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 1 BEFORE THE

 FLORIDA PUBLIC SERVICE COMMISSION

 2

 3 In the Matter of: DOCKET NO. 060172-EU

 4 PROPOSED RULES GOVERNING PLACEMENT OF

 NEW ELECTRIC DISTRIBUTION FACILITIES

 5 UNDERGROUND, AND CONVERSION OF EXISTING

 OVERHEAD DISTRIBUTION FACILITIES TO

 6 UNDERGROUND FACILITIES, TO ADDRESS

 EFFECTS OF EXTREME WEATHER EVENTS.

 7 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 8 PROPOSED AMENDMENTS TO RULES DOCKET NO. 060173-EU

 REGARDING OVERHEAD ELECTRIC

 9 FACILITIES TO ALLOW MORE STRINGENT

 CONSTRUCTION STANDARDS THAN REQUIRED

 10 BY NATIONAL ELECTRIC SAFETY CODE.

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 13 THE OFFICIAL TRANSCRIPT OF THE HEARING.

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 15 PROCEEDINGS: RULE DEVELOPMENT WORKSHOP

 16 DATE: Friday, May 19, 2006

 17 TIME: Commenced at 9:35 a.m.

 Concluded at 4:02 p.m.

 18

 PLACE: Betty Easley Conference Center

 19 Room 148

 4075 Esplanade Way

 20 Tallahassee, Florida

 21 REPORTED BY: MARY ALLEN NEEL

 Registered Professional Reporter

 22

 23

 VOLUME 1

 24 Pages 1 - 118

 25

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

 2 MR. HARRIS: Good morning. Welcome to a staff

 3 development rule workshop for Dockets 060172 and 060173.

 4 We did publish an FAW notice that was published May 5,

 5 2006.

 6 There is an agenda that has been floating

 7 around. We had a bunch of copies. I don't know if

 8 there are any left, but hopefully enough of you have

 9 them that there's sort of a general sense of what we're

 10 going to be doing.

 11 As I said, this is a staff rule development

 12 workshop. Really, for those of you who aren't familiar

 13 with our rulemaking process, this is the process by

 14 which we gather information that the staff will use in

 15 order to provide a recommendation to the Commissioners

 16 as to whether they should propose rule amendment

 17 language. It's somewhat an informal process. We are

 18 trying to gather information. This is for the staff's

 19 use. There may be Commissioners present in the room

 20 listening, but really it's for us to take your comments

 21 to the language we've got out there, consider it, and

 22 use it in formulating our recommendation to the

 23 Commissioners as to what we recommend they should

 24 propose down the road. It is somewhat informal.

 25 We have a court reporter here, and we'll be

 3

 1 transcribing everything you all say. I'll ask you all

 2 to identify yourselves, and the first time you speak,

 3 spell your name. There are a lot of people here, and

 4 the court reporter needs to keep track, so every time

 5 you go to speak if you speak more than one time, could

 6 you repeat your name so that she can get it. That would

 7 be very helpful.

 8 The transcription will be posted on our

 9 website at some point in the future. We don't have a

 10 firm date. There's a lot of stuff going on at the

 11 Commission that's taking our transcription resources.

 12 There will also be an opportunity to file

 13 post-workshop comments. These will be written comments.

 14 We'll be announcing the date for those at the end of the

 15 workshop. I would encourage all of you to take

 16 advantage of that. Written comments are a way to flesh

 17 out your comments to make sure that the points are made,

 18 and it's something that we can then look at in addition

 19 to the transcript to make sure we capture all the views

 20 correctly.

 21 With that, we do have an agenda, and -- oh, by

 22 the way, I'm sorry. I should introduce myself. I'm

 23 Larry Harris. I'm the attorney who's assigned to lead

 24 on this case. I'm one of the staff counsel here at the

 25 Public Service Commission. We also have Chris Moore,

 4

 1 one of our staff counsel, Connie Kummer, Bob Trapp, and

 2 Jim Breman, who are technical staff. We have some more

 3 technical staff in the audience, and some of them will

 4 be participating later on, and we'll introduce them when

 5 they come up.

 6 The first part of the agenda today I think

 7 will be some public comments. My understanding is we

 8 have a fair number of persons who don't work for any

 9 particular company that's directly regulated by these

 10 rules, but are members of the public and are concerned

 11 as to the Commission's actions in this case.

 12 Before we start with those, I believe one of

 13 our Commissioners, Commissioner Arriaga, is here and has

 14 a few brief comments he would like to make as part of

 15 this introduction phase, and then we'll get to the

 16 comments from members of the public.

 17 One thing I did forget to mention, we have a

 18 sign-up sheet toward the back at the second table in the

 19 corner. I would encourage everyone to sign that sheet.

 20 That's what we use to see the participation.

 21 Once we have Commissioner Arriaga and the City

 22 of Coral Gables delegation, those other members of the

 23 public who want to speak, I'll ask you all to identify

 24 yourselves and come to a microphone.

 25 With that, Commissioner.

 5

 1 COMMISSIONER ARRIAGA: Thank you, Mr. Harris.

 2 It's really not a comment regarding the workshop. It's

 3 basically a point of personal privilege that I wanted to

 4 take, and thank you so much for the opportunity.

 5 Just a few days ago, about a week ago or so, I

 6 had an invitation by the mayor of Coral Gables, the City

 7 Beautiful in Miami, to meet with them. And at the same

 8 time, I met with the Utility Service Reliability Task

 9 Force, which is a task force comprised of volunteers

 10 appointed by the City Commission. We had the

 11 opportunity to go over within the precepts of the law a

 12 lot of issues that the City Beautiful has pending and

 13 would like to discuss with you today.

 14 You all know that we're very open and we

 15 promote involvement by municipals, cities, and their

 16 city councils, and the citizens regarding what we do

 17 here in the Commission, especially with these two

 18 dockets that are open now that have a lot of influence

 19 in what the people in South Florida are expecting. So I

 20 really appreciate the fact that three members of the

 21 volunteer task force are here today.

 22 I met with the whole task force for about two

 23 and a half hours answering their questions, some of them

 24 really difficult. And I did encourage them to come back

 25 to our workshop today, because I think what they have to

 6

 1 say is important, and I think that the staff will be

 2 really interested in the issues that they will be

 3 discussing today and the proposals that the City has as

 4 one of the elements to be considered in the workshop and

 5 in our potential rulemaking.

 6 So with that, I would like to really welcome

 7 to Tallahassee and to the Commission Mr. Enrique Lopez,

 8 the chair of the task force, Mr. Peter Martin, and

 9 Mr. Thor Bruce, three volunteer citizens of the City

 10 Beautiful that are here today, and I'm really proud and

 11 glad that you took my invitation to come. This is where

 12 you can really make a difference, and this is where your

 13 issues will be heard and considered. Thank you for

 14 being here.

 15 Thank you, Mr. Chairman.

 16 MR. HARRIS: All right? Mr. Lopez.

 17 MR. LOPEZ: Yes. Good morning. And thank

 18 you, Commissioner. We're very pleased and privileged to

 19 be here this morning. Good morning, members,

 20 Commissioners and members of the Florida Public Service

 21 Commission, government officials, members of the

 22 utilities community, and residents of our state here

 23 today.

 24 I am Enrique Lopez, E-n-r-i-q-u-e, L-o-p-e-z,

 25 a resident of the City of Coral Gables, one of the

 7

 1 oldest municipalities in Miami-Dade County. I'm here

 2 today in my capacity as chairperson of the City of Coral

 3 Gables Utility Service Reliability Task Force. I am

 4 joined by two of my fellow task force members, Mr. Peter

 5 Martin and Dr. Thor Bruce, as well as a member of our

 6 city manager's office, Ms. Maria Alberro-Jimenez, our

 7 assistant city manager.

 8 I wish to also reciprocate and formally thank

 9 Commissioner Arriaga and his staff for having

 10 participated in a recent meeting of our task force.

 11 Commissioner, your participation was very insightful and

 12 extremely welcome. Thank you, Commissioner.

 13 I would like to address some observations for

 14 possible consideration by staff specific to both dockets

 15 that are in front of you today.

 16 As we work on this issue of underground,

 17 specifically 0172, I think significant consideration is

 18 required to ensure that as these undergrounding

 19 projects, whether they be conversions from overhead to

 20 underground or an initial underground, as they are

 21 considered and implemented, that consideration be given

 22 to the back end or the serving feeders and components or

 23 grid components that serve these potential communities

 24 that would be undergrounded and to ensure that they're

 25 up to par with new underground -- with new facilities.

 8

 1 Excuse me.

 2 Why I share this, our City specifically during

 3 Wilma, we had approximately 45 of 47 serving feeders

 4 that encountered one or more outages during the storm

 5 and post-storm recovery period. These were served,

 6 these 45 out of 47 were served or originate in

 7 approximately nine different substations. One of the

 8 advantages of underground, obviously, is hopefully

 9 increased reliability. However, not to say that these

 10 45 feeders had any deficiencies or possible

 11 deficiencies, but if we were to look at undergrounding

 12 from a cost component, cost-benefit area, we would

 13 definitely like to think that we would not have that

 14 possibility of 47 out of 45, that we would see a

 15 decrease in the number of potentially failing feeders or

 16 substations so that the benefits of undergrounding are

 17 maximized and realized.

 18 Specifically the construction standards, a lot

 19 of thought has been given by our task force, and some of

 20 our fellow members will be addressing with more

 21 specificity, is to consider the elimination, or at least

 22 find an alternative to the exemption that is presently

 23 granted the utilities under the Florida Building Code.

 24 And the intent here is really -- and that is point of

 25 view that was developed by one of our fellow members who

 9

 1 is not here today, Mr. John Anderson. And the intent is

 2 not to really impose, but basically step up or bring up

 3 to the real environments of the severe weather

 4 conditions of our State of Florida that we do require

 5 and demand of all entities except the utilities.

 6 Now, how we do this, whether it's an

 7 incorporation into the Florida Building Code or there

 8 are certain sections of the national code, I think it's

 9 more of a process. But the intent is to really ensure

 10 that any building, any structure, any facilities that

 11 are installed within our state are also prepared to meet

 12 the extreme wind and extreme weather conditions that we

 13 all in this room recognize exist. In conjunction with

 14 the above, we would request that consideration be given

 15 to construction requirements that address these unique

 16 climate environments.

 17 One thing that we did notice is that as we

 18 look at national codes, we have to share, and I say

 19 share or be exposed to charts and graphs and engineering

 20 studies that bring up such issues as ice and wind

 21 loading. Well, we all know what wind does in our state.

 22 However, I think we have an opportunity here to bring up

 23 what is specific to our state, which is wind. And every

 24 so often there's a frost here in Tallahassee, but not

 25 any significant to be called ice. I think we need to be

 10

 1 sensitive to the climate conditions.

 2 This sensitivity to climate conditions should

 3 be extended to the maintenance component of this docket.

 4 Florida is very humid. We do have a tremendous --

 5 different types of insects that can impact wooden poles,

 6 equipment, rust, corrosion, et cetera. So I think as we

 7 look at the extreme weather that we not only limit it to

 8 the construction component, but also to the maintenance

 9 and operations component that does impact reliability of

 10 service.

 11 One thing that we have been exposed to is that

 12 there is no formal coordination. And even though it's

 13 not specific to construction, within utilities today, in

 14 the areas of vegetation management and pole construction

 15 and maintenance, whereas they do have their individual

 16 vegetation management and maintenance plans as well as

 17 pole inspection plans, we have been found, at least what

 18 we've been exposed to, that A doesn't talk to B doesn't

 19 talk to C. And I think it's very important, because we

 20 are looking at the reliability of service. And as I

 21 always say, a palm frond can impact a power line, a

 22 cable company, or a telephone utility service. So to

 23 ensure and require that whatever plans actually are

 24 developed for the vegetation management and pole

 25 maintenance, that it be formally coordinated as you all

 11

 1 would deem acceptable.

 2 I think as I looked at the docket, also there

 3 were also references to generally accepted engineering

 4 practices. I am an engineer, and I also serve in a

 5 consulting capacity in the area of telecommunications as

 6 my profession, and that leaves room for tremendous

 7 interpretation. Even though I'm very proud of being in

 8 the profession, engineering profession, that is always

 9 very sensitive and a stickler for detail, generally

 10 accepted engineering practice is going to leave room for

 11 interpretation. I would ask that consideration be given

 12 by all parties that we define as much as we can what

 13 that all means with respect to construction and

 14 maintenance of service.

 15 Hurricane Wilma will be remembered for the

 16 impact it had in our state. It will also be remembered

 17 as the storm that sensitized all of us to take a hard

 18 look at all our past practices and how to correct our

 19 possible wrongs. This hearing today is an example of

 20 what this effort entails.

 21 This Commission's recent actions and rulings

 22 also reflect prudent and responsive review and analysis

 23 of many issues. It is a gargantuan task. It is a

 24 difficult task. It is not an overnight magical wand

 25 task. It is a new day in the regulatory landscape for

 12

 1 our state. All of us have embarked in a new era of

 2 utility management. Your actions and decisions will

 3 have a far-reaching impact on the overall economic

 4 growth and sustainability of our state. Let us be

 5 creative and look down the highway.

 6 We wish you continued success in this much

 7 needed endeavor. Thank you.

 8 At this time, I would like to introduce

 9 Mr. Peter Martin, a member of our task force. Thank

 10 you.

 11 MR. MARTIN: May it please the Commission and

 12 its staff. My name is Peter Martin. That's P-e-t-e-r,

 13 M-a-r-t-i-n.

 14 I was appointed to this Coral Gables Utility

 15 Service Reliability Task Force by Mayor Don Slesnick in

 16 part because of my background in regulated industries.

 17 I've appeared before this Commission in more than 30

 18 rate filings over the years and related matters,

 19 primarily involving water, wastewater, and natural gas,

 20 and I've also appeared and testified in numerous similar

 21 matters in regulated proceedings where counties were the

 22 utility regulators, including Miami-Dade and Sarasota

 23 County.

 24 In the interest of full disclosure, I also

 25 serve on the board of directors and as a member of the

 13

 1 Audit Committee of Chesapeake Utilities Corporation,

 2 which has regulated natural gas operations in Delaware,

 3 Maryland, and Virginia, and operates here in Florida as

 4 Central Florida Gas, which this Commission regulates.

 5 The residents of Coral Gables have suffered

 6 outages from last season's storms of up to three weeks,

 7 in part because of the city's extensive tree cover. The

 8 oldest areas of the city were developed in the 1920s,

 9 and much of the electric, telephone, and cable service

 10 is provided by poles located in very narrow rear lot

 11 easement areas behind the homes served. And as you

 12 might imagine, these areas have become overgrown with

 13 vegetation, and in some cases, even large trees.

 14 So there's a great amount of tension among

 15 city residents between the desire for an extensive tree

 16 canopy and the obvious interference that such a tree

 17 canopy has with utility poles. And so the City is

 18 seriously considering some sort of undergrounding

 19 program, perhaps initially on a pilot basis.

 20 Also, the City's rights-of-way in front of

 21 these older homes are largely covered by large trees,

 22 and tree roots can extend beneath sidewalks and even

 23 beneath streets. To install underground utility

 24 services in Coral Gables may require street excavations

 25 and even sidewalk removal and replacement. And, of

 14

 1 course, as a result of all this that I've described to

 2 you, the problem the City faces is the extreme cost.

 3 I believe that one way that the cost could be

 4 reduced would be if the City could work in a cooperative

 5 fashion with our utility, Florida Power & Light, whereby

 6 the City could issue tax-exempt industrial development

 7 revenue bonds. Clearly, this is a development impact

 8 that would improve things for the City in every way

 9 possible. Interest rates on such bonds could be much

 10 lower than FPL's corporate rates, and the proceeds would

 11 then become tax-exempt loans to the utility, in this

 12 case, to Florida Power & Light, and those proceeds could

 13 be used to finance the hardening and the undergrounding

 14 needed to improve service reliability in the City.

 15 The addition of a material amount of

 16 tax-exempt financing to the utility's balance sheet

 17 would ultimately reduce the utility's cost of capital,

 18 so that instead of a cost of capital of 11 percent, it

 19 could be mitigated by the addition of tax-exempt

 20 financing that might be obtainable at 5 or 6 percent,

 21 and this alone could mitigate the need for future rate

 22 increases.

 23 The facilities that would be constructed with

 24 the proceeds of tax-exempt financing would obviously

 25 increase the utility's rate base, and that could have a

 15

 1 potential impact on all of the utility's ratepayers,

 2 which we agree would be totally unacceptable. We're not

 3 proposing something that would benefit Coral Gables and

 4 in turn would cause an impact to the other ratepayers of

 5 the utility. That would be unacceptable. However, a

 6 modest surcharge on the electric bills of city residents

 7 could be designed to eliminate any impact that

 8 investments in Coral Gables would have on the utility's

 9 other ratepayers, and I'm aware that such

 10 community-specific surcharges have been authorized by

 11 the Commission in the past. For example, the surcharge

 12 that we pay in Dade County for BellSouth as a result of

 13 the Dade County manhole ordinance is an example of such

 14 a surcharge.

