

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Communications and Public Utilities Committee

BILL: CS/SB 1366

SPONSOR: Communications & Public Utilities Committee & Senators Constantine and Dockery

SUBJECT: Storm Infrastructure Recovery

DATE: March 15, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.			JU	
3.			GE	
4.			TA	
5.				
6.				

I. Summary:

The bill creates an alternative method for the investor-owned utilities to recover the costs of hurricane damages and to replenish their storm reserves. Under this alternative, a utility could petition the Public Service Commission (PSC or commission) for approval to issue bonds to obtain these funds, using a dedicated income stream consisting of monthly payments from customers as security for and a means of payment of the bonds. The PSC would determine whether the proposed bond-based recovery is reasonably expected to result in lower overall costs or to avoid or significantly mitigate rate impacts to customers as compared with traditional methods of recovery. If so, the PSC would: determine the amount of storm-related costs and reserves to be recovered, taking into consideration, when it deems appropriate, any other methods used by the utility to recover these costs; describe and estimate the financing costs to be recovered; and determine the period over which the recovery is to be made. The financing order would authorize issuance of the bonds and, to make payments on the bonds, would authorize imposition and collection of a monthly fee, called a storm-recovery charge, from all customers. The financing order would be irrevocable and inalterable. Additionally, the state pledges not to take any action that will alter the provision of this law making storm recovery charges irrevocable, binding, and nonbypassable, and not to take or permit any action to impair the value of storm recovery property, or to reduce storm recovery charges.

The bill amends section 679.1091 of the Florida Statutes and creates section 366.8260 of the Florida Statutes.

II. Present Situation:

Prior to Hurricane Andrew in 1992, Florida Power and Light (FP&L) (in whose territory Andrew made landfall) had commercial insurance on its generation, transmission, and distribution

facilities. The transmission and distribution (T&D) insurance limit was \$350 million per occurrence with a premium of \$3.5 million. Andrew caused approximately \$270 million in damages to FP&L’s T&D facilities. As a result, the insuring company offered FP&L new T&D coverage which consisted of a \$100 million annual aggregate loss limit with a minimum premium of \$23 million. At the time, FP&L explored other options for T&D coverage, but they proved economically inadequate given the damage caused by Hurricane Andrew.

In 1993, FP&L petitioned the Public Service Commission (PSC) to implement a self-insurance mechanism for storm damage to its T&D system and to address contributions to its Storm and Property Insurance Reserve Fund. The petition was granted June 17, 1993. Subsequently, the other three investor-owned utilities, Progress Energy, Tampa Electric Company, and Gulf Power, also obtained authorization to implement and fund reserve funds.

A reserve fund is money accrued to pay costs related to storm damage. At the utility’s option, the reserve fund may be either funded or unfunded. With a funded reserve, the amount of the reserve is set aside in a special fund to be used in the event of a storm. With an unfunded reserve, the utility books a reserve amount, but is free to use the money to meet its current obligations, but is liable for that amount in the event of a storm.

During August and September 2004, Hurricanes Charley, Frances, Ivan, and Jeanne struck Florida, causing power outages and damage throughout the state. In order to restore power, the IOUs were required to expend significantly more than their respective storm damage reserves. The estimated short-falls are as follows:

Utility	Estimated Storm Damage Costs (Net of Insurance)	Estimated Storm Damage Reserve	Estimated Damage Short-Fall	Damaging Storms
Florida Power and Light ¹	\$890 Million	\$357 Million	\$533 Million	Charley, Frances, Jeanne
Gulf Power Company ²	\$124 Million	\$28 Million	\$97 Million	Ivan
Progress Energy Florida ³	\$366 Million	\$47 Million	\$319 Million	Charley, Frances, Ivan, Jeanne
TECO Energy	\$72 Million	\$44 Million	\$28 Million	Charley, Frances, Jeanne
Total	\$1.452 Billion	\$476 Million	\$977 Million	

Currently, a utility may recover storm damage costs: 1) through its current base rates, 2) through a full evidentiary rate proceeding, or 3) through PSC approval of a surcharge on the customer’s bill. Progress Energy Florida (PEF) and FP&L currently have petitions pending at the PSC requesting storm recovery surcharges be added to customer bills. On January 18, 2005, the PSC approved FPL’s petition to begin collecting the surcharge of approximately \$2.09 per 1000 kWh

¹ Source: PSC Docket No. 041291-EI, amended petition filed February 4, 2005.

