

By Senator Rodriguez

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1 A bill to be entitled
2 An act relating to storm hardening; amending s.
3 366.8260, F.S.; defining the term "storm hardening";
4 requiring an electric utility, when petitioning the
5 Public Service Commission for a storm-recovery
6 financing order, to identify its storm hardening plan,
7 its compliance with the plan, and its overall prudence
8 in ensuring electric service reliability; requiring
9 the commission, when making a determination on a
10 petition, to consider the utility's prudence in storm
11 hardening, previously received storm hardening costs,
12 and the utility's prudence in expending such funds;
13 conforming a cross-reference; requiring that electric
14 utilities provide a discount on storm-recovery charges
15 to certain customers who have underground electric
16 utility distribution lines servicing their property or
17 who live in certain jurisdictions limiting the
18 planting of certain types of trees near certain
19 utility equipment; providing an effective date.

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

22
23 Section 1. Present paragraphs (k) through (q) of subsection
24 (1) of section 366.8260, Florida Statutes, are redesignated as
25 paragraphs (l) through (r), respectively, a new paragraph (k) is
26 added to that subsection, paragraphs (a) and (b) of subsection
27 (2) and paragraph (b) of subsection (5) of that section are
28 amended, present subsections (13), (14), and (15) of that
29 section are redesignated as subsections (14), (15), and (16),

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30 respectively, and a new subsection (13) is added to that
31 section, to read:

32 366.8260 Storm-recovery financing.—

33 (1) DEFINITIONS.—As used in this section, the term:

34 (k) "Storm hardening" means upgraded design and
35 construction practices, as well as maintenance practices, so
36 that electric transmission and distribution systems are better
37 able to withstand high winds, storm surges, and flooding
38 resulting from storms.

39 (2) FINANCING ORDERS.—

40 (a) An electric utility may petition the commission for a
41 financing order. For each petition, the electric utility shall:

42 1. Describe the storm-recovery activities that the electric
43 utility has undertaken or proposes to undertake and describe the
44 reasons for undertaking the activities.

45 2. Set forth the known storm-recovery costs and estimate
46 the costs of any storm-recovery activities that are not
47 completed, or for which the costs are not yet known, as
48 identified and requested by the electric utility.

49 3. Set forth the level of the storm-recovery reserve that
50 the utility proposes to establish or replenish and has
51 determined would be appropriate to recover through storm-
52 recovery bonds and is seeking to so recover and such level that
53 the utility is funding or will seek to fund through other means,
54 together with a description of the factors and calculations used
55 in determining the amounts and methods of recovery.

56 4. Indicate whether the electric utility proposes to
57 finance all or a portion of the storm-recovery costs and storm-
58 recovery reserve using storm-recovery bonds. If the electric

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59 utility proposes to finance a portion of such costs, the
60 electric utility shall identify that portion in the petition.

61 5. Estimate the financing costs related to the storm-
62 recovery bonds.

63 6. Estimate the storm-recovery charges necessary to recover
64 the storm-recovery costs, storm-recovery reserve, and financing
65 costs and the period for recovery of such costs.

66 7. Estimate any cost savings or demonstrate how it would
67 avoid or significantly mitigate rate impacts to customers
68 resulting from financing storm-recovery costs with storm-
69 recovery bonds as opposed to the traditional method of
70 recovering such costs from customers and through alternative
71 financing methods available to the electric utility.

72 8. Identify its storm hardening plan for the storm-impacted
73 area, its compliance with the plan, and its overall prudence in
74 protecting utility assets and ensuring reliable electric
75 transmission and distribution service in the storm-impacted
76 area.

77 ~~9.8.~~ File with the petition direct testimony supporting the
78 petition.

79 (b)1. Proceedings on a petition submitted pursuant to
80 paragraph (a) shall begin with a petition by an electric utility
81 and shall be disposed of in accordance with ~~the provisions of~~
82 chapter 120 and applicable rules, except that ~~the provisions of~~
83 this section, to the extent applicable, shall control.

84 a. Within 7 days after the filing of a petition, the
85 commission shall publish a case schedule, which schedule shall
86 place the matter before the commission on an agenda that will
87 permit a commission decision no later than 120 days after the

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88 date the petition is filed.

