

Article 7.

Rates of Public Utilities.

**§ 62-130. Commission to make rates for public utilities.**

(a) The Commission shall make, fix, establish or allow just and reasonable rates for all public utilities subject to its jurisdiction. A rate is made, fixed, established or allowed when it becomes effective pursuant to the provisions of this Chapter.

(b) Repealed by Session Laws 1985, c. 676, s. 15.

(c) Repealed by Session Laws 2021-23, s. 14, effective May 17, 2021.

(d) The Commission shall from time to time as often as circumstances may require, change and revise or cause to be changed or revised any rates fixed by the Commission, or allowed to be charged by any public utility.

(e) In all cases where the Commission requires or orders a public utility to refund moneys to its customers which were advanced by or overcollected from its customers, the Commission shall require or order the utility to add to said refund an amount of interest at such rate as the Commission may determine to be just and reasonable; provided, however, that such rate of interest applicable to said refund shall not exceed ten percent (10%) per annum. (1899, c. 164, ss. 2, 7, 14; 1903, c. 683; Rev., ss. 1096, 1099, 1106; 1907, c. 469, s. 4; Ex. Sess. 1908, c. 144, s. 1; 1913, c. 127, s. 2; 1917, c. 194; C.S., ss. 1066, 1071, 3489; Ex. Sess. 1920, c. 51, s. 1; 1925, c. 37; 1929, cc. 82, 91; 1933, c. 134, s. 8; 1941, c. 97; 1953, c. 170; 1963, c. 1165, s. 1; 1981, c. 461, s. 1; 1985, c. 676, s. 15(1); 2021-23, s. 14.)

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

(a) Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable.

(b) Every public utility shall furnish adequate, efficient and reasonable service. (1933, c. 307, ss. 2, 3; 1963, c. 1165, s. 1.)

**§ 62-132. Rates established under this Chapter deemed just and reasonable; remedy for collection of unjust or unreasonable rates.**

The rates established under this Chapter by the Commission shall be deemed just and reasonable, and any rate charged by any public utility different from those so established shall be deemed unjust and unreasonable. Provided, however, that upon petition filed by any interested person, and a hearing thereon, if the Commission shall find the rates or charges collected to be other than the rates established by the Commission, and to be unjust, unreasonable, discriminatory or preferential, the Commission may enter an order awarding such petitioner and all other persons in the same class a sum equal to the difference between such unjust, unreasonable, discriminatory or preferential rates or charges and the rates or charges found by the Commission to be just and reasonable, nondiscriminatory and nonpreferential, to the extent that such rates or charges were collected within two years prior to the filing of such petition. (1913, c. 127, s. 3; C.S., s. 1067; 1929, cc. 241, 342; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

Article 7.

Rates of Public Utilities.

**§ 62-133. How rates fixed.**

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

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

- (1) Ascertain the reasonable original cost or the fair value under G.S. 62-133.1A 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 the State, less that portion of the cost that has been consumed by previous use recovered by depreciation expense. In addition, construction work in progress may be included in the cost of the public utility's property under any of the following circumstances:
  - a. To the extent the Commission considers inclusion in the public interest and necessary to the financial stability of the utility in question, reasonable and prudent expenditures for construction work in progress may be included, subject to the provisions of subdivision (4a) of this subsection.
  - b. For baseload electric generating facilities, reasonable and prudent expenditures shall be included pursuant to subdivisions (2) or (3) of G.S. 62-110.1(f1), whichever applies, subject to the provisions of subdivision (4a) of this subsection.
- (1a) Apply the rate of return established under subdivision (4) of this subsection to rights-of-way acquired through agreements with the Department of Transportation pursuant to G.S. 136-19.5(a) if acquisition is consistent with a definite plan to provide service within five years of the date of the agreement and if such right-of-way acquisition will result in benefits to the ratepayers. If a right-of-way is not used within a reasonable time after the expiration of the five-year period, it may be removed from the rate base by the Commission when rates for the public utility are next established under this section.
- (2) Estimate such public utility's revenue under the present and proposed rates.
- (3) Ascertain such public utility's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation.
- (4) Fix such rate of return on the cost of the property ascertained pursuant to subdivision (1) of this subsection as will enable the public utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, including, but not limited to, the inclusion of construction work in progress in the utility's property under sub-subdivision b. of subdivision (1) of this subsection, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms that are reasonable and that are fair to its customers and to its existing investors.
- (4a) Require each public utility to discontinue capitalization of the composite carrying cost of capital funds used to finance construction (allowance for funds) on the construction work in progress included in its rate based upon the effective date of the first and each subsequent general rate order issued with respect to it after the effective date of this subsection; allowance for funds may

be capitalized with respect to expenditures for construction work in progress 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.

- (5) Fix such rates to be charged by the public utility as will earn in addition to reasonable operating expenses ascertained pursuant to subdivision (3) of this subsection the rate of return fixed pursuant to subdivisions (4) and (4a) on the cost of the public utility's property ascertained pursuant to subdivisions (1) and (1a) of this subsection.

(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.

(d) The Commission shall consider all other material facts of record that will enable it to determine what are reasonable and just rates.

(e) The fixing of a rate of return shall not bar the fixing of a different rate of return in a subsequent proceeding.

(f) Repealed by Session Laws 1991, c. 598, s. 7.

(g) Reserved.

(h) Repealed by Session Laws 1998-128, s. 4, effective September 4, 1998. (1899, c. 164, s. 2, subsec. 1; Rev., s. 1104; C.S., s. 1068; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1971, c. 1092; 1973, c. 956, s. 1; c. 1041, s. 1; 1975, c. 184, s. 2; 1977, c. 691, ss. 2, 3; 1981, c. 476; 1981 (Reg. Sess., 1982), c. 1197, s. 6; 1985, c. 676, s. 15(2); 1989 (Reg. Sess., 1990), c. 962, s. 4; 1991, c. 598, s. 7; 1998-128, s. 4; 2007-397, s. 8; 2018-51, s. 1.)

### **§ 62-133.1. Small water and sewer utility rates.**

(a) In fixing the rates for any water or sewer utility, the Commission may fix such rates on the ratio of the operating expenses to the operating revenues, such ratio to be determined by the Commission, unless the utility requests that such rates be fixed under G.S. 62-133(b) or G.S. 62-133.1B. Nothing in this subsection shall be held to extinguish any remedy or right not inconsistent herewith. This subsection shall be in addition to other provisions of this Chapter which relate to public utilities generally, except that in cases of conflict between such other provisions, this section shall prevail for water and sewer utilities.

(b) A water or sewer utility may enter into uniform contracts with nonusers of its utility service within a specific subdivision or development for the payment by such nonusers to the utility of a fee or charge for placing or maintaining lines or other facilities or otherwise making and

keeping such utility's service available to such nonusers; or such a utility may, by contract of assignment, receive the benefits and assume the obligations of uniform contracts entered into between the developers of subdivisions and the purchasers of lots in such subdivisions whereby such developer has contracted to make utility service available to lots in such subdivision and purchasers of such lots have contracted to pay a fee or charge for the availability of such utility service; provided, however, that the maximum nonuser rate shall be as established by contract, except that the contractual charge to nonusers of the utility service can never exceed the lawfully established minimum rate to user customers of the utility service. (1973, c. 956, s. 2; 2021-149, s. 1(b).)

**§ 62-133.1A. Fair value determination of government-owned water and wastewater systems.**

(a) Election. – A water or wastewater public utility, as defined by G.S. 62-3(23)a.2., may elect to establish rate base by using the fair value of the utility property instead of original cost when acquiring an existing water or wastewater system owned by a municipality or county or an authority or district established under Chapter 162A of the General Statutes.

(b) Determination of Fair Value. –

- (1) The fair value of a system to be acquired shall be based on three separate appraisals conducted by accredited, impartial valuation experts chosen from a list to be established by the Commission. The following shall apply to the valuation:
  - a. One appraiser shall represent the public utility acquiring the system, another appraiser shall represent the utility selling the system, and another appraiser shall represent the Public Staff of the Commission.
  - b. Each appraiser shall determine fair value in compliance with the uniform standards of professional appraisal practice, employing cost, market, and income approaches to assessment of value.
  - c. Fair value, for ratemaking purposes under G.S. 62-133, shall be the average of the three appraisals provided for by this subsection.
  - d. The original source of funding for all or any portions of the water and sewer assets being acquired is not relevant to an evaluation of fair value.
- (2) The acquiring public utility and selling utility shall jointly retain a licensed engineer to conduct an assessment of the tangible assets of the system to be acquired, and the assessment shall be used by the three appraisers in determining fair value.
- (3) Reasonable fees, as determined by the Commission, paid to utility valuation experts, may be included in the cost of the acquired system, in addition to reasonable transaction and closing costs incurred by the acquiring public utility.
- (4) The rate base value of the acquired system, which shall be reflected in the acquiring public utility's next general rate case for ratemaking purposes, shall be the lesser of the purchase price negotiated between the parties to the sale or the fair value plus the fees and costs authorized in subdivision (3) of this subsection.
- (5) The normal rules of depreciation shall begin to apply against the rate base value upon purchase of the system by the acquiring public utility.

(c) An application to the Commission for a determination of the rate base value of the system to be acquired shall contain all of the following:

- (1) Copies of the valuations performed by the appraisers, as provided in subdivision (1) of subsection (b) of this section.
- (2) Any deficiencies identified by the engineering assessment conducted pursuant to subdivision (2) of subsection (b) of this section and a five-year plan for prudent and necessary infrastructure improvements by the acquiring entity.
- (3) Projected rate impact for the selling entity's customers for the next five years.
- (4) The averaging of the appraisers' valuations, which shall constitute fair value for purposes of this section.
- (5) The assessment of tangible assets performed by a licensed professional engineer, as provided in subdivision (2) of subsection (b) of this section.
- (6) The contract of sale.
- (7) The estimated valuation fees and transaction and closing costs incurred by the acquiring public utility.
- (8) A tariff, including rates equal to the rates of the selling utility. The selling utility's rates shall be the rates charged to the customers of the acquiring public utility until the acquiring public utility's next general rate case, unless otherwise ordered by the Commission for good cause shown.

(d) Final Order. – If the application meets all the requirements of subsection (c) of this section, the Commission shall issue its final order approving or denying the application within six months of the date on which the application was filed. An order approving an application shall determine the rate base value of the acquired property for ratemaking purposes in a manner consistent with the provisions of this section.

(e) Commission's Authority. – The Commission shall retain its authority under Chapter 62 of the General Statutes to set rates for the acquired system in future rate cases, and shall have the discretion to classify the acquired system as a separate entity for ratemaking purposes, consistent with the public interest. If the Commission finds that the average of the appraisals will not result in a reasonable fair value, the Commission may adjust the fair value as it deems appropriate and in the public interest.

(f) The Commission shall adopt rules to implement this section. (2018-51, s. 2; 2021-23, s. 25.)

**§ 62-133.1B. Water and Sewer Investment Plan ratemaking mechanism authorized.**

(a) Notwithstanding the methods for fixing water and sewer rates under G.S. 62-133 or G.S. 62-133.1, upon application by a water or sewer utility in a general rate proceeding, the Commission may approve a Water and Sewer Investment Plan. A Water and Sewer Investment Plan, as filed by a water or sewer utility, shall include performance-based metrics that benefit customers and ensure the provision of safe, reliable, and cost-effective service by the water or sewer utility. For purposes of this section, "Water and Sewer Investment Plan" means a plan under which the Commission sets water or sewer base rates, revenue requirements through banding of authorized returns as provided in this section, and authorizes annual rate changes for a three-year period based on reasonably known and measurable capital investments and anticipated reasonable and prudent expenses approved under the plan without the need for a base rate proceeding during the plan period.

(b) The Commission may approve a Water and Sewer Investment Plan proposed by a water or sewer utility only upon a finding by the Commission that the plan results in rates that are just and reasonable and are in the public interest. In reviewing any application under this section, the

Commission shall consider whether the water or sewer utility's application, as proposed, (i) establishes rates that are fair both to the customer and to the water or sewer utility, (ii) reasonably ensures the continuation of safe and reliable utility services, (iii) will not result in sudden substantial rate increases to customers annually or over the term of the plan, (iv) is representative of the utility's operations over the plan term, and (v) is otherwise in the public interest. In approving an application submitted under this section, the Commission may impose any conditions in the implementation of a Water and Sewer Investment Plan that the Commission considers necessary to ensure that the utility complies with the plan, and that the plan and associated rates are just, reasonable, and in the public interest, and the plan reasonably ensures the provision of safe, reliable, and cost-effective service to customers.

(c) Any rate adjustment allowed under a Water and Sewer Investment Plan approved pursuant to this section shall not, on an annual basis for years two and three of the plan, exceed five percent (5%) of the utility's North Carolina retail jurisdictional gross revenues for the preceding plan year. Upon a petition to the Commission, the Commission may consider the addition of unplanned emergency capital investments that must be undertaken during a plan term to address risk of noncompliance with primary drinking water or effluent standards, or to mitigate cyber or physical security risks, even if such expenditures would cause the above-referenced cap to be exceeded.

(d) Any rate adjustment mechanism authorized pursuant to G.S. 62-133.12 or G.S. 62-133.12A shall be discontinued during the term of any Water and Sewer Investment Plan. The utility may file for a rate adjustment mechanism authorized pursuant to G.S. 62-133.12, which shall not become effective before the end of the Water and Sewer Investment Plan. No capital improvements recovered through a Water and Sewer Investment Plan may be included for recovery in a rate adjustment mechanism authorized pursuant to G.S. 62-133.12.

(e) The Commission shall, after notice and an opportunity for interested parties to be heard, issue an order ruling on the water or sewer utility's request to adjust base rates under G.S. 62-133, denying or approving, with or without modifications, a water or sewer utility's proposed Water and Sewer Investment Plan. An approved plan shall be effective no later than the end of the maximum suspension period pursuant to G.S. 62-134(b).

(f) At any time, for good cause shown and after an opportunity for hearing, the Commission may modify or terminate an approved Water and Sewer Investment Plan if modification or termination is determined to be in the public interest.

(g) The Commission shall establish banding of authorized returns on equity for Water and Sewer Investment Plans approved pursuant to this section. For purposes of this section, "banding of authorized returns" means a rate mechanism under which the Commission sets an authorized return on equity for a water or sewer utility that acts as a midpoint and then applies a low- and high-end range of returns to that midpoint under which a water or sewer utility will not overearn if within the high-end range and will not underearn if within the low-end range. Any banding of the water or sewer utility's authorized return shall not exceed 100 basis points above or below the midpoint. [The following applies:]

- (1) If a water or sewer utility exceeds the high-end range of the band that is approved by the Commission, the water or sewer utility shall refund or credit earnings above that high-end range to customers in a manner to be prescribed by rules adopted by the Commission pursuant to subsection (i) of this section.
- (2) If a water or sewer utility falls below the low-end range of the band that is approved by the Commission, the utility may file a general rate case.

(h) The Commission shall annually review a water or sewer utility's earnings to ensure the utility is not earning in excess of its allowable return on equity for reasonable and prudent costs to provide service. For purposes of measuring a water or sewer utility's earnings under any mechanisms, plans, or settlements approved under this section, the utility shall make an annual filing that sets forth the utility's earned return on equity for the prior 12-month period.

