

<b>Tab 1</b>	<b>SB 1048</b> by <b>Lee</b> ; (Identical to H 01055) Linear Facilities
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<b>Tab 2</b>	<b>SB 1238</b> by <b>Bean</b> ; (Similar to H 01043) Utility Investments in Gas Reserves
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The Florida Senate  
**COMMITTEE MEETING EXPANDED AGENDA**  
**COMMUNICATIONS, ENERGY, AND PUBLIC UTILITIES**  
**Senator Artiles, Chair**  
**Senator Montford, Vice Chair**

**MEETING DATE:** Tuesday, March 14, 2017  
**TIME:** 2:30—4:00 p.m.  
**PLACE:** 301 Senate Office Building

**MEMBERS:** Senator Artiles, Chair; Senator Montford, Vice Chair; Senators Broxson, Campbell, Clemens, Perry, Stargel, and Young

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1048</b> Lee (Identical H 1055)	Linear Facilities; Revising the definition of the term "development" to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; requiring the consideration of a certain variance standard when including conditions for the certification of an electrical power plant; requiring the consideration of a certain variance standard when including conditions for the certification of a proposed transmission line corridor, etc.  CU      03/14/2017 Favorable CA	Favorable Yeas 7 Nays 0

2	<b>SB 1238</b> Bean (Similar H 1043)	Utility Investments in Gas Reserves; Revising the jurisdiction of the Public Service Commission over public utilities to include the approval of cost recovery for certain gas reserve investments, etc.  CU      03/14/2017 Favorable RC	Favorable Yeas 8 Nays 0
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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
<b>Senate Confirmation Hearing:</b> A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
<b>Florida Public Service Commission</b>			
3	Polmann, Donald J. (Dunedin)	01/01/2021	Recommend Confirm Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

Tom waits 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.)

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

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BILL: SB 1048

INTRODUCER: Senator Lee

SUBJECT: Linear Facilities

DATE: March 13, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	<b>Favorable</b>
2.			CA	

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**I. Summary:**

SB 1048 amends the exemptions from the land-use-consistency provisions of the Power Plant Siting Act (PPSA) and Transmission Line Siting Act (TLSA) to provide that they apply to established rights-of-way and corridors, to rights-of way and corridors yet to be established, and to creation of distribution and transmission corridors.

The bill establishes the standard to be used in authorizing variances in a site certification under the PPSA and the TLSA. It also provides that the PPSA and TLSA cannot affect in any way the Public Service Commission's (PSC) exclusive jurisdiction to require transmission lines to be located underground.

The bill takes effect upon becoming a law.

**II. Present Situation:**

The bill overturns a Third District Court of Appeal (the court) decision in a power plant siting case.<sup>1</sup> The bill addresses two issues: application of specific local laws in a siting proceeding and the authority of the siting board to order undergrounding, or burying, of a transmission line.

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<sup>1</sup> *Miami-Dade County, et al, v. In Re: Florida Power & Light Co., etc., et al*, Opinion filed April 20, 2016, available at <http://www.3dca.flcourts.org/opinions/3D14-1467.pdf>. The Florida Supreme Court denied Florida Power and Light's petition for review, Friday, February 24, 2017, available at [https://efactssc-public.flcourts.org/casedocuments/2016/2277/2016-2277\\_disposition\\_137996.pdf](https://efactssc-public.flcourts.org/casedocuments/2016/2277/2016-2277_disposition_137996.pdf).

## **Application of Local Laws / “Development”**

### ***Statutes***

The application for certification of a site for a power plant and associated facilities must include a statement on the consistency of the site, and any associated facilities<sup>2</sup> that constitute a “development,” with existing land use plans and zoning ordinances that were in effect on the date the application was filed and a full description of the consistency.<sup>3</sup> This information must include an identification of those associated facilities that the applicant believes are exempt from the requirements of land use plans and zoning ordinances under the Community Planning Act provisions of ch. 163 and s. 380.04(3), F.S. Each affected local government must file a determination of the consistency of the site and non-exempt associated facilities with existing land use plans and zoning ordinances in effect on the date the application was filed. Any substantially affected person may file a petition with the designated administrative law judge (ALJ) to dispute the local government’s determination.<sup>4</sup> If a petition is filed, the ALJ must hold a land use hearing at which the sole issue for determination is whether the proposed site or nonexempt associated facility is consistent and in compliance with existing land use plans and zoning ordinances.<sup>5</sup>

Associated facilities that are exempt from the term “development” are not subject to the land use consistency and compliance requirements. The relevant definition of “development” is set out in s. 380.04, F.S., which expressly excludes the following activities from the term development:

- Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.
- The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.<sup>6</sup>

### ***Administrative Orders***

Several administrative orders on this issue have held that siting of the transmission line is exempt from “development” and thus exempt from application of the land-use-consistency provisions. This interpretation turns on the meaning of “established.”

One illustration of this interpretation is the following quote.

First, Gulf Power will create a new right-of-way for the powerline. A right-of-way is a ‘right of access,’ an easement, or an “other right[] in land. Second, Gulf Power will construct the powerline on the newly established right-of-way. Gulf Power is a utility engaged in the distribution or transmission of electricity. The construction of the

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<sup>2</sup> “Associated facilities” means, for the purpose of certification, those onsite and offsite facilities which directly support the construction and operation of the electrical power plant such as electrical transmission lines, substations, and fuel unloading facilities; pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities; water or wastewater transport pipelines; construction, maintenance, and access roads; and railway lines necessary for transport of construction equipment or fuel for the operation of the facility. Section 403.503(7), F.S.

<sup>3</sup> Section 403.50665(1), F.S.

<sup>4</sup> Section 403.50665(2)(a), F.S.

<sup>5</sup> Section 403.508, F.S.

<sup>6</sup> Section 380.04(3)(b) and (h), F.S.

powerline in the established right-of-way falls within s. 380.04(3)(b). See, *Bd. Of County Commrs. of Monroe County v. Dept. of Community Affairs*, 560 So.2d 240 (Fla. 3d DCA 1990); *Friends of Mantanzas, Inc. v. Dept. of Environmental Protection*, 729 So.2d 437 (Fla. 5th DCA 1999), and *1000 Friends of Florida, Inc. v. St. Johns County*, 765 So.2d 216 (Fla. 5th DCA 2000), interpreting the similar exemption for road improvements within the right-of-way in s. 380.04(3)(a), *Fla. Stat.* (2004).

