

1 A bill to be entitled
2 An act relating to reorganization of the Public Service
3 Commission; amending s. 112.324, F.S.; providing for
4 disposition by the Commission on Ethics of cases
5 concerning the executive director or staff of the Office
6 of Regulatory Staff; amending s. 119.011, F.S.; revising
7 the definition of the term "agency" to include the Office
8 of Regulatory Staff for purposes of provisions relating to
9 public records; amending s. 186.801, F.S.; directing the
10 commission to request assistance from the Office of
11 Regulatory Staff to make a preliminary study of certain
12 site plans submitted to the commission by electric
13 utilities; amending s. 350.001, F.S.; revising legislative
14 intent; amending s. 350.011, F.S.; prohibiting certain
15 acts by commissioners and commission staff; amending s.
16 350.012, F.S.; reorganizing the Committee on Public
17 Counsel Oversight into the Committee on Public Service
18 Commission Oversight; directing the committee to appoint a
19 Public Counsel and an executive director of the Office of
20 Regulatory Staff and to perform other duties; amending s.
21 350.031, F.S.; revising requirements for nomination by the
22 Public Service Commission Nominating Council for
23 appointment to the commission; creating s. 350.035, F.S.;
24 prohibiting attempts by certain persons to sway the
25 judgment of commissioners; providing for the Commission on
26 Ethics to investigate complaints of violations pursuant to
27 specified procedures; amending s. 350.04, F.S.; providing
28 requirements for nomination by the Public Service

29 Commission Nominating Council for appointment to the
 30 commission; requiring commissioners to complete a course
 31 of study developed by the executive director and general
 32 counsel of the Office of Regulatory Staff and approved by
 33 the Committee on Public Service Commission Oversight;
 34 requiring commissioners to complete continuing education;
 35 providing training requirements for commissioners and
 36 staff of the commission and the Office of Regulatory
 37 Staff; providing that the executive director of the Office
 38 of Regulatory Staff shall provide the certification of
 39 compliance to the Committee on Public Service Commission
 40 Oversight; amending s. 350.041, F.S.; revising legislative
 41 intent; revising standards of conduct for commissioners;
 42 revising provisions for investigation and reports by the
 43 Commission on Ethics of alleged violations; authorizing
 44 commission employees and the executive director of the
 45 Office of Regulatory Staff to request opinions from the
 46 Commission on Ethics; amending s. 350.042, F.S.; revising
 47 provisions for communications concerning agency action
 48 proceedings and proceedings under specified provisions;
 49 providing for application of such provisions to commission
 50 employees; revising restrictions on such communications by
 51 commissioners and commission employees; defining the term
 52 "ex parte communication"; amending s. 350.06, F.S.;
 53 revising provisions for the offices of the commission,
 54 payment of moneys, and employment of personnel; amending
 55 s. 350.0605, F.S.; restricting employment of a former
 56 executive director or former employee of the Office of

57 | Regulatory Staff; creating s. 350.071, F.S.; creating the
58 | Office of Regulatory Staff within the legislative branch
59 | of government; providing for the office to be considered a
60 | party of record in all proceedings before the Public
61 | Service Commission; requiring the commission to notify the
62 | office of certain proceedings; providing purpose of the
63 | office; defining the term "public interest"; providing
64 | that the office is subject to certain provisions governing
65 | ex parte communications; creating s. 350.072, F.S.;
66 | providing for an executive director and employees of the
67 | office; providing responsibilities of the executive
68 | director; providing for submission of a budget to the
69 | Committee on Public Service Commission Oversight;
70 | providing for the location and internal administration and
71 | operation of the office; creating s. 350.073, F.S.;
72 | providing for appointment, term, qualifications, and
73 | salary of the executive director of the office; providing
74 | for application of specified provisions for standards of
75 | conduct; creating s. 350.074, F.S.; providing duties of
76 | the office; authorizing the office to intervene in certain
77 | proceedings; requiring the office to provide an annual
78 | report to the Legislature; directing the commission and
79 | the office to establish procedures by which the office may
80 | elect not to participate as a party in certain matters;
81 | creating s. 350.075, F.S.; authorizing the office to
82 | access certain books and records; amending s. 350.113,
83 | F.S.; revising authorized uses of the Florida Public
84 | Service Regulatory Trust Fund; amending s. 350.117, F.S.;

85 | authorizing the office to require reports; requiring a
 86 | copy of any report provided to the commission to be
 87 | provided to the office; authorizing the commission to
 88 | request that the office perform management and operation
 89 | audits of any regulated company; repealing s. 350.121,
 90 | F.S., relating to commission inquiries and the
 91 | confidentiality of business material; creating s. 350.122,
 92 | F.S.; requiring persons testifying before the Public
 93 | Service Commission to disclose certain financial and
 94 | fiduciary relationships; providing that a determination by
 95 | the commission that a violation occurred constitutes
 96 | agency action for which a hearing may be sought; amending
 97 | s. 364.016, F.S.; authorizing the office to assess a
 98 | telecommunications company for certain travel costs;
 99 | amending s. 364.02, F.S.; defining the term "office" as
 100 | used in provisions relating to telecommunications
 101 | companies; amending s. 364.15, F.S.; revising provisions
 102 | authorizing the commission to compel changes to a
 103 | telecommunications facility; amending s. 364.183, F.S.;
 104 | providing that the office shall have access to certain
 105 | records of a telecommunications company and may require a
 106 | telecommunications company to file records, reports, or
 107 | other data; specifying limitations on the authority of the
 108 | commission to access records; providing for the office to
 109 | maintain confidentiality; amending s. 364.185, F.S.;
 110 | providing powers of the office to investigate and inspect
 111 | telecommunications companies; removing such powers from
 112 | the commission; amending s. 364.335, F.S.; revising the

113 authority of the commission to institute a proceeding to
 114 determine whether the grant of a certificate of need
 115 concerning construction, operation, or control of a
 116 telecommunications facility is in the public interest;
 117 amending s. 364.3376, F.S.; providing for the office to
 118 conduct certain investigations; amending s. 364.3381,
 119 F.S.; revising the authority of the commission to
 120 investigate allegations of certain anticompetitive
 121 practices; amending s. 364.37, F.S.; revising the
 122 authority of the commission to make such order and
 123 prescribe such terms and conditions with respect to
 124 controversies concerning territory to be served by a
 125 telecommunications facility; amending s. 366.02, F.S.;
 126 defining the term "office" as used in provisions relating
 127 to public utilities; amending s. 366.05, F.S.; authorizing
 128 the office to make certain purchases for examinations and
 129 testing; providing that the office shall have access to
 130 certain records and may require records, reports, or other
 131 data; specifying limitations on the authority of the
 132 commission to access records; authorizing the office to
 133 assess a public utility for certain travel costs; amending
 134 ss. 366.06, 366.07, 366.071, and 366.076, F.S.; removing
 135 authority of the commission to initiate certain
 136 proceedings or take certain actions upon its own motion;
 137 amending s. 366.08, F.S.; providing powers of the office
 138 to investigate public utilities; removing such powers from
 139 the commission; amending s. 366.093, F.S.; providing
 140 powers of the office to have access to records; specifying

141 limitations on the authority of the commission to access
 142 records; providing for the office to maintain
 143 confidentiality; amending s. 366.82, F.S.; revising the
 144 authority of the commission to require modifications or
 145 additions to a utility's plans and programs; amending s.
 146 367.021, F.S.; defining the term "office" as used in
 147 provisions relating to water and wastewater utilities;
 148 amending s. 367.045, F.S.; requires a water or wastewater
 149 utility to provide notice to the office when it applies
 150 for an initial or amended certificate of authorization;
 151 providing for an objection and a request for a public
 152 hearing by the office; requiring the commission to give
 153 notice of certain actions upon petition of the office;
 154 amending s. 367.081, F.S.; revising the authority of the
 155 commission to fix rates of water and wastewater utilities
 156 or implement changes of such rates; amending s. 367.0814,
 157 F.S.; providing for a water or wastewater utility to
 158 request and obtain assistance from the Office of
 159 Regulatory Staff for the purpose of changing its rates and
 160 charges; revising the authority of the commission to
 161 authorize interim rates; directing the commission to
 162 request from the office any information necessary to
 163 complete a status report; amending ss. 367.0817, 367.082,
 164 367.0822, and 367.083, F.S.; revising authority of the
 165 commission to initiate certain proceedings or take certain
 166 actions upon its own motion; amending s. 367.101, F.S.;
 167 providing that the commission shall, upon request, direct
 168 the office to investigate agreements or proposals for

169 | charges and conditions for service availability and report
 170 | the results; amending s. 367.121, F.S.; revising powers of
 171 | the commission; providing powers of the office; amending
 172 | s. 367.122, F.S.; providing for the office to test meters;
 173 | amending s. 367.145, F.S.; revising provisions for use of
 174 | certain regulatory fees; amending s. 367.156, F.S.;
 175 | providing powers of the office to have access to records;
 176 | specifying limitations on the authority of the commission
 177 | to access records; providing for the office to maintain
 178 | confidentiality; amending s. 367.171, F.S.; revising
 179 | provisions for jurisdiction of certain cases involving a
 180 | utility that becomes subject to county regulation;
 181 | amending s. 368.05, F.S., relating to gas transmission and
 182 | distribution facilities; prohibiting the commission from
 183 | initiating proceedings under specified provisions on its
 184 | own motion; specifying limitations on the authority of the
 185 | commission to access records; amending s. 368.061, F.S.;
 186 | revising provisions for compromise of a civil penalty;
 187 | revising the authority of the commission to initiate
 188 | injunction proceedings; amending s. 368.103, F.S.;
 189 | defining the term "office" as used in the "Natural Gas
 190 | Transmission Pipeline Intrastate Regulatory Act";
 191 | amending ss. 368.106 and 368.107, F.S.; revising the
 192 | authority of the commission to initiate certain
 193 | proceedings or take certain actions concerning rates;
 194 | amending s. 368.108, F.S.; providing powers of the office
 195 | to have access to records; specifying limitations on the
 196 | authority of the commission to access records; providing

197 | for the office to maintain confidentiality; amending s.
 198 | 368.1085, F.S.; authorizing the office to assess a natural
 199 | gas transmission company for certain travel costs;
 200 | removing the authority of the commission to assess such
 201 | costs; amending s. 368.109, F.S.; revising provisions for
 202 | use of certain regulatory fees; amending ss. 403.519,
 203 | 403.537, and 403.9422, F.S., relating to siting of
 204 | electrical transmission lines; revising authority of the
 205 | commission to initiate certain proceedings or take certain
 206 | actions upon its own motion; amending ss. 196.012,
 207 | 199.183, 212.08, 288.0655, 290.007, 364.602, 489.103, and
 208 | 624.105, F.S.; conforming cross-references; providing an
 209 | effective date.

210 |
 211 | Be It Enacted by the Legislature of the State of Florida:

212 |
 213 | Section 1. Paragraphs (a) and (c) of subsection (8) of
 214 | section 112.324, Florida Statutes, are amended to read:

215 | 112.324 Procedures on complaints of violations; public
 216 | records and meeting exemptions.—

217 | (8) If, in cases pertaining to complaints other than
 218 | complaints against impeachable officers or members of the
 219 | Legislature, upon completion of a full and final investigation
 220 | by the commission, the commission finds that there has been a
 221 | violation of this part or of s. 8, Art. II of the State
 222 | Constitution, it shall be the duty of the commission to report
 223 | its findings and recommend appropriate action to the proper
 224 | disciplinary official or body as follows, and such official or

225 body shall have the power to invoke the penalty provisions of
 226 this part, including the power to order the appropriate
 227 elections official to remove a candidate from the ballot for a
 228 violation of s. 112.3145 or s. 8(a) and (i), Art. II of the
 229 State Constitution:

230 (a) The President of the Senate and the Speaker of the
 231 House of Representatives, jointly, in any case concerning the
 232 Public Counsel, members of the Public Service Commission, the
 233 executive director of the Office of Regulatory Staff, members of
 234 the Public Service Commission Nominating Council, the Auditor
 235 General, the director of the Office of Program Policy Analysis
 236 and Government Accountability, or members of the Legislative
 237 Committee on Intergovernmental Relations.

238 (c) The President of the Senate, in any case concerning an
 239 employee of the Senate; the Speaker of the House of
 240 Representatives, in any case concerning an employee of the House
 241 of Representatives; or the President and the Speaker, jointly,
 242 in any case concerning an employee of a committee of the
 243 Legislature whose members are appointed solely by the President
 244 and the Speaker or in any case concerning an employee of the
 245 Public Counsel, Public Service Commission, Office of Regulatory
 246 Staff, Auditor General, Office of Program Policy Analysis and
 247 Government Accountability, or Legislative Committee on
 248 Intergovernmental Relations.

249 Section 2. Subsection (2) of section 119.011, Florida
 250 Statutes, is amended to read:

251 119.011 Definitions.—As used in this chapter, the term:

252 (2) "Agency" means any state, county, district, authority,

253 or municipal officer, department, division, board, bureau,
 254 commission, or other separate unit of government created or
 255 established by law including, for the purposes of this chapter,
 256 the Commission on Ethics, the Public Service Commission, the
 257 Office of Regulatory Staff, and the Office of Public Counsel,
 258 and any other public or private agency, person, partnership,
 259 corporation, or business entity acting on behalf of any public
 260 agency.

261 Section 3. Subsection (2) of section 186.801, Florida
 262 Statutes, is amended to read:

263 186.801 Ten-year site plans.—

264 (2) Within 9 months after the receipt of the proposed
 265 plan, the commission shall request assistance from the Office of
 266 Regulatory Staff to make a preliminary study of such plan and
 267 shall classify the plan ~~it~~ as "suitable" or "unsuitable." The
 268 commission may suggest alternatives to the plan. All findings of
 269 the commission shall be made available to the Department of
 270 Environmental Protection for its consideration at any subsequent
 271 electrical power plant site certification proceedings. It is
 272 recognized that 10-year site plans submitted by an electric
 273 utility are tentative information for planning purposes only and
 274 may be amended at any time at the discretion of the utility upon
 275 written notification to the commission. A complete application
 276 for certification of an electrical power plant site under
 277 chapter 403, when such site is not designated in the current 10-
 278 year site plan of the applicant, shall constitute an amendment
 279 to the 10-year site plan. In its preliminary study of each 10-
 280 year site plan, the commission shall consider such plan as a

281 | planning document and shall review:

282 | (a) The need, including the need as determined by the
283 | commission, for electrical power in the area to be served.

284 | (b) The effect on fuel diversity within the state.

285 | (c) The anticipated environmental impact of each proposed
286 | electrical power plant site.

287 | (d) Possible alternatives to the proposed plan.

288 | (e) The views of appropriate local, state, and federal
289 | agencies, including the views of the appropriate water
290 | management district as to the availability of water and its
291 | recommendation as to the use by the proposed plant of salt water
292 | or fresh water for cooling purposes.

293 | (f) The extent to which the plan is consistent with the
294 | state comprehensive plan.

295 | (g) The plan with respect to the information of the state
296 | on energy availability and consumption.

