

Akerman Practice Update

ENERGY, UTILITIES, AND TELECOMMUNICATIONS

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Pending Legislation Could Set “Clean Energy” Standard for Florida

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In the last week, two committees in the Florida Senate have voted unanimously in favor of establishing a “clean energy” standard to replace the renewable energy standard that last year’s Legislature directed the Public Service Commission to draft. The Senate bill that sets a clean energy standard, SB 1154, has no house companion as of this date, and the bill still has several significant hurdles to clear.

SB 1154 Summary

SB 1154 would require Florida IOUs to meet a “clean energy” standard that ramps up to 20% by 2020 and makes a number of significant changes to the PSC recommended rule, the most significant being that 25% of the 20% standard may be met by nuclear plants in service after July 1, 2009, or integrated gasification combined cycle plants with carbon capture and sequestration plans approved by DEP (“IGCC”).¹ Some other significant changes include the following: (1) “Clean energy,” for purposes of the standard, is defined similarly to “renewable energy” from sec. 366.91(2)(d), includes new nuclear and IGCC power, but not “solar energy,” only “solar photovoltaic.” (2) There is no carve-out for solar/wind energy, but an IOU may be excused from meeting the standard if the incremental cost² to produce/buy clean energy or buy credits exceeds 2% of the prior year’s retail revenue, with costs allocated separately between solar photovoltaic/wind and other renewable

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¹ Nuclear and IGCC power are not required, and the PSC cannot penalize an IOU for not having either.

² The cost to comply includes the cost to purchase renewable energy credits, the cost associated with participation in a clean energy credit market, and the cost for self-building clean energy generation to the extent that cost exceeds what the utility would have incurred for building non-clean generation or for purchasing energy and capacity from another source.

“Failure to meet the standard, if not excused, may lead to a show cause proceeding and a fine of \$5,000/day/violation”

categories at a 1% cap each; so, the costs for new nuclear and IGCC power do not appear to count against the cap.³ (3) Failure to meet the standard, if not excused, may lead to a show cause proceeding and a fine of \$5,000/day/violation; the PSC version suggested a return on equity penalty for unexcused performance. (4) IOUs are not required to issue periodic RFPs, but the PSC must implement a rule instructing IOUs how to determine the most cost-effective method of compliance and a rule determining what entities are eligible to produce credits. (5) The bill provides no guidance on how a clean energy market should be established or the value or duration of credits. The ramp-up milestones for meeting the clean energy standard are as follows:

- By 1-1-2013, 7 % of prior year’s retail sales.
- By 1-1-2016, 12 % of prior year’s retail sales.
- By 1-1-2019, 18 % of prior year’s retail sales.
- By 1-1-2021, 20 % of prior year’s retail sales.

The bill specifically provides that solar photovoltaic, wind, and all other renewables must be Florida-based, but the word “Florida” does not appear in the nuclear or IGCC definitions. The bill does specifically provide, however, that IOU members of the Southeast ERC may co-own or purchase nuclear or IGCC power from an out-of-state generation source owned by an IOU affiliate. Later sections of the bill permit recovery in base rates the cost for converting retiring generation to biomass at the time a new nuclear plant goes into service and encourage IOUs to pursue joint ownership of nuclear plants.

The bill strangely uses as many as four different terms to refer to investor owned electric utilities but makes no substantive change to section 366.92(5), which only required municipal and co-op utilities to develop their own standards for renewable energy and report same to the PSC by April 1, 2009, and annually thereafter. The bill also does not change the existing practice whereby IOUs pay only avoided costs for capacity and energy from renewable generation suppliers.

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³ The bill specifically provides “expenses” for new nuclear and IGCC plants “may not be included in calculating the cost of compliance.”

Akerman's Energy, Utilities, and Telecommunications team has vast experience, relationships, and knowledge in the areas of energy, utility regulatory law and policy, as well as telecommunications and technology in and out of Florida. Located in the firm's Tallahassee office, Akerman's lawyers represent some of the largest providers of energy and natural gas service, as well as telecommunications and technology. The team includes a former Chairman of the Florida Public Service Commission (PSC), a former PSC electric and telecommunications attorney, and a former General Counsel for Florida's largest competitive communications provider.

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