

ENROLLED  
 HB 549, Engrossed 2

2007 Legislature

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:

22  
 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:

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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

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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

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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

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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

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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

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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:

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- 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



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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

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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.