297 | Section 4. Section 350.001, Florida Statutes, is amended
298 | to read:

299 | 350.001 Legislative intent.—

300 | (1) The Florida Public Service Commission has been and
301 | shall continue to be an arm of the legislative branch of
302 | government. In the exercise of its jurisdiction, the commission
303 | shall neither establish nor implement any regulatory policy that
304 | is contrary to, or is an expansion of, the authority granted to
305 | it by the Legislature.

306 | (2) The Public Service Commission and its staff shall
307 | perform their ~~its~~ duties independently, impartially,
308 | professionally, honorably, and without undue influence from any

309 person.

310 (3) It is the desire of the Legislature that the Governor
 311 participate in the appointment process of commissioners to the
 312 Public Service Commission. The Legislature accordingly delegates
 313 to the Governor a limited authority with respect to the Public
 314 Service Commission by authorizing him or her to participate in
 315 the selection of members only in the manner prescribed by s.
 316 350.031.

317 Section 5. Section 350.011, Florida Statutes, is amended
 318 to read:

319 350.011 Florida Public Service Commission; jurisdiction;
 320 powers and duties.—

321 (1) The state regulatory agency heretofore known as the
 322 Florida Railroad and Public Utilities Commission or Florida
 323 Public Utilities Commission shall be known and hereafter called
 324 Florida Public Service Commission, and all rights, powers,
 325 duties, responsibilities, jurisdiction, and judicial powers now
 326 vested in said Railroad and Public Utilities Commission or said
 327 Florida Public Utilities Commission and the commissioners
 328 thereof are vested in the Florida Public Service Commission and
 329 the commissioners thereof.

330 (2) The commissioners of the Florida Public Service
 331 Commission may not supervise, direct, or control any person
 332 whose services are employed by the Office of Regulatory Staff
 333 created under s. 350.071.

334 (3) Notwithstanding any other provision of law, the
 335 commission may not inspect, audit, or examine any entity subject
 336 to the jurisdiction of the commission pursuant to any provision

337 of law, as these functions are the sole responsibility of the
 338 Office of Regulatory Staff.

339 (4) The commission staff may not appear as a party in
 340 commission proceedings and shall not offer testimony on issues
 341 before the commission. The commission staff shall not conduct
 342 discovery, either informally or pursuant to the Florida Rules of
 343 Civil Procedure, in any proposed agency action proceeding or any
 344 proceeding under s. 120.569 or s. 120.57 in which the
 345 substantial interests of a party are determined by the
 346 commission.

347 Section 6. Subsections (1) and (2) of section 350.012,
 348 Florida Statutes, are amended to read:

349 350.012 Committee on Public Service Commission ~~Counsel~~
 350 Oversight; creation; membership; powers and duties.—

351 (1) There is created a standing joint committee of the
 352 Legislature, designated the Committee on Public Service
 353 Commission ~~Counsel~~ Oversight, and composed of 12 members
 354 appointed as follows: six members of the Senate appointed by the
 355 President of the Senate, two of whom must be members of the
 356 minority party; and six members of the House of Representatives
 357 appointed by the Speaker of the House of Representatives, two of
 358 whom must be members of the minority party. The terms of members
 359 shall be for 2 years and shall run from the organization of one
 360 Legislature to the organization of the next Legislature. The
 361 President shall appoint the chair of the committee in even-
 362 numbered years and the vice chair in odd-numbered years, and the
 363 Speaker of the House of Representatives shall appoint the chair
 364 of the committee in odd-numbered years and the vice chair in

365 even-numbered years, from among the committee membership.
 366 Vacancies shall be filled in the same manner as the original
 367 appointment. Members shall serve without additional
 368 compensation, but shall be reimbursed for expenses.

369 (2) The committee shall:

370 (a) Appoint a Public Counsel as provided by general law;

371 (b) Appoint an executive director of the Office of
 372 Regulatory Staff, subject to confirmation by the Legislature, as
 373 provided by general law; and

374 (c) Perform such other duties as required by general law.

375 Section 7. Paragraphs (b) and (d) of subsection (1) and
 376 subsection (5) of section 350.031, Florida Statutes, are amended
 377 to read:

378 350.031 Florida Public Service Commission Nominating
 379 Council.—

380 (1)

381 (b) All terms shall be for 4 years except those members of
 382 the House and Senate, who shall serve 2-year terms concurrent
 383 with the 2-year elected terms of House members. ~~All terms of the~~
 384 ~~members of the Public Service Commission Nominating Council~~
 385 ~~existing on June 30, 2008, shall terminate upon the effective~~
 386 ~~date of this act; however, such members may serve an additional~~
 387 ~~term if reappointed by the Speaker of the House of~~
 388 ~~Representatives or the President of the Senate.~~ To establish
 389 staggered terms, appointments of members shall be made for
 390 initial terms to begin on July 1, 2008, with each appointing
 391 officer to appoint three legislator members, one of whom shall
 392 be a member of the minority party, to terms through the

393 remainder of the 2-year elected terms of House members; one
 394 nonlegislator member to a 6-month term; one nonlegislator member
 395 to an 18-month term; and one nonlegislator member to a 42-month
 396 term. Thereafter, the terms of the nonlegislator members of the
 397 Public Service Commission Nominating Council shall begin on
 398 January 2 of the year the term commences and end 4 years later
 399 on January 1.

400 (d) Vacancies on the council shall be filled for the
 401 unexpired portion of the term in the same manner as original
 402 appointments to the council. A member may not be reappointed to
 403 the council, except for a member of the House of Representatives
 404 or the Senate who may be appointed to two 2-year terms, ~~members~~
 405 ~~who are reappointed pursuant to paragraph (b)~~, or a person who
 406 is appointed to fill the remaining portion of an unexpired term.

407 (5) A person may not be nominated ~~to the Governor~~ for
 408 appointment to the Public Service Commission until the council
 409 has determined that the person satisfies the qualifications set
 410 forth in s. 350.04(2) ~~is competent and knowledgeable in one or~~
 411 ~~more fields, which shall include, but not be limited to: public~~
 412 ~~affairs, law, economics, accounting, engineering, finance,~~
 413 ~~natural resource conservation, energy, or another field~~
 414 ~~substantially related to the duties and functions of the~~
 415 ~~commission~~. The commission shall fairly represent the ~~above-~~
 416 ~~stated~~ fields identified in s. 350.04(2). Recommendations of the
 417 council shall be nonpartisan.

418 Section 8. Section 350.035, Florida Statutes, is created
 419 to read:

420 350.035 Prohibited influence on commissioners.—Neither the

421 Governor, the President of the Senate, the Speaker of the House
 422 of Representatives, a member of the Committee on Public Service
 423 Commission Oversight, nor a member of the Public Service
 424 Commission Nominating Council shall attempt to sway the
 425 independent judgment of the commission by bringing pressure to
 426 bear upon a commissioner or commission employee through that
 427 person's role in the nomination, appointment, or reconfirmation
 428 of commissioners. It is the duty of the Commission on Ethics to
 429 receive and investigate sworn complaints of violations of this
 430 section pursuant to ss. 112.322-112.3241.

431 Section 9. Section 350.04, Florida Statutes, is amended to
 432 read:

433 350.04 Qualifications of commissioners; training and
 434 continuing education.-

435 (1) A commissioner may not, at the time of appointment or
 436 during his or her term of office:

437 (a) ~~(1)~~ Have any financial interest, other than ownership
 438 of shares in a mutual fund, in any business entity which, either
 439 directly or indirectly, owns or controls any public utility
 440 regulated by the commission, in any public utility regulated by
 441 the commission, or in any business entity which, either directly
 442 or indirectly, is an affiliate or subsidiary of any public
 443 utility regulated by the commission.

444 (b) ~~(2)~~ Be employed by or engaged in any business activity
 445 with any business entity which, either directly or indirectly,
 446 owns or controls any public utility regulated by the commission,
 447 by any public utility regulated by the commission, or by any
 448 business entity which, either directly or indirectly, is an

449 affiliate or subsidiary of any public utility regulated by the
 450 commission.

451 (2) Each person recommended for appointment to the Public
 452 Service Commission by the Public Service Commission Nominating
 453 Council must:

454 (a) Have earned at least a baccalaureate degree from an
 455 institution of higher learning accredited by a regional or
 456 national accrediting body; and

457 (b) Possess a minimum of 10 years of professional
 458 experience, or a minimum of 6 years of professional experience
 459 if the person has earned an advanced degree, in one or more of
 460 the following:

- 461 1. Energy or electric industry issues.
- 462 2. Telecommunications issues.
- 463 3. Water and sewer industry issues.
- 464 4. Finance.
- 465 5. Economics.
- 466 6. Accounting.
- 467 7. Engineering.
- 468 8. Law.

469 (3) Before voting on any matter before the Public Service
 470 Commission, each person appointed to the commission after July
 471 1, 2010, shall complete a comprehensive course of study,
 472 developed by the executive director and general counsel of the
 473 Office of Regulatory Staff and approved by the Committee on
 474 Public Service Commission Oversight, that addresses the
 475 substantive matters within the jurisdiction of the commission,
 476 administrative law applicable to commission proceedings, and

477 standards of conduct applicable to commissioners. Thereafter,
 478 each commissioner must complete annually no less than 10 hours
 479 of continuing professional education directly related to
 480 substantive matters within the jurisdiction of the commission.

481 (4) No less than once every 12 months, each commissioner,
 482 commission employee, and staff member of the Office of
 483 Regulatory Staff shall receive training, in a form developed by
 484 the executive director and general counsel of the Office of
 485 Regulatory Staff, that addresses the standards of conduct
 486 applicable to commissioners, their staff, and staff of the
 487 Office of Regulatory Staff.

488 (5) The executive director of the Office of Regulatory
 489 Staff shall certify the office's compliance with the training
 490 requirements imposed by this section, the chair of the Public
 491 Service Commission shall certify the commission's compliance
 492 with these requirements, and each commissioner shall certify his
 493 or her individual compliance with the continuing professional
 494 education requirements of subsection (3). Each certification of
 495 compliance shall be provided to the Committee on Public Service
 496 Commission Oversight.

497 Section 10. Section 350.041, Florida Statutes, is amended
 498 to read:

499 350.041 Commissioners; standards of conduct.—

500 (1) STATEMENT OF INTENT.—

501 (a) Professional, impartial, and honorable commissioners
 502 are indispensable to the effective performance of the
 503 commission's duties. A commissioner shall maintain high
 504 standards of conduct and shall personally observe those

505 standards so that the integrity and impartiality of the
 506 commission may be preserved. The standards of conduct provided
 507 in this section should be construed and applied to further that
 508 objective.

509 (b) In addition to the provisions of part III of chapter
 510 112, which are applicable to public service commissioners by
 511 virtue of their being public officers and full-time employees of
 512 the legislative branch of government, the conduct of public
 513 service commissioners shall be governed by the standards of
 514 conduct provided in this section. Nothing shall prohibit the
 515 standards of conduct from being more restrictive than part III
 516 of chapter 112. Further, this section shall not be construed to
 517 contravene the restrictions of part III of chapter 112. In the
 518 event of a conflict between this section and part III of chapter
 519 112, the more restrictive provision shall apply.

520 (2) STANDARDS OF CONDUCT.—

521 (a) A commissioner may not accept anything from any
 522 business entity which, either directly or indirectly, owns or
 523 controls any public utility regulated by the commission, from
 524 any public utility regulated by the commission, or from any
 525 business entity which, either directly or indirectly, is an
 526 affiliate or subsidiary of any public utility regulated by the
 527 commission. A commissioner may attend conferences and associated
 528 meals and events that are generally available to all conference
 529 participants without payment of any fees in addition to the
 530 conference fee. Additionally, while attending a conference, a
 531 commissioner may attend meetings, meals, or events that are not
 532 sponsored, in whole or in part, by any representative of any

PCB EUP 10-04

Redraft - B

2010

533 public utility regulated by the commission and that are limited
534 to commissioners only, committee members, or speakers if the
535 commissioner is a member of a committee of the association of
536 regulatory agencies that organized the conference or is a
537 speaker at the conference. It is not a violation of this
538 paragraph for a commissioner to attend a conference for which
539 conference participants who are employed by a utility regulated
540 by the commission have paid a higher conference registration fee
541 than the commissioner, or to attend a meal or event that is
542 generally available to all conference participants without
543 payment of any fees in addition to the conference fee and that
544 is sponsored, in whole or in part, by a utility regulated by the
545 commission. If, during the course of an investigation by the
546 Commission on Ethics into an alleged violation of this
547 paragraph, allegations are made as to the identity of the person
548 giving or providing the prohibited gift, that person must be
549 given notice and an opportunity to participate in the
550 investigation and relevant proceedings to present a defense. If
551 the Commission on Ethics determines that the person gave or
552 provided a prohibited gift, the person may not appear before the
553 commission or otherwise represent anyone before the commission
554 for a period of 2 years.

555 (b) A commissioner may not accept any form of employment
556 with or engage in any business activity with any business entity
557 which, either directly or indirectly, owns or controls any
558 public utility regulated by the commission, any public utility
559 regulated by the commission, or any business entity which,
560 either directly or indirectly, is an affiliate or subsidiary of

PCB EUP 10-04

Redraft - B

2010

561 any public utility regulated by the commission.

562 (c) A commissioner may not have any financial interest,
563 other than shares in a mutual fund, in any public utility
564 regulated by the commission, in any business entity which,
565 either directly or indirectly, owns or controls any public
566 utility regulated by the commission, or in any business entity
567 which, either directly or indirectly, is an affiliate or
568 subsidiary of any public utility regulated by the commission. If
569 a commissioner acquires any financial interest prohibited by
570 this section during his or her term of office as a result of
571 events or actions beyond the commissioner's control, he or she
572 shall immediately sell such financial interest or place such
573 financial interest in a blind trust at a financial institution.
574 A commissioner may not attempt to influence, or exercise any
575 control over, decisions regarding the blind trust.

576 (d) A commissioner may not accept anything from a party in
577 a proceeding currently pending before the commission. If, during
578 the course of an investigation by the Commission on Ethics into
579 an alleged violation of this paragraph, allegations are made as
580 to the identity of the person giving or providing the prohibited
581 gift, that person must be given notice and an opportunity to
582 participate in the investigation and relevant proceedings to
583 present a defense. If the Commission on Ethics determines that
584 the person gave or provided a prohibited gift, the person may
585 not appear before the commission or otherwise represent anyone
586 before the commission for a period of 2 years.

587 (e) A commissioner may not serve as the representative of
588 any political party or on any executive committee or other

589 governing body of a political party; serve as an executive
 590 officer or employee of any political party, committee,
 591 organization, or association; receive remuneration for
 592 activities on behalf of any candidate for public office; engage
 593 on behalf of any candidate for public office in the solicitation
 594 of votes or other activities on behalf of such candidacy; or
 595 become a candidate for election to any public office without
 596 first resigning from office.

597 (f) A commissioner, during his or her term of office, may
 598 not make any public comment regarding the merits of any
 599 proceeding under ss. 120.569 and 120.57 currently pending before
 600 the commission.

601 (g) A commissioner may not conduct himself or herself in
 602 an unprofessional manner at any time during the performance of
 603 his or her official duties.

