BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Proposed adoption of Rule 25-6.030, FAC, Storm Protection Plan and Rule 25-6.031, FAC, Storm Protection Plan Cost Recovery Clause, etc.	DOCKET NO. 20190131 - EU FILED: August 27, 2019

FIRST SUPPLEMENTAL COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel (OPC), hereby file these supplemental comments on the August 8, 2019 Staff draft proposed Rules 25-6.030 and 25-6.031.

A. General Comments

These comments are supplemental to the OPC comments filed on July 15, 2019. Exhibit 1[1] contains the OPC's edits to the August 8, 2019 draft proposed Rules 25-6.030 and 25-6.031, consistent with the oral and written comments we have made on the record. These edits are still preliminary in nature and are subject to modification based on refinement of the Citizens' understanding of the scope and intended evolution of the Storm Protection Plan ("SPP") evaluation and SPP cost recovery clause process ("SPP Clause") pursuant to the referenced rule sections and Section 366.96, Fla. Stat. At this time, the OPC generally maintains and reconfirms the positions taken in prior comments and will not recount them here. The comments made in the workshops on June 25, 2019 and August 29, 2019 and in the July 25, 2019 written comments are re-affirmed here.

B. Cost can only be recovered on an historical basis.

[1] Exhibit 1 contains the OPC edits in "track changes" format to simulate a legislative strike and add process.

Section 366.96, Fla. Stat. requires the Commission to evaluate the SPP of each company first and then, after SPP approval, appears to only authorize collection of costs based on the actual costs incurred after expenditure, as more fully set out in our prior comments.

C. Double Recovery of significant storm protection costs are expressly prohibited.

It is abundantly clear that the Legislature did not intend to create an opportunity for the costs of the Storm Hardening Plans ("SHP") required by Commission rule 25-6.0342, F.A.C., that are being currently incurred on a business-as-usual basis ***and recovered through base rates,*** to be converted to clause recovery without lowering base rates. That would be double recovery of the same costs. It is also obvious that the thrust of the legislation was to provide SPP Clause recovery as an ***incentive*** for utilities to spend ***more*** on expanded storm hardening activities – especially undergrounding activities – in order to move existing, vulnerable above-ground facilities underground to enhance system resilience in the advent of extreme weather. While the law expressly forbids utilities from recovering the same costs twice, such a prohibition is easier stated than enforced. As discussed below, legislative and the Commission professional Staff analysts noted during the 2019 Legislative Session, the difficulty in separating new, incremental spending from SHP costs that are part of a utility's commitment to the Commission and its customers for storm hardening and which are recovered through base rates.

The OPC submits that it is instructive to review the House and Senate Staff analyses produced during the legislative consideration of the bills and amendments that ultimately became Section 366.96, Fla.Stat. The Commission itself also provided a general assessment from the regulator's perspective in submittals to the House and Senate Staffs. These documents are attached

at Exhibit 2[2] and include the Commission Staff's analysis submitted at the request of the House and Senate on similar companion bills (SB 796 and HB 797) as well as the final House and Senate Staff analyses. Collectively these materials, which did not appear to be challenged in the process, reveal that a fundamental assumption about the legislation was that the enactment contemplated incremental increase in activities and costs to expand that which is already being required and approved in the current storm hardening process per Commission rule. (Exh. 1, Bates pages 5, 8, and18).

Another assumption included in all four referenced technical and analytical documents that was not challenged is that existing base rates are covering the activities that are embedded in and approved in existing SHPs. (Exh. 1, Bates pages 4, 5, 8 and 18). It is a reasonable assumption that legislators generally relied upon this paradigm when voting to approving the SPP Clause process for the incremental costs associated with expanded storm hardening plans. Moreover, the factual background is highly consistent with the plain language of the statute. It is further significant to note that these analyses specifically noted that both FPL and Duke were undertaking pre-legislation activities beginning in 2018 to undertake targeted undergrounding (a minimum of three years for FPL and ten years for Duke), with FPL committing to spend $100 million and Duke not publicly disclosing its committed targeted undergrounding spend in 2018-2019. (Exh. 1, Bates pages 4, 5 and 14). Finally all three primary sources of analyses note that the Commission could

[2]Exhibit 2 contains Bates numbered documents consisting of (1) House of Representatives Staff Analysis Final, dated April 22, 2019; (2) The Florida Senate Staff Bill Analysis and Fiscal Impact Statement, dated April 15, 2019; (3)Florida Public Service Commission (FPSC), Agency Analysis of 2019 House Bill 797, dated March 5, 2019; and (4) Florida Public Service Commission (FPSC), Agency Analysis of 2019 Senate Bill 796, dated March 4, 2019 which have certain provisions highlighted by the OPC. The documents are not provided as interpretational authority but as context for the professional Staff analyses that was provided to aid in legislators' understanding of the technical issues related to the cost recovery aspects of storm hardening.

encounter difficulty in separating base rate and SPP Clause recoverable costs. (Exh. 1, Bates pages 8, 18, 26-27 and 33). It is instructive also that the Senate Staff analysis adopts the Commission observation that it may need to "address in detail each activity, level of activity management oversight, and other similar aspects" in reviewing ***the plans*** (in advance of considering SPP Clause recovery). (Exh. 1, Bates pages 18, 26 and 33).

With these technical reference documents as a backdrop, the principal focus of the OPC's comments and advocacy on this rule continues to be that the Commission must insure that costs being recovered through base rates are not also recovered again through the SPP Clause. This will require that the Commission receive sufficient detail in Plan consideration and in SPP Clause filings made before the completion of each utility's next base rate case. The presumption must be established that – at least in the initial Plan and SPP Clause filings – that the greater of (1) budgeted or forecasted storm hardening and vegetation management costs or (2) SHP commitments in plans submitted to and approved by the Commission, represent the amount of SPP costs that are being currently recovered through base rates. The OPC further submits that the establishment of rates in the past settlements have revenue growth opportunity factored into them based on fixed pricing per unit. The utility's healthy earnings within the ROE earnings bands, coupled with the commitments to the Commission to spend on hardening plans, further bolster and demonstrate that there are T&D hardening/reliability/UG/resiliency projects now being ***recovered through base rates.*** These costs therefore need to be accounted for before any incremental projects (and their associated costs) can be identified and approved for recovery. To be included in a request for SPP Clause recovery a cost must at least be above and beyond the amounts included in the commitments made to the Commission in storm hardening plans approved on July 9, 2019.

In order to establish costs for incremental recovery in a SPP Clause, the initial plan approval process should contain project-by-project information for amounts slated for recovery and include detail along the same lines for historical periods (for establishing a trend line or baseline reference) and for the current and future periods covered by the currently approved SHPs. An excellent example is FPL and Duke's targeted undergrounding program costs that are being recovered through base rates as noted by legislative and Commission Staff. Any SPP Clause recovery can only occur after these costs are accounted for as being recovered through base rates.

OPC's suggested edits to implement the statute place an emphasis on detailed information for the first three years of any 10 year plan as well as historical information related to costs being recovered through base rates. See, Exh. 2, Bates pages 18, 26 and 33. The underlying purpose of the statute and the facts that were marshalled and presented to the legislature for their use in deliberating the legislative proposals are compelling reasons for the Commission to require detailed information at the outset of implementing the statute by rule. See, edits to draft proposed Rule 25-6.030(3)(j); Exh. 1, Bates page 4.

D. Additional comments and observations.

The remainder of these written comments will focus on select, specific items or issues addressed in the August 20th workshop comments.

1. Reliability must be directly a function of extreme weather resilience.

The Commission should not adopt language that allows utilities to recover costs in the SPP Clause only tangentially related to storm hardening designed to overcome the effects of extreme weather. The OPC has provided edits to draft proposed Rule 25-6.030(2) that address potential opportunities to seek recovery of costs that are not incurred for the principal purpose of hardening the system against the effects of extreme weather. See, Exh.1, edits at Bates page 1.

2. Incremental O&M cost recovery should not be inflated with a WACC charge.

While the OPC adheres to its position that only historically incurred expenditures are allowed under the statute, to the extent that the Commission lawfully adopts a rule that provides for the conventional three year prospective recovery with true-ups, O&M expenses should not be eligible for carrying costs. During the second workshop, utility representatives claimed, without citing precedent, that they should be entitled to accrue and recover a weighted average cost of capital ("WACC") carrying cost (including shareholder profit) on O&M expenses from the time of incurrence until the date of recovery. The OPC vigorously objects to this for several reasons. First, the Commission has not traditionally – if ever – included a WACC on a non-capital cost such as O&M expense. Second, the statute does not provide for such recovery. Section 366.96 (9), Fla. Stat. does specifically provide for a WACC return on depreciable assets but makes no mention of such an extra cost element for O&M expenses. The absence of such a mention for expenses, jin stark contrast to the specific mention for capital costs, is compelling evidence that the Legislature did not intend for the Commission to create gratuitous carrying costs for expenses. Third, given that there is a strong presumption that O&M costs (primarily vegetation management) are being currently spent under SHPs that represent committed activities and expenditures which are being recovered through base rates, the Commission need not burden the rules with the suggested overreaching. No edits are provided here because the Staff draft judiciously does not include these cost recovery adders to SPP Clause recoverable costs.

3. **USOA definition for T&D should exclude meters and should not allow battery storage project costs**.

While the OPC does not object to a proposal to track the Federal Energy Regulatory Commission, Uniform System of Accounts ("USOA"), definitions of Transmission and Distribution plant for use in defining the type of facilities subject to SPP Clause recovery, the

Commission should nevertheless not allow a utility to include meters (USOA account 370) in SPP Clause cost recovery. Meters have the primary purpose of measuring the delivery of electricity to the utility's users. Any relationship of these devices to resilience and storm protection in the face of extreme weather conditions would be incidental and ancillary and have no place in SPP Clause-recoverable costs. Some utilities indicated an interest in having battery assets recovered in the SPP Clause. USOA accounts 348 and 363 cover the accounting for energy storage equipment and are broadly categorized as production plant. The plain language of the statute does not allow production plant to be included in SPP Clause recoverable costs. A utility should have a heavy, if not impossible burden of showing that the ***sole reason*** for adding a piece of production plant to rate base was for storm hardening and resiliency in the face of extreme weather threats in order for it to be considered for SPP Clause recovery. Otherwise, allowing exceptions to the specific statutory allowances would create gaping holes that could eviscerate the specific legislative purpose of hardening the utility transmission and distribution systems against extreme weather conditions. See, edits to draft proposed Rule 25-6.030(2)(c); Exh.1, edits at Bates pages 1-2.

4. The OPC does not waive its rights to assert potential unconstitutional contract impairments in the application of the draft rules when adopted.

To the extent that a court ultimately rules that the settlement agreements in place today for all 5 utilities are contracts, the OPC does not waive its position that allowing rate increases for costs historically and traditionally recovered through base rates before the next base rate case, violates the impairment of contracts provisions of the State of Florida and United States Constitutions, as noted in the Senate Staff analysis:

> Each IOU may have to wait until its currently applicable rate settlement agreement expires to use the storm protection cost recovery clause provisions of the bill. Both the federal and state constitutions prohibit passage or implementation of a law impairing the obligation of contracts. A settlement agreement is a contract, and this prohibition would be applicable. The question, then, is whether the state's

> "significant and legitimate public purpose" outweighs the intrusion into the parties' bargain. Allowing an IOU to recover capital expenses and a rate of return despite a rate freeze provision in a settlement agreement may violate the constitution's prohibition against impairment of contract.

See, Exh.1, edits at Bates page 16. (footnotes omitted)

E. Conclusion

The OPC urges the Commission to insure that the establishment of the implementing rules are accomplished with the customers in mind. It is imperative that customers are not required to pay twice for storm hardening activities and that SPP Clause recovery is limited to the narrow purposes of the statute. While this is a paramount concern, the OPC maintains each of the objections and suggestions made in prior comments and commend them to the Commission for its consideration in developing a rule that carries out the Legislature's intent with fairness to customers given heavy weight.

Respectfully submitted,
J.R. Kelly
Public Counsel

s/Charles J. Rehwinkel
Charles J. Rehwinkel
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
Docket No. 20190131-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 27th day of August, 2019, to the following:

James D. Beasley
J. Jeffrey Wahlen
Malcolm N. Means
Tampa Electric Company
Post Office Box 391
Tallahassee, Florida 32302
jbeasley@ausley.com
jwahlen@ausley.com
mmeans@ausley.com

Joint Administrative Procedures Committee
Ken Plante, Coordinator
680 Pepper Building
111 W. Madison Street
Tallahassee, FL 32399
joint.admin.procedures@leg.state.fl.us

Tampa Electric Company
Ms. Paula K. Brown
Regulatory Affairs
P.O.Box 111
Tampa, FL 33601-0111
regdept@tecoenergy.com

Kenneth A. Hoffman
Florida Power & Light Company
134 West Jefferson Street
Tallahassee, FL 32301-1713
Ken.Hoffman@fpl.com

Matthew R. Bernier
Duke Energy Florida
106 East College Avenue, Suite 800
Tallahassee, FL 32301
matthew.bernier@duke-energy.com

Holly Henderson
Gulf Power Company
215 S. Monroe St., Suite 618
Tallahassee, FL 32301
Holly.henderson@nexteraenergy.com

Robert Scheffel Wright
Gardner Law Firm
1300 Thomaswood Drive
Tallahassee FL 32308
schef@gbwlegal.com

Jon C. Moyle, Jr.
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, FL 32301
jmoyle@moylelaw.com
Attorneys for the Florida Industrial Power Users Group

Adria Harper
Andrew King
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
aharper@psc.state.fl.us
aking@psc.state.fl.us

James W. Brew
1025 Thomas Jefferson Street, NW
Eight Floor, West Tower
Washington, DC 20007
jbrew@smxblaw.com

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe Street, Suite 601
Tallahassee, FL 32301
bkeating@gunster.com
Attorneys for Florida Public Utilities Company

Kenneth M. Rubin/Kevin Donaldson
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408-0420
ken.rubin@fpl.com

Cindy Miller
1544 Cristobal Drive
Tallahassee FL 32303
milcindy@gmail.com

s/Charles J. Rehwinkel
Charles J. Rehwinkel
Deputy Public Counsel

EXHIBIT 1

OPC Edits to Staff August 8, 2019 Rule Drafts

25-6.030 Storm Protection Plan.

