

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 909

Short Title: Sound Energy & Renewables Policy Act. (Public)

Sponsors: Representatives Arp, J. Bell, and Dixon (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

April 26, 2017

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH SOUND POLICIES FOR INCREASED UTILIZATION OF RENEWABLE ENERGY SOURCES, TO REFORM NORTH CAROLINA'S IMPLEMENTATION OF THE PUBLIC UTILITIES REGULATORY POLICIES ACT OF 1978 AND TO PROVIDE FOR UTILITY COST RECOVERY FOR NEW QUALIFYING FACILITY GENERATORS, AND TO ASSURE LONG-TERM RELIABLE ENERGY FOR NORTH CAROLINA CUSTOMERS AT FAIR AND REASONABLE RATES.

The General Assembly of North Carolina enacts:

PART I. STANDARD CONTRACTS FOR SMALL POWER PRODUCERS

SECTION 1.(a) G.S. 62-3 reads as rewritten:

"§ 62-3. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

...

(27a) "Small power producer" means a person or corporation owning or operating an electrical power production facility ~~with a power production capacity which, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity and which depends upon renewable resources for its primary source of energy. For the purposes of this section, renewable resources shall mean: hydroelectric power. A small power producer shall not include persons primarily engaged in the generation or sale of electricity from other than small power production facilities.~~ that qualifies as a "small power production facility" under 16 U.S.C. § 796, as amended.

...."

SECTION 1.(b) G.S. 62-156 reads as rewritten:

"§ 62-156. Power sales by small power producers to public utilities.

(a) In the event that a small power producer and an electric utility are unable to mutually agree to a contract for the sale of electricity or to a price for the electricity purchased by the electric utility, the ~~commission~~ Commission shall require the electric utility to purchase the power, under rates and terms established as provided in ~~subsection (b) of this section.~~ subsection (b) or (c) of this section as of the date the small power producer makes a commitment to sell to the electric utility. For purposes of this section, a commitment to sell arises upon the earlier of (i) 180 days prior to the date a small power producer is capable of delivering power to the electric utility or (ii) the date the small power producer is ready,



1 willing, and able to commit to sell power to the electric utility and obligates itself to sell power
2 to the electric utility, thereby committing to accept the risk associated with failure to begin
3 delivering power as of the delivery commencement date.

4 ~~(b) No later than March 1, 1981, and at~~ At least every two years thereafter, years, the
5 ~~commission~~ Commission shall determine the standard contract avoided cost rates to be
6 included within the tariffs of the electric utility and paid by electric utilities for power
7 purchased from small power producers, producers with a design capacity of 100 kilowatts or
8 less, according to the following standards:

9 (1) ~~Term of Contract.~~ Standard Contract for Small Power Producers up to 100
10 kW. – Long-term contracts up to 10 years for the purchase of electricity by
11 the electric utility from small power producers with a design capacity up to
12 and including one hundred kilowatts (100 kW) shall be encouraged in order
13 to enhance the economic feasibility of these small power production
14 facilities.

15 ...
16 (3) Availability and Reliability of Power. – The rates to be paid by electric
17 utilities for power avoided capacity purchased from a small power producer
18 shall be established with consideration of the reliability and availability of
19 the power. A future capacity need shall only be avoided in a year where the
20 electric utility's most recent biennial integrated resource plan filed with the
21 Commission under G.S. 62-110.1(c) has identified a projected capacity need
22 to serve system load and the identified need can be met by the type of small
23 power producer resource based upon its availability and reliability of power,
24 other than swine or poultry wastes for which a need is established consistent
25 with G.S. 62-133.8(e) and (f).

26 (c) Nonstandard Rates for Purchases From Small Power Producers Above 100 kW. –
27 The rates to be paid by electric utilities to small power producers with a design capacity in
28 excess of one hundred kilowatts (100 kW) shall be established through good-faith negotiations
29 between the electric utility and small power producer. In establishing rates for purchases from
30 small power producers, the electric utility shall design rates and contracts at its forecasted
31 avoided costs for a fixed two-year term. Rates for the purchases shall take into account factors
32 related to the individual characteristics of the small power producer, including the factors
33 identified in subdivisions (b)(2) and (b)(3) of this section.

34 (d) Notwithstanding any other provision of this section, an electric utility shall not be
35 required to enter into a contract with or purchase power from a small power producer if the
36 electric utility's obligation to purchase from the small power producer has been terminated
37 pursuant to 18 C.F.R. § 292.309."

38 **SECTION 1.(c)** This section applies to any standard contract rates approved by the
39 Utilities Commission or nonstandard negotiated agreements entered into between a small
40 power producer and electric utility on or after the date this section becomes effective.

