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SENATE BILL DRS15233-NJ-37A

Short Title: North Carolina Consumer Protection Act. (Public)

Sponsors: Senators Meyer and Murdock (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT THAT REVISES CERTAIN DEFINITIONS IN PUBLIC UTILITY LAW AND
3 ADDS ADDITIONAL REQUIREMENTS TO PROTECT RATEPAYERS FROM PAYING
4 UNJUST OR UNREASONABLE FEES TO PUBLIC UTILITIES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 62-133.8 reads as rewritten:
7 **"§ 62-133.8. Clean Energy and Energy Efficiency Portfolio Standard (CEPS).**

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

9 (1) Advertising. – Any promotional activity aimed at increasing a public utility's
10 visibility, reputation, or profitability. This includes media campaigns, digital
11 marketing, and other promotional materials that do not address public service
12 issues or conservation efforts directly approved by a State or federal agency.
13 Advertising does not include any of the following:

14 a. Public messages that the public utility is directed to publish by a
15 federal, State, or local agency.
16 b. Public messages providing information on safety measures,
17 emergency conditions, or service interruptions.

18 ~~(1)(1a)~~ "Clean energy facility" means a Clean energy facility. – A renewable energy
19 facility, a nuclear energy facility, including an uprate to a nuclear energy
20 facility, or a fusion energy facility.

21 ~~(1a)(1b)~~ "Clean energy resource" means renewable Clean energy resource. –
22 Renewable energy resources, nuclear energy resources, including an uprate to
23 a nuclear energy facility, and fusion energy.

24 ~~(1b)(1c)~~ "Combined heat and power system" means a Combined heat and power
25 system. – A system that uses waste heat to produce electricity or useful,
26 measurable thermal or mechanical energy at a retail electric customer's
27 facility.

28 (1d) Commission. – The North Carolina Utilities Commission created under
29 G.S. 62-10, which regulates public utilities in North Carolina.

30 (2) ~~"Demand-side management"~~ means activities, Demand-side management. –
31 Activities, programs, or initiatives undertaken by an electric power supplier
32 or its customers to shift the timing of electricity use from peak to nonpeak
33 demand periods. "Demand-side management" includes, but is not limited to,
34 load management, electric system equipment and operating controls, direct
35 load control, and interruptible load.



- (3) ~~"Electric power supplier" means a~~ Electric power supplier. – A public utility, an electric membership corporation, or a municipality that sells electric power to retail electric power customers in the State.
- (3a) ~~"Electricity demand reduction" means a~~ Electricity demand reduction. – A measurable reduction in the electricity demand of a retail electric customer that is voluntary, under the real-time control of both the electric power supplier and the retail electric customer, and measured in real time, using two-way communications devices that communicate on the basis of standards.
- (4) ~~"Energy efficiency measure" means an~~ Energy efficiency measure. – An equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function. "Energy efficiency measure" includes, but is not limited to, energy produced from a combined heat and power system that uses non-clean energy resources. "Energy efficiency measure" does not include demand-side management.
- (4a) ~~"Fusion" means a~~ Fusion. – A reaction in which at least one heavier, more stable nucleus is produced from two lighter, less stable nuclei, typically through high temperatures and pressures, emitting energy as a result.
- (4b) ~~"Fusion energy" means the~~ Fusion energy. – The product of fusion reactions inside a fusion device, used for the purpose of generating electricity or other commercially usable forms of energy.
- (4c) Lobbying. – Any action undertaken to influence or attempt to influence legislative or executive action, or both, as defined under G.S. 120C-100, as well as any activity undertaken to influence regulatory matters, such as rate-making.
- (4c)(4d) ~~"New clean energy facility" means:~~ New clean energy facility. – Includes either of the following:
- a. ~~A new renewable energy facility;~~ or facility.
- b. Facilities placed into service on or after January 1, 2007, which are either (i) a nuclear energy facility, including an uprate to a nuclear energy facility, or (ii) a fusion energy facility.
- (5) ~~"New renewable energy facility" means a~~ New renewable energy facility. – A renewable energy facility that either: includes one of the following:
- a. Was placed into service on or after January 1, 2007.
- b. Delivers or has delivered electric power to an electric power supplier pursuant to a contract with NC GreenPower Corporation that was entered into prior to January 1, 2007.
- c. Is a hydroelectric power facility with a generation capacity of 10 megawatts or less that delivers electric power to an electric power supplier.
- (5a) Political influence activities. – Includes any of the following:
- a. Any activity intended to directly or indirectly affect or attempt to affect the decisions or actions of public officials, including, but not limited to, contributions or direct expenditures to political campaigns, parties, or advocacy groups.
- b. An activity for the purpose of directly or indirectly influencing public opinion with respect to (i) legislation, regulations, or ordinances, (ii) elections, (iii) referenda, or (iv) rate setting of electrical or gas corporations.
- c. An activity for the purpose of directly or indirectly influencing either of the following:

1. The possible adoption of federal, State, or local legislation, regulations, or ordinances.
2. The possible repeal or modification of federal, State, or local legislation, regulations, or ordinances.
- d. An activity for the purpose of directly or indirectly influencing elections or referenda, or appointments of public officials.
- e. An activity for the purpose of directly or indirectly influencing the approval, modification, or revocation of franchises of public utilities.
- f. An activity undertaken in support of lobbying or legislative action, including, but not limited to, research, analysis, preparation, or planning, whether done directly or indirectly on behalf of the public utility.
- (5b) Public official. – A decision maker within an administrative agency or legislative body at the local, State, or federal level, and the staff that support the decision maker's policy development.
- (5c) Public utility. – A utility company providing services related to electricity, gas, water, or telecommunications as defined in G.S. 62-3.
- (5d) Rate base. – The value of a public utility's property that is used to determine its rate of return and the revenues required to cover operating costs and provide a reasonable return as defined under G.S. 62-133.
- (5e) Regulatory matters. – Any issues, processes, or activities directly related to the oversight, implementation, or enforcement of statutes, rules, or policies administered by government agencies or regulatory bodies such as the North Carolina Utilities Commission or Department of Environmental Quality. This includes actions involving compliance with regulatory standards, the establishment or amendment of regulations, enforcement actions, rulemaking processes, and participation in administrative or legal proceedings concerning the regulation of public utilities.
- (6) ~~"Renewable energy certificate" means a~~ Renewable energy certificate. – A tradable instrument that is equal to one megawatt hour of electricity or equivalent energy supplied by a clean energy facility, new clean energy facility, or reduced by implementation of an energy efficiency measure that is used to track and verify compliance with the requirements of this section as determined by the Commission. A "renewable energy certificate" does not include the related emission reductions, including, but not limited to, reductions of sulfur dioxide, oxides of nitrogen, mercury, or carbon dioxide.
- (7) ~~"Renewable energy facility" means a~~ Renewable energy facility. – A facility, other than a hydroelectric power facility with a generation capacity of more than 10 megawatts, that ~~either~~ includes one of the following:
 - a. Generates electric power by the use of a renewable energy resource.
 - b. Generates useful, measurable combined heat and power derived from a renewable energy resource.
 - c. Is a solar thermal energy facility.
- (8) ~~"Renewable energy resource" means a~~ Renewable energy resource. – A solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility; or hydrogen derived from a renewable energy resource. "Renewable

energy resource" does not include peat, a fossil fuel, or nuclear energy resource.

- (9) Test-year method. – A method of determining the appropriate rate adjustments for public utilities based on the actual and projected costs, as outlined in G.S. 62-133.

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SECTION 2. G.S. 62-131 reads as rewritten:

"§ 62-131. Rates must be just and reasonable; service efficient.