(i) The Commission shall adopt rules to implement the requirements of this section, including rules to:

- (1) Establish procedures for filing a Water and Sewer Investment Plan under this section.
- (2) Require reporting on an annual basis of performance-based metrics and evaluation of those metrics' results to ensure the utility continues to perform in a safe, reliable, and cost-effective manner.
- (3) Develop banding of authorized returns. In setting a midpoint authorized rate of return on equity for banding of authorized returns pursuant to this section, the Commission may consider any decreased or increased risk to a water or sewer utility that may result from having an approved Water and Sewer Investment Plan.
- (4) Establish a procedure for the water or sewer utility to annually refund or credit to customers excess earnings above the high end of the authorized band of returns.
- (5) Establish a methodology to annually review the costs subject to the adjustment mechanism, including the opportunity for public hearings.

(j) On or before July 1, 2026, the Commission shall report to the Joint Legislative Commission on Energy Policy on the impacts of each Water and Sewer Investment Plan approved by the Commission pursuant to this section for a water or sewer utility. At a minimum, the report shall include a Plan's impact on rates for customers of the applicable utility, the number of customers disconnected for nonpayment in the four years prior to Commission approval of a Plan for the applicable utility, the number of utility customers disconnected for nonpayment after approval and implementation of the Plan to the date the report is submitted, and the amount of utility earnings under an approved plan. In consultation with the Department of Environmental Quality, the Commission shall also report on any impacts to drinking water quality of utility customers or to surface or groundwater resources from Plans implemented by water and sewer utilities. The report may include any other information the Commission deems relevant, and shall include any Commission recommendations for legislative action. (2021-23, s. 25; 2021-149, s. 1(a).)

### **§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.**

(a) The Commission shall permit an electric public utility that generates electric power by fossil fuel or nuclear fuel to charge an increment or decrement as a rider to its rates for changes in the cost of fuel and fuel-related costs used in providing its North Carolina customers with electricity from the cost of fuel and fuel-related costs established in the electric public utility's previous general rate case on the basis of cost per kilowatt hour.

- (a1) As used in this section, "cost of fuel and fuel-related costs" means all of the following:
- (1) The cost of fuel burned.
  - (2) The cost of fuel transportation.

- (3) The cost of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.
- (4) The total delivered noncapacity related costs, including all related transmission charges, of all purchases of electric power by the electric public utility that are subject to economic dispatch or economic curtailment.
- (5) The capacity costs associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. § 796, that are subject to economic dispatch by the electric public utility.
- (6) Except for those costs recovered pursuant to G.S. 62-133.8(h), the total delivered costs of all purchases of power from renewable energy facilities and new renewable energy facilities pursuant to G.S. 62-133.8 or to comply with any federal mandate that is similar to the requirements of subsections (b), (c), (d), (e), and (f) of G.S. 62-133.8.
- (7) The fuel cost component of other purchased power.
- (8) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of fuel and other fuel-related costs components.
- (9) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.
- (10) The total delivered costs, including capacity and noncapacity costs, associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. § 796, that are not subject to economic dispatch or economic curtailment by the electric public utility and not otherwise recovered under subdivision (6) of this subsection.
- (11) All nonadministrative costs related to the renewable energy procurement pursuant to G.S. 62-159.2 not recovered from the program participants.

(a2) For those costs identified in subdivisions (4), (5), (6), (10), and (11) of subsection (a1) of this section, the annual increase in the aggregate amount of these costs that are recoverable by an electric public utility pursuant to this section shall not exceed two and one-half percent (2.5%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year. The costs described in subdivisions (4), (5), (6), (10), and (11) of subsection (a1) of this section shall be recoverable from each class of customers as a separate component of the rider as follows:

- (1) For the noncapacity costs described in subdivisions (4), (10), and (11) of subsection (a1) of this section, the specific component for each class of customers shall be determined by allocating these costs among customer classes based on the method used in the electric public utility's most recently filed fuel proceeding commenced on or before January 1, 2017, as determined by the Commission, until the Commission determines how these costs shall be allocated in a general rate case for the electric public utility commenced on or after January 1, 2017.



- (2) For the capacity costs described in subdivisions (5), (6), (10), and (11) of subsection (a1) of this section, the specific component for each class of customers shall be determined by allocating these costs among customer classes based on the method used in the electric public utility's most recently filed fuel proceeding commenced on or before January 1, 2017, as determined by the Commission, until the Commission determines how these costs shall be allocated in a general rate case for the electric public utility commenced on or after January 1, 2017.

(a3) Notwithstanding subsections (a1) and (a2) of this section, for an electric public utility that has fewer than 150,000 North Carolina retail jurisdictional customers as of December 31, 2006, the costs identified in subdivisions (1), (2), (6), (7), and (10) of subsection (a1) of this section and the fuel cost component, as may be modified by the Commission, of electric power purchases identified in subdivision (4) of subsection (a1) of this section shall be recovered through the increment or decrement rider approved by the Commission pursuant to this section. For the costs identified in subdivisions (6) and (10) of subsection (a1) of this section that are incurred on or after January 1, 2008, the annual increase in the amount of these costs shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year. These costs described in subdivisions (6) and (10) of subsection (a1) of this section shall be recoverable from each class of customers as a separate component of the rider. For the costs described in subdivisions (6) and (10) of subsection (a1) of this section, the specific component for each class of customers shall be determined by allocating these costs among customer classes based on the electric public utility's North Carolina peak demand for the prior year, as determined by the Commission, until the Commission determines how these costs shall be allocated in a general rate case for the electric public utility commenced on or after January 1, 2008.

(b) The Commission shall conduct a hearing within 12 months of each electric public utility's last general rate case order to determine whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and fuel-related costs over or under the cost of fuel and fuel-related costs on a kilowatt-hour basis in base rates established in the electric public utility's last preceding general rate case. Additional hearings shall be held on an annual basis but only one hearing for each electric public utility may be held within 12 months of the last general rate case.

(c) Each electric public utility shall submit to the Commission for the hearing verified annualized information and data in such form and detail as the Commission may require, for an historic 12-month test period, relating to:

- (1) Cost of fuel and fuel-related costs used in each generating facility owned in whole or in part by the utility.
- (2) Fuel procurement practices and fuel inventories for each facility.
- (3) Burned cost of fuel used in each generating facility.
- (4) Plant capacity factor for each generating facility.
- (5) Plant availability factor for each generating plant.
- (6) Generation mix by types of fuel used.
- (7) Sources and fuel cost component of purchased power used.
- (8) Recipients of and revenues received for power sales and times of power sales.
- (9) Test period kilowatt-hour sales for the utility's total system and on the total system separated for North Carolina jurisdictional sales.

- (10) Procurement practices and inventories for: fuel burned and for ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.
- (11) The cost incurred at each generating facility of fuel burned and of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.
- (12) Any net gains or losses resulting from any sales by the electric public utility of fuel or other fuel-related costs components.
- (13) Any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.

(d) The Commission shall provide for notice of a public hearing with reasonable and adequate time for investigation and for all intervenors to prepare for hearing. At the hearing the Commission shall receive evidence from the utility, the Public Staff, and any intervenor desiring to submit evidence, and from the public generally. In reaching its decision, the Commission shall consider all evidence required under subsection (c) of this section as well as any and all other competent evidence that may assist the Commission in reaching its decision including changes in the cost of fuel consumed and fuel-related costs that occur within a reasonable time, as determined by the Commission, after the test period is closed. The Commission shall incorporate in its cost of fuel and fuel-related costs determination under this subsection the experienced over-recovery or under-recovery of reasonable costs of fuel and fuel-related costs prudently incurred during the test period, based upon the prudent standards set pursuant to subsection (d1) of this section, in fixing an increment or decrement rider. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of costs of fuel and fuel-related costs through the date that is 30 calendar days prior to the date of the hearing, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual hearing pursuant to this section. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case. The burden of proof as to the correctness and reasonableness of the charge and as to whether the cost of fuel and fuel-related costs were reasonably and prudently incurred shall be on the utility. The Commission shall allow only that portion, if any, of a requested cost of fuel and fuel-related costs adjustment that is based on adjusted and reasonable cost of fuel and fuel-related costs prudently incurred under efficient management and economic operations. In evaluating whether cost of fuel and fuel-related costs were reasonable and prudently incurred, the Commission shall apply the rule adopted pursuant to subsection (d1) of this section. To the extent that the Commission determines that an increment or decrement to the rates of the utility due to changes in the cost of fuel and fuel-related costs over or under base fuel costs established in the preceding general rate case is just and reasonable, the Commission shall order that the increment or decrement become effective for all sales of electricity and remain in effect until changed in a subsequent general rate case or annual proceeding under this section.

(d1) Within one year after ratification of this act, for the purposes of setting cost of fuel and fuel-related costs rates, the Commission shall adopt a rule that establishes prudent standards and procedures with which it can appropriately measure management efficiency in minimizing cost of fuel and fuel-related costs.

(e) If the Commission has not issued an order pursuant to this section within 180 days of a utility's submission of annual data under subsection (c) of this section, the utility may place the requested cost of fuel and fuel-related costs adjustment into effect. If the change in rate is finally determined to be excessive, the utility shall make refund of any excess plus interest to its customers in a manner ordered by the Commission.

(f) Nothing in this section shall relieve the Commission from its duty to consider the reasonableness of the cost of fuel and fuel-related costs in a general rate case and to set rates reflecting reasonable cost of fuel and fuel-related costs pursuant to G.S. 62-133. Nothing in this section shall invalidate or preempt any condition adopted by the Commission and accepted by the utility in any proceeding that would limit the recovery of costs by any electric public utility under this section.

(g) Repealed by Session Laws 2014-120, s. 10(d), effective September 18, 2014. (1981 (Reg. Sess., 1982), c. 1197, s. 1; 1987, c. 677, ss. 1, 5; 1989, c. 15, s. 1; 1991, c. 129, s. 1; 1995, c. 15, ss. 1, 2; 2007-397, s. 5; 2011-291, s. 2.11; 2014-120, s. 10(d); 2017-192, s. 4(a); 2018-114, s. 22.)

**§ 62-133.3: Repealed by Session Laws 1995, c. 27, s. 5.**

**§ 62-133.4. Gas cost adjustment for natural gas local distribution companies.**

(a) Rate changes for natural gas local distribution companies occasioned by changes in the cost of natural gas supply and transportation may be determined under this section rather than under G.S. 62-133(b), (c), or (d).

(b) From time to time, as changes in the cost of natural gas require, each natural gas local distribution company may apply to the Commission for permission to change its rates to track changes in the cost of natural gas supply and transportation. The Commission may, without a hearing, issue an order allowing such rate changes to become effective simultaneously with the effective date of the change in the cost of natural gas or at any other time ordered by the Commission. If the Commission has not issued an order under this subsection within 120 days after the application, the utility may place the requested rate adjustment into effect. If the rate adjustment is finally determined to be excessive or is denied, the utility shall make refund of any excess, plus interest as provided in G.S. 62-130(e), to its customers in a manner ordered by the Commission. Any rate adjustment under this subsection is subject to review under subsection (c) of this section.

(c) Each natural gas local distribution company shall submit to the Commission information and data for an historical 12-month test period concerning the utility's actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes. This information and data shall be filed on an annual basis in the form and detail and at the time required by the Commission. The Commission, upon notice and hearing, shall compare the utility's prudently incurred costs with costs recovered from all the utility's customers that it served during the test period. If those prudently incurred costs are greater or less than the recovered costs, the Commission shall, subject to G.S. 62-158, require the utility to refund any overrecovery by credit to bill or through a decrement in its rates and shall permit the utility to recover any deficiency through an increment in its rates. If the Commission finds the overrecovery or deficiency has been or is likely to be substantially reduced, negated, or reversed before or during the period in which it would be credited or recovered, the Commission, in its discretion, may order

the utility to make an appropriate adjustment or no adjustment to its rates, consistent with the public interest.

(d) Nothing in this section prohibits the Commission from investigating and changing unreasonable rates as authorized by this Chapter, nor does it prohibit the Commission from disallowing the recovery of any gas costs not prudently incurred by a utility.

(e) As used in this section, the word "cost" or "costs" shall be defined by Commission rule or order and may include all costs related to the purchase and transportation of natural gas to the natural gas local distribution company's system. (1991, c. 598, s. 8; 2021-23, s. 15.)

#### **§ 62-133.5. Alternative regulation, tariffing, and deregulation of telecommunications utilities.**

(a) Any local exchange company, subject to the provisions of G.S. 62-110(f1), that is subject to rate of return regulation pursuant to G.S. 62-133 or a form of alternative regulation authorized by subsection (b) of this section may elect to have the rates, terms, and conditions of its services determined pursuant to a form of price regulation, rather than rate of return or other form of earnings regulation. Under this form of price regulation, the Commission shall, among other things, permit the local exchange company to determine and set its own depreciation rates, to rebalance its rates, and to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices. Upon application, the Commission shall, after notice and an opportunity for interested parties to be heard, approve such price regulation, which may differ between local exchange companies, upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards that the Commission may adopt; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. Upon approval, and except as provided in subsection (c) of this section, price regulation shall thereafter be the sole form of regulation imposed upon the electing local exchange company, and the Commission shall thenceforth regulate the electing local exchange company's prices, rather than its earnings. The Commission shall issue an order denying or approving the proposed plan for price regulation, with or without modification, not more than 90 days from the filing of the application. However, the Commission may extend the time period for an additional 90 days at the discretion of the Commission. If the Commission approves the application with modifications, the local exchange company subject to such approval may accept the modifications and implement the proposed plan as modified, or may, at its option, (i) withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application; (ii) file another proposed plan for price regulation; or (iii) file an application for a form of alternative regulation under subsection (b) of this section. If the initial price regulation plan is approved with modifications and the local exchange company files another plan pursuant to part (ii) of the previous sentence, the Commission shall issue an order denying or approving the proposed plan for price regulation, with or without modifications, not more than 90 days from that filing by the local exchange company.

(b) Any local exchange company that is subject to rate of return regulation pursuant to G.S. 62-133 and which elects not to file for price regulation under the provisions of subsection (a) above may file an application with the Commission for forms of alternative regulation, which may differ between companies and may include, but are not limited to, ranges of authorized returns,

categories of services, and price indexing. Upon application, the Commission shall approve such alternative regulatory plan upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards established by the Commission; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. The Commission shall issue an order denying or approving the proposed plan with or without modification, not more than 90 days from the filing of the application. However, the Commission may extend the time period for an additional 90 days at the discretion of the Commission. If the Commission approves the application with modifications, the local exchange company subject to such approval may, at its option, accept the modifications and implement the proposed plan as modified or may, at its option, (i) withdraw its application and continue to be regulated under the form of regulation that existed at the time of filing the application; or (ii) file an application for another form of alternative regulation. If the initial plan is approved with modifications and the local exchange company files another plan pursuant to part (ii) of the previous sentence, the Commission shall issue an order denying or approving the proposed plan, with or without modifications, not more than 90 days from that filing by the local exchange company.

