

1 A bill to be entitled
2 An act relating to wholesale electric energy
3 production and sales; amending s. 74.011, F.S.;
4 including regional transmission organizations
5 within the scope of certain eminent domain
6 provisions; amending s. 361.01, F.S.; revising
7 provisions authorizing certain persons to take
8 certain materials from land for certain
9 purposes; creating s. 361.09, F.S.; giving
10 regional transmission organizations the power
11 of eminent domain; amending s. 366.01, F.S.;
12 providing additional legislative declarations;
13 amending s. 366.02, F.S.; providing and
14 revising definitions; amending s. 366.04, F.S.;
15 revising provisions relating to jurisdiction of
16 the Florida Public Service Commission; creating
17 s. 366.0411, F.S.; providing for commission
18 jurisdiction over regional transmission
19 organizations; amending s. 366.05, F.S.;
20 revising commission powers to include exercise
21 of authority over regional transmission
22 organizations; authorizing the commission to
23 investigate the wholesale electric market and
24 seek certain remedies; creating s. 366.052,
25 F.S.; requiring public utilities to transfer
26 certain generation assets to generation
27 affiliates; providing duties and
28 responsibilities of affiliates of certain
29 public utilities; creating s. 366.0521, F.S.;
30 providing legislative findings of eligibility
31 of certain utilities for certain federal

1 purposes; creating s. 366.053, F.S.; specifying
2 criteria, requirements, and limitations for
3 competitive acquisition of capacity and energy
4 by public utilities; imposing a code of conduct
5 for certain purposes; creating s. 366.054,
6 F.S.; providing for transfer of transmission
7 assets of load serving utilities to a regional
8 transmission organization; amending s. 366.055,
9 F.S.; providing requirements public utility
10 integrated generating resource reliability
11 plans; authorizing the commission to order
12 construction of certain electrical generating
13 plants or acquire additional capacity under
14 certain circumstances; creating s. 366.061,
15 F.S.; providing for continuing base rates of
16 public utilities for a time certain; providing
17 for recovery of certain costs under certain
18 circumstances; providing for review and
19 adjustment of base rates of public utilities
20 after a date certain; providing for recovery of
21 certain costs and expenses by public utilities;
22 protecting certain public utility contracts;
23 authorizing the commission to implement certain
24 rate structures for certain purposes; creating
25 s. 366.062, F.S.; authorizing public utilities
26 to recover fuel costs and variable costs of
27 production under certain circumstances;
28 creating s. 366.063, F.S.; authorizing public
29 utilities to recover certain fixed costs or
30 capital investments; creating s. 366.064, F.S.;
31 authorizing public utilities to recover costs

1 of purchased power; creating s. 366.0645, F.S.;
2 authorizing public utilities to recover certain
3 costs and charges of regional transmission
4 organizations; creating s. 366.066, F.S.;
5 protecting recovery of certain costs under
6 certain cost recovery clauses; creating s.
7 366.085, F.S.; requiring the commission to
8 report to the Legislature; specifying contents;
9 amending ss. 366.80, 366.81, and 366.83, F.S.;
10 deleting a repealed crossreference; amending s.
11 366.82, F.S.; requiring certain utilities to
12 file certain goals with the commission as part
13 of certain plans; specifying commission
14 approval of such goals for certain purposes;
15 amending s. 366.8255, F.S.; revising
16 definitions; authorizing recovery of utility
17 costs associated with environmental compliance;
18 preserving certain utility rates and charges;
19 preserving certain commission orders relating
20 to certain companies; amending s. 403.502,
21 F.S.; clarifying legislative intent; amending
22 s. 403.503, F.S.; revising definitions;
23 amending s. 403.504, F.S.; providing additional
24 powers of the Department of Environmental
25 Protection; amending s. 403.506, F.S.; revising
26 application of certain provisions to certain
27 electrical power plants; amending s. 403.5064,
28 F.S.; requiring applicants for power plant
29 siting permits to file certain documents with
30 the commission; amending s. 403.507, F.S.;
31 deleting a requirement that the commission

1 prepare a certain report; amending ss. 403.508,
2 403.509, 403.510, 403.511, 405.512, 403.513,
3 403.516, 403.517, 403.5175, 403.522, 405.523,
4 403.527, 403.529, 403.531, 403.5315, 403.532,
5 and 403.536, F.S.; reassigning to the
6 Department of Environmental Protection the
7 powers, duties, functions, responsibilities, and
8 procedures relating to the Governor and Cabinet
9 sitting as the power plan siting board;
10 deleting certain provisions to conform;
11 providing for applying provisions of the act to
12 certain applications for site certification;
13 providing exceptions; repealing s. 186.801,
14 F.S., relating to 10-year site plans; repealing
15 s. 377.709(6), F.S., relating to certain need
16 determination process exemptions under s.
17 403.519, F.S.; repealing s. 403.519, F.S.,
18 relating to exclusive forum for determination
19 of need; repealing s. 403.522(6), F.S.,
20 relating to a definition of board being the
21 Governor and Cabinet as the siting board;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 74.011, Florida Statutes, is amended to read:

27 74.011 Scope.--In any eminent domain action, properly
28 instituted by and in the name of the state; the Department of
29 Transportation; any county, school board, municipality,
30 expressway authority, regional water supply authority,
31 transportation authority, flood control district, or drainage

1 or subdrainage district; the ship canal authority; any
2 lawfully constituted housing, port, or aviation authority; the
3 Spaceport Florida Authority; or any rural electric
4 cooperative, telephone cooperative corporation, ~~or public~~
5 utility corporation, or regional transmission organization,
6 the petitioner may avail itself of the provisions of this
7 chapter to take possession and title in advance of the entry
8 of final judgment.

9 Section 1. Section 361.01, Florida Statutes, is
10 amended to read:

11 361.01 Eminent domain.--The president and directors of
12 any load serving utility as defined in s. 366.02 ~~corporation~~
13 ~~organized for the purpose of constructing, maintaining or~~
14 ~~operating public works,~~ or their properly authorized agents,
15 may enter upon any lands, public or private, necessary to the
16 business contemplated in the charter, and may appropriate the
17 same, or may take from any land most convenient to their work,
18 any timber, stone, earth or other material which may be
19 necessary for the construction and the keeping in repair of
20 its works and improvements upon making due compensation
21 according to law to private owners.

22 Section 2. Section 361.09, Florida Statutes, is
23 created to read:

24 361.09 Power of eminent domain for regional
25 transmission organizations.--Regional transmission
26 organizations as defined in s. 366.02 shall have the same
27 power of eminent domain and the authority to exercise such
28 power as accorded to load serving utilities under the laws of
29 this state.

30 Section 3. Section 366.01, Florida Statutes, is
31 amended to read:

1 366.01 Legislative declaration.--

2 (1) The regulation of public utilities as defined
3 herein is declared to be in the public interest and this
4 chapter shall be deemed to be an exercise of the police power
5 of the state for the protection of the public welfare and all
6 the provisions hereof shall be liberally construed for the
7 accomplishment of that purpose.

8 (2) The Legislature finds that the production and sale
9 of electricity at wholesale have evolved to a point at which
10 regulation of wholesale electric services should be reduced
11 and the public interest requires the transition to a fully
12 competitive wholesale market to assure the provision of
13 adequate energy supplies, resources, and reserves to all
14 residents of this state at reasonable cost.

15 (3) The Legislature further finds that the competitive
16 provision of electric energy services between and among
17 electric utilities will provide customers of load serving
18 utilities with reasonably priced, adequate, safe, reliable and
19 efficient supplies of electricity while still protecting the
20 resources and environment of this state and enhancing economic
21 development.

22 (4) The Legislature further finds that the promotion
23 of a viable competitive electric wholesale market would be
24 enhanced by the transfer of electric generation assets of each
25 public utility to a generation affiliate.

26 (5) The Legislature further finds that the competition
27 in the wholesale electric market will be enhanced by the
28 transfer of electric transmission assets or operational
29 control of such assets of each public utility to an
30 independent regional transmission organization designed to
31

1 ensure open and nondiscriminatory access to the transmission
2 grid.

3 (6) The Legislature further finds that it is in the
4 public interest to provide adequate retail rate and energy
5 supply protections for customers of public utilities during
6 the transition to a fully competitive electric wholesale
7 market. Based on such findings, legislation to establish and
8 maintain a fully competitive wholesale electric power market
9 in this state is warranted.

10 Section 4. Section 366.02, Florida Statutes, is
11 amended to read:

12 366.02 Definitions.--As used in this chapter:

13 (1) "Affiliate" means:

14 (a) A person who directly or indirectly owns or holds
15 at least 5 percent of the voting securities of a public
16 utility;

17 (b) A person in a chain of successive ownership of at
18 least 5 percent of the voting securities of a public utility;

19 (c) An entity that has at least 5 percent of its
20 voting securities owned or controlled, directly or indirectly,
21 by a public utility;

22 (d) An entity that has at least 5 percent of its
23 voting securities owned or controlled, directly or indirectly,
24 by:

25 1. A person who directly or indirectly owns or
26 controls at least 5 percent of the voting securities of a
27 public utility; or

28 2. A person in a chain of successive ownership of at
29 least 5 percent of the voting securities of a public utility;
30 or

1 (e) A person who is an officer or director of a public
2 utility or of a corporation in a chain of successive ownership
3 of at least 5 percent of the voting securities of a public
4 utility.

5 (2) "Base rates" means all rates and charges collected
6 by public utilities for retail electric service pursuant to
7 tariffs on file with the commission, excluding the cost
8 recovery adjustment clauses set forth in ss. 366.062, 366.063,
9 366.064, 366.0645, 366.82, and 366.8255, or such other cost
10 recovery adjustment clauses as may be authorized by the
11 commission.

12 (3) "Commission" means the Florida Public Service
13 Commission.

14 (4)(2) "Electric utility" means any municipal electric
15 utility, investor-owned electric utility, generation affiliate
16 of a public utility, exempt wholesale generator, regional
17 transmission organization, or rural electric cooperative which
18 owns, maintains, or operates, or proposes to own, maintain, or
19 operate, an electric generation, transmission, or distribution
20 facilities system within the state.

21 (5) "Exempt wholesale generator" means a provider of
22 electricity at wholesale as defined by 15 U.S.C. 79z-5a.

23 (6) "Generation affiliate" means an affiliate to which
24 a public utility transfers generation assets pursuant to s.
25 366.052 that provides electric power at wholesale. A
26 generation affiliate may be an exempt wholesale generator at
27 the time of the transfer of generation assets or may elect to
28 become an exempt wholesale generator subsequent to the
29 transfer.

30 (7) "Generation assets" means all assets associated
31 with the production of electricity, including, but not limited

1 to, generation plants, electrical interconnections of the
2 generation plant to the transmission system, fuel contracts,
3 fuel transportation contracts, associated fuel handling
4 equipment, water contracts, lands, surface or subsurface water
5 rights, emissions-related allowances, fuel supply
6 interconnections, and associated facilities and other assets
7 which directly support the construction and operation of the
8 generation plant.