41 **PART II. COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY**

42 **SECTION 2.(a)** Article 6 of Chapter 62 of the General Statutes is amended by
43 adding a new section to read:

44 **"§ 62-110.8. Competitive procurement of renewable energy.**

45 (a) Each electric utility shall file for Commission approval a process for the annual
46 competitive procurement of electricity from new renewable energy facilities with the purpose
47 of adding renewable energy resources to the State's generation resource portfolio in a manner
48 that allows the State's electric utilities to continue to reliably and cost-effectively serve
49 customers' future energy needs. Renewable energy resources eligible to participate in the
50 competitive procurement shall include resources identified in G.S. 62-133.8(a)(8) but shall be
51 included in the competitive procurement process.

1 limited to generators with a nameplate capacity rating of eighty megawatts (80 MW) or less.
2 Subject to the limitations set forth in subsections (b) and (c) of this section, electric utilities
3 subject to this section shall issue a request for proposals to procure renewable energy in an
4 amount not to exceed the procured renewable capacity. For purposes of this section, "procured
5 renewable capacity" means the following aggregate procurement levels: (i) for calendar years
6 2018-2022, a total of four hundred megawatts (400 MW) of renewable energy each calendar
7 year and (ii) for calendar years 2023 and thereafter, the offering of a competitive procurement,
8 with the amount to be procured determined by the Commission, taking into consideration a
9 showing of need evidenced by the electric utility's most recent biennial integrated resource plan
10 or annual update filed pursuant to G.S. 62-110.1(c).

11 (b) Electric utilities may jointly or individually implement the aggregate competitive
12 procurement requirements set forth in subsection (a) of this section, which shall include
13 procurement of new renewable energy facilities to be owned by the soliciting electric utility or
14 utilities and the purchase of renewable energy, capacity, and all environmental attributes from
15 third-party renewable energy facilities that commit to allow the procuring public utility rights
16 to dispatch, operate, and control the solicited renewable energy facilities in the same manner as
17 the electric utility's own generating resources. Procured renewable capacity in a given year
18 shall be subject to the following limitations:

19 (1) The amount of procured renewable capacity in a given year shall be reduced
20 or eliminated if the total amount of installed renewable energy capacity not
21 subject to economic dispatch or curtailment within the balancing authority
22 areas of electric utilities subject to this section exceeds thirty-five hundred
23 megawatts (3,500 MW) as of the date an annual competitive procurement is
24 issued. For purposes of this section, the term "balancing authority area"
25 means the collection of generation, transmission, and loads within the
26 metered boundaries of the balancing authority and the balancing authority
27 maintains load-resource balance within this area.

28 (2) To ensure the cost-effectiveness of procured renewable capacity, each
29 electric utility's procurement obligation shall be capped by the electric
30 utility's current forecast of its avoided cost over the term of the agreement.

31 (3) Fifty megawatts (50 MW) of the four hundred megawatts (400 MW) annual
32 competitive procurement of renewable energy established by subsection (a)
33 of this section shall be procured from renewable energy generating facilities
34 which produce electricity utilizing fuel derived from swine waste, poultry
35 waste, or landfill gas and shall not be subject to the avoided cost limit.

36 (4) No more than thirty percent (30%) of an electric utility's annual competitive
37 procurement requirement may be satisfied through self-development of new
38 renewable energy resources offered by the electric utility or any subsidiary
39 of the electric utility into the annual competitive procurement. This
40 limitation shall not preclude an electric utility from acquiring any new
41 renewable energy resources selected through the competitive procurement
42 that are located within the electric utility's service territory.

43 (c) Electric utilities subject to this section shall have authority to determine the location
44 and amount of annual procurement within their respective balancing authority areas, whether
45 located inside or outside the geographic boundaries of the State, taking into consideration (i)
46 the State's desire to foster diversification of the siting of renewable energy resources throughout
47 the State, (ii) the efficiency and reliability impacts of the siting of additional renewable energy
48 resources in each electric utility's service territory, and (iii) the potential for increased delivered
49 cost to an electric utility's customers as a result of siting additional renewable energy resources
50 in an electric utility's service territory, including the additional costs of ancillary services that
51 may be imposed due to the operational or locational characteristics of a specific renewable

1 energy resource technology, such as nondispatchability, unreliability of availability, and
2 creation or exacerbation of system congestion that may increase redispatch costs.

3 (d) The competitive renewable energy procurement requirements established by this
4 section shall be independently monitored by a third-party evaluator to be approved by the
5 Commission. All reasonable and prudent administrative and related expenses incurred to
6 implement this section shall be recovered from market participants through administrative fees
7 levied upon those that participate in the competitive bidding process, as approved by the
8 Commission.

9 (e) An electric utility may participate in any annual competitive procurement process
10 but shall only participate within its assigned service territory.

11 (f) An electric public utility subject to this section shall be authorized to recover the
12 costs of all purchases from third-party renewable energy resources and to recover the
13 authorized revenue of any utility-owned assets that are procured pursuant to this section
14 through an annual rider approved by the Commission and reviewed annually. Provided it is in
15 the public interest, the authorized revenue for any renewable energy resources owned by an
16 electric public utility may be calculated on a market basis in lieu of cost-of-service based
17 recovery, using data from the applicable competitive procurement to determine the market
18 price in accordance with the methodology established by the Commission pursuant to
19 subsection (g) of this section.

