

By Senator King

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1 A bill to be entitled
2 An act relating to securitizing energy rates; defining
3 terms; authorizing an electric utility to petition the
4 Public Service Commission for a financing order for
5 developing an electric utility plant; requiring the
6 electric utility to provide specified information in
7 the petition for a financing order; requiring that the
8 proceedings to consider a petition for a financing
9 order be completed in accordance with the provisions
10 of ch. 120, F.S., and other specified rules; requiring
11 the Public Service Commission to include specified
12 information in the financing order issued to the
13 electric utility; requiring the electric utility to
14 file with the commission a biannual letter that
15 applies the formula-based mechanism applicable to
16 preconstruction cost charges; authorizing an adversely
17 affected party to petition for judicial review in the
18 Supreme Court under certain circumstances; providing
19 that a financing order remains in effect until the
20 preconstruction cost bonds issued pursuant to the
21 order have been paid in full and the commission-
22 approved financing costs of such bonds have been
23 recovered in full; providing exceptions to Public
24 Service Commission jurisdiction; specifying duties for
25 an electric utility that has obtained a financing
26 order; requiring the electric utility to include
27 specified information in electric bills; providing
28 that preconstruction cost property of an electric
29 utility development constitutes a property right or

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30 interest; providing that preconstruction cost property
31 of the electric utility plant development continues to
32 exist until the preconstruction cost bonds issued
33 under a financing order, and all financing costs and
34 other costs of the bonds, are paid in full; providing
35 that the Uniform Commercial Code does not apply to
36 preconstruction cost property of the electric utility
37 plant development; providing exceptions; providing
38 that preconstruction cost property of the electric
39 plant development may be sold, assigned, or
40 transferred; requiring that all referenced financing
41 statements are subject to the Uniform Commercial Code;
42 providing an exception; providing that state law
43 governs electric utility plant developments; providing
44 that preconstruction cost bonds are not a debt or a
45 general obligation of the state or any of its
46 political subdivisions; providing that certain
47 designated entities may legally invest in
48 preconstruction cost bonds; providing that the state
49 pledges to and agrees with specified parties that the
50 state will refrain from taking certain actions;
51 providing that an assignee or financing party is not
52 an electric utility or person providing electric
53 service when it engages in the transactions described
54 in this section; providing that certain occurrences do
55 not affect the validity of any action taken by an
56 electric utility, assignee, or financing party;
57 providing for penalties if the utility violates the
58 financing order or applicable provisions of the act;

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59 amending s. 366.06(1), F.S.; authorizing the
60 commission in fixing rates to consider the extent to
61 which the public utility's economic risk has been
62 reduced by use of cost recovery mechanisms; providing
63 an effective date.

64

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

66

67 Section 1. Energy securitized rates.—

68 (1) ALTERNATIVE COST RECOVERY.—As an alternative to the
69 process for advance cost recovery for the siting, design,
70 licensing, and construction of nuclear and integrated
71 gasification combined cycle power plants provided in s. 366.93,
72 Florida Statutes, a public utility may securitize these costs as
73 provided in this section.

74 (2) DEFINITIONS.—As used in this section, the term:

75 (a) "Ancillary agreement" means any bond, insurance policy,
76 letter of credit, reserve account, surety bond, swap
77 arrangement, hedging arrangement, liquidity or credit support
78 arrangement, or other financial arrangement entered into in
79 connection with the issuance of preconstruction cost bonds.

80 (b) "Assignee" means any entity, including, but not limited
81 to, a corporation, limited liability company, partnership or
82 limited partnership, public authority, trust, financing entity,
83 or other legally recognized entity to which an electric utility
84 assigns, sells, or transfers, other than as security, all or a
85 portion of its interest in or right to preconstruction cost
86 property. The term also includes any entity to which an assignee
87 assigns, sells, or transfers, other than as security, its

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88 interest in or right to preconstruction cost property.

89 (c) "Commission" means the Florida Public Service
90 Commission.

91 (d) "Electric utility" or "utility" has the same meaning as
92 that provided in s. 366.8255, Florida Statutes.

93 (e) "Financing costs" means:

94 1. Interest and acquisition, defeasance, or redemption
95 premiums that are payable on preconstruction cost bonds;

96 2. Any payment required under an ancillary agreement and
97 any amount required to fund or replenish an account established
98 under the terms of any indenture, ancillary agreement, or other
99 financing documents pertaining to preconstruction cost bonds;

100 3. Any other cost related to issuing, supporting, repaying,
101 and servicing preconstruction cost bonds, including, but not
102 limited to, servicing fees, accounting and auditing fees,
103 trustee fees, legal fees, consulting fees, administrative fees,
104 placement and underwriting fees, capitalized interest, rating
105 agency fees, stock exchange listing and compliance fees, and
106 filing fees, including costs related to obtaining the financing
107 order;

108 4. Any taxes and license fees imposed on the revenues
109 generated from the collection of preconstruction cost charges;

110 5. Any income taxes resulting from the collection of
111 preconstruction cost charges in any such case whether paid,
112 payable, or accrued; or

113 6. Any state and local taxes, franchise, gross receipts,
114 and other taxes or similar charges, including, but not limited
115 to, regulatory assessment fees, whether paid, payable, or
116 accrued.

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117 (f) "Financing order" means an order under subsection (3)
118 which allows for the issuance of preconstruction cost bonds; the
119 imposition, collection, and periodic adjustments of
120 preconstruction cost charges; and the creation of
121 preconstruction cost property.

122 (g) "Financing party" means holders of preconstruction cost
123 bonds and trustees, collateral agents, or other persons acting
124 for the benefit of holders of preconstruction cost bonds.

