

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 777 Electric Power Rate Study  
**SPONSOR(S):** Ray  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1062

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	11 Y, 1 N	Whittier	Keating
2) Finance & Tax Committee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Regulation of electric utilities in Florida varies based on the organization of the electric utility. There are three distinct types of electric utility organizations providing service in Florida:

- Investor-owned electric utilities,
- Municipal electric utilities, and
- Rural electric cooperatives.

Within each of these types of utility are classes of ratepayers that are grouped together based on similar levels of demand, usage locations, and load patterns. The major classes of ratepayers are:

- Residential,
- Commercial, and
- Industrial.

All three types of electric utility are subject to the Public Service Commission's (PSC) statutory authority to regulate electric system planning, reliability, and safety. However, only the investor-owned electric utilities are under the PSC's authority to regulate retail rates and service.

The bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a comparative rate analysis to examine the average rates and charges imposed by electric utilities for each class of customer and to assess the utilities' average expenses for each class, including the cost of generation and distribution. The bill provides that the data must be summarized for the state's investor-owned electric utilities, municipal electric utilities, and rural electric cooperatives.

The report is to be submitted by OPPAGA to the President of the Senate, the Speaker of the House, and the standing legislative committees with jurisdiction over electric utilities or finance and taxation by December 1, 2015.

There appears to be no fiscal impact on state or local government. OPPAGA indicates that it can perform the responsibilities outlined in this bill within existing resources.

The bill provides that the act shall take effect upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### **Office of Program Policy Analysis and Government Accountability**

In 1994, the Legislature created the Office of Program Policy Analysis and Government Accountability (OPPAGA) as an arm of the Legislature to help improve the performance and accountability of state government. OPPAGA provides data, evaluative research, and objective analyses to assist legislative budget and policy deliberations. OPPAGA's research projects are undertaken at the direction of legislative leadership, the Joint Legislative Auditing Committee, and/or statutes or proviso language.<sup>1</sup>

##### **Public Service Commission**

Another arm of the Legislature, the Public Service Commission (PSC), ensures that Florida's consumers receive essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.<sup>2</sup> 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 and rulemaking to informal “proposed agency action” proceedings and formal evidentiary hearings. The PSC is composed of a five-member board with members appointed to staggered 4-year terms<sup>4</sup> and is funded primarily through regulatory assessment fees imposed on regulated entities.<sup>5</sup>

In performing its role, the PSC has authority to access the books and records of regulated entities, including relevant books and records of affiliates,<sup>6</sup> to require reports,<sup>7</sup> to conduct inquiries,<sup>8</sup> and to perform financial, management, and operations audits of regulated entities.<sup>9</sup> The PSC is authorized to initiate certain types of proceedings within its jurisdiction.

##### **Electric Utilities in Florida**

Florida law distinguishes “public utilities” from “electric utilities” for regulatory purposes. “Electric utility” is a broad term encompassing “any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.”<sup>10</sup> “Public utility” refers only to an investor-owned utility.

Regulation of electric utilities in Florida varies based on the organization of the electric utility. There are three distinct types of electric utility organizations providing service in Florida:

- Investor-owned electric utilities,
- Municipal electric utilities, and
- Rural electric cooperatives.

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<sup>1</sup> Office of Program Policy Analysis and Government Accountability, <http://www.oppaga.state.fl.us/>, (last visited Mar. 23, 2015).

<sup>2</sup> Florida Public Service Commission, <http://www.psc.state.fl.us/about/overview.aspx>, (last visited Mar. 23, 2015).

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

<sup>4</sup> s. 350.01, F.S.

<sup>5</sup> s. 350.113, F.S.

<sup>6</sup> See, e.g., sections 364.183, (telecommunications companies), 366.093, F.S. (public utilities), and 367.156, F.S. (water and wastewater systems).

<sup>7</sup> See, e.g., section 350.117(1), F.S.

<sup>8</sup> Authority under s. 350.121, F.S., has not been exercised by the PSC in almost 20 years.

<sup>9</sup> s. 350.117, F.S.

<sup>10</sup> s. 366.02(2), F.S.

All three types of electric utility are subject to the PSC's statutory authority to regulate electric system planning, reliability, and safety. Within each of these types of utility are classes of ratepayers that are grouped together based on similar levels of demand, usage locations, and load patterns.<sup>11</sup> The major classes of ratepayers are:

- Residential,
- Commercial, and
- Industrial.

### ***Investor-Owned Electric Utilities***

"Public utilities" are defined as "every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state . . . ." This definition specifically excludes: rural electric cooperatives; municipal electric utilities; special natural gas districts; natural gas transmission pipeline companies making only sales or delivery at wholesale or to direct industrial users; entities making sales of natural gas but neither owning nor operating transmission or distribution facilities in Florida; and persons supplying liquefied petroleum (LP) gas.<sup>12</sup>

The PSC is responsible for setting the rates charged by Florida's investor-owned electric utilities (IOUs).<sup>13</sup> An IOU may not charge customers any rate that has not been approved by the PSC.<sup>14</sup> The rates set by the PSC must allow the utility to: (a) recover its costs of providing service; and (b) earn a fair rate of return on its investment in utility property.<sup>15</sup> The IOUs serve the majority of all electric customers in the state, and include:

- Florida Power & Light Company,
- Duke Energy,
- Tampa Electric Company,
- Gulf Power Company, and
- Florida Public Utilities Company.

