

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 3
Agriculture/Environment/Natural Resources Committee Substitute Adopted
6/26/07

Short Title: Promote Renewable Energy/Baseload Generation. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

1
2 AN ACT TO: (1) PROMOTE THE DEVELOPMENT OF RENEWABLE ENERGY
3 AND ENERGY EFFICIENCY IN THE STATE THROUGH IMPLEMENTATION
4 OF A RENEWABLE ENERGY AND ENERGY EFFICIENCY PORTFOLIO
5 STANDARD (REPS), (2) ALLOW RECOVERY OF CERTAIN NONFUEL
6 UTILITY COSTS THROUGH THE FUEL CHARGE ADJUSTMENT
7 PROCEDURE, (3) PROVIDE FOR ONGOING REVIEW OF CONSTRUCTION
8 COSTS AND FOR RECOVERY OF COSTS IN RATES IN A GENERAL RATE
9 CASE, (4) ADJUST THE PUBLIC UTILITY AND ELECTRIC MEMBERSHIP
10 CORPORATION REGULATORY FEES, (5) PROVIDE FOR THE PHASEOUT
11 OF THE TAX ON THE SALE OF ENERGY TO NORTH CAROLINA FARMERS
12 AND MANUFACTURERS, (6) PROVIDE AN INCOME TAX CREDIT FOR
13 BUILDERS OF ENERGY-EFFICIENT HOMES, AND (7) ALLOW A TAX
14 CREDIT TO CONTRIBUTORS TO 501(C)(3) ORGANIZATIONS FOR
15 RENEWABLE ENERGY PROPERTY.

16 The General Assembly of North Carolina enacts:

17 **SECTION 1.** G.S. 62-2(a) reads as rewritten:

18 "**§ 62-2. Declaration of policy.**

19 (a) Upon investigation, it has been determined that the rates, services and
20 operations of public utilities as defined herein, are affected with the public interest and
21 that the availability of an adequate and reliable supply of electric power and natural gas
22 to the people, economy and government of North Carolina is a matter of public policy.
23 It is hereby declared to be the policy of the State of North Carolina:

24 ...

25 (8) To cooperate with other states and with the federal government in
26 promoting and coordinating interstate and intrastate public utility
27 service and reliability of public utility energy supply; ~~and~~

- 1 (9) To facilitate the construction of facilities in and the extension of
2 natural gas service to unserved areas in order to promote the public
3 welfare throughout the State and to that end to authorize the creation
4 of expansion funds for natural gas local distribution companies or gas
5 districts to be administered under the supervision of the North Carolina
6 Utilities ~~Commission~~.Commission; and
- 7 (10) To promote the development of renewable energy and energy
8 efficiency through the implementation of a Renewable Energy and
9 Energy Efficiency Portfolio Standard (REPS) that will do all of the
10 following:
- 11 a. Diversify the resources used to reliably meet the energy needs
12 of consumers in the State.
- 13 b. Provide greater energy security through the use of indigenous
14 energy resources available within the State.
- 15 c. Encourage private investment in renewable energy and energy
16 efficiency.
- 17 d. Provide improved air quality and other benefits to energy
18 consumers and citizens of the State."

19 **SECTION 2.(a)** Article 7 of Chapter 62 of the General Statutes is amended
20 by adding a new section to read:

21 **"§ 62-133.7. Renewable Energy and Energy Efficiency Portfolio Standard (REPS).**

22 (a) Definitions. – As used in this section:

- 23 (1) 'Combined heat and power system' means a system that uses waste
24 heat to produce electricity or useful, measurable thermal or mechanical
25 energy at a retail electric customer's facility.
- 26 (2) 'Demand-side management' means activities, programs, or initiatives
27 undertaken by an electric power supplier or its customers to shift the
28 timing of electricity use from peak to nonpeak demand periods.
29 'Demand-side management' includes, but is not limited to, load
30 management, electric system equipment and operating controls, direct
31 load control, and interruptible load.
- 32 (3) 'Electric power supplier' means a public utility, an electric membership
33 corporation, or a municipality that sells electric power to retail electric
34 power customers in the State.
- 35 (4) 'Energy efficiency measure' means an equipment, physical, or program
36 change implemented after 1 January 2007 that results in less energy
37 used to perform the same function. 'Energy efficiency measure'
38 includes, but is not limited to, energy produced from a combined heat
39 and power system that uses nonrenewable energy resources. 'Energy
40 efficiency measure' does not include demand-side management.
- 41 (5) 'New renewable energy facility' means a renewable energy facility that
42 either:
- 43 a. Was placed into service on or after 1 January 2007.

- 1 b. Delivers or has delivered electric power to an electric power
- 2 supplier pursuant to a contract with NC GreenPower
- 3 Corporation that was entered into prior to 1 January 2007.
- 4 c. Is a hydroelectric power facility with a generation capacity of
- 5 10 megawatts or less that delivers electric power to an electric
- 6 power supplier.
- 7 (6) 'Renewable energy certificate' means a tradable instrument that is
- 8 equal to one megawatt hour of electricity or equivalent energy
- 9 supplied by a renewable energy facility, new renewable energy
- 10 facility, or reduced by implementation of an energy efficiency measure
- 11 that is used to track and verify compliance with the requirements of
- 12 this section as determined by the Commission. A 'renewable energy
- 13 certificate' does not include the related emission reductions, including,
- 14 but not limited to, reductions of sulfur dioxide, oxides of nitrogen,
- 15 mercury, or carbon dioxide.
- 16 (7) 'Renewable energy facility' means a facility, other than a hydroelectric
- 17 power facility with a generation capacity of more than 10 megawatts,
- 18 that either:
- 19 a. Generates electric power by the use of a renewable energy
- 20 resource.
- 21 b. Generates useful, measurable combined heat and power derived
- 22 from a renewable energy resource.
- 23 c. Is a solar thermal energy facility.
- 24 (8) 'Renewable energy resource' means a solar electric, solar thermal,
- 25 wind, hydropower, geothermal, or ocean current or wave energy
- 26 resource; a biomass resource, including agricultural waste, animal
- 27 waste, wood waste, spent pulping liquors, combustible residues,
- 28 combustible liquids, combustible gases, energy crops, or landfill
- 29 methane; waste heat derived from a renewable energy resource and
- 30 used to produce electricity or useful, measurable thermal energy at a
- 31 retail electric customer's facility; or hydrogen derived from a
- 32 renewable energy resource. 'Renewable energy resource' does not
- 33 include a fossil fuel or nuclear energy resource.

34 (b) Renewable Energy and Energy Efficiency Standards (REPS) for Electric
 35 Public Utilities. –

- 36 (1) Each electric public utility in the State shall be subject to a Renewable
- 37 Energy and Energy Efficiency Portfolio Standard (REPS) according to
- 38 the following schedule:

<u>Calendar Year</u>	<u>REPS Requirement</u>
39 <u>2012</u>	<u>3% of 2011 North Carolina retail sales</u>
40 <u>2015</u>	<u>6% of 2014 North Carolina retail sales</u>
41 <u>2018</u>	<u>10% of 2017 North Carolina retail sales</u>
42 <u>2021 and thereafter</u>	<u>12.5% of 2020 North Carolina retail sales</u>

- 1 (2) An electric public utility may meet the requirements of this section by
2 any one or more of the following:
- 3 a. Generate electric power at a new renewable energy facility.
4 b. Use a renewable energy resource to generate electric power at a
5 generating facility other than the generation of electric power
6 from waste heat derived from the combustion of fossil fuel.
7 c. Reduce energy consumption through the implementation of an
8 energy efficiency measure; provided, however, an electric
9 public utility subject to the provisions of this subsection may
10 meet up to twenty-five percent (25%) of the requirements of
11 this section through savings due to implementation of energy
12 efficiency measures. Beginning in calendar year 2021 and each
13 year thereafter, an electric public utility may meet up to forty
14 percent (40%) of the requirements of this section through
15 savings due to implementation of energy efficiency measures.
16 d. Purchase electric power from a new renewable energy facility.
17 Electric power purchased from a new renewable energy facility
18 located outside the geographic boundaries of the State shall
19 meet the requirements of this section if the electric power is
20 delivered to a public utility that provides electric power to retail
21 electric customers in the State; provided, however, the electric
22 public utility shall not sell the renewable energy certificates
23 created pursuant to this paragraph to another electric public
24 utility.
25 e. Purchase renewable energy certificates derived from in-State or
26 out-of-state new renewable energy facilities. Certificates
27 derived from out-of-state new renewable energy facilities shall
28 not be used to meet more than twenty-five percent (25%) of the
29 requirements of this section, provided that this limitation shall
30 not apply to an electric public utility with less than 150,000
31 North Carolina retail jurisdictional customers as of 31
32 December 2006.
33 f. Use electric power that is supplied by a new renewable energy
34 facility or saved due to the implementation of an energy
35 efficiency measure that exceeds the requirements of this section
36 for any calendar year as a credit towards the requirements of
37 this section in the following calendar year or sell the associated
38 renewable energy certificates.
- 39 (c) Renewable Energy and Energy Efficiency Standards (REPS) for Electric
40 Membership Corporations and Municipalities. –
- 41 (1) Each electric membership corporation or municipality that sells
42 electric power to retail electric power customers in the State shall be
43 subject to a Renewable Energy and Energy Efficiency Portfolio
44 Standard (REPS) according to the following schedule:

