses that have prudence reviews, there's always an
20 ongoing review to determine whether or not there's a
21 degree of reasonableness being undertaken by the
22 utility. And if there's questions about that, there
23 might be an adjustment for that. And if there's any
24 evidence of imprudence, it's incumbent on staff to make
25 the Commission aware of that.

1 So, the question of unreasonableness comes up
2 continuously throughout the clause process.

3 Q Right, but -- but the -- the -- the assess- --
4 the true-up assessment, though, is looking at dollars
5 that have already been collected by the utilities,
6 already paid by the customers, correct?

7 A It's truing up how much money the utility is
8 able to keep. So, the utility collects five, and it
9 turns out that their expenses are actually eight, the
10 true-up process recognizes there's an under-collection
11 and that that under-collection is a reasonable amount to
12 award the utility.

13 And the similarity occurs -- there's symmetry
14 on the true-up process. It's not all one way.

15 Q Is it your understanding that the Commission
16 has authority to override the express language of the
17 statute just to correct for regulatory lag?

18 A To the extent that calls for a legal
19 conclusion, I don't know.

20 What I would recommend to the Commissioners is
21 my professional opinion that we should take every
22 opportunity to decrease costs to customers. So, that
23 would not -- so, I would not encourage the
24 Commissioners, where there are lower-cost regulatory
25 options, to pursue the higher-cost ones.

1 Q But would that opinion still stand if the
2 statute required the higher costs?

3 A If it was explicit, yes.

4 Q Okay. So -- so, are you saying that the
5 Legislature was unaware of the other statutorily-created
6 clauses when it drafted .96 and -- and used different
7 language?

8 A I'm suggesting contrary to that. The
9 Legislature was very much aware of the prior statutes.

10 MR. DAVID: Okay. That's all. Thank you.

11 THE COURT: Mr. Moyle?

12 MR. MOYLE: I have some -- I have a brief
13 couple of questions.

14 EXAMINATION

15 BY MR. MOYLE:

16 Q You had said that, in this clause, that the
17 prudence review will take place at the final true-up,
18 kind of the third -- the third step in the -- in the
19 process; is that right?

20 A Yes.

21 Q But -- but the utilities will recover money
22 from the ratepayers before that third step, correct?

23 A The timing of collection begins before that
24 review, yes.

25 Q Okay. And -- and then how far in advance

1 before that review is it able to begin, under your
2 proposed rule?

3 A At least one year.

4 Q And the -- if -- and we talked about true-up.
5 What's the rate that's paid on true-up re- -- refunds,
6 if you will? It's kind of a time value of money issued,
7 if the utilities over-recover.

8 A Under which kind of clause mechanism: the
9 deferred-cost-recovery mechanism advocated by OPC or the
10 one we're proposing?

11 Q What you're proposing here.

12 A The only thing that we have to true-up is the
13 timing of the collection of the revenues. So, it's only
14 the time value of the money that would be the commercial
15 30-day paper rate.

16 Q Do you know what that is, as we sit here
17 today?

18 A No, I don't know what that rate is.

19 Q Do you know if there's an opportunity for
20 arbitrage with respect to collecting money from
21 ratepayers and earning more on it than you would on a
22 30-day commercial paper rate?

23 A I do not engage in that activity.

24 MR. MOYLE: That's all I have.

25 THE COURT: Any -- any further direct?

1 MR. KING: Just one second, Your Honor.

2 FURTHER EXAMINATION

3 BY MR. KING:

4 Q I just have two for you, Mr. Bremen. Do all
5 cost-recovery clauses allow for the recovery of
6 projected costs?

7 A Yes.

8 Q And in your opinion, does 366.96, when it uses
9 the term "cost-recovery clause" -- is the Legislature
10 using a term of art?

11 A Yes.

12 MR. KING: That's it. Thank you.

13 THE COURT: Mr. Nordby?

14 MR. NORDBY: Nothing further.

15 THE COURT: Anything else from the intervenors
16 on PSC's side?

17 Okay. Thank you very much for your testimony.

18 Next witness. Mr. David, are you -- I'm --

19 MR. KING: Mr. Fletcher.

20 THE COURT: Raise your right hand, please.

21 Whereupon,

22 BART FLETCHER

23 was called as a witness, having been first duly sworn to
24 speak the truth, the whole truth, and nothing but the
25 truth, was examined and testified as follows:

1 THE COURT: And your name, for the record.

2 MR. FLETCHER: Stephen Bart Fletcher.

3 THE COURT: Stephen Mark?

4 MR. FLETCHER: Stephen Bart Fletcher.

5 EXAMINATION

6 BY MR. KING:

7 Q Good afternoon, Mr. Fletcher. I imagine this
8 is going to be really short.

9 Can you give me an overview of your academic
10 background.

11 A Yes. I received my Associate's degree from
12 Tallahassee Community College in 1993. I also received
13 my Bachelor's Degree from Florida State in accounting
14 and finance.

15 Q Do you currently work at the Public Service
16 Commission?

17 A I do.

18 Q How long have you worked for the Commission?

19 A 22 years.

20 Q And what's your current position at the
21 Commission?

22 A I'm the bureau chief of Surveillance Rate
23 Filings.

24 Q And how long have you held that position?

25 A For five years.

1 Q Have you held any other positions at the
2 Commission?

3 A I have. For one year, I was the supervisor of
4 the surveillance section; for a little over five years,
5 the supervisor of the rate-filing section; as well as an
6 accounting analyst for over ten years. I had various
7 titles.

8 Q Okay. And what are your current duties?

9 A Current duties is I'm responsible for 11
10 technical analysts, two administrative assistants in the
11 Bureau of Surveillance and Rate Filings. We're
12 primarily charged with the accounting, financial review,
13 and evaluation of complex rate proceedings involving
14 electric, gas, water, and wastewater utilities as well
15 as the earning surveillance for these facil- --
16 utilities.

17 Q And I know, if -- if you were here earlier, we
18 talked about AFUDC. Do you remember that? Can you just
19 refresh us what AFUDC stands for.

