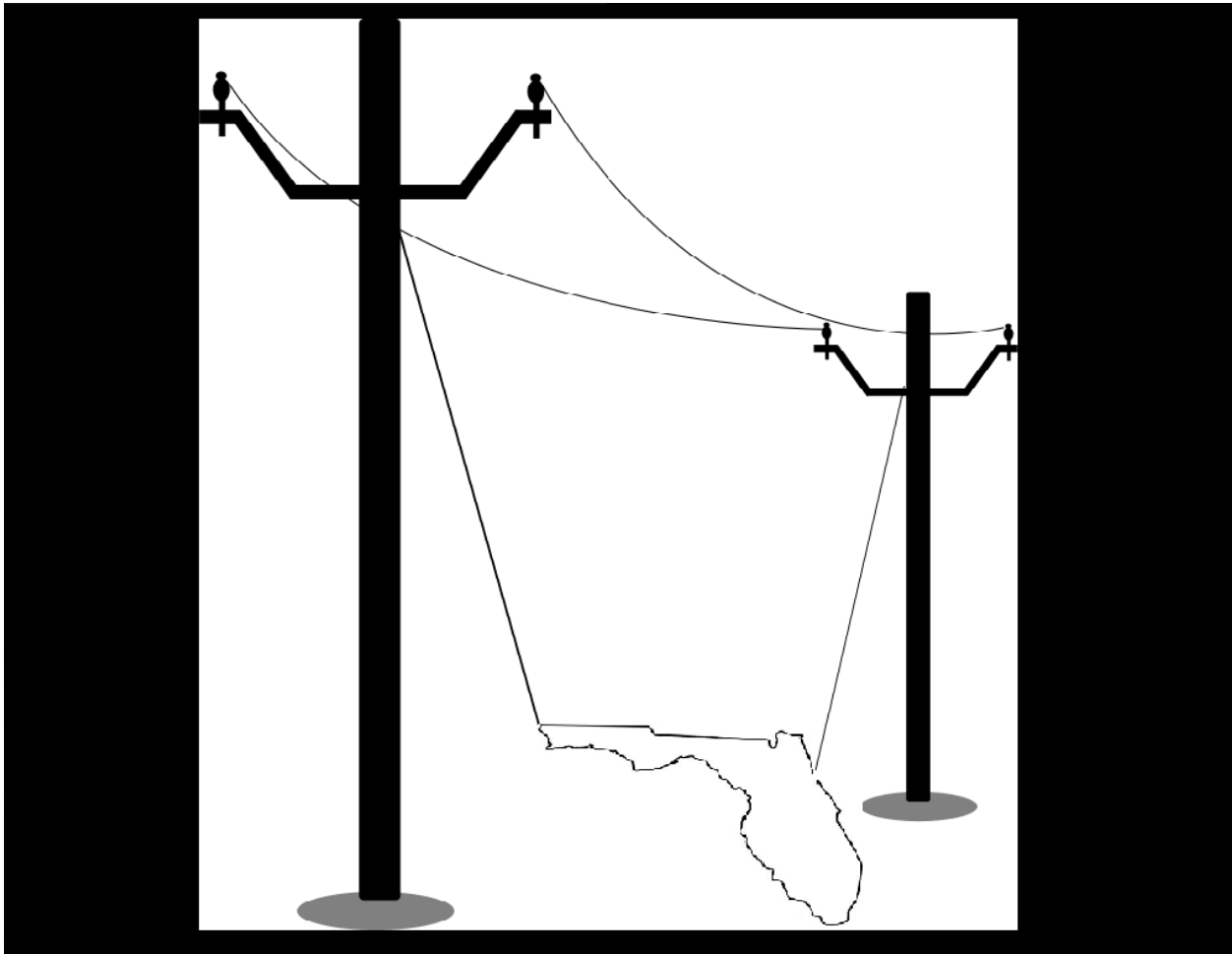


Power Play: Political Influence of Florida's Top Energy Corporations

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i n t e g r i t y

F L O R I D A

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Executive Summary

Increasingly, the Florida Legislature sets its agenda and policy outcomes based on the needs of large political donors rather than the public interestⁱ. In one recent example, the sitting state senate president openly explained his position on a public policy issue as supporting whatever one major campaign donor tells him to supportⁱⁱ. A large Budweiser distributor contributed nearly \$300,000 to political candidates and committees aligned with Senate President Don Gaetz and had the edge on its smaller craft beer industry competitorsⁱⁱⁱ.

A similar pattern exists for the energy sector in Florida where the Florida Legislature maintains a traditional, regulated monopoly-utility model^{iv}. This report examines the political influence of the state's four largest electric utility companies: Florida Power & Light (FPL), Duke Energy (formerly Progress Energy), TECO Energy and Gulf Power. *See Appendix for an insider's perspective from former State Senator Mike Fasano.*

These four corporations registered, on average, one lobbyist for every two state legislators each legislative session between 2007 and 2013. For the last five election cycles, these electric utilities were among the largest donors to state-level campaigns in Florida. In the same period of time, the policy wins for the four electric utilities included rate increases for customers, the defeat of a proposal that would have increased electric bill transparency and the removal of state regulators who opposed two proposed rate hikes^v.

Summary of Research Findings

1. **Major campaign donations.** Electric utilities contributed more than \$18 million to state-level candidates and party organizations between the 2004 and 2012 election cycles.
2. **Significant lobbying.** Lobbying spending by Florida's four largest electric utilities was more than \$12 million between 2007 and 2013.
3. **Revolving door and cronyism.** Electric utilities have made a point of hiring former state regulators and have employed the firms of several sitting state legislators.
4. **Higher electric bills for consumers.** Floridians have faced higher electric utility bills from each of the four corporations examined in this study in recent years.
5. **Anti-consumer regulations.** The Florida Legislature and the Florida Public Service Commission routinely side with electric utilities rather than consumers.

