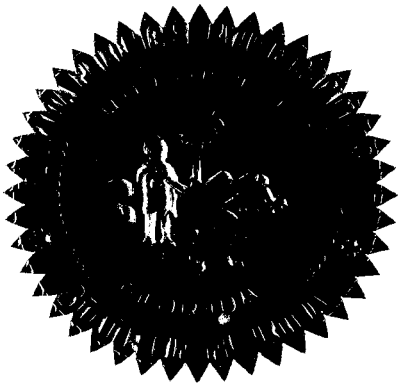
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED RULES GOVERNING PLACEMENT OF NEW ELECTRIC DISTRIBUTION FACILITIES UNDERGROUND, AND CONVERSION OF EXISTING OVERHEAD DISTRIBUTION FACILITIES TO UNDERGROUND FACILITIES, TO ADDRESS EFFECTS OF EXTREME WEATHER EVENTS. DOCKET NO. 060172-EU

PROPOSED AMENDMENTS TO RULES REGARDING OVERHEAD ELECTRIC FACILITIES TO ALLOW MORE STRINGENT CONSTRUCTION STANDARDS THAN REQUIRED BY NATIONAL ELECTRIC SAFETY CODE. DOCKET NO. 060173-EU

_____/



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 5

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER J. TERRY DEASON
COMMISSIONER ISILIO ARRIAGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW

DATE: Tuesday, December 5, 2006

PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	LINDA BOLES, CRR, RPR Official FPSC Reporter (850) 413-6734

PARTICIPATING:

CHARLES J. REHWINKEL, ESQUIRE, representing Embarq.

MICHAEL A. GROSS, ESQUIRE, representing Florida Cable Telecommunications Association, Inc.

JENNIFER KAY, representing BellSouth Telecommunications, Inc.

DE O'ROARK, ESQUIRE, representing Verizon.

JOHN T. BUTLER, ESQUIRE, representing Florida Power & Light Company.

R. SCHEFFEL WRIGHT, ESQUIRE, representing the Towns of Palm Beach and Jupiter Island and the City of Panama City Beach.

MICHAEL COOKE, GENERAL COUNSEL; LARRY HARRIS, ESQUIRE; BOB TRAPP and JIM BREMAN, representing the Florida Public Service Commission Staff.

P R O C E E D I N G S

CHAIRMAN EDGAR: And we are on Item 5. I understand that we do have an oral modification from our staff, and we'll give them a moment to get settled.

(Pause.)

Okay. I think we're ready. Mr. Harris.

MR. HARRIS: Thank you. Larry Harris on behalf of the Commission. This is Docket Number 060172 and 060173, what are being referred to as the storm hardening rules. Staff does have one oral modification. Our recommendation for all the rules is to adopt the rules as proposed with changes.

Before I get to the oral modification, I would note that this is a posthearing recommendation, which is generally limited to Commissioners and staff. However, given the size of the changes that we're recommending you make to the rules as proposed and the fact that this is a rulemaking docket, not a Chapter 120 hearing, we would suggest that participation could be at your discretion. And I see that a number of parties are here who might wish to address the Commissioners on the changes. That would be your discretion to allow comments or not.

The oral modification is to the recommendation. It's Rule 25-6.0342. It's in (5), which is on Page 32 of the recommendation, and it's Lines 15 and 16. Specifically, staff is recommending deleting the phrase "and other applicable

standards imposed by state and federal law." So we'd be deleting that section. The reason for the deletion is to satisfy a concern of the Joint Administrative Procedures Committee staff attorney. He was concerned with the vagueness of those applicable standards and procedures. They're not enumerated in the rule. We agree that that could be cause for concern and suggest that you delete that phrase. Other than that, there are no other changes to the recommendation as filed.

CHAIRMAN EDGAR: Thank you, Mr. Harris.

Commissioners, as Mr. Harris has described, this is a posthearing matter. As I know you'll all remember, we've had a great deal of discussion on these proposals at our previous rule hearing. However, as Mr. Harris has stated, our staff has recommended substantial changes. And in light of that, I think that it is probably a good idea for us to give the opportunity to the parties for some comments. I would ask that they be somewhat brief. We are not going to have a posthearing hearing. So I would ask your comments to be brief and to the point. And then there also would be the opportunity if we have questions, that we can pose them to our staff, but also to the individuals who have come.

Does that sound like an orderly way to proceed? Commissioner Arriaga?

COMMISSIONER ARRIAGA: I just want to clarify, Madam

Chairman, procedure-wise I'm okay with allowing comments. Of course, we always have a tradition of allowing people to speak their piece and have their day in court, as they say, so I have absolutely no problem.

But I just wanted to ask you, are we reopening this question and answer period, the modifications, et cetera? Are we back to the hearing mode?

CHAIRMAN EDGAR: Mr. Cooke, would you like to respond?

MR. COOKE: Commissioners, I think we're just suggesting that it would be appropriate in this case, because there were some significant changes to the rule, to allow some comment. But you are within your discretion whether to allow that at all.

And, second, if you do allow it, you have complete discretion over how to proceed with it. We're not, we're not reopening the hearing that occurred. I mean, this is a rulemaking, which is a fairly informal process, and you can, you can do this type of approach to it.

CHAIRMAN EDGAR: And I'll add to that, Commissioner Arriaga, my thinking, which is that we are not going into, quote, hearing mode. But I do think that because the changes are so substantial from the written proposals that were before us as suggested language prior to the hearing, that it may be useful to hear briefly from the parties and to allow questions,

if Commissioners have any.

And then after we have had our discussion, we will have a couple of options available to us, and Mr. Cooke can lay those out. One, of course, will to be adopt the rules as recommended by our staff. Another would be to make changes to the suggested language. If so, that would need to be very, very specific because we would be adopting rules.

COMMISSIONER ARRIAGA: All right. Thank you.

CHAIRMAN EDGAR: Mr. Cooke, do you have anything to add to that?

MR. COOKE: No. I agree.

CHAIRMAN EDGAR: Okay. Any further questions?

Who would like to begin? You're recognized.

MR. REHWINKEL: Thank you, Madam Chairman, Commissioners. My name is Charles Rehwinkel. I'm here on behalf of Embarq. And I also would like to say that in the interest of time I'm speaking here generally on behalf, in an introductory fashion on behalf of what I'd call a coalition of ILECs, CLECs and cable companies. And I would like to thank you from the bottom of my heart for the consideration that you have given us in allowing us to speak and participate in this matter.

As an initial matter, I would like to say that this coalition appreciates the opportunity afforded us in this process. The dialogue over the last few months has been very

useful and productive and, as it stands today, the proposed rule reflects the benefits of that dialogue.

This coalition is here to express its appreciation and to offer three very narrow refinements to the vastly improved rule. We think these refinements will reflect what we think has been the intent all along by the Commissioners to discharge the public policy and protect the customers of Florida, but to do it in a fair and neutral manner when it comes to the private agreements that the parties have had with the electric companies for many decades without any Commission interaction.

Before I address these three areas, I would just like to review the major concerns that we expressed initially when the rules were first proposed. Number one, we were concerned with what we perceived as an unlawful subdelegation of rulemaking authority. Number two, we were also concerned about the lack of a process formally to consider the benefits to be achieved and the cost of achieving those benefits. And finally, we had a serious concern that the proposal impermissibly interjected the Commission in the area of pole attachment rates, terms and conditions.

You, your staff, and the electric companies listened to these concerns and, as a result, the rules today reflect vast improvement in the rule initially proposed from these standpoints, and for this we are very grateful.

Against this backdrop, we are here today to ask you to consider three refinements. I will address the first, Michael Gross of the Florida Cable Telecommunications Association will address the second, and Jennifer Kay of BellSouth will address the third. I would also like to say that on behalf of Embarq, I concur in the remarks that I believe they will make on these points. But I'm just going address the first one.

The first refinement that we are suggesting is located in two parts of the proposed rule. This would be in Rule 25-6.0341(6) and Rule 25-6.0342(7). Currently this proposal contemplates that disputes arising under the product of these rules, i.e., the plans and the implementation of the plans, may be brought by affected entities. This is a very simple provision that just simply says the Commission will resolve these disputes. These opportunities that are provided in Sections 6 and 7 as I've cited are crucial to what we are asking for. These are the opportunities that you have provided the affected entities to, to present the essential cost-effectiveness evidence, and these are the ones that would be resolved by the Commission.

