Implications of the Absence of a Use Tax on Utilities for Education Funding

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Background

Section 203.01, F.S., imposes a tax of 2.5 percent upon the gross receipts of every person that receives payment for any utility service, defined in s. 203.012, F.S, as electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power. Until 2000, utility service taxable under this law was defined to include telecommunications services, but ch. 2000- 260, L.O.F., specifically imposed a gross receipts tax on communications services, and telecommunications services were removed from the definition of utility service.

The gross receipts tax was created in 1931, and in 1963 the Florida Constitution was amended to place all gross receipts tax revenue in a trust fund for university and junior college capital outlay, and to allow bonds to be issued for this purpose. The Constitution was amended again in 1974 to allow gross receipts tax revenue to be bonded for public school capital outlay expenditures.

From 1931 until 1990 the gross receipts tax rate was 1.5 percent. In 1990 it was raised to 2.0 percent, on July 1, 1991, it was increased to 2.25 percent, and on July 1, 1992 it was increased to its present rate of 2.5 percent. Communications services are taxed at 2.37 percent.

Since 1990, deregulation of natural gas markets has allowed some consumers to make purchases of gas that may not be subject to the Florida gross receipts tax, depending on how the transactions are structured. Charges for transportation of natural gas purchased in non-taxable transactions are also not taxable. Florida companies that sell natural gas delivered to a Florida address are placed at a competitive disadvantage because their sales are taxed, causing consumers who buy from those companies pay higher prices for natural gas. Funding for public education capital outlay is also reduced by the purchase of untaxed natural gas by Florida consumers.

Florida has not experienced deregulation in the wholesale or retail electricity markets, although the issue has been studied and legislation was filed in 2000 to create a study commission on electricity industry issues. The bill did not pass, but Governor Bush used it as a model to create the Energy 2020 Study Commission by executive order. The Commission's purpose was to determine what Florida's electric energy needs will be over the next 20 years, and how best to supply those needs in an efficient, affordable, and reliable manner that will ensure adequate electric reserves. It appears that deregulation of the electric industry in Florida is not imminent, but when it does occur it will create a situation parallel to that in the natural gas industry, with unequal taxation of electricity bought in state and out of state.

In 2003 the Senate Committee on Finance and Taxation Interim Report 2003-124 recommended that the gross receipts tax statute be amended to impose the gross receipts tax on the cost price of imported electricity or natural or manufactured gas and add a per-unit tax on the distribution of electricity and natural or manufactured gas. The committee approved a bill (CS/SB 1774) under which electricity or gas delivered or transported (but not sold) by distribution companies would have been subject to a per-unit tax, with the tax rate adjusted periodically for the market price, to maintain comparable taxation of gas purchased in state and out of state. Electricity or gas purchased out of state that was not transported by Florida companies would have been subject to tax on its cost-price, including transportation costs. Sales or delivery of natural or manufactured gas to certain manufacturers, or use of these products by these manufacturers, would not have been subject to tax.

The bill also provided amnesty for unpaid gross receipts tax, penalties, and interest if:

- the sales were by persons not regulated by Chapter 366 of the Florida Statutes, which regulates public utilities;
- the sales agreement provided for transfer of title to the gas outside of Florida; or
- the sales were of transportation services associated with the sales of gas.

The amnesty was limited to sellers that registered with the Department of Revenue by July 1, 2003, and applied for amnesty within three months of that date.

Similar legislation was introduced in 2004. The committee substitute for SB 594 by the Committee on Finance and Taxation imposed the gross receipts tax on the cost price of imported electricity and added a per-unit tax on the distribution of electricity. It maintained the current gross receipts tax on electricity or natural or manufactured gas sold by in-state distribution companies, and clarified the current law position that every person that receives payment for any natural or manufactured gas for light, heat, or power must report the total amount of gross revenue from these sales to the Department of Revenue and pay the appropriate gross receipts tax.

Under this bill, electricity delivered or transported (but not sold) by distribution companies would have been subject to a per-unit tax, with the tax rate adjusted periodically for the market price. This would have maintained comparable taxation of electricity purchased from in state and out of state. Electricity purchased from out of state that is not transported by Florida companies would have been subject to tax on its cost-price, including transportation costs. Sales or delivery of natural or manufactured gas to a person eligible for an exemption under s. 212.08(7) (ff), F.S., (primarily manufacturers and processors) for use as an energy source would not have been subject to tax. (Natural or manufactured gas used as a raw material is not subject to gross receipts tax under current law.)

This committee substitute provided forgiveness for unpaid gross receipts tax, penalties, and interest which may have been due on the sale or transportation of natural gas for consumption in this state if the sales were made prior to July 1, 2004, and:

- the sales were by persons not regulated by Chapter 366 of the Florida Statutes, which regulates public utilities;
- the sales agreement provided for transfer of title to the gas outside of Florida; or
- the sales were of transportation services associated with the sales of gas.

The forgiveness, which was called amnesty in the bill, was limited to sellers that registered with the Department of Revenue by July 1, 2004, and applied for forgiveness within three months of that date.

It was determined by the revenue estimating conference that this bill would have reduced gross receipts tax revenue. The revenue impact of the tax forgiveness was estimated to be ($1.5) million nonrecurring for FY 2004-05 and ($2.9) for FY 2005-06. The recurring impact of exempting natural gas purchases by manufacturers was estimated to be ($1.4) million.

Methodology

Staff collected information on changes in national and Florida natural gas markets since deregulation was introduced, and used data from the Public Service Commission, the Florida Municipal Natural Gas Association, and certain municipal gas utilities to determine the amount of natural gas transported to Florida consumers but not sold by local distribution companies. Current and historic data on natural gas prices, and the amount of gas delivered for the account of others was taken from the Energy Information Administration/Natural Gas Monthly. This information, plus gross receipts tax revenue history and forecasts, was used to estimate the magnitude of tax loss resulting from these untaxed purchases and its impact on PECO funding.