- | | | |
|---|----------------------------|--|
| | <u>Calendar Year</u> | <u>REPS Requirement</u> |
| 1 | | |
| 2 | <u>2012</u> | <u>3% of 2011 North Carolina retail sales</u> |
| 3 | <u>2015</u> | <u>6% of 2014 North Carolina retail sales</u> |
| 4 | <u>2018 and thereafter</u> | <u>10% of 2017 North Carolina retail sales</u> |
- 5 (2) An electric membership corporation or municipality may meet the
6 requirements of this section by any one or more of the following:
7 a. Generate electric power at a new renewable energy facility.
8 b. Reduce energy consumption through the implementation of
9 demand-side management or energy efficiency measures.
10 c. Purchase electric power from a renewable energy facility or a
11 hydroelectric power facility, provided that no more than thirty
12 percent (30%) of the requirements of this section may be met
13 with hydroelectric power, including allocations made by the
14 Southeastern Power Administration.
15 d. Purchase renewable energy certificates derived from in-State or
16 out-of-state renewable energy facilities. An electric power
17 supplier subject to the requirements of this subsection may use
18 certificates derived from out-of-state renewable energy facilities
19 to meet no more than twenty-five percent (25%) of the
20 requirements of this section.
21 e. Acquire all or part of its electric power through a wholesale
22 purchase power agreement with a wholesale supplier of electric
23 power whose portfolio of supply and demand options meets the
24 requirements of this section.
25 f. Use electric power that is supplied by a new renewable energy
26 facility or saved due to the implementation of demand-side
27 management or energy efficiency measures that exceeds the
28 requirements of this section for any calendar year as a credit
29 towards the requirements of this section in the following
30 calendar year or sell the associated renewable energy
31 certificates.
- 32 (d) Compliance With REPS Requirement Through Use of Solar Energy
33 Resources. – For calendar year 2018 and for each calendar year thereafter, at least
34 two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to
35 retail electric customers in the State, or an equivalent amount of energy, shall be
36 supplied by a combination of new solar electric facilities and new metered solar thermal
37 energy facilities that use one or more of the following applications: solar hot water,
38 solar absorption cooling, solar dehumidification, solar thermally driven refrigeration,
39 and solar industrial process heat. The terms of any contract entered into between an
40 electric power supplier and a new solar electric facility or new metered solar thermal
41 energy facility shall be of sufficient length to stimulate development of solar energy;
42 provided, the Commission shall develop a procedure to determine if an electric power
43 supplier is in compliance with the provisions of this subsection if a new solar electric
44 facility or a new metered solar thermal energy facility fails to meet the terms of its

1 contract with the electric power supplier. As used in this subsection, 'new' means a
 2 facility that was first placed into service on or after 1 January 2007. The electric power
 3 suppliers shall comply with the requirements of this subsection according to the
 4 following schedule:

<u>Calendar Year</u>	<u>Requirement for Solar Energy Resources</u>
<u>2010</u>	<u>0.02%</u>
<u>2012</u>	<u>0.07%</u>
<u>2015</u>	<u>0.14%</u>
<u>2018</u>	<u>0.20%</u>

10 (e) Compliance With REPS Requirement Through Use of Swine Waste
 11 Resources. – For calendar year 2018 and for each calendar year thereafter, at least
 12 two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to
 13 retail electric customers in the State shall be supplied, or contracted for supply in each
 14 year, by swine waste. The electric power suppliers, in the aggregate, shall comply with
 15 the requirements of this subsection according to the following schedule:

<u>Calendar Year</u>	<u>Requirement for Swine Waste Resources</u>
<u>2012</u>	<u>0.07%</u>
<u>2015</u>	<u>0.14%</u>
<u>2018</u>	<u>0.20%</u>

20 (f) Compliance With REPS Requirement Through Use of Poultry Waste
 21 Resources. – For calendar year 2014 and for each calendar year thereafter, at least
 22 900,000 megawatt hours of the total electric power sold to retail electric customers in
 23 the State shall be supplied, or contracted for supply in each year, by poultry waste
 24 combined with wood shavings, straw, rice hulls, or other bedding material. The electric
 25 power suppliers, in the aggregate, shall comply with the requirements of this subsection
 26 according to the following schedule:

<u>Calendar Year</u>	<u>Requirement for Poultry Waste Resources</u>
<u>2012</u>	<u>170,000 megawatt hours</u>
<u>2013</u>	<u>700,000 megawatt hours</u>
<u>2014</u>	<u>900,000 megawatt hours</u>

31 (g) Cost Recovery and Customer Charges. –

32 (1) For the purposes of this subsection, the term "incremental costs"
 33 means all reasonable and prudent costs incurred by an electric power
 34 supplier to:

- 35 a. Comply with the requirements of subsections (b), (c), (d), (e),
 36 and (f) of this section that are in excess of the electric power
 37 supplier's avoided costs other than those costs recovered
 38 pursuant to G.S. 62-133.8.
- 39 b. Fund research that encourages the development of renewable
 40 energy, energy efficiency, or improved air quality, provided
 41 those costs do not exceed one million dollars (\$1,000,000) per
 42 year.
- 43 c. Comply with any federal mandate that is similar to the
 44 requirements of subsections (b), (c), (d), (e), and (f) of this

1 section that exceed the costs that the electric power supplier
 2 would have incurred under those subsections in the absence of
 3 the federal mandate.

4 (2) All reasonable and prudent costs incurred by an electric power supplier
 5 to comply with any federal mandate that is similar to the requirements
 6 of subsections (b), (c), (d), (e), and (f) of this section, including, but
 7 not limited to, the avoided costs associated with a federal mandate that
 8 exceeds the avoided costs that the electric power supplier would have
 9 incurred pursuant to subsections (b), (c), (d), (e), and (f) of this section
 10 in the absence of the federal mandate, shall be recovered by the
 11 electric power supplier in an annual rider charge assessed in
 12 accordance with the schedule set out in subdivision (4) of this
 13 subsection increased by the Commission on a pro rata basis to allow
 14 for full and complete recovery of all reasonable and prudent costs
 15 incurred to comply with the federal mandate.

16 (3) Except as provided in subdivision (2) of this subsection, the total
 17 annual incremental cost to be incurred by an electric power supplier
 18 and recovered from the electric power supplier's retail customers shall
 19 not exceed an amount equal to the per-account annual charges set out
 20 in subdivision (4) of this subsection applied to the electric power
 21 supplier's total number of customer accounts determined as of 31
 22 December of the previous calendar year. An electric power supplier
 23 shall be conclusively deemed to be in compliance with the
 24 requirements of subsections (b), (c), (d), (e), and (f) of this section if
 25 the electric power supplier's total annual incremental costs incurred
 26 equals an amount equal to the per-account annual charges set out in
 27 subdivision (4) of this subsection applied to the electric power
 28 supplier's total number of customer accounts determined as of 31
 29 December of the previous calendar year. The total annual incremental
 30 cost recoverable by an electric power supplier from an individual
 31 customer shall not exceed the per-account charges set out in
 32 subdivision (4) of this subsection except as these charges may be
 33 adjusted in subdivision (2) of this subsection.