(1) Application and Scope.~~.~~ Each investor-owned electric utility (utility) must, within 90 days after the effective date of this rule, file a petition with the Commission for the approval of a Transmission and Distribution Storm Protection Plan (Storm Protection Plan) that covers the utility's immediate 10-year planning period. Thereafter, e~~E~~ach utility must file on the third Monday of January of each year a Plan update to be considered, for Commission approval~~, an updated Storm Protection Plan at least every 3 years~~.

(2) For the purpose of this rule, the following definitions apply:

(a) "Storm protection program" – a category or type of activity that is undertaken to enhance the utility's existing infrastructure for the purpose of reducing restoration costs related to extreme weather conditions, reducing outage times caused by extreme weather conditions, and improving overall service reliability related to threats from extreme weather conditions.

(b) "Storm protection project" – a specific activity within a storm protection program designed for the enhancement of a specified portion of existing electric transmission or distribution facilities and managing vegetation for the purpose of reducing restoration costs, reducing outage times, and improving overall service reliability due to extreme weather conditions.

(c) "Transmission and distribution facilities" – all ~~utility owned poles and fixtures, towers and fixtures, overhead conductors and devices, substations and related facilities, land and land rights, roads and trails, underground conduits, and underground conductors~~ assets maintained in accounts or subaccounts within the transmission and distribution functions in accordance with the Uniform System of Accounts for Public Utilities and Licensees as found in the Code of Federal Regulations, Title 18, Subchapter C, Part 101, for Major Utilities, as revised April 1, 2018. Meters recorded in Account 370 are not considered transmission and distribution

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facilities for the purposes of this rule or Rule 25-6.031. Battery storage assets recorded in Account 348 are not considered transmission and distribution facilities for the purposes of this rule or Rule 25-6.031.

(3) Contents of the Storm Protection Plan. For each Storm Protection Plan, the following information must be provided:

(a) A description of how implementation of the proposed Storm Protection Plan will strengthen electric utility infrastructure to withstand extreme weather conditions by promoting the overhead hardening of electrical transmission and distribution facilities, the undergrounding of certain electrical distribution lines, and vegetation management.

(b) A description of how implementation of the proposed Storm Protection Plan will reduce restoration costs and outage times associated with extreme weather events and improve overall service reliability.

(c) A description of the utility's service area, including areas prioritized for enhancement and any areas where the utility has determined that enhancement of the utility's existing transmission and distribution facilities would not be feasible, reasonable, or practical. Such description must include a general map, number of customers served within each area, and the utility's reasoning for prioritizing certain areas for enhanced performance and for designating other areas of the system as not feasible, reasonable, or practical. This description must include a listing of each jurisdiction in the utility's service territory with whom the utility has a franchise agreement, and the term and expiration or next renewal option date for each such agreement. Any expired agreements under negotiation, litigation or some interim or temporary arrangement must be noted and explained.

(d) A description of each proposed storm protection program that includes:

1. A description of how each proposed storm protection program is designed to enhance the utility's existing transmission and distribution facilities including an estimate of the

resulting reduction in outage times and restoration costs due to extreme weather events;

2. If applicable, the actual or estimated start and completion dates of the program;

3. A description of any storm protection programs that were considered but not included in the Storm Protection Plan, and an explanation for why the program was not included;

4. A cost estimate including capital and operating expenses, both fixed and variable;

5. A comparison of the costs identified in subparagraph (3)(d)4. and the benefits identified in subparagraph (3)(d)1.; and

6. A description of the criteria used to select and prioritize proposed storm protection programs.

(e~~d~~) For each of the first three years in a utility's Storm Protection Plan, the utility must provide a description of each proposed storm protection project that includes:

1. The actual or estimated construction start and completion dates and the project location;

2. A description of the affected existing facilities, including number and type(s) of customers served, historic service reliability performance during extreme weather events, and how this data was used to prioritize the proposed storm protection project; and

3. A cost estimate including capital and operating expenses, both fixed and variable; and

4. A description of the criteria used to select and prioritize proposed storm protection projects.

5. A demonstration that there are no strategic business considerations that are applied in such a way as to prioritize a project for reasons unrelated to or inconsistent with subsections (3)(d)1. and (3)(e)2.

6. A description of all alternative storm protection projects that were considered in selecting and prioritizing the projects included in the proposed Plan, including analyses of all projects considered based on objective engineering and cost-effectiveness principles, including engineering reliability considerations, and the reasons for selecting the projected

included in the Plan, and also including the reasons for not selecting alternative projects.

(fe) For each of the first three years in a utility's Storm Protection Plan, the utility must provide a description of its proposed vegetation management activities including:

1. The projected locations and frequency;

2. The projected miles of affected transmission and distribution overhead facilities;

3. The estimated annual labor and equipment costs for both utility and contractor personnel; and

4. A description of how the vegetation management activity will reduce outage times and restoration costs due to extreme weather events.

(gf) An estimate of the annual jurisdictional revenue requirements for each year of the Storm Protection Plan.

(hg) An estimate of rate impacts for each of the first three years of the Storm Protection Plan for residential, commercial, and industrial customers.

(ih) A description of any implementation alternatives that could mitigate the resulting rate impact for each of the first three years of the proposed Storm Protection Plan.

(j) Detailed project-specific information for the most recent historical period (prior to the first year of each Plan), and for each of the first three years of a Plan, showing by each year and project what storm protection projects and storm protection project costs are being recovered through base rates or any other cost recovery mechanism and the associated costs by capital and expense, including depreciation expense. For each of the Plan years, the same level of detail must be provided showing incremental costs that the utility intends to incur which are not being, and will not be, recovered through base rates or any other cost recovery mechanism.

(ki) Any other factors directly related to the purposes of Section 366.96, Florida Statutes, which the utility requests the Commission to consider.

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(4) By June 1, each utility must submit to the Commission Clerk an annual status report on the utility's Storm Protection Plan programs and projects. The annual status report shall include:

(a) Identification of all Storm Protection Plan programs and projects completed or planned for completion, and the status of all incomplete projects;

(b) Actual costs and rate impacts associated with completed programs and projects as compared to the estimated costs and rate impacts for those programs and projects; and

(c) Estimated costs and rate impacts associated with programs and projects planned for completion during the next year of the Storm Protection Plan.

Rulemaking Authority 366.96, FS. Law Implemented 366.96, FS. History–New _____.

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25-6.031 Storm Protection Plan Cost Recovery Clause.

(1) Application and Scope. This rule applies to each investor-owned electric utility (utility).

(2) After the Commission has issued a final order approving a utility's -Transmission and Distribution Storm Protection Plan (Storm Protection Plan), a utility may file a petition for recovery through the Storm Protection Plan cost recovery clause of Storm Protection Plan ~~associated~~ costs that it has incurred since the approval of the Plan and prior to the filing of the petition~~through the Storm Protection Plan cost recovery clause~~. The utility's petition shall be supported by testimony that provides details on the annual Storm Protection Plan implementation activities and associated costs, and how those activities and costs are consistent with its approved Storm Protection Plan.

(3) An annual hearing will be conducted no later than July 31 of each year after the calendar year in which the first Plan was approved to address petitions for recovery of Storm Protection Plan costs. The hearing will be limited to determining the reasonableness of ~~projected Storm Protection Plan costs, the~~ and prudence of actual Storm Protection Plan costs incurred by the utility, and to establish the Storm Protection Plan cost recovery factor~~s~~ consistent with the requirements of this rule.

(4) Deferred accounting treatment. Storm Protection Plan cost recovery clause true-up amounts shall be afforded deferred accounting treatment at the 30-day commercial paper rate for variances recovered pursuant to subsection (7)(a).

(5) Subaccounts. To ensure separation of costs subject to recovery through the clause, the utility filing for cost recovery shall maintain subaccounts for all items consistent with the Uniform System of Accounts prescribed by this Commission, pursuant to Rule 25-6.014, F.A.C.

(6) Recoverable costs.

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(a) The utility's petition for recovery of costs associated with its Storm Protection Plan may include costs incurred after the filing of the utility's Storm Protection Plan.

(b) Storm Protection Plan costs recoverable through the clause shall not include costs recovered through the utility's base rates or any other cost recovery mechanism. The utility must file detailed information consistent with Rule 25-6.030(g), F.A.C., as a part of meeting its burden of demonstrating that clause-eligible costs are not being recovered in base rates or any other cost recovery mechanism.

(c) The utility may recover the annual depreciation expense on capitalized Storm Protection Plan expenditures using the utility's most recent Commission-approved depreciation rates. The utility may recover a return on the undepreciated balance of the costs calculated at the utility's weighted average cost of capital using the return on equity mid-point most recently approved by the Commission.

(7) Pursuant to the order establishing procedure in the annual cost recovery proceeding, a utility shall submit the following for Commission review and approval as part of its cost recovery filings:

~~(a) Final True-Up for Previous Year. The utility shall submit its final true-up of Storm Protection Plan revenue requirements based on actual costs for the prior year and previously filed costs and revenue requirements for such prior year and a description of the work actually performed during such year.~~

~~(b) Estimated True-Up for Current Year. The utility shall submit its actual/estimated true-up of Storm Protection Plan revenue requirements based on a comparison of current year actual/estimated costs and the previously-filed projected costs and revenue requirements for such current year and a description of the work projected to be performed during such year.~~

~~(c) Projected Costs for Subsequent Year. The utility shall submit its projected Storm Protection Plan costs and revenue requirements for the subsequent year and a description of~~

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~~the work projected to be performed during such year.~~

(a~~d~~) True-Up of Variances. The utility shall report observed true-up variances including sales forecasting variances and~~,~~ changes in the utility's prices of services and/or equipment~~, and changes in the scope of work relative to the estimates provided pursuant to subparagraphs (7)(b) and (7)(c)~~. The utility shall also provide explanations for variances regarding the implementation of the approved Storm Protection Plan.

(b~~e~~) Proposed Storm Protection Plan Cost Recovery Factor~~s~~. The utility shall provide the calculations of its proposed factor~~s~~ and effective 12-month billing period.

(8) Recovery of costs under this rule does not preclude a utility from proposing inclusion of future Storm Protection Plan costs in base rates in a subsequent rate proceeding.

Rulemaking Authority 366.96, FS. Law Implemented 366.96, FS. History–New _____.

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EXHIBIT 2

HOUSE OF REPRESENTATIVES STAFF ANALYSIS
FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 797 Public Utility Storm Protection Plans
SPONSOR(S): Commerce Committee; Government Operations & Technology Appropriations Subcommittee; Energy & Utilities Subcommittee; Fine and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 796

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	13 Y, 0 N	Keating	Keating
2) Government Operations & Technology Appropriations Subcommittee	11 Y, 0 N	Helpling	Topp
3) Commerce Committee	21 Y, 0 N	Keating	Hamon

FINAL HOUSE FLOOR ACTION: **GOVERNOR'S ACTION:** Approved
110 **Y's** 3 **N's**

SUMMARY ANALYSIS

CS/CS/CS/HB 797 passed the House on May 1, 2019, as CS/CS/CS/SB 796, as amended. The Senate concurred in the House amendment to the Senate Bill and passed the bill as amended on May 2, 2019.

The Public Service Commission (PSC) has broad jurisdiction over the rates and service of investor-owned electric utilities (IOUs) in Florida. The PSC sets base rates at a level that allows each IOU to recover its prudent costs of providing service (not otherwise recovered through a cost recovery clause), including a return on prudent capital investments. Cost recovery clauses are established to address specific types of costs separate from base rates. Under a cost recovery clause, separate charges are set and adjusted annually to ensure full recovery of all eligible costs that the PSC determines were prudently incurred by the IOU.

The bill creates a new cost recovery clause, separate from an IOU's base rates, by which an IOU may recover its prudently incurred costs to implement a 10-year transmission and distribution (T&D) storm protection plan, including a return (profit) on capital expenditures. Each plan must explain the approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability and may include overhead hardening and increased resilience of T&D facilities, undergrounding of distribution facilities, and vegetation management. By including undergrounding projects in these plans, the bill reflects a policy shift that allows IOUs to collect the costs of such projects from all ratepayers rather than the party who requests underground installation. This will likely allow for the completion of additional undergrounding projects. Plans are subject to PSC approval and must be updated every 3 years.

