

STATE OF FLORIDA



# Public Service Commission

**Request for Proposals  
For Financial Advisory and  
Expert Witness Services to  
Assist the Florida Public Service Commission  
With Electric Utility Petition to Issue  
Nuclear Asset-Recovery Bonds**

**RFP Distribution Date: May 18, 2015**

**Proposals Due: June 8, 2015  
No Later Than 5:00 P.M.**

## **I. GENERAL INFORMATION**

### **A. Request for Proposals (RFP) Point of Contact and General Information**

This RFP is issued by the Florida Public Service Commission (FPSC or Commission). The RFP Coordinator is the sole point of contact for communications with the Commission regarding this RFP. The RFP Coordinator can be contacted at: [mlaux@psc.state.fl.us](mailto:mlaux@psc.state.fl.us).

The FPSC is requesting proposals for financial advisory and expert witness services to be provided to the Commission and its staff regarding a potential Florida investor-owned electric utility (IOU) petition(s) requesting a Financing Order to issue Nuclear Asset-Recovery Bonds. The selected Financial Advisor will assist the Commission in analyzing such petitions and provide expert witness testimony, assist in the preparation and implementation of any Financing Orders, and assist in the review of any subsequent issuances of Nuclear Asset-Recovery Bonds to ensure that the bonds were timely and efficiently issued and resulted in the lowest nuclear asset-recovery charges consistent with prevailing market conditions and the terms of the Financing Order which authorized the issuance.

Any person with a qualified disability shall not be denied equal access and effective communication regarding any proposal/proposal documents or the attendance at any related meeting or proposal opening. If accommodations are needed because of a disability, please contact the Commission Clerk, Calotta Stauffer (850) 413- 6728 at least five (5) business days prior to the noticed event.

### **B. Background and Definitions**

During the 2015 Regular Session, the Florida Legislature enacted Committee Substitute for House Bill 7109 (CS/HB 7109). The bill is included in this RFP as Attachment A. Section 8 of the Florida Constitution requires every bill passed by the Legislature to be presented to the Governor, and that such bills shall become law if the Governor approves and signs the bill, or fails to veto the bill. Upon presentation of the bill by the Legislature, the Governor will have 15 days to take action. If CS/HB 7109 becomes law, the effective date will be July 1, 2015. As of the date of issuance of this RFP, CS/HB 7109 has not been presented to the Governor.

Section 7 of CS/HB 7109 provides an IOU a method to recover costs of certain nuclear generation assets. Subject to FPSC review of the IOU's petition and the issuance of a Financing Order, Nuclear Asset-Recovery Bonds may be issued by the petitioning IOU to recover the asset investment, financing costs and other identified expenses associated with the bond offering. The repayment of these bonds would be securitized by a non-bypassable charge on customer bills.

Section 7 of CS/HB 7109 (part 366.95(1)(i)), defines Nuclear Asset-Recovery Bonds as “bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by an electric utility or an assignee pursuant to a Financing Order, the proceeds of which are used directly or indirectly to recover, finance, or refinance commission-approved nuclear asset recovery costs and financing costs, and that are secured by or payable from nuclear asset recovery property.” Financing Orders are defined in Section 7 of CS/HB 7109 (part 366.95(1)(f)), as “an order that authorizes the issuance of Nuclear Asset-Recovery Bonds; the imposition, collection, and periodic adjustments of the nuclear asset recovery charge; and the creation of nuclear asset recovery property.”

C. Terms and Conditions of RFP

The FPSC anticipates that the successful respondent to this RFP will provide financial advisory and expert witness services with respect to IOU petitions filed with the Commission requesting a Financing Order or nuclear asset securitization pursuant to Section 7 of CS/HB 7109. Each petition filed shall be reviewed separately, subject to all terms, conditions and contingencies as set forth in an Agreement between the FPSC and the Financial Advisor. The Commission cannot guarantee the number or timing of any petitions that may be filed pursuant to Section 7 of CS/HB 7109. Any and all proposals submitted in response to this RFP must address the actual scope of work and include all required information as requested in Sections II, III and IV of this RFP.

D. Compensation

Section 7 of CS/HB 7109 (part 366.95(2)(c)2.) provides that expenses associated with outside consultant services and counsel are to be included as part of the financing costs associated with a bond issuance. Any compensation earned or paid to the Financial Advisor is contingent upon:

- CS/HB 7109 becoming law,
- Actual closing of a bond issuance to which the requested services relate to, and
- FPSC acceptance of the Financial Advisor performance under the Agreement.

Except for the proceeds from an actual Nuclear Asset-Recovery Bond issuance, no other source of funding is available to pay the Financial Advisor for any expenses incurred or compensation earned. The Financial Advisor cannot and will not be paid from any funds appropriated to the FPSC. Any payment for compensation will take the form of a single payment (per petition under review), made to the Financial Advisor at the time of a bond closing in the amount as specified in the Agreement between the FPSC and the Financial Advisor.

## II. PROCEDURES AND PROVISIONS

- A. A signed original and seven copies of a respondent's proposal must be submitted in a sealed envelope marked "Proposal for Financial Advisor, sealed bid." The envelope must also show the name of the respondent. Proposals must be received no later than 5:00 p.m. Eastern Daylight Time, June 8, 2015 at the:

Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850.

- B. All timely received sealed proposal(s) will be opened by the RFP Coordinator on June 9, 2015, at 9:30 a.m. Eastern Daylight Time, in room 154 of the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. The proposal opening will be a public meeting.
- C. Copies of each proposal will be delivered, unaltered by the RFP Coordinator, to members of the FPSC Selection Committee for evaluation. Unless exempt by law, all information submitted in response to this RFP is a public record and available for public inspection pursuant to Chapter 119, Florida Statutes (F.S.), and Article I, Section 24, Florida Constitution. Any respondent claiming that its proposal contains information that is exempt from the public records law shall clearly mark and segregate that information from the remainder of the proposal and provide the specific statutory citation for such exemption. Written requests for exemption will be reviewed by the Commission as described in Chapter 366, F.S. Respondents must comply with Rule 25-22.006, Florida Administrative Code (F.A.C.). The FPSC reserves the right to use any or all information/material presented in any proposal submitted in reply to the RFP, subject to any confidentiality granted by the FPSC pursuant to Chapter 366, F.S. Disqualification of a respondent does not eliminate this right.
- D. Proposals that do not comply with the conditions specified herein, or include all required information, may be rejected. However, the FPSC reserves the right to accept proposals despite minor irregularities and will allow a respondent to correct such minor irregularities upon notification.
- E. This is a solicitation for financial advisory and expert witness services. The FPSC is not bound or required to enter into an Agreement with any respondent to this RFP and may terminate the RFP process at any time without penalty.
- F. The FPSC will not reimburse or be liable for any respondent's expenses incurred in connection with the selection process or the cost of any services performed by any respondent prior to the execution of a contract.

- G. The FPSC may investigate the qualifications of any respondent and may request additional information in regards to a respondent's proposal.
- H. In submitting a proposal, the respondent acknowledges that, unless authorized in writing by the FPSC Contract Manager, the Financial Advisor, during the term of the Agreement, will not be permitted to underwrite any bond issued by an IOU that filed a petition for a Financial Order. The FPSC may grant such permission limited to only those bonds which are being sold competitively.
- I. Only written requests for additional information or clarification concerning this RFP will be accepted by the FPSC and must be submitted to the RFP Coordinator via email at: [mlaux@psc.state.fl.us](mailto:mlaux@psc.state.fl.us).
- J. The FPSC will respond to all written inquiries concerning this RFP, and post all such questions and answers on the FPSC homepage: [www.floridapsc.com](http://www.floridapsc.com). To view any posted information related to this RFP, select the "Request for Proposals for Financial Advisory Services" link under the "Hot Topics" section of the FPSC homepage.
- K. The FPSC will post this RFP and any other required notices at the following locations; FPSC homepage [www.floridapsc.com](http://www.floridapsc.com), DMS Vendor Bid System [http://www.myflorida.com/apps/vbs/vbs\\_main\\_menu](http://www.myflorida.com/apps/vbs/vbs_main_menu), and, for the RFP, the May 18, 2015 issue of the Florida Administrative Register [www.flrules.org/bigDoc/](http://www.flrules.org/bigDoc/)
- L. Any unsolicited contact with FPSC Commissioners or FPSC staff concerning this RFP is not allowed and could constitute grounds for disqualification of a respondent.
- M. The FPSC assumes no liability with respect to the RFP, proposals, or any matters related thereto. To the fullest extent permitted by law, any prospective Financial Advisor, and its assignees or successors, by its participation in this RFP process shall indemnify, save and hold the FPSC and its employees and agents, free and harmless from all suits, causes of action, debts, rights, judgments, claims, demands, accounts, damages, costs, losses, and expenses of whatsoever kind in law or equity, known and unknown, foreseen and unforeseen, arising from or out of the RFP and/or any subsequent acts related thereto.
- N. All information contained in this RFP, including any clarifications, amendments and supplements thereto, reflects the best and most accurate information available to the FPSC at the time of preparation. No inaccuracies in such information shall constitute a basis for change of the payments to the Financial Advisor or a basis for legal recovery of damages, actual, consequential, or punitive.
- O. Any protest concerning this RFP or other related Commission action shall be made in accordance with Sections 120.57(3) and 287.042(2), F.S., and Chapter 28-110, F.A.C. Section 120.57(3)(b), F.S., and Rule 28-110.003, F.A.C., require that a notice of protest of a RFP or other solicitation documents shall be made within seventy-two (72) hours after the posting of notice(s). Any and all protest(s) concerning this RFP must be

timely filed with the Commission's Clerk at the address identified in Section II subsection A of this RFP. Failure to file a protest within the time prescribed in Section 120.57(3), F.S., shall constitute a waiver of proceedings under Chapter 120, F.S. Questions directed to the RFP Coordinator shall not constitute formal notice of a protest.

