

By Senator Crist

20-1296-98

1 A bill to be entitled
2 An act relating to the restructuring of the
3 electric power industry; making findings and
4 declarations regarding the electric industry;
5 defining terms; providing for a transition from
6 a regulated to a competitive electric
7 generation market; providing rulemaking
8 authority for the Public Service Commission;
9 requiring all electric utilities to file
10 restructuring plans; providing for retail
11 customer choice of electric generation
12 providers; requiring electric generation
13 providers to register and obtain a license;
14 requiring electric utilities to separate
15 generation facilities and operations from
16 transmission and distribution facilities and
17 operations; establishing an obligation for
18 utilities to connect customers to transmission
19 and distribution facilities; requiring
20 utilities to provide open access to
21 transmission and distribution facilities by
22 electric generation providers; providing for
23 regulation of rates for transmission and
24 distribution services; restricting the use of
25 eminent domain powers; establishing
26 environmental policies; requiring compliance by
27 municipal and cooperative electric utilities;
28 defining the term "stranded costs" and
29 providing a method of recovery of stranded
30 costs; establishing provisions for the
31 reliability and safety of electric service;

1 providing for noninterference with contract
2 rights; limiting the liability of distribution
3 companies; providing for severability;
4 providing an effective date.
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6 Be It Enacted by the Legislature of the State of Florida:
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8 Section 1. Florida Electric Industry Restructuring
9 Act.--This act may be cited as the "Florida Electric Industry
10 Restructuring Act."

11 Section 2. Legislative findings and intent.--The
12 Legislature finds that:

13 (1) The generation of electricity is no longer a
14 natural monopoly. Regulation of the generation of electricity
15 results in noncompetitive rates that vary considerably among
16 electric utilities.

17 (2) Noncompetitive rates and rate disparities hinder
18 the economic development of the state and its ability to
19 attract businesses and jobs. Restructuring of the electric
20 industry to provide greater competition and more efficient
21 regulation is a nationwide phenomenon and the state must
22 aggressively pursue restructuring and increased customer
23 choice in order to provide electric service at lower and more
24 competitive rates.

25 (3) Competition is the most efficient way to lower
26 prices for electrical service to all consumers, improve the
27 quality and variety of generation services, stimulate
28 innovation in service and supply, and create a more diverse
29 and decentralized electricity supply system, thereby promoting
30 the public interest.
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1 (4) It is in the public interest to permit all retail
2 electric consumers to choose their suppliers of electric
3 generation and ancillary services in a competitive market and
4 to continue to regulate electric transmission and distribution
5 in order to provide safe and reliable electricity at the
6 lowest possible prices for all consumers, while continuing to
7 assure that electric service will be available to all
8 consumers including those who choose not to participate in a
9 competitive electric market.

10 (5) Restructuring should recognize the benefits of and
11 provide appropriate encouragement to small power producers,
12 self-generation, co-generation, electric generation by highly
13 efficient processes, electric generation by renewable fuels,
14 and the use of cost-effective energy conservation measures.

15 Section 3. Definitions.--As used in this act, the
16 term:

17 (1) "Affiliated generation company" means any
18 generation company that controls, is controlled by, or is
19 under common control, ownership, or management with a
20 distribution utility. A 10-percent or greater voting or
21 ownership interest creates a rebuttable presumption of common
22 control.

23 (2) "Commission" means the Florida Public Service
24 Commission.

25 (3) "Distribution utility" means all owners,
26 operators, and providers of transmission or distribution
27 facilities or services to the public, including municipalities
28 and cooperatives.

29 (4) "Electric utility" means any municipal electric
30 utility, investor-owned electric utility, or rural electric
31 cooperative that owns, maintains, or operates an electric

1 generation, transmission, or distribution system within the
2 state; the term does not include small power producers or
3 entities engaged in self-generation or co-generation.

