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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20210138-PU

Proposed adoption of Rule 25-18.020,
F.A.C., Pole Safety, Inspection,
Maintenance, and Vegetation Management.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 2

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

DATE: Tuesday, March 1, 2022

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

REPORTED BY: DANA W. REEVES
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
112 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 CHAIRMAN FAY: All right. Commissioners, more
3 rules. Item 2 next. I will pretty much take this
4 up in the same manner that I did the previous item.
5 I'll give a minute for the parties to get in place
6 here, and then we can have them -- we can have a
7 summary and then have them address the Commission.

8 Good morning, Ms. DuVal, all you're recognized
9 that present the item.

10 MS. DUVAL: Good morning, Chairman and
11 Commissioners. Margo DuVal on behalf of legal
12 staff. Item 2 is staff's recommendation on the
13 proposed adoption of Rule 25-18.020 F.A.C. Pole
14 Safety, Inspection, Maintenance and Vegetation
15 Management. This rule is being proposed to
16 implement section 366.04(9) of the Florida
17 Statutes, which requires the Commission to regulate
18 the safety, vegetation management, repair,
19 replacement, maintenance, emergency response and
20 storm restoration requirements for communication
21 services providers' poles with public utility
22 attachments. Staff recommends that the draft rule
23 as set forth in Attachment A of the recommendation
24 meets the Florida Legislature's directive to adopt
25 rules that implement this section. Staff further

1 recommends that the Commission should certify that
2 the rule is not a minor violation rule because a
3 violation of the rule would result in economic or
4 physical harm to a person or have an adverse effect
5 on the public health, safety or welfare or create a
6 significant threat of such harm.

7 The following individuals are here to address
8 the Commission on this item, Tracy Hatch
9 representing AT&T, Jean Stockman representing
10 Lumen-Embarq Florida Inc., doing business as
11 CenturyLink, Maria Moncada representing Florida
12 Power and Light Company. In addition, the
13 following individuals are here and available to
14 answer any questions: Stephanie Cuello
15 representing Duke Energy Florida and Jeff Wahlen
16 representing Tampa Electric Company. And staff is
17 available for questions. Thank you.

18 CHAIRMAN FAY: Thank you, Ms. DuVal for that
19 summary. With that, I'll first go to AT&T to
20 present your comments.

21 MR. HATCH: Thank you, Mr. Chair. Tracy Hatch
22 appearing on behalf of AT&T. I guess a couple of
23 points, going specific to issues; one, is the
24 actual reporting cycle, which the staff
25 recommendation is for annual reporting. There were

1 a number of alternatives proposed. AT&T proposed a
2 various -- a slightly different reporting cycle,
3 depending on whether you had an 8 or a 10-year
4 cycle for pole inspections. We had proposed either
5 a two- or four-year cycle for reporting. And the
6 foundation for all of that is that we're cognizant
7 of doing it, but the question is, how often do we
8 have to do clerical work to report on exactly what
9 it is we're doing? An annual basis will give you
10 information. You'll get the same information on a
11 two- or four-year reporting cycle, and it seems
12 more efficient to us to do it on a combined or on
13 potentially a longer reporting cycle, you still get
14 the information you need to compare about how we
15 are performing versus an 8-year full cycle of
16 inspections. And so we would advocate that you
17 have either a two- or four-year cycle for your
18 reporting. It doesn't seem to make any real sense
19 to us that it be annual, simply because that's how
20 the electricians do it today. Consistency is one
21 thing, but usefulness is entirely different. And
22 we're in a deregulated environment. We have lots
23 of things to do, and far fewer people to do it.

24 CHAIRMAN FAY: Is that it?

25 MR. HATCH: There are others. We can do them

1 one at a time, or I'll just go through the whole
2 list and make it a free-for-all.

3 CHAIRMAN FAY: You can go through them. I
4 just ask you to be respectful of the other parties
5 with time.

6 MR. HATCH: Yeah, no problem. The second
7 thing is with respect to vegetation management.
8 The number of miles of vegetation managed versus
9 and including the number of miles to be managed at
10 whatever reporting cycle there's going to be.
11 Vegetation management -- nobody knows what that
12 really means. I don't know what that really means.
13 Does it mean that I inspected 500 miles whole line
14 and didn't cut a single branch because there was no
15 vegetation, or does it mean that I managed 30 feet
16 because I had to chop a wisteria vine around a pole
17 and spent two days doing it and digging it out?
18 There's no significant information to the number of
19 miles of vegetation managed without the definition
20 of what vegetation management is.

21 More importantly, in terms of a cycle of
22 vegetation management, staff, in its
23 recommendation, acknowledges that the NESC says
24 that vegetation management, particularly for
25 communications companies, ought to be on an

1 as-needed basis based on experience. And our
2 experience is, you don't have to manage vegetation
3 on a per-mile basis on an annual basis. As it
4 becomes necessary, then we do it.

5 The other thing that I would mention, too, is
6 that there's a new provision that's been inserted
7 in here that was not in the original draft rule
8 proposal, which is an acknowledgement of local
9 ordinances, and said that nothing in here shall
10 preclude a local ordinance. You're opening up a
11 can of worms here, simply because those comments
12 came from Coconut Creek. Now, the bulk of Coconut
13 Creek's comments were related to small cells, which
14 are exempt from this bill. And in their comments,
15 they complain about why didn't you include small
16 cells in the Commission's rules; because you
17 cannot. More importantly, Coconut Creek has a very
18 extensive landscaping requirement. Their
19 landscaping ordinance, which governs rights-of-way
20 as well as other things, is 75 pages long. It
21 details where you put trees, when you put trees,
22 how you put trees. It details what you can prune,
23 what you cannot prune. And pruning of a tree can
24 be defined in their ordinance as tree abuse.
25 That's how serious they are about this. And,

1 essentially, you're asking us to trim vegetation
2 and keep it managed away, and Coconut Creek's
3 asking us to put vegetation and landscaping in as
4 well as maintain it. They regulate how long the
5 grass can be. They regulate how much you can
6 actually trim the canopy of the tree. All of that
7 is inconsistent with our goals of vegetation
8 management, whatever that's going to be.

