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1 A bill to be entitled
 2 An act relating to air quality; amending s. 366.8255,
 3 F.S.; redefining the term "environmental laws or
 4 regulations" to include certain agreements entered into by
 5 electric utilities with the Department of Environmental
 6 Protection; redefining the term "environmental compliance
 7 costs" to include costs related to certain air pollution
 8 control equipment; providing for cost recovery by electric
 9 utilities under certain circumstances; creating s.
 10 366.8252, F.S.; providing for compliance with the Air
 11 Quality Improvement Act; providing a definition; requiring
 12 specified public utilities to submit a petition to the
 13 Public Service Commission for recovery of costs related to
 14 plans to achieve compliance; requiring the commission to
 15 establish regulatory conditions for approval of cost
 16 recovery; providing legislative findings that certain
 17 conditions imposed by the act are in the public interest;
 18 creating s. 403.0874, F.S.; creating the Air Quality
 19 Improvement Act; providing definitions; providing limits
 20 on emissions of nitrogen oxide and sulfur dioxide from
 21 certain electric generating units; requiring the
 22 department to expedite certain permits under certain
 23 circumstances; providing an effective date.

24
 25 WHEREAS, the Legislature intends to encourage and promote
 26 the reduction of air emissions throughout the state, and

27 WHEREAS, in an attempt to improve the state's air quality,
 28 the Legislature wishes to provide incentives for and encourage

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29 innovative approaches to lowering emissions from existing
 30 generating facilities, NOW, THEREFORE,

31
 32 Be It Enacted by the Legislature of the State of Florida:

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 34 Section 1. Paragraphs (c) and (d) of subsection (1) and
 35 subsection (2) of section 366.8255, Florida Statutes, are
 36 amended to read:

37 366.8255 Environmental cost recovery.--

38 (1) As used in this section, the term:

39 (c) "Environmental laws or regulations" includes all
 40 federal, state, or local statutes, administrative regulations,
 41 orders, ordinances, resolutions, or other requirements,
 42 including, but not limited to, voluntary agreements for air
 43 quality improvement programs entered into with the Florida
 44 Department of Environmental Protection prior to December 31,
 45 2011, that apply to electric utilities and are designed to
 46 protect or improve the environment.

47 (d) "Environmental compliance costs" includes all costs or
 48 expenses incurred by an electric utility in complying with
 49 environmental laws or regulations, including, but not limited
 50 to:

- 51 1. Inservice capital investments, including the electric
 52 utility's last authorized rate of return on equity thereon.†
- 53 2. Operation and maintenance expenses.†
- 54 3. Fuel procurement costs.†
- 55 4. Purchased power costs.†
- 56 5. Emission allowance costs.†
- 57 6. Direct taxes on environmental equipment.† ~~and~~

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58 7. Costs or expenses prudently incurred by an electric
 59 utility pursuant to an agreement entered into on or after the
 60 effective date of this act and prior to October 1, 2002, between
 61 the electric utility and the Florida Department of Environmental
 62 Protection or the United States Environmental Protection Agency
 63 for the exclusive purpose of ensuring compliance with ozone
 64 ambient air quality standards by an electrical generating
 65 facility owned by the electric utility.

66 8. Costs or expenses the commission determines are
 67 prudently incurred by an electric utility for the addition of
 68 air pollution control equipment for purposes of attaining or
 69 maintaining compliance status with ambient air quality standards
 70 or reducing emissions of hazardous air pollutants or visibility-
 71 impairing pollutants. In order to seek recovery of costs and
 72 expenses described in this subparagraph, an electric utility
 73 must enter into an agreement with the Florida Department of
 74 Environmental Protection prior to December 31, 2011, for the
 75 expeditious installation of this pollution control equipment.

