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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2014	.	
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The Committee on Environmental Preservation and Conservation (Grimsley) recommended the following:

Senate Amendment

Delete lines 120 - 408
and insert:
secondary drinking water standards adopted by the Department of Environmental Protection. In making its determination, the commission shall consider:
a. Testimony and evidence provided by customers and the utility.
b. Complaints that relate to the secondary drinking water



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11 standards which customers have filed during the past 5 years
12 with the commission, the Department of Environmental Protection,
13 the county health departments, or the applicable local
14 government.

15 c. The results of past tests required by the Department of
16 Environmental Protection or county health departments which
17 measure the utility's compliance with the applicable secondary
18 drinking water standards.

19 d. The results of other tests, if deemed necessary by the
20 commission.

21 4. In determining the value and quality of wastewater
22 service provided by a utility, the commission shall consider the
23 extent to which the utility provides wastewater service to its
24 customers which complies with the rules or ordinances governing
25 its activities. In making its determination, the commission
26 shall consider:

27 a. Testimony and evidence provided by customers and the
28 utility.

29 b. Complaints regarding violations of governing rules or
30 ordinances which customers have filed during the past 5 years
31 with any of the following:

32 (I) The commission;

33 (II) The Department of Environmental Protection;

34 (III) The county health departments; or

35 (IV) The local government.

36 5. If the commission determines that a utility provides
37 water service that does not meet the secondary drinking water
38 quality standards of the Department of Environmental Protection,
39 or that a utility provides wastewater service that adversely



40 affects customers due to a violation of the rules or ordinances
41 governing its operation, the utility shall provide the
42 commission with estimates of the costs and benefits of various
43 solutions to the problems. The utility shall meet with its
44 customers to discuss the costs and benefits of the various
45 solutions and report to the commission the conclusions of the
46 meetings. The commission shall adopt rules necessary to assess
47 and enforce the utility's compliance with this subparagraph. The
48 rules shall prescribe penalties, including fines and reduction
49 of return on equity of up to 100 basis points, if a utility
50 fails to adequately address or offer solutions to the water or
51 wastewater problems.

52 6. A utility may recover its prudently incurred costs and
53 expenses to resolve deficiencies found by the commission
54 pursuant to this subsection or found by the Department of
55 Environmental Protection in a proceeding under chapter 403,
56 related to noncompliance with secondary drinking water
57 standards, or concerning wastewater service that adversely
58 affect customers due to a violation of the rules or ordinances
59 governing its operation. Such costs shall be recoverable through
60 a rate case filed pursuant to this section or through a separate
61 proceeding initiated by petition of the utility. In its filing,
62 the utility shall describe the activities and costs projected or
63 incurred to resolve the deficiencies found by the commission or
64 the Department of Environmental Protection. Such costs may be a
65 result of action agreed upon by the utility and the commission
66 or the Department of Environmental Protection or as a
67 consequence of a consent order.

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69 Notwithstanding ~~the provisions of~~ this paragraph, the commission
70 shall approve rates for service which allow a utility to recover
71 from customers the full amount of environmental compliance
72 costs. Such rates may not include charges for allowances for
73 funds prudently invested or similar charges. For purposes of
74 this requirement, the term "environmental compliance costs"
75 includes all reasonable expenses and fair return on any prudent
76 investment incurred by a utility in complying with the
77 requirements or conditions contained in any permitting,
78 enforcement, or similar decisions of the United States
79 Environmental Protection Agency, the Department of Environmental
80 Protection, a water management district, or any other
81 governmental entity with similar regulatory jurisdiction.

82 (b) In establishing initial rates for a utility, the
83 commission may project the financial and operational data as set
84 out in paragraph (a) to a point in time when the utility is
85 expected to be operating at a reasonable level of capacity.

86 (c) In establishing rates for a utility, the commission may
87 authorize the creation of a utility reserve fund. The commission
88 shall adopt rules to govern the fund, including, but not limited
89 to, rules relating to expenses for which the fund may be used,
90 segregation of reserve account funds, requirements for a capital
91 improvement plan, and requirements for commission authorization
92 before disbursements are made from the reserve fund.

93 (4) (a) On or before March 31 of each year, the commission
94 by order shall establish a price increase or decrease index for
95 major categories of operating costs incurred by utilities
96 subject to its jurisdiction reflecting the percentage of
97 increase or decrease in such costs from the most recent 12-month



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98 historical data available. The commission by rule shall
99 establish the procedure to be used in determining such indices
100 and a procedure by which a utility, without further action by
101 the commission, or the commission on its own motion, may
102 implement an increase or decrease in its rates based upon the
103 application of the indices to the amount of the major categories
104 of operating costs incurred by the utility during the
105 immediately preceding calendar year, except to the extent of any
106 disallowances or adjustments for those expenses of that utility
107 in its most recent rate proceeding before the commission. The
108 rules shall provide that, upon a finding of good cause,
109 including inadequate service, the commission may order a utility
110 to refrain from implementing a rate increase hereunder unless
111 implemented under a bond or corporate undertaking in the same
112 manner as interim rates may be implemented under s. 367.082. A
113 utility may not use this procedure between the official filing
114 date of the rate proceeding and 1 year thereafter, unless the
115 case is completed or terminated at an earlier date. A utility
116 may not use this procedure to increase any operating cost for
117 which an adjustment has been or could be made under paragraph
118 (b), or to increase its rates by application of a price index
119 other than the most recent price index authorized by the
120 commission at the time of filing.