To the extent that IOU rates and charges increase due to implementation of T&D storm protection plans, certain state and local tax revenues may increase. The bill provides the PSC four additional positions, with recurring expenditures of $261,269 in FY 2019-20, FY 2020-21, and FY 2021-22, and non-recurring expenditures of $15,020 in FY 2019-20.

The bill's ultimate impact on the customer rates and charges for each IOU will vary with the details of each IOU's PSC-approved T&D storm protection plan. If an IOU's plan provides for an increase in storm protection activities above current levels, the customer rates and charges of that IOU will be higher than they otherwise would have been. These costs could be significant. An increase in prudent storm protection activities may reduce storm restoration costs and economic losses associated with power outages.

The bill was approved by the Governor on June 27, 2019, ch. 2019-158, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Ratemaking for Investor-Owned Electric Utilities

The Public Service Commission (PSC) has broad jurisdiction over the rates and service of investor-owned electric utilities (IOUs) in Florida.[1] Under this broad grant of authority, and through more specific grants of authority in chapter 366, F.S., the PSC sets rates for each IOU through five primary components, each of which is established in a separate administrative proceeding:

- Base rates
  - Designed to recover most operations and maintenance expenses, capital investments, and a return on capital investment.
- Fuel and purchased power cost recovery charges
  - Designed to recover the costs of fuel and the energy component of wholesale power purchases.
  - By PSC order, may include recovery of capital investments, including a return on investment, in limited circumstances.
- Capacity cost recovery charges
  - Designed to recover costs of the capacity component of wholesale power purchases.
  - By statute, may include recovery of certain costs related to development of new nuclear power plants, including a return, provided that the costs will be moved into base rates when the new plant becomes operational.[2]
- Environmental cost recovery charges
  - Designed to recover costs to comply with government-mandated environmental standards.
  - By statute, may include recovery of certain capital investments, including a return on investment, provided that these costs may be moved into base rates at the IOU's next rate case.[3]
- Energy conservation and efficiency cost recovery charges
  - Designed to recover costs of implementing PSC-approved energy conservation and efficiency programs.

As required by law, the PSC sets base rates that are designed to allow each IOU to recover its legitimate costs of providing service (not otherwise recovered through another cost recovery mechanism), including a return on the IOU's prudent capital investments.[4] Base rates proceedings are conducted on an as-needed basis through formal evidentiary hearings. In each rate case, the PSC sets a reasonable rate of return on equity for the IOU. After rates are set, the actual rate of return on equity earned by an IOU fluctuates over time as utility revenues and expenses fluctuate.

Separate from base rates, the remaining cost recovery charges are generally established to address specific types of costs that are difficult to plan for because they are volatile or otherwise beyond the utility's control. These charges are adjusted annually through formal evidentiary hearings to ensure full recovery of all eligible costs that the PSC determines were prudently incurred by the IOU.

[1] *See, e.g.,* ss. 366.01, 366.04(1), 366.041, 366.05(1), and 366.06, F.S. There are five public electric utilities in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company.
[2] S. 366.93, F.S.
[3] S. 366.8255, F.S.
[4] Ss. 366.041(1) and 366.06(1), F.S.

Storm Hardening

After the intense hurricane seasons that affected Florida in 2004 and 2005, the PSC imposed several new requirements on IOUs with respect to preparing for tropical storms and strengthening electric transmission and distribution infrastructure[5] to withstand severe weather events. Among these requirements, the PSC adopted a rule requiring each IOU to file storm hardening plans every three years.[6] The rule is intended:

- To ensure safe, adequate, and reliable electric transmission and distribution service for both operational and emergency purposes;
- To require the cost-effective strengthening of critical electric infrastructure to increase the ability of transmission and distribution facilities to withstand extreme weather conditions; and
- To reduce restoration costs and outage times associated with extreme weather conditions.

Each storm hardening plan is reviewed by the PSC to determine whether the plan meets the objectives of enhancing reliability and reducing restoration costs and outage times in a prudent, practical, and cost-effective manner to the affected parties. The activities outlined in each IOUs' storm hardening plan vary but typically include vegetation management, pole inspections, hardening of distribution feeders and laterals,[7] and undergrounding.[8]

Each storm hardening plan must address, at a minimum, the extent to which the plan:

- Complies with the National Electric Safety Code;
- Adopts extreme wind loading standards for distribution facilities used in new construction, major planned work including relocations, critical infrastructure facilities, and infrastructure located along major thoroughfares;
- Is designed to mitigate damage to underground and supporting overhead transmission and distribution facilities due to flooding and storm surge; and
- Provides for the placement of new and replacement distribution facilities in a manner that facilitates safe and efficient access to installation and maintenance.

Further, each storm hardening plan must explain the systematic approach the IOU will follow to achieve the objectives of enhancing reliability and reducing restoration costs and outage times associated with extreme weather events. The description of this "deployment strategy" must include, among other things:

- A description of the facilities affected, including technical design specifications, construction standards, and construction methodologies employed;
- The communities and areas within the IOU's service area where the electric infrastructure improvements, including facilities identified by the utility as critical infrastructure are to be made; and

[5] Transmission facilities are those parts of the electric power grid, including transmission lines, that move electricity at high voltages (69 kilovolts and above) from generating sources to "load centers" or other points on the grid where the voltage is reduced for delivery to an electric utility's distribution system. Distribution facilities are those parts of the electric power grid, including primary and secondary distribution lines and transformers, that deliver electricity at a reduced voltage usable by most end-users. In some circumstances, customers with extremely high demands may take service at transmission voltage.

[6] Rule 25-6.0342, F.A.C., *Electric Infrastructure Storm Hardening*. Each of the five IOUs in Florida is required to file an updated storm hardening plan in 2019.

[7] Distribution circuits are composed of laterals and feeders. Feeders run outward from substations and have the capability of serving thousands of customers. Laterals branch from the feeder circuits and are the final portion of the electric delivery system, serving a smaller portion of customers, and are typically associated with residential areas. *See* Florida Public Service Commission (FPSC), *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions*, at 9-10 (July 2018).

[8] FPSC, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions*, *supra* note 7, at 9.

- An estimate of the costs and benefits to the IOU of making the electric infrastructure improvements, including the effect on reducing storm restoration costs and customer outages.

The PSC's approval of a storm hardening plan does not constitute a finding that costs to implement the plan are prudently incurred. Utility implementation actions are monitored in conjunction with an annual review of each utility's transmission and distribution reliability performance. Each IOU's cost to implement its storm hardening plan and its reliability performance are among the many factors considered by the PSC when setting base rates for the IOU. If the IOU's next rate case is based on projected costs, the PSC reviews the IOU's projected annual storm hardening activities and estimated costs in the rate case to determine whether they are reasonable and cost-effective. If approved, these costs are included in new base rates to be paid by customers.[9]

Undergrounding Distribution Lines

IOUs install either overhead or underground distribution facilities based on the principle of least-cost electric distribution service, which is memorialized in various PSC rules and tariffs.[10] In general, the construction of underground distribution facilities, when compared with overhead facilities, is more expensive.

Under the PSC's rules, IOUs are required to establish the cost differential between overhead and underground construction, subject to PSC review and approval. Upon request, the IOU will complete a new underground installation or convert an existing overhead distribution line to underground installation, provided that the requesting party pays the appropriate cost differential established in the IOU's tariffs.[11]

Following the 2004 and 2005 hurricane seasons, the PSC amended its undergrounding rules by adopting new provisions that attempted to lessen the cost impact on parties requesting conversion of overhead facilities to underground installation. First, these changes require IOUs to account for average storm restoration costs when calculating the cost differential to be paid for undergrounding projects.[12] Assuming higher storm restoration costs for overhead facilities, the cost differential would be reduced. Second, these changes allow an IOU, subject to PSC approval, to request that a portion of the cost of an undergrounding project be borne by all of its ratepayers if a benefit to all ratepayers could be demonstrated.[13]

For Florida's three largest IOUs, approximately 40 percent of all distribution lines are underground, and the majority of recent undergrounding projects were for new construction, rather than the conversion of overhead lines to underground installation.[14]

In 2018, two Florida IOU's – Florida Power & Light Company (FPL) and Duke Energy Florida, LLC., (DEF) – began targeted undergrounding programs. Under its program, DEF plans to convert approximately 1,200 miles of overhead lines over for a ten-year term. DEF did not set a target expense level. FPL's program has a three-year term and is estimated to cost $100 million to convert 158 miles of overhead lines. The costs of these programs are supported through the revenues from current base

[9] Florida Public Service Commission (FPSC), Agency Analysis of 2019 House Bill 797, p. 2 (Mar. 5, 2019).
[10] *Id.*
[11] Most new subdivision construction is underground. Developers of new subdivisions that request underground construction recover the cost differential through the sales prices of lots or new homes. *Id.* at 2.
[12] Rule 25-6.078(4), F.A.C., *Schedule of Charges.*
[13] *See, e.g.,* Rule 25-6.064(7), F.A.C., *Contribution-in-Aid of Construction for Installation of New or Upgraded Facilities*; Rule 25-6.078(10), F.A.C., *Schedule of Charges*; Rule 25-6.115(12), F.A.C., *Facility Charges for Conversion of Existing Overhead Investor-Owned Distribution Facilities*.
[14] FPSC, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions*, *supra* note 7, at 11.

rates for each utility.[15] Each program focuses on historically poor performing lateral circuits, with the goal of testing different construction techniques and identifying impediments to converting these targeted overhead facilities to underground.[16]

2018 Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions

After a series of hurricanes impacted Florida in 2016 and 2017, the PSC initiated proceedings in October 2017 to review electric utility storm preparedness and restoration actions, and to identify potential areas where infrastructure damage, outages, and recovery time for customers could be minimized in the future. The PSC collected data from all utilities and sought input from non-utility stakeholders and customers, holding a workshop in May 2018 during which information was presented by utilities, customers and their representatives, and local governments.

In July 2018, the PSC released the results of its review. With respect to the initiatives taken after the 2004 and 2005 hurricane seasons, the PSC concluded that Florida's storm hardening programs were effective in reducing the length of outages as compared to the 2004 and 2005 hurricane seasons. The PSC determined that hardened overhead distribution facilities indeed performed better than non-hardened facilities, very few transmission structures failed, underground facilities performed much better compared to overhead facilities, and the primary cause of outages came from outside the utilities' right-of-way, such as damage from falling trees and displaced vegetation located where the utility lacked legal access to control the vegetation.[17]

Effect of Changes

The bill creates a new cost recovery charge, separate from an IOU's base rates, by which an IOU may recover its costs to implement a transmission and distribution storm protection plan, including a return (profit) on capital expenditures. By including distribution undergrounding projects in these plans, the bill reflects a policy shift that allows IOUs to collect the costs of these projects from all ratepayers, rather than the persons who specifically request undergrounding. Thus, the bill will likely allow for the completion of more local distribution line undergrounding projects. The bill may allow for more overhead hardening and vegetation management activities, though these activities are already funded at some level through current base rate revenues.

The bill provides a legislative finding that it is in the state's interest to strengthen electric utility infrastructure to withstand extreme weather conditions by promoting certain storm hardening activities. The bill also provides a legislative finding that these activities can effectively reduce restoration costs and outage times and improve overall service reliability for customers.

The bill creates the following definitions:

- "Public utility" or "utility" has the same meaning as provided in s. 366.02(1), F.S., excluding gas utilities.
- "Transmission and distribution storm protection plan" or "plan" means a plan for the overhead hardening and increased resilience of electric transmission and distribution facilities, undergrounding of electric distribution facilities, and vegetation management.
- "Transmission and distribution storm protection plan costs" means the reasonable and prudent costs to implement an approved transmission and distribution storm protection plan.
- "Vegetation management" means the actions a public utility takes to prevent or curtail vegetation from interfering with public utility infrastructure. The term includes the mowing of

[15] FPSC, Agency Analysis of 2019 House Bill 797, *supra* note 9, at 2-3.
[16] FPSC, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions*, *supra* note 7, at 12.
[17] *Id.* at 1-2.

vegetation, application of herbicides, trimming of trees, and removal of trees or brush near and around electric transmission and distribution facilities.

The bill requires each IOU to file, pursuant to PSC rule, a transmission and distribution (T&D) storm protection plan that covers the immediate 10-year planning period. The bill requires that each plan explain the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. The bill requires the PSC to adopt rules to specify the elements that must be included in each plan. The bill does not require that any IOU's plan provide for an increase in its storm protection activities above current levels.

In its review of each T&D storm protection plan, the PSC must consider the following:

- The extent to which the plan is expected to reduce restoration costs and outage times associated with extreme weather events and enhance reliability, including whether the plan prioritizes areas of lower reliability performance;
- The extent to which storm protection of transmission and distribution infrastructure is feasible, reasonable, or practical in certain areas of the IOU's service territory, including flood zones and rural areas;
- The estimated costs and benefits to the utility and its customers of making the improvements proposed in the plan; and
- The estimated annual rate impact resulting from implementation of the plan during the first three years addressed in the plan.

The bill requires the PSC, no later than 180 days after a complete T&D storm protection plan is filed, to determine whether it is in the public interest to approve, approve with modification, or deny the plan.