76 (2) An electric utility may submit to the commission a
 77 petition describing the utility's proposed environmental
 78 compliance activities and projected environmental compliance
 79 costs in addition to any Clean Air Act and Air Quality
 80 Improvement Act compliance activities and costs shown in a
 81 utility's filing under ss. ~~§~~ 366.825 and 366.8252 and may
 82 include a proposal for nontraditional recovery of any such costs
 83 and the reasons supporting approval of the proposal. If
 84 approved, the commission shall allow recovery of the utility's
 85 prudently incurred environmental compliance costs, including the
 86 costs incurred in compliance with the Clean Air Act and the Air

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87 Quality Improvement Act, and any amendments thereto or any
 88 change in the application or enforcement thereof, through an
 89 environmental compliance cost-recovery factor that is separate
 90 and apart from the utility's base rates. An adjustment for the
 91 level of costs currently being recovered through base rates or
 92 other rate-adjustment clauses must be included in the filing.

93 Section 2. Section 366.8252, Florida Statutes, is created
 94 to read:

95 366.8252 Air Quality Improvement Act compliance;
 96 definitions; plans; conditions.--

97 (1) For the purposes of this section, the term "Air
 98 Quality Improvement Act" or "act" refers to s. 403.0874.

99 (2) Each public utility subject to the air emission
 100 limitations of the Air Quality Improvement Act may petition the
 101 commission for approval to recover the costs of a plan to
 102 achieve compliance with the act. Such petition shall be filed
 103 with the commission on or before September 1 of the year prior
 104 to the calendar year for which requested cost recovery is to
 105 commence and shall include:

106 (a) The number and identity of affected generating units.

107 (b) A description of the compliance plan submitted by the
 108 public utility to the Department of Environmental Protection for
 109 certification pursuant to s. 403.0874(7).

110 (c) The estimated effects of the compliance plan on the
 111 public utility's requirements for construction and operation of
 112 proposed or alternative generating facilities.

113 (d) The public utility's proposed schedule for
 114 implementation of compliance activities.

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115 (e) The estimated costs, including capital investment and
116 operating expenses, that the public utility will incur to
117 implement its compliance plan.

118 (f) A description of any changes in the public utility's
119 future sources of fuel as a result of the compliance plan and
120 the estimated effects of any such changes on the public
121 utility's fuel costs.

122 (3) The commission shall review the costs submitted
123 pursuant to paragraph (2)(e) to determine whether such estimated
124 costs are reasonable. If, after such review, the commission
125 determines that the estimated costs of the public utility's plan
126 are reasonable, it shall approve the costs for recovery from the
127 utility's retail customers in accordance with the provisions of
128 s. 366.8255, subject to the additional regulatory conditions
129 provided in subsection (4). The commission shall render its
130 decision on a plan filed by a public utility within 8 months
131 after the date of filing. Notwithstanding the date of the
132 commission's decision, recovery of the public utility's
133 estimated costs shall be allowed commencing with the beginning
134 of the calendar year requested in the utility's petition and
135 shall be made subject to refund if the commission has not
136 rendered its decision prior to such time. Approval by the
137 commission shall establish that the public utility's estimated
138 costs to implement the plan are recoverable, subject to true-up
139 based on a subsequent determination of the utility's reasonable
140 actual costs.

141 (4) The commission shall establish the following
142 regulatory conditions in conjunction with the approval of cost

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143 recovery for a public utility's compliance plan pursuant to
144 subsection (3):

145 (a) If requested by the public utility in its petition
146 filed pursuant to subsection (2), the commission shall authorize
147 recovery of the public utility's total costs to implement the
148 compliance plan on a levelized basis over a period not to exceed
149 7 years beginning with the year in which cost recovery
150 commences. The public utility shall have the discretion in any
151 year during such cost recovery period to increase or decrease
152 such levelized recovery amount to the extent of any net over-
153 recovery or under-recovery in the aggregate for its combined
154 adjustment clauses, provided that the utility's estimated costs
155 to implement the compliance plan are fully recovered by the
156 conclusion of the cost recovery period. Any over-recovery or
157 under-recovery of the public utility's actual costs to implement
158 the compliance plan shall be trued up in the year following the
159 conclusion of the cost recovery period. Costs to implement the
160 compliance plan that are incurred beyond the recovery period
161 shall be recovered through applicable adjustment clauses in
162 accordance with the commission's normal practice and procedure.