125 (h) "Financing statement" has the same meaning as that
126 provided in Article 9 of the Uniform Commercial Code.

127 (i) "Integrated gasification combined cycle power plant" or
128 "plant" means an electrical power plant as defined in s.
129 403.503, Florida Statutes, which uses synthesis gas produced by
130 integrated gasification technology.

131 (j) "Nuclear power plant" or "plant" means an electrical
132 power plant as defined in s. 403.503, Florida Statutes, which
133 uses nuclear materials for fuel.

134 (k) "Pledgee" means a financing party to which an electric
135 utility or its successor or assignee mortgages, negotiates,
136 hypothecates, pledges, or creates a security interest or lien on
137 all or any portion of its interest in or right to
138 preconstruction cost property.

139 (l) "Power plant" or "plant" means a nuclear power plant or
140 an integrated gasification combined cycle power plant.

141 (m) "Preconstruction" is that period of time after a site,
142 including any related electrical transmission lines or
143 facilities, has been selected through and including the date the
144 utility completes site-clearing work. Preconstruction costs
145 shall be afforded deferred accounting treatment and shall accrue

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146 a carrying charge equal to the utility's allowance for funds
147 used during construction (AFUDC) rate until recovered in rates.

148 (n) "Preconstruction cost" includes, but is not limited to,
149 all capital investments, including rate of return, any
150 applicable taxes, and all expenses, including operation and
151 maintenance expenses, related to or resulting from the siting,
152 licensing, design, construction, or operation of the nuclear
153 power plant, including new, expanded, or relocated electrical
154 transmission lines or facilities of any size which are necessary
155 thereto, or of the integrated gasification combined cycle power
156 plant. It also includes appropriate carrying costs on the
157 utility's projected construction cost balance associated with
158 the nuclear or integrated gasification combined cycle power
159 plant. To encourage investment and provide certainty, for
160 nuclear or integrated gasification combined cycle power plant
161 need petitions submitted on or before December 31, 2010,
162 associated carrying costs shall be equal to the pretax AFUDC in
163 effect on the date this act becomes law. For nuclear or
164 integrated gasification combined cycle power plants for which
165 need petitions are submitted after December 31, 2010, the
166 utility's existing pretax AFUDC rate is presumed to be
167 appropriate unless determined otherwise by the commission in the
168 determination of need for the nuclear or integrated gasification
169 combined cycle power plant.

170 (o) "Preconstruction cost bonds" means bonds, debentures,
171 notes, certificates of participation, certificates of beneficial
172 interest, certificates of ownership, or other evidences of
173 indebtedness or ownership which are issued by an electric
174 utility or an assignee pursuant to a financing order, the

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175 proceeds of which are used directly or indirectly to recover,
176 finance, or refinance commission-approved preconstruction costs
177 or financing costs and which are secured by or payable from
178 preconstruction cost property.

179 (p) "Preconstruction cost charge" means the amounts
180 authorized by the commission to recover, finance, or refinance
181 preconstruction costs or financing costs, or as provided for in
182 a financing order, to be imposed on all customer bills and
183 collected in full by an electric utility or its successors or
184 assignees, or a collection agent, through a charge that is
185 separate and apart from the electric utility's base rates. This
186 charge shall be paid by all customers receiving transmission or
187 distribution service from the electric utility or its successors
188 or assignees under commission-approved rate schedules or under
189 special contracts, even if the customer elects to purchase
190 electricity from an alternative electricity supplier following a
191 fundamental change in regulation of public utilities in this
192 state.

193 (q) "Preconstruction cost property" means:

194 1. All rights and interests of an electric utility or
195 successor or assignee of the electric utility under a financing
196 order, including the right to impose, bill, collect, and receive
197 preconstruction cost charges authorized in the financing order
198 and to obtain periodic adjustments to such charges as provided
199 in the financing order.

200 2. All revenues, collections, claims, rights to payments,
201 payments, money, or proceeds arising from the rights and
202 interests specified in subparagraph 1., regardless of whether
203 such revenues, collections, claims, rights to payment, payments,

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204 money, or proceeds are imposed, billed, received, collected, or
205 maintained together with or commingled with other revenues,
206 collections, rights to payment, payments, money, or proceeds.

207 (r) "Uniform Commercial Code" has the same meaning as that
208 provided in s. 671.101, Florida Statutes.

209 (3) FINANCING ORDERS.—

210 (a) An electric utility may petition the commission for a
211 financing order for the recovery in rates of all prudently
212 incurred preconstruction costs. For each petition, the electric
213 utility shall:

214 1. Describe the activities that the electric utility has
215 undertaken or proposes to undertake which have or will result in
216 preconstruction costs and describe the reasons for undertaking
217 the activities.

218 2. Set forth the known preconstruction costs and estimate
219 the costs of any preconstruction activities that are not
220 completed, or for which the costs are not yet known, as
221 identified and requested by the electric utility.

222 3. Indicate whether the electric utility proposes to
223 finance all or a portion of the preconstruction costs using
224 preconstruction cost bonds. If the electric utility proposes to
225 finance a portion of such costs, the electric utility shall
226 identify that portion in the petition.

227 5. Estimate the financing costs related to the
228 preconstruction cost bonds.

229 6. Estimate the preconstruction charges necessary to
230 recover the preconstruction costs and financing costs and the
231 period for recovery of such costs.

