

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 7109	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Regulatory Affairs Committee; Energy & Utilities Subcommittee; La Rosa; Peters and others	116 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/CS/SB 288	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/HB 7109 passed the House on April 22, 2015, and subsequently passed the Senate on April 29, 2015. The bill:

- Establishes term limits for persons appointed to serve on the Public Service Commission (PSC);
- Requires a person who lobbies the Public Service Commission Nominating Council to register as a legislative lobbyist pursuant to s. 11.045, F.S., and comply with the provisions of that section;
- Requires PSC commissioners to annually complete four hours of ethics training;
- Expands the prohibition on ex parte communications to communications in a proceeding affecting substantial interests which a commissioner knows or reasonably expects will be filed within 180 days;
- Expands the prohibition on ex parte communications to include certain communications at scheduled and noticed open public meetings of educational programs and conferences of regulatory agency associations;
- Authorizes the Governor to remove from office a commissioner found by the Commission on Ethics to have willfully and knowingly violated the law with respect to ex parte communications, and requires removal from office after a second such finding;
- Requires the PSC to provide live streaming on the Internet of each PSC meeting attended by two or more commissioners and at which a decision is made concerning the rights or obligations of any person;
- Requires the PSC to place on its website a recording of each meeting, workshop, hearing, or proceeding;
- Prohibits a regulated electric utility from charging a higher rate under a tiered rate structure due to an increase in usage attributable to a billing cycle extension;
- Establishes limits on the deposit amount that a regulated electric utility may require from a customer;
- Requires a regulated electric utility to notify each customer of all available rates and to provide good faith assistance to the customer in selecting the best rate;
- Requires new and amended tariffs of regulated electric utilities to be approved by vote of the PSC, except for administrative changes, unless otherwise provided by law;
- Specifies that moneys received to implement measures to encourage demand-side renewable energy systems must be used solely for that purpose, including administrative costs of such measures; and
- Creates a financing mechanism by which an investor-owned electric utility, subject to the terms of a PSC order approving the use of such mechanism, may recover certain costs associated with the premature retirement of a nuclear power plant if the PSC finds that customer savings will result.

The Revenue Estimating Conference has determined that the bill will have a negative fiscal impact on state revenues of \$400,000 in FY 2015-16 and a recurring \$1.6 million in FY 2016-17 and thereafter, and will have a negative fiscal impact on local government revenues of \$700,000 in FY 2015-16 and a recurring \$2.7 million in FY 2016-17 and thereafter. The bill may have an insignificant negative fiscal impact on state government expenditures.

The bill was approved by the Governor on June 10, 2015, ch. 2015-129, L.O.F., and will become effective on July 1, 2015.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h7109z1.EUS

**DATE:** June 12, 2015

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Present Situation

##### *Proceedings of the Florida Public Service Commission*

The Florida Public Service Commission (“PSC” or “commission”) is an arm of the legislative branch of government.<sup>1</sup> The role of the PSC is to ensure that Florida’s consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.<sup>2</sup> In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.<sup>3</sup>

In performing this role, the PSC conducts proceedings ranging from workshops, customer hearings, internal affairs meetings, and rulemaking to informal “proposed agency action” proceedings and formal evidentiary hearings. The PSC conducts customer service hearings in the service territory of a rate-regulated utility to obtain customer comments in all formal evidentiary proceedings in which the PSC is considering a change in a utility’s base rates.<sup>4</sup> If feasible, the PSC holds formal evidentiary hearings concerning water and wastewater certificates in the service area of the utility seeking a new or amended certificate.<sup>5</sup>

The PSC streams live on the Internet all internal affairs meetings, agenda conferences, and hearings held in Tallahassee. It also streams live on the Internet all workshops, including rule development workshops, that it believes are of great public interest. All recordings of such meetings, hearings, and workshops are available for future review on the PSC’s web page.<sup>6</sup>

##### *Appointment of Public Service Commissioners*

The PSC is comprised of five commissioners appointed to staggered four-year terms.<sup>7</sup> There are no limits on the number of terms that a commissioner may serve. Although the PSC is an arm of the legislative branch of government, the Legislature has delegated to the Governor a “limited authority with respect to the Public Service Commission by authorizing him or her to participate in the selection of members” in a specific manner<sup>8</sup>: commissioners are appointed by the Governor from a slate of nominees selected by the Public Service Commission Nominating Council (PSC Nominating Council), and the Governor’s appointments must be confirmed by the Senate.<sup>9</sup>

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<sup>1</sup> s. 350.001, F.S.

<sup>2</sup> <http://www.psc.state.fl.us/about/overview.aspx#one>

<sup>3</sup> *Id.* During 2014, the PSC regulated five investor-owned electric companies, eight investor-owned natural gas utilities, and 149 investor-owned water and/or wastewater utilities. While the PSC does not fully regulate publicly owned municipal or cooperative electric utilities, the Commission does have jurisdiction, with regard to rate structure, territorial boundaries, bulk power supply operations and planning, over 34 municipally owned electric systems and 18 rural electric cooperatives. The PSC has jurisdiction, with regard to territorial boundaries and safety, over 28 municipally owned natural gas utilities and also exercises safety authority over all electric and natural gas systems operating in the state.