Therefore, the proposed powerline is not ‘development’ as defined in section 380.04, *Fla. Stat.* (2003).<sup>7</sup>

This interpretation involves both exemptions: first an applicant establishes a right-of-way, which constitutes a right-of-access or easement and so is exempt under s. 380.04(3)(h), F.S.; and second, the applicant seeks approval to construct a power line within “the newly established right-of-way, which is exempt under s. 380.04(3)(b), F.S.

Another illustration relies only on the second basis for exemption.

After certification of this project, TECO will acquire the necessary property interests in a ROW within the certified corridor for placement of the line. Construction of transmission lines on such established ROWs is excepted from the definition of ‘development’ in Section 163.3164(5), Florida Statutes. Accordingly, the provisions of the local comprehensive plans related to ‘development’ that have been adopted by the local governments crossed by the line are not applicable to this project.<sup>8</sup>

### ***Miami-Dade County vs. In Re: Florida Power & Light***

In this case, Florida Power & Light Company (FPL) filed an application under the PPSA to obtain a permit to construct and operate two new nuclear generating units and associated facilities at Turkey Point, including new transmission lines. They obtained a recommended order and a final order on certification, both approving FPL’s West Preferred Corridor as a back-up western transmission corridor if adequate right-of-way could not be obtained in the primary corridor in a timely manner and at a reasonable cost. Neither order considered local regulations nor required FPL to underground its lines.

The final order was appealed and the court reversed and remanded the final order based on three errors, including an incorrect application of the “development” exemption based on an erroneous interpretation of the exemption for:

Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.<sup>9</sup>

<sup>7</sup> *In re Petition for Declaratory Statement by Hughes*, 2004 Fla. ENV LEXIS 166, 4 ER FALR 113.

<sup>8</sup> *In Re: Tampa Electric Company Willow Oak-Wheeler-Davis Transmission Line Siting Application*, 2008 Fla. ENV LEXIS 115, 2008 ER FALR 175, at 50 (DOAH May 13, 2008), adopted in toto 2008 E.R. F.A.L.R. 175 (Siting Bd. Aug. 1, 2008).

<sup>9</sup> *Miami-Dade County*, supra note 1, at 11.

The court found the following errors in the siting board's application of the exemption law.

- In the siting process, the siting board certifies a corridor, not a right-of-way, and the exemption cannot be applied to the entire corridor.<sup>10</sup>
- The record reflects that the corridor is made up of parcels within and outside established rights-of-way, so the board has no way of knowing whether construction will take place in a right-of-way or an easement.<sup>11</sup>
- The exemption is for work conducted on "established rights-of-way." "And as the City of Miami contends, were this Court to accept FPL's argument on this issue, that an established right-of-way is not the same as an existing right-of-way, this would make the word 'established' meaningless."<sup>12</sup>

### *Analysis of Decisions*

The court appears to have based its decision solely on interpretation of the statutes at issue, without consideration of the previous administrative orders as precedent. The court's interpretation is supported by the plain English meaning of the words in the statute: establish means to institute, to make firm, to bring into existence, to put on a firm basis, to gain full recognition or acceptance, or to put beyond doubt.<sup>13</sup> The past tense usage means the act has been accomplished, that the right-of-way is in existence at the time of the siting proceedings. Unfortunately, the decision appears to conflict with the legislative intent for the PPSA and TLSA.

The stated intent for the siting acts is to establish a centralized, efficient procedure for approving a single license for power plant and transmission line sites, through application of both the state and local standards and recommendations of all involved agencies, while balancing the need for additional electricity against the need to minimize adverse effects on citizens and the environment, without undue conflict with the goals established by the applicable local comprehensive plan.<sup>14</sup>

However, if the statutes were interpreted and implemented as the court has held, it is doubtful a transmission line could ever be sited. The local land use laws classify property uses into multiple types of residential, commercial, and industrial property, with different permitted uses for each type. Each municipality and county is a different patchwork of these types of property, but application of the land use laws of each would likely restrict a transmission line to industrial use property. A transmission line cannot be constructed across multiple local governments using only the unconnected industrial property within each.

The previous administrative orders, on the other hand, appear to achieve the statutory intent, but appear to do so by a tortured interpretation of the word "established" within the context of "development."

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<sup>10</sup> *Miami-Dade County*, supra note 1, at 12.

<sup>11</sup> *Miami-Dade County*, supra note 1, at 12.

<sup>12</sup> *Miami-Dade County*, supra note 1, at 13-14.

<sup>13</sup> See, e.g., <https://www.merriam-webster.com/dictionary/establish> and <https://ahdictionary.com/word/search.html?q=establish>

<sup>14</sup> Sections 403.502 and 403.521, F.S., respectively.

It appears that the s. 380.04, F.S., standard for “development,” incorporated into the PPSA and TLSA by cross reference, is ambiguous in those contexts. The apparent intent of the bill is to clarify this ambiguity.

### **Authority of the Siting Board to Order Undergrounding of Transmission Lines**

#### ***Statutes***

The PPSA and TLSA authorize the siting board to include conditions in the certification.<sup>15</sup> Both also contain a limitation that the act does not affect in any way the ratemaking powers of the PSC under ch. 366, F.S.

#### ***Miami-Dade County vs. In Re: Florida Power & Light***

In the *Miami-Dade* decision, the court also reversed and remanded based on a finding that the siting board erroneously thought it did not have the power to require FPL to install the lines underground at FPL’s expense.

The court made the following finding.

The general grant of power in the PPSA to “impose conditions” upon certification, other than those listed in the PPSA, gave the Siting Board the power to impose the condition of requiring that the power lines be installed underground, at FPL’s expense. See s. 403.511(1), Fla. Stat.; s. 403.511(2)(b)(2). Undergrounding of the transmission lines is a condition upon certification encompassed by the Siting Board’s ability to impose “site specific criteria, standards, or limitations” on FPL’s project. As such, the Siting Board had the power to require it, contrary to the Siting Board’s conclusion that it had no such power. Accordingly, reversal is required on this point.<sup>16</sup>

FPL had argued that the siting board did not have jurisdiction to order undergrounding based on a previous case on an issue unrelated to the siting act. The court distinguished that case on the basis that it contained nothing regarding whether undergrounding could be required as a condition of certification in a siting case.

