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HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND TELECOMMUNICATIONS
ANALYSIS

BILL #: PCB UTCO 01-04

RELATING TO: Wholesale Energy Production and Sales

SPONSOR(S): Committee on Utilities and Telecommunications

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) UTILITIES AND TELECOMMUNICATIONS
(2)
(3)
(4)
(5)

I. SUMMARY:

Over the last several years, federal legislation and advances in electrical technology have created an environment to address the restructuring of the electric industry. Currently 24 states have enacted electric restructuring legislation. However a few of these states have move the implementation date further back. There are 26 states that have not enacted legislation, and of these many states are conducting studies.

On May 3, 2000, Florida Governor Jeb Bush established the Energy 2020 Study Commission by Executive Order No. 2000-127. This 17-member group is charged with proposing an energy plan and strategy for Florida.

On May 6, 2001 the Energy 2020 Study Commission issued its Interim Report entitled Proposal for Restructuring Florida's Wholesale Market for Electricity. This report provided recommendations that addressed the wholesale market in Florida.

In Florida, the Florida Public Service Commission (FPSC) has intrastate jurisdiction over electric utilities and is governed by chapter 366, Florida Statutes. The FPSC fully regulates the investor owned utilities (IOU) and has limited rate structure jurisdiction over the municipally owned electric utilities and the rural electric cooperatives.

This bill implements the recommendations of the Energy 2020 Study Commission.

This takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A []
3.	Individual Freedom	Yes []	No []	N/A []
4.	Personal Responsibility	Yes []	No []	N/A []
5.	Family Empowerment	Yes []	No []	N/A []

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

FEDERAL ENERGY REGULATORY COMMISSION: FEDERAL ENERGY REGULATOR

OVERVIEW OF FEDERAL REGULATION
The Federal Energy Regulatory Commission, FERC, is an independent regulatory commission with oversight of America's natural gas industry, electric utilities, hydroelectric projects, and oil pipeline transportation systems. It also has oversight of the rates set by federal power marketing association, PMA, and certification, under Public Utilities Regulatory Policy Act, PURPA, for small power production and cogeneration facilities.

GENERAL OVERVIEW

The primary legal authority of FERC comes from the Federal Power Act of 1935 (FPA), the Natural Gas Act of 1938 (NGA), the Interstate Commerce Act of 1976 (ICA), the Natural Gas Policy Act of 1978 (NGPA), the Public Utility Regulatory Policies Act of 1978 (PURPA), and Energy Policy Act of 1992 (EPAct).
The FERC oversees:
1) the transportation of natural gas and oil by pipeline in interstate commerce
2) the transmission and wholesale sales of electricity in interstate commerce
3) the licensing and inspection of private, municipal, and state hydroelectric projects, and
4) the oversight of related environmental matters.

OVERVIEW OF SPECIFIC JURISDICTION

1. ELECTRIC POWER
Under the FPA, the FERC has authority over wholesale electric rates and service standards, as well as the transmission of electricity in interstate commerce. It also conducts examinations of utility coordination and pooling agreements. The FERC uses its ratemaking authority to ensure that wholesale power rates and transmission rates charged by utilities are just and reasonable and not unduly discriminatory or preferential.

The EPAct amended the FPA to provide the FERC with additional authority:
(1) to order the provision of transmission services upon request, and

(2) to authorize certain types of wholesale power producers exempt from regulation by the Securities and Exchange Commission (SEC).

Certain public utility corporate endeavors are also within FERC's regulatory oversight. These include the: issuance of certain stock and debt securities, assumption of obligations and liabilities, mergers, consolidations, and dispositions of jurisdictional public utility facilities. As a continued monitoring of trusts activities, FERC also reviews interlocking directorates involving public utilities, electrical equipment suppliers, and entities authorized to underwrite public utility securities."

Lastly in the area of electric power, the FERC examines federal power marketing rates and, under PURPA, certifies small power producers and cogenerators as qualifying facilities (QFs).

2. NATURAL GAS

In regulating the natural gas pipeline industry of the nation, the primary authority of FERC comes from the NGA, the NGPA, the Outer Continental Shelf Lands Act (OCSLA), the Natural Gas Wellhead Decontrol Act of 1989 (NGWDA), and EPAct.

The FERC uses the provisions of the NGA to regulate both the construction of pipeline facilities and the transportation of natural gas in interstate commerce. As a prerequisite to companies providing services, and constructing and operating interstate pipeline facilities, the FERC must issue the companies certificates of public convenience and necessity.

The NGPA and the OCSLA also give FERC the authority to regulate the transportation of natural gas, but FERC no longer regulates the price of natural gas at the wellhead.

Finally, in the area of natural gas, FERC oversees for the U.S. construction and operation of facilities needed by pipelines at the point of entry or exit to import or export natural gas.

3. HYDROELECTRIC POWER

In addition to federal hydroelectric power regulation, FERC:

> regulates nonfederal hydroelectric power projects that affect navigable waters, occupy U.S. public lands, use water or waterpower at a government dam, or affect the interests of interstate commerce. . .

4. OIL PIPELINES

The FERC regulates oil pipeline companies engaged in interstate transportation, rates and practices under the Interstate Commerce Act and EPAct. The objective is to establish just and reasonable rates to encourage maximum use of oil pipelines--a relatively inexpensive means of bringing oil to market--while protecting shippers and consumers against unjustified costs.

The FERC lacks regulatory oversight over the construction of oil pipelines, the supply or price of oil or oil products. It does, however assure, shippers equal access to pipeline transportation, equal service conditions on a pipeline, and reasonable rates for moving petroleum and petroleum products by pipeline.

In 1992, the Energy Policy Act (EPAct) was passed. The act amended PURPA and created exempt wholesale generators (EWGs). This new class of power generators would be exempt from the provisions of the Public Utility Holding Company Act (PUHCA). The act also granted FERC with the authority to order and condition access by eligible parties to the interconnected transmission grid.

This action by Congress mandated wholesale competition in electricity, but it allowed states to decide whether to allow retail competition.

FERC ORDERS 888 AND 889: Open Transmission Access/Wholesale Competition

In 1996, the FERC issued Orders 888 and 889, which established rules governing a more open wholesale market.

Order No. 888 is entitled Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities.

Order 888 requires all public utilities that own, control, or operate transmission facilities to provide nondiscriminatory open access transmission services at a fair and reasonable price through the functional unbundling of their wholesale power services.

Functional unbundling entails requiring transmission owning utilities to: (1) take transmission services under the same tariff rates, terms, and conditions as do others; (2) state separate rates for wholesale generation, transmission, and ancillary services; and (3) rely on the same electronic information network that its transmission customers rely on to obtain information about its transmission system when buying or selling power.

Order 888 also provides for a stranded cost mechanism. Traditionally stranded costs occur when the net book regulatory accounting value of the plant is greater than the “fair market” value of the asset if it were sold. The other side of this equation is the situation where the net book value of an asset is less than the fair market value. In this case, the asset has economic value greater than the net book value resulting in stranded benefits.

Order No. 889 is entitled Open Access Same Time Information Systems and Standards of Conduct (OASIS). Order 889 requires all public utilities to develop or participate in an Internet-based bulletin board system. The system will furnish information about the transportation capacity that is available on transmission lines.

In Order No. 889, the FERC instituted standards of conduct for public utilities. These standards are intended to guard against transmission owners, and their affiliates, having an unfair competitive advantage by using information about electric power transmission systems. Order 889 to requires public utilities:

-Obtain information about their transmission system for their own wholesale power transactions in the same way their competitors do, via an OASIS on the Internet; and

-Completely separate their functions of wholesale power marketing and transmission operation.

