



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 16, 2006

TO: Lisa Polak Edgar, Chairman
J. Terry Deason, Commissioner
Isilio Arriaga, Commissioner
Matthew M. Carter II, Commissioner
Katrina J. Tew, Commissioner

FROM: Cindy Miller, Office of the General Counsel
Jim Dean, Director, Office of Strategic Analysis and Governmental Affairs

RE: 2006 Legislative Wrap-Up

Staff will be bringing to Internal Affairs proposed implementation plans where specific actions are required, and will be moving forward with rulemaking on the carrier of last resort obligation, and multitenant environments, as required by SB 142. None of these bills have been sent yet to the Governor for approval or veto.

We have included in the notebooks the three bills that most directly affect the Florida Public Service Commission (SB 888, Omnibus Energy Bill, SB 142, Telecommunications Changes, and HB 7237, PSC Chapter 350 Clean-Up). SB 888 contains an annotated summary of those sections affected and the duties of the Commission.

KEY BILLS THAT PASSED

Energy

SB 888, Omnibus Energy Act – 163-page bill. Those sections affecting the FPSC are listed below:

Section 8 (pp. 22-27): Creates the **Florida Energy Commission** (Commission) within the Office of Legislative Services. The Commission is composed of nine members appointed by the Senate President and Speaker of the House.¹ The chair of the FPSC, or his or her designee, may also attend meetings and provide information and advice at the request of the chair of the Commission. This provision also applies to the Public Counsel and executive agency heads

¹ A member must be an expert in one or more of the following: energy, natural resource conservation, economics, engineering, finance, law, consumer protection, state energy policy or a substantially related field.

including the DEP. The Commission may employ staff to assist in the performance of its duties.² Advisory groups may be formed to provide information on specific issues.

The Commission shall develop recommendations for legislation to establish a statewide energy policy. Recommendations are to be based on the guiding principles of reliability, efficiency, affordability, and diversity. The initial report is due December 31, 2007, with annual reports to follow thereafter. The initial report must:

1. identify incentives for research, development, or deployment projects involving the goals and issues set forth in this section of the bill;
2. set forth policy recommendations for conservation of all forms of energy;
3. set forth a plan of action, together with a timetable, for addressing additional issues;
4. include recommended steps and a schedule for the development of a comprehensive state climate action plan with greenhouse gas reduction through a public-involvement process.

Ten specific guiding principles are listed in support of the overall guiding principles of reliability, efficiency, affordability, and diversity.

It is the intent of the Legislature that nothing in this section shall change the powers, duties, and responsibilities of the FPSC or of the Florida Electrical Power Plant Siting Act.

Section 13 (pp. 37-40): Creates the Florida Renewable Energy Tax Credit of \$10.00 per megawatt-hour for renewable energy sold between 1/1/07 and 6/30/10. The program is capped at \$5 million per fiscal year. The FPSC is required to consult with the Department of Revenue in the development of an application form for the tax credit.

Section 15 (pp. 42-43): Amends Section 186.801, F.S. As part of the analysis of electric utility ten-year site plans, the FPSC is to review the plan's effect on fuel diversity within the state.

Section 16 (pp. 43-44): Amends the powers of the FPSC (Section 366.04(6), F.S.), that the FPSC may at a minimum adopt the 1984 National Electric Safety Code and new editions thereafter as constituting acceptable and adequate requirements for the protection and safety of the public.

Section 17 (pp. 44-45): Amends Section 366.05, F.S. The FPSC is given the ability to adopt construction standards that exceed the National Electrical Safety code to ensure reliable provision of service. This includes replacement facilities as well as new facilities. Also, when the FPSC is examining the adequacy of the electric grid it may consider fuel diversity or fuel supply reliability within that evaluation.

² Staff of the Commission may include an executive director, an attorney, a communications staff member, and an executive assistant.

Section 18 (p. 46): Creates Section 366.92, F.S., and states the intent of the Legislature to promote the development of renewable energy. The FPSC may adopt appropriate goals for increasing the use of existing, expanded, and new Florida renewable energy resources. The bill provides that the FPSC may change the goals and that the goals are to be reestablished at least once every five years. The bill also grants rulemaking authority.