(c) Any local exchange company subject to price regulation under the provisions of subsection (a) of this section may file an application with the Commission to modify such form of price regulation or for other forms of regulation. Any local exchange company subject to a form of alternative regulation under subsection (b) of this section may file an application with the Commission to modify such form of alternative regulation. Upon application, the Commission shall approve such other form of regulation upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards established by the Commission; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. If the Commission disapproves, in whole or in part, a local exchange company's application to modify its existing form of price regulation, the company may elect to continue to operate under its then existing plan previously approved under this subsection or subsection (a) of this section.

(c1) In determining whether a price regulation plan is otherwise consistent with the public interest, the Commission shall not consider the local exchange company's past or present earnings or rates of return.

(d) Any local exchange company subject to price regulation under the provisions of subsection (a) of this section, or other alternative regulation under subsection (b) of this section, or other form of regulation under subsection (c) of this section shall file tariffs for basic local exchange service and toll switched access services stating the terms and conditions of the services and the applicable rates. However, fees charged by such local exchange companies applicable to charges for returned checks shall not be tariffed or otherwise regulated by the Commission. The filing of any tariff changing the terms and conditions of such services or increasing the rates for such services shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing rates for basic local exchange service or toll switched access service shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days,

seven days after filing. Any local exchange company subject to price regulation under the provisions of subsection (a) of this section, or other alternative regulation under subsection (b) of this section, or other form of regulation under subsection (c) of this section may file tariffs for services other than basic local exchange services and toll switched access services. Any tariff changing the terms and conditions of such services or increasing the rates for an existing service or establishing the terms, conditions, or rates for a new service shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing the rates for such services shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, seven days after filing. In the event of a complaint with regard to a tariff filing under this subsection, the Commission may take such steps as it deems appropriate to assure that such tariff filing is consistent with the plan previously adopted pursuant to subsection (a) of this section, subsection (b) of this section, or subsection (c) of this section.

(e) Any allegation of anticompetitive activity by a competing local provider or a local exchange company shall be raised in a complaint proceeding pursuant to G.S. 62-73.

(f) Notwithstanding the provisions of G.S. 62-140, or any Commission rule or regulations: (i) the Commission shall permit a local exchange company or a competing local provider to offer competitive services with flexible pricing arrangements to business customers pursuant to contract and shall permit other flexible pricing options; and (ii) local exchange companies and competing local providers may provide a promotional offering for any tariffed service or tariffed offering by giving one day's notice to the Commission, but no Commission approval of the notice is required. Promotional offerings of any nontariffed service may be implemented without notice to the Commission or Commission approval. Carriers offering promotions of regulated services that are available for resale must provide a means for interested parties to receive notice of each promotional offering of regulated service, including the duration of the offering, at least one business day prior to the effective date of the promotional offering. Furthermore, local exchange companies and competing local providers may offer special promotions and bundles of new or existing service or products without the obligation to identify or convert existing customers who subscribe to the same or similar services or products. The Commission's complaint authority under G.S. 62-73 and subsection (e) of this section is applicable to any promotion or bundled service offering filed or offered under this subsection.

(g) The following sections of Chapter 62 of the General Statutes shall not apply to local exchange companies subject to price regulation under the terms of subsection (a) of this section or electing companies subject to alternative regulation under the terms of subsection (h) or (m) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132, 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153.

(h) Notwithstanding any other provision of this Chapter, a local exchange company that is subject to rate of return regulation or subject to another form of regulation authorized under this section and whose territory is open to competition from competing local providers may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection by filing notice of its intent to do so with the Commission. The election is effective immediately upon filing. A local exchange company shall not be permitted to make the election under this section unless it commits to provide stand-alone basic residential lines to rural customers at rates that are less than or comparable to those rates charged to urban customers for the same service.

(1) Definitions. – The following definitions apply in this subsection:

- a. Local exchange company. – The same meaning as provided in G.S. 62-3(16a).
  - b. Open to competition from competing local providers. – Both of the following apply:
    - 1. G.S. 62-110(f1) applies to the franchised area and to local exchange and exchange access services offered by the local exchange company.
    - 2. The local exchange company is open to interconnection with competing local providers that possess a certificate of public convenience and necessity issued by the Commission. The Commission is authorized to resolve any disputes concerning whether a local exchange company is open to interconnection under this section.
  - c. Single-line basic residential service. – Single-line residential flat rate basic voice grade local service with touch tone within a traditional local calling area that provides access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or the equivalent).
  - d. Stand-alone basic residential line. – Single-line basic residential service that is billed on a billing account that does not also contain another service, feature, or product that is sold by the local exchange company or an affiliate of the local exchange company and is billed on a recurring basis on the local exchange company's bill.
- (2) Beginning on the date that the local exchange company's election under this subsection becomes effective, the local exchange company shall continue to offer stand-alone basic residential lines to all customers who choose to subscribe to that service, and the local exchange company may increase rates for those lines annually by a percentage that does not exceed the percentage increase over the prior year in the Gross Domestic Product Price Index as reported by the United States Department of Commerce, Bureau of Economic Analysis, unless otherwise authorized by the Commission. With the sole exception of ensuring the local exchange company's compliance with the preceding sentence, the Commission shall not:
- a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's stand-alone basic residential lines.
  - b. Otherwise regulate any of the local exchange company's stand-alone basic residential lines.
- (3) Except to the extent provided in subdivision (2) of this subsection, beginning on the date the local exchange company's election under this subsection becomes effective, the Commission shall not do any of the following:
- a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's retail services.
  - b. Otherwise regulate any of the local exchange company's retail services.

- c. Impose any tariffing requirements on any of the local exchange company's services that were not tariffed as of the date of the election; or impose any constraints on the rates of the local exchange company's services that were subject to full pricing flexibility as of the date of election.
- (4) A local exchange company's election under this subsection does not affect the obligations or rights of an incumbent local exchange carrier, as that term is defined by section 251(h) of the Federal Telecommunications Act of 1996 (Act), under sections 251 and 252 of the Act or any Federal Communications Commission regulation relating to sections 251 and 252 of the Act, nor does it affect any authority of the Commission to act in accordance with federal or State laws or regulations, including those granting authority to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements.
  - (5) A local exchange company's election under this subsection does not prevent a consumer from seeking the assistance of the Public Staff of the North Carolina Utilities Commission to resolve a complaint with that local exchange company, as provided in G.S. 62-73.1.
  - (6) A local exchange company's election under this subsection does not affect the Commission's jurisdiction concerning the following:
    - a. Enforce federal requirements on the local exchange company's marketing activities. However, the Commission may not adopt, impose, or enforce other requirements on the local exchange company's marketing activities.
    - b. The telecommunications relay service pursuant to G.S. 62-157.
    - c. The Life Line or Link Up programs consistent with Federal Communications Commission rules, including, but not limited to, 47 C.F.R. § 54.403(a)(3), as amended from time to time, and relevant orders of the North Carolina Utilities Commission.
    - d. Universal service funding pursuant to G.S. 62-110(f1).
    - e. Carrier of last resort obligations pursuant to G.S. 62-110.
    - f. The authority delegated to it by the Federal Communications Commission to manage the numbering resources involving that local exchange company.
    - g. Regulatory authority over the rates, terms, and conditions of wholesale services.

(i) A competing local provider authorized by the Commission to do business under the provisions of G.S. 62-110(f1) may also elect to have its rates, terms, and conditions for its services determined pursuant to the plans described in subsection (h) or (m) of this section. However, it is provided further that any provisions of subsection (h) of this section requiring the provision of a specific retail service or impacting the pricing of such service, including stand-alone residence service, shall not apply to competing local providers.

(j) Notwithstanding any other provision of this Chapter, the Commission has jurisdiction over matters concerning switched access and intercarrier compensation of a local exchange company that has elected to operate under price regulation, as well as a local exchange carrier or



competing local provider operating under any form of regulation covered under this Article or G.S. 62-110(f1).

(k) To evaluate the affordability and quality of local exchange service provided to consumers in this State, a local exchange company or competing local provider offering basic local residential exchange service that elects to have its rates, terms, and conditions for its services determined pursuant to the plans described in subsection (h) or (m) of this section shall make an annual report to 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 on the state of its company's operations. The report shall be due 30 days after the close of each calendar year and shall cover the period from January 1 through December 31 of the preceding year. The Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources shall review the annual reports and shall decide whether to recommend that the General Assembly take corrective action in response to those reports. The report shall include the following:

- (1) An analysis of telecommunications competition by the local exchange company or competing local provider, including access line gain or loss and the impact on consumer choices from the date the local exchange company makes its election to be subject to alternative regulation under the terms of subsection (h) or (m) of this section.
- (2) An analysis of service quality based on customer satisfaction studies from the date the local exchange company makes its election to be subject to alternative regulation under the terms of subsection (h) or (m) of this section.
- (3) An analysis of the level of local exchange rates from the date the local exchange company makes its election to be subject to alternative regulation under the terms of subsection (h) or (m) of this section.

(l) For a local exchange company that has made an election to be subject to alternative regulation under subsection (m) of this section, the requirement to report annually to the General Assembly under subsection (k) of this section shall no longer apply on and after the third anniversary following the date of the local exchange company's election.

(m) Notwithstanding any other provision of this Chapter, a local exchange company that is subject to rate of return regulation or subject to another form of regulation authorized under this section and who forgoes receipt of any funding from a State funding mechanism, other than interconnection rates, that may be established to support universal service as described in G.S. 62-110(f1) and whose territory is open to competition from competing local providers may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection by filing notice of its intent to do so with the Commission. The election is effective immediately upon filing. The terms "local exchange company" and "open to competition from competing local providers" shall have the same meanings as in subsection (h) of this section.

- (1) Beginning on the date the local exchange company's election under this subsection becomes effective, the Commission shall not:
  - a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's retail services, regardless of the technology used to provide these services.

- b. Otherwise regulate any of the local exchange company's retail services, regardless of the technology used to provide these services.
  - c. Impose any tariffing requirements on any of the local exchange company's services that were not tariffed as of the date of the election, or impose any constraints on the rates of the local exchange company's services that were subject to full pricing flexibility as of the date of election.
- (2) A local exchange company's election under this subsection does not affect the obligations or rights of an incumbent local exchange carrier, as that term is defined by section 251(h) of the Federal Telecommunications Act of 1996 (Act), under sections 251 and 252 of the Act, or any Federal Communications Commission regulation relating to sections 251 and 252 of the Act.
- (3) A local exchange company's election under this subsection does not affect the Commission's jurisdiction concerning:
- a. Enforcement of federal requirements on the local exchange company's marketing activities as set forth in 47 U.S.C. Part 64. However, the Commission may not adopt, impose, or enforce other requirements on the local exchange company's marketing activities.
  - b. The telecommunications relay service pursuant to G.S. 62-157.
  - c. The Life Line or Link Up programs consistent with Federal Communications Commission rules and relevant orders of the North Carolina Utilities Commission.
  - d. Universal service funding pursuant to G.S. 62-110(f1).
  - e. The authority delegated to it by the Federal Communications Commission to manage the numbering resources involving that local exchange company.
  - f. Regulatory authority over the rates, terms, and conditions of wholesale services.
  - g. The Commission's authority under section 214(e) of the Federal Communications Act of 1934, consistent with Federal Communications Commission rules.
  - h. The authority of the Commission to act in accordance with federal or State laws or regulations, including those granting authority to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements.
- (4) A local exchange company's election under this subsection does not prevent a consumer from seeking the assistance of the Public Staff of the North Carolina Utilities Commission to resolve a complaint with that local exchange company, as provided in G.S. 62-73.1. (1995, c. 27, s. 6; 2003-91, s. 2; 2007-157, s. 1; 2009-238, ss. 1-4; 2009-570, s. 36; 2010-173, ss. 1-3; 2011-52, s. 3; 2011-291, s. 2.12; 2017-57, s. 14.1(u).)

**§ 62-133.6. Environmental compliance costs recovery.**

- (a) As used in this section:

- (1) "Coal-fired generating unit" means a coal-fired generating unit, as defined by 40 Code of Federal Regulations § 96.2 (July 1, 2001 Edition), that is located in this State and has the capacity to generate 25 or more megawatts of electricity.
- (2) "Environmental compliance costs" means only those capital costs incurred by an investor-owned public utility to comply with the emissions limitations set out in G.S. 143-215.107D that exceed the costs required to comply with 42 U.S.C. § 7410(a)(2)(D)(i)(I), as implemented by 40 Code of Federal Regulations § 51.121 (July 1, 2001 Edition), related federal regulations, and the associated State or Federal Implementation Plan, or with 42 U.S.C. § 7426, as implemented by 40 Code of Federal Regulations § 52.34 (July 1, 2001 Edition) and related federal regulations. The term "environmental compliance costs" does not include:
  - a. Costs required to comply with a final order or judgment rendered by a state or federal court under which an investor-owned public utility is found liable for a failure to comply with any federal or state law, rule, or regulation for the protection of the environment or public health.
  - b. The net increase in costs, above those proposed by the investor-owned public utility as part of its plan to achieve compliance with the emissions limitations set out in G.S. 143-215.107D, that are necessary to comply with a settlement agreement, consent decree, or similar resolution of litigation arising from any alleged failure to comply with any federal or state law, rule, or regulation for the protection of the environment or public health.
  - c. Any criminal or civil fine or penalty, including court costs imposed or assessed for a violation by an investor-owned public utility of any federal or state law, rule, or regulation for the protection of the environment or public health.
  - d. The net increase in costs, above those proposed by the investor-owned public utility as part of its plan to achieve the emissions limitations set out in G.S. 143-215.107D, that are necessary to comply with any limitation on emissions of oxides of nitrogen (NOx) or sulfur dioxide (SO<sub>2</sub>) that are imposed on an individual coal-fired generating unit by the Environmental Management Commission or the Department of Environmental Quality to address any nonattainment of an air quality standard in any area of the State.
- (3) "Investor-owned public utility" means an investor-owned public utility, as defined in G.S. 62-3.

(b) The investor-owned public utilities shall be allowed to accelerate the cost recovery of their estimated environmental compliance costs over a seven-year period, beginning January 1, 2003 and ending December 31, 2009. For purposes of this subsection, an investor-owned public utility subject to the provisions of subsections (b) and (d) of G.S. 143-215.107D shall amortize environmental compliance costs in the amount of one billion five hundred million dollars (\$1,500,000,000) and an investor-owned public utility subject to the provisions of subsections (c) and (e) of G.S. 143-215.107D shall amortize environmental compliance costs in the amount of eight hundred thirteen million dollars (\$813,000,000). During the rate freeze period established in subsection (e) of this section, the investor-owned public utilities shall, at a minimum, recover

through amortization seventy percent (70%) of the environmental compliance costs set out in this subsection. The maximum amount for each investor-owned public utility's annual accelerated cost recovery during the rate freeze period shall not exceed one hundred fifty percent (150%) of the annual levelized environmental compliance costs set out in this subsection. The amounts to be amortized pursuant to this subsection are estimates of the environmental compliance costs that may be adjusted as provided in this section. The General Assembly makes no judgment as to whether the actual environmental compliance costs will be greater than, less than, or equal to these estimated amounts. These estimated amounts do not define or limit the scope of the expenditures that may be necessary to comply with the emissions limitations set out in G.S. 143-215.107D.

