

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Communications, Energy, and Public Utilities Committee

BILL: CS/SB 1104

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Fasano

SUBJECT: Standards of Service for Investor-Owned Utilities

DATE: March 25, 2010 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | McGuire | Caldwell | CU | Fav/CS |
| 2. | | | GA | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill requires the Florida Public Service Commission (PSC or commission) to adopt rules to establish specific standards of reasonable and reliable service for retail residential customers that investor-owned electric and water and wastewater utilities (utility) must adhere to. The PSC is directed to evaluate utilities' annual reports for pertinent information in developing such rules and is required to use this information to establish a threshold for when a utility's service is considered to be unreasonable and unreliable.

The bill also requires the PSC to investigate all retail residential customer claims of inadequate or unreliable service and make a determination as to whether the utility in question has failed to meet standards adopted by the commission as required by the bill. When a violation has been committed, the PSC is authorized to impose a penalty for each day the violation continues. Collected penalties are to be deposited into the General Revenue Fund.

The bill directs the PSC to order utilities found in noncompliance with standards to compensate affected customers who have filed a claim with the commission for the failure to provide reasonable and reliable service to the customer.

The bill provides that any penalties or compensation paid by utilities under the provisions of the bill are prohibited from being recovered through ratepayers.

The bill provides an effective date of July 1, 2010.

The bill creates sections 366.042 and 367.112 of the Florida Statutes.

II. Present Situation:

Investor-owned Electric Utilities

Under s. 366.03, F.S., it is the responsibility of each public utility¹ to furnish its customers with reasonably sufficient, adequate, and efficient service upon terms required by the PSC.

Section 366.05 (1), F.S., gives the PSC authority to prescribe standards of quality and measurements for the purpose of ensuring the reliable provision of service. The PSC currently has rules in place regarding standards of construction, improvements to infrastructure, and safe construction. There are no PSC rules specifically stating what constitutes a reasonable, reliable, and adequate level of electric service.

- Service is defined by PSC Rule 25-6.003, F.A.C., as the “supply by the utility of electricity to the customer, including readiness to serve and availability of electrical energy at customer’s point of delivery . . . whether or not utilized by the customer.”
- Rule 25-6.034, F.A.C., relates to standards of construction that utilities are to adhere to. It requires that the facilities of each utility are to be constructed, installed, maintained, and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.
- Rule 25-6.0342, F.A.C., relating to electric infrastructure storm hardening is intended to ensure the provision of safe, adequate, and reliable electric transmission and distribution of service. It requires the strengthening of critical electric infrastructure as to increase the ability of transmission and distribution facilities to withstand extreme weather conditions and reduce restoration costs and outage times to customers associated with extreme weather conditions.
- Rule 25-6.0345, F.A.C., relates to standards of safety for construction of new transmission and distribution facilities. The rule requires that utilities must, at a minimum, comply with the standards of the National Electrical Safety Code.

In s. 366.05 (7), F.S., the PSC is given authority to require reports as necessary from utilities in order to assure the development of adequate and reliable energy grids. Under this authority, the PSC adopted rule 25-6.0455, F.A.C., which requires utilities to submit an Annual Distribution Service Reliability Report to the commission. The report is to include information on factors measuring reliability such as number of outage events, identification of the underlying cause of each event, average duration of outage events, and average-service restoration time for outage

¹ As defined in s. 366.02, F.S., ‘public utility’ is used in this section to mean suppliers of electricity or gas to or for the public within the state of Florida, expressly excluding municipal and cooperative utilities.

events. The PSC reviews these reports annually to assess trends in utility reliability, identifying any declines in service reliability that may require action.

Utilities are required by the commission under Rule 25-6.044(3), F.A.C., to make all reasonable efforts to prevent interruptions of service, and, when interruptions occur, to attempt to restore service within the shortest time practicable consistent with safety.

Section 366.04(1), F.S., outlines the duty of the PSC to hear service complaints, if any, presented by customers and the public during rate proceedings. These complaints are also to be taken into consideration in setting just rates.

The PSC currently fields customer complaints through its call center and through online submissions. Once the PSC has been contacted by a customer with a complaint, the Consumer Assistance Bureau within the PSC acts as a third-party mediator between the utility and consumer, working to resolve the complaint. Customers are also granted the opportunity to present complaints before the PSC during scheduled rate hearings, and commissioners are directed to take these complaints under consideration in setting fair and just rates under s. 366.041(1), F.S. Each customer complaint received by the PSC is assigned a category after the complaint is resolved. Reliability related complaints are those pertaining to trees, safety, repairs, quality of service, or service interruptions.²

The PSC has authority under s. 366.095, F.S., to impose a penalty of not more than \$5,000 when a utility has shown refusal to comply with or has willfully violated any PSC rule or order. The penalty may be imposed for each day a violation continues or is not resolved.