Additionally, Order 889 establishes the type, frequency, and format for the transmission-related information on OASIS. The FERC projects that "OASIS and the standards of conduct will fundamentally change the way business is conducted in bulk power markets and will continue to evolve as the competitive market matures."

Because the provisions included in Orders 888 and 889 were intended to address all transmission-owning systems, the FERC required that non-FERC regulated utilities (e.g. municipal electric utilities and rural electric cooperatives) to adopt reciprocating and conforming transmission access policies before securing the benefits obtained under a FERC regulated public utility tariff.

FERC RULEMAKING

In May 1999, a Notice of Proposed Rulemaking (NOPR) on Regional Transmission Organizations, RTOs was issued by the FERC. The scope of this rulemaking was expanded to include Independent System Operators, ISOs, but also other types of regional organizations such as independent transmission companies (Transcos), combinations of ISOs and Transco, or other acceptable structures. In December 1999, FERC issued its Final Rule on RTOs in Order No. 2000. Order No. 2000 required all public utilities that own, operate or control interstate transmission facilities to file by October 15, 2000 a proposal to participate in an RTO. Since the release of Order No. 2000, the actual filing date was revised and utilities already participating in an approved regional transmission entity were grand fathered.

Order No. 2000 stated that RTO development is voluntary. However, the FERC expects all transmission-owning utilities to comply. Although the FERC lacks the direct legal authority to mandate participation in RTOs, the FERC has stated its intent to use its regulatory authority in other areas to force compliance with Order No. 2000. As stated in a number of FPSC comments filed with the FERC, the FPSC believes that the FERC lacks direct authority to mandate the formation of RTOs. In its RTO NOPR, the FERC cites ss 202(a), 203, 205, and 206 of the Federal Power Act as authority for issuing its rulemaking. The FPSC has stated that these provisions do not, individually or collectively, support mandatory RTOs.

OVERVIEW OF FEDERAL REQUIREMENTS

The trend towards separating the generation component from vertically operating utilities is being driven by three major influences.

1. First the passage of the 1978 Public Utilities Policy Act (PURPA) required public utilities to purchase any power produced by certified cogenerators at the utility's full-avoided costs. Utilities were required to pay cogenerators an amount equal to what it would have cost the utility to construct and generate the same amount of electricity.

2. One result of PURPA was the coupling by turbine manufacturers of jet engine technology with steam driven recovery boilers to produce combined cycle power plants. These low cost units are modular in size and can be permitted relatively easily. Moreover, these plants are extremely fuel-efficient and environmentally clean. This significant modernization in electric generating technology came into the market at the same time natural gas prices were extremely low. The combination of low fuel cost and high fuel efficiency resulted in an economic incentive by large customers (self-service generation), independent power producers (EWGs, merchant plants) to by-pass the local utility.

3. The FERC's issuance of Order 888 required all public utilities to provide open access to their transmission lines to transmit electricity at wholesale. The open access initiatives of Order 888 resulted in power marketers, independent power producers, and utilities having the ability to buy and sell in both regional and national markets.

STATE OF FLORIDA

Florida is a peninsula and has limited transmission lines between it and its neighboring states allowing imports of only 8% of needed power. As a result, Florida primarily relies on native generation of load serving entities to provide power for the state. There are currently two incumbent utilities that serve over half the load in the state. Exclusive monopoly franchise rights have been granted to electric utilities and regulation has taken the place of competition to control prices, to ensure quality of service, and to provide an opportunity for a fair rate of return.

FLORIDA PUBLIC SERVICE COMMISSION: STATE ENERGY REGULATOR

OVERVIEW OF STATE REGULATION

The Florida Public Service Commission (FPSC) has intrastate regulatory oversight of utility services. Pursuant to s. 350.001, Florida Statutes, the PSC has been and continues to be an arm of the legislative branch of government. Additionally, pursuant to s. 1, Art. V of the State Constitution:

> Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices.

As a quasi-judicial commission the FPSC determines issues of substantial interest, the FPSC is subject to the provisions of chapter 120, Florida Statutes, the Administrative Procedures Act. Depending on the issue involved, decisions rendered by the FPSC are subject to direct appeal to either the district courts of appeal or to the Florida Supreme Court.

GENERAL OVERVIEW

Chapter 366, Florida Statutes, governs the jurisdiction of the FPSC over electric utilities. Pursuant to s. 366.04, Florida Statutes, the FPSC fully regulates five investor-owned utilities, IOU. These IOU companies are Florida Power & Light Co. (FP&L), Florida Power Corp. (FPC), Florida Public Utilities, Gulf Power Co., Tampa Electric Co. (TECO). The FPSC also has limited rate structure jurisdiction over 18 rural electric cooperatives and 33 municipally owned electric utilities. The limited rate structure jurisdiction over the cooperatives and municipalities involves the rates charged and revenues collected by them and the fair division among the residential, commercial, and industrial customer classes. The FPSC does not determine the total amount of revenues to be collected by municipalities or cooperatives, but it is responsible for reviewing the fairness by which the monies are collected from the various customer classes.

The FPSC is charged with full regulation of all electric utilities in the areas of public safety, territorial boundaries, conservation, cogeneration, and power supply planning. The regulation costs of public utilities within the jurisdiction of FPSC are initially borne by the utilities. These regulated utilities are assessed fees based on a percentage of their annual gross operating revenues to support the cost of regulation.

While cooperatives and municipalities are not included in the definition of public utilities, the FPSC does exercise limited jurisdiction. These two entities are also assessed a regulatory fee to cover the cost of their limited regulation. Specified by statute, these fees are deposited into the FPSC Regulatory Trust Fund and the General Revenue Fund.

These regulatory fees are considered a part of the operating and maintenance expenses of the utilities. As such, utilities are entitled to pass the costs of regulation on to their customers. As a result, the utilities are regulated at no costs to themselves. With these costs spread throughout a broad customer base, the economic impact on any one customer is negligible. Pursuant to section 350.113, Florida Statutes, the FPSC is authorized to collect this regulatory assessment fee (RAF) from the electric utilities. The RAF funds the Regulatory Trust Fund, which is the sole basis for funding the budget for the PSC.

SPECIFIC JURISDICTION

1. SETTING RETAIL RATES

The FPSC has sole jurisdiction over determining whether a proposed power plant is needed and is cost-effective. Pursuant to s. 403.519, Florida Statutes:

> In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members who might mitigate the need for the proposed plant and other matters within its jurisdiction, which it deems relevant. The commission's determination of need for an electrical power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(2)(a)2. An order entered pursuant to this section constitutes final agency action.

2. GRID RELIABILITY

The Florida Legislature has granted the PSC significant authority to address reliability issues. Beginning in the early 1970s, the Legislature enacted broad sweeping reforms which addressed the need for effective utility planning of the generation and transmission facilities necessary to maintain an adequate, reliable, and affordable supply of electricity in Florida. These initiatives are discussed below in letters b-c:

b. TEN-YEAR SITE PLANS

In 1973, the Legislature enacted s. 186.801, Florida Statutes, which required Ten-Year Site Plans. Initially, these plans were submitted to the Department of Community Affairs, Division of Resource Planning and Management, but during the 1995 legislative session, the administration of the Ten-Year Site Plans was turned over to the PSC.

The PSC now has the lead role in determining the suitability of plans by soliciting and compiling the review comments of other agencies, conducting public workshops to gather the views and opinions of the public, and performing an internal analysis to assess the need for power. Within the statutory allotment of nine months after receipt of a utility's Ten-Year Site Plan, the PSC must provide a report of all its findings to the Department of Environmental Protection (DEP) for its consideration of any subsequent electrical power plant cite certification proceedings.