(c) The investor-owned public utilities shall file their compliance plans, including initial cost estimates, with the Commission and the Department of Environmental Quality not later than 10 days after the date on which this section becomes effective. The Commission shall consult with the Secretary of Environmental Quality and shall consider the advice of the Secretary as to whether an investor-owned public utility's proposed compliance plan is adequate to achieve the emissions limitations set out in G.S. 143-215.107D.

(d) Subject to the provisions of subsection (f) of this section, the Commission shall hold a hearing to review the environmental compliance costs set out in subsection (b) of this section. The Commission may modify and revise those costs as necessary to ensure that they are just, reasonable, and prudent based on the most recent cost information available and determine the annual cost recovery amounts that each investor-owned public utility shall be required to record and recover during calendar years 2008 and 2009. In making its decisions pursuant to this subsection, the Commission shall consult with the Secretary of Environmental Quality to receive advice as to whether the investor-owned public utility's actual and proposed modifications and permitting and construction schedule are adequate to achieve the emissions limitations set out in G.S. 143-215.107D. The Commission shall issue an order pursuant to this subsection no later than December 31, 2007.

(e) Notwithstanding G.S. 62-130(d) and G.S. 62-136(a), the base rates of the investor-owned public utilities shall remain unchanged from the date on which this section becomes effective through December 31, 2007. The Commission may, however, consistent with the public interest:

- (1) Allow adjustments to base rates, or deferral of costs or revenues, due to one or more of the following conditions occurring during the rate freeze period:
  - a. Governmental action resulting in significant cost reductions or requiring major expenditures including, but not limited to, the cost of compliance with any law, regulation, or rule for the protection of the environment or public health, other than environmental compliance costs.
  - b. Major expenditures to restore or replace property damaged or destroyed by force majeure.
  - c. A severe threat to the financial stability of the investor-owned public utility resulting from other extraordinary causes beyond the reasonable control of the investor-owned public utility.
  - d. The investor-owned public utility persistently earns a return substantially in excess of the rate of return established and found reasonable by the Commission in the investor-owned public utility's last general rate case.

- (2) Approve any reduction in a rate or rates applicable to a customer or class of customers during the rate freeze period, if requested to do so by an investor-owned public utility that is subject to the emissions limitations set out in G.S. 143-215.107D.

(f) In any general rate case initiated to adjust base rates effective on or after January 1, 2008, the investor-owned public utility shall be allowed to recover its actual environmental compliance costs in accordance with Article 7 of this Chapter less the cumulative amount of accelerated cost recovery recorded pursuant to subsection (b) of this section.

(g) Consistent with the public interest, the Commission is authorized to approve proposals submitted by an investor-owned public utility to implement optional, market-based rates and services, provided the proposal does not increase base rates during the period of time referred to in subsection (e) of this section.

(h) Nothing in this section shall prohibit the Commission from taking any actions otherwise appropriate to enforce investor-owned public utility compliance with applicable statutes or Commission rules or to order any appropriate remedy for such noncompliance allowed by law.

(i) An investor-owned public utility that is subject to the emissions limitations set out in G.S. 143-215.107D shall submit to the Commission and to the Department of Environmental Quality on or before April 1 of each year a verified statement that contains all of the following:

- (1) A detailed report on the investor-owned public utility's plans for meeting the emissions limitations set out in G.S. 143-215.107D.
- (2) The actual environmental compliance costs incurred by the investor-owned public utility in the previous calendar year, including a description of the construction undertaken and completed during that year.
- (3) The amount of the investor-owned public utility's environmental compliance costs amortized in the previous calendar year.
- (4) An estimate of the investor-owned public utility's environmental compliance costs and the basis for any revisions of those estimates when compared to the estimates submitted during the previous year.
- (5) A description of all permits required in order to comply with the provisions of G.S. 143-215.107D for which the investor-owned public utility has applied and the status of those permits or permit applications.
- (6) A description of the construction related to compliance with the provisions of G.S. 143-215.107D that is anticipated during the following year.
- (7) A description of the applications for permits required in order to comply with the provisions of G.S. 143-215.107D that are anticipated during the following year.
- (8) The results of equipment testing related to compliance with G.S. 143-215.107D.
- (9) The number of tons of oxides of nitrogen (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) emitted during the previous calendar year from the coal-fired generating units that are subject to the emissions limitations set out in G.S. 143-215.107D.
- (10) The emissions allowances described in G.S. 143-215.107D(i) that are acquired by the investor-owned public utility that result from compliance with the emissions limitations set out in G.S. 143-215.107D.
- (11) Any other information requested by the Commission or the Department of Environmental Quality.

(j) The Secretary shall review the information submitted pursuant to subsection (i) of this section and determine whether the investor-owned public utility's actual and proposed modifications and permitting and construction schedule are adequate to achieve the emissions limitations set out in G.S. 143-215.107D and shall advise the Commission as to the Secretary's findings and recommendations.

(k) Any information, advice, findings, recommendations, or determinations provided by the Secretary pursuant to this section shall not constitute a final agency decision within the meaning of Chapter 150B of the General Statutes and shall not be subject to review under that Chapter. (2002-4, s. 9; 2015-241, s. 14.30(u), (v).)

**§ 62-133.7. Customer usage tracking rate adjustment mechanisms for natural gas local distribution company rates.**

In setting rates for a natural gas local distribution company in a general rate case proceeding under G.S. 62-133, the Commission may adopt, implement, modify, or eliminate a rate adjustment mechanism for one or more of the company's rate schedules, excluding industrial rate schedules, to track and true-up variations in average per customer usage from levels approved in the general rate case proceeding. The Commission may adopt a rate adjustment mechanism only upon a finding by the Commission that the mechanism is appropriate to track and true-up variations in average per customer usage by rate schedule from levels adopted in the general rate case proceeding and that the mechanism is in the public interest. (2007-227, s. 1.)

**§ 62-133.7A. Rate adjustment mechanism for natural gas local distribution company rates.**

In setting rates for a natural gas local distribution company in a general rate case proceeding under G.S. 62-133, the Commission may adopt, implement, modify, or eliminate a rate adjustment mechanism to enable the company to recover the prudently incurred capital investment and associated costs of complying with federal gas pipeline safety requirements, including a return based on the company's then authorized return. The Commission shall adopt, implement, modify, or eliminate a rate adjustment mechanism authorized under this section only upon a finding by the Commission that the mechanism is in the public interest. (2013-54, s. 1.)

**§ 62-133.8. Clean Energy and Energy Efficiency Portfolio Standard (CEPS).**

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

- (1) "Clean energy facility" means a renewable energy facility, a nuclear energy facility, including an uprate to a nuclear energy facility, or a fusion energy facility.
- (1a) "Clean energy resource" means renewable energy resources, nuclear energy resources, including an uprate to a nuclear energy facility, and fusion energy.
- (1b) "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 system equipment and operating controls, direct load control, and interruptible load.

- (3) "Electric power supplier" means 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 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 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 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 product of fusion reactions inside a fusion device, used for the purpose of generating electricity or other commercially usable forms of energy.
- (4c) "New clean energy facility" means:
  - a. A new renewable energy facility; or
  - 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 renewable energy facility that either:
  - 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.
- (6) "Renewable energy certificate" means 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 facility, other than a hydroelectric power facility with a generation capacity of more than 10 megawatts, that either:
  - 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 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.
- (b) Clean Energy and Energy Efficiency Standards (CEPS) for Electric Public Utilities. –
  - (1) Each electric public utility in the State shall be subject to a Clean Energy and Energy Efficiency Portfolio Standard (CEPS) according to the following schedule:

| <b>Calendar Year</b> | <b>CEPS Requirement</b>                   |
|----------------------|---|
| 2012                 | 3% of 2011 North Carolina retail sales    |
| 2015                 | 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 clean energy facility.
  - b. Use a clean 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%) 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 clean energy facility. Electric power purchased from a new clean 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 clean energy facilities. Certificates derived from out-of-state new clean 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 clean 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) Clean Energy and Energy Efficiency Standards (CEPS) 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 Clean Energy and Energy Efficiency Portfolio Standard (CEPS) according to the following schedule:

| <b>Calendar Year</b> | <b>CEPS Requirement</b>                 |
|----------------------|---|
| 2012                 | 3% of 2011 North Carolina retail sales  |
| 2015                 | 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 clean energy facility.
  - b. Reduce energy consumption through the implementation of demand-side management or energy efficiency measures.
  - c. Purchase electric power from a clean 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 clean energy facilities. An electric power supplier subject to the requirements of this subsection may use certificates derived from out-of-state clean 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 clean 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 CEPS 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:

| <b>Calendar Year</b> | <b>Requirement for Solar Energy</b> |
|----------------------|-------------------------------------|
| <b>Resources</b>     |                                     |
| 2010                 | 0.02%                               |
| 2012                 | 0.07%                               |
| 2015                 | 0.14%                               |
| 2018                 | 0.20%                               |

(e) **Compliance With CEPS Requirement Through Use of Swine Waste 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 shall be supplied, or contracted for supply in each year, by swine waste. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

| <b>Calendar Year</b> | <b>Requirement for Swine Waste</b> |
|----------------------|------------------------------------|
| <b>Resources</b>     |                                    |
| 2012                 | 0.07%                              |
| 2015                 | 0.14%                              |
| 2018                 | 0.20%                              |

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

| <b>Calendar Year</b> | <b>Requirement for Poultry Waste</b> |
|----------------------|--------------------------------------|
| <b>Resources</b>     |                                      |
| 2012                 | 170,000 megawatt hours               |
| 2013                 | 700,000 megawatt hours               |
| 2014                 | 900,000 megawatt hours               |

(g) **Control of Emissions.** – As used in this subsection, Best Available Control Technology (BACT) means an emissions limitation based on the maximum degree a reduction in the emission of air pollutants that is achievable for a facility, taking into account energy, environmental, and economic impacts and other costs. A biomass combustion process at any new clean energy facility that delivers electric power to an electric power supplier shall meet BACT. The Environmental

Management Commission shall determine on a case-by-case basis the BACT for a facility that would not otherwise be required to comply with BACT pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The Environmental Management Commission may adopt rules to implement this subsection. In adopting rules, the Environmental Management Commission shall take into account cumulative and secondary impacts associated with the concentration of biomass facilities in close proximity to one another. In adopting rules the Environmental Management Commission shall provide for the manner in which a facility that would not otherwise be required to comply with BACT pursuant to the PSD emissions programs shall meet the BACT requirement. This subsection shall not apply to a facility that qualifies as a new clean energy facility under sub-subdivision b. of subdivision (5) of subsection (a) of this section.

(h) Cost Recovery and Customer Charges. –

- (1) For the purposes of this subsection, the term "incremental costs" means all reasonable and prudent costs incurred by an electric power supplier to:
  - a. Comply with the requirements of subsections (b), (c), (d), (e), and (f) of this section that are in excess of the electric power supplier's avoided costs other than those costs recovered pursuant to 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.
  - d. Provide incentives to customers, including program costs, incurred pursuant to G.S. 62-155(f).
- (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:

| <b>Customer Class</b>   | <b>2008-2011</b> | <b>2012-2014</b> | <b>2015 and thereafter</b> |
|-------------------------|------------------|------------------|----------------------------|
| Residential per account | \$10.00          | \$12.00          | \$27.00                    |
| 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 pursuant to subdivisions (2) and (3) of this subsection are in the same proportion as the per-account annual charges for each customer class set out in subdivision (4) of this subsection.

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

- (1) Provide for the monitoring of compliance with and enforcement of the requirements of this section.
- (2) Include a procedure to modify or delay the provisions of subsections (b), (c), (d), (e), and (f) of this section in whole or in part if the Commission determines that it is in the public interest to do so. The procedure adopted pursuant to this subdivision shall include a requirement that the electric power supplier demonstrate that it made a reasonable effort to meet the requirements set out in this section.
- (3) Ensure that energy credited toward compliance with the provisions of this section not be credited toward any other purpose, including another clean energy portfolio standard or voluntary clean energy purchase program in this State or any other state.
- (4) Establish standards for interconnection of clean energy facilities and other nonutility-owned generation with a generation capacity of 10 megawatts or less to an electric public utility's distribution system; provided, however, that the Commission shall adopt, if appropriate, federal interconnection standards. The standards adopted pursuant to this subdivision shall include an expedited review process for swine and poultry waste to energy projects of two megawatts (MW) or less and other measures necessary and appropriate to achieve the objectives of subsections (e) and (f) of this section.

- (5) Ensure that the owner and operator of each clean energy facility that delivers electric power to an electric power supplier is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources.
- (6) Consider whether it is in the public interest to adopt rules for electric public utilities for net metering of clean energy facilities with a generation capacity of one megawatt or less.
- (7) Develop procedures to track and account for renewable energy certificates, including ownership of renewable energy certificates that are derived from a customer owned clean energy facility as a result of any action by a customer of an electric power supplier that is independent of a program sponsored by the electric power supplier.

(j) Repealed by Session Laws 2021-23, s. 16, effective May 17, 2021.

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

(l) [Registration of Facilities. – ] The owner, including an electric power supplier, of each clean energy facility or new clean energy facility, whether or not required to obtain a certificate of public convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy certificates it earns to be eligible for use by an electric power supplier to comply with G.S. 62-133.8 shall register the facility with the Commission. Such an owner shall file a registration statement in the form prescribed by the Commission and remit to the Commission the fee required pursuant to G.S. 62-300(a)(16). (2007-397, s. 2(a); 2009-475, s. 14(a); 2011-55, ss. 1, 2, 3; 2011-291, s. 2.13; 2011-309, s. 2; 2011-394, s. 1; 2015-241, s. 14.30(u); 2017-57, s. 14.1(p); 2017-192, ss. 7, 8(b), 10(a), 5.1(a); 2021-23, s. 16; 2023-138, s. 1(a).)

#### **§ 62-133.9. Cost recovery for demand-side management and energy efficiency measures.**

(a) The definitions set out in G.S. 62-133.8 apply to this section. As used in this section, "new," used in connection with demand-side management or energy efficiency measure, means a demand-side management or energy efficiency measure that is adopted and implemented on or after January 1, 2007, including subsequent changes and modifications.

(b) Each electric power supplier shall implement demand-side management and energy efficiency measures and use supply-side resources to establish the least cost mix of demand reduction and generation measures that meet the electricity needs of its customers. An electric membership corporation or municipality that qualifies as an electric power supplier may satisfy the requirements of this section through its purchases from a wholesale supplier of electric power that uses supply-side resources and demand-side management to meet all or a portion of the supply needs of its members and their retail customers, and that, by aggregating and promoting demand-side management and energy efficiency measures for its members, meets the requirements of this section.

(c) Each electric power supplier to which G.S. 62-110.1 applies shall include an assessment of demand-side management and energy efficiency in its resource plans submitted to the Commission and shall submit cost-effective demand-side management and energy efficiency options that require incentives to the Commission for approval.

