

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

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, (6) PROVIDE AN INCOME TAX CREDIT FOR BUILDERS OF ENERGY-EFFICIENT HOMES, AND (7) 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>	40 <u>3% of 2011 North Carolina retail sales</u>
41 <u>2015</u>	41 <u>6% of 2014 North Carolina retail sales</u>
42 <u>2018</u>	42 <u>10% of 2017 North Carolina retail sales</u>
43 <u>2021 and thereafter</u>	43 <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)	<u>An electric membership corporation or municipality may meet the</u>
6		<u>requirements of this section by any one or more of the following:</u>
7	a.	<u>Generate electric power at a new renewable energy facility.</u>
8	b.	<u>Reduce energy consumption through the implementation of</u>
9		<u>demand-side management or energy efficiency measures.</u>
10	c.	<u>Purchase electric power from a renewable energy facility or a</u>
11		<u>hydroelectric power facility, provided that no more than thirty</u>
12		<u>percent (30%) of the requirements of this section may be met</u>
13		<u>with hydroelectric power, including allocations made by the</u>
14		<u>Southeastern Power Administration.</u>
15	d.	<u>Purchase renewable energy certificates derived from in-State or</u>
16		<u>out-of-state renewable energy facilities. An electric power</u>
17		<u>supplier subject to the requirements of this subsection may use</u>
18		<u>certificates derived from out-of-state renewable energy facilities</u>
19		<u>to meet no more than twenty-five percent (25%) of the</u>
20		<u>requirements of this section.</u>
21	e.	<u>Acquire all or part of its electric power through a wholesale</u>
22		<u>purchase power agreement with a wholesale supplier of electric</u>
23		<u>power whose portfolio of supply and demand options meets the</u>
24		<u>requirements of this section.</u>
25	f.	<u>Use electric power that is supplied by a new renewable energy</u>
26		<u>facility or saved due to the implementation of demand-side</u>
27		<u>management or energy efficiency measures that exceeds the</u>
28		<u>requirements of this section for any calendar year as a credit</u>
29		<u>towards the requirements of this section in the following</u>
30		<u>calendar year or sell the associated renewable energy</u>
31		<u>certificates.</u>
32	(d)	<u>Compliance With REPS Requirement Through Use of Solar Energy</u>
33		<u>Resources. – For calendar year 2018 and for each calendar year thereafter, at least</u>
34		<u>two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to</u>
35		<u>retail electric customers in the State, or an equivalent amount of energy, shall be</u>
36		<u>supplied by a combination of new solar electric facilities and new metered solar thermal</u>
37		<u>energy facilities that use one or more of the following applications: solar hot water,</u>
38		<u>solar absorption cooling, solar dehumidification, solar thermally driven refrigeration,</u>
39		<u>and solar industrial process heat. The terms of any contract entered into between an</u>
40		<u>electric power supplier and a new solar electric facility or new metered solar thermal</u>
41		<u>energy facility shall be of sufficient length to stimulate development of solar energy;</u>
42		<u>provided, the Commission shall develop a procedure to determine if an electric power</u>
43		<u>supplier is in compliance with the provisions of this subsection if a new solar electric</u>
44		<u>facility or a new metered solar thermal energy facility fails to meet the terms of its</u>

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 the BACT for a facility on a case by case basis. The
 38 Environmental Management Commission may adopt rules to implement this subsection.
 39 In adopting rules, the Environmental Management Commission shall take into account
 40 cumulative and secondary impacts associated with the concentration of biomass
 41 facilities in close proximity to one another.