121 (b) Upon verified notice to the commission 45 days before
122 implementation of the increase or decrease, and without a
123 hearing, the approved rates of a utility shall automatically
124 increase or decrease. Such notice shall inform the commission
125 that the utility's costs for a specified expense item have
126 changed.



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127 1. The new rates shall reflect, on an amortized or annual
128 basis, as appropriate, the cost or amount of change in the cost
129 of the specified expense item. The new rates may not reflect the
130 costs of a specified expense item already included in the rates
131 of a utility. Specified expense items eligible for automatic
132 increase or decrease of a utility's rates include, but are not
133 limited to:

134 a. The rates charged by a governmental authority or other
135 water or wastewater utility regulated by the commission which
136 provides utility service to the utility.

137 b. The rates or fees that the utility is charged for
138 electric power.

139 c. The amount of ad valorem taxes assessed against the
140 utility's used and useful property.

141 d. The fees charged by the Department of Environmental
142 Protection in connection with the National Pollutant Discharge
143 Elimination System permit program.

144 e. The regulatory assessment fees imposed upon the utility
145 by the commission.

146 f. Costs incurred for water quality or wastewater quality
147 testing required by the Department of Environmental Protection.

148 g. The fees charged for wastewater biosolids disposal.

149 h. A loan service fee or loan origination fee associated
150 with a loan related to an eligible project. The commission shall
151 adopt rules governing the determination of eligible projects,
152 which shall be limited to those projects associated with new
153 infrastructure or improvements to existing infrastructure needed
154 to achieve or maintain compliance with federal or state primary
155 or secondary drinking water standards or wastewater treatment



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156 standards that relate to:

157 (I) The provision of water or wastewater service for
158 existing customers;

159 (II) The remediation or prevention of a violation of
160 federal or state primary or secondary drinking water standards;

161 (III) The replacement or upgrade of aging water or
162 wastewater infrastructure if needed to achieve or maintain
163 compliance with federal or state primary or secondary drinking
164 water regulations; or

165 (IV) Projects consistent with the most recent long-range
166 plan of the utility on file with the commission. Eligible
167 projects do not include projects primarily intended to serve
168 future growth.

169 i. Costs incurred for a tank inspection required by the
170 Department of Environmental Protection or a local governmental
171 authority.

172 j. Operator and distribution license fees required by the
173 Department of Environmental Protection or a local governmental
174 authority.

175 k. Water or wastewater operating permit or license fees
176 charged by the Department of Environmental Protection or a local
177 governmental authority.

178 1. Consumptive or water use permit fees charged by a water
179 management district.

180 2. A utility may not use the procedure under this paragraph
181 to increase or decrease its rates as a result of an increase or
182 decrease in a specific expense item which occurred more than 12
183 months before the filing by the utility.

184 3. The commission may establish by rule additional specific



185 expense items that cause an automatic increase or decrease in a
186 utility's rates as provided in this paragraph. To be eligible
187 for such treatment, an additional expense item shall be imposed
188 upon the utility by a federal, state, or local law, rule, order,
189 or notice and shall be outside the control of the utility. If
190 the commission exercises its authority to establish such rule,
191 the commission shall, at least once every 5 years, review the
192 rule and determine if each expense item should continue to be
193 cause for the automatic increase or decrease of a utility's
194 rates, or if any additional items should become cause for the
195 automatic increase or decrease of a utility's rates as provided
196 in this paragraph ~~The approved rates of any utility which~~
197 ~~receives all or any portion of its utility service from a~~
198 ~~governmental authority or from a water or wastewater utility~~
199 ~~regulated by the commission and which redistributes that service~~
200 ~~to its utility customers shall be automatically increased or~~
201 ~~decreased without hearing, upon verified notice to the~~
202 ~~commission 45 days prior to its implementation of the increase~~
203 ~~or decrease that the rates charged by the governmental authority~~
204 ~~or other utility have changed. The approved rates of any utility~~
205 ~~which is subject to an increase or decrease in the rates or fees~~
206 ~~that it is charged for electric power, the amount of ad valorem~~
207 ~~taxes assessed against its used and useful property, the fees~~
208 ~~charged by the Department of Environmental Protection in~~
209 ~~connection with the National Pollutant Discharge Elimination~~
210 ~~System Program, or the regulatory assessment fees imposed upon~~
211 ~~it by the commission shall be increased or decreased by the~~
212 ~~utility, without action by the commission, upon verified notice~~
213 ~~to the commission 45 days prior to its implementation of the~~