- P. The FPSC shall issue and post a notice of award, if any, to the successful respondent; however, no Agreement shall be formed between the respondent and the FPSC until the FPSC signs a contract with the successful respondent.
- Q. The FPSC may make an award under this RFP within sixty (60) days after the date of the opening of proposals, during which period responses shall remain firm and may not be withdrawn by a respondent. If an award is not made within sixty (60) days, the response shall remain firm until either the FPSC awards a contract or the FPSC receives from the respondent written notice that its proposal is withdrawn. Any proposal that expresses a shorter duration may, in the FPSC's sole discretion, be accepted or rejected.
- R. All information provided by, and representations made by, the respondent are material and important and will be relied upon by the FPSC in awarding an Agreement associated with this RFP.
- S. In submitting a proposal, the respondent understands, represents, acknowledges and certifies the following. If a respondent cannot so certify to any of following, the respondent shall include in its proposal a written explanation of why it cannot do so.
- The respondent is not currently under suspension or debarment by the State of Florida or any other governmental authority.
  - To the best of the knowledge of the person signing the proposal, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
  - The respondent currently has no delinquent obligations to the State of Florida, including a claim by the State for liquidated damages under any other contract.
  - The proposal is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
  - The prices and amounts included in the proposal have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts,

actual or approximate, have been disclosed to any respondent or potential respondent, nor will they be disclosed before the solicitation opening.

- The respondent has fully informed the FPSC, in writing, of all known convictions of the respondent, its affiliates (as defined in Section 287.133(1)(a), F.S.), and all directors, officers, and employees of the respondent and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- The respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for:
  - commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract, or
  - violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, or
  - within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The respondent is not on a convicted vendor list pursuant to Section 287.133, F.S., or on a discriminatory vendor list pursuant to Section 287.134, F.S., and is authorized to conduct business in the State of Florida.
- The Financial Advisor will be subject to the provisions of Chapter 112, F.S., (Public Officers and Employees), Chapter 350, F.S., (Standards of Conduct), Section 11.062 and 216.347, F.S., (prohibiting the use of State funds or appropriations for lobbying). Each respondent shall disclose within its proposal the name of any officer, director, or agent, who is also an employee of the State of Florida, or any of its agencies. Further, all respondents shall disclose the name of any state employee who owns, directly or indirectly, an interest of five percent or more in the respondent's firm or any of its branches.

- The respondent has read and understands the terms and conditions as set forth in Section VI of this RFP.
- If chosen to be the Financial Advisor, the respondent agrees that it intends to be legally bound to the Agreement that will be formed with the FPSC upon execution of the FPSC's contract.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the proposal, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the proposal.
- The respondent shall indemnify, defend, and hold harmless the FPSC and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its proposal.

### **III. SCOPE OF SERVICES**

Any service described in this Section of the RFP may need to be provided and performed by the Financial Advisor, under the Agreement, upon and in accordance with the written directions of the FPSC Contract Manager.

- A. Review petition(s) and all testimony, exhibits, responses to interrogatories, responses to requests for production of documents, deposition transcripts, hearing transcripts, and post hearing briefs.
- B. Assist Commission staff in the preparation of discovery.
- C. Prepare and provide expert witness testimony on topics identified by Commission staff. Any individual, and only that individual, who provides expert witness testimony will be precluded from participating in the preparation of either the Commission staff's post hearing recommendation(s) to the Commissioners or the Commission's final order concerning the petition under review.
- D. Review proposed financing costs, structuring of bond issuance, expected pricing of the bonds, and terms and conditions of the Nuclear Asset-Recovery Bonds and make recommendations for any suggested modifications to the proposed offering(s).
- E. Analyze whether the financing proposed in a petition would be reasonably expected to result in lower overall costs, or would avoid or significantly mitigate rate impacts to customers, than would alternative methods of financing or recovering certain nuclear



generation assets and expenses, and make recommendations for suggested modifications.

- F. Assist in the preparation and review of any FPSC Financing Order(s).
- G. Review any motions for reconsideration or appeals filed in response to an issued Financing Order. Assist Commission staff in responding to any such motions or appeals.
- H. Assist the Commission staff in evaluating all testimony, exhibits, filings, and reports in connection with a Nuclear Asset-Recovery Bond issuance, including but not limited to: Issuance Advice Letter, proposed servicing reports, and proposed true-up calculation procedures.
- I. Participate fully, and in advance of, all plans and decisions concerning the structuring, pricing and marketing of any Nuclear Asset-Recovery Bonds proposed to be issued by an IOU.
- J. Review documents associated with any final bond issuance, monitor the actual solicitation of bonds, and ensure that all reasonable and customary due diligence has been performed on the part of the IOU, the IOU's bond underwriter, and the IOU's financial advisors
- K. Provide updates on the status of any bond issuance and information on prevailing market conditions.
- L. Assist the Commission in its review of information submitted by an IOU on the actual costs of a Nuclear Asset-Recovery Bond issuance pursuant to Section 7 of CS/HB 7109 (part 366.95(2)(c)5.).
- M. Produce fully supported and documented statements concerning the fairness or reasonableness of the timing of a sale, gross underwriting spread, and pricing of any Nuclear Asset-Recovery Bond(s) and other reports and documents as needed to effectuate the purposes of this RFP and Section 7 of CS/HB 7109.
- N. As directed by the FPSC Contract Manager, perform other services as needed to assist the Commission in carrying out its duties and responsibilities pursuant to Section 7 of CS/HB 7109.

#### **IV. INFORMATION TO BE PROVIDED FOR EVALUATION IN PROPOSAL**

The purpose of the RFP is to identify and retain a Financial Advisor to assist the Commission in its review of any IOU petition(s) requesting a Financing Order. In addition, if a petition is approved by the Commission, the Financial Advisor will assist in the Commission's review of any Nuclear Asset-Recovery Bond issuance to ensure

that the bonds were timely and efficiently issued and resulted in the lowest nuclear asset-recovery charges consistent with prevailing market conditions and the terms of the Financing Order which authorized the issuance. Information provided in response to the following topics will be evaluated by the FPSC Selection Committee and will form the basis for the FPSC's selection of a winning proposal.

Except as set forth below, information provided in response to this Section shall not exceed 25 pages and any such information provided in excess of this limit will not be included in the FPSC evaluation or be available for awarding points. Transcripts of prior expert witness testimony, letters of recommendations, additional information regarding conflicts of interest, and any other information or declarations that may be required in accordance with other Sections of this RFP will not be counted towards the page limitation if separately marked and numbered as an attachment to the main body of the respondent's proposal. Proposal cover sheets and/or letter of transmittals will also be excluded from the page limitation.

To ensure that each proposal is evaluated fairly, the respondent must clearly identify, in its proposal, what information is to be evaluated within each separate topic as presented below:

A. Basic Information

1. Provide the name of the respondent and the preferred primary contact's mailing address, telephone number, fax number, and email address.

B. Certifications

1. Include a statement certifying that the proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the same services, and is in all respects fair and without collusion or fraud.

C. Qualifications (Maximum evaluation points 25)

1. Describe the respondent's organization, structure, and the resources the respondent will make available to the FPSC to execute the services to be provided in this RFP.
2. Identify (by name and title) the individuals who will have primary responsibility for providing the requested services to the FPSC and provide information on each named individual including their years of experience, type of experience, and any special expertise in connection with investor-owned electric utility securitized transactions.
3. For any utility securitized transactions listed as experience below, identify the individuals who were involved in those transactions for the respondent and

whether they will be available to the FPSC for this assignment. If not, please describe why they will not be available.

D. Experience (Maximum evaluation points 30)

1. Describe the respondent's experience and expertise in providing financial advisory services to utility regulatory agencies and experience in providing expert witness services in an administrative or judicial proceeding. Explain how such experience and expertise would be helpful to the FPSC in carrying out its duties and responsibilities under Section 7 of CS/HB 7109 (part 366.95(2)(c)2. and 5.)
2. Identify all individuals of the respondent who will be made available to the FPSC that have previously testified under oath before a utility regulatory body regarding any investor-owned electric utility securitized transactions. Please provide (as a separately marked and numbered attachment to the proposal) transcripts of all such testimony.
3. Describe the respondent's experience assisting in the development of regulatory financing decisions concerning investor-owned electric utility securitized transactions. Identify the sponsoring utility, the regulatory commission, and the date of issuance of any financing orders in which the respondent actively participated.
4. Explain the respondent's experience working with the Securities and Exchange Commission (SEC) regarding investor-owned electric utility securitized transactions. In particular, explain the respondent's experience in filing registration statements for investor-owned electric utility securitization bonds on SEC Form S-1 and Form S-3.
5. Explain the respondent's experience reviewing bond development and issuance expenses incurred by a sponsoring utility that would be included in ratepayer charges such as administrative costs, rating agency fees, counsel expenses, and modeling charges.
6. Identify any ratepayer cost savings that can be directly attributed to the respondent's efforts in an investor-owned electric utility securitized transaction.
7. Describe the respondent's experience determining appropriate bond pricing benchmarks for investor-owned electric utility securitized transactions and evaluating pricing versus such benchmarks. Provide the results of the last 5 (or all if less than 5) investor-owned electric utility securitized transactions involving the respondent as a financial advisor to a regulatory commission showing the relative spreads over swaps or treasuries. Compare these results to U.S. Agency securities of similar weighted average life at the time of issuance.

E. Scope of Services (Maximum evaluation points 25)

1. Provide a plan on how the respondent will address each item identified in the scope of services requirements set forth in Section III of this RFP. The plan should include comments concerning anticipated substantive issue(s) to be addressed and anticipated procedural matters.
2. Comment on the sufficiency of the scope of services identified in Section III of the RFP to assist the Commission in discharging its duties and responsibilities under Section 7 of CS/HB 7109 (part 366.95(2)(c)2. and 5.); identify and describe any additional services the respondent would suggest to assist the Commission in its discharging of these duties and responsibilities.

F. References (Maximum evaluation points 5)

1. List in the main body of the proposal and provide (as a separately marked and numbered attachment to the proposal) any letters of recommendation related to experience in providing financial advisory and expert witness services in connection with investor-owned electric utility securitized bonding.

G. Compensation (Maximum evaluation points 15)

1. Any compensation for work performed by the Financial Advisor under this RFP will be paid as described in Section I subsection D. of this RFP. For each petition that may be reviewed, identify the total amount of compensation required by the respondent to perform any such work as described in Section III of this RFP and any additional activities proposed by the respondent pursuant to Section IV subsection E. The requested compensation, which may not exceed \$2,500,000 per petition reviewed, will be competitively evaluated.

H. Conflicts of Interest

1. Identify any Florida investor-owned electric utility, its parent, or any affiliate for whom the respondent is currently providing financial services, bond underwriting services, or has a financial relationship.
2. Identify any potential or existing conflicts, the party with whom the conflict exists or might arise, the nature of the conflict and whether the respondent would step aside or resign from engagement or representation creating the conflict.
3. Identify any arrangement with any individual or entity with respect to the sharing of any compensation, fees or profit received from or in relation to acting as a Financial Advisor to the FPSC or whose compensation is based in whole or in part on compensation for acting as the Financial Advisor. If such arrangement exists, provide (as a separately marked and numbered attachment to the proposal)

part on compensation for acting as the Financial Advisor. If such arrangement exists, provide (as a separately marked and numbered attachment to the proposal) copies of any contract(s) relating to the arrangement and describe in detail the nature of the arrangement and the method of computing compensation.

