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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20210137-PU

Proposed adoption of Rule 25-18.010,  
F.A.C., Pole Attachment Complaints.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 3

COMMISSIONERS  
PARTICIPATING: CHAIRMAN GARY F. CLARK  
COMMISSIONER ART GRAHAM  
COMMISSIONER ANDREW GILES FAY  
COMMISSIONER MIKE LA ROSA  
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, November 2, 2021

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

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

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

2 CHAIRMAN CLARK: All right. Item No. 3  
3 proposed adoption of Rule 25-18.010, Pole  
4 Attachment Complaints.

5 Ms. Cowdery, would you introduce the item for  
6 us, please?

7 MS. COWDERY: Yes, Mr. Chairman.

8 I am Kathryn Cowdery with the Office of Public  
9 Counsel, General Counsel.

10 Item 3 is the proposed adoption of Rule  
11 25-18.010, Pole Attachment Complaints.

12 This rule is being proposed to administer and  
13 implement Section 366.084 that requires the  
14 Commission to hear and resolve complaints  
15 concerning rates, charges, terms and conditions of  
16 certain pole attachments to ensure that those  
17 rates, charges, terms and conditions are just and  
18 reasonable.

19 The following people are here to address the  
20 Commission: Tracy Hatch, representing AT&T; Maria  
21 Moncada, representing FPL. Floyd Self,  
22 representing Florida Internet and Television  
23 Association. Also here representing FIT is Charlie  
24 Dudley.

25 In addition, the following people are here and

1 available to answer any questions: Jeff Wahlen,  
2 representing Tampa Electric, and Dianne Triplett  
3 representing Duke Energy.

4 Staff is also available to answer any  
5 questions.

6 Thank you.

7 CHAIRMAN CLARK: Thank you very much, Ms.  
8 Cowdery.

9 All right. We will begin with Mr. Self. Good  
10 morning.

11 MR. SELF: Thank you, Mr. Chairman and  
12 Commissioners. Good morning.

13 Congratulations, Commissioner Fay, on your  
14 election to Chair.

15 Commissioners, Floyd Self of the Berger  
16 Singerman law firm on behalf of the Florida  
17 Internet and Television Association. I just have  
18 two issues that I would like to bring to your  
19 attention this morning.

20 First, I want to thank the Commission staff  
21 for being receptive and including in the draft  
22 language to address the denial of -- denial of  
23 access which FIT and other companies, including  
24 Duke, I believe, agreed were -- was a matter that  
25 required a shorter time period for resolution than

1 the 360 days or 365 that would apply to other  
2 proceedings.

3 And in saying that, we think denial of access  
4 is a fundamental and vital issue that should not  
5 take forever. And as much as we appreciate the  
6 Commission Staff recommending to you 180 days, I  
7 would like to encourage you to reduce that to 90  
8 days.

9 This is not rocket science. It's not as  
10 complicated as -- as resolving rate issues, and it  
11 is a pretty fundamental straightforward issue. Did  
12 someone request access? Were they denied access?  
13 What was the basis for the denial?

14 It seems to me that 90 days more than adequate  
15 time to resolve of that type of issue. It's  
16 comparable to a declaratory statement petition.  
17 And again, the first issue is resolving the access  
18 issue, and then other rates, terms and conditions,  
19 of course, can be resolved pursuant to the other  
20 process that can take up to a year. So I would  
21 encourage you to revise the 180 days to 90 days.

22 The second issue that I would like to raise  
23 with you is what we refer to as the default  
24 language, or I believe the recommendation discusses  
25 it as the methodology issue. I believe that the

1 rules, as proposed, fail to correctly implement the  
2 legislation, and also would fail to meet the  
3 threshold that would enable the FCC to relinquish  
4 jurisdiction to you.

5 What the recommendation before you on the rule  
6 language does, is, in our view, only includes part  
7 of the statute, the discussion of the alternative  
8 methodology, which is in the statute. And from our  
9 reading of this, that just doesn't make sense  
10 standing by itself, because it doesn't tell you  
11 what it's an alternative to.

12 The legislation very clearly speaks to the  
13 fact that the Commission is obligated to follow the  
14 rules and precedence of the FCC unless someone  
15 makes the case and demonstrates in the public  
16 interest an alternative methodology that should be  
17 utilized. And it seems, as a fundamental  
18 threshold, that if you are going to do justice to  
19 what the statute says, you are going to have to  
20 include language that also references the default,  
21 the fact that the FCC rules and regulations and  
22 precedence apply unless you present your case for  
23 an alternative methodology.

24 But in doing that, I also need to tell you  
25 that, as you well know, you cannot simply just

1 parrot the language in the statute. That if you  
2 are going to have rule-making, you have to explain  
3 what all of that means.

4 And so merely stating that, in the rule, that  
5 you are going to follow the FCC rules and  
6 precedence unless and alternative methodology is  
7 presented doesn't quite cut it because it doesn't  
8 really tell you what those terms mean. And so in  
9 the redline language that we provided to the  
10 Commission we provided some further elaboration,  
11 both with respect to what the FCC rules and  
12 regulations means as well as providing some  
13 additional clarification as to what the alternative  
14 methodology requirements are.

15 And so we would strongly encourage you to  
16 adopt the language that we propose in our comments  
17 with respect to both putting in the rule language  
18 about the FCC rule matchup with the alternative  
19 methodology, as well as providing the further  
20 elaboration language as to what those FCC rules and  
21 policies mean, as well as what is required for a  
22 party that's going to present a case based upon an  
23 alternative methodology.

24 And so with that, I will conclude my comments  
25 and be happy to take your questions.

1 CHAIRMAN CLARK: All right. Thank you, Mr.  
2 Self.

3 Commissioners, do you have questions for Mr.  
4 Self?

5 Staff, would you like to provide a response to  
6 that initial --

7 MS. COWDERY: Yes, Commissioner.

8 Staff chose the 180 days, which is sort of the  
9 baseline that FCC uses because at this time there  
10 is a lot of unknowns. We don't know exactly what  
11 is going to be coming in front of us. We don't  
12 know how simple the pole access denial cases are  
13 going to be. And we feel very comfortable that the  
14 prehearing officer who is assigned to any of these  
15 cases has full authority to have a faster track if  
16 we find that something can be resolved in a shorter  
17 amount of time. So that was our thinking on it.  
18 That's for the first point. Is there is any --

19 CHAIRMAN CLARK: Any questions on the first --  
20 Commissioner Graham.

21 COMMISSIONER GRAHAM: So the 180 days is more  
22 of the -- it's the maximum. You can always go  
23 shorter, it just depends.

24 MS. COWDERY: Oh, absolutely.

25 CHAIRMAN CLARK: I -- let me ask a question

1 related to this.

2 So this has to do with, if there is a  
3 complaint filed, typically there is an access  
4 issue, what does this do for the end customer? How  
5 does this affect the end customer, Ms. Cowdery?

6 MS. COWDERY: I am not fully qualified to  
7 answer that question. I know that what we are  
8 trying to do is move things along as quickly as  
9 possible under the circumstances so that there is  
10 no interference with providing services to a  
11 subscriber, or having a consumer problem, and  
12 that's the reason that we go with the 180.

13 I don't know specifics about how these access  
14 complaints specifically affect specific customers  
15 and circumstances. All I know is we do try to move  
16 it along.

17 CHAIRMAN CLARK: Mr. Self, if we were --  
18 let's, for example, had a business that was opening  
19 and they were trying to get service, could this  
20 timeline impede that business receiving the service  
21 they need to be able to open and conduct business?

