

By Senator Campbell

33-1274-02

See HB

1 A bill to be entitled

2 An act relating to clean energy generation;

3 creating the "Florida Clean Power Act of 2002";

4 providing for power plant emissions control;

5 providing definitions; providing for statewide

6 emissions standards; providing a schedule;

7 providing for emission rates; providing for a

8 generation performance standard; providing for

9 individual facility emissions allocations;

10 providing for emissions credits; providing a

11 penalty; authorizing sale or transfer of

12 emissions credits; providing for individual

13 facility emissions caps; authorizing recovery

14 of certain employee-related costs; providing

15 rulemaking authority and other powers of the

16 Department of Environmental Protection;

17 providing for a clean energy and energy

18 efficiency public benefit program; providing

19 definitions; authorizing specified electric and

20 natural gas utility charges to support energy

21 efficiency and clean energy programs and

22 research; providing for administration of funds

23 by a nongovernmental entity established by the

24 Public Service Commission; providing rulemaking

25 authority and other powers of the commission;

26 providing a definition; requiring annual

27 reports to the commission and department by

28 electric utilities of electrical purchases and

29 production and of emissions; requiring reports

30 to utility customers and the general public;

31 providing for interconnection and metering of

1 certain energy generating systems; providing
2 definitions; providing for rates, fees, and
3 other requirements for utility customers using
4 eligible clean energy systems; providing for
5 energy measurement calculations; requiring
6 utilities to make metering programs available
7 to customers using eligible clean energy
8 systems; providing safety, quality, and
9 interconnection requirements; providing
10 rulemaking authority of the commission;
11 authorizing electric utilities to perform
12 certain testing and inspections; amending ss.
13 403.503, 403.506, F.S.; revising the definition
14 of "electrical power plant" for certification
15 purposes under the Florida Electrical Power
16 Plant Siting Act; providing an effective date.

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

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20 Section 1. This act may be cited as the "Florida Clean
21 Power Act of 2002."

22 Section 2. Power plant emissions control.--

23 (1) DEFINITIONS.--The following definitions shall
24 apply to this section:

25 (a) "Best available control technology" means an
26 emission limitation based on the maximum degree of reduction
27 of each pollutant emitted from or resulting from a covered
28 generation facility, which the department, on a case-by-case
29 basis, taking into account energy, environmental, and economic
30 impacts and other costs, determines is achievable for such
31 facility through application of production processes and

1 available methods, systems, and techniques. Best available
2 control technology shall not allow emissions that exceed any
3 emission standard established under the New Source Performance
4 Standards or National Emission Standards for Hazardous Air
5 Pollutants.

6 (b) "Commission" means the Public Service Commission.

7 (c) "Covered generation facility" means an electric
8 generating facility, other than a nuclear facility, with a
9 nameplate capacity of 10 megawatts or greater that uses a
10 combustion device to generate electricity.

11 (d) "Department" means the Department of Environmental
12 Protection.

13 (e) "Global pollutant" means:

14 1. Carbon dioxide; or
15 2. Any other substance that the department may
16 identify by rule as a substance the emission of which into the
17 air from a combustion device used in the generation of
18 electricity endangers the public health or welfare of the
19 earth as a whole.

20 (f) "Pollutant" means:

21 1. Mercury;
22 2. Nitrogen oxide;
23 3. Sulfur dioxide; or
24 4. Any other substance, except for a global pollutant,
25 that the department may identify by rule as a substance the
26 emission of which into the air from a combustion device used
27 in the generation of electricity endangers public health or
28 welfare.

29 (2) STATEWIDE EMISSIONS STANDARDS.--

30 (a) Schedule.--Not later than July 1, 2003, the
31 department shall promulgate a final rule that establishes the

1 limits on the quantity of each global pollutant that all
2 covered generation facilities in the aggregate statewide shall
3 be permitted to emit beginning in calendar year 2011 and
4 establishes an emissions rate for each pollutant emitted by a
5 covered generation facility. The department may establish
6 limits for global pollutants that take effect after 2003. The
7 emission rates established pursuant to this paragraph shall
8 take effect January 1, 2007.