20 A Yes, AFUDC stands for "allowance for funds
21 used during construction."

22 Q Okay. And can you give us a little refresher
23 explanation of what AFUDC is.

24 A I'll be brief. AFUDC is essentially the
25 carrying costs of funding an eligible utility-project

1 investment during its construction.

2 Q And how does the Commission determine whether
3 to allow a utility to collect AFUDC?

4 A For electric investor-owned utilities, the
5 Commission would determine if a utility has met the
6 requirements for AFUDC under Rule 25-6.0141, Florida
7 Administrative Code.

8 Q Okay. Great. So, there's a separate rule for
9 AFUDC is what you're saying?

10 A Yes.

11 Q And should the recovery of AFUDC be permitted
12 through the storm-protection-plan cost- recovery clause?

13 A If the Commission deems that a project is
14 eligible for recovery under Rule 25-6.0141, then
15 recovery of AFUDC should be permitted in the storm-
16 protection-plan clause.

17 Q Okay. And next, a question about the -- the
18 plan proceedings. If the Commission were to have
19 proposed rules that had the amount of detail in the
20 project-level filings that the petitioners would like,
21 would that change the way AFUDC is treated in the plan?

22 A No.

23 MR. KING: That's all I have, Your Honor.

24 THE COURT: Further, Mr. --

25 MR. NORDBY: Nothing from FPL, Gulf.

1 THE COURT: Any other intervenors, on behalf
2 of PSC's side?

3 MR. MEANS: No, sir.

4 THE COURT: Office of Public Counsel?

5 MR. DAVID: Just a couple, please.

6 EXAMINATION

7 BY MR. DAVID:

8 Q Mr. Fletcher, are you a CPA?

9 A I am not.

10 Q And when -- when Mr. Willis was employed at
11 the PSC, as he earlier testified, was he your director?

12 A He was at one time, yes.

13 MR. DAVID: No further questions.

14 THE COURT: Mr. Moyle?

15 MR. MOYLE: No questions.

16 THE COURT: Thank you very much -- oh, did you
17 have -- I'm sorry. No redirect on that?

18 MR. KING: No, Judge. I think the Commission
19 rests.

20 THE COURT: Commission rests.

21 THE WITNESS: Excused?

22 THE COURT: Thank you.

23 Do the util- -- do the utilities have some
24 more?

25 MR. NORDBY: Judge, as we're just past 3:00,

1 we have one witness, and I think it will be short.

2 THE COURT: Okay. So -- and for this -- how
3 about the other utilities? Do we have anything
4 else? Okay. So, we're about done here. Should --
5 should we do it one more time?

6 (Laughter.)

7 THE COURT: Okay. Your witness -- or did you
8 want to take a break first or did you want to go
9 ahead and --

10 MR. NORDBY: Why don't we take a five-minute
11 break --

12 THE COURT: That would be fine.

13 MR. NORDBY: -- with your indulgence.

14 THE COURT: That's about normal, five to ten.

15 (Brief recess.)

16 THE COURT: Okay. We've got one more witness.
17 Is that it?

18 MR. NORDBY: We're just -- I think PSC had --

19 MR. KING: Judge, before we get going with
20 FPL's witness, we just wanted to clarify and make
21 sure that our exhibits, PSC 1 through 7 were -- had
22 been admitted.

23 THE COURT: I believe they were, at the very
24 beginning --

25 MR. KING: Okay.

1 THE COURT: -- of the proceeding. I see that.

2 MR. KING: We thought so, too. We just wanted
3 to check and make sure.

4 THE COURT: They're there. I don't know if
5 you wanted to shore up any of them, but I don't --
6 you know, as far as hearsay, there -- there may be
7 some hearsay, but most of this is legal.

8 MR. KING: Yeah, I think we're okay, as far as
9 that goes and -- yeah, of course, anyone else can
10 object.

11 THE COURT: Okay. Next witness, Mr. Nordby.

12 MR. NORDBY: FPL calls Dave Bromley.

13 THE COURT: Yes, again, if you would, state
14 your name for the record.

15 THE WITNESS: Yes, my name is David Bromley.

16 THE COURT: Mr. Bromley, raise your right
17 hand.

18 Whereupon,

19 DAVID BROMLEY

20 was called as a witness, having been first duly sworn to
21 speak the truth, the whole truth, and nothing but the
22 truth, was examined and testified as follows:

23 EXAMINATION

24 BY MR. NORDBY:

25 Q Good afternoon, Mr. Bromley. Would you state

1 your job title, for the record.

2 A Yes, I'm manager of regulatory services for
3 the power delivery business unit. That's the business
4 unit for FPL that basically has control over the poles
5 and wires of FPL.

6 Q Briefly describe your educational background.

7 A Yes, I have a Bachelor of Arts degree in
8 business administration with concentration in accounting
9 from Otterbein College, a small college in Ohio.

10 Q And your job history since college?

11 A I had a few jobs prior to Florida Power &
12 Light. I joined Florida Power & Light in 1983. I've
13 particularly been involved in regulatory-agency
14 coordination my whole career with FPL.

15 The first part of my career, from 1983 to
16 1997, I was in a department that's known now as
17 regulatory affairs. They're responsible for
18 coordinating all of the activities before the Florida
19 Public Service Commission as well as FERC.

20 My responsibilities --

21 Q Sorry. Could you explain what FERC is, for
22 the record.

23 A Federal Energy Regulatory Commission.

24 Q Thank you.

25 A It primarily has oversight over transmission

1 facilities, so -- so, from 1983 to 1997, my
2 responsibilities -- primarily, I had -- I was a
3 coordinator as well as a supervisor, and I was
4 supervisor for accounting -- accounting matters that
5 were before the Florida Public Service Commission. That
6 would include the filing of the depreciation rates, rate
7 cases, AFUDC issues, that -- that type of nature.

8 And then in 1997, I joined -- I joined the
9 power-delivery business unit, which is where I'm
10 currently at.

11 Q You mentioned a little bit about your current
12 job responsibilities. Is there anything more that you
13 wanted to add on that?