All we're asking in the language that we have shared with your staff and with the, the electric companies is that where disputes are brought, in the limited instances where we believe they would be brought, that they be resolved on an

expedited basis. We had initially proposed a 120-day time limit, and your staff has advised that it would not be wise to put a solid number there and we have listened to that. We are just asking that the language reflect that they be resolved on an expedited basis and that the implementation of a plan or a project proposed and challenged under these rules will be briefly stayed while the expedited hearing is concluded.

I have characterized this as a refinement and I think it is. But I think it reflects the essential nature that you're incorporating in these rules of affording due process and the ability to present the cost-effectiveness evidence to you. I can pass out the language, if you would prefer to see it.

Essentially we have in the first section, Section 6 of 0341, proposed that a stay ensue except in situations where the Florida Department of Transportation has ordered some sort of a relocation or other project that has specific time constraints that would not mesh with a stay under the PSC process. What we're asking is that for storm hardening projects that are, that come under your purview, that a brief stay be allowed. That's, quite frankly, all I have. I just wanted to offer that to you for your consideration today. And I would turn it over to Michael Gross to address the second issue.

CHAIRMAN EDGAR: Mr. Gross.

MR. GROSS: Good morning, Madam Chair, fellow Commissioners. Thank you very much for giving me the opportunity to speak this morning. And I join and concur in the commendatory and congratulatory comments that Mr. Rehwinkel just stated. I think this is a perfect example of the process working, and substantially all of the concerns of the FCTA have been resolved as of this morning.

There's one little bit of fine-tuning that we would like to suggest, and I'm going to call your attention to Rule 25-6.0342(6), which is (6). And on staff's copy it would be at the bottom of Page 32. I don't know if your pagination is the same as the copy that I have, but -- and there's a provision there which we welcome which would require the utilities to seek input from third-party attachers. And we really appreciate that provision and to be given that opportunity. But the way it reads, the entities who would be permitted to seek, to provide input or to reverse that, the utility's obligation is to seek input from entities who have existing agreements. And while generally that is not a problem, there are some situations where parties are lawfully attached to the poles who don't, for a variety of reasons don't have a current existing agreement. And the best example of that is a situation where there's an agreement that has expired while it's been renegotiated and there are good faith negotiations taking place in most cases. And we would suggest

that such an agreement -- that such an attachment would still be a lawful attachment, and that lawful attacher ought to be entitled to provide input under those circumstances.

And these are situations, we're not talking about the fly-by-night, unscrupulous attachers who stealthily sneak up in the middle of the night and throw their equipment on poles without any authority at all. That's -- we're talking about situations where there was an agreement, that the power companies have in their pole count inventories records of all the attachments, they have records of rent payments which continue to be paid during the contract renegotiations, and just to point out that there's a variety of attachers out there. There's not just wireline and cable, but there's wireless, there are municipal lights and signs and DOT lights and signs, there are a lot of entities that have their attachments on there. And we believe -- we read these rules to support giving, providing input to all of those attachers. And I've consulted with staff about this, adding the language so it would read "with existing agreements or lawful attachments to share the use of its electric utilities."

Now lawful attachments can -- an attempt to define lawful attachments could be a lengthy list. It really needs to be determined on a case-by-case basis. But we think the example that we've given you is a very clear-cut example, and that's the situation that really concerns the FCTA. And the

utilities know who the FCTA entities are, they know how to contact us. And when these rules become effective, we intend to reach out to the IOUs to initiate this collaborative process so that we can discuss what their plans are for third-party attachments or we can provide meaningful input. So I don't think that's an issue. And so I'm authorized to say that staff does not object to this language, and I'm open for any questions. Thank you very much.

MR. REHWINKEL: Madam Chairman, could I just add? In what I passed out, the language that Mr. Gross read, there's a 90-day number.

CHAIRMAN EDGAR: I was just about to ask you about that.

MR. REHWINKEL: That was, that was based on our proposal that we had made to staff that I think is categorically rejected about a 180-day lead time in filing the plan. So that was half that time frame. So I think the right number would be 45 days there.

CHAIRMAN EDGAR: Okay. So the language, some suggested language changes that you have passed out, what I'm looking at from what you gave us, Page 6, Line 8, would be to add there at the end of Line 8 "or lawful attachments." Then pick up the current language, "to share the use of its electric facilities." And then are you proposing "at least 45 days prior to filing the document with the Commission" as additional

new language?

MR. REHWINKEL: Yes. We should have fixed that. I apologize for that.

CHAIRMAN EDGAR: That's okay. Just so we're all clear.

Commissioners, are you clear on the proposed language?

COMMISSIONER ARRIAGA: I'm not. I'm sorry.

CHAIRMAN EDGAR: Okay. Commissioner Arriaga, how can we help?

COMMISSIONER ARRIAGA: Where is the modification, please?

CHAIRMAN EDGAR: Okay. I am looking in the proposed language in our item at Page 32 at the very bottom of the page, (6), at the very, very bottom of the page, Line 24 and 25. And then if you come to the handout that Mr. Rehwinkel passed out a few moments ago and look at his Page 6, Lines 8, 9 and 10.

COMMISSIONER ARRIAGA: Okay. Thank you.

CHAIRMAN EDGAR: Okay. Commissioners, any further questions on that point? No.

Okay. Mr. Gross, did you have further --

MR. GROSS: I wanted to ask Charles if you wanted me to address that 45 days or are you or Jennifer going to explain that?

MR. REHWINKEL: I was just saying that it was a

factor of the 180. Since 90 was half of 180, 45 is half of 90.

MR. GROSS: Okay.

CHAIRMAN EDGAR: Okay. We'll go ahead then and hear on the third suggested refinement and move through the comments, and then we'll have opportunity for questions and discussion.

MS. KAY: Good morning. My name is Jennifer Kay, and I represent BellSouth. We would like to also thank the Commission for the opportunity to be heard today.

Despite the hard work of staff and the parties, a key issue remains that causes us great concern: The fact that the IOUs have expressed their intent to use these rules to bill a significant portion of their hardening costs to the ILECs under joint use agreements, agreements that have been in place and unchanged for several decades. Generally speaking, the joint use agreements include a provision that allows a pole owner to recover half the cost of a new, taller, stronger pole if the pole is placed, quote, to meet the requirements of a public authority, unquote.

Certainly the ILECs never intended for this type of provision to be used to require the ILECs to essentially subsidize half the cost of certain upgrades to the electric infrastructure pursuant to these rules. We also do not believe it is the intent of the Commission for these rules to be used in the manner intended by the IOUs as a vehicle to impose a

significant portion of their costs on ILECs pursuant to a private contract that is outside the Commission's jurisdiction. To guard against this unintended consequence, we respectfully request that the Commission adopt what we have proposed as new Section 8 to Rule 25-6.0342, or to adopt alternative language that would accomplish the same goal.

The suggested language provides: "For the sole purpose of interpreting or enforcing any private contract or agreement between electric utilities and attaching entities, nothing in these rules is intended to be construed as a declaration of a public authority." Including this language minimizes the chances of the rules being used to seek unfair cost allocation. It also ensures that there will be a meaningful collaborative approach to hardening as contemplated by the rules. If you take away the premise that the IOUs could possibly shift half of certain hardening costs to the ILECs, the IOUs would be more motivated in developing their storm hardening plans to explore fully the most cost-efficient options. If cost efficient plans are filed with the Commission, we can expect less disputes at approval hearings and less delays in the process. Without the protections afforded by the revised language, BellSouth is concerned that the IOUs' hardening plans will be skewed by the belief that they will seek to recover half of their new pole costs from attaching entities, thereby leading to more disputes and less

collaboration.

The attaching entities recognize the Commission's goal to minimize future storm damage to electric infrastructure and resulting outages to customers. We also understand that there will be resulting cost impacts on third parties such as increased pole rental fees, additional manpower requirements and training on new construction standards. We are simply asking the Commission to prevent these rules from being used as a vehicle to shift a significant, set and unreasonable portion of the IOUs' hardening costs to the ILECs. While we do not concede this issue and are prepared to defend against this anticipated cost shifting, we contend that it would be more beneficial to the process to take this contentious issue off the table. The parties would be in a better position to take a collaborative approach to hardening and address cost implications as they should be handled, through negotiated business arrangements. Thank you.

