

§ 62-110.8. Competitive procurement of renewable energy.

(a) Each electric public utility shall file for Commission approval a program for the competitive procurement of energy and capacity from renewable energy facilities with the purpose of adding renewable energy to the State's generation portfolio in a manner that allows the State's electric public utilities to continue to reliably and cost-effectively serve customers' future energy needs. Renewable energy facilities eligible to participate in the competitive procurement shall include those facilities that use renewable energy resources identified in G.S. 62-133.8(a)(8) but shall be limited to facilities with a nameplate capacity rating of 80 megawatts (MW) or less that are placed in service after the date of the electric public utility's initial competitive procurement. Subject to the limitations set forth in subsections (b) and (c) of this section, the electric public utilities shall issue requests for proposals to procure and shall procure, energy and capacity from renewable energy facilities in the aggregate amount of 2,660 megawatts (MW), and the total amount shall be reasonably allocated over a term of 45 months beginning when the Commission approves the program. The Commission shall require the additional competitive procurement of renewable energy capacity by the electric public utilities in an amount that includes all of the following: (i) any unawarded portion of the initial competitive procurement required by this subsection; (ii) any deficit in renewable energy capacity identified pursuant to subdivision (1) of subsection (b) of this section; and (iii) any capacity reallocated pursuant to G.S. 62-159.2.

(b) Electric public utilities may jointly or individually implement the aggregate competitive procurement requirements set forth in subsection (a) of this section and may satisfy such requirements for the procurement of renewable energy capacity to be supplied by renewable energy facilities through any of the following: (i) renewable energy facilities to be acquired from third parties and subsequently owned and operated by the soliciting public utility or utilities; (ii) renewable energy facilities to be constructed, owned, and operated by the soliciting public utility or utilities subject to the limitations of subdivision (4) of this subsection; or (iii) the purchase of renewable energy, capacity, and environmental and renewable attributes from renewable energy facilities owned and operated by third parties that commit to allow the procuring public utility rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources. Procured renewable energy capacity, as provided for in this section, shall be subject to the following limitations:

- (1) If prior to the end of the initial 45-month competitive procurement period the public utilities subject to this section have executed power purchase agreements and interconnection agreements for renewable energy capacity within their balancing authority areas that are not subject to economic dispatch or curtailment and were not procured pursuant to G.S. 62-159.2 having an aggregate capacity in excess of 3,500 megawatts (MW), the Commission shall reduce the competitive procurement aggregate amount by the amount of such exceedance. If the aggregate capacity of such renewable energy facilities is less than 3,500 megawatts (MW) at the end of the initial 45-month competitive procurement period, the Commission shall require the electric public utilities to conduct an additional competitive procurement in the amount of such deficit.
- (2) To ensure the cost-effectiveness of procured new renewable energy resources, each public utility's procurement obligation shall be capped by the public utility's current forecast of its avoided cost calculated over the term of the power purchase agreement. The public utility's current forecast of its avoided cost shall be consistent with the Commission-approved avoided cost methodology.

- (3) Each public utility shall submit to the Commission for approval and make publicly available at 30 days prior to each competitive procurement solicitation a pro forma contract to be utilized for the purpose of informing market participants of terms and conditions of the competitive procurement. Each pro forma contract shall define limits and compensation for resource dispatch and curtailments. The pro forma contract shall be for a term of 20 years; provided, however, the Commission may approve a contract term of a different duration if the Commission determines that it is in the public interest to do so.
- (4) No more than thirty percent (30%) of an electric public utility's competitive procurement requirement may be satisfied through the utility's own development of renewable energy facilities offered by the electric public utility or any subsidiary of the electric public utility that is located within the electric public utility's service territory. This limitation shall not apply to any renewable energy facilities acquired by an electric public utility that are selected through the competitive procurement and are located within the electric public utility's service territory.

(c) Subject to the aggregate competitive procurement requirements established by this section, the electric public utilities shall have the authority to determine the location and allocated amount of the competitive procurement within their respective balancing authority areas, whether located inside or outside the geographic boundaries of the State, taking into consideration (i) the State's desire to foster diversification of siting of renewable energy resources throughout the State; (ii) the efficiency and reliability impacts of siting of additional renewable energy facilities in each public utility's service territory; and (iii) the potential for increased delivered cost to a public utility's customers as a result of siting additional renewable energy facilities in a public utility's service territory, including additional costs of ancillary services that may be imposed due to the operational or locational characteristics of a specific renewable energy resource technology, such as nondispatchability, unreliability of availability, and creation or exacerbation of system congestion that may increase redispatch costs.

(d) The competitive procurement of renewable energy capacity established pursuant to this section shall be independently administered by a third-party entity to be approved by the Commission. The third-party entity shall develop and publish the methodology used to evaluate responses received pursuant to a competitive procurement solicitation and to ensure that all responses are treated equitably. All reasonable and prudent administrative and related expenses incurred to implement this subsection shall be recovered from market participants through administrative fees levied upon those that participate in the competitive bidding process, as approved by the Commission.

(e) An electric public utility may participate in any competitive procurement process, but shall only participate within its own assigned service territory. If the public utility uses nonpublicly available information concerning its own distribution or transmission system in preparing a proposal to a competitive procurement, the public utility shall make such information available to third parties that have notified the public utility of their intention to submit a proposal to the same request for proposals.

(f) For purposes of this section, the term "balancing authority" means the entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports interconnection frequency in real time, and the term "balancing authority area" means the collection of generation, transmission, and loads within the metered boundaries of the balancing authority, and the balancing authority maintains load-resource balance within this area.

(g) An electric public utility shall be authorized to recover the costs of all purchases of energy, capacity, and environmental and renewable attributes from third-party renewable energy facilities and to recover the authorized revenue of any utility-owned assets that are procured pursuant to this section through an annual rider approved by the Commission and reviewed annually. Provided it is in the public interest, the authorized revenue for any renewable energy facilities owned by an electric public utility may be calculated on a market basis in lieu of cost-of-service based recovery, using data from the applicable competitive procurement to determine the market price in accordance with the methodology established by the Commission pursuant to subsection (h) of this section. The annual increase in the aggregate amount of these costs that are recoverable by an electric public utility pursuant to this subsection shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year.

(h) The Commission shall adopt rules to implement the requirements of this section, as follows:

- (1) Oversight of the competitive procurement program.
- (2) To provide for a waiver of regulatory conditions or code of conduct requirements that would unreasonably restrict a public utility or its affiliates from participating in the competitive procurement process, unless the Commission finds that such a waiver would not hold the public utility's customers harmless.
- (3) Establishment of a procedure for expedited review and approval of certificates of public convenience and necessity, or the transfer thereof, for renewable energy facilities owned by the public utility and procured pursuant to this section. The Commission shall issue an order not later than 30 days after a petition for a certificate is filed by the public utility.
- (4) Establishment of a methodology to allow an electric public utility to recover its costs pursuant to subsection (g) of this section.
- (5) Repealed by Session Laws 2021-165, s. 2(b), effective October 13, 2021.

(i) The requirements of this section shall not apply to an electric public utility serving fewer than 150,000 North Carolina retail jurisdictional customers as of January 1, 2017. (2017-192, s. 2(a); 2021-165, s. 2(a), (b).)