Procedurally, the utilities' Ten-Year Site Plans are filed by April 1, of each year. An aggregation of the plans, to provide a statewide and peninsular-wide perspective, is performed by the Florida Reliability Coordinating Council (FRCC) and is usually completed by July 1 each year. These plans are provided to the DEP, the Department of Community Affairs, the water management districts and other local, state, and federal agencies for their review and comments. The PSC also provides copies of the plans to interested members of the public. Public workshops are then held to solicit comments on the plans.

Finally, the PSC analyzes the plans, compiles the agency and public comments, and prepares a report, which is submitted, to DEP for consideration in prospective power plant siting proceedings.

c. TERRITORIAL AGREEMENTS

Pursuant to s. 366.04, Florida Statutes, it is within the jurisdiction of the PSC to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction and to resolve territorial disputes.

The 1974 Legislature added the first specific statutory reference to territorial agreements between electric utilities. . . as part of an act commonly known as the Grid Bill. The thrust of the Grid Bill was to give the PSC expanded authority over the planning, development, and coordination of electric facilities throughout the state.

Although prior to 1974, the FPSC lacked any jurisdictional authority over municipal utilities or rural electric cooperatives, such authority was granted in order to achieve the purposes of the Grid Bill.

The Grid Bill provides for the establishment and maintenance of a coordinated energy grid for the State; and established utility service territories have been viewed as an essential part of a coordinated energy grid. Since its passage in 1974, the Grid Bill has become the focus of the Commission's regulatory authority over retail service territories of electric utilities in the State.

There are elements of the Grid Bill, which also affect electric utility reliability. They are as follows:

1. Sections 366.04(2)(c) and 366.04(5), Florida Statutes
For operational and emergency purposes, the FPSC is granted jurisdiction to require electric utility conservation and reliability within a coordinated grid. The authority of the FPSC includes the planning, development, and maintenance of Florida grid to assure an adequate and reliable energy source without any uneconomic duplication of generation, transmission, or distribution facilities.

2. Section 366.05(7), Florida Statutes
The FPSC can require reports from all electric utilities to assure the development of adequate and reliable energy grids.

3. Section 366.05(8), Florida Statutes
If the FPSC determines that inadequacies exist with respect to the energy grid, it has the power, after proceedings as provided by law, to require installation or repair of necessary facilities, with the costs to be distributed in proportion to the benefits received, and to ensure compliance. This subsection does not supersede or control any provision of the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518, Florida Statutes.

3. Section 366.05(1), Florida Statutes
With exceptions to prior commitments, the PSC is authorized to take action to assure the energy reserves of all utilities in the Florida energy grid are available at all times.

4. Section 366.055(3), Florida Statutes
Subject to provisions hereof, the PSC has the power to require any electric utility to transmit electrical energy over its transmission lines from one utility to another or as a part of the total energy supply of the entire grid, subject to the provisions hereof.

WHOLESALE TRANSACTIONS
Investor owned utilities in Florida generally provide their own generation to serve their retail customers, which is a retail transaction. There are over 22 separate utilities that own electric generating facilities in Florida, but it is the four IOU companies that currently control 72.1% of the total statewide generating capacity used to serve retail customers, according 2000 Regional Load & Resource Plan, July 2000, Florida Reliability Council. However, a small percentage of the generation for each utility is made available for wholesale sales to other utilities. The three largest IOU companies, FP&L, FPC, and TECO meet approximately 5.4% of the energy needs in Florida through wholesale sales. Non-utility generators provide 6.3% through wholesale sales and an additional 3.8% is provided by out-of-state utilities through wholesale transactions to Florida utilities.

Many of the electric utilities that supply retail energy services to homes and businesses do not produce the electricity that they sell. For these small utilities and cooperatives, their generation capacity is purchased through wholesale agreements with other utilities. These transactions also include purchasing transmission to carry the power to the load centers that serve the customers. These wholesale purchases may be accomplished through partial or full requirement agreements or through an interchange purchase.

For the utilities and cooperatives that purchase through wholesale agreements, partial requirements mean, for all, except self-generation capacity, the remainder of their customer load requirement is purchased on the wholesale market. Full requirements mean all such utilities generation capacity is purchased on the wholesale market to serve the entire customer load. In the interchange market, utilities, which would otherwise own and operate all their own generation, may find it economical to purchase capacity and energy from generation units owned by other utilities. Purchases in the interchange market can take place on an hour-by-hour basis, or a short-term basis up to a year, or on a long-term basis for many years. The price, terms, and conditions associated with interchange purchases are either negotiated by the purchasing and selling utilities or determined by a formula tariff approved by the FERC. These types of wholesale transactions by IOU companies to the municipalities and cooperatives, which include rates, terms, and conditions, are governed by FERC.

WHOLESALE TRANSACTION REVIEW: STATE V. FEDERAL

Generally, in Florida, wholesale energy transactions can be characterized as long-term contractual sales, one year or longer, or short-term contractual sales, less than one year. Longer term sales are generally, but not exclusively, made to utilities that do not have their own generating facilities or may not have sufficient capacity to serve their own load and therefore require long term contracts for generation in order to reliably serve their end-use customers. Short term sales generally serve to meet transitory needs and occur because of marginal cost differences that make it possible, on occasion, for a utility to buy wholesale power cheaper than to generate power from its own units. The conditions that make such transactions economical for both parties may be present for a very short period, for example, an hour, or they may persist for weeks or months. Historically, the ability to participate in wholesale transactions has provided benefits to both utilities and ratepayers.

The role of the FPSC for rate setting purposes in wholesale transactions is treated in two different ways depending on whether the transactions are long-term or short-term. Long-term transactions are evaluated in the context of a rate case proceeding and are subject to a separation process. A rate case proceeding is a full evidentiary hearing whereby all the costs and expenses of a utility are justified, recurring operating expenses and prudent expenses are included in the net operating income, and a fair return on investment is determined based on prevailing market conditions. Since the wholesale transactions are the domain of the FERC for determining rates, terms and conditions, a method must be determined for assigning investment and expenses to the federal jurisdiction.

The FPSC performs this process in order to prevent retail customers from subsidizing wholesale activities. Each utility performs an analysis for a 12-month period to determine the percentage of peak for each month that is related to both retail and wholesale production. That percentage is averaged over the 12-month period to determine the separation factor. Based on that factor, portions of investment and expenses are removed from the calculation of retail rates and allocated to the federal jurisdiction. As a result, long-term wholesale transactions serve to reduce rate base and expenses in the calculation of retail rates. Utility shareholders retain revenues, except those related to fuel cost recovery, associated with long-term wholesale sales. This is compensation for the associated reduction in rate base and expenses that benefits retail ratepayers. Fuel cost and fuel-related costs recovery is one of four recovery clauses available to IOU companies whereby when prudently incurred are passed through to consumers.

For short-term transactions, the FPSC treats these sales somewhat differently. In theses situations, the sales are sporadic, so the utility is not committing long-term capacity to the wholesale customer. Short-term sales are not assigned costs responsibility through a separation process; therefore the retail ratepayer supports all of the investment that is used to make the sale. In exchange for supporting the investment, the retail ratepayer receives all of the revenues, both fuel and non-fuel, that the sale generates. This is reflected through a credit in the fuel and capacity cost recovery clauses. To encourage these sales when the demand of retail customers is not fully utilizing capacity, the FPSC has established incentives for some short-term wholesale transactions. For those sales subject to incentives, the utility shareholders receive 20% of the profit. The category for such short-term transactions, subject to the 20% incentive sharing mechanism, has expanded over time and now includes a broad range of short-term transactions. However, each utility has a wholesale sales revenue threshold that must be met before the incentive mechanism is triggered.