9 And what I would urge you not to do is give a
10 hook into Coconut Creek to claim a delegation of
11 authority to impose their ordinances on us in the
12 context of vegetation management or other context.
13 I think it probably exceeds your statutory grant of
14 authority under the statute, first and foremost.
15 But, more importantly, until you get into and look
16 at the issue of what Coconut Creek's ordinances are
17 and how they would affect us, I would argue and
18 urge you not to include that provision in this
19 rule. Nothing says that you -- if you see a need
20 for it, you can come back later and add it if you
21 need to. It is not one of the items that the
22 statute says you must consider in the first draft
23 the rule you first got.

24 CHAIRMAN FAY: Thank you. Next, CenturyLink.

25 MS. STOCKMAN: Good morning, Chairman and

1 Commissioners. My name is Jean Stockman and I'm
2 here for Embarq Florida, d/b/a CenturyLink. We
3 appreciate the efforts of the staff and the public
4 utility industries to develop reasonable
5 regulations, for pole attachment safety and
6 management.

7 COURT REPORTER: Can you please move a little
8 closer to the microphone?

9 MS. STOCKMAN: Sure. Thank you.

10 CHAIRMAN FAY: Thank you.

11 MS. STOCKMAN: CenturyLink participated in the
12 industry workshop held October 27th and filed
13 written comments with the Commission filing the
14 workshop on November 15th. We're here today to
15 comment on Subsection 3 of draft Rule 25-18.20,
16 concerning the frequency of pole inspections. The
17 proposed rule specifies that communications
18 providers, subject to the Commission's
19 jurisdiction, conduct inspections every eight
20 years. In our comments, we recommended a 10-year
21 cycle. Frontier also recommended a 10-year cycle
22 in its comments, and we stand by our comments in
23 this proceeding.

24 Ten year is an industry-standard cycle. Our
25 company reviews its entire nationwide 2.2 million

1 pole inventory on a 10-year cycle. And changing
2 one state to an 8-year cycle would create
3 administrative challenges. Large company operating
4 in 37 states as an ILEC, this would create a unique
5 one-of-a-kind scenario. We understand that other
6 utilities have an 8-year cycle and ask that the
7 rule allow flexibility to accommodate both time
8 frames. One approach would be to adopt a
9 permissible range of inspection cycles, allowing 8
10 to 10 years, or having a maximum 10-year cycle be
11 permissible. The rule could even impose a
12 recommended 8-year cycle while still allowing a
13 10-year maximum. We respectfully request the
14 Commission's consideration of this request. Thank
15 you.

16 CHAIRMAN FAY: Great. Thank you, Ms.
17 Stockman. Next, Ms. Moncada.

18 MS. MONCADA: Thank you, Mr. Chairman. Good
19 morning. To help aid in the discussion for this
20 morning, FPL has prepared some handouts, and I'm
21 happy to pass them out, or if staff has someone who
22 can pass them out, we have enough for everybody.

23 CHAIRMAN FAY: Okay. We'll see if somebody
24 from staff maybe can get them to us and then to the
25 parties. I'm afraid if I get up, Commissioner

1 Clark or Graham might take my seat, so.

2 Ms. Moncada, is this something that our staff
3 has seen previously?

4 MS. MONCADA: It is not, Mr. Chairman. We
5 have previously commented on this portion of the
6 rule, but this specific exhibit was not included
7 with our comments.

8 CHAIRMAN FAY: Okay. Does everybody have one?
9 With that, Ms. Moncada, you're recognized.

10 MS. MONCADA: Thank you. On behalf of FPL,
11 thank you again for the opportunity to address you
12 regarding this pole maintenance and inspection
13 rule. Your staff has, once again, done an
14 admirable job of developing a rule governing poles
15 owned by comm services providers, as required by
16 the statute. FPL supports the draft rule included
17 with the staff recommendation, with two exceptions
18 that are important to meeting the legislature's
19 goal of strengthening the grid and making it more
20 resilient to withstand major storms.

21 This goal, of course, directly impacts our
22 customers as well as the customers of the other
23 regulated utilities sitting around this table and
24 the Florida economy as a whole.

25 The first exception I want to talk about

1 relates to Section 366.04(9), A and B, which
2 require that these rules implement the Commission's
3 regulatory power over storm restoration
4 requirements for poles of communications service
5 providers. This specific subject does not appear
6 to be addressed in staff's proposed rule language.
7 So we suggest that under Subsection 5, which deals
8 with emergency response and storm restoration
9 procedures, that that section be revised to include
10 language to require a description of the procedures
11 employed by the provider to replace broken poles --

12 CHAIRMAN FAY: Ms. Moncada, I apologize to
13 interrupt you, but you're saying this would be
14 language within section five? Is this -- I see
15 section three being amended as --

16 MS. MONCADA: So section five is on the
17 following page. Oh, sub three of -- so part three
18 of section five.

19 CHAIRMAN FAY: In section five first.

20 MS. MONCADA: Yes.

21 CHAIRMAN FAY: Okay. Go ahead.

22 MS. MONCADA: So if we look at that handout,
23 the revised language says the description of the
24 procedures employed by the provider to replace
25 broken poles and downed overhead facilities,

1 including protocols for communications and
2 coordination with public utilities through
3 emergency response and storm restoration efforts.