22 MR. SELF: Yes, it would impede that ability,  
23 and it would certainly delay it under the rule  
24 before you for 180 days. Under our proposal, we  
25 would at least shorten that to 90 days.



1           CHAIRMAN CLARK: So the primary intent here,  
2           from your perspective, is to get service to the  
3           customer faster?

4           MR. SELF: Yes, sir. Absolutely.

5           CHAIRMAN CLARK: Ms. Cowdery, is there a -- I  
6           realize it's an additional workload and you are  
7           shortening the amount of time that it would take to  
8           review this, but from a procedural perspective,  
9           other than, okay, it's a lot more work in a shorter  
10          period of time, is there another reason that we  
11          would want the full 180 days?

12          MS. COWDERY: I think it was --

13          CHAIRMAN CLARK: I am coming to you, Ms.  
14          Helton.

15          MS. COWDERY: -- that we don't know exactly  
16          what -- it's not so much maybe workload. It's we  
17          don't know what's going to be in front of us. And  
18          we felt comfortable that the prehearing officer, if  
19          under the circumstances that's the case that's  
20          before him or her, can shorten the time period,  
21          will have the authority to set the time period  
22          within whatever time period they feel is  
23          appropriate.

24          CHAIRMAN CLARK: That's clarified.

25          Ms. Helton, you are --

1 MS. HELTON: Yes, sir. I just want to point  
2 out that the rule says the Commission will take  
3 final action. So in my mind, that means that there  
4 would be an evidentiary hearing. And so to conduct  
5 an evidentiary hearing in a process where we are  
6 not really familiar with and to get a final order  
7 within 90 days, I think that's a pretty tall order.

8 CHAIRMAN CLARK: Mr. Futrell.

9 MR. FUTRELL: And, Mr. Chairman, I think just  
10 point out one thing. I think, as mentioned in the  
11 first subsection, I think staff is envisioning this  
12 as a complaint either by a communication services  
13 provider as defined in the statute, or an attaching  
14 entity, or a pole owner. So it's going to be  
15 companies that may file a complaint against one of  
16 the other parties, but may have this sort of an --

17 CHAIRMAN CLARK: But could this relate to an  
18 end-use customer who has requested service that the  
19 utility can't get to the customer because they  
20 don't have attachment approvals?

21 MR. FUTRELL: It could. It could. But I  
22 think we are envisioning either some sort of either  
23 an evidentiary type proceeding here between  
24 parties, or some other litigious proceeding here.

25 CHAIRMAN CLARK: And you are saying that it's

1           virtually impossible to have an evidentiary hearing  
2           and a ruling within a 90-day -- I mean --

3                   MS. HELTON: We do that with need  
4           determinations, as we all know, but to get there,  
5           there are provisions in the statutes and the rules  
6           that cut down tremendously on the amount of time  
7           that we have to take certain actions. And so I am  
8           not sure, without that authority to do that, how we  
9           could get to a hearing and a final order in 90  
10          days.

11                   CHAIRMAN CLARK: I am going to put on the spot  
12          our legal colleagues on the bench here. Do you  
13          have any thoughts regarding this, either one of  
14          you?

15                   COMMISSIONER FAY: Thank you. You gave me the  
16          opening there.

17                   So, yeah, I mean, just to the point that was  
18          earlier discussed, I think the debate about the  
19          timeline, exactly how it works with staff, from my  
20          perspective, is a little bit unknown, and I think  
21          part of that process will be fleshed out. But to  
22          me, the reason I see it being appropriate is  
23          because it's a ceiling. And the 180-day ceiling,  
24          to me, is just that, a ceiling. And if I am  
25          prehearing officer on some of these, depending on

1           when they would come up, I would be inclined do it  
2           in a shorter time period. But with that said, I  
3           think each prehearing officer has the opportunity  
4           to address that based on the ceiling that's given  
5           to them.

6                        So I think the points that are made by FIT are  
7           fair, and I think statements we do have a similar  
8           timeline, and I think there is probably some good  
9           arguments as to expediting those, specifically to  
10          your point, Mr. Chair, if it is impacting an actual  
11          customer at the end, then I think there are pretty  
12          good arguments to speed that up.

13                       But with that said, I think for some of these  
14          things, we will hear arguments where one entity  
15          said they like what the FCC does on one part, and  
16          then we might hear they don't like what the FCC  
17          does on another part. And so for some clear  
18          adoption, or at least for a basis, I think some of  
19          these parameters are appropriate. And I think, if  
20          I understood what you said for FIT, that the 360  
21          days is appropriate. Your concern is more the  
22          actual 180 day?

23                       MR. SELF: Yes, sir. It's the denial of  
24          access.

25                       COMMISSIONER FAY: Sure.

1           MR. SELF:  It's the ability to serve a  
2           customer and how long until we can resolve that so  
3           we can serve the customer.  A process that's 90  
4           days obviously means there is a chance the customer  
5           is going to get served a lot faster than a 180-day  
6           process.

7           COMMISSIONER FAY:  Sure.  And just real quick,  
8           Mary Anne, would there be any prohibition --  
9           obviously staff would, from an operational  
10          standpoint, would have to adjust if a prehearing  
11          officer set a timeline that's shorter, but to your  
12          arguments about a discovery process and an  
13          evidentiary hearing, would we be able to do that?  
14          Because if -- it sounds like you are saying we do  
15          do that in other situations.  So I just want to be  
16          clear.  I don't want us saying it's impossible.  I  
17          think there is the possibility a prehearing officer  
18          may decide they want to do it that way.  I just  
19          want to make sure we can actually do that.

20          MS. HELTON:  I think I would like to say once  
21          we have done this a few times, we can give a much  
22          better educated opinion with respect to how quickly  
23          we can do these.  Right now, this is all -- we are  
24          all learning here at the Commission.

25                    And can we do things quickly?  Yes.  We do

1           need determinations quickly, as required by the  
2           statute. I just don't understand enough about this  
3           process to say every time we can do a denial of  
4           access. We don't know how many we are going to  
5           get. We don't know how complicated they will be.  
6           And so for me to sit here and say, sure, we can do  
7           it in 90 days, I don't know the answer to that.

8                   COMMISSIONER FAY: Sure.

9           Mr. Chairman, all I may add is that I believe  
10          that as a commission, as a body, we should be able  
11          to do it things quicker than the FCC does them, and  
12          so I would hope that's a reality, but as I said, I  
13          think each prehearing officer would be entitled to  
14          make that decision.

15          Thank you.

16                   CHAIRMAN CLARK: Great point.

17          Ms. Cowdery, move to the second point.

18                   MS. COWDERY: Thank you, Commissioner.

19          I feel very confident that the rule we have  
20          proposed meets the requirements for getting  
21          certification from the FCC. The requirements under  
22          the U.S. code require that we certify that the  
23          Commission regulates rates, terms and conditions.  
24          We have that authority under 366.04(8(a)).

25                   We have to have our timeframes, you know,

1           within the 300, you know, within the 180 days  
2           unless we have it in our rule at a higher amount of  
3           time, which is the 360. Pursuant to rule, that  
4           meets the requirements. And we've made effective  
5           rules and regulations implementing our authority.  
6           That's -- that's basically it.

7                     And as far as Mr. Self's comments that he  
8           feels that the proposed rule language that they  
9           suggested would be better. Really, the way I read,  
10          at least the copy I got in the postworkshop  
11          comments, and I don't know if there is another  
12          draft out there, basically the difference is that  
13          FIT is saying that we should adopt the rules of the  
14          -- in the CFR.