604 (h) The chair shall require order and decorum in
 605 proceedings before the commission. In the absence of the chair,
 606 the commissioner presiding over a commission proceeding shall
 607 require order and decorum in the proceeding.

608 (i) A commissioner shall be patient, dignified, and
 609 courteous to litigants, other commissioners, witnesses, lawyers,
 610 commission staff, staff of the Office of Regulatory Staff, and
 611 others with whom the commissioner deals in an official capacity.

612 (j) A commissioner shall perform his or her official
 613 duties without bias or prejudice. A commissioner may not, in the
 614 performance of his or her official duties, by words or conduct
 615 manifest bias or prejudice.

616 (k) A commissioner may not, with respect to parties or

617 classes of parties, cases, controversies, or issues likely to
 618 come before the commission, make pledges, promises, or
 619 commitments that are inconsistent with the impartial performance
 620 of the commissioner's official duties.

621 (l) A commissioner may not be swayed by partisan
 622 interests, public clamor, or fear of criticism.

623 (m) ~~(h)~~ A commissioner must avoid impropriety in all of his
 624 or her activities and must act at all times in a manner that
 625 promotes public confidence in the integrity and impartiality of
 626 the commission.

627 (n) ~~(i)~~ A commissioner may not directly or indirectly,
 628 through staff or other means, solicit anything of value from any
 629 public utility regulated by the commission, or from any business
 630 entity that, whether directly or indirectly, is an affiliate or
 631 subsidiary of any public utility regulated by the commission, or
 632 from any party appearing in a proceeding considered by the
 633 commission in the last 2 years.

634 (3) (a) The Commission on Ethics shall accept and
 635 investigate any alleged violations of this section pursuant to
 636 the procedures contained in ss. 112.322-112.3241.

637 (b) The Commission on Ethics shall provide the Governor
 638 and the Florida Public Service Commission Nominating Council
 639 with a report of its findings and recommendations with respect
 640 to alleged violations by a public service commissioner. The
 641 Governor is authorized to enforce these ~~the~~ findings and
 642 recommendations ~~of the Commission on Ethics~~, pursuant to part
 643 III of chapter 112.

644 (c) The Commission on Ethics shall provide the

645 disciplinary officials or bodies specified in part III of
 646 chapter 112 with a report of its findings and recommendations
 647 with respect to alleged violations of the specific provisions of
 648 this section that, pursuant to s. 350.073, are applicable to the
 649 executive director of the Office of Regulatory Staff.

650 (d) A public service commissioner, a commission employee,
 651 the executive director of the Office of Regulatory Staff, or a
 652 member of the Florida Public Service Commission Nominating
 653 Council may request an advisory opinion from the Commission on
 654 Ethics, pursuant to s. 112.322(3)(a), regarding the standards of
 655 conduct or prohibitions set forth in this section and ss.
 656 350.031, 350.04, and 350.042.

657 Section 11. Section 350.042, Florida Statutes, is amended
 658 to read:

659 350.042 Ex parte communications.—

660 (1) Each A commissioner and employee of the commission
 661 shall ~~should~~ accord to every person who is a party to or is
 662 registered with the commission as an interested person in a
 663 proposed agency action proceeding, or who is a party to a
 664 proceeding under s. 120.565, s. 120.569, or s. 120.57 ~~legally~~
 665 ~~interested in a proceeding,~~ or the person's lawyer, full right
 666 to be heard according to law, and, except as authorized by law,
 667 shall ~~not neither~~ initiate, solicit, or ~~not~~ consider ex parte
 668 communications concerning a pending proposed agency action ~~the~~
 669 ~~merits, threat, or offer of reward in any proceeding or a~~
 670 proceeding under s. 120.565, s. 120.569, or s. 120.57 ~~other than~~
 671 ~~a proceeding under s. 120.54 or s. 120.565, workshops, or~~
 672 ~~internal affairs meetings.~~ No individual shall discuss ex parte

673 | with a commissioner the merits of any issue that he or she knows
 674 | will be filed with the commission within 180 ~~90~~ days. ~~The~~
 675 | ~~provisions of this subsection shall not apply to commission~~
 676 | ~~staff.~~

677 | (a) As used in this section, the term "ex parte
 678 | communication" means any communication that:

679 | 1. If it is a written or printed communication or a
 680 | communication in electronic form, is not served on all parties
 681 | to a proceeding; or

682 | 2. If it is an oral communication, is made without
 683 | adequate notice to the parties and without an opportunity for
 684 | the parties to be present and heard.

685 | (b) Where circumstances require, ex parte communications
 686 | concerning scheduling, administrative purposes, or emergencies
 687 | that do not deal with substantive matters or issues on the
 688 | merits are authorized, if:

689 | 1. The commissioner or commission employee reasonably
 690 | believes that no party will gain a procedural or tactical
 691 | advantage as a result of the ex parte communication; and

692 | 2. The commissioner or commission employee makes provision
 693 | promptly to notify all parties of the substance of the ex parte
 694 | communication and, where possible, allows an opportunity to
 695 | respond.

696 | (2) The provisions of this section shall not prohibit an
 697 | individual residential ratepayer from communicating with a
 698 | commissioner or commission employee, provided that the ratepayer
 699 | is representing only himself or herself, without compensation.

700 | (3) This section shall not apply to oral communications or

701 discussions in scheduled and noticed open public meetings of
 702 educational programs or of a conference or other meeting of an
 703 association of regulatory agencies.

704 (4) If a commissioner or commission employee knowingly
 705 receives an ex parte communication prohibited by this section
 706 ~~relative to a proceeding other than as set forth in subsection~~
 707 ~~(1)~~, to which he or she is assigned, he or she must place on the
 708 record of the proceeding copies of all written communications
 709 received, all written responses to the communications, and a
 710 memorandum stating the substance of all oral communications
 711 received and all oral responses made, and shall give written
 712 notice to all parties to the communication that such matters
 713 have been placed on the record. Any party to the proceeding who
 714 desires to respond to the ~~an ex parte~~ communication may do so.
 715 The response must be received by the commission within 10 days
 716 after receiving notice that the ~~ex parte~~ communication has been
 717 placed on the record. The commissioner may, if he or she deems
 718 it necessary to eliminate the effect of an ex parte
 719 communication received by him or her, withdraw from the
 720 proceeding, in which case the chair shall substitute another
 721 commissioner for the proceeding.

722 (5) Any individual who makes an ex parte communication
 723 prohibited by this section shall submit to the commission a
 724 written statement describing the nature of such communication,
 725 to include the name of the person making the communication, the
 726 name of each ~~the~~ commissioner or commission employee
 727 ~~commissioners~~ receiving the communication, copies of all written
 728 communications made, all written responses to such

729 | communications, and a memorandum stating the substance of all
 730 | oral communications received and all oral responses made. The
 731 | commission shall place on the record of a proceeding all such
 732 | communications.

733 | (6) Any commissioner or commission employee who knowingly
 734 | fails to place on the record any ex parte ~~such~~ communications
 735 | prohibited by this section, in violation of this ~~the~~ section,
 736 | within 15 days after ~~of~~ the date of the ~~such~~ communication is
 737 | subject to removal or dismissal and may be assessed a civil
 738 | penalty not to exceed \$5,000. Any individual who knowingly fails
 739 | to comply with subsection (5) may be assessed a civil penalty
 740 | not to exceed \$5,000.

741 | (7) (a) It is ~~shall be~~ the duty of the Commission on Ethics
 742 | to receive and investigate sworn complaints of violations of
 743 | this section pursuant to the procedures contained in ss.
 744 | 112.322-112.3241.

745 | (b) If the Commission on Ethics finds that there has been
 746 | a violation of this section by a public service commissioner or
 747 | commission employee, it shall provide the Governor and the
 748 | Florida Public Service Commission Nominating Council with a
 749 | report of its findings and recommendations. The Governor is
 750 | authorized to enforce the findings and recommendations of the
 751 | Commission on Ethics, pursuant to part III of chapter 112.

752 | (c) If a commissioner, commission employee, or other
 753 | individual fails or refuses to pay the Commission on Ethics any
 754 | civil penalties assessed pursuant to ~~the provisions of~~ this
 755 | section, the Commission on Ethics may bring an action in any
 756 | circuit court to enforce the ~~such~~ penalty.

757 (d) If, during the course of an investigation by the
 758 Commission on Ethics into an alleged violation of this section,
 759 allegations are made as to the identity of the person who
 760 participated in the ex parte communication, that person must be
 761 given notice and an opportunity to participate in the
 762 investigation and relevant proceedings to present a defense. If
 763 the Commission on Ethics determines that the person participated
 764 in the ex parte communication, the person may not appear before
 765 the commission or otherwise represent anyone before the
 766 commission for a period of 2 years.

767 Section 12. Subsections (1), (2), and (3) of section
 768 350.06, Florida Statutes, are amended to read:

769 350.06 Place of meeting; expenditures; employment of
 770 personnel; records availability and fees.—

771 (1) The offices of the commission ~~said commissioners~~ shall
 772 be in the vicinity of Tallahassee, but the commissioners may
 773 hold sessions anywhere in the state at their discretion.

774 (2) All sums of money authorized to be paid on account of
 775 the commission ~~said commissioners~~ shall be paid out of the State
 776 Treasury only on the order of the Chief Financial Officer.

777 (3) The commission ~~commissioners~~ may employ clerical,
 778 technical, and professional personnel reasonably necessary for
 779 the performance of its ~~their~~ duties, except for those
 780 responsibilities and functions reserved to the Office of
 781 Regulatory Staff, and may also employ one or more persons
 782 capable of stenographic court reporting, to be known as the
 783 official reporters of the commission.

784 Section 13. Section 350.0605, Florida Statutes, is amended
785 to read:

786 350.0605 Former commissioners; executive directors; and
787 employees of the commission or Office of Regulatory Staff;
788 representation of clients before commission.—

789 (1) Any former commissioner of the Public Service
790 Commission or former executive director of the Office of
791 Regulatory Staff is prohibited from appearing before the
792 commission representing any client or any industry regulated by
793 the Public Service Commission for a period of 2 years following
794 termination of service as a commissioner or executive director
795 ~~on the commission~~.

796 (2) Any former employee of the commission or the Office of
797 Regulatory Staff is prohibited from appearing before the
798 commission representing any client regulated by the Public
799 Service Commission on any matter which was pending at the time
800 of termination and in which such former employee had
801 participated.

802 (3) For a period of 2 years following termination of
803 service as a commissioner or executive director ~~on the~~
804 ~~commission~~, a former commissioner of the Public Service
805 Commission or former executive director of the Office of
806 Regulatory Staff ~~member~~ may not accept employment by or
807 compensation from a business entity which, directly or
808 indirectly, owns or controls a public utility regulated by the
809 commission, from a public utility regulated by the commission,
810 from a business entity which, directly or indirectly, is an
811 affiliate or subsidiary of a public utility regulated by the

812 | commission or is an actual business competitor of a local
 813 | exchange company or public utility regulated by the commission
 814 | and is otherwise exempt from regulation by the commission under
 815 | ss. 364.02 ~~(15)-(14)~~ and 366.02(1), or from a business entity or
 816 | trade association that has been a party to a commission
 817 | proceeding within the 2 years preceding the member's termination
 818 | of service on the commission. This subsection applies only to
 819 | members of the Florida Public Service Commission who are
 820 | appointed or reappointed after May 10, 1993.

821 | Section 14. Section 350.071, Florida Statutes, is created
 822 | to read:

823 | 350.071 Office of Regulatory Staff; creation; purpose;
 824 | party status.-

825 | (1) The Office of Regulatory Staff is created within the
 826 | legislative branch of government within the intent expressed in
 827 | chapter 216. The office shall perform its duties independently.

828 | (2) The office shall be considered a party of record in
 829 | all proceedings before the Public Service Commission. All
 830 | tariffs, initial pleadings, complaints, and notices of appeal
 831 | filed with the commission shall be served upon the office. The
 832 | commission shall notify the office of the initiation of any
 833 | rulemaking proceeding, workshop, or other proceeding that the
 834 | commission is authorized by law to initiate.

835 | (3) The office shall represent the public interest of this
 836 | state. As used in ss. 350.071-350.075, the term "public
 837 | interest" means a balancing of the following:

838 | (a) Concerns of the using and consuming public, regardless
 839 | of customer class, with respect to services provided by any

840 company subject to the jurisdiction of the commission pursuant
 841 to any provision of law.

842 (b) Preservation of the financial integrity of the state's
 843 regulated public utilities and continued investment in and
 844 maintenance of facilities in order to provide reliable utility
 845 services at fair, just, and reasonable rates.

846 (c) Promotion of fair competition in telecommunications
 847 markets.

848 (4) The Office of Regulatory Staff shall be subject to the
 849 same provisions governing ex parte communications that apply to
 850 any other party to a commission proceeding. Any recommendation
 851 of the Office of Regulatory Staff shall be provided to the
 852 commission in a form, forum, and manner as may lawfully be
 853 provided by any other party.

854 Section 15. Section 350.072, Florida Statutes, is created
 855 to read:

856 350.072 Office of Regulatory Staff; employees;
 857 supervision; budget; location; procedures governing
 858 administration and operations.-

859 (1) The Office of Regulatory Staff shall consist of the
 860 executive director and any clerical, technical, and professional
 861 personnel that the executive director deems to be reasonably
 862 necessary for the performance of the duties of the office. The
 863 executive director is authorized to employ expert witnesses and
 864 other professional expertise that the executive director deems
 865 to be reasonably necessary to assist the office in the
 866 performance of its duties.

867 (2) The executive director shall employ and set the
 868 compensation for all personnel of the Office of Regulatory Staff
 869 and shall be responsible for the supervision and direction of
 870 all such personnel.

871 (3) Neither the executive director nor any employee of the
 872 Office of Regulatory Staff shall be subject to the supervision,
 873 direction, or control of the commission or the chairman, any
 874 member, or any employee of the commission.

875 (4) The executive director shall be responsible for
 876 preparing the budget for the Office of Regulatory Staff and
 877 shall submit the budget to the Committee on Public Service
 878 Commission Oversight.

879 (5) The Office of Regulatory Staff shall maintain offices
 880 in Leon County at a place convenient to the offices of the
 881 commission that will enable the Office of Regulatory Staff to
 882 efficiently perform its functions and duties.

883 (6) The Office of Regulatory Staff shall establish
 884 procedures governing its internal administration and operations.

885 Section 16. Section 350.073, Florida Statutes, is created
 886 to read:

887 350.073 Executive director; appointment; term of office;
 888 vacancies; qualifications; salary; oath of office; standards of
 889 conduct.—

890 (1) (a) The Committee on Public Service Commission
 891 Oversight shall appoint the executive director of the Office of
 892 Regulatory Staff by majority vote of the committee, subject to
 893 confirmation by a majority vote of the Senate and the House of
 894 Representatives.

895 (b) Until such time as each chamber confirms the
 896 appointment of the executive director, the appointee shall
 897 perform the functions of the office as provided by law.

898 (c) The reappointment of an executive director is subject
 899 to confirmation by a majority vote of the Senate and the House
 900 of Representatives.