4. Identify any person or firm retained by the respondent for the purpose of assisting the respondent to be selected as the Financial Advisor pursuant to this RFP. If the selection of the respondent to become the Financial Advisor will obligate the respondent to pay any firm or an individual who is not a full time employee of the respondent, identify the individual or firm to be paid and provide (as a separately numbered attachment to the proposal) specific information relating to compensation paid or to be paid including copies of any written contract relating to such arrangement.

## **V. EVALUATION PROCESS**

The responses to this RFP will be independently evaluated by members of the Selection Committee. Evaluation points will be assigned to the proposals pursuant to the point system identified in Section IV. Responses required throughout this RFP for which no points are assigned will not be used in computing the point score awarded to a proposal, but may be used for informational purposes or as a basis for possible disqualification of the respondent.

The FPSC Selection Committee members will evaluate the proposals by reviewing the responses to each of the items identified in Section IV and assigning points up to the maximum points allowed for each item. The ranking of each proposal will be based upon the total points awarded to each proposal by the committee members. The FPSC will post its notice of Intent to Award an Agreement to the respondent who submitted the highest ranked proposal and was not otherwise disqualified. The Agreement will include the RFP, the respondent's proposal, and an executed contract. It is anticipated that a respondent and the FPSC may need to clarify, by mutual agreement, how the RFP, the respondent's proposal, and the FPSC contract will work together. If the parties are not able to clarify the Agreement to the satisfaction of the FPSC, the FPSC reserves the right to reject a respondent's proposal and may select the next highest ranked proposal, subject to any needed clarifications.

## **VI. FINANCIAL ADVISOR CONTRACT**

All mutually agreeable clarifications will be reflected in the contract document along with the language set forth in this Section of the RFP, and routine contractual information including without limitation, the names and addresses of the parties, points of contact, intended purpose and term of the Agreement, a summary of services to be provided, and compensation. Any selected respondent must enter into a signed contract with the FPSC and shall perform services in accordance with such Agreement which

will be comprised of documents, as clarified during various stages of the RFP process, and include: the RFP, the respondent's proposal, and the Commission's contract. Any inconsistency between provisions of these documents will be resolved in the following order of precedence: 1) the contract; 2) the RFP; and 3) the respondent's proposal to the RFP. These documents, including any attachments, will embody the entire Agreement of the parties.

Provision of services to be provided by the Financial Advisor will be subject to the following terms and conditions:

- A. The parties agree that time is of the essence for the Financial Advisor's performance under the agreement.
- B. The FPSC will identify an FPSC Contract Manager who will act as the primary contact between the Commission and the Financial Advisor after a contract has been executed by both parties. The FPSC Contract Manager will assign tasks to the Financial Advisor, establish timelines for completion of such tasks, and identify any required deliverables.
- C. The Financial Advisor will provide the FPSC Contract Manager with monthly reports containing status information on each task assigned by the FPSC Contract Manager, current updates to the market condition reports, a general summary of the status of agreed upon deliverables, and any requests that require approval or actions by the FPSC Contract Manager to keep the work on schedule.
- D. The FPSC does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The FPSC will not pay for any personal property taxes levied on the Financial Advisor or for any taxes levied on employees' wages.
- E. Neither party shall be responsible for failure to perform under the Agreement if circumstances beyond their control, including, but not limited to, acts of God, governmental authority, war in the United States or other occurrence that makes it illegal or impossible for the Financial Advisor to perform.
- F. Work is to be performed by personnel and entities described in the Financial Advisor's proposal to the RFP. The Financial Advisor shall neither change the personnel performing under the Agreement nor transfer any interest in the Agreement without the prior written consent of the FPSC Contract Manager.
- G. The Agreement shall be in effect upon execution by both parties, and shall remain in effect until all Commission action undertaken pursuant to each petition becomes final and all required post bond issuance reviews are completed and accepted by the Contract Manager.

- H. The Financial Advisor and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, worker's compensation, licenses and registration requirements.
- I. The Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of Florida. Venue shall be in Leon County, Florida. With regard to limitation of actions, Section 95.11, F.S., shall govern.
- J. The Financial Advisor and any of its employees, agents, or assigns are independent contractors and not employees or agents of the FPSC.
- K. The Financial Advisor shall be fully liable for the actions of its agents, employees, partners, or subcontractors.
- L. The delay or failure by the Commission to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of the Commission's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- M. The FPSC's responsibility for tort claims shall be governed by the provisions of Section 768.28, F.S. Nothing within the Agreement shall be construed as waiving the sovereign immunity of the State of Florida.
- N. The FPSC may terminate the Agreement for its convenience or cause by giving ten (10) days written notice by registered mail to the Financial Advisor, specifying the effective date of termination. If the Agreement is terminated, the Financial Advisor shall, subject to the issuance of bonds, be paid for services satisfactorily performed subject to any damages sustained by the FPSC.
- Convenience  
The FPSC, by written notice to the Financial Advisor, may terminate the Agreement in whole or in part when the FPSC determines in its sole discretion that it is in the State's interest to do so. The Financial Advisor shall not perform any services after it receives a notice of termination, except as directed by the FPSC Contract Manager. The Financial Advisor shall not be entitled to recover any cancellation charges or lost profits.
  - Cause  
The FPSC may terminate the Agreement if the Financial Advisor fails to (a) deliver a deliverable within the time specified by the FPSC Contract Manager, (b) maintain adequate progress, thus endangering performance under the Agreement, (c) honor any term(s) of the Agreement, or (d) abide by any statutory, regulatory, or licensing requirement.
- O. If the Agreement is terminated, all finished or unfinished documents, data, studies, correspondence, reports and other products prepared by or for the Financial Advisor

under the Agreement shall be made available to, and for the exclusive use of, the FPSC for the purposes intended under the Agreement. Notwithstanding the above, the Financial Advisor shall not be relieved of liability to the FPSC for damages by virtue of any termination or breach of the Agreement by the Financial Advisor.

- P. If any provision of the Agreement is determined to be prohibited by law or judged to be void or unenforceable, that provision shall, to the extent required, be severed from the Agreement and rendered ineffective without prejudice to the validity and enforceability of the remainder of the provision or the Agreement generally. When possible, the parties shall use reasonable efforts to amend any provision prohibited by law or judged to be void or unenforceable in such a way that it becomes valid and legal and implements the original intent of the parties as to the matter or matters in question.
- Q. Unless otherwise exempt from disclosure under Chapter 119, F.S., or Section 24(a) of Article I of the State Constitution, all documents developed for or by the Financial Advisor under the Agreement qualifying as public records shall be made available by the Financial Advisor to the requestor, for public inspection. The FPSC may unilaterally cancel the Agreement for refusal by the Financial Advisor to allow such public access.
- R. The parties acknowledge and agree that the State of Florida may make the Agreement, and any documents related thereto, available to the public by posting on the Internet, or by other means.
- S. Any change in the Agreement shall be accomplished by a formal written amendment signed by the authorized representatives of both the FPSC and the Financial Advisor. No other document or oral communications shall be construed as an amendment to the Agreement.
- T. The Financial Advisor agrees to permanently refrain from using or mentioning its association with the FPSC in advertisements, letterhead, or business cards. The Financial Advisor's services to the FPSC may be generally described in the Financial Advisor's professional resume. The Financial Advisor may not give the impression in any manner, that the FPSC recommends or endorses the Financial Advisor or the services it performs.
- U. All contacts with the news media pertaining to the Agreement shall be referred to the FPSC'S Public Information Director at: [cmuir@psc.state.fl.us](mailto:cmuir@psc.state.fl.us).

## **VII. ATTACHMENT**

Attachment A  
Committee Substitute for House Bill 7109 (CS/HB 7109)



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1  
2 An act relating to the Florida Public Service  
3 Commission; amending s. 350.01, F.S.; providing term  
4 limits for commissioners appointed after a specified  
5 date; requiring that specified meetings, workshops,  
6 hearings, or proceedings of the commission be streamed  
7 live and recorded copies be made available on the  
8 commission's website; amending s. 350.031, F.S.;  
9 requiring a person who lobbies a member of the Florida  
10 Public Service Commission Nominating Council to  
11 register as a lobbyist; requiring implementation by  
12 joint rule; amending s. 350.041, F.S.; requiring  
13 public service commissioners to annually complete  
14 ethics training; amending s. 350.042, F.S.; revising  
15 the prohibition against ex parte communications to  
16 include any matter that a commissioner knows or  
17 reasonably expects will be filed within a certain  
18 timeframe; providing legislative intent; defining  
19 terms; applying the prohibition against ex parte  
20 communications to specified meetings; specifying  
21 conditions under which the Governor must remove from  
22 office any commissioner found to have willfully and  
23 knowingly violated the ex parte communications law;  
24 amending s. 366.05, F.S.; limiting the use of tiered  
25 rates in conjunction with extended billing periods;  
26 limiting deposit amounts; requiring a utility to

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27 | notify each customer if it has more than one rate for  
28 | any customer class; requiring the utility to provide  
29 | good faith assistance to the customer in determining  
30 | the best rate; assigning responsibility to the  
31 | customer for the rate selection; requiring the  
32 | commission to approve new tariffs and certain changes  
33 | to existing tariffs; amending s. 366.82, F.S.;  
34 | requiring that money received by a utility for the  
35 | development of demand-side renewable energy systems be  
36 | used solely for that purpose; creating s. 366.95,  
37 | F.S.; defining terms; authorizing electric utilities  
38 | to petition the commission for certain financing  
39 | orders that authorize the issuance of nuclear asset-  
40 | recovery bonds, authorize the imposition, collection,  
41 | and periodic adjustments of nuclear asset-recovery  
42 | charges, and authorize the creation of nuclear asset-  
43 | recovery property; providing requirements; providing  
44 | exceptions to the commission's jurisdiction for  
45 | certain aspects of financing orders; specifying duties  
46 | of electric utilities that have obtained a financing  
47 | order and issued nuclear asset-recovery bonds;  
48 | specifying properties, requirements, and limitations  
49 | relating to nuclear asset-recovery property; providing  
50 | requirements as to the sufficiency of the description  
51 | of certain nuclear asset-recovery property; subjecting  
52 | financing statements to the Uniform Commercial Code;

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53 providing an exception; specifying that nuclear asset-  
54 recovery bonds are not public debt; specifying certain  
55 state pledges relating to bondholders; declaring that  
56 certain entities are not electric utilities under  
57 certain circumstances; specifying effect of certain  
58 provisions in situations of conflict; providing for  
59 protecting validity of certain bonds under certain  
60 circumstances; providing penalties; providing an  
61 effective date.