Section 19 (pp. 46-48): The FPSC is required to direct a **study on Florida's electric transmission grid** and submit the results to the legislature by March 1, 2007. The study is to look at electric system reliability as to power transfer and emergency conditions.

The FPSC is to conduct a review to determine what should be done to enhance the reliability of the grid during extreme weather events, including the strengthening of transmission and distribution facilities. Considerations may include recommendations:

1. for promoting and encouraging underground electric distribution for new service or construction provided by public utilities;
2. for promoting and encouraging the conversion of existing overhead distribution facilities to underground, including any recommended incentives to local governments for local government-sponsored conversions;
3. as to whether incentives for local government-sponsored conversions should include participation by a public utility in the conversion costs, with such investment recognized as a new plant in service for regulatory purposes; and
4. for promoting and encouraging the use of road rights-of-way for the location of underground facilities in any local government-sponsored conversion project, provided the customers of the public utility do not incur increased liability and future relocation costs.

The review shall be submitted to the Governor, President of the Senate, and Speaker of the House by July 1, 2007.

Provides that this section does not limit the existing jurisdiction or powers of the FPSC and may not be construed to delay or defer docketed activities which relate to matters addressed by the review required by the section.

Section 43 (pp. 101-105): Amends Section 403.519, F.S. In **determining the need for a new power plant** subject to the Power Plant Siting Act, the FPSC is to take into account the need for fuel diversity and supply reliability.

This section also has provisions regarding nuclear power plants, specifying the contents of the need determination petition with the FPSC and specifying criteria the FPSC shall take into account when determining the need for a nuclear power plant. These include whether the nuclear plant will provide base load capacity, enhance reliability by improving fuel diversity, and provide the most cost-effective alternative taking into account the need to improve the balance of fuel diversity, reduce dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the grid.

The bill would exempt nuclear power plants from the requirements of the FPSC's Selection of Generating Capacity Rule (Rule 25-22.082, F.A.C.). This exception to the capacity bid rule does not exempt the utilities from using the most prudent mechanisms, including bidding, for the construction of the plant or plant components from vendors and suppliers.

After an affirmative determination of need is granted by the FPSC, utility costs incurred prior to commercial operation, including, but not limited to the siting, design, licensing, or construction of the plant shall not be subject to challenge, unless the FPSC finds in a hearing that costs were incurred imprudently.

Section 44 (pp. 105-108): Creates Section 366.93, F.S. Within six months after the enactment of the bill, the FPSC is to establish by rule alternative cost recovery mechanisms for **nuclear power plant** expenses. The rules are to include, but are not limited to, recovery of pre-construction expenses and the carrying costs on the utility's projected construction cost balance for the nuclear plant. The bill also specifies the AFUDC rate to be used to determine the carrying cost.

Recovery of costs, as specified in the bill, would be allowed after an affirmative determination of need is granted by the FPSC.

When the nuclear plant is placed in-service, the utility is allowed to increase base rates by the projected annual revenue requirements of the plant based on the revenue requirements for the first 12 months of operation. The bill also specifies the rate of return to be applied to the capital investment associated with the nuclear plant.

If the utility does not complete the nuclear plant, the utility shall be allowed to recover prudently incurred costs incurred after the FPSC's affirmative determination of need.

Section 66 (pp. 152-154): Amends Section 403.537, F.S. by clarifying that the FPSC is the sole forum for determination of need of an electric transmission line pursuant to the Transmission Line Siting Act, and that the need for the line may not be raised in another proceeding.

Section 73 (pp. 158-160): Amends Section 403.885, F.S. Broadens an existing stormwater management grants program to include other water projects including drinking water projects.

Section 77 (p. 161): The Act, except as otherwise provided, takes effect upon becoming law.

SB 980, Electric Substation Siting

The legislative intent is to ensure adequate and reliable electric infrastructure; and to do so, to the maximum extent practicable, while achieving compatibility with adjacent and surrounding land uses.

Local governments may adopt and enforce reasonable land development regulations for new distribution electric substations addressing only setback, landscaping, buffering, screening, lighting and other aesthetic compatibility-based standards. They may not require certain vegetated buffers or screens to be in excess of 14 feet.