20 (g) To implement the requirements of this section, the Commission shall adopt rules to:

21 (1) Provide oversight of the competitive procurement process.

22 (2) Provide for the waiver of regulatory conditions or code of conduct
23 requirements that would unreasonably restrict an electric utility, or its
24 affiliates, from participating in the annual competitive procurement process,
25 unless the Commission finds that the waiver would not hold the electric
26 utility's customers harmless.

27 (3) Establishment of a procedure for expedited review and approval of
28 certificates of public convenience and necessity, or the transfer thereof, for
29 renewable energy facilities owned by the utility and procured pursuant to
30 this section.

31 (4) Establishment of a methodology to allow an electric public utility to recover
32 its costs pursuant to subsection (f) of this section.

33 (5) Provide for the establishment of a procedure for the Commission to modify
34 or delay the provisions of this section, in whole or in part, if the Commission
35 determines that it is in the public interest to do so.

36 (h) The requirements of this section shall not apply to an electric utility serving fewer
37 than 150,000 North Carolina retail jurisdictional customers as of January 1, 2017."

38 **SECTION 2.(b)** G.S. 62-153 reads as rewritten:

39 **"§ 62-153. Contracts of public utilities with certain companies and for services.**

40 ...

41 (b) No public utility shall pay any fees, commissions or compensation of any
42 description whatsoever to any affiliated or subsidiary holding, managing, operating,
43 constructing, engineering, financing or purchasing company or agency for services rendered or
44 to be rendered without first filing copies of all proposed agreements and contracts with the
45 Commission and obtaining its approval. Provided, however, that this subsection shall not apply
46 to motor carriers of ~~passengers~~-passengers or power purchase agreements entered into pursuant
47 to the competitive renewable energy procurement process established by G.S. 62-133.8."

48 **SECTION 2.(c)** The competitive renewable energy procurement process required
49 by G.S. 62-110.8(a), as enacted by subsection (a) of this section, shall be filed with the Utilities
50 Commission by electric public utilities no later than 180 days after this section becomes
51 effective.

1
2 **PART III. COST RECOVERY FOR SMALL POWER PRODUCER PURCHASES OF**
3 **NEW RENEWABLE ENERGY COMPETITIVE PROCUREMENT**

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

5 **"§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.**

6 ...
7 (a1) As used in this section, "cost of fuel and fuel-related costs" means all of the
8 following:

9 ...
10 (10) The total delivered costs, including capacity and noncapacity costs,
11 associated with all purchases of electric power from qualifying cogeneration
12 facilities and qualifying small power production facilities, as defined in 16
13 U.S.C. § 796, that are not subject to economic dispatch or economic
14 curtailment by the electric public utility and not otherwise recovered under
15 subdivision (6) of this subsection.

16 (11) The total delivered costs, including capacity and energy costs, or authorized
17 revenues for renewable energy resources procured through the competitive
18 renewable energy procurement process established in G.S. 62-110.8,
19 whether the resources are owned by an electric public utility or purchased
20 from a third party.

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

28 (1) For the noncapacity costs described in ~~subdivision (4)~~ subdivisions (4), (10),
29 and (11) of subsection (a1) of this section, the specific component for each
30 class of customers shall be determined by allocating these costs among
31 customer classes based on the ~~electric public utility's North Carolina energy~~
32 usage for the prior year, method used in the electric public utility's most
33 recently filed fuel proceeding commenced on or before January 1, 2017, as
34 determined by the Commission, until the Commission determines how these
35 costs shall be allocated in a general rate case for the electric public utility
36 commenced on or after ~~January 1, 2008.~~ January 1, 2017.

37 (2) For the capacity costs described in subdivisions ~~(5) and (6)~~ (5), (6), (10), and
38 (11) of subsection (a1) of this section, the specific component for each class
39 of customers shall be determined by allocating these costs among customer
40 classes based on the ~~electric public utility's North Carolina peak demand for~~
41 the prior year, method used in the electric public utility's most recently filed
42 fuel proceeding commenced on or before January 1, 2017, as determined by
43 the Commission, until the Commission determines how these costs shall be
44 allocated in a general rate case for the electric public utility commenced on
45 or after ~~January 1, 2008.~~ January 1, 2017.

