

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Energy & Utilities
2 Subcommittee

3 Representative Mayfield offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (1) of section
8 120.52, Florida Statutes, is amended to read:

9 120.52 Definitions.—As used in this act:

10 (1) "Agency" means the following officers or governmental
11 entities if acting pursuant to powers other than those derived
12 from the constitution:

13 (a) The Governor; each state officer and state department,
14 and each departmental unit described in s. 20.04; the Board of
15 Governors of the State University System; the Commission on
16 Ethics; the Fish and Wildlife Conservation Commission; a
17 regional water supply authority; a regional planning agency; a

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18 multicounty special district, but only if a majority of its
19 governing board is comprised of nonelected persons; educational
20 units; and each entity described in chapters 163, 373, 380, and
21 582 and ss. ~~s.~~ 186.504 and 366.02(5).

22
23 This definition does not include a municipality or legal entity
24 created solely by a municipality; a legal entity or agency
25 created in whole or in part pursuant to part II of chapter 361;
26 a metropolitan planning organization created pursuant to s.
27 339.175; a separate legal or administrative entity created
28 pursuant to s. 339.175 of which a metropolitan planning
29 organization is a member; an expressway authority pursuant to
30 chapter 348 or any transportation authority or commission under
31 chapter 343 or chapter 349; or a legal or administrative entity
32 created by an interlocal agreement pursuant to s. 163.01(7),
33 unless any party to such agreement is otherwise an agency as
34 defined in this subsection.

35 Section 2. Subsection (19) is added to section 163.01,
36 Florida Statutes, to read:

37 163.01 Florida Interlocal Cooperation Act of 1969.—

38 (19) (a) Any entity created pursuant to this section that
39 supplies electricity through an interlocal agreement to its
40 member municipalities shall annually submit to the Public
41 Service Commission, the Public Counsel, and each member
42 municipality that participates in the electric power project an
43 independently prepared financial statement for each individual

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44 generation asset. The financial statement must include:

45 1. A balance sheet that reflects assets and liabilities
46 associated with each generation asset, including the plant in
47 service, accumulated additions and removals, net plant,
48 depreciation, asset and liability allocations, and any other
49 material asset and liability categories.

50 2. An income statement that reflects the operational and
51 financial activities of each generation asset for the reporting
52 period, including revenues, expenses, gains, and losses. Any
53 gains or losses from hedging activities associated with the
54 generation asset shall be separately itemized.

55 3. A statement of cash flows that identifies changes in
56 the generation asset's cash flows during the reporting period.

57 4. The current fair market value of each generation
58 asset. The current fair market value shall be determined
59 assuming the price that a willing buyer would pay a willing
60 seller for the generation asset, with neither party being under
61 any compulsion to buy or sell and both having reasonable
62 knowledge of relevant facts, and assuming all risk of ownership,
63 loss, and decommissioning, as applicable. The current fair
64 market value statement shall include the overall fair market
65 value of the generation asset as a whole and each member
66 municipality's equity position net of the entity's debt, based
67 on the current fair market generation asset value. The current
68 fair market value statement shall include, after considering the
69 market value of the generation assets, the net return on equity

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70 or the cost for any member municipality to withdraw from
71 membership in the entity.

72 (b) To serve as a member of the governing body of an
73 entity created pursuant to this section to supply electricity to
74 its member municipalities, each member of the governing body
75 must be an elected official from one of the entity's member
76 municipalities. Current members of a governing body of such an
77 entity who are not elected officials may continue to serve until
78 expiration of their terms but no later than July 1, 2016.

79 Section 3. Section 350.0611, Florida Statutes, is amended
80 to read:

81 350.0611 Public Counsel; duties and powers. ~~It shall be~~
82 ~~the duty of~~ The Public Counsel shall ~~to~~ provide legal
83 representation for the people of the state in proceedings before
84 the commission, ~~and~~ and in proceedings before counties pursuant to
85 s. 367.171(8), and in proceedings pursuant to s. 366.20
86 concerning rates and charges imposed by member electric
87 utilities as defined in s. 366.02. The Public Counsel shall have
88 such powers as are necessary to carry out the duties of his or
89 her office, including, but not limited to, the following
90 specific powers:

91 (1) To recommend to the commission or the counties, by
92 petition, the commencement of any proceeding or action or to
93 appear, in the name of the state or its citizens, in any
94 proceeding or action before the commission, the Division of
95 Administrative Hearings, or the counties and urge therein any