Findings

Gross Receipts Tax and Deregulation in the Utilities Industry

When the gross receipts tax was enacted, and for most of its history, utility services were provided by regulated monopolies. The gross receipts tax was a stable revenue source, and collection of the tax from utility providers was efficient and easy to administer. Even though the statutory imposition of the tax is on the person who receives payment for any utility service, it is understood that the tax is passed on to consumers of the utility services, and the law provides for separately stating the tax on the customer's bill. (S. 203.01(4), F.S.) The law also provides for taxation of electricity produced by cogeneration or by small power producers, or any person other than a cogenerator or small producer who produces electrical energy for his or her own use. (S. 203.01(1) (d) and (e), F.S.)

Retail sales of electricity have not been deregulated in Florida, and are unlikely to be deregulated in the immediate future, but deregulation in the natural gas industry has made it possible to purchase natural gas outside the state for use in the state since 1990, and these purchases have become a significant part of the market. Gross receipts tax has not been collected on these sales, and this creates significant problems:

- There is unequal treatment of natural gas users, with those who purchase from local distribution companies paying a price that includes tax and those who purchase from outside the state paying a lower, untaxed price;
- Local distribution companies are disadvantaged compared to out-of-state suppliers; and
- Funding for school construction is reduced.

Deregulation of U.S. Natural Gas Markets

When the gross receipts tax was enacted, and for many years thereafter, natural gas was provided by local distribution companies (LDCs), which were monopoly providers in their markets and which were regulated by the states where they were doing business. Prices charged by these businesses were set by public service commissions, and competition was limited. Deregulation of natural gas markets began in 1978 when, responding to problems of interstate natural gas shortages, Congress enacted the Natural Gas Policy Act and began the process of deregulating the price of natural gas. This law provided for the phased decontrol of natural gas wellhead prices. Consumption of gas increased as prices fell, but the act did little to promote and expand access to the wellhead market for gas.

In 1985, the Federal Energy Regulatory Commission (FERC) developed new regulations for interstate pipelines, which changed their role in the delivery of natural gas. Order No. 436 instituted open-access, non-discriminatory transportation of natural gas. It allowed downstream customers to buy gas from entities other than the pipeline owners. The deregulation of wellhead prices was completed when Congress enacted the Wellhead Decontrol Act of 1989. The House Committee on Energy and Commerce Report stated that FERC's current competitive open access pipeline system should be maintained, and urged FERC to improve "the competitive structure in order to maximize the benefits of decontrol." [1]

Order No. 436 allowed natural gas pipelines to phase in transportation service, and most took advantage of the opportunity. In 1992, FERC issued Order No. 636 which mandated open access by requiring the separation of natural gas sales and transportation services. Pipelines could no longer sell gas. The purpose of these orders was to end the pipelines' monopoly of natural gas and bring gas prices in line with cost of production.

The market for natural gas comprises producers, pipeline companies, storage companies, LDCs, marketers, and consumers. Some companies in the industry perform more than one function, but it is possible to segregate the market by functions typically provided by each market participant.[2]

Producers are firms that explore for new gas resources and produce gas from existing sources. The market for natural gas purchased from producers at the wellhead is unregulated; producers negotiate prices and delivery terms with final consumers or with other firms, such as marketers and LDCs. Some natural gas moves directly to transmission pipelines, the rest is processed to remove noxious gases and separate out hydrogen and light hydrocarbon liquids for sale to other industries.

Pipeline companies connect to the natural gas production facilities or processing plants and transport gas to their customers. Pipeline companies do not own the gas they deliver, but instead sell the service of transporting gas from suppliers to storage firms, which have developed facilities to store natural gas for later use, marketers, LDCs, or end-use customers.

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[1] *United Distribution Companies v. Federal Regulatory Commission,* 88F. 3d 1105, 1125 (U.S. App. D.C. 1996), citing H.R. Rep. No. 29, 101st Session. 6 (1989), as cited in FL PSC Memorandum dated Feb. 3, 2000 re Docket No. 96075-GU – Proposed Rule 25-7.0335, F.A.C.

[2] *U.S. Natural Gas Markets: Recent Trends and Prospects for the Future,* (Washington, D.C., Energy Information Administration Office of Integrated Analysis and Forecasting, May 2002) p. 2.

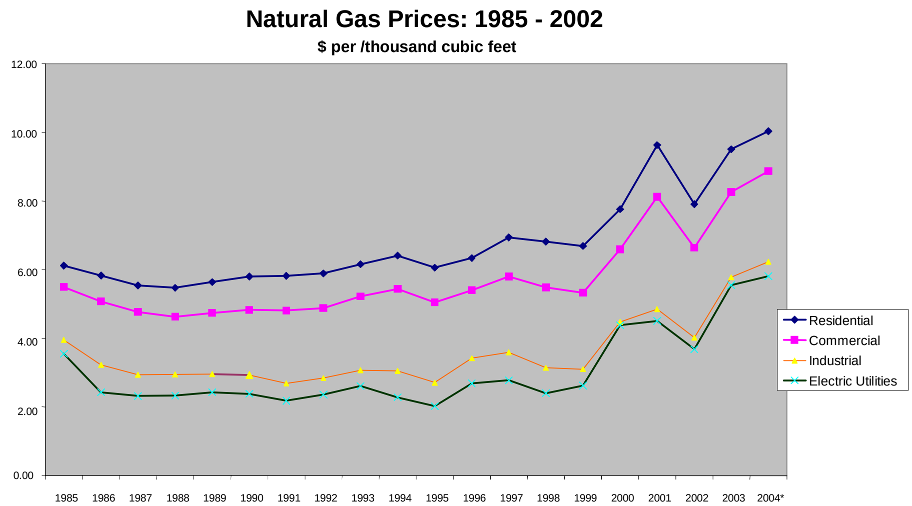
LDCs are companies that control local natural gas distribution facilities. Historically they were local monopoly natural gas utilities whose rates were regulated by state public utility commissions. Since deregulation, they may function as transporters of gas owned by end-use customers, or they may be both sellers and transporters of natural gas. Since 2003, two former LDCs have stopped selling natural gas and have switched all of their customers to transportation service. (See Recent Developments in Natural Gas Deregulation in Florida, below.) Transportation customers may also choose to have the LDC to provide scheduling, fuel acquisition, and delivery functions (the "merchant" function) for them.