(a) Every ~~rate~~rate, toll, charge, schedule made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Such rates, tolls, or charges will only be deemed reasonable if all of the following criteria are satisfied:

- (1) Revenue limits. – The public utility demonstrates that the aggregate rates provide revenues that are no greater than the actual costs incurred in serving North Carolina customers, including reasonable normalization for nonrecurring costs and future adjustments as approved by the Commission, and a fair return on the public utility's rate base.
- (2) Prohibited costs. – The public utility demonstrates that no part of its rates, tolls, or charges includes recovery of costs related to the following:
 - a. Advertisements if any portion of the message in an advertisement is considered advertising.
 - b. Lobbying, grassroots lobbying, executive or legislative advocacy, regardless of whether such lobbying or advocacy is undertaken directly or indirectly on behalf of a public utility.
 - c. Contributions or gifts to political candidates, political parties, political or legislative committees or any committee or organization working to influence legislative activities, referendum petitions, or elections.
 - d. Membership dues, sponsorships, or contributions to any business or industry trade association, group, or tax-exempt related entity, including, but not limited to, chambers of commerce, charitable organizations, charities managed by the public utility or affiliated interest, industry groups, and organizations classified under section 527 of the Internal Revenue Code.
 - e. Political influence activities.
 - f. Legal costs and litigation related to federal, State, or local regulations, legislation, ordinances, or regulatory proceedings, including actions against regulatory bodies or legislative decisions.
 - g. Travel, lodging, food, and beverage expenses for the utility's board of directors, officers, or for the parent company's board or officers, including any related expenses for affiliate boards or officers.
 - h. Any costs associated with investor relations activities, including, but not limited to, communication, reporting, or any other promotional activities intended for investors or stakeholders.
 - i. Compensation for any employee whose time is allocated to activities related to lobbying, legislative action, political influence activities, or advertising, marketing, or communications seeking to influence public opinion.
 - j. Entertainment or gifts.
 - k. Leasing, owning, or chartering an aircraft for use by the public utility's board of directors or officers, or those of a parent company or affiliate.
 - l. Expenses related to services not regulated by the Commission.

m. Any other lobbying or political activity that is conducted in support of a candidate committee, a political committee, or an inaugural committee, or in support of or opposition to a candidate for public office, regardless of whether such actions are undertaken directly or indirectly on behalf of a public utility.

(3) Fair classifications. – Rates must equitably classify customer groups and ensure fairness across all categories, including residential, commercial, and industrial customers.

(b) Every public utility shall furnish adequate, efficient and reasonable service.

(c) In determining costs of service, the Commission may apply a test-year method of estimating revenue needs, utilizing appropriate normalization and adjustments as required.

(d) The Commission may approve special rates or contracts for individual customers or customer classes if it determines that such measures are in the public interest, do not unreasonably burden other customers, and align with State emissions reductions goals."

SECTION 3. Article 7 of Chapter 62 of the General Statutes is amended by adding the following new sections to read:

"§ 62-131A. Prohibited cost recovery; annual reporting.

(a) Public utilities regulated under this Chapter cannot attempt to recover in rates any costs related to the Prohibited Costs listed in G.S. 62-131(a)(2).

(b) By July 1 of each year, regulated public utilities shall submit to the Commission an annual report detailing all of the following:

(1) A written, itemized description of any expenses associated with prohibited activities in G.S. 62-131(a)(2).

(2) For each expense, the report must include the date, the payee, the amount, and a description of the purpose of the expense.

(3) Third-party expenditures for prohibited activities, with details sufficient to describe the nature of the expenditure regarding payees and purposes.