14 A I've -- I've been involved in hardening
15 activities at the Florida Public Service Commission
16 since 2006 and 2007, when they initially held rule
17 hearings on their -- the current storm-hardening rule.
18 I participated in those workshops. I attended hearings.

19 There were settlements reached in that
20 particularly as it related to the level of detail
21 provided in storm-hardening plans, under the storm-
22 hardening rule. And then, of course, I participated in
23 these rule proceedings, both workshops as well as the
24 hearing.

25 Q Okay. Let's talk a little bit about the --

1 the pre-existing storm-hardening-plan rules. So, those
2 are not the ones at issue in this proceeding.

3 A Right.

4 Q Those are the ones that are -- have already
5 been adopted.

6 A Right.

7 Q What do those plans call for?

8 A So, those -- that storm-hardening -- those
9 storm-hardening plans are filed under 25-6.0342. And
10 I've actually been responsible for coordinating and
11 preparing and filing FPL's plans since 2007. So, that
12 would include the plans for 2007, 2010, '13, '16, and
13 '19.

14 And those plans for FPL -- there's been
15 some -- some testimony today that's not quite accurate,
16 but those plans for FPL only include the storm-
17 hardening plan fi- -- the storm-hardening that FPL does
18 to harden its feeders, which are the main distribution
19 lines that normally follow along major thoroughfares;
20 and then, most recently, the undergrounding in our
21 most-recent plan, the undergrounding of laterals; and
22 then we also have a transmission-hardening plan that
23 replaces wood transmission po- -- wood transmission
24 structures with concrete poles.

25 Q You mentioned a couple of terms. I just want

1 to make sure that they're clearly defined for the
2 record.

3 First one is "feeders." Could you explain to
4 the administrative law judge what a feeder is.

5 A Yeah. So, maybe I should start at the
6 beginning, where power is -- electricity is generated,
7 which is the power plant. Then we have transmission
8 lines that take the electricity from the power plant to
9 substations. And from the substations, that's where we
10 have our feeders that come out of the substations,
11 generally going along major thoroughfares.

12 Laterals, then, pull off of feeders, go back
13 into the neighborhoods. And then, back in the
14 neighborhoods, you have a service lateral that actually
15 goes from the lateral to the -- to the home.

16 Q And you said under the pre-existing storm-
17 hardening plan, one aspect of FPL's was the hardening of
18 feeders and laterals; is that correct?

19 A That's right. Yeah.

20 Q Could you explain a little about -- about --
21 bit about what hardening is, in this context.

22 A Yeah. So, it's -- it's essentially making the
23 infrastructure more storm-resilient. So, for feeders --
24 we harden a feeder typically either by replacing or
25 putting in stronger poles in place of current -- current

1 poles. Sometimes it includes putting in additional
2 poles. It increases the wind-load criteria, wind-
3 loading criteria for a particular feeder.

4 And for undergrounding, which was in our most-
5 current plan, that is -- we have a pilot that is going
6 on right now where we are undergrounding -- because of
7 the performance that we saw, lateral or underground
8 facilities, in the most-recent storms that FPL had, we
9 initiated a pilot to underground certain facilities
10 because those facilities performed much better than
11 overhead facilities during storms.

12 Q So, what are some of the specific benefits
13 both to a utility company and to customers from these
14 hardening activities?

15 A The goal was to try to eliminate or mitigate
16 damage from the storms that, then, reduces restoration
17 costs as well as restoration times.

18 Q And there are costs associated with the
19 hardening?

20 A There are, yes. And we're required to not
21 only provided costs in our hardening filings, but also
22 benefits.

23 Q How are those costs recovered by utilities
24 under the pre-existing storm-hardening plan?

25 A Those are recovered through base rates.

1 Q And how -- how frequently are base rates
2 adjusted? In general.

3 A For FPL, it's been on -- on a three- to
4 four-year time frame, most-recently.

5 Q Okay. Are you familiar with the -- the new
6 statute that was adopted this year, 366.96?

7 A Yes.

8 Q In what context did you become familiar with
9 that statute?

10 A I actually was -- one of my job
11 responsibilities is to look at new laws and legislation.
12 That's -- that could be paths that might have an impact
13 on the power-delivery business unit.

14 And so, as this one became projected that it
15 might have -- might get passed, I was asked to take a
16 look at it. So, I saw various drafts of the rule and
17 then, of course, the final rule.

18 Q To the extent you know, what was the genesis
19 of this storm-protection-plan statute? Where did --
20 where did it come from?

21 A Well, I think utilities were involved --

22 MR. MOYLE: I'm going to object. It was filed
23 by legislators and it requires him to speculate as
24 to what the legislators had in mind when they filed
25 it.

1 MR. NORDBY: I'll -- I'll withdraw the
2 question. We can stipulate --

3 THE COURT: I was going --

4 MR. NORDBY: -- that the Legislature --

5 THE COURT: -- to overrule it.

6 MR. NORDBY: -- passed the statute.

7 THE COURT: I was going to overrule it, but if
8 you're withdrawing it, I won't have to even rule.

9 BY MR. NORDBY:

10 Q How is the new storm-protection-plan statute
11 different from the pre-existing storm-hardening-plan
12 rule?

13 A I think it -- in general, it -- it's very
14 similar. There are some differences, nuances.

15 So, for instance, for FPL -- right now, we
16 only have, as I mentioned, three -- three programs that
17 are current storm-hardening plan. This, I think, will
18 allow some additional programs that, right now, are in
19 base rates that could make their way over into storm-
20 protection-plan clause filing.

21 And that would include, for instance, pole
22 distribution and transmission-pole inspections,
23 vegetation management -- transmission-and-distribution,
24 vegetation-management programs are examples of that.

25 THE COURT: Is that the main difference: this

1 is a clause-filing-type situation as opposed to the
2 old storm hardening?

3 THE WITNESS: Yes. It allows -- it -- it
4 helps to prevent or mitigate the regulatory lag.
5 So, it -- you know, utilities can take on, perhaps,
6 more than they would, knowing that they're going to
7 get faster recovery of the costs.