46"

47
48 **PART IV. EXPEDITED REVIEW OF INTERCONNECTION OF SWINE AND**
49 **POULTRY WASTE**

50 **SECTION 4. G.S. 62-133.8 reads as rewritten:**

51 **"§ 62-133.8. Renewable Energy and Energy Efficiency Portfolio Standard (REPS).**

1 ...
2 (i) Adoption of Rules. – The Commission shall adopt rules to implement the provisions
3 of this section. In developing rules, the Commission shall:

- 4 ...
5 (4) Establish standards for interconnection of renewable energy facilities and
6 other nonutility-owned generation with a generation capacity of 10
7 megawatts or less to an electric public utility's distribution system; provided,
8 however, that the Commission shall adopt, if appropriate, federal
9 interconnection standards. The standards adopted pursuant to this
10 subdivision shall include an expedited review process for swine and poultry
11 waste to energy projects of two megawatts (2 MW) or less and other
12 measures necessary and appropriate to achieve the objectives of subsections
13 (e) and (f) of this section.

14"

15
16 **PART V. UPDATE UTILITIES COMMISSION CHARGES AND FEES**

17 **SECTION 5.(a)** G.S. 62-133.8 reads as rewritten:

18 **"§ 62-133.8. Renewable Energy and Energy Efficiency Portfolio Standard (REPS).**

19 ...
20 (l) The owner, including an electric power supplier, of each renewable energy facility
21 or new renewable energy facility, whether or not required to obtain a certificate of public
22 convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy
23 certificates it earns to be eligible for use by an electric power supplier to comply with
24 G.S. 62-133.8 shall register the facility with the Commission. Such an owner shall file a
25 registration statement in the form prescribed by the Commission and remit to the Commission
26 the fee required pursuant to G.S. 62-300(a)(16)."

27 **SECTION 5.(b)** G.S. 62-300 reads as rewritten:

28 **"§ 62-300. Particular fees and charges fixed; payment.**

29 (a) The Commission shall receive and collect the following fees and charges in
30 accordance with the classification of utilities as provided in rules and regulations of the
31 Commission, and no others:

- 32 ...
33 (16) Two hundred fifty dollars (\$250.00) with each application for a certificate of
34 authority to engage in business as a solar electric generator lessor filed
35 pursuant to G.S. 62-126.7 or each registration statement for a renewable
36 energy facility or new renewable energy facility filed pursuant to
37 G.S. 62-133.8(l).
38 (17) Fifty dollars (\$50.00) for each report of proposed construction filed by the
39 owner of an electric generating facility that is exempt from the certification
40 requirements of G.S. 62-110.1(a).

41"

42
43 **PART VI. DISTRIBUTED RESOURCES ACCESS ACT**

44 **SECTION 6.(a)** Chapter 62 of the General Statutes is amended by adding a new
45 Article to read as follows:

46 "Article 6B.

47 "Distributed Resources Access Act.

48 **"§ 62-126. 1. Title.**

49 This act may be cited as the "Distributed Resources Access Act."

50 **"§ 62-126.2. Declaration of Policy.**

1 The General Assembly of North Carolina finds that as a matter of public policy it is in the
2 interest of the State to encourage the leasing of solar energy facilities for retail customers. The
3 General Assembly further finds and declares that in encouraging the leasing of and subscription
4 to solar energy facilities pursuant to this act, cross-subsidization should be avoided by holding
5 harmless electric public utilities' customers that do not participate in such arrangements.

6 **"§ 62-126.3. Definitions.**

7 For purposes of this Article, the following definitions apply:

- 8 (1) Affiliate. – Any entity directly or indirectly controlling or controlled by or
9 under direct or indirect common control with an electric power supplier.
- 10 (2) Commission. – The North Carolina Utilities Commission.
- 11 (3) Community solar energy facility. – A solar energy facility whose output is
12 shared through subscriptions.
- 13 (4) Customer generator lessee. – A lessee of a solar energy facility.
- 14 (5) Electric generator lessor. – The owner of an eligible electric generation
15 facility that leases the facility to a customer generator lessee, including any
16 agents who act on behalf of the solar electric generator lessor. For purposes
17 of this Article, an electric generator lessor shall not be considered a public
18 utility under G.S. 62-3(23).
- 19 (6) Electric power supplier. – A public utility, an electric membership
20 corporation, or a municipality that sells electric power to retail electric
21 customers in the State.
- 22 (7) Electric public utility. – A public utility as defined by G.S. 62-3(23) that
23 sells electric power to retail electric customers in the State.
- 24 (8) Maximum annual peak demand. – The maximum single hour of electric
25 demand actually occurring or estimated to occur at a premises.
- 26 (9) Net metering. – To use electrical metering equipment to measure the
27 difference between the electrical energy supplied to a retail electric customer
28 by an electric power supplier and the electrical energy supplied by the retail
29 electric customer to the electric power supplier over the applicable billing
30 period.
- 31 (10) Offering utility. – Any electric public utility as defined in G.S. 62-3(23)
32 serving at least 150,000 North Carolina retail jurisdictional customers as of
33 January 1, 2017. The term shall not include any other electric public utility,
34 electric membership corporation, or municipal electric supplier authorized to
35 provide retail electric service within the State. An offering utility's
36 participation in this Article as an electric generator lessor shall not otherwise
37 alter its status as a public utility with respect to any other provision of this
38 Chapter. An offering utility's participation in this Article shall be regulated
39 pursuant to the provisions of this Article.
- 40 (11) Person. – The same meaning as in G.S. 62-3(21).
- 41 (12) Premises. – The building, structure, farm, or facility to which electricity is
42 being or is to be furnished. Two or more buildings, structures, farms, or
43 facilities that are located on one tract or contiguous tracts of land and that are
44 utilized by one electric customer for commercial, industrial, institutional, or
45 governmental purposes, shall constitute one "premises," unless the electric
46 service to the building, structures, farms, or facilities are separately metered
47 and charged.
- 48 (13) Property. – The tract of land on which the premises is located, together with
49 all the adjacent contiguous tracts of land utilized by the same retail electric
50 customer.