CHAIRMAN EDGAR: Thank you.

Mr. Butler.

MR. REHWINKEL: Madam Chairman, before Mr. Butler goes, would you indulge me to make one additional correction to what I've passed out?

On Page 3, the language that is in Subsection 6 at the top of the page, I want to make it very clear that the deleted language to the right there is a deletion of a prior

coalition proposal. It is not something your staff has proposed. So this is just -- it should not have been there. We have just completely substituted our language for the proposed in the staff's recommendation, Section 6, if that makes sense.

So I just, just, I just wanted to make it crystal clear that what's deleted is not something your staff had proposed, but it's just a prior iteration of what we had offered up to the, to the -- in the dialogue. Does that make sense?

CHAIRMAN EDGAR: I think so.

MR. REHWINKEL: Okay. Thank you.

CHAIRMAN EDGAR: Mr. Butler.

MR. BUTLER: Good morning, Madam Chairman.

CHAIRMAN EDGAR: Good morning.

MR. BUTLER: The IOUs support the rule as it has been proposed. I think it would be most helpful for me and for the Commission for us to go last and simply respond to whatever else may be raised as questions or concerns about the rule. And so, therefore, I would ask your indulgence to defer to the last speaker and see if there's anybody else who intends to speak to the rules.

CHAIRMAN EDGAR: Mr. Butler, we can do that. That's fine.

MR. BUTLER: Thank you.

CHAIRMAN EDGAR: Mr. Wright.

MR. WRIGHT: Thank you, Madam Chairman and Commissioners. Good morning. As you know, I have been representing the Town of Palm Beach and the Town of Jupiter Island in these proceedings, and I still do represent them. I also now have the privilege of representing the City of Panama City Beach in these proceedings as well. And so I am speaking on their behalf today, in addition to Palm Beach and Jupiter Island.

My clients support the rules as proposed by the staff. Compared to where the present rules and compared to where we started on January 23rd when we had the first workshop and the Internal Affairs discussion in February, these rules go a long, long way toward recognizing the many benefits that undergrounding and hardening of overhead facilities will provide to the reliability of Florida's electric distribution infrastructure, and they recognize the benefits and they can be expected to provide meaningful incentives to undergrounding and to improvements in the reliability of our distribution system.

Our primary interests are very simply in seeing the amendments to the rules adopted as soon as possible, especially the amendments to Rule 25-6.115, which apply to the larger scale underground conversion projects.

And that's really all I have to say. I'd be happy to answer any questions you have on my clients' positions or on

any of the other issues here today. But that's really my message for you this morning. Again, we appreciate your hearing from us throughout this process, and we really appreciate the staff's hard work at getting what we think is a good rule out there that we can work with.

CHAIRMAN EDGAR: Thank you.

MR. O'ROARK: Good morning, Madam Chairman, Commissioners. I'm De O'Roark representing Verizon.

Verizon agrees with the comments made this morning by Embarq, FCTA and BellSouth, and we support the coalition's proposed changes.

CHAIRMAN EDGAR: Thank you.

Mr. Butler, that brings me back to you.

MR. BUTLER: Thank you, Madam Chairman. And, again, I will be speaking on behalf of all of the, all four major IOUs. If you have any particular questions with respect to any one company, we certainly have representatives here who can address them specifically.

On February 27 of this year the Commission directed staff to begin rulemaking proceedings to require electric utilities to strengthen Florida's electrical transmission and distribution infrastructure to better withstand the effects of severe weather events. The Commission staff has held three workshops on the proposed rules. The Commission has heard extensive presentations on the proposed rules, first at its

June 20 Agenda Conference and then subsequently the August 31 rulemaking hearing. And the Commission has received extensive posthearing briefs from interested persons.

In short, you are very well informed at this point about the proposed rules and the concerns of the different interests that will be affected by them.

The IOUs support adoption of the Commission's proposed rules as they are being considered today. We think they represent a reasonable compromise among competing interests, which is a proper goal of rulemaking. They will provide an extensive and effective framework for facilitating hardening of the IOUs' electrical distribution systems, which will benefit customers by increasing the ability of those systems, as well as the systems of the joint pole users, to withstand impacts from hurricanes and other major storms.

While the IOUs continue to believe that the Commission's June 28 rule proposal contained appropriate protection against the subdelegation concerns raised by the telecommunication interests, the current proposed rules address those concerns even more explicitly. The process of Commission review and approval for IOU hardening plans will result in detailed Commission oversight of all the hardening activities. There cannot possibly remain any legitimate concern that IOUs are given unsupervised discretion in pursuing their hardening plans or that other interests will not have a seat at the table

when the Commission decides on those plans.

The hardening goals of the proposed rules will result in IOU electric distribution systems that are better able to withstand the effects of severe weather events. That resilience will benefit the facilities of joint users and third-party attachers just as much as it does the electric distribution systems. If a pole is knocked down in a storm, it disrupts service for telephone, cable television and other attachers just the same as it disrupts electric service.

Naturally there is a cost associated with hardening. The IOUs and their customers will bear a significant hardening cost. There is no legitimate reason for the third-party attachers not to bear a fair share of the hardening costs as well. Unfortunately, however, a consistent theme of the third-party attachers' participation in this rulemaking has been trying to find a way to avoid that responsibility. This reluctance of the attachers to contribute is especially disappointing in view of the poor performance of non-IOU poles in recent storms. For example, non-IOU poles failed at roughly three times the rate of IOU poles in FPL's service territory during the 2005 storm season.

Let me turn and briefly address the three proposed changes that the IOUs, I mean, I'm sorry, that the telecommunication interests have addressed to you today. Start with the proposal in, I think it's 25-6.0341(6) and 0342(7) for

expedited resolution of disputes and for a stay of implementation during the dispute resolution except in the event of DOT mandate.

First of all, we certainly don't object to the idea of expedited resolution of disputes and to that extent would agree with the proposal.

However, the part about, you know, deferring or staying implementation of either relocations or of hardening plans in the case of 0341 and 0342 respectively, pending resolution concerns us. We appreciate the commitment, if it is made by the Commission, to expedited resolution, but we know from experience that even expedited resolution can take quite a while. And we think there are circumstances where it just doesn't make sense to hold up the implementation of the hardening plans during that resolution or, most particularly in the case of the relocations, to put the electric utilities in what could be a significant bind between obligations they have to proceed with relocations and the resolution of disputes.

Now there's been language proposed here by the telecommunication interests that would create an exception for Florida DOT-mandated relocations. And that's good, but we are concerned it doesn't go far enough. There are other sources, municipalities, excuse me, et cetera, that have authority to require relocations and are not covered by the exception solely for the FDOT. Now our, our first suggestion or primary

suggestion is simply not to include this language on stays. If it were to be included, however, there would need to be a broader and more open-ended exception with respect to circumstances where IOUs are mandated to relocate poles. Simply creating an exception for DOT helps, but it does not go far enough.

The next, the next suggested change that the telecommunications interests have suggested is the addition of the language, "or lawful attachments," I'm sorry, to entities, that electric utilities would need to give notice of its, excuse me, planned, or of its hardening plans and seek, seek input and recommendations from them. The problem we see with that, I think that Mr. Gross had sort of acknowledged the problem in his comments when he said that it's very difficult to define what a lawful attachment is. You have to do it on kind of a case-by-case basis. That's fine, except that we're going to be put in the position as electric utilities where we would have an obligation under the rule with this modification to seek input, and we're seeking input from people who we don't know who they are and it has to be defined on a case-by-case basis. We think that it's really just an unwarranted, unnecessary expansion of the notification requirement.

But if you were to adopt something along those lines, we think it's imperative that any lawful attacher or entity that considers itself a lawful attacher that is expecting to

get notice and does not have an existing agreement with the utility would have to provide some sort of upfront notification to us that they consider themselves to be in that position so we would know to give them notice of the plan and to seek input from them. To have something where we are on the hook for seeking input from people that we don't know who they are and whose, you know, qualification for the status depends on a case-by-case determination would really be an unworkable, an untenuous position to put the IOUs in.

