

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 1186

INTRODUCER: Communications, Energy, and Public Utilities and Senator Bennett

SUBJECT: Renewable Energy

DATE: April 14, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.			EP	
3.			WPSC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill deletes an obsolete requirement that the Public Service Commission (PSC or commission) adopt rules for a renewable portfolio standard. It also requires that the commission provide for full cost recovery by an investor-owned utility (IOU) for certain renewable energy projects and for compliance with any future federal renewable energy requirements.

The bill substantially amends sections 366.92 and 366.8255 of the Florida Statutes.

II. Present Situation:

Subsection 366.92(3), F.S., was enacted in 2008. It requires the commission to adopt rules for a renewable portfolio standard (RPS) requiring each provider to supply renewable energy to its customers directly, by procuring, or through renewable energy credits. It provides that the rule cannot be implemented until ratified by the Legislature and requires the commission to present a draft rule for legislative consideration by February 1, 2009. The PSC presented its Draft

Renewable Portfolio Standard Rule report on January 30, 2009.¹ RPS legislation was filed in the 2009 Regular Session but did not pass. The language is now obsolete as the PSC has completed its report and the legislative review has been accomplished. Additionally, should any legislator wish to use the PSC recommendations as the basis for future legislation, it remains available.

Subsection 366.92(4), F.S., requires the PSC to provide for full cost recovery under the environmental cost-recovery clause of all reasonable and prudent costs incurred by investor-owned utility (IOU)² for renewable energy projects that are zero greenhouse gas emitting at the point of generation, up to a total of 110 megawatts statewide, and for which the provider has secured necessary land, zoning permits, and transmission rights within the state. The costs must be deemed reasonable and prudent for purposes of cost recovery so long as the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate to the location of the facility. Pursuant to this subsection, Florida Power and Light is constructing three solar projects: a 25 megawatt solar photovoltaic project in Desoto County; a 75 megawatt solar thermal project co-located with an existing combined-cycle power plant in Martin County; and a 10 megawatt solar photovoltaic project located at Kennedy Space Center.

Section 366.8255, F.S., provides for IOU recovery of environmental compliance costs. The term “environmental compliance costs” includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations. The term “environmental laws or regulations” includes all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment.

To recover these costs, an IOU must file a petition with the PSC describing the utility's proposed environmental compliance activities and projected environmental compliance costs. If approved, the commission allows recovery of the utility's prudently incurred environmental compliance costs through an environmental compliance cost-recovery factor that is separate and apart from the utility's base rates. The environmental compliance cost-recovery factor must be set periodically, but at least annually, based on projections of the utility's environmental compliance costs during the forthcoming recovery period. The environmental compliance cost-recovery factor must provide for periodic true-up of the utility's actual environmental compliance costs with the projections on which past factors have been set, and must further require that any refund or collection made as part of the true-up process include interest.

¹http://www.floridapsc.com/utilities/electricgas/RenewableEnergy/2009_FPSC_Draft_RPS_Rule.pdf#xml=http://www.psc.state.fl.us/search/pdfhi.aspx?query=renewable+portfolio&pr=default&prox=page&rorder=500&rprox=500&rdfreq=500&rwfr eq=500&rlead=500&rdepth=0&sufs=0&order=r&mode=&opts=&cq=&id=49833a9511

² Subsection 366.92(2)(b), F.S., defines the term “provider” to mean a “utility” as defined in s. 366.8255(1)(a), F.S., which defines this term to mean “means any investor-owned electric utility that owns, maintains, or operates an electric generation, transmission, or distribution system within the State of Florida and that is regulated under this chapter.”

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 366.92, F.S., on renewable energy. The bill deletes obsolete language requiring the PSC to adopt rules establishing a renewable portfolio standard and provides legislative intent.

The bill also provides that an IOU can get full cost recovery for renewable energy projects when costs are in excess of the IOU's full avoided costs.³ To obtain the renewable resources, the IOU can choose to build renewable energy resources, convert an existing fossil fuel generation plant, or purchase renewable energy. Each IOU has the sole discretion to select which option to pursue and to determine the type and technology of the renewable resources that it elects to build.