Marketers are unregulated firms that typically perform the "merchant" function for natural gas customers, usually offering a package of supply, storage, and pipeline delivery services. The number of marketers has increased substantially since FERC Order 636 separated the merchant and transportation functions. Marketers may be affiliated with pipeline companies, LDCs, or producers.

Natural gas consumers include industrial, commercial, and residential users and electricity generation facilities. The table shows Florida consumption by sector since 1997.

Sector	**Market Share**					
	1997	1998	1999	2000	2001	2002
Industrial	27.39%	24.51%	24.41%	19.68%	17.74%	14.16%
Commercial	7.70%	7.57%	6.60%	9.01%	9.23%	8.08%
Residential	2.75%	2.83%	2.51%	2.84%	2.91%	2.19%
Electricity Generation	62.17%	65.09%	66.49%	68.47%	70.11%	75.57%

Natural gas prices vary by the category of consumer, with residential customers paying the most for gas, followed by commercial and industrial customers. Natural gas purchased to generate electricity is generally least expensive. The chart below shows average U.S. natural gas prices for each category since 1985.



Source: Energy Information Administration/Natural Gas Monthly August 2004

Deregulation of Natural Gas Sales in Florida

In 1990, the Florida Public Service Commission began to accommodate new competition for local distribution companies in supplying end-users in local markets by approving the purchase of natural gas by an end user from a source other than its local distribution company. It became possible for large users of natural gas to purchase from outside the state through a marketer. The end-user paid the marketer for the gas and separately paid a local distribution company to deliver it.

In 1996, a rule was proposed by the PSC to require Florida's investor-owned natural gas companies to offer transportation service to all nonresidential customers. In 2000, Rule 25-7.0335, F.A.C., was adopted. It provided all non-residential natural gas customers with the option of purchasing gas directly from a supplier other than the utility serving the territory where the customer is located. It also allows utilities to offer transportation of natural gas to residential customers when it is cost-effective to do so.

The market response to these regulatory changes has been dramatic. In 1990, seven percent of all natural gas provided by investor-owned companies was transported but not sold by these companies. By 1994, 55 percent of all gas provided by these companies was transported, and this figure rose to 69 percent by 2003. There are seven investor-owned natural gas utilities in Florida. In 2003 four of them offered transportation as well as sales, and two offered only transportation. Transported gas accounted for 69 percent of total throughput.

Natural Gas Transported by Investor-Owned Utilities

	Total Volume of Natural Gas Usage (Therms)	Percentage of Total Usage Transported
1988	681,939,592	0.00%
1989	730,035,555	0.00%
1990	781,345,470	7.04%
1991	864,473,469	32.77%
1992	900,605,886	42.97%
1993	918,589,581	48.49%
1994	1,087,701,978	55.20%
1995	1,305,351,729	57.40%
1996	1,165,824,080	55.35%
1997	1,223,889,734	61.34%
1998	1,224,890,859	60.87%
1999	1,382,389,846	67.47%
2000	1,460,828,983	69.45%
2001	1,430,225,897	71.73%
2002	1,625,051,528	73.96%
2003	1,560,700,762	68.74%

Source: FL PSC

At least 7 of Florida's 31 publicly-owned natural gas companies provide transportation services for some customers. In FY 2001-02, More than 41 million therms (one therm = 100,000 cubic feet) of natural gas were transported by these public utilities.[3]

Recent Developments in Natural Gas Deregulation in Florida

In the spring of 2002, the Florida division of Chesapeake Utilities Corporation and Indiantown Gas Company petitioned the PSC to allow them to convert all remaining sales customers to transportation service and to exit the merchant function. When Rule 25-7.0335 was adopted by the PSC in 2000, the Florida Division of Chesapeake Utilities Corporation offered transportation service to non-residential customers that accounted for approximately 70 percent of the

[3] Based on a survey of members of the Florida Municipal Natural Gas Association