<sup>4</sup> Public Service Commission Analysis of HB 219 (2015), submitted February 17, 2015.

<sup>5</sup> *Id.* See s. 367.045(4), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> ss. 350.01 and 350.031, F.S.

<sup>8</sup> s. 350.001, F.S.

<sup>9</sup> s. 350.031, F.S.

The PSC Nominating Council consists of 12 members, with six appointed by the President of the Senate and six appointed by the Speaker of the House of Representatives. The President and the Speaker must each appoint three members from their own chamber, including one member from the minority party, and three nonlegislator members. Council members have four-year terms, except that legislator members serve two-year terms concurrent with the two-year elected terms of House members. Council meetings are subject to public records and public meetings law.<sup>10</sup>

Before nominating a person to the Governor for appointment, the PSC Nominating Council must determine that the person is competent and knowledgeable in one or more fields, including but not limited to: public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or “another field substantially related to the duties and functions of the commission.” The law requires that the commission fairly represent these fields.<sup>11</sup>

#### *Public Service Commissioners – Standards of Conduct*

The PSC is required to perform its duties independently.<sup>12</sup> Part III of ch. 112, F.S., establishes a code of ethics for public officers and employees, which includes Public Service Commissioners. Generally, this code prohibits public officers, including commissioners, from soliciting or accepting anything of value to influence a vote or official action, using their official position to secure a special benefit, disclosing or using non-public information for personal benefit, soliciting gifts from lobbyists, and soliciting an honorarium from anyone or accepting an honorarium from a lobbyist. This code also establishes restrictions on public officers, including commissioners, from doing business with one’s own agency, having outside employment or contractual relationships that conflict with public duties, representing any party before one’s agency for compensation for two years after leaving office, and employing relatives in the agency. Finally, this code requires that public officers, including commissioners, disclose voting conflicts when a vote would result in a special private gain or loss, file quarterly reports for gifts over \$100 from persons not lobbyists or relatives, file quarterly reports for receipt of honorarium-related expenses from lobbyists, and disclose certain financial interests.

In addition to the provisions of Part III of ch. 112, F.S., public service commissioners are subject to more stringent requirements in s. 350.041, F.S. In the event of a conflict between Part III of ch. 112 and s. 350.041, F.S., the more restrictive provision applies.<sup>13</sup> Section 350.041, F.S., provides the following standards of conduct:

- A commissioner may not accept anything from a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not accept anything from a party in a proceeding currently pending before the commission.
- A commissioner may not accept any form of employment with, or engage in any business activity with, a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not have any financial interest in a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility), except for shares in a mutual fund.
- A commissioner may not serve as the representative of, or serve as an executive officer or employee of, a political party; campaign for any candidate for public office; or become a candidate for any public office without first resigning.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> s. 350.001, F.S.

<sup>13</sup> s. 350.041(1), F.S.

- A commissioner, during his or her term of office, may not make any public comment on the merits of a formal proceeding in which a person's substantial interests are determined.
- A commissioner may not conduct himself or herself in an unprofessional manner during the performance of official duties.
- A commissioner must avoid impropriety in all activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.

There are no statutory requirements for training related to commissioners' duties and responsibilities under these standards. However, the PSC's Office of General Counsel provides training for all new commissioners on the duties, responsibilities, and prohibitions contained in Chapters 112 and 350, F.S., as well as the public records and meeting laws, and informs commissioners of new developments in these areas.<sup>14</sup>

### *Ex Parte Communications*

Commissioners are prohibited from initiating or considering ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a rulemaking proceeding, a declaratory statement proceeding, workshops, or internal affairs meetings.<sup>15</sup> The law also prohibits an individual from discussing ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days.<sup>16</sup>

If a commissioner receives a prohibited ex parte communication, he or she must: place on the record of the proceeding a copy of any written correspondence or a memo stating the substance of any oral communication; provide written notice to all parties to the proceeding; and provide all parties the opportunity to respond to the ex parte communication. The commissioner may choose to withdraw from the proceeding if he or she believes it is necessary to do so to eliminate the effect of having received the communication.<sup>17</sup> Any individual other than a commissioner that makes a prohibited ex parte communication must submit to the commission: a written statement describing the nature of the communication; copies of all written communications made and written responses received; and a memorandum stating the substance of all oral communications made and oral responses received. The commission must place this information on the record of the relevant proceeding.<sup>18</sup>

The prohibition on ex parte communications does not apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies.<sup>19</sup>

The Commission on Ethics is empowered to investigate sworn complaints of violations of this section. If the Commission on Ethics finds that there has been a violation by a PSC commissioner, it must provide a report of its findings and recommendations to the Governor and the Florida Public Service Commission Nominating Council. The Governor is authorized to enforce the findings and recommendations. A commissioner who fails to place the communication on the record within 15 days is subject to removal and a civil penalty of up to \$5,000. Any other person who participated in the communication faces a two-year ban on practice before the PSC.<sup>20</sup>

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<sup>14</sup> Public Service Commission Analysis of HB 219, *supra* note 4.