The role of FERC for rate-setting purposes in wholesale transactions is that it regulates the prices, terms and conditions associated with both long-term and short-term wholesale sales by IOU companies. The FERC also regulates the prices, terms and conditions of the transmission services used in interstate commerce to deliver wholesale generation to the purchasing utility. The Energy Policy Act of 1992 authorized the FERC to allow certain generation providers, Exempt Wholesale Generators, or EWG, to sell wholesale electricity at market based rates while traditional monopoly utilities are required to charge cost-based rates for wholesale power where market power exists.

All wholesale providers of power must have tariffs or contracts on file with the FERC. This requirement includes bilateral contracts entered into for the sale of power on the wholesale market. Rate setting at FERC is different from that procedure performed at the state level. According to FPSC, the FERC's primary concern in setting wholesale rates is whether there is the potential for market power abuse. This concern, however, most recently has become secondary particularly in cases where retail competition has accompanied wholesale competition. The rationale of the FERC appears to be that if retail customers have a choice of provider then the potential for market abuse is, to a large extent, mitigated. The FERC also considers whether the wholesale customers have generation supply alternatives in their area. If no alternatives exist then the generation provider in that area is scrutinized more closely and may not be given market based pricing authority. Instead, the FERC will cap the rate of the generation company at an index price. The determination of index price is based on actual sales and transactions.

The FERC does not perform audits, cost of service studies or review the utilities investment and expenses in determining cost based rates. The FERC does not look at the operating characteristics of any specific plant, but instead, takes a total company approach, including affiliates, subsidiaries, etc., for determining cost based rates. All FERC approved wholesale tariffs are on a company wide basis.

In current regulatory law, there exists what is commonly referred to as the "filed rate doctrine." According to the FPSC, this doctrine in simple terms means that the courts have determined that a state regulatory body or any other governmental body does not have the ability to overturn or relitigate a rate, term or condition that has been established and implemented by another governmental entity. For rate setting purposes, the FERC establishes a wholesale rate for purposes of determining legitimate costs in determining a retail rate. The FPSC does not have the option of not recognizing that rate if it happens to be of the opinion that it is too high or imprudent.

The FPSC data indicates that generation capital cost currently comprise roughly 28.6% of the retail rate charged by IOU companies in Florida. While transmission represents only a fraction of total cost at 4.3%, the two together constitute a significant portion of overall retail energy costs. This roughly 33% of the costs, which currently is embedded in retail base rates, are under FPSC

oversight authority. Also fuel costs comprise another 37% of the retail rates, also under FPSC oversight authority.

STATE RETAIL REGULATION

As the current regulatory scheme exists in Florida, the FPSC determines retail rates. This rate regulation has historically been cost based. Utilities are allowed to charge rates, which recover the actual cost of producing and delivering electricity plus a fair return on investment. As a portion of its rate setting authority, the FPSC performs in-depth analysis of the investment and expenses relating to all three components of electric power, generation, transmission, and distribution. The ratemaking and rate review methods currently in use by the PSC include: A) A full revenue requirements rate case. By this method, all costs and expenses of a utility are justified. A fair rate of return (or profit) on investment is determined based on prevailing market conditions. B) Monthly surveillance reports. These reports are filed monthly with the PSC by each IOU company showing current and year to date accounting and financial data. This information is used to ensure that the rates being charged remain reasonable. C) Recovery clauses. Annual evidentiary hearings are conducted by the PSC to consider these pass through charges. Currently, there are four separate cost recovery clauses available to IOU companies. These are: 1) Fuel and Purchase Power 2) Purchased Capacity 3) Environmental 4) Energy Conservation.

SUMMARY OF HOW FEDERAL REQUIREMENTS HAVE AFFECTED FLORIDA

While FERC has no jurisdiction over retail sales of electricity, some aspects of Order 888 appear counter to the Federal Power Act (FPA), and considerably blur the jurisdictional separation between federal and state regulation of wholesale and retail sales.

On April 11, 1997, the Florida PSC, the National Association of Regulatory Commissioners (NARUC), and the state commissions of New York, Arkansas, Idaho, North Carolina, Wyoming, Illinois, and Washington filed a petition in the United States Court of Appeals challenging elements of Order 888. See Transmission Access Policy Study Group v. Federal Energy Regulatory Commission. (U.S. Court of Appeals for the D.C. Circuit). The Court upheld FERC orders 888 and 889. The case has been appealed to the U.S. Supreme Court.

Prior to Order 888, the state was operating under the provisions of section 212(g) of the FPA, which states:

> (g) Prohibition On Orders Inconsistent With Retail Marketing Areas. --No order may be issued under this Act which is inconsistent with any state law which governs the retail marketing areas of electric utilities.

It appears that the intent of the section is to preserve the distinction between state and federal jurisdiction. Under the FPA, the FERC regulates interstate commerce wholesale transactions and transmission. The PSC regulates retail generation, transmission, and distribution services to end-use customers pursuant to the Florida Statutes.

At issue, is FERC's assertion of jurisdiction over the regulation of unbundled retail transmission. If states provide for open retail access, the FERC appears to usurp state authority over the unbundled transmission component.

Additionally, the FERC contends it will provide deference to states for stranded costs recovery and the transition from bundled to unbundled rates; however, state regulators are unsure of the weight the FERC will give to their judgment of stranded assets. The FPSC writes in its 1999 restructuring update: "In most cases, the states have approved both the construction and cost recovery for these

facilities under bundled rate structures." As a result, in many cases, states already have in place methods for assessing recovery and transition costs.

Another issue of concern identified by the FPSC is FERC's Notice of Proposed Rulemaking (Docket No. RM99-2-000) issued on May 13, 1999. The FERC has proposed to amend its regulations under the Federal Power Act (FPA) to facilitate the formation of Regional Transmission Organizations (RTOs). Included in FERC's notice are certain characteristics and functions for a transmission entity to qualify as a RTO. For all users of the nation's transmission system, the FERC contends such an organization would ensure fair and nondiscriminatory access to transmission and ancillary services.

Whether the FERC can mandate the formation of RTOs as a one size fits all solution is questioned by the PSC, other state regulators, and state energy officials. It is the belief of the FPSC that FERC "must proceed on a case-by-case basis to address specific transmission problems, and work with states to develop regional approaches that achieve regional market consensus. . ."

FLORIDA TRANSCO

As a result of Order No. 2000, utilities in Florida examining the prospect of forming and participating in a RTO. Because of the state's unique peninsular geography, electric utilities in Florida have developed two distinct electric grids within the state over the years. These grids are commonly referred to as the Peninsular Florida system (east and south of the Apalachicola River), and the Southern Company system (west of the Apalachicola River). While utilities in both of these areas of the state are exploring RTOs, the utilities in Peninsular Florida appear to be further along in the process.

The Peninsular Florida TRANSCO is an independent organization whose stated focus is to serve the transmission needs of the Peninsula of Florida. The organization has made its initial filing with FERC.

ENERGY 2020 STUDY COMMISSION

On May 3, 2000, Florida Governor Jeb Bush established the Energy 2020 Study Commission, (Commission) by Executive Order No. 2000-127. This 17-member group is charged with proposing an energy plan and strategy for Florida. The first meeting took place on September 13, 2000. By December 1, 2001, the Commission is to make specific recommendation to the Florida Senate, the Florida House of Representatives, the Governor.

