

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 332
Committee Substitute Favorable 4/1/15
Committee Substitute #2 Favorable 4/16/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H332-PCS20359-TD-28

Short Title: Energy Policy Amendments.

(Public)

Sponsors:

Referred to:

March 24, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE RECOVERY OF CAPITAL-RELATED COSTS INCURRED BY A
3 NATURAL GAS UTILITY FOR CONSTRUCTING NATURAL GAS
4 INFRASTRUCTURE FOR A LARGE MANUFACTURING EMPLOYER, AND TO
5 AMEND THE LAWS RELATED TO ENERGY POLICY.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. NATURAL GAS ECONOMIC DEVELOPMENT INFRASTRUCTURE**

9 **SECTION 1.1.** Article 7 of Chapter 62 of the General Statutes is amended by
10 adding a new section to read:

11 **"§ 62-133.13. Cost recovery for natural gas economic development infrastructure.**

12 (a) Purpose. – The purpose of this section is to prescribe a methodology for cost
13 recovery by a natural gas local distribution company that constructs natural gas economic
14 development infrastructure to serve a project the Department of Commerce determines is an
15 eligible project under G.S. 143B-437.021. The Commission shall adopt rules to implement this
16 section.

17 (b) Eligibility. – Cost recovery under this section is limited to natural gas economic
18 development infrastructure the Commission determines satisfies all of the following conditions:

19 (1) The project will be located in an area where adequate natural gas
20 infrastructure for the eligible project is not economically feasible.

21 (2) Either the developer, prospective customer, or the occupant of the eligible
22 project provides, prior to initiation of construction of the natural gas
23 economic development infrastructure, a binding commitment in the form of
24 a commercial contract or other form acceptable to the Commission to the
25 natural gas local distribution company regarding service needed for a period
26 of at least 10 years from the date the gas is made available.

27 (3) The projected margin revenues not recoverable under G.S. 62-133.4 from
28 the eligible project will not be sufficient to cover the cost of the natural gas
29 infrastructure associated with the project.

30 (c) Economic Feasibility. – The Commission shall permit a natural gas local
31 distribution company to recover reasonable and prudent natural gas economic development
32 infrastructure costs only to the extent necessary to make the construction of the infrastructure
33 economically feasible, as determined by the Commission. In determining economic feasibility,
34 the Commission shall employ the net present value method of analysis. Only natural gas



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1 economic development infrastructure with a negative net present value shall be determined to
2 be economically infeasible.

3 (d) Costs Recoverable. – Eligible economic development infrastructure development
4 costs are the reasonable and prudent costs determined by the Commission to be both directly
5 related to the construction of natural gas infrastructure for an eligible project and economically
6 infeasible. The costs may include any of the following:

7 (1) Planning costs.

8 (2) Development costs.

9 (3) Construction costs and an allowance for funds used during construction and
10 a return on investment once the project is completed calculated using the
11 pretax overall rate of return approved by the Commission in the company's
12 most recent general rate case.

13 (4) A revenue retention factor.

14 (5) Depreciation.

15 (6) Property taxes.

16 (e) Rate Adjustment Surcharge Mechanism. – The Commission shall permit recovery
17 of eligible economic development infrastructure costs in a rate adjustment surcharge
18 mechanism. The mechanism shall allow for recovery on an annual or semiannual basis, as
19 determined by the Commission, subject to audit and reconciliation procedures. Any rate
20 adjustment surcharge mechanism adopted under this section shall terminate upon the earlier of
21 the full recovery of the costs allowed under subsection (d) of this section or the natural gas
22 local distribution company's next general rate case in which the eligible infrastructure
23 development costs shall be included in the natural gas distribution company's rate base.
24 Nothing in this section precludes the natural gas local distribution company from recovering
25 eligible economic development infrastructure costs in a general rate case.

26 (f) Limitations. – A natural gas local distribution company shall not invest more than
27 twenty-five million dollars (\$25,000,000) of eligible infrastructure development costs in any
28 year. The aggregate amount of eligible infrastructure development costs recovered under rate
29 adjustment surcharge mechanisms for all natural gas local distribution companies in the State
30 cannot exceed seventy-five million dollars (\$75,000,000). Cumulative rate adjustments allowed
31 under a rate adjustment surcharge mechanism approved by the Commission under this section
32 shall not exceed five percent (5%) of the total annual service margin revenues not recoverable
33 under G.S. 62-133.4 approved by the Commission in the natural gas local distribution
34 company's last general rate case."

35 **SECTION 1.2.** Article 10 of Chapter 143B of the General Statutes is amended by
36 adding a new section to read:

37 **"§ 143B-437.021. Natural gas economic development infrastructure.**

38 (a) Purpose and Definitions. – The purpose of this section is to provide eligibility
39 criteria for projects that require natural gas service infrastructure. Costs of natural gas service
40 infrastructure for projects the Department determines are eligible projects under this section
41 may be recovered by natural gas local distribution companies with approval of the North
42 Carolina Utilities Commission under G.S. 62-133.13. The definitions used in G.S. 143B-437.01
43 apply in this section. In addition, as used in this section, the term "Department" means the
44 Department of Commerce.

