

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS35119-RI-13

Short Title: Energy Security and Affordability Act.

(Public)

Sponsors: Senators Berger, P. Newton, and Barnes (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE THE INTERIM DATE FOR CARBON REDUCTION BY
3 CERTAIN ELECTRIC PUBLIC UTILITIES AND TO ALLOW AN ALTERNATIVE
4 COST RECOVERY MECHANISM FOR CONSTRUCTION WORK IN PROGRESS FOR
5 BASELOAD ELECTRIC GENERATING FACILITIES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.(a)** G.S. 62-110.9 reads as rewritten:

8 "**§ 62-110.9. Requirements concerning reductions in emissions of carbon dioxide from**
9 **electric public utilities.**

10 The Utilities Commission shall take all reasonable steps to achieve ~~a seventy percent (70%)~~
11 reduction in emissions of carbon dioxide (CO₂) emitted in the State from electric generating
12 facilities owned or operated by electric public utilities ~~from 2005 levels by the year 2030 and that~~
13 result in carbon neutrality by the year 2050. For purposes of this section, (i) "electric public
14 utility" means any electric public utility as defined in G.S. 62-3(23) serving at least 150,000
15 North Carolina retail jurisdictional customers as of January 1, 2021, and (ii) "carbon neutrality"
16 means for every ton of CO₂ emitted in the State from electric generating facilities owned or
17 operated by or on behalf of electric public utilities, an equivalent amount of CO₂ is reduced,
18 removed, prevented, or offset, provided that the offsets are verifiable and do not exceed five
19 percent (5%) of the authorized reduction goal. In achieving the authorized carbon reduction
20 ~~goals, goal,~~ the Utilities Commission shall:

- 21 (1) Develop a plan, no later than December 31, ~~2022, 2026,~~ with the electric
22 public utilities, including stakeholder input, for the utilities to achieve the
23 authorized reduction ~~goals, goal of carbon neutrality~~ by the year 2050, which
24 may, at a minimum, consider power generation, transmission and distribution,
25 grid modernization, storage, energy efficiency measures, demand-side
26 management, and the latest technological breakthroughs to achieve the least
27 cost path consistent with this section to achieve compliance with the
28 authorized carbon reduction ~~goals goal~~ (the "Carbon Plan"). The Carbon Plan
29 shall be reviewed every two years and may be adjusted as necessary in the
30 determination of the Commission and the electric public utilities.
- 31 (2) Comply with current law and practice with respect to the least cost planning
32 for generation, pursuant to G.S. 62-2(a)(3a), in achieving the authorized
33 carbon reduction ~~goals goal~~ and determining generation and resource mix for
34 the future. Any new generation facilities or other resources selected by the
35 Commission in order to achieve the authorized reduction ~~goals goal~~ for



electric public utilities shall be owned and recovered on a cost of service basis by the applicable electric public utility except that:

- a. Existing law shall apply with respect to energy efficiency measures and demand-side management.
- b. To the extent that new solar generation is selected by the Commission, in adherence with least cost requirements, the solar generation selected shall be subject to the following: (i) forty-five percent (45%) of the total megawatts alternating current (MW AC) of any solar energy facilities established pursuant to this section shall be supplied through the execution of power purchase agreements with third parties pursuant to which the electric public utility purchases solar energy, capacity, and environmental and renewable attributes from solar energy facilities owned and operated by third parties that are 80 MW AC or less that commit to allow the procuring electric public utility rights to dispatch, operate, and control the solicited solar energy facilities in the same manner as the utility's own generating resources and (ii) fifty-five percent (55%) of the total MW AC of any solar energy facilities established pursuant to this section shall be supplied from solar energy facilities that are utility-built or purchased by the utility from third parties and owned and operated and recovered on a cost of service basis by the soliciting electric public utility. These ownership requirements shall be applicable to solar energy facilities (i) paired with energy storage and (ii) procured in connection with any voluntary customer program.

