

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 7167	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Regulatory Affairs Committee; Energy & Utilities Subcommittee; Diaz, J.	104 Y's	12 N's
COMPANION BILLS:	(CS/CS/SB 1472)	GOVERNOR'S ACTION: Approved	

SUMMARY ANALYSIS

CS/HB 7167 passed the House on May 1, 2013, as CS/CS/SB 1472, as amended. The Senate concurred in the House amendment and subsequently passed the bill, as amended, on May 2, 2013. The bill amends existing law concerning the recovery of certain costs associated with the development of nuclear power plants and integrated combined cycle (IGCC) power plants.

Section 366.93, F.S., requires the Public Service Commission (PSC) to establish, by rule, alternative mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of nuclear power plants and integrated gasification combined cycle power plants. Specifically, the law requires that these mechanisms provide for recovery of preconstruction costs (e.g., costs of design, siting, licensing, and site clearing) and carrying costs on the utility's construction cost balance (i.e., financing costs for the plant) as they are incurred. A utility may petition for recovery of these costs through its rates only after the PSC has granted a determination of need for the proposed power plant. The law also provides that carrying costs for projects submitted for PSC review on or before December 31, 2010, shall be equal to the utility's pretax allowance for funds used during construction (AFUDC) rate in effect in 2006. These provisions are commonly referred to as "advanced cost recovery."

The bill amends the advanced cost recovery provisions of section 366.93, F.S. Specifically, the bill:

- Provides that recoverable carrying costs on the construction costs associated with a nuclear or IGCC power plant must be calculated based on the utility's PSC-approved AFUDC rate.
- Requires the PSC to determine, prior to commencement of both the preconstruction and construction phases of a new nuclear or IGCC power plant, that the plant remains feasible and that the projected costs for the plant are reasonable.
- Requires PSC approval of any preconstruction materials or equipment purchases that exceed 1 percent of the total projected cost of a nuclear or IGCC power plant.
- Provides a standard by which the PSC, in determining whether to approve any request for advanced cost recovery, must determine whether a utility intends to construct the power plant at issue.
- Provides that a utility, to continue to use the advanced cost recovery mechanism for a plant, must demonstrate its intent to construct the plant if it has not commenced construction of the plant within 10 years of obtaining a federal license (for a nuclear plant) or state certification (for an IGCC plant).
- Provides that a utility may not continue to use the advanced cost recovery mechanism if it has not commenced construction of a plant within 20 years of obtaining a license or certification.

The bill is not expected to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 14, 2013, ch. 2013-184, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Florida's Advanced Cost Recovery Law

On May 5, 2006, the Legislature passed SB 888, a comprehensive energy package that was signed into law by Governor Jeb Bush on June 19, 2006.¹ Among other things, the bill included provisions designed to encourage the development of new nuclear power generation in Florida.

At that time, a number of circumstances created an incentive for the policy decision to encourage new nuclear power resources. These circumstances included:

- Growing statewide demand for electrical power;
- High and volatile natural gas costs;
- Vulnerability to natural gas supply disruptions, such as those that resulted from the 2004 and 2005 tropical storm seasons;
- The expectation of new costs associated with carbon emissions; and
- Uncertainties about the economic and regulatory feasibility of constructing new coal-fired power plants.²

There were uncertainties, however, associated with the development of nuclear resources. First, though fuel costs for nuclear power plants are lower than those of traditional fossil-fueled plants, nuclear plants require a higher capital investment than fossil-fueled plants. Second, nuclear power plants require a substantial lead time to license and construct. Adding to this uncertainty, the U.S. Nuclear Regulatory Commission (NRC) had not reviewed or granted a construction and operating license for any new nuclear plant in Florida in almost 30 years.

SB 888 addressed these regulatory and financial uncertainties. As codified in section 366.93, F.S., the law requires the Public Service Commission (PSC) to establish, by rule, alternative mechanisms for the recovery of costs prudently incurred in the siting, design, licensing, and construction of a nuclear power plant. The law states that the mechanisms established by the PSC must be “designed to promote utility investment in nuclear power plants.” Specifically, the law requires that these mechanisms provide for recovery of “preconstruction costs”³ and “carrying costs on the utility's projected construction cost balance associated with the nuclear power plant.”⁴ A utility may petition for recovery of these costs through its capacity cost recovery charges – a component of each utility’s total rate that is set by the PSC at least once a year – only after the PSC has granted a determination of need for the proposed nuclear power plant.⁵ To “encourage investment and provide certainty,” the law provides that carrying costs for projects submitted for PSC review on or before December 31, 2010, shall be equal to the

¹ Section 44, Chapter 2006-230, Laws of Florida.