Summary of Policy Reform Recommendations

1. **Uniform ethics rules for legislators and local officials.** If local officials are banned from legislative lobbying, then apply the same rules to legislators lobbying local officials.
2. **Put inspector general reports online.** Inspector general investigative reports and audits should be posted online by the Florida Public Service Commission and all state and local agencies.
3. **Put gift and client disclosures made by all state and local officials online.**
4. **Require additional disclosure for political donations from government vendors and companies regulated by the Public Service Commission.**
5. **Electric bill transparency.** Unbundle bills with detailed disclosure of rate components.

Profile of Florida's Largest Electric Companies

Florida's largest electric utilities have more than 7.3 million customers in the state providing approximately \$17 billion in total revenue each year (See Exhibit 1)^{vi}.

Exhibit 1: 2012 Utility Bundled Retail Sales- Total

Company	State	Customers	Estimated Revenues
Florida Power & Light Co	FL	4,576,420	\$9.7 billion
Progress Energy/Duke Energy Florida, Inc.	FL	1,649,823	\$4.2 billion
Tampa Electric Co	FL	684,236	\$1.9 billion
Gulf Power Co	FL	434,570	\$1.1 billion
Total		7,345,049	\$17 billion

For residential customers in Florida, average monthly electric bills in the territories served by these corporations are about \$116 per month or nearly \$1400 each year^{vii}.

Electric Utilities' Political Influence in the State Capitol

Florida's four largest electric utility companies gave state-level candidates, political parties and committees more than \$18 million between the 2004 and 2012 election cycles (See Exhibit 2)^{viii}. That is an average of about \$3.6 million per two-year cycle.

Exhibit 2: State-level Political Contributions from Florida's Four Largest Electric Utility Corporations (2004-2012)^{ix}

Florida Power & Light	Progress/Duke Energy	TECO	Gulf Power	Year
\$393,284	\$328,750	\$476,796	\$88,100	2004
\$1,000,202	\$539,538	\$1,019,271	\$84,612	2006
\$2,399,383	\$516,664	\$1,115,267	\$99,000	2008
\$1,948,500	\$1,080,902	\$2,004,946	\$76,550	2010
\$570,600	\$610,723	\$804,935	\$20,500	2011
\$1,200,663	\$915,634	\$642,653	\$140,500	2012
				Totals
\$7,512,632	\$3,992,211	\$6,063,868	\$509,262	\$18,077,973

The large majority of the money, almost \$17 million, went to the state's political parties where there are no limits on the amount of money that may be given. The amount given to the state Republican Party versus the Democratic Party roughly mirrors the two-third to one-third partisan makeup of the Florida Legislature. The Republican Party of Florida received \$12 million and the Florida Democratic Party received about \$4.6 million (See Exhibit 3).

Exhibit 3: State-level Political Contributions from Florida’s Four Largest Electric Utility Corporations to Major State Political Parties (2004-2012)^x

Companies	Democratic Party	Republican Party	Totals 2004-2012
Florida Power & Light	\$2,062,814	\$4,154,818	\$6,217,632
Progress/Duke Energy	\$716,229	\$3,209,482	\$3,925,711
TECO	\$1,743,670	\$4,185,198	\$5,928,868
Gulf Power	\$100,100	\$359,162	\$459,262
Totals	\$4,622,813	\$11,908,660	\$16,531,473

These companies are often some of the top funding sources for political campaigns in the state, especially for legislative campaigns. A 2014 report^{xi} on the eve of the legislative session mentioned that Florida Power & Light had given \$2.6 million in campaign contributions in the 2012 election cycle alone.

In the 2012 election cycle, Florida Power & Light, Progress Energy and TECO were listed as among the top 20 campaign contributors in Florida, according to the National Institute on Money in Politics.^{xii} The “energy and natural resources” sector tied with the “health” sector for the most contributors. The three companies combined contributed over \$2.7 million during the election cycle which puts them third behind the Florida Republican Party and Florida Association of Realtors for the most campaign cash given.

In 2013, lawmakers from both parties accepted millions in campaign contributions from the state’s largest utility companies while rejecting calls from consumers and clean energy groups to repeal a law that allows utilities to charge customers up-front for nuclear reactors that might never get built, according to the *Miami Herald*^{xiii}.

Contributions that go directly from utility companies to candidates generally do not follow party lines. In the 2012 cycle for example, Florida Power & Light’s parent company NextEra gave at least \$500, the maximum amount allowed, to 116 members of the 160 member legislature.^{xiv} It should be pointed out that 116 legislators out of 160 is easily enough votes to constitute a majority, but also easily enough for the two-thirds vote necessary to override a Governor’s veto.

Another avenue for political spending for the four largest power companies is through Florida’s political committees, which are mostly allowed to accept unlimited campaign contributions. Some of these committees are set up directly by candidates for the legislature. Because these committees often operate under names that do not identify who or what group is really raising the money, it can be difficult to connect the givers to the takers.

While real estate is the top industry contributor and the insurance industry comes in second, Florida’s four largest power companies, together, would be the third highest industry contributor to state-level campaigns between 2004 and 2012 (**See Exhibit 4**).