(d) The Commission shall, upon petition of an electric public utility, approve an annual rider to the electric public utility's rates to recover all reasonable and prudent costs incurred for adoption and implementation of new demand-side management and new energy efficiency measures. Recoverable costs include, but are not limited to, all capital costs, including cost of capital and depreciation expenses, administrative costs, implementation costs, incentive payments to program participants, and operating costs. In determining the amount of any rider, the Commission:

- (1) Shall allow electric public utilities to capitalize all or a portion of those costs to the extent that those costs are intended to produce future benefits.
- (2) May approve other incentives to electric public utilities for adopting and implementing new demand-side management and energy efficiency measures. Allowable incentives may include:
  - a. Appropriate rewards based on the sharing of savings achieved by the demand-side management and energy efficiency measures.
  - b. Appropriate rewards based on capitalization of a percentage of avoided costs achieved by demand-side management and energy efficiency measures.
  - c. Any other incentives that the Commission determines to be appropriate.

(e) The Commission shall determine the appropriate assignment of costs of new demand-side management and energy efficiency measures for electric public utilities and shall assign the costs of the programs only to the class or classes of customers that directly benefit from the programs.

(f) None of the costs of new demand-side management or energy efficiency measures of an electric power supplier shall be assigned to any industrial customer that notifies the industrial customer's electric power supplier that, at the industrial customer's own expense, the industrial customer has implemented at any time in the past or, in accordance with stated, quantified goals for demand-side management and energy efficiency, will implement alternative demand-side management and energy efficiency measures and that the industrial customer elects not to participate in demand-side management or energy efficiency measures under this section. The electric power supplier that provides electric service to the industrial customer, an industrial customer that receives electric service from the electric power supplier, the Public Staff, or the Commission on its own motion, may initiate a complaint proceeding before the Commission to challenge the validity of the notification of nonparticipation. The procedures set forth in G.S. 62-73, 62-74, and 62-75 shall govern any such complaint. The provisions of this subsection shall also apply to commercial customers with significant annual usage at a threshold level to be established by the Commission.

(g) An electric public utility shall not charge an industrial or commercial customer for the costs of installing demand-side management equipment on the customer's premises if the customer provides, at the customer's expense, equivalent demand-side management equipment.

(h) The Commission shall adopt rules to implement this section.

(i) The Commission shall submit to the Governor and to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, 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 summary of the proceedings conducted pursuant to this section during the preceding two fiscal

years on or before September 1 of odd-numbered years. (2007-397, s. 4(a); 2011-291, s. 2.14; 2017-57, s. 14.1(p).)

**§ 62-133.10: Repealed by Session Laws 2021-23, s. 17, effective May 17, 2021.**

**§ 62-133.11. Rate adjustment for changes in costs based on third-party rates.**

(a) The Commission shall permit a water or sewer public utility to adjust its rates approved pursuant to G.S. 62-133 to reflect changes in costs based solely upon changes in the rates imposed by third-party suppliers of purchased water or sewer service, including applicable taxes and fees.

(b) Any water or sewer public utility seeking to adjust its rates pursuant to this section shall file a verified petition in such form and detail as the Commission may require.

(c) The Commission shall issue an order approving, denying, or approving with modifications a rate adjustment requested pursuant to this section within 60 days of the date of filing of a completed petition, unless that time is for good cause extended up to a maximum of 90 days. (2013-106, s. 1.)

**§ 62-133.12. Rate adjustment mechanism based on investment in repair, improvement, and replacement of water and sewer facilities.**

(a) The Commission may approve a rate adjustment mechanism in a general rate proceeding pursuant to G.S. 62-133 to allow a water or sewer public utility to recover through a system improvement charge the incremental depreciation expense and capital costs associated with the utility's reasonable and prudently incurred investment in eligible water and sewer system improvements. The Commission shall approve a rate adjustment mechanism authorized by this section only upon a finding that the mechanism is in the public interest. The frequency and manner of rate adjustments under the mechanism shall be as prescribed by the Commission.

(b) For purposes of this section, "eligible water system improvements" or "eligible sewer system improvements" shall include only those improvements found necessary by the Commission to enable the water or sewer utility to provide safe, reliable, and efficient service in accordance with applicable water quality and effluent standards.

(c) For purposes of this section, "eligible water system improvements" means:

- (1) Distribution system mains, valves, utility service lines (including meter boxes and appurtenances), meters, hydrants, hydro tanks, and pumping equipment installed as replacements.
- (2) Main extensions installed to eliminate dead ends and to implement solutions to regional water supply in order to comply with primary and, upon specific Commission approval, secondary drinking water standards.
- (3) Equipment and infrastructure installed to comply with primary drinking water standards.
- (4) Equipment and infrastructure installed at the direction of the Commission to comply with secondary drinking water standards or other health or environmental standards established by federal, State, or local governments.
- (5) Unreimbursed costs of relocating facilities due to roadway projects.

(d) For the purposes of this section, "eligible sewer system improvements" means:

- (1) Collection main extensions installed to implement solutions to wastewater problems.
- (2) Repealed by Session Laws 2021-149, s. 2, effective September 10, 2021.

- (3) Unreimbursed costs of relocating facilities due to roadway projects.
- (4) Replacement or improvement of force mains, gravity mains, service lines, pumps, motors, blowers, and other electrical or mechanical equipment.
- (e) The Commission shall provide for audit and reconciliation procedures, including measures for refunds of any over-collections under the system improvement charge with interest pursuant to G.S. 62-130(e).
- (f) The Commission may eliminate or modify any rate adjustment mechanism authorized pursuant to this section upon a finding that it is not in the public interest.
- (g) Cumulative system improvement charges for a water or sewer utility pursuant to a rate adjustment mechanism approved by the Commission under this section may not exceed seven and one-half percent (7.5%) of the total annual service revenues approved by the Commission in the water or sewer utility's last general rate case. Unreimbursed costs incurred for projects that are eligible under subdivisions (c)(5) and (d)(3) of this section shall be exempt from the percentage limitation imposed by this subsection on cumulative system improvement charges based upon annual service revenues. Accumulated depreciation for eligible water or sewer system improvements shall be updated in each filing submitted by a utility within the same docket. " (2013-106, s. 2; 2021-149, s. 2.)

**§ 62-133.12A. Customer usage tracking rate adjustment mechanisms for water and wastewater rates.**

In setting rates for a water and wastewater utility in a general rate proceeding under G.S. 62-133, the Commission may adopt, implement, modify, or eliminate a rate adjustment mechanism for one or more of the company's rate schedules to track and true-up variations in average per customer usage from levels approved in the general rate case proceeding. The Commission may adopt a rate adjustment mechanism only upon a finding by the Commission that the mechanism is appropriate to track and true-up variations in average per customer usage by rate schedule from levels adopted in the general rate case proceeding and the mechanism is in the public interest. (2019-88, s. 1.)

**§ 62-133.12B. Computation of income tax expense for ratemaking purposes; taxable contributions.**

A water or wastewater public utility is solely responsible for funding the income taxes on taxable contributions in aid of construction and customer advances for construction and shall record the income taxes the water or wastewater utility pays in accumulated deferred income taxes for accounting and ratemaking purposes. (2021-23, s. 25; 2021-76, s. 4.)

**§ 62-133.13. Recovery of costs related to unlawful discharges from coal combustion residuals surface impoundments to the surface waters of the State.**

The Commission shall not allow an electric public utility to recover from the retail electric customers of the State costs resulting from an unlawful discharge to the surface waters of the State from a coal combustion residuals surface impoundment, unless the Commission determines the discharge was due to an event of force majeure. For the purposes of this section, "coal combustion residuals surface impoundments" has the same meaning as in G.S. 130A-309.201. For the purposes of this section, "unlawful discharge" means a discharge that results in a violation of State or federal surface water quality standards. (2014-122, s. 1(a).)



**§ 62-133.14. Cost recovery for acquisition of joint municipal power agency ownership interest in generating facilities.**

(a) The Commission shall, upon the petition of an electric public utility and after hearing, approve an annual rider to the electric public utility's rates to recover the North Carolina retail portion of all reasonable and prudent costs incurred to acquire, operate, and maintain the proportional interest in electric generating facilities purchased from a joint agency established under Chapter 159B of the General Statutes. For the purposes of this section, "acquisition costs" means the amount paid by an electric public utility on or before December 31, 2016, to acquire the generating facilities, including the amount paid above the net book value of the generating facilities. The Commission shall adopt rules to implement the provisions of this section.

(b) In determining the amount of the rider, the Commission shall:

- (1) Allow an electric public utility to recover acquisition costs, as reasonable and prudent costs. For the benefit of the consumer, the acquisition costs shall be levelized over the useful life of the assets at the time of acquisition.
- (2) Include financing costs equal to the weighted average cost of capital as authorized by the Commission in the electric public utility's most recent general rate case.
- (3) Include an estimate of operating costs based on prior year's experience and the costs projected for the next 12-month period for any proportional capital investments in the acquired electric generating facilities.
- (4) Include adjustments to reflect the North Carolina retail portion of financing and operating costs related to the electric public utility's other used and useful generating facilities owned at the time of the acquisition to properly account for updated jurisdictional allocation factors.
- (5) Utilize the customer allocation methodology approved by the Commission in the electric public utility's most recent general rate case.

(c) The Commission shall require that an electric public utility file the following proposed annual adjustments to the rider:

- (1) Any under-recovery or over-recovery resulting from the operation of the rider.
- (2) Any changes necessary to recover costs as forecast for the next 12-month period.
- (3) Any changes to cost of capital determined in any general rate proceeding occurring after the initial establishment of the rider, where the cost of capital applies to both the remaining acquisition costs and additional capital investment in the electric generating facilities.
- (4) Any changes to the customer allocation methodology determined in any general rate proceeding occurring after the initial establishment of the rider.

(d) Any rider established under this section will expire after the end of the useful life of the acquired electric generating facilities at the time of acquisition, with any remaining unrecovered costs deferred until the electric public utility's next general rate proceeding under G.S. 62-133. (2015-3, s. 1.)

**§ 62-133.15. (Expires July 1, 2026 – see note) Cost recovery for natural gas economic development infrastructure.**

(a) Purpose. – The purpose of this section is to prescribe a methodology for cost recovery by a natural gas local distribution company that constructs natural gas economic development

infrastructure to serve a project the Department of Commerce determines is an eligible project under G.S. 143B-437.021. The Commission shall adopt rules to implement this section.

(b) Eligibility. – Cost recovery under this section is limited to natural gas economic development infrastructure the Commission determines satisfies all of the following conditions:

- (1) The project will be located in an area where adequate natural gas infrastructure for the eligible project is not economically feasible.
- (2) Either the developer, prospective customer, or the occupant of the eligible project provides, prior to initiation of construction of the natural gas economic development infrastructure, a binding commitment in the form of a commercial contract or other form acceptable to the Commission to the natural gas local distribution company regarding service needed for a period of at least 10 years from the date the gas is made available.
- (3) The projected margin revenues not recoverable under G.S. 62-133.4 from the eligible project will not be sufficient to cover the cost of the natural gas infrastructure associated with the project.

(c) Economic Feasibility. – The Commission shall permit a natural gas local distribution company to recover reasonable and prudent natural gas economic development infrastructure costs only to the extent necessary to make the construction of the infrastructure economically feasible, as determined by the Commission. In determining economic feasibility, the Commission shall employ the net present value method of analysis. Only natural gas economic development infrastructure with a negative net present value shall be determined to be economically infeasible.

(d) Costs Recoverable. – Eligible economic development infrastructure development costs are the reasonable and prudent costs determined by the Commission to be both directly related to the construction of natural gas infrastructure for an eligible project and economically infeasible. The costs may include any of the following:

- (1) Planning costs.
- (2) Development costs.
- (3) Construction costs and an allowance for funds used during construction and a return on investment once the project is completed, calculated using the pretax overall rate of return approved by the Commission in the company's most recent general rate case.
- (4) A revenue retention factor.
- (5) Depreciation.
- (6) Property taxes.

(e) Rate Adjustment Surcharge Mechanism. – The Commission shall permit recovery of eligible economic development infrastructure costs in a rate adjustment surcharge mechanism. The mechanism shall allow for recovery on an annual or semiannual basis, as determined by the Commission, subject to audit and reconciliation procedures. Any rate adjustment surcharge mechanism adopted under this section shall terminate upon the earlier of the full recovery of the costs allowed under subsection (d) of this section or the natural gas local distribution company's next general rate case in which the eligible infrastructure development costs shall be included in the natural gas distribution company's rate base. Nothing in this section precludes the natural gas local distribution company from recovering eligible economic development infrastructure costs in a general rate case.

(f) Limitations. – A natural gas local distribution company shall not invest more than twenty-five million dollars (\$25,000,000) of eligible infrastructure development costs in any year.

The aggregate amount of eligible infrastructure development costs recovered under rate adjustment surcharge mechanisms for all natural gas local distribution companies in the State cannot exceed seventy-five million dollars (\$75,000,000). Cumulative rate adjustments allowed under a rate adjustment surcharge mechanism approved by the Commission under this section shall not exceed five percent (5%) of the total annual service margin revenues not recoverable under G.S. 62-133.4 approved by the Commission in the natural gas local distribution company's last general rate case. (2016-118, s. 1; 2020-58, s. 7.3.)

**§ 62-133.16. Performance-based regulation authorized.**

- (a) Definitions. – For purposes of this section, the following definitions apply:
- (1) "Cost causation principle" means establishment of a causal link between a specific customer class, how that class uses the electric system, and costs incurred by the electric public utility for the provision of electric service.
  - (2) "Decoupling rate-making mechanism" means a rate-making mechanism intended to break the link between an electric public utility's revenue and the level of consumption of electricity on a per customer basis by its residential customers.
  - (3) "Distributed energy resource" or "DER" means a device or measure that produces electricity or reduces electricity consumption and is connected to the electric distribution system, either on the customer's premises or on the electric public utility's primary distribution system. A DER may include any of the following: energy efficiency, distributed generation, demand response, microgrids, energy storage, energy management systems, and electric vehicles.
  - (4) "Earnings sharing mechanism" means an annual rate-making mechanism that shares surplus earnings between the electric public utility and customers over the period of time covered by a MYRP.
  - (5) "Multiyear rate plan" or "MYRP" means a rate-making mechanism under which the Commission sets base rates for a multiyear period that includes authorized periodic changes in base rates without the need for the electric public utility to file a subsequent general rate application pursuant to G.S. 62-133, along with an earnings sharing mechanism.
  - (6) "Performance incentive mechanism" or "PIM" means a rate-making mechanism that links electric public utility revenue or earnings to electric public utility performance in targeted areas consistent with policy goals, as that term is defined by this section, approved by the Commission, and includes specific performance metrics and targets against which electric public utility performance is measured.
  - (7) "Performance-based regulation" or "PBR" means an alternative rate-making approach that includes decoupling, one or more performance incentive mechanisms, and a multiyear rate plan, including an earnings sharing mechanism, or such other alternative regulatory mechanisms as may be proposed by an electric public utility.
  - (8) "Policy goal" means the expected or anticipated achievement of operational efficiency, cost-savings, or reliability of electric service that is greater than that which already is required by State or federal law or regulation, including standards the Commission has established by order prior to and independent of

a PBR application, provided that, with respect to environmental standards, the Commission may not approve a policy goal that is more stringent than is established by (i) State law, (ii) federal law, (iii) the Environmental Management Commission pursuant to G.S. 143B-282, or (iv) the United States Environmental Protection Agency.