42 (h) Cost Recovery and Customer Charges. –

- 1 (1) For the purposes of this subsection, the term "incremental costs"
2 means all reasonable and prudent costs incurred by an electric power
3 supplier to:
- 4 a. Comply with the requirements of subsections (b), (c), (d), (e),
5 and (f) of this section that are in excess of the electric power
6 supplier's avoided costs other than those costs recovered
7 pursuant to G.S. 62-133.8.
- 8 b. Fund research that encourages the development of renewable
9 energy, energy efficiency, or improved air quality, provided
10 those costs do not exceed one million dollars (\$1,000,000) per
11 year.
- 12 c. Comply with any federal mandate that is similar to the
13 requirements of subsections (b), (c), (d), (e), and (f) of this
14 section that exceed the costs that the electric power supplier
15 would have incurred under those subsections in the absence of
16 the federal mandate.
- 17 (2) All reasonable and prudent costs incurred by an electric power supplier
18 to comply with any federal mandate that is similar to the requirements
19 of subsections (b), (c), (d), (e), and (f) of this section, including, but
20 not limited to, the avoided costs associated with a federal mandate that
21 exceeds the avoided costs that the electric power supplier would have
22 incurred pursuant to subsections (b), (c), (d), (e), and (f) of this section
23 in the absence of the federal mandate, shall be recovered by the
24 electric power supplier in an annual rider charge assessed in
25 accordance with the schedule set out in subdivision (4) of this
26 subsection increased by the Commission on a pro rata basis to allow
27 for full and complete recovery of all reasonable and prudent costs
28 incurred to comply with the federal mandate.
- 29 (3) Except as provided in subdivision (2) of this subsection, the total
30 annual incremental cost to be incurred by an electric power supplier
31 and recovered from the electric power supplier's retail customers shall
32 not exceed an amount equal to the per-account annual charges set out
33 in subdivision (4) of this subsection applied to the electric power
34 supplier's total number of customer accounts determined as of 31
35 December of the previous calendar year. An electric power supplier
36 shall be conclusively deemed to be in compliance with the
37 requirements of subsections (b), (c), (d), (e), and (f) of this section if
38 the electric power supplier's total annual incremental costs incurred
39 equals an amount equal to the per-account annual charges set out in
40 subdivision (4) of this subsection applied to the electric power
41 supplier's total number of customer accounts determined as of 31
42 December of the previous calendar year. The total annual incremental
43 cost recoverable by an electric power supplier from an individual
44 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 insure 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; provided, however, that the Commission shall adopt, if appropriate, federal interconnection standards.

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

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

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

17 **SECTION 2.(b)** The Commission shall submit the first report required by
18 G.S. 62-133.7(j), as enacted by subsection (a) of this section, no later than 1 October
19 2008.

20 **SECTION 3.** If the federal government imposes requirements similar to
21 those set out in G.S. 62-133.7 on electric power suppliers in the State, the Utilities
22 Commission shall determine the applicability of federal and State requirements so as to
23 apply the more stringent requirements except to the extent that State requirements may
24 be specifically preempted by federal law. The Commission shall adopt rules to establish
25 a procedure as an alternative to the procedure set out in G.S. 62-133 to annually adjust
26 the rates of electric public utilities to allow timely recovery of all reasonable costs of
27 compliance with the federal and State requirements pursuant to G.S. 62-133.7(h), as
28 enacted by Section 2 of this act. In adopting rules to establish the procedure, the
29 Commission shall incorporate the provisions of this act in accordance with this section
30 and the public interest.

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

33 **"§ 62-133.8. Cost recovery for demand-side management and energy efficiency**
34 **measures.**

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

40 (b) Each electric power supplier shall implement demand-side management and
41 energy efficiency measures and use supply-side resources to establish the least cost mix
42 of demand reduction and generation measures that meet the electricity needs of its
43 customers. An electric membership corporation or municipality that qualifies as an
44 electric power supplier may satisfy the requirements of this section through its

1 purchases from a wholesale supplier of electric power that uses supply-side resources
2 and demand-side management to meet all or a portion of the supply needs of its
3 members and their retail customers, and that, by aggregating and promoting
4 demand-side management and energy efficiency measures for its members, meets the
5 requirements of this section.

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

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

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

20 (2) May approve other incentives to electric public utilities for adopting
21 and implementing new demand-side management and energy
22 efficiency measures in order to treat investments in demand-side
23 management and energy efficiency measures in a manner similar to
24 investments in supply-side resources and to make electric public
25 utilities indifferent to the selection of demand-side management and
26 energy efficiency or supply-side options. Allowable incentives may
27 include:

28 a. Appropriate rewards based on the sharing of savings achieved
29 by the demand-side management and energy efficiency
30 measures.