In addition, the provision for 45 days advance notice before we would be filing our plans, I think, is an unnecessary and unwarranted imposition of an additional deadline. We're only going to have 90 days after these rules have been adopted and become effective to file our hardening plans. One of the conditions of the hardening plans is that they reflect our efforts at, you know, seeking input, what input we received, how we have tried to resolve it, et cetera, with the various third-party attacher interests. So if we don't do it, you know, our plan is going to be sort of insufficient on its face from the day that it's filed. We will get it done, we will get it done timely because we have an obligation to file the plan and to have within it the discussion of our, the results of our collaboration with the telecommunications interests, third-party attachers. We don't see that there is a need to put us under the additional pressure of a separate deadline

that we have to check off as a particular point when we got that, got that collaboration accomplished.

Finally, let me speak to the addition, proposed addition of Subsection 8 to 0342, the provision that would have you construing your rules as not constituting a declaration of public authority. We think this is totally inappropriate to include in the rules. It's basically interjecting yourselves into a contract interpretation issue. No matter what you do or don't say in here, the issue of what the, excuse me, joint users end up paying to each other under their joint use agreements is going to be a matter of contract interpretation that will be negotiated between them and, as necessary, resolved in a civil court. It's not something that is appropriate for your jurisdiction, and we think that it would be wrong for you to interject yourself into that position.

Having said that, you know, if you were to take a position at all, it ought to be that these rules indeed do constitute a declaration of public authority because the electric utilities will have gone through an extensive process of review and approval. You've told us that you're requiring us to harden the system and that we're supposed to file plans to do so. Our plans will be vetted by you. There will be careful review to determine that they are cost-effective for everybody involved. And, frankly, it's hard for me to imagine that there would be anything more explicitly required as a

declaration of public authority than the efforts we would undertake to harden the system once we have our plans approved.

That concludes my comments, and I once again just urge the Commission to move forward. I think the rules are good as they stand, and we're anxious to move forward toward implementing them. Thank you.

CHAIRMAN EDGAR: Thank you, Mr. Butler.

Mr. Wright.

MR. WRIGHT: Very quickly, if I could. I would just like to add my support to the comment that -- add my clients' support to the comment made by Mr. Butler regarding the stay provision. We will -- we may well find ourselves in the posture of proceeding with undergrounding projects where there are other projects, whether they're road widening or utility relocation or new utility construction, water and wastewater utilities, for example, being undertaken. So it's not -- it is at least possible, if not likely, that there will be other projects in conjunction with which we want to be doing undergrounding projects to save money and get the facilities in place at the lowest possible cost just, broader than just those by FDOT. So we're not wild about the stay. And if there is going to be a stay, we would agree with the IOUs that the exemption should be significantly broader to encompass other types of activities. Thank you.

CHAIRMAN EDGAR: Thank you. Mr. Harris and

Mr. Trapp, I'm going to look to you to respond to some of the comments that we have heard, please.

MR. HARRIS: Chairman, we had, had a chance to look over this language, and we basically aren't able to agree that any of the concerns raised by the language should be included, with the possible exception of the lawful agreements language, as Mr. Gross indicated.

With the lawful attachments, we do have a little bit of concern that there might be a potential for the JAPC to raise a concern about its vagueness, but we understand the concept they're asking for and don't object to that if you all want to include that.

The other points, the dispute resolution provision, we don't object to the expedited basis. We do object to the provision for an automatic stay, staff does. Basically we believe that the Commission practice has been that if a party wants a stay, they ask for it in their motion. We don't see any reason to depart from that here. We think that a party filing a challenge to the plan or to the implementation of the plan could ask in that motion for a stay of the project pending review, that it should be the Commission's decision whether to grant that stay or not. We're very concerned that this rule would tie the Commission's hands and either create a situation where you are unable to not grant the stay or had some lengthy procedure to try to undo a stay that was imposed by rule. So

we would suggest if you're inclined to think that a stay is a good idea, that it should be requested by the party and that you all could rule on it and make that decision, and that could be on an expedited basis.

As far as the expedited review of the complaint, we don't have any objection to that. We are uncomfortable with tying you to any specific time frame.

The 45-day language that was added at the end of the section on the lawful attachments we're also concerned with. We're not comfortable with putting in additional time frames. We think that the parties are required to work in good faith, that the IOUs need to give appropriate notice to the attachers, and we're uncomfortable with a specific deadline. What if they can't get it out for 40 days?

As far as the language regarding the declaration of a public authority, we're extremely concerned about that provision. This is Subsection 8. We agree with the IOUs that this is a private contract issue. The Commission does not have jurisdiction over those contracts probably. We haven't completed our research. But we would be very concerned about you all putting a provision in the rule that purports to make some, to make some statement of your intent with regard to those contracts without us knowing the full impact of what those contracts are, what our possible jurisdiction is or is not and the import of that. The word "declaration of a public

authority" strikes me as something that has some legal import, and I don't know what that is. And I'm very reluctant to recommend that you put that in a rule until I can tell what you that means, what its impact is, what legal problems that might encourage down the road in terms of if there is litigation and you have a provision in a rule. I think that just creates a lot of problems, and we don't know what those are. So I can't recommend that you include that language.

Our recommendation is that you adopt the rules with the changes we have proposed in our recommendations, and that would not include the language that has been proposed here to you all today.

MR. TRAPP: If I might add, Chairman.

CHAIRMAN EDGAR: Mr. Trapp.

MR. TRAPP: I won't dwell on it, but I feel obliged to say I feel a little consternation about this process. I count at least two additional changes in this red line version that we have that haven't been addressed today, and I'm not exactly sure what we're supposed to do with those other than possibly ignore them.

MR. REHWINKEL: Ignore them.

MR. TRAPP: Fine. That's good clarification.

I agree with --

CHAIRMAN EDGAR: I already was.

MR. TRAPP: I agree with the comments of Mr. Harris.

I do think it's important though that the Commission understand what this rule does, and this rule will bring you a plan and that plan will be fully reviewed by this Commission. And I think you'll be expected to look at cost impacts not only for the electric utilities, but for the attachers as well. And I think you will weigh the evidence in that evidentiary proceeding based on the evidence that's provided, the input that is provided, the cooperation that is provided between the industries, and the Commission will have the responsibility of deciding how to allocate costs associated with prudent cost-effective hardening. So I think that's really what we're recommending. And, again, I support Mr. Harris's comments. We support our proposed rule.

CHAIRMAN EDGAR: Thank you, Mr. Trapp. You have though kind of, kind of raised a different issue that I'd like to ask you about. And then, of course, we can come back to any of the issues that have already been raised.

In the dispute resolution, dispute resolution language, it says that "any dispute or challenge" -- I'm reading from the rule as proposed. "Any dispute or challenge related to the implementation of this rule by a customer, applicant for service or attaching entity shall be resolved by the Commission." And I think that's, that's good language, and recognize the point that Mr. Harris made that anybody bringing a dispute or a challenge could request a stay and that this

Commission would certainly give that due consideration.

But my question on this language is how are the customers going to know that there is a plan that has potential proposed changes to their neighborhood or to their property? Is there some notification that, that the customers or consumers would receive? How would they be aware of the plan? How would a customer have the opportunity or have the knowledge to know whether or not they had a dispute?

MR. TRAPP: Well, I think, first of all, the plan will be filed and noticed and there will be public hearings. So there will certainly be public opportunity to see what's in those plans.

CHAIRMAN EDGAR: When you say public hearing, can you elaborate on that?

MR. TRAPP: The Commission will have to approve the plan. So, you know, whether it's done through a PAA type process, there's legal notice and communication that goes out to the public with regard to that, the content of the PAA. The existence of the plans here are available for public review or public viewing. If it's done as the result of an evidentiary hearing either on the Commission's own motion or as the result of protest to a PAA, that hearing and its contents will be, will be noticed.

CHAIRMAN EDGAR: Mr. Breman, additional?

MR. BREMAN: Commissioner, Jim Breman. I work for

Bob, or I did.

(Laughter.)

You're actually, in my opinion, my personal opinion, you're sort of jumping the gun to Phase 2 of the rule of what the consequence of the rule is. Phase 2 of the rule requires the utility to come forward with a plan, as Bob pointed out. At that time we would be reviewing the plan so that it adequately addresses the issues you're bringing up, Commissioner.