The bill requires each IOU to submit to the PSC an updated T&D storm protection plan at least every three years after PSC approval of its most recent plan. The PSC must approve, modify, or deny each updated plan based on the same criteria used to review the initial plan.

After a T&D storm protection plan has been approved, the bill provides that the act of proceeding with actions to implement the plan does not constitute and is not evidence of imprudence. The bill requires the PSC to conduct an annual proceeding to determine an IOU's prudently incurred costs to implement its T&D storm protection plan and to allow the IOU to recover those costs through a charge separate and apart from its base rates. The bill refers to this process as the storm protection plan cost recovery clause. Once the PSC determines that costs were prudently incurred, those costs are not subject to disallowance or further review except for fraud, perjury, or intentional withholding of key information by the IOU.

The bill provides that the annual T&D storm protection plan costs may not include any costs recovered through the IOU's base rates. Further, such costs must be allocated to customer classes pursuant to the rate design most recently approved by the PSC.

If a capital expenditure is approved for recovery through the storm protection cost recovery clause, the bill authorizes the IOU to recover the annual depreciation on such cost, calculated at the IOU's current approved depreciation rates. The IOU may also recover a return on the undepreciated balance of the capital expenditure, calculated at the IOU's weighted average cost of capital using the last approved return on equity.

Beginning after the first full year of implementation of T&D storm protection plans, the bill requires the PSC to submit a status report by December 1 each year to the Governor, the President of the Senate, and the Speaker of the House. The report must identify all storm protection activities completed or planned for completion, the actual costs and rate impacts of completed activities as compared to the

estimated costs and rate impacts of those activities, and the estimated costs and rate impacts of activities planned for completion.

The bill requires the PSC to adopt rules to implement and administer its provisions. The bill requires the PSC to propose a rule for adoption as soon as practicable after the effective date of the bill, but no later than October 31, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   To the extent that IOU rates and charges increase due to implementation of T&D storm protection plans, certain tax revenues may increase.

2. Expenditures:

   The bill requires the PSC to review and approve/modify a 10-year T&D storm protection plan for each IOU, to conduct annual proceedings to review the costs associated with implementation of these plans, and to adopt implementing rules. The bill provides four additional positions and funding for one senior attorney, two public utility analyst II's, and one engineering specialist I, with recurring expenditures of $261,269 in FY 2019-20, FY 2020-21, and FY 2021-22, and non-recurring funding of $15,020 in FY 2019-20. The chart below shows the fiscal impact related to the funding provided in the bill over the next three fiscal years.

	FY 2019-20	FY 2020-21	FY 2021-22
1. Recurring	$261,269/ 4.00 FTE	$261,269/ 4.00 FTE	$261,269/ 4.00 FTE
2. Non-Recurring	$15,020/ 0 FTE	$0/0 FTE	$0/0 FTE
3. Total	$276,289	$261,269	$261,269

The Regulatory Trust Fund within the PSC has an estimated ending fund balance of $1.95 million and an additional $1.1 million in reserve as submitted by the commission in their Legislative Budget Request (submitted October 15, 2018) for the end of Fiscal Year 2019-20.[18] The trust fund should have sufficient resources for the four additional FTE provided in the bill to meet the increased workload.

[18] Florida Fiscal Portal, *Public Service Commission,* http://floridafiscalportal.state.fl.us/Document.aspx?ID=18268&DocType=PDF (last visited Mar. 25, 2019).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

To the extent that IOU rates and charges increase due to implementation of T&D storm protection plans, certain tax revenues may increase.

2. Expenditures:

See *Fiscal Comments* for a discussion of potential rate impacts and other economic impacts.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires each IOU to file a 10-year T&D storm protection plan for PSC review. Further, the bill requires each IOU to participate in annual cost recovery proceedings at the PSC to establish rates to recover the costs of its plan. Even if an IOU does not propose to increase its current level of storm protection activities, it will incur costs to comply with these requirements. These regulatory costs will be recovered from the IOU's customers through rates.

For a full discussion of potential rate impacts and other economic impacts, see *Fiscal Comments*, below.

D. FISCAL COMMENTS:

The bill's ultimate impact on the customer rates and charges for each IOU will vary with the details of each IOU's PSC-approved T&D storm protection plan. If an IOU's plan provides for an incremental increase in storm protection activities above current levels, the customer rates and charges of that IOU will be higher than they otherwise would have been. These costs could be significant. An increase in prudent storm protection activities may reduce storm restoration costs and economic losses associated with power outages

The bill requires each IOU to include in its T&D storm protection plan some combination of overhead hardening, undergrounding, and increased vegetation management and authorizes cost recovery for these activities through a new charge to customers. Currently, activities related to overhead hardening and vegetation management are funded through each IOU's base rate revenues. Further, the current FPL and DEF targeted undergrounding projects are funded through their respective base rate revenues. The bill provides that an IOU may not recover T&D storm protection plan costs that are already being recovered through its base rates.[19] Thus, only the costs associated with an incremental increase in these specific activities will be authorized for recovery through the new charge. If an IOU's PSC-approved plan provides for an incremental increase in these activities above current levels, its customer rates and charges will be higher than they otherwise would have been. The rate impact for each IOU will depend on the costs associated with any incremental increases in these activities in its PSC-approved plan.

Notably, the bill authorizes IOUs to include distribution undergrounding projects in their T&D storm protection plans and, to the extent these plans are approved by the PSC, to recover the associated costs through a new charge applied to all customers. Under current law, an entity, such as a municipality or developer, that requests the installation of new underground facilities or the conversion

[19] In its analysis of the bill, the PSC notes that there is no direct mechanism to measure or establish exactly what level of activities and associated costs are included in current base rates because fluctuations are normal. Consequently, it notes, there could be tension in assessing the level of activity and ultimately the costs that may qualify for recovery through the new charge. FPSC, Agency Analysis of 2019 House Bill 797, *supra* note 9, at 6-7.

of existing overhead facilities to an underground installation is responsible for paying the cost differential, insulating the IOU's general body of ratepayers from paying for the project through rates. As long as a cost differential exists between overhead and underground installations, the rates of all customers of an IOU that pursues these undergrounding projects as part of a PSC-approved plan, including residential, commercial, government, and industrial customers, will be higher than they otherwise would be to fund these projects.

The costs for specific overhead to underground conversion projects will vary by project. Depending on the specific overhead to underground conversion projects included in an IOU's PSC-approved T&D storm protection plan, the costs and rate impacts could be significant. For example, the cost data provided for FPL's current targeted undergrounding pilot program indicates an average all-in cost of $632,911 per mile for the 158 miles to be converted under the program. At the end of 2017, FPL had a total of 22,788 miles of overhead distribution laterals. At the per-mile cost indicated by its current program, converting four percent of FPL's total overhead distribution laterals each year would cost approximately $577 million per year.[20] This per-mile rate may or may not be indicative of the cost for all overhead to underground conversion projects pursued by FPL or other IOUs over the 10-year duration of their T&D storm protection plans.

Under the current PSC-approved rate agreements, each IOU's prudently-incurred storm restoration costs are recoverable from its customers through a surcharge for a specified period of time. An incremental increase in an IOU's prudent storm protection activities could result in reduced damage from future storms and, thus, reduced storm restoration costs recoverable from IOU customers. Further, an incremental increase in an IOU's prudent storm protection activities could result in fewer outages and shorter outage duration, reducing the negative economic impacts associated with the loss of power to government, businesses, and individuals. Actual cost savings and outage reductions will depend in part on future storm activity.

The bill requires the PSC, in its review of an IOU's T&D storm protection plan, to consider the estimated rate impacts of the plan, but it does not otherwise limit the total level of costs that may be charged to customers.

[20] Florida Public Service Commission, Agency Analysis of 2019 Senate Bill 796, p. 7 (Mar. 4, 2019).

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 796
INTRODUCER:	Appropriations Committee; Infrastructure and Security Committee; Innovation, Industry, and Technology Committee; and Senators Gruters, Bracy, Montford, and others
SUBJECT:	Public Utility Storm Protection Plans
DATE:	April 15, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	**Fav/CS**
2.	Price	Miller	IS	**Fav/CS**
3.	Sanders	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 796 creates a recovery clause[1] for storm protection costs instead of recovering these costs through base rates, as is done now; provides for recovery of a return on capital costs (profit) through the clause; and potentially requires the Public Service Commission (PSC) to approve cost recovery without consideration of the actual costs. The bill makes specific legislative findings that it is in the public interest to promote storm protection activities that will reduce restoration costs and outage times and increase reliability.

The bill applies to only public utilities, which are the investor-owned utilities (IOUs): Florida Power and Light, Duke Energy Florida, Gulf Power Company, Tampa Electric Company, and the Florida Public Utilities Corporation. Initially, the bill builds on the PSC's rule, requiring that, as part of the storm hardening plan required by the rule, each IOU must submit to the PSC, pursuant to PSC rule, for review and approval a transmission and distribution storm protection plan that covers the utility's immediate 10-year planning period.

[1] Most of an investor-owned utility's costs and profits are recovered through base rates, the per-kilowatt-hour charges on a customer's bill. Recovery clause charges are additional charges, usually in separate line item charges on the bill. A recovery clause is typically used to make an annual recovery of costs that are difficult to plan for, are a simple pass-through of actual costs, do not include capital costs or a return on those capital costs, and for which regulatory lag in recovering such costs would be problematic.

The bill requires the PSC to adopt rules to implement and administer its provisions, as soon as practicable after the effective date, but no later than October 31, 2019.

The bill appropriates for Fiscal Year 2019-2020, $261,270 in recurring funds and $15,020 in nonrecurring funds from the Regulatory Trust Fund and authorizes four positions with associated salary rate to implement the bill. Proceedings will also involve the Office of Public Counsel (OPC),[2] which may incur costs should there be an increase in evidentiary hearings; however, these costs are indeterminate.[3]

The bill takes effect upon becoming a law.

II. Present Situation:

Electric Utilities and the Public Service Commission

Chapter 366, F.S., provides for regulation of electric utilities in Florida. Section 366.02, F.S., provides definitions for these purposes.

- "Commission" means the Florida Public Service Commission.
- "Electric utility" means any municipal electric utility, investor-owned electric utility, or rural electric cooperative that owns, maintains, or operates an electric generation, transmission, or distribution system within the state.
- "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity … to or for the public within this state; but the term "public utility" does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; …

The PSC has grid reliability authority over all Florida electric utilities.[4] It has full economic regulation authority over the public utilities, including setting rates, and ensuring service quality standards.[5] The public utilities are the investor-owned utilities: Florida Power and Light, Duke Energy Florida, Gulf Power Company, Tampa Electric Company, and the Florida Public Utilities Corporation.

Hurricane-Related Costs

Until recently, the subject of electric utility costs associated with a hurricane meant the costs of post-hurricane repair of the electric grid, the system of transmission and distribution lines and associated infrastructure. Then after the 2004-2005 hurricane seasons, there was an emphasis on storm hardening and the resulting costs. The IOUs now incur, and recover from their ratepayers (their customers), two types of costs associated with hurricanes and storms: after-the-fact repair costs and pre-storm hardening costs.[6]

[2] The Office of Public Counsel represents utility customers in PSC proceedings (s. 350.0611, F.S.).
[3] Conversation with J.R. Kelly, Public Counsel, Office of Public Counsel (April 2, 2019).
[4] Sections 366.04(2)(c) and 366.05(8), F.S.
[5] Section 366.04(1), F.S.
[6] Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 5 (July 2018).

Storm hardening and cost recovery are governed by PSC rule.[7] The rule applies to all IOUs and is intended:

- To ensure safe, adequate, and reliable electric transmission and distribution service for both operational and emergency purposes;
- To require the cost-effective strengthening of critical electric infrastructure to increase the ability of transmission and distribution facilities to withstand extreme weather conditions; and
- To reduce restoration costs and outage times associated with extreme weather conditions.

Under the rule, each IOU filed an initial plan for the PSC's review and approval, after which each utility's plan must be updated every three years. In a proceeding to approve a utility's plan, the PSC is to consider whether the utility's plan meets the desired objectives of enhancing reliability and reducing restoration costs and outage times in a prudent, practical, and cost-effective manner to the affected parties.

The rule requires each utility storm-hardening plan to contain a detailed description of the construction standards, policies, practices, and procedures to be employed to enhance the reliability of overhead and underground electrical transmission and distribution facilities. Each filing must, at a minimum, address the extent to which the utility's storm hardening plan:

- Complies with a specified national safety code;
- Adopts specified extreme wind loading standards;
- Is designed to mitigate damage to underground and supporting overhead transmission and distribution facilities due to flooding and storm surges; and
- Provides for the placement of new and replacement distribution facilities to facilitate safe and efficient access for installation and maintenance.

Each storm hardening plan must explain the systematic approach the utility will follow to achieve the desired objectives of enhancing reliability and reducing restoration costs and outage times associated with extreme weather events. The explanation of the deployment strategy must include, but is not limited to, the following:

- A description of the facilities affected, including technical design specifications, construction standards, and construction methodologies employed;
- The communities and areas within the utility's service area where the electric infrastructure improvements are to be made;
- The extent to which the electric infrastructure improvements involve joint-use facilities on which third-party attachments exist;
- An estimate of the costs and benefits to the utility of making the improvements, including the effect on reducing storm restoration costs and customer outages; and
- An estimate of the costs and benefits to third-party attachers affected by the electric infrastructure improvements, including the effect on reducing storm restoration costs and customer outages realized by the third-party attachers.