- 1 (14) Solar energy facility. – A solar energy facility leased to a customer generator
2 lessee that meets the following requirements:
3 a. Generates electricity from a solar photovoltaic system and related
4 equipment that uses solar energy to generate electricity.
5 b. Is limited to a capacity of: (i) not more than the lesser of one
6 thousand kilowatts (1,000 kW) or one hundred percent (100%) of
7 contract demand if a nonresidential customer; or (ii) not more than
8 twenty kilowatts (20 kW) or one hundred percent (100%) of
9 estimated electrical demand if a residential customer.
10 c. Is located on a premises owned, operated, leased, or otherwise
11 controlled by the customer generator lessee that is also the premises
12 served by the solar energy facility.
13 d. Is interconnected and operates in parallel phase and synchronization
14 with an offering utility authorized by the Commission to provide
15 retail electric service to the premises and has been approved for
16 interconnection and parallel operation by that public utility.
17 e. Is intended only to offset no more than one hundred percent (100%)
18 of the customer generator lessee's own retail electrical energy
19 consumption at the premises.
20 f. Meets all applicable safety, performance, interconnection, and
21 reliability standards established by the Commission, the public
22 utility, the National Electrical Code, the National Electrical Safety
23 Code, the Institute of Electrical and Electronics Engineers,
24 Underwriters Laboratories, the Federal Energy Regulatory
25 Commission, and any local governing authorities.
26 (15) Subscription. – A contract between a subscriber and the owner of a
27 community solar energy facility that allows a subscriber to receive a bill
28 credit for the electricity generated by a community solar energy facility in
29 proportion to the electricity generated.

30 **"§ 62-126.4. Commission to establish net metering rates.**

31 (a) Each electric public utility shall file for Commission approval revised net metering
32 rates for electric customers that (i) own a renewable energy facility for that person's own
33 primary use or (ii) are customer generator lessees.

34 (b) The rates shall be nondiscriminatory and established only after an investigation of
35 the costs and benefits of customer-sited generation that shall include a consideration of the
36 fixed costs of the electric system, including generation, transmission, and distribution costs, and
37 the costs and benefits of renewable energy generation. The Commission shall establish net
38 metering rates under all tariff designs that ensure that the net metering retail customer pays its
39 full fixed cost of service. Such rates may include fixed monthly energy and demand charges.

40 (c) Until the rates have been approved by the Commission, the rate shall be the
41 applicable net metering rate established at the time the facility interconnects. Retail customers
42 that own and install an on-site renewable energy facility and interconnect to the grid prior to the
43 date the Commission approves new metering rates may elect to continue net metering under the
44 net metering rate in effect at the time of interconnection until January 1, 2027.

45 **"§ 62-126.5. Scope of leasing program in offering utilities' service areas.**

46 (a) An offering utility and its affiliates may be deemed to be electric generator lessors
47 and may offer leases to solar energy facilities only within the offering utility's own assigned
48 service area or, in the case of an affiliate, the service area assigned to an affiliated offering
49 utility. The costs an offering public utility incurs in marketing, installing, owning, or
50 maintaining leases through its own leasing programs as a lessor shall not be recovered from
51 other nonparticipating utility customers through rates and the Commission shall not have any

1 jurisdiction over the financial terms of such leases. An offering utility, and the customer
2 generator lessees that lease facilities from it, may participate on an equal basis with other
3 lessors and lessees, and in any approved incentive program offered by the utility to its
4 customers.

5 (b) An electric generator lessor that owns a solar energy facility within the assigned
6 service area of an offering utility and that is located on a premises owned or leased by a
7 customer generator lessee, shall be permitted to lease such facility exclusively to a customer
8 generator lessee under a lease, provided that the solar electric generator lessor complies with
9 the terms, conditions, and restrictions set forth within this section and holds a valid certificate
10 issued by the Commission pursuant to G.S. 62-126.7. An electric generator lessor shall not be
11 considered a "public utility" under G.S. 62-3(23) if the solar energy facility is only made
12 available to a customer generator lessee under a lease that conforms to the requirements of
13 G.S. 62-126.6 for the customer generator lessee's use on its premises where the solar energy
14 facility is located to serve the electric energy requirements of that particular premises, including
15 to enable the customer generator lessee to obtain a credit for the electricity generated under an
16 applicable net metering tariff or to engage in the sale of excess energy from the solar energy
17 facility to an offering utility.