15                    We don't know that that's appropriate at this  
16          time. And we know for sure that the statute does  
17          not require that. The statute specifically states  
18          that the Commission shall, by the orders of the FCC  
19          and the appellate decisions ruling on those orders,  
20          and that we shall apply those unless you have  
21          competent, substantial evidence produced by another  
22          party that a different methodology should be used.

23                    We are not bound to use those orders because  
24          we, as trier -- the Commission, as trier of fact,  
25          will listen to all the evidence in front of it,

1 make a determination on the case-by-case basis, and  
2 that will develop the precedent, and that will help  
3 the parties determine where they are going to be  
4 going on.

5 So that's the reason that we thought at this  
6 point in time we need to follow really what the  
7 statute sets out for us to do, which is develop our  
8 precedent, using sort of the guidelines that the  
9 statute gives us in those first four 100, 120.57  
10 proceedings, that's our thinking.

11 CHAIRMAN CLARK: Thank you, Ms. Cowdery.

12 Commissioners, questions? No questions?

13 All right. Thank you very much, Mr. Floyd.

14 Next up, Tracy Hatch.

15 MR. HATCH: Thank you, Mr. Chair.

16 Tracy Hatch appearing on behalf of AT&T.

17 I would adopt the comments of Mr. Self. He  
18 has pretty well covered everything that I have,  
19 particularly with respect to the rule methodology.  
20 You have to have an alternative to something. That  
21 something is the FCC rules.

22 CHAIRMAN CLARK: All right. Any questions  
23 from Commissioners?

24 All right. Thank you very much, Mr. Hatch.

25 Ms. Moncada.



1 MS. MONCADA: Good morning, Chairman Clark.  
2 Congratulations, Chairman Elect Fay. Good morning,  
3 Commissioner. Thank you for the opportunity to  
4 speak to you regarding the staff's proposed rule on  
5 the filing of pole attachment complaints on behalf  
6 of FPL.

7 We are thankful for the work that staff has  
8 put into this rule development through the workshop  
9 process, and also their consideration of many  
10 comments that were made. There are multiple  
11 stakeholders in this process and all comments have  
12 been considered.

13 FPL largely supports the staff recommendation,  
14 along with the proposed pole attachment complaint  
15 rule. It comports with the new subsection (8)(g)  
16 of the enabling statute, which requires the  
17 Commission to propose procedural rules. There is  
18 one procedural issue we would like to raise today  
19 for your consideration.

20 When FPL time filed its comments on September  
21 15th, we suggested that along with other pleading  
22 requirements, the rule also require a verified  
23 statement by the party filing the complaint  
24 essentially that it is current, to state whether it  
25 is current on the payments due on the invoiced

1 amounts that are not in dispute.

2 One clarification we would like to make this  
3 morning is to propose that the addition required  
4 that a confirmation that the attaching entity has  
5 paid the pole owner in full for the amount of the  
6 pole attachment rates which is not in dispute, as  
7 opposed to how we originally filed it, which said  
8 that it should include a confirmation as to whether  
9 the attaching entity has paid the pole owner how  
10 much it is owed or that is not in dispute.

11 The staff recommendation did not adopt this  
12 addition to the rule. Staff noted that through the  
13 complaint proceeding, the issues in dispute will be  
14 identified either by the complainant or by the  
15 responding party, and staff is correct about that.  
16 But respectfully, we don't think that actually  
17 accomplishes or captures what we are trying to  
18 accomplish through the proposed language. And what  
19 we are trying to get at is twofold.

20 First, that the complaint before the  
21 Commission should be limited to the actual dispute  
22 between the parties. And the second is the  
23 furtherance of the Commission's longstanding  
24 encouragement of settlements, which is also  
25 expressed as one of the intents of the statute. To

1 demonstrate this, I can use a very simplified  
2 example.

3 So if there is a pole attachment invoice and  
4 it calls for \$10 a pole but the attacher believes  
5 the rate should be \$8 a pole, then the dispute  
6 before the Commission should really be about the  
7 two-dollar difference between the ten and the eight  
8 dollars. It isn't a ten-dollar dispute, and the  
9 eight dollars should not be at issue at all. The  
10 attacher should not be allowed to withhold payment  
11 of the undisputed amount while the Commission  
12 undertakes what could be a year-long process.

13 And I certainly echo Commissioner Fay's  
14 statement that this commission can probably do  
15 things faster than 360, and do things faster than  
16 the FCC has done them, but it is a possibility that  
17 it could take up to that amount of time. And the  
18 pole attacher should not be allowed to withhold  
19 payment until the end of that process.

20 So if we take that simple example and scale it  
21 up to 10,000 poles, what we are saying is why make  
22 this a dispute about \$100,000 when really all we  
23 are disputing is the \$20,000 differences. We think  
24 it makes a lot of sense actually at issue to limit  
25 the pleadings and the evidence to what actually is

1 at issue or in dispute.

2 And one thing I want to be clear about, FPL is  
3 also a pole attacher. So this rule and what we are  
4 proposing as the addition would apply to FPL. It  
5 would apply to electric utilities who are attachers  
6 as well as telecom companies and other attaching  
7 entities.

8 And what we are trying to express is that no  
9 attacher, whether it's the electric utility or  
10 anyone else, should be permitted to use the  
11 Commission hearing process to gain an upper hand in  
12 negotiations by withholding payments on amounts  
13 that are not in dispute.

14 This is contrary to the Legislature's  
15 expressed intent in the new statute that's being  
16 implemented here, which states as its intent,  
17 quote, to encourage parties to enter into voluntary  
18 pole attachment agreements.

19 Withholding of payments that are undisputed  
20 also undermines this commission's policy of  
21 encouraging opposing parties to reach fair  
22 compromises.

23 The proposed language that we would like to  
24 add will remove improper incentives that push  
25 parties to litigate and, instead, will promote the

1           Legislature's intent to encourage settlements that  
2           would result in voluntary pole attachment  
3           agreements.

4                   Commissioners, we say this from experience.  
5           When an attacher fails to make any payment  
6           whatsoever, even though both parties know that at  
7           least some portion of the invoice is undisputed, it  
8           does not make for the start of good settlement  
9           discussions between the parties. Why? Because it  
10          lacks the hallmark of good faith, but it happens.  
11          And for FPL, I can say, we have even experienced a  
12          situation where the dollar amount that was being  
13          withheld amounted to \$20 million. We fear that  
14          that situation would continue to happen without a  
15          modification of the draft rule.

16                   By contrast, if the attaching entity pays at  
17          least the undisputed amount, and that's a sign of  
18          good faith, it's a sign of commercial  
19          reasonableness. And those are the things that are  
20          necessary when you want to start having discussions  
21          between opposing parties to eventually reach a  
22          resolution that could altogether avoid a complaint  
23          before the Commission. And that should be the  
24          result that we all want, no complaint whatsoever.

25                   The last thing I would like to say is that

1 FPL's requested addition is consistent with the  
2 rest of the rule proposed by the staff, which  
3 focuses on identifying disputed issues of material  
4 fact and streamlining the process.

5 In closing, FPL's proposal is intended to  
6 ensure that the process remains efficient, and that  
7 it remains focused on what is actually in dispute,  
8 that it doesn't devolve, instead, into ancillary  
9 issues. And our proposal also meets the  
10 Legislature's intent to encourage voluntary  
11 agreement.

12 Thank you.

13 CHAIRMAN CLARK: Thank you, Ms. Moncada.  
14 Commissioners, do you have any questions?  
15 Commissioner Fay.

16 COMMISSIONER FAY: Just a quick question, Ms.  
17 Moncada.

18 So your comments that you filed for the  
19 workshop, are you -- do you have specific language  
20 that you are proposing related to that?