62  
63 Be It Enacted by the Legislature of the State of Florida:

64  
65 Section 1. Subsection (3) of section 350.01, Florida  
66 Statutes, is amended, and subsection (8) is added to that  
67 section, to read:

68 350.01 Florida Public Service Commission; terms of  
69 commissioners; vacancies; election and duties of chair; quorum;  
70 proceedings.—

71 (3) Any person serving on the commission who seeks to be  
72 appointed or reappointed shall file with the nominating council  
73 no later than June 1 prior to the year in which his or her term  
74 expires a statement that he or she desires to serve an  
75 additional term. A commissioner appointed after July 1, 2015,  
76 may not serve more than three consecutive terms.

77 (8) Each meeting, including each internal affairs meeting,  
78 workshop, hearing, or other proceeding attended by two or more

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79 commissioners, and each such meeting, workshop, hearing, or  
80 other proceeding where a decision that concerns the rights or  
81 obligations of any person is made, shall be streamed live on the  
82 Internet and a recorded copy of the meeting, workshop, hearing,  
83 or proceeding shall be made available on the commission's  
84 website.

85 Section 2. Subsection (10) is added to section 350.031,  
86 Florida Statutes, to read:

87 350.031 Florida Public Service Commission Nominating  
88 Council.—

89 (10) In keeping with the purpose of the council, which is  
90 to select nominees to be appointed to an arm of the legislative  
91 branch of government, a person who is employed and receives  
92 payment, or who contracts for economic consideration, for the  
93 purpose of influencing or attempting to influence action of the  
94 council through oral or written communication or through an  
95 attempt to obtain the goodwill of a legislator or nonlegislator  
96 member of the council, or a person who is principally employed  
97 for governmental affairs by another person or governmental  
98 entity to act on behalf of that other person or entity for this  
99 purpose, must register as a lobbyist pursuant to s. 11.045 and  
100 otherwise comply with the requirements of that section. The  
101 Legislature shall implement this subsection by joint rule.

102 Section 3. Subsection (3) of section 350.041, Florida  
103 Statutes, is renumbered as subsection(4), and a new subsection  
104 (3) is added to that section to read:

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105 350.041 Commissioners; standards of conduct.—

106 (3) ETHICS TRAINING.—Beginning January 1, 2016, a  
107 commissioner must annually complete at least 4 hours of ethics  
108 training that addresses, at a minimum, s. 8, Art. II of the  
109 State Constitution, the Code of Ethics for Public Officers and  
110 Employees, and the public records and public meetings laws of  
111 this state. This requirement may be satisfied by completion of a  
112 continuing legal education class or other continuing  
113 professional education class, seminar, or presentation, if the  
114 required subjects are covered.

115 Section 4. Subsections (1) and (3) and paragraph (b) of  
116 subsection (7) of section 350.042, Florida Statutes, are amended  
117 to read:

118 350.042 Ex parte communications.—

119 (1) A commissioner should accord to every person who is  
120 legally interested in a proceeding, or the person's lawyer, full  
121 right to be heard according to law, and, except as authorized by  
122 law, shall neither initiate nor consider ex parte communications  
123 concerning the merits, threat, or offer of reward in any  
124 proceeding under s. 120.569 or s. 120.57 that is currently  
125 pending before the commission or that he or she knows or  
126 reasonably expects will be filed with the commission within 180  
127 days after the date of any such communication, other than a  
128 proceeding under s. 120.54 or s. 120.565, workshops, or internal  
129 affairs meetings. An ~~Ne~~ individual may not ~~shall~~ discuss ex  
130 parte with a commissioner the merits of any issue that he or she

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131 knows will be filed with the commission within 180 ~~90~~ days. ~~The~~  
132 ~~provisions of~~ This subsection does ~~shall~~ not apply to commission  
133 staff.

134 (3)(a) The Legislature finds that it is important to have  
135 commissioners who are educated and informed on regulatory  
136 policies and developments in science, technology, business  
137 management, finance, law, and public policy which are associated  
138 with the industries that the commissioners regulate. The  
139 Legislature also finds that it is in the public interest for  
140 commissioners to become educated and informed on these matters  
141 through active participation in meetings that are scheduled by  
142 organizations that sponsor such educational or informational  
143 sessions, programs, conferences, and similar events and that are  
144 duly noticed and open to the public.

145 (b) As used in this subsection, the term "active  
146 participation" or "participating in" includes, but is not  
147 limited to, attending or speaking at educational sessions,  
148 participating in organization governance by attending meetings,  
149 serving on committees or in leadership positions, participating  
150 in panel discussions, and attending meals and receptions  
151 associated with such events that are open to all attendees.

152 (c) The prohibition in subsection (1) remains in effect at  
153 all times at such meetings wherever located. While participating  
154 in such meetings, a commissioner shall:

155 1. Refrain from commenting on or discussing any proceeding  
156 under s. 120.569 or s. 120.57 which is currently pending before

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157 | the commission or that he or she knows or reasonably expects  
158 | will be filed with the commission within 180 days after the  
159 | meeting.

160 |       2. Use reasonable care to ensure that the content of the  
161 | educational session or other session in which the commissioner  
162 | participates is not designed to address or create a forum to  
163 | influence the commissioner on any proceeding under s. 120.569 or  
164 | s. 120.57 which is currently pending before the commission or  
165 | that he or she knows or reasonably expects will be filed with  
166 | the commission within 180 days after the meeting ~~This section~~  
167 | ~~shall not apply to oral communications or discussions in~~  
168 | ~~scheduled and noticed open public meetings of educational~~  
169 | ~~programs or of a conference or other meeting of an association~~  
170 | ~~of regulatory agencies.~~

171 |       (7)

172 |       (b) If the Commission on Ethics finds that there has been  
173 | a violation of this section by a public service commissioner, it  
174 | shall provide the Governor and the Florida Public Service  
175 | Commission Nominating Council with a report of its findings and  
176 | recommendations. The Governor is authorized to enforce the  
177 | findings and recommendations of the Commission on Ethics,  
178 | pursuant to part III of chapter 112 and to remove from office a  
179 | commissioner who is found by the Commission on Ethics to have  
180 | willfully and knowingly violated this section. The Governor  
181 | shall remove from office a commissioner who is found by the  
182 | Commission on Ethics to have willfully and knowingly violated

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183 this section after a previous finding by the Commission on  
184 Ethics that the commissioner willfully and knowingly violated  
185 this section in a separate matter.

186 Section 5. Subsection (1) of section 366.05, Florida  
187 Statutes, is amended to read:

188 366.05 Powers.—

189 (1) (a) In the exercise of such jurisdiction, the  
190 commission shall have power to prescribe fair and reasonable  
191 rates and charges, classifications, standards of quality and  
192 measurements, including the ability to adopt construction  
193 standards that exceed the National Electrical Safety Code, for  
194 purposes of ensuring the reliable provision of service, and  
195 service rules and regulations to be observed by each public  
196 utility; to require repairs, improvements, additions,  
197 replacements, and extensions to the plant and equipment of any  
198 public utility when reasonably necessary to promote the  
199 convenience and welfare of the public and secure adequate  
200 service or facilities for those reasonably entitled thereto; to  
201 employ and fix the compensation for such examiners and  
202 technical, legal, and clerical employees as it deems necessary  
203 to carry out the provisions of this chapter; and to adopt rules  
204 pursuant to ss. 120.536(1) and 120.54 to implement and enforce  
205 the provisions of this chapter.

206 (b) If the commission authorizes a public utility to  
207 charge tiered rates based upon levels of usage and to vary its  
208 regular billing period, the utility may not charge a customer a



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209 higher rate because of an increase in usage attributable to an  
210 extension of the billing period; however, the regular meter  
211 reading date may not be advanced or postponed more than 5 days  
212 for routine operating reasons without prorating the billing for  
213 the period.

214 (c) Effective January 1, 2016, a utility may not charge or  
215 receive a deposit in excess of the following amounts:

216 1. For an existing account, the total deposit may not  
217 exceed 2 months of average actual charges, calculated by adding  
218 the monthly charges from the 12-month period immediately before  
219 the date any change in the deposit amount is sought, dividing  
220 this total by 12, and multiplying the result by 2. If the  
221 account has less than 12 months of actual charges, the deposit  
222 shall be calculated by adding the available monthly charges,  
223 dividing this total by the number of months available, and  
224 multiplying the result by 2.

225 2. For a new service request, the total deposit may not  
226 exceed 2 months of projected charges, calculated by adding the  
227 12 months of projected charges, dividing this total by 12, and  
228 multiplying the result by 2. Once a new customer has had  
229 continuous service for a 12-month period, the amount of the  
230 deposit shall be recalculated using actual data. Any difference  
231 between the projected and actual amounts must be resolved by the  
232 customer paying any additional amount that may be billed by the  
233 utility or the utility returning any overcharge.

234 (d) If a utility has more than one rate for any customer

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235 class, it must notify each customer in that class of the  
236 available rates and explain how the rate is charged to the  
237 customer. If a customer contacts the utility seeking assistance  
238 in selecting the most advantageous rate, the utility must  
239 provide good faith assistance to the customer. The customer is  
240 responsible for charges for service provided under the selected  
241 rate.

242 (e) New tariffs and changes to an existing tariff, other  
243 than an administrative change that does not substantially change  
244 the meaning or operation of the tariff, must be approved by  
245 majority vote of the commission, except as otherwise  
246 specifically provided by law.

247 Section 6. Subsection (2) of section 366.82, Florida  
248 Statutes, is amended to read:

249 366.82 Definition; goals; plans; programs; annual reports;  
250 energy audits.—

251 (2) The commission shall adopt appropriate goals for  
252 increasing the efficiency of energy consumption and increasing  
253 the development of demand-side renewable energy systems,  
254 specifically including goals designed to increase the  
255 conservation of expensive resources, such as petroleum fuels, to  
256 reduce and control the growth rates of electric consumption, to  
257 reduce the growth rates of weather-sensitive peak demand, and to  
258 encourage development of demand-side renewable energy resources.  
259 The commission may allow efficiency investments across  
260 generation, transmission, and distribution as well as

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261 efficiencies within the user base. Moneys received by a utility  
262 to implement measures to encourage the development of demand-  
263 side renewable energy systems shall be used solely for such  
264 purposes and related administrative costs.