89 b. No later than 135 days after the date the petition is
90 filed, the commission shall issue a financing order or an order
91 rejecting the petition. A party to the commission proceeding may
92 petition the commission for reconsideration of the financing
93 order within 5 days after the date of its issuance. The
94 commission shall issue a financing order authorizing financing
95 of reasonable and prudent storm-recovery costs, the storm-
96 recovery reserve amount determined appropriate by the
97 commission, and financing costs if the commission finds that the
98 issuance of the storm-recovery bonds and the imposition of
99 storm-recovery charges authorized by the order are reasonably
100 expected to result in lower overall costs or would avoid or
101 significantly mitigate rate impacts to customers as compared
102 with alternative methods of financing or recovering storm-
103 recovery costs and storm-recovery reserve. Any determination of
104 whether storm-recovery costs are reasonable and prudent shall be
105 made with reference to the general public interest in, and the
106 scope of effort required to provide, the safe and expeditious
107 restoration of electric service. Such determination must also
108 consider whether the utility has acted prudently in adequately
109 storm hardening its electric transmission and distribution
110 service, whether the utility has already requested and
111 previously received storm hardening costs from customers, and
112 whether such funds were expended in a prudent manner.

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

115 a. Except as provided in sub-subparagraph f. and in
116 subparagraph 4., specify the amount of storm-recovery costs and

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117 the level of storm-recovery reserves, taking into consideration,
118 to the extent the commission deems appropriate, any other
119 methods used to recover these costs, and describe and estimate
120 the amount of financing costs which may be recovered through
121 storm-recovery charges; and specify the period over which such
122 costs may be recovered.

123 b. Determine that the proposed structuring, expected
124 pricing, and financing costs of the storm-recovery bonds are
125 reasonably expected to result in lower overall costs or would
126 avoid or significantly mitigate rate impacts to customers as
127 compared with alternative methods of financing or recovering
128 storm-recovery costs.

129 c. Provide that, for the period specified pursuant to sub-
130 subparagraph a., the imposition and collection of storm-recovery
131 charges authorized in the financing order shall be paid by all
132 customers receiving transmission or distribution service from
133 the electric utility or its successors or assignees under
134 commission-approved rate schedules or under special contracts,
135 even if the customer elects to purchase electricity from an
136 alternative electric supplier following a fundamental change in
137 regulation of public utilities in the state.

138 d. Determine what portion, if any, of the storm-recovery
139 reserves must be held in a funded reserve and any limitations on
140 how the reserve may be held, accessed, or used.

141 e. Include a formula-based mechanism for making expeditious
142 periodic adjustments in the storm-recovery charges that
143 customers are required to pay under the financing order and for
144 making any adjustments that are necessary to correct for any
145 overcollection or undercollection of the charges or to otherwise

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146 ensure the timely payment of storm-recovery bonds and financing
147 costs and other required amounts and charges payable in
148 connection with the storm-recovery bonds.

149 f. Specify the storm-recovery property that is, or shall
150 be, created in favor of an electric utility or its successors or
151 assignees and that shall be used to pay or secure storm-recovery
152 bonds and financing costs.

153 g. Specify the degree of flexibility to be afforded to the
154 electric utility in establishing the terms and conditions of the
155 storm-recovery bonds, including, but not limited to, repayment
156 schedules, interest rates, and other financing costs.

157 h. Provide that storm-recovery charges be allocated to the
158 customer classes using the criteria set out in s. 366.06(1), in
159 the manner in which these costs or their equivalent were
160 allocated in the cost-of-service study approved in connection
161 with the electric utility's last rate case. If the electric
162 utility's last rate case was resolved by a settlement agreement,
163 the cost-of-service methodology filed by the electric utility in
164 that case shall be used.

165 i. Provide that, after the final terms of an issuance of
166 storm-recovery bonds have been established and prior to the
167 issuance of storm-recovery bonds, the electric utility shall
168 determine the resulting initial storm-recovery charge in
169 accordance with the financing order and such initial storm-
170 recovery charge shall be final and effective upon the issuance
171 of such storm-recovery bonds without further commission action.

172 j. Include any other conditions that the commission
173 considers appropriate and that are not otherwise inconsistent
174 with this section.