901 (d) The appointment of an executive director may be
 902 terminated at any time by a majority vote of the Senate and the
 903 House of Representatives.

904 (2) (a) The term of the executive director shall be 4
 905 years, and the initial term of office shall begin January 2,
 906 2011. The Committee on Public Service Commission Oversight shall
 907 appoint the executive director no less than 60 days prior to the
 908 first day of the term to which he or she is appointed.

909 (b) In case of a vacancy in the office of executive
 910 director for any reason before expiration of the term of office,
 911 the Committee on Public Service Commission Oversight shall
 912 appoint a new executive director in the same manner as the
 913 original appointment. The committee may appoint an interim
 914 executive director to serve until such time as a new executive
 915 director is appointed.

916 (2) A person may not be appointed as executive director
 917 until the committee determines that the person satisfies the
 918 criteria set forth in s. 350.04(1) and (2) (a) and possesses a
 919 minimum of 12 years of professional experience in one or more of
 920 the fields identified in s. 350.04(2) (b).

921 (3) The salary of the executive director shall be set by
 922 the committee.

923 (4) The executive director shall take and subscribe to the
 924 oath of office required of state officers by the State
 925 Constitution.

926 (5) In addition to the provisions of part III of chapter
 927 112, applicable to the executive director by virtue of being a
 928 public officer and full-time employee of the legislative branch
 929 of government, the executive director shall be subject to the
 930 standards of conduct applicable to commissioners pursuant to s.
 931 350.041(2)(a), (b), (c), (d), (e), (g), (l), and (n). In the
 932 event of a conflict between this section and part III of chapter
 933 112, the more restrictive provision shall apply.

934 Section 17. Section 350.074, Florida Statutes, is created
 935 to read:

936 350.074 Office of Regulatory Staff; duties.—

937 (1) The Office of Regulatory Staff shall represent the
 938 public interest with respect to matters within the jurisdiction
 939 of the commission and, when considered necessary and in the
 940 public interest by the executive director, shall petition the
 941 commission to initiate proceedings on matters within its
 942 jurisdiction. The office shall have authority to:

943 (a) Review and investigate the rates charged or proposed
 944 to be charged, and the service furnished or proposed to be
 945 furnished, by any public utility or regulated company.

946 (b) Inspect, audit, and examine public utilities and
 947 regulated companies regarding matters within the jurisdiction of
 948 the commission.

949 (c) Represent the public interest in commission
 950 proceedings, hearings, rulemakings, and other regulatory

951 matters.

952 (d) Investigate complaints made in connection with matters
 953 under the jurisdiction of the commission, including those
 954 complaints that are directed to the commission or commissioners.

955 (e) Assist customers in the informal resolution of
 956 complaints regarding the rates or service of public utilities
 957 and regulated companies or regarding any other matter within the
 958 jurisdiction of the commission.

959 (f) Make studies to the commission with respect to
 960 standards, regulations, practices, or service of any public
 961 utility or regulated company.

962 (g) Provide legal representation of the public interest
 963 before other state agencies, federal agencies, and state and
 964 federal courts in connection with matters under the jurisdiction
 965 of the commission, including proceedings that could affect the
 966 rates or service of any public utility or regulated company.

967 (h) Educate the public on matters within the jurisdiction
 968 of the commission which are of special interest to consumers.

969 (2) The commission may not require the Office of
 970 Regulatory Staff to sponsor witnesses or provide testimony in
 971 any proceeding, but it may request in writing or at any duly
 972 noticed public meeting that the office:

973 (a) Provide information and reports on any matter subject
 974 to the commission's jurisdiction and matters incidental to the
 975 jurisdiction of the commission;

976 (b) Assist in the preparation of any report that the
 977 commission is required by law to produce; or

978 (c) Conduct inspections, audits, or examinations of public

979 utilities and regulated companies regarding matters within the
 980 jurisdiction of the commission.

981 (3) Decisions relating to whether, when, or how to
 982 petition to initiate proceedings before the commission or to
 983 participate or intervene in proceedings before other state
 984 agencies, federal agencies, or state or federal courts are in
 985 the sole discretion of the executive director, except for those
 986 matters that are specified by order of a court of competent
 987 jurisdiction.

988 (4) The Office of Regulatory Staff is considered to have
 989 an interest sufficient to maintain actions for judicial review
 990 of commission orders or decisions and may, as of right and in a
 991 manner prescribed by law, intervene or otherwise participate in
 992 any civil proceeding which involves the review or enforcement of
 993 commission action that the executive director determines may
 994 substantially affect the public interest.

995 (5) The Office of Regulatory Staff shall provide to the
 996 Legislature an annual report of its activities.

997 (6) The commission and the office shall establish mutually
 998 acceptable procedures by which the office may elect not to
 999 participate as a party in noncontroversial matters.

1000 Section 18. Section 350.075, Florida Statutes, is created
 1001 to read:

1002 350.075 Office of Regulatory Staff; access to records.—The
 1003 Office of Regulatory Staff shall have the authority to access or
 1004 require the production of books, records, and information
 1005 pursuant to ss. 364.183, 366.093, and 367.156 and shall have the

1006 authority to access or require production of any other records
 1007 as provided by law.

1008 Section 19. Subsections (1), (2), and (6) of section
 1009 350.113, Florida Statutes, are amended to read:

1010 350.113 Florida Public Service Regulatory Trust Fund;
 1011 moneys to be deposited therein.-

1012 (1) There is hereby created in the State Treasury a
 1013 special fund to be designated as the "Florida Public Service
 1014 Regulatory Trust Fund" which shall be used in the operation of
 1015 the commission and the Office of Regulatory Staff in the
 1016 performance of the various functions and duties required of them
 1017 ~~it~~ by law.

1018 (2) All fees, licenses, and other charges collected by the
 1019 commission shall be deposited in the State Treasury to the
 1020 credit of the Florida Public Service Regulatory Trust Fund to be
 1021 used in the operation of the commission and the Office of
 1022 Regulatory Staff as authorized by the Legislature; however,
 1023 penalties and interest assessed and collected by the commission
 1024 shall not be deposited in the trust fund but shall be deposited
 1025 in the General Revenue Fund. The Florida Public Service
 1026 Regulatory Trust Fund shall be subject to the service charge
 1027 imposed pursuant to chapter 215.

1028 (6) All moneys in the Florida Public Service Regulatory
 1029 Trust Fund shall be for the use of the commission and the Office
 1030 of Regulatory Staff in the performance of their ~~its~~ functions
 1031 and duties as provided by law, subject to the fiscal and
 1032 budgetary provisions of general law.

1033 Section 20. Subsections (1) and (2) of section 350.117,
 1034 Florida Statutes, are amended to read:

1035 350.117 Reports; audits.—

1036 (1) The commission and the Office of Regulatory Staff may
 1037 require such regular or emergency reports, including, but not
 1038 limited to, financial reports, as the commission or the office
 1039 deems necessary to fulfill its obligations under the law. A copy
 1040 of any report provided to the commission must be provided to the
 1041 Office of Regulatory Staff.

1042 (2) The commission may request that the Office of
 1043 Regulatory Staff perform management and operation audits of any
 1044 regulated company. The commission may consider the results of
 1045 such audits in establishing rates; however, the company shall
 1046 not be denied due process as a result of the use of any such
 1047 management or operation audit.

1048 Section 21. Section 350.121, Florida Statutes, is
 1049 repealed.

1050 Section 22. Section 350.122, Florida Statutes, is created
 1051 to read:

1052 350.122 Testimony; public disclosure of affiliation.—

1053 (1) Each person offering testimony at a meeting, workshop,
 1054 hearing, or other scheduled event of the commission shall
 1055 disclose any financial or fiduciary relationship with any party
 1056 to the proceedings at the time the testimony is provided to the
 1057 commission.

1058 (2) The determination by the commission that a person has
 1059 knowingly violated this section constitutes agency action for
 1060 which a hearing may be sought under chapter 120.

1061 Section 23. Section 364.016, Florida Statutes, is amended
 1062 to read:

1063 364.016 Travel costs.—The office ~~commission~~ has the
 1064 authority to assess a telecommunications company for reasonable
 1065 travel costs associated with reviewing the records of the
 1066 telecommunications company and its affiliates when such records
 1067 are kept out of state. The telecommunications company may bring
 1068 the records back into the state for review.

1069 Section 24. Subsections (11) through (16) of section
 1070 364.02, Florida Statutes, are renumbered as subsections (12)
 1071 through (17), respectively, and a new subsection (11) is added
 1072 to that section to read:

1073 364.02 Definitions.—As used in this chapter, the term:
 1074 (11) "Office" means the Office of Regulatory Staff.

1075 Section 25. Section 364.15, Florida Statutes, is amended
 1076 to read:

1077 364.15 Compelling repairs, improvements, changes,
 1078 additions, or extensions.—Whenever the commission finds, ~~on its~~
 1079 ~~own motion or~~ upon petition or complaint, that repairs or
 1080 improvements to, or changes in, any telecommunications facility
 1081 ought reasonably to be made, or that any additions or extensions
 1082 should reasonably be made to any telecommunications facility, in
 1083 order to promote the security or convenience of the public or
 1084 employees or in order to secure adequate service or facilities
 1085 for basic local telecommunications services consistent with the
 1086 requirements set forth in this chapter, the commission shall
 1087 make and serve an order directing that such repairs,
 1088 improvements, changes, additions, or extensions be made in the

1089 manner to be specified in the order. This section authorizes the
 1090 commission to impose only those requirements that it is
 1091 otherwise authorized to impose under this chapter.

1092 Section 26. Subsections (1) and (2) of section 364.183,
 1093 Florida Statutes, are amended to read:

1094 364.183 Access to company records.—

1095 (1) The commission and the office shall have access to all
 1096 records of a telecommunications company that are reasonably
 1097 necessary for the disposition of matters within the commission's
 1098 jurisdiction. The commission and the office shall also have
 1099 access to those records of a local exchange telecommunications
 1100 company's affiliated companies, including its parent company,
 1101 that are reasonably necessary for the disposition of any matter
 1102 concerning an affiliated transaction or a claim of
 1103 anticompetitive behavior including claims of cross-subsidization
 1104 and predatory pricing. Both the commission and the office may
 1105 require a telecommunications company to file records, reports or
 1106 other data directly related to matters within the commission's
 1107 jurisdiction in the form specified in the request ~~by the~~
 1108 ~~commission~~ and may require such company to retain such
 1109 information for a designated period of time. Upon request of the
 1110 company or other person, any records received by the commission
 1111 or the office which are claimed by the company or other person
 1112 to be proprietary confidential business information shall be
 1113 kept confidential and shall be exempt from s. 119.07(1) and s.
 1114 24(a), Art. I of the State Constitution. The authority of the
 1115 commission to access records under this section is granted
 1116 subject to the limitations set forth in s. 350.011(3) and (4).

1117 (2) Discovery in any docket or proceeding before the
 1118 commission shall be in the manner provided for in Rule 1.280 of
 1119 the Florida Rules of Civil Procedure. Upon a showing by a
 1120 company or other person and a finding by the commission that
 1121 discovery will require the disclosure of proprietary
 1122 confidential business information, the commission shall issue an
 1123 appropriate protective order designating the manner for handling
 1124 such information during the course of the proceeding and for
 1125 protecting such information from disclosure outside the
 1126 proceeding. Such proprietary confidential business information
 1127 shall be exempt from s. 119.07(1). Any records provided pursuant
 1128 to a discovery request for which proprietary confidential
 1129 business information status is requested shall be treated by the
 1130 commission, the Office of Regulatory Staff, ~~and~~ the Office of
 1131 the Public Counsel, and any other party subject to the public
 1132 records law as confidential and shall be exempt from s.
 1133 119.07(1), pending a formal ruling on such request by the
 1134 commission or the return of the records to the person providing
 1135 the records. Any record which has been determined to be
 1136 proprietary confidential business information and is not entered
 1137 into the official record of the proceeding shall be returned to
 1138 the person providing the record within 60 days after the final
 1139 order, unless the final order is appealed. If the final order is
 1140 appealed, any such record shall be returned within 30 days after
 1141 the decision on appeal. The commission shall adopt the necessary
 1142 rules to implement this subsection.

1143 Section 27. Section 364.185, Florida Statutes, is amended
 1144 to read:

1145 364.185 Investigations and inspections; power of office
 1146 ~~commission~~.—The office ~~commission~~ or its duly authorized
 1147 representatives may during all reasonable hours enter upon any
 1148 premises occupied by any telecommunications company and may set
 1149 up and use thereon all necessary apparatus and appliances for
 1150 the purpose of making investigations, inspections, examinations,
 1151 and tests and exercising any power conferred by this chapter or
 1152 chapter 350; however, the telecommunications company shall be
 1153 notified of and be represented at the making of such
 1154 investigations, inspections, examinations, and tests. The
 1155 requirement to provide prior notification and representation
 1156 shall not be applicable to the onsite field inspection of
 1157 equipment used to provide telecommunications services to the
 1158 transient public, including the facilities of call aggregators.

1159 Section 28. Subsections (2) and (4) of section 364.335,
 1160 Florida Statutes, are amended to read:

1161 364.335 Application for certificate.—

1162 (2) If the commission grants the requested certificate,
 1163 any person who would be substantially affected by the requested
 1164 certification may, within 21 days after the granting of such
 1165 certificate, file a written objection requesting a proceeding
 1166 pursuant to ss. 120.569 and 120.57. The commission may, upon
 1167 petition of the office ~~on its own motion~~, institute a proceeding
 1168 under ss. 120.569 and 120.57 to determine whether the grant of
 1169 such certificate is in the public interest. The commission shall
 1170 order such proceeding conducted in or near the territory applied
 1171 for, if feasible. If any person requests a public hearing on the
 1172 application, such hearing shall, if feasible, be held in or near

1173 the territory applied for, and the transcript of the public
 1174 hearing and any material submitted at or prior to the hearing
 1175 shall be considered part of the record of the application and
 1176 any proceeding related to the application.

1177 (4) Except as provided in s. 364.33, revocation,
 1178 suspension, transfer, or amendment of a certificate shall be
 1179 subject to the provisions of this section; except that, when the
 1180 commission institutes a proceeding upon petition of the office
 1181 ~~initiates the action~~, the commission shall furnish notice to the
 1182 appropriate local government and to the Public Counsel.

1183 Section 29. Subsection (10) of section 364.3376, Florida
 1184 Statutes, is amended to read:

1185 364.3376 Operator services.—

1186 (10) The office ~~commission~~ shall conduct an effective
 1187 program of random, no-notice compliance investigations of the
 1188 operator services providers and call aggregators operating
 1189 within the state. When the office ~~commission~~ finds a blocking
 1190 violation, it shall notify the commission and provide
 1191 information to assist the commission in determining ~~determine~~
 1192 whether the blocking is the responsibility of the call
 1193 aggregator or the operator services provider. The commission ~~and~~
 1194 may fine the responsible party in accordance with s. 364.285.
 1195 Upon the failure of the responsible party to correct a violation
 1196 within a mandatory time limit established by the commission or
 1197 upon a proven pattern of intentional blocking, the commission
 1198 shall order the discontinuance of the call aggregator's
 1199 telephone service or revoke the operator services provider's
 1200 certificate, as applicable.