- (9) "Rate year" means the year of the MYRP for which base rates are effective.
- (10) "Tracking metric" means a methodology for tracking and quantitatively measuring and monitoring outcomes or electric public utility performance.

(b) Performance-Based Regulation Authorized. – In addition to the method for fixing base rates established under G.S. 62-133, the Commission is authorized to approve performance-based regulation upon application of an electric public utility pursuant to the process and requirements of this section, so long as the Commission allocates the electric public utility's total revenue requirement among customer classes based upon the cost causation principle, including the use of minimum system methodology by an electric public utility for the purpose of allocating distribution costs between customer classes, and interclass subsidization of ratepayers is minimized to the greatest extent practicable by the conclusion of the MYRP period. This section shall not be construed to require the Commission to use the minimum system methodology for the purpose of classifying costs within a customer class when setting a basic facilities charge.

(c) Application. – An electric public utility shall be permitted to submit a PBR application in a general rate case proceeding initiated pursuant to G.S. 62-133. A PBR application shall include a decoupling rate-making mechanism, one or more PIMs, and a MYRP, including both an earnings sharing mechanism and proposed revenue requirements and base rates for each of the years that a MYRP is in effect or a method for calculating the same. The PBR application may also include proposed tracking metrics with or without targets or benchmarks to measure electric public utility achievement. The following additional requirements apply to a PBR application:

- (1) The following shall apply to a MYRP:
  - a. The base rates for the first rate year of a MYRP shall be fixed in the manner prescribed under G.S. 62-133, including actual changes in costs, revenues, or the cost of the electric public utility's property used and useful, or to be used and useful within a reasonable time after the test period, plus costs associated with a known and measurable set of capital investments, net of operating benefits, associated with a set of discrete and identifiable capital spending projects to be placed in service during the first rate year. Subsequent changes in base rates in the second and third rate years of the MYRP shall be based on projected incremental Commission-authorized capital investments that will be used and useful during the rate year and associated expenses, net of operating benefits, including operation and maintenance savings, and depreciation of rate base associated with the capital investments, that are incurred or realized during each rate year of the MYRP period; provided that the amount of increase in the second rate year under the MYRP shall not exceed four percent (4%) of the electric public utility's North Carolina retail jurisdictional revenue requirement that is used to fix rates during the first year of the MYRP pursuant to G.S. 62-133 excluding any revenue requirement for the capital spending projects to be placed in service during the first rate year. The amount of increase for the third

rate year under the MYRP shall not exceed four percent (4%) of the electric public utility's North Carolina retail jurisdictional revenue requirement that is used to fix rates during the first year of the MYRP pursuant to G.S. 62-133, excluding any revenue requirement for the capital spending projects placed in service during the first rate year. The revenue requirements associated with any single new generation plant placed in service during the MYRP for which the total plant in service balance exceeds five hundred million dollars (\$500,000,000) shall not be included in a MYRP. Instead, the utility may request and the Commission may grant, if it deems appropriate, permission to establish a regulatory asset and defer to such regulatory asset incremental costs related to such electric generation investments to be considered for recovery in a future rate proceeding. In setting the electric public utility's authorized rate of return on equity for an MYRP period, the Commission shall consider any increased or decreased risk to either the electric public utility or its ratepayers that may result from having an approved MYRP.

- b. In a proceeding authorizing a MYRP, the Commission shall establish a rider to refund amounts related to the earnings sharing mechanism, and to refund or collect amounts related to PIM rewards or penalties, and decoupling adjustments.
- c. Within 60 days of the conclusion of each rate year, the Commission shall establish a proceeding to:
  1. Examine the earnings of the electric public utility during the rate year to determine if the earnings exceeded the authorized rate of return on equity determined by the Commission in the proceeding establishing the PBR. If the weather-normalized earnings exceed the authorized rate of return on equity plus 50 basis points, the excess earnings above the authorized rate of return on equity plus 50 basis points shall be refunded to customers in the rider established by the Commission. If the weather-normalized earnings fall below the authorized rate of return on equity, the electric public utility may file a rate case pursuant to G.S. 62-133. Any penalties or rewards from PIM incentives and any incentives related to demand-side management and energy efficiency measures pursuant to G.S. 62-133.9(f) will be excluded from the determination of any refund pursuant to earnings sharing mechanism.
  2. Evaluate the performance of the electric public utility with respect to Commission approved PIMs applicable in the rate year. Any financial rewards shall be collected from customers and any penalties refunded to customers, in each case, through the rider established by the Commission.
  3. Evaluate the decoupling rate-making mechanism, and refund or collect, as applicable, a corresponding amount from residential customers through the rider established by the Commission.

- (2) The proposed decoupling mechanism shall only be applied to residential customer classes. The Commission shall establish an annual revenue requirement per residential customer and an appropriate distribution of said revenue requirement per customer in each month of the year. The established monthly revenue requirements times the actual number of residential customers each month shall become the target revenue for the residential class. Each month, the electric public utility shall defer to a regulatory asset or liability account the difference between the actual revenue and the target revenue for the residential class. The changes in revenue requirements for the second and third rate years shall be allocated to the residential customer class and divided by the number of residential customers to determine the appropriate adjustment to the annual revenue requirement per residential customer that is used to establish the target revenues for the residential class in the second and third rate years of a MYRP. The electric public utility may exclude rate schedules or riders for electric vehicle charging, including EV charging during off-peak periods on time-of-use rates, from the decoupling mechanism to preserve the electric public utility's incentive to encourage electric vehicle adoption.
  - (3) The policy goal targeted by a PIM shall be clearly defined, measurable with a defined performance metric, and solely or primarily within the electric public utility's control.
  - (4) Any PIM shall be structured to ensure that, pursuant to subdivisions (1) and (2) of this subsection, any penalty shall be refunded to customers and any reward shall be collected from customers and shall be limited such that the total of all potential and actual PIM incentives or penalties does not exceed one percent (1%) of the electric public utility's total annual revenue requirement that is used to fix rates during the first year of the MYRP pursuant to G.S. 62-133, excluding any revenue requirement for the capital spending projects to be placed in service during the first rate year, where the PIM is approved. Any incentives related to demand-side management and energy efficiency measures pursuant to G.S. 62-133.9(f) shall be excluded from the limits established in this section and shall continue to be recovered through the demand-side management and energy efficiency (DSM/EE) rider.
  - (5) Subject to the limitations set out in subdivision (4) of this subsection, any PIMs proposed by an electric public utility shall include one or more of the following:
    - a. Rewards based on the sharing of savings achieved by meeting or exceeding a specific policy goal.
    - b. Rewards or penalties based on differentiated authorized rates of return on common equity to encourage utility investments or operational changes to meet a specific policy goal, which shall not be greater than 25 basis points.
    - c. Fixed financial rewards to encourage achievement of specific policy goals, or fixed financial penalties for failure to achieve policy goals.
- (d) Commission Action on Application. –
- (1) The Commission shall approve a PBR application by an electric public utility only upon a finding that a proposed PBR would result in just and reasonable rates, is in the public interest, and is consistent with the criteria established in

this section and rules adopted thereunder. In reviewing any such PBR application under this section, the Commission shall consider whether the PBR application:

- a. Assures that no customer or class of customers is unreasonably harmed and that the rates are fair both to the electric public utility and to the customer.
  - b. Reasonably assures the continuation of safe and reliable electric service.
  - c. Will not unreasonably prejudice any class of electric customers and result in sudden substantial rate increases or "rate shock" to customers.
- (2) In reviewing any such PBR application under this section, the Commission may consider whether the PBR application:
- a. Encourages peak load reduction or efficient use of the system.
  - b. Encourages utility-scale clean energy and storage.
  - c. Encourages DERs.
  - d. Reduces low-income energy burdens.
  - e. Encourages energy efficiency.
  - f. Encourages carbon reductions.
  - g. Encourages beneficial electrification, including electric vehicles.
  - h. Supports equity in contracting.
  - i. Promotes resilience and security of the electric grid.
  - j. Maintains adequate levels of reliability and customer service.
  - k. Promotes rate designs that yield peak load reduction or beneficial load-shaping.
- (3) When an electric public utility files with the Commission an application for a general rate case pursuant to G.S. 62-133 and that application includes a PBR application, the Commission shall institute proceedings on the application as provided in this subdivision. The electric public utility shall not make any changes in any rate or implement a PBR except upon 30 days' notice to the Commission, and the Commission may require the electric public utility to provide notice of the pending PBR application to the same extent as provided in G.S. 62-134(a) and may suspend the effect of the proposed base rates and PBR implementation pending investigation in the same manner as provided in G.S. 62-134(b), provided that, the Commission may suspend the implementation of the proposed base rates for no longer than 300 days. The electric public utility's application shall plainly state the changes in base rates and the time when the change in rates will go into effect and shall include schedules in the same manner required pursuant to G.S. 62-134(a). The Commission shall, upon reasonable notice, conduct a hearing concerning the lawfulness of the proposed base rates and the PBR application. After hearing, the Commission shall issue an order approving, modifying, or rejecting the electric public utility's PBR application. In the event that the Commission rejects a PBR application, the Commission shall nevertheless establish the electric public utility's base rates in accordance with G.S. 62-133 based on the PBR application. If the Commission rejects the PBR application, it shall provide an explanation of the deficiency and an opportunity for the electric

public utility to refile, or for the electric public utility and the stakeholders to collaborate to cure the identified deficiency and refile.

(e) Commission Review. – At any time prior to expiration of a PBR plan period, the Commission, with good cause and upon its own motion or petition by the Public Staff, may examine the reasonableness of an electric public utility's rates under a plan, conduct periodic reviews with opportunities for public hearings and comments from interested parties, and initiate a proceeding to adjust base rates or PIMs as necessary. In addition, the approval of a PBR shall not be construed to limit the Commission's authority to grant additional deferrals between rate cases for extraordinary costs not otherwise recognized in rates.

(f) Plan Period. – Any PBR application approved pursuant to this section shall remain in effect for a plan period of not more than 36 months.

(g) Commission Authority Preserved. – Nothing in this section shall be construed to (i) limit or abrogate the existing rate-making authority of the Commission or (ii) invalidate or void any rates approved by the Commission prior to the effective date of this section. In all respects, the alternative rate-making mechanisms, designs, plans, or settlements shall operate independently, and be considered separately, from riders or other cost recovery mechanisms otherwise allowed by law, unless otherwise incorporated into such plan.

(h) Utility Reporting. – For purposes of measuring an electric public utility's earnings under a PBR application approved under this section, an electric public utility shall make an annual filing that sets forth the electric public utility's earned return on equity, the electric public utility's revenue requirement trued-up with the actual electric public utility revenue, the amount of revenue adjustment in terms of customer refund or surcharge, if applicable, and the adjustments reflecting rewards or penalties provided for in PIMs approved by the Commission.

(i) Commission Report. – No later than April 1 of each year, the Commission shall submit a report on the activities taken by the Commission to implement, and by electric public utilities to comply with, the requirements of this section to the Governor, the Environmental Review Commission, the Joint Legislative Commission on Energy Policy, 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, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the chairs of the House Committee on Energy and Public Utilities. The report shall include a summary of public comments received by the Commission. In developing the report, the Commission shall consult with the Department of Environmental Quality.

(j) Rulemaking. – The Commission shall adopt rules to implement the requirements of this section. Rules adopted shall include all of the following matters:

- (1) The specific procedures and requirements that an electric public utility shall meet when requesting approval of a PBR application.
- (2) The criteria for evaluating a PBR application.
- (3) The parameters for a technical conference process to be conducted by the Commission prior to submission of any PBR application consisting of one or more public meetings at which the electric public utility presents information regarding projected transmission and distribution expenditures and interested parties are permitted to provide comment and feedback; provided, however, no cross-examination of parties shall be permitted. The technical conference process to be established shall not exceed a duration of 60 days from the date on which the electric public utility requests initiation of such process.



- (4) In the event the Commission rejects a PBR application, the process by which an electric public utility may address the Commission's reasons for rejection of a PBR application, which process may include collaboration between stakeholders and the electric public utility to cure any identified deficiency in an electric public utility's PBR application. (2021-165, s. 4(a); 2023-138, s. 1(c).)

**§ 62-133.20. Cleanfields renewable energy demonstration parks.**

(a) Criteria for Designation. – A parcel or tract of land, or any combination of contiguous parcels or tracts of land, that meet all of the following criteria may be designated as a cleanfields renewable energy demonstration park:

- (1) The park consists of at least 250 acres of contiguous property.
- (2) All of the real property comprising the park is contiguous to a body of water.
- (3) The property within the park is or may be subject to remediation under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.), except for a site listed on the National Priorities List pursuant to 42 U.S.C. § 9605.
- (4) The park contains a manufacturing facility that is idle, underutilized, or curtailed and that at one time employed at least 250 people.
- (5) The owners of the park plan to attract at least 250 new jobs to the site.
- (6) The owners of the park have entered into a brownfields agreement with the Department of Environment and Natural Resources pursuant to G.S. 130A-310.32 and have provided satisfactory financial assurance for the brownfields agreement.
- (7) The creation of the park is for the purpose of featuring clean-energy facilities, laboratories, and companies, thereby spurring economic growth by attracting renewable energy and alternative fuel industries.
- (8) The development plan for the park must include at least three renewable energy or alternative fuel facilities.
- (9) The development plan for the park must include a biomass renewable energy facility that utilizes refuse derived fuel, including yard waste, wood waste, and waste generated from construction and demolition, but not including wood directly derived from whole trees, as the primary source for generating energy. The refuse derived fuel shall undergo an enhanced recycling process before being utilized by the biomass renewable energy facility.
- (10) The initial biomass renewable energy facility will not be a major source, as that term is defined in 40 C.F.R. § 70.2 (July 1, 2009 edition), for air quality purposes. The biomass renewable energy facility will remain in compliance with all applicable State and federal emissions requirements throughout its operating life.

(b) Certification. – The owner of a parcel or tract of land that seeks to establish a cleanfields renewable energy demonstration park shall submit to the Secretary of State an application for designation. The Secretary shall examine the application and may request any additional information from the owner of the parcel or tract of land or the Department of Environment and Natural Resources needed to verify that the project meets all of the criteria for designation. The Secretary may rely on certifications provided by the owner or the Department of Environment and Natural Resources that the criteria are met. If the Secretary determines that the

project meets all of the criteria, the Secretary shall make and issue a certificate designating the parcel or tract of land as a cleanfields renewable energy demonstration park to the owner and shall file and record the application and certificate in an appropriate book of record. The parcel or tract of land shall be designated as a cleanfields renewable energy demonstration park on the date the certificate is filed and recorded.

