**FECA Florida Legislative Report April 1, 2011**

There has been a lot of activity since our last report. A few House bills have been filed and passed out of one or two committees since the last report and already are headed to the House floor. We now have an energy bill in both chambers, SB 2078 and ENUS 11-01 in the House, and the good news is that the third party/retail issue for renewable generators is no longer in either bill. The Senate’s original draft allowed third parties to sell up to 5 MW of renewable power to a single customer if the generator is on the customer’s property, but that has been deleted and the debate now appears to be focused on whether the IOU’s can self-build renewables or whether they have to go out for bids. We also have been forced to deal with an attack on our pole attachment rates by the telephone and cable industries. They inserted language into their deregulation bill that would require the Department of Management Services to “encourage sustainable adoption of broadband in primarily unserved areas by removing barriers to entry, such as unreasonably high pole-attachment rates.” We have deleted the phrase “such as unreasonably high pole-attachment rates” from the Senate bill and believe we have a deal to do the same in the House.

The bills that are of concern to co-ops are listed below. More information on each bill can be found by visiting either [www.myfloridahouse.gov](http://www.myfloridahouse.gov) or [www.flsenate.gov](http://www.flsenate.gov).

**New Bills of Interest to Co-ops**

House Energy Bill - PCB ENUS-11-01 would streamline the State’s energy policy and prioritize the goals - with affordability being the first priority goal. At this time the bill does not address third party sales to retail customers by renewable generators. The bill would exempt all solar generation from the Power Plant Siting Act and would abolish the Florida Energy and Climate Commission and transfer its powers and duties to the Department of Agriculture and Consumer Services. In addition, the bill would allow IOUs to spend the equivalent of 2% of their 2010 retail sales on renewable energy for 5 years.

Senate Energy Bill – SB 2078 expands the 10-year site plans to include future transmission and distribution corridors and projected fuels and technologies for the next 20 years. The utilities have united to oppose this expansion. The bill also appears to require co-ops and municipals to get preapproval from the PSC for renewable generation, but the authors have assured us this was not their intent and we should be able to correct this. At this time the bill does not address third party sales to retail customers by renewable generators. The IOUs would be required to conduct a free energy audit of commercial customers prior to December of 2016. It would abolish the Florida Energy and Climate Commission and transfer its powers and duties to the Department of Environment Protection, but would keep the Florida Energy Office as a separate entity within DEP. In addition, the bill would allow IOUs to spend the equivalent of 2% of their 2010 retail sales on renewable energy for 5 years. The PCB was approved in a committee workshop this week and will be heard again in the same committee on Monday.

PSC – PCB ENUS 11-02 by the House Energy and Utilities Subcommittee would define ex parte communications and prohibit commissioners and their direct staff from such communications and create monetary penalties for those that make a prohibited ex parte communication. Commissioners would be subject to certain provisions from the Judicial Code of Conduct and would be required to have training and education on ethics and other matters. Commissioners would be prohibited from demanding or requiring PSC staff to pursue a particular position on pending substantive matters. The bill also would prevent the PSC from expanding the authority given to it by the Legislature. In addition, the Office of the Public Counsel would be transferred to the Attorney General’ Office.

Telecommunications deregulation – HB 1231 by Rep. Horner and SB 1524 by Sen. Simmons both included a provision that would require the Department of Management Services to “encourage sustainable adoption of broadband in primarily unserved areas by removing barriers to entry, such as unreasonably high pole-attachment rates.” We have deleted this language from SB 1524 and we expect to delete it from HB 1231 at its next stop.

Agriculture bill from 2010 that Gov. Crist vetoed - Both chambers voted to override Gov. Crist’s veto of last year’s agriculture bill HB 7103 and the bill is now law. The bill includes a definition of "sustainable agricultural land" with an ambiguous use of the word “energy”. The override eliminates the need to track HB 707 by Rep. Crisafulli and SB 858 by Sen. Hays, which were similar bills.

Campaign contribution limits – SB 1690 by Sen. Diaz de la Portilla would increase the campaign contribution limits from $500 to $10,000 for the Governor’s race, $5,000 for the other Cabinet races, and $2,500 for legislators.

Florida Energy and Climate Commission – SB 7100 would abolish the Florida Energy and Climate Commission and move its duties to DEP.