² Source: PSC Docket No. 050093-EI, filed February 2, 2005.

³ Source: PSC Docket No. 041272-EI, filed November 2, 2004

residential bill, subject to refund. PEF's petition is currently pending. Additionally, Gulf Power Company (Gulf) has entered into a stipulation with the Office of Public Counsel (OPC) and the Florida Industrial Power Users Group (FIPUG) concerning Gulf's recovery of costs related to the damage it received in Hurricane Ivan. The petition for approval is scheduled to be voted on by the PSC at its March 1, 2005, Agenda Conference. These pending requests are for surcharges to recover the deficiencies and bring each utility's storm reserve fund to zero. Additions to the reserves would come from the existing reserve charge over time.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 366.8260, F.S., which provides an alternative method for the investor-owned utilities to recover the costs of hurricane damages and to replenish their storm reserves. Speaking generally, a utility could petition the PSC for approval to issue bonds to obtain these funds, using a dedicated income stream consisting of monthly payments from customers as security for, and a means of payment of, the bonds.

The bill creates definitions, including those discussed below.

- "Electric utility" or "utility" has the same meaning as that provided in s. 366.8255, F.S., which is "any investor-owned electric utility that owns, maintains, or operates an electric generation, transmission, or distribution system within the State of Florida and that is regulated under this chapter."
- "Financing costs" is defined to include such expenses as interest; any payment required under an ancillary agreement; any cost relating to issuance, supporting, or servicing of storm-recovery bonds; and taxes or similar charges, including regulatory assessment fees.
- "Storm" means a named tropical storm or hurricane that occurred during calendar year 2004 or thereafter.
- "Storm-recovery activity" means any activity by or on behalf of an electric utility in connection with the restoration of electric service associated with electric power outages as the result of a storm or storms, including, but not limited to, mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, or distribution facilities.
- "Storm-recovery costs" means costs incurred or to be incurred by an electric utility in undertaking a storm-recovery activity, net of applicable insurance proceeds and, where determined appropriate by the commission, to include adjustments for normal capital replacement and operating costs, lost revenues, or other potential offsetting adjustments. Storm-recovery costs include the costs to finance any deficiency or deficiencies in storm-recovery reserves until such time as storm-recovery bonds are issued and costs of retiring any existing indebtedness relating to storm-recovery activities.
- "Storm-recovery charge" means the amounts authorized by the commission to recover, finance, or refinance storm-recovery costs and financing costs as provided in a financing order to be imposed on all customer bills and collected by an electric utility or its successors in full through a charge that is separate and apart from the electric utility's base rates, which charge shall be paid by all customers receiving transmission or distribution service from the electric utility or its successors under commission-approved rate schedules or under special contracts, even if the customer elects to purchase

electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state.

In its petition, the utility would be required to set out what it had done to repair storm damage and why it did so, what the costs of these activities were, how much of its reserve fund it is seeking to establish or replenish through the bonds, how much financing costs are estimated to be, how much the storm-recovery charge is estimated to be to be sufficient to recover all of these costs, and how using storm-recovery bonds will benefit customers as opposed to using traditional methods, through either estimated total cost savings or a demonstration of how it would avoid or significantly mitigate rate impacts to customers.

After reviewing the evidence, the PSC would determine the amount of storm-recovery costs and the level of reserves to be recovered, taking into consideration, to the extent the commission deems appropriate, any other methods used by the utility to recover these costs; describe and estimate the financing costs to be recovered; and specify the period over which the recovery is to be made. Concurrently, the PSC would determine whether the proposed bond-based recovery is reasonably expected to result in lower overall costs or to avoid or significantly mitigate rate impacts to customers as compared with alternative methods of recovery. If this test is met, the PSC would issue an order authorizing issuance of the bonds and imposition and collection of storm-recovery charges from customers. In the order, the PSC would set forth whether any of the reserves must be funded reserves, and if so, any limitations on the reserves. The PSC also would include in its order a formula-based mechanism for making any periodic adjustments to the monthly storm-recovery charge that are necessary to ensure that all costs are recovered in full and that there is no over recovery. The PSC is authorized to hire outside consultants during the hearing, with the expense included as a part of financing costs and recovered in the storm recovery charges.