31 b. Appropriate rewards based on capitalization of a percentage of
32 avoided costs achieved by demand-side management and
33 energy efficiency measures.

34 c. Any other incentives that the Commission determines to be
35 appropriate.

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

40 (f) None of the costs of new demand-side management or energy efficiency
41 measures of an electric power supplier shall be assigned to any industrial customer that
42 notifies the industrial customer's electric power supplier that, at the industrial customer's
43 own expense, the industrial customer has implemented at any time in the past or, in
44 accordance with stated, quantified goals for demand-side management and energy

1 efficiency, will implement alternative demand-side management and energy efficiency
2 measures and that the industrial customer elects not to participate in demand-side
3 management or energy efficiency measures under this section. The electric power
4 supplier that provides electric service to the industrial customer, an industrial customer
5 that receives electric service from the electric power supplier, the Public Staff, or the
6 Commission on its own motion, may initiate a complaint proceeding before the
7 Commission to challenge the validity of the notification of nonparticipation. The
8 procedures set forth in G.S. 62-73, 62-74, and 62-75 shall govern any such complaint.

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

10 (h) The Commission shall submit to the Governor and to the Joint Legislative
11 Utility Review Committee a summary of the proceedings conducted pursuant to this
12 section during the preceding two fiscal years on or before 1 September of
13 odd-numbered years."

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

17 **SECTION 4.(c)** The Utilities Commission shall prepare an analysis of
18 whether rate structures, policies and measures, including decoupling, in place in other
19 states and countries that promote a mix of generation involving renewable energy
20 sources and demand reduction should be implemented in this State. The Commission
21 shall submit this analysis to the Governor, the Joint Legislative Utility Review
22 Committee, and the Environmental Review Commission no later than 1 September
23 2008.

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

25 **"§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.**

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

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

36 (1) The cost of fuel burned.

37 (2) The cost of fuel transportation.

38 (3) The cost of ammonia, lime, limestone, urea, dibasic acid, sorbents, and
39 catalysts consumed in reducing or treating emissions.

40 (4) The total delivered noncapacity related costs, including all related
41 transmission charges, of all purchases of electric power by the electric
42 public utility, that are subject to economic dispatch or economic
43 curtailment.

- 1 (5) The capacity costs associated with all purchases of electric power from
2 qualifying cogeneration facilities and qualifying small power
3 production facilities, as defined in 16 U.S.C. § 796, that are subject to
4 economic dispatch by the electric public utility.
- 5 (6) Except for those costs recovered pursuant to G.S. 62-133.7(h), the total
6 delivered costs of all purchases of power from renewable energy
7 facilities and new renewable energy facilities pursuant to
8 G.S. 62-133.7 or to comply with any federal mandate that is similar to
9 the requirements of subsections (b), (c), (d), (e), and (f) of
10 G.S. 62-133.7.
- 11 (7) The fuel cost component of other purchased power.
- 12 (8) Cost of fuel and fuel-related costs shall be adjusted for any net gains or
13 losses resulting from any sales by the electric public utility of fuel and
14 other fuel-related costs components.
- 15 (9) Cost of fuel and fuel-related costs shall be adjusted for any net gains or
16 losses resulting from any sales by the electric public utility of
17 by-products produced in the generation process to the extent the costs
18 of the inputs leading to that by-product are costs of fuel or fuel-related
19 costs.

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

- 27 (1) For the costs described in subdivision (4) of subsection (a1) of this
28 section, the specific component for each class of customers shall be
29 determined by allocating these costs among customer classes based on
30 the electric public utility's North Carolina energy usage for the prior
31 year, as determined by the Commission, until the Commission
32 determines how these costs shall be allocated in a general rate case for
33 the electric public utility commenced on or after 1 January 2008.
- 34 (2) For the costs described in subdivisions (5) and (6) of subsection (a1) of
35 this section, the specific component for each class of customers shall
36 be determined by allocating these costs among customer classes based
37 on the electric public utility's North Carolina peak demand for the
38 prior year, as determined by the Commission, until the Commission
39 determines how these costs shall be allocated in a general rate case for
40 the electric public utility commenced on or after 1 January 2008.