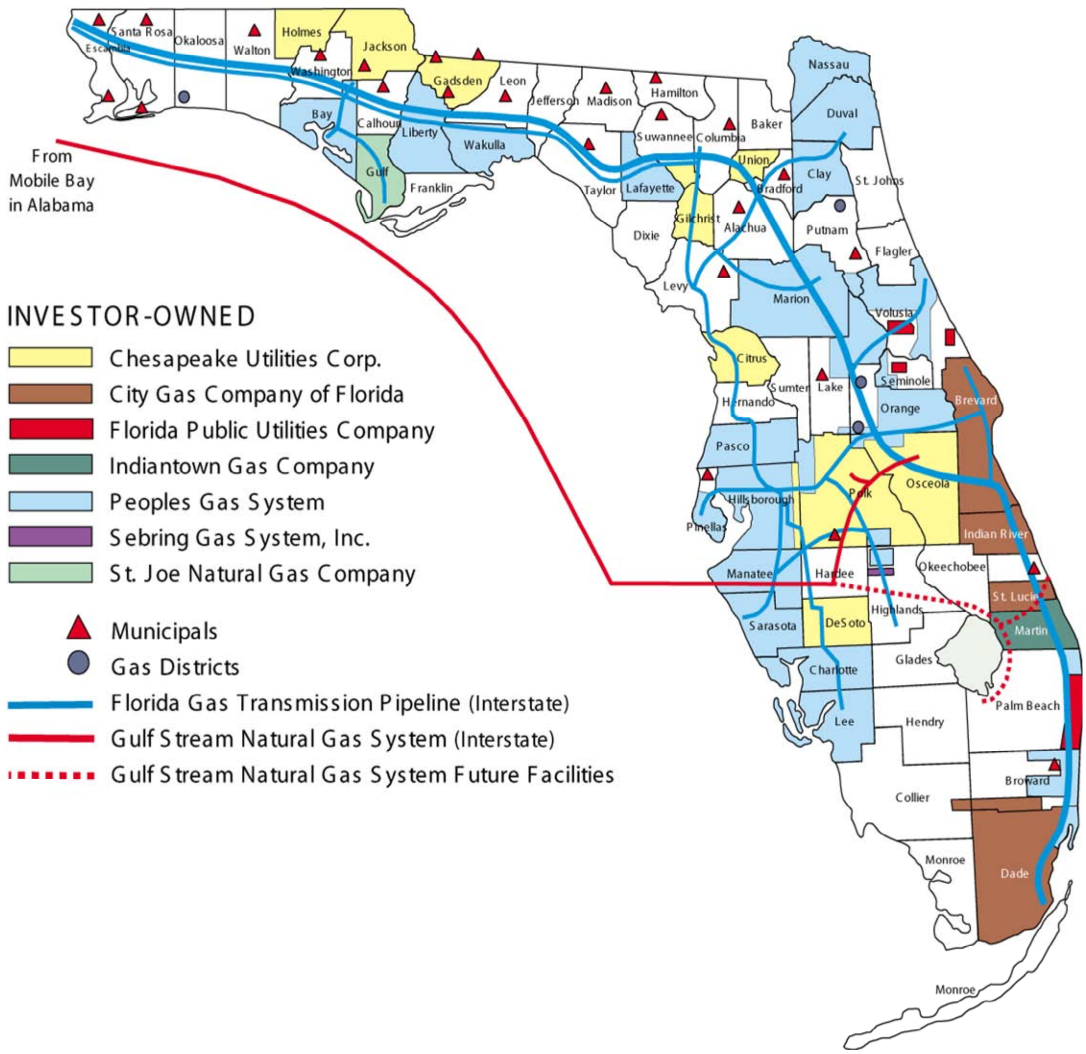
company's total system throughput. By the end of 2001, more than 96 percent of the company's total throughput of natural gas was transported but not sold by the company. The company's remaining sales customers included 663 low-usage non-residential customers (representing 2.5 percent of total throughput) and 9,587 residential customers (representing 1.5 percent of throughput). At this small level of sales service, the company asserted that it would be increasingly difficult to sell gas at competitive prices. Indiantown Gas Company transported 30 percent of its total system throughput at that time.

Under the proposals, a Transitional Transportation Service would be established to facilitate the conversion of the remaining sales service customers to aggregated customer pools. These pools would be administered by qualified gas marketers, who would be capable of combining the gas supply requirements of customers in the pools with other customers served by the Pool Manager, both on and off Chesapeake's and Indiantown's distribution systems. The proposals suggested a three-phase process, beginning with a two-year period during which each company's sales customers would receive gas supply service through one qualified Pool Manager selected by the company, and allowing the customers to choose one of two pricing options: a monthly indexed price or a fixed price. The second phase would expand the choices available, and in the final phase customers would be free to choose any Pool Manager authorized to deliver gas on the companies' distribution systems, and prices and other terms would be negotiated with no constraints imposed by the companies.

In November 2002, the PSC approved the first phase of the petitions, and authorized Chesapeake and Indiantown to convert all remaining sales customers to transportation service and to terminate merchant function as an experimental and transitional pilot program. The companies are required to provide interim reports after the first year of the program as well as final reports at the end of two years.

STATE OF FLORIDA

Natural Gas Utilities



Source: FL PSC

Natural Gas Deregulation and Its Effect on Gross Receipts Tax Revenue

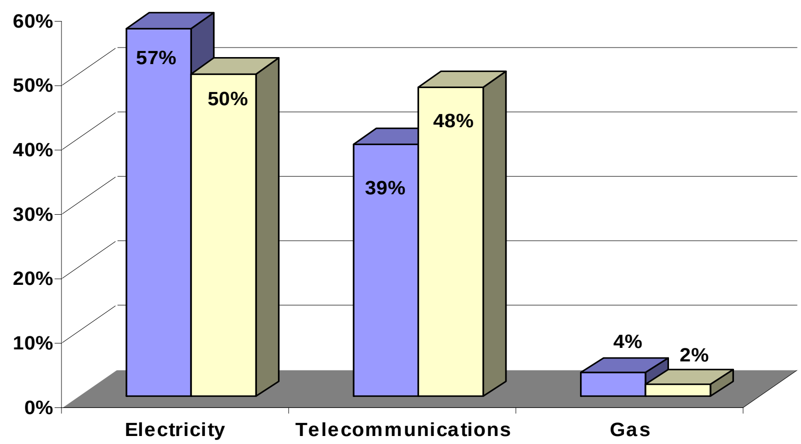
Until 1990, all natural gas purchases in Florida were made from local distribution companies (LDCs) that owned the distribution system through which the gas was delivered to the final consumer. The origin of the gas did not matter to the final consumer, because a Florida gas company bought the gas that flowed through its transportation system and resold it to the consumer. The price of natural gas included any costs associated with transporting it to the end-user, and gross receipts tax was calculated on the entire cost of the delivered product. Gross receipts tax was imposed on the sellers of utility services, including LDCs.

