

1 A bill to be entitled
 2 An act relating to power plants; amending s. 366.93, F.S.;
 3 revising definitions related to certain power plants to
 4 include integrated gasification combined cycle power
 5 plants; requiring the Public Service Commission to
 6 implement rules related to integrated gasification
 7 combined cycle power plant cost recovery; requiring a
 8 report; amending s. 403.502, F.S.; providing legislative
 9 intent for the consideration of renewable energy sources
 10 and technologies and conservation measures in actions
 11 related to electrical power plant and transmission line
 12 siting; amending s. 403.519, F.S.; providing requirements
 13 and procedures for determination of need for integrated
 14 gasification combined cycle power plants; requiring
 15 consideration of renewable energy sources and technologies
 16 and conservation measures in power plant siting
 17 determinations; providing an exemption from purchased
 18 power supply bid rules under certain circumstances;
 19 providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

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

25 366.93 Cost recovery for the siting, design, licensing,
 26 and construction of nuclear and integrated gasification combined
 27 cycle power plants.--

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

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

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

37 (c) "Integrated gasification combined cycle power plant"
38 or "plant" is an electrical power plant as defined in s.
39 403.503(13) that uses synthesis gas produced by integrated
40 gasification technology.

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

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

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

52 (2) Within 6 months after the enactment of this act, the
53 commission shall establish, by rule, alternative cost recovery
54 mechanisms for the recovery of costs incurred in the siting,
55 design, licensing, and construction of a nuclear or integrated
56 gasification combined cycle power plant. Such mechanisms shall

57 | be designed to promote utility investment in nuclear or
58 | integrated gasification combined cycle power plants and allow
59 | for the recovery in rates of all prudently incurred costs, and
60 | shall include, but are not limited to:

61 | (a) Recovery through the capacity cost recovery clause of
62 | any preconstruction costs.

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

78 | (3) After a petition for determination of need is granted,
79 | a utility may petition the commission for cost recovery as
80 | permitted by this section and commission rules.

81 | (4) When the nuclear or integrated gasification combined
82 | cycle power plant is placed in commercial service, the utility
83 | shall be allowed to increase its base rate charges by the
84 | projected annual revenue requirements of the nuclear or

85 integrated gasification combined cycle power plant based on the
86 jurisdictional annual revenue requirements of the plant for the
87 first 12 months of operation. The rate of return on capital
88 investments shall be calculated using the utility's rate of
89 return last approved by the commission prior to the commercial
90 inservice date of the nuclear or integrated gasification
91 combined cycle power plant. If any existing generating plant is
92 retired as a result of operation of the nuclear or integrated
93 gasification combined cycle power plant, the commission shall
94 allow for the recovery, through an increase in base rate
95 charges, of the net book value of the retired plant over a
96 period not to exceed 5 years.

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

108 (6) In the event the utility elects not to complete or is
109 precluded from completing construction of the nuclear or
110 integrated gasification combined cycle power plant, the utility
111 shall be allowed to recover all prudent preconstruction and
112 construction costs incurred following the commission's issuance

113 of a final order granting a determination of need for the
114 nuclear or integrated gasification combined cycle power plant.
115 The utility shall recover such costs through the capacity cost
116 recovery clause over a period equal to the period during which
117 the costs were incurred or 5 years, whichever is greater. The
118 unrecovered balance during the recovery period will accrue
119 interest at the utility's weighted average cost of capital as
120 reported in the commission's earnings surveillance reporting
121 requirement for the prior year.

122 Section 2. Subsection (4) is added to section 403.502,
123 Florida Statutes, to read:

124 403.502 Legislative intent.--The Legislature finds that
125 the present and predicted growth in electric power demands in
126 this state requires the development of a procedure for the
127 selection and utilization of sites for electrical generating
128 facilities and the identification of a state position with
129 respect to each proposed site. The Legislature recognizes that
130 the selection of sites and the routing of associated
131 transmission lines will have a significant impact upon the
132 welfare of the population, the location and growth of industry,
133 and the use of the natural resources of the state. The
134 Legislature finds that the efficiency of the permit application
135 and review process at both the state and local level would be
136 improved with the implementation of a process whereby a permit
137 application would be centrally coordinated and all permit
138 decisions could be reviewed on the basis of standards and
139 recommendations of the deciding agencies. It is the policy of
140 this state that, while recognizing the pressing need for

141 increased power generation facilities, the state shall ensure
 142 through available and reasonable methods that the location and
 143 operation of electrical power plants will produce minimal
 144 adverse effects on human health, the environment, the ecology of
 145 the land and its wildlife, and the ecology of state waters and
 146 their aquatic life and will not unduly conflict with the goals
 147 established by the applicable local comprehensive plans. It is
 148 the intent to seek courses of action that will fully balance the
 149 increasing demands for electrical power plant location and
 150 operation with the broad interests of the public. Such action
 151 will be based on these premises:

152 (4) To assure the citizens of Florida that renewable
 153 energy sources and technologies, as well as conservation
 154 measures, are utilized to the extent reasonably available.