<sup>15</sup> s. 350.042(1), F.S. The law does not define "ex parte communications" for purposes of this section, though it is generally understood to mean a communication between a commissioner and a party or other interested person, including an attorney or representative of that party or person, that was neither on the record nor on reasonable prior notice to all parties.

<sup>16</sup> *Id.*

<sup>17</sup> s. 350.042(4), F.S.

<sup>18</sup> s. 350.042(5), F.S.

<sup>19</sup> s. 350.042(3), F.S.

<sup>20</sup> s. 350.042(6) and (7), F.S.

## *Regulation of Electric Utility Customer Billing Practices*

### Rate Information Provided to Customers

The rates and terms of service for each rate-regulated electric utility (electric utility) are reflected in rate schedules applicable to various classes of customers, as established by order of the PSC. In some cases, a customer may be eligible to receive service under more than one rate schedule. PSC rules require an electric utility to notify each customer of any new rate schedule that they may be eligible for within 60 days of approval of the rate schedule and to notify each customer at least once a year of all rate schedules that the customer may elect. Upon request of a customer, an electric utility is required to provide the customer information about applicable rate schedules and assist the customer in obtaining the rate schedule which is most advantageous to the customer's requirements.<sup>21</sup> Absent a customer request, there is no affirmative duty for an electric utility to assist a customer in identifying the most advantageous rate.

### Establishment of Deposits

Under its authority to prescribe fair and reasonable rates and charges, the PSC has adopted a rule on customer deposits.<sup>22</sup> Under this rule, each electric utility's tariff must contain the utility's specific criteria for determining the amount of initial deposit. After a customer has had continuous service for a period of 23 months and has established a satisfactory payment record, the utility must:

- Refund a residential customer's deposit.
- At its option, either refund or pay a higher rate of interest<sup>23</sup> for nonresidential deposits.

An electric utility may also increase a customer's required deposit to secure payment of current bills. For new or additional deposits, the amount of the required deposit may not exceed "an amount equal to twice the average charges for actual usage of electric service for the twelve month period immediately prior to the date of notice." If a customer has had service for less than twelve months, the utility must calculate the new or additional deposit based upon the "average actual monthly usage available."<sup>24</sup>

Though the first part of the rule is ambiguous as to the period of usage for which charges should be averaged, the rule has consistently been interpreted and implemented to mean that the total amount of the deposit required by the utility may not exceed twice the average monthly bill for the immediately preceding twelve months.<sup>25</sup>

### Customer Billing Cycles

PSC rules specify that "each [electric utility] service meter shall be read at monthly intervals on the approximate corresponding day of each meter-reading period."<sup>26</sup> Further, utilities may adjust a billing cycle, provided that "[t]he regular meter reading date may be advanced or postponed not more than five days without a pro-ration of the billing for the period."<sup>27</sup>

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<sup>21</sup> Rule 25-6.093, F.A.C.

<sup>22</sup> Rule 25-6.097, F.A.C.

<sup>23</sup> *Id.* This higher interest rate is three percent instead of the usual two percent. In all cases the interest is simple interest, not compounded.

<sup>24</sup> *Id.*

<sup>25</sup> *See, e.g.*, PSC Order No. PSC-13-0124-PAA-EI, issued March 13, 2013, in Docket No. 120176-EI (In re: Complaint of Frederick Smallakoff against Progress Energy Florida, Inc. concerning alleged improper bills, Case No. 1059336E).

<sup>26</sup> Rule 25-6.099, F.A.C.

<sup>27</sup> Rule 25-6.100, F.A.C.

Upon approval of the PSC, electric utilities may use tiered rates in particular rate schedules. Tiered rates are typically used to encourage conservation by applying a higher rate for usage above a threshold specified in the rate schedule. The PSC's rules do not address the application of tiered rates to extended billing periods. Recently, an electric utility adjusted its billing period for one billing cycle "as part of an ongoing process started in May 2013 to streamline the company's routes for meter-reading throughout central and northern Florida."<sup>28</sup> As a result of the extended billing period, some customers' total usage for the extended billing period increased such that a tiered rate was applicable, even though their average daily use did not increase during that period. After many complaints, the utility agreed to refund all increased charges and absorb the remaining unbilled charges that would have resulted.<sup>29</sup>

### *Approval of Electric Utility Tariffs*

The PSC-approved rate schedules for each electric utility are set forth in tariffs. In certain circumstances, the PSC authorizes its staff to administratively approve utility tariffs without a vote of the commission. These circumstances include approval of tariffs filed to correct typographical errors, approval of tariff amendments that clarify or reorganize text, approval of tariffs filed in response to PSC rules or orders, and removal of obsolete tariffs once all customers have discontinued service under the tariff.<sup>30</sup>

