

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.

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

30 (c) "Integrated gasification combined cycle power plant"  
31 or "plant" is an electrical power plant as defined in s.  
32 403.503(13) that uses synthesis gas produced by integrated  
33 gasification technology.

34 (d)-(e) "Nuclear power plant" or "plant" is an electrical  
35 power plant as defined in s. 403.503(13)~~(12)~~ that uses nuclear  
36 materials for fuel.

37 (e) "Power plant" or "plant" means a nuclear power plant  
38 or an integrated gasification combined cycle power plant.

39 (f)-(d) "Preconstruction" is that period of time after a  
40 site has been selected through and including the date the  
41 utility completes site clearing work. Preconstruction costs  
42 shall be afforded deferred accounting treatment and shall accrue  
43 a carrying charge equal to the utility's allowance for funds  
44 during construction (AFUDC) rate until recovered in rates.

45 (2) Within 6 months after the enactment of this act, the  
46 commission shall establish, by rule, alternative cost recovery  
47 mechanisms for the recovery of costs incurred in the siting,  
48 design, licensing, and construction of a nuclear or integrated  
49 gasification combined cycle power plant. Such mechanisms shall  
50 be designed to promote utility investment in nuclear or  
51 integrated gasification combined cycle power plants and allow  
52 for the recovery in rates of all prudently incurred costs, and  
53 shall include, but are not limited to:

54 (a) Recovery through the capacity cost recovery clause of  
55 any preconstruction costs.

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56 (b) Recovery through an incremental increase in the  
57 utility's capacity cost recovery clause rates of the carrying  
58 costs on the utility's projected construction cost balance  
59 associated with the nuclear or integrated gasification combined  
60 cycle power plant. To encourage investment and provide  
61 certainty, for nuclear or integrated gasification combined cycle  
62 power plant need petitions submitted on or before December 31,  
63 2010, associated carrying costs shall be equal to the pretax  
64 AFUDC in effect upon this act becoming law. For nuclear or  
65 integrated gasification combined cycle power plants for which  
66 need petitions are submitted after December 31, 2010, the  
67 utility's existing pretax AFUDC rate is presumed to be  
68 appropriate unless determined otherwise by the commission in the  
69 determination of need for the nuclear or integrated gasification  
70 combined cycle power plant.

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

74 (4) When the nuclear or integrated gasification combined  
75 cycle power plant is placed in commercial service, the utility  
76 shall be allowed to increase its base rate charges by the  
77 projected annual revenue requirements of the nuclear or  
78 integrated gasification combined cycle power plant based on the  
79 jurisdictional annual revenue requirements of the plant for the  
80 first 12 months of operation. The rate of return on capital  
81 investments shall be calculated using the utility's rate of  
82 return last approved by the commission prior to the commercial  
83 inservice date of the nuclear or integrated gasification

84 combined cycle power plant. If any existing generating plant is  
85 retired as a result of operation of the nuclear or integrated  
86 gasification combined cycle power plant, the commission shall  
87 allow for the recovery, through an increase in base rate  
88 charges, of the net book value of the retired plant over a  
89 period not to exceed 5 years.

90 (5) The utility shall report to the commission annually  
91 the budgeted and actual costs as compared to the estimated  
92 inservice cost of the nuclear or integrated gasification  
93 combined cycle power plant provided by the utility pursuant to  
94 s. 403.519(4), until the commercial operation of the nuclear or  
95 integrated gasification combined cycle power plant. The utility  
96 shall provide such information on an annual basis following the  
97 final order by the commission approving the determination of  
98 need for the nuclear or integrated gasification combined cycle  
99 power plant, with the understanding that some costs may be  
100 higher than estimated and other costs may be lower.

101 (6) In the event the utility elects not to complete or is  
102 precluded from completing construction of the nuclear or  
103 integrated gasification combined cycle power plant, the utility  
104 shall be allowed to recover all prudent preconstruction and  
105 construction costs incurred following the commission's issuance  
106 of a final order granting a determination of need for the  
107 nuclear or integrated gasification combined cycle power plant.  
108 The utility shall recover such costs through the capacity cost  
109 recovery clause over a period equal to the period during which  
110 the costs were incurred or 5 years, whichever is greater. The  
111 unrecovered balance during the recovery period will accrue

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112 interest at the utility's weighted average cost of capital as  
113 reported in the commission's earnings surveillance reporting  
114 requirement for the prior year.