155 Section 3. Subsections (3) and (4) of section 403.519,
 156 Florida Statutes, are amended to read:

157 403.519 Exclusive forum for determination of need.--

158 (3) The commission shall be the sole forum for the
 159 determination of this matter, which accordingly shall not be
 160 raised in any other forum or in the review of proceedings in
 161 such other forum. In making its determination, the commission
 162 shall take into account the need for electric system reliability
 163 and integrity, the need for adequate electricity at a reasonable
 164 cost, the need for fuel diversity and supply reliability, ~~and~~
 165 whether the proposed plant is the most cost-effective
 166 alternative available, and whether renewable energy sources and
 167 technologies, as well as conservation measures, are utilized to
 168 the extent reasonably available. The commission shall also

169 expressly consider the conservation measures taken by or
170 reasonably available to the applicant or its members which might
171 mitigate the need for the proposed plant and other matters
172 within its jurisdiction which it deems relevant. The
173 commission's determination of need for an electrical power plant
174 shall create a presumption of public need and necessity and
175 shall serve as the commission's report required by s.
176 403.507(4). An order entered pursuant to this section
177 constitutes final agency action.

178 (4) In making its determination on a proposed electrical
179 power plant using nuclear materials or synthesis gas produced by
180 integrated gasification combined cycle power plant as fuel, the
181 commission shall hold a hearing within 90 days after the filing
182 of the petition to determine need and shall issue an order
183 granting or denying the petition within 135 days after the date
184 of the filing of the petition. The commission shall be the sole
185 forum for the determination of this matter and the issues
186 addressed in the petition, which accordingly shall not be
187 reviewed in any other forum, or in the review of proceedings in
188 such other forum. In making its determination to either grant or
189 deny the petition, the commission shall consider the need for
190 electric system reliability and integrity, including fuel
191 diversity, the need for base-load generating capacity, ~~and~~ the
192 need for adequate electricity at a reasonable cost, and whether
193 renewable energy sources and technologies, as well as
194 conservation measures, are utilized to the extent reasonably
195 available.

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

- 197 1. A description of the need for the generation capacity.
- 198 2. A description of how the proposed nuclear or integrated
- 199 gasification combined cycle power plant will enhance the
- 200 reliability of electric power production within the state by
- 201 improving the balance of power plant fuel diversity and reducing
- 202 Florida's dependence on fuel oil and natural gas.
- 203 3. A description of and a nonbinding estimate of the cost
- 204 of the nuclear or integrated gasification combined cycle power
- 205 plant.
- 206 4. The annualized base revenue requirement for the first
- 207 12 months of operation of the nuclear or integrated gasification
- 208 combined cycle power plant.
- 209 5. Information on whether there were any discussions with
- 210 any electric utilities regarding ownership of a portion of the
- 211 nuclear or integrated gasification combined cycle power plant by
- 212 such electric utilities.
- 213 (b) In making its determination, the commission shall take
- 214 into account matters within its jurisdiction, which it deems
- 215 relevant, including whether the nuclear or integrated
- 216 gasification combined cycle power plant will:
- 217 1. Provide needed base-load capacity.
- 218 2. Enhance the reliability of electric power production
- 219 within the state by improving the balance of power plant fuel
- 220 diversity and reducing Florida's dependence on fuel oil and
- 221 natural gas.
- 222 3. Provide the most cost-effective source of power, taking
- 223 into account the need to improve the balance of fuel diversity,
- 224 reduce Florida's dependence on fuel oil and natural gas, reduce

225 air emission compliance costs, and contribute to the long-term
226 stability and reliability of the electric grid.

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

234 (d) The commission's determination of need for a nuclear
235 or integrated gasification combined cycle power plant shall
236 create a presumption of public need and necessity and shall
237 serve as the commission's report required by s. 403.507(4)(a).
238 An order entered pursuant to this section constitutes final
239 agency action. Any petition for reconsideration of a final order
240 on a petition for need determination shall be filed within 5
241 days after the date of such order. The commission's final order,
242 including any order on reconsideration, shall be reviewable on
243 appeal in the Florida Supreme Court. Inasmuch as delay in the
244 determination of need will delay siting of a nuclear or
245 integrated gasification combined cycle power plant or diminish
246 the opportunity for savings to customers under the federal
247 Energy Policy Act of 2005, the Supreme Court shall proceed to
248 hear and determine the action as expeditiously as practicable
249 and give the action precedence over matters not accorded similar
250 precedence by law.

251 (e) After a petition for determination of need for a
252 nuclear or integrated gasification combined cycle power plant

253 has been granted, the right of a utility to recover any costs
254 incurred prior to commercial operation, including, but not
255 limited to, costs associated with the siting, design, licensing,
256 or construction of the plant, shall not be subject to challenge
257 unless and only to the extent the commission finds, based on a
258 preponderance of the evidence adduced at a hearing before the
259 commission under s. 120.57, that certain costs were imprudently
260 incurred. Proceeding with the construction of the nuclear or
261 integrated gasification combined cycle power plant following an
262 order by the commission approving the need for the nuclear or
263 integrated gasification combined cycle power plant under this
264 act shall not constitute or be evidence of imprudence.
265 Imprudence shall not include any cost increases due to events
266 beyond the utility's control. Further, a utility's right to
267 recover costs associated with a nuclear or integrated
268 gasification combined cycle power plant may not be raised in any
269 other forum or in the review of proceedings in such other forum.
270 Costs incurred prior to commercial operation shall be recovered
271 pursuant to chapter 366.

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