### *Recovery of Costs for Energy Efficiency and Conservation Programs*

Pursuant to the Florida Energy Efficiency and Conservation Act (FEECA), the PSC must establish energy efficiency and conservation goals for certain electric utilities and must establish plans and programs designed to meet those goals.<sup>31</sup> In 2008, the Legislature added a requirement for the PSC to adopt appropriate goals for increasing the development of demand-side renewable energy systems.<sup>32</sup> To implement this requirement, the PSC created a five-year solar pilot project, and each year the utilities collected money for these purposes. In the most recent FEECA goal-setting hearings in 2014, electric utilities proposed ending the project early, and parties to the proceeding expressed concern about the potential disposition of the remaining funds.

In annual hearings, the PSC reviews each utility's costs for FEECA programs. Cost recovery through rates in a given calendar year is based on the net of projected expenses for that year and the positive or negative "true-up" balance from the preceding period. Under this mechanism, utilities are able to recover only the actual costs of providing the FEECA programs, including costs to administer the programs.

### *Electric Utility Securitization Financing in Florida*

Following the severe tropical storm seasons that Florida faced in 2004 and 2005, the Legislature created a new financing mechanism, referred to as securitization, by which investor-owned electric utilities could petition the Public Service Commission for issuance of a financing order authorizing the

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<sup>28</sup> Jim Turner, *Duke Energy called to explain billing change*, Tallahassee Democrat, August 25, 2014, <http://www.tallahassee.com/story/news/politics/2014/08/25/duke-energy-called-explain-billing-change/14594563/> (last accessed March 13, 2015).

<sup>29</sup> Ivan Penn, *Duke charges were set to reach more than \$2.6 million in overbilling*, Tampa Bay Times, September 10, 2014, <http://www.tampabay.com/news/business/energy/duke-energy-refunds-17-million-to-customers-because-of-meter-issue/2197029> (last accessed March 13, 2015).

<sup>30</sup> Public Service Commission Analysis of HB 219, *supra* note 4 (referring to FPSC Agency Procedure Manual, Chapter 2.07).

<sup>31</sup> ss. 366.80-366.83 and 403.519, F.S.

<sup>32</sup> Chapter 2008-227, Laws of Fla. The term "demand-side renewable energy" means a system located on a customer's premises generating thermal or electric energy using Florida renewable energy resources and primarily intended to offset all or part of the customer's electricity requirements provided such system does not exceed 2 megawatts.

utility to issue bonds through a separate legal entity.<sup>33</sup> If granted, the financing order was required to establish a nonbypassable charge to the utility's customers in order to provide a secure stream of revenues to the separate legal entity from which the bonds would be paid. The purpose of this mechanism was to allow utilities access to low-cost financing to cover storm recovery costs and to replenish storm reserve funds. This mechanism has been implemented in only one instance.<sup>34</sup>

## **Effect of Proposed Changes**

### *Proceedings of the Florida Public Service Commission*

The bill establishes requirements for the PSC to provide live streaming on the Internet of specified proceedings. Specifically, the bill requires live streaming of each PSC meeting that is attended by two or more commissioners, including each internal affairs meeting, workshop, hearing, or other proceeding. The bill also requires live streaming of each PSC meeting, workshop, hearing, or other proceeding at which a decision is made which concerns the rights or obligations of any person. The bill requires that a recorded copy of each meeting, workshop, hearing, or proceeding be made available on the PSC's website.

The PSC currently provides live streaming, and makes recordings available on its website, for most of the types of meetings addressed in the bill, but it does not do so for all workshops or for many events held outside of Tallahassee. Thus, the bill will expand public access to view these events.

### *Appointment of Public Service Commissioners*

Noting that the purpose of the PSC Nominating Council is to select nominees for an arm of the legislative branch of government, the bill establishes a requirement that any person who lobbies the PSC Nominating Council must register as a lobbyist pursuant to s. 11.045, F.S., which governs registration and reporting requirements for legislative branch lobbying. The bill specifies the type of activity that qualifies as lobbying for purposes of registration, using essentially the same language used in s. 11.045, F.S., to define such activity. Specifically, the requirement applies to:

a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of influencing or attempting to influence action of the council through oral or written communication or through an attempt to obtain the goodwill of a legislator or nonlegislator member of the council, or a person who is principally employed for governmental affairs by another person or governmental entity to act on behalf of that other person or entity for this purpose ....

Each person subject to registration under the bill must also comply with the other provisions of s. 11.045, F.S., which address the filing of compensation reports, prohibited expenditures to the benefit of a member, and penalties for noncompliance. The bill provides for implementation by joint rule of the Legislature.

The bill also establishes term limits for PSC commissioners. Commissioners appointed after July 1, 2015, may not serve more than three consecutive terms.