9 (8) "Load serving utility" means an electric utility
10 that sells electric capacity or energy to retail customers in
11 this state.

12 (9) "Net book value" means the actual recorded cost of
13 or investment in generation or transmission assets, including
14 groups of such assets, and associated working capital
15 accounts, including, but not limited to, fuel stocks and
16 inventoried replacement items, minus accumulated reserves for
17 depreciation, dismantlement, and deferred taxes shown on the
18 corporate records of the public utility.

19 ~~(10)(1)~~ "Public utility" means every person,
20 corporation, partnership, association, or other legal entity
21 and their lessees, trustees, or receivers supplying
22 electricity or gas (natural, manufactured, or similar gaseous
23 substance) to or for the public within this state; but the
24 term "public utility" does not include either a cooperative
25 now or hereafter organized and existing under the Rural
26 Electric Cooperative Law of the state; any exempt wholesale
27 generator, generation affiliate, or regional transmission
28 organization making only sales or delivery of electricity for
29 resale; a municipality or any agency thereof; any dependent or
30 independent special natural gas district; any natural gas
31 transmission pipeline company making only sales or

1 transportation delivery of natural gas at wholesale and to
2 direct industrial consumers; any entity selling or arranging
3 for sales of natural gas which neither owns nor operates
4 natural gas transmission or distribution facilities within the
5 state; or a person supplying liquefied petroleum gas, in
6 either liquid or gaseous form, irrespective of the method of
7 distribution or delivery, or owning or operating facilities
8 beyond the outlet of a meter through which natural gas is
9 supplied for compression and delivery into motor vehicle fuel
10 tanks or other transportation containers, unless such person
11 also supplies electricity or manufactured or natural gas.

12 (11) "Regional transmission organization" means any
13 entity approved by the Federal Energy Regulatory Commission to
14 provide regional transmission services.

15 Section 5. Subsections (2), (5), and (6) of section
16 366.04, Florida Statutes, are amended to read:

17 366.04 Jurisdiction of commission.--

18 (2) In the exercise of its jurisdiction, the
19 commission shall have power over load serving electric
20 utilities for the following purposes:

21 (a) To prescribe uniform systems and classifications
22 of accounts.

23 (b) To prescribe a rate structure ~~for all electric~~
24 ~~utilities.~~

25 (c) To require electric power conservation, subject to
26 the limitation in s. 366.82(1), and reliability within a
27 coordinated grid, for operational as well as emergency
28 purposes.

29 (d) To approve territorial agreements between and
30 among load serving rural electric cooperatives, ~~municipal~~
31 ~~electric utilities, and other electric~~ utilities under its

1 jurisdiction. However, nothing in this chapter shall be
2 construed to alter existing territorial agreements as between
3 the parties to such agreements.

4 (e) To resolve, upon petition of a load serving
5 utility or on its own motion, any territorial dispute
6 involving service areas between and among load serving rural
7 ~~electric cooperatives, municipal electric utilities, and other~~
8 ~~electric~~ utilities under its jurisdiction. In resolving
9 territorial disputes, the commission may consider, but not be
10 limited to consideration of, the ability of the utilities to
11 expand services within their own capabilities and the nature
12 of the area involved, including population, the degree of
13 urbanization of the area, its proximity to other urban areas,
14 and the present and reasonably foreseeable future requirements
15 of the area for other utility services.

16 (f) To prescribe and require the filing of periodic
17 reports and other data as may be reasonably available and as
18 necessary to exercise its jurisdiction hereunder.

19
20 No provision of this chapter shall be construed or applied to
21 impede, prevent, or prohibit any municipally owned electric
22 utility system from distributing at retail electrical energy
23 within its corporate limits, as such corporate limits exist on
24 July 1, 1974; however, existing territorial agreements shall
25 not be altered or abridged hereby.

26 (5) The commission shall further have jurisdiction
27 over the planning, development, and maintenance of a
28 coordinated electric power grid throughout Florida to assure
29 an adequate and reliable source of energy for operational and
30 emergency purposes in Florida and the avoidance of further
31

1 uneconomic duplication of ~~generation, transmission, and~~
2 distribution facilities.

3 (6) The commission shall further have exclusive
4 jurisdiction to prescribe and enforce safety standards for
5 transmission and distribution facilities of all load serving
6 ~~public electric utilities, cooperatives organized under the~~
7 ~~Rural Electric Cooperative Law, and electric utilities and~~
8 regional transmission organizations ~~owned and operated by~~
9 ~~municipalities~~. In adopting safety standards, the commission
10 shall:

11 (a) Adopt the 1984 edition of the National Electrical
12 Safety Code (ANSI C2) as initial standards; and

13 (b) Adopt, after review, any new edition of the
14 National Electrical Safety Code (ANSI C2).

15
16 The standards prescribed by the current 1984 edition of the
17 National Electrical Safety Code (ANSI C2) shall constitute
18 acceptable and adequate requirements for the protection of the
19 safety of the public, and compliance with the minimum
20 requirements of that code shall constitute good engineering
21 practice by the utilities. The administrative authority
22 referred to in the 1984 edition of the National Electrical
23 Safety Code is the commission. However, nothing herein shall
24 be construed as superseding, repealing, or amending the
25 provisions of s. 403.523(1) and (10).

26 Section 6. Section 366.0411, Florida Statutes, is
27 created to read:

28 366.0411 Jurisdiction of commission over regional
29 transmission organizations.--

30 (1) In the exercise of its jurisdiction, the
31 commission shall have power over electric utilities which are

1 regional transmission organizations for the following
2 purposes:

3 (a) To prescribe and require filing of periodic
4 reports and other data as may be reasonably available and
5 necessary to exercise its jurisdiction under this chapter.

6 (b) To require, for informational purposes, the annual
7 filing of a 5-year plan for the siting, expansion, or
8 modification of transmission facilities.

9 (c) To determine the need under s. 403.537 for
10 transmission facilities, as proposed by the regional
11 transmission organization prior to construction of such
12 transmission facilities.

13 (d) To require the installation or repair of
14 transmission facilities under s. 366.05(8).

15 (e) To set generation reserve margins as required to
16 meet or establish the installed capacity obligation of
17 participants in a regional transmission organization as set
18 forth in the regional transmission organization's tariff or
19 other documents filed with the Federal Energy Regulatory
20 Commission.

21 (2) The commission shall not have jurisdiction over a
22 regional transmission organization, either directly or
23 indirectly, as a result of exercising its jurisdiction over
24 any other electric utility, unless expressly provided for in
25 this chapter.

26 Section 7. Subsections (8) and (9) of section 366.08,
27 Florida Statutes, are amended, and subsection (12) is added to
28 said section, to read:

29 366.05 Powers.--

30 (8) If the commission determines that there is
31 probable cause to believe that, unless the commission takes

1 action, the safety or reliability of the energy grids of this
 2 state would be impaired or that an emergency would otherwise
 3 exist ~~inadequacies exist with respect to the energy grids~~
 4 ~~developed by the electric utility industry, it shall have the~~
 5 ~~power, after notice and opportunity for hearings before the~~
 6 ~~commission proceedings as provided by law, and after a finding~~
 7 ~~that mutual benefits will accrue to the electric utilities~~
 8 ~~involved, to require installation or repair of necessary~~
 9 ~~facilities, including generating plants and transmission~~
 10 ~~facilities, with the costs to be distributed in proportion to~~
 11 ~~the benefits received, and to take all necessary steps to~~
 12 ~~ensure compliance. The load serving electric utilities or~~
 13 regional transmission organizations ~~involved in any action~~
 14 ~~taken or orders issued pursuant to this subsection shall have~~
 15 ~~full power and authority, notwithstanding any general or~~
 16 ~~special laws to the contrary, to jointly plan, finance, build,~~
 17 ~~operate, or lease generating and transmission facilities and~~
 18 ~~shall be further authorized to exercise the powers granted to~~
 19 ~~corporations in chapter 361. This subsection shall not~~
 20 ~~supersede or control any provision of the Florida Electrical~~
 21 ~~Power Plant Siting Act, ss. 403.501-403.518, to the extent~~
 22 such act would inhibit the commission from exercising its
 23 authority as set forth in this chapter.

24 (9) The commission may require the filing of reports
 25 and other data by a public utility or its affiliated
 26 companies, including its parent company, regarding
 27 transactions, or allocations of common costs, among the public
 28 utility and such affiliated companies. The commission may
 29 also require such reports or other data necessary to ensure
 30 that a public utility's ratepayers do not subsidize nonutility
 31 activities.

1 (12) The commission shall have the authority to
2 investigate the structure of the wholesale electric market in
3 this state and address issues of market power in the wholesale
4 electric market by seeking appropriate remedies for potential
5 abuses of market power before the Federal Energy Regulatory
6 Commission.

7 Section 8. Section 366.052, Florida Statutes, is
8 created to read:

9 366.052 Affiliates of public utilities that own,
10 maintain, and operate electric generation assets--

11 (1) On or before January 1, 2002, or as soon as
12 practical thereafter, each public utility shall transfer its
13 non-nuclear generation assets to a generation affiliate. The
14 generation assets shall be transferred at the net book value
15 of such assets on the last day of the month prior to the
16 effective date of the transfer. For the purposes of this
17 section, the term "generation assets" excludes contracts
18 entered into by public utilities for the purchase of electric
19 capacity and energy.

20 (2) A public utility that is in the process of
21 constructing a new non-nuclear generation asset on or after
22 the effective date of this act, shall transfer the non-nuclear
23 generation asset to its generation affiliate on or before the
24 commercial in-service date of the generation asset. Such
25 generation asset shall be transferred at the net book value of
26 such asset on the last day of the month prior to the effective
27 date of the transfer. The capacity of any such non-nuclear
28 generation asset shall be subject to the contractual
29 obligations set forth in subsections (5) and (6). The public
30 utility shall be entitled to recover the fuel and variable
31 costs of production, the capacity or fixed costs of

1 production, and the environmental compliance costs associated
2 with the contracts related to the generation asset transferred
3 pursuant to this subsection in accordance with ss. 366.062,
4 366.063, and 366.8255. In the alternative, the public utility
5 shall be entitled to recover the costs of purchased power
6 associated with the contracts related to the generation asset
7 transferred pursuant to this subsection in accordance with s.
8 366.064.

9 (3) Subsequent to the effective date of this act, each
10 public utility may transfer any nuclear generation assets to
11 its generation affiliate. Such nuclear generation asset shall
12 be transferred at the net book value of such asset on the last
13 day of the month prior to the effective date of the transfer.
14 In the event of such transfer, the nuclear decommissioning
15 reserve and liability associated with such assets may remain
16 with and be recovered by the public utility for the remainder
17 of the useful life of such nuclear generation assets.