4 The second area we'd like to address is
5 section three, which pertains to inspection,
6 repair, and replacement of poles. And our concern
7 relates to the types of inspections that are
8 required. Currently in the draft, the only
9 inspection that is required is a visual check. In
10 the recommendations, staff points out that the
11 communications companies can expand their
12 inspections to include methods other than visual to
13 ensure compliance with the National Electric Safety
14 Code strength requirements. But that further
15 assessment is permissive under the proposed rule
16 language. And the problem is that a visual check
17 can never demonstrate that a pole passes the NESC
18 strength requirement. Visuals can tell you only
19 that the pole has lost integrity and would fail the
20 test, but not that it has satisfied the standard.
21 FPL suggested in its original written comments, and
22 we continue to maintain today, that requiring only
23 visual checks is not adequate. Further tests must
24 be required and are vital to meeting the
25 legislature's goal to eliminate weaknesses in the

1 grid.

2 A number of years ago, in 2006, following the
3 back-to-back storms that occurred in Florida in
4 2004 and 2005, this commission opened a docket that
5 took a detailed look at pole inspection cycles,
6 inspection methods, and the role of inspections in
7 ensuring that a public utilities pole strength
8 requirements are satisfied. The Commission
9 observed that deteriorated poles are more likely to
10 fail, and that the only way to determine which
11 poles are acceptable is through inspections.

12 And, Commissioners, at the risk of stating the
13 obvious, the purpose of inspections should be
14 prevention. Inspections should identify which
15 poles will fail before it happens. When a storm
16 hits, the time it takes to restore service when
17 poles fail, meaning they fall down or snap, is
18 significantly longer than the time it takes to
19 restore service when poles remain standing.

20 As everyone knows very well, storms do not bob
21 and weave in between pole lines to avoid hitting
22 the telephone poles. All poles along the storm's
23 path are impacted. But the extent of that impact
24 and whether the customers lights will stay on or
25 whether the customer can be restored quickly

1 depends on the strength of the pole.

2 So all that leads to the question, what types
3 of inspections are adequate? The 2006 pole
4 inspection docket explored this issue in detail and
5 the Commission concluded the direct quote, "we find
6 it appropriate to require wood-pole inspections to
7 be based on the sound and bore technique for all
8 poles. This method produces information about the
9 remaining pole strength requirements as required by
10 the NESC, whereas the visual and thermovision
11 inspection methods cannot provide such
12 information." The Commission went on to say that
13 the sound and bore techniques should include
14 excavation for all southern pine poles and other
15 pole types, as appropriate.

16 So I bring that up because the Commission
17 already has found that visual inspections cannot
18 serve to determine whether the strength standards
19 of the NESC are satisfied. So we, FPL, submit that
20 it would be inappropriate to have a rule in which
21 visual checks are the only mandated inspection.
22 Strength is a function of circumference and
23 measuring circumference beneath ground level is the
24 only accurate way to assess strength, because that
25 is where the rotting and decaying is most likely to

1 occur. It's been more than 15 years now since the
2 Commission opened that pole inspection docket, and
3 the data that we've gathered in those years
4 demonstrates that the Commission's conclusions were
5 correct.

6 If we look at the handout that was circulated,
7 we can see in the data there that in the four years
8 from 2018 through 2021, FPL would have missed 98
9 percent of problem poles if they had relied solely
10 on visual checks. And the pictures on that page
11 are examples of poles that did pass the visual
12 test. They even passed above-ground practical
13 tests, but, ultimately, they fail to meet the NESC
14 strengths standard, and we learned that only after
15 excavating and performing further inspection.

16 The data and the sample photos demonstrate the
17 problem with the proposed rule language. The rule
18 would not satisfy legislative intent if we leave
19 the discovery of 98 percent of the problems to an
20 individual company's discretion. The conclusion
21 the Commission reached in 2006 remains true today.
22 This is another quote from that 2006 order: Visual
23 inspections provide little value in determining
24 loss of strength. For FPL alone, our facilities
25 are attached to approximately 275 communications

1 poles. If we miss 98 percent of the problem poles,
2 that could result in significant numbers of outages
3 or delays in restoration that could have been
4 prevented through a more thorough inspection.

5 So we ask that the Commission revise the
6 inspection requirement under Subsection 3 in the
7 manner set forth in page two of the handouts that
8 were circulated, so that more comprehensive tests
9 are not discretionary, but rather are required for
10 poles owned by communications services providers,
11 just as they are for the electric IOU's.
12 Establishing this requirement will help support the
13 delivery of reliable service and mitigate
14 restoration time. We're available to answer
15 questions, and also with me today in the event any
16 reinforcements, are Tom Elaine and William Boley
17 (sic) who have years of experience with FPL's pole
18 inspection program. Thank you.

19 CHAIRMAN FAY: Great. Thank you, Ms. Moncada,
20 as I addressed AT&T in the last rule, we have a
21 rule process that allows for information like this
22 to come forward at a much earlier time period. And
23 so I appreciate you bringing it forward, but just
24 recognize that we'll now have to process that and
25 make a decision on it today. And so anytime you

1 can get this information earlier, I think it allows
2 for a better result.

3 MS. MONCADA: Understood. I just wanted to
4 make sure the Commission is aware that the
5 information we presented today is consistent with
6 what we provided in our written comments, just not
7 exactly the same.

8 CHAIRMAN FAY: Thank you. And, with that,
9 Commissioners, what I'd like to do is maybe have
10 Ms. DuVal address some of those things, at least
11 generally if you're able to do so, and then allow
12 Commissioners to ask questions to either the
13 interested persons or to staff at this time. And I
14 see Mr. Ballinger has joined us in case we have
15 some pole questions on our end.

16 So with that, Ms. DuVal, if you -- I guess if
17 you'd like, we have essentially AT&T's comments and
18 then CenturyLink and then FPL, if you could address
19 those each individually.

20 MS. DUVAL: Mr. Chairman, if I -- if I may
21 make a recommendation. Would it be possible to
22 have a response from the communications services
23 providers to FPL's comments, and then we could
24 discuss all the issues in full?

