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 Fiscal Policy

BILL:	CS/SB 480
INTRODUCER:	Fiscal Policy Committee and Senator DiCeglie
SUBJECT:	Renewable Natural Gas
DATE:	February 16, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	**Favorable**
2.	Sanders	Betta	AEG	**Favorable**
3.	Schrader	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 480 amends s. 366.075, F.S., relating to Florida's experimental and transitional utility rates. The bill authorizes the Florida Public Service Commission (PSC) to establish an experimental mechanism to facilitate energy infrastructure investment in renewable natural gas (RNG).

The bill has an effective date of July 1, 2024.

II. Present Situation:

Florida Public Service Commission

The PSC is an arm of the legislative branch of government.[1] The role of the PSC is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[2] In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[3]

[1] Section 350.001, F.S.
[2] *See* Florida Public Service Commission (PSC), *Florida Public Service Commission Homepage*, available at http://www.psc.state.fl.us (last visited Feb. 15, 2024).
[3] PSC, *About the PSC*, available at https://www.psc.state.fl.us/about (last visited Feb. 15, 2024).

The PSC monitors the safety and reliability of the electric power grid[4] and may order the addition or repair of infrastructure as necessary.[5] The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities.[6] However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.[7] Municipally owned utility rates and revenues are regulated by their respective local governments. Rates and revenues for a cooperative utility are regulated by their governing body elected by the cooperative's membership.

There are four investor-owned electric utility companies (electric IOUs) in Florida: Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation (FPUC).[8] In addition, there are eight investor-owned natural gas utility companies (gas IOUs) in Florida: Florida City Gas, Florida Division of Chesapeake Utilities, FPUC, FPUC-Fort Meade Division, FPUC-Indiantown Division, Peoples Gas System, Sebring Gas System, and St. Joe Natural Gas Company. Of these eight gas IOUs, five engage in the merchant function servicing residential, commercial, and industrial customers: Florida City Gas, FPUC, FPUC-Fort Meade Division, Peoples Gas System, and St. Joe Natural Gas Company. Florida Division of Chesapeake Utilities, FPUC-Indiantown Division, and Sebring Gas System are only engaged in firm transportation service.[9]

Electric IOU and Gas IOU rates and revenues are regulated by the PSC and the utilities must file periodic earnings reports, which allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.[10]

Section 366.041(2), F.S., requires public utilities to provide adequate service to customers. As compensation for fulfilling that obligation, s. 366.06, F.S., requires the PSC to allow the IOUs to recover honestly and prudently invested costs of providing service, including investments in infrastructure and operating expenses used to provide electric service.[11]

Public Utilities under Chapter 366, Florida Statutes

Pursuant to s. 366.02(8), F.S., "public utility," as used in ch. 366, F.S., 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

[4] Section 366.04(5) and (6), F.S.
[5] Section 366.05(1) and (8), F.S.
[6] Section 366.05, F.S.
[7] Florida Public Service Commission, *About the PSC*, *supra* note 3.
[8] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, pg. 5, Apr. 2023 available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf (last visited Feb. 15, 2024).
[9] *Id.* Firm transportation service is offered to customers under schedules or contracts which anticipate no interruption under almost all operating conditions. *See* Firm transportation service, 18 CFR s. 284.7.
[10] PSC, *2023 Annual Report*, p. 6, (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2023.pdf) (last visited Jan. 11, 2024).
[11] *Id.*

public within this state." However, all of the following types of utilities are exempted from this definition:

- Rural electric cooperatives.
- Municipal electric and gas utilities.
- Dependent or independent special natural gas districts.
- Any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers.
- Any entity, selling or arranging for sales of natural gas, that neither owns nor operates natural gas transmission or distribution facilities within the state.
- A person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.

Experimental and Transitional Rates

Section 366.075, F.S., authorizes the PSC to approve experimental or transitional rates for the purpose of encouraging energy conservation or efficiency. This provision is used by the PSC to allow electric and natural gas utilities under its rate-regulatory jurisdiction to conduct limited scope pilot programs.

Such rates must be limited in geographic area and be for a limited period of time. The PSC may approve the area used in testing experimental rates and must specify in the order setting those rates the area that will be affected by those rates. The PSC can extend this time period "if it determines that further testing is necessary to fully evaluate the effectiveness of such experimental rates."