Changes adopted in 1990 allowed Florida customers to purchase gas directly from sellers other than LDCs. Industrial users of natural gas quickly switched to purchasing from other sellers. In these transactions, the purchase of gas was often not subject to gross receipts tax because the purchaser acquired the gas outside of Florida. A 1992 Technical Assistance Advisement by the Department of Revenue stated that the gross receipts tax was not applicable to charges for transportation services only, because the statute imposes a tax on persons who receive payment for a utility service, and transportation does not meet the statutory definition of utility service. Because of changes due to deregulation, the gross receipts tax base has been significantly reduced. Since 1990 the amount of natural gas delivered by LDCs but not sold by them has grown to about 70 percent of all gas supplied by privately-owned companies.

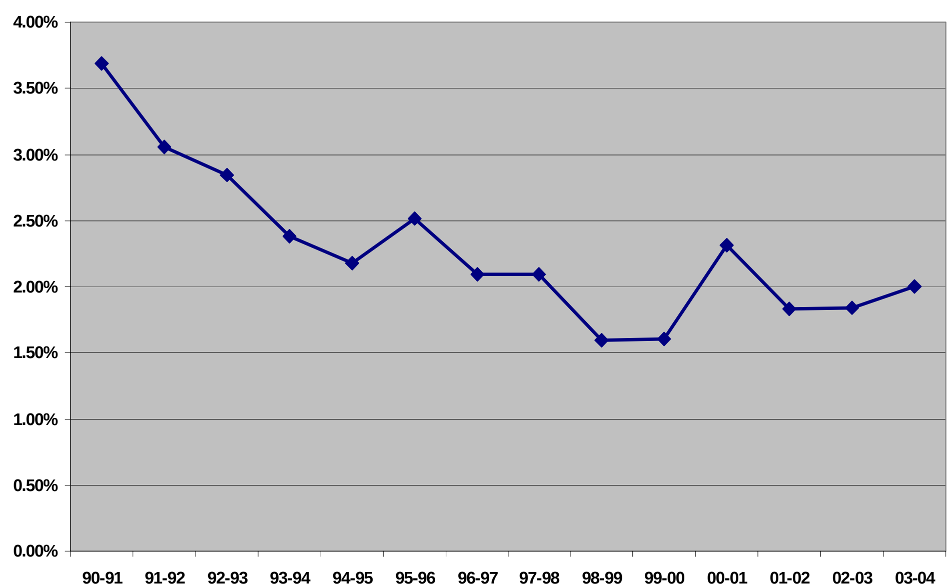
Purchase of natural gas from sellers other than LDCs is no longer limited to large end-users. Rule 25-7.0335, F.A.C., described above, requires Florida's investor-owned natural gas utilities to offer transportation service to all non-residential customers and authorizes the transportation of natural gas to residential customers when it is cost effective to do so. In 2003, 65 percent of natural gas used for commercial purposes in Florida was not purchased from LDCs, and in 2002, 97 percent of industrial-use gas was not purchased from LDCs.

The effect of changes on the way natural gas is sold in Florida can be seen in the state's gross receipts tax revenue history. Total gross receipts tax revenue has grown by almost 312 percent since 1985-86 (including rate increases in 1990, 1991, and 1992), but receipts from natural gas have grown much more slowly. In FY 1990-91 gross receipts tax revenue attributable to natural gas was 3.7 percent of total collections. This percentage has trended downward since then, and by FY 2003-04 it had fallen to 2 percent of total gross receipts tax revenue. Based on federal data, expenditures on natural gas in Florida (not including purchases for electricity generation) grew 47 percent from 1994 through 2002, but gross receipts tax revenue from this source for the same period grew only 31 percent.

Changes in Compostion of Gross Receipts Tax Revenue
FY 1990-91 and FY 2003-04



Percent of Gross Receipts Tax from Natural Gas



Source: FL Revenue Estimating Conference Gross Receipts Tax Revenue Estimate, Spring 2004.

Estimating the Revenue Impact of Out-of-State Gas Purchases

The amount of gross receipts tax revenue that would have been generated if all natural gas consumption in Florida (except for gas used to produce electric power) had been subject to the tax can be estimated using data from state or federal sources. Estimates based on these data provide very similar results:

- Estimate 1: The Florida Public Service Commission provided data for the quantity of natural gas transported and revenue received by investor-owned utilities for transporting (but not selling) it. Additional information on transported gas and revenue was supplied by municipal utilities. The revenue that would have been generated if this natural gas had been taxed is estimated, based on its estimated price and the reported transport revenues.