- (3) Ensure any generation and resource changes maintain or improve upon the adequacy and reliability of the existing grid.
- (4) Retain discretion to determine optimal timing and generation and resource-mix to achieve the least cost path to compliance with the authorized carbon reduction ~~goals, goal,~~ including discretion in achieving the authorized carbon reduction ~~goals goal~~ by the ~~dates date~~ specified in order to allow for implementation of solutions that would have a more significant and material impact on carbon reduction; provided, however, the Commission shall not exceed the ~~dates date~~ specified to achieve the authorized carbon reduction ~~goals goal~~ by more than two years, except in the event the Commission authorizes construction of a nuclear facility or wind energy facility that would require additional time for completion due to technical, legal, logistical, or other factors beyond the control of the electric public utility, or in the event necessary to maintain the adequacy and reliability of the existing grid. In making such determinations, the Utilities Commission shall receive and consider stakeholder input."

SECTION 1.(b) G.S. 62-110.1 reads as rewritten:

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

...

(e) As a condition for receiving a certificate, the applicant shall file an estimate of construction costs in such detail as the Commission may require. The Commission shall hold a public hearing on each application and no certificate shall be granted unless the Commission has approved the estimated construction costs and made a finding that construction will be consistent with the Commission's plan for expansion of electric generating capacity. A certificate for the construction of generating facility by an electric public utility, as that term is defined by

1 G.S. 62-110.9, shall be granted only if the applicant demonstrates and the Commission finds that
2 the facility is part of the least cost path to achieve compliance with the authorized carbon
3 reduction ~~goals~~ goal in G.S. 62-110.9, will maintain or improve upon the adequacy and reliability
4 of the existing grid, and that the construction and operation of the facility is in the public interest.
5 In making its determination, the Commission shall consider resource and fuel diversity and
6 reasonably anticipated future operating costs. Once the Commission grants a certificate, no
7 public utility shall cancel construction of a generating unit or facility without approval from the
8 Commission based upon a finding that the construction is no longer in the public interest.

9"

10 **SECTION 2.(a)** G.S. 62-133 reads as rewritten:

11 "**§ 62-133. How rates fixed.**

12 (a) In fixing the rates for any public utility subject to the provisions of this Chapter, other
13 than bus companies, motor carriers and certain water and sewer utilities, the Commission shall
14 fix such rates as shall be fair both to the public utilities and to the consumer.

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

16 (1) Ascertain the reasonable original cost or the fair value under G.S. 62-133.1A
17 of the public utility's property used and useful, or to be used and useful within
18 a reasonable time after the test period, in providing the service rendered to the
19 public within the State, less that portion of the cost that has been consumed
20 by previous use recovered by depreciation expense. In addition, construction
21 work in progress may be included in the cost of the public utility's property
22 under any of the following circumstances:

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

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

32 c. For baseload electric generating facilities, if the Commission
33 determines there is an overall cost-savings for customers over the life
34 of the generating facility and a baseload electric generating facility has
35 been subject to an annual ongoing review process pursuant to
36 G.S. 62-110.1(f), the Commission shall, upon determining through the
37 ongoing review process that the expenditures were reasonably and
38 prudently incurred, allow an increase in base rates outside of the
39 rate-making processes established under this section or
40 G.S. 62-133.16 to reflect solely the inclusion of such construction
41 work in progress in the rate base, with the increase being effective 30
42 days after the Commission's order finding that the expenditures were
43 reasonable and prudent.

44 ...

45 (4a) Require each public utility to discontinue capitalization of the composite
46 carrying cost of capital funds used to finance construction (allowance for
47 funds) on the construction work in progress included in its rate based upon the
48 effective date of the first and each subsequent general rate order issued with
49 respect to it after the effective date of this subsection; allowance for funds may
50 be capitalized with respect to expenditures for construction work in progress
51 not included in the utility's property upon which the rates were fixed. In

determining net operating income for return, the Commission shall not include any capitalized allowance for funds used during construction on the construction work in progress included in the utility's rate base.

...

(c) The original cost of the public utility's property, including its construction work in progress, shall be determined as of the end of the test period used in the hearing and the probable future revenues and expenses shall be based on the plant and equipment in operation at that time. If the public utility elects to establish rate base using fair value, the fair value determination of the public utility's property shall be made as provided in G.S. 62-133.1A, and the probable future revenues and expenses shall be based on the plant and equipment in operation at the end of the test period. The test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.

...."

SECTION 2.(b) G.S. 62-110.1 reads as rewritten:

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

...