(c) Renewable Energy Generation. – The definitions in G.S. 62-133.8 apply to this section. If the Utilities Commission determines that a biomass renewable energy facility located in the cleanfields renewable energy demonstration park is a new renewable energy facility, the Commission shall assign triple credit to any electric power or renewable energy certificates generated from renewable energy resources at the biomass renewable energy facility that are purchased by an electric power supplier for the purposes of compliance with G.S. 62-133.8. The additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity shall be eligible for use to meet the requirements of G.S. 62-133.8(f). The additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity shall first be used to satisfy the requirements of G.S. 62-133.8(f). Only when the requirements of G.S. 62-133.8(f) are met, shall the additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity be utilized to comply with G.S. 62-133.8(b) and (c). The triple credit shall apply only to the first 20 megawatts of biomass renewable energy facility generation capacity located in all cleanfields renewable energy demonstration parks in the State. (2010-195, ss. 2-4; 2011-279, s. 1.)

#### **§ 62-134. Change of rates; notice; suspension and investigation.**

(a) Unless the Commission otherwise orders, no public utility shall make any changes in any rate which has been duly established under this Chapter, except after 30 days' notice to the Commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The public utility shall also give such notice, which may include notice by publication, of the proposed changes to other interested persons as the Commission in its discretion may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed and in force at the time and kept open to public inspection. The Commission, for good cause shown in writing, may allow changes in rates without requiring the 30 days' notice, under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such public utility.

(b) Whenever there is filed with the Commission by any public utility any schedule stating a new or revised rate or rates, the Commission may, either upon complaint or upon its own initiative, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate or rates. Pending such hearing and the decision thereon, the Commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before they become effective, suspend the operation of such rate or rates, but not for a longer period than 270 days beyond the time when such rate or rates would otherwise go into effect. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate shall go into effect at the end of such period. After hearing, whether completed before or after the rate goes into effect, the Commission may make such order with respect thereto as would be proper in a proceeding instituted after it had become effective.

(c) At any hearing involving a rate changed or sought to be changed by the public utility, the burden of proof shall be upon the public utility to show that the changed rate is just and reasonable.

(d) Notwithstanding the provisions of this Article, any public utility engaged solely in distributing electricity to retail customers, which electricity has been purchased at wholesale rates from another public utility, an electric membership corporation or a municipality, may in its discretion, and without the necessity of public hearings as in this section is otherwise provided, elect to adopt the same retail rates to customers charged by the public utility, electric membership corporation or municipality from whom the wholesale power is purchased for the same service, unless the North Carolina Utility Commission finds upon a hearing, either on its own initiative or upon complaint, that the rate of return earned by such utility upon the basis of such rates is unjust and unreasonable. In such a proceeding the burden of proof shall be upon the electrical distribution company.

(e) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1197, s. 2.

(f) The Commission may adopt rules prescribing the information and exhibits required to be filed with any applications, or tariff for an increase in utility rates, including but not limited to all of the evidence or proof through the end of the test period which the utility will rely on at any hearing on such increase, and the Commission may suspend such increase until such data, information or exhibits are filed, in addition to the time provided for suspension of such increase in other provisions of this Chapter.

(g) The provisions of this section shall not be applicable to bus companies or to their rates, fares or tariffs.

(h) Notwithstanding the requirements of subsections (a) and (b) of this section, the Commission may, in lieu of fixing specific rates or tariffs for competitive services offered by a public utility defined in G.S. 62-3(23)a.6., adopt practices and procedures to permit pricing flexibility, detariffing services, or both. In exercising its authority to permit pricing flexibility, detariffing of services, or both, the Commission shall first determine that the service is competitive. After a determination that the service is competitive, the Commission shall consider the following in deciding whether to permit pricing flexibility, detariffing of services, or both:

- (1) The extent to which competing telecommunications services are available from alternative providers in the relevant geographic or service market;
- (2) The market share, growth in market share, ease of entry, and affiliations of alternative providers;
- (3) The size and number of alternative providers and the ability of such alternative providers to make functionally equivalent or substitute services readily available at competitive rates and on competitive terms and conditions;
- (4) Whether the exercise of Commission authority produces tangible benefits to consumers that exceed those available by reliance on market forces;
- (5) Whether the exercise of Commission authority inhibits the public utility from competing with unregulated providers of functionally equivalent telecommunications services;
- (6) Whether the existence of competition tends to prevent abuses, unjust discrimination or excessive charges for the service or facility offered;
- (7) Whether the public utility would gain an unfair advantage in its competitive activities; and
- (8) Any other relevant factors protecting the public interest.

(i) On motion of any interested party and for good cause shown, the Commission shall hold hearings prior to adopting any pricing flexibility or detariffing of services permitted under this section. The Commission may also revoke a determination made under this section when the

Commission determines, after notice and opportunity to be heard, that the public interest requires that the rates and charges for the service be more fully regulated.

(j) Notwithstanding the provisions of G.S. 62-140, the Commission may permit public utilities subject to subsection (h) of this section to offer competitive services to business customers upon agreement between the public utility and the customer provided the services are compensatory and cover the costs of providing the service. (1933, c. 307, s. 7; 1939, c. 365, s. 3; 1941, c. 97; 1945, c. 725; 1947, c. 1008, s. 24; 1949, c. 1132, s. 22; 1959, c. 422; 1963, c. 1165, s. 1; 1971, c. 551; 1973, c. 1444; 1975, c. 243, s. 8; c. 510, c. 867, s. 7; 1981 (Reg. Sess., 1982), c. 1197, s. 2; 1985, c. 676, s. 15(3); 1989, c. 112, s. 3.)

#### **§ 62-135. Temporary rates under bond.**

(a) Notwithstanding an order of suspension of an increase in rates, any public utility except a common carrier may, subject to the provisions of subsections (b), (c) and (d) hereof, put such suspended rate or rates into effect upon the expiration of six months after the date when such rate or rates would have become effective, if not so suspended, by notifying the Commission and its consumers of its action in making such increase not less than 10 days prior to the day when it shall be placed in effect; provided, however, that utilities engaged in the distribution of utility commodities bought at wholesale by the utility for distribution to consumers may put such suspended rate or rates, to the extent occasioned by changes in the wholesale rate of such utility commodity, into effect at the expiration of 30 days after the date when such rate or rates would become effective if not so suspended; provided that no rate or rates shall be left in effect longer than one year unless the Commission shall have rendered its decision upon the reasonableness thereof within such period. This section to become effective July 1, 1963.

(b) No rate or rates placed in effect pursuant to this section shall result in an increase of more than twenty percent (20%) on any single rate classification of the public utility.

(c) No rate or rates shall be placed in effect pursuant to this section until the public utility has filed with the Commission a bond in a reasonable amount approved by the Commission, with sureties approved by the Commission, or an undertaking approved by the Commission, conditioned upon the refund in a manner to be prescribed by order of the Commission, to the persons entitled thereto of the amount of the excess plus interest from the date that such rates were put into effect, if the rate or rates so put into effect are finally determined to be excessive. The amount of said interest shall be determined pursuant to G.S. 62-130(e).

(d) If the rate or rates so put into effect are finally determined to be excessive, the public utility shall make refund of the excess plus interest to its customers within 30 days after such final determination, and the Commission shall set forth in its final order the terms and conditions for such refund. If such refund is not paid in accordance with such order, any persons entitled to such refund may sue therefor, either jointly or severally, and be entitled to recover, in addition to the amount of the refund, all court costs and reasonable attorney fees for the plaintiff, to be fixed by the court. (1933, c. 307, s. 7; 1959, c. 422; 1963, c. 1165, s. 1; 1981, c. 461, s. 2.)

#### **§ 62-136. Investigation of existing rates; changing unreasonable rates; certain refunds to be distributed to customers.**

(a) Whenever the Commission, after a hearing had after reasonable notice upon its own motion or upon complaint of anyone directly interested, finds that the existing rates in effect and collected by any public utility are unjust, unreasonable, insufficient or discriminatory, or in violation of any provision of law, the Commission shall determine the just, reasonable, and

sufficient and nondiscriminatory rates to be thereafter observed and in force, and shall fix the same by order.

(b) All municipalities in the State are deemed to be directly interested in the rates and service of public utilities operating in such municipalities, and may institute or participate in proceedings before the Commission involving such rates or service. Any municipality may institute proceedings before the Commission to eliminate unfair and unreasonable discrimination in rates or service by any public utility between such complainant or its inhabitants and any other municipality or its inhabitants, and the Commission shall, upon complaint, after hearing afforded to the public utility affected and to all municipalities affected, have authority to remove such discrimination.

(c) If any refund is made to a distributing company operating as a public utility in North Carolina of charges paid to the company from which the distributing company obtains the energy, service or commodity distributed, the Commission may, in cases where the charges have been included in rates paid by the customers of the distributing company, require said distributing company to distribute said refund plus interest among the distributing company's customers in a manner prescribed by the Commission. The amount of said interest shall be determined pursuant to G.S. 62-130(e). (Ex. Sess. 1913, c. 20, s. 7; C.S., s. 1083; 1933, c. 134, s. 8; c. 307, s. 8; 1937, c. 401; 1941, c. 97; 1963, c. 1165, s. 1; 1981, c. 460, s. 1.)

#### **§ 62-137. Scope of rate case.**

In setting a hearing on rates upon its own motion, upon complaint, or upon application of a public utility, the Commission shall declare the scope of the hearing by determining whether it is to be a general rate case, under G.S. 62-133, or whether it is to be a case confined to the reasonableness of a specific single rate, a small part of the rate structure, or some classification of users involving questions which do not require a determination of the entire rate structure and overall rate of return. The procedures established in this section shall not be required when pricing alternatives permitted under G.S. 62-134(h) and (j) are adopted. (1963, c. 1165, s. 1; 1989, c. 112, s. 4.)

#### **§ 62-138. Utilities to file rates, service regulations and service contracts with Commission; publication; certain telephone service prohibited.**

(a) Under such rules as the Commission may prescribe, every public utility, except as permitted under G.S. 62-134(h) and (j):

- (1) Shall file with the Commission all schedules of rates, service regulations and forms of service contracts, used or to be used within the jurisdiction of the Commission; and
- (2) Shall keep copies of such schedules, service regulations and contracts open to public inspection. Except, if there is a sufficient likelihood that a public utility defined in G.S. 62-3(23)a.6. may suffer a competitive disadvantage if the rates for a specific competitive service are disclosed, the Commission may waive the public disclosure of the rates. The Commission may revoke the disclosure waiver upon a showing that the competitive disadvantage no longer exists.

(b) Every common carrier of passengers shall file with the Commission, print, and keep open for public inspection schedules showing all rates for the transportation of passengers in intrastate commerce and all services in connection therewith between points on its own routes and between points on its own routes and points on the routes of other such common carriers, and if it

establishes joint rates with other common carriers, it shall include in its schedules so filed such joint rates.

(c) Every irregular route common carrier of household goods shall file with the Commission, print, and keep open for public inspection schedules showing all rates for the transportation of household goods in intrastate commerce between points within the area of its authorized operation, and if it establishes joint rates with other common carriers, it shall include in its schedules so filed such joint rates between points within the area of its own authorized operation and points on the line or route of such other common carriers.

(c1) Any person who, though exempt from Commission regulation under Public Law 103-305, agrees to joint line rates or routes as authorized by Public Law 103-305 may file with the Commission, print, and keep open for public inspection schedules showing all such joint rates for the transportation of property in intrastate commerce, and all connected services, between all points the person serves.

(d) The schedules required by this section shall be published, filed, and posted in such form and manner and shall contain such information as the Commission may prescribe; and the Commission is authorized to reject any schedule filed with it which is not in compliance with this section. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) No public utility, unless otherwise provided by this Chapter, shall engage in service to the public unless its rates for such service have been filed and published in accordance with the provisions of this section.

(f) Under such rules as the Commission may prescribe, every electric membership corporation operating within this State shall file with the Commission, for information purposes, all rates, schedules of rates, charges, service regulations, and forms of service contracts, used or to be used within the State, and shall keep copies of such schedules, rates, charges, service regulations, and contracts open to public inspection.

(g) No public utility may offer or maintain telephone service to any subscriber to such service who has in use or proposes to place in use equipment which will enable said subscriber to observe or monitor telephone calls directed to or placed by said subscriber unless said subscriber shall agree that such equipment shall be used in conformity with the standards for the use of such equipment adopted by the Commission. (1899, c. 164, s. 7; Rev., s. 1109; 1907, c. 217, s. 5; C.S., s. 1074; 1933, c. 134, s. 8; c. 307, s. 4; 1941, c. 97; 1947, c. 1008, s. 25; 1949, c. 1132, s. 23; 1959, c. 209; 1963, c. 1165, s. 1; 1965, c. 287, s. 7; 1977, c. 799; 1989, c. 112, s. 5; 1995, c. 523, s. 6.)

#### **§ 62-139. Rates varying from schedule prohibited; refunding overcharge; penalty.**

(a) No public utility shall directly or indirectly, by any device whatsoever, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed by the Commission, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed by the Commission.

(b) Any public utility in the State which shall willfully charge a rate for any public utility service in excess of that prescribed by the Commission, and which shall omit to refund the same within 30 days after written notice and demand of the person overcharged, unless relieved by the Commission for good cause shown, shall be liable to him for double the amount of such overcharge, plus a penalty of ten dollars (\$10.00) per day for each day's delay after 30 days from such notice or date of denial or relief by the Commission, whichever is later. Such overcharge and penalty shall be recoverable in any court of competent jurisdiction. (1903, c. 590, ss. 1, 2; Rev., ss.

2642, 2643, 2644; Ex. Sess. 1913, c. 20, ss. 5, 12; C.S., ss. 1082, 1086, 3514; 1933, c. 134, s. 8; c. 307, s. 5; 1941, c. 97; 1963, c. 1165, s. 1; 1989, c. 112, s. 6.)

**§ 62-140. Discrimination prohibited.**

(a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section; provided that it shall not be an unreasonable preference or advantage or constitute discrimination against any person, firm or corporation or general rate payer for telephone utilities to contract with motels, hotels and hospitals to pay reasonable commissions in connection with the handling of intrastate toll calls charged to a guest or patient and collected by the motel, hotel or hospital; provided further, that payment of such commissions shall be in accordance with uniform tariffs which shall be subject to the approval of the Commission. Provided further, that it shall not be considered an unreasonable preference or advantage for the Commission to order, if it finds the public interest so requires, a reduction in local telephone rates for low-income residential consumers meeting a means test established by the Commission in order to match any reduction in the interstate subscriber line charge authorized by the Federal Communications Commission. If the State repeals any State funding mechanism for a reduction in the local telephone rates for low-income residential consumers, the Commission shall take appropriate action to eliminate any requirement for the reduced rate funded by the repealed State funding mechanism. For the purposes of this section, a State funding mechanism for a reduction in the local telephone rates includes a tax credit allowed for the public utility to recover the reduction in rates.

Nothing in this section prohibits the Commission from establishing different rates for natural gas service to counties that are substantially unserved, to the extent that those rates reflect the cost of providing service to the unserved counties and upon a finding by the Commission that natural gas service would not otherwise become available to the counties.