25 CHAIRMAN FAY: Sure. We could allow that,

1 just recognizing there are two other utilities that
2 are available for questions, presuming they don't
3 want to add anything to that. I think it's
4 appropriate to have the communications providers
5 provide that response, and then you can address
6 that. I just ask, once again, to be -- to respond
7 within the scope of what was discussed here and not
8 raise additional issues outside of what you
9 presented. With that, Mr. Hatch, you're
10 recognized.

11 MR. HATCH: With respect to FPL'S, I can't
12 argue one way or another. I haven't had a chance
13 to look at the data. I got it today. So it is
14 what it is. I can't vouch for it or throw stones
15 at it. I'm at somewhat of a loss. I can suggest
16 that what Ms. Moncada relayed to you from the
17 original storm-hardening proceedings is accurate.
18 The question as is whether it is still useful and
19 still essential. Do you need to go to these
20 extraordinary lengths to essentially assure
21 yourself that poles are going to stay up in a
22 storm?

23 CHAIRMAN FAY: Great. Thank you. Ms.
24 Stockman.

25 MS. STOCKMAN: I'm in much the same position

1 as Mr. Hatch, and -- that I would need to take this
2 information back to really provide a more fulsome
3 response to the allegations that Florida Power &
4 Light has made.

5 CHAIRMAN FAY: Okay. Great. With that, I'll
6 give Ms. DuVal a minute. Ms. DuVal, if you need to
7 take a few-minute recess, we're happy to do so; you
8 just make sure you have all the information you
9 need to respond.

10 MS. DUVAL: I think we're ready to go forward.
11 Thank you.

12 CHAIRMAN FAY: Sure. Go ahead.

13 MS. DUVAL: Okay. So I believe the first
14 comment that we heard from AT&T was about the
15 reporting cycle where they were suggesting either a
16 two- or four-year cycle as opposed to the
17 recommended annual report.

18 CHAIRMAN FAY: Correct.

19 MS. DUVAL: Yes. I will -- I will attempt to
20 begin to explain that and then refer to my
21 technical staff colleagues, as well.

22 My understanding is that staff believes that
23 it's important that this information be provided on
24 an annual basis so that we have the most
25 up-to-date, current information available in the

1 event that we need to refer to any of this
2 information, in case a docket comes up. I believe
3 that was addressed in FPL's comments. And in --
4 and then it's also -- I'm sorry. I was trying to
5 find the page on a recommendation here.

6 CHAIRMAN FAY: Go ahead. Take your time.

7 MS. DUVAL: Yes. On pages seven and eight.
8 It's consistent with the electric company's
9 submission of annual reports, but even aside from
10 that, it's important for us to have this
11 information in order to fulfill the duties that
12 were set forth in the statutes through this new
13 legislation. Would you like to add anything else?

14 CHAIRMAN FAY: Great. Okay. Next is the
15 local ordinance issue.

16 MS. DUVAL: On the local ordinance issue, I
17 just want to point out that this language was
18 included after reviewing the city of Coconut
19 Creek's comments. However, we just wanted to make
20 sure that it was clear that this draft rule
21 language was not intended to supersede any local
22 ordinances or trump anything that is already in
23 place that the companies may already be complying
24 with. So I understand AT&T's comments, but, at the
25 same time, we just want to make sure that everyone

1 understands that we were not intending to put
2 another requirement on the companies, and I think
3 that the way that we crafted this was to ensure
4 that we were not going outside the bounds of any
5 sort of statutory direction. We were just making
6 sure that we were actually not imposing anything
7 that would ultimately be interpreted to supersede
8 any other ordinances that are out there.

9 CHAIRMAN FAY: Great. So it wasn't something
10 specific the statute required, it's just a layer of
11 protection?

12 MS. DUVAL: Correct.

13 CHAIRMAN FAY: Okay. Great. And then next,
14 if you could address CenturyLink the 8- to 10-year
15 cycle, I think the recommendation pretty much
16 addresses that, but if there's anything you want to
17 add.

18 MS. DUVAL: Yes. As staff noted in the
19 recommendation, the 8-year cycle is consistent with
20 the electric companies, with the IOU's cycle. We
21 believe that this gives the companies an
22 appropriate amount of time. We also wanted to make
23 sure that we did not impose any other prescriptive
24 requirements on the companies as far as the
25 percentages. Essentially, we just wanted to set

1 the standard and say, okay, here's -- here's the
2 goal to achieve, and how you do that, you have the
3 discretion to do that.

4 CHAIRMAN FAY: Great. And then the last two
5 would just be the draft language received from FPL.
6 And will you address -- or spoken to issue five,
7 paren five first. And then paren three, you can
8 take them up however you'd like.

9 MS. DUVAL: If I may, I believe there was one
10 other comment --

11 MR. HETRICK: Chair. Margo -- I think we
12 skipped over vegetation management comments.

13 MS. DUVAL: Yes. That's what I was getting
14 to.

15 CHAIRMAN FAY: Great. Go ahead.

16 MS. DUVAL: Right. So as far as AT&T's
17 comments about the total miles of vegetation
18 management conducted, I may actually ask for some
19 assistance on this one from technical staff.

20 CHAIRMAN FAY: Okay. Great. Mr. Ballinger.

21 MR. BALLINGER: Excuse me. I forgot my name
22 tag today. Wasn't thinking I was going to have to
23 speak today.

24 The vegetation management, again, we were
25 getting similar data for electric utilities. But I

1 will say that what we're dealing with is a very
2 small subgroup of the telecoms poles. Remember,
3 these are only poles that have investor-owned
4 utility electric attachments on them. So it's
5 going to be a small subset of their overall pole
6 inventory.

7 We thought it would be good to get at least a
8 projection of vegetation management that they
9 intend to do over the next year. And as we get the
10 historical data, we can see how they're progressing
11 along. There's really not a set cycle in the NESC.
12 You can see, the NESC provides guidelines for
13 vegetation management. There's no strict clearance
14 amounts or frequencies in there.