18 (4) Generation assets transferred pursuant to
19 subsections (1), (2), and (3) shall be deemed to have received
20 the commission's consent as to the transfer as set forth in s.
21 366.0521 and no further commission action shall be required
22 with respect to the transfer or the designation of such
23 generation assets as eligible facilities for purposes of 15
24 U.S.C. 79z-5a. The transfer of generation assets by a public
25 utility to a generation affiliate shall be valued for all
26 purposes at net book value and the commission shall not for
27 any purposes impute or otherwise consider any gain or loss on
28 the sale or transfer of such facilities.

29 (5) The generation affiliate of each public utility
30 shall be required to enter into contracts to provide wholesale
31

1 electric capacity to its affiliated load serving utility, at
2 cost based rates, as follows:

3 (a) Effective January 1, 2002, and continuing through
4 December 31, 2004, the public utility shall have a right of
5 first refusal to secure, and its generation affiliate shall be
6 required to provide, up to 100 percent of the generation
7 affiliate's capacity available from generation assets
8 transferred from the public utility to provide service to the
9 public utility's retail customers.

10 (b) Effective January 1, 2005, the public utility
11 shall have a right of first refusal to secure, and its
12 generation affiliate shall be required to provide, up to 67
13 percent of the generation affiliate's capacity available from
14 generation assets transferred from the public utility to
15 provide service to the public utility's retail customers. The
16 public utility shall acquire the remainder of its capacity
17 requirements pursuant to s. 366.053.

18 (c) Effective January 1, 2006, the public utility
19 shall have a right of first refusal to secure, and its
20 generation affiliate shall be required to provide, up to 33
21 percent of the generation affiliate's capacity available from
22 generation assets transferred from the public utility to
23 provide service to the public utility's retail customers. The
24 public utility shall acquire the remainder of its capacity
25 requirements pursuant to s. 366.053.

26 (d) Effective January 1, 2007, the generation
27 affiliate of each public utility shall no longer have any
28 statutory obligation to provide capacity to meet its
29 affiliated public utility's load serving requirements for
30 retail customers. The public utility shall acquire all of its
31 capacity requirements pursuant to s. 366.053.

1 (6) The contractual obligation of the generation
2 affiliate to provide capacity to the public utility pursuant
3 to paragraphs (5)(a), (b), and (c) shall apply to any
4 transferee or purchaser of generation assets previously
5 transferred by the public utility to the generation affiliate.

6 (7) Each public utility shall file copies of the
7 contracts required under subsection (5) with the commission,
8 together with schedules reflecting the costs transferred by
9 the public utility to its generation affiliate pursuant to
10 this section.

11 (8) Public utilities shall retain the right to
12 purchase energy or capacity from any source when it is
13 economical to do so.

14 (9) This section shall not affect contracts for the
15 purchase or provision of electric capacity or energy entered
16 into by the public utility prior to the effective date of this
17 act.

18 Section 9. Section 366.0521, Florida Statutes, is
19 created to read:

20 366.0521 Eligible facilities of a public utility.--

21 (1) The Legislature finds that allowing existing,
22 rate-based generation assets to be eligible facilities under
23 15 U.S.C. 79z-5a upon the transfer of such assets to a
24 generation affiliate of a public utility, and the purchase by
25 a public utility of electric capacity and energy at wholesale
26 from a generation affiliate which is an exempt wholesale
27 generator pursuant to 15 U.S.C. 79z-5a, under the transition
28 contracts as prescribed in this chapter and thereafter
29 pursuant to the terms and conditions provided in this chapter:

30 (a) Will benefit customers;

31 (b) Is in the public interest;

1 (c) Does not violate state law, including least cost
2 planning; and

3 (d) Will not provide the generation affiliate company
4 which is an exempt wholesale generator any unfair competitive
5 advantage by virtue of its affiliation or association with the
6 public utility.

7 (2) The legislature further finds that the commission
8 has sufficient regulatory authority, resources, and access to
9 the books and records of the public utility and any relevant
10 associate, affiliate, or subsidiary company thereof under the
11 provision of s. 366.093 to exercise its duties under 15 U.S.C.
12 79z-5a.

13 Section 10. Section 366.053, Florida Statutes, is
14 created to read:

15 366.053 Competitive acquisition of capacity and energy
16 by public utilities.--

17 (1) Except as provided in s. 366.052, public utilities
18 shall acquire all new capacity and energy through a
19 competitive acquisition process which may include bids or
20 requests for proposals, negotiated bilateral contracts,
21 purchases in the open market, or any other reasonable
22 mechanism for obtaining capacity or energy.

23 (2) Acquisition of capacity or energy by a public
24 utility through a bid or request for proposals shall be
25 rebuttably presumed to be a prudent, cost-effective
26 acquisition. A public utility's request for approval of any
27 such acquisition shall be conducted on an expedited basis.

28 (3) Each public utility shall be responsible for
29 demonstrating that its acquisition of capacity is prudent.
30 The commission is authorized to determine whether the public
31 utility's acquisition or purchase of capacity is prudent and

1 to approve cost recovery of the acquisition through the
2 capacity and fuel cost recovery proceedings.

3 (4) The following code of conduct shall govern
4 purchases by a public utility of capacity and energy from its
5 generation affiliate for the purposes of assuring fair
6 competition between public utility generation affiliates and
7 other electric utilities in the competitive wholesale market
8 and to prevent cross-subsidization of the generation
9 affiliate's costs by public utilities. Pursuant to such code
10 of conduct:

11 (a) No public utility shall extend any undue
12 preference or advantage to a generation affiliate.

13 (b) Resources provided by a public utility to a
14 generation affiliate shall be provided pursuant to
15 compensation based on fully allocated costs charged to the
16 affiliate.

17 (c) All information made available by a public utility
18 to a generation affiliate in connection with a bid or request
19 for proposals for capacity or energy shall also be made
20 available by the public utility to other electric utilities.

21 Section 11. Section 366.054, Florida Statutes, is
22 created to read:

23 366.054 Regional transmission organizations that own
24 or operate transmission facilities.--Each load serving utility
25 may transfer its transmission assets to a regional
26 transmission organization. If a load serving utility elects
27 to transfer transmission assets to a regional transmission
28 organization, the transmission assets shall be transferred at
29 the net book value of such assets on the last day of the month
30 prior to the effective date of the transfer. The transfer of
31 transmission assets by a public utility to a regional

1 transmission organization shall be valued for all purposes at
2 net book value of such assets prior to the effective date of
3 such transfer. The commission shall not for any purpose
4 impute or otherwise consider any gain or loss on the sale or
5 transfer of such facilities.

6 Section 12. Subsections (4), (5), (6), (7), (8), (9),
7 (10), (11), (12), and (13) are added to section 366.055,
8 Florida Statutes, to read:

9 366.055 Availability of, and payment for, energy
10 reserves.--

11 (4) To ensure the continued adequate provision of
12 electric capacity to retail customers of public utilities, the
13 commission shall require all load serving utilities to plan
14 for an annual reserve margin for capacity approved by the
15 commission.

16 (5) Each public utility shall prepare an integrated
17 resource plan identifying existing and forecasted capacity
18 demand and needs and the extent to which forecasted generating
19 capacity needs can be met through demand side management
20 programs over a 5-year planning period. The integrated
21 resource plan shall be filed with the commission not less than
22 every 5 years and shall include an annual load forecast.

23 (6) Load serving utilities shall annually file a
24 5-year reliability plan with the commission. The 5-year
25 reliability plan shall include the load serving utility's:

26 (a) Load forecast for the applicable 5-year planning
27 horizon.

28 (b) Plans for meeting the forecasted load, including
29 capacity and energy contracts and conservation programs.

30 (7) Within 9 months after receipt of the proposed
31 plan, the commission shall make a preliminary study of such

1 plan and classify it as suitable or unsuitable. The
2 commission may suggest alternatives to the plan. The 5-year
3 reliability plan submitted by a load serving utility shall be
4 considered tentative information for planning purposes only
5 and may be amended at any time at the discretion of the load
6 serving utility upon written notification to the commission.

7 (8) Electric utilities operating electrical power
8 plants in this state shall annually file a 5-year plan with
9 the commission, reflecting existing and planned generating
10 resources and any planned use or commitments for these
11 resources.

12 (9) Any regional transmission organization operating
13 in this state shall annually file a 5-year plan with the
14 commission for informational purposes. The filing shall
15 reflect the regional transmission organization's plans for
16 siting, expansion, or modification of transmission facilities
17 in this state.

18 (10) The commission may adopt rules governing the
19 method of submitting, processing, and studying the 5-year
20 reliability plans filed by load serving utilities and the
21 informational filings by electric utilities operating
22 electrical power plants in this state and regional
23 transmission organizations as required by this section.

24 (11) The commission may order a load serving utility
25 to build an electrical generating plant under the terms and
26 conditions in s. 366.05(8).

27 (12) The commission may also order load serving
28 utilities to acquire capacity pursuant to the competitive
29 acquisition process set forth in s. 366.053 if the commission
30 determines that the reserve margin of a load serving utility
31

1 is projected to drop below the level approved by the
2 commission pursuant to subsection (4).

3 (13) If the Governor and Cabinet declare an energy
4 emergency, the Governor may require by executive order that
5 electric utilities provide electric energy and capacity from
6 generation assets within the state to load serving utilities
7 sufficient to meet the electric supply demands of electric
8 customers situated in the state.

9 Section 13. Section 366.061, Florida Statutes, is
10 created to read:

11 366.061 Rates of public utilities.--

12 (1) Upon the effective date of this act and continuing
13 through December 31, 2004, the base rates of public utilities
14 in effect on the effective date of this act shall remain in
15 effect continuing through and terminating on December 31,
16 2004.

17 (2) For the period through December 31, 2004:

18 (a) To the extent the costs of energy and capacity
19 purchased pursuant to s. 366.052 were recovered through base
20 rates on the effective date of this act, a public utility
21 shall continue to recover such costs through base rates.

22 (b) To the extent the costs of energy and capacity
23 purchased pursuant to s. 366.052 were recovered through the
24 fuel, capacity, purchased power, and environmental cost
25 recovery clauses on the effective date of this act, a public
26 utility shall continue to recover such costs as provided in
27 ss. 366.062, 366.063, 366.064, and 366.8255.

28 (c) To the extent the costs of purchased energy or
29 capacity were not included in the test period on which the
30 public utility's base rates were last set as of the effective
31

1 date of this act, a public utility shall recover such costs as
2 provided in s. 366.063.

3 (d) To the extent the costs of transmission service
4 were recovered through base rates on the effective date of
5 this act, a public utility shall continue to recover the costs
6 of transmission service through base rates.

7 (e) To the extent the costs of transmission service,
8 including start-up and transition costs of a regional
9 transmission organization and incremental capital investment
10 associated with new or upgraded transmission lines, were not
11 included in the test period on which the public utility's base
12 rates were last set prior to the effective date of this act, a
13 public utility shall recover such costs as provided in s.
14 366.065.