34 (4) An electric power supplier shall be allowed to recover the incremental
 35 costs incurred to comply with the requirements of subsections (b), (c),
 36 (d), (e), and (f) of this section and fund research as provided in
 37 subdivision (1) of this subsection through an annual rider not to exceed
 38 the following per-account annual charges:

<u>Customer Class</u>	<u>2008-2011</u>	<u>2012-2014</u>	<u>2015 and thereafter</u>
<u>Residential per account</u>	<u>\$10.00</u>	<u>\$12.00</u>	<u>\$34.00</u>
<u>Commercial per account</u>	<u>\$50.00</u>	<u>\$150.00</u>	<u>\$150.00</u>
<u>Industrial per account</u>	<u>\$500.00</u>	<u>\$1,000.00</u>	<u>\$1,000.00</u>

1 (5) The Commission shall adopt rules to establish a procedure for the
2 annual assessment of the per-account charges set out in this subsection
3 to an electric public utility's customers to allow for timely recovery of
4 all reasonable and prudent costs of compliance with the requirements
5 of subsections (b), (c), (d), (e), and (f) of this section and to fund
6 research as provided in subdivision (1) of this subsection. The
7 Commission shall insure that the costs to be recovered from individual
8 customers on a per-account basis pursuant to subdivisions (2) and (3)
9 of this subsection are in the same proportion as the per-account annual
10 charges for each customer class set out in subdivision (4) of this
11 subsection.

12 (h) Adoption of Rules. – The Commission shall adopt rules to implement the
13 provisions of this section. In developing rules, the Commission shall:

14 (1) Provide for the monitoring of compliance with and enforcement of the
15 requirements of this section.

16 (2) Include a procedure to modify or delay the provisions of subsections
17 (b), (c), (d), (e), and (f) of this section in whole or in part if the
18 Commission determines that it is in the public interest to do so. The
19 procedure adopted pursuant to this subdivision shall include a
20 requirement that the electric power supplier demonstrate that it made a
21 reasonable effort to meet the requirements set out in this section.

22 (3) Ensure that energy credited toward compliance with the provisions of
23 this section not be credited toward any other purpose, including
24 another renewable energy portfolio standard or voluntary renewable
25 energy purchase program in this State or any other state.

26 (4) Establish standards for interconnection of renewable energy facilities
27 and other nonutility owned generation with a generation capacity of 10
28 megawatts or less to an electric public utility's distribution system;
29 provided, however, that the Commission shall adopt, if appropriate,
30 federal interconnection standards.

31 (5) Consider whether it is in the public interest to adopt rules for electric
32 public utilities for net metering of renewable energy facilities with a
33 generation capacity of one megawatt or less.

34 (i) Report. – No later than 1 October of each year, the Commission shall submit
35 a report on the activities taken by the Commission to implement, and by electric power
36 suppliers to comply with, the requirements of this section to the Governor, the
37 Environmental Review Commission, and the Joint Legislative Utility Review
38 Committee. The report shall include any public comments received regarding direct,
39 secondary, and cumulative environmental impacts of the implementation of the
40 requirements of this section. In developing the report, the Commission shall consult
41 with the Department of Environment and Natural Resources."

42 **SECTION 2.(b)** The Commission shall submit the first report required by
43 G.S. 62-133.7(i), as enacted by subsection (a) of this section, no later than 1 October
44 2008.

1 **SECTION 3.** If the federal government imposes requirements similar to
2 those set out in G.S. 62-133.7 on electric power suppliers in the State, the Utilities
3 Commission shall determine the applicability of federal and State requirements so as to
4 apply the more stringent requirements except to the extent that State requirements may
5 be specifically preempted by federal law. The Commission shall adopt rules to establish
6 a procedure as an alternative to the procedure set out in G.S. 62-133 to annually adjust
7 the rates of electric public utilities to allow timely recovery of all reasonable costs of
8 compliance with the federal and State requirements pursuant to G.S. 62-133.7(g), as
9 enacted by Section 2 of this act. In adopting rules to establish the procedure, the
10 Commission shall incorporate the provisions of this act in accordance with this section
11 and the public interest.

12 **SECTION 4.(a)** Article 7 of Chapter 62 of the General Statutes is amended
13 by adding a new section to read:

14 **"§ 62-133.8. Cost recovery for demand-side management and energy efficiency**
15 **measures.**

16 (a) The definitions set out in G.S. 62-133.7 apply to this section. As used in this
17 section, 'new', used in connection with demand-side management or energy efficiency
18 measure, means demand-side management or energy efficiency measure that is adopted
19 and implemented on or after 1 January 2007, including subsequent changes and
20 modifications.

21 (b) Each electric power supplier shall implement demand-side management and
22 energy efficiency measures and use supply-side resources to establish the least cost mix
23 of demand reduction and generation measures that meet the electricity needs of its
24 customers. An electric membership corporation or municipality that qualifies as an
25 electric power supplier may satisfy the requirements of this section through its
26 purchases from a wholesale supplier of electric power that uses supply-side resources
27 and demand-side management to meet all or a portion of the supply needs of its
28 members and their retail customers, and that, by aggregating and promoting
29 demand-side management and energy efficiency measures for its members, meets the
30 requirements of this section.

31 (c) Each electric power supplier to which G.S. 62-110.1 applies shall include an
32 assessment of demand-side management and energy efficiency in its resource plans
33 submitted to the Commission and shall submit cost-effective demand-side management
34 and energy efficiency options that require incentives to the Commission for approval.

35 (d) The Commission shall, upon petition of an electric public utility, approve an
36 annual rider to the electric public utility's rates to recover all reasonable and prudent
37 costs incurred for adoption and implementation of new demand-side management and
38 new energy efficiency measures. Recoverable costs include, but are not limited to, all
39 capital costs, including cost of capital and depreciation expenses, administrative costs,
40 implementation costs, incentive payments to program participants, and operating costs.
41 In determining the amount of any rider, the Commission:

- 42 (1) Shall allow electric public utilities to capitalize all or a portion of those
43 costs to the extent that those costs are intended to produce future
44 benefits.

1 (2) May approve other incentives to electric public utilities for adopting
2 and implementing new demand-side management and energy
3 efficiency measures in order to treat investments in demand-side
4 management and energy efficiency measures in a manner similar to
5 investments in supply-side resources and to make electric public
6 utilities indifferent to the selection of demand-side management and
7 energy efficiency or supply-side options. Allowable incentives may
8 include:

- 9 a. Appropriate rewards based on the sharing of savings achieved
10 by the demand-side management and energy efficiency
11 measures.
12 b. Appropriate rewards based on capitalization of a percentage of
13 avoided costs achieved by demand-side management and
14 energy efficiency measures.
15 c. Any other incentives that the Commission determines to be
16 appropriate.

17 (e) The Commission shall determine the appropriate assignment of costs of new
18 demand-side management and energy efficiency measures for electric public utilities
19 and shall assign the costs of the programs only to the class or classes of customers that
20 directly benefit from the programs.

21 (f) None of the costs of new demand-side management or energy efficiency
22 measures of an electric power supplier shall be assigned to any industrial customer that
23 notifies the industrial customer's electric power supplier that, at the industrial customer's
24 own expense, the industrial customer has implemented at any time in the past or, in
25 accordance with stated, quantified goals for demand-side management and energy
26 efficiency, will implement alternative demand-side management and energy efficiency
27 measures and that the industrial customer elects not to participate in demand-side
28 management or energy efficiency measures under this section. The electric power
29 supplier that provides electric service to the industrial customer, an industrial customer
30 that receives electric service from the electric power supplier, the Public Staff, or the
31 Commission on its own motion, may initiate a complaint proceeding before the
32 Commission to challenge the validity of the notification of nonparticipation. The
33 procedures set forth in G.S. 62-73, 62-74, and 62-75 shall govern any such complaint.

34 (g) The Commission shall adopt rules to implement this section.

35 (h) The Commission shall submit to the Governor and to the Joint Legislative
36 Utility Review Committee of the General Assembly a summary of the proceedings
37 conducted pursuant to this section during the preceding two fiscal years on or before 1
38 September of odd-numbered years."

39 **SECTION 4.(b)** The Commission shall submit the first report required by
40 G.S. 62-133.8(h), as enacted by subsection (a) of this section, no later than 1 September
41 2009.

42 **SECTION 5.** G.S. 62-133.2 reads as rewritten:

43 "**§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.**"

1 (a) ~~The Commission may allow~~ shall permit an electric utilities-public utility that
2 generates electric power by fossil fuel or nuclear fuel to charge a uniform increment
3 or decrement as a rider to their-its rates for changes in the cost of fuel and the fuel
4 component of purchased power and fuel-related costs used in providing their-its North
5 Carolina customers with electricity from the cost of fuel and the fuel component of
6 purchased power established in their previous general rate case and fuel-related costs
7 established in the electric public utility's previous general rate case on the basis of cost
8 per kilowatt hour.

