

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 350

INTRODUCER: Senator Bean

SUBJECT: Procedures for Petitions for Utility Rate Relief

DATE: January 26, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sharon</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<b>Recommend: Favorable</b>
3.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 350 increases the maximum annual sales threshold for public electric utilities to qualify for rate relief under the Florida Public Service Commission’s (PSC or commission) proposed agency action (PAA) procedure to 1,000 gigawatt hours from 500 gigawatt hours.

The bill may have an insignificant positive fiscal impact on state government expenditures.

The bill is effective July 1, 2022.

**II. Present Situation:**

**Florida Public Service Commission**

The PSC is an arm of the legislative branch of government.<sup>1</sup> The PSC ensures that Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.<sup>2</sup> To do so, the PSC exercises authority over public utilities in one or more of these areas: (1) rate or economic regulation; (2) market competition oversight; and (3) monitoring of safety, reliability, and service issues.<sup>3</sup>

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.<sup>4</sup> Notably, courts have ruled that the sale of electricity to even a single customer makes the provider a “public

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

<sup>2</sup> See Florida Public Service Commission (PSC), *The PSC’s Role*, <http://www.psc.state.fl.us> (last visited Jan. 4, 2022).

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

<sup>4</sup> Section 366.02(1), F.S.

utility” subjecting them to the PSC’s regulatory jurisdiction, under s. 366.02(1), F.S.<sup>5</sup> The PSC’s jurisdiction over public utilities is exclusive and superior to all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in cases of conflict the PSC prevails.<sup>6</sup>

### Office of the Public Counsel

The Office of Public Counsel (OPC) was established by the Florida Legislature, under the legislative branch.<sup>7</sup> The OPC is tasked with providing legal representation for the general public of Florida in proceedings before the PSC and in other utility related matters.<sup>8</sup> The Public Counsel is appointed by the Joint Committee on Public Counsel Oversight, which is a standing joint legislative committee, established by the Joint Rules of the Florida Legislature.<sup>9</sup> The Public Counsel is appointed to a four year term, and may be reappointed, but may not serve more than 12 consecutive years in the position.<sup>10</sup> The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court.<sup>11</sup>

### Fixing and Charging Rates

The PSC is charged with determining and fixing fair, just, and reasonable rates that are requested, demanded, charged, or collected by any public utility for its service.<sup>12</sup> The process for fixing and charging rates is established in s. 366.06, F.S., and its implementing rules.<sup>13</sup> In addition to a traditional rate case,<sup>14</sup> natural gas and public electric utilities whose annual sales to end users are less than 500 gigawatt hours,<sup>15</sup> may utilize the proposed agency action (PAA) process under s. 366.06(4) F.S.<sup>16</sup>

<sup>5</sup> *Florida Public Service Com’n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990) (finding that even a property management company is a public utility within the PSC’s regulatory jurisdiction); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (Fla. 1988) (finding that “to the public,” as used in ch. 366, F.S., means “to any member of the public,” rather than “to the general public”).

<sup>6</sup> Section 366.04 (1), F.S.

<sup>7</sup> Section 350.0614 (2), F.S.; Florida Office of Public Counsel, *About the Office of Public Counsel*, <http://www.floridaopc.gov/Pages/About.aspx> (last visited Jan. 4, 2022).

<sup>8</sup> Sections 350.0611, F.S.

<sup>9</sup> Section 350.061(1), F.S.; Joint Rule 4.1(1)(b), Joint Rules of the Florida Legislature.

<sup>10</sup> Section 350.061(1), F.S.

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

<sup>12</sup> Section 366.06(1), F.S.

<sup>13</sup> Fla. Admin. Code R. 25-6.043 (Investor-Owned Electric Utility Petition for Rate Increase) and 25-6.140 (Electric Public Utilities Proposed Agency Action Notification); Fla. Admin. Code R. 25-7.039 (Natural Gas Utility Petition for Rate Increase); and Fla. Admin. Code R. 25-7.140 (Gas Public Utilities Proposed Agency Action Notification).

<sup>14</sup> In a “rate case,” the utility and affected parties present information and propose future prices and targets. This is a formal process much like a court case. Body of Knowledge on Infrastructure Regulation, *Rate Case*, <https://regulationbodyofknowledge.org/glossary/r/rate-case/> (last visited Jan. 4, 2022).