8 THE COURT: The other storm hardening was just
9 based on base rates?

10 THE WITNESS: That's correct, recovery was
11 through base rates.

12 BY MR. NORDBY:

13 Q Do these sorts of differences provide
14 incentives for investor-owned utilities to engage in
15 these hardening efforts?

16 A Yeah, I think that's part of -- that is part
17 of the purpose. FPL has been fully engaged really since
18 2006 in, you know, in storm-hardening our facilities.
19 We expect to be through with hardening all of our
20 feeders, 3,000 or so feeders, in 2004 -- I mean, I'm
21 sorry -- 2024. Our transmission poles -- we expect to
22 have them all changed out by 2022. So, we've already
23 done quite a bit.

24 Certainly, one that we're pursuing right now
25 is the undergrounding of laterals, which could be a big

1 one. And then there -- there might be new ones that we
2 haven't thought of yet.

3 Q Okay. And a hardened electric-utility
4 infrastructure, I believe you testified earlier, can
5 reduce outage times to customers; is that correct?

6 A Yeah, that's -- that's -- that's the intent.

7 Q And does it also have an effect on the
8 restoration cost, if there are outages?

9 A Yes, both -- both of those.

10 Q And that's a pos- -- positive effect?

11 A That's right.

12 Q Let's talk, now, about the storm-protection-
13 plan rulemaking process. Were you involved with that
14 process?

15 A Yes.

16 Q Okay.

17 A I attended both workshops as well as the
18 hearing -- the agenda conference and the hearing.

19 Q Okay. Were those workshops and then the
20 public hearing fairly-well-attended by the stakeholders?

21 A Yes. A lot of the people in this room were in
22 attendance, and others.

23 Q Did FPL have some concerns with the initial
24 draft of the rules that was presented at the first
25 workshop by Commission staff?

1 A We did. We had commented on several things
2 that we had concerns with. The big one, though -- and
3 we've heard some of the discussion today -- was the one-
4 year-versus-three-year project-level details.

5 Q Why -- why was that problematic for FPL?

6 A This is -- this is not a new issue that
7 relates only to the SPP plan. This is something that we
8 also had quite a bit of discussions with, with that.
9 The original storm-hard- -- storm-hardening plan, where
10 we, utilities, we, FPL, just don't have that level of
11 detail for years two or three.

12 And the reason we don't is that it -- the
13 information is going to change. We try to utilize the
14 most-recent information available to identify those
15 projects that we're going to do in years two and three.

16 So, to -- so, that would include things like
17 performance of those facilities during a storm. It
18 could involve day-to-day reliability and causes of
19 outages: Is vegetation associated with those outages.
20 Are there other projects that FPL is doing that maybe we
21 can look at utilization of resources better. Maybe we
22 have other work going on that it makes sense to do this
23 feeder at the same time we're doing this work.

24 So, there's a lot of things that go into that
25 prioritization and, identifying those things in advance,

1 we -- we just know they're going to change. So, we
2 don't do that currently right now. And you know, we
3 haven't -- those were the same reasons that we agreed to
4 provide one year of project-level detail back in the
5 original storm-hardening plans and program-level data
6 for years two and three.

7 Now, we -- we ultimately provide project-level
8 detail for those years, two and three. We provide
9 project-level detail every year when we make our annual
10 reliability report filing that shows all of the projects
11 that we had for the previous year, the status of those
12 projects, whether complete or not, and then we, at that
13 time, also lay out the project-level detail for the
14 current year that we're going to do.

15 So, while we only have in our plan at that
16 time one year of -- of project-level detail, the next
17 year, we provide that level -- that -- that information
18 to the Commission for year two, and then, when year
19 three comes, we provide that same level of detailed
20 information.

21 And we would do the same thing here in the
22 storm cost-recovery filing.

23 THE COURT: Does the rule, as written, provide
24 for that, for the level of detail of the current
25 year and then the -- the year before? Is that

1 how --

2 THE WITNESS: The plan rule does not.

3 THE COURT: Okay.

4 THE WITNESS: The plan rule says one year of
5 data, program costs for two and three, but the
6 cost-recovery rule -- when they -- when the --
7 there's language in there that refers to the
8 estimated projects that are going on.

9 So, project-level detail would be provided
10 there and then, in the final true-up, project-level
11 detail would be provided there. So, the issue
12 really is just a timing issue. You know, it's not
13 available when we develop the plan, but it's
14 available with time for it to be evaluated for
15 prudence, to determine whether it's in base rates
16 or not, you know, in the cost-recovery proceeding.
17 And it is -- it is laid out there that it's going
18 to be provided every year.

19 BY MR. NORDBY:

20 Q So, just to be specific, the concern that FP&L
21 had on the level of detail was in relation to the plan
22 rule and not with relation to the level of detail that
23 was required at the time FP&L went to recover the costs
24 in the clause proceeding?

25 A That's right. It's primarily the -- it dealt

1 with the plan rule. There was some language -- similar
2 adjustments made to the cost-recovery rule, but in the
3 end, project-level detail will be available in the
4 estimated true-up and the -- the actual final true-up,
5 such that, you know, Public Counsel and others can
6 review those.

7 Q So, as -- so, project-level detail will be
8 provided in those clause filings.

9 A That's correct.

10 Q If the Commission, Commission staff, or Public
11 Counsel wanted more information, would there be an
12 opportunity for them to receive that information in the
13 clause -- in a clause proceeding?

14 A Of course, that's -- as always, there's the
15 discovery process that we -- we've heard about, but the
16 project-level detail that has been discussed today not
17 being available, it will be available in the cost-
18 recovery clause --

19 Q Okay. So --

20 A -- for years two and three, ultimately.

21 Q So, let's go back to the -- to the plan rule,
22 then, and some of the level of details there. You
23 mentioned a couple of concerns. One of them was the --
24 the accuracy of the project-level detail in the out
25 years. You mentioned specifically vegetation growth.

1 Can you explain a little bit more about why
2 vegetation growth may change the -- the order or the
3 duration of different projects in the out years?