9 (a1) As used in this section, 'cost of fuel and fuel-related costs' include all of the
10 following:

- 11 (1) The cost of fuel burned.
- 12 (2) The cost of fuel transportation.
- 13 (3) The cost of ammonia, lime, limestone, urea, dibasic acid, sorbents, and
14 catalysts consumed in reducing or treating emissions.
- 15 (4) The total delivered noncapacity related costs, including all related
16 transmission charges, of all purchases of electric power by the electric
17 public utility, that are subject to economic dispatch or economic
18 curtailment.
- 19 (5) The capacity costs associated with all purchases of electric power from
20 qualifying cogeneration facilities and qualifying small power
21 production facilities, as defined in 16 U.S.C. § 796, that are subject to
22 economic dispatch by the electric public utility.
- 23 (6) Except for those costs recovered pursuant to G.S. 62-133.7(g), the total
24 delivered costs of all purchases of power from renewable energy
25 facilities and new renewable energy facilities pursuant to
26 G.S. 62-133.7 or to comply with any federal mandate that is similar to
27 the requirements of subsections (b), (c), (d), (e), and (f) of
28 G.S. 62-133.7.
- 29 (7) The fuel cost component of other purchased power.
- 30 (8) Cost of fuel and fuel-related costs shall be adjusted for any net gains or
31 losses resulting from any sales by the electric public utility of fuel, and
32 other fuel-related costs components.
- 33 (9) Cost of fuel and fuel-related costs shall be adjusted for any net gains or
34 losses resulting from any sales by the electric public utility of
35 by-products produced in the generation process to the extent the costs
36 of the inputs leading to that by-product are costs of fuel or fuel-related
37 costs.

38 (a2) For those costs identified in subdivisions (4), (5), and (6) of subsection (a1)
39 of this section, the annual increase in the aggregate amount of these costs that are
40 recoverable by an electric public utility pursuant to this section shall not exceed two
41 percent (2%) of the electric public utility's total North Carolina retail jurisdictional gross
42 revenues for the preceding calendar year. The costs described in subdivisions (4), (5),
43 and (6) of subsection (a1) of this section shall be recoverable from each class of
44 customers as a separate component of the rider as follows:

1 (1) For the costs described in subdivision (4) of subsection (a1) of this
2 section, the specific component for each class of customers shall be
3 determined by allocating these costs among customer classes based on
4 the electric public utility's North Carolina energy usage for the prior
5 year, as determined by the Commission, until the Commission
6 determines how these costs shall be allocated in a general rate case for
7 the electric public utility commenced on or after 1 January 2008.

8 (2) For the costs described in subdivisions (5) and (6) of subsection (a1) of
9 this section, the specific component for each class of customers shall
10 be determined by allocating these costs among customer classes based
11 on the electric public utility's North Carolina peak demand for the
12 prior year, as determined by the Commission, until the Commission
13 determines how these costs shall be allocated in a general rate case for
14 the electric public utility commenced on or after 1 January 2008.

15 (a3) Notwithstanding subsections (a1) and (a2) of this section, for an electric
16 public utility that has less than 150,000 North Carolina retail jurisdictional customers as
17 of 31 December 2006, the costs identified in subsection (a1) of this section shall be
18 recovered through the electric public utility's base and fuel rates respectively in the
19 manner approved by the Commission as of 1 July 2007 and as may be subsequently
20 modified by the Commission except that the costs described in subdivision (6) of
21 subsection (a1) of this section that are incurred on or after 1 January 2008 shall be
22 recovered as cost of fuel and fuel-related cost, and the annual increase in the amount of
23 those costs shall not exceed one percent (1%) of the electric public utility's total North
24 Carolina retail jurisdictional gross revenues for the preceding calendar year. These costs
25 shall be recoverable from each class of customers as a separate component of the rider.
26 For these costs, the specific component for each class of customers shall be determined
27 by allocating the costs among customer classes based on the electric public utility's
28 North Carolina peak demand for the prior year, as determined by the Commission, until
29 the Commission determines how these costs shall be allocated in a general rate case for
30 the electric public utility commenced on or after 1 January 2008.

31 ~~(b) For each electric utility engaged in the generation and production of electric~~
32 ~~power by fossil or nuclear fuels, the~~The Commission shall ~~hold~~ conduct a hearing
33 within 12 months of ~~the~~ each electric public utility's last general rate case order ~~and to~~
34 determine whether an increment or decrement rider is required to reflect actual changes
35 in the cost of fuel ~~and the fuel cost component of purchased power~~ and fuel-related costs
36 over or under the cost of fuel and fuel-related costs on a kilowatt-hour basis in base
37 rates established in the electric public utility's last preceding general rate case.
38 Additional hearings shall be held on an annual basis but only one hearing for each ~~such~~
39 electric public utility may be held within 12 months of the last general rate case.

40 (c) Each electric public utility shall submit to the Commission for the hearing
41 verified annualized information and data in such form and detail as the Commission
42 may require, for an historic 12-month test period, relating to:

43 (1) ~~Purchased cost~~ Cost of fuel and fuel-related costs used in each
44 generating facility owned in whole or in part by the utility.

- 1 (2) Fuel procurement practices and fuel inventories for each facility.
- 2 (3) Burned cost of fuel used in each generating facility.
- 3 (4) Plant capacity factor for each generating facility.
- 4 (5) Plant availability factor for each generating plant.
- 5 (6) Generation mix by types of fuel used.
- 6 (7) Sources and fuel cost component of purchased power used.
- 7 (8) Recipients of and revenues received for power sales and times of
- 8 power sales.
- 9 (9) Test period ~~kilowatt-hour~~kilowatt-hour sales for the utility's total
- 10 system and on the total system separated for North Carolina
- 11 jurisdictional sales.
- 12 (10) Procurement practices and inventories for: fuel burned and for
- 13 ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts
- 14 consumed in reducing or treating emissions.
- 15 (11) The cost incurred at each generating facility of fuel burned and of
- 16 ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts
- 17 consumed in reducing or treating emissions.
- 18 (12) Any net gains or losses resulting from any sales by the electric public
- 19 utility of fuel or other fuel-related costs components.
- 20 (13) Any net gains or losses resulting from any sales by the electric public
- 21 utility of by-products produced in the generation process to the extent
- 22 the costs of the inputs leading to that by-product are costs of fuel or
- 23 fuel-related costs.

24 (d) The Commission shall provide for notice of a public hearing with reasonable
25 and adequate time for investigation and for all intervenors to prepare for hearing. At the
26 hearing the Commission shall receive evidence from the utility, the ~~public staff~~Public
27 Staff, and any intervenor desiring to submit evidence, and from the public generally. In
28 reaching its decision, the Commission shall consider all evidence required under
29 subsection (c) of this section as well as any and all other competent evidence that may
30 assist the Commission in reaching its decision including changes in the ~~price of fuel~~
31 ~~consumed and changes in the price of the fuel in the fuel component of purchased~~
32 ~~power occurring within a reasonable time (as determined by the Commission) after the~~
33 ~~test period is closed.~~cost of fuel consumed and fuel-related costs that occur within a
34 reasonable time, as determined by the Commission, after the test period is closed. The
35 Commission shall incorporate in its ~~fuel-cost~~of fuel and fuel-related costs determination
36 under this subsection the experienced over-recovery or under-recovery of reasonable
37 costs of fuel and fuel-related costs~~expenses~~ prudently incurred during the test period,
38 based upon the prudent standards set pursuant to subsection (d1) of this section, in
39 fixing an increment or decrement rider. Upon request of the electric public utility, the
40 Commission shall also incorporate in this determination the experienced over-recovery
41 or under-recovery of costs of fuel and fuel-related costs through the date that is 30
42 calendar days prior to the date of the hearing, provided that the reasonableness and
43 prudence of these costs shall be subject to review in the utility's next annual hearing
44 pursuant to this section. The Commission shall use deferral accounting, and consecutive

1 test periods, in complying with this subsection, and the over-recovery or under-recovery
2 portion of the increment or decrement shall be reflected in rates for 12 months,
3 notwithstanding any changes in the base fuel cost in a general rate case. The burden of
4 proof as to the correctness and reasonableness of the charge and as to whether the cost
5 of fuel charges and fuel-related costs were reasonably and prudently incurred shall be
6 on the utility. The Commission shall allow only that portion, if any, of a requested cost
7 of fuel and fuel-related costs adjustment that is based on adjusted and reasonable cost of
8 fuel expenses and fuel-related costs prudently incurred under efficient management and
9 economic operations. In evaluating whether cost of fuel expenses and fuel-related costs
10 were reasonable and prudently incurred, the Commission shall apply the rule adopted
11 pursuant to subsection ~~(d1)~~ (d1) of this section. To the extent that the Commission
12 determines that an increment or decrement to the rates of the utility due to changes in
13 the cost of fuel and ~~the fuel cost component of purchased power~~ fuel-related costs over
14 or under base fuel costs established in the preceding general rate case is just and
15 reasonable, the Commission shall order that the increment or decrement become
16 effective for all sales of electricity and remain in effect until changed in a subsequent
17 general rate case or annual proceeding under this section.