232 7. Estimate any cost savings or demonstrate how it would

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233 avoid or significantly mitigate rate impacts to customers
234 resulting from financing preconstruction costs with
235 preconstruction cost bonds. This estimate of cost savings,
236 avoidance, or mitigation shall consider the traditional method
237 of recovering such costs from customers and through alternative
238 financing methods available to the electric utility and the
239 advance cost recovery procedure set forth in s. 366.93, Florida
240 Statutes.

241 8. File with the petition direct testimony supporting the
242 petition.

243 (b)1. Proceedings on a petition submitted pursuant to
244 paragraph (a) shall begin with a petition by an electric utility
245 and shall be disposed of in accordance with the provisions of
246 chapter 120, Florida Statutes, and applicable rules, except that
247 the provisions of this section, to the extent applicable, shall
248 control.

249 a. Within 7 days after the filing of a petition, the
250 commission shall publish a case schedule which shall place the
251 matter before the commission on an agenda that will permit a
252 commission decision no later than 120 days after the date the
253 petition is filed.

254 b. No later than 135 days after the date the petition is
255 filed, the commission shall issue a financing order or an order
256 rejecting the petition. A party to the commission proceeding may
257 petition the commission for reconsideration of the financing
258 order within 5 days after the date of its issuance. The
259 commission shall issue a financing order authorizing financing
260 of reasonable and prudent preconstruction costs and financing
261 costs if the commission finds that the issuance of the

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262 preconstruction cost bonds and the imposition of preconstruction
263 cost charges authorized by the order are reasonably expected to
264 result in lower overall costs or would avoid or significantly
265 mitigate rate impacts to customers as compared with alternative
266 methods of financing or recovering preconstruction costs.

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

269 a. Except as provided in sub-subparagraph f. and in
270 subparagraph 4., specify the amount of preconstruction costs,
271 taking into consideration, to the extent the commission deems
272 appropriate, any other methods used to recover these costs,
273 describe and estimate the amount of financing costs which may be
274 recovered through preconstruction cost charges, and specify the
275 period over which such costs may be recovered.

276 b. Determine that the proposed structuring, expected
277 pricing, and financing costs of the preconstruction cost bonds
278 are reasonably expected to result in lower overall costs or
279 would avoid or significantly mitigate rate impacts to customers
280 as compared with alternative methods of financing or recovering
281 preconstruction costs.

282 c. Provide that, for the period specified pursuant to sub-
283 subparagraph a., the imposition and collection of
284 preconstruction cost charges authorized in the financing order
285 shall be paid by all customers receiving transmission or
286 distribution service from the electric utility or its successors
287 or assignees under commission-approved rate schedules or under
288 special contracts, even if the customer elects to purchase
289 electricity from an alternative electric supplier following a
290 fundamental change in regulation of public utilities in the

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291 state.

292 d. Include a formula-based mechanism for making expeditious
293 periodic adjustments in the preconstruction cost charges that
294 customers are required to pay under the financing order and for
295 making any adjustments that are necessary to correct for any
296 overcollection or undercollection of the charges or to otherwise
297 ensure the timely payment of preconstruction cost bonds and
298 financing costs and other required amounts and charges payable
299 in connection with the preconstruction cost bonds.

300 e. Specify the preconstruction cost property that is, or
301 shall be, created in favor of an electric utility or its
302 successors or assignees and that shall be used to pay or secure
303 preconstruction cost bonds and financing costs.

304 f. Specify the degree of flexibility to be afforded to the
305 electric utility in establishing the terms and conditions of the
306 preconstruction cost bonds, including, but not limited to,
307 repayment schedules, interest rates, and other financing costs.

308 g. Provide that preconstruction cost charges be allocated
309 to the customer classes using the criteria set out in s.
310 366.06(1), Florida Statutes, in the manner in which these costs
311 or their equivalent were allocated in the cost-of-service study
312 approved in connection with the electric utility's last rate
313 case. If the electric utility's last rate case was resolved by a
314 settlement agreement, the cost-of-service methodology filed by
315 the electric utility in the settlement agreement shall be used.

316 h. Provide that, after the final terms of an issuance of
317 preconstruction cost bonds have been established and prior to
318 the issuance of preconstruction cost bonds, the electric utility
319 shall determine the resulting initial preconstruction cost

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320 charge in accordance with the financing order. Such initial
321 preconstruction cost charge is final and effective upon the
322 issuance of such preconstruction cost bonds without further
323 commission action.

324 i. Include any other conditions that the commission
325 considers appropriate and that are not otherwise inconsistent
326 with this section.

327

328 In performing the responsibilities of this subparagraph and
329 subparagraph 5., the commission may engage outside consultants
330 or counsel. Any expenses associated with such services shall be
331 included as part of financing costs and included in
332 preconstruction cost charges.

333 3. A financing order issued to an electric utility may
334 provide that creation of the electric utility's preconstruction
335 cost property pursuant to sub-subparagraph 2.g. is conditioned
336 upon, and shall be simultaneous with, the sale or other transfer
337 of the preconstruction cost property to an assignee and the
338 pledge of the preconstruction cost property to secure
339 preconstruction cost bonds.