### ***Municipal Electric Utilities and Rural Electric Cooperatives***

Municipal electric utilities and rural electric cooperatives are largely self-regulated entities.<sup>16</sup> They set their own rates and terms of service, and customer complaints are handled by the municipal utility or the rural cooperative. While the PSC has authority to prescribe a "rate structure" for these utilities, this authority is relatively limited when compared to the PSC's rate-setting authority for investor-owned electric utilities.

The term "municipal electric utility" is not defined in Florida law. Common understanding within the industry is that a municipal electric utility is an electric utility, owned and operated by a municipality or an agency of a municipality in Florida, which sells electricity at retail to the public. There are 34 municipal electric utilities located throughout the state.<sup>17</sup>

Municipal electric utilities are governed either by a local city commission or by an elected or appointed utility authority and are not-for-profit, though they often return money to the municipality's general fund. Capital is raised through operating revenues or sale of tax-exempt bonds.

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<sup>11</sup> Florida Electric Power Coordinating Group, Inc., Florida's Electric Utilities: A Reference Guide, p. 40 (Jan. 1994).

<sup>12</sup> s. 366.02(1), F.S.

<sup>13</sup> ss. 366.04(1), 366.041, 366.05(1), and 366.06, F.S.

<sup>14</sup> ss. 366.03 and 366.06, F.S.

<sup>15</sup> ss. 366.041(1) and 366.06(1), F.S.

<sup>16</sup> Except for the PSC's oversight for system planning, reliability, and safety purposes.

<sup>17</sup> Email correspondence with staff from the PSC (Mar. 23, 2015).

The term “cooperative” is used in Florida’s Rural Electric Cooperative Law (RECL)<sup>18</sup> to refer to a cooperative, nonprofit, membership corporation organized under the RECL for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas. The RECL addresses the creation, membership, governance, and powers of rural electric cooperatives.

Florida has 16 distribution cooperatives (serving retail customers) and two generation and transmission cooperatives (providing power to member distribution cooperatives for resale).<sup>19</sup>

Florida’s electric cooperatives are relatively small electric utilities and often work together to achieve scales of economy that they cannot achieve on their own. For example, many of Florida’s distribution cooperatives that serve retail customers are members of a generation and transmission cooperative that generates and purchases electrical power and delivers it to its member-cooperatives for resale to end-use customers.

Unlike municipal utilities that are governed in most cases by a board of elected officials, each cooperative is governed by a board of cooperative members who are elected by the membership of the cooperative.<sup>20</sup> Like municipal utilities, the rates and service of rural electric cooperatives are largely self-regulated. Rural electric cooperatives are not-for-profit, are owned by the members they serve, and provide at-cost electric service to their members.

### **Effect of Proposed Changes**

The bill directs OPPAGA to conduct a comparative rate analysis to examine the average rates and charges imposed by electric utilities for each class of customer and to assess the utilities’ average expenses for each class, including the cost of generation and distribution. The bill provides that the data must be summarized for the state’s investor-owned electric utilities, municipal electric utilities, and rural electric cooperatives. In reviewing the rates and charges by customer class, OPPAGA is to disaggregate and separately identify the following that are part of the net cost of power generation:

- Taxes,
- Fees,
- Franchise expenses, or
- Other major expenses.

The study is to separately identify the state-, regional-, and locally-imposed government fees associated with power generation in the state and analyze the impact of such fees on the cost of power generation and on overall customer rates. Further, after computing and analyzing the average rates and charges by customer class, OPPAGA must compare the rates against average rates and charges of other states in the southeastern United States.

The report is to be submitted by OPPAGA to the President of the Senate, the Speaker of the House, and the standing legislative committees with jurisdiction over electric utilities or finance and taxation by December 1, 2015.

The bill directs the Office of Public Counsel and the PSC to assist in obtaining the required information if it is requested by OPPAGA.

#### **B. SECTION DIRECTORY:**

**Section 1.** Requires OPPAGA to conduct a study to determine the average rates, charges, and expenses of providing electricity; specifies requirements for the study; directs the Office of the Public Counsel and the PSC to provide assistance in obtaining the required information as requested; requires the report to be provided to the Legislature by a specified date.

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<sup>18</sup> ch. 425, F.S.

<sup>19</sup> Email correspondence with staff from the PSC (Mar. 23, 2015).

<sup>20</sup> s. 425.10, F.S.

**Section 2.** Provides that the act shall take effect upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

OPPAGA indicates that it can perform the responsibilities outlined in this bill within existing resources.<sup>21</sup>

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

Not applicable.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>21</sup> Telephone conversation with staff from OPPAGA (Mar. 23, 2015).  
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**DATE:** 3/24/2015