 15 Another area that I would like the Commission

 16 and its staff to explore is the greater use of

 17 contributions in aid of construction in the electric

 18 industry. FPL, for example, adds approximately 100,000

 19 new connections a year within its service area. If as

 20 little as $1,000 were collected from each of these new

 21 customers, 100 million annually could be used to finance

 22 storm hardening and other improvements to the utility's

 23 existing infrastructure. The expected flow of funding

 24 from such sources could also be used to finance bonding

 25 by the utility, and the amount could be up to a billion

 16

 1 dollars to pay for the immediate hardening and

 2 infrastructure improvements that are needed.

 3 The existing core infrastructure in the older

 4 areas of communities like Coral Gables is typically

 5 where the hardening is the most needed. These are the

 6 older facilities that in many cases have been largely

 7 depreciated. But without that existing infrastructure,

 8 service could never be extended to the new businesses

 9 and homes that are built in the outlying newly developed

 10 areas, which again is why I believe that the collection

 11 of contributions from the outlying newly developed areas

 12 should and could be used to improve and harden the

 13 facilities in the central core system.

 14 Now, I'm aware that there's an existing

 15 statutory limitation in Chapter 366 that would

 16 essentially require CIAC payments to electric utilities,

 17 except for undergrounding, to be made by the ultimate

 18 consumer. However, this could be a minor addition to

 19 the closing statement on any new home or business built.

 20 This concludes my testimony. I would be

 21 pleased to answer any questions.

 22 MR. HARRIS: I don't believe we have any

 23 questions, if we want to go on to the next presenter.

 24 MR. BRUCE: Members of the Commission and

 25 staff, my name is Thor W. Bruce, T-h-o-r W. B-r-u-c-e.

 17

 1 I've been appointed to the Coral Gables Utility Service

 2 Reliability Task Force as the member appointed by the

 3 commission, the committee itself.

 4 I would like to thank the Commission for

 5 sharpening its focus on hurricane hardening of

 6 utilities, and I would like to point out that the City

 7 of Coral Gables Utility Service Reliability Task Force

 8 would not exist today if it wasn't for the concern of

 9 our citizens for the speed of storm restoration.

 10 We appreciate the complexity of the problem

 11 and the balancing act required between, one, the cost to

 12 harden -- and I would like to point out here that it's

 13 known through the market economy that people are willing

 14 to pay for reliability. We see how cars that are

 15 reliable sell well and sell for higher prices, and

 16 probably people are going to be willing to pay a little

 17 bit more for electricity to have a reliable source of

 18 power.

 19 But that cost of hardening needs to be

 20 balanced against the economic impact. The cost of the

 21 economic impact to businesses and individuals is so

 22 great, it's almost impossible to measure. It's

 23 staggering.

 24 And if we had a real storm, not a weak storm

 25 like Wilma, a real storm hit and sit over South Florida

 18

 1 for 24 hours, as we've seen happen, at a category 5

 2 level, this may actually end the economic history of

 3 South Florida. This is a very, very serious problem.

 4 So it's a balancing act between the cost to

 5 harden and the possibility that people may be willing to

 6 pay for this cost to harden through higher rates against

 7 the immense economic impact, and then against some minor

 8 aspects, like we like our tree canopy. And we like to

 9 have our tree canopy in Coral Gables, the City

 10 Beautiful, as well as have reliability, and we do like

 11 the esthetics of underground as opposed to overhead

 12 wires and transformers sitting on poles. But the most

 13 important thing here is the cost to harden versus the

 14 economic impact.

 15 Now, a member of our task force, Jorge Otero

 16 -- that's J-o-r-g-e, O-t-e-r-o -- had a previous

 17 commitment and was not able to come today, but he had an

 18 interesting comment that he wanted me to pass on, and

 19 that is, he believes that we need to decide early on

 20 which portions of the distribution network should be

 21 underground versus overhead.

 22 And the reason for that is because of the

 23 contribution in aid of construction. The CIAC formula

 24 spells out that when you decide to pay for

 25 undergrounding, you have to add back the net book value

 19

 1 of the removed facilities, and you have to pay for the

 2 cost of removing the old overhead facilities. And if we

 3 go forward on a hardening system that spends money on

 4 overhead utilities, it's going to become more and more

 5 expensive to then convert to underground utilities, and

 6 we don't want to be paying twice.

 7 So there's a need to decide early on which

 8 portions of the distribution network should be overhead

 9 versus underground, and it probably should be hybrid.

 10 There's probably places where it's cheaper to go

 11 underground than others and probably places where it's

 12 more effective to go underground than others, and that

 13 decision needs to be made early on.

 14 And probably there needs to be study, as we

 15 understand the Commission -- Commissioner Arriaga has

 16 pointed out to us that maybe some of the state

 17 universities should study the relative benefits of

 18 overhead versus underground. But this decision should

 19 be made early on, because the impact in cost later on of

 20 conversion will be higher if you spend a lot of money

 21 hardening overhead that subsequently you're going to go

 22 underground. So Jorge wanted to make that comment quite

 23 clear.

 24 One of the things Jorge also pointed out is

 25 that when you go underground, of course, you'll have

 20

 1 lower maintenance costs, as well as perhaps as much as

 2 seven times more reliability.

 3 So I think these are important issues that our

 4 task force had been discussing. Our report is getting

 5 near completion, and we'll be happy to submit it

 6 shortly. Thank you.

 7 MR. HARRIS: Does the City of Coral Gables

 8 contingent have any more comments, Mr. Lopez, any of

 9 the --

 10 MR. LOPEZ: No, Mr. Harris. We have completed

 11 our presentation and testimony. Thank you, sir.

 12 MR. HARRIS: Wonderful. Thank you. I really

 13 appreciate you all being here. I do think we have some

 14 other representatives of public groups.

 15 Hold on for a second. Excuse me.

 16 I'm sorry. Mr. Trapp has a question, I

 17 believe.

 18 MR. TRAPP: Mr. Bruce, you mentioned in your

 19 comments there that the City of Coral Gables is

 20 preparing a study report. Do I understand that you'll

 21 have some of these recommendations drawn up in a formal

 22 report?

 23 MR. BRUCE: Yes, sir. We have organized our

 24 report into short-range, intermediate, and long-term

 25 considerations, with suggestions that we're directing to

 21

 1 different utilities, to the Public Service Commission,

 2 to the citizens of our community, and to our city itself

 3 for things that we can do with regard to vegetation and

 4 other important aspects. We plan to review this report

 5 with the various utilities before submitting it, because

 6 we don't want to not consider all sources of reliable

 7 information. And as soon as we have an opportunity to

 8 review this with the utilities in our area, we will be

 9 submitting it to your Commission.

 10 MR. TRAPP: Did you have an idea of the time

 11 frame for that?

 12 MR. BRUCE: It will be very shortly. In fact,

 13 Chairman Enrique Lopez probably should answer that

 14 question.

 15 MR. LOPEZ: We're looking for the conclusion

 16 of our report to our City Commission and city management

 17 within the mid-June time line, within the next -- no

 18 later than next month.

 19 MR. TRAPP: Next month?

 20 MS. KUMMER: Mr. Bruce, going back to the

 21 report again, is the report for all utilities, or is

 22 directed only at electric?

 23 MR. BRUCE: It's for all utilities. But the

 24 biggest problem we had, because of the economic impact,

 25 was the electric utility problems, and to follow it up,

 22

 1 perhaps by Comcast because of the Internet connections.

 2 And we had very, very little problems with telephone,

 3 which is a very interesting thing, because the telephone

 4 services come on the same utility poles, which leads us

 5 to sort of suspect that for this storm, utility poles

 6 were not the problem.

 7 MR. BREMAN: When you say utilities, does it

 8 include gray water and other issues like that, or is it

 9 just pole-mounted utilities?

 10 MR. BRUCE: We did not discuss any water

 11 utilities, because we didn't have any failure in our

 12 water. Again, this is an ad hoc committee that was

 13 assembled because of the failure to restore the power

 14 quickly and because of the economic impact. And we

 15 didn't have any failure in our water or our sewage

 16 utilities.

 17 MR. HARRIS: Do you have any more questions?

 18 Does anyone out in the audience have any brief

 19 questions they would like to ask? I'm going to suggest

 20 that after people make comments, they're free to leave

 21 if they choose to, and so now might be a good time to

 22 sort of state that. And before I extend that offer to

 23 the City, they're welcome to stay or go as they choose,

 24 I wanted to ask if anyone out there might have any

 25 questions, brief questions. This isn't a debate or

 23

 1 anything.

 2 No? Okay. Thank you. You all are welcome to

 3 stay for the remainder of the day, or you're welcome to

 4 go, whatever works for you. Thank you for your

 5 participation.

 6 And I've been given to understand we're going

 7 to have other members of the public here who wish to

 8 speak. If there are anyone, we have a microphone over

 9 here, and we have another at this main table. If could

 10 ask you all to sort of come forward, if there is

 11 anybody.

 12 Okay. Do we -- great. We have a taker.

 13 Fantastic, I think. And you'll need to push the little

 14 white button there by the microphone in order to use it.

 15 MR. PLATNER: Thank you. My name is Alan

 16 Platner, P-l-a-t-n-e-r. I'm from Boca Raton, Florida.

 17 I am the chairman of our Emergency Power Committee for

 18 Boca Woods Country Club, which is a private residential

 19 community of 645 homes.

 20 We suffered very substantially during the

 21 Wilma outages, and over the last several years have had

 22 many, many outages. Power is an important

 23 consideration. It has become -- with the lack of

 24 reliability of power, has become a substantial issue

 25 both to our residents and to potential sellers and

 24

 1 purchasers of homes in our community, because we do not

 2 have a reliable power circumstance.

 3 We appeared at a Commission hearing on the

 4 FP&L bond issue which was held in early March, at which

 5 time we pointed out what we consider to be a very

 6 substantial problem for those of us who live in

 7 unincorporated areas of the state or county. The

 8 portion of Boca Raton that we live in is in Palm Beach

 9 County, but it is not within the municipality.

 10 The regulations as proposed by FP&L require

 11 that any activity towards burying the lines be supported

 12 by or required by a municipality. As long as that

 13 language exists, we are disenfranchised, as are many,

 14 many other people in the state.

 15 At that meeting, the Commissioners seemed to

 16 take substantial interest in our comments and directed

 17 FP&L to, quote, work with us to solve the problem. FP&L

 18 responded immediately. Where we had not been able to

 19 get attention for the previous six months, the following

 20 day we had attention. And they have been very gracious

 21 and attentive in providing us with an estimate of what

 22 the cost would be, how it could be done, and so on.

 23 We've had three or four meetings with them. They've had

 24 their engineers out to survey us. However, after they

 25 had given us a price, they haven't clearly identified

 25

 1 how this CIAC or CAIC works.

 2 Because the innervation of our property is on

 3 wooden poles, which we are told were built to the

 4 standards of 25 years ago, they are probably not

 5 suitable for more than 100 miles an hour. As you've

 6 heard from some of these other gentlemen and as I'm sure

 7 everyone is aware, the need in South Florida is to

 8 increase our coverage levels to 150 miles per hour, and

 9 an important part of that is burying the lines. It's an

 10 imperative for us for many reasons to get our lines

 11 buried.

 12 We understand that there is a necessity for an

 13 investment to be made, and given the right

 14 circumstances, we're prepared to make such an

 15 investment. However, under the current wording, we

 16 don't have that opportunity. We have received again

 17 several communications from FP&L telling us how much it

 18 will cost, but that very specifically the rule has not

 19 been approved for the 25 percent reduction in cost, and

 20 even if it was, in its current form, we would not

 21 qualify.

 22 We have gone before, or we've had a

 23 conversation, I should say, with a member of our Palm

 24 Beach Commission staff, because they potentially could

 25 be the municipality. Their position is quite clear and

 26

 1 well understood. They said, "we're very much in

 2 sympathy with you, and we believe that burying the lines

 3 in your area would benefit our entire community.

 4 However, the likelihood that we could raise the money

 5 for our share is somewhere between slim and none, and

 6 therefore, we cannot direct the burying of lines,

 7 because we would have to direct it for the entire

 8 community, or for at least the district, and we don't

 9 have the money for it." They have said that they would

 10 support us in any other way, if we need a letter from

 11 them indicating that they believe it should be done and

 12 so on and so forth.

 13 But I'm here today to appeal to you to change

 14 the way the regulation is being written so that any

 15 reasonable group -- and we are a community of 645

 16 homes -- any reasonable group who is willing to invest

 17 with FP&L to bury lines should have the opportunity of

 18 such participation. If that is not the case, one must

 19 question whether the offer of the 25 percent is a real

 20 offer.

 21 As the gentlemen before me have said, the

 22 financing is a very difficult circumstance. The need

 23 for governmental help for bond issues and so on and so

 24 forth is imperative, more imperative now because

 25 relatively little has been done to harden appropriately

 27

 1 during the last 15 or 20 years. I don't believe that is

 2 the fault of the public. I don't believe the public is

 3 aware, indeed, of what its stockholder-owned utilities

 4 take responsibility for or are held responsible for.

 5 The question of burying lines is very clearly

 6 the best opportunity we have to provide reliability in

 7 South Florida. The housing market in South Florida is

 8 now quite soft. One of the important reasons is people

 9 are afraid of hurricanes.

 10 An interesting sidelight to this is that

 11 communities such as ours are aggressively pursuing the

 12 introduction of natural gas, which is a noninterruptible

 13 technique of energy, because all of the new communities

 14 or almost all of the new communities being built in

 15 South Florida today have natural gas. They have that

 16 because residents moving into the state, almost all of

 17 whom come from the somewhere north of here, say, "I

 18 don't want to be subjected to the power outages that we

 19 hear so much about."

 20 I believe it is incumbent to the economy of

 21 the state that lines be buried as quickly as possible

 22 and that we understand that that is by far the preferred

 23 technique of hardening our structure.

 24 Additionally, I would point out, referring

 25 back to this CAIC, that comments made to us indicate

 28

 1 that while our current lines are 100-mile-an-hour lines,

 2 more than likely, in some relatively short period of

 3 time, as that standard changes to 150 miles an hour, the

 4 wooden poles that we have now at 230-foot centers will

 5 be increased to 150-foot centers, creating a veritable

 6 forest of these wooden poles, hardly appropriate for the

 7 level of residential homes in the area, more like Russia

 8 in the 1930s.

 9 To spend the money to do that will be very

 10 substantial. When that money is spent, it will be paid

 11 for by everybody in the community. We as a community

 12 are prepared to in partnership with the utility bury the

 13 lines at a reasonable price and remove the necessity for

 14 doing what can only be called something less than a half

 15 measure by trying to harden using additional poles.

 16 Again, our message is, we need not be

 17 disenfranchised. We need the wording to be changed so

 18 that any community or group such as ours who is capable

 19 be allowed to have the same discount or rebate that is

 20 available to a municipality, because under the current

 21 structure, most larger municipalities will not be able

 22 to finance this unless there are some major changes.

 23 Thank you very much.

 24 MS. KUMMER: Mr. Platner, a city has the legal

 25 authority to tax its citizens to pay for these types of

 29

 1 projects. Does your homeowners association have a

 2 similar right or legal ability to tax or place liens on

 3 property if your residents didn't --

 4 MR. PLATNER: I'm sorry. I didn't clearly

 5 understand your question.

 6 MS. KUMMER: I'm sorry. A municipality, if it

 7 chooses to underground, it has a legal right to tax its

 8 residents to pay for that.

 9 MR. PLATNER: Yes, they do.

 10 MS. KUMMER: Does your homeowners association

 11 have a similar right that it can tax or place liens on

 12 property to pay for undergrounding if that were to be

 13 the case?

 14 MR. PLATNER: Yes. Through our property

 15 owners association, we have the opportunity. And, of

 16 course, we do vote on this. Your members each have a

 17 voice in the property owners association.

 18 But we have very substantial interest in this,

 19 and we have, frankly, some very strong indications for

 20 another reason. Our community, because of the -- I'm

 21 going to say outrage over the outages, has indicated by

 22 survey that they would like us to put a generator in our

 23 community clubhouse so that in case of another

 24 circumstance like what we had, we would have at least

 25 someplace in the community that had light, water, the

 30

 1 potential for some food service, and air conditioning.