41 (a3) Notwithstanding subsections (a1) and (a2) of this section, for an electric
42 public utility that has less than 150,000 North Carolina retail jurisdictional customers as
43 of 31 December 2006, the costs identified in subsection (a1) of this section shall be
44 recovered through the electric public utility's base and fuel rates respectively in the

1 manner approved by the Commission as of 1 July 2007 and as may be subsequently
2 modified by the Commission except that the costs described in subdivision (6) of
3 subsection (a1) of this section that are incurred on or after 1 January 2008 shall be
4 recovered as cost of fuel and fuel-related cost, and the annual increase in the amount of
5 those costs shall not exceed one percent (1%) of the electric public utility's total North
6 Carolina retail jurisdictional gross revenues for the preceding calendar year. These costs
7 shall be recoverable from each class of customers as a separate component of the rider.
8 For these costs, the specific component for each class of customers shall be determined
9 by allocating the costs among customer classes based on the electric public utility's
10 North Carolina peak demand for the prior year, as determined by the Commission, until
11 the Commission determines how these costs shall be allocated in a general rate case for
12 the electric public utility commenced on or after 1 January 2008.

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

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

- 25 (1) ~~Purchased cost~~ Cost of fuel and fuel-related costs used in each
26 generating facility owned in whole or in part by the utility.
- 27 (2) Fuel procurement practices and fuel inventories for each facility.
- 28 (3) Burned cost of fuel used in each generating facility.
- 29 (4) Plant capacity factor for each generating facility.
- 30 (5) Plant availability factor for each generating plant.
- 31 (6) Generation mix by types of fuel used.
- 32 (7) Sources and fuel cost component of purchased power used.
- 33 (8) Recipients of and revenues received for power sales and times of
34 power sales.
- 35 (9) Test period ~~kilowatt-hour~~ kilowatt-hour sales for the utility's total
36 system and on the total system separated for North Carolina
37 jurisdictional sales.
- 38 (10) Procurement practices and inventories for: fuel burned and for
39 ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts
40 consumed in reducing or treating emissions.
- 41 (11) The cost incurred at each generating facility of fuel burned and of
42 ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts
43 consumed in reducing or treating emissions.

1 (12) Any net gains or losses resulting from any sales by the electric public
2 utility of fuel or other fuel-related costs components.

3 (13) Any net gains or losses resulting from any sales by the electric public
4 utility of by-products produced in the generation process to the extent
5 the costs of the inputs leading to that by-product are costs of fuel or
6 fuel-related costs.

7 (d) The Commission shall provide for notice of a public hearing with reasonable
8 and adequate time for investigation and for all intervenors to prepare for hearing. At the
9 hearing the Commission shall receive evidence from the utility, the ~~public staff,~~ Public
10 Staff, and any intervenor desiring to submit evidence, and from the public generally. In
11 reaching its decision, the Commission shall consider all evidence required under
12 subsection (c) of this section as well as any and all other competent evidence that may
13 assist the Commission in reaching its decision including changes in the ~~price of fuel~~
14 ~~consumed and changes in the price of the fuel in the fuel component of purchased~~
15 ~~power occurring within a reasonable time (as determined by the Commission) after the~~
16 ~~test period is closed.~~ cost of fuel consumed and fuel-related costs that occur within a
17 reasonable time, as determined by the Commission, after the test period is closed. The
18 Commission shall incorporate in its ~~fuel-cost of fuel and fuel-related costs~~ determination
19 under this subsection the experienced over-recovery or under-recovery of reasonable
20 costs of fuel and fuel-related costs ~~expenses~~ prudently incurred during the test period,
21 based upon the prudent standards set pursuant to subsection (d1) of this section, in
22 fixing an increment or decrement rider. Upon request of the electric public utility, the
23 Commission shall also incorporate in this determination the experienced over-recovery
24 or under-recovery of costs of fuel and fuel-related costs through the date that is 30
25 calendar days prior to the date of the hearing, provided that the reasonableness and
26 prudence of these costs shall be subject to review in the utility's next annual hearing
27 pursuant to this section. The Commission shall use deferral accounting, and consecutive
28 test periods, in complying with this subsection, and the over-recovery or under-recovery
29 portion of the increment or decrement shall be reflected in rates for 12 months,
30 notwithstanding any changes in the base fuel cost in a general rate case. The burden of
31 proof as to the correctness and reasonableness of the charge and as to whether the cost
32 of fuel ~~charges and fuel-related costs~~ were reasonably and prudently incurred shall be
33 on the utility. The Commission shall allow only that portion, if any, of a requested cost
34 of fuel and fuel-related costs adjustment that is based on adjusted and reasonable cost of
35 fuel ~~expenses and fuel-related costs~~ prudently incurred under efficient management and
36 economic operations. In evaluating whether cost of fuel ~~expenses and fuel-related costs~~
37 were reasonable and prudently incurred, the Commission shall apply the rule adopted
38 pursuant to subsection ~~(d1).~~ (d1) of this section. To the extent that the Commission
39 determines that an increment or decrement to the rates of the utility due to changes in
40 the cost of fuel and ~~the fuel cost component of purchased power~~ fuel-related costs over
41 or under base fuel costs established in the preceding general rate case is just and
42 reasonable, the Commission shall order that the increment or decrement become
43 effective for all sales of electricity and remain in effect until changed in a subsequent
44 general rate case or annual proceeding under this section.

