

FECA's Florida Legislative Report

February 17, 2017

We will have one more week of committee meetings next week, and then the Legislature will take a week off to prepare for the 2017 Legislative session to officially begin on March 7. Not much activity this week on the bills we are following, but it was still an eventful week. The House's utility committee heard testimony from the co-generators that are lobbying for rates other than avoided cost or the right to sell at retail to others. Part of the discussion involved using real time or wholesale market rates to reflect the time value of the co-generators power, which the solar and net metering proponents probably want to avoid. Apparently one IOU's "avoided cost" rate is about 2 or 3 cents a kwh. There also were presentations on renewables and FPL spoke about their 6 "universal" solar installations that total 224 MW, and the 4 new universal facilities they plan to build in accordance with their recent rate settlement. Apparently "universal" is the new word to describe large scale solar. There also was testimony from FAU on using ocean currents to generate electricity. Although everything is still in the test phase, they claim that ocean current can power 20% of Florida's electric needs.

Another significant event was the approval of Sen. Debbie Mayfield's (R), request that the Office of Program Policy Analysis and Government Accountability conduct a study on the Florida Municipal Power Agency (FMPA). Before the Joint Committee ruled, Sen. Mayfield commended FMPA on its efforts to negotiate an exit for the City of Vero Beach and delayed the study's start until October. The delay is to prevent the study from impeding the negotiations. The overarching premise of the study is to determine if the FMPA is adequately and effectively serving the purpose for which it was created. Specifically, the study will look at the following:

- Determine if the justification for the creation of FMPA still exists
- Evaluate the feasibility of FMPA being regulated by the PSC and a process to begin such regulation
- Evaluate potential impacts to FMPA's debt structure and the wholesale and retail power markets resulting from the orderly sale of FMPA's generation assets
- Evaluate actions in response to the 2015 Auditor General's report on FMPA

- Evaluate the feasibility and cost associated with an FMPA member terminating its membership
- Evaluate feasibility of liquidating FMPA, the process for same, while protecting bondholders and other contractual interests
- Identify other benefits provided by FMPA and evaluate its hedging practices.

This move by Sen. Mayfield now has us wondering whether she will still file a bill to increase the regulation of municipalities. Of course, bills are still pouring out of bill drafting and there are some humdingers in the new bill section below. We are still waiting on bills that address workers comp and undergrounding of transmission lines.

Below are the bills of interest that we are working on:

New Bills

Municipal Special Assessment for Law Enforcement - SB 932 by Sen. Thurston (D) would authorize a municipality to levy a special assessment to fund the costs of providing law enforcement services under certain circumstances. If the assessment is levied, the municipality would reduce its ad valorem millage. The governing body would have discretion to allocate the assessment based upon a property's square footage, use, location or other factors, which appears to allow the government to put a higher burden of the assessment on commercial property than on residential property.

Public Utility Environmental Remediation Costs - SB 974 by Sen. Rodriguez (D) would allow local governments to file a request for a hearing with the PSC for a determination of prudence on environmental damage caused by an IOU. If the Commission determines that the IOU failed to act prudently, the utility may not recover any costs for the damages from ratepayers and they must develop a plan to remedy any remaining environmental damage.

Public Electric Utility Rates - SB 976 by Sen. Rodriguez (D) would require an IOU to lower its residential customer rate by 25% for the first 500 kwhs if they charge a flat residential schedule (RS) rate, like Gulf Power. For IOUs that have tiered RS rates (FPL, Duke, TECO) the second tier (over 1000 kwhs) must be reduced by

25%. This would be instituted following the IOUs' first rate case after July 1, 2017 or on July 1, 2021, whichever occurs first.

Elimination of Certain Economic Programs - HB 7005 by the House Careers & Competition Subcommittee and Rep. Renner (R) would eliminate certain economic programs such as Enterprise Florida, Inc. and Visit Florida. The bill would allow current projects and existing contracts to be fulfilled with oversight from the Department of Economic Opportunity. The House is asserting that certain economic programs have not succeeded in their mission and should be abolished. The House's position is the polar opposite of the Governor, who believes these programs are not only successful, but necessary for Florida to remain competitive. HB 7005 passed out of its first committee.

Priority Bills

Wireless Companies and Pole Attachments - SB 596 by Sen. Hutson (R) and HB 687 by Rep. La Rosa (R) would limit the FDOT and local governments' ("authority or authorities) ability to regulate "small" wireless facilities in public rights-of-way when the wireless facilities attach to authority utility poles. The authorities would issue permits and require the wireless entities to provide information on the collocation similar to the information required for electric utilities. The bill would set rates and fees in statute for attachments on authority poles that may not exceed the lesser of the FCC pole attachment rate or \$15 per year. This is concerning since municipal electric (and cooperatives) pole attachment rates are not subject to the FCC formula and the \$15 rate is not cost-based. The bill would set a new standard with respect to permissible cubic feet of volume of the antenna and associated facilities. The antenna could be up to 6 cubic feet with associated equipment up to 28 cubic feet, excluding certain ancillary equipment. The authority would only be able to charge the wireless entity the actual cost, with certain limitations, for any additional work on authority utility poles necessitated to support the additional facilities. The bill would not apply to electric co-ops. However, the bad precedent set by this bill could be troublesome in the future.