In addition, s. 366.04(1), F.S., states that the PSC has jurisdiction to regulate and supervise the rates and services of each public utility. In fixing the just, reasonable, and compensatory rates of utilities, the PSC is authorized in s. 366.041(1), F.S., to take the following criteria into consideration:

- efficiency, sufficiency, and adequacy of the facilities provided and services rendered;
- cost of providing service; and
- value of service to the public.

Water and Wastewater Utilities

Water and wastewater utilities in Florida are subject to two types of regulation: 1) rates and service; and 2) health and welfare. The PSC, or in some cases the counties, regulate utilities with respect to rates and services, including quality of service, while DEP has jurisdiction over utilities with respect to permitting and the quality of water product received relating to public health and welfare.

Under the Water and Wastewater System Regulatory Law, s. 367.011, F.S., the commission is granted exclusive jurisdiction over each water and wastewater utility with respect to its service and rates. Exemptions to commission jurisdiction are provided in s. 367.022 (2), F.S., including

² Review of Florida's Investor-Owned Electric Utilities' Service Reliability in 2008, Florida Public Service Commission, http://www.psc.state.fl.us/utilities/electricgas/docs/Review_Fl_Investor_Owned_Electric_Utilities_Reliability_2008.pdf

an exemption for “systems owned, operated, managed, or controlled by governmental authorities.” Currently, 36 counties in the state of Florida fall under the jurisdiction of the commission for water and wastewater utilities. Utilities within the 31 counties not under commission jurisdiction are regulated by the counties themselves.³

Section 367.121(1)(a), F.S., gives the commission authority to prescribe standards of quality and measurements, and service rules, which are to be observed by each utility, except to the extent such authority is expressly given to another state agency. DEP is given authority under s. 403.853(1)(a)1., F.S., to adopt and enforce standards for drinking water quality, which must at minimum meet national primary and secondary drinking water regulations in effect at such time.

Section 367.111(1), F.S., provides that it is the duty of water and wastewater utilities⁴ to provide customers with safe, efficient, and sufficient service as proscribed by part VI of chapter 403 (DEP water supply standards) and parts I and II of chapter 373 (state water resource plan and permitting of consumptive uses of water), or rules adopted pursuant thereto.

PSC Rule 25-30.250, F.A.C., regarding continuity of utility service, states that each utility shall make all reasonable efforts to provide continuous service, reestablishing service with the shortest delay possible consistent with safety when interruptions do occur. Utilities are required to notify customers in advance of scheduled interruptions. Under this rule, when a customer’s water or wastewater service is interrupted and remains out of service for a period greater than 48 hours after the utility has been notified by the customer of the interruption, the utility is required to refund the customer the pro-rata portion of the month’s charges for the period of days during which service was not provided. Utilities are allowed to issue this refund as a credit toward the customer’s subsequent bill for service.

The PSC has the authority under s. 367.121(1)(c), F.S., to require regular or emergency reports from a utility as the commission deems necessary. Using this authority, the PSC adopted Rule 25-30.110, F.A.C., which requires utilities to submit annual reports on forms prescribed by the commission. These reports detail the financial information of utilities. The reports do not currently address factors of service reliability similar to the information required from electric utilities in their annual distribution service reliability reports.

Utilities are required under Rule 25-30.251, F.A.C., to keep records of all interruptions in service which affect 10 percent or more of their customers. These records are to reflect the cause of the interruption, the date, time, duration, and remedy of the interruption, and any steps taken to prevent recurrence of the interruption. Under this rule, utilities are also required to notify the commission within one work day of when such an interruption has been reported to the utility and within one work week after service has been restored to customers. Utilities are required to file with the Commission a complete report of the record of interruption.

³ Counties elect whether they will be subject to commission jurisdiction for water and wastewater utilities through adoption of a resolution by the board of county commissioners in such counties, declaring the county shall be subject to the provisions of Chapter 367, F.S. According to s. 367.171(1), F.S., counties can, by resolution, rescind any prior resolution or ordinance imposing commission jurisdiction on the county after 10 continuous years under the jurisdiction of the commission.

⁴ For purposes of this section, “utility” is defined in s. 367.021(12), F.S., as a water or wastewater utility who is providing or proposes to provide water or wastewater service to the public for compensation.