² See, *generally*, Statement of Alex Glenn, State President, Progress Energy Florida, before the Florida House of Representatives Energy & Utilities Subcommittee (March 27, 2013).

³ “Preconstruction” is defined in s. 366.93(1)(f), F.S., as “that period of time after a site . . . has been selected through and including the date the utility completes site clearing work.” “Cost” is defined in s. 366.93(1)(a), F.S., as including, but not limited to, “all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear power plant, including new, expanded, or relocated electrical transmission lines or facilities of any size that are necessary thereto, or of the integrated gasification combined cycle power plant.”

⁴ Section 366.93(2), F.S.

⁵ Section 366.93(3), F.S.

utility's pretax allowance for funds during construction (AFUDC) rate in effect when SB 888 became law.⁶ These provisions are commonly referred to as "advanced cost recovery."

In addition, the law provides that, until a nuclear power plant becomes commercially operational, the utility must report annually to the PSC its budgeted and actual costs for the plant as compared to the estimated cost of the plant as presented in the determination of need proceeding.⁷ If the utility elects not to complete the plant or is precluded from completing the plant, the law provides that the utility shall be allowed to recover all prudent preconstruction and construction costs incurred following the PSC's issuance of a final order granting a determination of need for the plant.⁸ The law allows the utility to recover these costs through its capacity cost recovery charges over a period equal to the period during which the costs were incurred or 5 years, whichever is greater.⁹ When the plant is placed into commercial service, the utility may increase its base rate charges by the projected annual revenue requirements of the plant.¹⁰

Under the advanced cost recovery mechanism, a utility is permitted to recover some of the costs associated with a new nuclear power plant earlier than it would under traditional power plant cost recovery. Under traditional cost recovery, a utility does not recover any costs associated with a new power plant until the plant has been placed into commercial service. Carrying costs (i.e., financing costs) accrue as AFUDC, compound during the construction period, and are added to the construction cost balance. When the plant is placed in service, rates may be adjusted by the PSC to provide for recovery of these costs. Under the advanced cost recovery mechanism, carrying costs and preconstruction costs (e.g., design, siting, licensing, and site clearing) are eligible for recovery through rates as they are incurred.¹¹ Thus, these costs do not accrue and compound during the course of construction. When the plant is placed into commercial service, rates are automatically adjusted to provide for recovery of the construction cost balance. Because preconstruction costs and carrying costs have already been recovered and have not compounded during construction of the plant, the rate impact upon completion is lower than it otherwise would be under traditional cost recovery. Under both traditional cost recovery and advanced cost recovery, the utility is required to raise capital and/or use its own funds to pay for construction of the power plant.

In 2007, the Legislature amended the law to provide similar treatment for integrated gasification combined cycle (IGCC) power plants.¹²

Implementation of Advanced Cost Recovery

To implement the advanced cost recovery law, the PSC adopted Rule 25-6.0423, Florida Administrative Code, on April 8, 2007. The rule establishes a process by which a utility may request and obtain approval to recover the preconstruction costs and carrying costs of new nuclear or IGCC power plants through ongoing annual proceedings. After a utility has obtained a determination of need for a new nuclear or IGCC generation project, the utility may petition the PSC for cost recovery through an adjustment to the utility's capacity cost recovery charges.¹³ In each annual proceeding, the PSC will determine the prudence of eligible costs incurred in the prior year as well as the reasonableness of

⁶ An "allowance for funds used during construction" (AFUDC) represents the costs of financing the construction of facilities before the facilities are completed and included in a utility's rate base. The AFUDC rate reflects the utility's weighted cost of capital, including debt and equity components. *Florida's Electric Utilities: A Reference Guide* (Florida Electric Power Coordinating Group, Revised 1994).

⁷ Section 366.93(5), F.S.

⁸ Section 366.93(6), F.S.

⁹ *Id.*

¹⁰ Section 366.93(4), F.S.

¹¹ Based on estimates by Florida Power & Light Company, licensing and other preconstruction costs will constitute approximately 3-6 percent of total project costs, and the carrying costs on construction costs will constitute approximately 8-10 percent of total project costs. These amounts will vary by project. See, Statement of Steven Scroggs, Senior Director, Nuclear Development, Florida Power & Light Company, before the Florida House of Representatives, Energy & Utilities Subcommittee (March 27, 2013).