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96 position which he or she deems to be in the public interest,
97 whether consistent or inconsistent with positions previously
98 adopted by the commission, the division, or the counties, and
99 utilize therein all forms of discovery available to attorneys in
100 civil actions generally, subject to protective orders of the
101 commission, the division, or the counties which shall be
102 reviewable by summary procedure in the circuit courts of this
103 state;

104 (2) To have access to and use of all files, records, and
105 data of the commission, the member electric utilities as defined
106 in s. 366.02, or the counties available to any other attorney
107 representing parties in a proceeding before the commission, the
108 Division of Administrative Hearings, or the counties;

109 (3) In any proceeding in which he or she has participated
110 as a party, to seek review of any determination, finding, or
111 order of the commission, the Division of Administrative
112 Hearings, or the counties, or of any hearing examiner designated
113 by the commission or the counties, in the name of the state or
114 its citizens;

115 (4) To prepare and issue reports, recommendations, and
116 proposed orders to the commission, the Governor, and the
117 Legislature on any matter or subject within the jurisdiction of
118 the commission, and to make such recommendations as he or she
119 deems appropriate for legislation relative to commission
120 procedures, rules, jurisdiction, personnel, and functions; and

121 (5) To appear before other state agencies, federal

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122 agencies, and state and federal courts in connection with
123 matters under the jurisdiction of the commission, in the name of
124 the state or its citizens.

125 Section 4. Subsection (1) of section 366.02, Florida
126 Statutes, is amended, and subsections (4) and (5) are added to
127 that section, to read:

128 366.02 Definitions.—As used in this chapter:

129 (1) "Public utility" means every person, corporation,
130 partnership, association, or other legal entity and their
131 lessees, trustees, or receivers supplying electricity or gas
132 (natural, manufactured, or similar gaseous substance) to or for
133 the public within this state, including the Florida Municipal
134 Power Agency. However, ~~but~~ the term "public utility" does not
135 include either a cooperative now or hereafter organized and
136 existing under the Rural Electric Cooperative Law of the state;
137 a municipality or any agency thereof; any dependent or
138 independent special natural gas district; any natural gas
139 transmission pipeline company making only sales or
140 transportation delivery of natural gas at wholesale and to
141 direct industrial consumers; any entity selling or arranging for
142 sales of natural gas which neither owns nor operates natural gas
143 transmission or distribution facilities within the state; or a
144 person supplying liquefied petroleum gas, in either liquid or
145 gaseous form, irrespective of the method of distribution or
146 delivery, or owning or operating facilities beyond the outlet of
147 a meter through which natural gas is supplied for compression

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148 and delivery into motor vehicle fuel tanks or other
149 transportation containers, unless such person also supplies
150 electricity or manufactured or natural gas.

151 (4) "Florida Municipal Power Agency" means the legal
152 entity, or a successor entity, formed under s. 163.01 by
153 interlocal agreement among member municipalities to supply
154 electricity.

155 (5) "Member electric utility" means a municipal electric
156 utility that is also a member of the Florida Municipal Power
157 Agency.

158 Section 5. Subsection (1) of section 366.04, Florida
159 Statutes, is amended to read:

160 366.04 Jurisdiction of commission.—

161 (1) In addition to its existing functions, the commission
162 shall have jurisdiction to regulate and supervise each public
163 utility with respect to its rates and service, except for the
164 Florida Municipal Power Agency; assumption by it of liabilities
165 or obligations as guarantor, endorser, or surety; and the
166 issuance and sale of its securities, except a security which is
167 a note or draft maturing not more than 1 year after the date of
168 such issuance and sale and aggregating (together with all other
169 then-outstanding notes and drafts of a maturity of 1 year or
170 less on which such public utility is liable) not more than 5
171 percent of the par value of the other securities of the public
172 utility then outstanding. In the case of securities having no
173 par value, the par value for the purpose of this section shall

