

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 269 Natural Gas and Public Utility Petitions for Rate Relief

**SPONSOR(S):** Byrd and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 350

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**FINAL HOUSE FLOOR ACTION:** 113 Y's      3 N's            **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 269 passed the House on March 9, 2022, as SB 350.

The bill increases the threshold under which investor-owned electric utilities (IOUs) are eligible to have a petition for rate relief considered by the Florida Public Service Commission (PSC) under informal procedures referred to as proposed agency action (PAA) procedures. Under current law, only IOUs with less than 500 gigawatt hours (GWh) in annual electricity sales are eligible to request use of these PAA procedures for rate cases. No Florida IOU currently has annual sales below this threshold. The bill increases the annual sales threshold to 1,000 GWh, which will make one IOU, Florida Public Utilities Company (FPUC), eligible to request use of PAA procedures for a rate case.

The bill may have an insignificant positive impact on state government expenditures. The bill will not impact state government revenues or local government revenues or expenditures.

The bill was approved by the Governor on April 27, 2022, ch. 2022-74, L.O.F., and will become effective on July 1, 2022.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Present Situation

The Florida Public Service Commission (PSC) is an arm of the Legislature, created to oversee utility services to the people of Florida.<sup>1</sup> Among its powers, the PSC has broad jurisdiction over the rates and service of investor-owned electric utilities (IOUs) in Florida.<sup>2</sup> As required by law, the PSC sets base rates that are designed to allow each IOU to recover its legitimate costs of providing service,<sup>3</sup> including a return on the IOU's prudent capital investments.<sup>4</sup>

Base rates are changed through "rate case" proceedings on an as-needed basis. When an IOU aims to change its base rates, it must petition the PSC and file documents that satisfy the minimum filing requirements (MFRs) established by the PSC for a rate case.<sup>5</sup> A formal hearing process ensues, including a discovery process, an evidentiary hearing, customer service hearings, and post-hearing brief submissions. The PSC must take final action and issue its final order on the IOU's petition within twelve months of the IOU's completed MFR filing,<sup>6</sup> though the PSC typically takes final action and issues its final order within eight months. This rate case process is typically resource intensive. Because an IOU's rate case expenses are considered a legitimate cost of providing service, these expenses are recovered through customer rates.

Under current law, an IOU with less than 500 gigawatt hours (GWh) in annual sales may request that its rate case be handled by the PSC under informal procedures referred to as proposed agency action (PAA) procedures. PAA procedures require less time and resources than the formal hearing process. Under PAA procedures, the IOU still must file documents that satisfy the MFRs, and customer service hearings are still held in the IOU's service territory. PSC staff may request data from the IOU, and the Office of Public Counsel<sup>7</sup> may appear as a party in the case and conduct discovery. Discovery from third parties is not permitted under PAA procedures. After the PSC hears input from its staff, the IOU, and any other interested persons, it votes on the IOU's rate request and memorializes its vote in writing as a PAA order. The order must be issued within five months of the IOU's completed filing of the MFRs.<sup>8</sup> Any person whose substantial interests are affected by the PAA order may protest the order and initiate the formal hearing process with respect to the specific matters protested. If no such protest is filed, the order shall be entered and become final agency action, subject only to appeal.<sup>9</sup>

At present, no IOU has annual sales below the 500 GWh threshold. When the threshold was enacted, Florida Public Utilities Company (FPUC), an IOU, operated two separate divisions, one in Marianna and one in Fernandina Beach. Each division was regulated as a separate entity for the purpose of setting rates. In 2004, the PSC approved a rate settlement agreement consolidating the rates and charges of the two divisions into one entity. From the time that the 500 GWh threshold was enacted

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

<sup>2</sup> See, e.g., ss. 366.01, 366.04(1), 366.041, 366.05(1), and 366.06, F.S. There are four IOUs in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, and Florida Public Utilities Company. The former Gulf Power Company merged into Florida Power & Light Company as of January 1, 2021.

<sup>3</sup> Base rates make up just one component of an IOU's rates. Other mechanisms are established by statute or PSC rule or order to allow IOUs to recover specific types of costs not included in base rates, such as fuel costs and certain environmental compliance costs.

<sup>4</sup> Ss. 366.041(1) and 366.06(1), F.S.

<sup>5</sup> See Rr. 25-6.043 and 25-6.140, F.A.C.

<sup>6</sup> S. 366.06(3), F.S.

<sup>7</sup> See S. 350.0611, F.S. (tasking the Office of the Public Counsel with providing legal representation for the general public of Florida in proceedings before the PSC and in other utility related matters).

<sup>8</sup> See S. 366.06(4), F.S.

<sup>9</sup> See Order Nos. PSC-08-0436-PAA-GU (PAA Order) and PSC-08-0849-CO-GU (Consummating Order), issued July 8 and August 1, 2008, in Docket No. 20070592-GU, In re: Petition for rate increase by St. Joe Natural Gas Company, Inc.

until FPUC's consolidation in 2004, the two independent divisions of FPUC were the only IOUs eligible to request use of PAA procedures for rate cases. After the consolidation, FPUC's annual sales surpassed the 500 GWh threshold, and it became ineligible to request use of PAA procedures for its rate cases.<sup>10</sup>

As shown in the following table, FPUC's annual electricity sales are substantially less than any other IOU within the state:

2020 Florida IOU Electricity Sales	
IOU	Sales (GWh)
Florida Power & Light	113,531
Duke Energy Florida	39,230
Tampa Electric	19,954
Gulf Power	10,635
FPUC	650

### Effect of the Bill

The bill increases the eligibility threshold under which an IOU may request that its rate case be handled informally through PAA procedures, from 500 GWh to 1,000 GWh. Under this change, Florida Public Utilities Company (FPUC) would regain its eligibility to use the PAA procedures.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill will likely have an insignificant positive fiscal impact on PSC expenditures due to potential cost savings realized by utilizing a proposed agency action (PAA) procedure, which is a more expedited disposition of a petition for rate relief, instead of a lengthy direct-to-hearing rate case that requires more time and staffing resources.<sup>11</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

<sup>10</sup> Email from Kaley Slattery, Legislative Director, Florida Public Service Commission, RE: Recorded year that FPUC exceeded 500 GWh in annual sales (Oct. 27, 2021).

<sup>11</sup> Florida Public Service Commission, Agency Analysis of 2022 House Bill 269, pg. 3 (Oct. 21, 2021).

To the extent that FPUC is able to reduce its rate case expenses through the use of PAA procedures, these savings will be passed along to its ratepayers. The bill could also offer potential benefits to newly-qualifying utilities resulting from a PAA instead of a direct-to-hearing rate case.<sup>12</sup>

D. FISCAL COMMENTS:

None.

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<sup>12</sup> *Id.*