18 (d1) Within one year after ratification of this act, for the purposes of setting ~~fuel~~
19 ~~rates,~~ cost of fuel and fuel-related costs rates, the Commission shall adopt a rule that
20 establishes prudent standards and procedures with which it can appropriately measure
21 management efficiency in minimizing ~~fuel cost of fuel and fuel-related costs~~.

22 (e) If the Commission has not issued an order pursuant to this section within ~~120~~
23 180 days of a utility's submission of annual data under subsection (c) of this section, the
24 utility may place the requested cost of fuel and fuel-related costs adjustment into effect.
25 If the change in rate is finally determined to be excessive, the utility shall make refund
26 of any excess plus interest to its customers in a manner ordered by the Commission.

27 (f) Nothing in this section shall relieve the Commission from its duty to consider
28 the reasonableness of ~~fuel expenses~~ the cost of fuel and fuel-related costs in a general
29 rate case and to set rates reflecting reasonable ~~fuel expenses~~ cost of fuel and fuel-related
30 costs pursuant to G.S. 62-133. Nothing in this section shall invalidate or preempt any
31 condition adopted by the Commission and accepted by the utility in any proceeding that
32 would limit the recovery of costs by any electric public utility under this section.

33 ~~On July 1, 1993 and every two years thereafter,~~ On 1 July of every
34 odd-numbered year, the Utilities Commission shall provide a report to the Joint
35 Legislative Utility Review Committee summarizing the ~~procedures~~ proceedings
36 conducted pursuant to ~~G.S. 62-133.2~~ this section during the preceding two years."

37 **SECTION 6.** G.S. 62-110.1 reads as rewritten:

38 "**§ 62-110.1. Certificate for construction of generating facility; analysis of**
39 **long-range needs for expansion of ~~facilities~~ facilities; ongoing review of**
40 **construction costs; inclusion of approved construction costs in rates.**

41 (a) Notwithstanding the proviso in G.S. 62-110, no public utility or other person
42 shall begin the construction of any steam, water, or other facility for the generation of
43 electricity to be directly or indirectly used for the furnishing of public utility service,
44 even though the facility be for furnishing the service already being rendered, without

1 first obtaining from the Commission a certificate that public convenience and necessity
2 requires, or will require, such construction.

3 (b) For the purpose of subsections (a), (c), and (d) of this section, "public utility"
4 shall include any electric membership corporation operating within this State, and the
5 term "public utility service" shall include the service rendered by any such electric
6 membership corporation.

7 (c) The Commission shall develop, publicize, and keep current an analysis of the
8 long-range needs for expansion of facilities for the generation of electricity in North
9 Carolina, including its estimate of the probable future growth of the use of electricity,
10 the probable needed generating reserves, the extent, size, mix and general location of
11 generating plants and arrangements for pooling power to the extent not regulated by the
12 ~~Federal Power~~Energy Regulatory Commission and other arrangements with other
13 utilities and energy suppliers to achieve maximum efficiencies for the benefit of the
14 people of North Carolina, and shall consider such analysis in acting upon any petition
15 by any utility for construction. In developing such analysis, the Commission shall
16 confer and consult with the public utilities in North Carolina, the utilities commissions
17 or comparable agencies of neighboring states, the ~~Federal Power~~Energy Regulatory
18 Commission, the Southern Growth Policies Board, and other agencies having relevant
19 information and may participate as it deems useful in any joint boards investigating
20 generating plant sites or the probable need for future generating facilities. In addition to
21 such reports as public utilities may be required by statute or rule of the Commission to
22 file with the Commission, any such utility in North Carolina may submit to the
23 Commission its proposals as to the future needs for electricity to serve the people of the
24 State or the area served by such utility, and insofar as practicable, each such utility and
25 the Attorney General may attend or be represented at any formal conference conducted
26 by the Commission in developing a plan for the future requirements of electricity for
27 North Carolina or this region. In the course of making the analysis and developing the
28 plan, the Commission shall conduct one or more public hearings. Each year, the
29 Commission shall submit to the Governor and to the appropriate committees of the
30 General Assembly a report of its analysis and plan, the progress to date in carrying out
31 such plan, and the program of the Commission for the ensuing year in connection with
32 such plan.

33 (d) In acting upon any petition for the construction of any facility for the
34 generation of electricity, the Commission shall take into account the applicant's
35 arrangements with other electric utilities for interchange of power, pooling of plant,
36 purchase of power and other methods for providing reliable, ~~efficient~~efficient, and
37 economical electric service.

38 (e) As a condition for receiving such certificate the applicant shall file an
39 estimate of construction costs in such detail as the Commission may require. The
40 Commission shall hold a public hearing on each such application and no certificate shall
41 be granted unless the Commission has approved the estimated construction costs and
42 made a finding that such construction will be consistent with the Commission's plan for
43 expansion of electric generating capacity. Once a certificate has been granted by the
44 Commission, no public utility shall cancel construction of a generating unit or facility

1 without requesting and receiving approval from the Commission based upon a finding
2 that the construction is no longer in the public interest.

3 (e1) Upon the request of the public utility or upon its own motion, the
4 Commission may review the certificate to determine whether changes in the probable
5 future growth of the use of electricity indicate that the public convenience and necessity
6 requires modification or revocation of the certificate. If the Commission finds that
7 completion of the generating facility is no longer in the public interest, the Commission
8 may modify or revoke the certificate.

9 (f) ~~The Commission shall maintain an ongoing review of such construction as it~~
10 ~~proceeds and the applicant shall submit each year during construction a progress report~~
11 ~~and any revisions in the cost estimates for the construction. The public utility shall~~
12 submit a progress report and any revision in the cost estimate for the construction
13 approved under subsection (e) of this section during each year of construction. Upon the
14 request of the public utility or upon its own motion, the Commission may conduct an
15 ongoing review of construction of the facility as the construction proceeds. If the
16 Commission approves any revised construction cost estimate and finds that incurrence
17 of the cost of that portion of the construction of the facility under review was reasonable
18 and prudent, the certificate shall remain in effect. If the Commission disapproves any
19 part of the revised cost estimate or finds that the incurrence of the cost of that portion of
20 the construction of the facility then under review was unreasonable or imprudent, the
21 Commission may modify or revoke the certificate.

22 (f1) The public utility shall recover through rates in a general rate case conducted
23 pursuant to G.S. 62-133 the actual costs it has incurred in constructing a generating
24 facility in reliance on a certificate issued under this section as provided in this
25 subsection, unless new evidence is discovered (i) that could not have been discovered
26 by due diligence at an earlier time and (ii) that reasonably tends to show that a previous
27 determination by the Commission that a material item of cost was just and reasonable
28 and prudently incurred was erroneous. If the Commission determines that evidence has
29 been submitted that meets the requirements of this subsection, the public utility shall
30 have the burden of proof to demonstrate that the material item of cost was in fact just
31 and reasonable and prudently incurred.

32 (1) When a facility has been completed, and the construction of the
33 facility has been subject to ongoing review under subsection (f) of this
34 section, the reasonable and prudent costs of construction approved by
35 the Commission during the ongoing review shall be included in the
36 public utility's rate base without further review by the Commission.

37 (2) If a facility has not been completed, and the construction of the facility
38 has been subject to ongoing review under subsection (f) of this section,
39 the reasonable and prudent costs of construction approved by the
40 Commission during the ongoing review shall be included in the public
41 utility's rate base without further review by the Commission.

42 (3) If a facility is under construction or has been completed and the
43 construction of the facility has not been subject to ongoing review
44 under subsection (f) of this section, the costs of construction shall be

1 included in the public utility's rate base if the Commission finds that
2 the incurrence of these costs is reasonable and prudent.

3 (f2) If the construction of a facility is cancelled, including cancellation as a result
4 of modification or revocation of the certificate under subsection (e1) of this section, and
5 the construction of the facility has been subject to ongoing review under subsection (f),
6 absent newly discovered evidence (i) that could not have been discovered by due
7 diligence at an earlier time and (ii) that reasonably tends to show that a previous
8 determination by the Commission that a material item of cost was just and reasonable
9 and prudently incurred was erroneous, the public utility shall recover through rates in a
10 general rate case conducted pursuant to G.S. 62-133 the costs of construction approved
11 by the Commission during the ongoing review that were actually incurred prior to
12 cancellation, amortized over a reasonable time as determined by the Commission. If the
13 Commission determines that evidence has been submitted that meets the requirements
14 of this subsection, the public utility shall have the burden of proof to demonstrate that
15 the material item of cost was just and reasonable and prudently incurred.