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174 be the fair market value as of the date of issue. The
175 commission, upon application by a public utility, may authorize
176 the utility to issue and sell securities of one or more
177 offerings, or of one or more types, over a period of up to 12
178 months; or, if the securities are notes or drafts maturing not
179 more than 1 year after the date of issuance and sale, the
180 commission, upon such application, may authorize the utility to
181 issue and sell such securities over a period of up to 24 months.
182 The commission may take final action to grant an application by
183 a public utility to issue and sell securities or to assume
184 liabilities or obligations after having given notice in the
185 Florida Administrative Register published at least 7 days in
186 advance of final agency action. In taking final action on such
187 application, the commission may deny authorization for the
188 issuance or sale of a security or assumption of a liability or
189 obligation if the security, liability, or obligation is for
190 nonutility purposes; and shall deny authorization for the
191 issuance or sale of a security or assumption of a liability or
192 obligation if the financial viability of the public utility is
193 adversely affected such that the public utility's ability to
194 provide reasonable service at reasonable rates is jeopardized.
195 Securities issued by a public utility or liabilities or
196 obligations assumed by a public utility as guarantor, endorser,
197 or surety pursuant to an order of the commission, which order is
198 certified by the clerk of the commission and which order
199 approves or authorizes the issuance and sale of such securities

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200 or the assumption of such liabilities or obligations, shall not
201 be invalidated by a modification, repeal, or amendment to that
202 order or by a supplemental order; however, the commission's
203 approval of the issuance of securities or the assumption of
204 liabilities or obligations shall constitute approval only as to
205 the legality of the issue or assumption, and in no way shall it
206 be considered commission approval of the rates, service,
207 accounts, valuation, estimates, or determinations of cost or any
208 other such matter. The jurisdiction conferred upon the
209 commission shall be exclusive and superior to that of all other
210 boards, agencies, political subdivisions, municipalities, towns,
211 villages, or counties, and, in case of conflict therewith, all
212 lawful acts, orders, rules, and regulations of the commission
213 shall in each instance prevail.

214 Section 6. Section 366.20, Florida Statutes, is created to
215 read:

216 366.20 Administrative review of member electric
217 utilities.—

218 (1) It is the intent of the Legislature that municipal
219 electric utility customers who receive service from a member
220 electric utility at a location outside the municipality's
221 boundaries may maintain administrative actions to determine
222 whether the member electric utility's rates and charges meet the
223 same standards for rates and charges that apply to public
224 utilities regulated under this chapter. If the rates and charges
225 are determined not to meet such legislative standards, the

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226 member electric utility shall adopt rates and charges that meet
227 the same standards for rates and charges that apply to public
228 utilities regulated under this chapter.

229 (2) As used in this section, the term "substantially
230 affected person" means an electric utility customer receiving
231 service from a member electric utility at a location outside the
232 municipality's boundaries.

233 (3) Each member electric utility shall give 60 days'
234 notice by publication in the Florida Administrative Register and
235 separately to the commission and to the Public Counsel of any
236 meeting that is subject to s. 286.011, any public meeting, any
237 hearing, or any workshop in which any change in its electric
238 rate is to be initially considered. The member electric utility
239 shall give at least 14 days' notice by publication in the
240 Florida Administrative Register and separately to the commission
241 and to the Public Counsel of each subsequent meeting that is
242 subject to s. 286.011, public meeting, hearing, or workshop in
243 which a rate change will be considered.

244 (4) Within 21 days after adoption or change of a rate or
245 charge by a member electric utility, a substantially affected
246 person or the Public Counsel may request a hearing before the
247 Division of Administrative Hearings to determine whether the
248 member electric utility's adoption or change of the rate or
249 charge complies with the standards for rates and charges that
250 apply to public utilities regulated under this chapter. The
251 parties to a hearing held pursuant to this section shall be the

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252 petitioning substantially affected person; the member electric
 253 utility; any other person who, as a matter of constitutional
 254 right, provision of statute, or provision of agency regulation
 255 is entitled to participate in whole or in part in the
 256 proceeding, or whose substantial interests will be affected by
 257 proposed agency action and who makes an appearance as a party;
 258 and the Public Counsel, who shall represent the interests of all
 259 substantially affected persons. The hearing shall be conducted
 260 pursuant to ss. 120.569 and 120.57(1), except that the order of
 261 the administrative law judge constitutes a final order that is
 262 subject to judicial review pursuant to s. 120.68.