CHAIRMAN EDGAR: Thank you.

Commissioners? Commissioner Deason.

COMMISSIONER DEASON: Madam Chairman, I just want to say at the very beginning here that I believe that we've seen history made here today. At least my recollection is that I thought I'd never see the day that one individual would get up and say that they were representing the ILECs, the CLECs and the cable companies. So congratulations.

MR. REHWINKEL: It may be the last day I'm here too. I don't know.

COMMISSIONER DEASON: Congratulations, Mr. Rehwinkel. I thought I'd never see the day.

CHAIRMAN EDGAR: We appreciate that good faith effort.

Commissioner Tew.

COMMISSIONER TEW: Thank you. And first let me echo

the things that I think I've heard from several parties here today and say what a good job staff has done and how much we've all benefited from the process. It's probably taken a little longer than we all thought originally, but I think that all the parties here today have made a really good effort to work together and I think that it shows up in this rule, which is a much improved product, I believe, over what we started with.

Having said that, I did want to ask a few specific questions about some of the proposals we've heard, and I think I'll start with the same one that the Chairman referenced there and ask our legal staff how soon can we deal with stay requests once we get them? If we don't put any kind of provision in here for an automatic stay, how soon can those be dealt with? And I guess some of the underlying questions there, is that something that a prehearing officer can deal with? If a prehearing officer weren't around and it needed to be dealt with on an expedited basis, is there a way that a different Commissioner could deal with it? Those kind of things. How soon could we deal with that kind of a request?

MR. HARRIS: Speaking for myself, I believe that the prehearing officer could address the request. The way I would see it coming in, it would be a complaint, you know, there's a problem with this plan, and an accompanying motion for a stay of the implementation of the plan. I think the prehearing officer could rule on that. If a party disagreed with it, they

could ask for rehearing before the full Commission.

I think it could be done very quickly. The Commission is used to dealing with things on an expedited or an emergency basis. I think the clerk's office has a way of getting things to the Chairman's office for very quick assignment. The uniform rules do contemplate that in some situations the presiding officer can move the dates, the time for filing responses forward. So my belief is that the prehearing officer could issue a ruling extremely quickly. Likewise, if it did need to go in front of the full Commission, staff is able to file, you know, recommendations on very short notice. We don't necessarily like it and it's not necessarily the best work that we do, but we are able to get things in front of you all very quickly.

So I would suspect that if a petition was filed, we could get, we, either the prehearing officer could rule quickly or the staff could get in front of the full Commission within a few weeks. Presumably a complainant is not going to wait until the construction machinery is on their street. This ties into the Chairman's concern. And it could relate -- you know, a customer could see, you know, machinery showing up and be like, wait a second, what are you guys doing out here? Oh, you're putting in 80-foot transmission towers. I don't really like that in my front yard. I want to file a complaint. That would obviously be the type of thing the Commission would need to

look at very quickly. We would hope, however, that there'd be some type of notice that before a company showed up on a residential street to put in 80-foot towers, they would have provided some notice to the neighborhood at least, maybe a hanging on the door or an article in the newspaper, something about what they were planning, and that would give people time to file a little bit more deliberately.

So to answer your question, I believe that it could be handled extremely expeditiously, either through the prehearing officer in a matter of days or a panel or the full Commission within a couple or three weeks.

COMMISSIONER TEW: Okay. So you don't have any concerns about putting language in there that at least would suggest that it be handled on an expedited basis?

MR. HARRIS: No, ma'am.

COMMISSIONER TEW: And I'll share with you all, when I first heard the idea about the automatic stay, I mean, there were some benefits to it in my mind in that if a utility had started work and you had an automatic stay while there was a challenge going on, that it might result in more cost-effective work being done on both ends of the equation with the electric utilities and the attachers to possibly do work at the same time, and that might ultimately result in less cost to a customer. So that's one of the reasons that the automatic stay somewhat appealed to me, but at the same time I see that there

could be concerns with it, as long as we put in place some kind of process for at least an expedited resolution of those kind of matters.

MR. HARRIS: Yes, ma'am. And I would just comment, you obviously will be making the vote and can insert the language you feel is appropriate.

I would be more -- I would be less comfortable with the stay being automatic subject to a petition by someone to lift it being handled on an expedited basis than simply following the normal practice of the Commission, which is to require the applicant, the complainant, the petitioner to ask for the stay and then that be granted. That's what we tend to do now. And I think it makes for a little bit cleaner process than if the stay is in place and the burden is on someone saying, no, this doesn't make sense to go forward. I think that just makes it more potential to be drawn out and less potential for it to be a clean, easy process. But that's my personal opinion.

MR. TRAPP: If I might add.

CHAIRMAN EDGAR: Mr. Trapp.

MR. TRAPP: I would simply like to point out that the language here is in the dispute resolution section of the rule, and I would remind the Commissioners that's the third bite at the apple. You know, first they are expected to work together to under -- between the industries understand what facilities

are being affected and being hardened, and there's opportunity there to have input to that process. Then there's the plan itself that's filed with the Commission that will be potentially, you know, arbitrated before the Commission or litigated before the Commission. Any complaints, if you were, with respect to location of facilities would arise in that process, and the Commission would have it before them to deal with. And I agree with Mr. Harris that proper notice, proper information about what's going on to the public should be addressed in the implementation of approving that plan.

The dispute resolution process is really kind of a safety net, third-bite-at-the-apple type of process. And for that reason, just from a policy standpoint, I won't address the legalities of it, from a policy standpoint the Commission should have the discretion to determine when a dispute petition comes in, the petition should request a stay if they want to, and the Commission should have the ability to determine, you know, the timeliness or the time constraints or whatever involved to determine whether a stay is necessary or not.

MR. REHWINKEL: Madam Chairman, would you entertain brief comment from me about the stay issue?

CHAIRMAN EDGAR: I will, briefly.

MR. REHWINKEL: I've been practicing before the Commission for 20 years, give or take, and I believe the motion for stay concept really arises out of the ratemaking concept,

where it's possible to hold money subject to refund or to true things up.

What we're talking about here is a build/no build situation where there's only one point in time where that can occur. You've got four IOUs, you've got at least four attachers from the ILEC community or more, and the cable, however many cable companies there are. You have potential for concurrent proceedings to be going on over the next several months as the rule is implemented. So expedition may be a good concept, but it may be a very impractical one, again, when we're in a build/no build situation. Once the trench is dug, filled and covered and one's not in there, the opportunity to remedy that situation is not effectively there from an economic standpoint.

So one of the concepts -- I felt like -- I mean, we'd be willing to look at what Mr. Butler offered as somewhat of an olive branch of expanding that exception for these other projects where they conflict with you, and I think that would take away a lot of the concern about there being an undue delay. But I would also ask you to consider flipping it and say that the stay would be granted unless someone shows for good cause why it should not in that initial phase. And I think if you had the exception for non-PSC projects and the presumption that way, I think we would be comfortable with the protection that we had that we would not miss an opportunity

and economic waste would occur.

And I really don't agree that is a third bite at the apple because in the plans you're not necessarily going to be seeing the specific projects. And if I can take you back to our initial concern about cost benefit analysis, this proceeding that you would have in this third bite is where you first hear the cost benefits of specific projects. It can be rather large and costly to the attachers. So that's really where it's going to happen for the first time. That's all I have to say. I'd just make my pitch that way.

CHAIRMAN EDGAR: Thank you.

Commissioner Carter.

MR. BUTLER: May I ask for -- I'm sorry.

CHAIRMAN EDGAR: Later.

MR. BUTLER: Thank you.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Thank you, Madam Chairman. If I may be recognized, I want to ask a few questions of staff.

CHAIRMAN EDGAR: You may.

COMMISSIONER CARTER: Mr. Trapp, as I read the report and read the case file here, it seems to me in terms of this rule it requires a plan that would tell you who, what, when, where, why and how much; correct?

MR. TRAPP: Yes, sir.

COMMISSIONER CARTER: That plan has to be presented

by the IOUs; correct?

MR. TRAPP: Yes, sir.

COMMISSIONER CARTER: And that plan has to be reviewed by the Commission; correct?

MR. TRAPP: Yes, sir.