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176 In performing the responsibilities of this subparagraph and
177 subparagraph 5., the commission may engage outside consultants
178 or counsel. Any expenses associated with such services shall be
179 included as part of financing costs and included in storm-
180 recovery charges.

181 3. A financing order issued to an electric utility may
182 provide that creation of the electric utility's storm-recovery
183 property pursuant to sub-subparagraph 2.f. is conditioned upon,
184 and shall be simultaneous with, the sale or other transfer of
185 the storm-recovery property to an assignee and the pledge of the
186 storm-recovery property to secure storm-recovery bonds.

187 4. If the commission issues a financing order, the electric
188 utility shall file with the commission at least biannually a
189 petition or a letter applying the formula-based mechanism
190 pursuant to sub-subparagraph 2.e. and, based on estimates of
191 consumption for each rate class and other mathematical factors,
192 requesting administrative approval to make the adjustments
193 described in sub-subparagraph 2.e. The review of such a request
194 shall be limited to determining whether there is any
195 mathematical error in the application of the formula-based
196 mechanism relating to the appropriate amount of any
197 overcollection or undercollection of storm-recovery charges and
198 the amount of an adjustment. Such adjustments shall ensure the
199 recovery of revenues sufficient to provide for the payment of
200 principal, interest, acquisition, defeasance, financing costs,
201 or redemption premium and other fees, costs, and charges in
202 respect of storm-recovery bonds approved under the financing
203 order. Within 60 days after receiving an electric utility's

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204 request pursuant to this paragraph, the commission shall either
205 approve the request or inform the electric utility of any
206 mathematical errors in its calculation. If the commission
207 informs the utility of mathematical errors in its calculation,
208 the utility may correct its error and refile its request. The
209 timeframes previously described in this paragraph shall apply to
210 a refiled request.

211 5. Within 120 days after the issuance of storm-recovery
212 bonds, the electric utility shall file with the commission
213 information on the actual costs of the storm-recovery bond
214 issuance. The commission shall review such information to
215 determine if such costs incurred in the issuance of the bonds
216 resulted in the lowest overall costs that were reasonably
217 consistent with market conditions at the time of the issuance
218 and the terms of the financing order. The commission may
219 disallow any incremental issuance costs in excess of the lowest
220 overall costs by requiring the utility to make a contribution to
221 the storm reserve in an amount equal to the excess of actual
222 issuance costs incurred, and paid for out of storm-recovery bond
223 proceeds, and the lowest overall issuance costs as determined by
224 the commission. The commission may not make adjustments to the
225 storm-recovery charges for any such excess issuance costs.

226 6. Subsequent to the earlier of the transfer of storm-
227 recovery property to an assignee or the issuance of storm-
228 recovery bonds authorized thereby, a financing order is
229 irrevocable and, except as provided in subparagraph 4. and
230 paragraph (c), the commission may not amend, modify, or
231 terminate the financing order by any subsequent action or
232 reduce, impair, postpone, terminate, or otherwise adjust storm-

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233 recovery charges approved in the financing order. After the
234 issuance of a financing order, the electric utility retains sole
235 discretion regarding whether to assign, sell, or otherwise
236 transfer storm-recovery property or to cause the storm-recovery
237 bonds to be issued, including the right to defer or postpone
238 such assignment, sale, transfer, or issuance.

239 (5) STORM-RECOVERY PROPERTY.—

240 (b)1. Except as specified in this section, the Uniform
241 Commercial Code does not apply to storm-recovery property or any
242 right, title, or interest of a utility or assignee described in
243 subparagraph (1) (p)1. ~~(1) (e)1.~~, whether before or after the
244 issuance of the financing order. In addition, such right, title,
245 or interest pertaining to a financing order, including, but not
246 limited to, the associated storm-recovery property and any
247 revenues, collections, claims, rights to payment, payments,
248 money, or proceeds of or arising from storm-recovery charges
249 pursuant to such order, may ~~shall~~ not be deemed proceeds of any
250 right or interest other than in the financing order and the
251 storm-recovery property arising from the order.

252 2. The creation, attachment, granting, perfection,
253 priority, and enforcement of liens and security interests in
254 storm-recovery property to secure storm-recovery bonds is
255 governed solely by this section and not by the Uniform
256 Commercial Code.