During the hearing, both the utility and the commission will estimate financing costs. The bill provides a mechanism for reconciling estimated versus actual financing costs. Within 120 days after the issuance of storm-recovery bonds, the electric utility is to file with the commission information on the actual costs of the storm-recovery-bond issuance. The commission is to review the information to determine if actual costs incurred in the issuance of the bonds resulted in the lowest overall costs that were reasonably consistent with market conditions at the time of the issuance and the terms of the financing order. The commission may disallow any incremental issuance costs in excess of the lowest overall costs by requiring the utility to make a contribution to the storm reserve in an amount equal to the excess of actual issuance costs incurred, and paid for out of storm recovery bond proceeds, and the lowest overall issuance costs as determined by the commission. The commission may not make adjustments to the storm-recovery charges for any such excess issuance costs.

The commission is required to either reject the petition or issue a financing order no later than 135 days after the filing of the petition. The PSC must issue a financing order if it finds that the issuance of the bonds and the imposition of storm-recovery charges on customers is reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with alternative methods of financing or recovering storm-recovery costs and storm-recovery reserves.

Within thirty days after the PSC issues a financing order or denies a request for reconsideration of a petition for an order, or if the request is granted, within thirty days of the decision on reconsideration, an adversely affected party may petition for judicial review in the Florida Supreme Court. Appellate review is based solely on the record before the PSC and briefs and is limited to whether the commission's order conforms to the constitution and laws of this state and the United States and is within the commission's discretion under this section. The bill provides that, as delay in the appeal will delay issuance of storm-recovery bonds, thereby diminishing savings which might otherwise be achieved, the Supreme Court must act on the appeal as expeditiously as practicable and give the appeal precedence over other matters not accorded similar precedence by law.

A financing order becomes irrevocable and the PSC may not alter the order after the earlier of the transfer of storm-recovery property by the utility to an assignee or the issuance of storm-recovery bonds. After issuance of a financing order, the utility retains sole discretion as to whether to issue bonds.

The utility is to adjust the storm-recovery charge at least twice a year. The utility must file a letter with the PSC applying the formula-based adjustment mechanism set forth in the financing order and requesting approval to make the adjustments to the storm-recovery charges assessed on its customers to ensure recovery of all costs and prevent over recovery. PSC review of the request is limited to whether there is any mathematical error.

The monthly charge to customers results from allocation of the storm-recovery charge discussed above among the utility's customers. The utility must explicitly reflect the storm-recovery charge on a customer's bill. The commission may determine whether to require this as a separate line item. If it does so and the utility does not comply, the failure to comply does not impair the bonds or the collection of the storm recovery charges, but does subject it to penalties under the existing penalty statute.

The right of the utility or its successor to collect storm-recovery charges and to obtain periodic adjustments to the charges constitutes a right in "storm-recovery property." The property exists until the storm-recovery bonds are paid and the financing costs recovered. The bill provides for perfection of an interest in the property; for sequestration of storm-recovery charge payments upon default of payment by the utility; for an exemption from any setoff, counterclaim, surcharge, or defense by the utility or any other person in connection with any insolvency of the utility; for an exemption from the Uniform Commercial Code; and for priority of liens on the property.

The state pledges not to take any action that will alter the provision of this law making storm recovery charges irrevocable, binding, and nonbypassable, and not to take or permit any action to impair the value of storm recovery property, or to reduce storm recovery charges, except as provided in this section.

Storm recovery bonds are not public debt.

Section 2 of the bill amends s. 679.1091, F.S., to add to the list of exemptions from that chapter, the Uniform Commercial Code on Secured Transactions, a transfer or pledge of, or creation of a

security interest in, any interest or right or portion or any interest or right in any storm-recovery property as defined in s. 366.8260, F.S.

Section 3 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill is expected to allow the investor-owned utilities to pay hurricane-related expenses more quickly than with surcharges and with lower interest expenses than with other available debt. This would benefit the utility's ratepayers as it would allow a lower increase in monthly payments (although total costs could be greater, depending on interest rates and length of payment), and would place the utility in a better position to restore its generation, transmission, and distribution facilities in subsequent hurricane seasons.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