[7] Fla. Admin. Code R. 25-6.0342 (2007).

Approval of an IOU's storm-hardening plan does not guarantee the IOU the recovery of all costs incurred to implement the plan. After the IOU takes steps to implement the plan, the IOU must seek cost recovery during its next general rate case proceeding, where the PSC reviews the costs and determines whether they were prudently incurred before adding the approved costs to the IOU's base rates.[8] This helps to protect the IOU's ratepayers.

Each IOU has a rate-case settlement in place with a provision freezing the IOU's base rates and they cannot get an increase to recover these costs until the settlement expires and they initiate another rate case.

Recovery Clauses

The vast majority of an IOU's general costs of providing service, including the IOU's profit, or allowed range of rates of return, is recovered through base rates. Base rates are set in a rate case, where all of an IOU's projected costs of doing business are reviewed and individual costs or categories of costs can be reviewed separately for a determination of accuracy and prudency. All approved costs are added together, an allowed range of rates of return is set, and a "revenue requirement" is established, the total revenue necessary to recover all these costs and the profit. The rates for different customer classes are then set that will provide recovery of this revenue requirement. The process protects the interests of both the IOU and its ratepayers.

There are, however, some exceptions where costs are recovered through a recovery clause, an additional charge usually in a separate line item charge on the bill. The primary recovery clause is the fuel-cost recovery clause charge. Fuel costs can vary, sometimes significantly, from year to year and are recovered through the fuel-cost recovery clause. A recovery clause is used when the costs at issue are volatile, unusual, or short-term and are therefore difficult to plan for, and when regulatory lag in recovering such costs would be problematic. Recovery clause proceedings are typically conducted on an annual basis and provide only for a pass-through of actual costs. As capital expenditures are typically made based on long-term plans, recovery clauses typically do not include capital costs or a return on those capital costs. An IOU cannot use a recovery clause to recover capital expenses and a rate of return on those expenses when there is an existing, applicable rate-settlement agreement containing a rate freeze.[9]

Undergrounding Lines

The construction of underground electrical distribution systems is more expensive than overhead systems, and the ratepayers served by the underground line are responsible for the difference in the costs between underground and overhead. The costs and benefits of storm hardening are factored into the cost difference calculation for new construction or conversion to underground facilities.[10]

[8] Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 12 (July 2018).
[9] *See*, e.g., *Citizens of the State v. Graham*, 213 So. 3d 703, 715-717 (Fla. 2017).
[10] Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 12 (July 2018).

The data collected after Hurricane Irma showed that underground lines suffered minimal outages during storms. It should be noted, while underground facilities fared particularly well during Hurricane Irma, they still are susceptible to damage caused by uprooted trees and flooding, and these repairs typically take longer to complete.[11]

In response to data requests from PSC staff, the three largest IOUs[12] stated that approximately 40 percent of all distribution lines are underground and that the majority of recent underground projects were for new construction, rather than the conversion of overhead to underground. Since 2006, the installed underground facilities have increased by approximately 5,300 miles for the IOUs. The total amount of installed underground facilities during the past five years was approximately 2,200 miles for an average rate of 440 miles/year.[13]

In an effort to further the deployment of underground facilities, Duke Energy Florida and Florida Power and Light have initiated targeted undergrounding programs that: began in 2018, focused on historically poor performing lateral circuits[14] to replace several hundred miles of overhead lines, and were funded through current base rates. Duke Energy Florida's pilot program is scheduled over a period of ten years and Florida Power and Light's for three years. The goal for each program is to test different construction techniques and identify impediments to converting these targeted overhead facilities to underground.[15]

III. Effect of Proposed Changes:

The bill creates s. 366.96, F.S., to require a recovery clause for storm protection costs, provide for recovery of a return on capital costs (profit) through the clause, and potentially require the PSC's approval of recovery without consideration of the cost.

The bill makes legislative findings that it is in the public interest to promote storm protection activities that will reduce restoration costs and outage times and increase reliability. It creates the following definitions:

- "Public utility" or "utility" has the same meaning as in s. 366.02(1), F.S.,[16] except that the bill provides the new section of law does not apply to a gas utility.
- "Transmission and distribution storm protection plan" or "plan" means a plan for the overhead hardening of electric transmission and distribution facilities, undergrounding of electric distribution facilities, and vegetation management.
- "Transmission and distribution storm protection plan costs" means the reasonable and prudent costs to implement an approved transmission and distribution storm protection plan.

[11] *Id*., 30.
[12] Florida Power and Light, Duke Energy Florida, and Tampa Electric Company.
[13] Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 11-12 (July 2018).
[14] An IOU's distribution grid consists of feeder and lateral circuits. Feeders run outward from substations and can serve thousands of customers. Laterals branch out from feeders and are the final portion of the electric delivery system, serving smaller numbers of customers and typically associated with residential areas. Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 9-10 (July 2018).
[15] *Id*., 12.
[16] Section 366.02(1), F.S., defines "public utility" to mean "every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state." The definition also contains a list of exclusions from the definition.

- "Vegetation management" means the actions a public utility takes to prevent or curtail vegetation from interfering with public utility infrastructure. The term includes the mowing of vegetation, application of herbicides, trimming of trees, and removal of trees or brush near and around electric transmission and distribution facilities.

The bill requires each public utility to file, pursuant to the PSC rule and for the PSC review, a transmission and distribution storm protection plan that covers the utility's immediate 10-year planning period. The PSC must approve or modify the plan within six months after the public utility files the plan with the PSC. In doing so, the PSC must give due consideration to all of the following:

- Whether the plan enhances reliability, strengthens infrastructure, and reduces restoration costs and outage times in a prudent, practical and cost-efficient manner, including whether the plan prioritizes areas of lower reliability performance.
- Whether storm protection of transmission and distribution infrastructure is feasible, reasonable, or practical in certain areas of the utility's service territory, including in flood zones and rural areas.
- The estimated rate impact that will result from the implementation of the public utility's proposed transmission and distribution storm protection plan during the first three years addressed in the plan.

Each public utility must submit an updated transmission and distribution storm protection plan at least every three years after the PSC's approval of its most recent plan. The PSC must approve or modify the plan using the same considerations as applied to the original plan.

After a storm protection plan has been approved, proceeding with actions to implement the plan does not constitute and is not evidence of imprudence. The bill requires the PSC to conduct an annual proceeding to allow a public utility to recover prudently incurred transmission and distribution storm protection plan costs through a storm protection cost recovery clause. Once the PSC determines that the costs were prudently incurred, the costs are not subject to disallowance or further prudence review, except for situations involving fraud, perjury, or the intentional withholding of key information by the public utility.

The annual transmission and distribution storm protection plan costs that are recoverable through the storm protection cost recovery clause do not include costs recoverable through the public utility's base rates and must be allocated to customer classes pursuant to the rate design most recently approved by the PSC.

If a capital expenditure cost is recoverable through a storm protection cost recovery clause, the public utility may recover the annual depreciation on such cost, calculated at the public utility's current approved depreciation rates. The IOU may also recover a return on the depreciated balance of the costs calculated at the public utility's weighted average cost of capital using the return on equity last approved by the PSC in a rate case or settlement order.

The bill requires the PSC to adopt rules to implement and administer its provisions as soon as practicable after the effective date, but no later than October 31, 2019.

Furthermore, the bill requires the Division of Law Revision to replace the phrase "the effective date of this act" where it occurs in this act with the date this act becomes law.

In order to implement provisions within the act, the bill provides an appropriation for Fiscal Year 2019-2020 of $261,270 in recurring funds and $15,020 in nonrecurring funds from the Regulatory Trust Fund and authorizes four positions with associated salary rate.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Each IOU may have to wait until its currently applicable rate settlement agreement expires to use the storm protection cost recovery clause provisions of the bill. Both the federal and state constitutions prohibit passage or implementation of a law impairing the obligation of contracts.[17] A settlement agreement is a contract, and this prohibition would be applicable. The question, then, is whether the state's "significant and legitimate public purpose" outweighs the intrusion into the parties' bargain.[18] Allowing an IOU to recover capital expenses and a rate of return despite a rate freeze provision in a settlement agreement may violate the constitution's prohibition against impairment of contract.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[17] U.S. CONST. Art. I, s. 10 and FLA. CONST. Art. I, s.10.
[18] *See*, e.g., *Searcy, Denney, Scarola, Barnhart & Shipley, Etc., et al. v. State of Florida*, 209 So. 3d 1181 (Fla. 2017), 1192

B. Private Sector Impact:

Public utilities will incur unknown costs to develop and implement the transmission and distribution storm protection plans, which will be passed on to their customers. Customers will get the benefits of the energy grid improvements, but these benefits cannot be quantified with any certainty because they depend on many variables, such as what improvements are made and the details of future storms and outages.

C. Government Sector Impact:

The bill appropriates, for Fiscal Year 2019-2020, $261,269 in recurring costs and $15,020 in nonrecurring costs from the Regulatory Trust Fund, four positions and associated rate to implement the storm protection cost recovery clause within the bill.

The bill requires the PSC to adopt rules to implement and administer its provisions. The PSC will incur costs to adopt the required rules and to hold hearings to develop the disaster preparation and energy grid improvement plans. There will be additional costs to continue to monitor and periodically modify the plans.

The hearings held by the PSC will also involve the Office of Public Counsel (OPC),[19] which may incur costs should there be an increase in evidentiary hearings; however, these costs are indeterminate.[20]

VI. Technical Deficiencies:

Lines 58-62 and 66-71 define "transmission and distribution storm protection plan" to include the costs of "vegetation management" in a broadly inclusive manner. Existing storm hardening plans include vegetation management[21] and the resulting costs are included in existing base rate charges,[22] so it is unclear how future vegetation management costs would be recovered.

VII. Related Issues:

In their analysis on the bill, the Public Service Commission staff raised several concerns.[23]

Approval of a Storm Protection Plan versus a Storm Hardening Plan

The bill does not appear to require changes to the PSC's current review of storm hardening plans or the method of cost recovery for their implementation. The activities and costs incurred for storm hardening remain a consideration during rate cases.

[19] The Office of Public Counsel represents utility customers in PSC proceedings (s. 350.0611, F.S.).
[20] Conversation with J.R. Kelly, Public Counsel, Office of Public Counsel (April 2, 2019).
[21] Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 5 (July 2018).
[22] *Id.,* 12.
[23] Public Service Commission, *Senate Bill 796 2019 Agency Legislative Bill Analysis* (March 4, 2019) (on file with Senate Committee on Innovation, Industry, and Technology).

However, the PSC must address storm protection plans differently because implementation of the storm protection plan activities and associated costs will become subject to an annual clause. The PSC orders on storm protection plans may need to address in detail each activity, level of activity, management oversight, and other similar aspects in addition to the specific factors set forth in the bill.

Separating Storm Protection Plan Cost Recovery from Base Rate Revenues

According to the PSC, revenues from base rates are currently addressing the utility's costs for targeted undergrounding and all storm hardening activities. Utility activities and costs fluctuate year-to-year based in part on the utility's management decisions and external factors such as extreme weather events. Year-to-year fluctuation of costs that are addressed by base rate revenues is normal.

The PSC indicated that the intent of the bill appears to promote an incremental increase of the same types of activities and costs that are already described by the existing storm hardening plans. However, there is no direct mechanism to measure or establish exactly what level of activities and associated costs are included in current base rates because fluctuations are normal. Consequently, there could be tension in assessing the level of activity and ultimately the costs that may qualify for recovery through the clause.

Administrative Timeline

The PSC indicated that allowing only six months for the PSC to complete its review of a public utility's transmission and distribution storm protection plans, hold hearings, and make a determination of approval or modification is aggressive. The bill language is unclear whether the six month period includes the additional time after the PSC vote that may be necessary for issuance of a final order. It is unlikely that six months is reasonably sufficient for an intervening party to perform a rigorous review assessing the factors required by the bill and validating that the costs identified by the utility are not included in base rates. In March 2016, all five public utilities filed storm hardening plans and the PSC voted on the plans in December, reflecting an administrative timeline of nine months.

VIII. Statutes Affected:

This bill creates section 366.96 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on April 11, 2019:
The committee substitute:

- States that a utility is to file a petition for storm protection plan review and approval pursuant to commission rule.

- Deletes the current provision: "After a storm protection plan has been approved, costs to implement the plan are not subject to challenge unless the commission finds that certain costs were imprudently incurred".
- Adds to the existing requirement that the commission adopt rules to implement and administer the new law a requirement that the commission propose a rule for adoption as soon as practicable after the effective date, but no later than October 31, 2019.
- Requires the Division of Law Revision to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.
- Adds an appropriation, for the 2019-2020 fiscal year, of $261,270 in recurring funds and $15,020 in nonrecurring funds from the Regulatory Trust Fund to the Public Service Commission, and authorizes four positions with an associated salary rate of 180,583 for the purpose of implementing this act.
- Replaces the current effective date of July 1, 2019, with upon becoming a law.