PCB EUP 10-04

Redraft - B

2010

1201 Section 30. Subsection (3) of section 364.3381, Florida
 1202 Statutes, is amended to read:

1203 364.3381 Cross-subsidization.—

1204 (3) The commission shall have continuing oversight
 1205 jurisdiction over cross-subsidization, predatory pricing, or
 1206 other similar anticompetitive behavior and may investigate, upon
 1207 petition or complaint ~~or on its own motion~~, allegations of such
 1208 practices.

1209 Section 31. Section 364.37, Florida Statutes, is amended
 1210 to read:

1211 364.37 Controversy concerning territory to be served;
 1212 powers of commission.—If any person in constructing or extending
 1213 his or her telecommunications facility unreasonably interferes
 1214 or is about to unreasonably interfere with any
 1215 telecommunications facility or service of any other person, or
 1216 if a controversy arises between any two or more persons with
 1217 respect to the territory professed to be served by each, the
 1218 commission, upon petition of the office or ~~on its own initiative~~
 1219 ~~or on~~ complaint of any person claiming to be adversely affected,
 1220 may make such order and prescribe such terms and conditions with
 1221 respect thereto as are just and reasonable.

1222 Section 32. Subsection (4) is added to section 366.02,
 1223 Florida Statutes, to read:

1224 366.02 Definitions.—As used in this chapter:

1225 (4) "Office" means the Office of Regulatory Staff.

1226 Section 33. Subsections (6), (9), and (11) of section
 1227 366.05, Florida Statutes, are amended to read:

1228 366.05 Powers.—

1229 (6) The commission or the office, if designated by the
 1230 commission to conduct testing, may purchase materials,
 1231 apparatus, and standard measuring instruments for such
 1232 examination and tests.

1233 (9) Both the commission and the office may require the
 1234 filing of reports and other data by a public utility or its
 1235 affiliated companies, including its parent company, regarding
 1236 transactions, or allocations of common costs, among the utility
 1237 and such affiliated companies. Both the commission and the
 1238 office may also require such reports or other data necessary to
 1239 ensure that a utility's ratepayers do not subsidize nonutility
 1240 activities. The authority of the commission to access records
 1241 under this subsection is granted subject to the limitations set
 1242 forth in s. 350.011(3) and (4).

1243 (11) The office may ~~commission has the authority to~~ assess
 1244 a public utility for reasonable travel costs associated with
 1245 reviewing the records of the public utility and its affiliates
 1246 when such records are kept out of state. The public utility may
 1247 bring the records back into the state for review.

1248 Section 34. Subsections (2) and (3) of section 366.06,
 1249 Florida Statutes, are amended to read:

1250 366.06 Rates; procedure for fixing and changing.—

1251 (2) Whenever the commission finds, upon request made ~~or~~
 1252 ~~upon its own motion,~~ that the rates demanded, charged, or
 1253 collected by any public utility for public utility service, or
 1254 that the rules, regulations, or practices of any public utility
 1255 affecting such rates, are unjust, unreasonable, unjustly
 1256 discriminatory, or in violation of law; that such rates are

1257 insufficient to yield reasonable compensation for the services
 1258 rendered; that such rates yield excessive compensation for
 1259 services rendered; or that such service is inadequate or cannot
 1260 be obtained, the commission shall order and hold a public
 1261 hearing, giving notice to the public and to the public utility,
 1262 and shall thereafter determine just and reasonable rates to be
 1263 thereafter charged for such service and promulgate rules and
 1264 regulations affecting equipment, facilities, and service to be
 1265 thereafter installed, furnished, and used.

1266 (3) Pending a final order by the commission in any rate
 1267 proceeding under this section, the commission may withhold
 1268 consent to the operation of all or any portion of the new rate
 1269 schedules, delivering to the utility requesting such increase,
 1270 within 60 days, a reason or written statement of good cause for
 1271 withholding its consent. Such consent shall not be withheld for
 1272 a period longer than 8 months from the date of filing the new
 1273 schedules. The new rates or any portion not consented to shall
 1274 go into effect under bond or corporate undertaking at the end of
 1275 such period, but the commission shall, by order, require such
 1276 public utility to keep accurate account in detail of all amounts
 1277 received by reason of such increase, specifying by whom and in
 1278 whose behalf such amounts were paid and, upon completion of
 1279 hearing and final decision in such proceeding, shall by further
 1280 order require such public utility to refund with interest at a
 1281 fair rate, to be determined by the commission in such manner as
 1282 it may direct, such portion of the increased rate or charge as
 1283 by its decision shall be found not justified. Any portion of
 1284 such refund not thus refunded to patrons or customers of the

1285 public utility shall be refunded or disposed of by the public
 1286 utility as the commission may direct; however, no such funds
 1287 shall accrue to the benefit of the public utility. The
 1288 commission shall take final commission action in the docket and
 1289 enter its final order within 12 months of the commencement date
 1290 for final agency action. As used in this subsection, the
 1291 "commencement date for final agency action" means the date upon
 1292 which it has been determined by the commission or its designee
 1293 that the utility has filed with the clerk the minimum filing
 1294 requirements as established by rule of the commission. Within 30
 1295 days after receipt of the application, rate request, or other
 1296 written document for which the commencement date for final
 1297 agency action is to be established, the commission or its
 1298 designee shall either determine the commencement date for final
 1299 agency action or issue a statement of deficiencies to the
 1300 applicant, specifically listing why said applicant has failed to
 1301 meet the minimum filing requirements. Such statement of
 1302 deficiencies shall be binding upon the commission to the extent
 1303 that, once the deficiencies in the statement are satisfied, the
 1304 commencement date for final agency action shall be promptly
 1305 established as provided herein. Thereafter, within 15 days after
 1306 the applicant indicates to the commission that it believes that
 1307 it has met the minimum filing requirements, the commission or
 1308 its designee shall either determine the commencement date for
 1309 final agency action or specifically enumerate in writing why the
 1310 requirements have not been met, in which case this procedure
 1311 shall be repeated until the commencement date for final agency
 1312 action is established. When the commission initiates a

1313 | proceeding upon a request made by a person other than the
 1314 | utility, the commencement date for final agency action shall be
 1315 | the date upon which the order initiating the proceeding is
 1316 | issued.

1317 | Section 35. Section 366.07, Florida Statutes, is amended
 1318 | to read:

1319 | 366.07 Rates; adjustment.—Whenever the commission, after
 1320 | public hearing either upon petition of the office ~~its own motion~~
 1321 | or upon complaint, shall find the rates, rentals, charges or
 1322 | classifications, or any of them, proposed, demanded, observed,
 1323 | charged or collected by any public utility for any service, or
 1324 | in connection therewith, or the rules, regulations,
 1325 | measurements, practices or contracts, or any of them, relating
 1326 | thereto, are unjust, unreasonable, insufficient, excessive, or
 1327 | unjustly discriminatory or preferential, or in anywise in
 1328 | violation of law, or any service is inadequate or cannot be
 1329 | obtained, the commission shall determine and by order fix the
 1330 | fair and reasonable rates, rentals, charges or classifications,
 1331 | and reasonable rules, regulations, measurements, practices,
 1332 | contracts or service, to be imposed, observed, furnished or
 1333 | followed in the future.

1334 | Section 36. Subsections (1) and (3) of section 366.071,
 1335 | Florida Statutes, are amended to read:

1336 | 366.071 Interim rates; procedure.—

1337 | (1) The commission may, during any proceeding for a change
 1338 | of rates, ~~upon its own motion, or~~ upon petition from any party,
 1339 | or by a tariff filing of a public utility, authorize the
 1340 | collection of interim rates until the effective date of the

1341 final order. Such interim rates may be based upon a test period
 1342 different from the test period used in the request for permanent
 1343 rate relief. To establish a prima facie entitlement for interim
 1344 relief, ~~the commission,~~ the petitioning party, or the public
 1345 utility shall demonstrate that the public utility is earning
 1346 outside the range of reasonableness on rate of return calculated
 1347 in accordance with subsection (5).

1348 (3) In granting such relief, the commission may, in an
 1349 expedited hearing but within 60 days of the commencement of the
 1350 proceeding, upon petition ~~or upon its own motion,~~ preclude the
 1351 recovery of any extraordinary or imprudently incurred
 1352 expenditures or, for good cause shown, increase the amount of
 1353 the bond or corporate undertaking.

1354 Section 37. Subsection (1) of section 366.076, Florida
 1355 Statutes, is amended to read:

1356 366.076 Limited proceedings; rules on subsequent
 1357 adjustments.—

1358 (1) Upon petition ~~or its own motion,~~ the commission may
 1359 conduct a limited proceeding to consider and act upon any matter
 1360 within its jurisdiction, including any matter the resolution of
 1361 which requires a public utility to adjust its rates to consist
 1362 with the provisions of this chapter. The commission shall
 1363 determine the issues to be considered during such a proceeding
 1364 and may grant or deny any request to expand the scope of the
 1365 proceeding to include other matters.

1366 Section 38. Section 366.08, Florida Statutes, is amended
 1367 to read:

1368 366.08 Investigations, inspections; power of office

1369 ~~commission.~~—The office ~~commission~~ or its duly authorized
 1370 representatives may during all reasonable hours enter upon any
 1371 premises occupied by any public utility and may set up and use
 1372 thereon all necessary apparatus and appliances for the purpose
 1373 of making investigations, inspections, examinations and tests
 1374 and exercising any power conferred by this chapter or chapter
 1375 350; however provided, such public utility shall have the right
 1376 to be notified of and be represented at the making of such
 1377 investigations, inspections, examinations and tests.

1378 Section 39. Subsections (1) and (2) of section 366.093,
 1379 Florida Statutes, are amended to read:

1380 366.093 Public utility records; confidentiality.—

1381 (1) The commission and the office shall ~~continue to~~ have
 1382 reasonable access to all public utility records and records of
 1383 the utility's affiliated companies, including its parent
 1384 company, regarding transactions or cost allocations among the
 1385 utility and such affiliated companies, and such records
 1386 necessary to ensure that a utility's ratepayers do not subsidize
 1387 nonutility activities. Upon request of the public utility or
 1388 other person, any records received by the commission or the
 1389 office which are shown and found by the commission to be
 1390 proprietary confidential business information shall be kept
 1391 confidential and shall be exempt from s. 119.07(1). The
 1392 authority of the commission to access records under this section
 1393 is granted subject to the limitations set forth in s. 350.011(3)
 1394 and (4).

1395 (2) Discovery in any docket or proceeding before the
 1396 commission shall be in the manner provided for in Rule 1.280 of

1397 the Florida Rules of Civil Procedure. Information which affects
 1398 a utility's rates or cost of service shall be considered
 1399 relevant for purposes of discovery in any docket or proceeding
 1400 where the utility's rates or cost of service are at issue. The
 1401 commission shall determine whether information requested in
 1402 discovery affects a utility's rates or cost of service. Upon a
 1403 showing by a utility or other person and a finding by the
 1404 commission that discovery will require the disclosure of
 1405 proprietary confidential business information, the commission
 1406 shall issue appropriate protective orders designating the manner
 1407 for handling such information during the course of the
 1408 proceeding and for protecting such information from disclosure
 1409 outside the proceeding. Such proprietary confidential business
 1410 information shall be exempt from s. 119.07(1). Any records
 1411 provided pursuant to a discovery request for which proprietary
 1412 confidential business information status is requested shall be
 1413 treated by the commission, the Office of Regulatory Staff, ~~and~~
 1414 the office of the Public Counsel, and any other party subject to
 1415 the public records law as confidential and shall be exempt from
 1416 s. 119.07(1), pending a formal ruling on such request by the
 1417 commission or the return of the records to the person providing
 1418 the records. Any record which has been determined to be
 1419 proprietary confidential business information and is not entered
 1420 into the official record of the proceeding must be returned to
 1421 the person providing the record within 60 days after the final
 1422 order, unless the final order is appealed. If the final order is
 1423 appealed, any such record must be returned within 30 days after
 1424 the decision on appeal. The commission shall adopt the necessary

1425 rules to implement this provision.

1426 Section 40. Subsections (6) and (7) of section 366.82,
 1427 Florida Statutes, are amended to read:

1428 366.82 Definition; goals; plans; programs; annual reports;
 1429 energy audits.—

1430 (6) The commission may change the goals upon a showing of
 1431 ~~for~~ reasonable cause. The time period to review the goals,
 1432 however, shall not exceed 5 years. After the programs and plans
 1433 to meet those goals are completed, the commission shall
 1434 determine what further goals, programs, or plans are warranted
 1435 and adopt them.

1436 (7) Following adoption of goals pursuant to subsections
 1437 (2) and (3), the commission shall require each utility to
 1438 develop plans and programs to meet the overall goals within its
 1439 service area. Upon petition, the commission may require
 1440 modifications or additions to a utility's plans and programs at
 1441 any time it is shown to be in the public interest consistent
 1442 with this act. In approving plans and programs for cost
 1443 recovery, the commission shall have the flexibility to modify or
 1444 deny plans or programs that would have an undue impact on the
 1445 costs passed on to customers. If any plan or program includes
 1446 loans, collection of loans, or similar banking functions by a
 1447 utility and the plan is approved by the commission, the utility
 1448 shall perform such functions, notwithstanding any other
 1449 provision of the law. However, no utility shall be required to
 1450 loan its funds for the purpose of purchasing or otherwise
 1451 acquiring conservation measures or devices, but nothing herein
 1452 shall prohibit or impair the administration or implementation of

1453 a utility plan as submitted by a utility and approved by the
 1454 commission under this subsection. If the commission disapproves
 1455 a plan, it shall specify the reasons for disapproval, and the
 1456 utility whose plan is disapproved shall resubmit its modified
 1457 plan within 30 days. Prior approval by the commission shall be
 1458 required to modify or discontinue a plan, or part thereof, which
 1459 has been approved. If any utility has not implemented its
 1460 programs and is not substantially in compliance with the
 1461 provisions of its approved plan at any time, the commission
 1462 shall adopt programs required for that utility to achieve the
 1463 overall goals. Utility programs may include variations in rate
 1464 design, load control, cogeneration, residential energy
 1465 conservation subsidy, or any other measure within the
 1466 jurisdiction of the commission which the commission finds likely
 1467 to be effective; this provision shall not be construed to
 1468 preclude these measures in any plan or program.

1469 Section 41. Subsections (9) through (13) of section
 1470 367.021, Florida Statutes, are renumbered as subsections (10)
 1471 through (14), respectively, and a new subsection (9) is added to
 1472 that section to read:

1473 367.021 Definitions.—As used in this chapter, the
 1474 following words or terms shall have the meanings indicated:

1475 (9) "Office" means the Office of Regulatory Staff.

