

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 3
Agriculture/Environment/Natural Resources Committee Substitute Adopted
6/26/07
House Committee Substitute Favorable 7/24/07
House Committee Substitute #2 Favorable 7/28/07

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

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"§ 62-2. Declaration of policy.

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

...

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility 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 peat, 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) Control of Emissions. – As used in this subsection, Best Available Control
 32 Technology (BACT) means an emissions limitation based on the maximum degree a
 33 reduction in the emission of air pollutants that is achievable for a facility, taking into
 34 account energy, environmental, and economic impacts and other costs. A biomass
 35 combustion process at any new renewable energy facility that delivers electric power to
 36 an electric power supplier shall meet BACT. The Environmental Management
 37 Commission shall determine on a case-by-case basis the BACT for a facility that would
 38 not otherwise be required to comply with BACT pursuant to the Prevention of
 39 Significant Deterioration (PSD) emissions program. The Environmental Management
 40 Commission may adopt rules to implement this subsection. In adopting rules, the
 41 Environmental Management Commission shall take into account cumulative and
 42 secondary impacts associated with the concentration of biomass facilities in close
 43 proximity to one another. In adopting rules the Environmental Management
 44 Commission shall provide for the manner in which a facility that would not otherwise

1 be required to comply with BACT pursuant to the PSD emissions programs shall meet
2 the BACT requirement.

3 (h) Cost Recovery and Customer Charges. –

4 (1) For the purposes of this subsection, the term 'incremental costs' means
5 all reasonable and prudent costs incurred by an electric power supplier
6 to:

7 a. Comply with the requirements of subsections (b), (c), (d), (e),
8 and (f) of this section that are in excess of the electric power
9 supplier's avoided costs other than those costs recovered
10 pursuant to G.S. 62-133.8.

11 b. Fund research that encourages the development of renewable
12 energy, energy efficiency, or improved air quality, provided
13 those costs do not exceed one million dollars (\$1,000,000) per
14 year.

15 c. Comply with any federal mandate that is similar to the
16 requirements of subsections (b), (c), (d), (e), and (f) of this
17 section that exceed the costs that the electric power supplier
18 would have incurred under those subsections in the absence of
19 the federal mandate.

20 (2) All reasonable and prudent costs incurred by an electric power supplier
21 to comply with any federal mandate that is similar to the requirements
22 of subsections (b), (c), (d), (e), and (f) of this section, including, but
23 not limited to, the avoided costs associated with a federal mandate that
24 exceeds the avoided costs that the electric power supplier would have
25 incurred pursuant to subsections (b), (c), (d), (e), and (f) of this section
26 in the absence of the federal mandate, shall be recovered by the
27 electric power supplier in an annual rider charge assessed in
28 accordance with the schedule set out in subdivision (4) of this
29 subsection increased by the Commission on a pro rata basis to allow
30 for full and complete recovery of all reasonable and prudent costs
31 incurred to comply with the federal mandate.

32 (3) Except as provided in subdivision (2) of this subsection, the total
33 annual incremental cost to be incurred by an electric power supplier
34 and recovered from the electric power supplier's retail customers shall
35 not exceed an amount equal to the per-account annual charges set out
36 in subdivision (4) of this subsection applied to the electric power
37 supplier's total number of customer accounts determined as of 31
38 December of the previous calendar year. An electric power supplier
39 shall be conclusively deemed to be in compliance with the
40 requirements of subsections (b), (c), (d), (e), and (f) of this section if
41 the electric power supplier's total annual incremental costs incurred
42 equals an amount equal to the per-account annual charges set out in
43 subdivision (4) of this subsection applied to the electric power
44 supplier's total number of customer accounts determined as of 31

December of the previous calendar year. The total annual incremental cost recoverable by an electric power supplier from an individual customer shall not exceed the per-account charges set out in subdivision (4) of this subsection except as these charges may be adjusted in subdivision (2) of this subsection.

(4) An electric power supplier shall be allowed to recover the incremental costs incurred to comply with the requirements of subsections (b), (c), (d), (e), and (f) of this section and fund research as provided in subdivision (1) of this subsection through an annual rider not to exceed 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>

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

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

- (1) Provide for the monitoring of compliance with and enforcement of the requirements of this section.
- (2) Include a procedure to modify or delay the provisions of subsections (b), (c), (d), (e), and (f) of this section in whole or in part if the Commission determines that it is in the public interest to do so. The procedure adopted pursuant to this subdivision shall include a requirement that the electric power supplier demonstrate that it made a reasonable effort to meet the requirements set out in this section.
- (3) Ensure that energy credited toward compliance with the provisions of this section not be credited toward any other purpose, including another renewable energy portfolio standard or voluntary renewable energy purchase program in this State or any other state.
- (4) Establish standards for interconnection of renewable energy facilities and other nonutility-owned generation with a generation capacity of 10 megawatts or less to an electric public utility's distribution system;

1 provided, however, that the Commission shall adopt, if appropriate,
2 federal interconnection standards.

