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1 A bill to be entitled

2 An act relating to electric service rates; amending s.
3 366.06, F.S.; providing for the Public Service Commission
4 to determine if an electric company should absorb a
5 portion of certain increases in fuel cost to its
6 customers; amending s. 366.8260, F.S.; providing for an
7 electric company to absorb certain customer's share of
8 increased rates due to a natural disaster; providing an
9 effective date.

10
11 WHEREAS, the State of Florida has seen significant
12 increases in the cost of electricity during the past 2 years,
13 and

14 WHEREAS, this significant increase in the cost of
15 electricity has been extremely burdensome to the citizens of
16 Florida due to the damages caused by the series of hurricanes
17 that have struck the state during the last 2 years and the
18 hardships our citizens have had to endure as a result, and

19 WHEREAS, the Legislature of the State of Florida would like
20 to provide the citizens of this state some relief from these
21 significant increases in the cost of electricity, NOW,
22 THEREFORE,

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (1) of section 366.06, Florida
27 Statutes, is amended to read:

28 366.06 Rates; procedure for fixing and changing.--

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29 (1) (a) A public utility shall not, directly or indirectly,
30 charge or receive any rate not on file with the commission for
31 the particular class of service involved, and no change shall be
32 made in any schedule. All applications for changes in rates
33 shall be made to the commission in writing under rules and
34 regulations prescribed, and the commission shall have the
35 authority to determine and fix fair, just, and reasonable rates
36 that may be requested, demanded, charged, or collected by any
37 public utility for its service. The commission shall investigate
38 and determine the actual legitimate costs of the property of
39 each utility company, actually used and useful in the public
40 service, and shall keep a current record of the net investment
41 of each public utility company in such property which value, as
42 determined by the commission, shall be used for ratemaking
43 purposes and shall be the money honestly and prudently invested
44 by the public utility company in such property used and useful
45 in serving the public, less accrued depreciation, and shall not
46 include any goodwill or going-concern value or franchise value
47 in excess of payment made therefor. In fixing fair, just, and
48 reasonable rates for each customer class, the commission shall,
49 to the extent practicable, consider the cost of providing
50 service to the class, as well as the rate history, value of
51 service, and experience of the public utility; the consumption
52 and load characteristics of the various classes of customers;
53 and public acceptance of rate structures.

54 (b) Notwithstanding any other provision of law, when the
55 fuel costs for an electric company exceed its fuel costs for the
56 preceding calendar year by more than 25 percent, the commission

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57 shall consider whether the electric company should absorb a
58 portion of the increase in fuel cost to its customers. In
59 determining the amount of the increased fuel cost that the
60 electric company will absorb, the commission shall consider the
61 prudence and efficiency of such a requirement and whether the
62 increase will place a burden on any customers, giving great
63 weight to the testimony of the customers of the electric
64 company.

65 Section 2. Paragraph (n) of subsection (1) and subsection
66 (2) of section 366.8260, Florida Statutes, are amended to read:

67 366.8260 Storm-recovery financing.--

68 (1) DEFINITIONS.--As used in this section, the term:

69 (n) "Storm-recovery costs" means, at the option and
70 request of the electric utility, and as approved by the
71 commission pursuant to sub-subparagraph (2) (c) ~~(b)~~ 1.b., costs
72 incurred or to be incurred by an electric utility in undertaking
73 a storm-recovery activity. Such costs shall be net of applicable
74 insurance proceeds and, where determined appropriate by the
75 commission, shall include adjustments for normal capital
76 replacement and operating costs, lost revenues, or other
77 potential offsetting adjustments. Storm-recovery costs shall
78 include the costs to finance any deficiency or deficiencies in
79 storm-recovery reserves until such time as storm-recovery bonds
80 are issued, and costs of retiring any existing indebtedness
81 relating to storm-recovery activities.

82 (2) FINANCING ORDERS.--

83 (a) An electric utility may petition the commission for a
84 financing order. For each petition, the electric utility shall:

85 1. Describe the storm-recovery activities that the
86 electric utility has undertaken or proposes to undertake and
87 describe the reasons for undertaking the activities.

