

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 408
 SPONSOR: Committee on Regulated Industries & Senator Smith
 SUBJECT: Interruption of Electric Utilities
 DATE: April 19, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable/CS
2.	Forgas	Johnson	JU	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill gives immunity to an electric utility for the good-faith compliance with a law enforcement or judicial order to interrupt electric service for the purpose of aiding law enforcement personnel in the performance of their duties, so long as the utility and its personnel exercise reasonable care in their actions.

The bill creates section 768.138 of the Florida Statutes.

II. Present Situation:

Currently, there is no statutory immunity for interrupting electric service. An electric utility's liability for injuries and damages arising from an interruption of electric service depends on the nature of the relationship between the injured party and the electric utility. If the party sustaining injury (economic or non-economic) is a customer of the electric utility, the liability of the electric utility will be based upon the terms of the contract between the customer and the electric utility.

For example, in *Landrum v. Florida Power & Light Co.*, 505 So.2d 552 (Fla. 3rd DCA 1987), the customers alleged that FP&L had contracted to supply electricity to their home and that, due to FP&L's negligent termination of service, a candle which was being used for illumination caused a fire, thereby resulting in personal and property damages. The court ruled that the customer's complaint failed to state a cause of action for negligence because FP&L's tariff operated as a limitation of liability for ordinary negligence.¹ The court held that "...a tariff validly approved

¹ A tariff is a document filed by the electric utility with the Public Service Commission that basically sets forth the rate the utility desires to charge customers, as well as the manner and methods of how it will provide service. The Public Service Commission must approve the tariff.

by the Public Service Commission, including a limitation of liability for ordinary negligence, resulting in the interruption of the regular supply of electric service, is valid.” *Landrum*, at 554-555.

If the contract between the customer and the electric utility, or the tariff approved by the Public Service Commission, does not contain a limitation on liability, then the electric utility will owe a duty of reasonable care to the customer. The failure to supply electric service to one legally entitled thereto constitutes a tort for which the electric utility may be liable in damages for all injuries proximately resulting from its omission. *See, Bromer v. Florida Power & Light Co.*, 45 So.2d 658 (Fla. 1949). This principle applies whether or not a contract exists between the customer and the electric utility. *See, Woodbury v. Tampa Waterworks Co.*, 57 Fla. 243, 249, 49 So. 556 (1909).

However, a different rule may apply in situations involving an injury to a non-customer. In *Arenado v. Florida Power & Light Co.*, 541 So.2d 612 (Fla. 1989), the Florida Supreme Court tacitly approved the ruling of the Fourth District Court of Appeal in a case where a non-customer alleged that the electric utility’s negligence caused the non-customer to sustain injuries in an automobile accident. Specifically, the non-customer alleged a traffic signal at an intersection was inoperative due to the negligence of the electric utility, thereby resulting in the accident. The Fourth District Court of Appeal ruled that the electric utility did not owe a duty to the non-customer and, accordingly, dismissed the non-customer’s lawsuit.

The Florida Public Service Commission’s rules require electric utilities to make all reasonable efforts to prevent interruptions of service and, when such interruptions do occur, to attempt to restore service within the shortest time practicable consistent with safety. *See, Rule 25-6.044(2), F.A.C.* There is no absolute guarantee of uninterrupted service as circumstances beyond a utility’s control can cause problems at a generation plant or with transmission wires that can create a power interruption. Additionally, Rule 25-6.105, F.A.C., provides for circumstances where the utility may discontinue service, including: the customer’s failure to pay his bill; to provide adequate space for the meter; or the utility’s noncompliance with state or municipal law.

An electric utility can interrupt power in a number of ways, each of which affects a different size area and a different number of customers. If the utility can interrupt the power at a specific customer’s meter, it will affect only that customer. If this cannot be done, which may be the case in an emergency, the power interruption necessarily will affect the electric supply to more customers. If power can be interrupted at a transformer, it may affect a block or a neighborhood. If it must be done at a substation, the power supply will be interrupted over a larger area, affecting the power supply to more people. However, depending on the emergency situation, some of these people may be evacuated from the area in advance of the power interruption.

Currently, s. 934.15, F.S., provides immunity to a telephone company that interrupts service pursuant to an order from law enforcement. The statute provides a number of conditions. First, the supervising law enforcement officer at the scene of the incident must have reasonable cause to believe:

- That a person is holding one or more hostages,

- That a person has barricaded herself or himself and taken a position of confinement to avoid apprehension,
- That there is the probability that a subject about to be arrested will resist with the use of weapons, or
- That a person has barricaded herself or himself and is armed and is threatening suicide.

Second, the telephone lines must be cut, rerouted, or diverted for the purpose of preventing telephone communications between the suspect and any person other than a law enforcement officer or the law enforcement officer's designee. Third, the cutting, rerouting, or diverting of telephone lines must be technically feasible and capable of being performed without endangering the lives of telephone company or other utility personnel.

The statute provides that the good faith reliance by a telephone company on an oral or written order to cut, reroute, or divert telephone lines given by a supervising law enforcement officer constitutes a complete defense to any civil, criminal, or administrative action arising out of such an order. There is no case law interpreting any of the provisions of s. 934.15, F.S.

III. Effect of Proposed Changes:

The bill creates s. 768.138, F.S., to give civil, criminal, and administrative immunity to an electric utility for its good-faith compliance with a law enforcement or judicial order to interrupt electric service for the purpose of aiding law enforcement personnel in the performance of their duties, so long as the utility and its personnel exercise reasonable care in their actions. This appears to give immunity from any action arising from the resulting lack of electric service, but not from negligence in the act of cutting the electricity.

The bill's limitation on liability may actually create liability to customers where none currently exists. If an electric utility has a tariff approved by the Public Service Commission that limits the liability of the utility for ordinary acts of negligence, the bill may negate that limitation of liability through its use of the phrase "... as long as the electric utility and its personnel exercise reasonable care in their actions." This language is the standard by which negligence is judged in civil actions.

Additionally, that same language in the bill may also establish a duty to noncustomers where none currently exists. As stated previously, the Florida Supreme Court's decision in *Arenado* tacitly approved the Fourth District Court of Appeal's ruling that an electric utility owes no duty to a non-customer. It could be argued that the bill, through its use of the "reasonable care" language, now creates a statutory duty to those non-customer individuals and entities who are adversely affected when a utility fails to use reasonable care in interrupting or disconnecting electric service. For example, assume a law enforcement officer directs the utility to disconnect service to a particular location. In carrying out this directive, the utility employee shuts off power to the wrong location and causes several traffic lights to be inoperative, resulting in an accident. Arguably, the person (non-customer) injured in the accident could argue that the employee did not "exercise reasonable care" in shutting off the power, thereby potentially making the utility liable under the bill.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.