9 (b) Limit for carbon dioxide.--The statewide carbon
10 dioxide emissions limit for calendar year 2007 and each year
11 thereafter established under paragraph (a) shall not be
12 greater than a tonnage equal to the total tonnage of carbon
13 dioxide emitted by electric generating facilities that
14 operated in 1990 in the state and would have been covered
15 generation facilities.

16 (c) Emission rates.--The emission rate for a pollutant
17 emitted by a covered generation facility shall be equivalent
18 to:

19 1. For nitrogen oxide, 1.5 pounds per megawatt hour.
20 2. For sulfur dioxide, 3.0 pounds per megawatt hour.
21 3. For mercury, the amount necessary to achieve a
22 50-percent reduction of emissions from the facility by 2007,
23 and a 90-percent reduction of emissions from the facility by
24 2011.

25 4. For all other pollutants, the emission rate that is
26 achievable by using the best available control technology for
27 that facility.

28 (d) Adjustment.--The department may lower the limit on
29 carbon dioxide established under paragraph (a) to an amount
30 lower than the amount established by paragraph (b) if the
31 department determines that such an adjustment would be in the

1 interests of the public health and welfare. Not later than
2 July 1, 2011, and every 7 years thereafter by July 1, the
3 department shall determine whether each emission rate
4 established under paragraph (a) is equivalent to best
5 available control technology. If the department determines
6 that an emission rate is no longer equivalent to best
7 available control technology, the department shall promulgate
8 by July 1 of the year in which review is required by this
9 paragraph a final rule that establishes an emission rate that
10 is equivalent to best available control technology. Any
11 emission rate established pursuant to this paragraph shall
12 take effect on January 1 of the calendar year following the
13 promulgation of the regulation establishing the emission rate.
14 Any emission rate established pursuant to this paragraph shall
15 not exceed an emission rate established pursuant to paragraph
16 (a).

17 (3) GENERATION PERFORMANCE STANDARD.--

18 (a) Annual determination.--Not later than October 1,
19 2003, and by October 1 of each year thereafter, the
20 department, in consultation with the commission, shall
21 determine for the next calendar year the generation
22 performance standard for each global pollutant emitted by a
23 covered generation facility.

24 (b) Formula.--The generation performance standard
25 shall be determined by dividing the statewide emissions limit
26 for the next calendar year as established under subsection (2)
27 by the department's estimate for the next calendar year of the
28 statewide megawatt-hour production by all covered generation
29 facilities.

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1 (c) Method.--The department shall determine by rule
2 the method to be used in determining an estimate under
3 paragraph (b).

4 (4) INDIVIDUAL EMISSIONS ALLOCATION.--The quantity of
5 carbon dioxide that a covered generation facility shall be
6 permitted to emit during a calendar year shall be equal to the
7 facility's annual generation of megawatt hours of electricity
8 multiplied by the generation performance standard as
9 established in subsection (3).

10 (5) EMISSIONS CREDITS.--

11 (a) Comparison of actual combustion device outputs
12 with individual emissions allocations.--At the end of each
13 year, the department shall compare the quantity of carbon
14 dioxide emitted by a covered generation facility during the
15 year with the individual emissions allocation as established
16 under subsection (4) applicable to that covered generation
17 facility for the year.

18 (b) Issuance of emissions credits.--Not later than
19 April 1 of each year, the department shall issue to a covered
20 generation facility one emissions credit for each ton by which
21 the quantity of carbon dioxide emitted by the covered
22 generation facility during the preceding year was less than
23 the individual emissions allocation as established under
24 subsection (4) applicable to the covered generation facility.

25 (c) Submission of emissions credits.--

26 1. Not later than July 1 of each year, a covered
27 generation facility that emitted a greater quantity of carbon
28 dioxide than the individual emissions allocation as
29 established under subsection (4) applicable to the covered
30 generation facility during the preceding year shall submit to
31 the department one emissions credit for each ton by which the

1 quantity of the carbon dioxide was greater than the individual
2 emissions allocation.

3 2. The credit limit for each covered generation
4 facility shall be equal to the total tonnage of carbon dioxide
5 emitted by electric generating facilities that operated in
6 1990 in the state and would have been covered generation
7 facilities, divided by the department's estimate, as required
8 under subsection (3), for the previous calendar year of the
9 statewide megawatt-hour production by all covered generation
10 facilities, and then multiplied by the facility's annual
11 generation of megawatt hours of electricity.