3 (5) Ensure that the owner and operator of each renewable energy facility
4 that delivers electric power to an electric power supplier is in
5 substantial compliance with all federal and state laws, regulations, and
6 rules for the protection of the environment and conservation of natural
7 resources.

8 (6) Consider whether it is in the public interest to adopt rules for electric
9 public utilities for net metering of renewable energy facilities with a
10 generation capacity of one megawatt or less.

11 (7) Develop procedures to track and account for renewable energy
12 certificates, including ownership of renewable energy certificates that
13 are derived from a customer owned renewable energy facility as a
14 result of any action by a customer of an electric power supplier that is
15 independent of a program sponsored by the electric power supplier.

16 (j) Report. – No later than 1 October of each year, the Commission shall submit
17 a report on the activities taken by the Commission to implement, and by electric power
18 suppliers to comply with, the requirements of this section to the Governor, the
19 Environmental Review Commission, and the Joint Legislative Utility Review
20 Committee. The report shall include any public comments received regarding direct,
21 secondary, and cumulative environmental impacts of the implementation of the
22 requirements of this section. In developing the report, the Commission shall consult
23 with the Department of Environment and Natural Resources."

24 **SECTION 2.(b)** The Commission shall submit the first report required by
25 G.S. 62-133.7(j), as enacted by subsection (a) of this section, no later than 1 October
26 2008.

27 **SECTION 2.(c)** G.S. 143B-282(a) reads as rewritten:

28 "(a) There is hereby created the Environmental Management Commission of the
29 Department of Environment and Natural Resources with the power and duty to
30 promulgate rules to be followed in the protection, preservation, and enhancement of the
31 water and air resources of the State.

32 ...
33 (6) The Commission may establish a procedure for evaluating renewable
34 energy technologies that are, or are proposed to be, employed as part
35 of a renewable energy facility, as defined in G.S. 62-133.7; establish
36 standards to ensure that renewable energy technologies do not harm
37 the environment, natural resources, cultural resources, or public health,
38 safety, or welfare of the State; and, to the extent that there is not an
39 environmental regulatory program, establish an environmental
40 regulatory program to implement these protective standards."

41 **SECTION 3.** If the federal government imposes requirements similar to
42 those set out in G.S. 62-133.7 on electric power suppliers in the State, the Utilities
43 Commission shall determine the applicability of federal and State requirements so as to
44 apply the more stringent requirements except to the extent that State requirements may

1 be specifically preempted by federal law. The Commission shall adopt rules to establish
2 a procedure as an alternative to the procedure set out in G.S. 62-133 to annually adjust
3 the rates of electric public utilities to allow timely recovery of all reasonable costs of
4 compliance with the federal and State requirements pursuant to G.S. 62-133.7(h), as
5 enacted by Section 2 of this act. In adopting rules to establish the procedure, the
6 Commission shall incorporate the provisions of this act in accordance with this section
7 and the public interest.

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

10 **"§ 62-133.8. Cost recovery for demand-side management and energy efficiency**
11 **measures.**

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

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

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

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

38 (1) Shall allow electric public utilities to capitalize all or a portion of those
39 costs to the extent that those costs are intended to produce future
40 benefits.

41 (2) May approve other incentives to electric public utilities for adopting
42 and implementing new demand-side management and energy
43 efficiency measures. Allowable incentives may include:

- 1 a. Appropriate rewards based on the sharing of savings achieved
2 by the demand-side management and energy efficiency
3 measures.
4 b. Appropriate rewards based on capitalization of a percentage of
5 avoided costs achieved by demand-side management and
6 energy efficiency measures.
7 c. Any other incentives that the Commission determines to be
8 appropriate.

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

13 (f) None of the costs of new demand-side management or energy efficiency
14 measures of an electric power supplier shall be assigned to any industrial customer that
15 notifies the industrial customer's electric power supplier that, at the industrial customer's
16 own expense, the industrial customer has implemented at any time in the past or, in
17 accordance with stated, quantified goals for demand-side management and energy
18 efficiency, will implement alternative demand-side management and energy efficiency
19 measures and that the industrial customer elects not to participate in demand-side
20 management or energy efficiency measures under this section. The electric power
21 supplier that provides electric service to the industrial customer, an industrial customer
22 that receives electric service from the electric power supplier, the Public Staff, or the
23 Commission on its own motion, may initiate a complaint proceeding before the
24 Commission to challenge the validity of the notification of nonparticipation. The
25 procedures set forth in G.S. 62-73, 62-74, and 62-75 shall govern any such complaint.
26 The provisions of this subsection shall also apply to commercial customers with
27 significant annual usage at a threshold level to be established by the Commission.

28 (g) An electric public utility shall not charge an industrial or commercial
29 customer for the costs of installing demand-side management equipment on the
30 customer's premises if the customer provides, at the customer's expense, equivalent
31 demand-side management equipment.

32 (h) The Commission shall adopt rules to implement this section.