Potential Gross Receipts Tax Revenue Based on Florida Data					
Fiscal Year	Value of out-of-state purchases ($ millions)	GRUT loss on out-of-state purchases ($ millions)	Transportation charges not subject to tax ($ millions)	GRUT loss from transportation charges ($ millions)	Total GRUT loss from out-of-state sales and transportation charges ($ millions)
88-89	0.0	0.0	0.0	0.0	0.0
89-90	7.5	0.1	4.1	0.1	0.2
90-91	44.6	0.9	13.6	0.3	1.2
91-92	89.7	2.0	21.5	0.5	2.5
92-93	116.9	2.9	23.4	0.6	3.5
93-94	150.6	3.8	31.2	0.8	4.5
94-95	191.9	4.8	27.5	0.7	5.5
95-96	229.9	5.7	27.2	0.7	6.4
96-97	277.9	6.9	35.5	0.9	7.8
97-98	284.8	7.1	36.8	0.9	8.0
98-99	297.2	7.4	50.0	1.2	8.7
99-00	433.3	10.8	47.1	1.2	12.0
00-01	547.6	13.7	82.7	2.1	15.8
01-02	522.7	13.1	101.1	2.5	15.6
02-03	571.0	14.3	105.6	2.6	16.9

Based on FL PSC Annual Gas Reports, data supplied by municipal gas utilities, and U.S. Natural Gas Prices reported in the Energy Information Administration/Monthly Energy Review August 2004

- Estimate 2: The U.S. Energy Information Administration reports data on the total quantity of natural gas delivered to each state's residential, commercial, and industrial users, the average price for each group, and what percentage of the gas was sold by LDCs. Florida data were used to estimate the quantity of natural gas delivered to residential, commercial, and industrial users "for the account of others," which means that the gas was not sold by local distribution companies, and was most likely not subject to gross receipts tax.

Potential Gross Receipts Tax Revenue Based on Federal Data

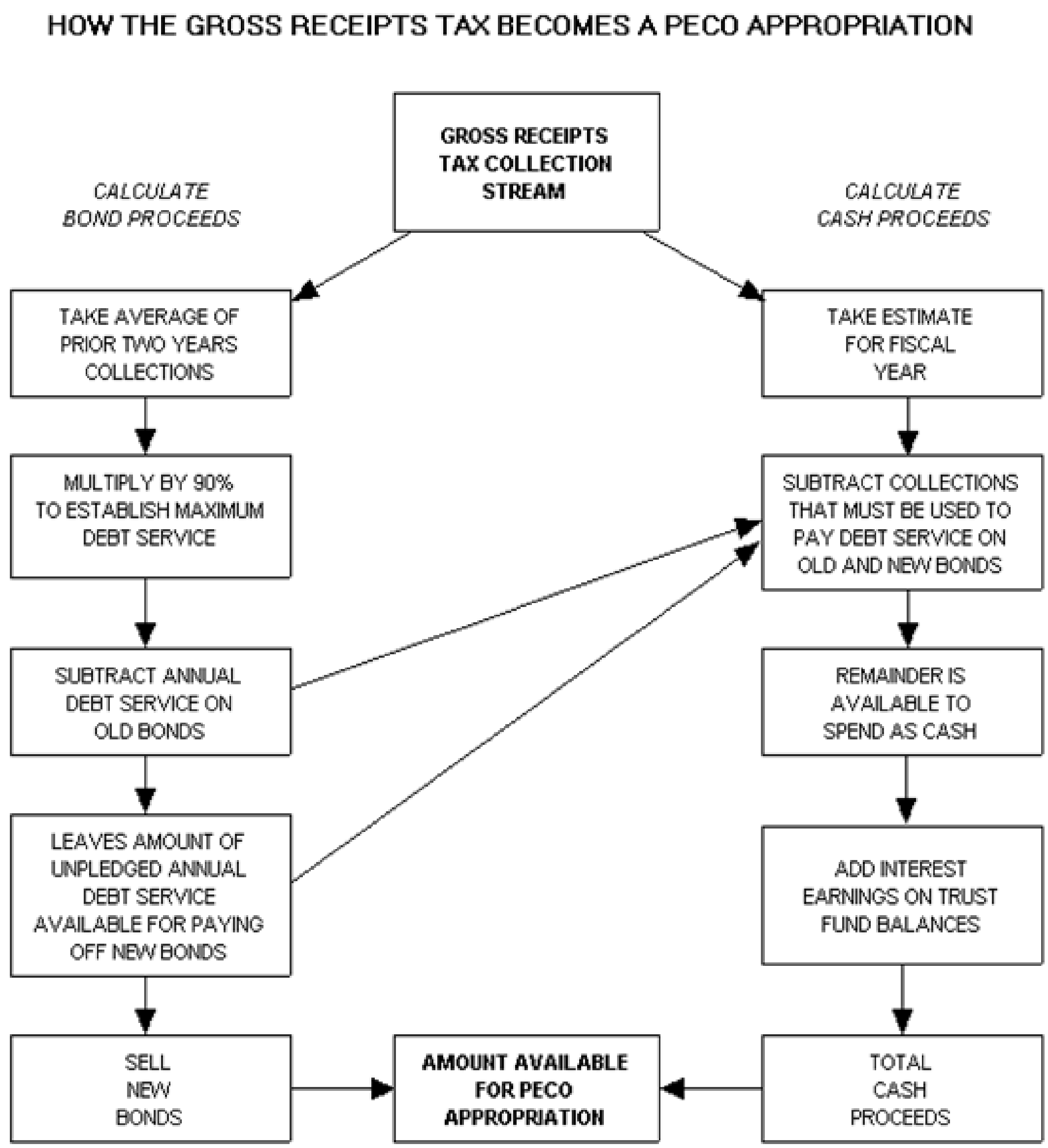
	Total Natural Gas Consumption (million cubic feet)	Delivered for the Account of Others (million cubic feet)	Estimated Expenditures on Natural Gas Delivered for the Account of Others ($ millions)	Potential Gross Receipts Tax Revenue ($ millions)
1995	188,400	113,336	$317.9	$7.9
1996	194,825	120,324	$334.3	$8.4
1997	174,954	113,932	$429.6	$10.7
1998	173,676	114,417	$457.3	$11.4
1999	184,273	129,600	$459.2	$11.5
2000	167,724	114,974	$628.0	$15.7
2001	159,544	112,621	$707.5	$17.7
2002	168,719	126,888	$633.6	$15.8

Energy Information Administration Natural Gas Annual 2002

Impact on Public Education Capital Outlay Fund

The Florida Constitution provides that gross receipts tax revenue must be placed in the Public Education Capital Outlay (PECO) Fund, and used to pay for capital projects at universities, community colleges, vocational technical schools, or public schools. These capital projects may be financed by bonds pledging the full faith and credit of the state, and the amount of bonds issued may not exceed 90 percent of the average amount of gross receipts tax revenue from the two preceding years.