15 (3) Effective January 1, 2005:

16 (a) The base rates of a public utility shall be
17 reviewed and adjusted if necessary by the commission to
18 recognize the ratemaking effects of the asset transfers
19 authorized by s. 366.052.

20 (b) The commission shall approve cost recovery of all
21 prudently incurred costs and expenses necessary to provide
22 adequate, reliable, and cost-effective electric service to a
23 public utility's retail customers. Cost recovery shall be
24 allowed through base rates and the adjustment clause factors
25 set forth in this chapter, as determined by the commission.
26 The commission shall establish the rates for all transactions
27 that remain within its jurisdiction. The rates for
28 transactions established by the Federal Energy Regulatory
29 Commission shall not be subject to review by the commission
30 and shall be approved for cost recovery if the commission
31 finds that the costs and expenses prudently incurred under

1 such transactions are necessary to provide adequate, reliable,
2 and cost-effective electric service to a public utility's
3 retail customers.

4 (4) All contracts entered into by public utilities for
5 the purchase of energy or capacity prior to the effective date
6 of this act shall remain the regulated asset and obligation of
7 the public utility and all costs associated with such
8 contracts shall continue to be recovered through base rates or
9 cost recovery adjustment clauses set forth in this chapter, as
10 determined by the commission.

11 (5) The commission is authorized to implement
12 appropriate performance or incentive-based rate structures for
13 public utilities to encourage least cost capacity and energy
14 purchases, cost savings, and reliability. The commission is
15 also encouraged to develop innovative retail rate structures
16 that will send appropriate price signals to retail customers
17 of a public utility.

18 Section 14. Section 366.062, Florida Statutes, is
19 created to read:

20 366.062 Cost of fuel and other variable costs of
21 production.--

22 (1)(a) "Fuel costs" means the costs of natural gas,
23 coal, oil, nuclear fuel, or other fuel incurred by an electric
24 utility in the generation of electric capacity or energy.

25 (b) "Variable costs of production" means the costs
26 associated with the production of energy or capacity from any
27 type of generating facility that vary as a function of the
28 output level of the facility.

29 (2) A public utility shall be allowed to recover all
30 fuel costs and expenses and other variable costs and expenses
31 of production, determined by the commission to be prudently

1 incurred to provide adequate, reliable, and cost-effective
2 electric service to its retail customers, through a cost
3 recovery factor that provides for recovery of both actual and
4 projected costs, subject to true-up. The cost recovery factor
5 shall be established by the commission on a periodic basis,
6 but at least annually, pursuant to procedures established by
7 commission order. The cost recovery factor shall be a charge
8 separate and distinct from the utility's base rates.

9 Section 15. Section 366.063, Florida Statutes, is
10 created to read:

11 366.063 Cost recovery of capacity and other fixed
12 costs of production.--

13 (1) "Capacity or fixed cost of production" means the
14 fixed cost or capital investment associated with the
15 production of energy or capacity from any type of generating
16 facility that does not vary as a function of the output level
17 of the facility.

18 (2) A public utility shall be allowed to recover all
19 capacity and other fixed costs of production, determined by
20 the commission to be prudently incurred to provide adequate,
21 reliable, and cost-effective electric service to its retail
22 customers, through a cost recovery factor that provides for
23 recovery of both actual and projected costs, subject to
24 true-up. The cost recovery factor shall be established by the
25 commission on a periodic basis, but at least annually,
26 pursuant to procedures established by commission order. The
27 cost recovery factor shall be a charge separate and distinct
28 from the utility's base rates. Effective January 1, 2002, and
29 continuing through December 31, 2004, to the extent such costs
30 and expenses are associated with generation assets transferred
31 pursuant to s. 366.052(1) or s. 366.052(3), and such costs

1 were not being recovered through the fuel, capacity, purchased
2 power, and environmental cost recovery clauses on the
3 effective date of this act, such costs shall continue to be
4 considered recovered through the public utility's base rates
5 and shall be excluded from recovery through this section.

6 Section 16. Section 366.064, Florida Statutes, is
7 created to read:

8 366.064 Cost recovery of purchased power.--

9 (1) "Purchased power" means the costs associated with
10 the purchase of energy or capacity by a public utility.

11 (2) A public utility shall be allowed to recover all
12 purchased power costs and expenses, determined by the
13 commission to be prudently incurred to provide adequate,
14 reliable, and cost-effective electric service to its retail
15 customers, through a cost recovery factor that provides for
16 recovery of both actual and projected costs, subject to
17 true-up. The cost recovery factor shall be established by the
18 commission on a periodic basis, but at least annually,
19 pursuant to procedures established by commission order. The
20 cost recovery factor shall be a charge separate and distinct
21 from the utility's base rates.

22 Section 17. Section 366.0645, Florida Statutes, is
23 created to read:

24 366.0645 Cost recovery of regional transmission
25 organization charges and costs.--

26 (1) "Regional transmission organization transition and
27 start up costs" include, but are not limited to:

28 (a) All costs and expenses incurred by a public
29 utility:

30 1. That participates in a regional transmission
31 organization to the extent such costs are incurred in forming

1 or otherwise undertaking activities necessary to participate
2 in a regional transmission organization; or

3 2. Under an interim arrangement associated or related
4 to the ultimate formation or participation in a regional
5 transmission organization.

6 (b) Such other costs and expenses that have been
7 approved or acknowledged by the Federal Energy Regulatory
8 Commission as legitimate start-up or transition costs
9 associated with the formation of a regional transmission
10 organization, an independent system operator, or otherwise
11 with the structuring or restructuring of a power pool.

12 (2) Public utilities shall be allowed to recover:

13 (a) All regional transmission organization transition
14 and start up costs described in subsection (1).

15 (b) All charges assessed to a public utility by a
16 regional transmission organization for construction,
17 operation, maintenance, repairs, additions, and upgrades of
18 existing and new transmission facilities.

19 (c) All charges assessed to a public utility by a
20 regional transmission organization for transmission services
21 under tariffs approved by the Federal Energy Regulatory
22 Commission.

23 (3) All costs and expenses incurred by a public
24 utility described in subsections (1) and (2) shall be
25 recovered through a cost recovery factor that provides for
26 recovery of actual and projected costs and pursuant to
27 procedures which provide for a periodic true-up. The cost
28 recovery factor shall be established by the commission on a
29 periodic basis, but at least annually, pursuant to procedures
30 established by commission order. The cost recovery factor
31

1 shall be a charge separate and distinct from the utility's
2 base rates.

3 Section 18. Section 366.066, Florida Statutes, is
4 created to read:

5 366.066 Costs recovery clauses: savings
6 clause.--Notwithstanding the establishment of the statutory
7 cost recovery clauses set forth in ss.366.062, 366.063,
8 366.064, and 366.0645:

9 (1) A public utility shall be authorized to recover
10 all prudently incurred fuel, purchased energy, and purchased
11 capacity costs recoverable by a public utility pursuant to
12 cost recovery clauses established by the commission prior to
13 the effective date of this act.

14 (2) The commission may establish additional cost
15 recovery clauses to allow a public utility to recover
16 prudently incurred costs of providing adequate, reliable, and
17 cost-effective electric service to retail customers and
18 provide by order for allocation of costs and expenses approved
19 for cost recovery among customer classes on the basis of
20 factors that recognize the fixed or variable nature of the
21 costs and expenses to be recovered.

22 Section 19. Section 366.085, Florida Statutes, is
23 created to read:

24 366.085 Reports to the Legislature.--

25 (1) The commission shall submit to the Governor, the
26 President of the Senate, the Speaker of the House of
27 Representatives, and the majority and minority leaders of the
28 Senate and House of Representatives, on December 1, 2002, and
29 annually thereafter, a report containing a detailed exposition
30 of:

1 (a) The status of wholesale electric competition in
2 the state.

3 (b) The number of electric utilities providing
4 wholesale electric capacity through electrical power plants
5 built in this state and the permitted capacity of all such
6 plants.

7 (c) The existing and forecasted levels of demand for
8 electric power supply in the state over the next 5 years.

9 (d) The number of electrical power plants to be built
10 over the next 5 years and the anticipated permitted capacity
11 of such plants.

12 (e) The existing and forecasted fuel mix for
13 electrical power plants currently built and anticipated to be
14 built in the state over the next 5 years.

15 (f) The existing and forecasted reliability of
16 wholesale electric power supplies over the next 5 years.

17 (g) Any other information and recommendations which
18 may be in the public interest.

19 Section 20. Section 366.80, Florida Statutes, is
20 amended to read:

21 366.80 Short title.--Sections 366.80-366.85 ~~and~~
22 ~~403.519~~ shall be known and may be cited as the "Florida Energy
23 Efficiency and Conservation Act."

24 Section 21. Section 366.81, Florida Statutes, is
25 amended to read:

26 366.81 Legislative findings and intent.--The
27 Legislature finds and declares that it is critical to utilize
28 the most efficient and cost-effective energy conservation
29 systems in order to protect the health, prosperity, and
30 general welfare of the state and its citizens. Reduction in,
31 and control of, the growth rates of electric consumption and

1 of weather-sensitive peak demand are of particular importance.
2 The Legislature further finds that the Florida Public Service
3 Commission is the appropriate agency to adopt goals and
4 approve plans related to the conservation of electric energy
5 and natural gas usage. The Legislature directs the commission
6 to develop and adopt overall goals and authorizes the
7 commission to require each utility to develop plans and
8 implement programs for increasing energy efficiency and
9 conservation within its service area, subject to the approval
10 of the commission. Since solutions to our energy problems are
11 complex, the Legislature intends that the use of solar energy,
12 renewable energy sources, highly efficient systems,
13 cogeneration, and load-control systems be encouraged.
14 Accordingly, in exercising its jurisdiction, the commission
15 shall not approve any rate or rate structure which
16 discriminates against any class of customers on account of the
17 use of such facilities, systems, or devices. This expression
18 of legislative intent shall not be construed to preclude
19 experimental rates, rate structures, or programs. The
20 Legislature further finds and declares that ss. 366.80-366.85
21 ~~and 403.519~~ are to be liberally construed in order to meet the
22 complex problems of reducing and controlling the growth rates
23 of electric consumption and reducing the growth rates of
24 weather-sensitive peak demand; increasing the overall
25 efficiency and cost-effectiveness of electricity and natural
26 gas production and use; encouraging further development of
27 cogeneration facilities; and conserving expensive resources,
28 particularly petroleum fuels.

29 Section 22. Section 366.82, Florida Statutes, is
30 amended to read:
31

1 366.82 Definition; goals; plans; programs; annual
2 reports; energy audits.--

3 (1) For the purposes of ss. 366.80-366.85 ~~and 403.519~~,
4 "utility" means any person or entity of whatever form which
5 provides electricity or natural gas at retail to the public,
6 specifically including municipalities or instrumentalities
7 thereof and cooperatives organized under the Rural Electric
8 Cooperative Law and specifically excluding any municipality or
9 instrumentality thereof, any cooperative organized under the
10 Rural Electric Cooperative Law, or any other person or entity
11 providing natural gas at retail to the public whose annual
12 sales volume is less than 100 million therms or any
13 municipality or instrumentality thereof and any cooperative
14 organized under the Rural Electric Cooperative Law providing
15 electricity at retail to the public whose annual sales as of
16 July 1, 1993, to end-use customers is less than 2,000 gigawatt
17 hours.

