

By Senator Bennett

21-599A-07

See HB 549

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A bill to be entitled

An act relating to power plants; amending s. 366.93, F.S.; revising definitions related to certain power plants to include integrated gasification combined cycle power plants; requiring the Public Service Commission to implement rules related to integrated gasification combined cycle power plant cost recovery; requiring a report; amending s. 403.519, F.S.; providing requirements and procedures for determination of need for integrated gasification combined cycle power plants; providing an exemption from purchased power supply bid rules under certain circumstances; providing an effective date.

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

Section 1. Section 366.93, Florida Statutes, is amended to read:

366.93 Cost recovery for the siting, design, licensing, and construction of nuclear and integrated gasification combined cycle power plants.--

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

(a) "Cost" includes, but is not limited to, all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear or integrated gasification combined cycle power plant.

1 (b) "Electric utility" or "utility" has the same
2 meaning as that provided in s. 366.8255(1)(a).

3 (c) "Integrated gasification combined cycle power
4 plant" or "plant" is an electrical power plant as defined in
5 s. 403.503(13) that uses synthesis gas produced by integrated
6 gasification technology.

7 (d)~~(e)~~ "Nuclear power plant" or "plant" is an
8 electrical power plant as defined in s. 403.503~~(13)~~~~(12)~~ that
9 uses nuclear materials for fuel.

10 (e) "Power plant" or "plant" means a nuclear power
11 plant or an integrated gasification combined cycle power
12 plant.

13 (f)~~(d)~~ "Preconstruction" is that period of time after
14 a site has been selected through and including the date the
15 utility completes site clearing work. Preconstruction costs
16 shall be afforded deferred accounting treatment and shall
17 accrue a carrying charge equal to the utility's allowance for
18 funds during construction (AFUDC) rate until recovered in
19 rates.

20 (2) Within 6 months after the enactment of this act,
21 the commission shall establish, by rule, alternative cost
22 recovery mechanisms for the recovery of costs incurred in the
23 siting, design, licensing, and construction of a nuclear or
24 integrated gasification combined cycle power plant. Such
25 mechanisms shall be designed to promote utility investment in
26 nuclear or integrated gasification combined cycle power plants
27 and allow for the recovery in rates of all prudently incurred
28 costs, and shall include, but are not limited to:

29 (a) Recovery through the capacity cost recovery clause
30 of any preconstruction costs.

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1 (b) Recovery through an incremental increase in the
2 utility's capacity cost recovery clause rates of the carrying
3 costs on the utility's projected construction cost balance
4 associated with the nuclear or integrated gasification
5 combined cycle power plant. To encourage investment and
6 provide certainty, for nuclear or integrated gasification
7 combined cycle power plant need petitions submitted on or
8 before December 31, 2010, associated carrying costs shall be
9 equal to the pretax AFUDC in effect upon this act becoming
10 law. For nuclear or integrated gasification combined cycle
11 power plants for which need petitions are submitted after
12 December 31, 2010, the utility's existing pretax AFUDC rate is
13 presumed to be appropriate unless determined otherwise by the
14 commission in the determination of need for the nuclear or
15 integrated gasification combined cycle power plant.

16 (3) After a petition for determination of need is
17 granted, a utility may petition the commission for cost
18 recovery as permitted by this section and commission rules.

19 (4) When the nuclear or integrated gasification
20 combined cycle power plant is placed in commercial service,
21 the utility shall be allowed to increase its base rate charges
22 by the projected annual revenue requirements of the nuclear or
23 integrated gasification combined cycle power plant based on
24 the jurisdictional annual revenue requirements of the plant
25 for the first 12 months of operation. The rate of return on
26 capital investments shall be calculated using the utility's
27 rate of return last approved by the commission prior to the
28 commercial inservice date of the nuclear or integrated
29 gasification combined cycle power plant. If any existing
30 generating plant is retired as a result of operation of the
31 nuclear or integrated gasification combined cycle power plant,

1 | the commission shall allow for the recovery, through an
2 | increase in base rate charges, of the net book value of the
3 | retired plant over a period not to exceed 5 years.

4 | (5) The utility shall report to the commission
5 | annually the budgeted and actual costs as compared to the
6 | estimated inservice cost of the nuclear or integrated
7 | gasification combined cycle power plant provided by the
8 | utility pursuant to s. 403.519(4), until the commercial
9 | operation of the nuclear or integrated gasification combined
10 | cycle power plant. The utility shall provide such information
11 | on an annual basis following the final order by the commission
12 | approving the determination of need for the nuclear or
13 | integrated gasification combined cycle power plant, with the
14 | understanding that some costs may be higher than estimated and
15 | other costs may be lower.

16 | (6) In the event the utility elects not to complete or
17 | is precluded from completing construction of the nuclear or
18 | integrated gasification combined cycle power plant, the
19 | utility shall be allowed to recover all prudent
20 | preconstruction and construction costs incurred following the
21 | commission's issuance of a final order granting a
22 | determination of need for the nuclear or integrated
23 | gasification combined cycle power plant. The utility shall
24 | recover such costs through the capacity cost recovery clause
25 | over a period equal to the period during which the costs were
26 | incurred or 5 years, whichever is greater. The unrecovered
27 | balance during the recovery period will accrue interest at the
28 | utility's weighted average cost of capital as reported in the
29 | commission's earnings surveillance reporting requirement for
30 | the prior year.