340 4. If the commission issues a financing order, the electric
341 utility shall file with the commission at least biannually a
342 petition or a letter applying the formula-based mechanism
343 pursuant to sub-subparagraph 2.e. and, based on estimates of
344 consumption for each rate class and other mathematical factors,
345 requesting administrative approval to make the adjustments
346 described in sub-subparagraph 2.e. The review of such a request
347 shall be limited to determining whether there is any
348 mathematical error in the application of the formula-based

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349 mechanism relating to the appropriate amount of any
350 overcollection or undercollection of preconstruction cost
351 charges and the amount of an adjustment. Such adjustments shall
352 ensure the recovery of revenues sufficient to provide for the
353 payment of principal, interest, acquisition, defeasance,
354 financing costs, or redemption premium and other fees, costs,
355 and charges with respect to preconstruction cost bonds approved
356 under the financing order. Within 60 days after receiving an
357 electric utility's request pursuant to this paragraph, the
358 commission shall approve the request or inform the electric
359 utility of any mathematical errors in its calculation. If the
360 commission informs the utility of mathematical errors in its
361 calculation, the utility may correct its error and refile its
362 request. The timeframes previously described in this paragraph
363 apply to a refiled request.

364 5. Within 120 days after the issuance of preconstruction
365 cost bonds, the electric utility shall file with the commission
366 information on the actual costs of the preconstruction cost bond
367 issuance. The commission shall review such information to
368 determine if the costs incurred in the issuance of the bonds
369 resulted in the lowest overall costs that were reasonably
370 consistent with market conditions at the time of the issuance
371 and the terms of the financing order. The commission may
372 disallow any incremental issuance costs in excess of the lowest
373 overall costs by requiring the utility to make a refund to its
374 customers in an amount equal to the excess of actual issuance
375 costs incurred, and paid for out of preconstruction cost bond
376 proceeds, and the lowest overall issuance costs as determined by
377 the commission. The commission may not make adjustments to the

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378 preconstruction cost charges for any such excess issuance costs.

379 6. Subsequent to the earlier of the transfer of
380 preconstruction cost property to an assignee or the issuance of
381 preconstruction cost bonds authorized thereby, a financing order
382 is irrevocable and, except as provided in subparagraph 4. and
383 paragraph (c), the commission may not amend, modify, or
384 terminate the financing order by any subsequent action or
385 reduce, impair, postpone, terminate, or otherwise adjust
386 preconstruction cost charges approved in the financing order.
387 After the issuance of a financing order, the electric utility
388 retains sole discretion regarding whether to assign, sell, or
389 otherwise transfer preconstruction cost property or to cause the
390 preconstruction cost bonds to be issued, including the right to
391 defer or postpone such assignment, sale, transfer, or issuance.

392 (c) At the request of an electric utility, the commission
393 may commence a proceeding and issue a subsequent financing order
394 that provides for retiring and refunding preconstruction cost
395 bonds issued pursuant to the original financing order if the
396 commission finds that the subsequent financing order satisfies
397 all of the criteria specified in paragraph (b). Effective on
398 retirement of the refunded preconstruction cost bonds and the
399 issuance of new preconstruction cost bonds, the commission shall
400 adjust the related preconstruction cost charges accordingly.

401 (d) Within 30 days after the commission issues an order
402 pursuant to paragraph (b) or a decision denying a request for
403 reconsideration or, if the request for reconsideration is
404 granted, within 30 days after the commission issues its decision
405 on reconsideration, an adversely affected party may petition for
406 judicial review in the Supreme Court. The petition for review

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407 shall be served upon the executive director of the commission
408 personally or by service at the office of the commission. Review
409 on appeal shall be based solely on the record before the
410 commission and briefs to the court and shall be limited to
411 determining whether the order issued pursuant to paragraph (b),
412 or the order on reconsideration, conforms to the constitution
413 and laws of this state and the United States and is within the
414 authority of the commission under this section. Inasmuch as
415 delay in the determination of the appeal of a financing order
416 will delay the issuance of preconstruction cost bonds, thereby
417 diminishing savings to customers which might be achieved if such
418 bonds were issued as contemplated by a financing order, the
419 Supreme Court shall proceed to hear and determine the action as
420 expeditiously as practicable and give the action precedence over
421 other matters not accorded similar precedence by law.

422 (e)1. A financing order remains in effect until the
423 preconstruction cost bonds issued pursuant to the order have
424 been paid in full and the commission-approved financing costs of
425 such bonds have been recovered in full.

426 2. A financing order issued to an electric utility shall
427 remain in effect and unabated notwithstanding the
428 reorganization, bankruptcy, or other insolvency proceedings of
429 the electric utility or its successors or assignees.

430 (4) EXCEPTIONS TO COMMISSION JURISDICTION.-

431 (a) If the commission issues a financing order to an
432 electric utility pursuant to this section, the commission may
433 not, in exercising its powers and carrying out its duties
434 pursuant to this chapter, consider the preconstruction cost
435 bonds issued pursuant to the order to be the debt of the

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436 electric utility other than for federal income tax purposes,
437 consider the preconstruction cost charges paid under the order
438 to be the revenue of the electric utility for any purpose, or
439 consider the preconstruction costs or financing costs specified
440 in the order to be the costs of the electric utility, nor may
441 the commission determine any action taken by an electric utility
442 which is consistent with the order to be unjust or unreasonable.

443 (b) The commission may not order or otherwise directly or
444 indirectly require an electric utility to use preconstruction
445 cost bonds to finance any project, addition, plant, facility,
446 extension, capital improvement, equipment, or any other
447 expenditure, unless the electric utility has filed a petition
448 under paragraph (3)(a) to finance the expenditure using
449 preconstruction cost bonds. The commission may not refuse to
450 allow an electric utility to recover costs for preconstruction
451 cost activities in an otherwise permissible fashion, or refuse
452 or condition authorization or approval under s. 366.04, Florida
453 Statutes, of the issuance and sale by an electric utility of
454 securities or the assumption by it of liabilities or
455 obligations, solely because of the potential availability of
456 preconstruction cost financing.