15 Again, we were trying to be consistent with
16 the IOU's, but also cognizant of the fact that we
17 do not set the rates for the telecom communicators
18 to recover these costs, unlike with the IOU's. We
19 have to balance that with our authority.

20 CHAIRMAN FAY: Thank you. And, with that, Ms.
21 DuVal, before we go into FPL's, I just wanted to
22 make sure we didn't miss any other mentions by
23 those parties. Mr. Hetrick? Okay. You can
24 address FPL's. Thank you.

25 MS. DUVAL: Turning to FPL's comments about

1 the visual checks first.

2 CHAIRMAN FAY: Paren three.

3 MS. DUVAL: Paren three. Yes. So I would
4 just like to say that when staff was crafting this
5 draft rule language, we didn't want to be too
6 prescriptive or too narrow in the rule language,
7 and that's mostly because there are so many
8 different situations. As you can see in FPL's
9 proposed language, they're calling out specifically
10 wood poles. However, as we move forward and learn
11 in this process, there may be other types of poles,
12 different sorts of setups, different locations
13 where these poles may be. So we were trying to be
14 as broad as we could, within the confines of rule
15 language that would be acceptable.

16 So I would just add that, again, I think that
17 staff was contemplating that there would be
18 additional tests conducted, if needed, but at this
19 point we felt like it was appropriate that the
20 companies be given the leeway to conduct their
21 inspections in the way that they found to be
22 appropriate in order to comply with the NESC
23 requirements. And I'm just afraid that narrowing
24 our language too much would be -- would be a
25 detriment to the process itself.

1 CHAIRMAN FAY: Great. Thank you. And then,
2 Mr. Ballinger, if you'd like to add, please.

3 MR. BALLINGER: I could add a little color to
4 that. What Ms. Moncada did not tell you is that
5 while the Commission required sound and bore
6 testing and excavation, immediately after that the
7 utilities came in with several exemptions, a lot of
8 it being based on the age of the pole, the type of
9 wood construction, where it was located. So Ms.
10 DuVal said, there's a lot of circumstances. The
11 other important factor to remember is that
12 directive was given through an order, not through a
13 rule. And rules need to be very prescriptive and
14 precise. They can't have open-ended directions, if
15 you will.

16 But, again, that's why staff is -- believes
17 that the rule is proper, that it requires the
18 telecoms to adhere to the NESC. How they get there
19 is their discretion, and, again, given the fact
20 that we don't have ratemaking authority over them
21 to recover these costs, we felt it would be best to
22 leave it to them to do it. Start with visual
23 inspections, but obviously hold them accountable
24 meeting the NESC.

25 CHAIRMAN FAY: Okay. Great. Thank you. And

1 then paren five, Ms. DuVal.

2 MS. DUVAL: For the -- for FPL's written
3 comments that they just provided us this morning,
4 when I was listening to Ms. Moncada, it sounded a
5 little different than what we have in front of us
6 here, but if it's basically the same idea, I
7 understand. I think that staff's goal in creating
8 this subsection was to have the communications
9 services providers just supply the Commission with
10 the information that we have, so, again, we can
11 have it on hand in the event that it is necessary
12 to refer to, and then also ensure that the
13 Commission is complying with the statute as it was
14 set forth. I believe Mr. Ballinger has another
15 comment to add on that.

16 CHAIRMAN FAY: Sure. Mr. Ballinger, you're
17 recognized.

18 MR. BALLINGER: I did not hear the telecom
19 providers comment on this section specifically. I
20 don't know that they have a real problem with it.
21 It seems to say very similar as what staff had, and
22 that we're looking for their procedures of how they
23 coordinate with the electric utilities during
24 emergencies. I would like to hear from the telecom
25 providers on this one specifically.

1 CHAIRMAN FAY: Sure. And I'll give them
2 another opportunity, but I think their response is
3 essentially they would need time for their client
4 to process it, to give an official opinion on that.
5 So I agree, just initial review, I'm not sure
6 substantively what the change would necessarily
7 mean, but I think just presented today it's got to
8 be put in context at some point.

9 So, with that, Commissioners, I think -- I
10 think we have comments from all the interested
11 persons and then those addressed by our staff. I'd
12 be more than happy to take questions for either the
13 interested persons or our staff at this time, to
14 make sure we have a full understanding of what's
15 been put before us. So, with that, I will
16 recognize Commissioner Clark.

17 COMMISSIONER CLARK: Thank you, Mr. Chairman.
18 I have several questions, I guess. I'm like you.
19 Some of this stuff is a little bit new in terms of
20 what we had seen it and was presented earlier on.
21 I'm a little bit confused. I have some questions
22 about a couple of the proposals and how they might
23 be handled or administered.

24 I'll start with staff. Regarding FPL's
25 comments involving testing, I tend to agree sound

1 and bore is certainly the best option. I realize
2 that could impose a significant cost. Did we
3 consider adding a sampling requirement of sound and
4 bore above and beyond site inspections?

5 CHAIRMAN FAY: Staff you're recognized to go
6 back and forth with questions.

7 MR. BALLINGER: We did. We tried to look at
8 what we do for the electrics, where I said there's
9 a lot of assumptions based on age. So they're not
10 sound and boring every pole. Let me make that very
11 clear. They're looking at ones based on the
12 conditions of their visuals and where they're
13 located. What we don't know is what types of poles
14 the telecoms have in inventory. Do they have
15 concrete poles? Do they have 30-foot towers? Do
16 they have 60-foot towers? So we don't know in the
17 locations of them to get that sample size.

18 COMMISSIONER CLARK: Aren't we going to get
19 that, Tom, in the first report?

20 MR. BALLINGER: We may not get --

21 COMMISSIONER CLARK: -- have a rule crafted,
22 or do we want to come back and adjust it once we
23 get the initial report?