88 2. Set forth the known storm-recovery costs and estimate
89 the costs of any storm-recovery activities that are not
90 completed, or for which the costs are not yet known, as
91 identified and requested by the electric utility.

92 3. Set forth the level of the storm-recovery reserve that
93 the utility proposes to establish or replenish and has
94 determined would be appropriate to recover through storm-
95 recovery bonds and is seeking to so recover and such level that
96 the utility is funding or will seek to fund through other means,
97 together with a description of the factors and calculations used
98 in determining the amounts and methods of recovery.

99 4. Indicate whether the electric utility proposes to
100 finance all or a portion of the storm-recovery costs and storm-
101 recovery reserve using storm-recovery bonds. If the electric
102 utility proposes to finance a portion of such costs, the
103 electric utility shall identify that portion in the petition.

104 5. Estimate the financing costs related to the storm-
105 recovery bonds.

106 6. Estimate the storm-recovery charges necessary to
107 recover the storm-recovery costs, storm-recovery reserve, and
108 financing costs and the period for recovery of such costs.

109 7. Estimate any cost savings or demonstrate how it would
110 avoid or significantly mitigate rate impacts to customers
111 resulting from financing storm-recovery costs with storm-
112 recovery bonds as opposed to the traditional method of

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113 recovering such costs from customers and through alternative
114 financing methods available to the electric utility.

115 8. File with the petition direct testimony supporting the
116 petition.

117 (b)1. In the event of a natural disaster, any customer who
118 is without power for more than 21 days shall be exempt from any
119 increased rates resulting from the cost attributed to the
120 natural disaster and the electric company shall absorb these
121 customers' share of the increased rates.

122 2. Any such costs attributable to natural disasters or
123 increased fuel costs shall not be considered as lost revenue by
124 the commission in determining any rate increases.

125 (c) ~~(b)~~1. Proceedings on a petition submitted pursuant to
126 paragraph (a) shall begin with a petition by an electric utility
127 and shall be disposed of in accordance with the provisions of
128 chapter 20 and applicable rules, except that the provisions of
129 this section, to the extent applicable, shall control.

130 a. Within 7 days after the filing of a petition, the
131 commission shall publish a case schedule, which schedule shall
132 place the matter before the commission on an agenda that will
133 permit a commission decision no later than 120 days after the
134 date the petition is filed.

135 b. No later than 135 days after the date the petition is
136 filed, the commission shall issue a financing order or an order
137 rejecting the petition. A party to the commission proceeding may
138 petition the commission for reconsideration of the financing
139 order within 5 days after the date of its issuance. The
140 commission shall issue a financing order authorizing financing

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141 of reasonable and prudent storm-recovery costs, the storm-
142 recovery reserve amount determined appropriate by the
143 commission, and financing costs if the commission finds that the
144 issuance of the storm-recovery bonds and the imposition of
145 storm-recovery charges authorized by the order are reasonably
146 expected to result in lower overall costs or would avoid or
147 significantly mitigate rate impacts to customers as compared
148 with alternative methods of financing or recovering storm-
149 recovery costs and storm-recovery reserve. Any determination of
150 whether storm-recovery costs are reasonable and prudent shall be
151 made with reference to the general public interest in, and the
152 scope of effort required to provide, the safe and expeditious
153 restoration of electric service.

154 2. In a financing order issued to an electric utility, the
155 commission shall:

156 a. Except as provided in sub-subparagraph f. and in
157 subparagraph 4., specify the amount of storm-recovery costs and
158 the level of storm-recovery reserves, taking into consideration,
159 to the extent the commission deems appropriate, any other
160 methods used to recover these costs, and describe and estimate
161 the amount of financing costs which may be recovered through
162 storm-recovery charges; and specify the period over which such
163 costs may be recovered.