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214 ~~increase or decrease that the rates charged by the supplier of~~
215 ~~the electric power or the taxes imposed by the governmental~~
216 ~~authority, or the regulatory assessment fees imposed upon it by~~
217 ~~the commission have changed. The new rates authorized shall~~
218 ~~reflect the amount of the change of the ad valorem taxes or~~
219 ~~rates imposed upon the utility by the governmental authority,~~
220 ~~other utility, or supplier of electric power, or the regulatory~~
221 ~~assessment fees imposed upon it by the commission. The approved~~
222 ~~rates of any utility shall be automatically increased, without~~
223 ~~hearing, upon verified notice to the commission 45 days prior to~~
224 ~~implementation of the increase that costs have been incurred for~~
225 ~~water quality or wastewater quality testing required by the~~
226 ~~Department of Environmental Protection. The new rates authorized~~
227 ~~shall reflect, on an amortized basis, the cost of, or the amount~~
228 ~~of change in the cost of, required water quality or wastewater~~
229 ~~quality testing performed by laboratories approved by the~~
230 ~~Department of Environmental Protection for that purpose. The new~~
231 ~~rates, however, shall not reflect the costs of any required~~
232 ~~water quality or wastewater quality testing already included in~~
233 ~~a utility's rates. A utility may not use this procedure to~~
234 ~~increase its rates as a result of water quality or wastewater~~
235 ~~quality testing or an increase in the cost of purchased water~~
236 ~~services, sewer services, or electric power or in assessed ad~~
237 ~~valorem taxes, which increase was initiated more than 12 months~~
238 ~~before the filing by the utility.~~

239 ~~4. The provisions of This subsection does ~~do~~ not prevent a~~
240 ~~utility from seeking a change in rates under pursuant to the~~
241 ~~provisions of subsection (2).~~

242 (c) Before implementing a change in rates under this



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243 subsection, the utility must ~~shall~~ file an affirmation under
244 oath as to the accuracy of the figures and calculations upon
245 which the change in rates is based, stating that the change will
246 not cause the utility to exceed the range of its last authorized
247 rate of return on equity. A person who ~~Whoever~~ makes a false
248 statement in the affirmation required under this subsection
249 ~~hereunder~~, which statement he or she does not believe to be true
250 in regard to any material matter, commits ~~is guilty of~~ a felony
251 of the third degree, punishable as provided in s. 775.082, s.
252 775.083, or s. 775.084.

253 (d) If, within 15 months after the filing of a utility's
254 annual report required by s. 367.121, the commission finds that
255 the utility exceeded the range of its last authorized rate of
256 return on equity after an adjustment in rates as authorized by
257 this subsection was implemented within the year for which the
258 report was filed or was implemented in the preceding year, the
259 commission may order the utility to refund, with interest, the
260 difference to the ratepayers and adjust rates accordingly. This
261 provision does ~~shall~~ not be construed to require a bond or
262 corporate undertaking not otherwise required.

263 (e) Notwithstanding anything in this section ~~herein~~ to the
264 contrary, a utility may not adjust its rates under this
265 subsection more than two times in any 12-month period. For the
266 purpose of this paragraph, a combined application or
267 simultaneously filed applications that were filed under the
268 provisions of paragraphs (a) and (b) are ~~shall be~~ considered one
269 rate adjustment.

270 (f) At least annually, the commission shall ~~may regularly,~~
271 ~~not less often than once each year,~~ establish by order a



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272 leverage formula or formulae that reasonably reflect the range
273 of returns on common equity for an average water or wastewater
274 utility and that ~~which~~, for purposes of this section, are ~~shall~~
275 ~~be~~ used to calculate the last authorized rate of return on
276 equity for a ~~any~~ utility which otherwise would not have an ~~no~~
277 established rate of return on equity. In any other proceeding in
278 which an authorized rate of return on equity is to be
279 established, a utility, in lieu of presenting evidence on its
280 rate of return on common equity, may move the commission to
281 adopt the range of rates of return on common equity which is
282 ~~that has been~~ established under this paragraph.

283 (7) A water utility may file tariffs establishing a
284 surcharge, or other method for the automatic adjustment of its
285 rates, which shall provide for recovery of the prudently
286 incurred fixed costs consisting of depreciation and pretax
287 returns of certain system improvement projects, as approved by
288 the commission, which are completed and placed in service
289 between base rate proceedings. Such projects shall be for the
290 specific purpose of achieving compliance with secondary drinking
291 water quality standards. With respect to each tariff filed, the
292 commission