24 MR. BALLINGER: We may not get the locations
25 of where they are, or the age of the poles. We

1 haven't gotten to that level of that. And, again,
2 we were trying to balance that of not having the
3 ratemaking, knowing also this is a small segment of
4 poles that they have. So, yes, we're learning as
5 we're going.

6 COMMISSIONER CLARK: Mr. Chairman, my second
7 question I'm going to pose to AT&T, could you --
8 any idea and Embargo or any of the other providers,
9 that would like to answer this -- I know AT&T, you
10 probably have a very large number compared to the
11 others -- but did you estimate the percentage of
12 the poles that you have that actually have -- this
13 is all we are talking about are poles which have
14 public utility services attached to them. So this
15 is where you're the attacher and not the attachee
16 in this case. Any idea on what percentage of poles
17 that would be?

18 MR. HATCH: I've actually asked that question
19 and I've not gotten an answer to that question.

20 COMMISSIONER CLARK: Even a ballpark, 15
21 percent, ten percent?

22 MR. HATCH: If I had to guess, I'd say the
23 bulk of our poles have electric -- electric
24 distribution facilities on them.

25 COMMISSIONER CLARK: Those are of your poles?

1 MR. HATCH: Of our poles. Now, bear in mind
2 that Commission's jurisdiction extends only to
3 joint-use poles. So I'm going to have a lot of --
4 some poles, in any event, that are not joint-use
5 poles, in which case they would not be subject to
6 this rule. So, in a sense, for purposes of this
7 rule, all the joint-use poles would will be subject
8 to the -- in terms of the total number of poles
9 that AT&T has, the percentage of which is joint-use
10 versus non-joint-use, no electric facilities on it,
11 I honestly, can't tell you that. And it's -- we
12 don't track the poles in that manner. We don't
13 track it by who's on the pole, per se.

14 COMMISSIONER CLARK: But you -- I assume you
15 do track the revenue that you generate from a pole
16 attachment?

17 MR. HATCH: Indeed, we do.

18 COMMISSIONER CLARK: It's simple math, there,
19 isn't it? The amount of revenue --

20 MR. HATCH: That comes with respect to the
21 attachments and they count all the attachments that
22 you have. They don't go out and inventory
23 individual poles. This pole has Comcast, this pole
24 has some electric on it, this pole has something
25 else.

1 COMMISSIONER CLARK: So, in respect to looking
2 at what I assume is one of your bigger concerns
3 being the additional costs that would be imposed
4 for meeting these requirements, would that not also
5 be considered when you renegotiate your pole
6 attachment rates?

7 MR. HATCH: Yes and no. The answer to that is
8 yes, but when you get into this business, it's a
9 by-bill. You jack up the rates high enough, they
10 put in their own pole. It creates its own fair
11 share of other problems in the sense that they can
12 go underground for -- if rates are high enough,
13 it's cheaper to go underground. If you have
14 somebody that refuses to let you on the pole, then
15 what are your options? Go underground, put up your
16 own pole. That creates a dual pole problem, which
17 nobody wants. The answer your question is, is can
18 my rates cover all my costs? Eventually, at some
19 point, they have to.

20 COMMISSIONER CLARK: But let's go back and
21 discuss. So you're saying that in -- how many
22 jurisdictions do you think would allow you to begin
23 to double-pole? Do you think you're going to get
24 into some issues there?

25 MR. HATCH: Exactly right, Commissioner. So,

1 in a sense, you'd end up fighting huge legal
2 battles with local jurisdictions that don't want
3 double poles. A lot of jurisdictions don't want
4 any poles, and that's always a source of
5 contention.

6 COMMISSIONER CLARK: The last issue --
7 listening, Mr. Chairman, a lot of the ideas I --
8 there's some very valid points. I think the 8-year
9 cycle versus the 10-year, I certainly would lean
10 toward the 8-year cycle. I think we could define
11 when it comes to electric utility, what vegetation
12 management is. That one wasn't too big of an issue
13 for me. I think we know what clearances we need
14 for electric utilities.

15 Now, I'm going to go to the issue that will
16 probably not make me a very popular person today,
17 and that comes to local rule. I am an advocate, in
18 most cases, for local ordinance and local rule --
19 home rule, if you will. But in the case of
20 utilities, especially when it comes to those that
21 have electric attachments on them, I'm going to
22 agree with Mr. Hatch on this. I think that this is
23 a dangerous area for us to give away our authority
24 to local rule, because that has caused many, many
25 of the problems that we have had regarding tree

1 ordinances in local communities and cities. Be it
2 good, bad, you can say what you like about how
3 beautiful the trees are and how nice it is and how
4 good it looks. When it comes to the interaction
5 with electric utilities, it is a major issue.

6 And I would certainly be willing to take a --
7 I don't know how we can redefine that. I get that
8 you have already conceded to local ordinances,
9 especially -- an example, Coconut Creek. Is there
10 a way that we hit a happy medium here that, you
11 know, we'll follow the existing ones that we're
12 already under but not be under the jurisdiction of
13 any future code? Is there a happy medium we can
14 hit there? Because if there's not, I'm willing to
15 say, I think our rules supercede theirs.

16 MR. HATCH: I'm not sure that there is a happy
17 medium. And I think I agree with you, you're
18 exactly right, your rules will supersede theirs.
19 But, more importantly, in the telecom world in
20 Chapter 364, it's very clear that Commission has
21 exclusive jurisdiction. So locals basically have
22 no regulatory authority. That's reinforced in
23 Chapter 337. Look at 337.401, which is the
24 right-of-way statute that governs all of this
25 stuff, there's now very clear language that says,

1 unless it's allowed by 364.610, the other telecom
2 type statutes, then no local jurisdiction can adopt
3 an ordinance unless it's specifically approved.
4 This language in the rule essentially creates the
5 illusion or a potential that now there's a
6 delegation from the Commission that say, I can do
7 all this, and so I would argue that's not the
8 intent of the changes to 366 that creates this, and
9 hence my original comment that it's beyond the
10 bounds of what 366 rulemaking would provide for and
11 creates a huge Pandora's box when you start
12 fighting jurisdictional battles with local
13 jurisdiction.