The IOU can recover all reasonable and prudent costs under the environmental cost recovery clause. Costs are to be deemed to be prudent if the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate for the type of renewable energy resource and appropriate to the location of the facility. Recoverable costs include, but are not limited to, the following:

- For construction of a renewable energy facility, costs of the siting, licensing, engineering, design, permitting, construction, operation, and maintenance of the facility and associated transmission facilities by the provider, including, but not limited to, all capital investments, including rate of return and any applicable taxes and all expenses, including operation and maintenance expenses;
- For conversion of an existing facility, the reasonable and prudent costs for conversion, including the costs of retirement of the fossil fuel generation plant;
- For the purchase of capacity and energy from new renewable energy resources, all reasonable and prudent costs associated with the purchase.

These provisions implicitly allow a return on equity in a newly-constructed renewable energy facility, without going through a rate case to add this new facility into rate base, as is required with all other new generation facilities.

The PSC is required to allow full cost recovery of the revenue requirements, including all reasonable and prudent costs incurred, over the entire useful life of the renewable energy resource using traditional declining balance amortization through the environmental cost-recovery clause. The PSC must compute these costs using a methodology that averages the revenue requirements over the projects or contracts economic lives.

Recovery of costs set forth above in amounts in excess of full avoided cost for any calendar year cannot exceed 2 percent in 2010 and 2011, 3 percent in 2012, or 4 percent in 2013 and thereafter of the investor-owned utility's total revenue from retail sales of electricity for the calendar year 2009.

³ The full avoided costs standard comes from s. 366.051, F.S., which requires that utilities purchase electricity from a cogenerator or small power producer at a rate equal to the purchasing utility's full avoided costs. A utility's full avoided costs are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from the cogenerator or small power producer the utility would generate itself or purchase from another source.

Costs incurred by a provider in 2010 for Florida renewable energy resources for which construction is commenced or for renewable energy purchased on or after the effective date of this act are to be counted toward and included in the calculation of the cost cap. Costs for renewable energy resources approved by the commission for cost recovery through the environmental cost recovery clause before the effective date of this act are not to be subject to or included in the calculation of the cost cap.

“If a majority value of the energy-producing components incorporated into such projects are manufactured or assembled within this state” in addition to full cost recovery and not subject to the percentage-of-revenue cap, the IOU also gets a return on equity of not less than 50 basis points above the top of the range of the provider’s last authorized rate of return on equity, approved by the commission for energy projects. This allows the IOU to not only recover a return on equity without going through a rate case, as discussed above, but to recover at the top of the range of rates of return, plus 50 basis points on top of that.⁴ It is unclear why an IOU would get paid more, by its ratepayers, as a result of the actions of a third party. Alternatively, this provision may be intended to compensate the IOU for its actions in assembly of the framework of a solar photovoltaic system and the attaching of the cells to this frame, or the assembly of the components of a concentrated solar thermal system. If so, it is unclear why this assembly deserves a greater rate of return than the assembly of the components of a fossil-fuel plant into a functioning whole.

The bill also requires that the PSC allow an IOU to recover all reasonable and prudent costs incurred to comply with any future federal renewable portfolio standard, including costs to purchase renewable energy credits or alternative compliance payments. These costs are not included in the percentage-of-revenue cap.

The bill provides that its provisions are not to be construed to:

- Impede or impair an IOU’s full cost recovery of all reasonable and prudent costs incurred for renewable energy projects approved by the commission as eligible for cost recovery through the environmental cost recovery clause before the effective date of this act;
- Require an IOU to build Florida renewable energy resources, convert existing fossil fuel generation plants to a Florida renewable resource, or purchase renewable energy; or
- Require an IOU to contract for generation at a price above its avoided cost if doing so would be inconsistent with or violate the Public Utility Regulatory Policies Act of 1978, as amended.

