

**Constitution Revision Commission  
General Provisions Committee  
Proposal Analysis**

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

Proposal #: P 51

Relating to: MISCELLANEOUS, creates new section

Introducer(s): Commissioner Newsome

Article/Section affected: Article X, adds new section

Date: December 12, 2017

	REFERENCE	ACTION
1.	GP	<b>Pre-meeting</b>
2.	EX	

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**I. SUMMARY:**

Proposal 51 adds a new section to Article X of the Florida Constitution and provides that:

Electricity customers may choose from multiple electric providers in a competitive market, and are not be restricted to purchase service from one provider.

The proposal provides that electricity customers may sell, trade, or dispose of their electricity as they please.

The proposal has an effective date of January 1, 2021.

**II. SUBSTANTIVE ANALYSIS:**

**A. PRESENT SITUATION:**

**Utilities in Florida**

There are three types of utilities that provide electric service in Florida: investor-owned utilities (IOUs), municipal utilities, and cooperative utilities. There are five IOUs, thirty-five municipally owned electric utilities, and eighteen rural electric cooperatives.<sup>1</sup>

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<sup>1</sup> See Florida Department of Agriculture and Consumer Services Website- Electric Utilities <http://www.freshfromflorida.com/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited 12/11/17).

*Investor-Owned Utilities*

There are five IOUs in Florida, including:

- Florida Power and Light;
- Duke Energy;
- Tampa Electric Company;
- Gulf Power Company; and
- Florida Public Utilities Corporation.<sup>2</sup>

Investor-owned utility rates and revenues are regulated by the Florida Public Service Commission.

*Municipal Owned Electric Utilities*

There are thirty-five municipally owned electric companies.<sup>3</sup> These companies are owned and/or operated by a municipality engaged in serving residential, commercial and/or industrial consumers, usually within the boundaries of the municipalities.<sup>4</sup> The following municipalities operate a utility:

- City of Alachua
- City of Bartow
- City of Blountstown
- City of Bushnell
- City of Chattahoochee
- City of Clewiston
- City of Fort Meade
- Fort Pierce Utilities Authority
- Gainesville Regional Utilities/City of Gainesville
- City of Green Cove Springs Electric Utility
- Town of Havana
- Homestead Energy Services
- Jacksonville Electric Authority
- Beaches Energy Service (Jacksonville Beach)
- Keys Energy Service (Key West)
- Kissimmee Utility Authority
- City of Lakeland
- City of Lake Worth Utilities
- City of Leesburg
- Moore Haven Municipal Light Department
- City of Mount Dora
- City of Newberry Utility Department
- City of New Smyrna Beach Utilities Company

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* For more information on municipal owned electric utilities see <http://publicpower.com/> (last visited 12/11/17).

<sup>4</sup> *Id.*

- City of Ocala
- Orlando Utilities Commission
- City of Quincy
- Reedy Creek Improvement District- Utilities Division
- City of St. Cloud
- City of Starke
- City of Tallahassee
- City of Vero Beach
- City of Wauchula
- City of Williston
- City of Winter Park Electric Utility<sup>5</sup>

The rates and revenues from the utilities are regulated by their city commission or an authority appointed by the city commission.<sup>6</sup>

#### *Rural Electric Cooperatives*

Rural electric cooperatives are joint ventures organized for the purpose of supplying electric energy to a specified area.<sup>7</sup> There are eighteen rural electric cooperatives in the state, including:

- Central Florida Electric Cooperative (Chiefland)
- Choctawhatchee Electric Cooperative (DeFuniak Springs)
- Clay Electric Cooperative (Keystone Heights)
- Escambia River Electric Cooperative (Jay)
- Florida Keys Electric Cooperative (Tavernier)
- Glades Electric Cooperative (Moore Haven)
- Gulf Coast Electric Cooperative (Wewahitchka)
- Lee County Electric Cooperative (North Fort Myers)
- Okefenoke Rural Electric Membership
- Peach River Electric Cooperative (Wauchula)
- PowerSouth Energy Cooperative
- Seminole Electric Cooperative (Tampa)
- Sumter Electric Cooperative (Sumterville)
- Suwannee Valley Electric Cooperative (Live Oak)
- Talquin Electric Cooperative (Quincy)
- Tri-County Electric Cooperative (Madison)
- West Florida Electric Cooperative (Graceville)
- Withlacoochee River Electric Cooperative (Dade City)<sup>8</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* The Keys Energy Service has an elected board that oversees the utility.

<sup>7</sup> For more information of rural electric cooperatives see <http://www.feca.com/> (last visited 12/11/17).