The Seminole holding was made in the context of rate-making with regard to the power vested in the Public Service Commission and not in the context of any of the Siting Board’s powers. The Siting Board’s power in no way infringes on the PSC’s authority with regard to rate-making, and there is no conflict with the PSC’s role. The Seminole case is simply inapplicable to the case before us.<sup>17</sup>

#### ***Analysis***

Again, the court appears to have based its decision solely on interpretation of the siting statutes. Interpretation and implementation is more complex when ch. 366, F.S., and the facts of economic regulation and undergrounding of power lines is considered as well.

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<sup>15</sup> Sections 403.511 and 403.531, F.S., respectively.

<sup>16</sup> *Miami-Dade County*, supra note 1, at 14-15.

<sup>17</sup> *Miami-Dade County*, supra note 1, at 18.

Undergrounding of transmission lines is more expensive than placing them on poles. The actual amount of the cost difference depends on the actual circumstances of the transmission line site. For the Turkey Point line, the estimate was that undergrounding would cost nine times more; \$13.3-\$18.5 million per mile compared to \$1.5-\$2.5 million. An estimated average is that the costs are around ten times more to underground a transmission line.<sup>18</sup>

Additionally, when an agency with regulatory authority over a regulated public utility orders that public utility to incur costs, the PSC *must* allow the utility to recover those costs. This affects the ratemaking power of the PSC under ch. 366, F.S., in at least two significant ways.

- It denies the PSC its oversight and ratemaking function of making the initial determination of whether the higher costs of undergrounding the transmission line are prudent and reasonable under the circumstances. This determination is an essential element of determining what utility costs are recoverable, which, in turn, is the first step in ratemaking.
- It denies the PSC the ability to make a determination of how undergrounding would affect grid reliability. Grid reliability is a part of ratemaking through the underlying regulatory compact, which includes customer service requirements.

### **III. Effect of Proposed Changes:**

The bill amends paragraphs 380.04(b) and (h), F.S., which contain the exemptions from “development” discussed above. The bill provides that the exemption for work done on established rights-of-way applies to established rights-of-way and corridors and to rights-of way and corridors yet to be established. It also provides that the exemption for the creation of specified types of property rights applies to creation of distribution and transmission corridors.

The bill makes the same changes to s. 163.3221, F.S., which provides definitions for use in the Florida Local Government Development Agreement Act, which provides for agreements between local governments and developers to improve the growth management and public planning processes.

The bill also amends ss. 403.511 and 403.531, F.S., which relate to the effect of certification under the PPSA and the TLSA, respectively. First, the bill specifies that the standard for granting variances in the certification is to be the standards set forth in s. 403.201, F.S. Section 403.201, F.S., authorizes variances in the following conditions.

- There is no practicable means known or available for the adequate control of the pollution involved.
- Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required.
- To relieve or prevent hardship of a kind other than those provided for above. Variances and renewals thereof granted under authority of this paragraph shall each be limited to a period of 24 months, except that variances granted pursuant to part II may extend for the life of the permit or certification.

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<sup>18</sup> Email from David Childs; Hopping Green & Sams, on March 10, 2017.



The bill also provides that the PPSA and TLSA cannot affect in any way the PSC's exclusive jurisdiction to require transmission lines to be located underground.

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 will clarify the application of local land use laws to transmission line corridors in siting cases under the PPSA and TLSA. This will provide certainty to both the utilities and the local governments, and will reduce expenses of siting and legal proceedings.

The express prohibition against the siting board ordering undergrounding of transmission lines will save utility ratepayers additional costs. As the PSC is a party to PPSA proceedings and may be a party to TLSA proceedings, it is possible that some coordination of siting proceedings and PSC ratemaking could be accomplished to incorporate undergrounding as a condition of certification while still maintaining PSC ratemaking authority.

C. Government Sector Impact:

The bill will clarify the application of local land use laws to transmission line corridors in siting cases under the PPSA and TLSA. This will provide certainty to both the utilities and the local governments, and will reduce expenses of siting and legal proceedings

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 163.3221, 380.04, 403.511, and 403.531.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Lee

20-00528C-17

20171048\_\_

A bill to be entitled

An act relating to linear facilities; amending s. 163.3221, F.S.; revising the definition of the term "development" to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; revising the definition to exclude the creation or termination of distribution and transmission corridors; amending s. 380.04, F.S.; revising the definition of the term "development" to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; revising the definition to exclude the creation or termination of distribution and transmission corridors; amending s. 403.511, F.S.; requiring the consideration of a certain variance standard when including conditions for the certification of an electrical power plant; clarifying that the Public Service Commission has exclusive jurisdiction to require underground transmission lines; amending s. 403.531, F.S.; requiring the consideration of a certain variance standard when including conditions for the certification of a proposed transmission line corridor; clarifying that the Public Service Commission has exclusive jurisdiction to require underground transmission lines; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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Section 1. Paragraph (b) of subsection (4) of section 163.3221, Florida Statutes, is amended to read:

163.3221 Florida Local Government Development Agreement Act; definitions.—As used in ss. 163.3220-163.3243:

(4) "Development" means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

(b) The following operations or uses shall not be taken for the purpose of this act to involve "development":

1. Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

2. Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, or renewing on established rights-of-way or corridors, or constructing on established or to be established rights-of-way or corridors, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.

3. Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

4. The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

5. The use of any land for the purpose of growing plants,

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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59 crops, trees, and other agricultural or forestry products;  
60 raising livestock; or for other agricultural purposes.

61 6. A change in use of land or structure from a use within a  
62 class specified in an ordinance or rule to another use in the  
63 same class.

64 7. A change in the ownership or form of ownership of any  
65 parcel or structure.

66 8. The creation or termination of rights of access,  
67 riparian rights, easements, distribution and transmission  
68 corridors, covenants concerning development of land, or other  
69 rights in land.

70 Section 2. Paragraphs (b) and (h) of subsection (3) of  
71 section 380.04, Florida Statutes, are amended to read:

72 380.04 Definition of development.—

73 (3) The following operations or uses shall not be taken for  
74 the purpose of this chapter to involve "development" as defined  
75 in this section:

76 (b) Work by any utility and other persons engaged in the  
77 distribution or transmission of gas, electricity, or water, for  
78 the purpose of inspecting, repairing, or renewing on established  
79 rights-of-way or corridors, or constructing on established or to  
80 be established rights-of-way or corridors, any sewers, mains,  
81 pipes, cables, utility tunnels, power lines, towers, poles,  
82 tracks, or the like. This provision conveys no property interest  
83 and does not eliminate any applicable notice requirements to  
84 affected land owners.

