

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1004*
Commerce Committee Substitute Adopted 5/7/09
House Committee Substitute Favorable 7/8/09
House Committee Substitute #2 Favorable 7/20/09
Fifth Edition Engrossed 7/22/09

Short Title: Amend Certain Electricity Generation Laws.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR RETENTION OF FUEL AND FUEL-RELATED COST
3 SAVINGS ASSOCIATED WITH THE PURCHASE OR CONSTRUCTION OF A
4 CARBON OFFSET FACILITY, TO BRING CERTAIN DAMS USED IN CONNECTION
5 WITH ELECTRIC GENERATING FACILITIES UNDER THE DAM SAFETY ACT,
6 AND TO MAKE OTHER CHANGES TO LAWS GOVERNING THE GENERATION OF
7 ELECTRICITY.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.(a)** The General Assembly makes the following findings:

- 10 (1) In 2002, North Carolina enacted S.L. 2002-4, the Clean Smokestacks Act,
11 with the goal of improving air quality in the State.
12 (2) With the enactment of the Clean Smokestacks Act, North Carolina became a
13 national leader in multipollutant air emissions reduction strategies and has
14 experienced significant reductions in oxides of nitrogen (NOx) and sulfur
15 dioxide (SO2), and, as a co-benefit, mercury.
16 (3) Duke Energy and Progress Energy, the investor-owned public utilities
17 governed by the Clean Smokestacks Act, actively participated in the
18 negotiations that led to the enactment of the Clean Smokestacks Act and
19 recommended substantial emissions reductions requirements and an
20 aggressive timeline for achieving compliance with those requirements.
21 (4) Both Duke Energy and Progress Energy have produced emissions reductions
22 greater than and sooner than required by the Clean Smokestacks Act.
23 (5) The retirement of coal-fired generating units and installation of generating
24 units that use natural gas as the primary fuel will reduce emissions of oxides
25 of nitrogen (NOx) and sulfur dioxide (SO2) more than would the installation
26 of sulfur dioxide (SO2) emissions controls on the coal-fired generating units.
27 (6) The retirement of coal-fired generating units and installation of generating
28 units that use natural gas as the primary fuel will reduce emissions of carbon
29 dioxide (CO2) and mercury (Hg) significantly more than would the
30 installation of sulfur dioxide (SO2) emissions controls on the coal-fired
31 generating units.
32 (7) The retirement of coal-fired generating units that are owned and operated by
33 Progress Energy and located in eastern North Carolina and the installation of



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1 generating units that use natural gas as their primary fuel to replace them
2 will reduce emissions of oxides of nitrogen (NOx), sulfur dioxide (SO2),
3 carbon dioxide (CO2), and mercury (Hg) more than would the installation of
4 sulfur dioxide (SO2) emissions controls on the older coal-fired generating
5 units.

6 **SECTION 1.(b)** G.S. 62-110.1 is amended by adding a new subsection to read:

7 "(h) Notwithstanding any other subsections of this section to the contrary, the
8 Commission shall render its decision on an application for a certificate within 45 days of the
9 date the application is filed if (i) the public utility that has applied for the certificate is subject
10 to the provisions of subsection (e) of G.S. 143-215.107D; (ii) the application involves a request
11 by the public utility to construct a generating unit that uses natural gas as the primary fuel at a
12 specific coal-fired generating site that the public utility owns or operates on July 1, 2009; (iii)
13 the coal-fired generating units at the site are not operated with flue gas desulfurization devices;
14 (iv) the public utility will permanently cease operations of all of the coal-fired generating units
15 at the site on or before the completion of the generating unit that is the subject of the certificate
16 application; and (v) the installation of the generating unit that uses natural gas as the primary
17 fuel allows the public utility to meet the requirements of subsection (e) of G.S. 143-215.107D.
18 When the public utility applies for a certificate as provided in this subsection, it shall submit to
19 the Commission and the Department of Environment and Natural Resources a revised verified
20 statement required pursuant to subsection (i) of G.S. 62-133.6 and to the Commission an
21 estimate of the costs of construction of the generating unit that uses natural gas as the primary
22 fuel in such detail as the Commission may require. The provisions of G.S. 62-82 and
23 subsection (e) of this section shall not apply to a certificate applied for pursuant to this
24 subsection. The authority granted pursuant to this subsection expires January 1, 2011."