12 3. The owner or operator of a covered generation
13 facility that is required to submit an emissions credit under
14 subparagraph 1. that fails to submit the emissions credit
15 shall pay to the department a civil penalty in the amount of
16 \$100 for each ton of carbon dioxide emissions in excess of the
17 individual emissions allocation applicable under subsection
18 (4) for which a carbon dioxide emissions credit has not been
19 submitted under subparagraph 1.

20 4. The department shall annually adjust the penalty
21 specified in subparagraph 3. for inflation based on the change
22 in the Consumer Price Index.

23 (d) Use of emissions credits.--A covered generation
24 facility may, on notice to the department, sell or otherwise
25 transfer an emissions credit to another person.

26 (6) INDIVIDUAL FACILITY EMISSION RATES.--The average
27 emission rate of a pollutant emitted by a covered generation
28 facility during a calendar year shall not exceed the emission
29 rate established under subsection (2).

30 (7) INDIVIDUAL FACILITY EMISSIONS CAPS.--
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1 (a) The quantity of each pollutant that a covered
2 generation facility shall be permitted to emit during a
3 calendar year shall be equal to the facility's average annual
4 generation of megawatt hours of electricity over the prior 3
5 calendar years multiplied by the emission rate as established
6 in subsection (2).

7 (b) No covered generation facility shall be permitted
8 to exceed a cap established by paragraph (a) unless granted a
9 waiver by the department in consultation with the commission.
10 Prior to granting such a waiver, the department shall require
11 public notice and comment on each request. The department
12 shall not issue a waiver unless it is determined that failure
13 to do so would lead to a shortage of electricity for citizens
14 of the state. Any waiver granted shall last for no longer than
15 1 year and shall specify a limit on emissions during the
16 period of effectiveness. If a covered generation facility
17 receives a waiver, the department shall exclude data from the
18 year in which a waiver was received in calculating the
19 emissions cap established by paragraph (a). The total duration
20 of waiver granted during the operational lifetime of a covered
21 generation facility shall not exceed 2 years.

22 (8) EMPLOYEE-RELATED TRANSITION COSTS.--In order to
23 mitigate potential negative impacts on utility personnel
24 directly affected by the requirements of this section, the
25 commission shall allow recovery of reasonable employee-related
26 transition costs incurred and projected for severance,
27 retraining, early retirement, outplacement, and related
28 expenses for the employees. However, there shall be no
29 recovery for employee-related transition costs associated with
30 officers, senior supervisory employees, and professional
31 employees performing predominantly regulatory functions. The

1 commission is authorized to require that an electric utility
2 recover these costs by collecting a per-kilowatt-hour
3 nonbypassable charge on electricity sold to each end-use
4 customer of the utility.

5 (9) POWERS OF DEPARTMENT.--The department may
6 promulgate such rules, conduct such investigations, and take
7 such other actions as are appropriate to implement this
8 section.

9 Section 3. Clean energy and energy efficiency public
10 benefits programs.--

11 (1) DEFINITIONS.--The following definitions shall
12 apply to this section:

13 (a) "Clean energy" means:

14 1. Solar energy.

15 2. Wind energy.

16 3. Fuel cells utilizing hydrogen.

17 4. Landfill gas.

18 5. Naturally flowing water and hydroelectric energy.

19 6. Sustainable bioenergy fuels.

20 7. Other energy resources and emerging technologies
21 that have significant potential for commercialization and do
22 not involve nuclear fission or the combustion of either fossil
23 fuels or municipal solid waste.

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25 "Clean energy" does not include electricity from generating
26 units that were in operation on October 1, 2002, unless the
27 electricity comes from an addition made to the unit after that
28 date.

29 (b) "Commission" means the Public Service Commission.
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1 (c) "Energy efficiency" means practices that save
2 energy. These practices include building construction methods
3 and installation of high-efficiency equipment and appliances.

4 (d) "Utility" means any entity of whatever form that
5 provides electricity or natural gas to end-use customers. The
6 form of an entity that may be a utility specifically includes
7 municipalities or instrumentalities thereof and cooperatives
8 organized under the Rural Electric Cooperative Law.