 2 And the pricing for that, as we have looked into it, is

 3 relatively similar to the cost of burying these lines,

 4 as we can see it. If the lines were buried -- and all

 5 the lines in our community are required to be buried, so

 6 just this one strip, if those lines were buried, we

 7 would have not a guarantee, but a fairly substantial

 8 warranty that we would have power in our community

 9 clubhouse, and we would have at least the minimum

 10 coverage that our community requires.

 11 MS. KUMMER: Thank you.

 12 MR. TRAPP: Hi. I'm Bob Trapp. I think we

 13 missed each other on the phone a couple of times.

 14 MR. PLATNER: Yes.

 15 MR. TRAPP: I wanted to clarify what we're

 16 talking about here. As I understand it, your community

 17 is an underground community, in that the homes

 18 themselves are underground, and --

 19 MR. PLATNER: That is correct. That was

 20 required of us. So we paid for that, and that was done.

 21 MR. TRAPP: And what you're really talking

 22 about is the feeder line that --

 23 MR. PLATNER: The perimeter line.

 24 MR. TRAPP: The perimeter line.

 25 MR. PLATNER: The perimeter line on Highway

 31

 1 441, between -- where we have approximately 3,100 feet,

 2 is on wooden poles. They're on wooden poles in an area

 3 where -- which abuts on one of our golf courses. And we

 4 had tremendous damage there. We had many, many outages.

 5 We believe we had over 60 percent of our outages from

 6 that one perimeter.

 7 So because of our storm damage, we took down

 8 all the trees, and we're now rebuilding that entire

 9 perimeter. As we rebuild it, it would be an ideal time

 10 for us to bury these lines.

 11 MR. TRAPP: So your primary issues, as I

 12 understand it, is over the apparent discriminatory

 13 application of the 25 percent reduction that Florida

 14 Power & Light has proposed.

 15 MR. PLATNER: That's right. That's right. We

 16 approach the utility and say, "We would like to do this

 17 based on the advertisements that you ran strongly in the

 18 newspapers saying that you would help us with at least

 19 25 percent," and they say, "Well, you don't qualify."

 20 MR. TRAPP: You indicated that you've been

 21 working with the company. And perhaps I should ask

 22 Mr. Butler this from Florida Power & Light. To what

 23 extent are you willing and able to work with the

 24 homeowners association in order to secure an underground

 25 CIAC?

 32

 1 MR. BUTLER: Well, I'll probably let Mr. Koch

 2 talk to this as well in just a second, but our concern

 3 has been really the ones of enforceability and access to

 4 the property for the undergrounding that Ms. Kummer had

 5 sort of alluded to.

 6 Frankly, though, this situation is one that

 7 sort of falls outside the box of what we are normally

 8 thinking of as the issue here where you have a community

 9 that currently has all of its facilities being overhead

 10 and you're wanting to convert that community to

 11 underground. If I'm understanding correctly, really

 12 we've got an issue of some limited segment of a feeder

 13 that serves into this community being undergrounded, and

 14 then whether any sort of special treatment ought to

 15 apply to that.

 16 And obviously, as Mr. Platner had indicated,

 17 the advice to this point is that our proposal wouldn't

 18 apply to them for providing the 25 percent investment.

 19 There has been, as he indicated again, significant

 20 discussion about what the normal CIAC cost would be for

 21 undergrounding that section of feeder.

 22 I'm not sure if that responds to your

 23 question. What are you looking for, Bob, as to FPL's

 24 response?

 25 MR. TRAPP: Well, you've made a proposal and

 33

 1 are even asking that it be included in our rules for a

 2 25 percent reduction for government-sponsored

 3 undergrounding. And I think the issue is a matter of

 4 ability to pay, ability to hold responsible for the

 5 payment of the CIAC and everything. I'm just wondering

 6 how a homeowners association fits in the scheme of

 7 things.

 8 I mean, if these people are willing to commit

 9 to, you know, the mortgage or whatever that's

 10 necessary -- and I have a picture here that we pulled of

 11 the Boca Woods border, and it looks like a very nice

 12 clean, open, road right-of-way situation where the

 13 supply lines are next to the sidewalk, which is next to

 14 a fairly large road right-of-way, it appears, and then

 15 the road. It doesn't look like it would be very hard to

 16 do the project.

 17 How do you address questions of easement? How

 18 do you address questions of securing the payment of the

 19 CIAC? Have you explored the same thing that was being

 20 offered earlier this morning of attaching bill

 21 surcharges or -- I don't know if the homeowners

 22 association has the ability to bond or not, but what

 23 type of financing avenues have you explored with these

 24 people?

 25 And again, I don't really want to get into the

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 1 merits of the 25 percent reduction at this point in

 2 time. But just from a basic underground CIAC, these

 3 people appear to be willing to work with you. They've

 4 done some cost analysis showing that this may be the

 5 most economic thing for them to do. How are you working

 6 with these people?

 7 MR. BUTLER: Well, again, what I had

 8 understood is that we are working with them very closely

 9 and have given them the information that would

 10 ordinarily be given. The rub is whether some sort of

 11 reduction in the ordinary charge that would be

 12 calculated ought to apply to them. And at this point,

 13 (1) we don't have a rule to do it, period, and (2) if we

 14 had our proposal, the way we understand it, it wouldn't

 15 end up applying to their circumstance.

 16 So the working with them to make the ordinary

 17 functioning of the CIAC mechanism available is something

 18 that has already happened. The doing something above

 19 and beyond that that would reduce the cost to them is

 20 the rub.

 21 MR. TRAPP: Okay.

 22 MR. BUTLER: And a couple of observations

 23 there. One, FPL actually already has a tariff available

 24 that could would contemplate and sort of facilitate a

 25 surcharge to be applied, but again, it is within a

 35

 1 government area, something that would be applied by a

 2 local government. We would have some questions about

 3 how that would work with respect to --

 4 MR. TRAPP: What question specifically, John?

 5 What problems do you have dealing with a homeowners

 6 association to do this?

 7 MR. BUTLER: I think that the -- one of the

 8 things that first comes to mind to me -- and I have not

 9 seen the homeowners association's contracts with its

 10 members, but it's one of enforceability and sort of

 11 unanimity. Is this something indeed where, if the

 12 homeowners association by some sort of majority vote

 13 decides that it wants to do something, that they can and

 14 then we can require everybody who is within that area to

 15 participate, even if they didn't like the idea and were

 16 in the minority who had not agreed with the proposal in

 17 the first place?

 18 That's something that pretty clearly local

 19 governments have authority to do. It's not something

 20 that necessarily a homeowners agreement is going to

 21 facilitate. It may, but that's something that I think

 22 needs to be reviewed on a case-by-case basis with the

 23 specifics of how broad and how much teeth there is in

 24 each homeowners association agreement. So that's

 25 certainly a significant issue.

 36

 1 Another one where this doesn't fit in really

 2 the box, frankly, that we are conceiving of this right

 3 off the bat is the fact that one of the reasons we are

 4 looking to limit this proposal to some sort of

 5 government sponsored facilities didn't have to do with

 6 enforceability, but had to do really with trying to get

 7 areas where you would really have an impact on storm

 8 restoration costs if you undergrounded the facilities.

 9 And one of the things we thought was important

 10 and continue to think is important is, you have some

 11 substantial contiguous area currently served -- all the

 12 facilities in it are overhead. It's a pain in the neck

 13 to go in there and restore house by house the overhead

 14 service if you have a storm. And therefore, if you get

 15 all of that facility undergrounded down to the lateral

 16 level, then you have a significant reduction in storm

 17 restoration costs, and therefore can justify having some

 18 sort of investment in, some sort of reduction in,

 19 whatever you want to call it, the CIAC that the

 20 community would end up paying.

 21 You know, the circumstance here where it's

 22 already undergrounded and a lot of the types of cost

 23 savings we're envisioning really wouldn't exist, because

 24 you're not making a change from the overhead laterals to

 25 underground. Really, all you're talking about is the

 37

 1 difference in cost of restoration for this segment of

 2 feeder that's running along adjacent to their property

 3 versus maybe not having to restore that one segment of

 4 feeder. You know, there may not be nearly the sort of

 5 cost savings that would justify the investment for them,

 6 at least by our model.

 7 That is our model, save money based on the

 8 storm restoration cost reductions of having this

 9 contiguous area that you no longer have to go in and

 10 sort of do the hand-to-hand combat of getting back to

 11 service on an overhead basis, and you can justify making

 12 some sort of investment for that community, and this

 13 doesn't seem to fit that model very closely.

 14 MR. TRAPP: Are you suggesting that even in

 15 the overhead case that this neighborhood would not

 16 qualify for the pole hardening?

 17 MR. BUTLER: I'm sorry. Would not qualify for

 18 pole hardening?

 19 MR. TRAPP: Yes. I mean, you just said that

 20 it doesn't appear to qualify for your 25 percent

 21 reduction for the purposes of underground hardening.

 22 Would it qualify -- do you anticipate a neighborhood or

 23 a project of this nature qualifying for pole hardening?

 24 MR. BUTLER: For the overhead feeder lines

 25 that are currently running adjacent to it is what you're

 38

 1 referring to?

 2 MR. TRAPP: Yes.

 3 MR. BUTLER: I think it would. I don't think

 4 that there's an intent to look at that on sort of a

 5 neighborhood-by-neighborhood basis if these were lines

 6 -- now, again, what I think your rules and what our

 7 proposal envisions is that, you know, it's basically new

 8 construction, major planned work, and critical

 9 infrastructure. I have no idea whether this particular

 10 segment of line would fit into any of those three

 11 categories in the near future. So it may not be

 12 something that would be in any short or intermediate

 13 term slated for the overhead hardening. But if it did,

 14 if it was feeding a critical infrastructure or if there

 15 was going to be some major rework on it, then, yes, it

 16 would end up being built to the extreme wind standards.

 17 MR. TRAPP: And therein lies my rub, because

 18 the staff's proposed rules, rather than address 25

 19 percent reductions that are discriminatorily spread here

 20 and there, address to the extent that you are going to

 21 harden overhead facilities, that that be taken into

 22 consideration in the calculation and determination of an

 23 underground, whether it be a conversion case or a new

 24 case --

 25 MR. BUTLER: And we don't disagree with that.

 39

 1 MR. TRAPP: -- cost differential. When, how

 2 best are you going to coordinate on projects such as

 3 this to ensure that they have the opportunity to take

 4 advantage of that credit that comes from the overhead

 5 hardening effect on the URD? I mean, are you -- I don't

 6 know if it's feasible to coordinate at a

 7 subdivision-by-subdivision level or by county level.

 8 MR. BUTLER: We're already proposing --

 9 MR. TRAPP: Are you working with Palm Beach to

 10 coordinate these types of things?

 11 MR. BUTLER: Well, first of all, just to

 12 answer your question, in our proposal, which would be

 13 similar to yours, as I understand it, we would be taking

 14 that into account in looking at the CIAC that they would

 15 be asked to pay. So, in other words, if they want to

 16 underground this segment of lateral, you know, sort of

 17 the deduction from the underground cost that you have

 18 for the overhead facilities would reflect the hardening

 19 costs for the overhead facilities. That's already

 20 there. You and we agree on that.

 21 The 25 percent we're talking about and

 22 something that you handle somewhat differently, and I'm

 23 sure we'll talk about it more later, but of also taking

 24 into account something like operating and maintenance

 25 expense and storm restoration cost differentials in

 40

 1 looking at the CIAC, that's the thing where in our mind

 2 it needs to be targeted. And one of the big reasons it

 3 needs to be targeted is that how much that differential

 4 really would be is going to be very dependent on whether

 5 you get this big footprint that you no longer have to

 6 bring all your trucks in and restore it to service on

 7 the one hand, or if you're talking about sort of

 8 isolated one-off customers or one-off segments of line,

 9 where that's the only thing being undergrounded, and you

 10 don't really have a whole lot of impact on the overall

 11 storm restoration costs, because you've still got your

 12 overhead crews in the same area having to deal with all

 13 the other stuff that hasn't been undergrounded. That's

 14 really what drives our proposal.

 15 MR. TRAPP: I look forward to getting involved

 16 with that discussion later on, because I think there's a

 17 lot that needs to be said here, and I'll just put one

 18 last thought in your mind before we move on. In that

 19 discussion, I want you to think about, if we go the

 20 approach of targeted hardening as opposed to mandatory

 21 hardening, I think we need to know how that information

 22 is going to be shared with the public so that the public

 23 can plan as you plan to maximize the cost-effectiveness

 24 of when to underground. I think that's an essential

 25 part of that shift, if we take it, from mandatory to

 41

 1 targeted hardening.

 2 Thank you very much.

 3 MR. PLATNER: May I make one additional

 4 comment, please?

 5 MR. HARRIS: Go ahead.

 6 MR. PLATNER: I want to say clearly that the

 7 people at FP&L at the staff level that we have worked

 8 with have been extremely cooperative. They have been

 9 very helpful, and they have discussed with us all kinds

 10 of opportunities. But there has never been any

 11 disagreement anyplace along the line that burying the

 12 lines would not be absolutely the best thing, not only

 13 for our community, but for the area in which it exists.

 14 Secondly, as per the picture that your staff

 15 took when they visited us, it's very clear that this

 16 installation is a very easy one to do and could be done

 17 at probably much lower cost than some other areas.

 18 There are no roads to go over. It's in soft earth.

 19 We're doing a lot of the work ourselves because we're

 20 doing landscaping in the area and wanted to put this at

 21 the same time as we were doing that. We have all the

 22 equipment there to do these kind of things.

 23 It speaks out, it cries out for a partnership

 24 effect, and that's all we're looking for. But we

 25 clearly feel that a community of 645 homes cannot be

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 1 disposed of as being unimportant. We reject that view.

 2 MR. HARRIS: Thank you, sir. We appreciate

 3 your comments. As I -- I believe you were in the room

 4 earlier. There will be an opportunity to provide

 5 written comments if you would like to take advantage of

 6 that also. I wanted to make sure you heard that.

 7 MR. PLATNER: Thank you.

 8 MR. HARRIS: Do we have anyone else who would

 9 like to provide public comments before we actually get

 10 into the technical discussion of the rule language that

 11 we have out there?

 12 No? Okay. With that, I believe we're going

 13 to go ahead and move on then.

 14 According to the agenda that some of you all

 15 have had a chance to pick up, we wanted to break this

 16 down by rule and sort of go through each one and try to

 17 get sort of an idea on one and sort of get it tied up

 18 before moving on to the others. I understand there's a

 19 lot of overlap between them, but we really do want to

 20 sort of try to focus for our purposes so we can get a

 21 handle on where we are with the specific rule language

 22 we've proposed of going sort of rule by rule.

 23 And so the first in the packet is 25-6.034,

 24 Standard of Construction. I believe it's the first four

 25 pages in the staff-proposed rule language.

 43

 1 Mr. Trapp, do you want to go ahead and give

 2 sort of a summary of how this has changed from the

 3 earlier version?

 4 MR. TRAPP: Sure. First of all, let me say

 5 thank you very much for the written comments that were

 6 provided. I think they were very helpful to staff, as

 7 was the discussion that we had at the last workshop. I

 8 think it was a productive workshop, and I hope this one

 9 is the same.

 10 We took many of your comments to heart and I

 11 guess have reframed this construction standard rule to

 12 be more of a "it's the utility's responsibility to come

 13 up with standards and to identify areas of hardening."

 14 As I said earlier, it's kind of the difference between

 15 the mandatory approach and the "you all do a good job"

 16 approach.

 17 That pretty much is an overview. We tried to

 18 identify in the agenda some of the remaining issues that

 19 we want to really touch on today.

 20 And I have to, as we did in the first

 21 workshop, turn first I guess to the munis and co-ops and

 22 ask about jurisdiction. We read your comments. They

 23 seemed to say that while you appreciated what we were

 24 doing, you didn't really want our help, but you might be

 25 able to live with it if we wrote the rules right. And

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 1 here we have a rule that only requires you to identify

 2 what you need to do to get your services right and your

 3 customers happy and submit those standards and plans to

 4 the Commission on an informational basis, and an action

 5 basis only if something is wrong. Does that make you

 6 all feel any better?

 7 MR. WILLINGHAM: My name is Bill Willingham --

 8 that's B-i-l-l, W-i-l-l-i-n-g-h-a-m -- with the Florida

 9 Electric Cooperative Association.

 10 Bob, we think you've come a long way with the

 11 rule, but again, we're going to have a problem just

 12 conceding jurisdiction just for the precedence that it

 13 sets.

 14 And we're struggling with a lot of things too.

 15 There are some things in the rule, particularly

 16 subsection (5) with the overhead, where there seem to be

 17 somewhat conflicting directions that we're getting

 18 there. As we said in our comments, our real problem

 19 with poles and things coming down has been the tornadic

 20 winds, whether microburst, tornados, we're not sure, and

 21 also trees. And we've had the experience where the

 22 hurricanes hit the same area twice, and the second time

 23 it hits it, there's very few tree limbs coming down, and

 24 our poles are staying up, it's just the wire coming

 25 down.