18 (2) The commission shall adopt appropriate goals for
19 increasing the efficiency of energy consumption by
20 residential, commercial, and industrial customers and
21 increasing the development of cogeneration, specifically
22 including goals designed to increase the conservation of
23 expensive resources, such as petroleum fuels, to reduce and
24 control the growth rates of energy ~~electric~~ consumption, and
25 to reduce the growth rates of weather-sensitive peak demand.
26 ~~The Executive Office of the Governor shall be a party in the~~
27 ~~proceedings to adopt goals. The commission may change the~~
28 ~~goals for reasonable cause. The time period to review the~~
29 ~~goals, however, shall not exceed 5 years. After the programs~~
30 ~~and plans to meet those goals are completed, the commission~~
31

1 ~~shall determine what further goals, programs, or plans are~~
2 ~~warranted and, if so, shall adopt them.~~

3 (3) Utilities subject to this section shall file
4 demand-side management goals with the commission as part of
5 the integrated resource plan required under s. 366.055(5) not
6 less than every 5 years. The goals shall be developed and
7 based on the utility's integrated resource plan employing a
8 5-year planning period. The time period to review the goals,
9 however, shall not exceed 5 years. Goals shall be developed
10 for residential, commercial, and industrial customers. The
11 commission may change the goals for reasonable cause.
12 Commission approval of the goals is required for cost recovery
13 pursuant to subsection (6). After the programs and plans to
14 meet the goals are completed, the commission shall determine
15 whether further goals, programs, or plans are warranted and,
16 if so, shall adopt them.

17 (4)(3) Following adoption of goals pursuant to
18 subsections subsection (2) and (3), the commission shall
19 require each utility to develop plans and programs to meet the
20 overall goals within its service area. If any plan or program
21 includes loans, collection of loans, or similar banking
22 functions by a utility and the plan is approved by the
23 commission, the utility shall perform such functions,
24 notwithstanding any other provision of the law. The
25 commission may pledge up to \$5 million of the Florida Public
26 Service Regulatory Trust Fund to guarantee such loans.
27 However, no utility shall be required to loan its funds for
28 the purpose of purchasing or otherwise acquiring conservation
29 measures or devices, but nothing herein shall prohibit or
30 impair the administration or implementation of a utility plan
31 as submitted by a utility and approved by the commission under

1 this subsection. If the commission disapproves a plan, it
 2 shall specify the reasons for disapproval, and the utility
 3 whose plan is disapproved shall resubmit its modified plan
 4 within 30 days. Prior approval by the commission shall be
 5 required to modify or discontinue a plan, or part thereof,
 6 which has been approved. If any utility has not implemented
 7 its programs and is not substantially in compliance with the
 8 provisions of its approved plan at any time, the commission
 9 shall adopt programs required for that utility to achieve the
 10 overall goals. Utility programs may include variations in rate
 11 design, load control, ~~cogeneration~~, residential energy
 12 conservation subsidy, or any other measure within the
 13 jurisdiction of the commission which the commission finds
 14 likely to be effective; this provision shall not be construed
 15 to preclude these measures in any plan or program.

16 (5)~~(4)~~ The commission shall require periodic reports
 17 from each utility and shall provide the Legislature and the
 18 Governor with an annual report by March 1 of the goals it has
 19 adopted and its progress toward meeting those goals. The
 20 commission shall also consider the performance of each utility
 21 pursuant to ss. 366.80-366.85 ~~and 403.519~~ when establishing
 22 rates for those utilities over which the commission has
 23 ratesetting authority.

24 (6)~~(5)~~ The commission shall require each utility to
 25 offer, or to contract to offer, energy audits to its
 26 residential customers. This requirement need not be uniform,
 27 but may be based on such factors as level of usage, geographic
 28 location, or any other reasonable criterion, so long as all
 29 eligible customers are notified. The commission may extend
 30 this requirement to some or all commercial customers. The
 31 commission shall set the charge for audits by rule, not to

1 exceed the actual cost, and may describe by rule the general
 2 form and content of an audit. In the event one utility
 3 contracts with another utility to perform audits for it, the
 4 utility for which the audits are performed shall pay the
 5 contracting utility the reasonable cost of performing the
 6 audits. Each utility over which the commission has ratesetting
 7 authority shall estimate its costs and revenues for audits,
 8 conservation programs, research and development related to
 9 energy conservation, and implementation of its plan for the
 10 immediately following 1-year ~~6-month~~ period. Reasonable and
 11 prudent unreimbursed costs projected to be incurred, or any
 12 portion of such costs, may be added to the rates which would
 13 otherwise be charged by a utility upon approval by the
 14 commission, provided that the commission shall not allow the
 15 recovery of the cost of any company image-enhancing
 16 advertising or of any advertising not directly related to an
 17 approved conservation program. Following each 1-year ~~6-month~~
 18 period, each utility shall report the actual results for that
 19 period to the commission, and the difference, if any, between
 20 actual and projected results shall be taken into account in
 21 succeeding periods. The state plan as submitted for
 22 consideration under the National Energy Conservation Policy
 23 Act shall not be in conflict with any state law or regulation.

24 (7)(6)(a) Notwithstanding the provisions of s.
 25 377.703, the commission shall be the responsible state agency
 26 for performing, coordinating, implementing, or administering
 27 the functions of the state plan submitted for consideration
 28 under the National Energy Conservation Policy Act and any acts
 29 amendatory thereof or supplemental thereto and for performing,
 30 coordinating, implementing, or administering the functions of
 31 any future federal program delegated to the state which

1 relates to consumption, utilization, or conservation of
2 electricity or natural gas; and the commission shall have
3 exclusive responsibility for preparing all reports,
4 information, analyses, recommendations, and materials related
5 to consumption, utilization, or conservation of electrical
6 energy which are required or authorized by s. 377.703.

7 (b) The Executive Office of the Governor shall be a
8 party in the proceedings to adopt goals and shall file with
9 the commission comments on the proposed goals including, but
10 not limited to:

11 1. An evaluation of utility load forecasts, including
12 an assessment of alternative supply and demand side resource
13 options.

14 2. An analysis of various policy options which can be
15 implemented to achieve a least-cost strategy.

16 ~~(8)(7)~~ The commission shall establish all minimum
17 requirements for energy auditors used by each utility. The
18 commission is authorized to contract with any public agency or
19 other person to provide any training, testing, evaluation, or
20 other step necessary to fulfill the provisions of this
21 subsection.

22 Section 23. Section 366.8255, Florida Statutes, is
23 amended to read:

24 366.8255 Environmental cost recovery.--

25 (1) As used in this section, the term:

26 (a) ~~"Electric utility" or "Utility"~~ means any
27 investor-owned electric load serving utility ~~that owns,~~
28 ~~maintains, or operates an electric generation, transmission,~~
29 ~~or distribution system within the State of Florida and that is~~
30 regulated under this chapter.

1 (b) "Commission" means the Florida Public Service
2 Commission.

3 (c) "Environmental laws or regulations" includes all
4 federal, state, or local statutes, administrative regulations,
5 orders, ordinances, resolutions, or other requirements that
6 apply to electric utilities and are designed to protect the
7 environment.

8 (d) "Environmental compliance costs" includes all
9 costs or expenses incurred by ~~a an electric~~ utility in
10 complying with environmental laws or regulations and, with the
11 prior approval of the commission, any other costs or expenses
12 prudently incurred in an effort to benefit the environment,
13 including, but not limited to:

14 1. Inservice capital investments, including the
15 ~~electric~~ utility's last authorized rate of return on equity
16 thereon;

17 2. Operation and maintenance expenses;

18 3. Fuel procurement costs;

19 4. Purchased power costs;

20 5. Emission allowance costs; and

21 6. Direct taxes on environmental equipment.

22 (2) ~~A An electric~~ utility may submit to the commission
23 a petition describing the utility's proposed environmental
24 compliance activities and projected environmental compliance
25 costs in addition to any Clean Air Act compliance activities
26 and costs shown in a utility's filing under s. 366.825. ~~If~~
27 ~~approved, the commission shall allow recovery of the utility's~~
28 ~~prudently incurred environmental compliance costs, including~~
29 ~~the costs incurred in compliance with the Clean Air Act, and~~
30 ~~any amendments thereto or any change in the application or~~
31 ~~enforcement thereof, through an environmental compliance~~

1 ~~cost-recovery factor that is separate and apart from the~~
2 ~~utility's base rates. An adjustment for the level of costs~~
3 ~~currently being recovered through base rates or other~~
4 ~~rate-adjustment clauses must be included in the filing.~~

5 (3) The commission shall allow recovery of costs
6 associated with the utility's environmental compliance
7 activities through an environmental compliance cost-recovery
8 clause if:

9 (a) The costs were prudently incurred.

10 (b) The utility's activity is undertaken to comply
11 with a governmentally imposed law, rule, order, or requirement
12 which was enacted, issued, effective, or applied after the
13 last test year upon which rates were established for the
14 utility or is a new activity undertaken in an effort to
15 benefit the environment with the prior approval of the
16 commission.

17 (4) The commission shall allow recovery of the
18 utility's prudently incurred environmental compliance costs,
19 including the costs incurred in compliance with the Clean Air
20 Act and any amendments thereto, or any change in the
21 application or enforcement thereof, through the environmental
22 compliance cost-recovery factor that is separate and apart
23 from the utility's base rates.

24 (5)(3) The environmental compliance cost-recovery
25 factor must be set periodically, but at least annually, based
26 on projections of the utility's environmental compliance costs
27 during the forthcoming recovery period, and must be adjusted
28 for variations in line losses. The environmental compliance
29 cost-recovery factor must provide for periodic true-up of the
30 utility's actual environmental compliance costs with the
31 projections on which past factors have been set, and must

1 further require that any refund or collection made as part of
2 the true-up process include interest.

3 ~~(6)~~⁽⁴⁾ Environmental compliance costs recovered
4 through the environmental cost-recovery factor shall be
5 allocated to the customer classes using the criteria set out
6 in s. 366.06(1), taking into account the manner in which
7 similar types of investment or expense were allocated in the
8 company's last rate case.

9 ~~(7)~~⁽⁵⁾ Recovery of environmental compliance costs
10 under this section does not preclude inclusion of such costs
11 in base rates in subsequent rate proceedings, if that
12 inclusion is necessary and appropriate; however, any costs
13 recovered in base rates may not also be recovered in the
14 environmental cost-recovery clause.