163 (b) If cost recovery is implemented pursuant to paragraph
164 (a), the base rates and related rate schedules of the public
165 utility in effect on the effective date of this section shall
166 remain unchanged and frozen during the initial 5 years of the
167 recovery period, the adjustment clause recovery factors of the
168 public utility in effect on the effective date of this section
169 shall remain unchanged and frozen during the recovery period,
170 and the depreciation rates and any annual adjustments to
171 depreciation expenses and reserves allowed in a rate settlement

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172 agreement approved by the commission for the public utility that
 173 are in effect on the effective date of this section shall remain
 174 in effect and capped during the recovery period, provided,
 175 however, that:

176 1. The base rate freeze shall not apply during the initial
 177 fixed term of any such base rate settlement agreement. Beyond
 178 the initial fixed term, any such rate settlement agreement shall
 179 be deemed to be superseded and replaced by the provisions of
 180 this subsection. The public utility may elect to extend the base
 181 rate freeze for the full cost recovery period by written notice
 182 to the commission at least 3 months prior to the expiration of
 183 the initial 5-year rate freeze period.

184 2. Any revenue-sharing mechanism contained in a base rate
 185 settlement agreement approved by the commission in lieu of rate
 186 of return regulation that is in effect on the effective date of
 187 this section shall be extended for the period of the base rate
 188 freeze and shall be the appropriate and exclusive mechanism to
 189 address earnings levels; provided, however, that:

190 a. The revenue-sharing threshold for the year following
 191 the initial fixed term of the base rate settlement agreement
 192 shall be established by using actual calendar year 2003 gross
 193 retail base rate revenues increased annually for the
 194 intermediate years by the average annual growth rate in retail
 195 kilowatt hour sales for the 10-calendar-year period ending
 196 December 31, 2003. The revenue cap for the year following the
 197 initial fixed term of the base rate settlement agreement shall
 198 be established by adding to the aforementioned threshold the
 199 difference between the threshold and the cap amounts for 2003,
 200 increased annually for the intermediate years by the average

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201 growth rate in retail kilowatt hour sales for the 10-calendar-
 202 year period ending December 31, 2003. Thereafter, both the
 203 revenue-sharing threshold and the cap shall increase annually by
 204 the average annual growth rate in retail kilowatt hour sales for
 205 the 10-calendar-year period ending December 31, 2003.

206 b. Incremental revenues attributable to a business
 207 combination or acquisition involving the public utility or to a
 208 change in rates pursuant to paragraph (d) shall be excluded in
 209 determining retail base rate revenues for purposes of revenue
 210 sharing.

211 c. For purposes other than reporting or assessing
 212 earnings, such as cost recovery clauses and allowance for funds
 213 used during construction, the public utility shall have an
 214 authorized return-on-equity rate of 12 percent.

215 3. The commission shall continue to review and approve the
 216 public utility's costs and programs subject to the adjustment
 217 clauses as it would in the absence of the adjustment clause
 218 freeze. During the adjustment clause freeze, the utility may
 219 allocate the total annual revenues from all adjustment clause
 220 cost recovery factors combined among the adjustment clauses in a
 221 manner that minimizes the year-end over-recovery or under-
 222 recovery balance in each individual clause. For any calendar
 223 year in which the net year-end over-recovery or under-recovery
 224 balance, after any discretionary adjustment to levelized
 225 compliance cost recovery pursuant to paragraph (a), for the
 226 utility's combined adjustment clauses in the aggregate is
 227 projected to exceed 10 percent of the total costs subject to the
 228 clauses, the commission shall make an adjustment to be
 229 implemented through a separate credit or charge on customer

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230 bills no later than the beginning of the following calendar
 231 year. Any year-end over-recovery or under-recovery balance in
 232 the utility's adjustment clauses for the final year of the cost
 233 recovery period shall be trued up in the following year in
 234 accordance with the commission's normal practice and procedure.