(4) A list of all divisions, departments, or other organizational employee groups within the public utility that performs activities associated with G.S. 62-131(a)(2). For each organizational employee group, the public utility shall include a list of employees who work in that group. For each employee, the public utility shall include the employee's job title, a job description sufficient to describe the employee's responsibilities, each activity described in G.S. 62-131(a)(2) in which the employee engages, and a description sufficient to describe the nature of any such activity, the total annual compensation for the employee, the hours allocated to the activity, the percentage of annual compensation paid for work associated with the activities described in G.S. 62-131(a)(2), and the percentage of annual compensation recoverable from ratepayers.

(5) Any additional information that the Commission deems relevant.

(c) The Commission shall review the reports submitted under this section, ensuring they comply with the requirements outlined in this act. The Commission may request additional clarification or documentation to ensure compliance. If any violations are identified, the Commission shall act promptly to enforce penalties as outlined in subsection (e) of this section.

(d) Public Disclosure. – A public utility shall do all of the following:

(1) Clearly and conspicuously disclose in all its public messaging and advertising whether the costs of the public messaging or advertising are being paid for by the corporation's shareholders or ratepayers. A disclosure is not clear and conspicuous if the disclosure is difficult to hear or read, or if the placement of the disclosure is easily overlooked.

(2) Publish on its publicly accessible website all materials filed with the Commission in accordance with subsection (b) of this section. The Commission shall make available the annual reports filed by public utilities in accordance with this section on its publicly accessible website with notice of the availability of the reports prominently displayed on the website.

(e) The Commission shall impose penalties on public utilities that recover prohibited costs through rates, equal to the amount improperly recovered and refund them to the ratepayers. The Commission shall also satisfy all of the following:

(1) In addition to any refunds that the Commission orders a public utility to pay ratepayers, the Commission shall assess a civil penalty in accordance with this section against a public utility that violates G.S. 62-131(a)(2) or fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the Commission related to implementing G.S. 62-131(a)(2).

a. This civil penalty will not be less than fifty thousand dollars (\$50,000) and not more than one hundred fifty thousand dollars (\$150,000) for each violation.

b. Each expense improperly recorded to cost recovery through ratepayers is a separate and distinct violation. Violations are continuing violations. Each day a violation to G.S. 62-131(a)(2) occurs shall be a separate and distinct violation.

c. The public utility shall not recover any penalty assessed pursuant to this section from ratepayers.

(2) Three-fourths of the monies collected pursuant to any settlement or penalties collected by the Commission for violations of G.S. 62-131(a)(2) shall be deposited in the "Energy Equity Fund," which is hereby established in the State Treasury.

(3) One-fourth of the monies collected pursuant to any settlement or penalties collected for violations of G.S. 62-131(a)(2) shall, upon appropriation by the General Assembly, be used by the Commission for purposes of increasing resources for the enforcement of this section.

(4) Upon appropriation by the General Assembly, monies in the "Energy Equity Fund" may be allocated for purposes of disaster recovery and relief, as well as assisting low-income households in transitioning to zero-emission appliances to mitigate air quality and public health impacts of using combustion appliances.

"§ 62-131B. Guidelines for special rates and alternative regulatory plans.

(a) The Commission may adopt alternative regulatory mechanisms, including performance-based rates or special customer rates, provided that such measures accomplish all of the following:

(1) Protect the public interest.

(2) Ensure equitable treatment across customer classes.

(3) Do not compromise the reliability of electric service.

(b) Before approving any alternative regulatory plan, the Commission shall ensure that the plan will not increase costs for other customers beyond reasonable limits or conflict with State energy goals, including renewable energy deployment.

(c) By November 1, 2025, the Commission shall initiate rulemaking to amend its rules under G.S. 62-30 to implement the requirements of this act. The Commission's rules shall not require public utilities to file more than one annual report related to advertising and political activities, except as required under G.S. 62-133.6."

1 **SECTION 4.** If any provision of this act or its application is held invalid, the
2 invalidity does not affect other provisions or applications of this act that can be given effect
3 without the invalid provisions or application and, to this end, the provisions of this act are
4 severable.

5 **SECTION 5.** This act is effective when it becomes law.