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 1 So we know that the trees are a big problem,

 2 and we think a lot of that has been taken care of, both

 3 by the hurricane and by the customers now letting us cut

 4 a lot more than we used to. And building to the extreme

 5 wind standard we feel is really going to do very little.

 6 One of our co-ops basically said it's going to be a

 7 matter of hours, not a matter of days, the difference

 8 that it's going to make, but the cost is tremendous.

 9 So to the extent that we're willing to go

 10 along with the rule and say we're under the rule, I

 11 think we're going to object to that just on a

 12 jurisdictional basis. But we definitely are looking at

 13 the rule. We're struggling with the same things

 14 everybody else is, and we're looking at all this.

 15 MR. TRAPP: I would like to point out that

 16 section (5) now only requires you to establish

 17 guidelines and procedures whereby you will consider

 18 extreme wind conditions. That to me is a considerable

 19 difference between, you know, mandating that all poles

 20 be traded out for the extreme winds. It makes you do a

 21 critical assessment of your system and determine areas

 22 where you feel that pole replacement is necessary, but

 23 it does not mandate it as such on a systemwide basis.

 24 MR. WILLINGHAM: What I was really getting to

 25 was what seem to be competing interests. You know, if

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 1 we build to the extreme -- for example, Withlacoochee

 2 has determined they've got some 130 extreme wind areas,

 3 and to meet that standard, they're going to have to put

 4 in about 50 percent more poles on every line that

 5 they've got there. So the problem is, by putting in all

 6 the extra poles, your restoration time when you get hit

 7 by a tornado is going to be a lot higher because you've

 8 got to build another 50 percent of the poles back up.

 9 So what I was getting to, these are kind of

 10 competing things, and we really don't necessarily want

 11 to give the PSC the authority to second-guess our

 12 judgment that we've done, and that's what this rule

 13 seems to do.

 14 MR. TRAPP: Okay. And Bill Peebles. Where is

 15 Fred, Bill?

 16 MR. PEEBLES: Fred is in Orlando. I'm not

 17 sure what he's doing.

 18 I'm Bill Peebles, P-e-e-b-l-e-s. I represent

 19 today the Florida Municipal Electric Association, and as

 20 Bob knows, I'm sort of a newcomer to this party.

 21 But we appreciate the progress, in our view,

 22 that you've made in the rule and understand the

 23 difference in approach. But as you will understand, we

 24 remain unable to concede jurisdiction, and I don't think

 25 there's any need to go into that argument again. We've

 47

 1 provided post-workshop written comments that I'll say,

 2 since I didn't write them, I found persuasive, and we'll

 3 stand by those comments.

 4 MR. TRAPP: Tell Fred we really missed his

 5 story.

 6 MR. PEEBLES: He might come back.

 7 MR. TRAPP: Well, I think you owe us a story.

 8 MR. PEEBLES: Anything in particular?

 9 MR. TRAPP: Never mind.

 10 Okay. Moving right along.

 11 MR. BUTLER: Excuse me, Larry. How do you

 12 want to proceed with comments on .034? We have -- I

 13 guess they fall into probably two categories, in part

 14 because it's two different groups of people who will be

 15 making them. One is on the nonpole attachment. We have

 16 three or four sections we would like to make comments

 17 on, and then we have some comments that we'll make on

 18 the pole attachment provisions that you've added at the

 19 end. Are you going to go through subsection by

 20 subsection, or shall we now just give you whatever we've

 21 got on nonpole attachment?

 22 MR. TRAPP: I think that's a good suggestion,

 23 John. We were kind of struggling with that ourselves up

 24 here, whether to go line by line, rule by rule. But as

 25 we've set out the agenda, we've pretty much -- okay.

 48

 1 It's the difference between mandatory versus somewhat

 2 discretionary targeted, and I think we can address that

 3 as one topic. If you would like to address that first,

 4 we'll do that, and then let's reserve a section of time

 5 just to talk about the pole attachments, because that's

 6 something that you all brought up to us at the last one

 7 that's kind of new. So if you want to start out, go

 8 ahead.

 9 MR. BUTLER: Okay. We have comments on three

 10 or four of the subsections. I'll just go through them

 11 in the order that they appear.

 12 You've added section (2) to what we were

 13 looking at in the April 17 version. This is the

 14 provision for making copies of the construction

 15 standards available and having them on file within a

 16 90-day period, and we've got a couple of concerns with

 17 that.

 18 One -- and this applies particularly with

 19 respect to the transmission more so than the

 20 distribution, although it's not a complete stranger to

 21 the distribution standards either. But there is

 22 something of a security concern, and any of you who

 23 participated in the storm securitization hearing will

 24 remember some of the sensitivity there. There really is

 25 a desire not to make conveniently accessible to people

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 1 who would like to do the system wrong detailed

 2 information about how it's built. And so we do have

 3 some concerns about just a general public accessibility

 4 of all of these standards and would want to work with

 5 you in some manner to try to make the accessibility of

 6 them limited to what's appropriate.

 7 We're a little concerned, at least in

 8 principle, of how much sheer volume of paper and the

 9 cost of it if people really started getting enthusiastic

 10 about taking copies of these standards, because they are

 11 voluminous and expensive to produce, although I have to

 12 say my expectation is there won't be a huge run on them.

 13 Probably the biggest concern we have there is

 14 just that we think your time frame of 90 days is short.

 15 Our estimate is we're probably looking at several

 16 months, on the order of six months, something like that,

 17 from the time that we end up agreeing on what's got to

 18 be changed to where all of these standards with all of

 19 the detailed revisions running through all of the

 20 sections would end up being finalized. And so we really

 21 do have a concern with the time period that you are

 22 proposing for making the sort of final version of the

 23 revised standards available.

 24 So that's pretty much what we've got on

 25 section (2). Our next comment we have is on –

 50

 1 MR. TRAPP: Let me just go ahead and ask you

 2 some questions as we go along, if I could. On the

 3 security concerns, what do you propose? I mean, should

 4 we hold these things confidential? Should we review

 5 them only in your offices? Should we make you come give

 6 us a showing every six months? I mean, how do we

 7 address that?

 8 MR. BUTLER: I think probably that providing

 9 them to you on a confidential basis, and that we would

 10 work with you to provide access to people who have any

 11 sort of legitimate interest in seeing them through your

 12 office as confidential documents, where we would agree

 13 to waive it for particular purposes, is probably a

 14 pretty good start.

 15 MS. KUMMER: Can I just jump in here, because

 16 this is at least partly my language. And maybe I didn't

 17 call it the right thing. But years ago, all the

 18 utilities used to file builders' handbooks. I called

 19 them construction manuals. Maybe that's not the right

 20 term. But I kept them with my tariffs. And it was my

 21 understanding that you gave those out to contractors.

 22 That, I think, is what we're talking about. Is that

 23 what you object to providing?

 24 MR. BUTLER: That's not what we were talking

 25 about. We're envisioning that there is a telephone book

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 1 sized set of standards, one for distribution and one for

 2 transmission that have all of the detail. I guess on

 3 the transmission side, it's the thing that was being

 4 referring to as the DERM during the storm securitization

 5 hearing, and that's how we were reading your rule

 6 proposal.

 7 MR. BREMAN: This is Jim Breman. Isn't your

 8 contractor package already available online on your

 9 website?

 10 MR. SPOOR: This is Mike Spoor, S-p-o-o-r,

 11 with FPL. Again, I think, Jim, the document you

 12 referenced, and, Connie, the one you referenced are

 13 subsections of ultimately the overall construction

 14 standards, one that we have already screened to ensure

 15 again that there's nothing there that we would want

 16 getting into the hands of the general public.

 17 MR. BREMAN: And while I'm on the topic, I'm

 18 just going to go down the row here. Gulf Power, is

 19 yours publicly available already?

 20 MR. STONE: Again, what --

 21 MR. BREMAN: The contractors' package only.

 22 MR. STONE: What we're talking about there is

 23 a very small portion of the distribution side of the

 24 house. It does not get into the transmission

 25 construction standards. And we share some of the

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 1 similar concerns about both from a security standpoint,

 2 but other aspects of why we think that broadening this

 3 to more than just what you're talking about in terms of

 4 a contractor, builders' guide, that kind of thing, where

 5 the public needs to be able to know what they have to do

 6 in order to interconnect with our system. That's --

 7 those are two different subjects.

 8 MR. BREMAN: But just the contractor package,

 9 isn't that already published and made available on the

 10 Web?

 11 MR. TRUMP: It's published and made available,

 12 but we don't have it on the Web at this time.

 13 MR. BREMAN: Okay. Progress?

 14 MR. BURNETT: John Burnett, B-u-r-n-e-t-t,

 15 with Progress Energy Florida. Jim, you're correct. Our

 16 construction package, as you stated, is available. And

 17 I think we call it our orange book, and I believe,

 18 Connie, that that's what you were speaking about

 19 earlier. It is available to the public.

 20 MR. TRAPP: But again, let me clarify, what

 21 you all are talking about is basically what you give

 22 contractors to make sure they can interconnect with you

 23 properly. It's not necessarily all your internal -- in

 24 other words, if I had Jim Breman evaluate those, could

 25 he tell whether or not you had appropriately hardened

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 1 Boca Raton?

 2 MR. BURNETT: No.

 3 MR. HAINES: Regan Haines, TECO, R-e-g-a-n,

 4 H-a-i-n-e-s. Similar to the other utilities, we have on

 5 our website what we call our SESR, Standard Electrical

 6 Service Requirements, and it's for contractors to

 7 understand how to interconnect with the system. So it's

 8 not the entire distribution system or anything about the

 9 transmission system.

 10 MR. BREMAN: And Mark Cutshaw with Florida

 11 Public Utilities. I saw you here earlier, and I'm not

 12 going to let you get away without answering something in

 13 the microphone.

 14 MR. CUTSHAW: Mark Cutshaw, C-u-t-s-h-a-w. We

 15 do have a builders' package available. It's not on the

 16 Web, but we do have it available, and it contains just

 17 the information you talked about, just how does the

 18 builder connect to our system.

 19 MR. BREMAN: The munis, do you all publish

 20 this? Co-ops?

 21 MR. WILLINGHAM: I honestly can't tell you.

 22 I've never looked to see.

 23 MR. PEEBLES: I don't know.

 24 MR. BREMAN: Thank you.

 25 MR. STONE: May I add -- this is Jeff Stone on

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 1 behalf of Gulf Power Company. It's also my

 2 understanding that not only is it not available on the

 3 Web from our perspective, but that we also routinely

 4 sign confidentiality agreements with contractors when

 5 they get access to some of this material.

 6 MR. TRAPP: Well, again, while we're on the

 7 subject, and to try to save time, so we don't get a

 8 bunch of repeats in here, does everybody agree that if

 9 we require this, that we can treat it as confidential

 10 information under the confidentiality rules and keep it

 11 in the locked vault and all that kind of stuff, and have

 12 limited access even among staff?

 13 MR. BUTLER: That would be fine for FPL. We

 14 certainly don't have any objection to that. The only

 15 other thing we would have is just reminding you that I

 16 think we're going to need more than 90 days to be able

 17 to get it to you.

 18 MR. TRAPP: Does everybody else need six

 19 months?

 20 MR. STONE: Bob, this is again Jeff Stone on

 21 behalf of Gulf. I'm not sure exactly the time frame,

 22 but we do know that it's big. It's a large volume of

 23 material. To the extent that there was some way to

 24 limit the scope of what it is you want filed, that would

 25 be beneficial I think both in terms of the Commission in

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 1 terms of record keeping. It may be that access at the

 2 utility may be more beneficial from that standpoint and

 3 something to consider.

 4 MR. TRAPP: And I guess that's where we're

 5 struggling. As regulators, you know, I can't totally

 6 trust you. I've got to come look over your shoulder

 7 some. It's a lot easier with our budget constraints,

 8 travel constraints, monetary constraints, staff

 9 constraints, for to us do that here in Tallahassee as

 10 opposed to sending a bunch of people down to Pensacola,

 11 Miami, wherever, Juno Beach or wherever. So I don't

 12 know. We would rather have it in Tallahassee, Jeff. Do

 13 you have a big heartburn?

 14 MR. STONE: Well, again, it's more of a

 15 logistical issue. You know, once -- we've already

 16 expressed our expressed our concern about the public

 17 access, and I just know that logistically, it becomes

 18 much more of a management issue from the Commission

 19 standpoint for confidential documents. It is easier to

 20 manage if it's viewed at the utility site.

 21 We certainly want to work with staff to make

 22 sure you have as much access as you need to look over

 23 our shoulder and ensure that we're going what the rule

 24 requires.

 25 MR. TRAPP: John?

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 1 MR. BURNETT: John Burnett, Progress Energy

 2 Florida. Bob, we don't have a problem with a copy being

 3 on file in Tallahassee. We would try to be judicious in

 4 identifying anything that was sensitive or confidential

 5 and marking only that, but otherwise, it's not a problem

 6 for staff to have a copy.

 7 MR. BRYANT: Howard Bryant, Tampa Electric,

 8 B-r-y-a-n-t. We would be able to work with you on

 9 confidentiality and provide it up here.

 10 Your question on whether 90 days is

 11 appropriate or not, we struggled with 90, but we're not

 12 sure 180 is the number, but we'll get started.

 13 MR. TRAPP: And y'all are just got going to

 14 give us anything, are you?

 15 MR. WILLINGHAM: Bob, I could tell you that

 16 for the co-ops, the ones that are under RUS regulation,

 17 their standards are online. They're on the RUS website.

 18 They've been modified somewhat, but generally, that

 19 would be the basic --

 20 MR. TRAPP: Those are -- the RUS standards

 21 that they adhere to are online?

 22 MR. WILLINGHAM: Correct.

 23 MR. TRAPP: But do you have interpretations of

 24 that that you have to translate into line diagrams and

 25 things of that nature?

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 1 MR. WILLINGHAM: Well, when you look at the

 2 RUS standards, the line diagrams are there. Now, co-ops

 3 will modify it to some extent, so it's not going to be

 4 exactly that standard for every single RUS borrower, but

 5 it will be close.

 6 MR. TRAPP: Okay.

 7 MR. GROSS: Bob, Michael Gross. I'm here on

 8 behalf of the Florida Cable Telecommunications

 9 Association.

 10 A little bit down the road today, I had

 11 intended to address a different aspect of this issue

 12 dealing with the right to challenge the construction

 13 standards that are filed. And I don't think that we

 14 would be willing to just accept wholesale that all this

 15 information would be confidential information. But to

 16 the extent that it would be, since we would like to be

 17 able to participate and have some input in this process

 18 with some Commission review, then we would sign a

 19 protective agreement. That's what we would suggest, in

 20 order to have the access necessary to participate in

 21 that process.

 22 MR. WRIGHT: Bob, Larry, Schef. I just wanted

 23 to add that -- I represent -- Robert Scheffel Wright,

 24 R-o-b-e-r-t, S-c-h-e-f-f-e-l, W-r-i-g-h-t. I go by

 25 Schef, which I spell S-c-h-e-f. I represent the Town of

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 1 Palm Beach and the Town of Jupiter Island in these

 2 proceedings.

 3 And I just wanted to state that I

 4 fundamentally agree with what Mike just said. I can

 5 conceive of a scenario where we would get into a dispute

 6 on the computation of the CIAC, where we would want to

 7 know whether they were calculating the hardening costs,

 8 as Bob was talking about a few minutes ago, calculating

 9 the hardening costs properly, and we would want to see

 10 it. In such an instance, like we do in much more

 11 contentious cases than these, we would be happy to sign

 12 a confidential protective agreement and limit access to

 13 counsel and appropriate engineers.

 14 MR. TRAPP: Some of that is going on already,

 15 I gather. Are you having trouble accessing information

 16 at Florida Power & Light?

 17 MR. WRIGHT: I would say -- generally

 18 speaking, these days, Bob, I would say we are not having

 19 problems getting information from FPL.

 20 MR. TRAPP: And are you entering into --

 21 MR. WRIGHT: We historically had some problems

 22 along those lines, but for the last year or so, FPL has

 23 been relatively forthcoming with information. As far as

 24 I know, we're not having any problems right now.

 25 MR. TRAPP: And that level of information, has

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 1 that been held confidential? Have you had to enter into

 2 a confidential agreement on that type of information?

 3 MR. WRIGHT: No. To the best of my knowledge,

 4 and they'll tell me if I'm wrong, I think that all we

 5 have -- what we have gotten is a binding cost estimate

 6 in the case of Jupiter Island, ballpark cost estimates

 7 in the case of both Jupiter Island and Palm Beach. And

 8 we did get specs with engineering drawings, the great

 9 big whole thing of whatever they were, 24-by-36 or

 10 30-by-48, engineering drawings associated with the

 11 binding cost estimate that FPL furnished to us in

 12 Jupiter island. We did not get into -- we haven't asked

 13 for -- to my knowledge, we have not asked for, nor have

 14 we been furnished a copy of the DERM, but like I said,

 15 we haven't asked for it.