4 (5) "Generation company" means a person, corporation,
5 or other entity, wherever located, which generates, purchases,
6 brokers, or markets electricity for sale at retail in the
7 state, and includes market aggregators.

8 Section 4. Transition to competitive electric
9 generation market.--

10 (1) By January 1, 2001, electric generation and
11 ancillary services must be deregulated and subject to the
12 competitive market in accordance with the provisions of this
13 act.

14 (2) The commission shall adopt rules to administer
15 this act using the procedures established in section
16 120.54(2)(d), Florida Statutes, for negotiated rulemaking. The
17 commission's rules must be consistent with this act and ensure
18 an orderly and timely transition to full customer choice. The
19 rules must include, but need not be limited to:

20 (a) Appropriate steps to achieve an orderly transition
21 to a competitive electric generation market.

22 (b) A program for making retail customers aware of
23 their new rights and the benefits of customer choice.

24 (c) Procedures and criteria for generation company
25 registration and licensing.

26 (d) Procedures and requirements for the separation by
27 electric utilities of generation facilities and operations
28 from transmission and distribution facilities and operations.

29 (e) Requirements to ensure that all generation
30 companies may compete equally to supply power to retail
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1 consumers and to mitigate concentrations of undue market
2 power.

3 (f) Minimum terms and conditions for service by
4 default providers.

5 (g) Minimum standards for contracts and agreements for
6 the retail sale of electricity and ancillary services to
7 residential customers.

8 (h) Information that investor-owned utilities seeking
9 recovery of stranded costs must submit and criteria for
10 calculating stranded costs.

11 (3) Notwithstanding section 350.128, Florida Statutes,
12 and section 366.10, Florida Statutes, challenges to commission
13 rules adopted under this act must be conducted according to
14 the procedures in section 120.56, Florida Statutes. The First
15 District Court of Appeal shall, upon petition, review any
16 order concerning the validity or invalidity of such rules.

17 Section 5. Electric utility restructuring plans.--

18 (1) By January 1, 1999, each electric utility shall
19 file a proposed restructuring plan with the commission. Each
20 plan must provide for customer choice and establish a protocol
21 for the disaggregation of services as set forth in this act
22 and must include, but not be limited to:

23 (a) Provisions requiring the unbundling of prices for
24 generation, transmission, distribution, metering, and billing,
25 and specification of the charge for each such service on
26 customer bills by January 1, 2000.

27 (b) Provisions specifying the manner in which it will
28 otherwise comply with each provision of this act and the
29 commission's restructuring rules.

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1 (c) In the case of investor-owned utilities,
2 documentation of stranded costs if any, as provided by section
3 15 of this act.

4 (2) Except as provided in subsection (3), the
5 commission shall conduct a hearing under section 120.57(1),
6 Florida Statutes, to determine whether each utility's proposed
7 restructuring plan adequately complies with the provisions of
8 this act and the commission's restructuring rules. The Public
9 Counsel appointed under section 350.061, Florida Statutes,
10 shall be a party to all such hearings. The Attorney General
11 and any person whose substantial interest may be affected has
12 the right to intervene as a party. The commission shall issue
13 an order approving a utility's plan, directing the utility to
14 make specified changes to its plan, or rejecting the plan and
15 directing the utility to submit a new plan that complies with
16 this act and the commission's restructuring rules. In the case
17 of an investor-owned utility, the commission's order must make
18 a determination of stranded costs and transition charges as
19 provided in section 15 of this act.

20 (3) In order to reduce the number of administrative
21 hearings conducted under this section, the commission in its
22 discretion may review any utility's proposed restructuring
23 plan to determine whether it adequately complies with this act
24 and the commission's restructuring rules. The commission shall
25 publish a notice of proposed agency action approving a
26 utility's plan, directing the utility to make specified
27 changes to its plan, or rejecting the plan and directing the
28 utility to submit a new plan that complies with this act and
29 the commission's restructuring rules, and advising all
30 interested persons that they have 45 days after publication of
31 the notice in which to file a request for a hearing under

1 section 120.57, Florida Statutes. Upon the petition of the
2 Public Counsel, the Attorney General, or any person whose
3 substantial interest may be affected, the commission shall
4 conduct a hearing as provided in subsection (2). This
5 subsection does not apply to investor-owned utilities.