1476 Section 42. Paragraph (a) of subsection (1), paragraph (a)
 1477 of subsection (2), and subsections (4) and (6) of section
 1478 367.045, Florida Statutes, are amended to read:

1479 367.045 Certificate of authorization; application and
 1480 amendment procedures.—

1481 (1) When a utility applies for an initial certificate of
 1482 authorization from the commission, it shall:

1483 (a) Provide notice of the actual application filed by mail
 1484 or personal delivery to the governing body of the county or city
 1485 affected, ~~to~~ the Public Counsel, the office, ~~to~~ the commission,
 1486 and ~~to~~ such other persons and in such other manner as may be
 1487 prescribed by commission rule;

1488 (2) A utility may not delete or extend its service outside
 1489 the area described in its certificate of authorization until it
 1490 has obtained an amended certificate of authorization from the
 1491 commission. When a utility applies for an amended certificate of
 1492 authorization from the commission, it shall:

1493 (a) Provide notice of the actual application filed by mail
 1494 or personal delivery to the governing body of the county or
 1495 municipality affected, ~~to~~ the Public Counsel, the office, ~~to~~ the
 1496 commission, and ~~to~~ such other persons and in such other manner
 1497 as may be prescribed by commission rule;

1498 (4) If, within 30 days after the last day that notice was
 1499 mailed or published by the applicant, whichever is later, the
 1500 commission receives from the Public Counsel, the office, a
 1501 governmental authority, or a utility or consumer who would be
 1502 substantially affected by the requested certification or
 1503 amendment a written objection requesting a proceeding pursuant
 1504 to ss. 120.569 and 120.57, the commission shall order such
 1505 proceeding conducted in or near the area for which application
 1506 is made, if feasible. Notwithstanding the ability to object on
 1507 any other ground, a county or municipality has standing to
 1508 object on the ground that the issuance or amendment of the

1509 certificate of authorization violates established local
 1510 comprehensive plans developed pursuant to ss. 163.3161-163.3211.
 1511 If a consumer, utility, or governmental authority or the office
 1512 or Public Counsel requests a public hearing on the application,
 1513 such hearing must, if feasible, be held in or near the area for
 1514 which application is made; and the transcript of such hearing
 1515 and any material submitted at or before the hearing must be
 1516 considered as part of the record of the application and any
 1517 proceeding related thereto.

1518 (6) The revocation, suspension, transfer, or amendment of
 1519 a certificate of authorization is subject to the provisions of
 1520 this section. The commission shall give 30 days' notice before
 1521 it initiates any such action upon petition of the office.

1522 Section 43. Paragraph (a) of subsection (2) and paragraph
 1523 (a) of subsection (4) of section 367.081, Florida Statutes, are
 1524 amended to read:

1525 367.081 Rates; procedure for fixing and changing.—

1526 (2)(a)1. The commission shall, ~~either upon request or upon~~
 1527 ~~its own motion~~, fix rates which are just, reasonable,
 1528 compensatory, and not unfairly discriminatory. In every such
 1529 proceeding, the commission shall consider the value and quality
 1530 of the service and the cost of providing the service, which
 1531 shall include, but not be limited to, debt interest; the
 1532 requirements of the utility for working capital; maintenance,
 1533 depreciation, tax, and operating expenses incurred in the
 1534 operation of all property used and useful in the public service;
 1535 and a fair return on the investment of the utility in property
 1536 used and useful in the public service. However, the commission

1537 shall not allow the inclusion of contributions-in-aid-of-
 1538 construction in the rate base of any utility during a rate
 1539 proceeding, nor shall the commission impute prospective future
 1540 contributions-in-aid-of-construction against the utility's
 1541 investment in property used and useful in the public service;
 1542 and accumulated depreciation on such contributions-in-aid-of-
 1543 construction shall not be used to reduce the rate base, nor
 1544 shall depreciation on such contributed assets be considered a
 1545 cost of providing utility service.

1546 2. For purposes of such proceedings, the commission shall
 1547 consider utility property, including land acquired or facilities
 1548 constructed or to be constructed within a reasonable time in the
 1549 future, not to exceed 24 months after the end of the historic
 1550 base year used to set final rates unless a longer period is
 1551 approved by the commission, to be used and useful in the public
 1552 service, if:

1553 a. Such property is needed to serve current customers;

1554 b. Such property is needed to serve customers 5 years
 1555 after the end of the test year used in the commission's final
 1556 order on a rate request as provided in subsection (6) at a
 1557 growth rate for equivalent residential connections not to exceed
 1558 5 percent per year; or

1559 c. Such property is needed to serve customers more than 5
 1560 full years after the end of the test year used in the
 1561 commission's final order on a rate request as provided in
 1562 subsection (6) only to the extent that the utility presents
 1563 clear and convincing evidence to justify such consideration.

1564

1565 Notwithstanding the provisions of this paragraph, the commission
 1566 shall approve rates for service which allow a utility to recover
 1567 from customers the full amount of environmental compliance
 1568 costs. Such rates may not include charges for allowances for
 1569 funds prudently invested or similar charges. For purposes of
 1570 this requirement, the term "environmental compliance costs"
 1571 includes all reasonable expenses and fair return on any prudent
 1572 investment incurred by a utility in complying with the
 1573 requirements or conditions contained in any permitting,
 1574 enforcement, or similar decisions of the United States
 1575 Environmental Protection Agency, the Department of Environmental
 1576 Protection, a water management district, or any other
 1577 governmental entity with similar regulatory jurisdiction.

1578 (4) (a) On or before March 31 of each year, the commission
 1579 by order shall establish a price increase or decrease index for
 1580 major categories of operating costs incurred by utilities
 1581 subject to its jurisdiction reflecting the percentage of
 1582 increase or decrease in such costs from the most recent 12-month
 1583 historical data available. The commission by rule shall
 1584 establish the procedure to be used in determining such indices
 1585 and a procedure by which a utility, without further action by
 1586 the commission, or the commission upon petition of the office ~~on~~
 1587 ~~its own motion~~, may implement an increase or decrease in its
 1588 rates based upon the application of the indices to the amount of
 1589 the major categories of operating costs incurred by the utility
 1590 during the immediately preceding calendar year, except to the
 1591 extent of any disallowances or adjustments for those expenses of
 1592 that utility in its most recent rate proceeding before the

1593 commission. The rules shall provide that, upon a finding of good
 1594 cause, including inadequate service, the commission may order a
 1595 utility to refrain from implementing a rate increase hereunder
 1596 unless implemented under a bond or corporate undertaking in the
 1597 same manner as interim rates may be implemented under s.
 1598 367.082. A utility may not use this procedure between the
 1599 official filing date of the rate proceeding and 1 year
 1600 thereafter, unless the case is completed or terminated at an
 1601 earlier date. A utility may not use this procedure to increase
 1602 any operating cost for which an adjustment has been or could be
 1603 made under paragraph (b), or to increase its rates by
 1604 application of a price index other than the most recent price
 1605 index authorized by the commission at the time of filing.

1606 Section 44. Subsections (1), (2), (4), (6), (8), and (10)
 1607 of section 367.0814, Florida Statutes, are amended to read:

1608 367.0814 Office of Regulatory Staff assistance in changing
 1609 rates and charges; interim rates.—

1610 (1) The commission may establish rules by which a water or
 1611 wastewater utility whose gross annual revenues are \$250,000 or
 1612 less may request and obtain ~~staff~~ assistance from the Office of
 1613 Regulatory Staff for the purpose of changing its rates and
 1614 charges. A utility may request such ~~staff~~ assistance by filing
 1615 an application with the commission. The gross annual revenue
 1616 level shall be adjusted on July 1, 2013, and every 5 years
 1617 thereafter, based on the most recent cumulative 5 years of the
 1618 price index established by the commission pursuant to s.
 1619 367.081(4)(a).

1620 (2) The official date of filing is established as 30 days

1621 after official acceptance by the office ~~commission~~ of the
 1622 application. If a utility does not remit a fee, as provided by
 1623 s. 367.145, within 30 days after acceptance, the commission may
 1624 deny the application. The commission has 15 months after the
 1625 official date of filing within which to issue a final order.

1626 (4) The commission may, upon petition from the office or
 1627 ~~its own motion, or upon petition~~ from the regulated utility,
 1628 authorize the collection of interim rates until the effective
 1629 date of the final order. Such interim rates may be based upon a
 1630 test period different from the test period used in the request
 1631 for permanent rate relief. To establish interim relief, there
 1632 must be a demonstration that the operation and maintenance
 1633 expenses exceed the revenues of the regulated utility, and
 1634 interim rates shall not exceed the level necessary to cover
 1635 operation and maintenance expenses as defined by the Uniform
 1636 System of Accounts for Class C Water and Wastewater Utilities
 1637 (1996) of the National Association of Regulatory Utility
 1638 Commissioners.

1639 (6) The utility, in requesting ~~staff~~ assistance from the
 1640 office, shall agree to accept the final rates and charges
 1641 approved by the commission unless the final rates and charges
 1642 produce less revenue than the existing rates and charges.

1643 (8) If a utility becomes exempt from commission regulation
 1644 or jurisdiction during the pendency of a ~~staff-assisted~~ rate
 1645 case conducted pursuant to this section, the request for rate
 1646 relief is deemed to have been withdrawn. Interim rates, if
 1647 previously approved, shall become final. Temporary rates, if
 1648 previously approved, must be discontinued, and any money

1649 collected pursuant to the temporary rates, or the difference
 1650 between temporary and interim rates, if previously approved,
 1651 must be refunded to the customers of the utility with interest.

1652 (10) The commission shall submit to the President of the
 1653 Senate and the Speaker of the House of Representatives by
 1654 January 1, 2013, and every 5 years thereafter, a report of the
 1655 status of proceedings conducted under this section, including
 1656 the number of utilities eligible to request ~~staff~~ assistance
 1657 from the office, the number of proceedings conducted annually
 1658 for the most recent 5-year period, the associated impact on
 1659 commission and office resources, and any other information the
 1660 commission deems appropriate. The commission shall request from
 1661 the office any information necessary to complete this report.

1662 Section 45. Subsection (6) of section 367.0817, Florida
 1663 Statutes, is amended to read:

1664 367.0817 Reuse projects.—

1665 (6) After the reuse project is placed in service, the
 1666 commission, upon ~~by~~ petition ~~or on its own motion~~, may initiate
 1667 a proceeding to true-up the costs of the reuse project and the
 1668 resulting rates.

1669 Section 46. Subsections (1) and (3) of section 367.082,
 1670 Florida Statutes, are amended to read:

1671 367.082 Interim rates; procedure.—

1672 (1) The commission may, during any proceeding for a change
 1673 of rates, ~~upon its own motion~~, upon petition from any party, or
 1674 by a tariff filing of a utility or a regulated company,
 1675 authorize the collection of interim rates until the effective
 1676 date of the final order. Such interim rates may be based upon a

1677 test period different from the test period used in the request
 1678 for permanent rate relief. Upon application by a utility, the
 1679 commission may use the projected test-year rate base when
 1680 determining the interim rates or revenues subject to refund. To
 1681 establish a prima facie entitlement for interim relief, ~~the~~
 1682 ~~commission,~~ the petitioning party, the utility, or the regulated
 1683 company shall demonstrate that the utility or the regulated
 1684 company is earning outside the range of reasonableness on rate
 1685 of return calculated in accordance with subsection (5).

1686 (3) In granting such relief, the commission may, in an
 1687 expedited hearing but within 60 days of the commencement of the
 1688 proceeding, upon petition ~~or upon its own motion,~~ preclude the
 1689 recovery of any extraordinary or imprudently incurred
 1690 expenditures or, for good cause shown, increase the amount of
 1691 the bond, escrow, letter of credit, or corporate undertaking.

1692 Section 47. Subsection (1) of section 367.0822, Florida
 1693 Statutes, is amended to read:

1694 367.0822 Limited proceedings.—

1695 (1) Upon petition ~~or by its own motion,~~ the commission may
 1696 conduct limited proceedings to consider, and act upon, any
 1697 matter within its jurisdiction, including any matter the
 1698 resolution of which requires a utility to adjust its rates. The
 1699 commission shall determine the issues to be considered during
 1700 such a proceeding and may grant or deny any request to expand
 1701 the scope of the proceeding to include other related matters.
 1702 However, unless the issue of rate of return is specifically
 1703 addressed in the limited proceeding, the commission shall not
 1704 adjust rates if the effect of the adjustment would be to change

1705 the last authorized rate of return.

1706 Section 48. Section 367.083, Florida Statutes, is amended
1707 to read:

1708 367.083 Determination of official date of filing.—Within
1709 30 days after receipt of an application, rate request, or other
1710 written document for which an official date of filing is to be
1711 established, the commission or its designee shall either
1712 determine the official date of filing or issue a statement of
1713 deficiencies to the applicant, specifically listing why said
1714 applicant has failed to meet the minimum filing requirements.
1715 Such statement of deficiencies shall be binding upon the
1716 commission to the extent that, once the deficiencies in the
1717 statement are satisfied, the official date of filing shall be
1718 promptly established as provided herein. Thereafter, within 20
1719 days after the applicant indicates to the commission that it
1720 believes that it has met the minimum filing requirements, the
1721 commission or its designee shall either determine the official
1722 date of filing or issue another statement of deficiencies,
1723 specifically listing why the requirements have not been met, in
1724 which case this procedure shall be repeated until the applicant
1725 meets the minimum filing requirements and the official date of
1726 filing is established. When the commission initiates a
1727 proceeding upon request made by a person other than the utility,
1728 the official date of filing shall be the date upon which the
1729 order initiating the proceeding is issued.

1730 Section 49. Subsection (1) of section 367.101, Florida
1731 Statutes, is amended to read:

1732 367.101 Charges for service availability.—

1733 (1) The commission shall set just and reasonable charges
 1734 and conditions for service availability. The commission by rule
 1735 may set standards for and levels of service-availability charges
 1736 and service-availability conditions. Such charges and conditions
 1737 shall be just and reasonable. The commission shall, upon request
 1738 ~~or upon its own motion,~~ direct the office to investigate
 1739 agreements or proposals for charges and conditions for service
 1740 availability and report the results to the commission.

1741 Section 50. Paragraphs (i) and (k) of subsection (1) and
 1742 subsection (2) of section 367.121, Florida Statutes, are amended
 1743 to read:

1744 367.121 Powers of commission and office.—

1745 (1) In the exercise of its jurisdiction, the commission
 1746 shall have power:

1747 (i) To require the filing of reports and other data by a
 1748 public utility or its affiliated companies, including its parent
 1749 company, regarding transactions or allocations of common costs,
 1750 among the utility and such affiliated companies. The commission
 1751 may also require such reports or other data necessary to ensure
 1752 that a utility's ratepayers do not subsidize nonutility
 1753 activities. The authority of the commission to access records
 1754 under this paragraph is granted subject to the limitations set
 1755 forth in s. 350.011(3) and (4).

1756 ~~(k) To assess a utility for reasonable travel costs~~
 1757 ~~associated with reviewing the records of the utility and its~~
 1758 ~~affiliates when such records are kept out of state. The utility~~
 1759 ~~may bring the records back into the state for review.~~

1760 (2) (a) The office ~~commission~~ or its duly authorized

1761 representatives may, during all reasonable hours, enter upon any
 1762 premises occupied by any utility and set up and use thereon any
 1763 necessary apparatus and appliance for the purpose of making
 1764 investigations, inspections, examinations, and tests and
 1765 exercising any power conferred by this chapter. Such utility
 1766 shall have the right to be notified of and be represented at the
 1767 making of such investigations, inspections, examinations, and
 1768 tests.