85 (h) The creation or termination of rights of access,  
86 riparian rights, easements, distribution and transmission  
87 corridors, covenants concerning development of land, or other

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88 rights in land.

89 Section 3. Paragraph (b) of subsection (2) and subsection  
90 (4) of section 403.511, Florida Statutes, are amended to read:

91 403.511 Effect of certification.—

92 (2)

93 (b)1. Except as provided in subsection (4), and in  
94 consideration of the standard for granting variances pursuant to  
95 s. 403.201, the certification may include conditions which  
96 constitute variances, exemptions, or exceptions from  
97 nonprocedural requirements of the department or any agency which  
98 were expressly considered during the proceeding, including, but  
99 not limited to, any site specific criteria, standards, or  
100 limitations under local land use and zoning approvals which  
101 affect the proposed electrical power plant or its site, unless  
102 waived by the agency and which otherwise would be applicable to  
103 the construction and operation of the proposed electrical power  
104 plant.

105 2. No variance, exemption, exception, or other relief shall  
106 be granted from a state statute or rule for the protection of  
107 endangered or threatened species, aquatic preserves, Outstanding  
108 National Resource Waters, or Outstanding Florida Waters or for  
109 the disposal of hazardous waste, except to the extent authorized  
110 by the applicable statute or rule or except upon a finding in  
111 the certification order that the public interests set forth in  
112 s. 403.509(3) in certifying the electrical power plant at the  
113 site proposed by the applicant overrides the public interest  
114 protected by the statute or rule from which relief is sought.

115 (4) This act shall not affect in any way the Public Service  
116 Commission's ratemaking powers or its exclusive jurisdiction to

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117 ~~require transmission lines to be located underground of the~~  
118 ~~Public Service Commission~~ under chapter 366; nor shall this act  
119 in any way affect the right of any local government to charge  
120 appropriate fees or require that construction be in compliance  
121 with applicable building construction codes.

122 Section 4. Paragraph (b) of subsection (2) and subsection  
123 (4) of section 403.531, Florida Statutes, are amended to read:

124 403.531 Effect of certification.—

125 (2)

126 (b) In consideration of the standard for granting variances  
127 pursuant to s. 403.201, the certification may include conditions  
128 that constitute variances and exemptions from nonprocedural  
129 standards or rules of the department or any other agency which  
130 were expressly considered during the certification review unless  
131 waived by the agency as provided in s. 403.526 and which  
132 otherwise would be applicable to the location of the proposed  
133 transmission line corridor or the construction, operation, and  
134 maintenance of the transmission lines.

135 (4) This act does not in any way affect the commission's  
136 ratemaking powers or its exclusive jurisdiction to require  
137 transmission lines to be located underground of the commission  
138 under chapter 366. This act does not in any way affect the right  
139 of any local government to charge appropriate fees or require  
140 that construction be in compliance with the National Electrical  
141 Safety Code, as prescribed by the commission.

142 Section 5. This act shall take effect upon becoming a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_ Bill Number (if applicable) 1048

Topic Transmission Lines - Energy Amendment Barcode (if applicable) \_\_\_\_\_

Name Jusan Glickman

Job Title Florida Director

Address PO Box 310 Phone 727-742-9003

Indian Rocks Beach FL 33786 Email jusan@cleanenergy.org

City State Zip

Speaking: ☐ For ☒ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Southern Alliance for Clean Energy

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date March 14, 2017 Bill Number (if applicable) 1048

Topic Linear Facilities Amendment Barcode (if applicable) \_\_\_\_\_

Name DAVID CHILDS

Job Title Legal Counsel

Address 119 S. Monroe Street Suite 300 Phone 850 222 7500

Tallahassee FL 32301 Email DAVIDC@H6SLAW.com

City State Zip

Speaking: ☒ For ☐ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Electric Power Coordinating Group

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Senator Lee  
SB 1048  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic Transmission Line Siting Act

Amendment Barcode (if applicable) \_\_\_\_\_

Name Charles Hiison

Job Title VP

Address 2520 Chamberlin Dr

Phone 850-508-0758

Street

Tallahassee FL

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TECO ENERGY.COM

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing TECO Energy

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**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.)

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

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BILL: SB 1238

INTRODUCER: Senator Bean

SUBJECT: Utility Investments in Gas Reserves

DATE: March 13, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell/Wiehle	Caldwell	CU	<b>Favorable</b>
2.			RC	

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**I. Summary:**

SB 1238 authorizes the Public Service Commission (PSC or commission) to approve cost recovery for prudently incurred natural gas reserve investments, including a rate of return and prudently incurred expenses associated with such investments, by a public utility through an adjustment clause. To qualify, the public utility must have at least 65 percent natural gas fueled generation.

By December 31, 2017, the commission must adopt a rule containing the standards by which it will determine the prudence of natural gas reserve investments. The rule must include the following three criteria:

- Each investment is projected to generate savings for customers over the life of the investment.
- Each investment must have at least 50 percent of the wells classified as proven reserves by the Securities and Exchange Commission.
- Total volume of natural gas produced from the utility's reserves must not exceed the following percentages of the utility's average projected natural gas daily burn:
  - 7.5 percent in 2018.
  - 10 percent in 2019.
  - 12.5 percent in 2020.
  - 15 percent thereafter.

The bill would take effect July 1, 2017.



## **II. Present Situation:**

### **Public Utility Cost Recovery/Fuel Cost Recovery Charge**

Each public utility<sup>1</sup> recovers its prudent costs and rate of return through charging base rates and various recovery charges, including the fuel cost recovery charge. Base rates include fixed costs such as capital investments and operating and maintenance costs incurred in predictable amounts. Recovery charges are used to recover unusual or volatile costs.

One recovery charge is the fuel cost recovery charge. The category of recovery charge was created by commission order, not statute. The commission has an annual docket on fuel cost recovery charges, and each public utility participates by petitioning the commission to address the issues particular to that utility. Unlike other types of recovery charges, the fuel cost recovery charges do not include recovery of capital investments or a return on investments; they are pass-through charges, simply passing the projected fuel costs on to customers on a monthly basis. During the annual fuel cost docket, the fuel cost recovery for the previous year is “trued up,” actual costs are compared to costs projected and recovered, and the next year’s charge is adjusted to compensate for any over- or under-charge.

