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DATE: April 18, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS**

BILL #: CS/HB 687

RELATING TO: Medically Essential Electric Public Utility Service

SPONSOR(S): Utilities & Telecommunications and Representative(s) Romeo & others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES & TELECOMMUNICATIONS (RIC) YEAS 16 NAYS 0
 - (2) HEALTH PROMOTION YEAS 7 NAYS 0
 - (3) COUNCIL FOR READY INFRASTRUCTURE YEAS 20 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

The bill conforms to CS/SB 224. The bill:

- Provides a definition for “medically essential”;
- Requires public utilities to provide service to customers who require medically essential service;
- Provides procedures for certification of certain utility services as medically necessary;
- Provides for notice to consumers who require medically essential services prior to disconnection or interruption of service;
- Provides for payment for service;
- Provides for monitoring of customers;
- Provides for customer responsibilities; and
- Provides for the identification of sources for funding purposes.

The bill becomes effective upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Service Commission Docket No. 98-0682-EI

In 1998, Public Service Commission (PSC) began discussing and addressing the issue of medically essential electric service during discussions on Docket No. 98-0682-E in response to a complaint that an investor owned utility (IOU) had failed to give the required 30-day notice that service would be disconnected. The procedures used by IOU companies for handling medically essential electric service accounts, at the time, varied across utilities and across the state.

On November 2, 1998, PSC staff gave commissioners an overview of the issue. The IOU companies explained their policies and procedures regarding medically essential electric service. The Compassion National Children's Foundation (Foundation) raised concerns that many IOU companies required an additional deposit from customers taking service under the medically essential electric service tariff. The PSC directed its staff and the IOU companies to explore solutions within the context of a proposed unified tariff. Rule 25-4.035, Florida Administrative Code, defines a tariff as a document that sets forth all the rates and charges for utility customer services, the classes and grades of service available to subscribers, the conditions and circumstances under which service will be furnished, and all the general rules and regulations governing the relationship of customer and utility. Tariff filings are required to be in compliance with the requirements of Chapter 25-9 of the PSC rules entitled "Construction and Filing of Tariffs by Public Utilities."

In a letter dated March 22, 1999, the Foundation expressed concerns that the proposed tariff did not go far enough and made several suggestions to improve the tariff. Specifically, the Foundation suggested that the definition of "medically essential electric service" include customers who do not require continuously operating electric-powered medical equipment, that the additional deposits be eliminated, and that policies be consistent with other states including: New Hampshire; Massachusetts; Oregon; and New York. New Hampshire and Massachusetts allow customers to receive an indefinite extension of service. Oregon allows an extension of up to 12 months for chronic cases. New York's Consolidated Edison keeps records of customers who use electrically operated support systems, so it can help in case of an emergency.

The PSC believed that the proposed tariff makes significant progress in addressing the utility needs of customers for whom service is medically essential. The PSC also believed that the tariffs would bring the regulation of Florida IOU companies by the PSC related to the furnishing of medically

essential utility service into line with the vast majority of states. Although the definition of medically essential was not expanded to include customers with asthma, for example, the definition of medically essential among the IOU companies is the same. Also, medically essential customers will be granted special consideration when they are faced with additional deposits.

Each IOU submitted an identical tariff for review. On April 30, 1999, the PSC approved the tariffs clarifying the terms and conditions under which IOU companies supply service to customers who qualify for protection under the utilities' Medically Essential Service.

The PSC approved the tariffs in Order No. PSC-99-0930-TRI-EI, which was issued May 10, 1999, filed in Docket No. 99-0334, 99317-EI, and effective June 1, 1999. A subsequent Consummating Order was issued making the decision final.

The basic purpose of the "medically essential" designation on a utility service account is to allow a customer whose life depends on an electrically operated device additional time to pay past due bills before disconnection. The additional time allows the customer to either secure funds to pay the bill from outside sources or to arrange for alternative care in the event that no funds are available.

Utilities have special accounts in which their customers contribute to assist people who are temporarily experiencing financial difficulties. The utilities "Share" programs are administered by social service agencies such as the Salvation Army, the American Red Cross, and various other social service providers. When a customer has difficulty paying their utility bill, the utilities' programs help the customer reach the social service organization that can offer assistance. Through the PSC's and the utility companies' websites, customers may obtain a publication entitled Where to Find Help With Making Utility Bill Payments in Florida.