CS/CS by Infrastructure and Security on March 20, 2019:
The committee substitute:

- Defines "public utility" or "utility" to have the same meaning as in 2. 366.02(1), F.S., except that the new section of law created by the bill does not apply to a gas utility.
- Removes the word "increased" before "vegetation management" in the definition of "transmission and distribution storm protection plan" or "plan."
- Removes the requirement that each public utility transmission and distribution storm protection plan be filed for the PSC's review as part of its storm hardening plan required by the PSC under s. 366.04(2)(c), F.S.
- Requires each public utility to file for the PSC's review, a transmission and distribution storm protection plan that covers the utility's immediate 10-year planning period, instead of a plan that covers 30 years.
- Revises the due consideration the PSC must give in approving or modifying a plan to include:
  - Whether the plan prioritizes areas of lower reliability performance, and
  - The estimated rate impact that will result from the implementation of the public utility's proposed transmission and distribution storm protection plan during the first three years addressed in the plan.
- Provides that after a storm protection plan has been approved, costs to implement the plan are not subject to challenge unless the PSC finds that certain costs were imprudently incurred, and proceeding with actions to implement the plan does not constitute and is not evidence of imprudence.
- Provides that costs that are recoverable through the storm protection cost recovery clause do not include costs recoverable through the public utility's base rates.
- Revises a reference to an authorized return on a "depreciated balance" to reference an authorized return on an "undepreciated balance."

CS by Innovation, Industry, and Technology on March 6, 2019:
The committee substitute:

- Requires each transmission and distribution storm protection plan to cover 30 years of planned improvements;

- Provides each plan should prioritize areas in order to generate the highest impact on system resiliency and efficiency and should focus on areas with large numbers of customers, high frequency outages, and lengthy outages;
- Deletes from the bill all provisions relating to federal corporate income tax benefits;
- Deletes from the bill the restriction on undergrounding (burying) of lines to no more than four percent of a utility's lateral distribution lines per year;
- Deletes from the bill the reference to ch. 120, F.S., in the provisions on Public Service Commission approval of a plan;
- Revises the provisions on updates plans to require that they address at least a 30-year period, require that the Public Service Commission approve or modify each updated plan, and require that it do so using the criteria used for approving or modifying the original plan; and
- Deletes the definitions of the terms commission and public utility, as those terms are already defined within ch. 366, F.S.

B. Amendments:

None.

Date: March 5, 2019

Agency Affected:	Public Service Commission	Telephone: 413.6524
Program Manager:	Katherine Pennington	Telephone: 413.6960
Agency Contact:	Katherine Pennington	Telephone: 413.6960
Respondent:		Telephone: 413.6092

RE: HB 797

I. SUMMARY:

HB 797 requires a Florida public utility to file a 30-year transmission and distribution storm protection plan for the Public Service Commission's (Commission or PSC) approval or modification. The bill sets out factors the PSC must consider in its approval process. The transmission and distribution storm protection plans must be filed on a three-year cycle, and be included in the storm hardening plans that the PSC already requires.[1] The Commission must approve or modify the plan within six months of filing.

The bill requires the PSC to administer an annual cost recovery clause that allows a public utility to recover prudently incurred implementation costs that are not included in the utility's base rates. While actions to implement an approved transmission and distribution storm protection plan are to be deemed prudent, any party may challenge the Commission's determination of prudence.

The bill takes effect July 1, 2019.

II. PRESENT SITUATION:

After the storm seasons of 2004 and 2005, the Commission established a requirement for wooden pole inspections, developed ten storm preparedness initiatives, and adopted rules for the purpose of requiring cost-effective strengthening of critical electric infrastructure. Section 25-6.0342, Florida Administrative Code (F.A.C.), requires investor owned electric utilities (IOUs) to file storm hardening plans for Commission review and approval at least every three years. These actions increase the ability of certain electric infrastructure to withstand extreme weather conditions, and to reduce restoration costs and outage time to end-use customers. By Order PSC-06-0144-PAA-EI, issued February 27, 2006, the Commission ordered each electric IOU to implement a cyclical eight-year wooden pole inspection program.

On April 25, 2006, the Commission issued Order PSC-06-0351-PAA-EI requiring:

- All Florida electric utilities, including municipal utilities and rural electric cooperative utilities, to provide a Hurricane Preparedness Briefing, which has since become an annual practice.
- Each electric IOU to file plans and estimated implementation costs for ten diverse storm preparedness initiatives that include vegetation management, increased utility coordination with local governments, and a formalized natural disaster preparedness and recovery program.
- Rulemaking to adopt distribution construction standards more stringent than the minimum safety requirements of the National Electrical Safety Code (NESC).
- Rulemaking to identify areas and circumstances where distribution facilities should be required to be constructed underground.

The Commission determined that the extreme wind-load standard of the NESC was more stringent than minimum safety requirements of the NESC. The Commission determined that it was appropriate to apply

[1] Rule 25-6.0342, Florida Administrative Code

this standard to new construction, major planned work including relocations, critical infrastructure facilities, and infrastructure located along major thoroughfares. For electric IOUs, the Commission implemented extreme wind-loading standard pursuant to Section 25-6.0342, F.A.C. The rule requires electric IOUs to file storm hardening plans for Commission review and approval at least every three years. The rule sets forth the requirements of the contents of the plan, and requires each electric IOU to consider extreme wind loading as well as mitigation of flood and storm surge damages for new construction. Consequently, each electric IOU's storm hardening plan reflects the individual circumstances and characteristics of that electric IOU.

With respect to underground construction, the Commission updated the rules governing electric IOU customer contributions for new or relocated electric facilities to allow inclusion of the estimated cost effects of storm hardening for overhead construction, as well as the estimated difference in storm restoration costs for overhead compared to underground electric systems. The updated rules can be found in Sections 25-6.064, 25-6.078, and 25-6.115, F.A.C.

These requirements were not required at the time for municipal electric utilities and rural electric cooperative utilities due to the Commission's limited jurisdiction. Instead, Section 25-6.0343, F.A.C., was adopted, which requires municipal and rural electric cooperative utilities to annually report information to the Commission that is comparable to the storm hardening plan requirements for the electric IOUs.

An electric IOU's storm hardening plan implementation and the associated costs are considered in the process that sets the electric IOU's base rate charges. If the next rate case is based on a projected test year, staff reviews the utility's projected annual storm hardening activities and estimated costs for reasonableness and cost-effectiveness. If approved by the Commission, these costs would be included in the new rates set for customers. Similarly, when considering cost recovery for restoration of electric service following a severe weather event, the Commission considers the actual costs to secure the incremental resources and labor required to repair and restore electric service.

Approval of the storm hardening plan does not constitute a finding that costs to implement the plan are prudently incurred. Utility implementation actions are monitored in conjunction with an annual review of each utility's transmission and distribution reliability performance. Each utility's cost to implement its storm hardening plan and its reliability performance are among the many factors considered by the PSC when setting the utility's base rates. In 2019, each of the five electric IOUs will be filing storm hardening plans consistent with the requirements of Rule 25-6.032, F.A.C.

Electric IOUs install either overhead or underground facilities based on the guidance of least cost electric distribution service memorialized in various rules and tariffs.[2] These rules explain that, when underground installation is requested, utilities are required to establish the cost differential between overhead and underground construction. The tariffs then apply the cost differential to situations addressing conversion of existing overhead and new construction. Over time, this cost differential has trended towards zero. Most new subdivision construction is underground. Developers of new subdivisions that request underground construction recover the cost differential through the sales prices of lots or new homes.

In 2018, both Florida Power & Light Company (FPL) and Duke Energy Florida, LLC., (DEF) began implementing targeted undergrounding programs. The impetus for the programs was a combination of factors, including: lessons learned from 2017 storm damage, efforts to reduce operational costs, and efforts to reduce customer outages during normal weather.[3] The utilities' objectives include learning how to more effectively engage customers and efficiently implement conversion to underground in established

[2] Rules 25-6.061, Relocation of Poles, 25-6.064, Contribution in Aid of Construction of Installation of New of Upgraded Facilities; 25-6.077, Installation of Underground Distribution System Within New Subdivisions; 25-6.078, Schedule of Charges; F.A.C.

[3] http://www.floridapsc.com/Files/PDF/Publications/Reports/Electricgas/UtilityHurricanePreparednessRestorationActions2018.pdf; http://www.floridapsc.com/Files/PDF/Agendas/InternalAffairs/Iapdfs/IA-08-07-18.pdf

communities. DEF's program is designed for a ten-year term and is estimated to convert 1,200 miles of overhead lines. DEF did not set a target expense level. FPL's program has a three-year term and is estimated to cost $100 million to convert 158 miles of overhead lines. Each utility's current base rate revenues are addressing the costs for the programs. Utility reports due in March 2019 are expected to present information about the status of these efforts and program trends.
Except for assessing the need for a specific new power plant or transmission line, Commission reviews of utility long-term plans focus on periods less than 30 years. Many factors can impact long-term plans, consequently these plans are reviewed either annually or on a program basis. For example, the Commission annually reviews utility 10-year site plans for new power plants and transmission facilities. An example of a program-based review cycle is utility energy efficiency and demand-side management goals that are reviewed and set every five years.[4]

Annually, the Commission administers five clauses addressing electric IOU costs. Clause recovery, instead of base rates recovery, is generally used for types of costs that can be more variable or provided for by statute. The following is a summary of the nature of costs recovered through clauses.

- The Fuel and Purchased Power Clause – The cost of fuel used to generate electricity, the cost to purchased power (electricity), as well as revenues from the sale of power to other electric utilities.
- The Capacity Clause – The cost of capacity (power plant or contracted capacity) and revenues from the sale of capacity to other electric utilities.
- The Environmental Cost Recovery Clause – The cost of compliance with new environmental requirements as provided by Section 366.8255, F.S.
- The Nuclear Cost Recovery Clause – The costs incurred to site, license, and construct a new nuclear power plant. Pursuant to Section 366.94, F.S., these costs are recovered through the Capacity Clause.
- Energy Conservation Cost Recovery Clause – The costs incurred to implement Commission approved energy and conservation programs.

III. EFFECT OF PROPOSED CHANGES:

The bill creates Section 366.96 F.S., Storm protection plan cost recovery. Public utilities must expand the storm hardening plans already required by the PSC to include transmission and distribution storm protection plans for PSC approval or modification. The PSC is required to make this determination within 6 months of the utility filing its plan.

In making its determination to approve or modify the filed plan, the PSC is required to consider whether the transmission and distribution storm protection plan:

- Enhances reliability, strengthens infrastructure, and reduces restoration costs and outage times in a prudent, practical and cost-efficient manner
- Prioritizes areas in order to generate the highest impact on system resiliency and efficiency
- Focuses on areas with large numbers of customers, high frequency outages, and lengthy outages
- Is feasible, reasonable, or practical in certain areas of the utility's service territory, including in flood zones and rural areas

The bill establishes that utility actions taken in implementing an approved plan are deemed prudent. However, a party may challenge the Commission's determination of prudence. This may be a departure from current practice of determining whether costs are prudently incurred.

The bill creates the storm protection cost recovery clause that enables an electric IOU to annually justify and recover its storm protection plan implementation costs. However, the cost must be stated separately from the utility's base rates and shall be allocated to customer classes based on the most recently approved PSC methodology. The bill language explains that the types of costs that can be recovered through the clause include depreciation and a return on the depreciated balance using the utility's

[4] Section 366.82(6), F.S.

weighted average cost of capital. This appears to be a departure from the current practice of recognizing a return on the undepreciated balance, but otherwise this is consistent with the mechanisms employed in other cost recovery clauses.

The PSC is required to adopt rules to implement and administer the requirements of Section 366.96, F.S.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

The annual storm protection cost recovery clause is estimated to require four additional positions: one senior attorney, two public utility analyst II, and one engineering specialist I.

	(FY 19-20) Amount / FTE	(FY 20-21) Amount / FTE	(FY 21-22) Amount / FTE
A. Revenues			
1. Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
2. Non-Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
B. Expenditures			
1. Recurring	$261,269/ 4 FTE	$269,269/ 4 FTE	$261,269/ 4 FTE
2. Non-Recurring	$15,020/ 0 FTE	$0/0 FTE	$0/0 FTE

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

Local governments that are customers of electric IOUs may experience an electric bill increase if the utilities seek recovery of costs that are incremental to those included in base rates.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

Electric IOUs will incur unknown costs to develop and implement transmission and distribution storm protection plans. These costs will be passed on to their customers through the storm protection cost recovery clause.

VII. LEGAL ISSUES:

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

None.

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

None.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

Yes. The Office of Public Counsel and other customer advocacy parties are likely to participate in an evidentiary hearing that requires a prudence determination.

D. Other:

None.

VIII. COMMENTS:

Administrative Timeline

Allowing only six months for the PSC to complete its review of an electric IOU's transmission and distribution storm protection plans and issue a determination of approval or modification is aggressive. The bill language is unclear whether the six month period includes the additional time after a Commission vote that may be necessary for issuance of a final order. It is unlikely that six months is reasonably sufficient for an intervening party to perform a rigorous review assessing the factors required by the bill. In March of 2016, all five electric IOUs filed storm hardening plans and the PSC voted on the plans in December, reflecting an administrative timeline of nine months.[5]

Each of the five utilities will be filing storm hardening plans pursuant to Rule 25-6.032, F.A.C., in early 2019. This act will take effect in July of 2019, in the middle of the process of evaluating these storm hardening plans. In addition, rules to administer the requirements of this bill will take time to develop. Consequently, the first opportunity for storm protection plans to be included in utility storm hardening plans, and for the storm protection cost recovery clause to be initiated, would be with the next set of filings due in 2022.