15 Section 24. Section 366.83, Florida Statutes, is
16 amended to read:

17 366.83 Certain laws not applicable; saving clause.--No
18 utility shall be held liable for the acts or omissions of any
19 person in implementing or attempting to implement those
20 measures found cost-effective by, or recommended as a result
21 of, an energy audit. The findings and recommendations of an
22 energy audit shall not be construed to be a warranty or
23 guarantee of any kind, nor shall such findings or
24 recommendations subject the utility to liability of any kind.
25 Nothing in ss. 366.80-366.85 ~~and 403.519~~ shall preempt or
26 affect litigation pending on June 5, 1980, nor shall ss.
27 366.80-366.86 ~~and 403.519~~ preempt federal law unless such
28 preemption is expressly authorized by federal statute.

29 Section 25. (1) This act does not invalidate any rate
30 or charge which has been previously approved and which is
31

1 lawfully being charged prior to the effective date of this
2 act.

3 (2) Florida Public Service Commission Order No.
4 PSC-99-0519-AS-EI shall remain in effect and Florida Power &
5 Light Company shall fully comply with that order and the terms
6 and conditions reflected in the stipulation and settlement
7 approved by such order.

8 (3) Florida Public Service Commission Order No.
9 PSC-97-0840-S-EI shall remain in effect and Florida Power
10 Corporation shall fully comply with that order and the terms
11 and conditions reflected in the stipulation and settlement
12 approved by such order.

13 (4) Florida Public Service Commission Order No.
14 PSC-99-2131-S-EI shall remain in effect and Gulf Power Company
15 shall fully comply with that order and the terms and
16 conditions reflected in the stipulation and settlement
17 approved by such order.

18 Section 26. Section 403.502, Florida Statutes, is
19 amended to read:

20 403.502 Legislative intent.--The Legislature finds
21 that the present and predicted growth in electric power
22 demands in this state requires the development of a procedure
23 for the selection and utilization of sites for electrical
24 generating facilities and the identification of a state
25 position with respect to each proposed site. The Legislature
26 recognizes that the selection of sites and the routing of
27 associated transmission lines will have a significant impact
28 upon the welfare of the population, the location and growth of
29 industry, and the use of the natural resources of the state.
30 The Legislature finds that the efficiency of the permit
31 application and review process at both the state and local

1 level ~~may would~~ be improved with the implementation of a
2 process whereby a permit application would be centrally
3 coordinated and all permit decisions ~~could be~~ reviewed on the
4 basis of standards and recommendations of the deciding
5 agencies. It is the policy of this state that, while
6 recognizing the pressing need for increased power generation
7 facilities, the state shall ensure through available and
8 reasonable methods that the location and operation of
9 electrical power plants will produce minimal adverse effects
10 on human health, the environment, the ecology of the land and
11 its wildlife, and the ecology of state waters and their
12 aquatic life and will not unduly conflict with the goals
13 established by the applicable local comprehensive plans. ~~It is~~
14 ~~the intent to seek courses of action that will fully balance~~
15 ~~the increasing demands for electrical power plant location and~~
16 ~~operation with the broad interests of the public.~~Consistent
17 with the Legislature's intent to promote competitive wholesale
18 electric supplies in this state as provided in chapter 366,
19 the centrally-coordinated licensing process established under
20 this act shall be available, at the election of the applicant,
21 as an alternative to seeking permits from each agency
22 otherwise having jurisdiction. The department's action under
23 s. 403.509(1) shall ~~Such action will~~ be based on these
24 premises:
25 (1) To assure the citizens of Florida that operation
26 safeguards are technically sufficient for their welfare and
27 protection.
28 (2) To ensure adequate assessment of effect ~~a~~
29 ~~reasonable balance between the need for the facility and the~~
30 ~~environmental impact resulting from construction and operation~~
31 ~~of the facility, including air and water quality, fish and~~

1 wildlife, and the water resources and other natural resources
2 of the state.

3 (3) To ensure compliance with applicable nonprocedural
4 requirements of agencies, consistent with the provisions of s.
5 403.511(2)(b)~~meet the need for electrical energy as~~
6 ~~established pursuant to s. 403.519.~~

7 Section 27. Subsections (12) and (13) of section
8 403.503, Florida Statutes, are amended to read:

9 403.503 Definitions relating to Florida Electrical
10 Power Plant Siting Act.--As used in this act:

11 (12) "Electrical power plant" means, for the purpose
12 of certification, any ~~steam or solar~~ electrical generating
13 facility using any process or fuel, including nuclear
14 materials, and includes associated facilities which directly
15 support the construction and operation of the electrical power
16 plant and those associated transmission lines which connect
17 the electrical power plant to an existing transmission network
18 or rights-of-way to which the applicant intends to connect,
19 ~~except that this term does not include any steam or solar~~
20 ~~electrical generating facility of less than 75 megawatts in~~
21 ~~capacity unless the applicant for such a facility elects to~~
22 ~~apply for certification under this act.~~ An associated
23 transmission line may include, at the applicant's option, any
24 proposed terminal or intermediate substations or substation
25 expansions connected to the associated transmission line.

26 (13) "Electric utility" means cities and towns,
27 counties, public utility districts, ~~regulated electric~~
28 ~~companies, electric cooperatives, and joint operating~~
29 agencies, electric utilities as defined in s. 366.02, or
30 combinations thereof, engaged in, or authorized to engage in,
31

1 the business of generating, transmitting, or distributing
2 electric energy.

3 Section 28. Subsections (11) and (12) are added to
4 section 403.504, Florida Statutes, to read:

5 403.504 Department of Environmental Protection; powers
6 and duties enumerated.--The department shall have the
7 following powers and duties in relation to this act:

8 (11) To take action on an administrative law judge's
9 recommended order concerning land use and zoning consistency
10 in accordance with s. 403.508(2).

11 (12) To take final action on applications for
12 certification by written order in accordance with s.
13 403.509(1).

14 Section 29. Section 403.506, Florida Statutes, is
15 amended to read:

16 403.506 Applicability and certification.--

17 (1) The provisions of this act shall apply to any
18 electrical power plant as defined herein, for which an
19 applicant has elected to apply for certification ~~except that~~
20 ~~the provisions of this act shall not apply to any electrical~~
21 ~~power plant or steam generating plant of less than 75~~
22 ~~megawatts in capacity or to any substation to be constructed~~
23 ~~as part of an associated transmission line unless the~~
24 ~~applicant has elected to apply for certification of such plant~~
25 ~~or substation under this act. No construction of any new~~
26 ~~electrical power plant or expansion in steam generating~~
27 ~~capacity of any existing electrical power plant may be~~
28 ~~undertaken after October 1, 1973, without first obtaining~~
29 ~~certification in the manner as herein provided, except that~~
30 ~~this act shall not apply to any such electrical power plant~~
31 ~~which is presently operating or under construction or which~~

1 ~~has, upon the effective date of chapter 73-33, Laws of~~
2 ~~Florida, applied for a permit or certification under~~
3 ~~requirements in force prior to the effective date of such act.~~

4 (2) Except as provided in the certification,
5 modification of nonnuclear fuels, internal related hardware,
6 or operating conditions not in conflict with certification
7 which increase the electrical output of a unit to no greater
8 capacity than the maximum operating capacity of the existing
9 generator shall not constitute an alteration or addition to
10 generating capacity which is eligible for ~~requires~~
11 certification pursuant to this act.

12 (3) The application for any related department license
13 which is required pursuant to any federally delegated or
14 approved permit program shall be processed within the time
15 periods allowed by this act, in lieu of those specified in s.
16 120.60. However, permits issued pursuant to s. 403.0885 shall
17 be processed in accordance with 40 C.F.R. part 123.

18 Section 30. Subsection (4) is added to section
19 403.5064, Florida Statutes, to read:

20 403.5064 Distribution of application; schedules.--

21 (4) Within 7 days after completeness has been
22 determined, the applicant shall file a copy of the application
23 with the Florida Public Service Commission for informational
24 purposes. Copies of changes and amendments to the application
25 related to the commission's market surveillance and
26 reliability responsibilities set forth in ss. 366.05 and
27 366.055 shall be timely filed with the commission.

28 Section 31. Paragraph (a) of subsection (2) and
29 paragraph (b) of subsection (4) of section 403.507, Florida
30 Statutes, are amended to read:

1 403.507 Preliminary statements of issues, reports, and
2 studies.--

3 (2)(a) The following agencies shall prepare reports as
4 provided below and shall submit them to the department and the
5 applicant within 150 days after distribution of the complete
6 application:

7 1. The Department of Community Affairs shall prepare a
8 report containing recommendations which address the impact
9 upon the public of the proposed electrical power plant, based
10 on the degree to which the electrical power plant is
11 consistent with the applicable portions of the state
12 comprehensive plan and other such matters within its
13 jurisdiction. The Department of Community Affairs may also
14 comment on the consistency of the proposed electrical power
15 plant with applicable strategic regional policy plans or local
16 comprehensive plans and land development regulations.

17 ~~2. The Public Service Commission shall prepare a~~
18 ~~report as to the present and future need for the electrical~~
19 ~~generating capacity to be supplied by the proposed electrical~~
20 ~~power plant. The report shall include the commission's~~
21 ~~determination pursuant to s. 403.519 and may include the~~
22 ~~commission's comments with respect to any other matters within~~
23 ~~its jurisdiction.~~

24 2.3. The water management district shall prepare a
25 report as to matters within its jurisdiction.

26 3.4. Each local government in whose jurisdiction the
27 proposed electrical power plant is to be located shall prepare
28 a report as to the consistency of the proposed electrical
29 power plant with all applicable local ordinances, regulations,
30 standards, or criteria that apply to the proposed electrical
31 power plant, including adopted local comprehensive plans, land

1 development regulations, and any applicable local
2 environmental regulations adopted pursuant to s. 403.182 or by
3 other means.

4 ~~4.5.~~ The Fish and Wildlife Conservation Commission
5 shall prepare a report as to matters within its jurisdiction.

6 ~~5.6.~~ The regional planning council shall prepare a
7 report containing recommendations that address the impact upon
8 the public of the proposed electrical power plant, based on
9 the degree to which the electrical power plant is consistent
10 with the applicable provisions of the strategic regional
11 policy plan adopted pursuant to chapter 186 and other matters
12 within its jurisdiction.

13 ~~6.7.~~ Any other agency, if requested by the department,
14 shall also perform studies or prepare reports as to matters
15 within that agency's jurisdiction which may potentially be
16 affected by the proposed electrical power plant.