1769 (b) The office may assess a utility for reasonable travel
 1770 costs associated with reviewing the records of the utility and
 1771 its affiliates when such records are kept out of state. The
 1772 utility may bring the records back into the state for review.

1773 Section 51. Subsections (3) and (4) of section 367.122,
 1774 Florida Statutes, are amended to read:

1775 367.122 Examination and testing of meters.—

1776 (3) The commission shall establish reasonable fees to be
 1777 paid for testing such meters on the request of the customers.
 1778 Current utility customers or users may, at their discretion, pay
 1779 the fee fixed by the commission at the time of the request or
 1780 have the utility include the fee with their next regularly
 1781 scheduled statement. However, the fee shall be paid by the
 1782 utility and repaid to the customer or user if the meter is found
 1783 defective or incorrect to the disadvantage of the customer or
 1784 user in excess of the degree or amount of tolerance customarily
 1785 allowed for such meters, or as may be provided for in rules and
 1786 regulations of the commission. No fee may be charged for any
 1787 such testing done by the commission or its representatives. The
 1788 commission may designate the office to conduct testing on its

1789 behalf.

1790 (4) The commission or the office, if designated by the
 1791 commission to conduct testing, may purchase materials,
 1792 apparatus, and standard measuring instruments for such
 1793 examinations and tests.

1794 Section 52. Subsection (3) of section 367.145, Florida
 1795 Statutes, is amended to read:

1796 367.145 Regulatory assessment and application fees.—

1797 (3) Fees collected by the commission pursuant to this
 1798 section may only be used to cover the cost of the commission and
 1799 the office in regulating water and wastewater systems. Fees
 1800 collected by the commission pursuant to chapters 364 and 366 may
 1801 not be used to pay the cost of regulating water and wastewater
 1802 systems.

1803 Section 53. Subsections (1) and (2) of section 367.156,
 1804 Florida Statutes, are amended to read:

1805 367.156 Public utility records; confidentiality.—

1806 (1) The commission and the office shall ~~continue to~~ have
 1807 reasonable access to all utility records and records of
 1808 affiliated companies, including its parent company, regarding
 1809 transactions or cost allocations among the utility and such
 1810 affiliated companies, and such records necessary to ensure that
 1811 a utility's ratepayers do not subsidize nonutility activities.
 1812 Upon request of the utility or any other person, any records
 1813 received by the commission or the office which are shown and
 1814 found by the commission to be proprietary confidential business
 1815 information shall be kept confidential and shall be exempt from
 1816 s. 119.07(1). The authority of the commission to access records

1817 under this section is granted subject to the limitations set
 1818 forth in s. 350.011(3) and (4).

1819 (2) Discovery in any docket or proceeding before the
 1820 commission shall be in the manner provided for in Rule 1.280 of
 1821 the Florida Rules of Civil Procedure. Information which affects
 1822 a utility's rates or cost of service shall be considered
 1823 relevant for purposes of discovery in any docket or proceeding
 1824 where the utility's rates or cost of service are at issue. The
 1825 commission shall determine whether information requested in
 1826 discovery affects a utility's rates or cost of service. Upon
 1827 showing by a utility or other person and a finding by the
 1828 commission that discovery will require the disclosure of
 1829 proprietary confidential business information, the commission
 1830 shall issue appropriate protective orders designating the manner
 1831 for handling such information during the course of the
 1832 proceeding and for protecting such information from disclosure
 1833 outside the proceeding. Such proprietary confidential business
 1834 information shall be exempt from s. 119.07(1). Any records
 1835 provided pursuant to a discovery request for which proprietary
 1836 confidential business information status is requested shall be
 1837 treated by the commission, the Office of Regulatory Staff, and
 1838 the Office of the Public Counsel, and any other party subject to
 1839 the public records act as confidential and shall be exempt from
 1840 s. 119.07(1), pending a formal ruling on such request by the
 1841 commission or the return of the records to the person providing
 1842 the records. Any record which has been determined to be
 1843 proprietary confidential business information and is not entered
 1844 into the official record of the proceeding must be returned to

PCB EUP 10-04

Redraft - B

2010

1845 the person providing the record within 60 days after the final
 1846 order, unless the final order is appealed. If the final order is
 1847 appealed, any such record must be returned within 30 days after
 1848 the decision on appeal. The commission shall adopt the necessary
 1849 rules to implement this provision.

1850 Section 54. Subsection (5) of section 367.171, Florida
 1851 Statutes, is amended to read:

1852 367.171 Effectiveness of this chapter.—

1853 (5) When a utility becomes subject to regulation by a
 1854 county, all cases in which the utility is a party then pending
 1855 before the commission, or in any court by appeal from any order
 1856 of the commission, shall remain within the jurisdiction of the
 1857 commission or court until disposed of in accordance with the law
 1858 in effect on the day such case was filed by any party with the
 1859 commission or initiated by the commission upon the petition of
 1860 any party, whether or not the parties or the subject of any such
 1861 case relates to a utility in a county wherein this chapter no
 1862 longer applies.

1863 Section 55. Subsection (4) is added to section 368.05,
 1864 Florida Statutes, to read:

1865 368.05 Commission jurisdiction; rules.—

1866 (4) The commission may not, on its own motion, initiate
 1867 any proceeding under this part. The authority of the commission
 1868 to access records under this section is granted subject to the
 1869 limitations set forth in s. 350.011(3) and (4).

1870 Section 56. Subsections (2) and (3) of section 368.061,
 1871 Florida Statutes, are amended to read:

1872 368.061 Penalty.—

1873 (2) Any such civil penalty may be compromised by the
 1874 commission ~~commissioners~~. In determining the amount of such
 1875 penalty or the amount agreed upon in compromise, the
 1876 appropriateness of such penalty to the size of the business of
 1877 the person charged, the gravity of the violation, and the good
 1878 faith of the person charged in attempting to achieve compliance
 1879 after notification of a violation shall be considered. Each
 1880 penalty shall be a lien upon the real and personal property of
 1881 said persons and enforceable by the commission as statutory
 1882 liens under chapter 85, the proceeds of which shall be deposited
 1883 in the general revenue fund of the state.

1884 (3) The commission ~~commissioners~~ may, upon petition at
 1885 ~~their discretion~~, cause to be instituted in any court of
 1886 competent jurisdiction in this state proceedings for injunction
 1887 against any person subject to the provisions of this part to
 1888 compel the observance of the provisions of this part or any
 1889 rule, regulation, or requirement of the commission made
 1890 thereunder.

1891 Section 57. Subsections (5) and (6) of section 368.103,
 1892 Florida Statutes, are renumbered as subsections (6) and (7),
 1893 respectively, and a new subsection (5) is added to that section
 1894 to read:

1895 368.103 Definitions.—As used in ss. 368.101-368.112, the
 1896 term:

1897 (5) "Office" means the Office of Regulatory Staff.

1898 Section 58. Subsection (2) of section 368.106, Florida
 1899 Statutes, is amended to read:

1900 368.106 Statement of intent to increase rates; major

1901 changes; hearing; suspension of rate schedules; determination of
 1902 rate level.—

1903 (2) Except when a rate is deemed just and reasonable
 1904 pursuant to s. 368.105(3), if there is filed with the commission
 1905 an initial rate, or a change or modification in any rate in
 1906 effect, the commission shall, on complaint by any person whose
 1907 substantial interests are affected by the rate, or may, upon
 1908 petition by the office ~~on its own motion~~, at any time before
 1909 such rate would have taken effect, order a hearing pursuant to
 1910 ss. 120.569 and 120.57 to determine whether the rate is just and
 1911 reasonable.

1912 Section 59. Section 368.107, Florida Statutes, is amended
 1913 to read:

1914 368.107 Unreasonable or violative existing rates and
 1915 services.—If the commission, after reasonable notice and
 1916 hearing, upon petition by the office ~~on its own motion~~ or
 1917 written complaint by any person who has a substantial interest,
 1918 finds that any rate or service filed with the commission,
 1919 including any rate filed pursuant to s. 368.105(3), whether or
 1920 not being demanded, observed, charged, or collected by any
 1921 natural gas transmission company for any service is unjust,
 1922 unreasonable, or unduly discriminatory or preferential, or in
 1923 any way in violation of any provision of law, the commission
 1924 shall determine the just and reasonable rates, including maximum
 1925 or minimum rates and services, to be thereafter observed and in
 1926 force, and shall fix the same by order to be served on the
 1927 natural gas transmission company. Those rates and services shall
 1928 constitute the legal rates and services of the natural gas

1929 transmission company until changed as provided by ss. 368.101-
 1930 368.112.

1931 Section 60. Subsections (1) and (2) of section 368.108,
 1932 Florida Statutes, are amended to read:

1933 368.108 Confidentiality; discovery.-

1934 (1) The commission and the office shall ~~continue to~~ have
 1935 reasonable access to all natural gas transmission company
 1936 records and records of the natural gas transmission company's
 1937 affiliated companies, including its parent company, regarding
 1938 transactions or cost allocations among the natural gas
 1939 transmission company and such affiliated companies, and such
 1940 records necessary to ensure that a natural gas transmission
 1941 company's ratepayers do not subsidize unregulated activities.
 1942 Upon request of the natural gas transmission company or other
 1943 person, any records received by the commission or the office
 1944 which are shown and found by the commission to be proprietary
 1945 confidential business information shall be confidential and
 1946 exempt from s. 119.07(1). The authority of the commission to
 1947 access records under this section is granted subject to the
 1948 limitations set forth in s. 350.011(3) and (4).

1949 (2) Discovery in any docket or proceeding before the
 1950 commission shall be in the manner provided for in Rule 1.280 of
 1951 the Florida Rules of Civil Procedure. Information which affects
 1952 a natural gas transmission company's rates or cost of service
 1953 shall be considered relevant for purposes of discovery in any
 1954 docket or proceeding where the natural gas transmission
 1955 company's rates or cost of service are at issue. The commission
 1956 shall determine whether information requested in discovery

1957 affects a natural gas transmission company's rates or cost of
 1958 service. Upon a showing by a natural gas transmission company or
 1959 other person and a finding by the commission that discovery will
 1960 require the disclosure of proprietary confidential business
 1961 information, the commission shall issue appropriate protective
 1962 orders designating the manner for handling such information
 1963 during the course of the proceeding and for protecting such
 1964 information from disclosure outside the proceeding. Such
 1965 proprietary confidential business information shall be exempt
 1966 from s. 119.07(1). Any records provided pursuant to a discovery
 1967 request for which proprietary confidential business information
 1968 status is requested shall be treated by the commission, the
 1969 Office of Regulatory Staff, ~~and~~ the Office of the Public
 1970 Counsel, and any other party subject to the public records law
 1971 as confidential and shall be exempt from s. 119.07(1) pending a
 1972 formal ruling on such request by the commission or the return of
 1973 the records to the person providing the records. Any record
 1974 which has been determined to be proprietary confidential
 1975 business information and is not entered into the official record
 1976 of the proceeding must be returned to the person providing the
 1977 record within 60 days after the final order, unless the final
 1978 order is appealed. If the final order is appealed, any such
 1979 record must be returned within 30 days after the decision on
 1980 appeal. The commission shall adopt the necessary rules to
 1981 implement this provision.

1982 Section 61. Section 368.1085, Florida Statutes, is amended
 1983 to read:

1984 368.1085 Travel costs.—The office ~~commission~~ has the

PCB EUP 10-04

Redraft - B

2010

1985 authority to assess a natural gas transmission company for
 1986 reasonable travel costs associated with reviewing the records of
 1987 the natural gas transmission company and its affiliates when
 1988 such records are kept out of state. The natural gas transmission
 1989 company may bring the records back into the state for review.

1990 Section 62. Section 368.109, Florida Statutes, is amended
 1991 to read:

1992 368.109 Regulatory assessment fees.—Each natural gas
 1993 transmission company operating under ss. 368.101-368.112, for
 1994 all or any part of the preceding 6-month period, shall pay to
 1995 the commission, within 30 days following the end of each 6-month
 1996 period, a fee that may not exceed 0.25 percent annually of its
 1997 gross operating revenues derived from intrastate business
 1998 excluding sales for resales to natural gas transmission
 1999 companies, public utilities that supply gas, municipal gas
 2000 utilities, and gas districts. The fee shall, to the extent
 2001 practicable, be related to the cost of the commission and the
 2002 office in regulating such natural gas transmission companies.

2003 Section 63. Subsection (1) of section 403.519, Florida
 2004 Statutes, is amended to read:

2005 403.519 Exclusive forum for determination of need.—

2006 (1) On request by an applicant or upon petition by the
 2007 Office of Regulatory Staff ~~on its own motion~~, the commission
 2008 shall begin a proceeding to determine the need for an electrical
 2009 power plant subject to the Florida Electrical Power Plant Siting
 2010 Act.

2011 Section 64. Paragraph (a) of subsection (1) of section
 2012 403.537, Florida Statutes, is amended to read:

2013 403.537 Determination of need for transmission line;
 2014 powers and duties.—

2015 (1) (a) Upon request by an applicant or upon petition by
 2016 the Office of Regulatory Staff ~~its own motion~~, the Florida
 2017 Public Service Commission shall schedule a public hearing, after
 2018 notice, to determine the need for a transmission line regulated
 2019 by the Florida Electric Transmission Line Siting Act, ss.
 2020 403.52-403.5365. The notice shall be published at least 21 days
 2021 before the date set for the hearing and shall be published by
 2022 the applicant in at least one-quarter page size notice in
 2023 newspapers of general circulation, and by the commission in the
 2024 manner specified in chapter 120, by giving notice to counties
 2025 and regional planning councils in whose jurisdiction the
 2026 transmission line could be placed, and by giving notice to any
 2027 persons who have requested to be placed on the mailing list of
 2028 the commission for this purpose. Within 21 days after receipt of
 2029 a request for determination by an applicant, the commission
 2030 shall set a date for the hearing. The hearing shall be held
 2031 pursuant to s. 350.01 within 45 days after the filing of the
 2032 request, and a decision shall be rendered within 60 days after
 2033 such filing.

2034 Section 65. Paragraph (a) of subsection (1) of section
 2035 403.9422, Florida Statutes, is amended to read:

2036 403.9422 Determination of need for natural gas
 2037 transmission pipeline; powers and duties.—

2038 (1) (a) Upon request by an applicant or upon petition by
 2039 the Office of Regulatory Staff ~~its own motion~~, the commission
 2040 shall schedule a public hearing, after notice, to determine the

2041 need for a natural gas transmission pipeline regulated by ss.
 2042 403.9401-403.9425. Such notice shall be published at least 45
 2043 days before the date set for the hearing and shall be published
 2044 in at least one-quarter page size in newspapers of general
 2045 circulation and in the Florida Administrative Weekly, by giving
 2046 notice to counties and regional planning councils in whose
 2047 jurisdiction the natural gas transmission pipeline could be
 2048 placed, and by giving notice to any persons who have requested
 2049 to be placed on the mailing list of the commission for this
 2050 purpose. Within 21 days after receipt of a request for
 2051 determination by an applicant, the commission shall set a date
 2052 for the hearing. The hearing shall be held pursuant to s. 350.01
 2053 within 75 days after the filing of the request, and a decision
 2054 shall be rendered within 90 days after such filing.