6 (4) Notwithstanding section 350.128, Florida Statutes,
7 and section 366.10, Florida Statutes, judicial review of any
8 commission final order on an electric utility's restructuring
9 plan or any other final order concerning the matters addressed
10 in this act shall be by petition to the First District Court
11 of Appeal. Any party who is adversely affected by the
12 commission order is entitled to judicial review.

13 Section 6. Retail customer choice.--

14 (1) All retail consumers must be permitted to choose
15 their provider of electric generation and ancillary services
16 by January 1, 2001. Customers may choose a generation company
17 through the following means:

18 (a) Bilateral contract. Retail customers may negotiate
19 a bilateral contract with a generation company.

20 (b) Market aggregator. Retail customers may choose to
21 receive generation and other energy services from a market
22 aggregator. Market aggregators may generate electricity
23 directly, buy and sell electricity, or enter into financial
24 contracts or otherwise arrange for electric generation
25 resources. Market aggregators may be brokers, marketers,
26 associations, cooperatives, buying clubs, municipalities, or
27 other entities that buy or arrange for electric generation
28 services.

29 (c) Default provider. The commission shall select one
30 or more default generation companies to provide service to any
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1 customer who does not choose a generation supplier. In
2 selecting a default provider, the commission shall:

3 1. Establish by rule a level of basic service,
4 including minimum terms and conditions, to be provided by
5 default generation companies to customers who do not
6 affirmatively choose their generation company.

7 2. With the assistance of the Department of Management
8 Services, conduct a competitive bid and award customers to
9 those generation companies willing to provide basic service at
10 the lowest prices.

11 (2) The commission shall establish and oversee a
12 ballot procedure by which all retail customers may
13 affirmatively select their generation company. Balloting must
14 be completed and generation companies advised of the results
15 sufficiently in advance of January 1, 2001, to allow competing
16 generation companies to prepare for servicing their customers.
17 Electric utilities shall mail the ballots to their current
18 customers as directed by the commission. The ballot procedure
19 must not favor any generation company. The commission shall
20 assign customers who fail to select a generation company to
21 default providers.

22 (3) The commission shall establish by rule minimum
23 standards for contracts and agreements for the sale of
24 electricity and ancillary services to residential customers,
25 including disclosure of pricing, term of service, and
26 termination provisions.

27 Section 7. Generation company registration and
28 licensing.--

29 (1) All generation companies must register with and
30 obtain a license from the commission. Applicants must provide
31 information to the commission to establish their financial,

1 managerial, and technical ability to provide the proposed
2 services, including: a listing of the competitive electric and
3 electric-related products and services to be provided and the
4 locations in which such services will be offered; a
5 description of the applicant's financial, managerial, and
6 technical ability to obtain and deliver such products and
7 services in a safe and reliable manner; a description of the
8 form of ownership and organization of the applicant; a listing
9 of officers and directors; the names and addresses of local
10 representatives for commission contacts; the names of any
11 affiliated generation company or distribution utility; and
12 such other information as the commission reasonably requires.

13 (2) The commission shall register and issue a license
14 to any applicant who demonstrates the financial, managerial,
15 and technical ability to provide the proposed services, and
16 shall by rule, adopt guidelines for making such a
17 demonstration. Requirements for registration and licensing
18 must not be unreasonably restrictive or be used to deter
19 competition or market entry.