Renewable Energy

Section 366.91, F.S., establishes a number of renewable policies for the state. The purpose of these policies, as established in this section, states it is in the public interest to promote the development of renewable energy resources in this state.[12] Further, the statute is intended to encourage fuel diversification to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.[13]

The section defines "renewable energy" as:

> [E]electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid

[12] Section 366.91(1), F.S
[13] *Id.*

manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.[14]

Renewable Natural Gas

Natural gas is a fossil energy source which forms beneath the earth's surface. Natural gas contains many different compounds, the largest of which is methane.[15] Conventional natural gas is primarily extracted from subsurface porous rock reservoirs via gas and oil well drilling and hydraulic fracturing, commonly referred to as "fracking." RNG refers to biogas that has been upgraded to use in place of fossil fuel natural gas (i.e. conventional natural gas).[16]

Section 366.91, F.S., identifies sources for producing RNG as a potential source of renewable energy.[17] The section specifically defines renewable natural gas as anaerobically generated biogas,[18] landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater. Under the definition, such gas may be used as a transportation fuel or for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

Biogas used to produce RNG comes from various sources, including municipal solid waste landfills, digesters at water resource recovery facilities, livestock farms, food production facilities, and organic waste management operations.[19] Raw biogas has a methane content between 45 and 65 percent.[20] Once biogas is captured, it is treated in a process called conditioning or upgrading, which involves the removal of water, carbon dioxide, hydrogen sulfide, and other trace elements. After this process, the nitrogen and oxygen content is reduced and the RNG has a methane content comparable to natural gas and is thus a suitable energy source in applications that require pipeline-quality gas, such as vehicle applications.[21]

RNG that meets certain standards qualifies as an advanced biofuel under the Federal Renewable Fuel Standard Program.[22] This program was enacted by the United States Congress in order to

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[14] Section 366.91(2)(e), F.S.
[15] United States Energy Information Administration, *Natural gas explained*, Dec. 27, 2022, available at https://www.eia.gov/energyexplained/natural-gas/ (last visited Feb. 15, 2024)
[16] Environmental Protection Agency, *Landfill Methane Outreach Program (LMOP): Renewable Natural Gas*, available at https://www.epa.gov/lmop/renewable-natural-gas (last visited Feb. 15, 2024).
[17] Section 366.91(2)(e), F.S., defines "renewable energy," in part, as energy produced from biomass. Section 366.91(2)(b), F.S., defines "biomass" in part, as "a power source that is comprised of, but not limited to, combustible residues or gases from…waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas." RNG would be such a combustible gas.
[18] Section 366.91(2)(a) defines "biogas" as a mixture of gases produced by the biological decomposition of organic materials which is largely comprised of carbon dioxide, hydrocarbons, and methane gas.
[19] Environmental Protection Agency, *supra* note 16.
[20] *Id.*
[21] United States Department of Energy, *Renewable Natural Gas Production*, available at https://afdc.energy.gov/fuels/natural_gas_renewable.html (last visited Feb. 15, 2024).
[22] United States Department of Energy, *Renewable Fuel Standard*, available at https://afdc.energy.gov/laws/RFS#:~:text=The%20Renewable%20Fuel%20Standard%20(RFS,Act%20of%202007%20(EISA) (last visited Feb. 15, 2024).

reduce greenhouse gas emissions by reducing reliance on imported oil and expanding the nation's renewable fuels sector.[23]

Nationally, there were 538 landfill gas facilities in operation as of August 2022, and, as of May 2022, 330 anaerobic digester systems operating at commercial livestock farms in the United States.[24] Of the more than 16,000 wastewater treatment plants in operation in the United States, approximately 1,200 have anaerobic digesters on site, and 860 of those have the equipment to use their biogas on site.[25]

FPL Woodford Decision

In *Citizens of State v. Graham*, 191 So. 3d 897 (Fla. 2016), the Florida Supreme Court found the PSC lacked statutory authority to approve cost recovery for FPL's investment in a natural gas production facility in the Woodford Shale Gas Region in Oklahoma (Woodford Project). The Woodford Project involved exploration and production of natural gas and not the purchase of actual fuel—something that would generally be within the types of activities an electric utility would engage in. The Supreme Court cited to s. 366.02(2), F.S. (2014), which defines an "electric utility" as "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state," and found that the Woodford Project activities did not fall within this definition.[26]