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

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

40 **SECTION 4.(c)** The Utilities Commission shall prepare an analysis of
41 whether rate structures, policies, and measures, including decoupling, in place in other
42 states and countries that promote a mix of generation involving renewable energy
43 sources and demand reduction should be implemented in this State. The Commission

1 shall submit this analysis to the Governor, Environmental Review Commission, and the
2 Joint Legislative Utility Review Committee no later than 1 September 2008.

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

4 "**§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.**

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

13 (a1) As used in this section, 'cost of fuel and fuel-related costs' means all of the
14 following:

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

42 (a2) For those costs identified in subdivisions (4), (5), and (6) of subsection (a1)
43 of this section, the annual increase in the aggregate amount of these costs that are
44 recoverable by an electric public utility pursuant to this section shall not exceed two

1 percent (2%) of the electric public utility's total North Carolina retail jurisdictional gross
2 revenues for the preceding calendar year. The costs described in subdivisions (4), (5),
3 and (6) of subsection (a1) of this section shall be recoverable from each class of
4 customers as a separate component of the rider as follows:

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

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

19 (a3) Notwithstanding subsections (a1) and (a2) of this section, for an electric
20 public utility that has fewer than 150,000 North Carolina retail jurisdictional customers
21 as of 31 December 2006, the costs identified in subdivisions (1), (2), (6), and (7) of
22 subsection (a1) of this section and the fuel cost component, as may be modified by the
23 Commission, of electric power purchases identified in subdivision (4) of subsection (a1)
24 of this section shall be recovered through the increment or decrement rider approved by
25 the Commission pursuant to this section. For the costs identified in subdivision (6) of
26 subsection (a1) of this section that are incurred on or after 1 January 2008, the annual
27 increase in the amount of these costs shall not exceed one percent (1%) of the electric
28 public utility's total North Carolina retail jurisdictional gross revenues for the preceding
29 calendar year. These costs described in subdivision (6) of subsection (a1) of this section
30 shall be recoverable from each class of customers as a separate component of the rider.
31 For the costs described in subdivision (6) of subsection (a1) of this section, the specific
32 component for each class of customers shall be determined by allocating these costs
33 among customer classes based on the electric public utility's North Carolina peak
34 demand for the prior year, as determined by the Commission, until the Commission
35 determines how these costs shall be allocated in a general rate case for the electric
36 public utility commenced on or after 1 January 2008.

37 ~~(b) For each electric utility engaged in the generation and production of electric~~
38 ~~power by fossil or nuclear fuels, the~~The Commission shall ~~hold~~ conduct a hearing
39 within 12 months of ~~the~~ each electric public utility's last general rate case order ~~and to~~
40 determine whether an increment or decrement rider is required to reflect actual changes
41 in the cost of fuel ~~and the fuel cost component of purchased power and fuel-related costs~~
42 over or under the cost of fuel and fuel-related costs on a kilowatt-hour basis in base
43 rates established in the electric public utility's last preceding general rate case.

1 Additional hearings shall be held on an annual basis but only one hearing for each such
2 electric public utility may be held within 12 months of the last general rate case.

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

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

31 (d) The Commission shall provide for notice of a public hearing with reasonable
32 and adequate time for investigation and for all intervenors to prepare for hearing. At the
33 hearing the Commission shall receive evidence from the utility, the ~~public staff,~~Public
34 Staff, and any intervenor desiring to submit evidence, and from the public generally. In
35 reaching its decision, the Commission shall consider all evidence required under
36 subsection (c) of this section as well as any and all other competent evidence that may
37 assist the Commission in reaching its decision including changes in the ~~price of fuel~~
38 ~~consumed and changes in the price of the fuel in the fuel component of purchased~~
39 ~~power occurring within a reasonable time (as determined by the Commission) after the~~
40 ~~test period is closed.~~cost of fuel consumed and fuel-related costs that occur within a
41 reasonable time, as determined by the Commission, after the test period is closed. The
42 Commission shall incorporate in its ~~fuel-cost of fuel and fuel-related costs~~ determination
43 under this subsection the experienced over-recovery or under-recovery of reasonable
44 costs of fuel and fuel-related costs~~expenses~~ prudently incurred during the test period,

1 based upon the prudent standards set pursuant to subsection (d1) of this section, in
2 fixing an increment or decrement rider. Upon request of the electric public utility, the
3 Commission shall also incorporate in this determination the experienced over-recovery
4 or under-recovery of costs of fuel and fuel-related costs through the date that is 30
5 calendar days prior to the date of the hearing, provided that the reasonableness and
6 prudence of these costs shall be subject to review in the utility's next annual hearing
7 pursuant to this section. The Commission shall use deferral accounting, and consecutive
8 test periods, in complying with this subsection, and the over-recovery or under-recovery
9 portion of the increment or decrement shall be reflected in rates for 12 months,
10 notwithstanding any changes in the base fuel cost in a general rate case. The burden of
11 proof as to the correctness and reasonableness of the charge and as to whether the cost
12 of fuel charges and fuel-related costs were reasonably and prudently incurred shall be
13 on the utility. The Commission shall allow only that portion, if any, of a requested cost
14 of fuel and fuel-related costs adjustment that is based on adjusted and reasonable cost of
15 fuel expenses and fuel-related costs prudently incurred under efficient management and
16 economic operations. In evaluating whether cost of fuel expenses and fuel-related costs
17 were reasonable and prudently incurred, the Commission shall apply the rule adopted
18 pursuant to subsection ~~(d1)~~ (d1) of this section. To the extent that the Commission
19 determines that an increment or decrement to the rates of the utility due to changes in
20 the cost of fuel and ~~the fuel cost component of purchased power~~ fuel-related costs over
21 or under base fuel costs established in the preceding general rate case is just and
22 reasonable, the Commission shall order that the increment or decrement become
23 effective for all sales of electricity and remain in effect until changed in a subsequent
24 general rate case or annual proceeding under this section.