The current utility tariffs provide the terms and conditions related to "Discontinuance and Withholding of Service." For purposes of this public contract, a "medically essential service customer" is a residential customer whose electric service is medically essential, as affirmed through the certificate of a medical doctor. Service is "medically essential" if the customer has continuously operating electric-powered medical equipment necessary to sustain the life of, or avoid serious medical complications requiring immediate hospitalization of, the customer or another permanent resident at the service address. The physician certificate must explain briefly and clearly, in non-medical terms, why continuance of electric service is medically essential, and it must be consistent with the requirements of the tariff of the company. A customer who is certified as a medically essential service customer must renew such certification periodically. The company may require certification no more frequently than once every twelve months.

The tariff also provides customers who require medically essential service with a limited extension of time, not to exceed thirty days, beyond the date service would normally be subject to disconnection for non-payment of bill, following the requisite notice pursuant to Rule 25-6.105(5), Florida Administrative Code. Utilities are to provide these customers with written notice specifying the date of disconnection based on the limited extension, and the customer is responsible for making mutually satisfactory arrangements to ensure payment within this additional extension of time for service or for making other arrangements for meeting their medically essential needs.

Additionally, the tariff requires that, no later than 12 noon prior to the date scheduled for the disconnection of services, the utility must attempt telephone contact with the customer concerning the scheduled disconnect date. In cases of unsuccessful telephone attempts, a field representative must be sent to the residence to attempt contact. If contact is not made, the representative may leave written notification at the residence of the scheduled disconnection date. Thereafter, the utility may disconnect service on the date specified.

The tariff further states that a utility has the right to discontinue service to a customer and such right may be exercised without any liability for loss, damage, or injury resulting directly or indirectly from lack of electric service. The utility will be under no obligation or duty to ascertain whether such discontinuance would likely result in any such loss, damage, or injury.

Rule 25-6.097(3), Florida Administrative Code

Pursuant to Rule 25-6.097(3), Florida Administrative Code, the company may grant the customer special considerations.

For reconnection cases, service charges and deposits may be applicable.

Rule 25-6.105(11), Florida Administrative Code

Rule 25-6.105(11), Florida Administrative Code governs Life Sustaining Medical Equipment (LSME)/Medically Essential Service. The rule provides that:

Each utility shall submit, as a tariff item, a procedure for discontinuance of service when that service is medically essential.

Municipal Electric and Rural Electric Cooperatives

Municipal Electric and Rural Electric Cooperatives are not subject to the same level of PSC supervision as the IOUs in relation to prices, terms, and conditions of service.

According to the PSC, no clear statutory mandate exists directing the creation of a special, protected class of LSME/Medically Essential customers separate from other residential rate customers, and the creation of such a class of customers would appear to violate section 366.03, Florida Statutes, which provides in part:

[A]ll rates . . . shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

The PSC believes that, under current law, it cannot create a special “leave service active” class of LSME/Medically Essential ratepayers absent legislative delegation of specific power. The PSC believes a tariff requiring uniformity in LSME/Medically Essential utility service could be difficult to enforce without legislative action.

C. EFFECT OF PROPOSED CHANGES:

The bill conforms to CS/SB 224. The bill:

- Provides a definition for “medically essential”;
- Requires public utilities to provide service to customers who require medically essential service;
- Provides procedures for certification of certain utility services as medically necessary;
- Provides for notice to consumers who require medically essential services prior to disconnection or interruption of service;
- Provides for payment for service;
- Provides for monitoring of customers;
- Provides for customer responsibilities; and

- Provides for the identification of sources for funding purposes.

The bill becomes effective upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 366.15, F.S., relating to medically essential electric public utility service.

Subsection (1) defines the term "medically essential" to mean the medical dependence on electric-powered equipment that must be operated continuously, or as circumstances require as specified by a physician, to avoid the loss of life or immediate hospitalization of the customer or another permanent resident at the service address.

Subsection (2) requires each public utility to designate employees who are authorized to direct an ordered continuation or restoration of medically essential electric service. The subsection also prohibits a public utility from imposing upon any customer any additional deposit to continue or restore medically essential electric service.

Subsection (3) requires each public utility to annually provide a written explanation of the certification process for medically essential electric service to each utility customer. To obtain a certification of "medically essential" electric service, the customer is required to complete forms supplied by the public utility and to submit a form completed by a licensed physician who states in medical and nonmedical terms why the electric service is medically essential. The subsection also provides that false certification of medically essential service by a physician is a violation of s. 458.331(1)(h), F.S., relating to grounds for disciplinary action.

Further, the subsection requires recertification of the medically essential service status once every 12 months. The public utility would be required to send the certified customer by regular mail a package of recertification materials, including recertification forms, at least 30 days prior to the expiration of the customer's certification. The materials sent to the customer would be required to advise the certified customer that he or she must complete and submit the recertification forms within 30 days after the expiration of the customer's existing certification. The recertification forms are not received within this 30-day period, the public utility may terminate the customer's certification by the procedures the bill would establish.

