§ 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.

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

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

(c) The Commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina, including its estimate of the probable future growth of the use of electricity, the probable needed generating reserves, the extent, size, mix and general location of generating plants and arrangements for pooling power to the extent not regulated by the Federal Energy Regulatory Commission and other arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of North Carolina, and shall consider such analysis in acting upon any petition by any utility for construction. In developing such analysis, the Commission shall, as it deems necessary, confer and consult with the public utilities in North Carolina, the utilities commissions or comparable agencies of neighboring states, the Federal Energy Regulatory Commission and other agencies having relevant information and may participate as it deems useful in any joint boards investigating generating plant sites or the probable need for future generating facilities. In addition to such reports as public utilities may be required by statute or rule of the Commission to file with the Commission, any such utility in North Carolina may submit to the Commission its proposals as to the future needs for electricity to serve the people of the State or the area served by such utility, and insofar as practicable, each such utility, the Public Staff, and intervenors may attend or be represented at any formal conference conducted by the Commission in developing a plan for the future requirements of electricity for North Carolina or this region. In the course of making the analysis and developing the plan, the Commission shall conduct a public hearing on such plan in the year a biennial integrated resource plan is filed and may hold a public hearing on such plan in a year that an annual update of an integrated resource plan is filed. Each year, the Commission shall submit to the Governor and to the appropriate committees of the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources a report of its analysis and plan, the progress to date in carrying out such plan, and the program of the Commission for the ensuing year in connection with such plan.

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

(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 G.S. 62-110.9, shall be granted only if the applicant demonstrates and the Commission finds that

the facility is part of the least cost path to achieve compliance with the authorized carbon reduction goal in G.S. 62-110.9, will maintain or improve upon the adequacy and reliability of the existing grid, and that the construction and operation of the facility is in the public interest, and that the other resources listed in G.S. 62-110.9(1) would not establish or maintain a more cost-effective and reliable generation system consistent with G.S. 62-110.9. In making its determination, the Commission shall consider resource and fuel diversity and reasonably anticipated future operating costs. Once the Commission grants a certificate, no public utility shall cancel construction of a generating unit or facility without approval from the Commission based upon a finding that the construction is no longer in the public interest.

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

(f) The public utility shall submit a progress report and any revision in the cost estimate for the construction approved under subsection (e) of this section during each year of construction. Upon the request of the public utility or upon its own motion, the Commission shall conduct an ongoing review of construction of the facility as the construction proceeds. In any such ongoing review process, the public utility shall submit an application, including detailed documentation and supporting testimony, demonstrating that the public utility's construction and related costs and expenditures incurred during the review period in connection with such certified generating facility were reasonable and prudently incurred and, if necessary, requesting a modification of the certificate. The purpose of each ongoing review hearing is to determine the reasonableness and prudence of the costs incurred by the public utility during the period under review and to determine whether the certificate should remain in effect or be modified or revoked. The public utility shall have the burden of proof to demonstrate that all costs and expenditures were reasonable and prudently incurred. The Commission shall conduct a hearing regarding each such review period and shall allow intervention in such proceeding. Subject to any variation needed at the start or completion of construction, the review period for each proceeding shall be approximately 12 months of construction and related costs and expenditures. In addition, once the ongoing review process has been initiated, the public utility shall be required to submit quarterly status reports and the Public Staff shall be entitled to submit discovery with respect to such quarterly status reports. The Commission shall commence the hearing with respect to each review period within 120 days of the public utility's application and issue a decision within 60 days of the close of the hearing, or waiver thereof if no disputed issues have been identified. If the Commission approves any revised construction cost estimate, if applicable, and finds that incurrence of the cost of that portion of the construction of the facility under review was reasonable and prudent, the certificate shall remain in effect. If the Commission disapproves any part of the revised cost estimate or finds that the incurrence of the cost of that portion of the construction of the facility then under review was unreasonable or imprudent, the Commission may modify or revoke the certificate.

(f1) 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 discovered evidence (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, the public utility shall recover through rates in a general rate case conducted pursuant to G.S. 62-133 the costs of construction approved by the Commission during the ongoing review that were actually incurred prior to cancellation, amortized over a reasonable time as determined by the Commission. In the general rate case, the Commission shall make any adjustment that may be required because costs of construction previously added to the utility's rate base pursuant to subsection (f1) of this section are removed from the rate base and recovered in accordance with this subsection. Any costs of construction actually incurred, but not previously approved by the Commission, shall be recovered only if they are found by the Commission to be reasonable and prudent. 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 just and reasonable and prudently incurred.

(f3) If the construction of a facility is cancelled, including cancellation as a result of the modification or revocation of the certificate under subsection (e1) of this section, and the construction of the facility has not been subject to ongoing review under subsection (f) of this section, the public utility shall recover through rates in a general rate case conducted pursuant to G.S. 62-133 the costs of construction that were actually incurred prior to the cancellation and are found by the Commission to be reasonable and prudent, amortized over a reasonable time as determined by the Commission. In the general rate case, the Commission shall make any adjustment that may be required because costs of construction previously added to the utility's rate base pursuant to subsection (f1) of this section are removed from the rate base and recovered in accordance with this subsection.

(g) The certification requirements of this section shall not apply to (i) a nonutility-owned generating facility fueled by clean energy resources under two megawatts in capacity; (ii) to persons who construct an electric generating facility primarily for that person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation; or (iii) a solar energy facility or a community solar energy facility, as provided by and subject to the limitations of Article 6B of this Chapter. However, such persons shall be required to report the proposed construction of the facility and the completion of the facility to the

Commission and the interconnecting public utility. Such reports shall be for informational purposes only and shall not require action by the Commission or the Public Staff.

(h) Expired pursuant to its own terms, effective January 1, 2011. (1965, c. 287, s. 2; 1975, c. 780, s. 1; 1979, c. 652, s. 2; 2007-397, s. 6; 2009-390, s. 1(b); 2013-187, s. 2; 2015-241, s. 14.30(u); 2015-264, s. 11; 2017-57, s. 14.1(o); 2017-192, s. 6(c); 2021-23, s. 12; 2023-138, s. 2; 2024-57, s. 3D.1(e); 2025-78, s. 2(a).)