<sup>15</sup> A megawatt is one million watts and a kilowatt is one thousand watts. A 100 watt light bulb is rated to consume 100 watts of electricity. The average South Atlantic home has a monthly consumption of 1,088 kilowatt hours. United States Nuclear Regulatory Commission, *What is a Megawatt?* <https://www.nrc.gov/docs/ML1209/ML120960701.pdf> (last visited Jan. 4, 2022). A gigawatt is equal to one thousand megawatts. Body of Knowledge on Infrastructure Regulation, *Gigawatt-hours (gWh)*, <https://regulationbodyofknowledge.org/glossary/g/gigawatt-hours-gwh/> (last visited Jan. 4, 2022).

<sup>16</sup> See Fla. Admin. Code R. 25-22.029 (Proposed Agency Action Proceedings); Fla. Admin. Code R. 25-6.140 (Electric Public Utilities Proposed Agency Action Notification); and Fla. Admin. Code R. 25-7.140 (Gas Public Utilities Proposed Agency Action Notification).

### ***Standard Rate Case***

The PSC must take final action in a standard rate case within 12 months from the commencement date for final agency action.<sup>17</sup> The “commencement date for final agency action” is determined by the PSC clerk as the date when the utility has met the minimum filing requirements.<sup>18</sup> Minimum filing requirements are established by rule.<sup>19</sup>

During the pre-hearing phase, one of the PSC’s commissioners is assigned to preside as the prehearing officer for the docket.<sup>20</sup> They will enter an order establishing procedure and set the matter for a final hearing.<sup>21</sup> During this time, substantially affected persons have the opportunity to intervene and submit discovery and request information from the utility.<sup>22</sup> Toward the end of discovery, the utility and parties have a prehearing conference to finalize the issues.<sup>23</sup>

The hearing is evidentiary and conducted with the full panel of PSC commissioners, pursuant to ss. 120.569 and 120.57, F.S. In addition, customer service hearings are scheduled where customers provide testimony regarding rates and quality of service. Finally, the parties may file post-hearing briefs. If the parties waive the filing of briefs and consent to a vote at the hearing, the PSC will vote on the merits at another meeting after reviewing the record and any post-hearing filings. At the conclusion of the rate case the PSC issues a written final order, which the parties may appeal.<sup>24</sup>

### ***Proposed Agency Action Procedure***

Under s. 366.06(4), F.S., natural gas utilities and public electric utilities with less than 500 gigawatt hours in annual sales have the option to petition the PSC for rate relief utilizing the PAA procedure.<sup>25</sup>

A PAA docket will not be immediately set for hearing, but will be scheduled for commission consideration at a regular agenda conference. The PSC’s staff recommendation is prepared for

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<sup>17</sup> Section 366.06(3), F.S. A utility seeking to change the rates it charges must first give the commission notice of its selected test year. *See* Fla. Admin. Code R. 25-6.043 and 25-7.039. The concept of a “test year” is used to calculate future rates. This allows for comparison of a defined period’s rate base costs including operating expenses with its total revenues. *See* Utility Dive, *As the power sector transforms, can utilities and customers find common ground on ratemaking?* (July 2, 2018), <https://www.utilitydive.com/news/as-the-power-sector-transforms-can-utilities-and-customers-find-common-gro/526399/> (last visited Jan. 4, 2022).

<sup>18</sup> *See* s. 366.06(3), F.S.

<sup>19</sup> *See* Fla. Admin. Code R. 25-6.043, (Investor-Owned Electric Utility Petition for Rate Increase); Fla. Admin. Code R. 25- 7.039, (Natural Gas Utility Petition for Rate Increase).

<sup>20</sup> PSC, *Bill Analysis for SB 350* (Oct. 11, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment and General Government).

<sup>21</sup> *Id.*

<sup>22</sup> *See* s. 120.569 F.S.; PSC, *Bill Analysis, supra* at n. 20.

<sup>23</sup> PSC, *Bill Analysis, supra* at n. 20.