 16 MR. BUTLER: That's what I was just going to

 17 follow up. FPL pretty routinely shows, discusses with,

 18 whatever you want to call it, various limited aspects of

 19 its construction standards with people where there is a

 20 need to have that discussion, and we would continue to

 21 do so and don't see that as something that has to be

 22 coming to the Commission and seeing your copy that's

 23 kept confidential.

 24 The big concern is people having access to the

 25 document in its totality that just -- you can use that

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 1 for purposes that are much different than Mr. Wright's

 2 client seeing some particular provision that applies and

 3 defines something about the estimate that's being given

 4 to them, and it's that potential for the document being

 5 accessible in its totality that we are concerned about

 6 and why we would like to have the procedure that we've

 7 just been discussing.

 8 MS. KUMMER: Can I hop in here just a minute?

 9 MR. TRAPP: Yes, jump right in, Connie.

 10 MS. KUMMER: This is a question for Mr. Gross

 11 and Mr. Wright. In terms of -- I think you mentioned

 12 particularly challenging an assumption, and I think,

 13 Schef, you also mentioned challenging CIAC. Would you

 14 envision challenging -- for example, we've left the

 15 hardening on a targeted basis. Would you envision

 16 challenging whether or not facilities should be hardened

 17 or the degree to which they would be hardened? Would

 18 that be the type of thing you would be looking for in

 19 challenging the CIAC?

 20 MR. WRIGHT: Connie, I would say that that's

 21 possible if it was a discretionary targeting issue as

 22 opposed to a mandate and we wanted to convert, say, the

 23 south half of Palm Beach or all of Jupiter Island.

 24 You know, this is all very hypothetical, but

 25 with that caveat, I would say if FPL says, "Well, we

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 1 don't view this as critical to be targeted for

 2 hardening, and accordingly, we're only going to allow

 3 you X as the estimated cost of the overhead facilities

 4 that would otherwise be installed," we might say, "Well,

 5 no, it really ought to be hardened, and the cost ought

 6 to be 2X," or 3X or whatever, yes, that is something

 7 that might become an issue in our negotiations.

 8 On the other hand, FPL might say, "Sure, we'll

 9 agree with you that that's critical, and have your

 10 engineers talk to our engineers, and we'll all sit down

 11 and figure it out." And if we have a remaining dispute

 12 after that as to whether the cost is 1.8X or 2.1X, then

 13 we might have to come to you on that.

 14 MS. KUMMER: Mr. Gross, would you have similar

 15 concerns?

 16 MR. GROSS: I think I would concur with what

 17 Mr. Wright has said. But our primary concern is -- I

 18 mean, our understanding is that the power companies all

 19 have construction standards now, but that the Commission

 20 by rule is now requesting some modified or enhanced

 21 construction standards to meet the goals of this rule.

 22 And while there is -- and it's something that's going to

 23 be done unilaterally by the power companies, according

 24 to this rule. There's a right to challenge mentioned,

 25 but it's not at all clear whether a third-party

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 1 attacher -- I mean, cable is here as a third-party

 2 attacher. Those are parties who seem to have been left

 3 out of this discussion, so I'm here to assert our

 4 position throughout the day today.

 5 But it's not clear whether a customer or an

 6 applicant who has the right to challenge would include a

 7 third-party attacher, number one. We would like the

 8 right to challenge, but also to maybe avoid a challenge

 9 if we could participate in the process and give our

 10 input.

 11 And also, the mechanism for challenging the

 12 construction standards is the customer complaint rule.

 13 And I took a look at it, and I was a little concerned

 14 about whether -- it wasn't really designed, for example,

 15 for a third-party attacher to challenge construction

 16 standards, and we might do well to look at a different

 17 procedure than the customer complaint rule.

 18 MR. TRAPP: What procedure would that be?

 19 MR. GROSS: Well, I haven't come up with that

 20 yet. We kind of got into this midstream, and --

 21 MR. TRAPP: We're on a tight time frame, Mike,

 22 and if you don't have a suggestion now, I mean, it's

 23 going to get passed over. I need to know what procedure

 24 you're --

 25 MR. GROSS: Well, with all due respect, we

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 1 found out about this rule development through notice by

 2 rumor. And I went back to find out how that could

 3 happen, and when I looked at the docket, it appeared

 4 that only power companies were notified about this. So

 5 we just got involved in it very recently, and we only

 6 got this latest version of the rule Monday, so we're

 7 really scrambling right now to address these rules.

 8 Now, I will go back and work on that, but I

 9 don't have a suggestion as we speak.

 10 MS. KUMMER: Well, perhaps if we allow for

 11 written comments afterwards, you could come up with some

 12 generalized suggestions. That might be a better

 13 approach.

 14 MR. GROSS: Yes. We might be able to go into

 15 more detail in our post-workshop comments.

 16 MR. BREMAN: Last but not least, FPC regarding

 17 the six months or 90 days.

 18 MR. CUTSHAW: This is Mark Cutshaw. We can

 19 provide them, but we will need the six-month time period

 20 before we can get them updated and provide them to you

 21 in a confidential manner.

 22 MR. TRAPP: I think we covered most of Florida

 23 Power & Light's comments. Can we move to -- are there

 24 additional comments? I guess Gulf, or John, do you

 25 additional comments?

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 1 MR. BUTLER: I'm sorry. We have other

 2 comments on later subsections in .034. Do you want us

 3 to go ahead and make those now, or do you want to move

 4 through sort of subsection by subsection?

 5 MR. TRAPP: Well, I'll tell you what. We've

 6 been so productive just going subsection by subsection,

 7 maybe we ought to stick there. That way we'll make sure

 8 at the end we're through with the rules.

 9 MR. BUTLER: Okay.

 10 MR. TRAPP: Any other comments on section (2),

 11 subsection (2) of the proposed .034?

 12 No, no, no, no, no. I don't see any takers,

 13 so can we move to section (3)? This is just reiterating

 14 the generic language that's in our existing rule kind of

 15 as a starting point to frame the thing, and then we go

 16 there.

 17 Section (4), we recognize now that the

 18 National Electric Safety Code is not a construction

 19 standard, but it's something to be adhered to at a

 20 minimum, which implies you can go beyond it. Section

 21 (4), we spell out the specificity of the code, put the

 22 grandfathering provision in.

 23 Section (5).

 24 MR. WRIGHT: Bob, I have some questions that I

 25 would like to ask in connection with subsection (4).

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 1 Would this be the right time for that?

 2 MR. TRAPP: Yes.

 3 MR. WRIGHT: Okay. You all proposed the rule

 4 to adopt the 2002 edition of the NESC, which is

 5 certainly the current edition. I think everybody, or if

 6 they're not, they should be, in the room is aware that

 7 the NESC is presently undergoing revision and there is

 8 scheduled to be a new edition published next year, the

 9 2007 edition. It's not a big deal to me at this point,

 10 I don't think, but do you intend to just write the rule

 11 to say the then current edition of the rule, or do you

 12 want to come back for new rulemaking next year?

 13 MR. TRAPP: We've gone through this struggle

 14 with our past jurisdiction the last 20 years with the

 15 National Electric Safety Code pursuant to statute, and

 16 what the lawyers -- what I understand the lawyers to be

 17 saying is we can't delegate our authority to the IEEE.

 18 MR. WRIGHT: Thank you.

 19 MR. TRAPP: And quite frankly, Schef, I in

 20 good faith can't put that we've reviewed the 2007 code

 21 at this point in time, so we're going to have to adopt

 22 the 2002 code.

 23 MR. WRIGHT: And if we need to come back next

 24 year, we can come back next year.

 25 MR. TRAPP: Yes. The timing may be that we'll

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 1 immediately turn around and then say we have reviewed

 2 the 2007 code and we adopt it, but it's our intent, as

 3 we've done in the past in our safety jurisdiction, to

 4 keep the rules current with respect to the code

 5 versions.

 6 MR. BREMAN: About every five years.

 7 MR. TRAPP: About every five years?

 8 MR. WRIGHT: That's great. I have a couple of

 9 further questions about subsection (4). (4)(b) states

 10 that facilities constructed prior to the effective date

 11 of the '02 edition would be subject to whatever

 12 standard, NESC minimum standards were required. My

 13 question is, have you all thought about and do you

 14 intend to do anything about what would trigger

 15 refurbishment, relocation, rebuilding, whatever, what

 16 would trigger the applicability of the 2002 edition to

 17 facilities that were initially constructed in, say,

 18 1996, just for example?

 19 MR. TRAPP: I'm open to a suggestion, but so

 20 far have not heard a precise definition of when that

 21 occurs, and therefore would leave it to a rule

 22 interpretation on a case-by-case complaint basis.

 23 That's my opinion.

 24 MR. WRIGHT: Thank you. That's all my

 25 questions on number (4).

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 1 MR. TRAPP: Can we move to (5)? Okay. (5)

 2 acknowledges extreme wind loading and suggests utilities

 3 should take it into consideration and develop their own

 4 policies with regard to their standards for new

 5 construction, major changes, and targeted

 6 infrastructure. Does everybody understand what we tried

 7 to say? John?

 8 MR. BURNETT: Thank you, Bob. John Burnett,

 9 Progress Energy Florida.

 10 Bob, one minor suggestion that my company

 11 would have with (5) is on line 19 in subsection (5)

 12 after the words "reasonably practical." We would

 13 suggest that the words "cost-effective or economic" be

 14 added there. And, Bob, the intent by that was, we

 15 wanted to make sure -- while in the words "reasonably

 16 practical," staff may have intended to capture a

 17 cost-effective analysis, and I think that could be

 18 interpreted in there, we would like it more clear that

 19 in our plans we could take a look at cost-effectiveness

 20 as well.

 21 And to give an example, there may be an

 22 instance where a grade B pole may provide just as much

 23 incremental benefit as a pole that wasn't necessarily up

 24 to the extreme wind standard, and for cost-effectiveness

 25 analysis, we could look at that and say we could get the

 68

 1 same bang for our buck out of a grade B pole, but not

 2 necessarily a grade A or a concrete.

 3 MR. TRAPP: And your precise word additions

 4 were just the word "cost-effective"?

 5 MR. BURNETT: Cost-effective, yes, sir.

 6 MR. TRAPP: So reasonably practical,

 7 cost-effective, and feasible?

 8 MR. BURNETT: Yes, sir.

 9 MR. TRAPP: And you'll put that in your

 10 written comments as well?

 11 MR. BURNETT: Yes, sir.

 12 MR. BREMAN: Is that with the understanding

 13 that it's "and," or "or"? Do you understand what I'm

 14 saying?

 15 MR. BURNETT: Yes, sir. I think it could be

 16 all of the -- I think would have to be practical, I

 17 think would have to be cost-effective, and feasible.

 18 MR. BREMAN: And, and, and, not or?

 19 MR. BURNETT: Yes, sir.

 20 MR. TRAPP: Is anyone disturbed by those

 21 words? Mike?

 22 MR. GROSS: I'm not disturbed by that. I just

 23 have a question. The types of construction described in

 24 (5)(a), (b), and (c), would that require the utility to

 25 bring all existing poles into compliance?

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 1 MR. TRAPP: My understanding, it says as part

 2 of its construction standards, each utility shall

 3 establish guidelines and procedures relative to these

 4 types of construction, so it would be -- the utility

 5 would have to prudently determine how to harden their

 6 overhead facilities, is the intent.

 7 MR. GROSS: Thank you.

 8 MR. TRAPP: Any more on (5)?

 9 Moving to (6), location, here we're struggling

 10 with where to put things, preferably front lot,

 11 preferably in easement, road right-of-way. We adopted

 12 pretty much, I think, John, your language from Florida

 13 Power & Light.

 14 MR. BUTLER: Except I think you're talking

 15 about (7).

 16 MR. TRAPP: Oh, did I skip one? I skipped

 17 one.

 18 MR. BUTLER: And I have a comment. That's the

 19 reason I noticed.

 20 MR. TRAPP: Larry gave me a note here saying

 21 that we're to take a break after this rule, and so I'm

 22 overanxious to get on break. I'm sorry. (6) has to do

 23 with addressing underground with respect to flood zones.

 24 MR. BUTLER: We would -- we like what you've

 25 done. The revisions to it are a lot more what we would

 70

 1 like to see on (6). The only thing we would suggest is

 2 to end it after the word "storm surges" in the next to

 3 the last line, instead of the "in areas designated as

 4 surge zones by the DCA."

 5 And the reason for that mainly is wanting to

 6 avoid even an implication of something that -- I like

 7 the metaphor I've heard of creating the anthill

 8 phenomenon, whereby construction is to the flood zone

 9 elevations that various building codes end up

 10 specifying, and if there is a suggestion that some

 11 different designation is used, what you could end up

 12 having is the potential for construction of utility

 13 facilities to a different elevation than the

 14 construction of the homes, you know, nearby, so the

 15 transformer pads are little anthills located up several

 16 feet higher than what the rest of the construction in

 17 the community would be. So to avoid that potential

 18 misunderstanding, we would like to eliminate the

 19 reference to the surge zone.

 20 MR. TRAPP: Those maps are so pretty, though,

 21 I assume that you'll continue to use them in your

 22 judgment and guidance as to how you set your standards.

 23 MR. BUTLER: We would.

 24 MR. TRAPP: And we've thought about that too,

 25 because there are certainly areas interior to the state

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 1 that aren't affected by surge zones that are subject to

 2 river flooding or creek flooding or what have you.

 3 MR. BUTLER: Yes. That's sort of the opposite

 4 problem, but you're right. There you have it that you

 5 have a potential for a significant flooding problem, but

 6 it's not a surge problem, and this would be heading it

 7 in a direction doesn't apply.

 8 MR. TRAPP: Point taken. Any more comment on

 9 (6), John?

 10 MR. BUTLER: No.

 11 MR. BURNETT: Yes, sir. Thank you, Bob. John

 12 Burnett again, Progress Energy Florida.

 13 Bob, on subsection (6), line 5, we would offer

 14 the same suggestion, adding the words "cost-effective"

 15 after "reasonably practical" there. And again, the

 16 intent is if, of course, there was a new technology that

 17 was brought about that would help in these efforts, it

 18 may be technically feasible and practical, but could be

 19 $50 million per unit, so we would just like that ability

 20 to also look at cost-effectiveness.

 21 MR. TRAPP: Other comments on (6)?

 22 Going now to (7), again, I think we picked up

 23 Florida Power & Light's language with respect to the use

 24 of easements and road right-of-ways. Is there any

 25 heartburn here? Mike?

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 1 MR. GROSS: Yes. One of our members sent me

 2 some comments expressing some concern about (7)(b). And

 3 I apologize if this -- I missed the earlier discussions

 4 about how this language was arrived at. But the concern

 5 really is not so much about new construction being

 6 placed streetside, but this language suggesting when

 7 upgrading the plant, to move it to streetside. This is

 8 not a common practice and would substantially increase

 9 the cost of upgrading the network.

 10 Since the rules are directed to the power

 11 companies, it's really not cable's direct issue as an

 12 attacher, but if the power companies vacate the poles in

 13 the rear easements, it would force us to move as well,

 14 and I don't know what the rationale was for this

 15 provision.

 16 MR. TRAPP: In section (b), you say?

 17 MR. GROSS: (7)(b).

 18 MR. TRAPP: (7)(b), for initial, expansion,

 19 rebuild, or relocation. Okay.

 20 Well, I think it was my intent at least to be

 21 governed more by (7)(a), line 13, where it starts, "To

 22 the extent practical and feasible, facilities shall be

 23 placed."

 24 We want to be conscious of cost-effectiveness,

 25 but at the same time, we've heard innumerable,

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 1 innumerable stories about where the cost lies, and where

 2 the impacts are are in these tangled rear lot easements

 3 where vegetation is consuming and where fences have been

 4 put in to block access roads and things of that nature.

 5 So our intent, staff's intent is to try to encourage

 6 utilities, to the extent they can, to abandon the rear

 7 lot and get to the front lot. But as you can tell,

 8 Mike, we're struggling with how to do that in the

 9 language, so can you help us out with the language?

 10 MR. GROSS: I'll take a shot at it.

 11 MR. TRAPP: Okay.

 12 MR. BUTLER: Bob, you have, as you said, used

 13 a lot of the format of what we had proposed. There are

 14 a couple of things different here that I do need to

 15 bring to your attention.