Among the issues to be addressed by the Energy 2020 Study Commission are: (1) current and future reliability of electric and natural gas supply, (2) emerging energy supply and delivery options, (3) electric industry competition, (4) environmental impact of energy supply, (5) energy conservation, and (6) fiscal impacts of energy supply options on taxpayers and energy providers.

The Commission on February 6, 2001 issued its Interim Report entitled Proposal for Restructuring Florida's Wholesale Market for Electricity. In its transmittal letter the Commission wrote that it:

> adopted a two-phase approach to its study of Florida's electric industry. . .The first phase has addressed policy changes needed with respect to Florida's wholesale market to assure an adequate, reliable and affordable supply of electricity. The work plan contemplated an interim report with recommendations on the wholesale market before the 2001 Legislative Session.

C. EFFECT OF PROPOSED CHANGES:

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. This section amends section 74.011, Florida Statutes. It grants the right of eminent domain to a regional transmission organization.

Section 2. This section amends section 74.011, Florida Statutes. It grants the right of eminent domain to load serving utilities, as defined, but not to generation providers.

Section 3. This section creates section 361.09, Florida Statutes. It grants the grants the right of eminent domain to regional transmission organizations as afforded to load serving utilities under Florida law.

Section 4. This section amends section 366.01, Florida Statutes,
366.01(1). This section preserve the FPSC's authority to regulate public utilities but, as defined is subsequent sections; public utilities would only be allowed to own and operate distribution facilities. The distribution only public utilities would be required to purchase all generation requirements from FERC regulated wholesale generation providers and all transmission requirements from a FERC approved regional transmission organization.

366.01(2). This section declares that the state and federal regulation of the production and sale of electricity should be reduced. This section assures that competition in the provision of generation services will assure the provision of adequate energy supplies, resources and reserves to all electricity customers in Florida at a reasonable cost. There is no provision to restore appropriate levels of regulation if competition does not occur.

366.01(3). This section declares that competition for the supply of generation services will provide customers with reasonably priced, adequate, safe, reliable and efficient supplies of electricity; and protect the resources and environment of Florida and enhance economic development.

366.01(4). This section declares that competition in generation will be enhanced by the transfer of existing IOU generation assets, which are currently subject to state cost-based rate regulation. To wholesale generation affiliates, which would be regulated by the FERC. The proposed legislation does not apply to municipal electric utilities and rural electric cooperatives.

366.01(5). This section declares that competition in generation will be promoted by the transfer of existing transmission assets or the transfer of operational control of such assets, which are currently subject to state cost-based regulation, to an independent regional transmission organization approved and regulated by the FERC.

366.01(6). This section finds that certain retail consumer rate and energy supply protections need to be established during the transition to a fully competitive and unregulated wholesale market. This section does not address the need for consumer protection after the transition period expires. Pursuant to subsequent sections of the proposed legislation, the transition period is a fixed period of time (six years). There is no provision to extend the transition period if a fully competitive wholesale market is not achieved or if the assumed results specified in s. 366.01(1)-366.01(6) are not realized.

Section 5. This section amends section 366.02, Florida statutes, regarding definitions.

366.02(1)(a)-(e). "Affiliated" or "Affiliate" conforms to the definition of a corporate affiliate as used by the Securities Exchange Commission.

366.02(2). "Base rates" means all rates and charges collected by public utilities for retail electric service pursuant to tariffs on file with the FPSC, excluding the cost recovery adjustment clauses set forth in sections 366.062, 366.063, 366.064, 366.0645, 366.82, and 366.8255, or such other costs recovery clauses as may be authorized by the FPSC.

366.02(4). "Electric utility" clarifies and expands the current definition of electric utility to include: 1) generation affiliates; 2) exempt wholesale generators; 3) regional transmission organizations.

366.02(5). "Exempt wholesale generator" conforms to the definition in the Federal Energy Act of 1992.

366.02(6). "Generation affiliate" clarifies that if a generation affiliate becomes an EWG it could be authorized by the FERC, after demonstrating a lack of regional market power, to charge market based rates for generation services sold.

366.02(7). "Generation assets" means all assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, associated fuel handling equipment, water contracts, lands, surface or subsurface water rights, emissions - related allowances, fuel supply interconnections, and associated facilities which directly support the construction and operation of the generation plant.

366.02(8). "Load serving utility" means a utility that serve a retail customers.

366.02(9). "Net book value" is defined as the original cost of generation or transmission assets, including groups of such assets, less accumulating reserves for depreciation, dismantlement, and income taxes on the corporate records of the public utility. The definition of Net book value includes dismantlement costs for both nuclear and non-nuclear assets. Under current regulation, the FPSC requires IOU companies to establish a funded nuclear decommissioning reserve dedicated to ensuring that sufficient money will be available to dismantle nuclear power plants when they are retired. The nuclear decommissioning reserve is funded through rates charged to retail customers. If nuclear and non-nuclear assets are transferred at net book cost to generation affiliates, the state will no longer have control over the funding of, accounting for, or disposition of nuclear and non-nuclear dismantlement reserves. The FPSC also requires IOU companies to collect additional money from ratepayers to pay for the dismantlement of on-nuclear power plants when they retire.

366.02(10). "Public utility" clarifies that EWGs, generation affiliates, and regional transmission organizations are not public utilities under chapter 366, Florida Statutes. As such these entities would not be subject to the cost-based ratemaking authority of the FPSC.

366.02(11) "Regional transmission organization" means any entity approved by the Federal Energy Regulatory Commission to provide regional transmission services.

Section 6. This section amends subsection (2), (5), (6) of section 366.04, Florida Statutes, regarding the jurisdiction of the FPSC.

366.04(2). This section limits the FPSC's current "Grid Bill" authority over electric utilities to apply only to the load serving distribution companies that will remain after their generation assets have been transferred to generation affiliates and transmission assets have been transferred to a RTO.

366.04(5). This section removes the authority of the FPSC to prevent further uneconomic duplication of generation and transmission.

366.04(6). This section preserves the current jurisdiction of FPSC over the safety of transmission and distribution facilities in the state.

Section 7. This section is created to clarify the jurisdiction of the FPSC over regional transmission organizations

366.0411(1)(a), (b). The bill limits the jurisdiction of the FPSC over the RTO, and the scope of information the FPSC is authorized to require is also limited.

Currently, pursuant to s. 186.801, Florida Statutes, Ten-Year Site Plans, which is being repealed by the proposed legislation, the FPSC requires all electric utilities to file a ten-year plan for the siting, expansion or modification of major transmission lines, i.e. 230 KV or higher, eight miles or longer, and crossing a county line. This section provides for a five-year planning horizon. However, major transmission lines have typically required extensive lead-time to plan, site, and construction, in some cases more than ten years.

366.0411(c). This section is consistent with the current authority of the FPSC under s. 403.537, Florida Statutes, to determine the need for major new transmission lines proposed for construction by electric utilities in Florida.

366.0411(d). This section authorizes the FPSC to require the installation or repair of transmission facilities, but that authority is limited by the proposed amendments of section 366.05(8), Florida Statutes, which restricts the FPSC to taking action only if the safety or reliability of energy grids of the state would be impaired.

366.0411(e). This section authorized the FPSC to establish generation reserve margins for the participants in a regional transmission organization. The intent appears to be to ensure that, in the context of a competitive wholesale market, each load serving entity purchases its fair share of generation reserves from unregulated wholesale generation providers. However, the language is not entirely clear because the meaning of "the participants in a regional transmission organization" depends on whether (1) the unregulated generation provider purchases transmission service to deliver its generation to the load serving entity, or (2) the load serving entity provides or purchases the transmission service, or (3) some combination of the two. If an unregulated generation provider purchases the transmission service from the RTO, then s. 366.041(1)(e) appears to be inconsistent with the bulk of the proposed legislation which prohibits the FPSC from requiring unregulated generation providers to build additional capacity or maintain reserves.