(f1) ~~The~~ Except as provided in G.S. 62-133(b)(1)c., the public utility shall recover through rates in a general rate case conducted pursuant to G.S. 62-133 the actual costs it has incurred in constructing a generating facility in reliance on a certificate issued under this section as provided in this subsection, unless new evidence is discovered (i) that could not have been discovered by due diligence at an earlier time and (ii) that reasonably tends to show that a previous determination by the Commission that a material item of cost was just and reasonable and prudently incurred was erroneous. If the Commission determines that evidence has been submitted that meets the requirements of this subsection, the public utility shall have the burden of proof to demonstrate that the material item of cost was in fact just and reasonable and prudently incurred.

- (1) When a facility has been completed, and the construction of the facility has been subject to ongoing review under subsection (f) of this section, the reasonable and prudent costs of construction approved by the Commission during the ongoing review shall be included in the public utility's rate base without further review by the Commission.
- (2) If a facility has not been completed, and the construction of the facility has been subject to ongoing review under subsection (f) of this section, the reasonable and prudent costs of construction approved by the Commission during the ongoing review shall be included in the public utility's rate base without further review by the Commission.
- (3) If a facility is under construction or has been completed and the construction of the facility has not been subject to ongoing review under subsection (f) of this section, the costs of construction shall be included in the public utility's rate base if the Commission finds that the incurrence of these costs is reasonable and prudent.

(f2) If the construction of a facility is cancelled, including cancellation as a result of modification or revocation of the certificate under subsection (e1) of this section, and the construction of the facility has been subject to ongoing review under subsection (f), absent newly

1 discovered evidence (i) that could not have been discovered by due diligence at an earlier time
2 and (ii) that reasonably tends to show that a previous determination by the Commission that a
3 material item of cost was just and reasonable and prudently incurred was erroneous, the public
4 utility shall recover through rates in a general rate case conducted pursuant to G.S. 62-133 or as
5 provided in G.S. 62-133(b)(1)c., the costs of construction approved by the Commission during
6 the ongoing review that were actually incurred prior to cancellation, amortized over a reasonable
7 time as determined by the Commission. In the general rate ~~ease, case, or a proceeding under~~
8 G.S. 62-133(b)(1)c., the Commission shall make any adjustment that may be required because
9 costs of construction previously added to the utility's rate base pursuant to subsection (f1) of this
10 section are removed from the rate base and recovered in accordance with this subsection. Any
11 costs of construction actually incurred, but not previously approved by the Commission, shall be
12 recovered only if they are found by the Commission to be reasonable and prudent. If the
13 Commission determines that evidence has been submitted that meets the requirements of this
14 subsection, the public utility shall have the burden of proof to demonstrate that the material item
15 of cost was just and reasonable and prudently incurred.

16"

17 **SECTION 2.(c)** G.S. 62-110.6 reads as rewritten:

18 "**§ 62-110.6. Rate recovery for construction costs of out-of-state electric generating**
19 **facilities.**

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

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

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

37 (d) G.S. 62-110.1(f) shall apply to the construction cost estimate determined by the
38 Commission to be appropriate, and the actual costs the public utility incurs in constructing the
39 facility shall be recoverable through rates in a general rate case pursuant to G.S. 62-133 as
40 provided in ~~G.S. 62-110.1(f1)~~G.S. 62-110.1(f1), or as provided in G.S. 62-133(b)(1)c.

41 (e) If the construction of a facility is cancelled, the public utility shall recover through
42 rates in a general rate case conducted pursuant to ~~G.S. 62-133~~G.S. 62-133, or as provided in
43 G.S. 62-133(b)(1)c., the costs of construction that were actually incurred prior to the cancellation
44 and are found by the Commission to be reasonable and prudent, as provided in subsections (f2)
45 and (f3) of G.S. 62-110.1."

46 **SECTION 3.** If any provision of this act or the application thereof to any person or
47 circumstances is held invalid, such invalidity shall not affect other provisions or applications of
48 this section that can be given effect without the invalid provision or application and, to this end,
49 the provisions of this section are declared to be severable.

1 **SECTION 4.** This act is effective when it becomes law, and Section 2 of this act
2 applies to petitions for an increase to rates based on construction work in progress filed on or
3 after that date.