257 3. A valid, enforceable, and attached lien and security
258 interest in storm-recovery property may be created only upon the
259 later of:

- 260 a. The issuance of a financing order;
- 261 b. The execution and delivery of a security agreement with

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262 a financing party in connection with the issuance of storm-
263 recovery bonds; or

264 c. The receipt of value for the storm-recovery bonds.

265
266 A valid, enforceable, and attached security interest shall be
267 perfected against third parties as of the date of filing of a
268 financing statement in the Florida Secured Transaction Registry,
269 as such registry is defined in Article 9 of the Uniform
270 Commercial Code, in accordance with subparagraph 4., and shall
271 thereafter be a continuously perfected lien; and such security
272 interest in the storm-recovery property and all proceeds of such
273 storm-recovery property, whether or not billed, accrued, or
274 collected, and whether or not deposited into a deposit account
275 and however evidenced, shall have priority in accordance with
276 subparagraph 8. and take precedence over any subsequent judicial
277 or other lien creditor. No continuation statement need be filed
278 to maintain such perfection.

279 4. Financing statements required to be filed pursuant to
280 this section shall be filed, maintained, and indexed in the same
281 manner and in the same system of records maintained for the
282 filing of financing statements in the Florida Secured
283 Transaction Registry under Article 9 of the Uniform Commercial
284 Code. The filing of such a financing statement shall be the only
285 method of perfecting a lien or security interest on storm-
286 recovery property.

287 5. The priority of a lien and security interest perfected
288 under this paragraph is not impaired by any later modification
289 of the financing order or storm-recovery property or by the
290 commingling of funds arising from storm-recovery property with

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291 other funds, and any other security interest that may apply to
292 those funds shall be terminated as to all funds transferred to a
293 segregated account for the benefit of an assignee or a financing
294 party or to an assignee or financing party directly.

295 6. If a default or termination occurs under the terms of
296 the storm-recovery bonds, the financing parties or their
297 representatives may foreclose on or otherwise enforce their lien
298 and security interest in any storm-recovery property as if they
299 were a secured party under Article 9 of the Uniform Commercial
300 Code; and a court may order that amounts arising from storm-
301 recovery property be transferred to a separate account for the
302 financing parties' benefit, to which their lien and security
303 interest shall apply. On application by or on behalf of the
304 financing parties to a circuit court of this state, such court
305 shall order the sequestration and payment to the financing
306 parties of revenues arising from the storm-recovery property.

307 7. The interest of a pledgee of an interest or any rights
308 in any storm-recovery property is not perfected until filing as
309 provided in subparagraph 4.

310 8. The priority of the conflicting interests of pledgees in
311 the same interest or rights in any storm-recovery property is
312 determined as follows:

313 a. Conflicting perfected interests or rights of pledgees
314 rank according to priority in time of perfection. Priority dates
315 from the time a filing covering the interest or right is made in
316 accordance with this paragraph.

317 b. A perfected interest or right of a pledgee has priority
318 over a conflicting unperfected interest or right of a pledgee.

319 c. A perfected interest or right of a pledgee has priority

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320 over a person who becomes a lien creditor after the perfection
321 of such pledgee's interest or right.

322 (13) STORM-RECOVERY CHARGE DISCOUNT.-

323 (a) In areas where an electric utility customer or group of
324 customers, such as a homeowners' association, has underground
325 electric utility distribution lines servicing their property or
326 group of properties, the electric utility serving those
327 customers must provide a 15 percent discount on any storm-
328 recovery charge over other customers of the same class who do
329 not have underground distribution lines servicing their
330 property. This paragraph applies only when such distribution
331 lines were undergrounded at the direct request of, and upon the
332 assessment of an impact or other discrete fee to, the current or
333 previous customer or group of customers serviced at such
334 property or group of properties.

335 (b) If a local government adopts an ordinance prohibiting
336 the planting of trees, other than small trees that will reach a
337 maximum height of 10 feet, within 5 lateral feet, at ground
338 level, of any overhead utility distribution or transmission
339 line, an electric utility shall provide a 15 percent discount on
340 any storm-recovery charge to customers within such local
341 government's jurisdiction over other customers of the same class
342 who are not within such jurisdiction.

343 Section 2. This act shall take effect July 1, 2018.