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

5 (e) If the Commission has not issued an order pursuant to this section within ~~120~~
6 180 days of a utility's submission of annual data under subsection (c) of this section, the
7 utility may place the requested cost of fuel and fuel-related costs adjustment into effect.
8 If the change in rate is finally determined to be excessive, the utility shall make refund
9 of any excess plus interest to its customers in a manner ordered by the Commission.

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

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

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

21 "**§ 62-110.1. Certificate for construction of generating facility; analysis of**
22 **long-range needs for expansion of ~~facilities.~~facilities; ongoing review of**
23 **construction costs; inclusion of approved construction costs in rates.**

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

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

34 (c) The Commission shall develop, publicize, and keep current an analysis of the
35 long-range needs for expansion of facilities for the generation of electricity in North
36 Carolina, including its estimate of the probable future growth of the use of electricity,
37 the probable needed generating reserves, the extent, size, mix and general location of
38 generating plants and arrangements for pooling power to the extent not regulated by the
39 ~~Federal Power-Energy Regulatory Commission~~ and other arrangements with other
40 utilities and energy suppliers to achieve maximum efficiencies for the benefit of the
41 people of North Carolina, and shall consider such analysis in acting upon any petition
42 by any utility for construction. In developing such analysis, the Commission shall
43 confer and consult with the public utilities in North Carolina, the utilities commissions
44 or comparable agencies of neighboring states, the ~~Federal Power-Energy Regulatory~~

1 Commission, the Southern Growth Policies Board, and other agencies having relevant
2 information and may participate as it deems useful in any joint boards investigating
3 generating plant sites or the probable need for future generating facilities. In addition to
4 such reports as public utilities may be required by statute or rule of the Commission to
5 file with the Commission, any such utility in North Carolina may submit to the
6 Commission its proposals as to the future needs for electricity to serve the people of the
7 State or the area served by such utility, and insofar as practicable, each such utility and
8 the Attorney General may attend or be represented at any formal conference conducted
9 by the Commission in developing a plan for the future requirements of electricity for
10 North Carolina or this region. In the course of making the analysis and developing the
11 plan, the Commission shall conduct one or more public hearings. Each year, the
12 Commission shall submit to the Governor and to the appropriate committees of the
13 General Assembly a report of its analysis and plan, the progress to date in carrying out
14 such plan, and the program of the Commission for the ensuing year in connection with
15 such plan.

16 (d) In acting upon any petition for the construction of any facility for the
17 generation of electricity, the Commission shall take into account the applicant's
18 arrangements with other electric utilities for interchange of power, pooling of plant,
19 purchase of power and other methods for providing reliable, ~~efficient~~-efficient, and
20 economical electric service.