4 A Yeah, it's not so much the vegetation growth;
5 it's whether vegetation was a cause of the outages for a
6 particular feeder or lateral. So, we want -- we want to
7 use the most-current information available. Maybe there
8 was a storm -- you know, when we provide the information
9 in year one, there's a storm that year, that, then,
10 affects how we prioritize the projects for year two.

11 And maybe another storm that happens that
12 would end up, you know, as a result of the performance
13 of those storms, we're prioritizing what -- what gets
14 done in year three.

15 So, vegetation outages would be one -- just
16 one of the considerations, but I mentioned there were
17 other things: day-to-day reliability results,
18 coordinating work with other work that's going on, and
19 trying to utilize resources efficiently.

20 Q Now, you're not an engineer; is that correct?

21 A I'm not an engineer.

22 Q I'm going to ask you some lay-type questions
23 on this next issue.

24 A Okay.

25 Q Talk a little bit about the process for

1 undergrounding lateral lines. These are the lines that
2 go into the neighborhoods; is that right?

3 A That's correct.

4 Q What's involved, not from an engineering
5 perspective, but what sorts of things does FPL have to
6 do in order to underground a line across a number of
7 different individual parcels?

8 A Well, one of the things that we have to do is
9 get authorization from customers to locate certain
10 facility -- underground facilities, which would also
11 include the -- the transformer boxes, which are, for
12 FPL, these green boxes that are generally on private
13 property, that we have to get permission from customers
14 to put those on their property.

15 And, in fact, a lot of times, customers don't
16 want those on their property, naturally. And so, if
17 that's the case, and we can't install that particular
18 lateral underground, we have to -- we have to move on.

19 So, that's -- that's an example of one.

20 Q So -- so, if FP&L, as -- as an example, had in
21 its plan in year three to underground all of the lateral
22 lines on Elm Street, and one of the property owners on
23 Elm Street said, I don't want a transmission box in the
24 middle of my front yard, I'm not going to let you do
25 that, then what would FPL have to do?

1 A We -- we would move on and try to find another
2 replacement lateral.

3 Q Were there any other -- any other concerns
4 that requiring that much detail, inaccurate detail in
5 the out years, cause for FPL?

6 A Well, just -- just by providing that, it
7 creates unnecessary cost for the utility. As I
8 mentioned, we don't do that right now. We don't plan
9 for those projects or lay out those projects for years
10 two or three. So, it would create cost for the utility.

11 If we fi- -- ended up producing or preparing
12 that information and filing it, we would -- I know we
13 would get questions from staff as well as the
14 intervenors on those particular projects, when, in
15 reality, when we get to finally do those years, those
16 projects may not even be there. So, it would cause
17 unnecessary work and rework and cost on really all of
18 the participants here.

19 And then, it was mentioned also about the
20 customer confusion and customer dissatisfaction. And I
21 think this would probably -- for FPL, would -- would
22 apply to our underground lateral program where
23 municipalities are very interested in -- in what we're
24 doing in an underground basis because it -- if they have
25 plans to do undergrounding and they see -- which they

1 may now have to pay for. If they see we have plans to
2 underground certain facilities, they might forego those
3 plans to pursue that.

4 And then, when we get to year three, they find
5 out, hey, we're -- you said you were going to do that
6 lateral there, where's that lateral at, and it's like,
7 well, you know, plans -- our plans changed. So, we
8 just -- we believe that will cause a lot of angst.

9 Q Requiring project-level certainty in year
10 three may cause some -- some unjustified expectations
11 about what might happen?

12 A That's right.

13 Q Okay. So, you had mentioned three primary
14 areas of concern: the inaccuracies of the project-level
15 detail in the out year, the -- the cost of developing
16 the details for the out year, and -- and then the
17 potential for customer confusion with this unjustified
18 expectations for project-level detail in the out year.

19 Are those the three primary areas that you
20 discussed at the -- at the workshops?

21 A Yes.

22 Q Did other investor-owned utilities at the
23 workshops provide similar input to Commission staff as
24 to the draft of the rule?

25 A Yeah, pretty much identical.

1 Q These issues aren't unique to FPL.

2 A That's right.

3 Q Is it your experience in rulemaking workshops
4 that stakeholder input is -- is useful in developing
5 regulations?

6 A Yeah, I think it's -- it's useful for not only
7 utilities, but for the Commission and -- as well as
8 intervenors, for everybody to sort of understand, you
9 know, all that's involved in -- in associated with the
10 new rules.

11 Q I don't want to talk in detail about the
12 clause rule because the problems were primarily in the
13 plan rule, but is detail required in the clause rule as
14 far as cost recovery?

15 A Yes. As I mentioned, you know, in year one,
16 we'll provide project-level detail, but then there's
17 also provisions in the cost-recovery clause rule that
18 requires project-level detail later on in the process.
19 You know, Jim Bremen talked about a three-year process.

20 So, in -- you know, years two and -- years two
21 and three, we will -- we are required, and it's in the
22 rule now, for us to provide project-level detail for --
23 for those periods.

24 Q In these past storm-hardening-plan filings,
25 has the Office of Public Counsel ever intervened to

1 question the level of detail that was provided? To your
2 knowledge.

3 A No. I've been involved in all of those, and
4 as -- as they mentioned, they've not participated in
5 those proceedings, and I can also share that, during
6 rate-case proceedings, they've never requested project-
7 level detail in reviewing costs for storm-hardening
8 plans.

9 Q Do you agree that, in these clause
10 proceedings, FPL and any utility will bear the burden of
11 proof in proving the -- that their costs were prudently
12 incurred?

13 A Yes, we al- -- always have that burden, yes.

14 Q Will the Public Service Commission have enough
15 information in the plan filing to make an informed
16 decision as to approval of the plan?

17 A Yes. Yes, they will have project-level detail
18 for year one. They'll have program-level detail for
19 year two. And what that means -- program-level detail
20 means -- so, project-level detail, we'll give them, you
21 know, there's 300 feeders that we're going to do in year
22 one, and we're going to do 150 laterals.