457 (5) ELECTRIC UTILITY DUTIES.-

458 (a) The electric bills issued by an electric utility that
459 has obtained a financing order and issued preconstruction cost
460 bonds must explicitly reflect that a portion of the charges
461 represents preconstruction cost charges approved in a financing
462 order issued to the electric utility. If the preconstruction
463 cost property has been transferred to an assignee, the bills
464 also must include a statement to the effect that the assignee is

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465 the owner of the rights to preconstruction cost charges and that
466 the electric utility or any other entity, if applicable, is
467 acting as a collection agent or servicer for the assignee. The
468 tariff applicable to customers must indicate the preconstruction
469 cost charge and the ownership of that charge. The commission
470 shall determine whether to require electric utilities to include
471 such information or amounts owed with respect to the
472 preconstruction cost property as a separate line item on
473 individual electric bills.

474 (b) The failure of an electric utility to comply with this
475 subsection does not invalidate, impair, or affect any financing
476 order, preconstruction cost property, preconstruction cost
477 charge, or preconstruction cost bonds, but subjects the electric
478 utility to penalties under s. 366.095, Florida Statutes.

479 (6) PRECONSTRUCTION COST PROPERTY.—

480 (a)1. All preconstruction cost property that is specified
481 in a financing order constitutes an existing, present property
482 right or interest, notwithstanding that the imposition and
483 collection of preconstruction cost charges depends on the
484 electric utility to which the order is issued performing its
485 servicing functions relating to the collection of
486 preconstruction cost charges and on future electricity
487 consumption. Such property exists whether or not the revenues or
488 proceeds arising from the property have been billed, have
489 accrued, or have been collected, and notwithstanding the fact
490 that the value or amount of the property is dependent on the
491 future provision of service to customers by the electric utility
492 or its successors or assignees.

493 2. Preconstruction cost property specified in a financing

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494 order shall continue to exist until the preconstruction cost
495 bonds issued under the order are paid in full and all financing
496 costs and other costs of the bonds have been recovered in full.

497 3. All or any portion of preconstruction cost property
498 specified in a financing order issued to an electric utility may
499 be transferred, sold, conveyed, or assigned to a successor or
500 assignee, including an affiliate or affiliates of the electric
501 utility created for the limited purpose of acquiring, owning, or
502 administering preconstruction cost property or issuing
503 preconstruction cost bonds under the financing order. All or any
504 portion of preconstruction cost property may be pledged to
505 secure preconstruction cost bonds issued pursuant to the order,
506 amounts payable to financing parties and counterparties under
507 any ancillary agreements, and other financing costs. Each such
508 transfer, sale, conveyance, assignment, or pledge by an electric
509 utility or affiliate of an electric utility is considered to be
510 a transaction in the ordinary course of business.

511 4. If an electric utility defaults on any required payment
512 of charges arising from preconstruction cost property specified
513 in a financing order, a court shall, upon application by an
514 interested party, and without limiting any other remedies
515 available to the applying party, order the sequestration and
516 payment of the revenues arising from the preconstruction cost
517 property to the financing parties. Any such order remains in
518 full force and effect notwithstanding any reorganization,
519 bankruptcy, or other insolvency proceedings with respect to the
520 electric utility or its successors or assignees.

521 5. The interest of a transferee, purchaser, acquirer,
522 assignee, or pledgee in preconstruction cost property specified

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523 in a financing order issued to an electric utility, and in the
524 revenue and collections arising from that property, is not
525 subject to setoff, counterclaim, surcharge, or defense by the
526 electric utility or any other person or in connection with the
527 reorganization, bankruptcy, or other insolvency of the electric
528 utility or any other entity.

529 6. Any successor to an electric utility shall perform and
530 satisfy all obligations of, and have the same rights under a
531 financing order as, the electric utility under the financing
532 order in the same manner and to the same extent as the electric
533 utility, including collecting and paying to the person entitled
534 to receive the revenues, collections, payments, or proceeds of
535 the preconstruction cost property. This provision applies
536 whether the succession occurs pursuant to any reorganization,
537 bankruptcy, or other insolvency proceeding or whether pursuant
538 to any merger or acquisition, sale, or other business
539 combination, or transfer by operation of law, as a result of
540 electric utility restructuring or otherwise.

541 (b)1. Except as specified in this section, the Uniform
542 Commercial Code does not apply to preconstruction cost property
543 or any right, title, or interest of a utility or assignee
544 described in subparagraph (2)(q)1., whether before or after the
545 issuance of the financing order. In addition, such right, title,
546 or interest pertaining to a financing order, including, but not
547 limited to, the associated preconstruction cost property and any
548 revenues, collections, claims, rights to payment, payments,
549 money, or proceeds of or arising from preconstruction cost
550 charges pursuant to such order, shall not be deemed proceeds of
551 any right or interest other than in the financing order and the

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552 preconstruction cost property arising from the order.

553 2. The creation, attachment, granting, perfection,
554 priority, and enforcement of liens and security interests in
555 preconstruction cost property to secure preconstruction cost
556 bonds is governed solely by this section and not by the Uniform
557 Commercial Code.

558 3. A valid, enforceable, and attached lien and security
559 interest in preconstruction cost property may be created only
560 upon the later of:

561 a. The issuance of a financing order;

562 b. The execution and delivery of a security agreement with
563 a financing party in connection with the issuance of
564 preconstruction cost bonds; or

565 c. The receipt of value for the preconstruction cost bonds.

