

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 549 Power Plants  
**SPONSOR(S):** Traviesa and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1202

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Energy</u>	_____	<u>Wiggins</u>	<u>Collins</u>
2) <u>Environment &amp; Natural Resources Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The 2006 Legislature enacted the "Florida Renewable Energy Technologies and Efficiencies Act" to address a variety of energy related concerns. In response to the disruption in energy supply experienced during the 2004 and 2006 hurricane seasons, the Legislature authorized the Public Service Commission (PSC) to consider fuel diversity and fuel reliability as factors when determining the need for new electric generation.<sup>1</sup> The Act also revised statutory provisions governing determination of need and cost recovery for the construction of nuclear power plants.

When the Public Service Commission (PSC) evaluates a public utility's decision regarding the addition of generating capacity, the commission, pursuant to law, utilizes the "bid rule" process as a means to ensure that a public utility's selection of a proposed generation addition is the most cost-effective alternative available. This rule was designed to provide power at the cheapest rate to the consumer. Due to the high cost of constructing nuclear plants, the bid rule in many cases eliminates nuclear power as an option. In 2006, the Legislature adopted CS/CS/CS/SB 888 to provide that the bid rule does not apply to a nuclear power plant, and that an applicant for a determination of need for such a power plant is not required to secure competitive proposals for power supply before applying for a certificate and filing a petition for a determination of need. In addition, CS/CS/CS/SB 888 authorized nuclear plants to recover their pre-operational costs prior to completion of the project.

Integrated gasification combined cycle (IGCC) power plants convert coal into a synthetic gas, which is then burned in a standard combined cycle power plant to create electric power. This bill applies the provisions created in CS/CS/CS/SB 888 for nuclear power plants to IGCC power plants by exempting them from the "bid rule" process and allowing such plants to recover their pre-operational costs prior to completion of the project

According to information provided by Tampa Electric Company, the provisions enacted by CS/CS/CS/SB 888 for nuclear power plants are equally applicable to IGCC power plants:

- IGCC plants are very expensive to construct relative to natural gas combined cycle plants and other alternatives.
- IGCC plants provide fuel diversity and price stability along with reliability which cannot be obtained without the modification of the determination of need statute and the assurance of cost recovery.

The Tampa Electric Company also maintains that there is an urgency to capitalize on the \$133.5 million in tax credits that have been awarded by the Federal Internal Revenue Service for a proposed project in Polk County. To be eligible for the tax credits, the IGCC facility must be placed in service within five years of the date of the issuance of the certification which would likely be around November 2013. Otherwise, the tax credits are subject to recapture in accordance with the IRS rules.

This bill does not appear to have a fiscal impact on state and local governments. The bill allows IGCC power plants to recover pre-operational costs incurred prior to the commercial in-service date of the IGCC plant. These costs will be passed onto ratepayers prior to the completion of the project.

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<sup>1</sup> s. 403.519 (3), F.S.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - Within 6 months of this bill becoming law, the Florida Public Service Commission must develop rules to establish alternative cost recovery mechanisms incurred in the siting, design, licensing, and construction of integrated gasification combined cycle power plants.

#### B. EFFECT OF PROPOSED CHANGES:

##### IGCC Power Plant definition and Emission Information

###### *Background Information*

IGCC power plants convert coal into a synthetic gas, which is then burned in a standard combined cycle power plant to create electrical power. An IGCC plant can utilize natural gas as an alternative fuel. According to the Environmental Protection Agency's Office of Atmospheric Programs:

For traditional pollutants such as nitrogen oxides (NO<sub>x</sub>), sulfur oxide (SO<sub>2</sub>), particulate matter (PM) and mercury (Hg), IGCC power plants are inherently lower polluting than the current generation of traditional coal-fired power plants. IGCC plants also have multi-media benefits, as it uses less water than pulverized coal (PC) facilities. IGCC power plants also produce a solid waste stream that can be a useful byproduct for producing roofing tiles and as filler for new roadbed construction. IGCC power plants also have the potential to reduce solid waste by using as fuel a combination of coal and renewable biomass products.<sup>2</sup>

##### Cost Recovery Provisions

###### *Present Situation*

According to the Public Service Commission (PSC),<sup>3</sup> "...expenditures for any pre-operational costs to build power plants would accrue in a regulatory account and when the plant was operational, all costs in this account would become part of the total plant cost that could be placed in the rate base. Current PSC practice does allow public utilities to request early cash flows to occur for power plant construction costs upon a showing that the utility would suffer financial hardships without such early recovery of costs."