20 Section 8. Unbundling of services.--The commission's
21 restructuring rules must require that all electric utilities
22 operationally and financially separate electric generation
23 assets and operations from transmission and distribution
24 assets and operations as described in this section. Employees
25 of a distribution utility may not be shared with and must be
26 physically separated from those of an affiliated generation
27 company. A distribution utility and its affiliated generation
28 company must keep separate records and books of accounts which
29 are subject to review by the commission and the Attorney
30 General.

31 Section 9. Obligation to connect.--

1 (1) Electric utilities shall be relieved of their
2 traditional obligation to serve. Distribution utilities shall
3 have an obligation to connect all customers within their
4 service territory on nondiscriminatory terms and conditions.

5 (2) Consumers shall have the right to select their
6 generation company and have nondiscriminatory access to
7 interconnection with their host distribution utility, which
8 distribution utility shall, in conjunction with any
9 intermediate distribution utility, be required to transport
10 electricity from the point of generation to the consumer.

11 Section 10. Open access.--

12 (1) Distribution utilities must provide open access to
13 their transmission and distribution facilities and make
14 available ancillary services to all generation companies on
15 equal terms. The commission's restructuring plan must assure
16 nondiscriminatory, open access to all transmission and
17 distribution facilities for all wholesale and retail
18 transactions.

19 (2) Distribution utilities must file with the
20 commission or other agencies, as appropriate, service tariffs
21 that provide open access for all competitors. The commission
22 shall adopt rules to ensure that distribution companies do not
23 favor or extend any unfair advantage to any generation company
24 in pricing, service, or obtaining access to transmission and
25 distribution facilities, and shall monitor distribution
26 utilities for compliance with such rules and this section.

27 (3) In order to ensure fair competition among
28 generation companies and provide equal and open access to
29 transmission and distribution facilities, distribution
30 utilities and their employees:

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1 (a) May not sell or otherwise provide products or
2 services to any affiliated generation company without posting
3 the offering electronically or via facsimile transfer to all
4 licensed generation companies, or otherwise making a
5 sufficient offering to the market for such products and
6 services, and the commission shall oversee the establishment
7 and maintenance of an electronic information network available
8 to all generation companies and customers to assure that the
9 intent of this subsection is implemented.

10 (b) Shall process all similar requests for a product,
11 service, or information, and provide such product, service, or
12 information in the same manner and within the same period of
13 time for all generation companies.

14 (c) May not condition or tie the provision of any
15 product, service, or rate agreement to the provision of any
16 product or service in which an affiliated generation company
17 is involved.

18 (d) May not provide information to an affiliated
19 generation company without a request in cases in which the
20 information is made available to other generation companies
21 only upon request.

22 (e) May not give any appearance of speaking on behalf
23 of its affiliated generation company, represent that any
24 advantage accrues to customers or others in the use of the
25 distribution company's products or services as a result of
26 that customer or others dealing with its affiliated generation
27 company, engage in joint advertising or marketing programs
28 with its affiliated generation company, or promote any product
29 or service offered by its affiliated generation company.

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1 (f) Shall annually provide to each distribution
2 utility employee a copy of these standards or such restatement
3 of these standards as the commission directs.

4 Section 11. Transmission and distribution pricing.--

5 (1) The commission shall to the extent of its
6 jurisdiction establish just and reasonable rates for unbundled
7 transmission and local distribution services. In setting
8 rates, the commission shall consider, in addition to the
9 criteria set forth in section 366.041, Florida Statutes, the
10 need to enhance reliability and safety, relieve transmission
11 and distribution congestion, and achieve the lowest possible
12 price for consumers.

13 (2) Each distribution utility must file unbundled
14 service tariffs to provide services to all eligible purchasers
15 on a nondiscriminatory basis.

16 (3) The commission has jurisdiction over all aspects
17 of transmission and distribution rates and services not
18 subject to the exclusive jurisdiction of the Federal Energy
19 Regulatory Commission.