Subsection (4) requires that each public utility certify a customer's electric service as medically essential if the customer completes the requirements of subsection (3).

Subsection (5) provides that, regardless of any other provision of this section, a public utility is authorized to disconnect service to a residence whenever an emergency may threaten the health or safety of a person, the surrounding area, or the public utility's distribution system. The subsection also requires the public utility to act promptly to restore service as soon as feasible.

Subsection (6) requires that no later than 24 hours before any scheduled disconnection of service for nonpayment of bills to a customer who requires medically essential service, a public utility shall attempt to contact the customer by telephone in order to provide notice of the scheduled disconnection. The subsection also provides that if the customer does not have a telephone number listed on the account or if the public utility cannot reach the customer or other adult resident of the premises by telephone by the specified time, the public utility shall send a representative to the customer's residence to attempt to contact the customer, no later than 4 p.m. of the day before scheduled disconnection. In the event that contact is not made, however, the public utility is authorized to leave written notification at the residence advising the customer of the scheduled

disconnection. Once these steps have been taken, the public utility may disconnect service on the specified date.

Subsection (7) provides that each public utility customer who requires medically essential service is responsible for making satisfactory arrangements with the public utility to ensure payment for such service and such arrangements must be consistent with the requirements of the utility's tariff.

Subsection (8) provides that each public utility customer who requires medically essential service is solely responsible for any backup equipment or power supply and a planned course of action in the event of a power outage or interruption of service.

Subsection (9) requires each public utility that provides electric service to any customers who require medically essential service to call, contact, or otherwise advise such customer of any scheduled service interruptions.

Subsection (10) requires each public utility to provide information on sources of state or local agency funding which may provide financial assistance to the public utility's customers who require medically essential service and who notify the public utility of their need for financial assistance.

Subsection (10) also requires each public utility that operates a program to receive voluntary financial contributions from the public utility's customers to provide assistance to persons who are unable to pay for the public utility's services to maintain a list of all agencies to which the public utility distributes such funds for such purposes, and make the list available to any such person who requests the list.

Each public utility that operates such a program is required to:

- Maintain a system of accounting for the specific amounts distributed to each such agency and the public utility and requires such agencies to maintain a system of accounting for the specific amounts distributed to persons under such programs.
- Train its customer service representatives to assist any person who possesses a medically essential certification as provided in this section in identifying such agencies and programs.

Section 2. Provides that nothing in this act would form the basis for any cause of action against a public utility and that failure to comply with any obligation created by the bill would not constitute evidence of negligence on the part of the public utility.

Section 3. Provides that the act becomes effective upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would apparently impose additional regulatory costs on public utilities necessary to provide a mechanism for certification of customers whose utility needs are medically essential. The bill would also impose additional costs on public utilities by requiring additional procedures to be complied with before disconnection or interruption of service for a customer whose service is deemed medically essential. A reliable estimate of the potential increased administrative costs imposed on public utilities is not available.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

In amending chapter 366, F.S., the bill applies to public utilities as defined in chapter 366, F.S., which includes public natural gas utilities. Thus, public natural gas utilities, in addition to public electric utilities, would be subject to the terms of the bill requiring all public utilities to provide an

annual written explanation of the certification process for medically essential electric service and requiring all public utilities to provide information on sources of state or local funding that may provide financial assistance to customers requiring medically essential electric service. The practical effect is uncertain.

The bill only authorizes physicians licensed under chapter 458, F.S., relating to medical practice, to certify in medical and nonmedical terms why the electric service is medically essential and provides that false certification is grounds for discipline under s. 458.331(1)(h), F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 2001, the Utilities & Telecommunications Committee adopted an amendment to strike everything after the enacting clause. The amendment conforms to Senate language, and the bill was made a committee substitute. The amendment deletes the provision that includes in "medically essential" service the use of feeding tubes or operation of medical equipment used in kidney dialysis. The amendment also deletes the phrase "that supplies electricity" from "public utility that supplies electricity" and "electric" from the phrase "medically essential electric service" and "medically essential electric service."

On April 12, 2001, the Committee on Health Promotion adopted two amendments to the bill. Amendment #1 expands the authority to issue medically essential certification to physicians licensed under chapter 459, F.S, relating to osteopathy. Amendment #2 applies penalties for false certification of medically essential utility service to physicians licensed under chapter 459, F.S. These two amendments are traveling with the bill.

The Council for Ready Infrastructure, at its April 18, 2001, meeting adopted an amendment to clarify that "medically essential" refers to residential service. This amendment conforms the House bill to its Senate companion.

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

Prepared by:

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Staff Director:

Patrick L. "Booter" Imhof

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