COMMISSIONER CARTER: And in addition to reviewing the plan, the cost must be reviewed by the Commission.

MR. TRAPP: Yes, sir.

COMMISSIONER CARTER: Did I miss anything? I mean, I'm listening for something different.

MR. TRAPP: If any part of that plan is unacceptable to the Commission, the Commission can ask the offending party to go back and fill it in.

COMMISSIONER CARTER: That's what I read and that's what I thought you said today; right?

MR. TRAPP: Yes, sir.

COMMISSIONER CARTER: Okay. Thank you, Madam Chairman.

CHAIRMAN EDGAR: Thank you, Commissioner Carter.

Mr. Butler, brief comment.

MR. BUTLER: Thank you, and sorry for the interruption earlier.

Just briefly responding to Mr. Rehwinkel, we are, frankly, quite concerned about the potential of the stay mechanism as creating the opportunity for procedural delays in

implementing the hardening plan both at the front end of actually getting it started, you know, having it approved and moving it forward, and then probably in many respects more so with respect to what he brought up, which is, you know, the details of implementing it, the particular deployment strategy, a particular standard, a particular project that is going to be undertaken pursuant to the hardening plan. And we think it would be counter to your desire to move forward as promptly as reasonably, you know, is consistent with good practices and careful input from everyone to have an automatic stay on all of those elements of implementing hardening in the state. If somebody has got a real problem with a particular part of the plan or a particular implementation of it and it's the sort of thing where it looks like it has substantial merit to you and there is a lot of cost associated with starting to do something that can't be undone, that's what they'll say in their motion for stay. But to have it where there's an automatic stay or where we've got to come in and scramble and sort of mobilize to argue for lifting of the stay every time somebody simply files a piece of paper saying that they want to dispute a particular element of the hardening plans, we think is going to create an opportunity, don't know whether it would be exercised or not, but an opportunity for just procedural-driven delays that would be inconsistent with what you're wanting to do with the rules. Thank you.

CHAIRMAN EDGAR: Thank you.

Commissioner Arriaga.

COMMISSIONER ARRIAGA: Thank you. Two or three questions to staff basically.

Mr. Harris, would you please clarify for me your first statement today regarding the concerns that you may have or the staff may have to the proposal by FCTA, the lawful attachments under 45 days? I wasn't clear what you were saying.

MR. HARRIS: Yes, sir. We understand the concept and are in somewhat agreement with it. Our only concern is, again, we made an oral modification to remove some language that the JAPC staff attorney had determined might have been vague. The lawful attachments could potentially raise that same question. The attorney could comment. I don't know what the lawful attachments are. Where does the rule define what they are? Where can I find what a lawful attachment is? You know, we would have to negotiate with him and perhaps bring something back to you for resolution. It could potentially delay the adoption of these rules if there was a concern. I'm not saying there is one. I'm saying that that's something that staff had looked at and thought that it might potentially raise a concern in their mind.

COMMISSIONER ARRIAGA: Regarding the issue of the stay -- let me go back a little bit. You're okay with the

expedited procedure; right?

MR. HARRIS: Yes, sir.

COMMISSIONER ARRIAGA: Now regarding the stay, let us assume that we would approve something like that. What would it do to the time frame of the execution of this rule?

MR. HARRIS: That's very hypothetical, so let me speculate.

You all, y'all, y'all implement some plans. The construction, you know -- let's say the utility, the IOU goes ahead and publishes a notice in the newspaper or hangs some fliers on the door, hey, we're going to put in new transmission lines on your street. Nobody says anything. Construction machinery shows up. A customer says, wait a second, what are you guys doing? I didn't think you were serious. I thought you guys were just talking about something. I'm going to file a complaint. Files a complaint up here: I don't like the storm hardening on my street, signed Mr. Customer. It gets filed.

The IOU has to stop, move their machinery away. The street is torn up, power may be hanging on temporary poles. We all -- then under the automatic scenario, the IOU would have to come in and file a reason why the stay should be lifted, this doesn't make sense. A customer could say, well, where in your rule does it give them the opportunity to lift the stay? I don't see that language in there. I want my stay. You all

have to litigate that issue, take some number of Agenda Conferences. Then the customer says, okay, I've lost -- you finally decide, no, this doesn't make sense, we're going to go forward with the project. A customer three houses down the street or the next street over waits until they get to his street, files the same complaint. I object to this construction project. It's just slightly different enough that it can't be included in the first order, holds up the project again.

What staff is suggesting is that customer would have to in his complaint say I want a stay and this is why, this is why I need the stay. There's no, there's no remedy to me. If they've already got -- you know. And we think that's a better way of going about this.

It puts -- and I'm not saying an individual customer should necessarily bear a burden if they haven't had notice, but what I'm saying is there should be some justification on the front end as to why the stay is necessary as opposed to the presumption being that the stay is automatic unless someone else can get it lifted. That's shifting a burden, it's shifting the workload, it's shifting the decision to you all to make, and I think that's just a more difficult situation to think about.

I did disagree a little bit with Mr. Rehwinkel. We do not agree that the first time they see the cost on these

projects is going to be when the construction machinery is rolling out to that street. That is not the intent of this rule. We intend for you, the Commissioners, to have this cost data in front of you when you make these decisions. It might not be to the dime, but it should be at least a very good ball park of this street is going to cost about this much, or we want to strengthen these portions of this city and it's going to cost about this much per mile and we have ten miles. That's the kind of information we want the plans to have for you all. If the first time the cost benefit data pops up is in the actual implementation, then there's been a failure in the plans, is my impression, of the rule that we drafted.

COMMISSIONER ARRIAGA: Thank you. And so the process of automatic stay as suggested by the telecoms would probably put us in the 2010 storm season.

MR. HARRIS: Your guess is as good as mine, Commissioner.

COMMISSIONER ARRIAGA: One more question, Madam Chair.

The issue of public authority, Mr. Harris and Mr. Cooke, do I understand correctly that a rule is a statement of public authority?

MR. HARRIS: Yes, sir.

MR. COOKE: Commissioner, I think rules speak for themselves. I think that what the telecom industry is asking

us -- I mean, the parties have stated here that they believe these contracts are private agreements between private parties. They've asserted that we don't have jurisdiction over them. And what the telecom industry is asking us to do is essentially, in my opinion, express an interpretation of those agreements. And I am uncomfortable with that. I think it raises potential questions about impairment of contract. I can't absolutely sit here and say that you can't do that, but it certainly raises that as a very serious concern on our part, and I advise against that language.

COMMISSIONER ARRIAGA: Thank you, Madam Chair.

CHAIRMAN EDGAR: Thank you.

Commissioner Tew.

COMMISSIONER TEW: Follow-up on that a little bit.

Mr. Harris, you said the rule is a statement of public authority in response to that question. Do you think anything in the rules as drafted now would trigger agreements between electric companies and the attachers? Because I guess I don't see it that way.

MR. HARRIS: I don't see it that way either, but I have to preface that with saying I have not read their agreements. So I don't know with particularity what the agreements say.

As Mr. Trapp said earlier, these rules require the filing of a plan for the 0342 rule. I don't see how the filing

of a plan triggers some type of cost impacts in their joint use agreements unless the joint use agreements contemplate a shifting of cost for the preparation of the plants, which I don't anticipate they would.

There may be some concern with the 0341 rule, which is the location of facilities rule, the back lot to front lot. That could potentially be something that the plan, that the joint use agreements have taken into account. But, again, they've negotiated these contracts between themselves. It was done a long time ago. I haven't read them, but my feeling is that nothing in these rules that we are recommending that you all adopt should trigger some cost shifting under their joint use agreements. I don't see it. But if they're telling us it does, then I don't have the factual data to dispute that.

COMMISSIONER TEW: And follow-up on that a little more. I wanted to ask Ms. Kay, I think, and I may be misstating how you, how you stated it earlier, but you said something about the electric companies have expressed their intent to shift costs to attachers. I was wondering if you could elaborate on that a little bit, because I want a better understanding of what exactly has been said or represented between the entities about cost shifts on these issues.

MS. KAY: I'm sorry. I don't have a specific example or cite to give to you, but I believe that it was expressed at the August hearing and also in some filings in this docket that

they would look to the private agreements for cost allocation.