Exhibit 4: State-level Political Contributions from Florida’s Four Largest Electric Utility Corporations Compared to Other Industries (2004-2012)^{xv}

Four Largest Electric Co.'s	Real Estate	Insurance
\$18,077,973	\$66,682,286	\$40,241,080

Electric Utilities Lobbying Influence in the State Capitol

Since 2007, Florida’s four largest investor-owned utilities have spent just over \$12.5 million on lobbyists before the Florida Legislature (**See Exhibit 5**). The lobbying expenditures are remarkably consistent from year to year. The small variations from year to year are hard to explain without a detailed analysis of the issues before the legislature on a yearly basis. The power companies employ some 90 to 100 lobbyists each year, a significant number for four companies when you consider the Florida Legislature has 160 members.

Exhibit 5: Legislative Lobbying Spending by Florida’s Largest Electric Utilities (2007-2013)

Company	Number of Lobbyists	Total Paid
Florida Power & Light	190	\$4,713,000
Progress Energy/Duke Energy	133	\$1,985,000
TECO Energy	191	\$4,160,000
Gulf Power	87	\$1,655,000
Totals	601	\$12,513,000

Government lobbying is a multi-million dollar business in Florida and for the largest power companies in the state, the money spent on lobbying gets results. Case in point is the 2006 law passed overwhelmingly by the Florida Legislature that allows utilities to collect money in advance from customers to build new nuclear reactors. As reported in the *Tampa Bay Times* in August of 2013, the heavily lobbied law allowed Progress Energy and its successor company Duke Energy to charge its customers up to \$1.5 billion for a nuclear power plant that will never be built and the company gets to keep the money, including \$150 million as profit.^{xvi}

Florida began requiring lobbying firms to report their compensation in 2007. While there are no compensation reports for 2006 when the nuclear cost recovery law was passed, in 2007 Progress Energy spent \$320,000^{xvii} and employed 16 lobbyists^{xviii}. In 2006, they employed 15 of mostly the same lobbyists^{xix} so the authors of this report assume the cost to lobby for the new law was relatively the same. If that is true, the \$300,000 lobbying investment in the passage of the nuclear cost recovery law yielded a \$150 million as profit for the company’s shareholders.

A recent report found lobbyists in Florida were paid \$132.3 million to lobby the legislature in 2013 and \$93.8 million to lobby Governor Rick Scott’s office and the executive branch.^{xx} A 2013 report by Florida Trend listed Florida’s top twenty lobbying firms based on reported revenue.^{xxi} Of the top fifteen firms listed reporting revenues ranging from \$2.45 million up to more than \$8 million, four were employed by Florida Power & Light, TECO employed three, and Gulf Power and Progress Energy each employed two.

Florida law requires power companies to report their lobbying expenditures in a range which is then aggregated to produce an estimated expenditure.^{xxii} Based on those estimates, since 2007, Florida Power & Light has spent the most on lobbying (\$4.7 million) and typically employs up to 33 lobbyists in any given year. TECO follows close behind spending \$4.2 million and also employing up to 31 lobbyists per year.

Progress Energy/Duke Energy and Gulf Power are on the lower end respectively. Progress Energy/Duke Energy spent about \$2 million since 2007 and employed 16 to 20 lobbyists a year. Gulf Power spent \$1.7 million and hired 11 to 15 lobbyists every year.

Legislators Have Their Own Set of Rules for Lobbying

In the 2014 session, Florida legislators are considering a proposal to prohibit local elected officials from lobbying the legislature, but the bill would not restrict legislators from lobbying local elected officials. In July 2012, Integrity Florida found 11 members of the Florida Legislature on the payroll of lobbying firms^{xxiii}.

Legislators with Ties to Electric Utilities

Based on quarterly client disclosure forms, financial disclosure forms and media coverage, the following three state legislators appear to have ties to firms lobbying for electric utilities:

Sen. Diaz de la Portilla and FPL

State Senator Miguel Diaz de la Portilla received \$410,855.19 in income from Becker & Poliakoff, P.A. during the 2012 calendar year, according to his Form 6, Full and Public Disclosure of Financial Interests filed with the Florida Commission on Ethics in August 2013^{xxiv}.

Sen. Diaz de la Portilla's firm lobbied for FPL in South Miami^{xxv}, according to a *Miami Herald* report. The report states "When South Miami commissioners were readying to take a vote opposing Florida Power & Light's proposed base-rate increase, Mayor Philip Stoddard got an unexpected phone call -- from his state senator. Miguel Diaz de la Portilla, a lawyer and lobbyist, called on behalf of his firm's client: FPL." Pincrest Mayor Cindy Lerner has also accused Sen. Diaz de la Portilla of supporting Florida Power & Light instead of his constituents, according to another *Miami Herald* report^{xxvi}.

Sen. Negron and FPL

State Senator Joe Negron received \$254,459 in income from the Gunster Law Firm during the 2012 calendar year, according to his Form 6, Full and Public Disclosure of Financial Interests filed with the Florida Commission on Ethics in July 2013^{xxvii}.

Sen. Negron filed a Form 2 Quarterly Client Disclosure for the quarter ending in December 2012 with the Florida Commission on Ethics that lists Florida Power & Light as a client of his law firm's "not represented directly by me" before the Department of Environmental Protection, the

Public Service Commission, the Department of Justice and the South Florida Water Management District^{xxviii}.

Gulf Power Company also paid Gunster Yoakley & Stewart PA \$120,000 for legislative lobbying in 2012^{xxix}.

According to Gunster's website in March 2014, Sen. Negrón "is an of counsel attorney who joined the firm in 2010"^{xxx}. In 2010, Sen. Negrón served on the Senate Communications, Energy, and Public Utilities Committee where, according to the *Palm Beach Post*, his questions of PSC appointees "mirrored the investor-owned utilities dissatisfaction with the regulators that turned down nearly \$2 billion in proposed rate increases since they joined the panel"^{xxxi}.