Fuel price hedging is a tool public utilities can use to reduce their exposure to volatile and potentially rising fuel costs. A fuel price hedging contract is a futures contract that allows a public utility using fuel as a means of generation to establish a fixed or capped cost, via a commodity swap or option. Florida public utilities can seek to recover their prudent financial hedging costs through the fuel clause.

### **Florida Power & Light’s Natural Gas Investment/Public Service Commission**

On June 25, 2014, Florida Power and Light Company (FPL) filed a petition requesting a prudence determination on its proposal to acquire an interest in a natural gas reserve project. The determination would allow FPL to recover costs incurred through its joint venture with an oil and natural gas company to engage in the acquisition, exploration, drilling, and development of natural gas wells in Oklahoma (known as the “Woodford Project”). A determination of prudence is the first step in gaining approval for recovery of those costs. FPL also sought approval to recover the revenue requirements associated with investing in and operating the gas reserves through the fuel clause. FPL further requested that the commission establish guidelines under which FPL could participate in future gas reserve projects without the commission’s prior approval and recover the costs through the fuel clause, subject to the commission’s established process for reviewing fuel-related transactions.

On January 12, 2015, in a case of first impression, the commission approved FPL’s petition requesting a prudence determination on FPL’s proposal to acquire an interest in a natural gas

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<sup>1</sup> A “public utility” is every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity ... to or for the public within this state.” It does not include either a municipal electric utility or a cooperative. Section 366.02(1), F.S. Basically, it is the four investor-owned utilities: Florida Power & Light, Duke Energy Florida, Tampa Electric Company, and Gulf Power.

reserve project and to allow the revenue requirements associated with investing in an operating the gas reserves be recovered through the fuel clause.<sup>2</sup> According to the PSC Order:

USG Properties Woodford I, LLC (USG), an FPL affiliate, entered into a series of agreements with PetroQuest Energy, Inc. (Petroquest), under which USG will pay a share of the costs for developing and operating natural gas production wells and will receive a portion of PetroQuest's working interest in those wells in the Woodford Shale Gas Region in Oklahoma. Subject to the terms of the agreements, FPL will be entitled to acquire USG's interest, contingent upon a commission finding that the Project is prudent and may be recovered through the Fuel Clause.<sup>3</sup>

The PSC approved FPL's petition to recover costs in the Woodford Project with conditions.

We find the Woodford Project, in the manner described in the FPL petition and evidence on the record, is expected to produce customer benefits and is in the public interest. We find its costs are recoverable through the Fuel Clause. In order to provide additional protections for FPL customers, we find it necessary to add two conditions for compliance with the Order. First FPL shall add the appropriate subaccounts, under the FERC system of accounting, which will correspond to a one-on-one basis with the accounts used by the Gas Reserve Company. Second, FPL shall utilize an independent auditor in performing the audits provided in the agreement and shall work with Commission staff to develop the scope of the audits.

On July 14, 2015, the commission approved with modifications FPL's petition requesting guidelines under which FPL could participate in future gas reserve projects without the commission's prior approval and recover the costs through the fuel clause.<sup>4</sup>

### **Florida Power & Light's Natural Gas Investment/Florida Supreme Court**

In January 15, 2015, the Office of Public Counsel (OPC) filed Notices of Appeal with the Florida Supreme Court challenging several PSC orders related to this issue.<sup>5</sup> The Florida Supreme Court consolidated OPC's three appeals and the Florida Industrial Power Users Group's (FIPUG) appeal of the commission's orders approving the Woodford Project and approving guidelines.

On May 19, 2016, the Supreme Court of Florida reversed the orders stating that the commission exceeded its statutory authority when approving recovery of FPL's costs and investment in the Woodford Project.<sup>6</sup> The Court held that treating these activities as a hedge would require FPL's ratepayers to guarantee the capital investment and operations of an oil and gas venture without the Florida Legislature's authority:

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<sup>2</sup> See: Order No. PSC-15-0038-FOF-EI, issued January 12, 2015, in Docket No. 150001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

<sup>3</sup> *Id.*

<sup>4</sup> Order No. PSC-15-0284-FOF-EI, issued July 14, 2015, in Docket No. 120005-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

<sup>5</sup> *Id.*

<sup>6</sup> *Citizens of the State of Florida v Art Graham*, 191 So. 3d 897, Fla. (May 19, 2016).

It is undisputed that FPL is an electric utility. It is also undisputed that the PSC's ratemaking authority encompasses the authority to examine fuel cost expenditures and approve cost recovery to compensate for utilities' fuel expenses through the fuel clause. See *Gulf Power Co. v. Fla. Publ. Serv. Comm'n*, 487 So.2d 1036, 1037 (Fla.1986).

However, the PSC does not have the statutory authority to approve cost recovery for FPL's investment in the Woodford Project. As explained above, Section 366.06(1) provides that the PSC has the authority to determine and fix fair, just, and reasonable rates for public utilities, and Section 366.02(2) defines an electric utility as owning, maintaining, or operating an electric generation, transmission, or distribution system. Therefore, under the plain meaning of these two statutes, cost recovery is permissible only for costs arising from the "generation, transmission, or distribution" of electricity. The Woodford Project's exploration, drilling, and production of natural gas fuel in Oklahoma do not constitute generating, transmitting, or distributing electricity in Florida as the meaning of those terms are plainly understood. *In other words, the exploration, drilling, and production of fuel falls outside the purview of an electric utility as defined by the Legislature.*

Additionally, the PSC does not have the statutory authority necessary to approve cost recovery for the Woodford Project through the characterization of the project as "a long-term physical hedge." While PSC's ratemaking authority includes examining and approving cost recovery for public utilities' hedging of fuel costs, see *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*, Order No. PSC-08-0667-PAA-EI, 2008 WL 6347188 (Fla.P.S.C. Oct. 8, 2008), the Woodford Project does not involve a certain quantity of fuel for a certain price.<sup>7</sup>

The Court also noted: "... regulated utilities through the fuel clause do not earn a rate of return on money spent to purchase fuel" . . . and "utilities through the fuel clause do not earn a return on the cost of hedging positions purchased."<sup>8</sup>

### III. Effect of Proposed Changes:

The bill amends s. 366.04(2), F.S., to authorize the commission to approve cost recovery through an adjustment clause for a utility's prudent investments in natural gas reserves, including rate of return, and for prudently incurred expenses associated with such investments. To qualify to make these investments, a utility must have at least 65 percent natural-gas-fueled generation.