 16 One is, in (a), you've used the word "shall"

 17 where we had "may" in the first sentence. And the main

 18 concern, what we were trying to avoid there is that this

 19 is probably a 99 percent complete list of where the

 20 facilities would be located, but if for some reason

 21 there was some location that we needed to use and the

 22 customer wanted to use that didn't fit within this

 23 category, we didn't want to be constrained by that.

 24 We had suggested wording that I think would

 25 deal with that at the end of this sentence, "as deemed

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 1 necessary by the utility," or something like that. But

 2 somehow we need some flexibility where this isn't a

 3 completely prescriptive list of where the facilities

 4 could be located.

 5 MR. TRAPP: Well, I think our intent, John,

 6 was to put that flexibility in the opening phrase, "To

 7 the extent practicable and feasible." And again, we may

 8 want to talk about cost-effective.

 9 MR. BUTLER: But I'm talking about the first

 10 sentence.

 11 MR. TRAPP: You're talking about the first

 12 sentence, for initial -- line 11?

 13 MR. BUTLER: And maybe a fix would be to have

 14 the same sort of exception in there, you know,

 15 reasonable and practical and feasible.

 16 MR. TRAPP: I'll tell you what. We feel

 17 pretty strongly about using easements and public road

 18 right-of-ways. Where else do you put it? Illegally on

 19 somebody's property without telling them?

 20 MR. BUTLER: No, certainly not. But the

 21 concern is just that I don't know that this is a

 22 completely inclusive list of where the stuff would go.

 23 And what we thought you were trying to achieve and the

 24 reason we had used the word "may" was to make it clear

 25 that these are all places that are okay for the

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 1 utilities to be putting the facilities. And the use of

 2 the word "shall" flipped it around to at least raise the

 3 potential concern that if there's something else in a

 4 particular circumstance that is the right place to put

 5 it and it's not within these categories, that we will

 6 end up being precluded from doing so.

 7 MR. TRAPP: And that may be a regulatory

 8 difference where the utilities like "may" and we like

 9 "shall."

 10 MS. KUMMER: And I'll tell you what. If you

 11 can come up with an example that doesn't fit into these,

 12 we'll think about it a little harder.

 13 MR. TRAPP: Yes. But if there is a need to

 14 put a caveat, an out clause in there, "unless good cause

 15 is shown" or some kind of language like that, certainly

 16 I think we'll consider it.

 17 MR. BUTLER: The other thing that we would

 18 like you to consider, the second -- there's three

 19 things -- is in the second sentence of that subsection

 20 (a). We don't think this should apply to upgrades or

 21 rebuilds. We don't think that moving facilities from --

 22 you know, typically the example would be a back lot

 23 easement out to the front, simply because you're

 24 upgrading or rebuilding the facilities is something that

 25 is always going to be appropriate, fair, or well

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 1 received by the customers where it's happening because

 2 of both esthetics and their own costs of having to

 3 relocate their service drop connection, et cetera, is a

 4 good idea. For the new facilities, we think that would

 5 be appropriate, but do not think that that's something

 6 that ought to be there as a requirement for the upgrades

 7 and rebuilds.

 8 MR. TRAPP: Staff, I believe, more firmly

 9 disagrees with you on that point. First of all, I think

 10 the sentence again starts out with some discretionary

 11 language, to the extent practical, cost-effective, and

 12 feasible. We can put cost-effective in there if you

 13 want to.

 14 Furthermore, we've limited it not to any

 15 upgrade. It has to be a contiguous group of customers

 16 served by the same distribution line, where there's a

 17 conscious decision made that for purposes of reducing

 18 storm outages, increasing reliability, and what have

 19 you, and it's cost-effective and it's feasible and it's

 20 practical, you're going to move the thing to the front.

 21 And the word "shall" is one of those strong words that

 22 we like to use to tell the utilities we're serious.

 23 MR. BUTLER: In staff's view, if a

 24 circumstance arose where there was going to be a rebuild

 25 that triggered this and you had a block in which none of

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 1 the customers wanted this to happen, either for

 2 esthetics or cost --

 3 MR. TRAPP: I'm sure we would hear about it,

 4 and a rule waiver might be applicable.

 5 MR. BUTLER: I'm sorry?

 6 MR. TRAPP: A rule waiver in those

 7 circumstances might be applicable. Now, I speak as an

 8 engineer. Maybe I need to turn to Larry, the attorney,

 9 and see if we can waive this rule in that circumstance.

 10 Do you have a feel for that, Larry?

 11 MR. HARRIS: No comment. No comment. It's

 12 something that we would need to think about.

 13 MR. BUTLER: That really is a concern. I

 14 mean, to some extent, there's the old Marxist phrase,

 15 the revolution of declining expectations. The people

 16 who have the stuff back there and like it there, and

 17 suddenly, just because of something out of their

 18 control, there is a decision to upgrade the facilities,

 19 and now that shunts it into the category where it has to

 20 be located at the front of their property, and they may

 21 not like the appearance of that, they may have some

 22 pretty major investments in their own personal

 23 electrical facilities to facilitate the connection to

 24 the newly located service drop, et cetera, that's just

 25 something that concerns us. And sort of having to do it

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 1 blanket -- and unfortunately, I'm not sure that the

 2 practical, cost-effective, and feasible picks up that

 3 concern, so the exception that you've created may not

 4 end up addressing it, and we would ask you to consider

 5 that.

 6 MS. KUMMER: You understand that what we're

 7 trying to fix is -- the back lot lines have been

 8 trouble, always will be trouble, and we're trying to

 9 find a way to migrate gently away from that. And maybe

 10 this language doesn't quite do that. But I think you

 11 are probably sympathetic at least with the goal, and if

 12 you have some better way of accomplishing that, we would

 13 certainly be willing to listen.

 14 MR. BUTLER: The only other thing there, even

 15 if you leave it as it is, you should at least take out

 16 the customer, or "affecting a customer." I mean, I

 17 don't think anybody would think it would be a very good

 18 idea to move, you know, a line or a single pole out to

 19 the front where really what you've got is just that a

 20 single customer is affected. The contiguous group of

 21 customers is the sort of thing where it would make sense

 22 to have that sort of line relocation.

 23 MR. TRAPP: Again, I would rather think of

 24 some creative caveat language for that rather than

 25 remove that, because I assume there would be

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 1 circumstances where an individual customer would

 2 benefit, as the system well may too, from a relocation

 3 from back to front.

 4 MS. MOORE: How about inserting something, a

 5 good cause provision, and maybe you could come up with

 6 some examples for us of what would be good cause.

 7 MR. BUTLER: We can work with that.

 8 And the last thing, and I will stop talking on

 9 this rule section, we had sort of an ending paragraph on

 10 our equivalent to this section that required that the

 11 locations where the facilities would be put would be

 12 provided by the applicant in a reasonable time and would

 13 comply with applicable rules and regulations. We would

 14 like to see that included, because we think both of them

 15 are important points. It was just sort of a stub

 16 paragraph that went after section (c).

 17 MR. TRAPP: It reads, "In all cases, the

 18 location must be provided by the applicant"? Is that

 19 the one you're talking about?

 20 MR. BUTLER: That's the one, yes.

 21 MR. TRAPP: We'll look at it again.

 22 MR. BUTLER: Thank you.

 23 MR. TRAPP: (7).

 24 MR. STONE: Gulf has some comments we would

 25 like to make on subsection (7). First, we think for

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 1 clarification purposes, it would be useful to add the

 2 word "distribution" between "electric" and "facilities"

 3 on line 9. It seems like the scope of this particular

 4 subsection is devoted to distribution facilities, and it

 5 would avoid some confusion if we did that.

 6 Secondly, to the second sentence in

 7 subparagraph (a), you have restricted yourself to

 8 easements and not the --

 9 MR. TRAPP: Line 13, is that where you're at?

 10 MR. STONE: The first time I was referring to

 11 line 9. Now I'm on line 13, 13 through 16.

 12 MR. TRAPP: Okay.

 13 MR. STONE: And in particular, I'm referring

 14 to line 14, where it says "shall be placed in

 15 easements." And we would suggest that that needs to be

 16 broadened to include other public rights-of-way where

 17 the utility has the right to locate. Restricting it

 18 strictly to easements would require conveyances that may

 19 not be necessary.

 20 MR. TRAPP: Okay. Is that it?

 21 MR. STONE: That's our comments.

 22 MR. TRAPP: Down the line, Power Corp. -- I

 23 mean Progress. The munis were --

 24 MR. PEEBLES: As long as we're still in, we

 25 had, I guess, a question about subparagraph (b),

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 1 although I think I heard the answer. The way I

 2 understand the way subparagraph (b) would work, it's for

 3 new underground, and the new underground would have to

 4 be on the front of the property unless the utility found

 5 essentially an operational reason to go in the back.

 6 And -- you're shaking your head like, yeah, that's what

 7 you mean?

 8 MR. TRAPP: Yes, sir.

 9 MR. PEEBLES: I would just encourage you to

 10 look around at the development wherein you find yourself

 11 today. Southwood is a new urbanism development. There

 12 are lots and lots more of these coming, and there are

 13 alleys that are the utility easement access areas, and

 14 there's probably no operational difference in being in

 15 the front and the back. And the way this rule is cast,

 16 it would require the utility to find an operational

 17 benefit to moving from the front to the back and would

 18 prohibit, for example, St. Joe from building this

 19 development the way they want to build it and have those

 20 facilities as well as alley access in the back of the

 21 property.

 22 MR. TRAPP: I don't think you want to listen

 23 to the comment, the personal comment from me that

 24 Southwood is a disaster waiting to happen. My

 25 understanding is there are no shrubs, trees, or bushes

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 1 in Southwood at this point in time because it used to be

 2 a cow pasture. And while I'm given to understand also

 3 that there are some restrictive covenants about what you

 4 can plant and what you can't plant, I know that as a

 5 personal property owner, I very rarely listen to that

 6 kind of advice. I suspect in another 20 or 30 years,

 7 we're going to see trees, bushes, fences, walls, and

 8 everything else in those easements back there. And I

 9 think that's the problem we're facing now, and I don't

 10 see why we should encourage it for the future. That's

 11 again my personal Bob Trapp opinion.

 12 MR. PEEBLES: Sounds like it.

 13 MS. KUMMER: Just along that same point, the

 14 other utilities, are you doing rear lot construction on

 15 new construction now? Are you doing that today?

 16 MR. SPOOR: Mike Spoor with FPL. Connie, I'm

 17 not aware of any big projects of any nature that we

 18 would be putting anything in the rear of.

 19 MR. BREMAN: Connie, can I ask for a

 20 clarification of your question? Are you speaking

 21 strictly overhead, or both overhead and underground?

 22 MS. KUMMER: Either, either, either overhead

 23 or underground. Gulf?

 24 MR. TRUMP: Ken Trump, Gulf Power. Not in

 25 general. There's some commercial applications where we

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 1 can go in the back, but it's wide open, plenty of

 2 access.

 3 MR. BURNETT: John Burnett, Progress Energy.

 4 Unless we're presented with an operational necessity, we

 5 are not.

 6 MS. KUMMER: That's what I thought.

 7 MR. HAINES: Regan Haines, Tampa Electric.

 8 The same. We are not building rear lot, either overhead

 9 or underground. It would be a very rare exception if we

 10 would do that.

 11 MR. CUTSHAW: This is Mark Cutshaw, Florida

 12 Public Utilities. We do not do any rear lot line

 13 construction. The only exception would be shopping

 14 centers that have a wide open access behind the shopping

 15 center. That would be the only exception.

 16 MR. GROSS: I would just like to reiterate our

 17 concern at the outset, which is not involving new

 18 construction or upgrades, but moving an existing line

 19 from rear to front. And if I heard you correctly, Bob,

 20 I thought I heard you just say a moment ago that this

 21 was intended to deal with new construction.

 22 MR. TRAPP: Which section are you looking at?

 23 MR. GROSS: I'm looking at section (7)(b),

 24 (7)(b) right now.

 25 MR. TRAPP: Oh, I thought we were on (c).

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 1 Okay.

 2 Well, again, our position, or at least my

 3 position on this is that we should encourage front lot

 4 as much as possible, and that there is that caveat at

 5 the end of that particular sentence that gives the

 6 utility the discretion to determine an operational,

 7 economic, or reliability benefit to another location.

 8 MR. WRIGHT: Larry.

 9 MR. HARRIS: Schef.

 10 MR. WRIGHT: I do have a couple of things on

 11 (3) -- I'm sorry, on (7). First, Palm Beach and Jupiter

 12 Island agree with Gulf's comments that in, I think it's

 13 line 14, it should say, "facilities shall be placed in

 14 easements or rights-of-way."

 15 I would suggest a similar change in what I

 16 guess it would be line 18, where it says, "shall require

 17 the applicant for service to provide easements." I

 18 would suggest adding the language "or access to

 19 rights-of-way," recognizing that (b) may not address the

 20 situation of my clients, because (c) appears to address

 21 my clients' situation.

 22 And my comment on (c) is that -- I guess this

 23 is line 22, the second line of subsection (c). I

 24 believe that the word "may" should be changed to the

 25 word "shall." (1) That is consistent with the purpose

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 1 of the rule, as articulated particularly in subsection

 2 (7)(a); and (2) I cannot envision a scenario wherein the

 3 utility could object, given the other qualifications you

 4 have set forth in the rule. We have to provide all the

 5 necessary permits, and we have to meet the utility's

 6 legal, financial, and operational requirements. I think

 7 that if we check all the boxes as you have identified

 8 them in the rule, then we should be entitled to have

 9 them in rights-of-way and not have it left to the

 10 utility's discretion.

 11 Thank you.

 12 MR. HARRIS: Any more comments for section

 13 (7)? No? Okay. Well, the next section I believe is

 14 going to be a little bit contentious, so let's take

 15 five-minute break. We're trying to move this along. I

 16 know a lot of people have commitments this afternoon, so

 17 we are trying to move it. So let's try for five

 18 minutes, please.

 19 (Short recess.)

 20 MR. HARRIS: All right. We're going to get

 21 started up again. I think what we're going to try to do

 22 is, we're going to go ahead and finish .034 and try to

 23 do .0345 and then take a lunch break. We'll see what

 24 kind of progress we make. I am conscious that a lot of

 25 people have -- I've been told that several people have

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 1 commitments this afternoon, so we want to try to move,

 2 so we'll see how quickly we get through .034 and .0345

 3 and then decide how long to take for lunch. But we will

 4 have some type of a lunch break, and then we'll come

 5 back and try to get with the further rules.

 6 We're on subsection (8) of 6.034, so --

 7 MR. WILLIS: My name is Lee Willis, L-e-e,

 8 W-i-l-l-i-s. I represent Tampa Electric, but I'm going

 9 to make some comments on behalf of not only Tampa

 10 Electric, but Florida Power & Light, Progress, and Gulf

 11 Power with respect to pole attachments.

 12 As a result of the hurricane seasons in 2004

 13 and 2005, both this Commission and the companies you

 14 regulate have undertaken a very comprehensive review of

 15 ways critical infrastructure of the statewide

 16 coordinated grid could be improved to withstand severe

 17 weather.

 18 Now, this Commission has undertaken a

 19 multi-pronged approach to that review. You first had an

 20 overall review and a workshop. You have had a pole

 21 inspection docket and have issued an order with respect

 22 to that, you've had a storm plan docket and have issued

 23 an order with respect to storm plans, and you've opened

 24 this rulemaking. In each of these various venues, you

 25 have considered the various factors which have caused

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 1 poles to fail and have considered ways to avoid such

 2 failures.

 3 Pole attachments have emerged as a significant

 4 concern expressed by this Commission in every phase of

 5 your review of critical infrastructure. For example, on

 6 in the pole attachment order that was -- pole inspection

 7 order that was issued on February 27th, you noted (1)

 8 that nonelectric attachments impose additional strength

 9 requirements; (2) many pole attachments occur well after

 10 the date of the pole installation; (3) the National

 11 Electric Safety Code requires a pole must be strong

 12 enough to support the facilities attached to the pole at

 13 all times; (4) that third parties have completed pole

 14 attachments to electric IOU wood poles that were done

 15 without full considerations of the requirements of the

 16 NESC; and (5) that wood pole strength inspections

 17 require remaining strength assessments as well as pole

 18 attachment loading assessments.

 19 Now, again, in your storm plan order that was

 20 issued April the 25th, you adopted 10 initiatives for

 21 the utilities to consider in plans that they would file

 22 with the Commission by June 1. These initiatives

 23 included an audit of joint use attachment agreements to

 24 determine such things as the location of poles, the type

 25 of ownership, the age of the pole and attachments, and a

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 1 verification that the attachments are made pursuant a

 2 current joint use agreement. And it said that stress

 3 calculations shall be made to ensure that each joint use

 4 pole is not overloaded or approaching overloading for

 5 instances not already addressed in the pole inspection

 6 order.

 7 Now, this Commission's basic theme throughout

 8 this has been that nothing should be attached to the

 9 pole that is not engineered in advance to be there.