566
567 A valid, enforceable, and attached security interest shall be
568 perfected against third parties as of the date of filing of a
569 financing statement in the Florida Secured Transaction Registry,
570 as such registry is defined in Article 9 of the Uniform
571 Commercial Code, in accordance with subparagraph 4., and shall
572 thereafter be a continuously perfected lien. Such security
573 interest in the preconstruction cost property and all proceeds
574 of such preconstruction cost property, whether or not billed,
575 accrued, or collected, and whether or not deposited into a
576 deposit account and however evidenced, has priority in
577 accordance with subparagraph 8. and takes precedence over any
578 subsequent judicial or other lien creditor. No continuation
579 statement need be filed to maintain such perfection.

580 4. Financing statements required to be filed pursuant to

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581 this section shall be filed, maintained, and indexed in the same
582 manner and in the same system of records maintained for the
583 filing of financing statements in the Florida Secured
584 Transaction Registry under Article 9 of the Uniform Commercial
585 Code. The filing of such a financing statement is the only
586 method of perfecting a lien or security interest on
587 preconstruction cost property.

588 5. The priority of a lien and security interest perfected
589 under this paragraph is not impaired by any later modification
590 of the financing order or preconstruction cost property or by
591 the commingling of funds arising from preconstruction cost
592 property with other funds. Any other security interest that may
593 apply to those funds shall be terminated as to all funds
594 transferred to a segregated account for the benefit of an
595 assignee or a financing party or to an assignee or financing
596 party directly.

597 6. If a default or termination occurs under the terms of
598 the preconstruction cost bonds, the financing parties or their
599 representatives may foreclose on or otherwise enforce their lien
600 and security interest in any preconstruction cost property as if
601 they were a secured party under Article 9 of the Uniform
602 Commercial Code. In that instance, a court may order that
603 amounts arising from preconstruction cost property be
604 transferred to a separate account for the financing parties'
605 benefit, to which their lien and security interest shall apply.
606 On application by or on behalf of the financing parties to a
607 circuit court of this state, such court shall order the
608 sequestration and payment to the financing parties of revenues
609 arising from the preconstruction cost property.

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610 7. The interest of a pledgee of an interest or any rights
611 in any preconstruction cost property is not perfected until
612 filing as provided in subparagraph 4.

613 8. The priority of the conflicting interests of pledgees in
614 the same interest or rights in any preconstruction cost property
615 is determined as follows:

616 a. Conflicting perfected interests or rights of pledgees
617 rank according to priority in time of perfection. Priority dates
618 from the time a filing covering the interest or right is made in
619 accordance with this paragraph.

620 b. A perfected interest or right of a pledgee has priority
621 over a conflicting unperfected interest or right of a pledgee.

622 c. A perfected interest or right of a pledgee has priority
623 over a person who becomes a lien creditor after the perfection
624 of such pledgee's interest or right.

625 (c) The sale, assignment, or transfer of preconstruction
626 cost property is governed by this paragraph. All of the
627 following apply to a sale, assignment, or transfer under this
628 paragraph:

629 1. The sale, conveyance, assignment, or other transfer of
630 preconstruction cost property by an electric utility to an
631 assignee that the parties have in the governing documentation
632 expressly stated to be a sale or other absolute transfer is an
633 absolute transfer and true sale of, and not a pledge of or
634 secured transaction relating to, the transferor's right, title,
635 and interest in, to, and under the preconstruction cost
636 property, other than for federal and state income and franchise
637 tax purposes. After such a transaction, the preconstruction cost
638 property is not subject to any claims of the transferor or the

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639 transferor's creditors, other than creditors that hold a prior
640 security interest in the preconstruction cost property perfected
641 under paragraph (b).

642 2. The characterization of the sale, conveyance,
643 assignment, or other transfer as a true sale or other absolute
644 transfer under subparagraph 1., and the corresponding
645 characterization of the transferee's property interest, is not
646 affected by:

647 a. Commingling of amounts arising with respect to the
648 preconstruction cost property with other amounts.

649 b. The retention by the transferor of a partial or residual
650 interest, including an equity interest, in the preconstruction
651 cost property, whether direct or indirect, or whether
652 subordinate or otherwise.

653 c. Any recourse that the transferee may have against the
654 transferor other than any such recourse created, contingent
655 upon, or otherwise occurring or resulting from one or more of
656 the transferor's customers' inability to timely pay all or a
657 portion of the preconstruction cost charge.

658 d. Any indemnifications, obligations, or repurchase rights
659 made or provided by the transferor, other than indemnity or
660 repurchase rights based solely upon a transferor's customers'
661 inability to timely pay all or a portion of the preconstruction
662 cost charge.

663 e. The responsibility of the transferor to collect
664 preconstruction cost charges.

665 f. The treatment of the sale, conveyance, assignment, or
666 other transfer for tax, financial reporting, or other purposes.

667 g. Granting or providing to holders of the preconstruction

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668 cost bonds a preferred right to the preconstruction cost
669 property or credit enhancement by the electric utility or its
670 affiliates with respect to the preconstruction cost bonds.

671 3. Any right that an electric utility has in the
672 preconstruction cost property prior to its pledge, sale, or
673 transfer, or any other right created under this section or
674 created in the financing order and assignable under this section
675 or assignable pursuant to a financing order, shall be property
676 in the form of a contract right. Transfer of an interest in
677 preconstruction cost property to an assignee is enforceable only
678 upon the later of the issuance of a financing order, the
679 execution and delivery of transfer documents to the assignee in
680 connection with the issuance of preconstruction cost bonds, and
681 the receipt of value. An enforceable transfer of an interest in
682 preconstruction cost property to an assignee shall be perfected
683 against all third parties, including subsequent judicial or
684 other lien creditors, when a notice of that transfer has been
685 given by the filing of a financing statement in accordance with
686 subparagraph 4. The transfer shall be perfected against third
687 parties as of the date of filing.