Growth Management - SB 1122 by Sen. Bennett and HB 7129 would eliminate the requirement for local comprehensive plans to account for existing and future electric power generation and transmission systems and greenhouse gas reduction strategies. At this point we are not sure that this is a good thing. HB 7129 passed out of its only committee as is on the way to the House floor.

Resolution on Energy Conservation - HB 7153 is a resolution urging Congress reinstitute and affirm local government’s authority to finance improvements to their constituents’ homes and businesses if the improvements are for energy conservation and efficiency, wind resistance or renewable energy. Last year, Florida enacted the PACE bond bill but the law has been frozen by the Federal Housing Finance Agency. HB 7153 is on the House floor.

**Other Bills of great interest that are moving**

Energy Economic Zones - SB 1460 by Sen. Bennett and HB 1175 by Rep. Pilon would provide incentives to form energy economic zones. These incentives include sales tax exemptions, property tax credits, and tax refunds. An IOU would be allowed to offer discounts of up to 50% on rates to small businesses located in an energy economic zone for up to 5 years. In addition, projects located in energy economic zones would have priority ranking to receive any energy grants. SB 1460 passed out of its first committee.

Discretionary Sales Surtax - SB 1864 by Sen. Altman and HB 1281 by Rep. Rehwinkel-Vasilinda would authorize local governments to impose a discretionary sales surtax that would be used to provide financial assistance to owners of residential property who install renewable energy devices or make energy efficiency upgrades. The bill defines renewable energy devices accepted in the program including solar, wind, geothermal and certain accessories associated with these devices. Additionally, the bill defines what actions constitute energy efficiency improvements. HB 1281 passed out of its first committee.

EPA Resolutions - HM 1375 by Rep. Fresen is a resolution urging Congress to clarify and specify EPA’s legal and regulatory obligations regarding greenhouse gases. HM 1375 is on the House floor.

Numeric Nutrient Criteria - HB 1401 by Rep. Stuebe is a resolution urging Congress to keep the EPA from overextending its mandate and to direct the EPA not to interfere with Florida’s previously approved clean water program. HB 1401 is on the House floor.

Metal recycling (metal theft) – SB 1528 by Sen. Altman and HB 753 by Rep. Ford would amend the recycling and metal theft statutes to make it easier for recyclers to purchase goods from legitimate sellers. We will have to watch this to make sure it does not weaken the existing statute. SB 1528 passed out of its first committee.

Assault or Battery on Utility workers – HB 15 by rep. Soto and SB 734 by Sen. Wise would increase the criminal penalties for committing assault or battery on a utility worker. SB 734 passed out of its second committee and has one more committee stop.

Numeric Nutrient Criteria (NNC) - HB 239 by Rep. T. Williams and SB 1090 by Sen. Dean and SB 1490 by Sen. Evers would prohibit DEP, water management districts, and local governmental entities from implementing EPA’s numeric nutrient water quality criteria (NNC) rules. The bills would authorize DEP to adopt Florida-specific NNC criteria if DEP determines that such criteria are necessary. It also provides that certain total maximum daily loads (TMDL) and associated numeric interpretations constitute site specific numeric nutrient water quality criteria, but provides that the TMDLs (now also considered water quality criteria) will still be subject to all of the state flexibility mechanisms, rules, and orders tethered to a TMDL. These bills should help Florida in its lawsuit against EPA, but there is a risk that they could create a situation where a permit cannot be obtained. HB 239 passed out of its first committee.

Repeal of Cap-and-Trade Authority - HB 4117 by Rep. Plakon and SB 762 by Sen. Hayes would repeal the Florida Climate Protection Act (FCPA) that was enacted in 2008 ( HB 7135). The FCPA authorized DEP to draft a cap-and-trade rule that was subject to ratification by the Legislature. Even though DEP has discontinued its efforts to draft a cap-and-trade rule, it would be very beneficial to have this law removed from the statutes. SB 762 passed out of the second committee and has one stop left before it goes to the floor.

Unclaimed Deposits - SB 770 by Sen. Siplin and HB 807 by Taylor would require unclaimed utility deposits to be put into a newly created Energy Affordability Trust Fund (EATF). The trust fund would be created by SB 772 (Sen. Siplin) and HB 809 (Rep. Taylor) to supplement the Low Income Home Energy Assistance Program. Currently, unclaimed deposits are sent to the Dept. of Financial Services and held in escrow until claimed by the owner or eligible heir. SBs 770/772 passed out of their first committee.