A new distribution substation will be a permitted use in all land use categories in the applicable local government comprehensive plan and zoning districts except those designated as preservation, conservation or historic preservation. If the application for a proposed distribution substation demonstrates that the substation design is consistent with the local government's applicable setback, landscaping, buffering, screening and other aesthetic compatibility based standards, the application for development must be approved.

Standards are set out for proposed placement of a substation in a residential area. The utility must provide information on its preferred site and as many as three alternative areas, including sites within non-residential areas, if the local government deems the additional review and consideration is necessary. The process is set out for a final decision.

A local government may not require information or evaluate a utility's business decisions about its service, customer demand for service, or quality of its service, unless the utility voluntarily offers the information.

Vegetation management and rights-of-way provisions are addressed. If requested, the utility must meet with the local government to discuss and submit the utility's vegetation maintenance plan. The utility's practices must conform to certain national ANSI standards. Certain requirements do not apply if a local government develops, with the utility's input, a written plan specifically for vegetation maintenance within the local government's rights-of-way and the plan is not inconsistent with the National Electric Safety Code as adopted by the Public Service Commission. However, the plan may not require planting vegetation taller than 14 feet in the right-of-way. Vegetation maintenance costs shall be considered recoverable costs.

Electrical substation planning is addressed. By June 1 of every year, the electric utilities with service areas within each regional planning council shall notify the council of the utilities' current plans over a 5-year period to site substations within the local government areas contained within each region, including an identification of whether each electric utility substation planned in a general area is a distribution or transmission substation, a listing of the proposed substations' site acreage needs and anticipated capacity, and maps showing general locations of the planned electric substations. The information is advisory and shall be included in the council's report, and provided to local governments requesting the information.

Nothing in this Act is intended to supersede Chapter 403, the Power Plant Siting Act. The Act takes effect upon becoming law.

Telecommunications

CS/CS/SB 142, Telecommunications

Publication and Prices

- On nonbasic service, each company shall, at its option, maintain tariffs with the FPSC or otherwise publish terms, conditions, rates, and may set or change, on 1 day's notice, the rates for each nonbasic service.
- The FPSC may establish guidelines for such publication. The guidelines may not require more information than what is required to be filed with a tariff.
- Language is deleted which would have allowed basic local telecom service to be subject to the same regulatory treatment as nonbasic.
- Criteria are added for the companies to meet in order to have regulatory treatment of retail service at a level no greater than that imposed on competitive LECs. The incumbent LECs must demonstrate that the competition faced by the company is sufficient and sustainable to allow such competition to supplant regulation by the FPSC.

Multitenant Environments

It applies to an owner or developer of a multitenant business or residential property, any condominium association or homeowners' association.

A LEC obligated to serve as carrier-of-last-resort (COLR) is not obligated to provide basic local service to any customers in a multitenant business or residential property. This includes apartments, condominiums, subdivisions, office buildings or office parks when the owner or developer:

- (1) permits only one communications service provider to install its facilities; or
- (2) accepts or agrees to accept incentives or rewards that are contingent on the provision of communications service provider to the exclusion of incumbent LECs; or
- (3) collects from occupants or residents charges in any manner, including collection through rent, fees or dues; or
- (4) enters into an agreement with the communications provider contingent on the limitation of the LEC's access to the property.

The LEC relieved of its COLR obligation to deliver service to the occupants or residents must notify the FPSC in a timely manner.

A LEC may also seek a waiver of its COLR from the FPSC for good cause shown based on the facts and circumstances of provision of service to the multitenant property. Notice must be given to the building owner or developer at the same time as the petition. The FPSC has 90 days to act on the petition. The FPSC shall implement the paragraph through rulemaking.

The COLR obligation returns if all the conditions cease to exist, and the owner/developer requests in writing that LECs make service available to customers at the property, and confirms in writing that there is no intention to arrange with another provider.

Office of Public Counsel

The sum of \$800,000 of recurring funds from the General Revenue Fund is appropriated to the Office of Public Counsel for the 2006-2007 fiscal year.

The Act takes effect upon becoming law.