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

29 (e) If the Commission has not issued an order pursuant to this section within ~~120~~
30 180 days of a utility's submission of annual data under subsection (c) of this section, the
31 utility may place the requested cost of fuel and fuel-related costs adjustment into effect.
32 If the change in rate is finally determined to be excessive, the utility shall make refund
33 of any excess plus interest to its customers in a manner ordered by the Commission.

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

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

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

1 **"§ 62-110.1. Certificate for construction of generating facility; analysis of**
2 **long-range needs for expansion of ~~facilities-facilities~~; ongoing review of**
3 **construction costs; inclusion of approved construction costs in rates.**

4 (a) Notwithstanding the proviso in G.S. 62-110, no public utility or other person
5 shall begin the construction of any steam, water, or other facility for the generation of
6 electricity to be directly or indirectly used for the furnishing of public utility service,
7 even though the facility be for furnishing the service already being rendered, without
8 first obtaining from the Commission a certificate that public convenience and necessity
9 requires, or will require, such construction.

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

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

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

1 (e) ~~As a condition for receiving such certificate~~ a certificate, the applicant shall
2 file an estimate of construction costs in such detail as the Commission may require. The
3 Commission shall hold a public hearing on each ~~such~~ application and no certificate shall
4 be granted unless the Commission has approved the estimated construction costs and
5 made a finding that ~~such~~ construction will be consistent with the Commission's plan for
6 expansion of electric generating capacity. A certificate for the construction of a coal or
7 nuclear facility shall be granted only if the applicant demonstrates and the Commission
8 finds that energy efficiency measures; demand-side management; renewable energy
9 resource generation; combined heat and power generation; or any combination thereof,
10 would not establish or maintain a more cost-effective and reliable generation system and
11 that the construction and operation of the facility is in the public interest. In making its
12 determination, the Commission shall consider resource and fuel diversity and
13 reasonably anticipated future operating costs. Once the Commission grants a certificate,
14 no public utility shall cancel construction of a generating unit or facility without
15 approval from the Commission based upon a finding that the construction is no longer
16 in the public interest.

17 (e1) Upon the request of the public utility or upon its own motion, the
18 Commission may review the certificate to determine whether changes in the probable
19 future growth of the use of electricity indicate that the public convenience and necessity
20 require modification or revocation of the certificate. If the Commission finds that
21 completion of the generating facility is no longer in the public interest, the Commission
22 may modify or revoke the certificate.

23 (f) ~~The Commission shall maintain an ongoing review of such construction as it~~
24 ~~proceeds and the applicant shall submit each year during construction a progress report~~
25 ~~and any revisions in the cost estimates for the construction. The public utility shall~~
26 submit a progress report and any revision in the cost estimate for the construction
27 approved under subsection (e) of this section during each year of construction. Upon the
28 request of the public utility or upon its own motion, the Commission may conduct an
29 ongoing review of construction of the facility as the construction proceeds. If the
30 Commission approves any revised construction cost estimate and finds that incurrence
31 of the cost of that portion of the construction of the facility under review was reasonable
32 and prudent, the certificate shall remain in effect. If the Commission disapproves any
33 part of the revised cost estimate or finds that the incurrence of the cost of that portion of
34 the construction of the facility then under review was unreasonable or imprudent, the
35 Commission may modify or revoke the certificate.

36 (f1) The public utility shall recover through rates in a general rate case conducted
37 pursuant to G.S. 62-133 the actual costs it has incurred in constructing a generating
38 facility in reliance on a certificate issued under this section as provided in this
39 subsection, unless new evidence is discovered (i) that could not have been discovered
40 by due diligence at an earlier time and (ii) that reasonably tends to show that a previous
41 determination by the Commission that a material item of cost was just and reasonable
42 and prudently incurred was erroneous. If the Commission determines that evidence has
43 been submitted that meets the requirements of this subsection, the public utility shall

1 have the burden of proof to demonstrate that the material item of cost was in fact just
2 and reasonable and prudently incurred.

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

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

13 (3) If a facility is under construction or has been completed and the
14 construction of the facility has not been subject to ongoing review
15 under subsection (f) of this section, the costs of construction shall be
16 included in the public utility's rate base if the Commission finds that
17 the incurrence of these costs is reasonable and prudent.