23 In year two, we'll -- we'll -- this is just an
24 example -- we'll provide the Commission -- we're going
25 to do 400 feeders and 200 laterals, and the total cost

1 for that is "X."

2 So, we'll provide that for years two and three
3 so that they know what the -- the level is, how many
4 we're planning to do, as well as the estimated cost
5 associated with those. And there will be enough level
6 of detail there to provide the annual revenue
7 requirements as well as the rate impacts.

8 Q And -- and even --

9 A And --

10 Q And even further detail will be provided in
11 the reliability report and in the clause proceedings.

12 A Yeah, similar-type project-level of detail,
13 yes.

14 Q Does FPL have the ability to compile project-
15 level detail for three years out in the future with any
16 great degree of accuracy and reliability?

17 A We do have the ability to -- to produce that
18 information. The reliability of it, I -- I would
19 question as to -- as to -- for all the reasons that
20 I've -- I've discussed. It would -- it's definitely
21 going to be different. And providing it in advance, I
22 think, just causes unnecessary cost, confusion for
23 customers, and potentially dissatisfaction.

24 MR. NORDBY: I don't have anything further.

25 THE COURT: Anything from the aligned PSC, on

1 this witness, for further direct?

2 MR. KING: We have nothing.

3 THE COURT: Okay. Thank you.

4 Office of Public Counsel, Mr. David?

5 MR. DAVID: Yes, Tad David for the Office of
6 Public Counsel.

7 EXAMINATION

8 BY MR. DAVID:

9 Q Mr. Bromley, you noted the -- the issues with
10 providing three years of -- of storm-protection-plan
11 details, but if the Commission were to ask for that
12 project-level detail, would it be available?

13 A We would have to produce it, yes, but then we
14 would -- it would face the -- the issues with the
15 reliability of that information.

16 Q All right. And if the projected details at
17 the project level are provided in the clause proceeding
18 and the clause proceeding is carried out, as has been
19 testified to earlier today, won't there still be the
20 potential for the same confusion and the -- because of
21 the time frames of the -- looking forward and looking
22 back?

23 A No, I don't think so because we're going to
24 be -- we're going to be giving the projects that we're
25 going to do in the given year -- so, for projects two

1 and three, when we get to the beginning of that year,
2 we'll know the projects, then, that are going to be
3 done.

4 Q You mentioned a settlement regarding the level
5 of detail in storm hardening. And who -- do you
6 remember who participated in that agreement?

7 A Yes, it was primarily the attaching entities
8 at that time. And by that, I mean, it's the cable TV
9 companies, the telecommunication companies. And the
10 issue there had to do with -- they were concerned about
11 not knowing when or how much costs were going to be
12 incurred on their part on an annual basis because of the
13 storm-hardening activities.

14 So, when we harden a facility and replace
15 poles, they're attached to those poles. So, when we
16 replace those poles, they have to remove off of their
17 facilities attached to them -- so, they -- they incur
18 costs. So, they were interested in getting annual
19 information.

20 And so, as a result of us explaining to them,
21 we only have it for year one and two -- year one, and
22 then, year two, you know, we don't -- years two and
23 three, we don't have that. We agreed that, in September
24 of the year before the actual projects are going to take
25 place that we would provide them a preliminary listing

1 so that they had an idea of how much to budget for the
2 following year.

3 And then, when that got -- when that became
4 actual and trued-up, we provided them the actual list,
5 which generally happens in, like, February or March the
6 next year.

7 Q So, that's still relied on true-up?

8 A Pardon?

9 Q That -- that operation relied on true-up also?

10 A Correct, yeah. And really, it was just a
11 function of the listing of the projects, where they were
12 located, so that they could get an idea -- they -- you
13 know, they -- they all don't operate within our entire
14 service territory.

15 So, we gave them county-level information or
16 substation-level information that then they could
17 determine from that how many projects might impact them.

18 Q Before FPL or -- or any of the IOUs do
19 undergrounding, do they have to -- how much notice do
20 they have to give city and local governments regarding,
21 you know, for -- for permitting and -- and those type
22 things?

23 A Well, we have to obtain permits in order to be
24 able to construct the facilities.

25 Q And so -- and so, how -- how long of lead time

1 is necessary on that? How -- how far ahead of your plan
2 or how far out do you have to plan in order to know
3 which cities or which municipalities and -- and where
4 and the information that may be included on those
5 permits?

6 A Okay. So, I -- I do not have that kind of
7 information. The reason that I know about when plan
8 information is available for FPL is because I'm -- I'm
9 the one who has to provide plan information for our
10 hardening filings, plan information for our annual
11 reliability filings.

12 So, I'm talking with the people that are
13 overseeing -- overseeing that and trying to find out,
14 hey, when -- when will you -- when are you going to have
15 a final plan of projects in order to -- for me to file
16 it with the Florida Public Service Commission.

17 Q So, your -- your perspective is more internal
18 instead of external operation, correct?

19 A Well, it's external in the fact that we're
20 filing information with the Florida Public Service
21 Commission, but --

22 Q Right, but you -- that -- you're filing --
23 you're getting that information from -- internally.
24 You're not -- you were just -- my understanding was you
25 were saying, you're not the one that goes out and files

1 things with the per- -- to get the permit.

2 A That's correct.

3 Q Does that external work.

4 A I -- I -- I do not do that. Yeah, our
5 engineering groups and -- are the ones that handle that.

6 MR. DAVID: Okay. No other questions.

7 THE COURT: Mr. Moyle?

8 MR. MOYLE: Thank you. I have -- I have some.

9 EXAMINATION

10 BY MR. MOYLE:

11 Q You were asked some general questions about
12 undergrounding. That's kind of your bailiwick,
13 undergrounding for Florida Power & Light, as I
14 understand your testimony, right?

15 A It's not my bailiw- -- bailiwick. I'm -- I'm
16 involved with undergrounding as it relates to the filing
17 of our hardening plans.

18 Q Okay. And -- and this clause that we've been
19 talking about today -- is that -- is that going to
20 result in additional rates being charged to ratepayers?