235 (c) During the cost recovery period set forth in paragraph
 236 (a), the public utility shall be allowed to:

237 1. Recover through the capacity cost recovery mechanism of
 238 the fuel and purchased power adjustment clause its annual
 239 revenue requirements associated with any generating unit subject
 240 to the Florida Electrical Power Plant Siting Act, ss. 403.501-
 241 403.518, that is placed in service by the public utility during
 242 such period.

243 2. Suspend up to 100 percent of the annual accruals to its
 244 reserves for the dismantlement and decommissioning of generating
 245 facilities without limiting the utility's right to recover
 246 through future accruals or otherwise the reasonable and prudent
 247 costs of such dismantlement and decommissioning.

248 3. Accelerate the amortization of regulatory assets
 249 previously approved by the commission.

250 (d) Notwithstanding the foregoing base rate and adjustment
 251 clause freeze, the commission may take the following actions
 252 consistent with the public interest, which shall not be
 253 construed to impair the continued effectiveness of the
 254 regulatory conditions provided in this subsection:

255 1. Allow adjustments to the rates, defer costs or
 256 revenues, or implement other remedial regulatory treatment of
 257 the public utility to take into account one or more of the
 258 following conditions occurring during the rate freeze period:

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259 a. Governmental action pursuant to any law, regulation,
260 rule, or order that results in significant cost reductions or
261 requires major expenditures. Such actions include, but are not
262 limited to, a requirement for the utility to alter its
263 structure, to divest itself of assets, to establish a regional
264 transmission organization, or to install pollution control
265 equipment solely for compliance purposes pursuant to a
266 settlement agreement entered into with or approved by a
267 government agency.

268 b. Major expenditures to restore or replace property
269 damaged or destroyed by force majeure, including, but not
270 limited to, hurricanes, tropical storms, or tornadoes.

271 c. The public utility's retail base rate earnings falling
272 below a 10-percent return on equity as reported on a commission-
273 adjusted or pro forma basis on a monthly earnings surveillance
274 report. The public utility's achieved return on equity shall be
275 calculated based upon an adjusted equity ratio to the extent
276 provided for in the public utility's last base rate settlement
277 agreement approved by the commission.

278 d. Changes in accounting requirements that substantially
279 affect the utility's recognition of revenues and expenses.

280 2. Approve any reduction in base rates or base rate
281 charges requested by the public utility or approve any new or
282 revised tariff provisions or rate schedules requested by the
283 utility, provided that such tariff request does not increase any
284 existing base rate component of a tariff or rate schedule during
285 the period the base rate freeze is in effect unless the
286 application of such new or revised tariff or rate schedule is
287 optional to the utility's customers.

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288 (e) The Legislature finds that the regulatory conditions
 289 established by this subsection provide the necessary and
 290 appropriate recognition of the obligations imposed on a public
 291 utility by the Air Quality Improvement Act and that such
 292 conditions are therefore in the public interest. Notwithstanding
 293 the other provisions of this subsection, in the event
 294 circumstances arise which demonstrate that there will be a
 295 substantial harm to the public interest, the commission may take
 296 such action otherwise within its jurisdiction as it finds
 297 necessary to prevent or mitigate such harm.

298 Section 3. Section 403.0874, Florida Statutes, is created
 299 to read:

300 403.0874 Emissions of nitrogen oxide, sulfur dioxide, and
 301 particulate matter from certain electric generating units.--

302 (1) This section shall be known by the popular name the
 303 "Air Quality Improvement Act."

304 (2) As used in this section:

305 (a) "Electric utility steam generating unit" means an
 306 electric utility steam generating unit that has more than 100
 307 megawatts of potential electric output capacity and supplies
 308 more than one-third of such capacity to any utility power
 309 distribution system for sale.