17 (4) The department shall prepare a written analysis,
18 which shall be filed with the designated administrative law
19 judge and served on all parties no later than 240 days after
20 the complete application is filed with the department, but no
21 later than 60 days prior to the hearing, and which shall
22 include:

23 (b) Copies of the studies and reports required by this
24 section ~~and s. 403.519.~~

25 Section 32. Subsections (2) and (3) and paragraph (a)
26 of subsection (4) of section 403.508, Florida Statutes, are
27 amended to read:

28 403.508 Land use and certification proceedings,
29 parties, participants.--

30 (2) The sole issue for determination at the land use
31 hearing shall be whether or not the proposed site is

1 consistent and in compliance with existing land use plans and
 2 zoning ordinances. The designated administrative law judge's
 3 recommended order shall be issued within 30 days after
 4 completion of the hearing and shall be reviewed by the
 5 department board within 45 days after receipt of the
 6 recommended order by the department board. If it is
 7 determined by the department board that the proposed site does
 8 conform with existing land use plans and zoning ordinances in
 9 effect as of the date of the application, the responsible
 10 zoning or planning authority shall not thereafter change such
 11 land use plans or zoning ordinances so as to affect the
 12 proposed site unless certification is subsequently denied or
 13 withdrawn. If it is determined by the department board that
 14 the proposed site does not conform, it shall be the
 15 responsibility of the applicant to make the necessary
 16 application for rezoning. Should the application for rezoning
 17 be denied, the applicant may appeal this decision to the
 18 department board, which may, if it determines after notice and
 19 hearing that it is in the public interest to authorize the use
 20 of the land as a site for an electrical power plant, authorize
 21 a variance to the adopted land use plan and zoning ordinances.
 22 In the event a variance is denied, no further action may be
 23 taken on the complete application by the department until the
 24 proposed site conforms to the adopted land use plan or zoning
 25 ordinances.

26 (3) A certification hearing shall be held by the
 27 designated administrative law judge no later than 300 days
 28 after the complete application is filed with the department;
 29 ~~however, an affirmative determination of need by the Public~~
 30 ~~Service Commission pursuant to s. 403.519 shall be a condition~~
 31 ~~precedent to the conduct of the certification hearing.~~ The

1 certification hearing shall be held at a location in proximity
2 to the proposed site. The certification hearing shall also
3 constitute the sole hearing allowed by chapter 120 to
4 determine the substantial interest of a party regarding any
5 required agency license or any related permit required
6 pursuant to any federally delegated or approved permit
7 program. At the conclusion of the certification hearing, the
8 designated administrative law judge shall, after consideration
9 of all evidence of record, submit to the department ~~board~~ a
10 recommended order no later than 60 days after the filing of
11 the hearing transcript. In the event the administrative law
12 judge fails to issue a recommended order within 60 days after
13 the filing of the hearing transcript, the administrative law
14 judge shall submit a report to the department ~~board~~ with a
15 copy to all parties within 60 days after the filing of the
16 hearing transcript to advise the department ~~board~~ of the
17 reason for the delay in the issuance of the recommended order
18 and of the date by which the recommended order will be issued.

19 (4)(a) Parties to the proceeding shall include:

20 1. The applicant.

21 ~~2. The Public Service Commission.~~

22 ~~2.3.~~ The Department of Community Affairs.

23 ~~3.4.~~ The Fish and Wildlife Conservation Commission.

24 ~~4.5.~~ The water management district.

25 ~~5.6.~~ The department.

26 ~~6.7.~~ The regional planning council.

27 ~~7.8.~~ The local government.

28 Section 33. Section 403.509, Florida Statutes, is
29 amended to read:

30 403.509 Final disposition of application.--

31

1 (1) Within 60 days after receipt of the designated
2 administrative law judge's recommended order, the department
3 ~~board~~ shall act upon the application by written order,
4 approving certification or denying the issuance of a
5 certificate, in accordance with the terms of this act, and
6 stating the reasons for issuance or denial. If the
7 certificate is denied, the department ~~board~~ shall set forth in
8 writing the action the applicant would have to take to secure
9 the department's ~~board's~~ approval of the application.

10 ~~(2) The issues that may be raised in any hearing~~
11 ~~before the board shall be limited to those matters raised in~~
12 ~~the certification proceeding before the administrative law~~
13 ~~judge or raised in the recommended order. All parties, or~~
14 ~~their representatives, or persons who appear before the board~~
15 ~~shall be subject to the provisions of s. 120.66.~~

16 (2)(3) Within 30 days after issuance of the
17 certification, the department shall issue and forward to the
18 United States Environmental Protection Agency a proposed
19 operation permit for a major source of air pollution and must
20 issue or deny any other license required pursuant to any
21 federally delegated or approved permit program. The
22 department's action on the license and its action on the
23 proposed operation permit for a major source of air pollution
24 shall be based upon the record and recommended order of the
25 certification hearing. The department's actions on a
26 federally required new source review or prevention of
27 significant deterioration permit shall be based on the record
28 and recommended order of the certification hearing and of any
29 other proceeding held in connection with the application for a
30 new source review or prevention of significant deterioration
31 permit, on timely public comments received with respect to the

1 application or preliminary determination for such permit, and
2 on the provisions of the state implementation plan. The
3 department's action on a federally required new source review
4 or prevention of significant deterioration permit shall differ
5 from the actions taken by the siting board regarding the
6 certification if the federally approved state implementation
7 plan requires such a different action to be taken by the
8 department. Nothing in this part shall be construed to
9 displace the department's authority as the final permitting
10 entity under the federally approved permit program. Nothing
11 in this part shall be construed to authorize the issuance of a
12 new source review or prevention of significant deterioration
13 permit which does not conform to the requirements of the
14 federally approved state implementation plan. Any final
15 operation permit for a major source of air pollution must be
16 issued in accordance with the provisions of s. 403.0872.
17 Unless the federally delegated or approved permit program
18 provides otherwise, licenses issued by the department under
19 this subsection shall be effective for the term of the
20 certification issued by the board. If renewal of any license
21 issued by the department pursuant to a federally delegated or
22 approved permit program is required, such renewal shall not
23 affect the certification issued by the board, except as
24 necessary to resolve inconsistencies pursuant to s.
25 403.516(1)(a).

26 (3)~~(4)~~ In regard to the properties and works of any
27 agency which is a party to the certification hearing, the
28 department ~~board~~ shall have the authority to decide issues
29 relating to the use, the connection thereto, or the crossing
30 thereof, for the electrical power plant and site and to direct
31 any such agency to execute, within 30 days after the entry of

1 certification, the necessary license or easement for such use,
2 connection, or crossing, subject only to the conditions set
3 forth in such certification.

4 ~~(4)(5)~~ Except for the issuance of any operation permit
5 for a major source of air pollution pursuant to s. 403.0872,
6 the issuance or denial of the certification by the department
7 ~~board~~ and the issuance or denial of any related department
8 license required pursuant to any federally delegated or
9 approved permit program shall be the final administrative
10 action required as to that application.

11 ~~(5)(6)~~ All certified electrical power plants must
12 apply for and obtain a major source air-operation permit
13 pursuant to s. 403.0872. Major source air-operation permit
14 applications for certified electrical power plants must be
15 submitted pursuant to a schedule developed by the department.
16 To the extent that any conflicting provision, limitation, or
17 restriction under any rule, regulation, or ordinance imposed
18 by any political subdivision of the state, or by any local
19 pollution control program, was superseded during the
20 certification process pursuant to s. 403.510(1), such rule,
21 regulation, or ordinance shall continue to be superseded for
22 purposes of the major source air-operation permit program
23 under s. 403.0872.

24 Section 34. Subsection (3) of section 403.510, Florida
25 Statutes, is amended to read:

26 403.510 Superseded laws, regulations, and
27 certification power.--

28 (3) The department ~~board~~ shall have the power to adopt
29 reasonable procedural rules to carry out its duties under this
30 act and to give effect to the legislative intent that this act
31

1 is to provide an efficient, simplified, centrally coordinated,
2 one-stop licensing process.

3 Section 35. Subsection (1) and paragraph (b) of
4 subsection (2) of section 403.511, Florida Statutes, are
5 amended to read:

6 403.511 Effect of certification.--

7 (1) Subject to the conditions set forth therein, any
8 certification signed by the Governor or issued by the
9 department shall constitute the sole license of the state and
10 any agency as to the approval of the site and the construction
11 and operation of the proposed electrical power plant, except
12 for the issuance of department licenses required under any
13 federally delegated or approved permit program and except as
14 otherwise provided in subsection (4).

15 (2)

16 (b) Except as provided in subsection (4), the
17 certification may include conditions which constitute
18 variances, exemptions, or exceptions from nonprocedural
19 requirements of the department or any agency which were
20 expressly considered during the proceeding unless waived by
21 the agency as provided below and which otherwise would be
22 applicable to the construction and operation of the proposed
23 electrical power plant. No variance, exemption, exception, or
24 other relief shall be granted from a state statute or rule for
25 the protection of endangered or threatened species, aquatic
26 preserves, Outstanding National Resource Waters, or
27 Outstanding Florida Waters or for the disposal of hazardous
28 waste, except to the extent authorized by the applicable
29 statute or rule or except upon a finding by the department
30 ~~siting board~~ that the public interests set forth in s. 403.502
31 in certifying the electrical power plant at the site proposed

1 by the applicant overrides the public interest protected by
2 the statute or rule from which relief is sought. Each party
3 shall notify the applicant and other parties at least 60 days
4 prior to the certification hearing of any nonprocedural
5 requirements not specifically listed in the application from
6 which a variance, exemption, exception, or other relief is
7 necessary in order for the ~~department board~~ to certify any
8 electrical power plant proposed for certification. Failure of
9 such notification by an agency shall be treated as a waiver
10 from nonprocedural requirements of the department or any other
11 agency. However, no variance shall be granted from standards
12 or regulations of the department applicable under any
13 federally delegated or approved permit program, except as
14 expressly allowed in such program.

15 Section 36. Subsection (1) of section--403.512,
16 Florida Statutes, is amended to read:

17 403.512 Revocation or suspension of
18 certification.--Any certification may be revoked or suspended:

19 (1) For any material false statement in the
20 application or in the supplemental or additional statements of
21 fact or studies required of the applicant when a true answer
22 would have warranted the board's or the department's refusal
23 to issue ~~recommend~~ a certification in the first instance.

24 Section 37. Section 403.513, Florida Statutes, is
25 amended to read:

26 403.513 Review.--Proceedings under this act shall be
27 subject to judicial review as provided in chapter 120.
28 Separate appeals of the certification order ~~issued by the~~
29 ~~board~~ and of any department permit issued pursuant to a
30 federally delegated or approved permit program shall be
31 consolidated for purposes of judicial review.

1 Section 38. Paragraph (a) of subsection (1) of section
2 403.516, Florida Statutes, is amended to read:

3 403.516 Modification of certification.--

4 (1) A certification may be modified after issuance in
5 any one of the following ways:

6 (a) ~~The board may delegate to the department the~~
7 ~~authority to modify specific conditions in the certification.~~
8 The department may modify specific conditions of a site
9 certification which are inconsistent with the terms of any
10 final air pollution operation permit for the certified
11 electrical power plant issued by the United States
12 Environmental Protection Agency under the terms of 42 U.S.C.
13 s. 7661d.