25 **SECTION 2.** Article 7 of Chapter 62 of the General Statutes is amended by adding
26 a new section to read:

27 "**§ 62-133.10. Retention of fuel and fuel-related cost savings associated with the purchase**
28 **or construction of a carbon offset facility.**

29 (a) The Commission shall permit an electric public utility that purchases or constructs a
30 carbon offset facility to adjust its fuel and fuel-related costs in G.S. 62-133.2 to retain the North
31 Carolina retail allocation of the system fuel and fuel-related cost savings resulting from the
32 purchase or construction of the facility, not to exceed the annual revenue requirement
33 associated with the allocated North Carolina retail portion of the facility as determined using
34 the cost of service methodology approved by the Commission in the utility's last general rate
35 case.

36 (b) For purposes of this section, "carbon offset facility" means a facility in this State
37 that meets all of the following:

- 38 (1) The facility is purchased or constructed by an electric public utility between
39 July 1, 2009, and July 1, 2014.
- 40 (2) The facility uses solar electric, solar thermal, wind, hydropower, geothermal,
41 or ocean current or wave energy to generate electricity or equivalent BTUs.
- 42 (3) The electricity or equivalent BTUs produced by the facility will displace
43 electric generation so as to reduce greenhouse gas emissions from existing
44 fossil fuel fired generating facilities used by the utility to meet the electricity
45 needs of its North Carolina customers.

46 (c) An electric public utility seeking the adjustment authorized by this section first shall
47 file with the Commission a petition requesting a determination that the facility the utility
48 proposes to purchase or construct is a carbon offset facility. The utility shall include in its
49 petition all of the following information in such form and detail as the Commission may
50 require:

- 51 (1) Description and location of the facility.

- 1 (2) The benefit of the facility.
- 2 (3) A list of all necessary permitting and approvals and their status.
- 3 (4) Purchase or construction schedule, with in-service or completion date.
- 4 (5) Projected costs to purchase or construct and the annual revenue requirement
5 for the facility.
- 6 (6) Projected annual generation output of the facility and information detailing
7 how the generation projections were calculated.
- 8 (7) Information demonstrating that the operation of the facility will displace
9 electric generation resulting in a reduction of greenhouse gas emissions from
10 existing fossil fuel fired facilities used by the utility to meet the electricity
11 needs of its North Carolina customers.
- 12 (8) The projected fuel and fuel-related cost savings the utility seeks to retain and
13 how the savings were calculated.

14 (d) Upon the filing of the petition, the Public Staff shall conduct an investigation and
15 shall file a report with the Commission setting forth the results of its investigation and stating
16 whether the facility is a carbon offset facility. The Public Staff's report shall be filed not later
17 than 45 days after the date the petition was filed, unless the Commission grants an extension of
18 time not to exceed 15 days for good cause shown. Other interested persons may file comments
19 in response to the utility's petition and the Public Staff's report not later than 15 days after the
20 Public Staff files its report. The Commission shall enter an order either granting or denying the
21 petition not later than 105 days after the date the petition was filed. A finding by the
22 Commission that the facility is a carbon offset facility shall establish that the utility's decision
23 to purchase or construct the facility is reasonable and prudent.

24 (e) Nothing in this section shall be construed to exempt an electric public utility from
25 obtaining all applicable permits and certificates, including a certificate of public convenience
26 and necessity required by G.S. 62-110.1. An electric public utility shall file annual cost and
27 schedule updates with the Commission until the purchase or construction of an approved
28 carbon offset facility is completed.

29 (f) Upon placement into service of an approved carbon offset facility, the electric
30 public utility shall, in addition to the information and data provided under G.S. 62-133.2,
31 submit the following in conjunction with its application for a fuel and fuel-related charge
32 adjustment:

- 33 (1) A calculation of the annual revenue requirement associated with the carbon
34 offset facility.
- 35 (2) Information demonstrating the specific items of costs associated with the
36 carbon offset facility's annual revenue requirement are reasonable and
37 prudent.
- 38 (3) The fuel and fuel-related cost savings resulting from operation of the carbon
39 offset facility.
- 40 (4) Actual generation output of the carbon offset facility, including a
41 demonstration and quantification of how this generation displaced electric
42 generation resulting in reduced greenhouse gas emissions from existing
43 fossil fuel fired facilities used by the utility to meet the electricity needs of
44 its North Carolina customers during the test year.