COMMISSIONER TEW: Is there reason to think that the rule as drafted today is going to trigger your joint use agreements?

MS. KAY: Well, ultimately it'll be a matter of interpretation of the contract. But our, our feeling is that because that argument is out there, we are compelled because of the significant costs that could be involved to bring it to your attention. And if, in fact, it is not the Commission's intent to have that provision put into play because of these rules, that that intent be expressed somewhere. Whether you like this particular language or not, you know, we would be, you know, willing to, you know, help work on different proposed language. But if that is not the intent of the Commission, then I think that there is a real fear that that is going to happen as a result of these rules.

COMMISSIONER TEW: I wanted to ask staff, and we've had some discussions about this probably numerous times now, about when and if our actions become mandatory. And I'm not sure about the exact language in the agreements. I think maybe the proposal here suggests that, the public authority language suggests perhaps how it's phrased in contracts, although I haven't myself looked at those.

It seems to me that after a plan is filed and the Commission either approves or doesn't approve or approves part

of the plan, that the Commission at that point would have the discretion to say whether or not something is considered mandatory. It seems to me that maybe in some cases we wouldn't want to say that every single thing in here is required to be done exactly as it's laid out to give some flexibility going forward to the parties who have to carry it out. Again, that's just my thoughts. I don't know what the other Commissioners think. But can you elaborate on when and if our actions become requirements that I think then might trigger these joint use agreements?

MR. HARRIS: Yes, ma'am. The way I would see it is similar to your view, that once the plans are filed, you all are going to be asked to vote. And the vote is where I think we start getting into this mandate language. If the vote is to approve the plans, including approve what they said they were going to do in the plans, that is probably a mandate. You're telling them to go and do it. We approved this; go do it. I think at that point when you're voting, you would have some discretion to basically say -- well, you know, and I don't want to make this analogy too strong, but somewhere along the opposite end of the continuum, which is ten-year site plans. We had that in Internal Affairs. They look good, they're determined to be suitable. That's the opposite end of the spectrum from a mandate. I don't know what that means. If you all get the storm hardening plans and you determine them

suitable, I don't know if that's a mandate or not. It certainly isn't some type of order to go do them probably. Whether the utility companies would be comfortable going forward and then incurring a lot of costs based on this suitability, I don't know.

But so you sort of, I think, are going to have a spectrum. You could sort of find the Ten-Year Site Plan idea of suitability. You could do the exact opposite, which is you will go and do these plans in this way on these dates with these costs, that would be a very prescriptive mandate, or somewhere in between. It could be that you approve the plans, a mandate, but then specifically list projects or costs or a section to the plan and say we are not ordering this particular section. We're ordering the concept of this section, but we're not specifically ordering what you've listed here. And so I think there will be a lot of flexibility. And the reason I can't give you a better answer is we don't know what the plans are going to say. We're hoping that they will be very detailed, but we don't know that. And so until we see the plans, until you see the plans and have the ability to vote on them, I don't think we can say for sure whether it's a mandate or not. If the plans are just we're going to go out and do good and we're not going to have anymore storm-related failures, thank you, and you say go do that, is that a mandate? You know, I don't know.

COMMISSIONER TEW: I agree. And the Ten-Year Site Plan analogy helps me somewhat too. I don't see that when we find plans as suitable as them being requirements, because many of the plants that are listed in those plans haven't even been approved by the Commission yet. Of course, it's for some time in the future. So I don't think you could call those plants listed in there requirements of the Commission. But ultimately it sounds like that that's something that can be dealt with at a later time. Although I understand the concerns with the language that BellSouth has proposed, it doesn't seem to me like voting on the rules that are before us today should in itself trigger the joint use agreements because there has been no requirement other than to file a plan. But, of course, correct me if I'm wrong, and I don't want to leave Mr. Butler out, so I would like to ask him to give any response on what I've said or what staff has said.

MR. BUTLER: Thank you, Commissioner Tew. I think that you and staff are viewing it the way that we would. You know, the mere direction to file a plan I don't think constitutes a declaration of public authority with respect to any particular project that would be undertaken, which is the level at which the dispute will arise, if it does, on, you know, who's responsible for the costs of those.

I think that if you take this in the direction we have heard from staff in our discussions on the current version

of the rule, that sort of hardening plan version of the rules that is intended where we're going to be providing you with some pretty detailed, you know, explicit proposals on what we're going to do where and when over a, you know, three-year period and then you end up telling us go do those particular projects, we want you to do that and that's required to implement our direction for hardening the systems within the state, you know, that does sound to me like a declaration of a public authority. You might end up finding that because of what we file or what you approve, that as you suggest there are areas in it where you say that part of this is discretionary and that might fall into more of a gray area. But I would guess I mostly would urge you to be doing what you need to do to encourage and implement hardening of electric distribution systems in Florida as the goal rather than trying to guess how the, you know, application or the implementation of your particular rule approach is going to affect interpretation of a contract. I mean, those contracts are going to be negotiated and resolved in a different forum, I believe, and I'm a little concerned that this process ends up getting kind of highjacked by a secondary consideration. This really ought to be about doing the best thing to harden electric distribution systems in Florida. I think that the language that was proposed and really kind of this discussion is detracting to some extent from that direction. I know you need to have the discussion,

but that's really the focus I'd like to see returned to the rules. Thank you.

CHAIRMAN EDGAR: Commissioner Tew.

COMMISSIONER TEW: Perhaps I should clarify too. I do think that that is the purpose of why we're here. But I also, as someone that's going to have to answer, I think, to telephone customers as well, and cable customers and customers of attachers, I think to the extent that we take action that ultimately results in a change to their bill, on their telephone bill, whatever bill it is, I think we have to be concerned about that. But I agree that we do not have jurisdiction to interpret private contracts, and I don't think that -- I think we're not intending to try to get into that business any time soon, but I think we do have to think about the implications of what we're doing on customers, whether they be electric customers or telephone customers or cable customers. And that's why I had a lot of concerns about this language here.

And to go a little bit farther, I don't know what the intent of the companies before us is about cost shifting and things like that, but I do think that there will be costs that should be paid for by telephone and cable attachers and other types of attachers too. And I do think that at some point some of these contracts are going to be triggered. I just have concerns about when they get triggered and how much of the

thing should be shifted to them.

With respect to the stay, for instance, I would hope that whatever improvements are done to the system are done in the most cost-effective way possible so that costs are reduced on both sides of that equation.

MR. BUTLER: I agree. One other thing I would just add, Commissioner Tew, in response to your interest in being sure you understand what the costs are going to be for all of the people affected, and that's a very legitimate concern for the Commission to have. Keep in mind that you're going to hear about that probably at least as much as you want to by the time this process is completed because there will be almost certainly presentations to you at an Agenda Conference where you are proposing agency action on these hardening plans. If anybody doesn't like what you do, there will be a hearing where you will hear more about it. And if people still don't like that, you're going to end up having a dispute to be resolved about particular applications of it. Where I think a great deal of the opposition to anything that the electric utilities file is going to be basically driven by concerns over the costs that other entities are going to have to bear as a result of the hardening plans. So that's going to be a thoroughly vetted subject in the course of the approval and implementation of the plans. Thank you.

COMMISSIONER TEW: I do have one other question.

This is about the second proposal that the attachers raised, that FCTA introduced. I heard Mr. Butler's concern about not being able to notice attachers that they didn't know were lawfully attached, and I agree with that; in fact, raised that same question. And would throw out the possibility of adding the word "simply known" in front of lawfully -- lawful attachers. Just because I don't think it's reasonable to expect you to notice attachers that you don't know exist and that are on your system lawfully.

I think that in the, in the situations that Mr. Gross has described that are probably subject to litigation, for instance, a judge may have ruled that the attacher gets to remain on the facilities at least for the course of the litigation, I think that in that case it will be known and that's probably more likely the case. But if there's some case out there where you didn't know, then I don't think you could reasonably be expected to notice. I'd just throw that out. It looks like Mr. Butler wants to respond to that, so I'd leave it up to the Chair.

MR. BUTLER: My, my response to that, Commissioner Tew, is that if you go down that route -- again, our recommendation is simply not to incorporate the concept. But if you feel that it would be appropriate, then I think better than just known, because then one gets into the question of how known and how proved known, et cetera, is something like, you

know, that has provided advanced written notice or something to that effect.