18 (c) Any lease of a solar energy facility not entered into pursuant to this section is
19 prohibited, and any electric generator lessor that enters into a lease outside of an offering
20 utility's program implemented pursuant to this section or otherwise enters into a contract or
21 agreement where payments are based upon the electric output of a solar energy facility shall be
22 considered a "public utility" under G.S. 62-3(23), and be in violation of the franchised service
23 rights of the offering utility or any other electric power supplier authorized to provide retail
24 electric service in the State. This section does not authorize the sale of electricity from solar
25 energy facilities directly to any customer of an offering utility or other electric power supplier
26 by the owner of a solar energy facility. The electrical output from any solar energy facility
27 leased pursuant to this program shall be the sole and exclusive property of the customer
28 generator lessee.

29 (d) The total installed capacity of all solar energy facilities on an offering utility's
30 system that are leased pursuant to this section shall not exceed one percent (1.0%) of the
31 previous five-year average of the North Carolina retail contribution to the offering utility's
32 coincident retail peak demand. The offering utility may refuse to interconnect customers that
33 would result in this limitation being exceeded. Each offering utility shall establish a program
34 for new installations of leased equipment to permit the reservation of capacity by customer
35 generator lessees, whether participating in a public utility or non-utility lessor's leasing
36 program, on its system including provisions to prevent or discourage abuse of such programs.
37 Such programs must provide that only prospective individual customer generator lessees may
38 apply for, receive, and hold reservations to participate in the offering utility's leasing program.
39 Each reservation shall be for a single customer premises only and may not be sold, exchanged,
40 traded, or assigned except as part of the sale of the underlying premises.

41 (e) To comply with the terms of this section, each customer generator lessee's solar
42 energy facility shall serve only one premises, and shall not serve multiple customer generator
43 lessees or multiple premises. The customer generator lessee must enroll in the applicable rate
44 schedule made available by the interconnecting offering utility, subject to the participation
45 limitations set forth in subsection (a) of this section.

46 **"§ 62-126.6. Electric customer generator leasing requirements; disclosures; records.**

47 (a) A lease agreement offered by an electric generator lessor must meet the following
48 requirements:

- 49 (1) Be signed and dated by the retail electric customer. Any agreement that
50 contains blank spaces when signed by the retail electric customer is voidable

- 1 at the option of the retail electric customer until the solar energy facility is
2 installed.
- 3 (2) Be in at least 12-point type.
- 4 (3) Include a provision granting the retail electric customer the right to rescind
5 the agreement for a period of not less than three business days after the
6 agreement is signed by the retail electric customer.
- 7 (4) Provide a description of the solar energy facility, including the make and
8 model of the solar energy facility's major components, and a guarantee
9 concerning energy production output that the solar energy facility will
10 provide over the expected life of the agreement.
- 11 (5) Separately set forth the following items, as applicable:
- 12 a. The total cost to the retail electric customer under the lease
13 agreement for the solar energy facility over the life of the agreement.
- 14 b. Any interest, installation fees, document preparation fees, service
15 fees, or other costs to be paid by the retail electric customer.
- 16 c. The total number of payments, including the interest, the payment
17 frequency, the estimated amount of the payment expressed in dollars,
18 and the payment due date over the leased term.
- 19 (6) Identify all current tax incentives and rebates or other State or federal
20 incentives for which the buyer may be eligible and any conditions or
21 requirements pursuant to the agreement to obtain these tax incentives,
22 rebates, or other incentives.
- 23 (7) Identify the tax obligations that the retail electric customer may be required
24 to pay as a result of buying, financing, or leasing the solar energy facility,
25 including:
- 26 a. The assessed value and the property tax assessments associated with
27 the solar energy facility, calculated in the year the agreement is
28 signed.
- 29 b. Transaction privilege taxes that may be assessed against the person
30 leasing the solar energy facility.
- 31 c. Any obligation of the retail electric customer to transfer tax credits or
32 tax incentives of the solar energy facility to any other person.
- 33 (8) Disclose whether the warranty or maintenance obligations related to the
34 solar energy facility may be sold or transferred to a third party.
- 35 (9) Include a disclosure, the receipt of which shall be separately acknowledged
36 by the retail electric customer, if a transfer of the sale, lease, or financing
37 agreement is subject to any restrictions pursuant to the agreement on the
38 retail electric customer's ability to modify or transfer ownership of a solar
39 energy facility, including whether any modification or transfer is subject to
40 review or approval by a third party. If the modification or transfer of the
41 solar energy facility is subject to review or approval by a third party, the
42 agreement must identify the name, address, and telephone number of, and
43 provide for updating any change in, the entity responsible for approving the
44 modification or transfer.
- 45 (10) Include a disclosure, the receipt of which shall be separately acknowledged
46 by the retail electric customer, if a modification or transfer of ownership of
47 the real property to which the solar energy facility is or will be affixed is
48 subject to any restrictions pursuant to the agreement on the retail electric
49 customer's ability to modify or transfer ownership of the real property to
50 which the solar energy facility is installed or affixed, including whether any
51 modification or transfer is subject to review or approval by a third party. If