21 MS. MONCADA: Yes. If you have -- if you have  
22 the document in front of you, Commissioner Fay.

23 COMMISSIONER FAY: Yes.

24 MS. MONCADA: On line 20 of page one, is that  
25 what you are -- that's in red. Do you see that?

1 We attached as Exhibit A to our comments a redline  
2 of the proposed rule.

3 COMMISSIONER FAY: Okay. Hold on one second.

4 MS. MONCADA: Sure.

5 COMMISSIONER FAY: Okay, I am with you. Go  
6 ahead. So on line 20 in the first page?

7 MS. MONCADA: Yes. It says -- well, if I  
8 start on line 19, it talks about the verified  
9 statement regarding the amount of such contractual  
10 pole attachment rates that is not in dispute,  
11 semicolon, and confirmation that the attaching  
12 entity has paid the pole owner in full for the  
13 amount of the pole attachment rates that is not in  
14 dispute prior to the filing of the complaint.

15 COMMISSIONER FAY: Okay. And then do you  
16 believe -- Mr. Chairman, if I could just ask a  
17 quick follow-up.

18 CHAIRMAN CLARK: Yes, please.

19 COMMISSIONER FAY: Thank you.

20 Do you believe, I guess, that that can't be  
21 addressed through the process? Because I agree  
22 with you when you speak about the language that the  
23 Legislature has sent us to implement this, there is  
24 the encouragement language of those agreements.  
25 But I am just wondering if it's not specifically

1           laid out here, you are saying there is no  
2           limitation from a commission perspective as to if  
3           there is a -- if there is something else being  
4           withheld, why this issue is being, I guess for lack  
5           of a better word, litigated, or presented to the  
6           Commission, then there is no way, essentially, for  
7           that recovery to take place; or is it that it's a  
8           separate legal issue that the utility and the  
9           telecom entity would have to figure out between  
10          themselves?

11                   MS. MONCADA: It could actually be more  
12           protracted than that, Commissioner Fay. Based on  
13           the way that the statute is laid out, that is  
14           probably subject to civil court jurisdiction. And  
15           then what we would have are competing forums over  
16           the same related dispute that could go on forever  
17           and ever, and that's really not good for anybody.

18                   COMMISSIONER FAY: Okay. Chairman, if I could  
19           just ask for --

20                   CHAIRMAN CLARK: Yes.

21                   COMMISSIONER FAY: Thank you.

22                   MR. SELF: Thank you, Commissioner Fay, Mr.  
23           Chairman.

24                   Briefly, I would oppose it for two reasons.  
25           One, we are now starting to get into the



1 nitty-gritty of what the pleadings themselves  
2 should include.

3 More importantly, on a practical matter, while  
4 this sounds pretty simple and straightforward, you  
5 know, what's the amount in dispute. I have handled  
6 dozens of these different types of interconnection  
7 issues involving a multitude of different companies  
8 over time, and often there is no agreement about  
9 how much is in dispute. And so while it may seem  
10 simple to say, well, Carrier A thinks they are due  
11 \$10 and Carrier B thinks it's \$8, it's really not  
12 that simple. There is often a lot of other things  
13 that come into play such that there is not an  
14 agreement that it's \$2 that's in dispute.

15 And so I think we are getting -- that is a  
16 change that I think is way too much in the weeds.  
17 It doesn't help the process, is only going to  
18 further enlarge the amount of litigation that's  
19 going to occur fighting about whether or not you  
20 have met the pleading requirements for putting the  
21 amount in controversy. There is too much  
22 disagreement over what is in dispute to include  
23 that type of provision in the rule.

24 COMMISSIONER FAY: If AT&T wanted to respond  
25 too.

1 CHAIRMAN CLARK: Mr. Hatch.

2 MR. HATCH: Yes. Thank you.

3 Right now, I adopt Mr. Self's comments too.

4 But essentially what they are trying to do first --  
5 step back. First, there is nothing in the enabling  
6 legislation to suggest this should or could be part  
7 of the rule. That's one thing.

8 Second, what it's creating is a threshold bar  
9 to even filing a complaint if there is the kind of  
10 dispute that Mr. Self has described. These kinds  
11 of things are well in dispute. And even the  
12 conflicts that Ms. Moncada identified, there is a  
13 whole lot more. It's not nearly as simplistic as  
14 she suggested in terms of negotiations in good  
15 faith.

16 CHAIRMAN CLARK: All right. Thank you.

17 Ms. Cowdery, your response?

18 MS. COWDERY: Yeah, I just had a couple points  
19 on this. Something that concerns GCL is that what  
20 is a verified statement? What are they actually  
21 doing there? Because, I mean, there is -- it's not  
22 like a notarized statement. We don't have  
23 authority to do that under the statute. An  
24 ordinary statement, what is the -- you know, what  
25 exactly is the purpose of it? Is it a procedural

1 bar for getting a complaint heard?

2 So if there is a dispute and the complainant,  
3 you know, says, well, I can't -- I can't do that  
4 because we do have a dispute, isn't this an issue  
5 for the Commission to consider as part of the  
6 complaint? If an entity believes that someone is  
7 improperly withholding rent money, they can file a  
8 complaint. And a response, if the respondent  
9 doesn't believe that the complainant has properly  
10 identified the issues, and they are not properly  
11 paying them can raise that as an issue. It's  
12 something that we can look at, and we can look on  
13 it, again, as developing precedent.

14 So that's some of our concerns. We are a  
15 little -- you know, we want to be careful about  
16 under 120, where we would be under Chapter 120, we  
17 would be holding these hearings, you know. We  
18 don't want to stop somebody from having -- from  
19 filing a complaint based on this particular  
20 procedure because they don't feel like they can,  
21 you know, they can file this kind of a verified  
22 complaint, whatever the verified complaint is.

23 CHAIRMAN CLARK: Thank you, Ms. Cowdery.

24 Commissioner Graham.

25 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.

1           I guess first I should start off by  
2           apologizing to staff. I should have asked this  
3           question in briefing, but I didn't have a briefing  
4           on it.

5           It just caught my attention as I was reading  
6           through it, and I guess I -- I don't agree with Mr.  
7           Self. I think this allows for you to be more laser  
8           focused when you come before the staff with a  
9           complaint.

10          As I heard Florida Power & Light say, if you  
11          can clearly decide what's disputed and what's  
12          undisputed, then there is no reason why you can't  
13          collect the money on the dollars that are  
14          disputing. I mean, I guess I kind of look at this,  
15          in my simplistic head, if someone comes before us  
16          with a rate case. You will allow them to take --  
17          to get -- you will allow for them to get interim  
18          rates until the rate case is finalized, and then  
19          after the rate case is finalized, then you can  
20          true-up at the end.

21          So when a complaint comes forward, there is no  
22          reason why you can't get what I think is the  
23          undisputed amount, get that off the table so no one  
24          is at a deficit, and then when it's finally  
25          decided, you can true it all up again. That's what

1 I see -- I think this makes this easier, and it  
2 makes it more balanced from both sides.

3 That's all I have.

4 CHAIRMAN CLARK: Thank you, Commissioner  
5 Graham.

6 Other Commissioners have a question?

7 Commissioner La Rosa.

8 COMMISSIONER LA ROSA: Thank you, Chairman.  
9 And this one maybe is for FPL.

10 If I am reading the law correctly, rate is  
11 only the first thing the Legislature is asking us  
12 to do.

13 What else -- or what else is involved in these  
14 disputes outside of rate? Is it engineering? Is  
15 it equipment? You know, what else besides just  
16 rates?