20 Section 12. Eminent domain.--Generation companies have
21 no right of eminent domain.

22 Section 13. Environmental policies.--Electric industry
23 restructuring should recognize the benefits of and provide
24 appropriate encouragement to small power producers,
25 self-generation, co-generation, electric generation by highly
26 efficient processes and renewable fuels, and cost-effective
27 energy conservation measures.

28 Section 14. Municipal and cooperative electric
29 utilities.--Municipal and cooperative electric utilities are
30 not subject to commission regulation of rates for transmission
31 and distribution services. With the exception of paragraphs

1 (5)(a)-(c), municipal and cooperative electric utilities are
2 not subject to the stranded-cost-recovery provisions in
3 section 15 of this act. Except as otherwise specifically
4 provided in this act, municipal and cooperative electric
5 utilities are subject to all requirements of this act.

6 Section 15. Stranded costs.--

7 (1) RECOVERY OF STRANDED COSTS.--Following the
8 procedures and criteria established in this section,
9 investor-owned utilities may seek to recover demonstrable
10 stranded costs. Stranded costs are the costs of
11 generation-related assets that an investor-owned utility
12 prudently incurred before July 1, 1998, that were being
13 recovered or were eligible for recovery in rates or charges
14 approved by the commission as of July 1, 1998, and that will
15 not be recovered due solely to the implementation of this act.

16 (2) CRITERIA FOR DETERMINATION OF STRANDED COSTS.--

17 (a) Stranded costs include:

18 1. Costs meeting the criteria of this section and
19 arising under power purchase or qualifying facility contracts,
20 including associated fuel contracts, or associated with any
21 buy-out, buy-down, or renegotiation of power purchase or
22 qualifying facility contracts; and

23 2. Costs meeting the criteria of this section and
24 associated with required environmental mandates currently
25 approved for cost recovery and power acquisitions mandated by
26 federal statutes.

27 (b) Stranded costs do not include:

28 1. Costs related to transmission and distribution
29 facilities and services.

30 2. Costs for which the utility has previously been
31 compensated.

1 3. Costs that the utility would not have recovered or
2 that were not eligible for recovery under applicable
3 regulation and rate tariffs in effect on July 1, 1998.

4 4. Lost revenues due to changes in usage occurring in
5 the normal course of business, including those resulting from
6 changes in business cycles; termination of operations;
7 weather; reduced production; changes in manufacturing
8 processes; energy conservation efforts other than as
9 previously approved by the commission; installation,
10 expansion, or changes in the performance of self-generation,
11 co-generation, or small power producer facilities; or other
12 similar factors.

13 5. Lost revenues due to the exercise of competitive
14 alternatives that were available before July 1, 1998,
15 including demand-side management, energy conservation
16 measures, co-generation, self-generation, and movement of
17 customers from the service area.

18 6. Costs incurred for purposes other than to comply
19 with the utility's obligation to serve its customers within
20 its service territory in the state.

21 7. Costs that were imprudently incurred or that the
22 utility failed to aggressively mitigate.

23 (c) Stranded costs must be offset by stranded
24 benefits. Stranded benefits include:

25 1. The amount by which the market value of any
26 retained asset exceeds book value.

27 2. The amount by which the sale price, including the
28 total value of all consideration received, of any asset sold
29 in an arm's length transaction exceeds book value.

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1 3. The amount by which any bona fide offer to purchase
2 a generation-related asset exceeds the market value claimed by
3 the utility.

4 (3) DUTIES AND RESPONSIBILITIES OF INVESTOR-OWNED
5 UTILITIES.--

6 (a) Duty to mitigate. Beginning on July 1, 1998,
7 investor-owned utilities shall have the duty to prudently,
8 thoroughly, and aggressively mitigate stranded costs.
9 Mitigation measures may include, but are not limited to,
10 reduction of expenses, renegotiation of existing contracts,
11 refinancing of existing debt, divestiture of electric
12 generation assets, and sale, write-off, or write-down of
13 uneconomic or surplus assets.