21 (e) As a condition for receiving ~~such certificate~~ a certificate, the applicant shall
22 file an estimate of construction costs in such detail as the Commission may require. The
23 Commission shall hold a public hearing on each ~~such~~ application and no certificate shall
24 be granted unless the Commission has approved the estimated construction costs and
25 made a finding that ~~such~~ construction will be consistent with the Commission's plan for
26 expansion of electric generating capacity. A certificate for the construction of a coal or
27 nuclear facility shall be granted only if the applicant demonstrates and the Commission
28 finds that energy efficiency measures; demand side management; renewable energy
29 resource generation; combined heat and power generation; or any combination thereof,
30 would not establish or maintain a more cost effective and reliable generation system and
31 that the construction and operation of the facility is in the public interest. In making its
32 determination, the Commission shall consider resource and fuel diversity and
33 reasonably anticipated future operating costs. Once the Commission grants a certificate,
34 no public utility shall cancel construction of a generating unit or facility without
35 approval from the Commission based upon a finding that the construction is no longer
36 in the public interest.

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

43 (f) ~~The Commission shall maintain an ongoing review of such construction as it~~
44 ~~proceeds and the applicant shall submit each year during construction a progress report~~

1 ~~and any revisions in the cost estimates for the construction.~~ The public utility shall
2 submit a progress report and any revision in the cost estimate for the construction
3 approved under subsection (e) of this section during each year of construction. Upon the
4 request of the public utility or upon its own motion, the Commission may conduct an
5 ongoing review of construction of the facility as the construction proceeds. If the
6 Commission approves any revised construction cost estimate and finds that incurrence
7 of the cost of that portion of the construction of the facility under review was reasonable
8 and prudent, the certificate shall remain in effect. If the Commission disapproves any
9 part of the revised cost estimate or finds that the incurrence of the cost of that portion of
10 the construction of the facility then under review was unreasonable or imprudent, the
11 Commission may modify or revoke the certificate.

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

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

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

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

37 (f2) If the construction of a facility is cancelled, including cancellation as a result
38 of modification or revocation of the certificate under subsection (e1) of this section, and
39 the construction of the facility has been subject to ongoing review under subsection (f),
40 absent newly discovered evidence (i) that could not have been discovered by due
41 diligence at an earlier time and (ii) that reasonably tends to show that a previous
42 determination by the Commission that a material item of cost was just and reasonable
43 and prudently incurred was erroneous, the public utility shall recover through rates in a
44 general rate case conducted pursuant to G.S. 62-133 the costs of construction approved

1 by the Commission during the ongoing review that were actually incurred prior to
2 cancellation, amortized over a reasonable time as determined by the Commission. In the
3 general rate case, the Commission shall make any adjustment that may be required
4 because costs of construction previously added to the utility's rate base pursuant to
5 subsection (f1) of this section are removed from the rate base and recovered in
6 accordance with this subsection. Any costs of construction actually incurred, but not
7 previously approved by the Commission, shall be recovered only if they are found by
8 the Commission to be reasonable and prudent. If the Commission determines that
9 evidence has been submitted that meets the requirements of this subsection, the public
10 utility shall have the burden of proof to demonstrate that the material item of cost was
11 just and reasonable and prudently incurred.

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

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

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

29 **"§ 62-110.6. Rate recovery for construction costs of out-of-state electric generating**
30 **facilities.**

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

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

39 (c) The Commission shall conduct a public hearing to consider and determine the
40 need for the facility and the reasonableness of the construction cost estimate and
41 proposed construction schedule. If the Commission finds that the construction will be
42 needed to assure the provision of adequate public utility service within North Carolina,
43 the Commission shall approve a construction cost estimate and a construction schedule
44 for the facility. In making its determinations under this section, the Commission may

1 consider whether the state in which the facility will be sited has issued a certificate or
2 license for construction of the facility and approved a construction cost estimate and
3 construction schedule for the facility. The Commission shall issue its order not later
4 than 180 days after the public utility files its petition.

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

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

14 **"§ 62-110.7. Project development cost review for a nuclear facility.**

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

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

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

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

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

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

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

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

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

28 (1a) Apply the rate of return established under subdivision (4) of this
29 subsection to rights-of-way acquired through agreements with the
30 Department of Transportation pursuant to G.S. 136-19.5(a) if
31 acquisition is consistent with a definite plan to provide service within
32 five years of the date of the agreement and if such right-of-way
33 acquisition will result in benefits to the ratepayers. If a right-of-way
34 is not used within a reasonable time after the expiration of the five-year
35 period, it may be removed from the rate base by the Commission when
36 rates for the public utility are next established under this section.