17 CHAIRMAN CLARK: Ms. Moncada.

18 MS. MONCADA: Pole attachment disputes can  
19 have multiple components to them. There are  
20 instances when it is just about the rate. But  
21 there are opportunities at a point in time when  
22 negotiations start with respect to where should we  
23 be on the rate, where the pole owner could approach  
24 the attacher and say, let's look at this  
25 holistically, and let's look not only at the rates,

1 but let's look about -- let's look at what you are  
2 doing on transfers. Let's look at how you are  
3 engineering maybe your own poles, and how we can  
4 better serve the aesthetics of the community. It  
5 could be a whole host of issues that could be  
6 resolved at once, but there are instances where it  
7 could be just about the rate.

8 COMMISSIONER LA ROSA: Follow-up.

9 What -- you mentioned, you know, it could be a  
10 \$20-million withholding, and that's the, you know,  
11 term of the contract that's being negotiated.  
12 What's the average size of these deals, these  
13 attachment deals, whether it's in a municipality, a  
14 county, whatever the geographics are?

15 MS. MONCADA: I don't have a precise answer to  
16 that. I will answer it this way: The invoice is  
17 essentially the result of the rate times the number  
18 of poles to which the entity is attached. So if a  
19 pole attacher is on 400,000 of our poles, we could  
20 be looking at amounts of 10, 20 million dollars.  
21 If the pole attacher is on far fewer poles, then it  
22 will be -- then the invoice amount will be  
23 proportionately lower.

24 COMMISSIONER LA ROSA: Thank you.

25 CHAIRMAN CLARK: Any other questions?

1 I think have a couple.

2 Ms. Moncada, I am going to address this to you  
3 to begin with, so let's make a small hypothetical  
4 here that the disputed amount is the two dollars  
5 that you mentioned between the six that's currently  
6 negotiated and eight. Could the attaching entity  
7 basically say, when they file their complaint, that  
8 they don't agree with the six either? And would  
9 that negate your ability to collect the six?

10 MS. MONCADA: This is, in a practical sense,  
11 how we view this working. We send out an invoice.  
12 It's due on June 30th, let's say. Then they say,  
13 we are not going to pay it because we think the  
14 rate is too high. At that point, we say, well,  
15 what do you think it should be? I think that's a  
16 very reasonable question, a fair question to ask.  
17 If you think it's too high, then what should it be?  
18 And they say, well, we think it should be X. Well,  
19 at least pay X then.

20 CHAIRMAN CLARK: So you are asking for a  
21 voluntary compliance that is contrary to a contract  
22 you have in place? Because your attachment -- you  
23 are already guided with a company by a contractual  
24 obligation. You are not doing attachments without  
25 a contract in place. The contract specifies the

1 amount to be paid. I assume that some instance  
2 occurs where we are no longer in agreement that  
3 this particular attachment complies under the terms  
4 of the existing contract, is that correct?

5 MS. MONCADA: I couldn't agree with you more  
6 that there is a contractual obligation to pay the  
7 amount that is set forth pursuant to either the  
8 rate in the contract or the formula in the  
9 contract. And, in fact, there is a longstanding  
10 understanding even at the FCC through a U.S.  
11 Department of Justice letter that was provided at  
12 one point to the Eleventh Circuit Court of Appeals  
13 which says you should pay the full amount. You  
14 should pay the full amount.

15 So that's the contractual obligation. And  
16 what we are trying to say through the rule is we  
17 would love for the contract to be complied with in  
18 its totality, but at least if you're -- at least  
19 before filing the complaint at the Commission, at  
20 least pay the X that you think is the right rate.  
21 We are not trying to have noncompliance with our  
22 own agreement. We would prefer compliance with the  
23 agreement.

24 CHAIRMAN CLARK: Mr. Hatch, Mr. Self, would  
25 you like to respond before I go to my next



1 question?

2 MR. HATCH: A couple of thoughts.

3 First, to the extent that it's anticipated  
4 that this would narrow the issues and enable  
5 reasonable settlements, by the time you file a  
6 complaint, negotiations have failed, so this is not  
7 going to help that process.

8 Now, subsequent to filing the complaint and  
9 the development of the litigation, you can always,  
10 again, still try and resolve the case as the case  
11 develops, but this is not going to help you before  
12 you file a complaint.

13 I guess second, it is a procedural bar that's  
14 going to engender a whole lot more litigation  
15 because I will certify pursuant to the rule that I  
16 did. The defendant in the complaint will then say,  
17 well, no, you didn't do this as part of your  
18 agreement, your attaching agreement.

19 So essentially you fight that fight before you  
20 can even fight -- file a complaint. And I think  
21 the staff has it right, that once you file the  
22 complaint, all the issues are on the table and they  
23 are all available for litigation, and the  
24 Commission can flesh them all out as they are  
25 identified in the process and go through. That is

1 the process the Commission follows typically.

2 To create this automatic narrowing based on  
3 one party's perception of whether they are  
4 complying or not I think is probably too far a  
5 stretch. I don't think you can do that adequately.  
6 You are creating two separate proceedings. Because  
7 then you have a proceeding to determine whether you  
8 can file a complaint. I mean, under the APA, you  
9 are going to have a proceeding of some sort to  
10 reach that conclusion.

11 CHAIRMAN CLARK: Mr. Self.

12 MR. SELF: I bill by the hour so I love  
13 litigation. This just seems like a lawyer's relief  
14 act. As Mr. Hatch indicated, it really simply  
15 provides more opportunity to litigate the case  
16 before you actually litigate the case.

17 I agree with Ms. Moncada. There can be  
18 hundreds of thousands of poles such that even a  
19 dollar or two dispute can be serious money. And  
20 that's, quite frankly, the point. Even though  
21 these are all very large corporations, you know,  
22 tens of millions of dollars here, tens of millions  
23 of dollars there in disputes, you know, does add  
24 up. And so as much as I would love to potentially  
25 be involved in litigating these additional issues,

1           it's -- it's just -- it's stupid. It's just  
2           unnecessary to have to engage in this sort of pre  
3           litigation, threshold litigation before you can  
4           even decide.

5           Just -- as the staff has indicated, just file  
6           your complaint. Put in what you think is relevant.  
7           The respondent will respond with what that parties  
8           thinks is relevant, and then you are off to the  
9           races.

10           CHAIRMAN CLARK: Thank you, Mr. Self.

11           Ms. Moncada, I kind of understand where you  
12           are coming from philosophically. I'm not sure how  
13           we get there.

14           My second observation is the language that you  
15           have proposed I think is different from the  
16           language you began your statement with.

17           As I read the language, and I will ask for  
18           legal clarification. I am certainly not an  
19           attorney, and don't claim to be, but the proposal  
20           that I read actually doesn't require you to make a  
21           payment. It basically requires that you verify  
22           whether or not you have made the payment.

23           I don't have a real issue or problem with  
24           that. I think you were asking for it to go further  
25           than that, and wanting to change what you proposed

1 to put teeth in to say you will pay it, or agree  
2 that you are going to pay it; is that correct?

3 MS. MONCADA: It is correct that we have  
4 modified compared to what we submitted on September  
5 15th slightly. Yes.