16 (f3) If the construction of a facility is cancelled, including cancellation as a result
17 of the modification or revocation of the certificate under subsection (e1) of this section,
18 and the construction of the facility has not been subject to ongoing review under
19 subsection (f) of this section, the public utility shall recover through rates in a general
20 rate case conducted pursuant to G.S. 62-133 the costs of construction that were actually
21 incurred prior to the cancellation and are found by the Commission to be reasonable and
22 prudent, amortized over a reasonable time as determined by the Commission.

23 (g) The certification requirements of this section shall not apply to a
24 nonutility-owned generating facility fueled by renewable energy resources under two
25 megawatts in capacity or to persons who construct an electric generating facility
26 primarily for that person's own use and not for the primary purpose of producing
27 electricity, heat, or steam for sale to or for the public for compensation; provided,
28 however, that such persons shall, nevertheless, be required to report to the Utilities
29 Commission the proposed construction of such a facility before beginning construction
30 thereof."

31 **SECTION 7.** Article 6 of Chapter 62 of the General Statutes is amended by
32 adding two new sections to read:

33 **§ 62-110.6. Rate recovery for construction costs of out-of-state electric generating**
34 **facilities.**

35 (a) The Commission shall, upon petition of a public utility, determine the need
36 for and, if need is established, approve an estimate of the construction costs and
37 construction schedule for an electric generating facility in another state that is intended
38 to serve retail customers in this State.

39 (b) The petition may be filed at any time after an application for a certificate or
40 license for the construction of the facility has been filed in the state in which the facility
41 will be sited. The petition shall contain a showing of need for the facility, an estimate of
42 the construction costs, and the proposed construction schedule for the facility.

43 (c) The Commission shall conduct a public hearing to consider and determine the
44 need for the facility and the reasonableness of the construction cost estimate and

1 proposed construction schedule. If the Commission finds that the construction will be
2 needed to assure the provision of adequate public utility service within North Carolina,
3 the Commission shall approve a construction cost estimate and a construction schedule
4 for the facility. In making its determinations under this section, the Commission may
5 consider whether the state in which the facility will be sited has issued a certificate or
6 license for construction of the facility and approved a construction cost estimate and
7 construction schedule for the facility. The Commission shall issue its order not later
8 than 180 days after the public utility files its petition.

9 (d) G.S. 62-110.1(f) shall apply to the construction cost estimate determined by
10 the Commission to be appropriate, and the actual costs the public utility incurs in
11 constructing the facility shall be recoverable through rates in a general rate case
12 pursuant to G.S. 62-133 as provided in G.S. 62-110.1(f1).

13 (e) If the construction of a facility is cancelled, the public utility shall recover
14 through rates in a general rate case conducted pursuant to G.S. 62-133 the costs of
15 construction that were actually incurred prior to the cancellation and are found by the
16 Commission to be reasonable and prudent, as provided in subsections (f2) and (f3) of
17 G.S. 62-110.1.

18 **"§ 62-110.7. Project development cost review for a nuclear facility.**

19 (a) For purposes of this section, "project development costs" mean all capital
20 costs associated with a potential nuclear electric generating facility incurred before (i)
21 issuance of a certificate under G.S. 62-110.1 for a facility located in North Carolina or
22 (ii) issuance of a certificate by the host state for an out-of-state facility to serve North
23 Carolina retail customers, including, without limitation, the costs of evaluation, design,
24 engineering, environmental analysis and permitting, early site permitting, combined
25 operating license permitting, initial site preparation costs, and allowance for funds used
26 during construction associated with such costs.

27 (b) At any time prior to the filing of an application for a certificate to construct a
28 potential nuclear electric generating facility, either under G.S. 62-110.1 or in another
29 state for a facility to serve North Carolina retail customers, a public utility may request
30 that the Commission review the public utility's decision to incur project development
31 costs. The public utility shall include with its request such information and
32 documentation as is necessary to support approval of the decision to incur proposed
33 project development costs. The Commission may hold a hearing regarding the request.
34 The Commission shall issue an order within 180 days after the public utility files its
35 request. The Commission shall approve the public utility's decision to incur project
36 development costs if the public utility demonstrates by a preponderance of evidence that
37 the decision to incur project development costs is reasonable and prudent; provided,
38 however, the Commission shall not rule on the reasonableness or prudence of specific
39 project development activities or recoverability of specific items of cost.

40 (c) All reasonable and prudent project development costs, as determined by the
41 Commission, incurred for the potential nuclear electric generating facility shall be
42 included in the public utility's rate base and shall be fully recoverable through rates in a
43 general rate case proceeding pursuant to G.S. 62-133.

1 (d) If the public utility is allowed to cancel the project, the Commission shall
2 permit the public utility to recover all reasonable and prudently incurred project
3 development costs in a general rate case proceeding pursuant to G.S. 62-133 amortized
4 over a period equal to the period during which the costs were incurred, or five years,
5 whichever is greater."

6 **SECTION 8.** G.S. 62-133(b) reads as rewritten:

7 "(b) In fixing such rates, the Commission shall:

8 (1) Ascertain the reasonable original cost of the public utility's property
9 used and useful, or to be used and useful within a reasonable time after
10 the test period, in providing the service rendered to the public within
11 the State, less that portion of the cost ~~which that~~ has been consumed by
12 previous use recovered by depreciation ~~expense plus the reasonable~~
13 ~~original cost of investment in plant under construction (construction~~
14 ~~work in progress). In ascertaining the cost of the public utility's~~
15 ~~property, construction work in progress as of the effective date of this~~
16 ~~subsection shall be excluded until such plant comes into service but~~
17 ~~reasonable and prudent expenditures for construction work in progress~~
18 ~~after the effective date of this subsection may be included, to the extent~~
19 ~~the Commission considers such inclusion in the public interest and~~
20 ~~necessary to the financial stability of the utility in question, subject to~~
21 ~~the provisions of subparagraph (b)(4a) of this section.~~expense. In
22 addition, construction work in progress may be included in the cost of
23 the public utility's property under any of the following circumstances:

24 a. To the extent the Commission considers inclusion in the public
25 interest and necessary to the financial stability of the utility in
26 question, reasonable and prudent expenditures for construction
27 work in progress may be included, subject to the provisions of
28 subdivision (4a) of subsection (b) of this section.

29 b. For baseload electric generating facilities, reasonable and
30 prudent expenditures shall be included pursuant to subdivisions
31 (2) or (3) of G.S. 62-110.1(f1) whichever applies, subject to the
32 provisions of subdivision (4a) of subsection (b) of this section.

33 (1a) Apply the rate of return established under subdivision (4) of this
34 subsection to rights-of-way acquired through agreements with the
35 Department of Transportation pursuant to G.S. 136-19.5(a) if
36 acquisition is consistent with a definite plan to provide service within
37 five years of the date of the agreement and if such right-of-way
38 acquisition will result in benefits to the ratepayers. If a right-of-way is
39 not used within a reasonable time after the expiration of the five-year
40 period, it may be removed from the rate base by the Commission when
41 rates for the public utility are next established under this section.

42 (2) Estimate such public utility's revenue under the present and proposed
43 rates.

(3) Ascertain such public utility's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation.

(4) Fix such rate of return on the cost of the property ascertained pursuant to subdivision (1) as will enable the public utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms ~~which~~that are reasonable and ~~which~~that are fair to its customers and to its existing investors.

(4a) Require each public utility to discontinue capitalization of the composite carrying cost of capital funds used to finance construction (allowance for funds) on the construction work in progress included in its rate based upon the effective date of the first and each subsequent general rate order issued with respect to it after the effective date of this subsection; allowance for funds may be capitalized with respect to expenditures for construction work in progress not included in the utility's property upon which the rates were fixed. In determining net operating income for return, the Commission shall not include any capitalized allowance for funds used during construction on the construction work in progress included in the utility's rate base.

(5) Fix such rates to be charged by the public utility as will earn in addition to reasonable operating expenses ascertained pursuant to subdivision (3) of this subsection the rate of return fixed pursuant to subdivisions (4) and (4a) on the cost of the public utility's property ascertained pursuant to subdivisions (1) and (1a) of this subsection."

SECTION 9.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve one-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after 1 July 2007.