However, in making its decision, the Supreme Court noted the following:

> This may be a good idea, but whether advance cost recovery of speculative capital investments in gas exploration and production by an electric utility is in the public interest is a policy determination that must be made by the Legislature. For example, in contrast to natural gas exploration and production, the Legislature has authorized the PSC to approve cost recovery for capital investments in nuclear power plants and energy efficient and renewable energy power sources. See ss. 366.8255; 366.92; 366.93, Fla. Stat. (2014). Without statutory authorization from the Legislature, the recovery of FPL's costs and capital investment in the Woodford Project through the fuel clause is overreach.[27]

Thus, while the Supreme Court determined that the PSC could not approve cost recovery for capital electric utility investments in natural gas production, it indicated that the Legislature has the authority to allow for such if it chose to do so.[28]

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[23] Environmental Protection Agency, *Renewable Fuel Standard Program*, available at https://www.epa.gov/renewable-fuel-standard-program (last visited Feb. 15, 2024).
[24] United States Department of Energy, *supra* note 21.
[25] *Id.*
[26] *Citizens of State v. Graham*, 191 So. 3d 897, 901-2 (Fla. 2016).
[27] *Id.* at 902.
[28] Florida Public Service Commission, *Bill Analysis for SB 1162* (Mar. 14, 2023) (on file with the Senate Regulated Industries Committee).

Biogas in Florida

According to the American Biogas Council, Florida has 70 operational biogas systems:
- 40 wastewater systems;
- 21 landfills;
- Five food waste systems; and
- Four manure processing locations.[29]

III. Effect of Proposed Changes:

Section 1 amends s. 366.075, F.S., to authorize the Public Service Commission (PSC) to establish an experimental mechanism to facilitate energy infrastructure investment in gas using the administrative proceeding structure created for storm protection plans and cost recovery in ss. 366.96, (7) and (8), F.S. As used in the section, "gas" has the meaning as the definition of renewable natural gas (RNG) provided in Section s. 366.91(2)(f), F.S.[30]

In establishing this mechanism, the PSC is to consider the intent provided in s. 366.91(1), F.S., for renewable energy. The gas infrastructure investment may include only such investments that collect, prepare, clean, process, transport, or inject gas for pipeline distribution.

The section provides that the PSC has the discretion to determine whether to use an annual proceeding to conduct such an experimental mechanism. The section also requires the PSC to propose a rule for adoption as soon as practicable, but not later than January 1, 2025.

Section 2 provides an effective date of July 1, 2024.

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.

[29] American Biogas Council at https://americanbiogascouncil.org/resources/state-profiles/florida/ (last visited Feb. 15, 2024).
[30] Section s. 366.91(2)(f), F.S. defines "renewable natural gas" as "anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater which may be used as a transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline."

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Public utilities will likely expand their use and sale of RNG, the costs of which will be authorized to be passed through to the utilities' customers.

C. Government Sector Impact:

The bill expands the responsibilities of the PSC. Though the PSC has not provided an analysis of this version of the bill, a similar provision is included in CS/SB 1624. In the PSC's analysis of the provision in that bill, the PSC stated that the workload may be handled with its existing level of full-time equivalent positions authorized for fiscal year 2023-2024.[31]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 366.075 of the Florida Statutes.

IX. Additional Information:

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

CS by Fiscal Policy on February 15, 2024:
The committee substitute deletes all provisions of the bill and adds a provision to establish an experimental mechanism to facilitate gas energy infrastructure investment using the storm protection plan administrative proceeding structure designated in ss. 366.96(7) and (8), F.S., and the legislative intent for renewable energy provided in s. 366.91(1), F.S. As used in the provision, "gas" means the definition of renewable natural

[31] Florida Public Service Commission, *Bill Analysis for CS/SB 1624*, Feb. 9. 2024 (on file with the Senate Regulated Industries Committee).

gas provided in s. 366.91(2)(f), F.S. It changes the relating to clause from "renewable natural gas" to "energy infrastructure investment."

B. Amendments:

None.