14 CHAIRMAN FAY: Great. Thank you, Commissioner
15 La Rosa, you're recognized.

16 COMMISSIONER LA ROSA: Thank you, Chairman.
17 And I think my question is going to go in the same
18 line as Commissioner Clark -- and did a great job
19 of laying out some of my concerns. But I want to
20 go a little further on the last section, Section 8,
21 about the, I guess, the local ordinance issue. My
22 question would be for staff: What would happen if
23 we removed that Section 8, and how would this rule
24 then be defined if there was a conflict?

25 MS. DUVAL: Thank you, Commissioner. And I

1 would just reiterate, again, that staff's intent
2 was to ensure that it was clear that we were not
3 giving away any jurisdiction, and that we didn't
4 want there to be any sort of confusion or
5 contradiction. So, apparently, we weren't super
6 successful in that. So if the Commission would
7 like to remove that subsection, I believe that we
8 would be comfortable with that.

9 COMMISSIONER LA ROSA: And, Chairman, I just
10 kind of just add just quick notes. I know we got
11 work before us. I agree with Commissioner Clark.
12 I, too, enjoy the fact that, you know, we've got
13 some older vegetation and the aesthetics that that
14 provides, but at the intent of the public good
15 sometimes, that can get in the way. And I've had a
16 little bit of experience working with local
17 authorities, and the dispute and the resolution
18 sometimes lands up here in Tallahassee, which, at
19 the end of the day, just makes us and reminds us
20 that maybe we just need to be more clear with how
21 we do things. I'm not saying anything about how
22 staff has laid this out. This is a lot of hard
23 work. And I like the majority of this. I just
24 think that maybe Section 8 just maybe goes a little
25 bit too far. Maybe we're painting a picture of

1 something that doesn't necessarily need to -- need
2 to be there, and I would -- I would certainly be in
3 support of removing that section of this rule.

4 CHAIRMAN FAY: Great. Anything else?
5 Commissioner Passidomo, you're recognized.

6 COMMISSIONER PASSIDOMO: Thank you, Mr.
7 Chairman. I just have a quick question for staff
8 regarding reporting cycles. So I don't know if you
9 want to do that, if we want to address the local
10 ordinance issue first or come back to this.

11 CHAIRMAN FAY: Sure. If you want to speak to
12 that, and then you can ask them about the reporting
13 cycle.

14 COMMISSIONER PASSIDOMO: Okay. So really I --
15 so it seems IOU's annual -- they have an annual
16 reporting and then AT&T's sort of proposing two- to
17 four-year cycles. And I just -- I'm trying to get
18 a grasp of what the -- you know, any sort of, you
19 know, pros or detriments of doing a -- switching to
20 a two- to four-year.

21 CHAIRMAN FAY: You're recognized.

22 MR. BALLINGER: Everybody stepped away from
23 the mic, so I'm left. From a staff perspective, it
24 would be more efficient for staff to get it on an
25 annual basis, along with the electrics would give

1 us stuff. Knowing that's coming in every year, we
2 can do some gross comparisons between the
3 industries, things that would make it more
4 efficient and more beneficial for us. I understand
5 it does impose an administrative cost on the
6 telecom companies, but we were trying to be
7 consistent with both industries.

8 COMMISSIONER PASSIDOMO: Just continuity
9 between the two -- you know, both sets of
10 utilities?

11 MR. BALLINGER: Yes, ma'am.

12 COMMISSIONER PASSIDOMO: Thank you.

13 CHAIRMAN FAY: Anyone else? I just have a
14 quick question for staff. So I know there's some
15 discussion about essentially what we mandate in the
16 rule and then the cost recovery. And I don't -- I
17 don't know all the details about the agreements
18 between the parties, but just from a cost-recovery,
19 a Commission perspective, if we as a Commission
20 choose to change the inspections of the poles to a
21 more thorough or a more stringent review, there
22 isn't an ability for the telecommunication provider
23 to recover that for the ratepayer. They would just
24 be mandated to do that and absorb the costs?

25 MR. BALLINGER: That's my understanding. We

1 don't set their rates for communications services.
2 Now, the Commission does have the authority now
3 over complaints over attachment agreements. If
4 it's collected there, that's a different story.

5 CHAIRMAN FAY: Okay.

6 MS. DUVAL: Right. So if I can just add to
7 that. So, unlike the electric companies, or the
8 electric IOU's and their statute for the storm
9 protection plan clause and their storm protection
10 plans, they have the opportunity to come in and
11 recover some of the costs that are expended there.
12 So we were trying to keep that in mind as we were
13 drafting this rule language, as well, that the
14 statute that applies to the communication services
15 providers, to my understanding, as well, does not
16 provide them with the opportunity to come in and
17 recover any of that.

18 CHAIRMAN FAY: Great.

19 MS. DUVAL: To the Commission, at least.

20 CHAIRMAN FAY: Okay. Great. And, with that,
21 Commissioner Clark, you're recognized.

22 COMMISSIONER CLARK: I'm sorry, Mr. Chair. I
23 didn't mean to interrupt. I just wanted ask --

24 CHAIRMAN FAY: Go ahead.

25 COMMISSIONER CLARK: It's my understanding,

1 kind of under a timeline on this one, I'm the one
2 that asked for the last one to be deferred. I'm
3 not going to ask for another deferral. I'm burning
4 all my chips up here, I guess. However, we are
5 under an April 1st deadline. I do believe there
6 are some considerations here that have been
7 presented that we might want to consider some
8 changes. I think the parties at least acknowledged
9 they might can give us an opinion on a couple of
10 them. We were talking about the -- especially the
11 procedures for repair. Could we give them some
12 time, Mr. Chairman, maybe at the end, pick this
13 back up at the end and see if the parties can -- I
14 don't know if that's of any advantage or not. Just
15 a suggestion. I would love to see us have a couple
16 of changes, at least considered, and maybe the
17 parties can agree to some of those changes?