688 4. Financing statements required to be filed under this
689 section shall be maintained and indexed in the same manner and
690 in the same system of records maintained for the filing of
691 financing statements in the Florida Secured Transaction Registry
692 under Article 9 of the Uniform Commercial Code. The filing of
693 such a financing statement shall be the only method of
694 perfecting a transfer of preconstruction cost property.

695 5. The priority of a transfer perfected under this section
696 is not impaired by any later modification of the financing order

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697 or preconstruction cost property or by the commingling of funds
698 arising from preconstruction cost property with other funds, and
699 any other security interest that may apply to those funds shall
700 be terminated when they are transferred to a segregated account
701 for the assignee or a financing party. If preconstruction cost
702 property has been transferred to an assignee or financing party,
703 any proceeds of that property shall be held in trust for the
704 assignee or financing party.

705 6. The priority of the conflicting interests of assignees
706 in the same interest or rights in any preconstruction cost
707 property is determined as follows:

708 a. Conflicting perfected interests or rights of assignees
709 rank according to priority in time of perfection. Priority dates
710 from the time a filing covering the transfer is made in
711 accordance with subparagraph 4.

712 b. A perfected interest or right of an assignee has
713 priority over a conflicting unperfected interest or right of an
714 assignee.

715 c. A perfected interest or right of an assignee has
716 priority over a person who becomes a lien creditor after the
717 perfection of such assignee's interest or right.

718 (7) DESCRIPTION OR INDICATION OF PROPERTY.—The description
719 of preconstruction cost property being transferred to an
720 assignee in any sale agreement, purchase agreement, or other
721 transfer agreement, granted or pledged to a pledgee in any
722 security agreement, pledge agreement, or other security
723 document, or indicated in any financing statement is only
724 sufficient if such description or indication describes the
725 financing order that created the preconstruction cost property

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726 and states that such agreement or financing statement covers all
727 or part of such property described in such financing order. This
728 subsection applies to all purported transfers of, and all
729 purported grants or liens or security interests in,
730 preconstruction cost property, regardless of whether the related
731 sale agreement, purchase agreement, other transfer agreement,
732 security agreement, pledge agreement, or other security document
733 was entered into, or any financing statement was filed, before
734 or after the effective date of this section.

735 (8) FINANCING STATEMENTS.—All financing statements
736 referenced in this section shall be subject to Part 5 of Article
737 9 of the Uniform Commercial Code, except that the requirement as
738 to continuation statements does not apply.

739 (9) CHOICE OF LAW.—The law governing the validity,
740 enforceability, attachment, perfection, priority, and exercise
741 of remedies with respect to the transfer of an interest or right
742 or the pledge or creation of a security interest in any
743 preconstruction cost property shall be the laws of this state,
744 and, exclusively, the provisions of this section.

745 (10) PRECONSTRUCTION COST BONDS NOT PUBLIC DEBT.—The state
746 or its political subdivisions are not liable on any
747 preconstruction cost bonds, and the bonds are not a debt or a
748 general obligation of the state or any of its political
749 subdivisions, agencies, or instrumentalities. An issue of
750 preconstruction cost bonds does not, directly or indirectly or
751 contingently, obligate the state or any agency, political
752 subdivision, or instrumentality of the state to levy any tax or
753 make any appropriation for payment of the bonds, other than in
754 their capacity as consumers of electricity. This subsection

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755 shall in no way preclude bond guarantees or enhancements
756 pursuant to this section. All bonds must contain on their face a
757 statement to the following effect: "Neither the full faith and
758 credit nor the taxing power of the State of Florida is pledged
759 to the payment of the principal of, or interest on, this bond."

760 (11) PRECONSTRUCTION COST BONDS AS LEGAL INVESTMENTS WITH
761 RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY REGARDING
762 LEGAL INVESTMENT.—The following entities may legally invest any
763 sinking funds, moneys, or other funds belonging to them or under
764 their control in preconstruction cost bonds:

765 (a) The state, the investment board, municipal
766 corporations, political subdivisions, public bodies, and public
767 officers, except for members of the commission.

768 (b) Banks and bankers, savings and loan associations,
769 credit unions, trust companies, savings banks and institutions,
770 investment companies, insurance companies, insurance
771 associations, and other persons carrying on a banking or
772 insurance business.

773 (c) Personal representatives, guardians, trustees, and
774 other fiduciaries.

775 (d) All other persons whatsoever who are now or may
776 hereafter be authorized to invest in bonds or other obligations
777 of a similar nature.

778 (12) STATE PLEDGE.—

779 (a) For purposes of this subsection, the term "bondholder"
780 means a person who holds a preconstruction cost bond.

781 (b) The state pledges to and agrees with bondholders, the
782 owners of the preconstruction cost property, and other financing
783 parties that the state will not:

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784 1. Alter the provisions of this section which make the
785 preconstruction cost charges imposed by a financing order
786 irrevocable, binding, and nonbypassable;

787 2. Take or permit any action that impairs or would impair
788 the value of preconstruction cost property; or

789 3. Except as allowed under this section, reduce, alter, or
790 impair preconstruction cost charges that are to be imposed,
791 collected, and remitted for the benefit of the bondholders and
792 other financing parties until any and all principal, interest,
793 premium, financing costs and other fees, expenses, or charges
794 incurred, and any contracts to be performed, in connection with
795 the related preconstruction cost bonds have been paid and
796 performed in full.