Sen. Smith and FPL

In 2009, the *Sun Sentinel* reported that state Sen. Chris Smith worked for the Johnson, Anselmo law firm, which lists FPL as a client^{xxxii}. According to the report, when Smith was out of office briefly, he did lobby Fort Lauderdale for FPL^{xxxiii}. Smith presently serves on the Senate Communications, Energy, and Public Utilities Committee^{xxxiv}.

Gift and Client Disclosures are Not Online

In 2013, the Florida Legislature passed Senate Bill 2, requiring financial disclosure forms of statewide elected officials, state legislators and constitutional officers to be posted online by the Florida Commission on Ethics. Other records related to accountability of public officials are more difficult for the public to access since they are not online, including gift disclosures (Form 9) and quarterly client disclosures (Form 2).

The Revolving Door – Regulators Turned Lobbyists

Some large electric utilities employ insiders, including former PSC commissioners and former PSC staff. The "revolving door" is coming used to lure former government regulators and officials into more lucrative lobbying and consulting jobs. A *Sun Sentinel* report in 2010^{xxxv} found 18 former officials who were working for Florida Power & Light or who had set up or joined lobbying firms that represented the company.

Florida Statute 350.0605 states that "any former commissioner of the Public Service Commission is prohibited from appearing before the commission representing any client or any industry regulated by the PSC for a period of two years following termination of service on the commission."^{xxxvi} The law does not prohibit them from working for a firm that has a utility as a client, only from representing that firm before the PSC. Obviously there are many ways a former PSC commissioner or staff member could assist a utility company in a rate case or with a bill in the Florida Legislature without "appearing" before the commission.

In a 2009 report,^{xxxvii} the *Sun Sentinel* documented former state utility regulators that were lobbying for Florida Power & Light. Several were former PSC Commissioners and one was a former Commissioner's top aide.

There are plenty of examples of the revolving door between the public and private sector and it has been widely reported on, especially when it involves the Public Service Commission. The following are just a few examples but there are many others.

Among former PSC Commissioners who worked for firms with FPL ties are:

- **Susan Clark**, Public Service Commissioner from 1991 to 2000^{xxxviii}.
- **Terry Deason**, Public Service Commissioner from 1991 to 2006^{xxxix}.
- **Mike Wilson**, Public Service Commissioner from 1985 to 1991^{xl}.
- **Lila Jaber**, Public Service Commissioner from 2000 to 2004^{xli}, was not directly tied to the utility, but worked for a firm that FPL hired. Gunster Law Firm advertises her experience on the Public Service Commission and her knowledge of “utility related matters.”^{xlii}
- **Braulio Baez**, Public Service Commissioner from 2000 to 2006^{xliii}. Left the PSC to work for a law firm that had FPL as a client^{xliv}, and then returned as Executive Director of the PSC in 2011.

The revolving door is not limited to former PSC Commissioners. As a state-appointed consumer advocate for utility customers in the Office of Public Counsel, Harold McLean was one of FPL’s staunchest critics from 2003 to 2007, helping to negotiate a base rate freeze in 2005. In 2009, he became a consultant for FPL. According to a 2009 South Florida Sun Sentinel report,^{xlv} critics at the time suggested McLean was hired to blunt criticism of the company and help it win a rate increase and to gain federal and state approval of new nuclear generators.

Staff members at the PSC are also part of the revolving door of public employees leaving public service to work on behalf of the utilities they were once charged with regulating.^{xlvi} For instance, Ryder Rudd, director of the PSC’s Office of Strategic Analysis and Government Affairs was forced to resign after attending a Kentucky Derby party at the Palm Beach Gardens home of an FPL executive, around the time of a FPL rate increase request.^{xlvii} During this time, the PSC was embroiled in a scandal involving inappropriate communications between utility representatives and Commission Staff.

At the time, Commissioner Nathan Skop said through his chief adviser that the calls, combined with media reports of other conversations between commission and utility employees, paint a “clear picture that regulated utilities are deeply integrated in all levels of the commission.”^{xlviii} Rudd was subsequently hired by Citizens for Clean Energy in 2010, an organization sponsored, in part, by FPL.^{xlix}

Likewise, Jim Dean worked at the PSC as its director of the Office of Strategic Studies and Government Affairs before leaving the PSC to launch a consulting firm. During his consulting tenure he provided testimony¹ before the PSC on behalf of FPL regarding conservation goal setting for the state’s largest power company. He has since been rehired by the PSC to head its Division of Economics.ⁱⁱ

Utilizing the “revolving door” from the public to the more lucrative private sector is just one more tool the utilities use in their lobbying efforts to gain an advantage before the PSC and in the Florida Legislature.

Electric Utilities as State Government Vendors

Florida taxpayers have also paid these four corporations more than \$276 million for services, primarily for providing electricity to state-owned or leased facilities, since FY 2008-2009 (See Exhibit 6).

**Exhibit 6: State government vendor payments to Florida's largest electric utilities
FY 2008 – FY 2013-2014 (through 3/1/14)**

Vendor	Total Paid
Florida Power & Light	\$159,792,366
Progress Energy/Duke Energy	\$74,980,618
TECO	\$3,495,893
Gulf Power	\$37,894,372
Total (FY 2008-2009 through 3/1/14)	\$276,163,249

About the Florida Public Service Commission

The Florida Public Service Commission (PSC) is an agency that serves a critical role in Florida's energy planning process - as it relates to the state's largest electric utilities and other regulated industries. The PSC is charged with the following responsibilities: 1) setting just and reasonable rates; 2) approving the need for new power plants, and 3) setting conservation goals. These decisions impact the bills of families and businesses across the state.