If, however, an IOU chooses to pay costs for purchased power above its full avoided costs, the seller is required to surrender to the IOU all renewable attributes of the energy being purchased. Presumably the IOU would then sell these attributes using a renewable energy credit. The bill does not provide for any sharing of the revenues from this sale of attributes (which ratepayers have paid for through full cost recovery) among ratepayers and shareholders.

Section 2 of the bill amends s. 366.8255, F.S., to provide for recovery through the environmental cost recovery clause of the cost of compliance with “any federal or state law that requires an

⁴ A basis point is equal to 1/100th of a percentage point; so an additional 50 basis points on a rate of return would increase the percentage return by half of a percent.

electric utility to provide electricity from renewable energy.” It is unclear whether this includes only a direct, explicit requirement or also includes an indirect requirement, such as a law requiring a reduction in carbon emissions. The bill expressly provides for recovery of “costs or expenses prudently incurred to comply with any environmental laws or regulations requiring that any portion of the electric utility’s energy sales, demand, or other measures of the provision of electricity to its customers be derived from renewable energy, however defined, either produced by the electric utility itself or purchased from another source, or through credits purchased to comply in whole or in part with such provisions, including costs or expenses associated with setting up and participating in market or other mechanisms for trading such renewable energy credits.” These costs are not included in the percentage-of-revenue cap.

Section 3 provides that 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. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill should provide an incentive for IOUs to increase the amount of renewable energy within their total amount of electricity produced or purchased. This would help achieve the benefits such as minimizing dependence on fossil fuels and improving the environment.

Ratepayers will pay increased prices so that an IOU can obtain full cost recovery for building a renewable energy facility; converting an existing facility into a renewable energy facility; or purchasing renewable energy. There is no oversight of the determination to take such an action or of the selection of the technology to be used, and only limited oversight of the resulting costs. The costs of construction expressly include a return on equity for the facility without going through a rate case to add that facility to rate base as is usually required. The total amount of these costs that can be recovered in

any calendar year cannot exceed 2 percent in 2010 and 2011, 3 percent in 2012, or 4 percent in 2013 and thereafter of the investor-owned utility’s total revenue from retail sales of electricity for the calendar year 2009. Based on revenue figures from annual reports provided to the PSC, the initial 2 percent cap would allow each public utility to recover up to the following amounts to produce or purchase renewable energy in addition to any amounts that do not exceed each utility's avoided cost:

Florida Power & Light Company	\$225,200,000
Progress Energy Florida	\$94,980,000
Tampa Electric Company	\$43,040,000
Gulf Power Company	\$23,420,000

“If a majority value of the energy-producing components incorporated into such projects are manufactured or assembled within this state” in addition to full cost recovery and not subject to the percentage-of-revenue cap, the IOU also gets a return on equity of not less than 50 basis points above the top of the range of the provider’s last authorized rate of return on equity, approved by the commission for energy projects. It is unknown how much this would cost ratepayers as the amount depends on the amount invested. It is unclear why an IOU would get paid more, by its ratepayers, as a result of the actions of a third party. Alternatively, this provision may be intended to compensate the IOU for its actions in assembly of the framework of a solar photovoltaic system and the attaching of the cells to this frame, or the assembly of the components of a concentrated solar thermal system. If so, it is unclear why this assembly deserves a greater rate of return than the assembly of the components of a fossil-fuel plant into a functioning whole.

The bill also requires that the PSC allow an IOU to recover all reasonable and prudent costs incurred to comply with any future federal renewable portfolio standard, including costs to purchase renewable energy credits or alternative compliance payments. These costs are unknown as the requirements of such a standard cannot be predicted.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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 April 14, 2010:

The committee substitute deletes all references to annual megawatt caps, including all references to roof-top or pole-mounted solar energy. It also deletes all provisions relating to the process for cost recovery. Finally it deletes the provision exempting solar facilities from the Power Plant Siting Act.

The committee substitute adds an annual cap on the amount of cost that can be recovered. It also adds provisions for recovery of the cost of compliance with a federal requirement for production or purchase of renewable energy.

- B. **Amendments:**

None.