797
798 This paragraph does not preclude limitation or alteration if
799 full compensation is made by law for the full protection of the
800 preconstruction cost charges collected pursuant to a financing
801 order and of the holders of preconstruction cost bonds and any
802 assignee or financing party entering into a contract with the
803 electric utility.

804 (c) Any person or entity that issues preconstruction cost
805 bonds may include the pledge specified in paragraph (b) in the
806 bonds and related documentation.

807 (13) NOT AN ELECTRIC UTILITY.—An assignee or financing
808 party shall not be considered an electric utility or person
809 providing electric service by virtue of engaging in the
810 transactions described in this section.

811 (14) CONFLICTS.—In the event of conflict between this
812 section and any other law regarding the attachment, assignment,

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813 or perfection, or the effect of perfection, or priority of,
814 assignment or transfer of, or security interest in
815 preconstruction cost property, this section shall govern to the
816 extent of the conflict.

817 (15) EFFECT OF INVALIDITY ON ACTIONS.—Effective on the date
818 that preconstruction cost bonds are first issued under this
819 section, if any provision of this section is held to be invalid
820 or is invalidated, superseded, replaced, repealed, or expires
821 for any reason, that occurrence shall not affect the validity of
822 any action allowed under this section which is taken by an
823 electric utility, an assignee, a financing party, a collection
824 agent, or a party to an ancillary agreement. Any such action
825 shall remain in full force and effect with respect to all
826 preconstruction cost bonds issued or authorized in a financing
827 order issued under this section prior to the date that such
828 provision is held to be invalid or is invalidated, superseded,
829 replaced, or repealed, or that expires for any reason.

830 (16) PENALTIES.—A violation of this section or of a
831 financing order issued under this section subjects the utility
832 that obtained the order to penalties under s. 366.095, Florida
833 Statutes, and to any other penalties or remedies that the
834 commission determines are necessary to achieve the intent of
835 this section and the intent and terms of the financing order and
836 to prevent any increase in financial impact to the utility's
837 ratepayers above that set forth in the financing order. If the
838 commission orders a penalty or a remedy for a violation, the
839 monetary penalty or remedy, and the costs of defending against
840 the proposed penalty or remedy, may not be recovered from
841 ratepayers. The commission may not make adjustments to

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842 preconstruction cost charges for any such penalties or remedies.

843 (17) CONSTRUCTION COSTS.—When the nuclear or integrated
844 gasification combined cycle power plant is placed in commercial
845 service, the utility shall be allowed to increase its base rate
846 charges by the projected annual revenue requirements of the
847 nuclear or integrated gasification combined cycle power plant
848 based on the jurisdictional annual revenue requirements of the
849 plant for the first 12 months of operation. The rate of return
850 on capital investments shall be calculated using the utility's
851 rate of return last approved by the commission prior to the
852 commercial inservice date of the nuclear or integrated
853 gasification combined cycle power plant. If any existing
854 generating plant is retired as a result of operation of the
855 nuclear or integrated gasification combined cycle power plant,
856 the commission shall, through an increase in base rate charges,
857 allow for the recovery of the net book value of the retired
858 plant over a period not to exceed 5 years.

859 (18) COST RECOVERY IF PLANT IS NOT COMPLETED.—If the
860 utility elects not to complete or is precluded from completing
861 construction of the nuclear power plant, including new,
862 expanded, or relocated electrical transmission lines or
863 facilities necessary thereto, or of the integrated gasification
864 combined cycle power plant, the utility shall be allowed to
865 recover all prudent preconstruction and construction costs
866 incurred following the commission's issuance of a final order
867 granting a determination of need for the nuclear power plant and
868 electrical transmission lines and facilities necessary thereto
869 or for the integrated gasification combined cycle power plant.
870 The utility shall recover such costs through the capacity cost

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871 recovery clause over a period equal to the period during which
872 the costs were incurred or 5 years, whichever is greater. The
873 unrecovered balance during the recovery period shall accrue
874 interest at the utility's weighted average cost of capital as
875 reported in the commission's earnings surveillance reporting
876 requirement for the prior year.

877 Section 2. Subsection (1) of section 366.06, Florida
878 Statutes, is amended to read:

879 366.06 Rates; procedure for fixing and changing.—

880 (1) A public utility shall not, directly or indirectly,
881 charge or receive any rate not on file with the commission for
882 the particular class of service involved, and no change shall be
883 made in any schedule. All applications for changes in rates
884 shall be made to the commission in writing under rules and
885 regulations prescribed, and the commission shall have the
886 authority to determine and fix fair, just, and reasonable rates
887 that may be requested, demanded, charged, or collected by any
888 public utility for its service. The commission shall investigate
889 and determine the actual legitimate costs of the property of
890 each utility company, actually used and useful in the public
891 service, and shall keep a current record of the net investment
892 of each public utility company in such property which value, as
893 determined by the commission, shall be used for ratemaking
894 purposes and shall be the money honestly and prudently invested
895 by the public utility company in such property used and useful
896 in serving the public, less accrued depreciation, and shall not
897 include any goodwill or going-concern value or franchise value
898 in excess of payment made therefor. In fixing fair, just, and
899 reasonable rates for each customer class, the commission shall,

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900 to the extent practicable, consider the cost of providing
901 service to the class, as well as the rate history, value of
902 service, and experience of the public utility; the consumption
903 and load characteristics of the various classes of customers;
904 the extent to which the public utility's economic risk has been
905 reduced by use of cost recovery mechanisms such as recovery
906 clauses and pass-throughs, advance cost recovery, and bonding
907 using the rate-payment stream to securitize the bonds; and
908 public acceptance of rate structures.

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