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

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

42 (4) Fix such rate of return on the cost of the property ascertained pursuant
43 to subdivision (1) as will enable the public utility by sound
44 management to produce a fair return for its shareholders, considering

1 changing economic conditions and other factors, as they then exist, to
2 maintain its facilities and services in accordance with the reasonable
3 requirements of its customers in the territory covered by its franchise,
4 and to compete in the market for capital funds on terms ~~which~~that are
5 reasonable and ~~which~~that are fair to its customers and to its existing
6 investors.

7 (4a) Require each public utility to discontinue capitalization of the
8 composite carrying cost of capital funds used to finance construction
9 (allowance for funds) on the construction work in progress included in
10 its rate based upon the effective date of the first and each subsequent
11 general rate order issued with respect to it after the effective date of
12 this subsection; allowance for funds may be capitalized with respect to
13 expenditures for construction work in progress not included in the
14 utility's property upon which the rates were fixed. In determining net
15 operating income for return, the Commission shall not include any
16 capitalized allowance for funds used during construction on the
17 construction work in progress included in the utility's rate base.

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

23 **SECTION 9.(a)** The percentage rate to be used in calculating the public
24 utility regulatory fee under G.S. 62-302(b)(2) is twelve one-hundredths of one percent
25 (0.12%) for each public utility's North Carolina jurisdictional revenues earned during
26 each quarter that begins on or after 1 July 2007.

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

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

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

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

35 ...

36 (1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to
37 the sales price of electricity ~~described in this subdivision and that is~~
38 measured by a separate meter or another separate ~~device; device and~~
39 sold to a commercial laundry or to a pressing and dry-cleaning
40 establishment for use in machinery used in the direct performance of
41 the laundering or the pressing and cleaning service.

42 a. ~~Sales of electricity to farmers to be used by them for any farm~~
43 ~~purposes other than preparing food, heating dwellings, and~~
44 ~~other household purposes. The quantity of electricity or gas~~

~~purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.~~

- ~~b. Sales of electricity to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity to be used for residential heating purposes. The quantity of electricity purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.~~
- ~~e. Sales of electricity to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service."~~

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

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

...

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

- a. Sales of electricity to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants.
- b. Sales of electricity to farmers to be used by them for any farming purposes other than preparing food, heating dwellings, and other household purposes."

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

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

- a. Sales of electricity to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants.
- b. Sales of electricity to farmers to be used by them for any farming purposes other than preparing food, heating dwellings, and other household purposes."

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

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

1 **"§ 105-164.13. Retail sales and use tax.**

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

5
6 Agricultural Group.

- 7
8 (1) Any of the following items sold to a farmer for use by the farmer in the
9 planting, cultivating, harvesting, or curing of farm crops or in the
10 production of dairy products, eggs, or animals. A "farmer" includes a
11 dairy operator, a poultry farmer, an egg producer, a livestock farmer, a
12 farmer of crops, and a farmer of an aquatic species, as defined in
13 G.S. 106-758.
- 14 a. Commercial fertilizer, lime, land plaster, plastic mulch, plant
15 bed covers, potting soil, and seeds.
 - 16 b. Farm machinery, attachment and repair parts for farm
17 machinery, and lubricants applied to farm machinery. The term
18 "machinery" includes implements that have moving parts or are
19 operated or drawn by an animal. The term does not include
20 implements operated wholly by hand or motor vehicles required
21 to be registered under Chapter 20 of the General Statutes.
 - 22 c. A horse or mule.
 - 23 d. ~~Fuel other than electricity.~~ Fuel."

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

26 **"§ 105-164.13. Retail sales and use tax.**

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

- 30 ...
- 31 **(56)** Fuel, including electricity, sold to a manufacturer for use in connection
32 with the operation of a manufacturing facility."

33 **SECTION 10.(h)** Subsections (a) and (h) of this section become effective
34 when this act becomes law. Subsections (b) and (c) of this section become effective 1
35 July 2007 and apply to sales occurring on or after that date. Subsection (d) of this
36 section becomes effective 1 July 2008 and applies to sales occurring on or after that
37 date. Subsections (e), (f), and (g) of this section become effective 1 July 2009 and apply
38 to sales occurring on or after that date.