Economic Recovery/Deepwater Horizon Disaster - SB 248 by Sen. Gaetz would extend the expiration dates of certain building permits following the declaration of a state of emergency by the Governor. The bill would give a tax refund to qualified target industries that relocate from another state to northwest Florida and would appropriate $10 million in recurring funds for the purpose of economic development in northwest Florida. SB 248 is on the Senate floor.

Growth Management - SB 174 by Sen. Bennett and HB 7001 by Rep. Workman would reenact specific provisions of SB 360, the 2009 growth management amendments that have been challenged in the courts. The bill would address comprehensive plans, concurrency requirements for transportation facilities, notices for new or increased impact fees, and the process for adopting a comprehensive plan. It also would create a definition for “dense urban service area” and provided a method of designating these jurisdictions; created transportation concurrency exception areas in municipalities that qualify as dense urban land areas; and extended previously obtained permits and approvals by 2 years. HB 7001 passed and is headed to the Governor.

Environmental Permitting – SB 1404 by Sen. Evers and HB 991 by Rep. Patronis would allow local governments to expedite the permitting process for biofuel and renewable facilities. In addition, the bill revises a number of provisions relating to construction and building permits, permit application requirements, local government comprehensive plans and other activities. The overarching intent is to facilitate coordination among local, state and federal agencies and to implement a more efficient permitting process. HB 991 passed out of its second committee.

Biodiesel Manufacturers - SB 1284 by Sen. Bennett would exempt certain biodiesel manufacturers from bonding requirements and certain diesel fuel taxes.  The bill would also set a new fuel standard, which would require that all diesel sold in Florida contain a certain percentage of biodiesel. SB 1284 passed out of its first committee.

**Other Bills of Interest that have not moved and may become amendments**

Retail Wheeling for Renewable Projects – SB 1048 by Sen. Lynn exempts renewable generators of up to 5 MW from the definition of public utility. These renewable generators will not be regulated by the PSC and may sell electricity to other customers (it is silent as to whether they must be customers of the same utility) regardless of entities that are in the proximity of the generator, including co-op members. The bill also is silent as to whether we can put these customers on a special rate to insure that the remaining customers do not subsidize the renewable generator’s consumers.

Renewable/Clean Energy Standard - SB 1102 by Sen. Detert would create a 20% clean energy standard for IOUs and a penalty for failing to meet the standard. Clean energy includes renewables and one fourth of the goal can be met with new nuclear and carbon capture and sequestration. Presently the bill does not include co-ops and municipals. The bill also would promote natural gas as the preferred fuel for end use consumption.

EPA Regulation of GHG - SR 1260 by Sen. Bennett is a resolution to Congress opposing the Environmental Protection Agency’s (EPA) regulation of greenhouse gasses (GHG) under the Clean Air Act.  The resolution requests that the EPA not make an endangerment finding for GHG and to not pursue regulation of GHG.

Expansion of PSC Jurisdiction - HB 899 by Rep. Mayfield would place the City of Vero Beach Electric Utility (VBEU) under the jurisdiction of the PSC as a public utility and subject to full rate regulation.  The bill allows VBEU to maintain the ability to levy a public service tax to customers inside the city limits and a similar surcharge to those outside city limits.  The bill is ambiguous on whether or not the PSC would have to approve the public service tax or surcharge, but the bill states that VBEU would have to provide justification for customers outside city limits.  VBEU would not be considered a public utility and fully regulated by the PSC if VBEU stopped serving customers outside the city limits.

Renewable Energy Tax/Solar Incentives - SB 282 by Sen. Bennett and HB 219 by Rep. Rehwinkle-Vasilinda would require each electric utility, including co-ops, to collect a monthly 25¢ tax on each customer. The proceeds from this tax would be deposited in a trust fund (created by SB 284 and HB 221). The Florida Energy Office, through a committee of political appointees, would utilize the funds to subsidize conservation, efficiency, and renewable energy projects, but municipal solid waste projects would not be eligible for subsidies from the trust fund. It renews the solar rebate program through 2016, but would reduce the rebate to $2.50 per watt for the first year, $2 per watt for the next 2 years, and $1.50 per watt after that. The bills appear to allow public utilities to recover costs that are above avoided costs if they purchase power from these projects.

Unemployment Compensation - HB 7005 by Rep. Holder and SB 728 by Sen. Detert would prevent an unemployment tax increase by making it more difficult to qualify for unemployment benefits and reducing benefits. Because of the high number of people drawing benefits, the unemployment trust fund has been depleted. The depletion has triggered a statutory mechanism that will raise the unemployment tax unless there is new legislation. SB 728 has one stop left before the floor and HB 7005 passed out of the House.