265 Section 7. Section 366.95, Florida Statutes, is created to  
266 read:

267 366.95 Financing for certain nuclear generating asset  
268 retirement or abandonment costs.-

269 (1) DEFINITIONS.-As used in this section, the term:

270 (a) "Ancillary agreement" means any bond, insurance  
271 policy, letter of credit, reserve account, surety bond, interest  
272 rate lock or swap arrangement, hedging arrangement, liquidity or  
273 credit support arrangement, or other financial arrangement  
274 entered into in connection with nuclear asset-recovery bonds.

275 (b) "Assignee" means any entity, including, but not  
276 limited to, a corporation, limited liability company,  
277 partnership or limited partnership, public authority, trust,  
278 financing entity, or other legally recognized entity to which an  
279 electric utility assigns, sells, or transfers, other than as  
280 security, all or a portion of its interest in or right to  
281 nuclear asset-recovery property. The term also includes any  
282 entity to which an assignee assigns, sells, or transfers, other  
283 than as security, its interest in or right to nuclear asset-  
284 recovery property.

285 (c) "Commission" means the Florida Public Service  
286 Commission.

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287 (d) "Electric utility" or "utility" has the same meaning  
288 as provided in s. 366.8255.

289 (e) "Financing costs" means:

290 1. Interest and acquisition, defeasance, or redemption  
291 premiums payable on nuclear asset-recovery bonds;

292 2. Any payment required under an ancillary agreement and  
293 any amount required to fund or replenish a reserve account or  
294 other accounts established under the terms of any indenture,  
295 ancillary agreement, or other financing documents pertaining to  
296 nuclear asset-recovery bonds;

297 3. Any other cost related to issuing, supporting,  
298 repaying, refunding, and servicing nuclear asset-recovery bonds,  
299 including, but not limited to, servicing fees, accounting and  
300 auditing fees, trustee fees, legal fees, consulting fees,  
301 financial advisor fees, administrative fees, placement and  
302 underwriting fees, capitalized interest, rating agency fees,  
303 stock exchange listing and compliance fees, security  
304 registration fees, filing fees, information technology  
305 programming costs, and any other costs necessary to otherwise  
306 ensure the timely payment of nuclear asset-recovery bonds or  
307 other amounts or charges payable in connection with the bonds,  
308 including costs related to obtaining the financing order;

309 4. Any taxes and license fees imposed on the revenues  
310 generated from the collection of the nuclear asset-recovery  
311 charge;

312 5. Any state and local taxes, franchise, gross receipts,

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313 and other taxes or similar charges, including, but not limited  
314 to, regulatory assessment fees, in any such case whether paid,  
315 payable, or accrued; and

316 6. Any costs incurred by the commission for any outside  
317 consultants or counsel pursuant to subparagraph (2)(c)2.

318 (f) "Financing order" means an order that authorizes the  
319 issuance of nuclear asset-recovery bonds; the imposition,  
320 collection, and periodic adjustments of the nuclear asset-  
321 recovery charge; and the creation of nuclear asset-recovery  
322 property.

323 (g) "Financing party" means any and all of the following:  
324 holders of nuclear asset-recovery bonds and trustees, collateral  
325 agents, any party under an ancillary agreement, or any other  
326 person acting for the benefit of holders of nuclear asset-  
327 recovery bonds.

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

330 (i) "Nuclear asset-recovery bonds" means bonds,  
331 debentures, notes, certificates of participation, certificates  
332 of beneficial interest, certificates of ownership, or other  
333 evidences of indebtedness or ownership that are issued by an  
334 electric utility or an assignee pursuant to a financing order,  
335 the proceeds of which are used directly or indirectly to  
336 recover, finance, or refinance commission-approved nuclear  
337 asset-recovery costs and financing costs, and that are secured  
338 by or payable from nuclear asset-recovery property. If

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339 certificates of participation or ownership are issued,  
340 references in this section to principal, interest, or premium  
341 shall be construed to refer to comparable amounts under those  
342 certificates.

343 (j) "Nuclear asset-recovery charge" means the amounts  
344 authorized by the commission to repay, finance, or refinance  
345 nuclear asset-recovery costs and financing costs. If determined  
346 appropriate by the commission and provided for in a financing  
347 order, such amounts are to be imposed on and be a part of all  
348 customer bills and be collected by an electric utility or its  
349 successors or assignees, or a collection agent, in full through  
350 a nonbypassable charge that is separate and apart from the  
351 electric utility's base rates, which charge shall be paid by all  
352 existing or future customers receiving transmission or  
353 distribution service from the electric utility or its successors  
354 or assignees under commission-approved rate schedules or under  
355 special contracts, even if a customer elects to purchase  
356 electricity from an alternative electricity supplier following a  
357 fundamental change in regulation of public utilities in this  
358 state.

359 (k) "Nuclear asset-recovery costs" means:

360 1. At the option of and upon petition by the electric  
361 utility, and as approved by the commission pursuant to sub-  
362 subparagraph (2)(c)1.b., pretax costs that an electric utility  
363 has incurred or expects to incur which are caused by, associated  
364 with, or remain as a result of the early retirement or

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365 abandonment of a nuclear generating asset unit that generated  
366 electricity and is located in this state where such early  
367 retirement or abandonment is deemed to be reasonable and prudent  
368 by the commission through a final order approving a settlement  
369 or other final order issued by the commission before July 1,  
370 2017, and where the pretax costs to be securitized exceed \$750  
371 million at the time of the filing of the petition. Costs  
372 eligible or claimed for recovery pursuant to s. 366.93 are not  
373 eligible for securitization under this section unless they were  
374 in the electric utility's rate base and were included in base  
375 rates before retirement or abandonment.

376 2. Such pretax costs, where determined appropriate by the  
377 commission, include, but are not limited to, the capitalized  
378 cost of the retired or abandoned nuclear generating asset unit,  
379 other applicable capital and operating costs, accrued carrying  
380 charges, deferred expenses, reductions for applicable insurance  
381 and salvage proceeds and previously stipulated write-downs or  
382 write-offs, if any, and the costs of retiring any existing  
383 indebtedness, fees, costs, and expenses to modify existing debt  
384 agreements or for waivers or consents related to existing debt  
385 agreements.

386 (1) "Nuclear asset-recovery property" means:

387 1. All rights and interests of an electric utility or  
388 successor or assignee of the electric utility under a financing  
389 order, including the right to impose, bill, collect, and receive  
390 nuclear asset-recovery charges authorized under the financing

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391 order and to obtain periodic adjustments to such charges as  
392 provided in the financing order; or

393 2. All revenues, collections, claims, rights to payments,  
394 payments, money, or proceeds arising from the rights and  
395 interests specified in subparagraph 1., regardless of whether  
396 such revenues, collections, claims, rights to payment, payments,  
397 money, or proceeds are imposed, billed, received, collected, or  
398 maintained together with or commingled with other revenues,  
399 collections, rights to payment, payments, money, or proceeds.

400 (m) "Pledgee" means a financing party to which an electric  
401 utility or its successors or assignees mortgages, negotiates,  
402 hypothecates, pledges, or creates a security interest or lien on  
403 all or any portion of its interest in or right to nuclear asset-  
404 recovery property.

405 (n) "Uniform Commercial Code" has the same meaning as  
406 provided in chapters 670-680.

407 (2) FINANCING ORDERS.-

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

410 1. Describe the nuclear asset-recovery costs;

411 2. Indicate whether the utility proposes to finance all or  
412 a portion of the nuclear asset-recovery costs using nuclear  
413 asset-recovery bonds. If the utility proposes to finance a  
414 portion of such costs, the utility must identify the specific  
415 portion in the petition;

416 3. Estimate the financing costs related to the nuclear



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417 asset-recovery bonds;

418 4. Estimate the nuclear asset-recovery charges necessary  
419 to recover the nuclear asset-recovery costs and financing costs  
420 and the period for recovery of such costs;

421 5. Estimate any projected cost savings, based on current  
422 market conditions, or demonstrate how the issuance of nuclear  
423 asset-recovery bonds and the imposition of nuclear asset-  
424 recovery charges would avoid or significantly mitigate rate  
425 impacts to customers as compared with the traditional method of  
426 financing and recovering nuclear asset-recovery costs from  
427 customers;

428 6. Demonstrate that securitization has a significant  
429 likelihood of resulting in lower overall costs or would avoid or  
430 significantly mitigate rate impacts compared to the traditional  
431 method of cost recovery; and

432 7. File direct testimony supporting the petition.

433 (b) If an electric utility is subject to a settlement  
434 agreement that governs the type and amount of principal costs  
435 that could be included in nuclear asset-recovery costs, the  
436 electric utility must file a petition, or have filed a petition,  
437 with the commission for review and approval of those principal  
438 costs no later than 60 days before filing a petition for a  
439 financing order pursuant to this section. The commission may not  
440 authorize any such principal costs to be included or excluded,  
441 as applicable, as nuclear asset-recovery costs if such inclusion  
442 or exclusion, as applicable, of those costs would otherwise be

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443 precluded by such electric utility's settlement agreement.

444 (c)1. Proceedings on a petition submitted pursuant to  
445 paragraph (a) begin with the petition by an electric utility,  
446 filed subject to the timeframe specified in paragraph (b), if  
447 applicable, and shall be disposed of in accordance with chapter  
448 120 and applicable rules, except that this section, to the  
449 extent applicable, controls.

450 a. Within 7 days after the filing of a petition, the  
451 commission shall publish a case schedule, which must place the  
452 matter before the commission on an agenda that permits a  
453 commission decision no later than 120 days after the date the  
454 petition is filed.

455 b. No later than 135 days after the date the petition is  
456 filed, the commission shall issue a financing order or an order  
457 rejecting the petition. A party to the commission proceeding may  
458 petition the commission for reconsideration of the financing  
459 order within 5 days after the date of its issuance. The  
460 commission shall issue a financing order authorizing the  
461 financing of reasonable and prudent nuclear asset-recovery costs  
462 and financing costs if the commission finds that the issuance of  
463 the nuclear asset-recovery bonds and the imposition of nuclear  
464 asset-recovery charges authorized by the financing order have a  
465 significant likelihood of resulting in lower overall costs or  
466 would avoid or significantly mitigate rate impacts to customers  
467 as compared with the traditional method of financing and  
468 recovering nuclear asset-recovery costs. Any determination of

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469 whether nuclear asset-recovery costs are reasonable and prudent  
470 shall be made with reference to the general public interest and  
471 in accordance with paragraph (b), if applicable.

