

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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**HOUSE BILL 298
Committee Substitute As Amended Favorable 4/9/13**

Short Title: Affordable and Reliable Energy Act.

(Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED
AN ACT TO REDUCE THE BURDEN OF HIGH ENERGY COSTS ON THE CITIZENS OF
NORTH CAROLINA BY REVISING THE RENEWABLE ENERGY PORTFOLIO
STANDARDS; TO PROVIDE FOR COST RECOVERY BY PUBLIC UTILITIES FOR
CERTAIN COSTS OF COMPLIANCE WITH RENEWABLE ENERGY PORTFOLIO
STANDARDS; AND TO PROVIDE A STUDY OF ENERGY POLICY IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-2(a)(10) 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:

...

(10) To promote ~~the development of~~ renewable energy and energy efficiency through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) that will do all of the following:

- a. Diversify the resources used to reliably meet the energy needs of consumers in the State.
- b. Provide greater energy security through the use of indigenous energy resources available within the State.
- c. Encourage private investment in renewable energy and energy efficiency.
- d. Provide improved air quality and other benefits to energy consumers and citizens of the State."

SECTION 2. G.S. 62-133.8 reads as rewritten:

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

(a) Definitions. – As used in this section:

- (1) "Combined heat and power system" means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility.
- (2) "Demand-side management" means activities, programs, or initiatives undertaken by an electric power supplier or its customers to shift the timing of electricity use from peak to nonpeak demand periods. "Demand-side management" includes, but is not limited to, load management, electric



- 1 system equipment and operating controls, direct load control, and
2 interruptible load.
- 3 (3) "Electric power supplier" means a public utility, an electric membership
4 corporation, or a municipality that sells electric power to retail electric
5 power customers in the State.
- 6 (3a) "Electricity demand reduction" means a measurable reduction in the
7 electricity demand of a retail electric customer that is voluntary, under the
8 real-time control of both the electric power supplier and the retail electric
9 customer, and measured in real time, using two-way communications
10 devices that communicate on the basis of standards.
- 11 (4) "Energy efficiency measure" means an equipment, physical, or program
12 change implemented after January 1, 2007, that results in less energy used to
13 perform the same function. "Energy efficiency measure" includes, but is not
14 limited to, energy produced from a combined heat and power system that
15 uses nonrenewable energy resources. "Energy efficiency measure" does not
16 include demand-side management.
- 17 (5) "New renewable energy facility" means a renewable energy facility that
18 either:
19 a. Was placed into service on or after January 1, 2007.
20 b. Delivers or has delivered electric power to an electric power supplier
21 pursuant to a contract with NC GreenPower Corporation that was
22 entered into prior to January 1, 2007.
23 c. Is a hydroelectric power facility with a generation capacity of 10
24 megawatts or less that delivers electric power to an electric power
25 supplier.
- 26 (6) "Renewable energy certificate" means a tradable instrument that is equal to
27 one megawatt hour of electricity or equivalent energy supplied by a
28 renewable energy facility, new renewable energy facility, or reduced by
29 implementation of an energy efficiency measure that is used to track and
30 verify compliance with the requirements of this section as determined by the
31 Commission. A "renewable energy certificate" does not include the related
32 emission reductions, including, but not limited to, reductions of sulfur
33 dioxide, oxides of nitrogen, mercury, or carbon dioxide.
- 34 (7) "Renewable energy facility" means a ~~facility, other than a hydroelectric~~
35 ~~power facility with a generation capacity of more than 10 megawatts,~~facility
36 that either:
37 a. Generates electric power by the use of a renewable energy resource.
38 b. Generates useful, measurable combined heat and power derived from
39 a renewable energy resource.
40 c. Is a solar thermal energy facility.
- 41 (8) "Renewable energy resource" means a solar electric, solar thermal, wind,
42 hydropower, geothermal, or ocean current or wave energy resource; a
43 biomass resource, including agricultural waste, animal waste, wood waste,
44 spent pulping liquors, combustible residues, combustible liquids,
45 combustible gases, energy crops, or landfill methane; waste heat derived
46 from a renewable energy resource and used to produce electricity or useful,
47 measurable thermal energy at a retail electric customer's facility; or
48 hydrogen derived from a renewable energy resource. "Renewable energy
49 resource" does not include peat, a fossil fuel, or nuclear energy resource.