### *Public Service Commissioners – Standards of Conduct*

The bill requires that PSC commissioners must annually complete four hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public

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<sup>33</sup> s. 366.8260, F.S.

<sup>34</sup> Docket No. 060038-EI, Florida Public Service Commission.

Officers and Employees, and the public records and public meetings laws of the state. The bill provides that this requirement can be met by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

### *Ex Parte Communications*

The bill expands the prohibition on ex parte communications to include any communication between a commissioner and a person legally interested in a proceeding (e.g., a party, interested person, or legal counsel for either) concerning the merits, threat, or offer of reward in a proceeding which a commissioner knows or reasonably expects will be filed within 180 days after the date of the communication. This reduces the period of time during which communications could potentially occur between interested persons and commissioners concerning the merits of matters that may come before the PSC. The bill specifies that the prohibition applies in proceedings under sections 120.569 and 120.57, F.S., i.e., proceedings in which a party's substantial interests may be affected.

The bill eliminates the exception for ex parte communications in scheduled and noticed open public meetings of educational programs and conferences of associations of regulatory agencies. The bill provides a finding that recognizes the value of having commissioners attend educational programs, conferences, and meetings of associations of regulatory agencies, but establishes requirements for attendance and participation in such meetings that are intended to avoid violations of the ex parte prohibition. While participating in these meetings, a commissioner must refrain from commenting on or discussing any proceeding covered by the prohibition and must use reasonable care to ensure that the content of a meeting in which the commissioner participates is not designed to address or create a forum to influence the commissioner on any such proceeding.

The bill authorizes the Governor to remove from office any commissioner found by the Commission on Ethics to have willfully and knowingly violated s. 350.042, F.S., related to ex parte communications, even if the Commission on Ethics does not recommend removal. The bill requires the Governor to remove a commissioner from office upon a finding by the Commission on Ethics that the commissioner willfully and knowingly violated s. 350.042, F.S., in a second, subsequent matter.

### *Regulation of Electric Utility Customer Billing Practices*

#### Rate Information Provided to Customers

In each instance where an electric utility offers more than one rate for any customer class, the bill requires the utility to notify each customer in that class of the available rates and explain how each rate is charged. The bill requires each electric utility, when contacted by a customer seeking assistance in selecting the most advantageous rate, to provide good faith assistance to the customer.

#### Establishment of Deposits

The bill establishes clear provisions for the calculation of deposits that an electric utility may require as a condition of service. The bill provides that, effective January 1, 2016, a utility may not charge or receive a deposit in excess of the following amounts:

- For an existing account, the total deposit may not exceed the total charges for two months of average actual usage, calculated by adding the monthly charges from the 12-month



period immediately before the date any change in the deposit amount is sought, dividing this total by 12, and multiplying the result by two. If the account has less than 12 months of actual usage, the deposit must be calculated by adding the available monthly charges, dividing this total by the number of months available, and multiplying the result by two.

- For a new customer, the amount may not exceed two months of projected charges, calculated by adding the projected 12 months of charges, dividing this total by 12, and multiplying the result by two. Once a new customer has had continuous service for a 12-month period, the amount of the deposit must be recalculated, using actual usage data. Any difference between the projected and actual amounts must be resolved by the customer paying any additional amount that may be billed by the utility or the utility returning any overcharge.

### Customer Billing Cycles

In situations where the PSC has approved tiered rates for an electric utility and has authorized the utility to adjust its regular billing period, the bill prohibits a utility from charging the customer higher rates because of an increase in usage attributable to the extended billing period. The bill maintains the current practice of allowing meter reading dates to be advanced or postponed up to five days, for routine operating reasons, without a requirement that billing be pro-rated for that period.

### *Approval of Electric Utility Tariffs*

The bill provides that new and amended electric utility tariffs must be approved by vote of the PSC, except as otherwise specifically provided by law. The bill provides an exception for administrative changes that do not substantially change the meaning or operation of a tariff.

### *Recovery of Costs for Energy Efficiency and Conservation Programs*

The bill provides that moneys received by a rate-regulated electric utility to implement measures to encourage development of demand-side renewable energy systems may only be used for that purposes, including related administrative costs. This provision is consistent with current PSC practice.

### *Electric Utility Securitization Financing in Florida – Nuclear Asset Recovery Costs*

The bill creates a bond financing mechanism by which an investor-owned electric utility, subject to the terms of a financing order issued by the PSC, may recover certain costs associated with the premature retirement of a nuclear power plant if the commission finds that the utility's use of the financing mechanism will avoid or significantly mitigate rate impacts to customers as compared with traditional methods of recovery for such costs. The financing order would establish a nonbypassable charge to the utility's customers to provide a secure stream of revenues to the separate legal entity from which the bonds would be paid. This securitized revenue stream would allow the utility access to low-cost financing to cover certain costs associated with the premature retirement of a nuclear power plant, reducing total costs charged to the utility's ratepayers.