Green Jobs Tax Credit – SB 1958 by Sen. Smith and HB 447 by Rep. Alan Williams would create a tax credit for the creation of Green Jobs. The bill would define Green Jobs as employment in an industry related to alternative and renewable energy, including manufacturing jobs. Beginning in Jan. 2012 the bill would allow an employer a $500 tax credit per full-time employee earning more than $50,000 a year. If the employers’ tax credits exceed the liability, then the credit could be carried forward each year until the program expires in Jan. 2017. Additionally, the bill would create the Green Jobs Council to work with stakeholders to develop strategic initiatives.

PSC – SB 804 by Sen. Fasano and HB 719 by Rep. Vasilinda would require PSC commissioners to be elected rather than appointed. Candidates would not be able to raise campaign funds from any entity that is regulated by the PSC.

Energy Efficiency Products - HB 1365 by Rep. Williams would exempt certain energy efficient products from sales tax. The bill would allow the exemption to recur annually in October and last four days.

Off Shore Drilling Resolution - HM 1357 by Rep Baxley is a resolution urging Congress to support offshore drilling and to allow Florida to receive revenues resulting from oil and gas exploration.

Right-of-Way Relocation - SB 1934 by Sen. Evers and HB 1389 by Rep. Kreegel would clarify that a utility must initiate the process of pole removal or relocation (instead of actually completing the removal or relocation) within 30 days of notice by the DOT or other authority. In addition, if DOT purchases the property on which a utility is already located, DOT would have to pay the costs of removing or relocating facilities. DOT also would have to pay for relocations if the utility has previously transferred its property interest to DOT without compensation, if the utility is located on the Turnpike Homestead extension and a permit was issued by the DOT to the utility in 1972.

Office of Energy and Water - SB 1810 by Sen. Benacquisto would expand the current Office of Water Coordination within the Dept. of Agriculture to include energy and would rename it the Office of Energy and Water. The Office would be responsible for water and energy related policies affecting agriculture within the Department’s jurisdiction. Further, the bill would repeal the Farm-to-Fuel statute. In addition, the bill defines renewable diesel fuel and renewable fuel oil as being derived from biomass and exempts these fuels from sales tax.

Renewable Energy- SB 1724 by Sen. Altman and HB 1349 by Rep. Burgin would provide sales tax exemptions and tax credits for solar energy systems that have a certain percentage of components manufactured in Florida or the U.S. The bill would exclude developers of renewable generation (under 5MWs) from the definition of “public utility.” The PSC must allow full cost recovery for renewable energy produced or purchased by an IOU. The bill sets forth provisions which must be included in a standard offer contract for the purchase of renewable energy by an IOU, including a bidding requirement. The IOUs would be required to spend 2% of retail revenues for renewable energy (including a 25% carve out for solar), which is the essence of the RPS rule proposed by the PSC a few years ago. In addition, certain renewable energy generators and expansions of renewable facilities would be exempt from the Power Plant Siting Act. The bill would also allow a renewable energy developer (under 5 MWs) to provide electricity and conjunctive billing to consumers located on the same or contiguous property as the renewable generator. The Energy Economic Zone Pilot Program would be expanded to implement a model to assist communities in attracting renewable and energy efficient technologies.

Special Assessments for Renewable Energy - SB 1640 by Sen. Bennett would allow municipalities to collect special assessments to pay an IOU for any costs above avoided costs for renewable energy purchased by the utility.

Renewable Facilities Financed by Local Governments - SB 1642 by Sen. Bennett and HB 1267 by Rep. Berman would allow local governments to finance certain capital projects, including renewable generating facilities, by expanding their bonding authority.  The bill would further allow any size renewable generator to provide service to one or more retail customers.  The PSC would be required to promulgate rules to administer this program and set rates to ensure that the general body of ratepayers of the electric utility serving the area is not subsidizing customers of the renewable facilities.

Termination of Service - SB 1572 by Sen. Siplin would prevent an electric or gas utility from disconnecting service, because of nonpayment, to seniors or low-income families during extreme weather days (32°F or below or 95°F and above).  The bill would not allow disconnections on the day or the following two days (also any day before a holiday or weekend) when the temperature standards are met.