Section 366.93, F.S., enacted as part of CS/CS/CS/SB 888, requires the PSC to adopt rules within six months for alternative cost recovery for nuclear power plants that allow recovery for the following items if they were prudently incurred:

- Any preconstruction costs
- Any carrying costs for construction cost balances (this would include mainly interest expenses).

The section provides that an investor-owned utility may petition the PSC for early recovery of these costs after the utility receives an affirmative determination of need for its nuclear power plant. The section allows the utility to increase its base rate charges by the projected annual revenue requirements of the nuclear power plant once the plant is operational.

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<sup>2</sup> Emissions Monitoring and Control Technology, S. Khan, EPA's Office of Atmospheric Programs.

<sup>3</sup> Florida Public Service Commission Staff Analysis for HB 549, 2/19/07.

The only mechanism for permitting any disallowance of costs would be based on the PSC finding certain costs were imprudently incurred pursuant to a chapter 120, F.S., proceeding where the standard of proof is a "preponderance of the evidence standard." Section 403.519(4)(e), F.S., also states that imprudence may not be found for any costs due to events outside the utility's control.

Section 366.93(5) and (6), F.S., require that the utility file annual reports to the PSC on the budgeted and actual construction costs and that if a utility elects not to complete a nuclear power plant project, the utility shall be allowed to recover all prudent preconstruction and construction costs.

Section 403.503(13), F.S., which is applicable to any power plant subject to the PPSA, defines construction costs to include not only lines and substations directly interconnected to a power plant, but any transmission upgrades or expansions on the state's transmission system. Thus, any grid-wide upgrades required to reliably handle the electric output of a new nuclear power plant would similarly be subject to early recovery.

### *Proposed Situation*

This bill extends the provisions of s. 366.93, F.S., to future integrated gasification combined cycle (IGCC) power plants. The effect would be to allow utilities to recover costs incurred prior to the commercial in-service date of the IGCC plant if such costs are determined to be prudent.

### **Need Determination Provisions**

#### *Present Situation*

Utilities seeking to construct a power plant, such as an IGCC, with a steam generator greater than 75 megawatts must acquire regulatory approval through the Florida Electrical Power Plant Siting Act (PPSA) (ss. 403.501-.518, F.S.) under the coordination of the Florida Department of Environmental Protection. An affirmative determination of need is required from the PSC as a condition to proceed under the PPSA, as provided in s. 403.507(4)(b), F.S.

Under s. 403.519, F.S., the PSC is the sole forum for the determination of need for an electrical power plant subject to the PPSA. Upon request by an applicant, the PSC must begin a proceeding to determine the need for an electrical power plant subject to the PPSA. The PSC's determination of need for an electrical power plant creates a presumption of public need and necessity and serves as its report required under the PPSA.

Section 403.519, F.S., requires the PSC, in considering whether to approve a need petition for a non-nuclear power plant, to take into account several criteria, including:

- the need for electric system reliability and integrity;
- the need for adequate electricity at a reasonable cost;
- the need for diversity and supply reliability;
- whether the proposed plant is the most cost-effective alternative available;
- available conservation measures which mitigate the need for the plant;
- and other matters within the PSC's jurisdiction.

In determining whether the proposed plant is the most cost-effective alternative, the PSC established Rule 25-22.082, F.A.C., Selection of Generating Capacity. This rule requires utilities to request bids for alternatives to its proposed plant in order to meet the identified need for power. The effect of the rule is to provide the PSC with more complete information about potential alternatives to the proposed power plant to use as a consideration in its deliberation of the project's cost-effectiveness.