Specifically, the bill authorizes an electric utility to recover "nuclear asset recovery costs"<sup>35</sup> by issuing bonds to obtain funding to pay those costs. The bonds would be paid through charging

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<sup>35</sup> The bill defines "nuclear asset recovery costs" as pretax costs that an electric utility has incurred or expects to incur which are caused by, associated with, or remain as a result of the early retirement or abandonment of a nuclear generating asset unit that generated electricity and is located in this state where such early retirement or abandonment is deemed to be reasonable and prudent

and collecting a “nuclear asset recovery charge”<sup>36</sup> from the utility’s customers. “Financing costs”<sup>37</sup> for the bond issuance are included in the charge. The right to bill and collect the authorized charges and to have all resulting revenues constitutes “nuclear asset recovery property.”<sup>38</sup> The utility may transfer the nuclear asset recovery property to an assignee.<sup>39</sup>

Under this mechanism, an electric utility may petition the PSC for a financing order. In its petition, the utility must:

- Describe the total nuclear asset recovery costs;
- Indicate whether the utility proposes to finance all or a portion of the nuclear asset recovery costs using securitized bonds, and if only a portion of the total costs will be recovered through bonds, identify that portion;
- Estimate the financing costs;

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by the commission through a final order approving a settlement or other final order issued by the commission before July 1, 2017, and where the pretax costs to be securitized exceed \$750 million at the time of the filing of the petition. Such pretax costs, where determined appropriate by the commission, include, but are not limited to, the capitalized cost of the retired or abandoned nuclear generating asset unit, other applicable capital and operating costs, accrued carrying charges, deferred expenses, reductions for applicable insurance and salvage proceeds and previously stipulated write-downs or write-offs, if any, and the costs of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements. Costs eligible or claimed for recovery pursuant to s. 366.93, F.S., are not eligible for securitization under this section unless they were in the electric utility’s rate base and were included in base rates before retirement or abandonment.

<sup>36</sup> A “nuclear asset recovery charge” is the charge authorized by the commission to repay nuclear asset recovery costs and financing costs. It is imposed on and part of all customer bills as a separate, nonbypassable charge.

<sup>37</sup> The term “financing costs” includes:

- Interest and acquisition, defeasance, or redemption premiums that are payable on nuclear asset recovery bonds;
- Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to the bonds;
- Any other cost related to issuing, supporting, repaying, refunding, and servicing the bonds, including, but not limited to, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, financial advisor fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of the bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;
- Any taxes and license fees imposed on the revenues generated from the collection of the nuclear asset recovery charge;
- Any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including but not limited to, regulatory assessment fees, in any such case whether paid, payable, or accrued; and
- Any costs that are incurred by the PSC for any outside consultants or counsel.

<sup>38</sup> The term “nuclear asset recovery property” means:

- All rights and interests of an electric utility or successor or assignee under a financing order, including the right to impose, bill, collect, and receive nuclear asset recovery charges as authorized in the financing order and to obtain periodic adjustments to such charges as provided in the financing order; and
- All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

<sup>39</sup> “Assignee” is defined to mean any entity, including, but not limited to, a corporation, limited liability company, partnership or limited partnership, public authority, trust, financing entity, or other legally recognized entity to which an electric utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to nuclear asset recovery property. The term also includes any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to nuclear asset recovery property. Subparagraph 366.95(5)(a)3. provides that all or any portion of nuclear asset recovery property may be transferred, sold, conveyed, or assigned to a successor or assignee, that is wholly owned, directly or indirectly, by the electric utility, created for the limited purpose of acquiring, owning, or administering nuclear asset recovery property or issuing nuclear asset recovery bonds. This appears to limit the initial transfer of the nuclear asset recovery property to a subsidiary or affiliate company.

- Estimate the nuclear asset recovery charges necessary to recover the nuclear asset recovery costs and financing costs and the period for recovery of such costs;
- Estimate any projected cost savings, based on current market conditions, or demonstrate how the issuance of the securitized bonds and the imposition of nuclear asset recovery charges would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset recovery costs from customers;
- Demonstrate that securitization has a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts compared to traditional cost recovery; and
- File with the petition direct testimony supporting the petition.

Within 7 days after the filing of a petition, the PSC must publish a case schedule which will permit it to make a decision no later than 120 days after the date the petition is filed. No later than 135 days after the date the petition is filed, the PSC must issue either a financing order or an order rejecting the petition. The PSC must issue a financing order authorizing financing of reasonable and prudent nuclear asset recovery costs and financing costs if it finds that the issuance of the nuclear asset recovery bonds will have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset recovery costs.