The commission must adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of such gas reserve investments. The standards must require, at minimum, all of the following:

- Each natural gas reserve investment is projected to generate savings for customers over the life of the investment.

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<sup>7</sup> *Id.*, at 901, (Emphasis added).

<sup>8</sup> *Id.*

- The total volume of natural gas produced from all of the utility's natural gas reserve investments must not exceed the following percentages of the utility's average projected daily burn of natural gas:
  - 7.5 percent in 2018;
  - 10 percent in 2019;
  - 12.5 percent in 2020; and
  - 15 percent in 2021 and thereafter.
- Each investment must be made in natural gas projects that have at least 50 percent of the wells within the project classified as proved gas reserves by the Securities and Exchange Commission.

#### **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:**

According to the commission Order approving the Woodford project, "the base case indicates savings [to the customers] of \$51.9 million over the life of the project."<sup>9</sup> It is important to note that these savings are calculated by taking the forecasted price for natural gas and calculating to its present value. Thus, the savings can fluctuate based upon the price of natural gas.<sup>10</sup>

A public utility will be able to recover its incremental operating and maintenance costs as well as recovery of a rate of return on its capital investments in a natural gas reserve project through the fuel clause associated with long-term capital investments (30 years or more).

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<sup>9</sup> Order No. PSC-15-0038-FOF-EI, page 5.

<sup>10</sup> According to the Order No. PSC-15-0038-FOF-EI, at page 5: "the sensitivities show that the magnitude of potential positive savings (\$170.2 million assuming high fuel price and high productivity) exceeds the magnitude of potential losses (-\$50.7 million assuming low fuel price and low productivity).

**C. Government Sector Impact:**

According to the commission, “rulemaking associated with the implementation of SB 1238 is not expected to require additional staff. The bill also authorizes recurring responsibilities associated with oversight of a qualifying electric [public utility’s] investments in natural gas reserves, and allowing recovery of prudently incurred investments including a rate of return. Recurring administrative expenses can be moderated by using an existing adjustment clause and associated resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

As the Florida Supreme Court noted, allowing a regulated public utility to recover costs and a rate of return on an investment in the exploration and production of natural gas is different from traditional hedging activities and traditional use of the fuel cost recovery charge process.

- Investing in natural gas exploration, drilling, and production falls outside the core function of an electric utility.<sup>11</sup>
- The investment does not involve a certain quantity of fuel for a certain price, and thus not only fails to help prevent price shocks from volatile fuel prices but creates more uncertainty in prices rather than less.<sup>12</sup>
- Contrary to traditional uses of the fuel cost recovery clause where the utility neither incurs capital costs nor earns a rate of return<sup>13</sup>, here, at least as authorized by the commission, the utility does both.
- Instead of hedging taxpayer risk, the investment, as approved by the commission, shifts both the risk of price volatility and the risks of exploration and production to ratepayers<sup>14</sup>.

The Court stated: “[t]his may be a good idea, but whether advance cost recovery of speculative capital investments in gas exploration and production by an electric utility is in the public interest is a policy determination that must be made by the Legislature.”<sup>15</sup>

The criteria in the bill for the standards by which the commission will determine the prudence of gas reserve investments are similar to some of the guidelines adopted by the commission in its July 14, 2015, Order.<sup>16</sup> The guidelines approved by the commission included criteria for the scope of gas reserve project participation for the estimated aggregate output limits; customer savings, supply diversity, and characteristics of gas reserves.

The percentages of the utility’s average projected daily burn of natural gas to the total volume of natural gas produced from all of the utility’s natural gas reserve investments in the bill are less

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<sup>11</sup> *Citizens of the State of Florida v Art Graham*, 191 So.3d 897, 901 Fla. (May 19, 2016)

<sup>12</sup> *Id.*, at 902

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See Appendix A, Order No. PSC-15-0284-FOF-EI, issued July 14, 2015, in Docket No. 120005-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

than those approved by the commission. The commission approved for years 2015 through 2018: 5 percent, 10 percent, 15 percent, and 20 percent respectively and capped the maximum at 20 percent.

According to the commission, the phrase “has at least 65 percent natural-gas-fueled generation” can refer either to installed power plant capacity or actual electricity generation, or kilowatt-hours (kWh). If it refers to capacity, as of December 31, 2015, public utility generation capable of using natural gas as the primary fuel ranged from 67 percent to 24 percent based on net summer capacity megawatt (MW) ratings. Existing natural gas generation for FPL was 67 percent, Duke Energy Florida, LLC, (DEF) was 62 percent, Tampa Electric Company (TECO) was 58 percent, and Gulf Power Company (GPC) was 24 percent. This data set suggests only one electric generating public utility would qualify at this time.<sup>17</sup>

The commission continued, “if the standard refers to actual generation or kWh, actual natural gas usage varies from year to year based primarily on:

- the dynamics of price differentials between fuels;
- the ability of a given power plant to switch to lower priced fuels;
- the public utility’s generation technology diversity;
- the price of available wholesale transactions; and
- the public utility’s real-time system requirements.”<sup>18</sup>

Based on forecasts through 2025, multiple utilities could qualify in every year. FPL projected sustained generation from natural gas in excess of at least 65 percent. DEF projected sustained usage in excess of 65 percent after 2016. GPC projected a declining reliance on natural gas from a peak in 2017 due to an anticipated increase in coal-fired resources. However, GPC could potentially qualify during the period 2016 through 2019. Various factors influence a public utility’s annual usage of natural gas in the production of energy. The percentage of natural gas used on an energy basis can be expected to continue to change annually based on market forces.<sup>19</sup>

Natural Gas Usage – Percent of Net Energy for Load<sup>20</sup>

Utility	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
FPL	69.9	67.8	70.6	70.7	69.9	71.2	70.2	69.6	69.9	69.9	69.9
DEF	59.7	64.8	70.7	76.1	79.0	69.2	66.9	79.1	78.4	81.1	81.4
GPC	64.9	73.8	80.8	77.2	68.3	36.9	34.0	34.7	18.7	12.6	14.5
TECO	49.3	44.3	50.1	52.3	52.8	50.9	52.3	51.3	50.7	51.7	51.9

Based upon this uncertainty, the phrase “at least 65 percent natural-gas-fueled generation” should be clarified.