Local Government Renewable Energy Zones - SB 1452 by Sen. Bennett and HB 1119 by Rep. Trudi Williams would allow local governments to create energy zones through local ordinances. The energy zones would allow renewable energy producers to sell electricity to new retail customers (not defined but could include tear downs as well as undeveloped properties) within this zone or sell the electricity to the territory’s electric utility at established renewable energy rates.  This would enable renewable energy producers to create electric utilities that are only subject to local jurisdictions and are not subject to the PSC’s jurisdiction. The bill would require the renewable producer to pay the electric utility serving the area a fee of 1.5¢ per kwh of renewable energy produced and sold unless the utility offers a “disconnectable rate” to the producer and its customers within the zone.  A “disconnectable rate” apparently is synonymous with a utility’s interruptible rate. The PSC would be required to promulgate rules to ensure that the general body of ratepayers of the electric utility serving the area is not subsidizing customers of the renewable facilities. Electric utilities would be required to submit reports on the implementation of this program. The bill would exempt renewable producers from the definition of a utility in Chapter 366, which also exempts them from the gross receipts and public service taxes.

Contamination Notification – SB 132 by Sen. Joyner and HB 147 by Rep. Ahern would revise contamination notification provisions to require notice of site rehabilitation to specified persons/entities in the affected area. Within 30 days of notice, local governments would be required to mail a copy of the notice to each homeowner’s association. In addition, DEP would provide a copy of the notice to property owners at the rehabilitation site and to schools and childcare facilities. Further, the bills would allow the notifying agencies to recover costs from the responsible party under certain circumstances. SB 132 passed the first committee of reference and has three stops left in the Senate. HB 147 has not been heard yet.

Ad Valorem Exemptions- HB 531 by Rep. Frishe and SB 434 by Sen. Latvala would implement a Constitutional amendment that passed in 2008, which prohibits the taxation of improvements to residential property if the improvements are a renewable energy device or they strengthen the property’s resistance to wind damage.  The exemptions would apply to new and existing residential construction. In addition, SB 412 by Sen. Bennett would have expanded the Constitutional amendment to include commercial property, but it has been withdrawn. SB 434 is moving and only has one committee stop before the floor.

PSC/Ex Parte Communications - SB 212 by Sen. Fasano would prohibit PSC commissioners and staff from engaging in ex parte communications with regulated entities. Any oral or written communications between a regulated entity and PSC commissioners and staff would have to be made available to the public. Additionally, the bill would place a four year ban on commissioners and staff from lobbying the executive and legislative branches, appearing before the PSC, or working for a regulated entity if their employment was terminated after July 1, 2011. The bill would direct PSC commissioners to follow the Code of Judicial Conduct except when it conflicts with Florida’s sunshine laws, and authorizes the PSC to impose penalties on regulated entities that engage in ex parte communications up to .1% of their annual operating revenue.

Transactions of Regulated Metals - HB 343 by Rep. Metz and SB 622 by Sen. Hays would help law enforcement in tracking stolen copper and other metals by requiring notification to all local law enforcement agencies of regulated metal sales despite jurisdictions.

**Bills that only apply to IOUs that we are monitoring**

Cost Recovery for IOUs - SB 1336 by Sen. Bennett would repeal statutes requiring the PSC to promulgate rules for an RPS that would have to be ratified by the legislature.  Further, the bill would allow IOUs to either purchase renewable energy or self-build renewable generation and use the environmental cost recovery clause to recoup costs in excess of full avoided costs.  The bill would provide investment caps above avoided cost of 2% in 2011 and 2012, 3% in 2013 or 4% in 2014 and thereafter based on the IOU’s retail sales for 2010.  In addition, the bill would allow an IOU to apply for an extra 50 basis points on the ROE for renewable projects if the majority of the components and manufactured parts come from Florida.

Cost Recovery - SB 200 by Sen. Fasano and HB 4161 by Rep. Rehwinkle Vasilinda would repeal the pre-construction cost recovery clause that is available to IOUs to finance construction of nuclear and IGCC facilities.

Full Cost Recovery for Renewables - SB 156 by Sen. Detert appears to require IOUs to provide 10-year contracts for renewable projects at a cost equal to the renewable power provider’s cost plus a profit.

Rate Increases - HB 159 by Rep. Campbell and SB 806 by Sen. Diaz de la Portilla would require the legislature to ratify any PSC approved rate increases for public utilities. Both bills have been withdrawn from further consideration.