21 A I don't -- I'm not sure I'm the right one to
22 ask that question.

23 Q Do you know -- do you -- do you know?

24 A If the Commission approves plans that
25 ultimately get approval for cost recovery, there will be

1 a -- a charge in the -- for the cost-recovery clause.

2 Q So, that would be a yes.

3 A I'm not sure because those same projects --
4 whether we were getting recovery through cost for --
5 through the clause -- you know, we're -- we're
6 essentially there right now, doing a lot of similar --
7 the same project that we're collecting through base
8 rates. So, ultimately, base rates would have gotten,
9 you know, a similar -- a similar charge.

10 Q But it's -- it's projected that there's going
11 to be an incremental cost associated with undergrounding
12 your -- your feeders and your distribution lines,
13 correct?

14 A Well, there -- it's likely there will be an
15 incremental charge for laterals, but as I mention, our
16 feeder hardening, you know, is terminating in 2024. Our
17 hardening of transmission facilities is terminating in
18 2022. So, you know, some of the things are dropping off
19 and some things are being added. So, I'm not sure what
20 the net --

21 Q Yeah.

22 A Net will be.

23 Q This -- this change also is a -- is a policy
24 change, is it not, with respect to -- previously, for
25 distribution undergrounding, if a city wanted to -- to

1 have their distribution underground, they would have to
2 pay for it, correct?

3 A Yeah, the Commission has rules for determining
4 how much cities and cust- -- customers might have to
5 contribute to an underground project.

6 Q And -- and the same for a developer. If a
7 developer wanted to do a brand-new development somewhere
8 and put in -- everything on a underground basis, the
9 developer would have to pay for that, correct?

10 A Well, historically, yes, but actually, our --
11 our last filing or two for URD subdivisions, there --
12 there is no charge right now for -- per-lot charge for
13 undergrounding.

14 Q And that's changing as a result of this -- of
15 this new regime that we're in and we're talking about
16 today with these rules?

17 A No, it's a result of looking at the total cost
18 associated with overhead and underground, taking into
19 consideration all of the operational costs of overhead
20 and underground facilities.

21 Q So, based on that answer, it's -- it's as --
22 same costs to underground as to overhead in a
23 residential development?

24 A So, right now, there is no cost differential.
25 Developers do not pay any cost differential for URD

1 subdivisions because overhead, right now, considering
2 all of the costs which would include storm restoration,
3 avoided storm-restoration costs -- overhead is more
4 expensive than underground.

5 Q And so, you don't believe that because of
6 this -- this change in law.

7 A It has nothing to do with the SPP.

8 Q One of the concerns I heard you mention
9 about -- about providing the information is because, if
10 you put it out there, staff and intervenors are likely
11 to ask questions about it; is that right?

12 A Yes, Jon, you did.

13 Q And I -- I take it that you don't think that's
14 a good thing.

15 A Well, it's -- I believe it's not -- I'm not
16 saying that's a bad thing. It's an unnecessary cost
17 that all of us are going to incur, knowing that the
18 projects are going to change. That's my position on it.

19 Q Right, but ultimately the costs are paid for
20 by -- by my clients and the -- and Office of the Public
21 Counsel, by ratepayers, correct?

22 A Utility costs are generally recovered from
23 others, yes, but --

24 Q And so, it's not --

25 A If we don't have to incur those, we would

1 rather not incur those.

2 Q Right, but it's not persuasive to you that
3 people who pay the costs are saying, hey, we'd rather
4 have this information, give us more information rather
5 than less information; we understand that -- that we may
6 be charged for that, but we're okay with that. That --
7 that's not a persuasive point to you with respect to the
8 provision of the cost data?

9 A I understand that's your position on that.
10 I -- I -- I don't think it's an appropriate thing to do.

11 Q Okay. With respect to the overall costs of --
12 of this, are you familiar with recent statements made by
13 FPL executives about the cost of the undergrounding
14 going forward, or -- or hardening?

15 A I've seen some of those, yes.

16 Q And -- and let -- let me just hand this out
17 and show -- show this to y'all.

18 MR. NORDBY: Judge, it seems as though we're
19 going in an area beyond the scope of the direct.

20 THE COURT: I believe -- I think you mentioned
21 something about hardening costs sunseting in -- in
22 2022? Did you say that?

23 THE WITNESS: No, certain programs -- we will
24 be finished with them in 2022, that --

25 THE COURT: Is this just because of a planning

1 horizon and you're going to look at some more
2 things?

3 THE WITNESS: No, we -- we've done all the
4 work associated with that program.

5 THE COURT: So, everything is already
6 underground and taken care of.

7 THE WITNESS: What I spoke of being finished
8 in 2022 was the replacement of transmission wood
9 poles with steel and concrete. That's finishing in
10 2022. We're finishing our feeder-hardening
11 program, scheduled to finish that in 2024, but
12 we'll have other programs --

13 THE COURT: Sure.

14 THE WITNESS: -- that are going to go on.

15 THE COURT: Okay. And -- and this was -- this
16 is related to -- I mean, it's a -- maybe a bit
17 beyond. What is this relating to?

18 MR. MOYLE: I think it's related to his other
19 programs, about the costs because I think -- I
20 think what he's saying is, we're finishing up the
21 transmission lines, the big, heavy ones, but where
22 the real heavy lift is is the distribution lines,
23 the small lines that go to your house and are in
24 developments. And I want to ask him some questions
25 about -- about that.

1 THE COURT: Do you need the documents to ask
2 him the questions?

3 MR. MOYLE: I think -- I think so. He's
4 ref- -- he indicated he was familiar with some
5 recent statements made by the executives. So, I
6 would like to --

7 THE COURT: Okay. We'll see --

8 MR. MOYLE: -- put this one --

9 THE COURT: I -- you know -- do you want to
10 look -- do you -- are you familiar with the
11 documents?

12 MR. NORDBY: I mean, I -- I can guess on what
13 it is based on -- on what was on his exhibit list.
14 I don't think I asked on direct anything about
15 specific cost amounts or any statements by
16 executives. I was just asking more-general
17 questions about the way in which they developed
18 their plans, rather than any specific statements or
19 cost estimates.