Due to the high cost of constructing nuclear plants, the bid rule in many cases eliminates nuclear power as an option. In 2006, the Legislature adopted CS/CS/CS/SB 888 to provide that the bid rule does not

apply to a nuclear power plant, and that an applicant for a determination of need for such a power plant is not required to secure competitive proposals for power supply before applying for a certificate and filing a petition for a determination of need.

Under the statutory provisions enacted by the 2006 Legislature (s. 403.519(4), F.S.), in making its determination to either grant or deny a petition, the PSC is required to consider:

- the need for electric system reliability and integrity, including fuel diversity;
- the need for base-load generating capacity; and
- the need for adequate electricity at a reasonable cost.

In making its determination, the PSC must also take into account matters within its jurisdiction, which it deems relevant, including whether the nuclear power plant will:

- provide needed baseload capacity;
- enhance the reliability of electric power within the state and reduce Florida's dependence on fuel oil and natural gas; and
- provide the most cost-effective source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid.

The PSC's determination of need for a nuclear plant creates presumption of public need and necessity. Any review of the order is to be accomplished by the Supreme Court as expeditiously as practicable giving precedence over matters not accorded similar precedence by law.

Under s. 403.519(4), F.S., after a petition for determination of need for a nuclear power plant has been granted, the right of a utility to recover any costs incurred prior to commercial operation, including, but not limited to, costs associated with the siting, design, licensing, or construction of the plant, are not subject to challenge unless and only to the extent the PSC finds, based on a preponderance of the evidence adduced at a hearing before the PSC under s. 120.57, F.S., that certain costs were imprudently incurred. Proceeding with the construction of the nuclear power plant following an order by the PSC approving the need for the nuclear power plant shall not constitute or be evidence of imprudence. Imprudence shall not include any cost increases due to events beyond the utility's control. A utility's right to recover costs associated with a nuclear power plant may not be raised in any other forum or in the review of proceedings in such other forum. Costs incurred prior to commercial operation must be recovered pursuant to chapter 366, F.S.

### *Proposed Situation*

The bill exempts IGCC power plants from the bid rule prior to the completion of the project and applies to such plants the same requirements (s. 403.519(4)) applied to nuclear power plants under the 2006 legislation. One effect of these changes will be a reduction in the amount of time necessary to proceed with a hearing.

### C. SECTION DIRECTORY:

**Section 1.** Amends s. 366.93, F.S., to authorize IGCC power plants to recover pre-operational costs of siting, design, licensing, and construction prior to completion of the project.

**Section 2.** Amends s. 403.519, F.S., to conform the determination of need process for integrated gasification combined cycle plants to those of nuclear power plants and to exempt IGCC plants from the bid rule process.

**Section 3.** Provides that the bill shall take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows IGCC power plants to recover preconstruction costs prior to completion of the project. These costs will be passed onto ratepayers prior to the completion of the project.

### D. FISCAL COMMENTS:

This bill does not appear to have a fiscal impact on state or local governments.

## III. COMMENTS

### B. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take any action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

#### 2. Other:

None.

### C. RULE-MAKING AUTHORITY:

The bill adds integrated gasification combined cycle power plants to the Public Service Commission's current rulemaking authority regarding cost recovery mechanisms.

### D. DRAFTING ISSUES OR OTHER COMMENTS:

According to information provided by Tampa Electric Company, the provisions enacted for nuclear power plants in 2006 are equally applicable to IGCC power plants:

- IGCC plants are very expensive to construct relative to natural gas combined cycle plants and other alternatives.

- IGCC plants provide fuel diversity and price stability along with reliability which cannot be obtained without the modification of the determination of need statute and the assurance of cost recovery.

The Tampa Electric Company also maintains that there is an urgency to capitalize on the \$133.5 million in tax credits that have been awarded by the Federal Internal Revenue Service for a proposed project in Polk County. To be eligible for the tax credits, the IGCC facility must be placed in service within five years of the date of the issuance of the certification which would likely be around November 2013. Otherwise, the tax credits are subject to recapture in accordance with the IRS rules.

#### E. STATEMENT OF THE SPONSOR

“No statement submitted.”

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**