366.0411(2). This section does not expressly grant the FPSC authority to monitor, investigate, or taken any action to determine whether generation and transmission markets specifically administered by a RTO have or are abusing market power.

Also this section prohibits the FPSC from directly or indirectly reviewing the rates and charges imposed by a RTO. If retail transmission facilities are transferred from public utilities to a RTO, as is being proposed in the GridFlorida RTO filing before the FERC, then it appears that under federal law the ratemaking jurisdiction over the transmission assets transferred will also transfer from the State to the FERC.

Section 8. This section amends subsection (8), (9), and (12) of section 366.05 relating to powers of the FPSC.

366.05(8) This subsection limits the current Grid bill authority of the FPSC from being able to correct any inadequacy in the energy grids of Florida to only being able to address issues of safety or reliability and to react to emergencies.

366.05(9). This section preserves the authority of the FPSC to require the filing of cost data from public utilities and their affiliates. This section does not, however, authorize the FPSC to require the filing of cost information for a RTO or its affiliates.

366.05(12). This section authorizes the FPSC to investigate the structure of the wholesale electric market in Florida and to address issues of market power. However, the FPSC is not authorized to take any action in the event market abuses are found other than to seek remedies from the FERC.

Section 9. This section creates section 366.052 to read:

Section 366.052(1). That on or before January 1, 2002, or as soon as practical thereafter, each IOU transfer, at net book value, its non-nuclear generation assets to a generation affiliates.

Section 366.052(2). That on or after the effective date of this act, that each IOU transfer, at net book value, its non-nuclear generation assets that are under construction to a generation affiliate.

This section also requires the FPSC to allow the public utility to recover through a cost recovery clause all the fuel costs, fixed and variable costs, and environmental compliance costs associated with building a new power plant which are not allowed to be recovered through the current Environmental Cost Recovery Clause. Rather, they are to be recovered through base rates. Also, under current regulatory practice, the fixed capital costs and variable costs, other than fuel, associated with new power plants are recovered through base rates.

Section 366.052(3). This section allows each IOU company, at its own discretion, to transfer, at net book cost, its nuclear generation assets to a generation affiliate. Each IOU company may also elect to transfer the nuclear decommissioning reserve to a generation affiliate. Under current regulatory practice, the FPSC requires each IOU company to establish a funded nuclear decommissioning reserve, which is paid for by retail ratepayers.

366.052(4). This section prohibits the FPSC from taking any action to impute or otherwise consider any gain or loss on the transfer of generation assets from a public utility to a generation affiliate or the subsequent sale of such generation assets from a generation affiliate to a third party. It would prohibit the FPSC from determining how the gains or losses should be handled.

366.052(5)-366.052(5)(d). Subsection (5) establishes a three year period (January 1, 2002 through December 31, 2004) during which each public utility will have a right of first refusal to purchase back generation from its generation affiliate at cost based rates to supply 100% of its retail customer load and energy requirements. For the subsequent year (January1, 2005 through December 31, 2005), this right of first refusal is reduced to 67%. For next year (January 1, 2006 through December 31, 2006), the first right of refusal is reduced to 33%. Finally, starting January 1, 2007, each public utility must purchase all of its generation requirements from the competitive wholesale market.

At present, Florida IOU companies provide generation, transmission, and distribution services under a single bundled rate, which is cost-based, regulated by the FPSC. Under this cost-based system of regulation, IOU companies are obligated by statute to provide an adequate and reliable supply of generation to serve their customers needs. In turn power plants constructed to meet the needs of customers are included in rate base for each utility, and the generation plant costs of the utility plus a return on investment is recovered through retail rates.

Investor owned utilities in Florida generally provide their own generation to serve their retail customers. However a small percentage of the generation for each utility is made available for wholesale sales to other utilities. Under the proposed legislation, for the first three years (2002-2004) generation affiliates must sell generation back to their affiliate public utilities at a "cost based rate." Over the next three years (2004-2006) the amount of generation priced at "cost based rates" declines by one-third each year. After the 6-year transition period, generation affiliates are not held to any "cost based rate" standard and will be able to charge a rate the market and FERC will allow.

After the transition period, rates charged by generation affiliates will be entirely subject to FERC regulation. Currently, the FERC places more scrutiny on sales to an affiliate and requires such sales to be cost-based. Again, however, it is not clear that the FERC will continue this practice or that the FERC method of ratemaking will result in the same rates as would have been set under state regulation. The FERC appears to be relying on the market place to establish reasonable prices. The burden of proof regarding abuses in affiliate transactions and market power appears to be is placed on the FPSC or other intervenors at the FERC.

366.052(6). This section requires that the purchase power contracts between a public utility and its generation affiliate continue during the transition period if generation assets are transferred or sold to a third party.

366.052(7). This section requires transition contracts between public utilities and their generation affiliates and underlying generation cost data to be filed with the FPSC.

366.052(8). This section allows public utilities to purchase generation from entities other than their generation affiliates when it is economical to do so.

366.052(9). This section requires public utilities to continue to bear the responsibility of contracts for the purchase of generation entered into prior to the enactment of this proposed legislation. These contracts would not be transferred to generation affiliates. This section would include existing PURPA contracts with cogenerators and small power producers, which, in many jurisdictions, are considered, stranded costs.

Section 10. Section 366.0521 is created to read:

366.0521(1)(a)-(d). This section allows generation affiliates to become FERC approved EWGs and subject to mitigation of market power, qualify for market based rates rather than cost-based rates.

Under federal law, state commissioners are required to make a specific determination that in order for rate based generation to become eligible EWGs such status 1) will benefit customers; 2) is in the public interest; and 3) does not violate state law. This provision appears to assert by dictum that these conditions have been met without a specific case-by-case finding.

366.0521(2). This section grants the FPSC authority to have reasonable access to all public utility records and records of the affiliated companies of the utility, including its parent company, regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that ratepayers of a do not subsidize non-utility activities.

Section 11. Section 366.053 is created to read:

Competitive Acquisition of Capacity and Energy by Public Utilities
366.053(1). This section requires load serving utilities to purchase all their generation requirements from the competitive wholesale market either through bids or requests for proposals, negotiated

bilateral contracts, purchases in the open market, or any other reasonable manner. This section does not authorize the FPSC or the industry to pursue the development of a real time energy market to ensure the optimization of short-term energy sales.

366.053(2). Purchases of capacity and energy pursuant to a bid or request for proposal are presumed to be prudent and cost-effective. This would place the burden of proof on intervenors, including the Office of Public Counsel, to demonstrate that the purchase is not prudent and cost effective.

366.053(3). This section clarifies that the purchasing utility has the burden of proof to demonstrate to the FPSC that a purchase is prudent and cost-effective. The FPSC is required to pass all prudent and cost-effective costs directly to ratepayers through capacity and fuel cost recovery clauses. This section does not expressly authorize the FPSC to establish rules governing bids and request for proposal guidelines, requirements, and practices.

366.053(4)(a)-(c). This section establishes a Code of Conduct governing the purchase of generation by a load serving entity utility and its generation affiliate. The FPSC is not expressly authorized to monitor affiliate transactions or investigate possible abuses. If abuses are determined, there is no provision for any action against the offending parties. The FPSC is not authorized to enact rules governing affiliate transactions.