No PSC Voting Conflicts

The Florida Public Service Commission informed the report authors that it does not have any public records related to any actual or potential conflicts of interest disclosures from its Commissioners between 2009 and February 2014.

Case Studies - Electric Utility Influence with the Florida Legislature and State Regulators

Florida is on pace to become the third largest state in the country^{lii} and is already the nation's third largest consumer of energy^{liii}. With population growth there is increased demand and many different opinions exist as to how to best meet those needs. Rather than delving into that debate, this report looks squarely at the persistent and pervasive influence of Florida's largest utility companies on the state's regulatory and political bodies, namely the Florida Legislature and the PSC. The following case studies illustrate a few examples of electric utility influence.

Utility Rate Hikes

In November 2013, the Florida PSC granted rate increases for Duke Energy and TECO^{liv}. The following month, the PSC approved annual rate increases for both FPL^{lv} and Gulf Power^{lvi}. Such rate increases have occurred frequently in recent years and other examples are detailed in upcoming case studies.

Office of Public Counsel

The Office of Public Counsel (OPC) exists to counter the anticipated imbalance of regulated industry influence by providing a consumer voice in proceedings. According to the OPC website, the office intervenes in rate proceedings before the PSC, performs independent analyses, presents testimony of expert witnesses, cross-examines utility witnesses, and files recommendations and briefs in rate proceedings and other cases^{lvii}. The Public Counsel exists under and at the pleasure of the Joint Committee on Public Counsel Oversight within the Florida Legislature and the position is reconfirmed biennially^{lviii}.

PSC Nominating Council

The PSC commissioners themselves are also partially selected by members of the state legislature who comprise the PSC Nominating Council. The Council selects a pool of prospective commissioners, which they submit to the Governor who makes the final selection. The Council consists of 12 members: six appointed by the Senate President and six appointed by the Speaker of the House and usually meets twice a year^{lix}. The imbalance between consumer and industry influence at the PSC and the legislature is probably best illustrated by looking back at the outcomes of several high profile rate hike requests by electric utilities.

Rate Hikes (2009 – 2010)

In 2009, the two largest electric utility providers in the state, Florida Power & Light and Progress Energy (now Duke Energy) requested sizable rate increases. FPL requested a \$1.3 billion increase, while Progress Energy requested an annual increase of \$500 million^{lx}. In both cases the Public Counsel argued that the rate increases were not justified and in the case of FPL, OPC went as far as to recommend a decrease in the base rate by \$364 million. FPL's high executive pay and their use of corporate jets and helicopters as well their current profit margin of 12.5% all were put in the media spotlight as examples of corporate excess.

Throughout the proceedings FPL admitted to overcharging customers \$1.25 billion dollars to cover the depreciation of aging infrastructure despite using that need as one of the justifications for the rate request^{lxi}. Governor Charlie Crist was a vocal opponent of the rate hike and strongly encouraged the sitting commissioners to reject the rate hikes. At that point most of the commissioners were like minded^{lxii}. Several of the Governor's appointees sat on the commission and the chair was former state legislator Nancy Argenziano who had a reputation for standing up to the industry and being more focused on how decisions impact customers^{lxiii}.

In January of 2010, the PSC ruled against both Progress Energy and FPL's rate requests^{lxiv}. Just three months later, the Florida Senate refused to confirm Governor Crist's new appointees to the commission. David Klement of Bradenton and Benjamin "Steve" Stevens of Pensacola were sitting on the commission awaiting the official confirmation by the Senate, but were rejected.

It is worth noting that members of the State Senate and State House played a role in nominating those commissioners before Governor Crist selected them. When appointed, Governor Crist largely promoted Klement and Stevens as outsiders with no industry ties that could bring new

blood to the commission at a time when it was being heavily criticized due to the cozy relationships between the commissioners and industries they regulate^{lxv}.

Several months later, the two commissioners who had voted against the FPL and Progress Energy rate hike requests, former Senator Argenziano, then PSC Chair and Nathan Skop, who together were viewed as the consumer advocates on the PSC, were in effect fired. They were not allowed to reapply for another term in office when the PSC Nominating Council rejected their applications^{lxvi}. To sum up, four of the five PSC commissioners voted against the FPL and Progress Energy rate hikes. All four of those commissioners lost their jobs within a few months.

Rate Hike (2012)

In the first quarter of 2012, FPL and its parent company NextEra Energy were doing quite well. Profits were increasing, operating revenues were up and the company had already invested about \$1.3 billion in new plants and upgrades^{lxvii}. However, in March, FPL asked regulators to raise base rates by \$690.4 million per year and for an 11.5 percent rate of return, up from 10 percent, to cover \$1 billion in projected costs associated with a new and more efficient plant in Cape Canaveral.

J.R. Kelly, the Public Counsel, contested this rate request saying it was excessive^{lxviii}. Facing resistance, the company changed course. In August, FPL asked the PSC to curtail its original rate request of \$690 million because the company had reached a settlement which it argued would benefit consumers^{lxix}. The Florida Retail Federation, Florida's Public Counsel Office and groups such as AARP all opposed the rate hike^{lxx}. However, a collective, including several large industrial groups, agreed to a base-rate increase of \$378 million, or about a \$6 increase on a typical monthly bill. The utility agreed to a lower return on equity of 10.7 percent, compared to up to 11.5 percent in its original request.