A financing order issued by the commission must:

- Specify the amount of nuclear asset recovery costs to be financed using securitized bonds; describe and estimate the amount of financing costs which may be recovered through nuclear asset recovery charges; and specify the period over which such costs may be recovered;
- Determine if the proposed structuring, expected pricing, and financing costs have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset recovery costs, and provide detailed findings of fact addressing cost-effectiveness and associated rate impacts upon retail customers and retail customer classes;
- Provide that, for a specified period, the nuclear asset recovery charges authorized in the financing order shall be nonbypassable and must be paid by all existing and future customers receiving transmission or distribution service from the electric utility or its successors or assignees, even if the customer elects to purchase electricity from an alternative electric supplier including following a fundamental change in regulation of public utilities in the state;
- Include a formula-based true-up mechanism for making expeditious periodic adjustments in the nuclear asset recovery charges that are necessary to correct for any overcollection or undercollection of the charges;
- Specify the nuclear asset recovery property that is, or will be, created in favor of the electric utility or its successors or assignees and that will be used to pay or secure the nuclear asset recovery bonds;
- Specify the degree of flexibility to be afforded to the utility in establishing the terms and conditions of the bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs;
- Provide that nuclear asset recovery charges must be allocated to the customer classes using the criteria set out in s. 366.06(1), F.S.,<sup>40</sup> in the manner in which these costs or their

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<sup>40</sup> This statute states that in fixing fair, just, and reasonable rates for each customer class, the PSC shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public

equivalent were allocated in the cost-of-service study approved in connection with the electric utility's last rate case. If the electric utility's last rate case was resolved by a settlement agreement, the cost-of-service methodology adopted in the settlement agreement will be used;

- Provide that, after the final terms of an issuance of nuclear asset recovery bonds have been established and prior to the issuance of nuclear asset recovery bonds, the electric utility must determine the resulting initial nuclear asset recovery charge in accordance with the financing order and the initial nuclear asset recovery charge is final and effective upon the issuance of the securitized bonds without further PSC action so long as the charge is consistent with the financing order; and
- Include any other conditions that the PSC considers appropriate and that are authorized by this section.

If the PSC issues a financing order and bonds are issued, the electric utility or its assignee must file with the PSC, at least biannually, a petition or a letter applying the formula-based true-up mechanism and, based on estimates of consumption for each rate class and other factors, requesting administrative approval to make necessary adjustments. Review of the request is limited to determining whether there is any error in the application of the formula-based mechanism relating to the amount of any overcollection or undercollection or in the amount of an adjustment.

Within 120 days after the issuance of nuclear asset recovery bonds, the electric utility must file with the PSC information on the actual costs of the bond issuance. The PSC must review the information to determine if the 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 PSC may disallow any incremental issuance costs in excess of the lowest overall costs by requiring the utility to make a credit to rates, through the PSC's annual capacity cost recovery proceeding, in an amount equal to the excess of actual issuance costs incurred, and paid for out of bond proceeds, and the lowest overall issuance costs as determined by the PSC. The PSC may not make adjustments to the nuclear asset recovery charges for any excess issuance costs. This mechanism appears to protect utility ratepayers from paying for financing costs deemed unreasonable by the PSC while protecting the integrity of the securitized revenue stream that supports the bond issuance.

Subsequent to the earlier of the transfer of nuclear asset recovery property to an assignee or the issuance of nuclear asset recovery bonds, a financing order is irrevocable, and the PSC may not, other than through the true-up process, amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust nuclear asset recovery charges.

After the issuance of a financing order, the electric utility retains sole discretion regarding whether to assign, sell, or otherwise transfer nuclear asset recovery property or to cause nuclear asset recovery bonds to be issued. If the electric utility decides not to cause bonds to be issued, the utility may not recover financing costs from ratepayers.

Within 30 days after the PSC issues a financing order or another final order, an adversely affected party may petition for judicial review in the Florida Supreme Court. The Court must hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

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utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

A financing order remains in effect and all nuclear asset recovery property continues to exist until the nuclear asset recovery bonds have been paid in full and all financing costs have been recovered in full. A financing order remains in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, or merger, or sale of the electric utility or its successors or assignees.

An electric utility that has issued nuclear asset recovery bonds must disclose on its bills the portion of the charges that represent nuclear asset recovery charges and, if the nuclear asset recovery property has been transferred to an assignee, must include a statement that the assignee is the owner of the rights to the nuclear asset recovery charges and that the electric utility is acting as a collection agent for the assignee. The applicable tariff also must indicate the nuclear asset recovery charge and the ownership of that charge.

If an electric utility defaults on any payment of nuclear asset recovery charges, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, must order the sequestration and payment of the revenues arising from the nuclear asset recovery property.

Any successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of electric utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the electric utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the nuclear asset recovery property.

A valid, enforceable, and attached security interest is perfected against third parties as of the date of filing of a financing statement in the Florida Secured Transaction Registry and thereafter is a continuously perfected lien. The security interest in the nuclear asset recovery property and all proceeds of the nuclear asset recovery property, whether billed, accrued, or collected, and whether deposited into a deposit account and however evidenced, have priority and take precedence over any subsequent judicial or other lien creditor.