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

<sup>25</sup> Fla. Admin. Code R. 25-22.029 (Proposed Agency Action Notification). The utility must request to use this procedure when it submits its minimum filing requirements. Fla. Admin. Code R. 25-6.140(1)(d); and Fla. Admin. Code R. 25-7.140(1)(d).

the PSC’s consideration at a regular agenda conference.<sup>26</sup> The OPC may appear as a party and conduct limited discovery and staff may request information from the utility.<sup>27</sup> Customer hearings are scheduled to allow customers to comment on the rates and service offered by the utility.<sup>28</sup> Discovery from third parties is not permitted during this initial process. The Administrative Procedure Act only provides for intervention by substantially affected persons after issuance of a written PAA.<sup>29</sup>

At the agenda conference, the commission will consider the staff recommendation, receive input from the utility and any interested persons and the utility’s customers, and will vote on the request made by the utility. The Commission’s decision is memorialized as a PAA order. A party whose substantial interest may be affected by the PAA order must timely file a petition for administrative hearing; otherwise, an order will be entered making the PAA order a final agency action subject only to appeal.<sup>30</sup>

In a PAA docket, the statutory deadline for the PSC to enter a PAA order is five months from the commencement date.<sup>31</sup> If a petition protesting the PAA order is filed, the PSC must render a final decision no later than eight months from the petition’s filing.<sup>32</sup> A hearing on a PAA objection may only address the issues disputed in the petition. All other issues are deemed stipulated.<sup>33</sup>

Subsection 366.06(4), F.S., was last amended by the Florida Legislature in 1993.<sup>34</sup> Currently, none of the public electric utilities regulated by the PSC are eligible to utilize the PAA procedure for rate relief. The following table lists their annual sales in gigawatt hours.<sup>35</sup>

ELECTRIC UTILITIES	
2020	GWh
Florida Power & Light	113,531
Duke Energy Florida	39,230
Tampa Electric	19,954
Gulf Power	10,635
FPUC	650

**I. Effect of Proposed Changes:**

The bill increases the maximum annual sales threshold for public electric utilities to qualify for rate relief under the PSC’s proposed agency action procedure from 500 gigawatt hours to

<sup>26</sup> The commission generally conducts one regular agenda conference in every calendar month. PSC, *Bill Analysis, supra* at n. 20.

<sup>27</sup> Section 350.0611, F.S.; PSC, *Bill Analysis, supra* at n. 20.

<sup>28</sup> PSC, *Bill Analysis, supra* at n. 20.

<sup>29</sup> See ss. 120.569 and 120.57, F.S.

<sup>30</sup> PSC, *Bill Analysis, supra* at n. 20.

<sup>31</sup> See s. 366.06(4), F.S.; PSC, *Bill Analysis, supra* at n. 20.

<sup>32</sup> See s. 366.06(4), F.S.

<sup>33</sup> Section 120.80(13)(b), F.S.

<sup>34</sup> See Ch. 35, s. 5, Laws of Fla. (1993).

<sup>35</sup> PSC, *Bill Analysis, supra* at n. 20.

1,000 gigawatt hours. This would allow the Florida Public Utilities Company – Electric Division to be eligible to utilize the proposed agency action procedure for its petition for rate relief.<sup>36</sup>

The bill is effective July 1, 2022.

## II. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

### D. State Tax or Fee Increases:

None.

### E. Other Constitutional Issues:

None.

## III. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The bill may have a positive fiscal impact on public electric utilities that become eligible to utilize the proposed agency action procedure for rate relief in lieu of a standard rate case. This may minimize litigation and regulatory costs. These cost avoidances may result in savings, or prevent increases, to the ratepayers.

It appears the Florida Public Utilities Company's Electric Division will be eligible to utilize the PAA procedure for rate relief due to its annual sale level.

The bill does not affect natural gas utilities regulated by the PSC as they do not have a statutory annual sales threshold to qualify for the PAA procedure.

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<sup>36</sup> *Id.*

**C. Government Sector Impact:**

The bill may have an insignificant positive fiscal impact on the PSC and the Office of Public Counsel by saving time and financial resources for rate relief by utilities eligible for the PAA procedure instead of a standard rate case.

**IV. Technical Deficiencies:**

None.

**V. Related Issues:**

None.

**VI. Statutes Affected:**

This bill substantially amends section 366.06 of the Florida Statutes.

**VII. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.