SECTION 9.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2007-2008 fiscal year is two hundred thousand dollars (\$200,000).

SECTION 10.(a) Section 24.19 of S.L. 2006-66 is repealed.

SECTION 10.(b) G.S. 105-164.4(a)(1f) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-quarter percent (4.25%).

...

(1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity ~~described in this subdivision and that is measured by a separate meter or another separate device;~~device and

1 sold to a commercial laundry or to a pressing and dry-cleaning
 2 establishment for use in machinery used in the direct performance of
 3 the laundering or the pressing and cleaning service.

4 a. ~~Sales of electricity to farmers to be used by them for any farm~~
 5 ~~purposes other than preparing food, heating dwellings, and~~
 6 ~~other household purposes. The quantity of electricity or gas~~
 7 ~~purchased or used at any one time shall not be a determinative~~
 8 ~~factor as to whether its sale or use is or is not subject to the rate~~
 9 ~~of tax provided in this subdivision.~~

10 b. ~~Sales of electricity to manufacturing industries and~~
 11 ~~manufacturing plants for use in connection with the operation of~~
 12 ~~the industries and plants other than sales of electricity to be~~
 13 ~~used for residential heating purposes. The quantity of electricity~~
 14 ~~purchased or used at any one time shall not be a determinative~~
 15 ~~factor as to whether its sale or use is or is not subject to the rate~~
 16 ~~of tax provided in this subdivision.~~

17 e. ~~Sales of electricity to commercial laundries or to pressing and~~
 18 ~~dry cleaning establishments for use in machinery used in the~~
 19 ~~direct performance of the laundering or the pressing and~~
 20 ~~cleaning service."~~

21 **SECTION 10.(c)** G.S. 105-164.4(a) is amended by adding a new
 22 subdivision to read:

23 "(a) A privilege tax is imposed on a retailer at the following percentage rates of
 24 the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is
 25 four and one-quarter percent (4.25%).

26 ...
 27 (1i) The rate of one and eighty-nine hundredths percent (1.89%) applies to
 28 the sales price of electricity described in this subdivision and measured
 29 by a separate meter or another separate device:

30 a. Sales of electricity to manufacturing industries and
 31 manufacturing plants for use in connection with the operation of
 32 the industries and plants.

33 b. Sales of electricity to farmers to be used by them for any
 34 farming purposes other than preparing food, heating dwellings,
 35 and other household purposes."

36 **SECTION 10.(d)** G.S. 105-164.4(a)(1i), as enacted by subsection (c) of this
 37 section, reads as rewritten:

38 "(1i) The rate of ~~one and eighty nine hundredths percent (1.89%)~~
 39 ninety-four hundredths percent (0.94%) applies to the sales price of
 40 electricity described in this subdivision and measured by a separate
 41 meter or another separate device:

42 a. Sales of electricity to manufacturing industries and
 43 manufacturing plants for use in connection with the operation of
 44 the industries and plants.

1 b. Sales of electricity to farmers to be used by them for any
2 farming purposes other than preparing food, heating dwellings,
3 and other household purposes."

4 **SECTION 10.(e)** G.S. 105-164.4(a)(1i), as enacted by this section, is
5 repealed.

6 **SECTION 10.(f)** G.S. 105-164.13(1) reads as rewritten:

7 "**§ 105-164.13. Retail sales and use tax.**

8 The sale at retail and the use, storage, or consumption in this State of the following
9 tangible personal property and services are specifically exempted from the tax imposed
10 by this Article:

11 Agricultural Group.

12
13
14 (1) Any of the following items sold to a farmer for use by the farmer in the
15 planting, cultivating, harvesting, or curing of farm crops or in the
16 production of dairy products, eggs, or animals. A "farmer" includes a
17 dairy operator, a poultry farmer, an egg producer, a livestock farmer, a
18 farmer of crops, and a farmer of an aquatic species, as defined in
19 G.S. 106-758.

20 a. Commercial fertilizer, lime, land plaster, plastic mulch, plant
21 bed covers, potting soil, and seeds.

22 b. Farm machinery, attachment and repair parts for farm
23 machinery, and lubricants applied to farm machinery. The term
24 "machinery" includes implements that have moving parts or are
25 operated or drawn by an animal. The term does not include
26 implements operated wholly by hand or motor vehicles required
27 to be registered under Chapter 20 of the General Statutes.

28 c. A horse or mule.

29 d. ~~Fuel other than electricity.~~ Fuel."

30 **SECTION 10.(g)** G.S. 105-164.13 is amended by adding a new subdivision
31 to read:

32 "**§ 105-164.13. Retail sales and use tax.**

33 The sale at retail and the use, storage, or consumption in this State of the following
34 tangible personal property and services are specifically exempted from the tax imposed
35 by this Article:

36 ...

37 (56) Fuel, including electricity, sold to a manufacturer for use in connection
38 with the operation of a manufacturing facility."

39 **SECTION 10.(h)** Subsections (a) and (h) of this section become effective
40 when this act becomes law. Subsections (b) and (c) of this section become effective 1
41 July 2007 and apply to sales occurring on or after that date. Subsection (d) of this
42 section becomes effective 1 July 2008 and applies to sales occurring on or after that
43 date. Subsections (e), (f), and (g) of this section become effective 1 July 2009 and apply
44 to sales occurring on or after that date.

1 **SECTION 11.(a)** G.S. 105-187.41 reads as rewritten:
 2 "**§ 105-187.41. Tax imposed on piped natural gas.**

3 (a) Scope. – An excise tax is imposed on piped natural gas received for
 4 consumption in this State. This tax is imposed in lieu of a sales and use tax and a
 5 percentage gross receipts tax on piped natural gas.

6 (b) Rate. – The tax rate is set in the table below. The tax rate is based on monthly
 7 therm volumes of piped natural gas received by the end-user of the gas. If an end-user
 8 receives piped natural gas that is metered through two or more separate measuring
 9 devices, the tax is calculated separately on the volume metered through each device
 10 rather than on the total volume metered through all measuring devices, unless the
 11 devices are located on the same premises and are part of the same billing account. In
 12 that circumstance, the tax is calculated on the total volume metered through the two or
 13 more separate measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
14 First 200	\$.047
15 201 to 15,000	.035
16 15,001 to 60,000	.024
17 60,001 to 500,000	.015
18 Over 500,000	.003

19 (c) Gas City Exemption. – The tax imposed by this section does not apply to
 20 piped natural gas received by a gas city for consumption by that city or to piped natural
 21 gas delivered by a gas city to a sales or transportation customer of the gas city.

22 (d) Reduction of Tax. – The tax imposed by this section is reduced by one-third
 23 for piped natural gas received by a manufacturer for use in connection with the
 24 operation of the manufacturing facility and for piped natural gas received by a farmer to
 25 be used for any farming purpose other than preparing food, heating dwellings, and other
 26 household purposes."

27 **SECTION 11.(b)** G.S. 105-187.41(d), as enacted by subsection (a) of this
 28 section, reads as rewritten:

29 "(d) Reduction of Tax. – The tax imposed by this section is reduced by ~~one-third~~
 30 ~~(1/3)~~two-thirds for piped natural gas received by a manufacturer for use in connection
 31 with the operation of the manufacturing facility or for piped natural gas received by a
 32 farmer to be used for any farming purpose other than preparing food, heating dwellings,
 33 and other household purposes."

34 **SECTION 11.(c)** G.S. 105-187.41(d), as enacted by this section, is repealed.

35 **SECTION 11.(d)** G.S. 105-187.41(c) reads as rewritten:

36 "~~(c) Gas City Exemption. Exemptions.~~ – The tax imposed by this section does not
 37 apply to ~~piped~~any of the following:

38 (1) Piped natural gas received by a gas city for consumption by that ~~city or~~
 39 ~~to piped city.~~

40 (2) Piped natural gas delivered by a gas city to a sales or transportation
 41 customer of the gas city.
 42
 43

- 1 (3) Piped natural gas received by a manufacturer for use in connection
2 with the operation of the manufacturing facility.
3 (4) Piped natural gas received by a farmer to be used for any farming
4 purpose other than preparing food, heating dwellings, and other
5 household purposes."

6 **SECTION 11.(e)** Subsection (a) of this section becomes effective July 1,
7 2007, and applies to piped natural gas received on or after that date. Subsection (b) of
8 this section becomes effective July 1, 2008, and applies to piped natural gas received on
9 or after that date. Subsections (c) and (d) of this section become effective July 1, 2009,
10 and apply to piped natural gas received on or after that date. The remainder of this
11 section is effective when it becomes law.