1 the modification or transfer of the real property to which the solar energy
2 facility is affixed or installed is subject to review or approval by a third
3 party, the agreement must identify the name, address, and telephone number
4 of, and provide for updating any change in, the entity responsible for
5 approving the modification or transfer.

6 (11) Provide a full and accurate summary of the total costs under the agreement
7 for maintaining and operating the solar energy facility over the life of the
8 solar energy facility, including financing, maintenance, and construction
9 costs related to the solar energy facility.

10 (12) If the agreement contains an estimate of the retail electric customer's future
11 utility charges based on projected utility rates after the installation of a solar
12 energy facility, provide an estimate of the retail electric customer's estimated
13 utility charges during the same period as impacted by potential utility rate
14 changes ranging from at least a five-percent (5%) annual decrease to at least
15 a five-percent (5%) annual increase from current utility costs. The
16 comparative estimates must be calculated based on the same utility rates.

17 (13) Include a disclosure, the receipt of which shall be separately acknowledged
18 by the retail electric customer that states:
19 "Utility rates and utility rate structures are subject to change. These changes
20 cannot be accurately predicted and projected savings from your solar energy
21 facility are therefore subject to change. Tax incentives are subject to change
22 or termination by executive, legislative, or regulatory action."

23 (b) Before the maintenance or warranty obligations of a solar energy facility under an
24 existing lease agreement are transferred, the person who is currently obligated to maintain or
25 warrant the solar energy facility must disclose the name, address, and telephone number of the
26 person who will be assuming the maintenance or warranty of the solar energy facility.

27 (c) If the electric generator lessor's marketing materials contain an estimate of the retail
28 electric customer's future utility charges based on projected utility rates after the installation of
29 a solar energy facility, the marketing materials must contain an estimate of the retail electric
30 customer's estimated utility charges during the same period as impacted by potential utility rate
31 changes ranging from at least a five-percent (5%) annual decrease to at least a five-percent
32 (5%) annual increase from current utility costs.

33 **"§ 62-126.7. Commission authority over electric generator lessors.**

34 (a) No person shall engage in the leasing of a solar energy facility without having
35 applied for and obtained a certificate authorizing those operations from the Commission. The
36 application for a certificate of authority to engage in business as an electric generator lessor
37 shall be made in a form prescribed by the Commission and accompanied by the fee required
38 pursuant to G.S. 62-300(16).

39 (b) In acting upon the application for a certificate of authority to engage in business as
40 an electric generator lessor, the Commission shall take into account the State's interest in
41 encouraging the leasing of solar electric generation facilities and avoidance of
42 cross-subsidization as declared by the policy objectives of this Article as provided in
43 G.S. 62-126.2, as well as the policy of the State as provided in G.S. 62-2(a). The Commission
44 shall issue a certificate of authority to engage in business as an electric generator lessor, if the
45 Commission finds that the applicant is fit, willing, and able to conduct that business in
46 accordance with the provisions of this Article. The certificate shall be effective from the date
47 issued unless otherwise specified therein, and shall remain in effect until terminated under the
48 terms thereof, or until suspended or revoked as herein provided.

49 (c) As a condition for issuance and continuation of a certificate of authority for an
50 electric generator lessor, the applicant shall certify to the Commission all of the following:

- 1 (1) The applicant will register with the Commission each solar energy facility
2 that the applicant leases to a customer generator lessee.
- 3 (2) That each lease of a solar energy facility that the applicant offers or accepts
4 will comply with the provisions of this Article.
- 5 (3) The applicant will consent to the auditing of its books and records by the
6 Public Staff insofar as those records relate to transactions with an offering
7 utility or a customer generator lessee that is located in the State.
- 8 (4) That the applicant will conduct its business in substantial compliance with
9 all federal and State laws, regulations, and rules for the protection of the
10 environment and conservation of natural resources, the provision of electric
11 service, and the protection of consumers.

12 (d) Upon the request of a public utility, an electric membership corporation, the Public
13 Staff, a customer generator lessee, or person having an interest in the solar electric generator
14 lessor's conduct of its business, the Commission may review the certificate to determine
15 whether the solar electric generator lessor is conducting business in compliance with this
16 Article. After notice to the electric generator lessor, the Commission may suspend the
17 certificate and enter upon a hearing to determine whether the certificate should be revoked.
18 After the hearing, and for good cause shown, the Commission may, in its discretion, reinstate a
19 suspended certificate, continue a suspension of a certificate, or revoke a certificate.