164 b. Determine that the proposed structuring, expected
165 pricing, and financing costs of the storm-recovery bonds are
166 reasonably expected to result in lower overall costs or would
167 avoid or significantly mitigate rate impacts to customers as

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168 compared with alternative methods of financing or recovering
169 storm-recovery costs.

170 c. Provide that, for the period specified pursuant to sub-
171 subparagraph a., the imposition and collection of storm-recovery
172 charges authorized in the financing order shall be paid by all
173 customers receiving transmission or distribution service from
174 the electric utility or its successors or assignees under
175 commission-approved rate schedules or under special contracts,
176 even if the customer elects to purchase electricity from an
177 alternative electric supplier following a fundamental change in
178 regulation of public utilities in the state.

179 d. Determine what portion, if any, of the storm-recovery
180 reserves must be held in a funded reserve and any limitations on
181 how the reserve may be held, accessed, or used.

182 e. Include a formula-based mechanism for making
183 expeditious periodic adjustments in the storm-recovery charges
184 that customers are required to pay under the financing order and
185 for making any adjustments that are necessary to correct for any
186 overcollection or undercollection of the charges or to otherwise
187 ensure the timely payment of storm-recovery bonds and financing
188 costs and other required amounts and charges payable in
189 connection with the storm-recovery bonds.

190 f. Specify the storm-recovery property that is, or shall
191 be, created in favor of an electric utility or its successors or
192 assignees and that shall be used to pay or secure storm-recovery
193 bonds and financing costs.

194 g. Specify the degree of flexibility to be afforded to the
195 electric utility in establishing the terms and conditions of the

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196 storm-recovery bonds, including, but not limited to, repayment
197 schedules, interest rates, and other financing costs.

198 h. Provide that storm-recovery charges be allocated to the
199 customer classes using the criteria set out in s. 366.06(1), in
200 the manner in which these costs or their equivalent were
201 allocated in the cost-of-service study approved in connection
202 with the electric utility's last rate case. If the electric
203 utility's last rate case was resolved by a settlement agreement,
204 the cost-of-service methodology filed by the electric utility in
205 that case shall be used.

206 i. Provide that, after the final terms of an issuance of
207 storm-recovery bonds have been established and prior to the
208 issuance of storm-recovery bonds, the electric utility shall
209 determine the resulting initial storm-recovery charge in
210 accordance with the financing order and such initial storm-
211 recovery charge shall be final and effective upon the issuance
212 of such storm-recovery bonds without further commission action.

213 j. Include any other conditions that the commission
214 considers appropriate and that are not otherwise inconsistent
215 with this section.

216

217 In performing the responsibilities of this subparagraph and
218 subparagraph 5., the commission may engage outside consultants
219 or counsel. Any expenses associated with such services shall be
220 included as part of financing costs and included in storm-
221 recovery charges.

222 3. A financing order issued to an electric utility may
223 provide that creation of the electric utility's storm-recovery

224 property pursuant to sub-subparagraph 2.f. is conditioned upon,
225 and shall be simultaneous with, the sale or other transfer of
226 the storm-recovery property to an assignee and the pledge of the
227 storm-recovery property to secure storm-recovery bonds.

228 4. If the commission issues a financing order, the
229 electric utility shall file with the commission at least
230 biannually a petition or a letter applying the formula-based
231 mechanism pursuant to sub-subparagraph 2.e. and, based on
232 estimates of consumption for each rate class and other
233 mathematical factors, requesting administrative approval to make
234 the adjustments described in sub-subparagraph 2.e. The review of
235 such a request shall be limited to determining whether there is
236 any mathematical error in the application of the formula-based
237 mechanism relating to the appropriate amount of any
238 overcollection or undercollection of storm-recovery charges and
239 the amount of an adjustment. Such adjustments shall ensure the
240 recovery of revenues sufficient to provide for the payment of
241 principal, interest, acquisition, defeasance, financing costs,
242 or redemption premium and other fees, costs, and charges in
243 respect of storm-recovery bonds approved under the financing
244 order. Within 60 days after receiving an electric utility's
245 request pursuant to this paragraph, the commission shall either
246 approve the request or inform the electric utility of any
247 mathematical errors in its calculation. If the commission
248 informs the utility of mathematical errors in its calculation,
249 the utility may correct its error and refile its request. The
250 timeframes previously described in this paragraph shall apply to
251 a refiled request.