30-year Transmission and Distribution Storm Protection Plan

The bill requires utilities to file a 30-year plan for Commission approval or modification every three years. These plans may necessarily hinge on forecasts covering a potential variety of weather-related assumptions regarding the frequency and severity of extreme weather events as well as the amount of work a utility can accomplish annually in each of the 30 years. In this way, it is possible that the scope of planned activities and costs may be highly dependent on 30-year weather forecasting. This suggests that the 30-year plans may need to explore the potential for a high degree of variability in the level of utility activity and costs due to the uncertainty of forecasting weather events over a 30-year period.

The Commission's experience with high-cost, long-lived assets such as power plants and transmission lines has lead it to establish an annual review of utility 10-year plans. Review of the 10-year plan considers scenarios addressing changes in growth, economic factors, and market trends.

The Prudence Standard

The PSC's longstanding practice for determining prudence is "consideration of what a reasonable utility manager would have done, in light of the conditions and circumstances which were known, or should been known, at the time the decision was made."[6] This standard results in assessing

[5] Docket Nos. 160051-EI, 160105-EI, 160106-EI, 160107-EI, and 160108-EI.

[6] Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, I*n re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers $143 million*; Order No. PSC-08-0749-FOF-EI, issued November 12, 2008, in Docket No. 080009-EI, *In re: Nuclear cost recovery clause*; Order No. PSC-09-0783-FOF-EI, Docket No. 090009-EI, *In re: Nuclear cost recovery clause*; Order No. PSC-11-0547-FOF-EI, issued November 19, 2009, in Docket No.

the utility's actions and decisions that give rise to the costs incurred. If an action or decision was prudent, then the resulting costs were prudently incurred and recoverable from customers. However, if an action or decision was not prudent, then the resulting costs were not prudently incurred and are not recoverable from customers. Any substantially affected party may appeal a Commission order.

An example where the Commission addresses a utility's long-term plan and then subsequently conducts annual cost recovery clause proceedings is found in Sections 403.419(4)(e), and 366.93, F.S. After a petition for a determination of need has been granted, the right of a utility to recover any costs incurred shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing, that certain costs were imprudently incurred.

The bill states "[a]ction taken by a public utility for storm protection of transmission and distribution facilities pursuant to a commission-approved plan is deemed prudent, but a party may challenge the commission's determination of prudence." It is unclear whether the Commission's determination of prudence subject to challenge is to be a presumption of prudence in the Commission's order approving a storm protection plan, prior to any utility decisions or actions to actually incur plan implementation costs. To challenge and overturn a determination of prudence, a party must show that the utility engaged in fraud, perjury, or intentionally withheld key information. It is unclear how this standard is to be applied to a presumption of prudence in a Commission order approving a storm protection plan. The standard of review for determining prudence as expressed in the language of the bill may not be consistent with the PSC's longstanding practice.

Approval of a Storm Protection Plan versus a Storm Hardening Plan

The bill does not appear to require changes to the Commission's current review of storm hardening plans or the method by which the utility recovers the cost of implementation. The activities and costs incurred for storm hardening remain a consideration during rate cases.

However, the Commission must address storm protection plans differently because implementation of the storm protection plan activities and associated costs will become subject to an ongoing clause. Commission orders on storm protection plans many need to address in detail each activity, level of activity, management oversight, and other similar aspects in addition to the specific factors set forth in the bill.

Return on the Depreciated Balance versus Return on Undepreciated Balance

The bill describes costs that can be recovered through the clause. The costs include "a return on the depreciated balance." However, this is a departure from current accounting practice. Current accounting practice is to allow a utility to earn a return on the undepreciated balance. The undepreciated balance is the utility's remaining investment that has not been recovered. The depreciated balance is the sum of the annual amounts that the utility collects as depreciation expense through Commission established rates.

Separating Storm Protection Plan Cost Recovery from Base Rate Revenues

Revenues from base rates are currently addressing utility costs for targeted undergrounding and storm hardening programs and all storm hardening activities. Utility activities and costs fluctuate year-to-year based in part on the utility's management decisions and external factors such as extreme weather events. Year-to-year fluctuation of costs that are addressed by base rate revenues is normal.

The intent of the bill appears to promote an incremental increase of the same types of activities

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110009-EI, *In re: Nuclear cost recovery clause*; Order No. PSC-12-0650-FOF-EI, issued December 11, 2012, in Docket No. 120009-EI, *In re: Nuclear cost recovery clause*; Order No. PSC-13-0493-FOF-EI, issued October 18, 2013, in Docket No. 130009-EI, *In re: Nuclear cost recovery clause*

and costs that are already described by the existing storm hardening plans. However, there is no direct mechanism to measure or establish exactly what level of activities and associated costs are included in current base rates because fluctuations are normal. Consequently, there could be tension in assessing the level of activity and ultimately the costs that may qualify for recovery through the clause.

Public Utility Defined by Section 366.02, F.S.

Section 366.02(1), F.S., defines public utility to include electric and natural gas companies.

> "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state . . .

The bill requires each public utility to file a transmission and distribution storm protection plan as part of the storm hardening plan required by the Commission. The Commission does not require storm hardening plans from natural gas companies. It is unclear whether the bill is intended to place requirements on all public utilities including natural companies or just electric utilities as defined by Section 366.8255(1)(a), F.S.

> "Electric utility" or "utility" means any investor-owned electric utility that owns, maintains, or operates an electric generation, transmission, or distribution system within the State of Florida and that is regulated under this chapter.

Prepared by: Breman

Date: March 4, 2019

Agency Affected:	Public Service Commission	Telephone: 413.6524
Program Manager:	Katherine Pennington	Telephone: 413.6960
Agency Contact:	Katherine Pennington	Telephone: 413.6960
Respondent:		Telephone: 413.6092

RE: SB 796

I. SUMMARY:

SB 796 requires each of Florida's electric investor-owned utilities (IOUs) to file a transmission and distribution storm protection plan for the Public Service Commission's (Commission or PSC) approval or modification pursuant to Chapter 120, Florida Statutes. The bill sets out factors the PSC must consider in its approval process. The transmission and distribution storm protection plans must be filed on a three-year cycle, and be included in the storm hardening plans that the PSC already requires.[1] The Commission must approve or modify the plan within six months of filing.

The bill requires the PSC to administer an annual cost recovery clause that allows an electric IOU to recover prudently incurred implementation costs that are not included in the utility's base rates. While actions to implement an approved transmission and distribution storm protection plan are to be considered prudent, any party may challenge costs associated with such actions.

The bill requires the establishment of a storm protection reserve account to be funded with tax reform savings that would otherwise be returned to customers. Annually, the reserve balance is to be used to offset the revenue requirements of implementing an approved transmission and distribution storm protection plan that are included in the annual clause.

II. PRESENT SITUATION:

After the storm seasons of 2004 and 2005, the Commission established a requirement for wooden pole inspections, developed ten storm preparedness initiatives, and adopted rules for the purpose of requiring cost-effective strengthening of critical electric infrastructure. Rule 25-6.0342, Florida Administrative Code (F.A.C.), requires electric IOUs to file storm hardening plans for Commission review and approval at least every three years. These actions increase the ability of certain electric infrastructure to withstand extreme weather conditions, and to reduce restoration costs and outage time to end-use customers. By Order PSC-06-0144-PAA-EI, issued February 27, 2006, the Commission ordered each electric IOU to implement a cyclical eight-year wooden pole inspection program.

On April 25, 2006, the Commission issued Order PSC-06-0351-PAA-EI requiring:

- All Florida electric utilities, including municipal utilities and rural electric cooperative utilities, to provide a Hurricane Preparedness Briefing, which has since become an annual practice.
- Each electric IOU to file plans and estimated implementation costs for ten diverse storm preparedness initiatives that include vegetation management, increased utility coordination with local governments, and a formalized natural disaster preparedness and recovery program.
- Rulemaking to adopt distribution construction standards more stringent than the minimum safety requirements of the National Electrical Safety Code (NESC).
- Rulemaking to identify areas and circumstances where distribution facilities should be required to be constructed underground.

The Commission determined that the extreme wind-load standard of the NESC was more stringent than minimum safety requirements of the NESC. The Commission determined that it was appropriate to apply this standard to new construction, major planned work including relocations, critical infrastructure

[1] Rule 25-6.0342, Florida Administrative Code

facilities, and infrastructure located along major thoroughfares. For electric IOUs, the Commission implemented extreme wind-loading standard pursuant to Rule 25-6.0342, F.A.C. The rule requires electric IOUs to file storm hardening plans for Commission review and approval at least every three years. The rule sets forth the requirements of the contents of the plan, and requires each electric IOU to consider extreme wind loading as well as mitigation of flood and storm surge damages for new construction. Consequently, each electric IOU's storm hardening plan reflects the individual circumstances and characteristics of that electric IOU.

With respect to underground construction, the Commission updated the rules governing electric IOU customer contributions for new or relocated electric facilities to allow inclusion of the estimated cost effects of storm hardening for overhead construction, as well as the estimated difference in storm restoration costs for overhead compared to underground electric systems. The updated rules can be found in Rules 25-6.064, 25-6.078, and 25-6.115, F.A.C.

These requirements were not required at the time for municipal electric utilities and rural electric cooperative utilities due to the Commission's limited jurisdiction. Instead, Rule 25-6.0343, F.A.C., was adopted, which requires municipal and rural electric cooperative utilities to annually report information to the Commission that is comparable to the storm hardening plan requirements for the electric IOUs.

An electric IOU's storm hardening plan implementation and the associated costs are considered in the process that sets the electric IOU's base rate charges. If the next rate case is based on a projected test year, staff reviews the utility's projected annual storm hardening activities and estimated costs for reasonableness and cost-effectiveness. If approved by the Commission, these costs would be included in the new rates set for customers. Similarly, when considering cost recovery for restoration of electric service following a severe weather event, the Commission considers the actual costs to secure the incremental resources and labor required to repair and restore electric service.

Approval of the storm hardening plan does not constitute a finding that costs to implement the plan are prudently incurred. Utility implementation actions are monitored in conjunction with an annual review of each utility's transmission and distribution reliability performance. Each utility's cost to implement its storm hardening plan and its reliability performance are among the many factors considered by the PSC when setting the utility's base rates. In 2019, each of the five electric IOUs will be filing storm hardening plans consistent with the requirements of Rule 25-6.032, F.A.C.

Utilities install either overhead or underground facilities based on the guidance of least cost electric distribution service memorialized in various rules and tariffs.[2] These rules explain that, when underground installation is requested, utilities are required to establish the cost differential between overhead and underground construction. The tariffs then apply the cost differential to situations addressing conversion of existing overhead and new construction. Over time, this cost differential has trended towards zero. Most new subdivision construction is underground. Developers of new subdivisions that request underground construction recover the cost differential through the sales prices of lots or new homes.

In 2018, both Florida Power & Light Company (FPL) and Duke Energy Florida, LLC., (DEF) began implementing targeted undergrounding programs. The impetus for the programs was a combination of factors, including: lessons learned from 2017 storm damage, efforts to reduce operational costs, and efforts to reduce customer outages during normal weather.[3] The utilities' objectives include learning how to more effectively engage customers and efficiently implement conversion to underground in established communities. DEF's program is designed for a ten-year term and is estimated to convert 1,200 miles of overhead lines. DEF did not set a target expense level. FPL's program has a three-year term and is

[2] Rules 25-6.061, Relocation of Poles, 25-6.064, Contribution in Aid of Construction of Installation of New of Upgraded Facilities; 25-6.077, Installation of Underground Distribution System Within New Subdivisions; 25-6.078, Schedule of Charges; F.A.C.

[3] http://www.floridapsc.com/Files/PDF/Publications/Reports/Electricgas/UtilityHurricanePreparednessRestorationActions2018.pdf; http://www.floridapsc.com/Files/PDF/Agendas/InternalAffairs/Iapdfs/IA-08-07-18.pdf

estimated to cost $100 million to convert 158 miles of overhead lines. Each utility's current base rate revenues are addressing the costs for the programs. Utility reports due in March 2019 are expected to present information about the status of these efforts and program trends.

In 2018, the PSC established dockets to address the effects of the Tax Cuts and Jobs Act of 2017.[4] As of February 7, 2019, final orders have been issued in four of these cases addressing the unique situations applicable to the respective electric IOUs. The disposition of 2018 tax savings has varied. For example, in one case, tax savings are used to accelerate power plant depreciation, while another utility is required to use some of the tax savings to reduce the level of recovery through the fuel and purchased power clause, to recover storm restoration costs, and to replenish its storm damage reserve. The Commission's 2018 orders address the disposition of tax reform savings for years 2018, 2019, 2020, and beyond until the respective utility's base rates are reset.

Annually, the Commission administers five clauses addressing electric IOU costs. Clause recovery, instead of base rates recovery, is generally used for types of costs that can be more variable or provided by statute. The following is a summary of the nature of costs recovered through clauses.