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

474 a. Except as provided in sub-subparagraph d. and  
475 subparagraph 4., specify the amount of nuclear asset-recovery  
476 costs to be financed using nuclear asset-recovery bonds, taking  
477 into consideration, to the extent the commission deems  
478 appropriate, any other methods used to recover these costs. The  
479 commission shall describe and estimate the amount of financing  
480 costs which may be recovered through nuclear asset-recovery  
481 charges and specify the period over which such costs may be  
482 recovered. Any such determination as to the overall time period  
483 for cost recovery must be consistent with a settlement  
484 agreement, if any, under paragraph (b);

485 b. Determine if the proposed structuring, expected  
486 pricing, and financing costs of the nuclear asset-recovery bonds  
487 have a significant likelihood of resulting in lower overall  
488 costs or would avoid or significantly mitigate rate impacts to  
489 customers as compared with the traditional method of financing  
490 and recovering nuclear asset-recovery costs. A financing order  
491 must provide detailed findings of fact addressing cost-  
492 effectiveness and associated rate impacts upon retail customers  
493 and retail customer classes;

494 c. Require, for the period specified pursuant to sub-

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495 subparagraph a., that the imposition and collection of nuclear  
496 asset-recovery charges authorized under a financing order be  
497 nonbypassable and paid by all existing and future customers  
498 receiving transmission or distribution service from the electric  
499 utility or its successors or assignees under commission-approved  
500 rate schedules or under special contracts, even if a customer  
501 elects to purchase electricity from an alternative electric  
502 supplier following a fundamental change in regulation of public  
503 utilities in this state;

504 d. Include a formula-based true-up mechanism for making  
505 expeditious periodic adjustments in the nuclear asset-recovery  
506 charges that customers are required to pay pursuant to the  
507 financing order and for making any adjustments that are  
508 necessary to correct for any overcollection or undercollection  
509 of the charges or to otherwise ensure the timely payment of  
510 nuclear asset-recovery bonds and financing costs and other  
511 required amounts and charges payable in connection with the  
512 nuclear asset-recovery bonds;

513 e. Specify the nuclear asset-recovery property that is, or  
514 shall be, created in favor of an electric utility or its  
515 successors or assignees and that shall be used to pay or secure  
516 nuclear asset-recovery bonds and all financing costs;

517 f. Specify the degree of flexibility to be afforded to the  
518 electric utility in establishing the terms and conditions of the  
519 nuclear asset-recovery bonds, including, but not limited to,  
520 repayment schedules, expected interest rates, and other

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521 financing costs consistent with sub-subparagraphs a.-e.;  
522 g. Require nuclear asset-recovery charges to be allocated  
523 to the customer classes using the criteria set out in s.  
524 366.06(1), in the manner in which these costs or their  
525 equivalent was allocated in the cost-of-service study that was  
526 approved in connection with the electric utility's last rate  
527 case and that is in effect during the nuclear asset-recovery  
528 charge annual billing period. If the electric utility's last  
529 rate case was resolved by a settlement agreement, the cost-of-  
530 service methodology that was adopted in the settlement agreement  
531 in that case and that is in effect during the nuclear asset-  
532 recovery charge annual billing period shall be used;  
533 h. Require, after the final terms of an issuance of  
534 nuclear asset-recovery bonds have been established and before  
535 the issuance of nuclear asset-recovery bonds, that the electric  
536 utility determine the resulting initial nuclear asset-recovery  
537 charge in accordance with the financing order and that such  
538 initial nuclear asset-recovery charge be final and effective  
539 upon the issuance of such nuclear asset-recovery bonds without  
540 further commission action so long as the nuclear asset-recovery  
541 charge is consistent with the financing order; and  
542 i. Include any other conditions that the commission  
543 considers appropriate and that are authorized by this section.  
544  
545 In performing the responsibilities of this subparagraph and  
546 subparagraph 5., the commission may engage outside consultants

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547 and counsel. All expenses associated with such services shall be  
548 included as part of financing costs and included in the nuclear  
549 asset-recovery charge.

550 3. A financing order issued to an electric utility may  
551 provide that creation of the electric utility's nuclear asset-  
552 recovery property pursuant to sub-subparagraph 2.e. is  
553 conditioned upon, and simultaneous with, the sale or other  
554 transfer of the nuclear asset-recovery property to an assignee  
555 and the pledge of the nuclear asset-recovery property to secure  
556 nuclear asset-recovery bonds.

557 4. If the commission issues a financing order and nuclear  
558 asset-recovery bonds are issued, the electric utility or  
559 assignee must file with the commission at least biannually a  
560 petition or a letter applying the formula-based true-up  
561 mechanism pursuant to sub-subparagraph 2.d. and, based on  
562 estimates of consumption for each rate class and other  
563 mathematical factors, requesting administrative approval to make  
564 the adjustments described in sub-subparagraph 2.d. The review of  
565 such a request is limited to determining whether there is any  
566 mathematical error in the application of the formula-based  
567 mechanism relating to the amount of any overcollection or  
568 undercollection of nuclear asset-recovery charges and the amount  
569 of any adjustment. Such adjustments shall ensure the recovery of  
570 revenues sufficient to provide for the timely payment of  
571 principal, interest, acquisition, defeasance, financing costs,  
572 or redemption premium and other fees, costs, and charges

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573 relating to nuclear asset-recovery bonds approved under the  
574 financing order. Within 60 days after receiving an electric  
575 utility's request pursuant to this paragraph, the commission  
576 must approve the request or inform the electric utility of any  
577 mathematical errors in its calculation. If the commission  
578 informs the utility of mathematical errors in its calculation,  
579 the utility may correct the error and refile the request. The  
580 timeframes previously described in this paragraph apply to a  
581 refiled request.

582 5. Within 120 days after the issuance of nuclear asset-  
583 recovery bonds, the electric utility shall file with the  
584 commission information on the actual costs of the nuclear asset-  
585 recovery bonds issuance. The commission shall review, on a  
586 reasonably comparable basis, such information to determine if  
587 such costs incurred in the issuance of the bonds resulted in the  
588 lowest overall costs that were reasonably consistent with market  
589 conditions at the time of the issuance and the terms of the  
590 financing order. The commission may disallow all incremental  
591 issuance costs in excess of the lowest overall costs by  
592 requiring the electric utility to make a credit to the capacity  
593 cost recovery clause in an amount equal to the excess of actual  
594 issuance costs incurred, and paid for out of nuclear asset-  
595 recovery bonds proceeds, and the lowest overall issuance costs  
596 as determined by the commission. The commission may not make  
597 adjustments to the nuclear asset-recovery charges for any such  
598 excess issuance costs.

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599       6. Subsequent to the transfer of nuclear asset-recovery  
600 property to an assignee or the issuance of nuclear asset-  
601 recovery bonds authorized thereby, whichever is earlier, a  
602 financing order is irrevocable and, except as provided in  
603 subparagraph 4. and paragraph (d), the commission may not amend,  
604 modify, or terminate the financing order by any subsequent  
605 action or reduce, impair, postpone, terminate, or otherwise  
606 adjust nuclear asset-recovery charges approved in the financing  
607 order. After the issuance of a financing order, the electric  
608 utility retains sole discretion regarding whether to assign,  
609 sell, or otherwise transfer nuclear asset-recovery property or  
610 to cause nuclear asset-recovery bonds to be issued, including  
611 the right to defer or postpone such assignment, sale, transfer,  
612 or issuance. If the electric utility decides not to cause  
613 nuclear asset-recovery bonds to be issued, the electric utility  
614 may not recover financing costs, as defined in paragraph (1)(e),  
615 from customers.

616       (d) At the request of an electric utility, the commission  
617 may commence a proceeding and issue a subsequent financing order  
618 that provides for refinancing, retiring, or refunding nuclear  
619 asset-recovery bonds issued pursuant to the original financing  
620 order if the commission finds that the subsequent financing  
621 order satisfies all of the criteria specified in paragraph (c).  
622 Effective upon retirement of the refunded nuclear asset-recovery  
623 bonds and the issuance of new nuclear asset-recovery bonds, the  
624 commission shall adjust the related nuclear asset-recovery



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625 charges accordingly.

626 (e) Within 30 days after the commission issues a financing  
627 order or a decision denying a request for reconsideration or, if  
628 the request for reconsideration is granted, within 30 days after  
629 the commission issues its decision on reconsideration, an  
630 adversely affected party may petition for judicial review in the  
631 Florida Supreme Court. The petition for review must be served  
632 upon the executive director of the commission personally or by  
633 service at the office of the commission. Review on appeal shall  
634 be based solely on the record before the commission and briefs  
635 to the court and is limited to determining whether the financing  
636 order, or the order on reconsideration, conforms to the State  
637 Constitution and state and federal law and is within the  
638 authority of the commission under this section. Inasmuch as  
639 delay in the determination of the appeal of a financing order  
640 will delay the issuance of nuclear asset-recovery bonds, thereby  
641 diminishing savings to customers which might be achieved if such  
642 nuclear asset-recovery bonds were issued as contemplated by a  
643 financing order, the Florida Supreme Court shall proceed to hear  
644 and determine the action as expeditiously as practicable and  
645 give the action precedence over other matters not accorded  
646 similar precedence by law.

647 (f)1. A financing order remains in effect and all such  
648 nuclear asset-recovery property continues to exist until nuclear  
649 asset-recovery bonds issued pursuant to the financing order have  
650 been paid in full and all commission-approved financing costs of

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651 such nuclear asset-recovery bonds have been recovered in full.

652 2. A financing order issued to an electric utility remains  
653 in effect and unabated notwithstanding the reorganization,  
654 bankruptcy or other insolvency proceedings, merger, or sale of  
655 the electric utility or its successors or assignees.

656 (3) EXCEPTIONS TO COMMISSION JURISDICTION.—

657 (a) If the commission issues a financing order to an  
658 electric utility pursuant to this section, the commission may  
659 not, in exercising its powers and carrying out its duties  
660 regarding any matter within its authority pursuant to this  
661 chapter, consider the nuclear asset-recovery bonds issued  
662 pursuant to the financing order to be the debt of the electric  
663 utility other than for federal income tax purposes, consider the  
664 nuclear asset-recovery charges paid under the financing order to  
665 be the revenue of the electric utility for any purpose, or  
666 consider the nuclear asset-recovery costs or financing costs  
667 specified in the financing order to be the costs of the electric  
668 utility, nor may the commission determine any action taken by an  
669 electric utility which is consistent with the financing order to  
670 be unjust or unreasonable.