50 (b) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Public
51 Utilities. –

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

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales
2015 through 2018	6% of 2014 North Carolina retail sales
2018	10% of 2017 North Carolina retail sales
2021 and thereafter	12.5% of 2020 North Carolina retail sales

(2) An electric public utility may meet the requirements of this section by any one or more of the following:

- a. Generate electric power at a ~~new~~ renewable energy facility.
- b. Use a renewable energy resource to generate electric power at a generating facility other than the generation of electric power from waste heat derived from the combustion of fossil fuel.
- c. Reduce energy consumption through the implementation of an energy efficiency measure; provided, however, an electric public utility subject to the provisions of this subsection may meet up to ~~twenty-five percent (25%)~~ fifty percent (50%) of the requirements of this section through savings due to implementation of energy efficiency measures. ~~Beginning in calendar year 2021 and each year thereafter, an electric public utility may meet up to forty percent (40%) of the requirements of this section through savings due to implementation of energy efficiency measures.~~
- d. Purchase electric power from a ~~new~~ renewable energy facility. Electric power purchased from a ~~new~~ renewable energy facility located outside the geographic boundaries of the State shall meet the requirements of this section if the electric power is delivered to a public utility that provides electric power to retail electric customers in the State; provided, however, the electric public utility shall not sell the renewable energy certificates created pursuant to this paragraph to another electric public utility.
- e. Purchase renewable energy certificates derived from in-State or out-of-state ~~new~~ renewable energy facilities. Certificates derived from out-of-state ~~new~~ renewable energy facilities shall not be used to meet more than twenty-five percent (25%) of the requirements of this section, provided that this limitation shall not apply to an electric public utility with less than 150,000 North Carolina retail jurisdictional customers as of December 31, 2006.
- f. Use electric power that is supplied by a ~~new~~ renewable energy facility or saved due to the implementation of an energy efficiency measure that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.
- g. Electricity demand reduction.

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

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

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales
2015 through 2018	6% of 2014 North Carolina retail sales
2018 and thereafter	10% of 2017 North Carolina retail sales

(2) An electric membership corporation or municipality may meet the requirements of this section by any one or more of the following:

- a. Generate electric power at a new renewable energy facility.
- b. Reduce energy consumption through the implementation of demand-side management or energy efficiency measures.
- c. Purchase electric power from a renewable energy facility or a hydroelectric power facility, provided that no more than thirty percent (30%) of the requirements of this section may be met with hydroelectric power, including allocations made by the Southeastern Power Administration.
- d. Purchase renewable energy certificates derived from in-State or out-of-state renewable energy facilities. An electric power supplier subject to the requirements of this subsection may use certificates derived from out-of-state renewable energy facilities to meet no more than twenty-five percent (25%) of the requirements of this section.
- e. Acquire all or part of its electric power through a wholesale purchase power agreement with a wholesale supplier of electric power whose portfolio of supply and demand options meets the requirements of this section.
- f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of demand-side management or energy efficiency measures that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.
- g. Electricity demand reduction.

~~(d) Compliance With REPS Requirement Through Use of Solar Energy Resources.— For calendar year 2018 and for each calendar year thereafter, at least two tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State, or an equivalent amount of energy, shall be supplied by a combination of new solar electric facilities and new metered solar thermal energy facilities that use one or more of the following applications: solar hot water, solar absorption cooling, solar dehumidification, solar thermally driven refrigeration, and solar industrial process heat. The terms of any contract entered into between an electric power supplier and a new solar electric facility or new metered solar thermal energy facility shall be of sufficient length to stimulate development of solar energy; provided, the Commission shall develop a procedure to determine if an electric power supplier is in compliance with the provisions of this subsection if a new solar electric facility or a new metered solar thermal energy facility fails to meet the terms of its contract with the electric power supplier. As used in this subsection, "new" means a facility that was first placed into service on or after January 1, 2007. The electric power suppliers shall comply with the requirements of this subsection according to the following schedule:~~

Calendar Year	Requirement for Solar Energy Resources
2010	0.02%
2012	0.07%
2015	0.14%
2018	0.20%

1 (e) Compliance With REPS Requirement Through Use of Swine Waste Resources. –
 2 ~~For calendar year 2018 and for each calendar year thereafter, at least two tenths of one percent~~
 3 ~~(0.2%)~~ For the years listed below, no less than the corresponding percentage of the total electric
 4 power in kilowatt hours sold to retail electric customers in the State shall be supplied, or
 5 contracted for supply in each year, by swine waste. The electric power suppliers, in the
 6 aggregate, shall comply with the requirements of this subsection according to the following
 7 schedule:

8 **Requirement for Swine**

9 **Calendar Year Waste Resources**

10 2012 0.07%

11 2015 through 2018 0.14%

12 ~~2018~~ ~~0.20%~~

13 (f) Compliance With REPS Requirement Through Use of Poultry Waste Resources. –
 14 ~~For calendar year 2014 and for each calendar year thereafter, at least 900,000 megawatt~~
 15 ~~hours~~ the years listed below, at least the number of megawatt hours of the total electric power
 16 sold to retail electric customers in the State or an equivalent amount of energy shall be
 17 supplied, or contracted for supply in each year, by poultry waste combined with wood
 18 shavings, straw, rice hulls, or other bedding material. The electric power suppliers, in the
 19 aggregate, shall comply with the requirements of this subsection according to the following
 20 schedule:

21 **Requirement for Poultry**

22 **Calendar Year Waste Resources**

23 2012 170,000 megawatt hours

24 2013 700,000 megawatt hours

25 2014

26 through 2018 900,000 megawatt hours

27 (g) Control of Emissions. – As used in this subsection, Best Available Control
 28 Technology (BACT) means an emissions limitation based on the maximum degree a reduction
 29 in the emission of air pollutants that is achievable for a facility, taking into account energy,
 30 environmental, and economic impacts and other costs. A biomass combustion process at any
 31 new renewable energy facility that delivers electric power to an electric power supplier shall
 32 meet BACT. The Environmental Management Commission shall determine on a case-by-case
 33 basis the BACT for a facility that would not otherwise be required to comply with BACT
 34 pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The
 35 Environmental Management Commission may adopt rules to implement this subsection. In
 36 adopting rules, the Environmental Management Commission shall take into account cumulative
 37 and secondary impacts associated with the concentration of biomass facilities in close
 38 proximity to one another. In adopting rules the Environmental Management Commission shall
 39 provide for the manner in which a facility that would not otherwise be required to comply with
 40 BACT pursuant to the PSD emissions programs shall meet the BACT requirement. This
 41 subsection shall not apply to a facility that qualifies as a new renewable energy facility under
 42 sub-subdivision b. of subdivision (5) of subsection (a) of this section.

43 (h) Cost Recovery and Customer Charges. –

44 (1) For the purposes of this subsection, the term "incremental costs" means all
 45 reasonable and prudent costs incurred by an electric power supplier to:

- 46 a. Comply with the requirements of subsections (b), (c), ~~(d)~~, (e), and (f)
 47 of this section that are in excess of the electric power supplier's
 48 avoided costs other than those costs recovered pursuant to
 49 G.S. 62-133.9.

- b. ~~Fund research that encourages the development of renewable energy, energy efficiency, or improved air quality, provided those costs do not exceed one million dollars (\$1,000,000) per year.~~
- c. Comply with any federal mandate that is similar to the requirements of subsections (b), (c), ~~(d)~~, (e), and (f) of this section that exceed the costs that the electric power supplier would have incurred under those subsections in the absence of the federal mandate.

(2) All reasonable and prudent costs incurred by an electric power supplier to comply with any federal mandate that is similar to the requirements of subsections (b), (c), ~~(d)~~, (e), and (f) of this section, including, but not limited to, the avoided costs associated with a federal mandate that exceeds the avoided costs that the electric power supplier would have incurred pursuant to subsections (b), (c), ~~(d)~~, (e), and (f) of this section in the absence of the federal mandate, shall be recovered by the electric power supplier in an annual rider charge assessed in accordance with the schedule set out in subdivision (4) of this subsection increased by the Commission on a pro rata basis to allow for full and complete recovery of all reasonable and prudent costs incurred to comply with the federal mandate.

(3) Except as provided in subdivision (2) of this subsection, the total annual incremental cost to be incurred by an electric power supplier and recovered from the electric power supplier's retail customers shall not exceed an amount equal to the per-account annual charges set out in subdivision (4) of this subsection applied to the electric power supplier's total number of customer accounts determined as of December 31 of the previous calendar year. An electric power supplier shall be conclusively deemed to be in compliance with the requirements of subsections (b), (c), ~~(d)~~, (e), and (f) of this section if the electric power supplier's total annual incremental costs incurred equals an amount equal to the per-account annual charges set out in subdivision (4) of this subsection applied to the electric power supplier's total number of customer accounts determined as of December 31 of the previous calendar year. The total annual incremental cost recoverable by an electric power supplier from an individual 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:

Customer Class	2008-2011	2012-2014	2015 and thereafter
Residential per account	\$10.00	\$12.00	\$34.00
Commercial per account	\$50.00	\$150.00	\$150.00
Industrial per account	\$500.00	\$1,000.00	\$1,000.00

(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 ensure that the costs to be recovered from individual customers on a per-account basis

1 pursuant to subdivisions (2) and (3) of this subsection are in the same
2 proportion as the per-account annual charges for each customer class set out
3 in subdivision (4) of this subsection.