 10 Pole attachments can have significant wind loading and

 11 stress effects on a pole and can cause overloading, as

 12 you've recognized, and that some attachments are being

 13 made without notice or prior engineering, and steps

 14 should be taken to assess pole attachment effects on

 15 individual poles to prevent overloading.

 16 In recognition of this theme, and in listening

 17 to and reading your materials and orders, the four

 18 companies for which I'm speaking here, Tampa Electric,

 19 Gulf, Progress, and Florida Power & Light, jointly

 20 proposed rules that in essence would require utilities

 21 to establish, file, and maintain safety and engineering

 22 standards and procedures for attachments by others to

 23 the utilities' electric distribution poles that must

 24 meet the National Electric Safety Code and further would

 25 require that no attachment be made to the poles except

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 1 in compliance with those procedures.

 2 Now, the Commission or staff has in your

 3 proposed rules that you've circulated prior to this

 4 workshop in subsection (8), the rule we're speaking of

 5 now, have captured the essence of the proposal that the

 6 utilities had advanced. Your rules require that the

 7 utility establish and file written standards and

 8 procedures for attachments by others and provide that

 9 challenges to these procedures can be made by filing a

 10 complaint with the Commission. We believe that this

 11 approach is both reasonable and balanced.

 12 Now, we would make one editorial suggestion.

 13 In the first sentence that was on page 4 of your

 14 handout, between -- we would suggest that you add the

 15 words "safety, reliability, capacity and engineering" in

 16 the first sentence between "written" and "standards."

 17 And that suggested addition is consistent with the rest

 18 of the language that you --

 19 MR. HARRIS: Could you give me that again,

 20 Lee?

 21 MR. WILLIS: Yes. It is in the first

 22 sentence, if you look at page 4, line 1, between

 23 "written" and "standards," you would add the words

 24 "safety, reliability, capacity and engineering."

 25 No discussion about pole attachments would be

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 1 complete without a short discussion about your

 2 jurisdiction. We feel very strongly that this

 3 Commission has very broad and exclusive jurisdiction

 4 over safety and reliability of electric utilities'

 5 distribution facilities. This jurisdiction extends both

 6 to the utility and to the facility itself. The proposed

 7 rules are an appropriate implementation of that

 8 jurisdiction.

 9 We expect in the course of this proceeding

 10 that there may be much said about the FCC's jurisdiction

 11 in this area. Please keep in mind that there are two

 12 types of issues regarding pole attachments. First,

 13 there are issues of access, including the attachments'

 14 effects on safety and reliability; and secondly, there

 15 are issues of contract, including rates, terms, and

 16 conditions applicable to the attachment.

 17 Each type of access is handled differently

 18 under federal law. Jurisdiction over access issues

 19 rests with the state to the extent it in fact regulates

 20 such issues, and jurisdiction over the rates, terms, and

 21 conditions rests with the FCC unless the state certifies

 22 that it has jurisdiction.

 23 We believe without question the jurisdiction

 24 over safety and reliability does not rest with the FCC

 25 unless you fail to exercise that jurisdiction. Now is

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 1 the time for you to act. You've recognized a serious

 2 issue that's affecting the safety and reliability of

 3 electric and communications services. It is now

 4 critical for the Commission to help utilities deal with

 5 the threat to its distribution facilities in a fair and

 6 reasonable way.

 7 Part of the solution is establishment of

 8 attachment standards and procedures that must require

 9 that any attachment meet or exceed the National Electric

 10 Safety Code before an attachment is made to the

 11 facilities. A key provision in these procedures is to

 12 require notification before the attachment is made. The

 13 utility can then determine if it has a pole attachment

 14 agreement with the attaching party and determine whether

 15 the proposed attachment will overload the pole before

 16 the attachment is made.

 17 This rule is also very consistent with current

 18 Commission activities. Your draft rules addressing pole

 19 safety and reliability, including attachments to poles,

 20 are supplemental to the regulations and inspection

 21 policies of this Commission. The Commission under

 22 existing rules actively inspects utility poles and

 23 audits work orders in connection with construction of

 24 transmission and distribution facilities to determine

 25 whether there are variances with the National Electric

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 1 Safety Code. The utilities are notified in the instance

 2 where there are variances that are observed, and the

 3 Commission asks the utility to ensure that the attaching

 4 entity remedies any variance.

 5 Now, let's review the current situation.

 6 There's no question that third-party pole attachments

 7 increase wind loading and stress on a pole and can cause

 8 the failure of a pole. Each of the utilities has a vast

 9 expanse of distribution facilities, making it difficult

 10 to police the interaction of third parties with its

 11 distribution poles, and there is increasing concern that

 12 third-party attachments are being made in the power

 13 space. This, we believe, is not only dangerous to the

 14 workers that make the attachments, but provides greater

 15 wind stress and loading of these facilities toward the

 16 top of the pole rather than in the designated

 17 communications space.

 18 The concerns we raise go beyond the concerns

 19 about electric service. Electric distribution

 20 facilities represent critical infrastructure both for

 21 the provision of electric service and for the provision

 22 of communication service. The Commission should take a

 23 prospective engineering and safety view of the critical

 24 distribution infrastructure which is essential to both

 25 services.

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 1 The concern about pole attachments is

 2 particularly acute in Florida. It's critical that the

 3 proposed pole attachment rules be added as another means

 4 of Florida's defense against hurricanes. The Florida

 5 Legislature provided you additional jurisdiction in 1986

 6 with respect to safety. You have undertaken and

 7 administered that. It is now, as you've recognized, a

 8 problem. It's important that you now address this, and

 9 we believe that you have a duty to adopt these rules at

 10 this time based on the situation.

 11 The proposed rules, in essence, are an

 12 important additional step in protecting the safety and

 13 reliability of critical distribution infrastructure for

 14 the provision of electric service and for communication

 15 services.

 16 We might add that in our comments that we will

 17 submit, there may be some additional sections of the law

 18 that -- or the law implemented that you should add to

 19 your rule, and we'll add those in our comments.

 20 Thanks.

 21 MR. BREMAN: Can I ask him a question now?

 22 MR. HARRIS: Go ahead, Jim.

 23 MR. BREMAN: You said something I wasn't sure

 24 if I was understanding. Is it part of the companies'

 25 proposal that you're going to start reporting

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 1 unannounced pole attachments to the Commission for

 2 review for National Electric Safety Code compliance, or

 3 what was that?

 4 MR. WILLIS: Well, what we were saying is that

 5 we supported your rule with the addition of the words

 6 that we added. And, of course, the utilities would then

 7 adopt and file with you our written standards and

 8 requirements. And then just as your rule provides, any

 9 third party that objects to those would bring that to

 10 your attention, and it would be adjudicated.

 11 MR. BREMAN: Okay. Thank you.

 12 MS. KUMMER: Lee, you also said that -- at

 13 least what I understood you to say is that one of the

 14 cornerstones is to require notification prior to

 15 attachment.

 16 MR. WILLIS: Yes.

 17 MS. KUMMER: And if so, how would you propose

 18 to enforce that?

 19 MR. WILLIS: Well, we would have that

 20 provision in our standards. To some degree, we would --

 21 I think the spirit of all of this, Connie, is that every

 22 party that interacts with a Commission pole cooperate

 23 and work together to implement this. But again, I think

 24 the utilities' filed procedures could possibly have some

 25 provisions with respect to that, and you would have a

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 1 chance to review that, as would any third party.

 2 MR. TRAPP: Lee, I had a question. Earlier

 3 today on section (2) we were discussing whether or not

 4 the standards should be filed with the Commission, and

 5 if so, how, and confidentiality concerns and that type

 6 of thing. We proposed that these pole attachment

 7 standards and procedures be part of those standards that

 8 would be filed with the Commission. Do you have or does

 9 the industry have similar concerns about confidentiality

 10 in filing in this section that rises to the level that

 11 you did earlier?

 12 MR. WILLIS: Bob, I'm not aware that we have

 13 concerns about confidentiality of those particular

 14 sections. I may not be sensitive to all the concerns of

 15 the different companies with respect to that, but I

 16 think that we certainly want them to be readily

 17 available to all of the attaching parties, that they

 18 would have access to them and then be able to follow

 19 their full due process rights to challenge it if they so

 20 desired.

 21 MR. TRAPP: Okay.

 22 MR. GROSS: Michael Gross on behalf of the

 23 FCTA. I would just like to point out, I think as the

 24 representatives of the power companies well know, that

 25 most power companies and telephone companies which are

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 1 pole owners already have procedures for authorizing

 2 attachments, and there are penalties for unauthorized

 3 attachments, and there's a permitting process. The NESC

 4 standards already apply, and if they're not being

 5 enforced and inspections are not being done prudently,

 6 that's another story, and that's something that needs to

 7 be corrected. But the NESC requirements don't specify

 8 how they will be implemented, and the power companies

 9 have construction standards for the purpose and

 10 procedures and specifications for third-party

 11 attachments for the purpose of implementing the NESC

 12 standards. So we don't have any problem with that, and

 13 that is currently the stats quo.

 14 As far as the jurisdictional issue and the

 15 suggestion of inserting the word "capacity" between

 16 "written standards," or "safety, reliability, capacity

 17 and engineering," I would like to make some

 18 jurisdictional comments. I think there is some

 19 concurrent jurisdiction in this area between the FCC and

 20 the states. It's difficult to draw the line and do

 21 demarcation except on a case-by-case basis.

 22 But I do think that these written standards

 23 and procedures for attachments, if they impact access,

 24 which is a right under the FCC's jurisdiction, and if

 25 they impact the make ready and pole change-out regime,

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 1 which is what's done when there's not enough capacity on

 2 a pole for new attachments and it has to be rearranged

 3 or modified or a new pole changed out to accommodate new

 4 attachments, there are provisions in place for

 5 reimbursement of the pole owners in those situations.

 6 So if these written standards go too far, they

 7 could start encroaching, and that's why we don't want to

 8 just simply challenge these after the fact, but we would

 9 like to be involved in the process of developing these

 10 written standards and try to avoid litigation over it.

 11 Now, the capacity issue is a very hotly

 12 contested issue at the FCC right now, and I think it

 13 would be inappropriate for this Commission in its rules

 14 to inject that word, "capacity." There's a lot of

 15 litigation pending now on what capacity means, and a lot

 16 of it has to do with safety and engineering and the NESC

 17 code. So we would strongly object to putting the word

 18 "capacity" in there.

 19 MR. TRAPP: I don't understand your position

 20 on that. Could you elaborate a little bit?

 21 MR. GROSS: Well, there is litigation right

 22 now pending at the FCC where one of the key issues is

 23 determining when a pole is at full capacity.

 24 MR. TRAPP: I guess I don't see how it impacts

 25 this rule.

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 1 MR. GROSS: Well, what I see here is the state

 2 trying to step in. And I haven't seen these written

 3 standards, but if the word "capacity" is inserted in

 4 there, it's not going to surprise me if I see the power

 5 companies' written standards regarding capacity

 6 resolving that issue in their favor. That's pending at

 7 the FCC right now.

 8 MR. TRAPP: How do you determine when you

 9 attach a cable to an electric pole whether that cable is

 10 going to make the pole fall down without assessing

 11 capacity?

 12 MR. GROSS: I don't think -- "capacity" a term

 13 of art. I think you have all the component parts to

 14 determine the space between attachments, the NESC

 15 requirements, the acceptable engineering practices. All

 16 of those components and variables are sufficient to

 17 determine whether that pole can accommodate another

 18 attachment. And if it can't, under the FCC regime,

 19 there are provisions for make ready or even -- modifying

 20 the pole, rearranging attachments, or even putting a new

 21 pole in there.

 22 MR. TRAPP: So you're saying "capacity" is a

 23 term of art or has become a term of art beyond the

 24 normal meaning of the word.

 25 MR. GROSS: Yes.

 99

 1 MR. TRAPP: You're saying it has nothing to do

 2 with the stress on the pole; it has to do with, well,

 3 maybe there's too many wires there, or maybe they're

 4 lumped too close together or they're jammed together,

 5 and --

 6 MR. GROSS: Well, if it's a violation of the

 7 safety code, and if it does create wind loading problems

 8 or other safety and engineering problems, sure, I think

 9 those are all legitimate concerns, and those might all

 10 add up to somebody's definition of the pole being at

 11 full capacity. But there is a tremendous argument

 12 that's being litigated right now as to when a pole is at

 13 full capacity, and all those other variables are thrown

 14 into the mix of this debate.

 15 MR. TRAPP: I hope you'll include that in your

 16 written comments, because I think we need to understand

 17 that better. The common lay use of the word "capacity,"

 18 as I understand it, it doesn't offend me at all, but

 19 obviously it offends you.

 20 MR. GROSS: Well, I can only say that I sat

 21 through five days of hearing two weeks ago with -- Eric

 22 Langley, are you still in the room here?

 23 MR. LANGLEY: Right here.

 24 MR. GROSS: Where we presented expert

 25 testimony and legal argument about when a pole was at

 100

 1 full capacity.

 2 MR. BREMAN: Just so that I understand -- this

 3 is Jim Breman. Just so that I understand what this

 4 capacity word is, when you proposed it, Mr. Willis, did

 5 you intend it to mean pole capacity? What did you

 6 intend it to mean?

 7 MR. WILLIS: Yes, it's pole capacity, what

 8 effect does the attachment have on the pole, will it

 9 cause it to fail.

 10 MR. TRAPP: Well, let me ask Mr. Gross. As I

 11 understood your comments, do you have a basic problem

 12 with section (8), or just with that word?

 13 MR. GROSS: I don't have a problem with

 14 section (8), and I think it memorializes pretty much the

 15 procedures and the processes that are already in place,

 16 and perhaps an enhanced version of this will come out of

 17 this rule, is what I would expect. So we don't have a

 18 -- the only concern we have is what I expressed earlier

 19 regarding the construction standards. But these pole

 20 attachment standards are part of those standards, as I

 21 understand that, and it's a question of some point of

 22 entry that we would have to be part of the process of

 23 developing those. And you had asked me if I could come

 24 up with some alternative language on what kind of

 25 procedure could efficiently address that, and I will

 101

 1 endeavor to do that by the time of our post-hearing

 2 comments. But other than that, we really don't have a

 3 problem with this, because I think this is consistent

 4 with existing law.

 5 MR. TRAPP: Now, you're representing cable,

 6 but we also had input from Time Warner and T-Mobile.

 7 Are you representing them?

 8 MR. LANGLEY: No. I'm Eric Langley, and I'm

 9 here on behalf of Gulf Power, and I did --

 10 MR. TRAPP: That's what I thought.

 11 MR. LANGLEY: -- want to address some of what

 12 Mr. Gross had raised.

 13 MR. TRAPP: Before you get there, could I ask,

 14 are there any representatives from T-Mobile or Time

 15 Warner that came to the workshop that would like to

 16 provide some input on this section?

 17 MR. ADAMS: Yes. I'm Gene Adams. I represent

 18 Time Warner Telecom.

 19 I think Mr. Gross has basically stated the

 20 concerns we would have with Mr. Willis's proposal. I

 21 think it does largely memorialize what is practice, but

 22 there are concerns that we would have, the standards

 23 that they adopt and how would we adequately challenge

 24 those if we feel they go beyond what is contemplated, we

 25 feel, under FCC rules and regulations now.

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 1 MR. TRAPP: And with respect to the overall

 2 section (8), does the section give you heartburn, or is

 3 it just the inclusion of those words that Mr. Willis

 4 suggested?

 5 MR. ADAMS: I don't think overall it gives me

 6 any heartburn, but again, I think it's the way -- if

 7 they're required to adopt standards and procedures,

 8 again, do they go too far as to what we believe the FCC

 9 requires.

 10 MR. TRAPP: And with respect to this

 11 Commission's jurisdiction, I mean, are you comfortable

 12 with, to the extent that this Commission is involved

 13 with those issues, handling that in our consumer

 14 complaint type process?

 15 MR. ADAMS: I don't know. I've got to check

 16 on that. I don't know the answer to that right now.

 17 MR. TRAPP: Gulf.

 18 MR. LANGLEY: Eric Langley for Gulf Power. We

 19 join, of course, in the comments that Mr. Willis made,

 20 and we do think that capacity, that specific word should

 21 be included in section (8). It is inextricably

 22 intertwined with engineering, safety, and reliability

 23 concerns, and so to try to divorce capacity from those I

 24 think would be a disservice.

 25 The fact that the FCC is currently considering

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 1 what it means to be at full capacity in no way limits

 2 what this Commission can and should do, because in

 3 essence, the FCC is attempting to decide this in a

 4 vacuum. And if this Commission were to entertain that

 5 issue, there are certainly procedures, as Mr. Gross

 6 pointed out, by which they can challenge any

 7 determinations that this Commission would make with

 8 respect to what capacity actually means. But we

 9 strongly believe that capacity, along with safety,

 10 reliability, and engineering, should be included as set

 11 forth by Mr. Willis.