14 (b) Duty to cooperate. Investor-owned utilities shall
15 have a duty to cooperate with the commission in the
16 implementation of this act as a precondition for recovery of
17 stranded costs. Approval of a recovery plan and collection of
18 any stranded costs shall be deemed a settlement of all such
19 claims by an investor-owned utility. An investor-owned utility
20 seeking to establish claims for recovery of stranded costs
21 through any other means is ineligible for recovery of stranded
22 costs under the method provided in this act.

23 (4) STRANDED-COST-RECOVERY PLAN.--As a component of
24 its restructuring plan submitted under section 5 of this act,
25 each investor-owned utility shall file a
26 stranded-cost-recovery plan with the commission. The recovery
27 plan must:

28 (a) Identify, quantify, and document all requested
29 stranded costs.

30 (b) Describe and document all mitigation efforts
31 undertaken, ongoing, and planned for the future.

1 (c) Identify, quantify, and document all anticipated
2 stranded benefits.

3 (d) Provide such other information as the commission
4 requires to make its determination of stranded costs.

5 (5) RECOVERY OF STRANDED COSTS THROUGH TRANSITION
6 CHARGES.--

7 (a) The recovery of stranded costs must be
8 accomplished through a nondiscriminatory, appropriately
9 structured transition charge that is fair to all customer
10 classes, lawful, limited in duration, and consistent with the
11 promotion of fully competitive markets.

12 (b) Transition charges must apply only to customers
13 within an investor-owned utility's distribution service
14 territory in effect on July 1, 1998, must be separately stated
15 on each customer's bill, and may not disadvantage one class of
16 customer or supplier over another. The charges may not apply
17 to wheeling-through transactions, wholesale sales,
18 self-generation, co-generation, small power production, or any
19 competitive alternative that existed before July 1, 1998.

20 (c) Recovery mechanisms that impede competition, such
21 as entry and exit fees, may not be used.

22 (d) The commission shall establish a limited period,
23 not to exceed 10 years, for the fair and expeditious recovery
24 of stranded costs. The recovery period and the amount of the
25 transition charge must not cause the total price for electric
26 power for any customer to exceed the rate paid for electric
27 power on July 1, 1998. Any stranded costs not recovered under
28 these procedures by the end of the recovery period are not
29 recoverable by an investor-owned utility.

30 (6) APPROVAL OF STRANDED-COST-RECOVERY PLANS.--
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1 (a) The commission shall review each
2 stranded-cost-recovery plan and conduct a hearing under
3 section 5 of this act to determine the amount of each
4 investor-owned utility's stranded costs and an appropriate
5 transition charge for the recovery of the stranded costs. In
6 determining stranded costs, the commission shall consider
7 whether the requested stranded cost amount is equitable,
8 appropriate, in the public interest, and consistent with the
9 intent of this act. The commission shall balance the interests
10 of consumers and utility investors and consider what portion
11 of stranded costs utility investors should bear. Any
12 investor-owned utility seeking recovery of stranded costs
13 shall have the burden of proving its stranded costs by clear
14 and convincing evidence.

15 (b) No later than March 31, 2003, each investor-owned
16 utility shall submit a revised stranded-cost-recovery plan
17 that shall adjust the utility's estimated stranded costs to
18 reflect actual market conditions through December 31, 2002.
19 The commission shall review revised stranded-cost-recovery
20 plans and conduct hearings to determine revised stranded costs
21 and transition charges using the same procedures specified for
22 the original stranded-cost determinations. As part of such
23 proceedings, the commission shall raise or lower transition
24 charges, or require refunds if necessary, in order to reflect
25 changes in approved stranded-cost-recovery.

26 Section 16. Reliability and safety.--All generation
27 companies and distribution utilities must have in place
28 sufficient measures to preserve the integrity, safety,
29 reliability, and quality of electric service, including, as
30 applicable, sufficient capacity reserves and spinning
31 reserves. The commission shall adopt rules ensuring reliable

