

Committee Substitute for Senate Bill No. 1352

An act relating to the Public Service Commission; amending s. 367.081, F.S.; prohibiting the commission from imputing prospective future contributions-in-aid-of-construction against certain utility investments in certain rate proceedings; providing construction; requiring the commission to approve rates for certain services under certain circumstances; providing construction; deleting a requirement that the commission consider a utility's investments in certain lands or facilities in setting final rates; amending s. 367.021, F.S.; redefining the term "governmental authority"; amending s. 367.022, F.S.; eliminating the annual report requirement for exempt resellers; providing for an additional exemption; amending s. 367.071, F.S.; authorizing specified transactions before Public Service Commission approval; amending s. 367.0816, F.S.; removing provisions requiring rate-case expense reductions at the conclusion of the recovery period; amending 367.0814, F.S.; authorizing the commission to authorize the collection of interim rates under certain circumstances; providing criteria; authorizing the commission to require collection of certain rate differentials; providing for finalization of interim rates under certain circumstances; providing for refund of certain rate differentials under certain circumstances; amending s. 367.082, F.S.; clarifying a procedure relating to a withdrawal of a request for rate relief during the pendency of a rate case; amending s. 367.091, F.S.; requiring utilities to notify local governing bodies of the filing of an application for rate change; requiring the Florida Public Service Commission to grant petitions to intervene which are filed by local governing bodies; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) of section 367.081, Florida Statutes, is amended to read:

367.081 Rates; procedure for fixing and changing.—

(2)(a)1. The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, the commission shall consider the value and quality of the service and the cost of providing the service, which shall include, but not be limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service. However, the commission shall not allow the inclusion of contributions-in-aid-of-construction in the rate base of any utility during a rate proceeding, nor shall the commission impute prospective future contributions-in-aid-of-construction against the utility's investment in property used and useful in the public service; and accumulated depreciation on such contributions-in-aid-of-construction shall not be

used to reduce the rate base, nor shall depreciation on such contributed assets be considered a cost of providing utility service.

2. For purposes of such proceedings, the commission shall consider utility property, including land acquired or facilities constructed or to be constructed within a reasonable time in the future, not to exceed 24 months after the end of the historic base year used to set final rates unless a longer period is approved by the commission, to be used and useful in the public service, if:

a. Such property is needed to serve current customers;

b. Such property is needed to serve customers 5 years after the end of the test year used in the commission's final order on a rate request as provided in subsection (6) at a growth rate for equivalent residential connections not to exceed 5 percent per year; or

c. Such property is needed to serve customers more than 5 full years after the end of the test year used in the commission's final order on a rate request as provided in subsection (6) only to the extent that the utility presents clear and convincing evidence to justify such consideration.

Notwithstanding the provisions of this paragraph, the commission shall approve rates for service which allow a utility to recover from customers the full amount of environmental compliance costs. Such rates may not include charges for allowances for funds prudently invested or similar charges. For purposes of this requirement, the term "environmental compliance costs" includes all reasonable expenses and fair return on any prudent investment incurred by a utility in complying with the requirements or conditions contained in any permitting, enforcement, or similar decisions of the United States Environmental Protection Agency, the Department of Environmental Protection, a water management district, or any other governmental entity with similar regulatory jurisdiction. The commission shall also consider the investment of the utility in land acquired or facilities constructed or to be constructed in the public interest within a reasonable time in the future, not to exceed, unless extended by the commission, 24 months from the end of the historical test period used to set final rates.

Section 2. Section 1 of this act does not apply to rate cases that are pending on March 11, 1999.

Section 3. Subsection (7) of section 367.021, Florida Statutes, is amended to read:

367.021 Definitions.—As used in this chapter, the following words or terms shall have the meanings indicated:

(7) "Governmental authority" means a political subdivision, as defined by s. 1.01(8), or a regional water supply authority created pursuant to s. 373.1962, or a nonprofit corporation formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility.

Section 4. Section 367.022, Florida Statutes, is amended to read:

367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

- (1) The sale, distribution, or furnishing of bottled water.;
- (2) Systems owned, operated, managed, or controlled by governmental authorities, including water or wastewater facilities operated by private firms under water or wastewater facility privatization contracts as defined in s. 153.91, and nonprofit corporations formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility.;
- (3) Manufacturers providing service solely in connection with their operations.;
- (4) Public lodging establishments providing service solely in connection with service to their guests.;
- (5) Landlords providing service to their tenants without specific compensation for the service.;
- (6) Systems with the capacity or proposed capacity to serve 100 or fewer persons.;
- (7) Nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives.;
- (8) Any person who resells water or wastewater service at a rate or charge which does not exceed the actual purchase price of the water or wastewater thereof, if such person files at least annually with the commission a list of charges and rates for all water service sold, the source and actual purchase price thereof, and any other information required by the commission to justify the exemption; but such person is subject to the provisions of s. 367.122.
- (9) Wastewater treatment plants operated exclusively for disposing of industrial wastewater.
- (10) The sale of bulk supplies of desalinated water to a governmental authority.
- (11) Any person providing only nonpotable water for irrigation purposes in a geographic area where potable water service is available from a governmentally or privately owned utility or a private well.
- (12) The sale for resale of bulk supplies of water or the sale or resale of wastewater services to a governmental authority or to a utility regulated pursuant to this chapter either by the commission or the county.

Section 5. Subsection (1) of section 367.071, Florida Statutes, is amended to read:

367.071 Sale, assignment, or transfer of certificate of authorization, facilities, or control.—

(1) No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility. However, a sale, assignment, or transfer of its certificate of authorization, facilities or any portion thereof, or majority organizational control may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

Section 6. Section 367.0816, Florida Statutes, is amended to read:

367.0816 Recovery of rate case expenses.—The amount of rate case expense determined by the commission pursuant to the provisions of this chapter to be recovered through a public utilities rate shall be apportioned for recovery over a period of 4 years. ~~At the conclusion of the recovery period, the rate of the public utility shall be reduced immediately by the amount of rate case expense previously included in rates.~~

Section 7. Section 367.0814, Florida Statutes, is amended to read:

367.0814 Rates and charges; requests for staff assistance in changing.—

(1) The commission may establish rules by which a water or wastewater utility whose gross annual revenues are \$150,000 or less may request and obtain staff assistance for the purpose of changing its rates and charges. A utility may request staff assistance by filing an application with the commission.

(2) The official date of filing is established as 30 days after official acceptance by the commission of the application. If a utility does not remit a fee, as provided by s. 367.145, within 30 days after acceptance, the commission may deny the application. The commission has 15 months after the official date of filing within which to issue a final order.

(3) The provisions of s. 367.081(1), (2)(a), and (3) shall apply in determining the utility's rates and charges.

(4) The commission may, upon its own motion, or upon petition from the regulated utility, authorize the collection of interim rates until the effective date of the final order. Such interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. To establish interim relief, there must be a demonstration that the operation and maintenance expenses exceed the revenues of the regulated utility, and interim rates shall not exceed the level necessary to cover operation and maintenance expenses as defined by the Uniform System of Accounts for Class C Water and Wastewater Utilities (1996) of the National Association of Regulatory Utility Commissioners.

(5) The commission may require that the difference between the interim rates and the previously authorized rates be collected under bond, escrow,

letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(6)(4) The utility, in requesting staff assistance, shall agree to accept the final rates and charges approved by the commission unless the final rates and charges produce less revenue than the existing rates and charges.

(7)(5) In the event of a protest or appeal by a party other than the utility, the commission may provide for temporary rates subject to refund with interest.

(8)(6) If a utility becomes exempt from commission regulation or jurisdiction during the pendency of a staff-assisted rate case, the request for rate relief is deemed to have been withdrawn. Interim rates, if previously approved, shall become final. Temporary rates, if previously approved, must be discontinued, and any money collected pursuant to the temporary rates, or the difference between temporary and interim rates, if previously approved, must be refunded to the customers of the utility with interest.

(9)(7) The commission may by rule establish standards and procedures whereby rates and charges of small utilities may be set using criteria other than those set forth in s. 367.081(1), (2)(a), and (3).

Section 8. Subsection (7) of section 367.082, Florida Statutes, is amended to read:

367.082 Interim rates; procedure.—

(7) If a utility becomes exempt from commission regulation ~~or jurisdiction~~ during the pendency of a rate case, the request for rate relief pending before the commission is deemed to have been withdrawn. Interim rates, if previously approved, must be discontinued, and any money collected pursuant to interim rate relief must be refunded to the customers of the utility with interest.

Section 9. This act does not apply to rate cases pending on March 11, 1999.

Section 10. Present subsections (2), (3), (4), and (5) of section 367.091, Florida Statutes, are redesignated as subsections (3), (4), (5), and (6), respectively, and a new subsection (2) is added to that section, to read:

367.091 Rates, tariffs; new class of service.—

(2) Upon filing an application for new rates, the utility shall mail a copy of the application to the chief executive officer of the governing body of each county within the service areas included in the rate request. The governing body may petition the commission for leave to intervene in the rate change proceeding and the commission shall grant intervenor status to any governing body that files a petition.

Section 11. This act shall take effect upon becoming a law.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.