HB 871, Telephone Calling Records

Obtaining telephone calling records by fraudulent means is prohibited. It applies to records of telecommunications companies and includes VoIP service and wireless. "Calling record" is defined as a record held by a telecom company of the telephone calls made or text messages sent or received by a customer of that company. It is a violation for a person to fraudulently obtain the records, ask another person to do so, or sell the records. A first violation is a misdemeanor of the first degree; subsequent violations are a felony of the third degree.

Exemptions are set out for law enforcement; and for a telecom company in the case of testing security procedures for maintaining confidentiality, investigating misconduct of an employee; or recovering a calling record obtained by another person in a fraudulent manner.

The Act takes effect July 1, 2006.

Administrative/Other

HB 7237, Public Service Commission

The bill sets out the terms of Commissioners as beginning on January 2 and ending 4 years later on January 1. Any person serving on the Commission who seeks to be reappointed must file with the nominating council at least 210 days (instead of 180) before the expiration of their term a statement they desire to serve an additional term.

Obsolete language is removed regarding the Florida Railroad and Public Utilities Commission, the Qualifications of a Chief Auditor, compensation for court reporting, condemnation proceedings and the coal slurry pipeline. There's clarifying language about fees for copying accounting records. Deletes rate specific language on regulatory assessment fees since that language is now in industry Chapters.

The Act takes effect July 1, 2006.

SB 262, Administrative Procedure Act

The Department of State will electronically publish on an Internet website the Florida Administrative Weekly, which shall serve as the official website for the publication. The Department will also publish a printed version. Publication of material, such as notices of hearings, on the Department website does not preclude publication on an agency's website or by other means.

Other changes are made relating to incorporation of forms, challenges to agency rules, explicit rulings on exceptions in hearings. When an administrative law judge declares a proposed rule wholly or partly invalid, the rule shall not be adopted unless the decision is reversed on appeal.

The head of each agency must add to its report due on October 1 an identification of cases or disputes in which the agency is involved which should be conducted under the summary hearing process.

By December 31, 2007, the Department of State must make available to agencies training courses to assist with the transition to publishing on the Florida Administrative Weekly Internet website. The training may be by workshops or software packages.

The Act generally takes effect July 1, 2006.

SB 2000, Ethics / Public Officers and Employees

The bill was amended and language was removed which prohibited employees from working on any "matter" in the private sector they worked on in the public sector.

An employee of the state or any political subdivision may not participate in any political campaign for an elective office while on duty.

A current or former public officer, agency employee or local government attorney may not disclose work information not available to the general public, "except for information relating exclusively to governmental practices."

Post-employment restrictions are extended to OPS employees.

An agency employee, "including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to SES under chapter 2001-43," may not personally represent another person or entity before the agency for 2 years after vacation of position, unless employed by another state agency.

Provisions on disclosure of financial interests are revised regarding joint ownership of assets, or joint liability.

Reporting requirements are extended to those who leave office during the calendar year covered by the report.

The Ethics Commission may recommend that the restitution penalty be paid to the agency or to the General Revenue Fund.

When an agency employee's position is eliminated, an employee may work with a business entity doing business with the entity in certain instances.

A lobbyist may not serve on the Ethics Commission

The Act takes effect October 1, 2006.

HB 1123, Government Accountability

The Florida Government Accountability Act is created. The Senate and House may appoint standing or select committees as a Legislative Sunset Advisory Committee to advise the legislature regarding agency sunsets. They may employ staff, and the Office of Program Policy Analysis and Government Accountability (OPAGGA) shall assist in the review.

The first reviews start in 2008. The FPSC and the Governor's Office are not reviewed until 2015. The agencies may be abolished if certain conditions are met. If the Legislature fails to take action to continue the agency prior to the review date, the agency may continue to submit its legislative budget request.

A list of criteria for the review are set out. Examples are: the promptness and effectiveness with which the agency disposes of consumer complaints; the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which public participation has resulted in rules compatible with agency objectives to agency compliance with purchasing rules for underutilized businesses; an assessment of the extent to which the agency jurisdiction and programs overlap with those of other agencies and the extent to which they could be consolidated; an assessment of less restrictive or alternative methods of providing services; the extent to which the agency has corrected deficiencies identified by the Auditor General, the OPAGGA, legislative studies, and federal audit entities; and much more.