Electricity Theft - SB 776 by Sen. Baxley (R) would establish criteria for an electric utility and the courts to follow for the recovery of losses associated with

illegal marijuana grow houses. The criteria include processes to establish the amount of electricity that was stolen. After the utility follows these criteria, the burden of proof would shift to the defendant.

Retail Wheeling for Solar Generators - SB 456 by Sen. J. Rodriguez (D) would exempt solar-based renewable energy systems up to 2.5 MW from the definition of public utility. These generators would not be regulated by the PSC and could sell electricity to end-users, including existing utility customers, that are on the same property as the generator. The bill is silent as to whether these customers could be put on a special rate to ensure that the remaining customers do not subsidize the renewable generator's consumers and does not address what entity will regulate the safety of these small utilities.

Renewable Device Taxation – SB 90 by Sen. Brandes (R) would implement Amendment 4 by excluding renewable energy source devices used for commercial purposes, such as solar panels and related equipment, from property value assessments. Further, the bill would exempt from ad valorem taxation renewable devices considered tangible personal property. The bill would grant the exemptions for all qualifying renewable devices regardless of installation date. The exemptions for residential and commercial renewable devices would expire on Dec. 31, 2037. SB 90 passed out of its first committee.

Public Notification of Pollution - SB 532 by Sen. Galvano (R) would create the Public Notice of Pollution Act. The goal would be to notify the public of a reportable pollution spill or release (as defined in statute) that may pose an immediate danger to the public health, safety or welfare. This bill attempts to mollify the onerous expectations for public notification of spills that DEP implemented last fall through an emergency rule. In the event of a reportable pollution release an entity would need to notify DEP within 24 hours of its discovery and provide detailed information regarding the spill. If multiple parties are subject to the notification requirement, a single notification by one party will suffice and will constitute compliance for all parties. Once DEP is notified of a spill, they would need to publish the notice on a website that is accessible to the public within 24 hours of receipt. In addition, DEP must create an electronic mailing list for notices that the public can request to be on. If an entity fails to

provide notification to DEP they would be subject to civil penalties, which may include a \$10,000 fine.

Underground Facilities - SB 446 by Sen. Passidomo (R) and HB 379 by Rep. Leek (R) would require that participants in Sunshine State One-Call of Florida, Inc. (One-Call) report at least annually, by March 31 of each year, the damages to their underground facilities for the preceding year. Further, the bill would expand the information currently required to be submitted to the Legislature by the One-Call Board, which information would be analyzed to improve the program and prevent future dig ins. In addition, an excavator would need to call 911 and file a report with the One-Call system if damage to an underground facility results in the release of any natural or other gas or hazardous liquid. HB 379 passed out its first committee of reference.

Regulation of Drones - SB 832 by Sen. Young (R) would grant state government the primary authority to regulate drones, in accordance with FAA regulations, and would restrict the use of drones around critical infrastructure. Further, the bill's definition of critical infrastructure includes electric utility facilities. The bill would create a second-degree misdemeanor for knowingly and willingly allowing a drone to fly too close, make contact, or fly over critical infrastructure. The bill would provide exemptions from penalties for certain drone operators including the owners and operators of critical infrastructure and their contractors who have written permission to utilize drones.

Other Bills of Interest

Florida Building Commission - SB 7000 by Committee on Community Affairs and Sen. Lee (R) would require the Florida Building Commission (FBC) to use the most recently published edition of the Florida Building Code (Code) as the foundation for future updates to the Code. In addition, FBC would only have to review, not update, the Code every 3 years. Also, the FBC would only have to review other codes such as the International Building Code and the National Electrical Code, but not necessarily adopt any changes. SB 7000 passed out of its first committee.

Utility Workers - SB 408 by Sen. Passidomo (R), SB 432 Sen. Baxley (R) and HB 253 by Rep. Stone (R) are bills that would protect vulnerable users of public rights-

of-ways, including persons working on utility facilities along roadways. SB 432/HB 253 would increase penalties in instances resulting in injury or death to vulnerable road users. SB 408 would also increase penalties as well as requiring motorists to maintain at least 3 feet of space between the vulnerable user and the vehicle when passing. Violations would be in addition to the move over restrictions and penalties enacted 2014.

Rural Economic Development - SB 600 by Sen. Grimsley (R) and HB 333 by Rep. Clemons (R) would direct the Office of Economic and Demographic Research and OPPAGA to analyze “rural areas of opportunities” which include rural areas adversely affected by economic distress and competitive disadvantages. The Rural Economic Development Initiative (“REDI”) would encourage job creation, improved community infrastructure such as roads and utilities, improved access to health care and expansion of a skilled workforce in these areas. The REDI would submit an annual report on its initiatives and accomplishments to the Governor, Senate and House.

Bills That Only Apply to Munis

Gainesville Regional Utilities Authority - HB 759 by Rep. Clemons (R) is a local bill that would amend the City of Gainesville’s charter, creating a regional independent utilities authority called the Gainesville Regional Utilities Authority (GRUA). GRUA would be governed by an independent commission of 5 members appointed by the city commission. The purpose of GRUA would be to acquire, construct, and operate utilities including the following utilities: electric, water, wastewater, reuse water, natural gas, and communications. Further, the bill would provide general provisions for the operation and management of GRUA and its corporate structure. The bill would supersede local ordinances if there are conflicts. If the bill passes, Article VII would take effect by referendum only if it is approved by a majority of voters in Gainesville. This bill virtually mirrors the legislation in 2016, except this bill does not provide a salary for the potential GRUA members.