6 CHAIRMAN CLARK: Okay. Ms. Cowdery, did -- I  
7 assume I read the language correct?

8 MS. COWDERY: Yes, Commissioner.

9 CHAIRMAN CLARK: Yay. Two points for me.  
10 Good.

11 Commissioners, questions or comments,  
12 observations?

13 Commissioner La Rosa.

14 COMMISSIONER LA ROSA: Chairman, thank you.  
15 Just one further question. Maybe this goes to FIT  
16 and to AT&T.

17 What other options do you have other than  
18 attaching?

19 MR. SELF: I'm sorry, other than what?

20 COMMISSIONER LA ROSA: Than attaching to these  
21 poles, what other options do you have -- going back  
22 to the Chairman's question, saying is this going to  
23 delay service to the end user, to the consumer,  
24 what other options that exist, and are those  
25 processes longer than it would be for attaching

1 onto the poles from what we are seeing today?

2 MR. SELF: I mean, fundamentally, you either,  
3 you go aerial or you go underground. And  
4 underground tends to be a lot more expensive,  
5 obviously, for multiple reasons. And the poles are  
6 there. You certainly don't want us putting  
7 additional poles. A lot of municipalities and  
8 counties don't permit multiple poles. You got to  
9 use what's already there. And, you know, the  
10 Congress has found that it's a fundamental right to  
11 be able to attach to existing poles. That's what  
12 enables carriers to provide service.

13 And so, sure, you could go underground, but  
14 that just adds more cost not into the equation.

15 MR. HATCH: It also -- it also adds a lot more  
16 time in terms of going underground in terms of  
17 aerial. Aerial is much faster, much more economic.

18 MR. SELF: And even with directional boring,  
19 there is still issues, especially with some local  
20 governments, as to when and how you can do some of  
21 those things. You know, it becomes more  
22 problematic, especially in, like, downtown areas.  
23 They don't want you cutting streets. They don't  
24 want you cutting sidewalks. So it can be a mess.

25 CHAIRMAN CLARK: Commissioner Fay.

1           COMMISSIONER FAY: Thank you, Mr. Chairman.

2           If I could, my question is directed at staff  
3 and not the presenters here, the speakers.

4           If we go ahead and move forward with the  
5 recommendation as proposed to us with the rules,  
6 can you just clarify for me if there are current  
7 actions pending at the FCC, would they then move  
8 over to the Commission? Or, I guess, if they are  
9 resolved and either appealed, or they are in a  
10 different state, would those then be moved to the  
11 Commission, or would they be resolved before -- I  
12 guess I should say after our certification is  
13 received?

14          CHAIRMAN CLARK: Ms. Cowdery.

15          MS. COWDERY: There is some amount of unknown  
16 in that at this point for staff. We are aware that  
17 I believe there are, like, two proceedings at the  
18 FCC that I believe are possibly in the  
19 reconsideration mode. I do not know the timing how  
20 long that's going to take.

21          All I know is that, you know, under the FCC  
22 rules, once we certify to the FCC, the FCC -- and  
23 the FCC approves the certification and does some  
24 public notice and everything, they will dismiss  
25 those -- they will dismiss pending cases for lack

1 of jurisdiction and send them to the Commission.

2 What that means precisely, if they've got  
3 something pending on reconsideration at this time I  
4 do not know. We would certainly find that out  
5 before we came back to the Commission for  
6 certification. We would update ourselves on what  
7 exactly was going on, and what exactly the FCC's  
8 position would be on that. At this time, that's  
9 what I know.

10 COMMISSIONER FAY: Okay. So I guess there is  
11 the two possible ones, and then as we get closer to  
12 certification, then the FCC, I guess, could tell us  
13 if they are going to close those out or not before  
14 we receive our certification.

15 MS. COWDERY: We will find out.

16 COMMISSIONER FAY: Okay. That's all I had,  
17 Mr. Chair.

18 CHAIRMAN CLARK: Ms. Moncada.

19 MS. MONCADA: Yes, a few things.

20 I just wanted to make sure that I answered  
21 your question clearly about the change that was  
22 made in the language compared to what was submitted  
23 on September 15th.

24 All we are doing is changing the requirement  
25 from confirming whether the attaching entity has

1           made the payment to confirmation that the attaching  
2           entity has made the payment. Really no more than  
3           that.

4                   I would like to respond to a few of the  
5           comments that have been made.

6                   Essentially what I am hearing is that they  
7           should be allowed to pay zero for as long as the  
8           amount is in dispute and until the end of the  
9           Commission's proceeding.

10                   I think we can all agree that, yes, certain  
11           entities have a statutory right to attach under  
12           most circumstances, but none of them have the right  
13           to attach for free. And if you are withholding  
14           payment, you should probably know what it is that  
15           you think the rate should be. Otherwise, how could  
16           they even come to this commission and file a  
17           complaint without presenting to you an idea of what  
18           they think the rate should be?

19                   And I disagree that it's not going to help you  
20           before filing the complaint, because there could be  
21           an array of cases that are never filed because this  
22           rule requirement exists, if adopted by you all, and  
23           therefore, the undisputed amount is paid, and  
24           parties can come together and reach a reasonable  
25           compromise on the undisputed -- I am sorry -- on



1 the disputed amount, and then never come before  
2 you. And so you would never actually see the  
3 evidence that it helped you because it didn't come  
4 before the Commission, but once it does come to the  
5 Commission, it is streamlined and focused.

6 CHAIRMAN CLARK: Good points.

7 I am still and, I guess -- and I am going to  
8 go back to another legal opinion here regarding  
9 even if you change the language to your second  
10 proposal of confirmation, would the failure to  
11 attach such an evidentiary document that confirms  
12 it automatically discharge the case in the other  
13 person's favor?

14 MS. COWDERY: It would mean that if one of the  
15 requirements for filing the complaint is not met,  
16 you wouldn't have con -- you know, you wouldn't be  
17 considered to have filed a complaint. And under  
18 this rule, you have to file everything that's  
19 listed in order to get a filing date for the  
20 complaint.

21 So it would not be considered complete, and it  
22 would not be considered filed, and the timeframe  
23 wouldn't -- the time clock wouldn't start rolling.  
24 The respondent has 30 days if they want to file,  
25 from the filing date, file a response.

1           CHAIRMAN CLARK: So you have -- you have to  
2           have filed the document confirming the payment. If  
3           you filed a document that --

4           MS. COWDERY: Yes.

5           CHAIRMAN CLARK: -- did not confirm the  
6           payment, it would not be in compliance. So the  
7           original request was just a verification statement.  
8           This requires a confirmation that changes and  
9           shifts the burden.

10          MS. MONCADA: Right. And I still don't know  
11          what, you know, legally what does verified, what  
12          does confirmed --

13          CHAIRMAN CLARK: If you took the word verified  
14          out that just says a statement from the company  
15          representative --

16          MS. MONCADA: Right.

17          CHAIRMAN CLARK: -- that would be more --  
18          Commissioners, back at you.

19          Commissioner Passidomo. I am sorry, I missed  
20          your light.

21          COMMISSIONER PASSIDOMO: Quick question.

22          I don't know if this should be directed to Ms.  
23          Cowdery, but I know that specifically in the  
24          statute FCC precedent does not apply here. That's  
25          the, you know, the Florida Legislature has made

1           that clear. But has this sort of, you know,  
2           prerequisite, is that required at the FCC -- was  
3           that previously required at the FCC? Are there,  
4           you know, FCC decisions to that respect? That's  
5           basically to any of you.

6           MS. COWDERY: I do not know. I don't know if  
7           that's been an issue that's come up at the FCC or  
8           not. I do not know.