¹² Section 1, Chapter 2007-117, Laws of Florida.

¹³ Since 1992, capacity cost recovery charges have been set on an annual basis to allow utilities to recover the costs of purchasing generating capacity from wholesale electricity providers. These charges have historically constituted a relatively small portion of each utility's overall rates.

actual and estimated project costs for the current and upcoming year. Those costs deemed reasonable and prudent are allowed for recovery. Estimated and projected costs are subject to true-up in the following year's proceeding.

Since adoption of the PSC's rule, Progress Energy Florida (Progress)¹⁴ and Florida Power & Light Company (FPL) have used the advanced cost recovery law to obtain recovery of costs associated with the following nuclear power projects:

- Progress – 180 megawatt (MW) expansion of existing Crystal River Unit 3 (project terminated)¹⁵
- Progress – 2,200 MW addition of new Levy County Units 1 & 2 (pending NRC licensure)¹⁶
- FPL – 208 MW expansion of existing Turkey Point Units 3 & 4 (complete)¹⁷
- FPL – 206 MW expansion of existing St. Lucie Units 1 & 2 (complete)¹⁸
- FPL – 2,200-3,040 MW addition of new Turkey Point Units 6 & 7 (pending NRC licensure)¹⁹

Because each of these projects was submitted to the PSC for a determination of need prior to December 31, 2010, the AFUDC rates in effect for each utility as of 2006 have been used to calculate the recoverable carrying costs for the projects.

In 2007, Tampa Electric Company filed a petition for determination of need for an integrated gasification combined cycle power plant, but subsequently withdrew its petition.²⁰ No utility has filed for approval of such a plant since that time. Accordingly, no utility has used advanced cost recovery for an integrated gasification combined cycle power plant.

Developments / Changed Circumstances since Initial Implementation of Advanced Cost Recovery

Progress and FPL have received all or most state regulatory approvals for the expansion projects and new construction projects listed above. In addition, FPL has received all required NRC license approvals for its expansion projects. However, a number of circumstances have changed since initial approval of these projects, including:

- Decreased growth in statewide demand for electrical power;
- Lower and less volatile natural gas prices as a result of increased supply sources;
- Delays in the federal licensing process, including a recent suspension of final decisions on licenses pending a reassessment of risks related to spent nuclear fuel storage;²¹ and
- No new costs associated with carbon emissions.

Since these projects were initially approved by the PSC, the estimated costs have risen for all of the projects. Further, the projected in-service dates for the new construction projects have been pushed back several years. The table below shows how estimated costs and in-service dates for the specific projects have changed since initial approval by the PSC:

	Original Estimates		Current Estimates (2012)	
	Total Cost	In-Service Year	Total Cost	In-Service Year

¹⁴ Progress merged with Duke Energy Corporation effective July 2, 2012. For purposes of this analysis, the combined company is referred to as "Progress."

¹⁵ Determination of Need granted by the PSC in Order No. PSC-07-0119-FOF-EI, issued February 8, 2007, in Docket No. 060642-EI. On February 5, 2013, Progress announced its decision to retire CR3, effectively terminating the uprate project.

¹⁶ Determination of Need granted by the PSC in Order No. PSC-08-0518-FOF-EI, issued August 12, 2008, in Docket No. 080148-EI.

¹⁷ Determination of Need granted by the PSC in Order No. PSC-08-0021-FOF-EI, issued January 7, 2008, in Docket No. 070602-EI.

¹⁸ *Id.*

¹⁹ Determination of Need granted by the PSC in Order No. PSC-08-0237-FOF-EI, issued April 11, 2008, in Docket No. 070650-EI.

²⁰ See Order No. PSC-07-0877-FOF-EI, issued October 31, 2007, in Docket No. 070647-EI.

²¹ In June 2012, a federal appeals court required the NRC to conduct a more thorough review of the potential environmental impacts of spent fuel from new nuclear units. New York v. Nuclear Regulatory Commission, 681 F.3d 471 (June 8, 2012). The NRC expects to complete its review in September 2014.