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1 Section 2. Subsection (4) of section 403.519, Florida
2 Statutes, is amended to read:

3 403.519 Exclusive forum for determination of need.--

4 (4) In making its determination on a proposed
5 electrical power plant using nuclear materials or synthesis
6 gas produced by integrated gasification combined cycle power
7 plant as fuel, the commission shall hold a hearing within 90
8 days after the filing of the petition to determine need and
9 shall issue an order granting or denying the petition within
10 135 days after the date of the filing of the petition. The
11 commission shall be the sole forum for the determination of
12 this matter and the issues addressed in the petition, which
13 accordingly shall not be reviewed in any other forum, or in
14 the review of proceedings in such other forum. In making its
15 determination to either grant or deny the petition, the
16 commission shall consider the need for electric system
17 reliability and integrity, including fuel diversity, the need
18 for base-load generating capacity, and the need for adequate
19 electricity at a reasonable cost.

20 (a) The applicant's petition shall include:

21 1. A description of the need for the generation
22 capacity.

23 2. A description of how the proposed nuclear or
24 integrated gasification combined cycle power plant will
25 enhance the reliability of electric power production within
26 the state by improving the balance of power plant fuel
27 diversity and reducing Florida's dependence on fuel oil and
28 natural gas.

29 3. A description of and a nonbinding estimate of the
30 cost of the nuclear or integrated gasification combined cycle
31 power plant.

1 4. The annualized base revenue requirement for the
2 first 12 months of operation of the nuclear or integrated
3 gasification combined cycle power plant.

4 5. Information on whether there were any discussions
5 with any electric utilities regarding ownership of a portion
6 of the nuclear or integrated gasification combined cycle power
7 plant by such electric utilities.

8 (b) In making its determination, the commission shall
9 take into account matters within its jurisdiction, which it
10 deems relevant, including whether the nuclear or integrated
11 gasification combined cycle power plant will:

12 1. Provide needed base-load capacity.

13 2. Enhance the reliability of electric power
14 production within the state by improving the balance of power
15 plant fuel diversity and reducing Florida's dependence on fuel
16 oil and natural gas.

17 3. Provide the most cost-effective source of power,
18 taking into account the need to improve the balance of fuel
19 diversity, reduce Florida's dependence on fuel oil and natural
20 gas, reduce air emission compliance costs, and contribute to
21 the long-term stability and reliability of the electric grid.

22 (c) No provision of rule 25-22.082, Florida
23 Administrative Code, shall be applicable to a nuclear or
24 integrated gasification combined cycle power plant sited under
25 this act, including provisions for cost recovery, and an
26 applicant shall not otherwise be required to secure
27 competitive proposals for power supply prior to making
28 application under this act or receiving a determination of
29 need from the commission.

30 (d) The commission's determination of need for a
31 nuclear or integrated gasification combined cycle power plant

1 shall create a presumption of public need and necessity and
2 shall serve as the commission's report required by s.
3 403.507(4)(a). An order entered pursuant to this section
4 constitutes final agency action. Any petition for
5 reconsideration of a final order on a petition for need
6 determination shall be filed within 5 days after the date of
7 such order. The commission's final order, including any order
8 on reconsideration, shall be reviewable on appeal in the
9 Florida Supreme Court. Inasmuch as delay in the determination
10 of need will delay siting of a nuclear or integrated
11 gasification combined cycle power plant or diminish the
12 opportunity for savings to customers under the federal Energy
13 Policy Act of 2005, the Supreme Court shall proceed to hear
14 and determine the action as expeditiously as practicable and
15 give the action precedence over matters not accorded similar
16 precedence by law.

17 (e) After a petition for determination of need for a
18 nuclear or integrated gasification combined cycle power plant
19 has been granted, the right of a utility to recover any costs
20 incurred prior to commercial operation, including, but not
21 limited to, costs associated with the siting, design,
22 licensing, or construction of the plant, shall not be subject
23 to challenge unless and only to the extent the commission
24 finds, based on a preponderance of the evidence adduced at a
25 hearing before the commission under s. 120.57, that certain
26 costs were imprudently incurred. Proceeding with the
27 construction of the nuclear or integrated gasification
28 combined cycle power plant following an order by the
29 commission approving the need for the nuclear or integrated
30 gasification combined cycle power plant under this act shall
31 not constitute or be evidence of imprudence. Imprudence shall

1 not include any cost increases due to events beyond the
2 utility's control. Further, a utility's right to recover costs
3 associated with a nuclear or integrated gasification combined
4 cycle power plant may not be raised in any other forum or in
5 the review of proceedings in such other forum. Costs incurred
6 prior to commercial operation shall be recovered pursuant to
7 chapter 366.

8 Section 3. This act shall take effect upon becoming a
9 law.

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