2055 Section 66. Subsection (6) of section 196.012, Florida
 2056 Statutes, is amended to read:

2057 196.012 Definitions.—For the purpose of this chapter, the
 2058 following terms are defined as follows, except where the context
 2059 clearly indicates otherwise:

2060 (6) Governmental, municipal, or public purpose or function
 2061 shall be deemed to be served or performed when the lessee under
 2062 any leasehold interest created in property of the United States,
 2063 the state or any of its political subdivisions, or any
 2064 municipality, agency, special district, authority, or other
 2065 public body corporate of the state is demonstrated to perform a
 2066 function or serve a governmental purpose which could properly be
 2067 performed or served by an appropriate governmental unit or which
 2068 is demonstrated to perform a function or serve a purpose which

2069 would otherwise be a valid subject for the allocation of public
 2070 funds. For purposes of the preceding sentence, an activity
 2071 undertaken by a lessee which is permitted under the terms of its
 2072 lease of real property designated as an aviation area on an
 2073 airport layout plan which has been approved by the Federal
 2074 Aviation Administration and which real property is used for the
 2075 administration, operation, business offices and activities
 2076 related specifically thereto in connection with the conduct of
 2077 an aircraft full service fixed base operation which provides
 2078 goods and services to the general aviation public in the
 2079 promotion of air commerce shall be deemed an activity which
 2080 serves a governmental, municipal, or public purpose or function.
 2081 Any activity undertaken by a lessee which is permitted under the
 2082 terms of its lease of real property designated as a public
 2083 airport as defined in s. 332.004(14) by municipalities,
 2084 agencies, special districts, authorities, or other public bodies
 2085 corporate and public bodies politic of the state, a spaceport as
 2086 defined in s. 331.303, or which is located in a deepwater port
 2087 identified in s. 403.021(9)(b) and owned by one of the foregoing
 2088 governmental units, subject to a leasehold or other possessory
 2089 interest of a nongovernmental lessee that is deemed to perform
 2090 an aviation, airport, aerospace, maritime, or port purpose or
 2091 operation shall be deemed an activity that serves a
 2092 governmental, municipal, or public purpose. The use by a lessee,
 2093 licensee, or management company of real property or a portion
 2094 thereof as a convention center, visitor center, sports facility
 2095 with permanent seating, concert hall, arena, stadium, park, or
 2096 beach is deemed a use that serves a governmental, municipal, or

2097 public purpose or function when access to the property is open
 2098 to the general public with or without a charge for admission. If
 2099 property deeded to a municipality by the United States is
 2100 subject to a requirement that the Federal Government, through a
 2101 schedule established by the Secretary of the Interior, determine
 2102 that the property is being maintained for public historic
 2103 preservation, park, or recreational purposes and if those
 2104 conditions are not met the property will revert back to the
 2105 Federal Government, then such property shall be deemed to serve
 2106 a municipal or public purpose. The term "governmental purpose"
 2107 also includes a direct use of property on federal lands in
 2108 connection with the Federal Government's Space Exploration
 2109 Program or spaceport activities as defined in s. 212.02(22).
 2110 Real property and tangible personal property owned by the
 2111 Federal Government or Space Florida and used for defense and
 2112 space exploration purposes or which is put to a use in support
 2113 thereof shall be deemed to perform an essential national
 2114 governmental purpose and shall be exempt. "Owned by the lessee"
 2115 as used in this chapter does not include personal property,
 2116 buildings, or other real property improvements used for the
 2117 administration, operation, business offices and activities
 2118 related specifically thereto in connection with the conduct of
 2119 an aircraft full service fixed based operation which provides
 2120 goods and services to the general aviation public in the
 2121 promotion of air commerce provided that the real property is
 2122 designated as an aviation area on an airport layout plan
 2123 approved by the Federal Aviation Administration. For purposes of
 2124 determination of "ownership," buildings and other real property

2125 improvements which will revert to the airport authority or other
 2126 governmental unit upon expiration of the term of the lease shall
 2127 be deemed "owned" by the governmental unit and not the lessee.
 2128 Providing two-way telecommunications services to the public for
 2129 hire by the use of a telecommunications facility, as defined in
 2130 s. 364.02 (16) ~~(15)~~, and for which a certificate is required under
 2131 chapter 364 does not constitute an exempt use for purposes of s.
 2132 196.199, unless the telecommunications services are provided by
 2133 the operator of a public-use airport, as defined in s. 332.004,
 2134 for the operator's provision of telecommunications services for
 2135 the airport or its tenants, concessionaires, or licensees, or
 2136 unless the telecommunications services are provided by a public
 2137 hospital.

2138 Section 67. Paragraph (b) of subsection (1) of section
 2139 199.183, Florida Statutes, is amended to read:

2140 199.183 Taxpayers exempt from nonrecurring taxes.—

2141 (1) Intangible personal property owned by this state or
 2142 any of its political subdivisions or municipalities shall be
 2143 exempt from taxation under this chapter. This exemption does not
 2144 apply to:

2145 (b) Property related to the provision of two-way
 2146 telecommunications services to the public for hire by the use of
 2147 a telecommunications facility, as defined in s. 364.02 (16) ~~(15)~~,
 2148 and for which a certificate is required under chapter 364, when
 2149 the service is provided by any county, municipality, or other
 2150 political subdivision of the state. Any immunity of any
 2151 political subdivision of the state or other entity of local
 2152 government from taxation of the property used to provide

2153 telecommunication services that is taxed as a result of this
 2154 paragraph is hereby waived. However, intangible personal
 2155 property related to the provision of telecommunications services
 2156 provided by the operator of a public-use airport, as defined in
 2157 s. 332.004, for the operator's provision of telecommunications
 2158 services for the airport or its tenants, concessionaires, or
 2159 licensees, and intangible personal property related to the
 2160 provision of telecommunications services provided by a public
 2161 hospital, are exempt from taxation under this chapter.

2162 Section 68. Subsection (6) of section 212.08, Florida
 2163 Statutes, is amended to read:

2164 212.08 Sales, rental, use, consumption, distribution, and
 2165 storage tax; specified exemptions.—The sale at retail, the
 2166 rental, the use, the consumption, the distribution, and the
 2167 storage to be used or consumed in this state of the following
 2168 are hereby specifically exempt from the tax imposed by this
 2169 chapter.

2170 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.—There are also
 2171 exempt from the tax imposed by this chapter sales made to the
 2172 United States Government, a state, or any county, municipality,
 2173 or political subdivision of a state when payment is made
 2174 directly to the dealer by the governmental entity. This
 2175 exemption shall not inure to any transaction otherwise taxable
 2176 under this chapter when payment is made by a government employee
 2177 by any means, including, but not limited to, cash, check, or
 2178 credit card when that employee is subsequently reimbursed by the
 2179 governmental entity. This exemption does not include sales of
 2180 tangible personal property made to contractors employed either

PCB EUP 10-04

Redraft - B

2010

2181 directly or as agents of any such government or political
2182 subdivision thereof when such tangible personal property goes
2183 into or becomes a part of public works owned by such government
2184 or political subdivision. A determination whether a particular
2185 transaction is properly characterized as an exempt sale to a
2186 government entity or a taxable sale to a contractor shall be
2187 based on the substance of the transaction rather than the form
2188 in which the transaction is cast. The department shall adopt
2189 rules that give special consideration to factors that govern the
2190 status of the tangible personal property before its affixation
2191 to real property. In developing these rules, assumption of the
2192 risk of damage or loss is of paramount consideration in the
2193 determination. This exemption does not include sales, rental,
2194 use, consumption, or storage for use in any political
2195 subdivision or municipality in this state of machines and
2196 equipment and parts and accessories therefor used in the
2197 generation, transmission, or distribution of electrical energy
2198 by systems owned and operated by a political subdivision in this
2199 state for transmission or distribution expansion. Likewise
2200 exempt are charges for services rendered by radio and television
2201 stations, including line charges, talent fees, or license fees
2202 and charges for films, videotapes, and transcriptions used in
2203 producing radio or television broadcasts. The exemption provided
2204 in this subsection does not include sales, rental, use,
2205 consumption, or storage for use in any political subdivision or
2206 municipality in this state of machines and equipment and parts
2207 and accessories therefor used in providing two-way
2208 telecommunications services to the public for hire by the use of

2209 a telecommunications facility, as defined in s. 364.02 (16) ~~(15)~~,
 2210 and for which a certificate is required under chapter 364, which
 2211 facility is owned and operated by any county, municipality, or
 2212 other political subdivision of the state. Any immunity of any
 2213 political subdivision of the state or other entity of local
 2214 government from taxation of the property used to provide
 2215 telecommunication services that is taxed as a result of this
 2216 section is hereby waived. However, the exemption provided in
 2217 this subsection includes transactions taxable under this chapter
 2218 which are for use by the operator of a public-use airport, as
 2219 defined in s. 332.004, in providing such telecommunications
 2220 services for the airport or its tenants, concessionaires, or
 2221 licensees, or which are for use by a public hospital for the
 2222 provision of such telecommunications services.

2223 Section 69. Paragraph (b) of subsection (2) of section
 2224 288.0655, Florida Statutes, is amended to read:

2225 288.0655 Rural Infrastructure Fund.—

2226 (2)

2227 (b) To facilitate access of rural communities and rural
 2228 areas of critical economic concern as defined by the Rural
 2229 Economic Development Initiative to infrastructure funding
 2230 programs of the Federal Government, such as those offered by the
 2231 United States Department of Agriculture and the United States
 2232 Department of Commerce, and state programs, including those
 2233 offered by Rural Economic Development Initiative agencies, and
 2234 to facilitate local government or private infrastructure funding
 2235 efforts, the office may award grants for up to 30 percent of the
 2236 total infrastructure project cost. If an application for funding

PCB EUP 10-04

Redraft - B

2010

2237 is for a catalyst site, as defined in s. 288.0656, the office
 2238 may award grants for up to 40 percent of the total
 2239 infrastructure project cost. Eligible projects must be related
 2240 to specific job-creation or job-retention opportunities.
 2241 Eligible projects may also include improving any inadequate
 2242 infrastructure that has resulted in regulatory action that
 2243 prohibits economic or community growth or reducing the costs to
 2244 community users of proposed infrastructure improvements that
 2245 exceed such costs in comparable communities. Eligible uses of
 2246 funds shall include improvements to public infrastructure for
 2247 industrial or commercial sites and upgrades to or development of
 2248 public tourism infrastructure. Authorized infrastructure may
 2249 include the following public or public-private partnership
 2250 facilities: storm water systems; telecommunications facilities;
 2251 broadband facilities; roads or other remedies to transportation
 2252 impediments; nature-based tourism facilities; or other physical
 2253 requirements necessary to facilitate tourism, trade, and
 2254 economic development activities in the community. Authorized
 2255 infrastructure may also include publicly or privately owned
 2256 self-powered nature-based tourism facilities, publicly owned
 2257 telecommunications facilities, and broadband facilities, and
 2258 additions to the distribution facilities of the existing natural
 2259 gas utility as defined in s. 366.04(3)(c), the existing electric
 2260 utility as defined in s. 366.02, or the existing water or
 2261 wastewater utility as defined in s. 367.021(13)~~(12)~~, or any
 2262 other existing water or wastewater facility, which owns a gas or
 2263 electric distribution system or a water or wastewater system in
 2264 this state where:

2265 | 1. A contribution-in-aid of construction is required to
 2266 | serve public or public-private partnership facilities under the
 2267 | tariffs of any natural gas, electric, water, or wastewater
 2268 | utility as defined herein; and

2269 | 2. Such utilities as defined herein are willing and able
 2270 | to provide such service.

2271 | Section 70. Subsection (8) of section 290.007, Florida
 2272 | Statutes, is amended to read:

2273 | 290.007 State incentives available in enterprise zones.—
 2274 | The following incentives are provided by the state to encourage
 2275 | the revitalization of enterprise zones:

2276 | (8) Notwithstanding any law to the contrary, the Public
 2277 | Service Commission may allow public utilities and
 2278 | telecommunications companies to grant discounts of up to 50
 2279 | percent on tariffed rates for services to small businesses
 2280 | located in an enterprise zone designated pursuant to s.
 2281 | 290.0065. Such discounts may be granted for a period not to
 2282 | exceed 5 years. For purposes of this subsection, the term
 2283 | "public utility" has the same meaning as in s. 366.02(1) and the
 2284 | term "telecommunications company" has the same meaning as in s.
 2285 | 364.02 (15) ~~(14)~~.

2286 | Section 71. Subsection (4) of section 364.602, Florida
 2287 | Statutes, is amended to read:

2288 | 364.602 Definitions.—For purposes of this part:

2289 | (4) "Originating party" means any person, firm,
 2290 | corporation, or other entity, including a telecommunications
 2291 | company or a billing clearinghouse, that provides any
 2292 | telecommunications service or information service to a customer

PCB EUP 10-04

Redraft - B

2010

2293 or bills a customer through a billing party, except the term
 2294 "originating party" does not include any entity specifically
 2295 exempted from the definition of "telecommunications company" as
 2296 provided in s. 364.02 (15) ~~(14)~~.

2297 Section 72. Subsection (5) of section 489.103, Florida
 2298 Statutes, is amended to read:

2299 489.103 Exemptions.—This part does not apply to:

2300 (5) Public utilities, including special gas districts as
 2301 defined in chapter 189, telecommunications companies as defined
 2302 in s. 364.02 (15) ~~(14)~~, and natural gas transmission companies as
 2303 defined in s. 368.103(4), on construction, maintenance, and
 2304 development work performed by their employees, which work,
 2305 including, but not limited to, work on bridges, roads, streets,
 2306 highways, or railroads, is incidental to their business. The
 2307 board shall define, by rule, the term "incidental to their
 2308 business" for purposes of this subsection.

2309 Section 73. Section 624.105, Florida Statutes, is amended
 2310 to read:

2311 624.105 Waiver of customer liability.—Any regulated
 2312 company as defined in s. 350.111, any electric utility as
 2313 defined in s. 366.02(2), any utility as defined in s.
 2314 367.021 (13) ~~(12)~~ or s. 367.022(2) and (7), and any provider of
 2315 communications services as defined in s. 202.11(2) may charge
 2316 for and include an optional waiver of liability provision in
 2317 their customer contracts under which the entity agrees to waive
 2318 all or a portion of the customer's liability for service from
 2319 the entity for a defined period in the event of the customer's
 2320 call to active military service, death, disability, involuntary

PCB EUP 10-04

Redraft - B

2010

2321 unemployment, qualification for family leave, or similar
2322 qualifying event or condition. Such provisions may not be
2323 effective in the customer's contract with the entity unless
2324 affirmatively elected by the customer. No such provision shall
2325 constitute insurance so long as the provision is a contract
2326 between the entity and its customer.

2327 Section 74. This act shall take effect October 1, 2010.