Available PECO funds for any given year are made up of bond proceeds and cash proceeds. Both estimates begin with the Gross Receipts Tax. The maximum debt service capacity is determined and the amount of already existing debt is subtracted, leaving the amount available to support new bonds. The state then sells the new bonds and places the proceeds in the trust fund for spending on a set of projects which are stipulated in the Appropriations Act. Any tax collections not needed for paying debt service can be spent as cash. These remaining tax collections are combined with interest earnings of the trust fund to pay for the remainder of the PECO appropriation.



In a normal year, most of the amount available for PECO spending (about 75%) comes from the sale of bonds. It is important to remember that a PECO bond sale is made each year, which obligates a portion of the Gross Receipts Tax collection stream into the future. In other words, the state gives up a portion of the future tax collections in order to enjoy the benefit of having a larger amount to spend on projects in the present. At current interest rates and bond terms, this means giving up about $1 in revenue for 30 years for every $15 that is spent today. Thus it can be seen that as time goes by, most of what is collected by the tax is not available for PECO projects, but instead must be paid as interest on the outstanding bonds.

This also means that since the state sells the maximum amount of bonds it can each year, the ability to sell additional bonds the following year is dependent on there being an increase in the tax collections. When the tax collections increase, there is additional money available to pay the interest on new bonds. If tax collections were to stay constant, there could be no new bond sales. Since most of the PECO appropriation is derived from the sale of new bonds, it is easy to see that the tax source must grow if there is to be significant funding for the PECO program.

The loss of natural gas sales from the gross receipts tax base has reduced the amount of growth in the tax source, and reduced the amount revenue available to fund new school construction. The estimated lost gross receipts tax revenue could have supported an additional $220 million in PECO appropriations from FY 1990-91 through FY 2002-03. The increased bonding capacity from collecting tax on the value of untaxed delivered gas today is approximately $300 million.

Related Issues

Purchases of natural gas outside of the state, and potential deregulation of retail electricity markets, may erode local government revenue as well as revenue that accrues to the state. The public service tax (commonly referred to as the "municipal utility tax") is based on utility purchases in a municipality or charter county, and franchise fees are traditionally negotiated as a percentage of a company's gross receipts.

Municipalities and charter counties are authorized under s. 166.231, F.S., to levy a public service tax on the purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and water service. This tax may be at a rate up to 10 percent, and is limited to purchases in the municipality or charter county. This tax does not include a use tax provision, and by purchasing gas outside the state industrial and commercial users have been able to avoid the cost of the tax.

Franchise fees are generally negotiated between a local government and a utility operating within its boundaries as compensation for operation within the jurisdiction's boundaries and use of public rights-of-way. The traditional rate for electric utilities has been 6 percent, but franchise fees have been negotiated above and below that rate. Franchise fees are usually negotiated as a percentage of the gross receipts of the company. Franchise fees can represent up to 25 percent of a jurisdiction's general revenue and can be pledged.

Deregulation in the natural gas industry and potential deregulation of the electricity market allow consumers to buy from suppliers outside the state or jurisdiction without generating franchise fees, since the seller is not operating within the jurisdiction or utilizing local government rights-of-way and those transportation and transmission facilities that operate within the jurisdiction or use the rights-of-way are not receiving revenue for the electricity or natural gas being delivered.

Conclusions and Recommendations

Taxing natural gas purchased out-of-state differently from in-state purchases leads to three undesirable results: Companies that sell or market natural gas in Florida are placed at a competitive disadvantage because their sales are taxed; consumers who buy gas in Florida pay higher prices for natural gas; and funding for public education capital outlay is reduced when Florida consumers purchase untaxed natural gas.

This unequal taxation of natural gas purchases can be remedied by extending the existing gross receipts tax to the cost price of imported gas (generally known as a use tax) or by adding a per-unit tax on the distribution of natural gas. This committee is drafting legislation that would maintain the current gross receipts tax on natural gas sold in Florida. Gas acquired outside of Florida and transported by local distribution companies would be subject to a per-unit tax, with the tax rate adjusted periodically for the market price, to maintain comparable taxation of in-state and out-of-state gas purchases. Gas purchased out of state that is not transported by LDCs would be subject to tax on its cost-price, including transportation costs.

The draft legislation also includes parallel taxation of electricity. If Florida's electric industry is deregulated, the law will be in place to maintain a level playing field with respect to taxes.

Appendixes

Appendix A – Natural Gas Transportation in Florida: Quantity and Revenue

	Investor-Owned Transported (therms)	Municipal and District Transported (therms)	Total Transported (therms)	Investor-Owned Transport Revenues	Municipal and District Transport Revenues	Total Transport Revenues
1990	55,028,426		55,028,426	$4,127,159		$4,127,159
1991	283,302,501	12,674,903	295,977,404	$13,574,145		$13,574,145
1992	387,008,574	16,063,889	403,072,463	$20,721,232	$741,410	$21,462,642
1993	445,427,177	20,614,212	466,041,389	$22,364,771	$1,014,852	$23,379,623
1994	600,391,334	20,709,101	621,100,435	$30,169,203	$984,755	$31,153,958
1995	749,309,105	21,517,491	770,826,596	$26,798,633	$707,012	$27,505,645
1996	645,301,087	21,126,360	666,427,447	$26,460,180	$750,270	$27,210,450
1997	750,775,926	23,312,840	774,088,766	$34,716,357	$776,045	$35,492,402
1998	745,550,218	21,498,440	767,048,658	$36,244,265	$585,278	$36,829,543
1999	932,746,443	18,617,500	951,363,943	$49,506,696	$478,471	$49,985,167
2000	1,014,509,732	33,529,990	1,048,039,722	$45,991,927	$1,110,492	$47,102,419
2001	1,025,867,113	35,977,923	1,061,845,036	$81,173,998	$1,575,083	$82,749,081
2002	1,201,879,620	41,154,209*	1,243,033,829	$99,508,504	$1,620,426*	$101,128,930
2003	1,072,892,044	46,712,412*	1,119,604,456	$103,738,592	$1,862,261*	$105,600,853