- Fuel and Purchased Power Clause – The cost of fuel used to generate electricity, the cost to purchased power (electricity), as well as revenues from the sale of power to other electric utilities.
- Capacity Clause – The cost of capacity (power plant or contracted capacity) and revenues from the sale of capacity to other electric utilities.
- Environmental Cost Recovery Clause – The cost of compliance with new environmental requirements as provided for by Section 366.8255, F.S.
- Nuclear Cost Recovery Clause – The costs incurred to site, license, and construct a nuclear power plant. Pursuant to Section 366.94, F.S., these costs are recovered through the Capacity Clause.
- Energy Conservation Cost Recovery Clause – The costs incurred to implement Commission approved energy and conservation programs.

III. EFFECT OF PROPOSED CHANGES:

The bill creates Section 366.96, F.S., relating to public utility transmission and distribution storm protection plans. Transmission and distribution storm protection plans are plans for overhead hardening of electric transmission or distribution facilities, undergrounding of electrical distribution facilities and increased vegetation management.

The bill requires electric IOUs to expand the storm hardening plans already required by the PSC to include transmission and distribution storm protection plans, for PSC approval or modification pursuant to Chapter 120, F.S. Chapter 120, F.S., provides uniform procedures for the exercise of specified authority such as, but not limited to, meetings, hearings, workshops, rulemaking, rules, and maintenance of agency final orders. In general, the language as used in the bill could require the PSC to convene an evidentiary hearing to review the plans. The PSC is required to make its determination within 6 months of the utility filing its plan. A transmission and distribution storm protection plan may not include the undergrounding of more than 4 percent of the utility's lateral distribution lines per year.

In making its determination to approve or modify the filed plan, the PSC is required to consider whether a transmission and distribution storm protection plan:

- Enhances reliability, strengthens infrastructure, and reduces restoration costs and outage times in a prudent, practical, and cost-efficient manner
- It is feasible, reasonable, or practical in certain areas of the utility's service territory including but not limited to rural areas and flood zones

It is unclear what the terms "practical" and "cost-efficient" mean in the context of reviewing storm protection plans, as no definition of these terms is provided. The Commission traditionally evaluates the

[4] Docket Nos. 20180039-EI, 20180045-EI, 20180046-EI, 20180047-EI, and 20180048-EI.

"cost-effectiveness" of utility proposals based on an analysis of alternatives. The bill establishes that all utility actions taken in implementing an approved plan are considered prudent. However, a party may challenge the prudence of the costs associated with the actions. As discussed in the comment section, this may be a departure from how the Commission currently determines the prudence of utility actions and the associated costs.

The bill creates the storm protection cost recovery clause that enables a public utility to annually recover plan implementation costs. However, the costs must be shown not to be included in the utility's base rates and shall be allocated to customer classes based on the most recently approved PSC methodology. The bill language explains that the types of costs that can be recovered through the clause include depreciation and a return on the depreciated balance using the utility's weighted average cost of capital. As discussed in the comment section, this appears to be a departure from current practice of recognizing a return on the undepreciated balance. The bill describes the annual clause process as using projections and true-ups that reconcile the variances in the level of costs incurred compared to projections as well as variances between the level of projected and actual energy sales upon which the cost recovery factors are based. The interest rate used in the true-up process is based on the 30-day commercial paper rate. The clause process described in the bill is consistent with the methodology currently employed for other cost recovery clauses.

The bill creates a storm protection reserve to record annual tax savings that would otherwise be returned to customers. A positive balance in a utility's storm protection reserve must be used to fund the PSC approved annual revenue requirements of the utility's storm protection cost recovery clause and reduce the amount the utility would otherwise collect. If the reserve is insufficient to cover the projected revenue requirements, the Commission must establish a factor intended to recover storm protection costs not covered by the reserve. Any year-end surplus in the storm protection reserve must be returned to customers through the storm protection cost recovery clause.

The PSC is required to adopt rules to implement and administer the requirements of Section 366.96, F.S.

The bill takes effect on July 1, 2019.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

The annual storm protection cost recovery clause is estimated to require four additional positions: one senior attorney, two public utility analyst II, and one engineering specialist I.

(Amounts to be determined – will be the same as HB 797)

	(FY 19-20) Amount / FTE	**(FY 20-21) Amount / FTE**	**(FY 21-22) Amount / FTE**
A. Revenues			
1. Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
2. Non-Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
B. Expenditures			
1. Recurring	$261,269/ 4 FTE	$261,269/ 4 FTE	$261,269/ 4 FTE
2. Non-Recurring	$15,020	$0/0 FTE	$0/0 FTE

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

Local governments that are customers of public utilities may experience an electric bill increase if the utilities seek recovery of costs that are incremental to those included in base rates.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

Public utilities will incur unknown costs to develop and implement transmission and distribution storm protection plans that are incremental to storm hardening. These costs will be passed on to their customers through the storm protection cost recovery clause.

VII. LEGAL ISSUES:

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

None.

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

None.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

Yes. The Office of Public Counsel and other customer advocacy parties are likely to participate in annual evidentiary hearings.

D. Other:

None.

VIII. COMMENTS:

Administrative Timeline

Allowing only six months for the PSC to complete its review of a public utility's transmission and distribution storm protection plans, hold hearings, and make a determination of approval or modification is aggressive. The bill language is unclear whether the six month period includes the additional time after Commission vote that may be necessary for issuance of a final order. It is unlikely that six months is reasonably sufficient for an intervening party to perform a rigorous review assessing the factors required by the bill and validating that the costs identified by the utility are not included in base rates. In March of 2016, all five public utilities filed storm hardening plans and the PSC voted on the plans in December, reflecting an administrative timeline of nine months.[5]

[5] Docket Nos. 160061-EI, 160105-EI, 160106-EI, 160107-EI, and 160108-EI.

Return on the Depreciated Balance versus Return on Undepreciated Balance

The bill describes costs that can be recovered through the clause. The costs include "a return on the depreciated balance." However, this is a departure from current accounting practice. Current accounting practice is to allow a utility to earn a return on the undepreciated balance. The undepreciated balance is the utility's remaining investment that has not been recovered. The depreciated balance is the sum of the annual amounts that the utility collects as depreciation expense through Commission established rates.

The Prudence Standard

The PSC's longstanding practice for determining prudence is "consideration of what a reasonable utility manager would have done, in light of the conditions and circumstances which were known, or should have been known, at the time the decision was made."[6] This standard results in assessing the utility's actions and decisions that give rise to the costs incurred. If an action or decision was prudent then the resulting costs were prudently incurred and recoverable from customers. However, if an action or decision was not prudent, then the resulting costs were not prudently incurred and are not recoverable from customers.

The bill states "[a]ll actions taken in implementing the storm protection plan are considered prudent, but a party may challenge the prudence of the costs associated with such actions." The standard of review for determining prudence as expressed in the language of the bill may not be consistent with the PSC's longstanding practice. With a presumption that all utility actions are prudent, it is unclear how a party can challenge the prudence of costs associated with those actions.

Approval of a Storm Protection Plan versus a Storm Hardening Plan

Currently, Commission approval of storm hardening plans do not constitute a finding that costs to implement the plan are prudently incurred. The bill does not appear to require changes to the Commission's current review of storm hardening plans or the method of cost recovery for their implementation. The activities and costs incurred for storm hardening remain a consideration during rate cases.

However, the Commission must address storm protection plans differently because implementation of the storm protection plan activities and associated costs will become subject to an annual clause. Commission orders on storm protection plans may need to address in detail each activity, level of activity, management oversight, and other similar aspects in addition to the specific factors set forth in the bill.

Separating Storm Protection Plan Cost Recovery from Base Rate Revenues

Revenues from base rates are currently addressing the utility's costs for targeted undergrounding and all storm hardening activities. Utility activities and costs fluctuate year-to-year based in part on the utility's management decisions and external factors such as extreme weather events. Year-to-year fluctuation of costs that are addressed by base rate revenues is normal.

The intent of the bill appears to promote an incremental increase of the same types of activities and costs that are already described by the existing storm hardening plans. However, there is no direct mechanism to measure or establish exactly what level of activities and associated costs are included in current base rates because fluctuations are normal. Consequently, there could be

[6] Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, I*n re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers $143 million*; Order No. PSC-08-0749-FOF-EI, issued November 12, 2008, in Docket No. 080009-EI, *In re: Nuclear cost recovery clause*; Order No. PSC-09-0783-FOF-EI, Docket No. 090009-EI, *In re: Nuclear cost recovery clause*; Order No. PSC-11-0547-FOF-EI, issued November 19, 2009, in Docket No. 110009-EI, *In re: Nuclear cost recovery clause*; Order No. PSC-12-0650-FOF-EI, issued December 11, 2012, in Docket No. 120009-EI, *In re: Nuclear cost recovery clause*; Order No. PSC-13-0493-FOF-EI, issued October 18, 2013, in Docket No. 130009-EI, *In re: Nuclear cost recovery clause*

tension in assessing the level of activity and ultimately the costs that may qualify for recovery through the clause.

Four Percent of the Utility's Lateral Distribution Lines

The bill states that a "utility's transmission and distribution storm protection plan may not include the undergrounding of more than four percent of the utility's lateral distribution lines per year." It is unclear whether the four percent of lateral distribution lines refers to the total number of lines or just those that remain overhead. In other words, is a utility to calculate four percent of the total laterals in place and use that as an annual cap going forward, or is the utility only allowed to underground four percent of remaining overhead laterals in any given year?

It is also unclear whether the number of lateral lines or number of lateral miles should be used. Lateral lines can be short or long. Conversion of longer overhead laterals will tend to cost more than shorter laterals and require more time to complete.

The level of costs associated with the systemic conversion to underground that is contemplated by the bill is unknown at this time. However, assuming the four percent criteria is applied to overhead distribution line miles enables development of an estimated cost impact. For illustrative purposes, data FPL presented regarding its targeted underground program and its reported number of overhead lateral miles is used.[7,8]

FPL estimated its three-year targeted undergrounding project would cost $100 million and convert 158 miles of overhead lines. This results in an average project cost per mile of $632,911 ($100 million / 158 miles = $632,911 per mile). The $632,911 per mile estimate is on a total program basis. Therefore, FPL's project estimate is expected to represent all of its costs, including cost associated with coordinating with affected customers and other utilities that are attached to poles that will be removed along the length of the 158 miles. In 2018, FPL reported that as of year-end 2017 it had a total of 22,788 miles of overhead laterals.

Table 1 illustrates the effect of using the four percent criteria to establish a fixed cap on the maximum number of miles that can be included in FPL's plan in any given year. To set a cap on the number of miles, the total miles of overhead lateral lines of 22,788 is multiplied by four percent, equating to approximately 912 miles. Assuming an average cost of $632,911 per mile and an annual average target level of 912 miles provides an estimated cost of $577 million.

Table 1

Year	Beginning of Year Miles of Existing Overhead Lateral Lines	4 Percent per Year	Estimated Average Cost per Mile	Utility's Estimated Annual Costs (Millions)
1	22,788	912	$632,911	$577
10	14,580	912	$632,911	$577
26	0	0	0	$0

Table 2 shows the effect of using the four percent annually on the remaining miles of overhead lateral lines. In this scenario, the number of miles of existing overhead lateral lines is reduced in subsequent years by the number of miles determined by the annual four percent limit in the prior year. The number of miles that can be converted to underground as well as the annual cost is reduced for the first 25 years. However, after 25 years there will still be overhead lateral lines. It should also be noted that when applying the four percent criteria to subsequent years it may be appropriate to use the actual number of remaining overhead distribution lateral line miles.

[7] http://www.floridapsc.com/Files/PDF/Agendas/InternalAffairs/Iapdfs/IA-08-07-18.pdf
[8] http://www.floridapsc.com/ElectricNaturalGas/ElectricDistributionReliability

Table 2

Year	Beginning of Year Miles of Existing Overhead Lateral Lines	4 Percent per Year	Estimated Average Cost per Mile	Utility's Estimated Annual Costs (Millions)
1	22,788	912	$632,911	$577
10	15,781	681	$632,911	$399
26	8,212	329	$632,911	$266

Tax Reform Savings

The bill requires that any savings resulting from tax reform that would otherwise have been returned to customers must be recorded in a storm protection reserve account. While the bill appears to address a future situation where annual tax reform savings may be identified between a utility's rate cases, it does not address the current situation where the Commission has already held hearings and issued orders on matters concerning the 2017 change in federal taxes. Commission orders for four of the five investor-owned utilities address the disposition of known tax reform savings for years 2018, 2019, 2020, and beyond until the respective utility's base rates are reset. It is unclear whether the bill would require the Commission to revisit these decisions.

Public Utility Defined by Section 366.02, F.S.

Section 366.02(1), F.S., defines public utility to include electric and natural gas companies.

> "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state . . .

The bill states that "public utility" or "utility" has the same meaning as in s. 366.02(1). The bill requires each public utility to file a transmission and distribution storm protection plan as part of the storm hardening plan required by the Commission. The Commission does not require storm hardening plans from natural gas companies. It is unclear whether the bill is intended to place requirements on all public utilities including natural gas companies or just electric utilities as defined by Section 366.8255(1)(a), F.S.

> "Electric utility" or "utility" means any investor-owned electric utility that owns, maintains, or operates an electric generation, transmission, or distribution system within the State of Florida and that is regulated under this chapter.

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