18 (f2) If the construction of a facility is cancelled, including cancellation as a result
19 of modification or revocation of the certificate under subsection (e1) of this section, and
20 the construction of the facility has been subject to ongoing review under subsection (f),
21 absent newly discovered evidence (i) that could not have been discovered by due
22 diligence at an earlier time and (ii) that reasonably tends to show that a previous
23 determination by the Commission that a material item of cost was just and reasonable
24 and prudently incurred was erroneous, the public utility shall recover through rates in a
25 general rate case conducted pursuant to G.S. 62-133 the costs of construction approved
26 by the Commission during the ongoing review that were actually incurred prior to
27 cancellation, amortized over a reasonable time as determined by the Commission. In the
28 general rate case, the Commission shall make any adjustment that may be required
29 because costs of construction previously added to the utility's rate base pursuant to
30 subsection (f1) of this section are removed from the rate base and recovered in
31 accordance with this subsection. Any costs of construction actually incurred, but not
32 previously approved by the Commission, shall be recovered only if they are found by
33 the Commission to be reasonable and prudent. If the Commission determines that
34 evidence has been submitted that meets the requirements of this subsection, the public
35 utility shall have the burden of proof to demonstrate that the material item of cost was
36 just and reasonable and prudently incurred.

37 (f3) If the construction of a facility is cancelled, including cancellation as a result
38 of the modification or revocation of the certificate under subsection (e1) of this section,
39 and the construction of the facility has not been subject to ongoing review under
40 subsection (f) of this section, the public utility shall recover through rates in a general
41 rate case conducted pursuant to G.S. 62-133 the costs of construction that were actually
42 incurred prior to the cancellation and are found by the Commission to be reasonable and
43 prudent, amortized over a reasonable time as determined by the Commission. In the
44 general rate case, the Commission shall make any adjustment that may be required

1 because costs of construction previously added to the utility's rate base pursuant to
2 subsection (f1) of this section are removed from the rate base and recovered in
3 accordance with this subsection.

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

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

14 **"§ 62-110.6. Rate recovery for construction costs of out-of-state electric generating**
15 **facilities.**

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

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

24 (c) The Commission shall conduct a public hearing to consider and determine the
25 need for the facility and the reasonableness of the construction cost estimate and
26 proposed construction schedule. If the Commission finds that the construction will be
27 needed to assure the provision of adequate public utility service within North Carolina,
28 the Commission shall approve a construction cost estimate and a construction schedule
29 for the facility. In making its determinations under this section, the Commission may
30 consider whether the state in which the facility will be sited has issued a certificate or
31 license for construction of the facility and approved a construction cost estimate and
32 construction schedule for the facility. The Commission shall issue its order not later
33 than 180 days after the public utility files its petition.

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

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

43 **"§ 62-110.7. Project development cost review for a nuclear facility.**

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

9 (b) At any time prior to the filing of an application for a certificate to construct a
10 potential nuclear electric generating facility, either under G.S. 62-110.1 or in another
11 state for a facility to serve North Carolina retail customers, a public utility may request
12 that the Commission review the public utility's decision to incur project development
13 costs. The public utility shall include with its request such information and
14 documentation as is necessary to support approval of the decision to incur proposed
15 project development costs. The Commission shall hold a hearing regarding the request.
16 The Commission shall issue an order within 180 days after the public utility files its
17 request. The Commission shall approve the public utility's decision to incur project
18 development costs if the public utility demonstrates by a preponderance of evidence that
19 the decision to incur project development costs is reasonable and prudent; provided,
20 however, the Commission shall not rule on the reasonableness or prudence of specific
21 project development activities or recoverability of specific items of cost.

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

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

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

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

- 33 (1) Ascertain the reasonable original cost of the public utility's property
34 used and useful, or to be used and useful within a reasonable time after
35 the test period, in providing the service rendered to the public within
36 the State, less that portion of the cost ~~which that~~ has been consumed by
37 previous use recovered by depreciation ~~expense plus the reasonable~~
38 ~~original cost of investment in plant under construction (construction~~
39 ~~work in progress). In ascertaining the cost of the public utility's~~
40 ~~property, construction work in progress as of the effective date of this~~
41 ~~subsection shall be excluded until such plant comes into service but~~
42 ~~reasonable and prudent expenditures for construction work in progress~~
43 ~~after the effective date of this subsection may be included, to the extent~~
44 ~~the Commission considers such inclusion in the public interest and~~

1 necessary to the financial stability of the utility in question, subject to
2 the provisions of subparagraph (b)(4a) of this section. expense. In
3 addition, construction work in progress may be included in the cost of
4 the public utility's property under any of the following circumstances:

5 a. To the extent the Commission considers inclusion in the public
6 interest and necessary to the financial stability of the utility in
7 question, reasonable and prudent expenditures for construction
8 work in progress may be included, subject to the provisions of
9 subdivision (4a) of this subsection.