45 (g) The Commission shall approve an estimate of the projected fuel and fuel-related
46 cost savings and an annual revenue requirement for an approved facility, as appropriate, in each
47 G.S. 62-133.2 proceeding. The Commission also may approve a true-up procedure for the
48 projected fuel and fuel-related cost savings. In the first G.S. 62-133.2 proceeding conducted
49 after the approved facility is placed in service, the Commission shall determine the reasonable
50 and prudent cost of the facility for ratemaking purposes. The revenue requirement associated
51 with the facility shall include but not be limited to: depreciation; operating and maintenance

1 costs; applicable taxes; and a return on investment, net of accumulated depreciation,
2 accumulated deferred income taxes, and other applicable savings or adjustments. The rate of
3 return on investment shall be based on the then current capital structure, embedded cost of
4 preferred stock, and embedded cost of debt of the public utility net of appropriate income taxes,
5 and the cost of common equity approved in the public utility's then most recent general rate
6 case.

7 (h) The Commission shall authorize the electric public utility to utilize deferral
8 accounting for the fuel and fuel-related cost savings realized in conjunction with the operation
9 of an approved facility. The Commission shall, by rule or order, approve the terms and
10 conditions of the deferral accounting.

11 (i) The annual revenue requirement of the approved facility in excess of the annual fuel
12 and fuel-related cost savings shall be deemed recovered through the utility's then current base
13 rates.

14 (j) The adjustment authorized by this section shall terminate upon the establishment of
15 new rates in the electric public utility's next general rate case following the placement into
16 service and inclusion into base rates of the approved facility."

17 **SECTION 3.(a)** G.S. 143-215.25A reads as rewritten:

18 **"§ 143-215.25A. Exempt dams.**

19 (a) Except as otherwise provided in this Part, this Part does not apply to any dam:

- 20 (1) Constructed by the United States Army Corps of Engineers, the Tennessee
21 Valley Authority, or another agency of the United States government, when
22 the agency designed or approved plans for the dam and supervised its
23 construction.
- 24 (2) Constructed with financial assistance from the United States Soil
25 Conservation Service, when that agency designed or approved plans for the
26 dam and supervised its construction.
- 27 (3) Licensed by the Federal Energy Regulatory Commission, or for which a
28 license application is pending with the Federal Energy Regulatory
29 Commission.
- 30 (4) For use in connection with electric generating facilities regulated by the
31 Nuclear Regulatory Commission under the jurisdiction of the North Carolina
32 Utilities Commission, except that a dam operated by a small power
33 producer, as defined in G.S. 62-3(27a), shall be subject to the provisions of
34 this Part even though the dam is constructed pursuant to a certificate of
35 public convenience and necessity issued by the North Carolina Utilities
36 Commission.
- 37 (5) Under a single private ownership that provides protection only to land or
38 other property under the same ownership and that does not pose a threat to
39 human life or property below the dam.
- 40 (6) That is less than 15 feet in height or that has an impoundment capacity of
41 less than 10 acre-feet, unless the Department determines that failure of the
42 dam could result in loss of human life or significant damage to property
43 below the dam.

44 (b) The exemption from this Part for a dam described in subdivisions (1) and (2) of
45 subsection (a) of this section does not apply after the supervising federal agency relinquishes
46 authority for the operation and maintenance of the dam to a local entity."

47 **SECTION 3.(b)** Any impoundments or other facilities that were in use on the
48 effective date of this section in connection with nonnuclear electric generating facilities under
49 the jurisdiction of the North Carolina Utilities Commission, and that had been exempted under
50 the provisions of G.S. 143-215.25A(4), prior to amendment by Section 3(a) of this act, shall be
51 deemed to have received all of the necessary approvals from the Department of Environment

1 and Natural Resources and the Commission for Dam Safety, and shall not be required to submit
2 application, certificate, or other materials in connection with the continued normal operation
3 and maintenance of those facilities.

4 **SECTION 4.** Section 3 of this act becomes effective January 1, 2010. The
5 remainder of the act is effective when it becomes law.