<sup>8</sup> *Id.*

The rates and revenues of rural electric cooperative utilities are regulated by their elected cooperative officers.<sup>9</sup>

### **Florida Public Service Commission**

Currently, the Florida Public Service Commission (PSC) regulates electric industries in the state.<sup>10</sup> The PSC regulates rates, charges, territorial agreements, need for power plants, and more.<sup>11</sup> The rules and regulations promulgated by the PSC define and promote good utility practices and procedures, adequate and efficient service to the public at reasonable costs, and to establish the rights and responsibilities of both the utility and the customer.<sup>12</sup>

There are three distinct components to the provision of electricity services: (1) generation (the actual production of electricity); (2) transmission (the transportation of large volumes of electricity at high voltage between the generating plant and the distribution system); and (3) distribution (the delivery of electricity to retail customers in a usable, low voltage form). Over the past century, Florida's electric industry has developed as a vertically-integrated industry, with electric utilities packaging the generation, transmission, and distribution of electricity and providing it to retail consumers in a single rate.

The Legislature has given the PSC broad and exclusive powers to prescribe and enforce safety standards for the transmission and distribution facilities of all IOUs, municipal electric utilities, and electric cooperatives.<sup>13</sup> The "Grid Bill"<sup>14</sup> also gives the PSC broad powers to protect the integrity and reliability of Florida's overall electric system. The PSC's jurisdiction over system reliability includes establishing mechanisms for sharing of energy reserves of all electric utilities, and instituting conservation and reliability measures within a coordinated grid. To assist the PSC in its responsibility to ensure the reliability of Florida's electric system, each generating electric utility in Florida is required to file ten-year site plans with the PSC at least every two years. Those plans identify the utility's forecasts of system load, demand-side conservation achievements, and plans for generation and transmission additions required to serve the electricity requirements of its customers. The PSC reviews those plans and issues a report on their suitability for electric system planning.<sup>15</sup>

The PSC regulates the retail rates and cost of services of five IOUs.<sup>16</sup> The retail rates charged by municipal electric utilities are set by municipal officials elected by the customers they serve or by an appointed board. The rates for not-for-profit electric cooperatives are set by a board of trustees elected by all cooperative members pursuant to Chapter 425, Florida Statutes. The PSC also has rate structure jurisdiction over all electric utilities (IOUs, municipal electric utilities, and

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<sup>9</sup> *Id.*

<sup>10</sup> Fla. Admin. Code R. ch. 25-6 (2000). The PSC does not regulate municipal owned or cooperative electric utilities, except for safety oversight.

<sup>11</sup> PSC, *When to Call The Florida Public Service Commission* (Nov. 15, 2017), [http://www.psc.state.fl.us/Files/PDF/Publications/Consumer/Brochure/When\\_to\\_Call\\_the\\_PSC.pdf](http://www.psc.state.fl.us/Files/PDF/Publications/Consumer/Brochure/When_to_Call_the_PSC.pdf). (last visited 12/11/17).

<sup>12</sup> Fla. Admin. Code R. ch. 25-6 (2000).

<sup>13</sup> § 366.04(6), Fla. Stat.

<sup>14</sup> See §§ 366.04(2)(c), 366.05(8), Fla. Stat. (vesting the FPSC with jurisdiction over the planning, development, and maintenance of a coordinated Electric Grid throughout the State of Florida).

<sup>15</sup> See § 186.801, Fla. Stat.

<sup>16</sup> See §§ 366.04, 366.05, 366.06, 366.07, Fla. Stat.; PSC 2017 Facts, *supra* note 3, at 1.

cooperatives) in order to ensure that their rates are not unduly discriminatory and all customer classes (residential, commercial, and industrial) are paying their fair share of the utility's costs.<sup>17</sup>

Under Florida's current regulatory structure, the retail price of electricity is below the national average.<sup>18</sup> Recent data compiled by the U.S. Department of Energy's Information Administration (EIA) shows that Florida's residential rates are the lowest of the ten largest states in the country.<sup>19</sup>

In November 2017, the PSC's Review of the 2017 Ten-Year Site Plans shows that the current supply of electricity in Florida is reliable, even during peak demand periods or unplanned plant outages.<sup>20</sup> Moreover, either by statute or the PSC's approval of territorial agreements, all consumers in the state are assured electricity service regardless of their location or socio-economic status.<sup>21</sup>

### **Regulatory Framework in Other States**

The majority of states still follow the vertically integrated model that is currently used here in Florida.<sup>22</sup> In those states that have experimented with restructuring their electricity markets, those efforts have typically occurred in states where electricity prices were disproportionately high *and* which had access to power supply sources from other states.<sup>23</sup> Neither of those dynamics are present in Florida. As noted above, Florida's residential rates are below the national average<sup>24</sup> and are the lowest of the ten largest states in the country.<sup>25</sup> Moreover, Florida's peninsular geography constrains interties with other states and has "resulted in an interstate interconnection system that has limited the state's competitive generation options (i.e., power sales to and power purchases from out-of-state utilities)."<sup>26</sup>

Currently no state has an energy market that is completely deregulated. The closest state is Texas with approximately 85% of the state having access to energy choice.<sup>27</sup> Other than the state of Virginia, no deregulation has taken place in the electric market since 2002.<sup>28</sup> In 2003, Arkansas passed legislation reversing deregulation. The comment for the status of deregulation in Virginia,

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<sup>17</sup>See § 366.04(2)(b), Fla. Stat.