The June 4, 2015, recommendation from PSC staff discussed the categories for classifying gas reserves for public company reporting. Proved reserves are those reserves with reasonable certainty (90 percent probability), probable reserves are those reserves with some uncertainty

<sup>17</sup> PSC Bill Analysis of SB 1238, Mar. 10, 2017.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> PSC Bill Analysis of SB 1238, Mar. 10, 2017, page 3, citing: 2016 Ten-Year Site Plans, Schedule 6.2.

(50 percent probability), and possible reserves are those reserves with high uncertainty (10 percent probability) that the predicted quantity of gas can be commercially recovered under current technical, contractual, economic, and regulatory conditions.<sup>21</sup>

In its Order, the commission amended the guidelines to state:

In addition, FPL will only enter into transactions for gas reserve projects that involve wells classified as “Proved Reserves” or “Probable Reserve” as defined by the Securities and Exchange Commission for public company reporting. Because one of the primary purposes of gas reserve projects is a physical source of supply to serve its natural gas needs, at least 50 percent of the wells in each gas reserve project must be classified as “Proved Reserves.” FPL will not enter into transactions for gas reserve projects that involve wells classified as “Possible Reserves.”

The bill does not restrict transactions for gas reserve projects that involve wells classified as “possible reserves.”

The commission in both its order authorizing the recovery of the Woodford project and in the Guidelines required FPL to “add the appropriate subaccounts, under the FERC system of accounting, which will correspond to a one-on-one basis with the accounts used by the Gas Reserve Company.” And that FPL must “utilize an independent auditor in performing the audits provided in the agreement and shall work with Commission staff to develop the scope of the audits.” If it is intended that the Guidelines be consistent with those contemplated in the commission order, more specific rulemaking authority may be required.

The bill requires the commission to adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of gas reserve investments. The commission points out in its review of the bill, that while a rule may be proposed before or by that date, the date of adoption will depend in part upon what further legal process stakeholders avail themselves of pursuant to s. 120.54, F.S.

## **VIII. Statutes Affected:**

This bill substantially amends section 366.04 of the Florida Statutes.

## **IX. Additional Information:**

### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

### **B. Amendments:**

None.

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<sup>21</sup> Order No. PSC-15-0284-FOF-EI, issued July 14, 2015, in Docket No. 120005-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Bean

4-01107A-17

20171238\_\_

A bill to be entitled

An act relating to utility investments in gas reserves; amending s. 366.04, F.S.; revising the jurisdiction of the Public Service Commission over public utilities to include the approval of cost recovery for certain gas reserve investments; requiring the commission to adopt, by rule, standards by which it will determine the prudence of such investments; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present paragraphs (d), (e), and (f) of subsection (2) of section 366.04, Florida Statutes, are redesignated as paragraphs (e), (f), and (g), respectively, and a new paragraph (d) is added to that subsection, to read:

366.04 Jurisdiction of commission.—

(2) In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:

(d) To approve cost recovery by adjustment clause for a utility's prudent investments, including rate of return, and for prudently incurred expenses associated with such investments, in natural gas reserves if the utility has at least 65 percent natural-gas-fueled generation. The commission shall adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of such gas reserve investments. The standards must require, at minimum, all of the following:

1. Each natural gas reserve investment is projected to

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

4-01107A-17

20171238\_\_

generate savings for customers over the life of the investment.

2. The total volume of natural gas produced from all of a utility's natural gas reserve investments must not exceed the following percentages of the utility's average projected daily burn of natural gas:

a. 7.5 percent in 2018;

b. 10 percent in 2019;

c. 12.5 percent in 2020; and

d. 15 percent in 2021 and thereafter.

3. Each investment must be made in natural gas projects that have at least 50 percent of the wells within the project classified as proved gas reserves by the Securities and Exchange Commission.

No provision of this chapter shall be construed or applied to impede, prevent, or prohibit any municipally owned electric utility system from distributing at retail electrical energy within its corporate limits, as such corporate limits exist on July 1, 1974; however, existing territorial agreements shall not be altered or abridged hereby.

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

## THE FLORIDA SENATE

## APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-14-2017

Meeting Date

1238

Bill Number (if applicable)

Topic Energy - Risky Drilling Amendment Barcode (if applicable)Name Susan GlickmanJob Title Florida DirectorAddress PO Box 310Phone 727-7429003

Street

Indian Rocks Bch FL 33785

City

State

Zip

Email Susan@cleanenergy.orgSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Southern Alliance for Clean EnergyAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

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3/14/17

Meeting Date

1238

Bill Number (if applicable)

Topic SB 1238 NATURAL GAS Amendment Barcode (if applicable)Name Jon Moyle

Job Title

Address 118 N. Gadsden St

Street

Phone 850-681-3828

City

Fort Meade FL 32301

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing FLA. INDUSTRIAL POWER USERS GROUPAppearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/14/17  
Meeting Date

1238  
Bill Number (if applicable)

Topic UTILITY INVESTMENTS IN GAS

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title \_\_\_\_\_

Address 1674 UNIVERSITY BLVD #295  
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Phone 941.323.2404

Email cullenavee@aol.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing SLEESA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/14/17  
Meeting Date

1238  
Bill Number (if applicable)

Topic ENERGY DEVELOPMENT

Amendment Barcode (if applicable)

Name KEVIN DOYLE

Job Title CONSUMER ENERGY ALLIANCE -

FLORIDA EXECUTIVE DIRECTOR

Address 76 S. LAURA ST. #1702  
Street  
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Email KDOYLE@CONSUMERENERGYALLIANCE.ORG

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing CONSUMER ENERGY ALLIANCE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/14/17  
Meeting Date

5B 1238  
Bill Number (if applicable)

Topic NATURAL GAS EXPLORATION

Amendment Barcode (if applicable)

Name JACK McRAY

Job Title \_\_\_\_\_

Address 200 W. COLLEGE ST. #304  
Street

Phone 850-577-5187

TLH FL 32301  
City State Zip

Email jmcray@gap.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing AARP

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/14/17  
Meeting Date

5B 1238  
Bill Number (if applicable)

Topic Gas Reserves

Amendment Barcode (if applicable)