9 (2) PUBLIC BENEFITS CHARGE AND ADMINISTRATION.--

10 (a) Not later than January 1, 2003, the commission
11 shall require each utility to collect a
12 1.3-mills-per-kilowatt-hour nonbypassable charge on
13 electricity sold to each end-use customer of the utility. Not
14 later than January 1, 2003, the commission shall require each
15 utility to collect a 6-mills-per-therm nonbypassable charge on
16 natural gas sold to each end-use customer of the utility.
17 These funds shall be used to support energy efficiency
18 programs.

19 (b) Not later than January 1, 2003, the commission
20 shall require each utility to collect a
21 0.4-mills-per-kilowatt-hour nonbypassable charge on
22 electricity sold to each end-use customer of the utility. Not
23 later than January 1, 2003, the commission shall require each
24 utility to collect a 2-mills-per-therm nonbypassable charge on
25 natural gas sold to each end-use customer of the utility.
26 These funds shall be used to support comprehensive low-income
27 residential energy efficiency programs.

28 (c) Not later than January 1, 2003, the commission
29 shall require each utility to collect a
30 0.7-mills-per-kilowatt-hour nonbypassable charge on
31 electricity sold to each end-use customer of the utility. Not

1 later than January 1, 2003, the commission shall require each
2 utility to collect a 4-mills-per-therm nonbypassable charge on
3 natural gas sold to each end-use customer of the utility.
4 These funds shall be used to support clean energy programs.

5 (d) Not later than January 1, 2003, the commission
6 shall require each utility to collect a
7 0.4-mills-per-kilowatt-hour nonbypassable charge on
8 electricity sold to each end-use customer of the utility. Not
9 later than January 1, 2003, the commission shall require each
10 utility to collect a 2-mills-per-therm nonbypassable charge on
11 natural gas sold to each end-use customer of the utility.
12 These funds shall be used to support research and development
13 on energy efficiency and clean energy.

14 (e) The commission shall direct that the funds
15 collected pursuant to this subsection be transferred to a
16 nongovernmental entity established by the commission for the
17 purpose of administering the funds.

18 (3) POWERS OF COMMISSION.--The commission may
19 promulgate such rules, conduct such investigations, and take
20 such other actions as are appropriate to implement this
21 section.

22 Section 4. Disclosure.--

23 (1) For purposes of this section, "electric utility"
24 means cities and towns, counties, public utility districts,
25 regulated electric companies, electric cooperatives, and joint
26 operating agencies, or combinations thereof, engaged in, or
27 authorized to engage in, the business of generating,
28 transmitting, or distributing electric energy.

29 (2) Not later than October 1, 2003, and by October 1
30 of each year thereafter, each electric utility shall report to
31 the Public Service Commission and the Department of

1 Environmental Protection the following information regarding
2 the preceding 12-month period:

3 (a) Total megawatt hours of electricity produced from
4 generating facilities owned by the electric utility or under
5 long-term contract to the electric utility that are sold to
6 end-use customers in the state.

7 (b) Total megawatt hours of electricity purchased by
8 the electric utility from other sources and sold to end-use
9 customers in the state.

10 (c) The proportion of such production from facilities
11 listed under paragraph (a) that use nuclear fuels, oil, coal,
12 natural gas, hydropower, and other fuels as the principal
13 generation fuel.

14 (d) The amount of emissions in pounds per kilowatt
15 hour from facilities listed under paragraph (a) of the
16 following pollutants:

- 17 1. Carbon dioxide.
- 18 2. Carbon monoxide.
- 19 3. Each heavy metal.
- 20 4. Nitrogen oxides.
- 21 5. Particulates.
- 22 6. Sulfur oxides.
- 23 7. Volatile organic compounds.
- 24 8. Any other pollutant specified by the department.

25 (e) The amount of high-level and low-level radioactive
26 waste produced by facilities listed under paragraph (a).

27 (3) Not later than January 1, 2004, and annually
28 thereafter, the Department of Environmental Protection shall
29 report the information received pursuant to subsection (2) to
30 the general public by posting the information on the web site
31 of the department and by any other appropriate method.