14 Section 39. Paragraph (a) of subsection (1) and
15 subsection (4) of section 403.517, Florida Statutes, are
16 amended to read:

17 403.517 Supplemental applications for sites certified
18 for ultimate site capacity.--

19 (1)(a) The department shall adopt rules governing the
20 processing of supplemental applications for certification of
21 the construction and operation of electrical power plants to
22 be located at sites which have been previously certified for
23 an ultimate site capacity pursuant to this act. Supplemental
24 applications shall be limited to electrical power plants using
25 the fuel type previously certified for that site. The rules
26 adopted pursuant to this section shall include provisions for:

27 1. Prompt appointment of a designated administrative
28 law judge.

29 2. The contents of the supplemental application.
30
31

1 3. Resolution of disputes as to the completeness and
2 sufficiency of supplemental applications by the designated
3 administrative law judge.

4 4. Public notice of the filing of the supplemental
5 applications.

6 5. Time limits for prompt processing of supplemental
7 applications.

8 6. Final disposition by the department ~~board~~ within
9 215 days of the filing of a complete supplemental application.

10 (4) For the purposes of this act, the term "ultimate
11 site capacity" means the maximum generating capacity for a
12 site as certified by the board or the department.

13 Section 40. All applications for site certification
14 under part II of chapter 403, Florida Statutes, pending on or
15 filed after the effective date of this act, including all
16 applications for site certification with respect to which no
17 final action was taken pursuant to s. 403.509, Florida
18 Statutes, shall be subject to this act, provided, any action
19 taken in favor of an applicant under part II of chapter 403,
20 Florida Statutes, prior to the effective date of this act
21 shall not be affected by this act. Processing of such
22 applications shall be completed in accordance with this act.
23 If any application for site certification under part II of
24 chapter 403, Florida Statutes, is denied before the effective
25 date of this act, solely because the applicant failed to
26 obtain a determination of need from the Florida Public Service
27 Commission, such application may be approved after the
28 effective date of this act, without undergoing further review
29 or hearings pursuant to ss. 403.507-403.058, Florida Statutes,
30 provided the proposed electrical power plant complies with the
31 requirements of this act.

1 Section 41. Subsection (4) of section 403.5175,
2 Florida Statutes, is amended to read:

3 403.5175 Existing electrical power plant site
4 certification.--

5 (4) In considering whether an application submitted
6 under this section should be approved in whole, approved with
7 appropriate conditions, or denied, the department ~~board~~ shall
8 consider whether, and to the extent to which the proposed
9 changes to the electrical power plant and its continued
10 operation under certification will:

11 (a) Comply with applicable nonprocedural requirements
12 of agencies;

13 (b) Result in environmental or other benefits compared
14 to current utilization of the site and operations of the
15 electrical power plant if the proposed changes or alterations
16 are undertaken;

17 (c) Minimize, through the use of reasonable and
18 available methods, the adverse effects on human health, the
19 environment, and the ecology of the land and its wildlife and
20 the ecology of state waters and their aquatic life; and

21 (d) Serve and protect the broad interests of the
22 public.

23 Section 42. Subsection (12) of section 403.522,
24 Florida Statutes, is amended to read:

25 403.522 Definitions relating to Transmission Line
26 Siting Act.--As used in this act:

27 (12) "Electric utility" means cities and towns,
28 counties, public utility districts, ~~regulated electric~~
29 ~~companies, electric cooperatives, and joint operating~~
30 agencies, electric utilities as defined in s. 366.02, or
31 combinations thereof, engaged in, or authorized to engage in,

1 the business of generating, transmitting, or distributing
2 electric energy.

3 Section 43. Subsection (12) is added to section
4 403.523, Florida Statutes, to read:

5 403.523 Department of Environmental Protection; powers
6 and duties.--The department shall have the following powers
7 and duties:

8 (12) To take final action on applications for
9 certification by written order in accordance with s. 403.529.

10 Section 44. Paragraph (b) of subsection (3) of section
11 403.527, Florida Statutes, is amended to read:

12 403.527 Notice, proceedings, parties, participants.--

13 (3)

14 (b) In the event the administrative law judge fails to
15 issue a recommended order within 60 days after the filing of
16 the hearing transcript, the administrative law judge shall
17 submit a report to the department board with a copy to all
18 parties within 60 days after the filing of the hearing
19 transcript to advise the department board of the reason for
20 the delay in the issuance of the recommended order and of the
21 date by which the recommended order will be issued.

22 Section 45. Section 403.529, Florida Statutes, is
23 amended to read:

24 403.529 Final disposition of application.--

25 (1) Within 30 days after receipt of the administrative
26 law judge's recommended order, the department board shall act
27 upon the application by written order, approving in whole,
28 approving with such conditions as the department board deems
29 appropriate based on the record of the certification
30 proceeding, or denying the certification and stating the
31 reasons for issuance or denial.

1 ~~(2) The issues that may be raised in any hearing~~
2 ~~before the board shall be limited to matters raised in the~~
3 ~~certification proceeding before the administrative law judge~~
4 ~~or raised in the recommended order. All parties, or their~~
5 ~~representatives, or persons who appear before the board shall~~
6 ~~be subject to the provisions of s. 120.66.~~

7 (2)(3) If certification is denied, the department
8 ~~board~~ shall set forth in writing the action the applicant
9 would have to take to secure the approval of the application
10 by the department board.

11 (3)(4) In determining whether an application should be
12 approved in whole, approved with modifications or conditions,
13 or denied, the department board shall consider whether, and
14 the extent to which, the location of the transmission line
15 corridor and the construction and maintenance of the
16 transmission line will:

17 (a) Ensure electric power system reliability and
18 integrity;

19 (b) Meet the electrical energy needs of the state in
20 an orderly and timely fashion;

21 (c) Comply with nonprocedural requirements of
22 agencies;

23 (d) Be consistent with applicable local government
24 comprehensive plans; and

25 (e) Effect a reasonable balance between the need for
26 the transmission line as a means of providing abundant
27 low-cost electrical energy and the impact upon the public and
28 the environment resulting from the location of the
29 transmission line corridor and maintenance of the transmission
30 lines.
31

1 ~~(4)~~~~(5)~~(a) Any transmission line corridor certified by
2 the department board shall meet the criteria of this section.
3 When more than one transmission line corridor is proper for
4 certification pursuant to s. 403.522(10) and meets the
5 criteria of this section, the department board shall certify
6 the transmission line corridor that has the least adverse
7 impact regarding the criteria in subsection~~(3)~~~~(4)~~, including
8 costs.

9 (b) If the department board finds that an alternate
10 corridor rejected pursuant to s. 403.5271 meets the criteria
11 of subsection~~(3)~~~~(4)~~ and has the least adverse impact
12 regarding the criteria in subsection~~(3)~~~~(4)~~, including cost,
13 of all corridors that meet the criteria of subsection~~(3)~~~~(4)~~,
14 ~~then~~ the department board shall deny certification or shall
15 allow the applicant to submit an amended application to
16 include such corridor.

17 (c) If the department board finds that two or more of
18 the corridors that comply with the provisions of subsection
19 ~~(3)~~~~(4)~~ have the least adverse impacts regarding the criteria
20 in subsection~~(3)~~~~(4)~~, including costs, and that such corridors
21 are substantially equal in adverse impacts regarding the
22 criteria in subsection~~(3)~~~~(4)~~, including costs, ~~then~~ the
23 department board shall certify the corridor preferred by the
24 applicant if the corridor is one proper for certification
25 pursuant to s. 403.522(10).

26 ~~(5)~~~~(6)~~ The issuance or denial of the certification by
27 the board shall be the final administrative action required as
28 to that application.

29 Section 46. Subsection (1) and paragraph (b) of
30 subsection (2) of section 403.531, Florida Statutes, are
31 amended to read:

1 403.531 Effect of certification.--

2 (1) Subject to the conditions set forth therein,
3 certification shall constitute the sole license of the state
4 and any agency as to the approval of the location of
5 transmission line corridors and the construction and
6 maintenance of transmission lines. The certification shall be
7 valid for the life of the transmission line, provided that
8 construction on, or condemnation or acquisition of, the
9 right-of-way is commenced within 5 years of the date of
10 certification or such later date as may be authorized by the
11 board or the department.

12 (2)

13 (b) The certification may include conditions which
14 constitute variances and exemptions from nonprocedural
15 standards or regulations of the department or any other
16 agency, which were expressly considered during the proceeding
17 unless waived by the agency as provided below and which
18 otherwise would be applicable to the location of the proposed
19 transmission line corridor or the construction and maintenance
20 of the transmission lines. Each party shall notify the
21 applicant and other parties at the time scheduled for the
22 filing of the agency reports of any nonprocedural requirements
23 not specifically listed in the application from which a
24 variance, exemption, exception, or other relief is necessary
25 in order for the department ~~board~~ to certify any corridor
26 proposed for certification. Failure of such notification
27 shall be treated as a waiver from the nonprocedural
28 requirements of that agency.

29 Section 47. Section 403.5315, Florida Statutes, is
30 amended to read:
31

1 403.5315 Modification of certification.--A
2 certification may be modified after issuance in any one of the
3 following ways:

4 ~~(1) The board may delegate to the department the~~
5 ~~authority to modify specific conditions in the certification.~~

6 (1)~~(2)~~ The department may modify the terms and
7 conditions of the certification if no party objects in writing
8 to such modification within 45 days after notice by mail to
9 the last address of record in the certification proceeding,
10 and if no other person whose substantial interests will be
11 affected by the modification objects in writing within 45 ~~30~~
12 days after issuance of public notice. If objections are
13 raised, the applicant may file a petition for modification
14 pursuant to subsection (3).

15 ~~(2)~~(3) The applicant or the department may file a
16 petition for modification with the department and the Division
17 of Administrative Hearings setting forth:

18 (a) The proposed modification;
19 (b) The factual reasons asserted for the modification;
20 and

21 (c) The anticipated additional environmental effects
22 of the proposed modification.

23 ~~(3)~~(4) Petitions filed pursuant to subsection (3)
24 shall be disposed of in the same manner as an application but
25 with time periods established by the administrative law judge
26 commensurate with the significance of the modification
27 requested.

28 Section 48. Subsection (1) of section 403.532, Florida
29 Statutes, is amended to read:

30 403.532 Revocation or suspension of
31 certification.--Any certification may be revoked or suspended:

1 (1) For any material false statement in the
2 application or in the supplemental or additional statements of
3 fact or studies required of the applicant when a true answer
4 would have warranted the board's or the department's refusal
5 to recommend a certification in the first instance.

6 Section 49. Subsection (3) of section 403.536, Florida
7 Statutes, is amended to read:

8 403.536 Superseded laws, regulations, and
9 certification power.--

10 (3) The department ~~board~~ shall have the power to adopt
11 reasonable procedural rules to carry out its duties under this
12 act and to give effect to the legislative intent that this act
13 provide an efficient, centrally coordinated, one-stop
14 licensing process.

15 Section 50. Sections 186.801 and 403.519, subsection
16 (6) of section 377.709, and subsection (6) of section 403.522,
17 Florida Statutes, are repealed.

18 Section 51. This act shall take effect upon becoming a
19 law.