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

117 403.519 Exclusive forum for determination of need.--

118 (4) In making its determination on a proposed electrical  
119 power plant using nuclear materials or synthesis gas produced by  
120 integrated gasification combined cycle power plant as fuel, the  
121 commission shall hold a hearing within 90 days after the filing  
122 of the petition to determine need and shall issue an order  
123 granting or denying the petition within 135 days after the date  
124 of the filing of the petition. The commission shall be the sole  
125 forum for the determination of this matter and the issues  
126 addressed in the petition, which accordingly shall not be  
127 reviewed in any other forum, or in the review of proceedings in  
128 such other forum. In making its determination to either grant or  
129 deny the petition, the commission shall consider the need for  
130 electric system reliability and integrity, including fuel  
131 diversity, the need for base-load generating capacity, and the  
132 need for adequate electricity at a reasonable cost.

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

- 134 1. A description of the need for the generation capacity.
- 135 2. A description of how the proposed nuclear or integrated  
136 gasification combined cycle power plant will enhance the  
137 reliability of electric power production within the state by  
138 improving the balance of power plant fuel diversity and reducing  
139 Florida's dependence on fuel oil and natural gas.

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140 3. A description of and a nonbinding estimate of the cost  
141 of the nuclear or integrated gasification combined cycle power  
142 plant.

143 4. The annualized base revenue requirement for the first  
144 12 months of operation of the nuclear or integrated gasification  
145 combined cycle power plant.

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

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

154 1. Provide needed base-load capacity.

155 2. Enhance the reliability of electric power production  
156 within the state by improving the balance of power plant fuel  
157 diversity and reducing Florida's dependence on fuel oil and  
158 natural gas.

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

164 (c) No provision of rule 25-22.082, Florida Administrative  
165 Code, shall be applicable to a nuclear or integrated  
166 gasification combined cycle power plant sited under this act,  
167 including provisions for cost recovery, and an applicant shall

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168 not otherwise be required to secure competitive proposals for  
169 power supply prior to making application under this act or  
170 receiving a determination of need from the commission.

171 (d) The commission's determination of need for a nuclear  
172 or integrated gasification combined cycle power plant shall  
173 create a presumption of public need and necessity and shall  
174 serve as the commission's report required by s. 403.507(4)(a).  
175 An order entered pursuant to this section constitutes final  
176 agency action. Any petition for reconsideration of a final order  
177 on a petition for need determination shall be filed within 5  
178 days after the date of such order. The commission's final order,  
179 including any order on reconsideration, shall be reviewable on  
180 appeal in the Florida Supreme Court. Inasmuch as delay in the  
181 determination of need will delay siting of a nuclear or  
182 integrated gasification combined cycle power plant or diminish  
183 the opportunity for savings to customers under the federal  
184 Energy Policy Act of 2005, the Supreme Court shall proceed to  
185 hear and determine the action as expeditiously as practicable  
186 and give the action precedence over matters not accorded similar  
187 precedence by law.

188 (e) After a petition for determination of need for a  
189 nuclear or integrated gasification combined cycle power plant  
190 has been granted, the right of a utility to recover any costs  
191 incurred prior to commercial operation, including, but not  
192 limited to, costs associated with the siting, design, licensing,  
193 or construction of the plant, shall not be subject to challenge  
194 unless and only to the extent the commission finds, based on a  
195 preponderance of the evidence adduced at a hearing before the

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196 commission under s. 120.57, that certain costs were imprudently  
197 incurred. Proceeding with the construction of the nuclear or  
198 integrated gasification combined cycle power plant following an  
199 order by the commission approving the need for the nuclear or  
200 integrated gasification combined cycle power plant under this  
201 act shall not constitute or be evidence of imprudence.  
202 Imprudence shall not include any cost increases due to events  
203 beyond the utility's control. Further, a utility's right to  
204 recover costs associated with a nuclear or integrated  
205 gasification combined cycle power plant may not be raised in any  
206 other forum or in the review of proceedings in such other forum.  
207 Costs incurred prior to commercial operation shall be recovered  
208 pursuant to chapter 366.

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