Utilities are required under PSC rule 25-30.355, F.A.C., to fully investigate all customer complaints and respond fully to all customer requests. They are also required by PSC rule 25-30.130, F.A.C., to keep records of all signed, written complaints received from customers. When a complaint has not been fully resolved as perceived by the customer, the PSC also fields complaints for water and wastewater utilities through both its online submission form and consumer assistance call center.

Section 367.161, F.S., grants the commission authority to impose upon any entity subject to its jurisdiction under chapter 367 found to have refused to comply with or to have willfully violated any provision of chapter 367 or any lawful rule or order of the commission, a penalty of not more than \$5,000 for each offense. Each day the violation continues is considered a separate offense. DEP is also granted authority to impose penalties on utilities for violations under s. 403.860(1) and (2), F.S. Section 403.860(3), F.S., authorizes DEP to initiate an administrative proceeding to establish liability and require a utility to take corrective action.

Additionally, under s. 367.081, F.S., the commission is directed to fix rates, which are just, reasonable, compensatory, and not unfairly discriminatory. In establishing such rates, the commission is required to take the value and quality of the service and the costs of providing the service.

PSC Rule 25-30.433, F.A.C., states that the commission shall make a determination of the utility's quality of service in every rate case proceeding, derived from 3 separate components of utility operation:

- quality of utility's product (water and wastewater);
- operational conditions of utility's plant and facilities; and
- utility's attempt to address customer satisfaction.

DEP and county health department officials' testimony concerning quality of service as well as the testimony of a utility's customers shall also be considered in the PSC's determination of rates.

III. Effect of Proposed Changes:

This bill directs the PSC to establish by rule standards of reasonable and reliable service for both electric and water and wastewater utilities. In developing such rules, the PSC is directed to analyze annual reports submitted by the utilities, along with other sources of information.

The bill also requires that the PSC investigate all claims of inadequate or unreliable service filed by retail residential customers to determine if the utility in question has failed to meet the standards adopted as required by this bill. If the PSC makes a determination that the utility has indeed failed to meet adopted standards, the PSC is given authority to impose a penalty of not more than \$5,000 for each day the utility continues to be in violation of the standards.⁵ All penalties collected are to be deposited into the General Revenue fund.

⁵ Under some circumstances this penalty may be cumulative to the existing \$5,000 penalties provided in ss. 366.095 and 367.161, F.S.

The bill creates liability of a utility for loss of service to customers. Upon determining that a utility is in noncompliance with adopted standards, the PSC is directed to order the utility to compensate customers for failure to deliver reasonable and reliable service an amount not to exceed \$100 for the month a violation occurred.

The bill also states that any penalties or compensation paid to the PSC or to customers under the provisions of the bill may not be recovered through ratepayers.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact to the private sector from this bill is indeterminate. Utilities would be directed by the PSC to compensate customers for compensable loss of services an amount not to exceed \$100 for a month in which services have been determined to be below standards.

Greater reliability costs more, as more maintenance and upkeep will be required of utilities to ensure reliable service. This could adversely affect customer rates, as the PSC is to take into consideration the cost of services when determining rates.

C. Government Sector Impact:

There is potential for positive revenue impact from penalties deposited into general revenue. However, there is potential that additional staff may need to be hired by the PSC in order to handle increased workload caused by investigations into customer complaints.

VI. Technical Deficiencies:

Lines 9-10 and 64 of the bill refer to investor-owned electric utilities' "annual distribution reliability report," which is required by PSC rule. However, the correct name of this report is the "Annual Distribution Service Reliability Report."

Lines 30-31, 32, 39, 44-45, 110, 113-114, 134, 138, 145 and 147 of the bill refer to water and wastewater utilities as "investor-owned utilities." Neither the PSC, DEP, nor the Florida Statutes refer to these utilities as "investor-owned." To stay consistent with ch. 367, F.S., and PSC rules, the term utility should be used.

Line 114 of the bill directs the PSC to review each water and wastewater utility's "annual distribution reliability report" in establishing standards and a threshold for what is considered unreasonable and unreliable service. The PSC does not currently require water and wastewater utilities to submit such an annual report.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities on March 23, 2010:

The bill provides additional guidance to the PSC as to what factors should be considered in establishing rules regarding standards for reasonable and reliable service for utilities. The bill expands the provisions of the bill from electric utilities to include water and wastewater utilities. The bill limits the number of claims a customer may file with the commission to one within a 30-day period. The bill also defines \$100 as the maximum that shall be paid by a utility to a customer as compensation for the failure of the utility to provide reasonable and reliable service. This compensation is to be paid for the given month in which the utility is determined to be in violation of standards adopted by the commission under the provisions of the bill.

- B. **Amendments:**

None.