12 **SECTION 12.(a)** G.S. 105-187.51A reads as rewritten:

13 **"§ 105-187.51A. Tax imposed on manufacturing fuel.**

14 A privilege tax is imposed on a manufacturing industry or plant that purchases fuel
15 to operate the industry or plant. The tax is ~~one percent (1%)~~ sixty-seven hundredths
16 percent (0.67%) of the sales price of the fuel. The tax does not apply to electricity or
17 piped natural gas."

18 **SECTION 12.(b)** G.S. 105-187.51A, as amended by subsection (a) of this
19 section, reads as rewritten:

20 **"§ 105-187.51A. Tax imposed on manufacturing fuel.**

21 A privilege tax is imposed on a manufacturing industry or plant that purchases fuel
22 to operate the industry or plant. The tax is ~~sixty-seven hundredths percent (0.67%)~~
23 thirty-four hundredths percent (0.34%) of the sales price of the fuel. The tax does not
24 apply to electricity or piped natural gas."

25 **SECTION 12.(c)** G.S. 105-187.51A is repealed.

26 **SECTION 12.(d)** Subsection (a) of this section becomes effective July 1,
27 2007, and applies to fuel purchased on or after that date. Subsection (b) of this section
28 becomes effective July 1, 2008, and applies to fuel purchased on or after that date.
29 Subsection (c) of this section becomes effective July 1, 2009. The remainder of this
30 section is effective when it becomes law.

31 **SECTION 13.(a)** Part 1 of Article 4 of Chapter 105 of the General Statutes
32 is amended by adding a new section to read:

33 **"§ 105-130.49. Construction or improvement of energy-efficient home.**

34 (a) Definitions. – The following definitions apply in this section:

- 35 (1) Energy-efficient home. – A single- or multi-family home that is a
36 federally qualified energy-efficient home or a State-certified
37 energy-efficient home.
38 (2) Federally qualified energy-efficient home. – A residence qualified
39 under the ENERGY STAR Program administered by the United States
40 Environmental Protection Agency.
41 (3) State-certified energy-efficient home. – A residence certified under the
42 NC Healthy Built Homes Program administered by the North Carolina
43 Solar Center, the State Energy Office, and the North Carolina
44 Department of Administration.

1 **(b) Credit.** – A taxpayer that builds or manufactures an energy-efficient home is
2 allowed a credit against the taxes imposed by this Part. In order to claim a credit under
3 this section, the taxpayer must include with the tax return documentation that the
4 property with respect to which a credit is claimed is an energy-efficient home. A
5 taxpayer may claim only one of the credits allowed under this section with respect to a
6 single home. The amount of the credit is as follows:

7 **(1)** For a taxpayer that builds or manufactures a new federally qualified
8 energy-efficient home, the credit is one thousand dollars (\$1,000).

9 **(2)** For a taxpayer that builds or manufactures a new State-certified
10 energy-efficient home, the credit is two thousand dollars (\$2,000).

11 **(c) Cap.** – The credit allowed under this section may not exceed the amount of
12 tax imposed by this Part for the taxable year reduced by the sum of all credits allowable,
13 except tax payments made by or on behalf of the taxpayer. Any unused portion of a
14 credit under this section may be carried forward for the succeeding five years.

15 **(d) Sunset.** – This section is repealed effective for taxable years beginning on or
16 after January 1, 2012."

17 **SECTION 13.(b)** Part 2 of Article 4 of Chapter 105 of the General Statutes
18 is amended by adding a new section to read:

19 **"§ 105-151.31. Construction or improvement of energy-efficient home.**

20 **(a) Definitions.** – The following definitions apply in this section:

21 **(1)** Energy-efficient home. – A single- or multi-family home that is a
22 federally qualified energy-efficient home or a State-certified
23 energy-efficient home.

24 **(2)** Federally qualified energy-efficient home. – A residence qualified
25 under the ENERGY STAR Program administered by the United States
26 Environmental Protection Agency.

27 **(3)** State-certified energy-efficient home. – A residence certified under the
28 NC Healthy Built Homes Program administered by the North Carolina
29 Solar Center, the State Energy Office, and the North Carolina
30 Department of Administration.

31 **(b) Credit.** – A taxpayer that builds or manufactures an energy-efficient home is
32 allowed a credit against the taxes imposed by this Part. In order to claim a credit under
33 this section, the taxpayer must include with the tax return documentation that the
34 property with respect to which a credit is claimed is an energy-efficient home. A
35 taxpayer may claim only one of the credits allowed under this section with respect to a
36 single home. The amount of the credit is as follows:

37 **(1)** For a taxpayer that builds or manufactures a new federally qualified
38 energy-efficient home, the credit is one thousand dollars (\$1,000).

39 **(2)** For a taxpayer that builds or manufactures a new State-certified
40 energy-efficient home, the credit is two thousand dollars (\$2,000).

41 **(c) Cap.** – The credit allowed under this section may not exceed the amount of
42 tax imposed by this Part for the taxable year reduced by the sum of all credits allowable,
43 except tax payments made by or on behalf of the taxpayer. Any unused portion of a
44 credit under this section may be carried forward for the succeeding five years.

1 (d) Sunset. – This section is repealed effective for taxable years beginning on or
2 after January 1, 2012."

3 **SECTION 13.(c)** This section is effective for taxable years beginning on or
4 after 1 January 2007 and applies to homes that receive the qualification or certification
5 on or after that date.

6 **SECTION 14.(a)** Article 3B of Chapter 105 of the General Statutes is
7 amended by adding a new section to read:

8 **"§ 105-129.16G. Credit for contributing to a nonprofit organization that invests in**
9 **renewable energy property.**

10 (a) Credit. – A taxpayer that makes an eligible contribution to a nonprofit
11 organization organized under section 501(c)(3) of the Code is allowed a credit under
12 this section. The amount of credit allowed is equal to a portion of the credit that the
13 nonprofit organization would be allowed under G.S. 105-129.16A if the nonprofit
14 organization was subject to tax. The portion allowed to each taxpayer is equal to the
15 percentage of the total costs for which the nonprofit organization would have been
16 eligible for a credit under G.S. 105-129.16A that were covered by the taxpayer's eligible
17 contribution.

18 (b) Definition. – For the purposes of this section, an 'eligible contribution' is one
19 that satisfies all of the following conditions:

20 (1) The contribution was designated by the taxpayer to be used for
21 investing in renewable energy property.

22 (2) The nonprofit organization used the contribution for investing in
23 renewable energy property.

24 (c) Administration. – The nonprofit organization must keep records of all
25 contributions that have been designated to be used for investing in renewable energy
26 property and must keep records of all investments in renewable energy property. The
27 nonprofit organization must inform all taxpayers that make eligible contributions of the
28 amount of credit for which they are eligible."

29 **SECTION 14.(b)** G.S. 105-259(b) is amended by adding a new section to
30 read:

31 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State
32 who has access to tax information in the course of service to or employment by the State
33 may not disclose the information to any other person unless the disclosure is made for
34 one of the following purposes:

35 ...

36 (38) To verify with a nonprofit organization information relating to
37 eligibility for a credit under G.S. 105-129.16G."

38 **SECTION 14.(c)** This section is effective for taxable years beginning on or
39 after 1 January 2007.

40 **SECTION 15.** If any section or provision of this act is declared
41 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
42 provision does not affect the validity of this act as a whole or any part of this act other
43 than the part declared to be unconstitutional or invalid.

1 **SECTION 16.** Sections 1, 2, 6, 7, and 8 of this act become effective 1
2 January 2008. The provisions of Section 2 of this act that provide for the recovery of
3 costs incurred under Section 2 apply only to costs that are incurred on and after 1
4 January 2008. Sections 3, 4, 15, and 16 of this act become effective when this act
5 becomes law. The provisions of Section 4 of this act that provide for the recovery of
6 costs incurred under Section 4 apply only to costs that are incurred on and after the date
7 that this act becomes law. Section 5 of this act becomes effective 1 January 2008
8 provided that (i) the provisions of G.S. 62-133.2, as amended by Section 5 of this act,
9 apply only to fuel and fuel-related costs incurred on and after 1 January 2008 regardless
10 of the test period established by the Utilities Commission, and (ii) the costs described in
11 G.S. 62-133.2(a1)(3) that are incurred on and after the date this act becomes law shall
12 be recoverable as provided in G.S. 62-133.2 as amended by Section 5 of this act.
13 Sections 10, 11, 12, 13, and 14 of this act become effective as provided in those
14 sections. Section 9 of this act becomes effective 1 July 2007.