9           CHAIRMAN CLARK: Commissioners, you have  
10          staff's proposal, you have --

11          mr. mon: I'm sorry, Mr. Chairman --

12          CHAIRMAN CLARK: Ms. Moncada, yes.

13          MS. MONCADA: -- I apologize. I would like an  
14          opportunity to respond to Commissioner Passidomo's  
15          question if that's okay?

16          CHAIRMAN CLARK: Sure.

17          MS. MONCADA: Thank you.

18          So I have two authorities here with me this  
19          morning. One, again, is a letter from March 29th  
20          of 1999 from the U.S. Department of Justice, Civil  
21          Decision, Appellate Staff, and I think it's  
22          relevant here. It was sent to the Eleventh Circuit  
23          Court of Appeals in connection with a Gulf Power  
24          pole attachment appeal from the FCC, and it says:

25          The FCC has no general power to set pole

1 attachment rates in the first instance. Its  
2 regulatory authority over such rates comes into  
3 play when a cable company files a complaint  
4 alleging that a rate charged by a utility is not  
5 just and reasonable. Thus, in the absence of an  
6 FCC adjudication, a cable company seeking pole  
7 access must pay the rate that the utility demands.

8 There is a lot more, but I will skip to page  
9 six here and it says:

10 If a cable company files a complaint and the  
11 FCC determines that a rate is not just and  
12 reasonable, the FCC may order the utility to accept  
13 what the FCC determines to be a just and reasonable  
14 rate, and may order the utility to pay a refund.

15 And that's what this letter says about the  
16 procedure.

17 And I also have a Fiber Technologies Networks  
18 complaint versus Duquesne Light Company from 2003,  
19 an FCC decision, where the FCC says -- and I don't  
20 have it highlighted, so I apologize. But it does  
21 go on to say that the attacher who was claiming  
22 that it should not have been forced to pay the rate  
23 charged by the electric utility demonstrated --  
24 failed to demonstrate actual or threatened  
25 termination.

1           It says: Although, we understand that Fiber  
2           Tech contends that the \$565,000 constitutes an  
3           overcharge in violation of Section 224.

4           And just as background, Section 224 is the  
5           pole attachment complaint rule for the FCC.

6           Fiber Tech fails to explain in either the  
7           state petition or the complaint how it could be  
8           irreparably harmed if it simply paid Duquesne the  
9           565,000-dollar amount now, with the expectation  
10          that it would later recover this payment as a  
11          refund if it succeeds in proving this Section 224  
12          violations alleged in the complaint.

13          So hopefully that's helpful to you,  
14          Commissioner Passidomo.

15          COMMISSIONER PASSIDOMO: Sure. Thanks, Ms.  
16          Moncada.

17          I mean, I understand that authority. The way  
18          that I hear that, though, is that it's not setting  
19          a bar for getting your complaint in in the first  
20          place. It's, obvious, you need to pay your, you  
21          know, you have to pay your contractual obligations,  
22          but that doesn't stop you from filing the complaint  
23          as it's kind of a prerequisite or an additional  
24          requirement before they take up -- there is  
25          probably more to that case that I don't know.

1 CHAIRMAN CLARK: Mr. Self.

2 MR. SELF: Thank you, Mr. Chairman.

3 I don't that randomly reading letters and  
4 things is very useful at this juncture. It seems  
5 to me, if anything, that what Ms. Moncada has done  
6 is proven my point, which is why you need to  
7 provide further elaboration in the rule as to what  
8 exactly the statute means with respect to what are  
9 those FCC rules and precedents that apply, so.

10 CHAIRMAN CLARK: Thank you, Mr. Self.

11 Commissioner Graham, a question?

12 COMMISSIONER GRAHAM: Well, I was just going  
13 back to what Florida Power & Light just said. It  
14 seems like they are going to the other -- it seems  
15 like the FCC was going to the other extreme, where  
16 they are saying, pay the full amount up front, and  
17 after the negotiations you can get a refund coming  
18 back if contractually you think you owe less than  
19 what they are telling you you owe.

20 What I was proposing earlier was just moving  
21 forward on the lower amount and allow for it, after  
22 the suit dispute is handled, for the dollars to  
23 change hands that way.

24 So I get where they are coming from, and it  
25 makes sense to me that why should somebody sit --

1           why should somebody be able to hang on their poles  
2           for free until after the thing is done. There is  
3           no skin in the game.

4           MR. SELF: And, Mr. Chairman, just briefly. I  
5           believe Ms. Moncada implied that carriers are  
6           seeking to say pay zero.

7           And I obviously can't speak for the universe  
8           of carriers that attach to poles, but I don't think  
9           any of the carriers are suggesting that they should  
10          pay zero. I think they pay what they believe is  
11          undisputed. The problem is what -- what Carrier A  
12          may say is the disputed amount, the pole owner may  
13          completely disagree as to whether that is the  
14          amount that's in dispute.

15          CHAIRMAN CLARK: I think that's kind of where  
16          I keep coming back at, is how do I know what is an  
17          undisputed amount? That's what I am struggling  
18          with here. Do you think, Ms. Moncada, that there  
19          is a point that both the parties can agree to what  
20          an undisputed amount is?

21          MS. MONCADA: Absolutely. So when FIT member,  
22          let's just say, for example, comes to you with a  
23          complaint and says, FPL is charging me \$10, it  
24          should be 7.50. That 7.50, it is undisputed that  
25          they should be paying at least that amount.

1           CHAIRMAN CLARK: So if we made a modification  
2           somehow, I don't know how yet, to the proposed  
3           language that says that there was -- if there is a  
4           unquestioned undisputed amount, there is an -- if  
5           there is an undisputed amount, that that should be  
6           paid. Mr. Self, how would you feel about that, if  
7           both parties agree to an undisputed amount that is  
8           owed?

9           MR. SELF: The problem is is they may not  
10          agree with --

11          CHAIRMAN CLARK: I didn't ask that. That was  
12          not -- the question is if they agree on an  
13          undisputed amount?

14          MR. SELF: I think what you are asking is if  
15          the petitioner would say, I believe I owe X, and I  
16          have paid X, is that what you're --

17          CHAIRMAN CLARK: Yes, that is correct.

18          MR. SELF: That's what you are looking for?

19          CHAIRMAN CLARK: Yes.

20          MR. SELF: I think making the statement is  
21          probably -- I think it -- if I was drafting a  
22          complaint, I think I would make that statement  
23          myself in the complaint to let the Commission know  
24          that we are not -- we haven't completely paid zero.  
25          I think I would make -- I think it's just



1           fundamental as a lawyer to make that type of  
2           statement in the pleading. I don't know that you  
3           need to require making that statement.

4           CHAIRMAN CLARK: In order for us to put -- in  
5           order for us to put the -- when we look at the  
6           stick and carrot approach here, I think that's,  
7           that may be a reasonable way to get that.

8           Mr. Hatch, your thoughts?

9           MR. HATCH: My thoughts follow along with Mr.  
10          Self's a little further in the sense that where Mr.  
11          Self started was what if they don't agree? What if  
12          they cannot agree?

13          CHAIRMAN CLARK: But you're -- we are  
14          disregarding that. If the language says -- if you  
15          don't agree, then -- it sets it aside.

16          MR. HATCH: If your point is when you file a  
17          complaint, you allege in your complaint that I have  
18          paid X that I think is the right amount.

19          CHAIRMAN CLARK: Uh-huh.

20          MR. HATCH: If that's your statement, and it's  
21          not a threshold filing to establish whether X is  
22          correct, then I don't know that I have a problem  
23          with that.

24          CHAIRMAN CLARK: Good. That's what I wanted  
25          to hear.

1           MR. SELF: Yeah, I think I understand what you  
2           are saying now, Mr. Chairman. You simply are  
3           saying that as a matter of pleading, the petitioner  
4           should state how much they have paid.

