

FECA's Florida Legislative Report

February 24, 2017

The Legislature takes a break next week before the 2017 Legislative session officially begins on March 7. Not much activity in the committees this week, but we spent a lot of time negotiating on the pole attachment legislation and reviewing new bills and amendments. One new bill of particular concern appears to authorize the Office of Public Counsel to represent residential ratepayers in any proceeding at the PSC that involves the determination of a rate structure. Under current law we believe the OPC is not authorized to participate in a co-op rate structure proceeding. By expressly limiting the authorization to the representation of residential ratepayers, this provision directs OPC to only represent residential members in our proceedings, potentially including any administratively approved rate structure change.

New bills continue to pour out of bill drafting, and 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

Linear Facilities - SB 1048 by Sen. Lee (R) would exclude work by electric utilities on rights-of-way from the definition of “development” under the Florida Local Government Development Agreement Act. This is in response to an adverse decision against FP&L in the Third District Court of Appeals which ruled that under the Power Plant Siting Act, the Siting Board must consider local developmental regulations such as undergrounding when the project includes new transmission lines. This decision adds a new regulatory step to the power plant siting process when new linear facilities are included in the project which unnecessarily adds time and money to the process.

OPC/Government-owned Utilities - SB 1146 by Sen. Broxson (R) and HB 977 by Rep. Rommel (R) would allow the Office of Public Counsel (OPC) to represent the customers of local government-owned utilities that live outside the boundary of the local government in rate proceedings. The bill also would allow the OPC to

represent residential customers before the PSC during proceedings to determine any utility's rate structure.

Cost Recovery for Nuclear/IGCC Power Plants - SB 1100 by Sen. Rodriguez (D) would repeal the pre-completion cost recovery clause that is available to IOUs to finance construction of nuclear and IGCC power plants.

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) and HB 879 by Rep. Burgess (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. The bill was amended with ambiguous language this week to address solar facilities utilized by electric utilities. However, the stated intent is to restrict the exemption to make sure it only includes the solar facilities and does not include the grid or other equipment used to connect the arrays to the grid. SB 90 passed out of its second 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) and HB 901 by Rep. McClain (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.

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. 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. The bill was amended this week to allow Visit Florida to continue, albeit with more regulations and a smaller budget. HB 7005 passed out of its last committee.

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.

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.

Bills That Only Apply to IOUs

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.