1 (4) Beginning October 1, 2003, each electric utility
2 shall provide to its customers the information it reported
3 pursuant to subsection (2) for the most recent 12-month
4 period. This information shall be provided in a bill insert on
5 a quarterly basis using the electric utility's normal billing
6 cycle. The information provided pursuant to this subsection
7 shall be presented in a format that is understandable by a
8 person of ordinary intelligence who is not familiar with the
9 electric utility industry and its environmental impacts.

10 Section 5. Interconnection and metering of small
11 photovoltaic, hydrogen fuel cell, and wind turbine systems.--

12 (1) The following definitions shall apply to this
13 section:

14 (a) "Customer" means an end-use consumer of
15 electricity who uses an eligible clean energy system.

16 (b) "Electric utility" means any entity of whatever
17 form that provides electricity to end-use customers. The form
18 of an entity that may be an electric utility specifically
19 includes municipalities or instrumentalities thereof and
20 cooperatives organized under the Rural Electric Cooperative
21 Law.

22 (c) "Eligible clean energy system" means a facility
23 for generation of electricity that:

24 1. Is of no more than 15 kilowatts (AC) capacity.

25 2. Operates in parallel with facilities of the
26 electric distribution system.

27 3. Is intended primarily to offset part or all of the
28 customer's own electricity requirements.

29 4. Is located on the customer's premises.

30 5. Utilizes a hydrogen fuel cell, solar electric
31 array, or wind turbine.

1 (2) A customer shall pay the same rates, fees, or
2 other payments and be subject to the same conditions and
3 requirements as all other purchasers from the electric utility
4 in the same rate class, except for appropriate and necessary
5 conditions approved by the Public Service Commission for
6 safety and reliability of the electric distribution system.

7 (3) Electric energy measurement for eligible clean
8 energy systems using a single-register meter that measures
9 only the net electricity consumed or produced at any given
10 time shall be calculated in the following manner:

11 (a) The electric utility that serves the customer
12 shall measure the net electricity produced or consumed during
13 the customer's billing period, in accordance with normal
14 metering practices.

15 (b) If the electricity supplied by the electric
16 utility exceeds the electricity generated by the customer and
17 fed back to the electric distribution system during the
18 billing period, then the customer shall be billed for the net
19 electricity supplied by the electric utility, in accordance
20 with normal metering practices.

21 (c) If the electricity generated by the customer
22 exceeds the electricity supplied by the electric utility:

23 1. The customer shall be billed for the appropriate
24 charges for that month, in accordance with subsection (2); and

25 2. The customer shall be credited for the excess
26 kilowatt hours generated during the billing period, with this
27 kilowatt hour credit appearing on the bill for the following
28 billing period.

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1 At the beginning of each calendar year, any remaining unused
2 kilowatt hour credit accumulated during the previous year
3 shall expire, without any compensation to the customer.

4 (4) Electric energy measurement for eligible clean
5 energy systems that use metering capable of separately
6 tracking the inflow and outflow of electricity shall be
7 calculated in the following manner:

8 (a) The customer shall be billed for the appropriate
9 charges for that month, in accordance with subsection (2).

10 (b) The customer shall be credited for the kilowatt
11 hours fed back to the electric distribution system during the
12 billing period. The credit shall equal the number of kilowatt
13 hours multiplied by a rate that is no less than the average,
14 bundled retail rate charged to the customer by the electric
15 utility for each kilowatt hour delivered to the customer
16 during the billing period.

17 (5) An electric utility:

18 (a) Shall make the metering program established by
19 this section available to any customer using an eligible clean
20 energy system on a first-come, first-served basis until the
21 total cumulative generating capacity of eligible clean energy
22 systems equals 1 percent of the electric utility's peak demand
23 during 1998. An electric utility shall interconnect additional
24 eligible clean energy systems above this capacity if found by
25 the Public Service Commission to be in the public interest.

26 (b) May, at its own expense, install one or more
27 additional meters on the premises of the customer to monitor
28 the flow of electricity in each direction.

29 (c) Shall charge the customer a minimum monthly fee
30 that is the same as other customers of the electric utility in
31 the same rate class, but shall not charge the customer any

1 additional standby, capacity, interconnection, or other fee or
2 charge.

3 (6)(a) An eligible clean energy system shall conform
4 to the applicable electrical safety, power quality, and
5 interconnection requirements established by the Institute of
6 Electrical and Electronic Engineers and Underwriters
7 Laboratories, and as defined by the National Electric Code.