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

40 **"§ 105-187.41. Tax imposed on piped natural gas.**

41 (a) Scope. – An excise tax is imposed on piped natural gas received for
42 consumption in this State. This tax is imposed in lieu of a sales and use tax and a
43 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) Reduction of Tax. – The tax imposed by this section is reduced by one-third for piped natural gas received by a manufacturer for use in connection with the operation of the manufacturing facility and for piped natural gas received by a farmer to be used for any farming purpose other than preparing food, heating dwellings, and other household purposes."

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

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

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

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

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

- (1) Piped natural gas received by a gas city for consumption by that ~~city or to piped city.~~
- (2) Piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.
- (3) Piped natural gas received by a manufacturer for use in connection with the operation of the manufacturing facility.
- (4) Piped natural gas received by a farmer to be used for any farming purpose other than preparing food, heating dwellings, and other household purposes."

1 **SECTION 11.(e)** Subsection (a) of this section becomes effective 1 July
2 2007 and applies to piped natural gas received on or after that date. Subsection (b) of
3 this section becomes effective 1 July 2008 and applies to piped natural gas received on
4 or after that date. Subsections (c) and (d) of this section become effective 1 July 2009
5 and apply to piped natural gas received on or after that date. The remainder of this
6 section is effective when it becomes law.

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

8 **"§ 105-187.51A. Tax imposed on manufacturing fuel.**

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

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

15 **"§ 105-187.51A. Tax imposed on manufacturing fuel.**

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

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

21 **SECTION 12.(d)** Subsection (a) of this section becomes effective 1 July
22 2007 and applies to fuel purchased on or after that date. Subsection (b) of this section
23 becomes effective 1 July 2008 and applies to fuel purchased on or after that date.
24 Subsection (c) of this section becomes effective 1 July 2009. The remainder of this
25 section is effective when it becomes law.

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

28 **"§ 105-130.49. Construction or improvement of energy-efficient home.**

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

30 (1) Energy-efficient home. – A single- or multifamily home that is a
31 federally qualified energy-efficient home or a State-certified
32 energy-efficient home.

33 (2) Federally qualified energy-efficient home. – A residence qualified
34 under the ENERGY STAR Program administered by the United States
35 Environmental Protection Agency.

36 (3) State-certified energy-efficient home. – A residence certified under the
37 NC Healthy Built Homes Program administered by the North Carolina
38 Solar Center, the State Energy Office, and the North Carolina
39 Department of Administration.

40 (b) Credit. – A taxpayer that builds or manufactures an energy-efficient home is
41 allowed a credit against the taxes imposed by this Part. In order to claim a credit under
42 this section, the taxpayer must include with the tax return documentation that the
43 property with respect to which a credit is claimed is an energy-efficient home. A

1 taxpayer may claim only one of the credits allowed under this section with respect to a
2 single home. The amount of the credit is as follows:

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

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

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

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

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

15 **"§ 105-151.31. Construction or improvement of energy-efficient home.**

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

17 (1) Energy-efficient home. – A single- or multifamily home that is a
18 federally qualified energy-efficient home or a State-certified
19 energy-efficient home.

20 (2) Federally qualified energy-efficient home. – A residence qualified
21 under the ENERGY STAR Program administered by the United States
22 Environmental Protection Agency.

23 (3) State-certified energy-efficient home. – A residence certified under the
24 NC Healthy Built Homes Program administered by the North Carolina
25 Solar Center, the State Energy Office, and the North Carolina
26 Department of Administration.

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

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

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

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

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

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

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

6 **"§ 105-129.16G. Credit for contributing to a nonprofit organization that invests in**
7 **renewable energy property.**

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

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

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

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

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

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

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

33 ...

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

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

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

42 **SECTION 16.** Sections 1, 2, 6, 7, and 8 of this act become effective 1
43 January 2008. The provisions of Section 2 of this act that provide for the recovery of
44 costs incurred under Section 2 apply only to costs that are incurred on and after 1

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