Name Sam Forrest

Job Title VICE PRESIDENT, ENERGY MARKETING

Address 700 UNIVERSE BLVD  
Street

Phone 561 602 3864

JUNO BEACH FL 33408  
City State Zip

Email SAM.FORREST@FPL.COM

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Power & Light

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



**RICK SCOTT**  
GOVERNOR

RECEIVED

16 SEP 19 AM 9:23

DIVISION OF ELECTIONS  
SECRETARY OF STATE

September 15, 2016

Kenneth W. Detzner  
Secretary of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following appointment under the provisions of  
Section 350.01, Florida Statutes:

Dr. Donald Jeffrey Polmann  
2251 Colonial Drive  
Dunedin, Florida 34698

as a member of the Florida Public Service Commission, succeeding Lisa B. Edgar, subject to  
confirmation by the Senate. This appointment is effective January 2, 2017, for a term ending  
January 1, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/aa

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Pinellas

RECEIVED  
16 NOV -2 PM 2:16  
DIVISION OF ELECTIONS  
SECRETARY OF STATE

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Commissioner, Florida Public Service Commission

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Donald J. Polmann  
Signature

Sworn to and subscribed before me this 15<sup>th</sup> day of November, 2016.

Dane Lynch Notary Public  
Signature of Officer Administering Oath or of Notary Public

Dane Lynch  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☐ OR Produced Identification ☒

Type of Identification Produced FL D.L.



DANE LYNCH  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# EE850758  
Expires 11/12/2016

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

2251 Colonial Drive

Street or Post Office Box

Dunedin, FL 34698

City, State, Zip Code

Donald J. Polmann

Print name as you desire commission issued

Donald J. Polmann  
Signature

2020

STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections

I, Ken Detzner, Secretary of State,  
do hereby certify that

**Donald J. Polmann**

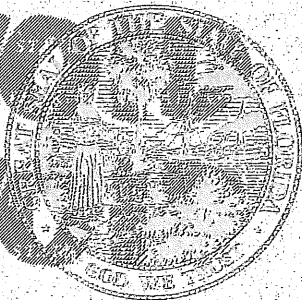
is duly appointed a member of the  
**Florida Public Service Commission**

for a term beginning on the Second day of January, A.D., 2017,  
until the First day of January, A.D., 2021 and is subject to be  
confirmed by the Senate during the next regular session of the  
Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Fourth day of November, A.D., 2016.*

*Ken Detzner*

Secretary of State



DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

State of Florida appears in small letters across the face of this 8 1/2 x 11" document.

**The Florida Senate**  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Donald J. Polmann  
Florida Public Service Commission

**NOTICE OF HEARING**

TO: Dr. Donald J. Polmann

YOU ARE HEREBY NOTIFIED that the Committee on Communications, Energy, and Public Utilities of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 14, 2017, in 301 Senate Office Building, commencing at 2:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 10th day of March, 2017

Committee on Communications, Energy, and  
Public Utilities

\_\_\_\_\_  
Senator Frank Artiles  
As Chair and by authority of the committee

cc: Members, Committee on Communications, Energy, and Public Utilities  
Office of the Sergeant at Arms



THE FLORIDA SENATE

# COMMITTEE WITNESS OATH

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**CHAIR:**

**Please raise your right hand and be sworn in as a witness.**

**Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?**

**WITNESS'S NAME:** Dr. Donald J. Polmann

**ANSWER:** Yes

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

**COMMITTEE NAME:** Committee on Communications, Energy, and Pub. Utility

**DATE:** 3/14/2017

# CourtSmart Tag Report

**Room:** SB 301

**Case No.:**

**Caption:** Senate Committee on Communications, Energy, and Public Utility

**Type:**

**Judge:**

**Started:** 3/14/2017 2:31:23 PM

**Ends:** 3/14/2017 3:34:02 PM

**Length:** 01:02:40

2:32:14 PM	Call to Order
2:32:22 PM	Roll Call
2:33:08 PM	SB 1048 - Linear Facilities
2:33:23 PM	SB 1238 - Utility Investments in Gas Reserves by Sen. Bean
2:36:30 PM	Question - Sen. Montford
2:36:45 PM	Response - Sen. Bean
2:37:19 PM	Follow up - Sen. Montford
2:37:28 PM	Response - Sen. Bean
2:37:46 PM	Susan Glickman, Florida Director, Southern Alliance for Clean Energy
2:40:40 PM	Jon Moyle, FL. Industrial Power Users Group
2:51:00 PM	Question - Sen. Broxson
2:51:28 PM	Response - Jon Moyle
2:52:23 PM	Follow up - Sen. Broxson
2:52:42 PM	Response - Jon Moyle
2:52:55 PM	David Cullen, Sierra Club Florida
2:56:21 PM	Kevin Doyle, Executive Director, Consumer Energy Alliance
2:57:31 PM	Jack McRay, AARP
3:00:44 PM	Sam Forrest, VP Energy Marketing, Florida Power and Light
3:06:52 PM	Question - Sen. Montford
3:07:20 PM	Response - Sam Forrest
3:08:05 PM	Follow up - Sen. Montford
3:08:21 PM	Response - Sam Forrest
3:09:00 PM	Closing - Sen. Bean
3:10:10 PM	Roll Call Vote
3:10:38 PM	SB 1048 - Linear Facilities by Sen. Lee
3:14:05 PM	Question - Sen. Montford
3:14:19 PM	Response - Sen. Lee
3:14:47 PM	Susan Glickman, Florida Director, Southern Alliance for Clean Energy
3:17:57 PM	Question - Sen. Clemens
3:18:26 PM	Response - Susan Glickman
3:19:16 PM	David Childs, Legal Counsel, FL. Electric Power Coordinating Group
3:20:53 PM	Question - Sen. Ariles
3:21:29 PM	Closing - Sen. Lee
3:24:11 PM	Roll Call Vote
3:24:37 PM	Senate Confirmation of Donald J. Polmann, Florida Public Service Commission
3:25:58 PM	Question - Sen. Clemens
3:26:18 PM	Response - Donald Polmann
3:28:53 PM	Question - Sen. Broxson
3:29:16 PM	Response - Donald Polmann
3:30:43 PM	Debate - Sen. Clemens
3:31:09 PM	Debate - Sen. Ariles
3:31:26 PM	Closing Remarks - Donald Polmann
3:33:26 PM	Roll Call Vote
3:33:56 PM	Adjourn