5           CHAIRMAN CLARK: And that -- no, not exactly,  
6           not how much -- not stating how much they have  
7           paid, but how much they are appearing to pay.

8           MR. SELF: How much they think it should be --

9           CHAIRMAN CLARK: Yes.

10          MR. SELF: -- and if they have paid it?

11          CHAIRMAN CLARK: Do you think it is possible  
12          for the two of you to work that statement out,  
13          Ms. -- I am sorry, three of you, three parties --  
14          to work that out in a statement?

15          MS. MONCADA: I do, and it is exactly what we  
16          intended. So to the extent that our language made  
17          it confusing, then we apologize for that, and we  
18          will work on it; because that is precisely the  
19          concept that we were trying to accomplish, which is  
20          if you believe the rate is X, then at least pay X.

21          CHAIRMAN CLARK: Ms. Cowdery, Ms. Helton, do  
22          y'all think that is possible physically?

23          MS. HELTON: Sure.

24          CHAIRMAN CLARK: Great. That's what I wanted  
25          to hear.

1           Commissioners, do you have any objections to  
2           us proceeding down this route? We are looking for  
3           solutions. Everybody is liking it? Good. Then  
4           10-minute recess, 12 if necessary.

5           (Brief recess.)

6           CHAIRMAN CLARK: All right. I think everybody  
7           had a chance to read it. It won't take long. That  
8           replaces line 16, correct, on page 12?

9           All right. Again. Let me say thank you all  
10          for your cooperation and willingness to work this  
11          out. It seems to me to be a very good compromise  
12          on all parts.

13          There are three decisions, I guess, before the  
14          Commission right now. There was a question  
15          regarding the extension from -- the change from 180  
16          days to 90 days. There was the issue of dealing  
17          with the rule and FCC, and whether or not the  
18          applicable. And then the third proposal is this  
19          particular change, the change in subsection (g),  
20          subparagraph (g) on page 16; am I correct?

21          MR. HETRICK: That captures the three issues.  
22          Yes, Mr. Chairman.

23          CHAIRMAN CLARK: Okay. Any comments from any  
24          parties before I call for a motion?

25          MR. HATCH: Mr. Chairman.

1 CHAIRMAN CLARK: Yes.

2 MR. HATCH: Tracy Hatch with AT&T.

3 CHAIRMAN CLARK: Yeah, I am sorry.

4 MR. HATCH: Sorry about that.

5 CHAIRMAN CLARK: Thank you.

6 MR. HATCH: The language as it's basically  
7 been written out works fine, but I still call into  
8 question whether the statutory provision itself  
9 allows for this in there. You know, we are -- we  
10 are engaged in a debate is it procedural, is it  
11 not? And it drifts back and forth across the line.  
12 It's extremely very close. And so I still question  
13 whether or not it's actually provided for in the  
14 statute as your rule-making authority.

15 CHAIRMAN CLARK: Duly noted.

16 Ms. Cowdery, you are going to say duly noted  
17 also, right?

18 MS. COWDERY: Duly noted, we have authority.

19 CHAIRMAN CLARK: Thank you.

20 Commissioners?

21 Mr. Self?

22 MR. SELF: Can I just say ditto to Mr. Hatch?

23 CHAIRMAN CLARK: Yes. Sure. Ditto. It's on  
24 the record.

25 Commissioners?

1 Commissioner Graham.

2 COMMISSIONER GRAHAM: You know, it's  
3 interesting to me that it took nine attorneys 30  
4 minutes to come up with 42 words.

5 MR. HATCH: If we got paid by the word, it  
6 would be a lot longer.

7 COMMISSIONER GRAHAM: I picked the wrong  
8 profession.

9 CHAIRMAN CLARK: That's right.  
10 Commissioner Fay.

11 COMMISSIONER FAY: Thank you, Mr. Chairman. I  
12 have a comment and then I will move forward with  
13 this item.

14 I think the debate here had today was a good  
15 one. It is a little concerning to hear that there  
16 is still a legal objection but substantively you  
17 agree to the language. So I think with that, that  
18 component of the issue, can move forward.

19 I think, in large part, the Legislature's  
20 intent in movement from the FCC to us to do this  
21 does touch on the jurisdiction and how these things  
22 will come forward to us. And so I think -- I think  
23 actually all three parties and their lawyers served  
24 them well today, because I think it's proof that we  
25 are not exactly sure how all of these are going to

1 look and what will be included.

2 And my concern is just, you know, we are a  
3 venue to resolve these -- these issues, but not  
4 necessarily one to litigate other issues that are  
5 going to be brought in on these potentially, and so  
6 I just ask the parties to be very mindful of that  
7 as we -- we move forward.

8 And I think, you know, the -- all jokes aside  
9 about lawyers, right, and the hourly billing, I  
10 think there is a potential for a lot of ancillary  
11 litigation related to some of these components, and  
12 obviously, it's an important issue for the  
13 interested parties. But I think just, as we move  
14 forward, we will keep in mind our jurisdiction in  
15 the Commission and what that the Legislature has  
16 asked us to do.

17 So with that, I feel, Mr. Chairman, at your  
18 direction, with the negotiated language on that  
19 Issue 3, the 180-day, and then as the staff  
20 recommendation includes the rate setting language,  
21 which does not mandate the FCC language, I would  
22 move approval on that item.

23 CHAIRMAN CLARK: I have a motion, do I have --

24 MS. HELTON: And, Mr. Chairman, maybe, to make  
25 the record complete, I don't think we've actually

1 read the language into the record.

2 CHAIRMAN CLARK: Okay. We'll read item G into  
3 the record substituting the item in front of you  
4 for line 16 on page 12 of the staff recommendation.

5 Item G would read: If the complaint involves  
6 a dispute regarding rates or billing, a statement  
7 of the dollar amount in dispute, the dollar amount  
8 not in dispute, whether the amount not in dispute  
9 has been paid to the pole owner, and if not paid,  
10 the reasons why not.

11 COMMISSIONER FAY: That would be included in  
12 my -- in my motion.

13 CHAIRMAN CLARK: All right.

14 COMMISSIONER FAY: It's said much better than  
15 I would, so thank you, Mr. Chairman.

16 Do I have a second?

17 COMMISSIONER GRAHAM: Second.

18 CHAIRMAN CLARK: I have a second, a motion and  
19 a second.

20 Any discussion?

21 On the motion, all in favor say aye.

22 (Chorus of ayes.)

23 CHAIRMAN CLARK: Opposed?

24 (No response.)

25 CHAIRMAN CLARK: Motion carries.

1           Thank you very much. Thank you to all of the  
2 parties involved here today.

3           MR. SELF: Thank you, Commissioners.

4           CHAIRMAN CLARK: Are there any other items to  
5 come before the Agenda Conference?

6           Seeing none, we stand adjourned.

7           We will reconvene in, Dave, do you need 10?  
8 Five minutes. Reconvene in five minutes.

9           (Agenda item concluded.)

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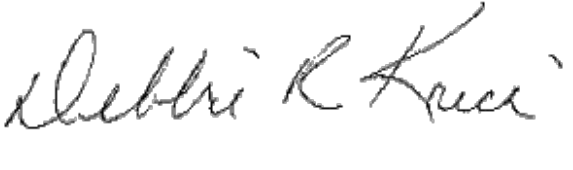
STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA KRICK, 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 16th day of November, 2021.



DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #HH31926  
EXPIRES AUGUST 13, 2024