671 (b) The commission may not order or otherwise directly or  
672 indirectly require an electric utility to use nuclear asset-  
673 recovery bonds to finance any project, addition, plant,  
674 facility, extension, capital improvement, equipment, or any  
675 other expenditure, unless that expenditure is a nuclear asset-  
676 recovery cost and the electric utility has filed a petition

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677 pursuant to paragraph (2)(a) to finance such expenditure using  
678 nuclear asset-recovery bonds. The commission may not refuse to  
679 allow an electric utility to recover nuclear asset-recovery  
680 costs in an otherwise permissible fashion, or refuse or  
681 condition authorization or approval pursuant to s. 366.04 of the  
682 issuance and sale by an electric utility of securities or the  
683 assumption by the utility of liabilities or obligations, solely  
684 because of the potential availability of nuclear asset-recovery  
685 cost financing.

686 (4) ELECTRIC UTILITY DUTIES.—The electric bills of an  
687 electric utility that has obtained a financing order and caused  
688 nuclear asset-recovery bonds to be issued must:

689 (a) Explicitly reflect that a portion of the charges on  
690 such bill represents nuclear asset-recovery charges approved in  
691 a financing order issued to the electric utility and, if the  
692 nuclear asset-recovery property has been transferred to an  
693 assignee, must include a statement to the effect that the  
694 assignee is the owner of the rights to nuclear asset-recovery  
695 charges and that the electric utility or other entity, if  
696 applicable, is acting as a collection agent or servicer for the  
697 assignee. The tariff applicable to customers must indicate the  
698 nuclear asset-recovery charge and the ownership of that charge.

699 (b) Include the nuclear asset-recovery charge on each  
700 customer's bill as a separate line item titled "Asset  
701 Securitization Charge" and include both the rate and the amount  
702 of the charge on each bill.

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703  
704 The failure of an electric utility to comply with this  
705 subsection does not invalidate, impair, or affect any financing  
706 order, nuclear asset-recovery property, nuclear asset-recovery  
707 charge, or nuclear asset-recovery bonds, but does subject the  
708 electric utility to penalties under s. 366.095.

709 (5) NUCLEAR ASSET-RECOVERY PROPERTY.—

710 (a)1. All nuclear asset-recovery property that is  
711 specified in a financing order constitutes an existing, present  
712 property right or interest therein, notwithstanding that the  
713 imposition and collection of nuclear asset-recovery charges  
714 depends on the electric utility, to which the financing order is  
715 issued, performing its servicing functions relating to the  
716 collection of nuclear asset-recovery charges and on future  
717 electricity consumption. Such property exists regardless of  
718 whether the revenues or proceeds arising from the property have  
719 been billed, have accrued, or have been collected and  
720 notwithstanding the fact that the value or amount of the  
721 property is dependent on the future provision of service to  
722 customers by the electric utility or its successors or  
723 assignees.

724 2. Nuclear asset-recovery property specified in a  
725 financing order exists until nuclear asset-recovery bonds issued  
726 pursuant to the financing order are paid in full and all  
727 financing costs and other costs of such nuclear asset-recovery  
728 bonds have been recovered in full.

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729       3. All or any portion of nuclear asset-recovery property  
730 specified in a financing order issued to an electric utility may  
731 be transferred, sold, conveyed, or assigned to a successor or  
732 assignee, that is wholly owned, directly or indirectly, by the  
733 electric utility, created for the limited purpose of acquiring,  
734 owning, or administering nuclear asset-recovery property or  
735 issuing nuclear asset-recovery bonds under the financing order.  
736 All or any portion of nuclear asset-recovery property may be  
737 pledged to secure nuclear asset-recovery bonds issued pursuant  
738 to the financing order, amounts payable to financing parties and  
739 to counterparties under any ancillary agreements, and other  
740 financing costs. Each such transfer, sale, conveyance,  
741 assignment, or pledge by an electric utility or affiliate of an  
742 electric utility is considered to be a transaction in the  
743 ordinary course of business.

744       4. If an electric utility defaults on any required payment  
745 of charges arising from nuclear asset-recovery property  
746 specified in a financing order, a court, upon application by an  
747 interested party, and without limiting any other remedies  
748 available to the applying party, shall order the sequestration  
749 and payment of the revenues arising from the nuclear asset-  
750 recovery property to the financing parties. Any such financing  
751 order remains in full force and effect notwithstanding any  
752 reorganization, bankruptcy, or other insolvency proceedings with  
753 respect to the electric utility or its successors or assignees.

754       5. The interest of a transferee, purchaser, acquirer,

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755 assignee, or pledgee in nuclear asset-recovery property  
756 specified in a financing order issued to an electric utility,  
757 and in the revenue and collections arising from that property,  
758 is not subject to setoff, counterclaim, surcharge, or defense by  
759 the electric utility or any other person or in connection with  
760 the reorganization, bankruptcy, or other insolvency of the  
761 electric utility or any other entity.

762 6. Any successor to an electric utility, whether pursuant  
763 to any reorganization, bankruptcy, or other insolvency  
764 proceeding or whether pursuant to any merger or acquisition,  
765 sale, or other business combination, or transfer by operation of  
766 law, as a result of electric utility restructuring or otherwise,  
767 must perform and satisfy all obligations of, and have the same  
768 rights under a financing order as, the electric utility under  
769 the financing order in the same manner and to the same extent as  
770 the electric utility, including collecting and paying to the  
771 person entitled to receive the revenues, collections, payments,  
772 or proceeds of the nuclear asset-recovery property.

773 (b)1. Except as provided in this section, the Uniform  
774 Commercial Code does not apply to nuclear asset-recovery  
775 property or any right, title, or interest of an electric utility  
776 or assignee described in subparagraph (1)(1)1., whether before  
777 or after the issuance of the financing order. In addition, such  
778 right, title, or interest pertaining to a financing order,  
779 including, but not limited to, the associated nuclear asset-  
780 recovery property and any revenues, collections, claims, rights

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781 to payment, payments, money, or proceeds of or arising from  
782 nuclear asset-recovery charges pursuant to such order, is not  
783 deemed proceeds of any right or interest other than in the  
784 financing order and the nuclear asset-recovery property arising  
785 from the order.

786 2. The creation, attachment, granting, perfection,  
787 priority, and enforcement of liens and security interests in  
788 nuclear asset-recovery property to secure nuclear asset-recovery  
789 bonds is governed solely by this section and, except to the  
790 extent provided in this section, not by the Uniform Commercial  
791 Code.

792 3. A valid, enforceable, and attached lien and security  
793 interest in nuclear asset-recovery property may be created only  
794 upon the later of:

795 a. The issuance of a financing order;

796 b. The execution and delivery of a security agreement with  
797 a financing party in connection with the issuance of nuclear  
798 asset-recovery bonds; or

799 c. The receipt of value for nuclear asset-recovery bonds.

800

801 A valid, enforceable, and attached security interest is  
802 perfected against third parties as of the date of filing of a  
803 financing statement in the Florida Secured Transaction Registry,  
804 as defined in s. 679.527, in accordance with subparagraph 4.,  
805 and is thereafter a continuously perfected lien; and such  
806 security interest in the nuclear asset-recovery property and all

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807 proceeds of such nuclear asset-recovery property, regardless of  
808 whether billed, accrued, or collected, and regardless of whether  
809 deposited into a deposit account and however evidenced, has  
810 priority in accordance with subparagraph 8. and takes precedence  
811 over any subsequent judicial or other lien creditor. A  
812 continuation statement does not need to be filed to maintain  
813 such perfection.

814 4. Financing statements required to be filed pursuant to  
815 this section must be filed, maintained, and indexed in the same  
816 manner and in the same system of records maintained for the  
817 filing of financing statements in the Florida Secured  
818 Transaction Registry, as defined in s. 679.527. The filing of  
819 such a financing statement is the only method of perfecting a  
820 lien or security interest on nuclear asset-recovery property.

821 5. The priority of a lien and security interest perfected  
822 under this paragraph is not impaired by any later modification  
823 of the financing order or nuclear asset-recovery property or by  
824 the commingling of funds arising from nuclear asset-recovery  
825 property with other funds, and any other security interest that  
826 may apply to those funds is terminated as to all funds  
827 transferred to a segregated account for the benefit of an  
828 assignee or a financing party or to an assignee or financing  
829 party directly.

830 6. If a default or termination occurs under the terms of  
831 the nuclear asset-recovery bonds, the financing parties or their  
832 representatives may foreclose on or otherwise enforce their lien



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833 and security interest in any nuclear asset-recovery property as  
834 if they were a secured party under Article 9 of the Uniform  
835 Commercial Code; and a court may order that amounts arising from  
836 nuclear asset-recovery property be transferred to a separate  
837 account for the financing parties' benefit, to which their lien  
838 and security interest applies. Upon application by or on behalf  
839 of the financing parties to a circuit court of this state, the  
840 court shall order the sequestration and payment to the financing  
841 parties of revenues arising from the nuclear asset-recovery  
842 property.

843 7. The interest of a pledgee of an interest or any rights  
844 in any nuclear asset-recovery property is not perfected until  
845 filing as provided in subparagraph 4.

846 8. The priority of the conflicting interests of pledgees  
847 in the same interest or rights in any nuclear asset-recovery  
848 property is determined as follows:

849 a. Conflicting perfected interests or rights of pledgees  
850 rank according to priority in time of perfection. Priority dates  
851 from the time a filing covering the interest or right is made in  
852 accordance with this paragraph.

853 b. A perfected interest or right of a pledgee has priority  
854 over a conflicting unperfected interest or right of a pledgee.

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

858 (c) The sale, assignment, or transfer of nuclear asset-

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859 recovery property is governed by this paragraph. All of the  
860 following apply to a sale, assignment, or transfer under this  
861 paragraph:

862 1. The sale, conveyance, assignment, or other transfer of  
863 nuclear asset-recovery property by an electric utility to an  
864 assignee that the parties have in the governing documentation  
865 expressly stated to be a sale or other absolute transfer is an  
866 absolute transfer and true sale of, and not a pledge of or  
867 secured transaction relating to, the transferor's right, title,  
868 and interest in, to, and under the nuclear asset-recovery  
869 property, other than for federal and state income and franchise  
870 tax purposes. After such a transaction, the nuclear asset-  
871 recovery property is not subject to any claims of the transferor  
872 or the transferor's creditors, other than creditors holding a  
873 prior security interest in the nuclear asset-recovery property  
874 perfected under paragraph (b).