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

14 (1a) Apply the rate of return established under subdivision (4) of this
15 subsection to rights-of-way acquired through agreements with the
16 Department of Transportation pursuant to G.S. 136-19.5(a) if
17 acquisition is consistent with a definite plan to provide service within
18 five years of the date of the agreement and if such right-of-way
19 acquisition will result in benefits to the ratepayers. If a right-of-way
20 not used within a reasonable time after the expiration of the five-year
21 period, it may be removed from the rate base by the Commission when
22 rates for the public utility are next established under this section.

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

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

28 (4) Fix such rate of return on the cost of the property ascertained pursuant
29 to subdivision (1) of this subsection as will enable the public utility by
30 sound management to produce a fair return for its shareholders,
31 considering changing economic conditions and other factors,
32 including, but not limited to, the inclusion of construction work in
33 progress in the utility's property under sub-subdivision b. of
34 subdivision (1) of this subsection, as they then exist, to maintain its
35 facilities and services in accordance with the reasonable requirements
36 of its customers in the territory covered by its franchise, and to
37 compete in the market for capital funds on terms ~~which~~ that are
38 reasonable and ~~which~~ that are fair to its customers and to its existing
39 investors.

40 (4a) Require each public utility to discontinue capitalization of the
41 composite carrying cost of capital funds used to finance construction
42 (allowance for funds) on the construction work in progress included in
43 its rate based upon the effective date of the first and each subsequent
44 general rate order issued with respect to it after the effective date of

1 this subsection; allowance for funds may be capitalized with respect to
2 expenditures for construction work in progress not included in the
3 utility's property upon which the rates were fixed. In determining net
4 operating income for return, the Commission shall not include any
5 capitalized allowance for funds used during construction on the
6 construction work in progress included in the utility's rate base.

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

12 **SECTION 9.(a)** The percentage rate to be used in calculating the public
13 utility regulatory fee under G.S. 62-302(b)(2) is twelve one-hundredths of one percent
14 (0.12%) for each public utility's North Carolina jurisdictional revenues earned during
15 each quarter that begins on or after 1 July 2007.

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

19 **SECTION 10.(a)** G.S. 105-164.4(a)(1i) is repealed.

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

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

24 ...

- 25 (1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to
26 the sales price of electricity ~~described in this subdivision and that is~~
27 measured by a separate meter or another separate ~~device; device and~~
28 sold to a commercial laundry or to a pressing and dry-cleaning
29 establishment for use in machinery used in the direct performance of
30 the laundering or the pressing and cleaning service.

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

37 b. Repealed.

38 e. ~~Sales of electricity to commercial laundries or to pressing and~~
39 ~~dry cleaning establishments for use in machinery used in the~~
40 ~~direct performance of the laundering or the pressing and~~
41 ~~cleaning service."~~

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

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

4 ...

5 (1j) The rate of one and eight-tenths percent (1.8%) applies to the sales
6 price of electricity described in this subdivision and measured by a
7 separate meter or another separate device:

8 a. Sales of electricity to manufacturing industries and
9 manufacturing plants for use in connection with the operation of
10 the industries and plants.

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

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

16 "(1j) The rate of ~~one and eight tenths percent (1.8%)~~ one and four-tenths
17 percent (1.4%) applies to the sales price of electricity described in this
18 subdivision and measured by a separate meter or another separate
19 device:

20 a. Sales of electricity to manufacturing industries and
21 manufacturing plants for use in connection with the operation of
22 the industries and plants.

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

26 **SECTION 10.(e)** G.S. 105-164.4(a)(1j), as enacted by subsection (c) of this
27 section and amended by subsection (d) of this section, reads as rewritten:

28 "(1j) The rate of ~~one and four tenths percent (1.4%)~~ eight-tenths percent
29 (0.8%) applies to the sales price of electricity described in this
30 subdivision and measured by a separate meter or another separate
31 device:

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

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

38 **SECTION 10.(f)** G.S. 105-164.4(a)(1j), as enacted by this section, is
39 repealed.

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

41 "**§ 105-164.13. Retail sales and use tax.**

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

Agricultural Group.

- (1) Any of the following items sold to a farmer for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A "farmer" includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758.
 - a. Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, and seeds.
 - b. Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term "machinery" includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.
 - c. A horse or mule.
 - d. ~~Fuel other than electricity.~~ Fuel."

SECTION 10.(h) G.S. 105-164.13 is amended by adding two new subdivisions to read:

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

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

- ...
- (1b) Electricity sold to a farmer to be used for any farming purpose other than preparing food, heating dwellings, and other household purposes.
- ...
- (56) Fuel and electricity sold to a manufacturer for use in connection with the operation of a manufacturing facility."

SECTION 10.(i) Subsections (a), (b), and (c) of this section become effective 1 October 2007 and apply to sales occurring on or after that date. Subsection (d) of this section becomes effective 1 July 2008 and applies to sales occurring on or after that date. Subsection (e) of this section becomes effective 1 July 2009 and applies to sales occurring on or after that date. Subsections (f), (g), and (h) of this section become effective 1 July 2010 and apply to sales occurring on or after that date. The remainder of this section is effective when it becomes law.