45 (b) Eligibility. – An eligible project is an economic development project that the
46 Department determines satisfies all of the following conditions:

47 (1) The eligible project will provide opportunities for natural gas usage, jobs,
48 and other economic development benefits in addition to those provided by
49 the project.

50 (2) The Department certifies that the business has invested or intends to invest at
51 least two hundred million dollars (\$200,000,000) of private funds in

1 improvements to real property and additions to tangible personal property in
 2 the project.

3 (3) The business employs or intends to employ at least 1,500 full-time
 4 employees or equivalent full-time contract employees at the project at the
 5 time the application is made and the business agrees to maintain at least
 6 1,500 full-time employees or equivalent full-time contract employees at the
 7 project.

8 (c) Wage Standard. – A project may be considered an eligible project under this section
 9 only if the project is undertaken by a business that satisfies a wage standard at the project. A
 10 business satisfies the wage standard if it pays an average weekly wage that is at least equal to
 11 one hundred and ten percent (110%) of the average wage for all insured private employers in
 12 the county. The Department of Commerce shall annually publish the wage standard for each
 13 county. In making the wage calculation, the business shall include any jobs that were filled for
 14 at least 1,600 hours during the calendar year, regardless of whether the jobs are full-time
 15 positions or equivalent full-time contract positions. Each year that a rate adjustment surcharge
 16 mechanism under G.S. 62-133.13 is in effect, the business shall provide the Department a
 17 certification that the business continues to satisfy the wage standard.

18 (d) Health Insurance. – A project may be considered an eligible project under this
 19 section only if the project is undertaken by a business that makes available health insurance for
 20 all of the full-time employees and equivalent full-time contract employees of the project with
 21 respect to which the application is made. For the purposes of this subsection, a business makes
 22 available health insurance if it pays at least fifty percent (50%) of the premiums for health care
 23 coverage.

24 Each year that a rate adjustment surcharge mechanism under G.S. 62-133.13 is in effect, the
 25 business shall provide the Department a certification that the business continues to make
 26 available health insurance for all full-time employees of the project governed by the agreement.

27 (e) Safety and Health Programs. – A project may be considered an eligible project
 28 under this section only if the project is undertaken by a business that has no citations under the
 29 Occupational Safety and Health Act that have become a final order within the last three years
 30 for willful serious violations or for failing to abate serious violations with respect to the
 31 location for which the eligible project is located. For the purposes of this subsection, "serious
 32 violation" has the same meaning as in G.S. 95-127.

33 (f) Environmental Impact. – A project may be considered an eligible project under this
 34 section only if the project is undertaken by a business that certifies that, at the time of the
 35 application, the business satisfies the environmental impact standard under G.S. 105-129.83."

36 **SECTION 1.3.** This Part is effective when it becomes law and expires July 1,
 37 2020. The expiration does not affect the validity of any rate adjustment surcharge mechanism
 38 imposed or authorized under the provisions of this act prior to the effective date of the
 39 expiration.
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41 **PART II. AMENDMENTS TO ENERGY POLICY**

42 **UPDATED REPS REQUIREMENTS**

43 **SECTION 2.1.** G.S. 62-133.8 reads as rewritten:

44 **"§ 62-133.8. Renewable Energy and Energy Efficiency Portfolio Standard (REPS).**

45 ...

46 (b) **Renewable Energy and Energy Efficiency Standards (REPS) for Electric Public**
 47 **Utilities. –**

48 (1) Each electric public utility in the State shall be subject to a Renewable
 49 Energy and Energy Efficiency Portfolio Standard (REPS) according to the
 50 following schedule:

51 Calendar Year	REPS Requirement
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1	2012	3% of 2011 North Carolina retail sales
2	2015 <u>and thereafter</u>	6% of 2014 North Carolina retail sales
3	2018	10% of 2017 North Carolina retail sales
4	2021 and thereafter	12.5% of 2020 North Carolina retail sales

5 ...
 6 (c) Renewable Energy and Energy Efficiency Standards (REPS) for Electric
 7 Membership Corporations and Municipalities. –

8 (1) Each electric membership corporation or municipality that sells electric
 9 power to retail electric power customers in the State shall be subject to a
 10 Renewable Energy and Energy Efficiency Portfolio Standard (REPS)
 11 according to the following schedule:

12	Calendar Year	REPS Requirement
13	2012	3% of 2011 North Carolina retail sales
14	2015 <u>and thereafter</u>	6% of 2014 North Carolina retail sales
15	2018 and thereafter	10% of 2017 North Carolina retail sales

16"

17

18 **AMEND COST CAPS FOR REPS COMPLIANCE**

19 **SECTION 2.2.(a)** G.S. 62-133.8(h)(4) reads as rewritten:

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

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

30 **SECTION 2.2.(b)** This section becomes effective July 1, 2015, and applies to cost
 31 recovery proceedings that occur on or after that date.