<sup>18</sup>PSC 2017 Facts, at 6.

<sup>19</sup>See Appendix, Comparison of Residential Electrical Prices for 10 Largest States in 2016, Extracted from the EIA Average Price by State by Provider Chart (EIA-961).

<sup>20</sup>See PSC Review of the 2017 Ten-Year Site Plans of Florida's Electric Utilities at 5 (Nov. 2017), <http://www.floridapsc.com/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2017/Review.pdf> (finding that, based on the review of the ten-year site plans, the projections of load growth are reasonable) (last visited 12/11/17).

<sup>21</sup>See, e.g., § 366.03, Fla. Stat.

<sup>22</sup>See Institute for Local Self-Reliance, Status of Electricity Market, <https://ilsr.org/wp-content/uploads/2016/07/status-of-state-electricity-market.jpg> (identifying as source 2010 data from EIA) (last visited 12/11/17).

<sup>23</sup>Severin Borenstein & James Bushnell, Energy Institute at Haas, The U.S. Electricity Industry after 20 Years of Restructuring at 13 (Revised May 2015), <https://ei.haas.berkeley.edu/research/papers/WP252.pdf>. (last visited 12/11/17).

<sup>24</sup>See PSC 2017 Facts, at 6.

<sup>25</sup>See Appendix.

<sup>26</sup>RTO Briefing Paper, at 25.

<sup>27</sup><http://www.electricchoice.com/map-deregulated-energy-markets/> (last visited 12/11/17).

<sup>28</sup>*Id.*

the date for which is shown to be 2007, states “choice programs are limited for residential consumers.”<sup>29</sup>

Utility deregulation has had varying results in different states. In Montana, the state legislature deregulated electricity in 1997, allowing the state utility to sell off its hydroelectric dams and other Montana assets.<sup>30</sup> The dams and coal plants were sold to Pennsylvania Power.<sup>31</sup> The lines and wires were sold to a South Dakota-based company, NorthWestern Energy.<sup>32</sup> In 2002, Montana Power reinvented itself as Touch America, a communications company.<sup>33</sup> One year after this metamorphosis, it filed for bankruptcy.<sup>34</sup>

### *Illinois*

The Illinois Commerce Commission has recently reported a surge in customer complaints.<sup>35</sup> More than 1 in 5 Chicago-area households are signed up to buy electricity from a company other than Commonwealth Edison (ComEd), and many are paying an average of 24% more than ComEd customers.<sup>36</sup> In August, the Illinois Attorney General filed a lawsuit against one alternative energy supplier for misleading customers about all aspects of the company’s costly electricity contracts, including the price, length of the contract and even the identity of the company. The lawsuit alleges that customers were given the false impression they were signing up for a discounted rate from ComEd or that they were going to save money through a made-up energy choice program. In reality, customers were routinely paying higher prices for their electricity.<sup>37</sup>

### *New York*

In 1996, the New York State Public Service Commission approved plans to allow customers the option to buy their natural gas and electric supply from companies other than their local utility company. Since then, hundreds of thousands of commercial, industrial, and residential customers have chosen to purchase their energy from an Energy Service Company, rather than their utility.<sup>38</sup> The New York Public Service Commission had found that suppliers overcharged households statewide by \$819 million between January 2014 and June 2016, with low-income customers accounting for \$96 million of that.<sup>39</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> [http://missoulain.com/news/state-and-regional/montana-power-co-investors-to-receive-cents-per-share/article\\_8b442892-a50f-11e2-b55f-0019bb2963f4.html](http://missoulain.com/news/state-and-regional/montana-power-co-investors-to-receive-cents-per-share/article_8b442892-a50f-11e2-b55f-0019bb2963f4.html) (last visited 12/11/17).

<sup>31</sup> <http://www.greatfallsribune.com/story/opinion/2017/03/06/make-deregulation-mistake-montana/98802500/> (last visited 12/11/17).

<sup>32</sup> *Id.*

<sup>33</sup> [http://missoulain.com/news/state-and-regional/montana-power-co-investors-to-receive-cents-per-share/article\\_8b442892-a50f-11e2-b55f-0019bb2963f4.html](http://missoulain.com/news/state-and-regional/montana-power-co-investors-to-receive-cents-per-share/article_8b442892-a50f-11e2-b55f-0019bb2963f4.html) (last visited 12/11/17).