263 Section 7. This act shall take effect July 1, 2016.

264 -----
 265
 266 **T I T L E A M E N D M E N T**

267 Remove everything before the enacting clause and insert:

268 A bill to be entitled

269 An act relating to municipal power regulation;
 270 amending s. 120.52, F.S.; revising the definition of
 271 the term "agency" for purposes of the Administrative
 272 Procedure Act to include certain municipal electric
 273 utilities; amending s. 163.01, F.S.; requiring certain
 274 entities created under the Interlocal Cooperation Act
 275 of 1969 to submit independently prepared financial
 276 statements for certain electric power projects to
 277 specified public entities; providing statement

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278 requirements; providing eligibility requirements for
279 membership on the governing body of certain entities
280 created under the Interlocal Cooperation Act of 1969;
281 amending s. 350.0611, F.S.; expanding the duties of
282 the Public Counsel to include proceedings involving
283 the Florida Municipal Power Agency; amending s.
284 366.02, F.S.; revising the definition of the term
285 "public utility" to include the Florida Municipal
286 Power Agency; defining the terms "Florida Municipal
287 Power Agency" and "member electric utility"; amending
288 s. 366.04, F.S.; exempting the Florida Municipal Power
289 Agency from regulation by the Public Service
290 Commission for purposes of rates and service; creating
291 s. 366.20, F.S.; creating a right for certain
292 municipal electric customers to maintain
293 administrative actions regarding electric rates and
294 service; requiring adoption of certain rates and
295 charges under certain circumstances; defining the term
296 "substantially affected person"; providing notice
297 requirements for a member electric utility when it
298 proposes changes to rates or charges; authorizing
299 substantially affected persons or the Public Counsel
300 to request an administrative hearing within a
301 specified time; specifying the parties to the hearing;
302 specifying hearing requirements; specifying that
303 orders of an administrative law judge are final;

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304 providing for judicial review of final orders;
305 providing an effective date.

306

307 WHEREAS, The Florida Municipal Power Agency is a joint-use
308 action agency created pursuant to a series of interlocal
309 agreements with the state's municipalities to finance, acquire,
310 contract, manage, and operate its own electric power projects or
311 jointly accomplish the same purposes with other public or
312 private utilities, and

313 WHEREAS, the Florida Municipal Power Agency is governed by
314 a board of directors, consisting of one board member from each
315 member municipality, which decides all issues concerning each
316 project except for the "All-Requirements" power supply project,
317 and

318 WHEREAS, the All-Requirements power supply project is
319 governed by an executive committee, with each All-Requirements
320 project member municipality that purchases power from the
321 project appointing one executive committee member, and

322 WHEREAS, the Auditor General conducted an operational audit
323 of the of Florida Municipal Power Agency and released Report No.
324 2015-165 to the Joint Legislative Auditing Committee on March
325 30, 2015, which included findings and recommendations, and

326 WHEREAS, the Auditor General found many of the Florida
327 Municipal Power Agency's hedging activities to be inconsistent
328 with other joint-use action agencies, leading to net losses of
329 \$247.6 million over the past 12 fiscal years, and

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330 WHEREAS, the Auditor General concluded that several of the
331 Florida Municipal Power Agency's personnel and payroll
332 administration activities may negatively affect future rates,
333 including the Chief Executive Officer's employment contract that
334 provides severance pay and lifetime benefits even if employment
335 is terminated for cause, and

336 WHEREAS, the Florida Municipal Power Agency did not
337 consistently follow its own procurement and competitive
338 selection policies, one of which may increase the cost of future
339 bond issues, and

340 WHEREAS, the Florida Municipal Power Agency's All-
341 Requirements project agreement to curtail peak-shaving
342 activities is primarily voluntary, relies on self-reporting, and
343 contains no penalties for noncompliance, and

344 WHEREAS, certain All-Requirements project contract
345 provisions relating to the withdrawal of members are ambiguous,
346 use a fixed discount rate rather than one based on current
347 capital costs, and do not provide for independent verification
348 by a withdrawing member, and

349 WHEREAS, even though the Florida Municipal Power Agency is
350 a governmental entity, many of the laws that apply to local
351 governments do not apply to the agency, and

352 WHEREAS, the Florida Municipal Power Agency is not subject
353 to any rate-setting authority, including by the Public Service
354 Commission, and

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355 WHEREAS, there exists a need to promote transparency and
356 consistency and to increase public understanding and confidence
357 in the operation of the Florida Municipal Power Agency by the
358 member municipalities and the public, including those electric
359 ratepayers who are not residents of the municipality supplying
360 electric power but who are subject to a municipality that is
361 receiving power from the agency, NOW, THEREFORE,