SECTION 11.(a) G.S. 105-187.41 reads as rewritten:

"§ 105-187.41. Tax imposed on piped natural gas.

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

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

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

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

(d) Reduced Rate. – Piped natural gas received by a manufacturer for use in connection with the operation of a manufacturing facility or by a farmer to be used for any farming purpose other than preparing food, heating dwellings, and other household purposes is taxable at a reduced rate as provided in this subsection. To be eligible for the reduced tax rate, a person must have a manufacturer's certificate or a farmer's certificate issued under G.S. 105-164.28A. A person who uses piped natural gas for an unauthorized purpose is liable for any tax due on the gas.

<u>Monthly Volume of Therms Received</u>	<u>Rate Per Therm</u>
<u>First 200</u>	<u>\$.032</u>
<u>201 to 15,000</u>	<u>.024</u>
<u>15,001 to 60,000</u>	<u>.016</u>
<u>60,001 to 500,000</u>	<u>.010</u>
<u>Over 500,000</u>	<u>.002"</u>

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

"(d) Reduced Rate. – Piped natural gas received by a manufacturer for use in connection with the operation of a manufacturing facility and by a farmer to be used for any farming purpose other than preparing food, heating dwellings, and other household purposes is taxable as provided in this subsection. To be eligible for the reduced tax rate, a person must have a manufacturer's certificate or a farmer's certificate issued under G.S. 105-164.28A. A person who uses piped natural gas for an unauthorized purpose is liable for any tax due on the gas.

Monthly Volume of Therms Received	Rate Per Therm
First 200	\$.032 .025

1	201 to 15,000	.024.019
2	15,001 to 60,000	.016.013
3	60,001 to 500,000	.010.008
4	Over 500,000	.002.002"

5 **SECTION 11.(c)** G.S. 105-187.41(d), as enacted by subsection (a) of this
6 section and amended by subsection (b) of this section, reads as rewritten:

7 "(d) **Reduced Rate.** – Piped natural gas received by a manufacturer for use in
8 connection with the operation of a manufacturing facility and by a farmer to be used for
9 any farming purpose other than preparing food, heating dwellings, and other household
10 purposes is taxable as provided in this subsection. To be eligible for the reduced tax
11 rate, a person must have a manufacturer's certificate or a farmer's certificate issued
12 under G.S. 105-164.28A. A person who uses piped natural gas for an unauthorized
13 purpose is liable for any tax due on the gas.

14	Monthly Volume of	Rate Per Therm
15	Therms Received	
16	First 200	\$.025.014
17	201 to 15,000	.019.010
18	15,001 to 60,000	.013.007
19	60,001 to 500,000	.008.004
20	Over 500,000	.002.001"

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

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

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

- 25 (1) Piped natural gas received by a gas city for consumption by that city or
26 ~~to piped city.~~
- 27 (2) Piped natural gas delivered by a gas city to a sales or transportation
28 customer of the gas city.
- 29 (3) Piped natural gas received by a manufacturer for use in connection
30 with the operation of the manufacturing facility. To be eligible for the
31 exemption, a person must have a manufacturer's certificate issued
32 under G.S. 105-164.28A. A person who uses piped natural gas for an
33 unauthorized purpose is liable for any tax due on the gas.
- 34 (4) Piped natural gas received by a farmer to be used for any farming
35 purpose other than preparing food, heating dwellings, and other
36 household purposes. To be eligible for the exemption, a person must
37 have a farmer's certificate issued under G.S. 105-164.28A. A person
38 who uses piped natural gas for an unauthorized purpose is liable for
39 any tax due on the gas."

40 **SECTION 11.(f)** Subsection (a) of this section becomes effective 1 October
41 2007 and applies to bills issued on or after that date. Subsection (b) of this section
42 becomes effective 1 July 2008 and applies to bills issued on or after that date.
43 Subsection (c) of this section becomes effective 1 July 2009 and applies to bills issued
44 on or after that date. Subsections (d) and (e) of this section become effective 1 July

1 2010 and apply to bills issued on or after that date. The remainder of this section is
2 effective when it becomes law.

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

4 **"§ 105-187.51A. Tax imposed on manufacturing fuel.**

5 A privilege tax is imposed on a manufacturing industry or plant that purchases fuel
6 to operate the industry or plant. The tax is ~~one percent (1%)~~ seven-tenths percent (0.7%)
7 of the sales price of the fuel. The tax does not apply to electricity or piped natural gas."

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

10 **"§ 105-187.51A. Tax imposed on manufacturing fuel.**

11 A privilege tax is imposed on a manufacturing industry or plant that purchases fuel
12 to operate the industry or plant. The tax is ~~seven-tenths percent~~ five-tenths percent
13 (0.5%) of the sales price of the fuel. The tax does not apply to electricity or piped
14 natural gas."