20 THE COURT: Let -- show him the document and
21 let's start into it. I'm not -- I haven't ruled
22 that it's admissible yet.

23 MR. MOYLE: Yeah.

24 THE COURT: Give Mr. Nordby and whoever else a
25 copy.

1 MR. MOYLE: I may -- we have miscommunicated,
2 but I was going to call him in my case-in-chief --

3 THE COURT: Okay.

4 MR. MOYLE: -- and then he -- you know, he
5 said, we can pick him up --

6 THE COURT: Oh, that's -- you're right. No,
7 you are right. You did ask and I said I would give
8 you some leeway. So, you didn't miscommunicate on
9 that. So, for that reason --

10 MR. MOYLE: Okay.

11 BY MR. MOYLE:

12 Q I just handed you a document, we'll go ahead
13 and mark it as FIPUG's No. 3. Have you seen this
14 document before?

15 A I have.

16 Q And you're familiar with it, including the
17 statements that are -- that are in here; is that right?

18 A I'm familiar with what's in the article.

19 Q Okay. And so -- so, the -- the cost of
20 burying neighborhood lines for customers, going forward
21 the next 30 years, is between 25 and \$35 billion; is
22 that right?

23 A That's what it says in the article, yes.

24 Q Right. But I'm asking you: Is that your
25 understanding, based upon your duties and

1 responsibilities as well?

2 A No, I -- I'm not sure the basis for the 25 to
3 35 million. I saw the article when it came out.

4 Q Yeah. And who -- who is the person who is
5 quoted as saying that?

6 A I believe it's Mr. Silagy, our -- Florida
7 Power & Light's president and CEO.

8 Q Right. He -- he generally is pretty good on
9 his facts, I assume, right?

10 A I don't question him often, yes.

11 (Laughter.)

12 Q Except maybe today or no?

13 A No.

14 Q And -- and with respect to the 25 to
15 35 billion that's -- that's referenced herein, how much
16 of that, if you know or can you approximate, will flow
17 through this clause?

18 A Yeah, no, I don't know that.

19 Q But -- but undergrounding is something that
20 will come through this clause, correct?

21 A It -- it could, yes.

22 Q Yeah. And hasn't FPL decided that they
23 will make -- make use of the clause?

24 A Yes, but I -- I can tell you right now that
25 I -- I am actually working on our -- our filing, and,

1 you know, ri- -- it's not final yet. It hasn't been
2 submitted for management approval. It's in the drafting
3 phase. I'm drafting it. So, that has not been finally
4 determined.

5 Q And we -- we've known each other over -- over
6 the years, I guess, talking regulatory matters; is that
7 right?

8 A That's correct, yeah.

9 Q All right. And you're aware that I represent
10 the Florida Industrial Power Users Group, a large group
11 of --

12 A That's what you say, Jon, yes.

13 (Laughter.)

14 MR. MOYLE: It's late on a Friday, we're
15 approaching a holiday, and I'm going to wish you --
16 wish you well in that, and have no further
17 questions. Thank you.

18 I'd admit this exhibit, if I could.

19 THE COURT: Any objection to the exhibit?

20 MR. NORDBY: Hearsay, probably relevance, but
21 other than that, no objection.

22 THE COURT: Hearsay, party opponent, right?

23 Not hearsay. Anyway, I --

24 MR. NORDBY: It's -- it's a --

25 THE COURT: I had seen that figure somewhere

1 else, \$632,000 a mile.

2 MR. NORDBY: I mean, I --

3 THE COURT: I put in a cable for a pump that I
4 had for my solar system and it didn't cost me
5 that --

6 MR. NORDBY: Judge --

7 THE COURT: -- but I understand there's quite
8 a bit more to it.

9 (Laughter.)

10 MR. NORDBY: As -- as to the party-opponent
11 aspect, I don't know that we'd concede that the
12 news article necessarily is an accurate
13 representation.

14 THE COURT: I understand. No, I under- --

15 MR. NORDBY: But subject to those sorts of --

16 THE COURT: I understand.

17 MR. NORDBY: -- concerns --

18 THE COURT: I understand. No, I think there
19 was something else that said the \$630,000 a mile.
20 I not quite sure --

21 MS. FALL-FRY: Yes, Your Honor, there is. And
22 it's in the record.

23 THE COURT: Yes. Yes, but anyway -- but these
24 are for the benefit of everyone, I assume, just
25 like -- right? I would think.

1 (Whereupon, FIPUG's Exhibit No. 3 was admitted
2 into evidence.)

3 THE COURT: Thank you very much for your
4 testimony.

5 Are we done here?

6 MS. FALL-FRY: Yes, sir.

7 MR. NORDBY: Judge, if I could just have one
8 moment.

9 THE COURT: Yes. Yes.

10 I think maybe he -- I didn't give you any
11 further -- are we -- are we done?

12 MR. NORDBY: We're done. Yes.

13 THE COURT: Okay. Thank you.

14 (Discussion off the record.)

15 THE COURT: Is there anything else that any
16 other party would like to get on the record?

17 MR. NORDBY: Judge, just -- just briefly, I
18 know you reserved your ruling on Mr. Moyle's
19 client's standing. And given that, you've reserved
20 your ruling. I -- I think it makes sense that he
21 be permitted to submit a proposed final order.

22 THE COURT: He will.

23 MR. NORDBY: So, to that extent, we have no
24 concerns with that.

25 We would ask that if -- if you ultimately

1 agree with our contention that his client lacks
2 standing, that any additional issues that were
3 injected into the proceeding from his client be
4 disregarded in the resolution of the case.

5 THE COURT: That -- I mean, I would do that.

6 (Discussion off the record.)

7 (Whereupon, proceedings were concluded at 4:12
8 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS WRAY, 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 26th day of December, 2019.



ANDREA KOMARIDIS WRAY
NOTARY PUBLIC
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EXPIRES February 9, 2021