4 (i) Adoption of Rules. – The Commission shall adopt rules to implement the provisions
5 of this section. In developing rules, the Commission shall:

6 (1) Provide for the monitoring of compliance with and enforcement of the
7 requirements of this section.

8 (2) Include a procedure to modify or delay the provisions of subsections (b), (c),
9 ~~(d)~~, (e), and (f) of this section in whole or in part if the Commission
10 determines that it is in the public interest to do so. The procedure adopted
11 pursuant to this subdivision shall include a requirement that the electric
12 power supplier demonstrate that it made a reasonable effort to meet the
13 requirements set out in this section.

14 (3) Ensure that energy credited toward compliance with the provisions of this
15 section not be credited toward any other purpose, including another
16 renewable energy portfolio standard or voluntary renewable energy purchase
17 program in this State or any other state.

18 (4) Establish standards for interconnection of renewable energy facilities and
19 other nonutility-owned generation with a generation capacity of 10
20 megawatts or less to an electric public utility's distribution system; provided,
21 however, that the Commission shall adopt, if appropriate, federal
22 interconnection standards.

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

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

30 (7) Develop procedures to track and account for renewable energy certificates,
31 including ownership of renewable energy certificates that are derived from a
32 customer owned renewable energy facility as a result of any action by a
33 customer of an electric power supplier that is independent of a program
34 sponsored by the electric power supplier.

35 (j) Report. – No later than October 1 of each year, the Commission shall submit a
36 report on the activities taken by the Commission to implement, and by electric power suppliers
37 to comply with, the requirements of this section to the Governor, the Environmental Review
38 Commission, and the Joint Legislative Commission on Governmental Operations. The report
39 shall include any public comments received regarding direct, secondary, and cumulative
40 environmental impacts of the implementation of the requirements of this section. In developing
41 the report, the Commission shall consult with the Department of Environment and Natural
42 Resources.

43 (k) Tracking of Renewable Energy Certificates. No later than July 1, 2010, the
44 Commission shall develop, implement, and maintain an Internet Web site for the online
45 tracking of renewable energy certificates in order to verify the compliance of electric power
46 suppliers with the REPS requirements of this section and to facilitate the establishment of a
47 market for the purchase and sale of renewable energy certificates."

48 **SECTION 3.(a)** Incremental costs incurred by an electric power supplier prior to
49 July 1, 2013, to comply with any requirement repealed by this act may be recovered as
50 provided in G.S. 62-133.8(h). For the purposes of cost recovery under this act, costs incurred
51 prior to July 1, 2013, include all of the following:

- 1 (1) Costs under purchase contracts for renewable energy entered into prior to
2 July 1, 2013, for the purpose of complying with REPS requirements repealed
3 by this act.
- 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, 2013, for the purpose of complying with REPS
7 requirements repealed by this act.
- 8 (3) Costs incurred and contracted for to fund research to encourage the
9 development of renewable energy, energy efficiency, or improved air quality
10 under the repealed provisions of G.S. 62-133.8(h)(1)b.
- 11 (4) Other costs the Utilities Commission determines are reasonable and prudent
12 costs incurred prior to July 1, 2013, to comply with the REPS requirements
13 repealed by this act.

14 **SECTION 3.(b)** In order to recover costs under G.S. 62-113.8(h), any contract
15 entered into by an electric power supplier after July 1, 2013, to comply with the requirements
16 of G.S. 62-133.8, as amended by Section 2 of this act, shall end by December 31, 2018.
17 Incremental costs incurred by an electric power supplier after July 1, 2013, to comply with
18 G.S. 62-133.8, as amended by Section 2 of this act, must be recovered prior to December 31,
19 2019.

20 **SECTION 4.(a)** The Legislative Research Commission shall study and make
21 recommendations on legislation on a comprehensive long-range State energy policy to achieve
22 maximum effective management and use of present and future sources of energy. The
23 Commission shall study all forms of energy, including renewable and alternative sources of
24 energy. The Commission shall study the implementation of S.L. 2007-397 and make
25 recommendations on any changes to the law as necessary.

26 **SECTION 4.(b)** In conducting its study under this section, the Legislative
27 Research Commission shall examine the implementation of S.L. 2007-397 and make
28 recommendations on any changes to the law as necessary. The Commission may make an
29 interim report to the 2013 General Assembly, including any proposed legislation, when it
30 reconvenes in 2014 and shall make its final report, including any proposed legislation, to the
31 2015 General Assembly.

32 **SECTION 5.** This act becomes effective July 1, 2013.