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

17 **"§ 105-187.51A. Tax imposed on manufacturing fuel.**

18 A privilege tax is imposed on a manufacturing industry or plant that purchases fuel
19 to operate the industry or plant. The tax is ~~five-tenths percent (0.5%)~~ three-tenths
20 percent (0.3%) of the sales price of the fuel. The tax does not apply to electricity or
21 piped natural gas."

22 **SECTION 12.(d)** G.S. 105-187.51A is repealed.

23 **SECTION 12.(e)** Subsection (a) of this section becomes effective 1 October
24 2007 and applies to fuel purchased on or after that date. Subsection (b) of this section
25 becomes effective 1 July 2008 and applies to fuel purchased on or after that date.
26 Subsection (c) of this section becomes effective 1 July 2009 and applies to fuel
27 purchased on or after that date. Subsection (d) of this section becomes effective 1 July
28 2010. The remainder of this section is effective when it becomes law.

29 **SECTION 13.(a)** Article 3B of Chapter 105 of the General Statutes is
30 amended by adding a new section to read:

31 **"§ 105-129.16G. Credit for donating funds to a nonprofit organization to enable**
32 **the nonprofit to acquire renewable energy property.**

33 (a) Credit. – A taxpayer who donates money to a tax-exempt nonprofit
34 organization for the purpose of providing funds for the organization to construct,
35 purchase, or lease renewable energy property is allowed a credit under this section if the
36 nonprofit organization uses the donation for its intended purpose. A tax-exempt
37 nonprofit organization is an organization that is exempt from tax under section
38 501(c)(3) of the Code.

39 The amount of the credit allowed in this section is the taxpayer's share of the credit
40 the nonprofit organization could claim under G.S. 105-129.16A if the nonprofit
41 organization were subject to tax. The taxpayer's share of the credit is calculated by
42 dividing the taxpayer's donation by the cost of the renewable energy property
43 constructed, purchased, or leased by the nonprofit organization and placed in service
44 during the taxable year and then multiplying this percentage by the amount of the credit

1 the nonprofit organization could claim if it were subject to tax. A taxpayer must take the
2 credit allowed by this section in the year in which the property is placed in service. The
3 installment requirements in G.S. 105-129.16A for nonresidential property do not apply
4 to the credit allowed in this section.

5 (b) Records. – A nonprofit organization must keep a record of all donations it
6 receives for the purpose of providing funds for the organization to construct, purchase,
7 or lease renewable energy property and of the amount of the donations used for this
8 purpose. If a nonprofit organization places renewable energy property in service that is
9 purchased in whole or in part from donations made for this purpose, the nonprofit
10 organization must give each taxpayer who made a donation a statement setting out the
11 amount of the credit for which the taxpayer qualifies under this section. The statement
12 must describe the renewable energy property placed in service and state the cost of the
13 property, the amount of the credit the nonprofit organization could claim under
14 G.S. 105-129.16A if it were subject to tax, and the taxpayer's share of the credit allowed
15 in this section. If the donations made for the renewable energy property exceed the cost
16 of the property, the nonprofit organization must prorate each taxpayer's share of the
17 credit. The sum of the credits allowed under this section to taxpayers who make
18 donations to a nonprofit organization may not exceed the amount of the credit the
19 nonprofit organization could claim under G.S. 105-129.16A if it were subject to tax.

20 (c) No Double Benefit. – A taxpayer who claims a credit under this section based
21 on a donation to a nonprofit organization is not allowed to deduct this donation as a
22 charitable contribution."

23 **SECTION 13.(b)** G.S. 105-130.5(a) is amended by adding a new
24 subdivision to read:

25 "(a) The following additions to federal taxable income shall be made in
26 determining State net income:

27 ...

28 (19) The amount of a donation made to a nonprofit organization for which a
29 credit is claimed under G.S. 1105-129.16G."

30 **SECTION 13.(c)** G.S. 105-134.6(c) is amended by adding a new
31 subdivision to read:

32 "(c) Additions. – The following additions to taxable income shall be made in
33 calculating North Carolina taxable income, to the extent each item is not included in
34 taxable income:

35 ...

36 (5b) The amount of a donation made to a nonprofit organization for which a
37 credit is claimed under G.S. 105-129.16G."

38 **SECTION 13.(d)** G.S. 105-259(b) is amended by adding a new section to
39 read:

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

44 ...

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

3 **SECTION 13.(e)** This section is effective for taxable years beginning on or
4 after 1 January 2008.

5 **SECTION 14.** The Utilities Commission shall submit to the Governor, the
6 Environmental Review Commission, and the Joint Legislative Utility Review
7 Committee a report on the actual results of the cost allocations established pursuant to
8 G.S. 62-133.7(h), as enacted by Section 2 of this act, G.S. 62-133.8(e) and
9 G.S. 62-133.8(f), as enacted by Section 4 of this act, and G.S. 62-133.2(a2) and
10 G.S. 62-133.2(a3), as enacted by Section 5 of this act, during the preceding two fiscal
11 years on or before 1 October of odd-numbered years. The Utilities Commission shall
12 submit the first report required by this section no later than 1 October 2009.

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

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