I'm being handed by Mr. Gross something he would like me to agree to. Let me see what it says here. He has written "Any third-party attacher that wishes to provide input under this subsection may provide the utility contact information for the person designated to receive communications from the utility." I don't know if exactly that language fits, but that's the type of concept I'm talking about. That if we had something like this where it's expanded to the larger universe of lawful attachers, that it would be something that is triggered by our having received advanced written notice of their desire to get information about those sorts of, you know, plans or relocations. Because, otherwise, I think the "known" helps, but it still leaves open sort of the ambiguity as to how it's known and how we ended up showing that we did or didn't know about it. So that would be my response.

CHAIRMAN EDGAR: Mr. Gross, do you have copies that you want to distribute?

MR. GROSS: Yes.

CHAIRMAN EDGAR: Mr. Gross, let's give our staff a minute to look at this, and then I'm going to ask you briefly to speak to it.

MR. GROSS: Madam Chair, may I make a quick comment while staff is reviewing that?

CHAIRMAN EDGAR: You may.

MR. GROSS: I've taken a quick look at 25-6.034(1), relocation rule, and .034(2), and I've counted seven references to third-party attachers. The only one that imposes the limitation of existing agreements is the right of the attacher to provide input. In the two dispute resolution provisions in each one of those rules there is no requirement or restriction of that right to third-party attachers with existing agreements. And I understand the terms "lawful attachment" as many terms in legislation and rules are subject to interpretation. And these rules, while excellent, are replete with terms that could be subject to interpretation. And in those instances there is no restriction, and I imagine there may be some questions on the part of an IOU in terms of their obligations to third-party attachers when there's no further defining language with respect to that.

We don't have any problem with that, and we just think that it would be perhaps somewhat disparate treatment, to put it nicely, as far as the right to receive input versus other rights on the part of the attachers and also the obligations of the IOUs. I would hope that this additional language could solve any concerns.

MR. BUTLER: Madam Chairman.

CHAIRMAN EDGAR: Mr. Butler.

MR. BUTLER: My distinguished colleagues have pointed

out to me something I missed in reading this that certainly would be a concern to us. I hope that Mr. Gross would not object to this change.

It says that, you know, a third-party attacher wishing to receive input may provide the utility contact information. We would want that to say "shall" because clearly we wouldn't want to be in the position where they only have the opportunity to do so.

MR. GROSS: Madam Chair, we would have no objection to that change.

CHAIRMAN EDGAR: Duly noted.

Commissioner Carter.

COMMISSIONER CARTER: Madam Chairman, if I might be recognized to make a comment and then maybe to reiterate something that I think that staff said that I believe that I understood in reading and both when I asked Mr. Trapp. It seems like we're dancing like a drunk man in the dark on this rule.

On February 27th of '06 we approved the pole inspection, vegetation management regimen. On April 17th of '06 and May 19th of '06 and July 14th of '06 we had rule development workshops on this matter. On June 26th -- June 20th of '06 we voted to propose the rule amendments. Right? On July 24th the electric cooperative filed a motion to bifurcate the process. On October 4th we had a hearing on it,

we voted to adopt a new rule. On August 31 a statement of estimated regulatory costs was provided. On July 28th FCTA filed a petition before DOAH. And here we are today on December 4, 2006. It seems like we're pretty much, like I say, either we're dancing like a drunk man in the dark or we're lollygagging on the rule.

Now from my reading of the rule and my question to Mr. Trapp, it says, as presented, the proposed rule as presented, there's a plan that's required by the IOUs that would answer who, what, when, where, why and how much the costs would be prior to any process taking place. Secondly, there will be a review of that plan by the PSC, that would be us, including staff. And in the context of reviewing that plan, a major component of that plan would be the costs, whether the cost applies to the attachers, the IOUs or anybody else, Lottie, Dottie, everybody. And it seems like to me, Madam Chairman and my fellow Commissioners, is that staff has anticipated these questions, they've had an open dialogue with all the parties concerned and it's time now to move forward. Thank you.

CHAIRMAN EDGAR: Thank you, Commissioner Carter.

We've been accused of a lot of things, but this is the first time I think it's lollygagging.

(Laughter.)

Commissioner Deason, did you have a question?

COMMISSIONER DEASON: No. I agree with Commissioner Carter. It's time to move forward. I'm ready to make a motion.

CHAIRMAN EDGAR: Commissioner Deason, you're recognized.

COMMISSIONER DEASON: I would move staff's recommendation with the modification they suggested today on Page 32, deleting the phrase on Line 15 and 16, and would also incorporate the Gross language that we just discussed.

COMMISSIONER CARTER: Second the motion.

CHAIRMAN EDGAR: Commissioners, discussion?

COMMISSIONER ARRIAGA: Question.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Commissioner Deason, clarification, please. The last part, you're proposing to include the piece of paper just handed out by Mr. Gross.

COMMISSIONER DEASON: That's right, and with the change of "may" to "shall."

COMMISSIONER ARRIAGA: "May" to "shall." Thank you.

MR. HARRIS: And, Commissioner, did you want to include the expedited dispute process?

COMMISSIONER DEASON: That was not part of my motion.

MR. HARRIS: Okay. I'm sorry.

COMMISSIONER DEASON: But I'm not opposed to that. If a Commissioner wishes to pursue that, I'm certainly willing

to entertain that.

COMMISSIONER CARTER: Madam Chairman.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: I don't think it would be appropriate, in view of what staff has said, is that that process is already available to us. So I don't see a necessity for modifying the motion to that effect with the expedited language in it.

CHAIRMAN EDGAR: And, Commissioner Deason, I want to make sure that I am clear as well with, with your motion, and I appreciate you putting it forward.

The language that had been suggested regarding 45 days prior to filing, that is not a part of your motion is my understanding, but I want to make sure I'm clear.

COMMISSIONER DEASON: The 45-day suggestion is not part of my motion.

CHAIRMAN EDGAR: Thank you, Commissioner Deason.

Commissioners, any further questions, clarification or discussion before I ask for a vote?

COMMISSIONER ARRIAGA: Question.

CHAIRMAN EDGAR: Commissioner Arriaga.

COMMISSIONER ARRIAGA: Commissioner Deason again, I'm sorry. The expedited part suggested by Commissioner Carter is not included.

COMMISSIONER CARTER: Not suggested by me.

COMMISSIONER DEASON: Commissioner Carter did not suggest --

COMMISSIONER ARRIAGA: No. He suggested not to include it, that's what I'm saying.

COMMISSIONER DEASON: That's correct. And my motion does not include anything to --

COMMISSIONER ARRIAGA: Okay. Perfect. It's clear. It's clear. Thank you.

MR. COOKE: Madam Chairman, can I just be clear?

CHAIRMAN EDGAR: Mr. Cooke.

MR. COOKE: The word "lawful" is part of your motion, the insert?

COMMISSIONER DEASON: It was my understanding, and I'm glad we're clarifying all of this, is that this language would be instead of reference to a lawful attacher.

MR. COOKE: Okay. Thank you.

CHAIRMAN EDGAR: And that was my understanding as well. But, Mr. Cooke, I appreciate the question.

Commissioner Tew.

COMMISSIONER TEW: Just one clarification question of staff. If a party wants to request a stay, we still have the ability to deal with that on an expedited basis and a party presumably has an ability to ask for it to be resolved on an expedited basis.

MR. HARRIS: Yes, ma'am.

CHAIRMAN EDGAR: Commissioners, further questions? Okay. And, Commissioner Deason, my understanding of the motion is that it does incorporate all nine issues that are included in this item; is that correct?

COMMISSIONER DEASON: That is correct, Madam Chairman.

CHAIRMAN EDGAR: Thank you, sir.

Okay. Commissioners, we've had good discussion. I'd say thank you to all of the parties for your participation through this lengthy process and for the collaboration that we've had, and thank you to our staff.

Commissioners, all in favor of the motion, say aye.

(Unanimous affirmative vote.)

Opposed? Show the motion adopted. Thank you.

(Agenda Item 5 concluded.)

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, CRR, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 11th DAY OF DECEMBER, 2006.

Linda Boles

LINDA BOLES, CRR, RPR
FPSC Official Commission Reporter
(850) 413-6734