Section 12. Section 366.054 is created to read: Regional Transmission Organizations that Own or Operate Transmission Facilities.

366.054. This section permits load serving utilities to transfer their transmission assets to a RTO at net book cost. The FPSC is prohibited from taking any action to impute or otherwise consider any gain or loss on the transfer of transmission assets to a RTO.

Section 13. Section 366.055 is amended to add subsections (4), (5), (6), (7), (8), (9), (10), (11), (12), and (13)

366.055(4). This section appears to require the FPSC to approve an annual reserve margin for generation capacity. However, this section does not expressly authorize the FPC to enact rules to do so.

366.055(5). This section requires each investor-owned load serving utility to file an Integrated Resource Plan (IRP) with the FPSC not less than every five years. It appears that the IRP would only include forecast demand and energy requirements, plus purchased power reserves, and identify cost effective demand-side conservation measures. All electric utilities including municipal electric utilities and rural electric cooperatives are currently required to provide a ten-year forecast under the current Ten-Year Site Plan and for reliability and conservation planning the FPSC has, on occasion, required 20 year forecasts.

366.055(6). This section requires the load serving utilities to file a 5-year reliability plan with the FPSC. Currently, pursuant to section 186.80 Ten-Year Site Plans, which is being repealed by the proposed legislation, the FPSC requires all electric utilities to file a ten-year plan for the siting, expansion, retirement, or modification of major power plants. Since power plants typically require extensive lead times (up to 6 years for a coal plant) it appears that a five-year planning horizon may be too short.

366.055(7). This section provides for FPSC review of the plans, which is consistent with existing FPSC authority in the current Ten-Year Site Plan process.

366.055(8). This section provides only utilities with existing plants must file a five-year plan based on the word "operating." Electric utilities, which are planning to operate power plants, are not required to file a five-year plan showing the planned use of these generation resources.

366.055(9). This section provides that RTOs must file a 5-year plan with the FPSC.

366.055(10). This section grants the FPSC expressed authority to enact rules governing the planning filings made by the load serving utilities, generation providers, and RTO.

366.055(11). This section authorizes the FPSC to require a load serving utility to build, and presumably include in rate base, a power plant if the competitive generation markets fail to provide adequate and reliable supplies of capacity and energy. However, it is not clear whether a load serving utility will have any remaining expertise or the financial capability to build a power plant. Currently, generation and transmission represent approximately 60% of the capital investment of Florida vertically integrated investor owned utilities. These assets will be transferred to generation affiliates along with all current power plant sites, including common facilities, and personnel responsible for planning, siting, building and operating the power plants.

366.055(12). This section authorizes the FPSC to require a load serving utility to purchase additional generation from the competitive market if, for whatever reason, the load serving utility does not plan to meet its load and energy requirements plus reserve margin.

366.055(13). This section clarifies the existing emergency powers of the Governor.

Section 14. Section 366.061 is created to read: Rates of public utilities.

366.061(1). This section freezes base rates at current levels. It does not include any provisions allowing the FPSC to mitigated on its own motion or on request of the Office of Public Counsel or any other party, any kind of earnings review or rate reduction should the earnings of an investor-owned utility exceed the current authorized rate of return and earnings range.

These rates do not include the generation and transmission costs that are to be recovered through cost recovery clauses.

366.061(2)(a)-(e). This section provides fee cost recovery clauses to remain in effect through December 31, 2004.

366.061(3)(a),(b). This section delays the unbundling of transmission from retail rates until January 1, 2005. In the interim, investor-owned utilities will recover all startup costs, transition costs and incremental costs associated with transferring their transmission assets to the RTO through an automatic cost recovery clause. However the GridFlorida RTO is expected to become operational by December 15, 2001.

The FPSC would be able to intervene and take positions on ratemaking matters before the FERC pursuant to 366.015. If the FPSC does intervene in ratemaking, the FERC would not necessarily give deference to the state's position. Once rates are approved by the FERC, the FPSC is prohibited from withholding cost recovery of the costs of any transaction with a generation provider.

366.061(4). This section requires all contracts for purchased power to remain with the load serving utility. This includes market priced PURPA contracts. The FPSC is prohibited from netting the stranded costs associated with these contracts against the gain on sales, if any, of generation assets transferred to generation affiliates.

366.061(5). This section authorizes the FPSC to establish performance or incentive based rate structures. The FPSC is encouraged to develop innovative retail rate structures that send price signals to consumers.

Section 15. Section 366.062 is created to read: Cost of fuel and other variable costs of production

366.062(1)(a) "Fuel costs" means the costs of natural gas, coal, oil, nuclear fuel or other fuel incurred by an electric utility in the generation of electric capacity or energy.

366.062(1)(b) "Variable costs of production" means the costs associated with the production of energy or capacity from any type of generating facility that vary as a function of the output level of the facility.

366.062(2). This section codifies the Fuel and Purchased Power Cost Recovery Clause, which is currently authorized pursuant to FPSC Order as a regulatory policy, and, hence, subject to change as circumstance warrant and demonstrated by evidentiary proceedings.

Section 16. Section 366.063 is created to read: Cost Recovery of Capacity and Other Fixed Costs of Production

366.063(1). "Capacity or fixed cost production" means the fixed cost or capital investment associated with the production of energy or capacity from any type of generating facility that does not vary as a function for the output level of the facility.

366.062(2). This section would provide a shift to cost recovery through automatic adjustment clauses. At present, approximately 54% of a typical residential bill consists of costs recovered through base rates with approximately 46% of costs recovered through recovery clauses, principally the fuel adjustment clause. Under the proposed legislation, this will change to approximately 23% of all costs (primarily distribution) being recovered through base rates and 77% of all costs (generation, transmission, fuel, conservation, and environment) being recovered through recovery clauses.

Section 17. Section 366.064 is created to read: Cost Recovery of Purchased Power

366.064(1). "Purchased Power" means the costs associated with the purchase of energy or capacity or both by a public utility.

366.064(2). This section requires the FPSC to establish a cost recovery clause for the pass through of all prudent generation purchases made by an LSE.

Section 18. Section 366.0645 is created to read: Cost Recovery of Regional Transmission Organization Charges and Costs

Section 366.0645(1). This section defines "Regional transmission organization transition and start up costs" as all costs incurred in forming and participating in an RTO. It includes, but is not limited to, costs and expenses approved by the FERC.

366.0645(2). This section clarifies that each load serving utility shall be allowed to recover, through an automatic cost recovery clause, all charges assessed it by an RTO, including start-up and transition costs.

366.0645(3). This section requires the FPSC to establish a cost recovery clause for the recovery of charges assessed a load serving utility by a RTO. The cost recovery clause is to be designed to recover both actual and projected costs with a periodic true up.

Section 19. Section 366.066 is created to read: Cost Recovery Clauses: Savings Clause

366.066(1)(a)-(b). This section authorizes the FPSC to establish additional cost recovery clauses if deemed necessary to allow load serving utilities to recover prudently incurred costs.

Section 20. Section 366.085 is created to read: Reports to the Legislature

366.085(1)(a)-(g). This section requires the FPSC to submit an annual report on the status of wholesale electric competition in Florida. The report must include demand for and supply of generation in the state for a projected 5-year period. The report must also include an assessment of existing and forecasted reliability. The FPSC may provide other information and recommendations, which may be in the public interest.

Section 21. Section 366.80 is amended to read: Short title

This section strikes a cross reference to section 403.519, Florida Statutes.

Section 22. Section 366.81 This section corrects a cross-referenced cite.