After receiving the agency report, OPAGGA will conduct a program evaluation and justification review. The advisory committees might then hold public hearings to consider information and testimony. Criteria are set out for the committee's review to determine whether a public need exists for the continuation of a state agency or the performance of its functions.

The Act takes effect July 1, 2006.

SB 1678, Agency Fees

The legislative intent is that all costs of providing a regulatory service be borne solely by those who receive the service or are subject to regulation. The fees should be reasonable and take into account the differences between businesses being regulated. State agencies should operate as efficiently as possible and report to the Legislature additional methods by which to streamline their operational costs.

Each state agency must examine the fees it charges for providing regulatory services annually. The examination shall determine whether operational efficiencies can be achieved, whether the regulatory activity is an appropriate function, and whether the fees are adequate to cover both direct and indirect costs of regulatory service, and other issues.

If the agency determines the fees are not adequate to cover program cost and that an appropriation is necessary, the agency must present information for realigning revenue or costs.

The Legislature must review the regulatory fee structure for all businesses every 5 years.

The Act takes effect July 1, 2006.

SB 1632, Inspector General Bill

There is created a Council on Inspectors General in the Office of Chief Inspector General within the Executive Office of the Governor. It will consist of five members—the Chief Inspector General and four Inspectors General from other state agencies, appointed by the Governor or designee

The Council will create an independent review process for investigation and audits conducted by state agency Inspectors General. It will provide an opportunity for entities and individuals to challenge in writing the findings, conclusions and recommendations in a state agency Inspector General report. Also, it will provide a hearing process. The Chief Inspector General may independently investigate the state agency Inspector General report.

The Council will issue a report by January 1, 2007, on recommendations and its proposed state agency Inspector General review process. Administrative support for the council will be provided by the Office of Chief Inspector General. A sunset date of June 30, 2007, is provided

The Act takes effect July 1, 2006.

SB 2518, Contractual Services

For agencies subject to Chapter 287, restrictions are placed on contract amendments that result in a longer term or increased payments when the original value is more than \$10 million. Requirements are also placed on negotiations when the contract amount is in excess of \$1 million.

A Council on Efficient Government is created within the Department of Management Services to review and issue advisory reports on business cases submitted. The Council consists of 7 members appointed by the Governor. The Secretary of Management services serves as the chair. The Council must employ a standard process for reviewing business cases to outsource. Detailed requirements are placed on state agencies wishing to outsource functions or responsibilities.

The Act takes effect upon becoming law.

KEY BILLS THAT FAILED

Video Franchise (HB 1199, SB 1222) – HB 1199 and SB 900 took quite different approaches. HB 1199 established a centralized statewide franchising role in the Department of State, and a consumer complaint role at the Department of Agriculture and Consumer Services. SB 900 retained a role for local governments in issuing video franchises.

Elected Public Service Commission (HB 537, SB 1222) – These bills were never heard in committee.

Lifeline (SB 314, SB 322, SB 580) – The bills authorizing increased Lifeline activities were never heard in committee.

Public Counsel (SB 1542, HB 142) – SB 1542 granted an expanded Public Counsel role to investigate complaints concerning communications services and other matters not regulated by the FPSC. While the bill was not passed by the House, Public Counsel was given an additional \$800,000 in CS/SB 142 for the 2006-2007 Fiscal Year.

CBM:tf

Commissioners

May 16, 2006

Page 12

cc: Mary Andrews Bane
Charles H. Hill
Rick Melson
Steve Stolting
Roberta Bass
Cayce Hinton
Manuel Arisso
William Garner
Jeremy Susac
David Smith
Mary Anne Helton
Patrick Wiggins

OGC Attorneys
Blanca Bayo
Marcia Sharma
Robert Waddell
Tim Devlin
Joe Jenkins
Bob Trapp
Kathy Lewis
Beth Salak
Dale Mailhot
Dan Hoppe
Bev DeMello

Rhonda Hicks
Kevin Bloom
Todd Brown
Richard Tudor
Hurd Reeves
Cameron Cooper
Mark Futrell
Allen Mortham
Greg Shafer
John Williams
Brenda Buchan
Jacob Williams