

HOUSE OF REPRESENTATIVES STAFF 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, As CS	Keating	Keating
2) Government Operations & Technology Appropriations Subcommittee	11 Y, 0 N, As CS	Helpling	Topp
3) Commerce Committee	21 Y, 0 N, As CS	Keating	Hamon

SUMMARY ANALYSIS

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 another cost recovery charge), including a return on prudent capital investments. Apart from base rates, cost recovery charges are generally established to address specific types of costs that are difficult to plan for. These separate charges are adjusted annually to ensure full recovery of all eligible costs that the PSC determines were prudently incurred by the IOU.

PSC rules require each IOU to file a storm hardening plan every three years with the objective of enhancing reliability and reducing restoration costs and outage times in a prudent, practical, and cost-effective manner. The activities outlined in each IOUs' storm hardening plan vary but typically include vegetation management, pole inspections, hardening of distribution feeders and laterals, and undergrounding. The PSC's approval of a storm hardening plan does not constitute a finding that costs to implement the plan are prudently incurred. Rather, 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. Undergrounding costs, however, typically are paid by the party who requests that facilities be installed underground.

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 (T&D) 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 such projects from all ratepayers. 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 funded at some level through current base rate revenues.

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 provides an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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.

Storm Hardening

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.

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 infrastructure⁵ 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
- 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

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.

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 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.

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.

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.

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 Proposed 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 increased 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 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;

¹⁷ *Id.* at 1-2.

- 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.

B. SECTION DIRECTORY:

Section 1. Creates s. 366.96, F.S., related to storm protection plan cost recovery.

Section 2. Provides appropriations and positions.

Section 3. Provides an effective date of upon becoming law.

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.

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.

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

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 and approval/modification. 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 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 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

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.

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

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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to adopt implementing rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill gives the PSC broad discretion to determine whether a T&D storm protection plan and the specific projects included therein are prudent for purposes of cost recovery. The PSC will be required to determine the prudence of actions proposed to occur over a 10-year planning period.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Energy & Utilities Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Provided a definition for "public utility" to clarify that the bill does not apply to gas utilities.
- Provided that each utility's transmission and distribution storm protection plan must cover the immediate 10-year planning period.
- Added that the PSC, when reviewing a transmission and distribution storm protection plan, must give consideration to, among other things:
 - Whether the plan prioritizes areas of lower reliability performance.
 - The estimated rate impacts over the first three years of the plan.
- Required PSC review and approval or modification of updates to each plan.
- Provided that costs to implement a PSC-approved plan are not subject to challenge unless the PSC determines that such costs were not prudently incurred.

- Provided that, after a PSC determination that costs were prudently incurred, such costs are not subject to disallowance or further prudence review except on the grounds of fraud, perjury, or intentional withholding of key information.
- Provided that the costs recoverable through an IOU's storm protection cost recovery charge may not include costs being recovered through the utility's base rates.
- Corrected a drafting error to indicate that a utility that is authorized to recover capital expenditure costs through its storm protection cost recovery charge may recover a return on the undepreciated balance of those costs.

On April 1, 2019, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides appropriations and four positions to implement the bill.

On April 18, 2019, the Commerce Committee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Replaced the term "public interest" with the term "state's interest" within the legislative findings.
- Removed a legislative finding that utilities should focus primarily on undergrounding distribution laterals.
- Expanded the definition of a T&D storm protection plan to include "increased resilience" of electric transmission and distribution facilities.
- Provided a broad description of what a T&D storm protection plan must address and directed the PSC to specify, by rule, the elements that must be included in each plan.
- Directed the PSC, in its review of a proposed T&D storm protection plan, to consider the estimated costs and benefits to the utility and its ratepayers.
- Provided that the PSC must determine whether it is in the public interest to approve, approve with modification, or deny a proposed T&D storm protection plan, or an update to such a plan.
- Clarified the process by which the PSC will review T&D storm protection plan costs on an annual basis.
- Required the PSC to provide the Legislature and Governor an annual report on the status of utilities' storm protection activities and specifies information to be included in the report.
- Required the PSC to propose implementing rules no later than October 31, 2019.
- Provided that the bill will take effect upon becoming law.

The staff analysis has been updated to reflect the committee substitute as passed by the Commerce Committee.