If a default or termination occurs under the terms of the nuclear asset recovery bonds, the financing parties<sup>41</sup> or their representatives may foreclose on or otherwise enforce their lien and security interest in any nuclear asset recovery property as if they were a secured party under Article 9 of the Uniform Commercial Code, and a court may order that amounts arising from nuclear asset recovery property be transferred to a separate account for the financing parties' benefit. On application by or on behalf of the financing parties to a circuit court of this state, the court must order the sequestration and payment to the financing parties of revenues arising from the nuclear asset recovery property.

The bill sets out a "state pledge" that the state will not:

- Alter the provisions of this section which make the nuclear asset recovery charges irrevocable, binding, and nonbypassable charges;
- Take or permit any action that impairs or would impair the value of nuclear asset recovery property or revises authorized nuclear asset recovery costs; or
- Except as allowed under this section, reduce, alter, or impair nuclear asset recovery charges that are to be imposed, collected, and remitted for the benefit of the bondholders and other

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<sup>41</sup> "Financing Party" means any and all of the following: holders of Nuclear Asset Recovery Bonds and trustees, collateral agents, any party under an Ancillary Agreement, or any other persons acting for the benefit of holders of nuclear asset recovery bonds.

financing parties until all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the nuclear asset recovery bonds have been paid and performed in full.

If an electric utility violates these provisions or a financing order, it is subject to penalties under s. 366.095, F.S.,<sup>42</sup> and to any other penalties or remedies that the PSC determines are necessary. If the PSC orders a penalty or a remedy for a violation, the monetary penalty or remedy and the costs of defending against the proposed penalty or remedy may not be recovered from the ratepayers.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill creates a mechanism by which a utility may access low-cost financing to recover certain costs associated with premature retirement of a nuclear power plant, if the PSC finds that use of the mechanism will avoid or significantly mitigate rate impacts to customers. Duke Energy Florida (Duke Energy) currently has unrecovered costs associated with its retired nuclear power plant, Crystal River Unit 3.

Assuming that Duke Energy is able to use the new mechanism to finance these costs and create customer savings, in turn reducing taxable charges to customers, the Revenue Estimating Conference determined that this provision of the bill will have a negative fiscal impact on the state's General Revenue Fund of \$100,000 in FY 2015-16 and a recurring \$400,000 in FY 2016-17 and subsequent fiscal years, and will have a negative fiscal impact on state trust funds of \$300,000 in FY 2015-16 and a recurring \$1.2 million in FY 2016-17 and subsequent fiscal years.

#### 2. Expenditures:

In its analysis of the bill,<sup>43</sup> the PSC estimates non-recurring costs of \$13,795 to purchase equipment required to live-stream meetings held outside of Tallahassee. It estimates recurring costs of \$16,760 for additional staff time and travel to such meetings to provide live streaming. The PSC also indicates that, if the agency's current in-house ethics training will not satisfy the training requirements in the bill, the bill may increase costs to obtain outside ethics training for commissioners.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill creates a mechanism by which a utility may access low-cost financing to recover certain costs associated with premature retirement of a nuclear power plant, if the PSC finds that use of the mechanism will avoid or significantly mitigate rate impacts to customers. Duke Energy currently has unrecovered costs associated with its retired nuclear power plant, Crystal River Unit 3.

Assuming that Duke Energy is able to use the new mechanism to finance these costs and create customer savings, in turn reducing charges to customers, the Revenue Estimating Conference

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<sup>42</sup> This statute authorizes the PSC to impose upon a utility that is found to have refused to comply with or to have willfully violated any lawful rule or order of the PSC, or any provision of this chapter, a penalty for each offense of not more than \$5,000, which is fixed, imposed, and collected by the PSC. Each day that such refusal or violation continues is considered a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the PSC as a statutory lien.

<sup>43</sup> Florida Public Service Commission, Agency Analysis of 2015 House Bill 7109, pp. 4-5 (April 8, 2015).

determined that this provision of the bill will have a negative fiscal impact on local government revenues of \$700,000 in FY 2015-16 and a recurring \$2.7 million in FY 2016-17 and subsequent fiscal years. These amounts reflect reduced collections of municipal and county public service taxes and franchise fees.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Customers of rate-regulated electric utilities will be protected from the imposition of higher, tiered rates in certain situations resulting from the extension of a utility's billing cycle. Customers will be protected from the imposition of excessive deposits and will receive rate schedule information that will allow cost comparisons.

Customers of an electric utility that utilizes the securitization mechanism for certain nuclear asset retirement or abandonment costs should experience rates that are lower than they otherwise would be. Based on estimates that assume the use of this mechanism under current market conditions, customers of Duke Energy could see total savings of up to \$600 million (net present value).

Persons who lobby the PSC Nominating Council may incur costs to register as a lobbyist, if not otherwise registered. Electric utilities may incur costs to adjust billing systems to comply with the bill.

D. FISCAL COMMENTS:

None.