	(millions)		(millions)	
FPL				
Upgrades to existing nuclear plants (St. Lucie 1&2 and Turkey Point 3&4)	\$1,446	2011-2012	Min. \$2,956 Max. \$3,150	2012-2013
New nuclear plant (Turkey Point 6&7)	Min. \$8,622 Max. \$12,597	2018-2020	Min. \$12,812 Max. \$18,694	2022-2023
Progress				
Upgrades to existing nuclear plant (Crystal River 3)*	\$382	2011	\$635	2014 (Terminated-2013)
New nuclear plant (Levy 1&2)	\$16,897	2016-2017	\$23,987	2024-2025

Source: Florida Public Service Commission

*On February 5, 2013, Progress announced its decision to retire the unit. Because repair of the unit was a prerequisite to the uprate project, the uprate project has been terminated.

In addition, the utilities' AFUDC rates have decreased from their 2006 levels to reflect decreased costs of capital since that time. For Progress, the AFUDC rate has decreased from 8.848% in 2006 to 7.44% presently. For FPL, the AFUDC rate has decreased from 7.42% in 2006 to 6.41% presently.

As part of its annual cost recovery proceedings,²² the PSC reviews the long-term feasibility of these projects. In its most recent annual review of these projects, the PSC found that although the overall cost-effectiveness of the projects has declined, the projects remain feasible in light of economic, regulatory, and technical factors.²³ The PSC did not rule on the continuing feasibility of Progress' expansion of Crystal River Unit 3, as the status of that project was unresolved at that time.

Effect of Changes

The bill amends the advanced cost recovery provisions of section 366.93, F.S. Specifically, the bill:

- Provides that recoverable carrying costs on the construction costs associated with a nuclear or IGCC power plant must be calculated based on the utility's PSC-approved AFUDC rate.
- Requires the PSC to determine, prior to commencement of both the preconstruction and construction phases of a new nuclear or IGCC power plant, that the plant remains feasible and that the projected costs for the plant are reasonable.
- Requires PSC approval of any preconstruction materials or equipment purchases that exceed 1 percent of the total projected cost of a nuclear or IGCC power plant.
- Provides a standard by which the PSC, in determining whether to approve any request for advanced cost recovery, must determine whether a utility intends to construct the power plant at issue.
- Provides that a utility, to continue to use the advanced cost recovery mechanism for a plant, must demonstrate its intent to construct the plant if it has not commenced construction of the plant within 10 years of obtaining a federal license (for a nuclear plant) or state certification (for an IGCC plant).

²² The order resulting from the PSC's 2011 cost recovery proceedings was appealed to the Florida Supreme Court on two grounds: (1) that the utilities had not demonstrated intent to build the new planned units; and (2) that section 366.93, F.S., is an unconstitutional delegation of legislative authority because it does not provide sufficient guidance to the PSC. The court rejected both arguments and affirmed the PSC's order. Southern Alliance for Clean Energy v. Graham, No. SC11-2465 (Fla. May 2, 2013).

²³ Order No. PSC-12-0650-FOF-EI, issued December 11, 2012, in Docket No. 120009-EI.

- Provides that a utility may not continue to use the advanced cost recovery mechanism for a plant if it has not commenced construction of the plant within 20 years of obtaining a license or certification.

Calculation of Recoverable Carrying Costs – Applicable AFUDC Rate

The bill provides that recoverable carrying costs on the construction costs associated with a nuclear or IGCC power plant must be calculated based on the utility's PSC-approved AFUDC rate. Each utility's AFUDC rate reflects its weighted cost of capital, including debt and equity components. Changes to these rates are approved by the PSC from time to time as the costs of debt and equity financing change.

Under current law, recoverable carrying costs on nuclear and IGCC power plants are calculated using the utility's AFUDC rate in effect in 2006: 8.848% for Progress, and 7.42% for FPL. Because capital costs have decreased since 2006, the utilities' 2006 AFUDC rates may overstate actual carrying costs in the present environment. Currently approved AFUDC rates are 7.44% for Progress and 6.41% for FPL. Thus, the bill will have the immediate effect of lowering the rates at which recoverable carrying costs are calculated. Assuming that the currently approved AFUDC rates remain constant through plant development and construction, the PSC estimates that this change would reduce total project costs by \$870 million for Progress' Levy County project and \$710 million for FPL's Turkey Point project. However, because AFUDC rates will change over time as each utility's debt and equity costs change, the actual effect of the bill on total project costs will vary. If a utility's authorized AFUDC rate increases to exceed its 2006 level during the term of advanced cost recovery, the rate at which recoverable carrying costs are calculated will increase beyond the level provided for in current law.