310 (b) "Investor-owned public utility" means a public
 311 utility, as defined in s. 366.02, that supplies electricity to
 312 or for the public in this state.

313 (3) An investor-owned public utility that on the effective
 314 date of this act owns or operates coal-fired electric utility
 315 steam generating units for which the collective emissions of
 316 nitrogen oxide from all such coal-fired generating units were

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317 between 32,000 tons and 36,000 tons in calendar year 2002, as
 318 reported in the United States Environmental Protection Agency
 319 clean air markets program database, shall not collectively emit
 320 from all such coal-fired generating units more than 17,000 tons
 321 of nitrogen oxide in calendar year 2010 or any calendar year
 322 thereafter.

323 (4) An investor-owned public utility that on the effective
 324 date of this act owns or operates coal-fired electric utility
 325 steam generating units for which the collective emissions of
 326 sulfur dioxide from all such coal-fired generating units were
 327 between 96,000 tons and 100,000 tons in calendar year 2002, as
 328 reported in the United States Environmental Protection Agency
 329 clean air markets program database, shall not collectively emit
 330 from all such coal-fired generating units more than 50,000 tons
 331 of sulfur dioxide in calendar year 2010 or any calendar year
 332 thereafter.

333 (5) An investor-owned public utility that on the effective
 334 date of this act owns or operates residual oil and natural gas-
 335 fired or residual oil-fired electric utility steam generating
 336 units for which the collective emissions of nitrogen oxide from
 337 all such oil and gas-fired or oil-fired generating units
 338 exceeded 11,000 tons in calendar year 2002, as reported in the
 339 United States Environmental Protection Agency clean air markets
 340 program database, shall not collectively emit from all such oil
 341 and gas-fired or oil-fired generating units more than an annual
 342 weighted average of 0.26 pounds of nitrogen oxide per million
 343 BTUs of fuel consumed in calendar year 2010 or any calendar year
 344 thereafter.

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345 (6) An investor-owned public utility that on the effective
 346 date of this act owns or operates residual oil and natural gas-
 347 fired or residual oil-fired electric utility steam generating
 348 units for which the collective emissions of particulates from
 349 all such oil and gas-fired or oil-fired generating units
 350 exceeded 7,000 tons in calendar year 2002, as reported in the
 351 Annual Operating Reports of the investor-owned public utility
 352 filed under Title V of the Clean Air Act, shall not collectively
 353 emit from all such oil and gas-fired or oil-fired generating
 354 units more than an annual weighted average of 0.030 pounds per
 355 million BTUs of fuel consumed in calendar year 2012 or any
 356 calendar year thereafter.

357 (7) An investor-owned public utility to which this section
 358 applies may determine how it will achieve compliance with the
 359 collective air emissions limitations imposed by this section and
 360 shall submit its compliance plan to the Department of
 361 Environmental Protection no later than August 1 of the year this
 362 section becomes effective. Within 30 days after such compliance
 363 plan or any subsequent revised compliance plan is submitted, the
 364 department shall certify whether the compliance plan or revised
 365 compliance plan is capable of achieving the emissions
 366 limitations required under this section. Compliance with the air
 367 emissions limitations set out in this section does not alter any
 368 obligation to comply with any other federal or state law,
 369 regulation, or rule related to air quality or visibility.

370 (8) The electric utility steam generating units that are
 371 subject to the collective air emissions limitations set out in
 372 this section on the effective date of this act shall remain
 373 subject to the collective air emissions limitations regardless

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374 of whether each individual generating unit thereafter continues
375 to be owned or operated by an investor-owned public utility.

376 (9) The Department of Environmental Protection shall
377 expedite the issuance of any permit or modified permit to an
378 investor-owned public utility for electric utility steam
379 generating units subject to this section and shall include
380 conditions that provide for compliance with the requirements of
381 this section by incorporating the emissions limitations
382 contained herein and requiring testing, monitoring,
383 recordkeeping, and reporting adequate to ensure compliance
384 therewith.

385 Section 4. This act shall take effect upon becoming a law.