32

33 **ENERGY EFFICIENCY FOR REPS COMPLIANCE**

34 **SECTION 2.3.(a)** G.S. 62-133.8(b)(2)c. reads as rewritten:

35 "c. Reduce energy consumption through the implementation of an
 36 energy efficiency measure; provided, however, an electric public
 37 utility subject to the provisions of this subsection may meet up to
 38 ~~twenty-five percent (25%)~~fifty percent (50%) of the requirements of
 39 this section through savings due to implementation of energy
 40 efficiency measures. ~~Beginning in calendar year 2021 and each year~~
 41 ~~thereafter, an electric public utility may meet up to forty percent~~
 42 ~~(40%) of the requirements of this section through savings due to~~
 43 ~~implementation of energy efficiency measures."~~

44 **SECTION 2.3.(b)** This section becomes effective July 1, 2015.

45

46 **COST RECOVERY HOLD HARMLESS**

47 **SECTION 2.4.** Incremental costs incurred by an electric power supplier prior to
 48 July 1, 2015, to comply with any requirement repealed or amended by this Part may be
 49 recovered as provided in G.S. 62-133.8(h), as amended by this Part. For the purposes of cost
 50 recovery under this act, costs incurred prior to July 1, 2015, include all of the following:

- 1 (1) Costs under purchase contracts for renewable energy entered into prior to
2 July 1, 2015, for the purpose of complying with REPS requirements repealed
3 or amended by this Part.
- 4 (2) The costs of renewable energy facilities built by a public utility for which a
5 certificate of public convenience and necessity has been issued by the
6 Commission prior to July 1, 2015, for the purpose of complying with REPS
7 requirements repealed or amended by this Part.
- 8 (3) Other costs the Utilities Commission determines are reasonable and prudent
9 costs incurred prior to July 1, 2015, to comply with the REPS requirements
10 repealed or amended by this Part.

11 12 STANDARD CONTRACT FOR SMALL POWER PRODUCERS

13 **SECTION 2.5.(a)** G.S. 62-3(27a) reads as rewritten:

14 "(27a) "Small power producer" means a person or corporation owning or operating
15 an electrical power production facility with a power production capacity
16 which, together with any other facilities located at the same site, does not
17 exceed 80 megawatts of electricity and which depends upon renewable
18 resources for its primary source of energy. For the purposes of this section,
19 renewable resources shall mean: hydroelectric ~~power~~, solar electric,
20 solar thermal, wind, geothermal, ocean current, wave energy resources, and
21 biomass derived from agricultural waste, animal waste, wood waste, spent
22 pulping liquors, combustible residues, liquids, or gases not derived from
23 fossil fuel, energy crops, or landfill methane. A small power producer shall
24 not include persons primarily engaged in the generation or sale of electricity
25 from other than small power production facilities."

26 **SECTION 2.5.(b)** G.S. 62-156(b)(1) reads as rewritten:

27 "(1) Term of Contract. – Long-term contracts for the purchase of electricity by
28 the utility from small power producers shall be encouraged in order to
29 enhance the economic feasibility of small power production. The
30 Commission shall require electric utilities to provide standard contracts to
31 small power facilities that generate electricity from swine or poultry waste
32 with a capacity of no greater than five megawatts. For small power
33 producers that generate electricity from all other renewable energy
34 resources, the Commission shall require electric public utilities to provide
35 standard contracts for facilities with a capacity of no greater than 100
36 kilowatts of capacity."

37 **SECTION 2.5.(c)** G.S. 62-156(b) is amended by adding a new subdivision to read:

38 "(4) Avoided Cost of Capacity. – The Commission approved standard contract
39 shall not require payment for capacity during the years in which the electric
40 utility lacks a capacity need, as demonstrated through the electric public
41 utility's most recent integrated resource plan approved by the Commission
42 under G.S. 62-110.1(c) for small power producers that generate electricity
43 from renewable resources other than swine or poultry waste."

44 **SECTION 2.5.(d)** This section is effective January 1, 2017, and applies to facilities
45 for which a certificate of public convenience and necessity has been applied for on or after that
46 date.

47 48 STUDY OF REPS REQUIREMENTS

49 **SECTION 2.6.** The Joint Legislative Commission on Energy Policy shall study
50 reforms to the REPS requirements under G.S. 62-133.8, issues related to grid security and

1 stability related to dispatchable versus non-dispatchable power, and any other matter related to
2 the long-term energy needs of the State the Council deems appropriate.

3

4 **PART III. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

5 **SECTION 3.1.** If any section or provision of this act is declared unconstitutional or
6 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
7 the part declared to be unconstitutional or invalid.

8 **SECTION 3.2.** Except as otherwise provided, this act is effective when it becomes
9 law.