20 (e) It shall be a violation of law punishable by a civil penalty of not more than ten
21 thousand dollars (\$10,000) per occurrence for any person to either directly or indirectly do any
22 of the following:

- 23 (1) Solicit business as a lessor of solar energy facilities without a valid
24 certificate issued under this section or otherwise in violation of the terms of
25 this Article.
- 26 (2) Engage in any unfair or deceptive practice in the leasing of renewable
27 electric generation facilities or otherwise violate the requirements of
28 G.S. 62-126.6.
- 29 (3) Operate in violation of the terms of the certificate issued by this Article."

30 **SECTION 6.(b)** G.S. 62-3 reads as rewritten:

31 **"§ 62-3. Definitions.**

32 As used in this Chapter, unless the context otherwise requires, the term:

- 33 ...
- 34 (23) a. "Public utility" means a person, whether organized under the laws of this
35 State or under the laws of any other state or country, now or hereafter
36 owning or operating in this State equipment or facilities for:
37 1. Producing, generating, transmitting, delivering or furnishing
38 electricity, piped gas, steam or any other like agency for the
39 production of light, heat or power to or for the public for
40 compensation; provided, however, that the term "public
41 utility" shall not include persons who construct or operate an
42 electric generating facility, the primary purpose of which
43 facility is ~~for such either for~~ (i) a person's own use and not for
44 the primary purpose of producing electricity, heat, or steam
45 for sale to or for the public for ~~compensation; compensation or~~
46 (ii) a person who constructs or operates an eligible renewable
47 energy facility on the site of a customer's property and leases
48 such facility to that customer, as provided by and subject to
49 the limitations of Article 6B of this Chapter;

50 "

51 **SECTION 6.(c)** G.S. 62-110.1(g) reads as rewritten:

1 "(g) The certification requirements of this section shall not apply to (i) a
2 nonutility-owned generating facility fueled by renewable energy resources under two
3 megawatts in ~~capacity or capacity~~; (ii) to persons who construct an electric generating facility
4 primarily for that person's own use and not for the primary purpose of producing electricity,
5 heat, or steam for sale to or for the public for compensation; or to (iii) a solar energy facility or
6 a community solar energy facility, as provided by and subject to the limitations of Article 6B of
7 this Chapter. provided, however, that such ~~If the generating capacity of the facility exceeds~~
8 ~~twenty kilowatts, however, such persons shall, nevertheless, be required to~~ shall report the
9 proposed construction of such a facility to the Utilities Commission the proposed construction
10 ~~of such a facility before beginning construction thereof.~~ construction and shall report
11 completion of the facility to the Commission and the interconnecting electric public utility at
12 the time construction is complete."
13

14 **PART VII. ENERGY STORAGE STUDY**

15 **SECTION 7.** The North Carolina Policy Collaboratory (Collaboratory) at the
16 University of North Carolina at Chapel Hill shall conduct a study on energy storage technology
17 if contributions for the study of at least seventy-five thousand dollars (\$75,000) are identified
18 and matched one-to-one in order to qualify for the challenge grant funds administered by the
19 Office of State Budget and Management as provided in S.L. 2016-94 (The Joint Conference
20 Committee Report on the Base, Capital, and Expansion Budgets). If the Collaboratory no
21 longer qualifies for those funds due to the expiration of the fiscal year, the Collaboratory may
22 use additional funds appropriated to the Collaboratory on a nonrecurring basis up to
23 seventy-five thousand dollars (\$75,000) if the funds are matched one-to-one in the 2017-2018
24 fiscal year. The study shall address how energy storage technologies may or may not provide
25 value to North Carolina consumers based on factors that may include, but are not limited to,
26 capital investment, value to the electric grid, net utility savings, net job creation, impact on
27 consumer rates and service quality, or any other factors related to deploying one or more of
28 these technologies. The study shall also address the feasibility of energy storage in North
29 Carolina, including, but not limited to, services energy storage can provide that are not being
30 performed currently, the economic potential or impact of energy storage deployment in North
31 Carolina, and the identification of existing policies and recommended policy changes that may
32 be considered to address a statewide coordinated energy storage policy. The Collaboratory shall
33 provide the results of this study no later than December 1, 2018, to the Energy Policy Council
34 and the Joint Legislative Commission on Energy Policy.
35

36 **PART VIII. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

37 **SECTION 8.(a)** If any section or provision of this act is declared unconstitutional
38 or invalid by the courts, it does not affect the validity of this act as a whole or any part other
39 than the part declared to be unconstitutional or invalid.

40 **SECTION 8.(b)** The headings to the parts of this act are a convenience to the
41 reader and are for reference only. The headings do not expand, limit, or define the text of this
42 act.

43 **SECTION 8.(c)** This act is effective when it becomes law.