Section 23. This section amends section 366.82, Florida Statutes, to read:

366.82(1). This section strikes the reference to s. 403.519, Florida Statutes, for purposes of definition of public utility. At present, this section of the statutes has been interpreted by the Florida Supreme Court as not allowing merchant plants to apply for a power plant need determination because they do not directly serve retail end-use customers. Also, while not addressed by the court, the 2,000-gigawatt hour annual sales threshold appears to restrict all but the 6 largest utilities in Florida (FPL, FPC, Gulf, TECO, Jacksonville Electric Authority, and Orlando Utilities Commission) from applying for a power plant need determination. Striking this reference to section 403.519 removes restrictions.

366.82(2). This section clarifies that the conservation goals of the FPSC are to be aimed at increasing the efficiency of end-use customer energy consumption. It also clarifies that energy consumption means electrical energy consumption, not other forms of energy consumption such as automotive fuels, home heating fuels, etc.

366.82(3). This section clarifies that the FPSC will continue to set conservation goals on a 5 year cycle for load serving utilities.

366.82(4). This section removes cogeneration from consideration as a load serving utilities conservation program. However, pursuant to s. 366.052(9), load serving utilities are required to continue to be responsible for existing cogeneration contracts. These generation resource contracts are not required to be transferred to generation affiliates.

366.82(5). The reference to s. 403.519 is stricken to reflect the load serving utilities will no longer be in the power plant construction business.

366.82(6). This section requires the FPSC to allow research and development related to energy conservation to be allowed and to be recovered through a cost recovery clause rather than through base rates. The period covered by the Conservation Cost Recovery Clause has been changed

from 6 months to one year. This is consistent with the time period used by the FPSC for other cost recovery clauses.

Section 24. Section 366.8255, Florida Statutes is amended to read:

366.8255(1). This section defines utility as any investor-owned electric load serving utility.

366.8255(1)(d). This section expands the scope of costs recoverable through the Environmental Cost Recovery Clause to any other costs or expenses prudently incurred in an effort to benefit the environment. Prior approval by the FPSC is required.

366.8255(1)(d)1. This section provides that during the six-year transition period, the last authorized rate of return on equity would be that established under the regime of cost-based regulation.

366.8255(2). This section removes the FPSC discretion to approve or disapprove the recovery of proposed environmental compliance costs, including Clean Air Act compliance costs, through the Environmental Cost Recovery Clause. At present, the FPSC can decide to allow recovery of prudent environmental compliance costs through base rates.

366.8255(3). This section requires the FPSC to authorize recovery of all prudent environmental compliance costs through the Environmental Cost Recovery Clause. Under the current laws, the cost of environmental compliance for new power plants is required to be recovered through base rates. The FPSC also has the discretion to allow other environmental compliance costs to be recovered through base rates.

Also, during the transition period when base rates are to be frozen, this provision may allow utilities to recover additional costs associated with plants under construction through the Environmental Cost Recovery Clause that would otherwise be subject to the freeze on base rates.

366.8255(4). This section provides that the FPSC must allow cost recovery of environmental compliance costs, including Clean Air Act compliance costs, through the Environmental Cost Recovery Clause rather than through base rates.

Section 25. Section 366.83 is amended to correct cross-reference cites.

Section 26. Subsections (2), (3), (4), and (5) of section 366.83 clarify that past rate stipulations approved by the FPSC are not affected by the proposed legislation and are grand fathered.

Section 27. Section 403.502 provides legislative intent.

Section 28. Subsections (12) and (13) of section 403.503 are amended to read:

403.503(12). This section removes the 75 MW threshold for steam and solar generating facilities, thereby making the act, as amended, applicable to all electrical generating power plants.

403.503(13). The section broadens the definition of applicant to include all electric utilities, generation affiliates, exempt wholesale generators, and regional transmission organizations.

Section 29. Subsections (11) and (12) are added to section 403.504

403.504(11). This section would give the FDEP final authority over land use and zoning issues.

403.504(12). This section would give the FDEP, instead of the Governor and Cabinet, the final approval authority in all power plant certifications.

Section 30. Section 403.506, Florida Statutes is amended to read:

403.506(1)-(2). This section clarifies that the provisions of this act apply to any electrical power plant without regard to size or technology for which an applicant has elected to apply for certification.

Section 31. Subsection (4) is added to section 403.5064, Florida Statutes.

403.5064(4). The FPSC will receive a copy of each certification application for information purposes only.

Section 32. Paragraphs (a) of subsection (2) and paragraph (b) of subsection of (4) of section 403.507, Florida Statutes are amended to eliminate the requirement for the FPSC to report on the need for a proposed new power plant.

Section 33. Section 403.508(2) This section requires the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed generation plant.

403.508(3). This section eliminates the requirement for the FPSC to conduct a need determination as a prerequisite to certification. This section requires the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed generation plant.

403.508(4). This section is amended to provide that the FPSC will no longer be a party to a power plant certification.

Section 34. This section amends section 403.509(1) to require the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed generation plant.

403.509(2). This section is repealed.

Section 403.509(3) is amended to require the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed generation plant.

Section 403.509(4) is amended to require the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed generation plant.

Section 35. Section 403.510, Florida Statutes, is amended to require the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed generation plant.

Section 36. Section 403.511, Florida Statutes, is amended to provide that existing certifications signed by the Governor, or the FDEP have final authority to approve certifications for all new power plants.

Section 37. Section 403.512, Florida Statues is amended to the Siting Board for previous certifications.

Section 38. Section 403.513, Florida Statutes, is amended to require the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed generation plant.

Section 39. Section 403.516, Florida Statutes, is amended to require the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed generation plant.

Section 40. Subsection 403.517(1)(a)6, Florida Statutes is amended to requires the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed generation plant.

Subsection 403.517(4), Florida Statutes is amended to retain the Siting Board for previous certifications.

Section 41. This section provides directory language.

Section 42. Subsection 403.5175(4) is amended to eliminate the requirement for the FPSC to report on the need for a proposed new power plant.

Section 43. Subsection (12) of Section 403.522, Florida Statutes is amended to read: "Electric utility" means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, and joint operating agencies, electric utilities as defined in s. 366.02(4), or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

Section 44. Subsection (12) is added to section 403.523 to provide that FDEP has authority to take final action on applications for certification in accordance with s. 403.529.

Section 45. Subsection 403.527(3)(b), Florida Statutes is amended to require FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed generation plant.

Section 46. Subsection 403.529(1) is amended to require the FDEP, rather than the Governor and Cabinet as the Siting Board, to approve certification of a proposed transmission line.

403.529(2). This section requires the FDEP, rather than the Governor and Cabinet as the Siting Board, to approve certification of a proposed transmission line.

403.529(3)(a)-(e). This section requires the FDEP, rather than the Governor and Cabinet as the Siting Board, to approve certification of a proposed transmission line.

403.529(4). This section requires the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed transmission line.

Section 47. Subsection (1) and paragraph (b) of subsection (2) of section 403.531 are amended to preserve the Board for previous certifications.

Section 48. Section 403.5315, Florida Statutes is amended to require the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed transmission line.

Section 49. Section 403.532 is amended to provided that any certification may be revoked or suspended.

Section 50. Section 403.536, Florida Statutes, is amended to require the FDEP, rather than the Governor and Cabinet sitting as the Siting Board, to approve certification of a proposed transmission line.

Section 51. Sections 186.801 and 403.519, subsection (6) of section 377.709, and subsection (6) of section 403.522, Florida Statutes, are repealed.

Section 52. This section provides that this act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND TELECOMMUNICATIONS:

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