* Estimates based on previous average growth in municipal and district transported therms
Source: FL PSC and Survey of members of Florida Municipal Natural Gas Association

Appendix B – U.S. Energy Information Administration Data on Florida Natural Gas Consumption and Price

	Residential			Commercial			Industrial			
	Delivered (million cubic feet)	% LDC	Price (LDC) ($/thousand cubic feet)	Delivered (million cubic feet)	% LDC	Price (LDC) ($/thousand cubic feet)	Delivered (million cubic feet)	% LDC	Price (LDC) ($/thousand cubic feet)	C ($ cu
1985	13,533		7.46	30,674		5.33				
1986	13,860		7.20	35,829		4.43			3.06	
1987	14,566		7.48	37,492		4.69			3.29	
1988	14,891		7.49	37,834		4.54			2.84	
1989	13,089		8.06	35,105		4.85			3.13	
1990	12,976	99.30%	8.47	36,306	97.60%	5.04			3.58	
1991	12,908	99.30%	8.98	39,264	97.40%	4.92			3.11	
1992	14,380	99.40%	9.08	41,727	97.70%	4.98	84,788	32.90%	3.22	
1993	13,940	99.30%	10.02	41,151	97.80%	5.84	100,286	26.60%	3.88	
1994	13,855	99.30%	9.98	39,935	97.80%	5.54	126,873	16.30%	3.51	
1995	14,540	99.30%	9.85	40,383	97.60%	5.33	133,477	15.80%	3.28	
1996	16,293	99.20%	10.74	41,810	97.10%	6.45	136,722	12.80%	4.21	
1997	13,117	99.20%	11.90	36,700	96.72%	6.85	125,137	10.00%	4.41	
1998	14,102	99.26%	11.29	37,659	97.53%	6.40	121,915	7.00%	3.98	
1999	13,797	99.21%	11.59	36,269	94.50%	6.50	134,207	5.00%	4.12	
2000	15,133	99.25%	12.93	47,904	67.40%	7.71	104,687	5.20%	5.93	
2001	15,547	99.23%	15.73	49,286	56.60%	10.5	94,711	3.80%	6.98	
2002	15,127	99.15%	13.61	55,803	42.30%	8.17	97,789	3.30%	5.35	
2003	16,025	96.88%	17.11	53,811	35.40%	10.91	n.a.	n.a.	7.00**	

* estimate based on FL PSC data
**estimate based on 8 months' data

Appendix C – Methodology for Estimating Gross Receipts Tax Impact of Not Taxing Natural Gas Used in Florida

Estimate 1 The quantity of gas transported by Florida utilities for each calendar year is converted to fiscal years and multiplied by the Florida average city gate price of natural gas in that year.[4] (City gate price is the average price of natural gas at the point where the gas is transferred from a pipeline to a local distribution company. It does not include the cost of delivering the gas from a local distribution company to the final consumer.) This amount is multiplied by the appropriate gross receipts tax rate for that period, to estimate the revenue loss associated with the sales price of the untaxed gas consumed in Florida. The revenue earned by utilities for transporting this gas is also converted to fiscal years and multiplied by the appropriate gross receipts tax rate. The sum of these estimates for each year is the estimated gross receipts tax loss.

There are potential sources of error in the estimate: Using the average city gate price as an estimate of the price of transported gas may understate or overstate the actual price. The city gate price is probably too low for the commercial and residential end-users that have switched to transported gas. Since 1985, the national average commercial gas price has been 80 percent higher than the industrial price, and the average residential price has been 100 percent higher. It is preferable to using the average industrial price reported by LDCs, though, since that price includes the cost of distribution. In this estimation method distribution costs are estimated directly. Another potential source of error is that some transported gas goes directly to end-users and is not distributed by local utilities. The available data do not allow inclusion of these purchases. A final potential error is that available survey data may not include all transportation by municipal utilities.

Estimate 2 The U.S. Energy Information Administration's data on the total quantity of natural gas delivered to Florida residential, commercial, and industrial users and what percentage of the gas was sold by LDCs were used to estimate the quantity of natural gas delivered to residential, commercial, and industrial users "for the account of others," which means that the gas was not sold by local distribution companies, and was most likely not subject to gross receipts tax. These quantities are multiplied by the reported average price for residential and commercial customers and by the city gate price for industrial customers, to estimate the value of sales on which gross receipts tax was not collected. Potential gross receipts tax revenue is calculated by applying the appropriate tax rate.

A potential source of error in the estimate is that the price of gas delivered "for the account of others" is not reported to the EIA. The reported prices for residential and commercial customers are those charged by LDCs for gas they sell to these final users. Competition with gas marketers can be expected to prevent LDC prices from being too far out of line with prices paid for transported gas. Industrial gas deliveries are multiplied by the city gate price instead of the LDC price, since LDCs sell such a small amount of gas to industrial users.

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[4] EIA's Natural Gas Prices for Florida, August 2004.