8 (b) The Public Service Commission may adopt, by rule
9 or order, additional electrical safety, power quality, and
10 interconnection requirements for customers that the commission
11 determines are necessary to protect public safety and system
12 reliability.

13 (c) An electric utility may not require a customer
14 whose eligible clean energy system meets the requirements of
15 paragraphs (a) and (b) to comply with additional safety or
16 performance standards, perform or pay for additional testing
17 or inspection, or purchase additional liability insurance.

18 (d) An electric utility may, at its own expense, and
19 upon reasonable notice to the customer, perform such testing
20 and inspection of an eligible clean energy system in order to
21 confirm that the system conforms to applicable electrical
22 safety, power quality, and interconnection requirements.

23 Section 6. Subsection (12) of section 403.503, Florida
24 Statutes, is amended to read:

25 403.503 Definitions relating to Florida Electrical
26 Power Plant Siting Act.--As used in this act:

27 (12) "Electrical power plant" means, for the purpose
28 of certification, any ~~steam or solar~~ electrical generating
29 facility using any process or fuel, including nuclear
30 materials, and includes associated facilities which directly
31 support the construction and operation of the electrical power

1 plant and those associated transmission lines which connect
2 the electrical power plant to an existing transmission network
3 or rights-of-way to which the applicant intends to connect,
4 except that this term does not include any ~~steam or solar~~
5 electrical generating facility of less than 75 megawatts in
6 capacity unless the applicant for such a facility elects to
7 apply for certification under this act. An associated
8 transmission line may include, at the applicant's option, any
9 proposed terminal or intermediate substations or substation
10 expansions connected to the associated transmission line.

11 Section 7. Subsection (1) of section 403.506, Florida
12 Statutes, is amended to read:

13 403.506 Applicability and certification.--

14 (1) The provisions of this act shall apply to any
15 electrical power plant as defined herein, except that the
16 provisions of this act shall not apply to any electrical power
17 plant ~~or steam-generating plant~~ of less than 75 megawatts in
18 capacity or to any substation to be constructed as part of an
19 associated transmission line unless the applicant has elected
20 to apply for certification of such plant or substation under
21 this act. No construction of any new electrical power plant or
22 expansion in ~~steam~~ generating capacity of any existing
23 electrical power plant may be undertaken after October 1,
24 1973, without first obtaining certification in the manner as
25 herein provided, except that this act shall not apply to any
26 such electrical power plant which is presently operating or
27 under construction or which has, upon the effective date of
28 chapter 73-33, Laws of Florida, applied for a permit or
29 certification under requirements in force prior to the
30 effective date of such act.

31 Section 8. This act shall take effect October 1, 2002.

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LEGISLATIVE SUMMARY

Creates the "Florida Clean Power Act of 2002." Provides for power plant emissions control. Provides definitions. Provides for statewide emissions standards. Provides a schedule. Provides for emission rates. Provides for a generation performance standard. Provides for individual facility emissions allocations. Provides for emissions credits. Provides a penalty. Authorizes sale or transfer of emissions credits. Provides for individual facility emissions caps. Authorizes recovery of certain employee-related costs. Provides rulemaking authority and other powers of the Department of Environmental Protection. Provides for a clean energy and energy efficiency public benefit program. Provides definitions. Authorizes specified electric and natural gas utility charges to support energy efficiency and clean energy programs and research. Provides for administration of funds by a nongovernmental entity established by the Public Service Commission. Provides rulemaking authority and other powers of the commission. Provides a definition. Requires annual reports to the commission and department by electric utilities of electrical purchases and production and of emissions. Requires reports to utility customers and the general public. Provides for interconnection and metering of certain energy generating systems. Provides definitions. Provides for rates, fees, and other requirements for utility customers using eligible clean energy systems. Provides for energy measurement calculations. Requires utilities to make metering programs available to customers using eligible clean energy systems. Provides safety, quality, and interconnection requirements. Provides rulemaking authority of the commission. Authorizes electric utilities to perform certain testing and inspections. Revises the definition of "electrical power plant" for certification purposes under the Florida Electrical Power Plant Siting Act. (See bill for details.)