Additional PSC Reviews of Nuclear Power Plants and IGCC Power Plants

The bill requires a series of PSC reviews of a nuclear or IGCC power plant, splitting the preconstruction phase into licensing and other preconstruction work.

First, the bill provides that during the licensing phase, while a utility seeks to obtain a combined operating license from the Nuclear Regulatory Commission for a nuclear power plant or state certification for an IGCC power plant, the utility may recover only costs related to, or necessary for, obtaining the license or certificate.

Second, the bill requires a utility, after obtaining the license or certificate, to petition the PSC for approval before proceeding with preconstruction work beyond those activities necessary to maintain a license or certificate. The only costs a utility may recover before obtaining PSC approval are those that are previously approved or necessary to maintain the license or certification. For the PSC to approve preconstruction work on a plant, it must determine that the plant remains feasible and that the projected costs for the plant are reasonable.

Third, the bill requires a utility, after obtaining approval to proceed with post-licensing or post-certification preconstruction work, to petition the PSC for approval of any preconstruction materials or equipment purchases that exceed 1 percent of the total projected cost for the project.

Fourth, the bill requires a utility, before beginning the construction phase, to petition the PSC for approval to do so. The only costs that a utility may recover before beginning construction work are those that were previously approved or are necessary to maintain the license or certification for the plant. For the PSC to approve proceeding with construction on a plant, it must determine that the plant remains feasible and that the projected costs for the plant are reasonable.

The bill further provides that, beginning January 1, 2014, the PSC, in determining whether to approve a request for advanced cost recovery, may find that a utility intends to construct a plant only if the utility proves by a preponderance of the evidence that it has committed "sufficient, meaningful, and available

resources” to enable the plant to be completed and that its intent is “realistic and practical.” It appears that this finding of “intent to construct” is intended to be a prerequisite to further cost recovery under s. 366.93, F.S., though the bill does not clearly require such a finding except as noted below.

Time Limits for Use of Advanced Cost Recovery

The bill provides certain deadlines upon which a utility may lose the opportunity to continue using the advanced cost recovery mechanism for a plant. First, if a utility has not begun construction of a plant within 10 years after the date on which it obtains a federal license or state certification for the plant, it must petition the PSC to preserve the opportunity to continue to use advanced cost recovery for costs relating to that plant. In its review, the PSC must determine whether the utility remains intent on building the plant. If the PSC finds that the utility does remain intent on building the plant, the utility retains the ability to continue to recover costs using advanced cost recovery. If the PSC finds a lack of such intent, it may enter an order prohibiting recovery of any future costs relating to the plant through the advanced cost recovery mechanism.

Second, if a utility has not begun construction of a plant within 20 years after the date on which it obtains a federal license or state certification for the plant, it may not recover future costs relating to that plant through the advanced cost recovery mechanism.

In either scenario, the bill does not limit the availability of cost recovery through a utility’s base rates for a plant that is completed and becomes commercially operational.

The effective date of this bill is July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. The bill requires the Public Service Commission (PSC) to conduct additional reviews for each of two nuclear power projects proposed by Progress Energy Florida and Florida Power & Light Company that are currently pending licensure by the Nuclear Regulatory Commission. The PSC has indicated that the cost of any such reviews can be covered within its existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If a utility obtains a license from the Nuclear Regulatory Commission to construct a new nuclear power plant in Florida (or state certification to construct an IGCC power plant), the bill requires additional regulatory approvals by the PSC prior to the preconstruction and construction phases of the project, as well as approval of certain materials and equipment purchases during the preconstruction phase. These reviews are not required to be conducted outside of the PSC's ongoing annual cost recovery proceedings, so the impact of these reviews on utility costs should be insignificant.

The bill provides that recoverable carrying costs on the construction costs associated with a nuclear power project must be calculated based on the utility's PSC-approved AFUDC rate. Currently approved AFUDC rates are lower than the rates presently fixed by law, thus the bill will have the immediate effect of reducing costs recovered from customers and lowering rates. Assuming that the currently approved AFUDC rates remain constant through plant development and construction, the PSC estimates that this change would reduce total project costs by \$870 million for Progress' Levy County project and \$710 million for FPL's Turkey Point project. However, because AFUDC rates will change over time as each utility's debt and equity costs change, the actual effect of the bill on total project costs will vary. If a utility's authorized AFUDC rate increases to exceed its 2006 level during the term of advanced cost recovery, the rate at which recoverable carrying costs are calculated will increase beyond the level provided for in current law.

D. FISCAL COMMENTS:

None.