The state's top consumer advocate continued to oppose the increase^{lxxi} arguing this was a bad deal for nearly everyone in the state by shifting costs from commercial to residential customers. Over a four-year period, the proposal would raise base rates for a typical residential customer by nearly \$10 per month^{lxxii}. In October of 2012, Kelly took the extreme and unusual step of requesting the Florida Supreme Court step in to halt the FPL rate settlement arguing it only serves the largest businesses, encompassing only 1 percent of FPL's 4.6 million customers and does not serve residents or small businesses^{lxxiii}.

In its brief to the Court, The Office of Public Counsel (OPC) argues that the PSC order would give FPL \$500 million more in annual revenues than experts recommend and it would add at least an additional \$450 million in previously unrequested rate increases during 2014 and 2016. OPC called the PSC decision a lopsided and unjust order "heavily skewed to favor FPL to the detriment of customers."^{lxxiv} At the time of publication of this report, the Supreme Court has not issued a ruling on the petition from OPC^{lxxv}.

This was the first major rate case decided by the new PSC since the legislature unseated four members of the previous commission. The commission agreed to modify the FPL settlement allowing the company a \$358 million rate hike as a compromise and four years of guaranteed

profits between 9.5 to 11.5 percent^{lxxvi}.

This decision marked the first time ever that the PSC has moved forward on a rate settlement without the consent of the OPC^{lxxvii}. FPL sidestepped the public counsel when it entered into its agreement with the Florida Industrial Power Users Group, the South Florida Hospital and Healthcare Association and the Federal Executive Agencies^{lxxviii}.

Nuclear Cost Recovery

In 2006, the Florida Legislature passed SB 888, a 163-page energy bill sponsored by former Senator Lee Constantine which, among many other things, gave utilities a new method to finance nuclear plants, known as early or advanced cost recovery^{lxxix}. The bill^{lxxx}, brought forward by the largest utility companies in the state, was designed to give them the ability to pass the pre-construction costs of new plants onto customers long before a plant is ever built and even if the plant is never built. The industry argued that they would not be able to pursue these plants unless customers financed the preliminary and ongoing construction costs^{lxxxii}.

This was a dramatic shift from how plants were previously financed. Under the current regulatory scheme, customers are forced to pay billions of dollars of costs for power plants that may never be built in their lifetime. There is presently no process for consumers to recoup funds they have paid in the event that a company decides to abandon a proposal for a new plant, as in the case with Duke Energy's now canceled Levy County proposal.

Companies can make even more money if a project is delayed or has major cost overruns. In 2006 when the early cost recovery law was passed, proponents said new nuclear reactors would cost \$5 or 6 billion. In 2008, Progress Energy projected \$17 billion for the construction of their Levy plant. This jumped to \$22 billion in 2011 and then up to \$24 billion in 2012^{lxxxiii}. As the project is drawn out, the private companies continue to collect preconstruction and carrying costs (including a return to company shareholders) on customers' monthly bills.

Duke Energy, who merged with Progress Energy, announced in August of 2013 that it would pull the plug on the Levy County nuclear plant. Customers would still have to pay up to \$1.5 billion while Duke shareholders keep \$150 million in profit^{lxxxiiii}. They face no penalty and customers will not be reimbursed for what they have paid.

In 2013, the Florida Legislature passed SB1472, which created more checks by the PSC in the cost recovery process and limited recovery for projects after 20 years (following a federal license); however, it still allows companies to continue collecting fees^{lxxxv}. The bill was supported by critics but they warned that its effectiveness was in the hands of the PSC^{lxxxvi}. House members voted down a transparency amendment to the bill offered by Representative Michelle Rehwinkel Vasilinda that would have required companies to break down costs including those associated with nuclear costs recovery on customers' monthly bills^{lxxxvii}.

The passage of the 2006 bill is an illustration of the electric utility industry's outsized influence on the legislature. At the PSC, industry influence impacts decision-making around nuclear cost recovery. As of the publication date of this report, the PSC has yet to turn down a request by a

utility company to use early cost recovery for nuclear plant construction costs since 2006. In 2011, the PSC approved \$196 million in costs that were passed onto FPL customers for nuclear-related projects, including proposed new reactors at Turkey Point, 25 miles south of Miami.^{lxxxvii} In 2012, FPL requested and was granted another \$151 million for nuclear projects,^{lxxxviii} and in 2013, the Company requested and was granted an additional \$43 million from the PSC.^{lxxxix}

In November 2012, the PSC approved Progress Energy's ability to recover \$143 million for construction costs associated with its Levy county plants and Crystal River plant^{xc}. In October of 2013, the PSC again voted 4 to 1 in favor of allowing Duke (formerly Progress Energy) to collect \$3.2 billion more of costs related to both the shuttered Crystal River Unit 3 reactor and the canceled Levy County nuclear plant^{xcⁱ xcⁱⁱ}. Over the past several years, the commission has approved more than \$1 billion for FPL's and Progress Energy Florida's nuclear pursuits as a result of the 2006 law.

Public Service Commission Reform

A statewide grand jury issued a series of PSC reform recommendations in 1992. The grand jury explicitly said that their recommendations, focused primarily on ex parte communications between utilities and those who regulate them, should be viewed as a starting point and that the details should be vigorously debated by lawmakers, but they emphasized that "there can be no doubt that reform is necessary"^{xcⁱⁱⁱ}. Many of the grand jury's recommendations have yet to make it into law despite issues relating to ex parte communications becoming a hot button issue in 2009^{xc^{iv}} and numerous reform bills filed by lawmakers^{xc^v}.