875 2. The characterization of the sale, conveyance,  
876 assignment, or other transfer as a true sale or other absolute  
877 transfer under subparagraph 1. and the corresponding  
878 characterization of the transferee's property interest are not  
879 affected by:

880 a. Commingling of amounts arising with respect to the  
881 nuclear asset-recovery property with other amounts;

882 b. The retention by the transferor of a partial or  
883 residual interest, including an equity interest, in the nuclear  
884 asset-recovery property, whether direct or indirect, or whether

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885 subordinate or otherwise;

886 c. Any recourse that the transferee may have against the  
887 transferor other than any such recourse created, contingent  
888 upon, or otherwise occurring or resulting from one or more of  
889 the transferor's customers' inability or failure to timely pay  
890 all or a portion of the nuclear asset-recovery charge;

891 d. Any indemnifications, obligations, or repurchase rights  
892 made or provided by the transferor, other than indemnity or  
893 repurchase rights based solely upon a transferor's customers'  
894 inability or failure to timely pay all or a portion of the  
895 nuclear asset-recovery charge;

896 e. The responsibility of the transferor to collect nuclear  
897 asset-recovery charges;

898 f. The treatment of the sale, conveyance, assignment, or  
899 other transfer for tax, financial reporting, or other purposes;  
900 or

901 g. The granting or providing to holders of nuclear asset-  
902 recovery bonds a preferred right to the nuclear asset-recovery  
903 property or credit enhancement by the electric utility or its  
904 affiliates with respect to such nuclear asset-recovery bonds.

905 3. Any right that an electric utility has in the nuclear  
906 asset-recovery property before its pledge, sale, or transfer or  
907 any other right created under this section or created in the  
908 financing order and assignable under this section or assignable  
909 pursuant to a financing order is property in the form of a  
910 contract right. Transfer of an interest in nuclear asset-

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911 recovery property to an assignee is enforceable only upon the  
912 later of the issuance of a financing order, the execution and  
913 delivery of transfer documents to the assignee in connection  
914 with the issuance of nuclear asset-recovery bonds, and the  
915 receipt of value. An enforceable transfer of an interest in  
916 nuclear asset-recovery property to an assignee is perfected  
917 against all third parties, including subsequent judicial or  
918 other lien creditors, when a notice of that transfer has been  
919 given by the filing of a financing statement in accordance with  
920 subparagraph (b)4. The transfer is perfected against third  
921 parties as of the date of filing.

922 4. Financing statements required to be filed under this  
923 section must be maintained and indexed in the same manner and in  
924 the same system of records maintained for the filing of  
925 financing statements in the Florida Secured Transaction  
926 Registry, as defined in s. 679.527. The filing of such a  
927 financing statement is the only method of perfecting a transfer  
928 of nuclear asset-recovery property.

929 5. The priority of a transfer perfected under this section  
930 is not impaired by any later modification of the financing order  
931 or nuclear asset-recovery property or by the commingling of  
932 funds arising from nuclear asset-recovery property with other  
933 funds. Any other security interest that may apply to those  
934 funds, other than a security interest perfected under paragraph  
935 (b), is terminated when they are transferred to a segregated  
936 account for the assignee or a financing party. If nuclear asset-

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937 recovery property has been transferred to an assignee or  
938 financing party, any proceeds of that property must be held in  
939 trust for the assignee or financing party.

940 6. The priority of the conflicting interests of assignees  
941 in the same interest or rights in any nuclear asset-recovery  
942 property is determined as follows:

943 a. Conflicting perfected interests or rights of assignees  
944 rank according to priority in time of perfection. Priority dates  
945 from the time a filing covering the transfer is made in  
946 accordance with subparagraph (b) 4.

947 b. A perfected interest or right of an assignee has  
948 priority over a conflicting unperfected interest or right of an  
949 assignee.

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

953 (6) DESCRIPTION OR INDICATION OF PROPERTY.—The description  
954 of nuclear asset-recovery property being transferred to an  
955 assignee in any sale agreement, purchase agreement, or other  
956 transfer agreement, granted or pledged to a pledgee in any  
957 security agreement, pledge agreement, or other security  
958 document, or indicated in any financing statement is only  
959 sufficient if such description or indication describes the  
960 financing order that created the nuclear asset-recovery property  
961 and states that such agreement or financing statement covers all  
962 or part of such property described in such financing order. This

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963 subsection applies to all purported transfers of, and all  
964 purported grants or liens or security interests in, nuclear  
965 asset-recovery property, regardless of whether the related sale  
966 agreement, purchase agreement, other transfer agreement,  
967 security agreement, pledge agreement, or other security document  
968 was entered into, or any financing statement was filed, before  
969 or after the effective date of this section.

970 (7) FINANCING STATEMENTS.—All financing statements  
971 referenced in this section are subject to Part V of Art. 9 of  
972 the Uniform Commercial Code, except that the requirement as to  
973 continuation statements does not apply.

974 (8) CHOICE OF LAW.—The law governing the validity,  
975 enforceability, attachment, perfection, priority, and exercise  
976 of remedies with respect to the transfer of an interest or right  
977 or the pledge or creation of a security interest in any nuclear  
978 asset-recovery property shall be the laws of this state, and  
979 exclusively, the laws of this section.

980 (9) NUCLEAR ASSET-RECOVERY BONDS NOT PUBLIC DEBT.—The  
981 state or its political subdivisions are not liable on any  
982 nuclear asset-recovery bonds, and the bonds are not a debt or a  
983 general obligation of the state or any of its political  
984 subdivisions, agencies, or instrumentalities. An issue of  
985 nuclear asset-recovery bonds does not, directly, indirectly, or  
986 contingently obligate the state or any agency, political  
987 subdivision, or instrumentality of the state to levy any tax or  
988 make any appropriation for payment of the nuclear asset-recovery

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989 bonds, other than in their capacity as consumers of electricity.  
990 This subsection does not preclude bond guarantees or  
991 enhancements pursuant to this section. All nuclear asset-  
992 recovery bonds must contain on the face thereof a statement to  
993 the following effect: "Neither the full faith and credit nor the  
994 taxing power of the State of Florida is pledged to the payment  
995 of the principal of, or interest on, this bond."

996 (10) NUCLEAR ASSET-RECOVERY BONDS AS LEGAL INVESTMENTS  
997 WITH RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY  
998 REGARDING LEGAL INVESTMENT.—All of the following entities may  
999 legally invest any sinking funds, moneys, or other funds  
1000 belonging to them or under their control in nuclear asset-  
1001 recovery bonds:

1002 (a) The state, the investment board, municipal  
1003 corporations, political subdivisions, public bodies, and public  
1004 officers, except for members of the commission.

1005 (b) Banks and bankers, savings and loan associations,  
1006 credit unions, trust companies, savings banks and institutions,  
1007 investment companies, insurance companies, insurance  
1008 associations, and other persons carrying on a banking or  
1009 insurance business.

1010 (c) Personal representatives, guardians, trustees, and  
1011 other fiduciaries.

1012 (d) All other persons whatsoever who are now or may  
1013 hereafter be authorized to invest in bonds or other obligations  
1014 of a similar nature.

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1015        (11) STATE PLEDGE.—

1016        (a) For purposes of this subsection, the term "bondholder"

1017 means a person who holds a nuclear asset-recovery bond.

1018        (b) The state pledges to and agrees with bondholders, the

1019 owners of the nuclear asset-recovery property, and other

1020 financing parties that the state will not:

1021        1. Alter the provisions of this section which make the

1022 nuclear asset-recovery charges imposed by a financing order

1023 irrevocable, binding, and nonbypassable charges;

1024        2. Take or permit any action that impairs or would impair

1025 the value of nuclear asset-recovery property or revises the

1026 nuclear asset-recovery costs for which recovery is authorized;

1027 or

1028        3. Except as authorized under this section, reduce, alter,

1029 or impair nuclear asset-recovery charges that are to be imposed,

1030 collected, and remitted for the benefit of the bondholders and

1031 other financing parties until any and all principal, interest,

1032 premium, financing costs and other fees, expenses, or charges

1033 incurred, and any contracts to be performed, in connection with

1034 the related nuclear asset-recovery bonds have been paid and

1035 performed in full.

1036

1037 This paragraph does not preclude limitation or alteration if

1038 full compensation is made by law for the full protection of the

1039 nuclear asset-recovery charges collected pursuant to a financing

1040 order and of the holders of nuclear asset-recovery bonds and any



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1041 assignee or financing party entering into a contract with the  
1042 electric utility.

1043 (c) Any person or entity that issues nuclear asset-  
1044 recovery bonds may include the pledge specified in paragraph (b)  
1045 in the nuclear asset-recovery bonds and related documentation.

1046 (12) NOT AN ELECTRIC UTILITY.—An assignee or financing  
1047 party is not an electric utility or person providing electric  
1048 service by virtue of engaging in the transactions described in  
1049 this section.

1050 (13) CONFLICTS.—If there is a conflict between this  
1051 section and any other law regarding the attachment, assignment,  
1052 or perfection, or the effect of perfection, or priority of,  
1053 assignment or transfer of, or security interest in nuclear  
1054 asset-recovery property, this section shall govern.

1055 (14) EFFECT OF INVALIDITY ON ACTIONS.—Effective on the  
1056 date that nuclear asset-recovery bonds are first issued under  
1057 this section, if any provision of this section is held invalid  
1058 or is invalidated, superseded, replaced, repealed, or expires  
1059 for any reason, that occurrence does not affect the validity of  
1060 any action allowed under this section which is taken by an  
1061 electric utility, an assignee, a financing party, a collection  
1062 agent, or a party to an ancillary agreement; and any such action  
1063 remains in full force and effect with respect to all nuclear  
1064 asset-recovery bonds issued or authorized in a financing order  
1065 issued under this section before the date that such provision is  
1066 held invalid or is invalidated, superseded, replaced, or

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1067 repealed, or expires for any reason.

1068 (15) PENALTIES.—A violation of this section or of a  
1069 financing order issued under this section subjects the utility  
1070 that obtained the order to penalties under s. 366.095 and to any  
1071 other penalties or remedies that the commission determines are  
1072 necessary to achieve the intent of this section and the intent  
1073 and terms of the financing order and to prevent any increase in  
1074 financial impact to the utility's customers above that set forth  
1075 in the financing order. If the commission orders a penalty or a  
1076 remedy for a violation, the monetary penalty or remedy and the  
1077 costs of defending against the proposed penalty or remedy may  
1078 not be recovered from the customers. The commission may not make  
1079 adjustments to nuclear asset-recovery charges for any such  
1080 penalties or remedies.

1081 Section 8. This act shall take effect July 1, 2015.