 12 MS. KUMMER: I have a question. I guess, Lee,

 13 you're probably the best one to answer it. I know that

 14 the state commissions don't have jurisdiction over terms

 15 and conditions unless they affirmatively take that

 16 jurisdiction. Is that also true of capacity? Can the

 17 state assume jurisdiction over capacity, or is that

 18 exclusively FCC?

 19 MR. WILLIS: No. You have that jurisdiction

 20 without having to certify it, and all you have to do is

 21 exercise it.

 22 MR. BREMAN: Would it be wrong for me to say

 23 pole capacity, because the word "capacity" means a lot

 24 of things to us in the electric industry. Could I just

 25 say pole capacity if the language stays?

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 1 MR. LANGLEY: I think that would make sense.

 2 MR. TRAPP: Does that help you any?

 3 MR. GROSS: Well, I still take issue with it,

 4 because whatever capacity means, it relates to safety,

 5 reliability, engineering. And the FCC is going to

 6 shortly determine what full capacity is, when a pole is

 7 at full capacity, and it would seem to me that that

 8 would preempt any state rule that tried to define

 9 capacity in a different manner. And that's why I don't

 10 think it's necessary to put that word in here, because

 11 it's such a volatile word right now, capacity. And it's

 12 not just necessarily the common-sense -- it's not simple

 13 and a matter of common sense as to what full capacity

 14 is.

 15 MS. KUMMER: And how long has the FCC been

 16 working on this?

 17 MR. GROSS: Well, there has been litigation

 18 that has been from the FCC up through the Eleventh

 19 Circuit Court of Appeals up to the U.S. Supreme Court on

 20 related issues, and it has finally come back from the

 21 Eleventh Circuit Court of Appeals that upheld the FCC

 22 formula as providing just compensation for mandatory

 23 access of third-party attachers to the pole owner's

 24 poles.

 25 But there was an exception in that Eleventh

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 1 Circuit opinion that if the pole owner can show on a per

 2 pole basis that the pole is at full capacity, and either

 3 one of the following two conditions are met, that

 4 there's another buyer waiting in the wings or they have

 5 a higher value than total use.

 6 And they're entitled to an evidentiary

 7 hearing, which is also a departure from normal FCC

 8 practice, to get that determination. And Gulf Power has

 9 requested that hearing, and there was a final hearing

 10 had. I think it took about a year to get to final

 11 hearing on that, but there was an initial proceeding.

 12 It went up to the Eleventh Circuit and came back. I

 13 don't remember. It's been several years since that has

 14 all taken place.

 15 But the hearing process is not much different

 16 from this Commission's process in terms of the

 17 administrative law procedures, post-hearing filings,

 18 which are coming due in the next couple of months, and

 19 then the ALJ will make a ruling. And then I believe --

 20 correct me if you disagree, Eric. That will then go to

 21 the full Commission.

 22 MR. LANGLEY: That's my understanding.

 23 MR. GROSS: And then probably in this case,

 24 either or both parties are going to appeal to a federal

 25 appellate court regardless of however the ruling comes

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 1 out.

 2 MR. TRAPP: I'm disappointed to hear that.

 3 MR. GROSS: I'm trying to be realistic.

 4 MS. KUMMER: So I guess we're looking at

 5 probably another two or three years down the road before

 6 we get anything from the FCC; correct?

 7 MR. LANGLEY: That probably is true. But

 8 again, I don't think that there's any need for the

 9 Commission to wait on the FCC to do something, because

 10 the FCC -- and I don't want to turn this into a forum

 11 for rehashing through the issues that Mr. Gross and I

 12 were on opposite sides of just a few weeks ago.

 13 But the principal argument advanced by the

 14 cable companies in that case on the capacity issue was

 15 an economic one, not a safety one, not a reliability

 16 one, not an engineering one, and in our view, not a

 17 practical one. So we believe that it is appropriate for

 18 the Florida Public Service Commission to include that in

 19 the rulemaking and to entertain and define what that

 20 means.

 21 MS. KUMMER: That was sort of where I was

 22 headed. This Commission has often taken the stance that

 23 maybe by doing something first, we can guide the federal

 24 agencies down what we think is an appropriate path.

 25 MR. GROSS: And I agree with Mr. Langley that

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 1 we probably shouldn't debate the issues that are at the

 2 FCC, because I take issue with some of the comments he

 3 just made about our position on full capacity. So we'll

 4 go back and forth. We've already done that at the FCC,

 5 so --

 6 MR. HARRIS: Are there any more comments then

 7 on section (8), pole attachments? FPL?

 8 MR. CUTSHAW: This is Mark Cutshaw with

 9 Florida Public Utilities. Just real quick, we agree

 10 with this proposed language. We do agree with the

 11 capacity issue.

 12 Our only concern is the actual implementation,

 13 the cooperation between the parties, the cost

 14 allocation, the cost sharing. That's our concern.

 15 We're a much smaller utility and don't necessarily have

 16 the resources some of the others do, but it will impact

 17 us in our dealings with the third parties. But we do

 18 agree with the language and the capacity issue.

 19 MR. HARRIS: Okay. Any other comments on

 20 section (8) or on this rule altogether?

 21 MR. GROSS: Well, I'm just going to end by

 22 saying that I foresee tremendous potential for

 23 litigation on -- and I'll have to see it before. I'll

 24 have to see these written standards and how they define

 25 capacity. But subject to that, I could easily foresee a

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 1 tremendous potential for litigation here over how that

 2 term is defined.

 3 MR. HARRIS: Anybody else on section (8) or on

 4 Rule 6-25.034?

 5 MR. BUTLER: Excuse me, Larry. Not on section

 6 (8), but on -- staff's proposal drops what is currently

 7 section (2) of the rule, its metering standards, and FPL

 8 has raised that and continues to raise it. We don't

 9 understand why you're dropping it. It seems like it has

 10 some value in providing kind of a common understanding

 11 of what are the appropriate standards to be applicable

 12 for metering. I don't see how it's related to

 13 hardening, and I'm not really sure why it's being

 14 dropped.

 15 MR. TRAPP: Staff was under the impression

 16 that that got covered in the thermal meter -- the rule

 17 that came about as a result of the thermal meter dispute

 18 with Power & Light, and that those standards were in

 19 another section of the rules.

 20 Now, if that's incorrect, maybe we can address

 21 that. But we just didn't see that a meter rule really

 22 belonged here. It belonged someplace else. And if it's

 23 deficient, we need to fix it. I agree with you, John.

 24 MR. BUTLER: Okay. So we'll check and see if

 25 it's covered adequately elsewhere. If it is, we'll –

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 1 MR. BREMAN: This comes under our meter

 2 expert, Sid Matlock, so you might want to have a

 3 discussion with him, because he directed us to delete

 4 it.

 5 MR. BUTLER: Okay.

 6 MR. TRAPP: And I need to point out before we

 7 leave this rule entirely, I guess on our schedule as

 8 part of this rule, we had a subsection on estimated cost

 9 impacts. I don't know if you want to try to entertain

 10 that now or do it after lunch or whatever.

 11 MS. KUMMER: Is it a long one?

 12 MR. TRAPP: Well, I just had one comment to

 13 make.

 14 MR. HARRIS: Make your comment, Bob.

 15 MR. TRAPP: Okay. If you'll throw that slide

 16 up, please. And maybe we got this a little out of

 17 order. Maybe we should have talked about this on the

 18 front end rather than the back end, but we attempted to

 19 take the -- Jim attempted to take the numbers you

 20 provided as cost impacts to the last workshop, and we

 21 asked that you all give us some estimates for the rule

 22 as it was proposed last time, and then cost estimates

 23 for any changes that you wanted to make to the rule.

 24 Well, assuming that the new draft of staff is

 25 more in line with what you all were proposing at the

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 1 last workshop, I think we've got a fair comparison of

 2 the two cases, one of a mandatory type of approach, and

 3 a second one of a more -- you know, the responsibility

 4 of the utility approach with targeted, more targeted

 5 hardening.

 6 What strikes me immediately about this chart

 7 is, other than the lack of data -- I think it suffers

 8 substantially from the lack of data, because the

 9 conclusion I reach from it, there's not a great deal of

 10 cost difference between the two proposals. Now, that's

 11 not consistent with what I've been hearing, by anyone.

 12 And therefore, my comment is to encourage you to look at

 13 these numbers, and you may need to revise them, update

 14 them, make sure that they're accurate.

 15 The only real thing that jumps off the page is

 16 Progress Energy's estimate for a 10-year conversion of

 17 back lot to front lot, and we didn't even ask that.

 18 That was kind of volunteered, I think, on your part. We

 19 didn't specify any 10-year turnaround, although that's

 20 an interesting project. But that's the only real

 21 significant cost I see up there, $100 million just for

 22 that alone.

 23 But I'm not seeing a whole lot of cost

 24 difference here between the two proposals, which as a

 25 staff member puts me in a kind of awkward position,

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 1 because I'm not sure what to recommend to the

 2 Commission. Do I recommend them two alternatives or

 3 recommend what we've got on the table today? And I've

 4 got to make -- well, we have got to make that decision

 5 in the next two weeks. So if you could take a look at

 6 that, please.

 7 MR. BREMAN: Feel free to call me directly

 8 with any changes or revisions. And also Craig Hewitt,

 9 he needs to be in the loop.

 10 MR. HARRIS: I think we will be talking more

 11 about the regulator, the SERC data and the numbers when

 12 we close out the session this afternoon, so it will give

 13 you a little bit of time to sort of think about this

 14 while we're on lunch and then as the afternoon goes

 15 along and sort of come back with it.

 16 The staff is under a relatively tight time

 17 line, we feel, to get something done, and so -- we know

 18 it's very difficult for you all to put numbers together

 19 and get them to us. We're sensitive to that. We hope

 20 you're sensitive to the stress we're under timewise and

 21 we can work together to get the best numbers we can so

 22 that we can make a decision on what -- we, the staff can

 23 make a decision on what to recommend to the

 24 Commissioners.

 25 Anything else on .034?

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 1 MR. GROSS: I apologize, but I just noticed

 2 something in paragraph (8) that I think needs to be

 3 addressed, and I just need to make one comment on it.

 4 It's the last sentence, "No attachment to an electric

 5 utility's transmission or distribution poles shall be

 6 made except in compliance with such utility's attachment

 7 standards and procedures as filed with the Commission."

 8 And this may just run right up against the

 9 FCC's mandatory access provisions if these standards and

 10 procedures are manipulated to keep attachers off of

 11 those poles. And keep in mind that the electric

 12 utilities and the cable companies are going to be

 13 competing for communication services and information

 14 services, and there is an incentive for the power

 15 companies to keep the cable industries and other

 16 attachers off their poles.

 17 MR. HARRIS: All right. With that, we're

 18 going to go ahead and close out the .034 part of today's

 19 discussion so we can move on. My intent is to give the

 20 staff what we need to move on, so I would prefer that

 21 unless there's some serious needs, as we go on, we sort

 22 of tie a little bow around .034 for today. Your written

 23 comments will refer to this stuff, but I would prefer we

 24 don't keep referring back to it.

 25 And so we're going to move on cleanly and now

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 1 move on to .0345. And again, we can go through it

 2 either section by section -- I think there aren't that

 3 many changes, so I would suggest maybe we just go

 4 company by company and see if there are other concerns

 5 with it.

 6 MR. TRAPP: Let me before you start, because I

 7 would like to get an opinion from you. First of all,

 8 let me explain that in the last workshop we proposed no

 9 changes to this rule because we thought we had a very

 10 tight legislative directive on this. Since that time,

 11 Ed Mills's group, our safety engineers basically went

 12 through it and did some cleanup. So the changes that

 13 you see are intended only really as cleanup.

 14 Also since that time, however, the Legislature

 15 has closed session and acted on that statute, and to the

 16 best of my knowledge, Senate Bill 888 that was adopted

 17 by the Legislature makes one change to that rule, and it

 18 is the "at a minimum" language.

 19 So what I need to ask you all is, does that

 20 change anything in this proposed rule? Given the fact

 21 that I guess the law is not law yet, and probably won't

 22 be until July 1st at best, but assuming it becomes law,

 23 the statute adds "at a minimum, you must comply"

 24 language. We must enforce the National Electric Safety

 25 Code at a minimum. Does that change anything in this

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 1 rule? Do we need to put the words there or something?

 2 MR. HARRIS: Somebody has got to have

 3 something to say about this. Come on. No?

 4 MR. BUTLER: No.

 5 MR. HARRIS: Well, that went fast. Great.

 6 MR. WRIGHT: Larry, Schef over here. If the

 7 question on the table is the question as just posed

 8 about whether the "at a minimum" changes, I don't have

 9 any comment. I do have one thing I wanted to bring up

 10 in connection with .0345.

 11 MR. HARRIS: Okay.

 12 MR. WRIGHT: This is the time? Okay. It's

 13 just -- my question and suggestion is, what is the

 14 relationship between the reporting requirements for

 15 electric work orders in .0345(2) and the sufficient

 16 record keeping and accounting measures to identify

 17 storm-related operating and maintenance costs for

 18 underground and overhead facilities in 25-6.078? It

 19 seems to me that work order information could well be

 20 useful there.

 21 And as background, and we've made no secret

 22 about this, we've been frankly appalled at the inability

 23 of the utilities to tell us how much it cost to restore

 24 underground and overhead service after storms and their

 25 inability to tell us what the relative reliability was.

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 1 It just seems to me -- and we'll think about

 2 submitting post-workshop comments on the subject. It

 3 seems to me that it might be possible to further the

 4 purposes that you are trying to further in the record

 5 keeping requirements of 6.078(4) by expanding what is

 6 required in the electric work order information, such as

 7 a brief description of -- a notation as to whether it's

 8 an underground or overhead job and what the cause is,

 9 was it in a storm restoration environment or not, was it

 10 because debris flew into the wires or something like

 11 that that might be checked.

 12 Those are my comments, and I'll work with my

 13 clients to give you something more definitive on the

 14 back end of this.

 15 MS. KUMMER: I think this rule only applies to

 16 new construction. Is that correct? It doesn't apply

 17 to --

 18 MR. TRAPP: Schef, I would encourage you to --

 19 if we're going to include something like that, I

 20 wouldn't put it in this rule.

 21 MR. WRIGHT: Would not?

 22 MR. TRAPP: Would not put it here.

 23 MR. WRIGHT: Okay.

 24 MR. TRAPP: Those work order specifications,

 25 as I understand it, were the means by which our safety

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 1 staff does a random sample of the work orders which to

 2 inspect for safety purposes under this law, which limits

 3 our inspection capability to vintage after 1986, I think

 4 it is, new facilities only. You're going more, as I

 5 understand it, to data collection with respect to the

 6 performance characteristics between underground and

 7 overhead, and I think that's where we talk about --

 8 MR. WRIGHT: I missed the applicability to new

 9 construction only piece. Sorry.

 10 MR. HARRIS: Okay. Any other comments about

 11 either what Bob was asking about or .0345 in general?

 12 No? Okay. With that, we're going to go ahead and close

 13 out .0345.

 14 It's my inclination, unless you all tell me

 15 differently, that we take a lunch break. And the reason

 16 I say that is, I suspect there will be a lot of

 17 discussion about 6.064 and.115, the undergrounding CIAC

 18 stuff. So unless somebody tells me that it's their

 19 impression we'll get through that quickly, I think we

 20 probably ought to take a lunch, and I would suggest,

 21 given where we are, an hour.

 22 My five minutes didn't work earlier. I would

 23 hope that we could really try to focus on being back

 24 here and everybody sitting down and ready to start again

 25 in an hour, which by my clock would be about 12:30 –

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 1 I'm sorry, it's 12:35 now. Let's say 55 minutes and

 2 come back at 1:30 and try to really start at that time.

 3 (Lunch recess.)

 4 (Transcript continues in Volume 2.)

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 1 CERTIFICATE OF REPORTER

 2

 3 STATE OF FLORIDA:

 4 COUNTY OF LEON:

 5 I, MARY ALLEN NEEL, Registered Professional

 6 Reporter, do hereby certify that the foregoing

 7 proceedings were taken before me at the time and place

 8 therein designated; that my shorthand notes were

 9 thereafter translated under my supervision; and the

 10 foregoing pages numbered 1 through 117 are a true and

 11 correct record of the aforesaid proceedings.

 12 I FURTHER CERTIFY that I am not a relative,

 13 employee, attorney or counsel of any of the parties, nor

 14 relative or employee of such attorney or counsel, or

 15 financially interested in the foregoing action.

 16 DATED THIS 30th day of May, 2006.

 17

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