Structural critiques of the PSC often raise the question about whether commissioners should be elected rather than appointed. However, PSC reform proposals have a history of inaction by the state legislature^{xc^{vi}}. The grand jury report compared the role PSC commissioners play to that of judges. According to the grand jury, "Individuals charged with responsibilities similar to those of a judge must conduct themselves in a manner that exhibits fairness". The grand jury explained that a judge cannot meet with one party alone to discuss an issue of importance if the judge is the final arbiter of that issue. The report noted that judges are required to avoid even the appearance of impropriety^{xc^{vii}}. Lawmakers have repeatedly attempted to address PSC ethics issues in the Florida Legislature with little progress^{xc^{viii} xc^{ix}}. The most recent push is by Senator John Legg, who filed a bill in the 2014 session that would impose term limits on commissioners^c.

Conclusion

The volume of spending on state election campaigns and legislative lobbying efforts by these utilities, along with the case studies detailed in this report, may explain the industry's outsized political influence on the Florida Legislature and state regulators.

Policy Recommendations

1. **Uniform ethics rules for legislators and local officials.** If local officials are banned from legislative lobbying, then apply the same rules to legislators lobbying local officials.
2. **Put inspector general reports online.** Inspector general investigative reports and audits should be posted online by the Florida Public Service Commission and all state agencies. If internal government watchdogs conduct an investigation of potential corruption, fraud, waste or abuse, the public should know about it and be able to read the report online. These reports and audits are already public records but they are typically not posted online for the public to know they exist.
3. **Put gift and client disclosures made by state lawmakers and regulators online.** Ensure full compliance with gift and client disclosures by lawmakers and state regulators. Florida legislators are already required to file disclosures when they receive gifts and they must file quarterly client disclosures if their professional firms have clients with business before state government. These forms are presently public records but they are only available upon request and sometimes for a fee. Gift disclosures and quarterly client disclosures should be posted online for the public to access at no charge.
4. **Make campaign donations from vendors and state regulated industries more transparent.** Require added disclosure if a donor is a state government vendor or a company regulated by the Public Service Commission. Implement a mandatory statewide filing system and enhanced campaign finance database with unique identification numbers for donors who are state government vendors or companies regulated by the Public Service Commission. State government vendor identification numbers could be used as the common reference related to each contribution. Large corporations often have parent companies, subsidiaries, multiple office addresses and several variations of their corporate names, factors which make tracking their campaign dollars challenging. The public would benefit from a full scale use of unique campaign contributor information from all donors.
5. **Electric bill transparency.** Unbundle bills with detailed disclosure of rate components. Floridians deserved to know what they are paying for, especially in the cases where major infrastructure projects are pursued by electric utilities that may or may not go online. Customers should receive more detailed bills with all components of their electric rate and special infrastructure projects unbundled and clearly disclosed. In addition, the PSC website should provide easy public access to rate history information for every company they regulate.

Appendix

In March 2014, Integrity Florida sent former State Senator Mike Fasano five questions about the political influence of Florida's top energy corporations. Sen. Fasano served in the Florida Legislature, both in the State Senate and State House, for a total of nearly 20 years. Here are Sen. Fasano's responses:

1. How would you characterize the influence of the state's four largest investor-owned utilities (FPL, TECO, Progress Energy/ Duke and Gulf) in the halls of the state Capitol and their ability to shape public policy for their own benefit?

The four largest investor-owned utilities in Florida have a large amount of influence with many members of the legislature. This is primarily because, combined, they have a large budget that is dedicated to lobbying lawmakers on behalf of the issues they support or oppose. The lobbying budget is significant because other organizations that may have different points of view on those issues tend to have much less money to spend to get their positions heard. The more money a business or organization has for lobbying efforts, the more access that can be purchased via high-profile lobbying firms, extensive use of media and direct mail services.

When you toss in the potential of legislative leadership pushing one side or another of a utility-backed issue, any legislator unwilling to go up against the powerful lobbying efforts of utility companies will most likely not want to buck leadership. They tend to "go along to get along." This is a sad reality that gives greater power to utilities than the issues they support may deserve.

2. Compare the utilities' ability to game the system in the Capitol to other industries like insurance and healthcare.

Utilities use their considerable financial resources to obtain the best positions for their industry. This is comparable to the efforts of insurance and healthcare industries doing the same. The only reason these companies spend money in Tallahassee is to influence policy and pass or kill legislation. Very little is done for altruistic purposes. Companies exist to have a strong bottom-line, especially if they have investors they must report to. Lobbyists want to have a contract for not only the current year but for many years to come. Stall tactics can benefit both the industry and the lobbying corps. Continually pushing for new sources of revenue, for example, ensures that utility companies will always have a place at the table. Additionally, it ensures that their lobbyists will have secure employment.

3. What kind of pressure can be brought to bear on a member who stands up on behalf of consumers or sponsors legislation to more tightly regulate the utility industry or reform the PSC?

If a courageous lawmaker introduces or actively supports measures that challenge the status quo on these issues, they may be the recipient of pressure to back down in a number of ways. The least confrontational is the "sweep it under the rug" approach that some committee chairs may employ. In essence, a pro-consumer bill that is filed in a pro-business legislative environment may never be heard if the chair of the first committee of reference does not support the bill. The

legislation may languish in committee for the entire session and there is nothing the sponsor can do about it. Committee chairs have sole authority to put bills of their choice on the committee's agenda, although presiding officers can use their extensive power to ensure that bills they support are heard, while bills they oppose are not.