252 5. Within 120 days after the issuance of storm-recovery
253 bonds, the electric utility shall file with the commission
254 information on the actual costs of the storm-recovery bond
255 issuance. The commission shall review such information to
256 determine if such costs incurred in the issuance of the bonds
257 resulted in the lowest overall costs that were reasonably
258 consistent with market conditions at the time of the issuance
259 and the terms of the financing order. The commission may
260 disallow any incremental issuance costs in excess of the lowest
261 overall costs by requiring the utility to make a contribution to
262 the storm reserve in an amount equal to the excess of actual
263 issuance costs incurred, and paid for out of storm-recovery bond
264 proceeds, and the lowest overall issuance costs as determined by
265 the commission. The commission may not make adjustments to the
266 storm-recovery charges for any such excess issuance costs.

267 6. Subsequent to the earlier of the transfer of storm-
268 recovery property to an assignee or the issuance of storm-
269 recovery bonds authorized thereby, a financing order is
270 irrevocable and, except as provided in subparagraph 4. and
271 paragraph (d) ~~(e)~~, the commission may not amend, modify, or
272 terminate the financing order by any subsequent action or
273 reduce, impair, postpone, terminate, or otherwise adjust storm-
274 recovery charges approved in the financing order. After the
275 issuance of a financing order, the electric utility retains sole
276 discretion regarding whether to assign, sell, or otherwise
277 transfer storm-recovery property or to cause the storm-recovery
278 bonds to be issued, including the right to defer or postpone
279 such assignment, sale, transfer, or issuance.

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280 (d)~~(e)~~ At the request of an electric utility, the
281 commission may commence a proceeding and issue a subsequent
282 financing order that provides for retiring and refunding storm-
283 recovery bonds issued pursuant to the original financing order
284 if the commission finds that the subsequent financing order
285 satisfies all of the criteria specified in paragraph (c) ~~(b)~~.
286 Effective on retirement of the refunded storm-recovery bonds and
287 the issuance of new storm-recovery bonds, the commission shall
288 adjust the related storm-recovery charges accordingly.

289 (e)~~(d)~~ Within 30 days after the commission issues an order
290 pursuant to paragraph (c) ~~(b)~~ or a decision denying a request
291 for reconsideration or, if the request for reconsideration is
292 granted, within 30 days after the commission issues its decision
293 on reconsideration, an adversely affected party may petition for
294 judicial review in the Florida Supreme Court. The petition for
295 review shall be served upon the executive director of the
296 commission personally or by service at the office of the
297 commission. Review on appeal shall be based solely on the record
298 before the commission and briefs to the court and shall be
299 limited to determining whether the order issued pursuant to
300 paragraph (c) ~~(b)~~, or the order on reconsideration, conforms to
301 the constitution and laws of this state and the United States
302 and is within the authority of the commission under this
303 section. Inasmuch as delay in the determination of the appeal of
304 a financing order will delay the issuance of storm-recovery
305 bonds, thereby diminishing savings to customers which might be
306 achieved if such bonds were issued as contemplated by a
307 financing order, the Supreme Court shall proceed to hear and

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308 determine the action as expeditiously as practicable and give
309 the action precedence over other matters not accorded similar
310 precedence by law.

311 (f)~~(e)~~1. A financing order remains in effect until the
312 storm-recovery bonds issued pursuant to the order have been paid
313 in full and the commission-approved financing costs of such
314 bonds have been recovered in full.

315 2. A financing order issued to an electric utility shall
316 remain in effect and unabated notwithstanding the
317 reorganization, bankruptcy, or other insolvency proceedings of
318 the electric utility or its successors or assignees.

319 Section 3. This act shall take effect July 1, 2006.