<sup>34</sup> *Id.*

<sup>35</sup> <https://www.pluginillinois.org/Complaints.aspx> (last visited 12/11/17).

<sup>36</sup> <http://www.chicagobusiness.com/article/20170715/ISSUE01/170719893/buying-power-from-an-indie-you-may-be-paying-too-much> (last visited 12/11/17).

<sup>37</sup> [http://illinoisattorneygeneral.gov/pressroom/2017\\_08/20170825b.html](http://illinoisattorneygeneral.gov/pressroom/2017_08/20170825b.html) (last visited 12/11/17).

<sup>38</sup> <https://www.nygande.com/EnergyChoice/Deregulation.aspx> (last visited 12/11/17).

<sup>39</sup> <http://www.chicagobusiness.com/article/20170715/ISSUE01/170719893/buying-power-from-an-indie-you-may-be-paying-too-much> (last visited 12/11/17).

*Connecticut*

Connecticut deregulated its electric industry in 1998, providing an open market for customers to take advantage of competitive offers from various electric suppliers. This required that Connecticut Light & Power and United Illuminating unbundle their services and sell off their generation assets in order to start purchasing power on the wholesale market alongside competitive retail suppliers.<sup>40</sup> Currently, Connecticut is one of the most competitive deregulated markets in the country and more than 650,000 customers have switched to a new electric supplier.<sup>41</sup>

*Pennsylvania*

Pennsylvania deregulated its utility industry in 1997.<sup>42</sup> A 2007 report by the Electric Power Supply Association credits competition-driven efficiencies at nuclear plants with providing \$450 million in benefits annually to the mid-Atlantic region. Greater efficiencies at coal plants have reduced coal consumption by more than 12 million tons a year, according to the association.<sup>43</sup> Pennsylvania consumers pay electricity rates that are below the national average.<sup>44</sup>

*Ohio*

Ohio restructured its utility market in 1999, and took effect in 2001. It required a 5% residential rate reduction freeze until 2005 to allow the market to grow.<sup>45</sup> In 2008, the Governor signed legislation into law that restructured the Public Utility Commission of Ohio (PUCO),<sup>46</sup> which requires utilities to offer a standard services offer for customers who do not actively choose a retail supplier. PUCO was given broad authority to make sure these proposals were fair to consumers. A 2017 survey by the American Coalition of Competitive Energy Suppliers found that 72% of consumers are satisfied with the competition and resulting energy choice available in Ohio. 43% of respondents chose a factor other than price as their primary consideration when comparing energy products. Factors of concern include sustainability, environmental factors, and energy-related value-added services.<sup>47</sup>

*Texas*

Texas passed the Texas Electric Choice Act in 1999. This bill requires vertically integrated investor-owned utilities to unbundle their business functions. Within six years, more than 40% of customer had switched providers based on price or other benefits.<sup>48</sup> Within ten years,

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<sup>40</sup> <https://www.maketheswitchusa.com/connecticut-energy-deregulation> (last visited 12/11/17).

<sup>41</sup> <https://www.maketheswitchusa.com/energy-company-plans/ct> (last visited 12/11/17).

<sup>42</sup> <http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/66/00.028..HTM> (last visited 12/11/17).

<sup>43</sup> [http://www.pennlive.com/editorials/index.ssf/2011/02/what\\_energy\\_deregulation\\_has\\_p.html](http://www.pennlive.com/editorials/index.ssf/2011/02/what_energy_deregulation_has_p.html) (last visited 12/11/17).

<sup>44</sup> *Id.*

<sup>45</sup> <https://www.directenergy.com/learning-center/energy-choice/ohio-history-electric-deregulation> (last visited 12/11/17).

<sup>46</sup> <http://codes.ohio.gov/oac/4901:1> (last visited 12/11/17).

<sup>47</sup> <http://www.energychoicematters.com/stories/20170607b.html> (last visited 12/11/17).

<sup>48</sup> Midland-Reporter Telegram Editorial, May 17, 2009. On file with CRC staff.

competition in the industry was credited with bringing more than 131,000 permanent jobs and \$761 billion in annual state revenues.<sup>49</sup>

**B. EFFECT OF PROPOSED CHANGES:**

The proposed change allows electricity customers to choose from multiple electric providers in a competitive market, and would not be restricted to purchase service from one provider.

The proposal provides that electricity customers may sell, trade, or dispose of their electricity as they please. This change goes into effect on January 1, 2021.

**C. FISCAL IMPACT:**

Unknown.

**III. Additional Information:**

**A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

**B. Amendments:**

None.

**C. Technical Deficiencies:**

None.

**D. Related Issues:**

None.

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<sup>49</sup> *Id.*