A more public method of bringing pressure upon a member would be to threaten their membership on a committee or their leadership of the same. I was removed as chair of the Senate Criminal & Civil Justice Appropriations Committee because I opposed the Senate president's plan to privatize prisons in Florida. In the end this drastic move did not accomplish what leadership intended because the bill did not ultimately pass. However, it is an example of what could happen to anyone in a position of leadership who does not follow in lockstep with the presiding officers.

"Loving a bill to death" is also a tactic that can be employed to give the appearance that leadership supports any given measure, while the ultimate goal is to stop it in its tracks. This is often accomplished by having a leadership-friendly member amend a bill, whether in committee or on the floor, with an expensive provision that kills the bill because there is no money to pay for the amendatory provision.

Finally, a utility company, like any private entity, can choose to support the campaign or re-election campaign of whomever it chooses. It does not take a great stretch of the imagination to envision that campaign dollars would flow to the political opponent of any lawmaker or candidate who speaks out against utility companies.

4. How immune to political pressure is the PSC when it is making decisions on proposed utility rate hikes?

Members of the PSC are political appointees. Candidates for appointment are chosen by members of a commission that is full of political appointees. The final selection of a member of the commission is made by the governor. While there may never be an explicit agreement between the parties to support or oppose any particular issue, it is fair to say that the appointee is going to have a similar outlook on utility matters as the one who made the appointment. Additionally, since commissioners serve for four-year terms, they must also "go along to get along" if they have any chance of being reappointed. It is a rare member indeed who serves on the PSC and does not worry about how his/her decisions will impact their potential to be reappointed.

5. As an insider who spent almost 20 years in the legislature, do you have any anecdotal stories that you can share with us that illustrate the power of the utility lobby?

Perhaps one of the most disturbing illustrations of the utility lobby's power occurred during the 2010 legislative session. Governor Charlie Crist had appointed Benjamin Stevens and David Klement to two seats on the Florida Public Service Commission at the end of 2009. Like all top-level gubernatorial appointments, the Florida Senate is required to hold confirmation hearings and take a formal vote as a body for or against the appointments.

During their short tenure on the Commission, Commissioners Stevens and Klement distinguished themselves as being pro-consumer regulators who were not in lockstep with the utility industry. They voted against the utility lobby in a major rate case that drew the ire of the power companies, which led the charge to remove them from office. Florida Power & Light had previously requested a \$1.2 billion dollar rate hike, while then-Progress Energy Florida (now Duke Energy) had requested a \$500 million dollar rate increase.

Because of their consumer-friendly stance, as well as the good work they had been doing on the commission, I and a few like-minded senators forcefully supported the confirmation of Commissioners Stevens and Klement. However, the utility lobby pulled out all the stops to prevent them from being confirmed. The chairman of the Senate Ethics and Elections Committee at that time, Senator J.D. Alexander, was an outspoken critic of the two commissioners. As the committee chair charged with reviewing appointments he attempted to block Klement and Stevens from receiving their rightful vote on the Senate floor. What complicated the issue even more was that certain powerful legislators used the Stevens/Klement confirmation process to get back at Governor Crist for his veto of a teacher merit pay bill that was a legislative leadership priority during the 2009 legislative session. When all was said and done, despite the best efforts of courageous legislators such as Senator Mike Bennett, Senator Nancy Detert and Senator Lee Constantine, the confirmation of Stevens and Klement were denied.

Commissioner Klement's words at the time of the vote aptly stated the power of lobbyists in general, and utility lobbyists in particular. He wrote: "Today's vote by the Florida Senate was an example of government at its worst – using vital public regulatory appointments to get back at the governor and to satisfy the wishes of the utility industry. As Senator Mike Fasano so well put it at my last hearing on April 19 [2010], this is shameful conduct by our elected officials...Senate leaders Haridopolis, Thrasher and Alexander asserted that we were not qualified, based on answers to a few questions obviously supplied by utility lobbyists at one brief interview...I want to thank the senators who supported my confirmation...they stood up to the special interests. But unfortunately there weren't enough like-minded senators in that chamber. It was the Third Chamber to which Senator Fasano referred – the lobbyists in the rotunda outside the Senate – who won this vote. And it was the people of Florida who lost."

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F L O R I D A

Integrity Florida is a nonprofit, nonpartisan research institute and government watchdog whose mission is to promote integrity in government and expose public corruption. Our vision is government in Florida that is the most open, ethical, responsive and accountable in the world. Website: www.integrityflorida.org | Twitter: [@IntegrityFL](https://twitter.com/IntegrityFL)

Integrity Florida and its research have been cited by major news outlets including *CNN*, the *BBC*, the *New York Times*, the *Washington Post* and the *Associated Press*. Integrity Florida policy solutions have been incorporated into **8 new laws increasing government transparency and accountability** in Florida.

Founded in January 2012 by Dan Krassner, Nicole Krassner and Michael Dema, Integrity Florida is based in Tallahassee, Florida. Research Director Ben Wilcox joined the organization in February 2012. Current research is focused on increasing government transparency and accountability through open budgets, open contracts, open data, ethics reform, campaign finance reform and reducing cronyism.

What Others are Saying about Integrity Florida

Tampa Bay Times: "...the independent watchdog and research group Integrity Florida took little time raising its profile and becoming an influential player in public policy."

Pensacola News-Journal: "...Integrity Florida is on the side of angels, doing work on the anti-corruption stage and urging Florida lawmakers to do something about our top-ranked status."

Global Integrity: "Integrity Florida ... exemplifies what it means to work for common good."

Washington Post: Integrity Florida proposal "...ultimately could shape reform efforts on the federal level..."

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