18 CHAIRMAN FAY: Sure. Commissioner Clark, I
19 think that's an appropriate idea. I would be
20 hesitant to sort of pause this item and move on to
21 another one, but I'd be more than happy maybe to
22 just allow the parties, or interested persons, a
23 few minutes, let's say maybe 10 minutes, to have a
24 discussion and just make sure there's not anything
25 else they want to add before the Commission

1 potentially takes up this rule.

2 Just from my perspective, I think staff and
3 interested persons worked extremely hard on trying
4 to get some of these terms specified. And even
5 with the definition of vegetation management, I
6 think there are some things that are going to be
7 the results of the implementation of this, and we
8 just won't know everything until we begin to do
9 some of that. And I think the reporting is
10 essential, the annual reporting is essential for
11 the Commission to have what it needs to understand
12 that, and an 8-year cycle is consistent with what
13 the utilities do. And so I'm comfortable with that
14 also.

15 I think the points raised by the ordinance
16 being included, I think it's not something that, as
17 staff and Ms. DuVal have stated, it's not a
18 specific mandate in there, but it's something that
19 you tried to address related to a municipal. And
20 so I think being mindful of how that might trigger
21 other things, and it's not a mandate, I'd be
22 comfortable excluding that from the proposed rule,
23 also.

24 So, with that, let me -- I'll give staff and
25 the interested persons a few minutes to discuss and

1 we will start back at 10:00 --

2 MR. BAEZ: Mr. Chairman, may I beg your
3 indulgence and make it 20 minutes?

4 CHAIRMAN FAY: I guess so. Yeah.

5 MR. BAEZ: It puts us at 11:00.

6 CHAIRMAN FAY: So we'll be back at 11:00 a.m.

7 MR. BAEZ: Thank you.

8 CHAIRMAN FAY: Yep. No problem.

9 (Brief recess.)

10 CHAIRMAN FAY: All right. Commissioners, just
11 a quick update. So I'm going to allow staff
12 basically, I'd say five to 10 minutes, just to put
13 some things on paper that they have been working
14 on, and then they'll present it to us. So we'll
15 say at 11:10 we will begin back. Thanks.

16 (Brief recess.)

17 CHAIRMAN FAY: I'll give the interested
18 parties just a second to review the draft that we
19 have and then I'll have our legal present. I just
20 want to give them a minute to make sure we got
21 everything.

22 All right. Ms. DuVal, are you ready to
23 address the Commission?

24 MS. DUVAL: Yes, thank you, Chairman, and we
25 appreciate the time. Thank you so much.

1 CHAIRMAN FAY: Sure. Thank you.

2 MS. DUVAL: Okay. So the first amendment that
3 we would recommend to the draft rule language
4 addresses FPL's comment about Subsection 3. That
5 would be the inspection, repair and replacement of
6 poles section. However, instead of making the
7 change in that subsection, we would be making a
8 change to a different subsection, which would be --
9 it's page 12 of the draft recommendation -- or of
10 the recommendation, excuse me. So that is
11 Subsection 6 of the draft rule language, the
12 reporting requirements section. And that would be
13 line 25, the very last line.

14 CHAIRMAN FAY: Okay. So after the semicolon
15 we'd insert, and the methods used to ensure
16 compliance with NESC strength requirements?

17 MS. DUVAL: Yes, that's correct.

18 CHAIRMAN FAY: Okay. And then -- go ahead.
19 Sorry. The next one.

20 MS. DUVAL: The second change addresses FPL's
21 second suggested amendment, and that would be to
22 Subsection 5, and it is (a)3. So that is also on
23 page 12 of the recommendation, lines 8 and 9. And
24 in there we would just be accepting FPL's proposed
25 language, as provided.

1 CHAIRMAN FAY: So, just for the record, the
2 additional language would be after provider. It's
3 provider's procedure to repair and replace damaged
4 poles overhead facilities, including protocols
5 for -- there's a few other edits after that; is
6 that correct?

7 MS. DUVAL: Correct. And then the final
8 change that we are recommending would be on page 13
9 of the staff recommendation, and that would be
10 striking Subsection 8, which is line 16 and 17.

11 CHAIRMAN FAY: That's the ordinance language?

12 MS. DUVAL: Correct.

13 CHAIRMAN FAY: Were all the interested persons
14 able to understand those changes? I know some were
15 presented by the parties. Yes. Great.

16 Okay. With that, Commissioners, I think
17 you've had a chance to review that. The other
18 proposed language in the recommendation would
19 remain intact. The only thing, I guess -- if we
20 put a motion forward on this item, the current
21 recommendation would require annual reporting in an
22 8-year cycle. So if that is something you'd like
23 to change, you need to do so on the motion outside
24 of the recommendation.

25 So that -- I think we're in the posture to

1 make a motion and move forward, based on the
2 changes that we have. I'll take any questions or
3 comments from Commissioners and/or a motion at this
4 time. And/or I will pass the gavel to --

5 COMMISSIONER CLARK: I'll move -- I'll move
6 the proposed changes by staff into the
7 recommendation, Mr. Chairman.

8 CHAIRMAN FAY: Great. Thank you. So the
9 recommendation and the changes as stated by Ms.
10 DuVal. We have a motion. Do we have a second?

11 COMMISSIONER GRAHAM: Second.

12 CHAIRMAN FAY: We have a motion and a second.
13 All those in favor, say aye.

14 (Chorus of ayes.)

15 CHAIRMAN FAY: And opposed?

16 (No comments made.)

17 CHAIRMAN FAY: With that, we have a rule.

18 Thank you, everybody, for your work on this.

19 Appreciate it.

20 (Agenda item concluded.)

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