(b) The Commission shall make reasonable and just rules and regulations:

- (1) To prevent discrimination in the rates or services of public utilities.
- (2) To prevent the giving, paying or receiving of any rebate or bonus, directly or indirectly, or misleading or deceiving the public in any manner as to rates charged for the services of public utilities.

(c) No public utility shall offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of such utility service except upon filing of a schedule of such compensation or consideration or equipment to be furnished and approved thereof by the Commission, and offering such compensation, consideration or equipment to all persons within the same classification using or applying for such public utility service; provided, in considering the reasonableness of any such schedule filed by a public utility the Commission shall consider, among other things, evidence of consideration or compensation paid by any competitor, regulated or nonregulated, of the public utility to secure the installation or adoption of the use of such competitor's service. For the purpose of this subsection, "public utility" shall include any electric membership corporation operating within this State, and the terms "utility service" and "public utility service" shall include the service rendered by any such electric membership corporation. (1899, c. 164, s. 2, subsecs. 3, 5; Rev., s. 1095; 1913, c. 127, s. 6; C.S., s. 1054; 1933,

c. 134, s. 8; c. 307, s. 6; 1941, c. 97; 1963, c. 1165, s. 1; 1965, c. 287, s. 8; 1977, 2nd Sess., c. 1146; 1985, c. 694, s. 1; 1997-426, s. 1; 2013-363, s. 11.1; 2021-23, s. 18.)

#### **§ 62-141. Long and short hauls.**

(a) Except when expressly permitted by the Commission, it shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of like kind of household goods under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Chapter to charge and receive as great compensation for a shorter as for a longer distance.

(b) Upon application to the Commission, common carriers may in special cases be authorized to charge less for longer than for shorter distances for the transportation of household goods; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

(c) The provisions of this section shall not be applicable to bus companies or to their rates, charges or tariffs. (1899, c. 164, s. 14; Rev., s. 1107; Ex. Sess. 1913, c. 20, s. 9; 1915, c. 17, s. 1; C.S., s. 1072; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1985, c. 676, s. 15(4); 1995, c. 523, s. 7.)

#### **§ 62-142. Contracts as to rates.**

All contracts and agreements between public utilities as to rates shall be submitted to the Commission for inspection that it may be seen whether or not they are a violation of law or the rules and regulations of the Commission, and all arrangements and agreements whatever as to the division of earnings of any kind by competing public utilities shall be submitted to the Commission for inspection and approval insofar as they affect the rules and regulations made by the Commission to secure to all persons doing business with such utilities just and reasonable rates. The Commission may make such rules and regulations, as to such contracts and agreements as the public interest may require. (1899, c. 164, s. 6; Rev., s. 1108; C.S., s. 1073; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

#### **§ 62-143. Schedule of rates to be evidence.**

The schedule of rates fixed by statute or under this Article, in suits brought against any public utility involving the rates of a public utility or unjust discrimination in relation thereto, shall be taken in all courts as prima facie evidence that the rates therein fixed are just and reasonable. Any such schedule when certified by a clerk of the Commission as a true copy of a schedule on file with the Commission shall be received in all courts as prima facie evidence of such schedule without further proof, and, if the clerk certifies that said schedule has been approved by the Commission, as prima facie evidence of such approval. (1899, c. 164, s. 7; Rev., s. 1112; C.S., s. 1077; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

#### **§ 62-144. Free transportation.**

(a) All common carriers under the supervision of the Commission shall furnish free transportation to the members of the Commission, and, upon written authority of the Commission, such carriers shall also furnish free transportation to such persons as the Commission may designate in its employ or in the employ of the Department of Motor Vehicles for the inspection of



equipment and supervision of safe operating conditions and of traffic upon the highways of the State.

(b) Except as provided in subsection (a), no common carrier shall, directly or indirectly, issue, give, tender, or honor any free fares except to its bona fide officers, agents, commission agents, employees and retired employees, and members of their immediate families: Provided, that common carriers under this Article may exchange free transportation within the limits of this section and may accept as a passenger a totally blind person accompanied by a guide at the usual and ordinary fare charged to one person under such reasonable regulations as may have been established by the carrier and approved by the Commission.

(c) Any person except those permitted by law accepting free transportation shall be guilty of a Class 1 misdemeanor.

(d) Nothing in this section shall prohibit the carriage, storage or handling of household goods free or at reduced rates for the United States, State or municipal governments, or for charitable or educational purposes, or the use of passes for journeys wholly within this State which have been or may be issued for interstate journeys under the authority of the United States Interstate Commerce Commission. (1899, c. 164, s. 22; c. 642; 1901, c. 652; c. 679, s. 2; 1905, c. 312; Rev., s. 1105; Ex. Sess. 1908, c. 144, s. 4; 1911, cc. 49, 148; 1913, c. 100; 1915, c. 215; 1917, cc. 56, 160; C.S., ss. 1069, 1070, 3492; 1933, c. 134, s. 8; 1941, c. 97; 1949, c. 1132, s. 27; 1953, c. 1279; 1963, c. 1165, s. 1; 1993, c. 539, s. 477; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 523, s. 8.)

#### **§ 62-145. Rates between points connected by more than one route.**

When there is more than one route between given points in North Carolina, and freight is routed or directed by the shipper or consignee to be transported over a shorter route, and it is in fact shipped by a longer route between such points, the rate fixed by law or by the Commission for the shorter route shall be the maximum rate which may be charged, and it shall be unlawful to charge more for transporting such freight over the longer route than the lawful charge for the shorter route. (Ex. Sess. 1913, c. 20, s. 11; C.S., s. 1085; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

#### **§ 62-146. Rates and service of motor common carriers of property.**

(a) It shall be the duty of every common carrier of household goods by motor vehicle to provide safe and adequate service, equipment, and facilities for transportation in intrastate commerce and to establish, observe and enforce just and reasonable regulations and practices relating thereto, and, in the case of household goods carriers, relating to the manner and method of presenting, marking, packing and delivering property for transportation in intrastate commerce.

(b) Except under special conditions and for good cause shown, a common carrier by motor vehicle authorized to transport general commodities over regular routes shall establish reasonable through routes and joint rates, charges, and classifications with other such common carriers by motor vehicle; and such common carrier may establish, with the prior approval of the Commission, such routes, joint rates, charges and classifications with any irregular route common carrier by motor vehicle, or any common carrier by rail, express, or water.

(c) Repealed by Session Laws 1985, c. 676, s. 15.

(d) In case of joint rates between common carriers of property, it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein, which shall not unduly prefer or prejudice any of such participating carriers. Upon

investigation and for good cause, the Commission may, in its discretion, prohibit the establishment of joint rates or service.

(e) Any person may make complaint in writing to the Commission that any rate, classification, rule, regulations, or practice in effect or proposed to be put into effect, is or will be in violation of this Article. Whenever, after hearing, upon complaint or in an investigation or its own initiative, the Commission shall be of the opinion that any individual or joint rate demanded, charged, or collected by any common carrier or carriers by motor vehicle, or by any such common carrier or carriers in conjunction with any other common carrier or carriers, for transportation of household goods in intrastate commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate or the value of the service thereunder, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate or the minimum or maximum, or the minimum and maximum rate thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective.

(f) Whenever, after hearing upon complaint or upon its own initiative, the Commission is of the opinion that the divisions of joint rates applicable to the transportation of household goods in intrastate commerce between a common carrier by motor vehicle and another carrier are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable division thereof to be received by the several carriers; and in cases where the joint rate or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers in accordance with the order from the date of filing the complaint or entry of order of investigation or such other dates subsequent thereto as the Commission finds justified, and in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

(g) In any proceeding to determine the justness or reasonableness of any rate of any common carrier of household goods by motor vehicle, there shall not be taken into consideration or allowed as evidence any elements of value of the property of such carrier, good will, earning power, or the certificate under which such carrier is operating, and such rates shall be fixed and approved, subject to the provisions of subsection (h) hereof, on the basis of the operating ratios of such carriers, being the ratio of their operating expenses to their operating revenues, at a ratio to be determined by the Commission; and in applying for and receiving a certificate under this Chapter any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of every transferee of such certificate or of any part thereof.

(h) In the exercise of its power to prescribe just and reasonable rates and charges for the transportation of household goods in intrastate commerce by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon movement of traffic by the carrier or carriers for which rates are prescribed; to the need in the public interest of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient

to enable such carriers under honest, economical, and efficient management to provide such service.

(i) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith. This section shall be in addition to other provisions of this Chapter which relate to public utilities generally, except that in cases of conflict between such other provisions and this section, this section shall prevail for motor carriers. (1947, c. 1008, s. 23; 1949, c. 1132, s. 22; 1963, c. 1165, s. 1; 1985, c. 676, s. 15(5); 1995, c. 523, s. 9.)

#### **§ 62-146.1. Rates and service of bus companies.**

(a) It shall be the duty of every bus company to provide safe and adequate service, equipment and facilities for transportation of passengers in intrastate commerce and to establish, observe and enforce just and reasonable regulations and practices.

(b) The Commission by its rules and regulations may require the interlining of passengers by bus companies operating in intrastate commerce in this State where the point of destination of the passenger is not served by the originating carrier. In these cases it shall be the duty of every bus company to establish reasonable through rates with other bus companies; to establish, observe and enforce just and reasonable individual and joint rates, fares and charges and just and reasonable regulations and practices relating to the charges and to the issuance, form and substance of tickets and the carrying of personal and excess baggage.

(c) In case of joint rates between bus companies, it shall be the duty of the bus companies to establish just and reasonable regulations and practices in connection with the joint rates and just, reasonable and equitable divisions between the participating companies, which shall not unduly prefer or prejudice any of the participating companies.

(d) A bus company providing fixed route service may file with the Commission a petition for new or revised rates, fares or charges. Unless the Commission orders otherwise, no bus company shall make any changes in its rates, fares and charges, which have been established under this Chapter, except after 30 days' notice to the Commission. The notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The bus company shall also give notice, which may include notice by publication, of the proposed changes to other interested persons that the Commission may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed with the Commission and in force at the time and kept open to public inspection by the bus company. The Commission, for good cause shown in writing, may allow changes in rates without requiring the 30 days' notice, under any conditions as it prescribes. All changes shall be immediately indicated by the bus company on its schedules.

(e) Whenever there is filed with the Commission by any bus company any schedule stating a new or revised rate, fare or charge, the Commission may, either upon complaint or upon its own initiative, after reasonable notice, hold a hearing to determine if the proposed new or revised rates, fares or charges are just and reasonable. Pending the hearing and a decision, the Commission, upon filing with the proposed schedule and delivering to the affected bus company a statement in writing of its reasons, may, at any time before they become effective, suspend the operation of the rate or rates, for a period not to exceed 120 days from the filing of the petition. If the proceeding has not been concluded and a final order made within the period of suspension, the proposed change of rate shall go into effect at the end of the 120-day period.

(f) In any proceeding to determine the justness or reasonableness of any rates, fares or charges of a bus company, the Commission shall authorize revenue levels that are adequate under

honest, economical, and efficient management to cover total operating expenses, including the operation of leased equipment and depreciation, plus a reasonable profit. The standards and procedures adopted by the Commission under this subsection shall allow the bus company to achieve revenue levels that will provide a flow of net income, plus depreciation, adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, attract and retain capital and amounts adequate to provide a sound passenger bus transportation system in this State, and take into account reasonable estimated or foreseeable future costs.

(g) Notwithstanding any provision of this section, the Commission may not investigate, suspend, review or revoke the operation of proposed new or revised rates, fares or charges if the proposed new or revised rates, fares or charges do not exceed the standard rates, fares or charges then in effect by the petitioning bus company for comparable interstate transportation of passengers.

(h) Any person may make complaint in writing to the Commission that any rate, fare, charge, classification, rule, regulation, or practice in effect, or proposed to be put in effect, is or will be in violation of this Chapter. Whenever, after holding a hearing, upon complaint, in an investigation, or upon its own initiative, the Commission finds that any individual or joint rate demanded, charged, or collected by any bus company for transportation of passengers in intrastate commerce, or any classification, rule, regulation or practice of the bus company affecting the rate or the value of the service provided, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial or constitute an unfair or destructive competitive practice, or otherwise contravenes the policies declared in this Chapter, or is in contravention of any provision of this Chapter, the Commission shall determine and prescribe the lawful rate, or the lawful classification, rule, regulation or practice to be put into effect.

(i) For purposes of this Chapter, rates, fares and charges established pursuant to this section shall be deemed fair, just and reasonable.

(j) Notwithstanding any other provision of this Chapter, the rates, fares and charges established for charter service by a bus company authorized and engaged in charter operations in this State shall be exempt from regulation by the Commission. A bus company authorized and engaged in charter operations shall file with the Commission a current statement of its rates, fares and charges as required by the Commission. (1985, c. 676, s. 15(6).)

#### **§ 62-147: Repealed by Session Laws 1995, c. 523, s. 10.**

#### **§ 62-148. Rates on leased or controlled utility.**

If any public utility operating in the State other than a motor carrier is owned, controlled or operated by lease or other agreement by any other public utility doing business in the State, its rates may, in the discretion of the Commission, be determined for such public utility by the rates prescribed for the public utility which owns, controls or operates it. (Ex. Sess. 1908, c. 144, s. 2; C.S., s. 3490; 1963, c. 1165, s. 1.)

#### **§ 62-149. Unused tickets to be redeemed.**

Whenever any ticket is sold and is not wholly used by the purchaser, it shall be the duty of the carrier selling such ticket to redeem it or the unused portion thereof at the price paid for it, or in such manner and at such price as the Commission shall prescribe by regulation. (1891, c. 290; 1893, c. 249; 1895, c. 83, ss. 2, 3; 1897, c. 418; Rev., s. 2627; C.S., s. 3503; 1963, c. 1165, s. 1.)

**§ 62-150. Ticket may be refused intoxicated person; penalty for prohibited entry.**

The ticket agent of any common carrier of passengers shall at all times have power to refuse to sell a ticket to any person applying for the same who may at the time be intoxicated. The driver or other person in charge of any conveyance for the use of the traveling public shall at all times have power to prevent any intoxicated person from entering such conveyance. If any intoxicated person, after being forbidden by the driver or other person having charge of any such conveyance for the use of the traveling public, shall enter such conveyance, he shall be guilty of a Class 1 misdemeanor. (1885, c. 358, ss. 1, 2, 3; Rev., ss. 2625, 2626, 3757; C.S., s. 3504; 1963, c. 1165, s. 1; 1993, c. 539, s. 478; 1994, Ex. Sess., c. 24, s. 14(c); 1998-128, s. 5.)

**§ 62-151. Passenger refusing to pay fare or violating rules may be ejected.**

If any passenger shall refuse to pay his fare, or be or become intoxicated, or violate the rules of a common carrier, it shall be lawful for the driver of the bus or other conveyance, and servants of the carrier, on stopping the conveyance, to put him and his baggage out of the conveyance, using no unnecessary force. (1871-2, c. 138, s. 34; Code, s. 1962; Rev., s. 2629; C.S., s. 3507; 1949, c. 1132, s. 30; 1953, c. 1140, s. 4; 1957, c. 1152, s. 16; 1961, c. 472, s. 11; 1963, c. 1165, s. 1; 1998-128, s. 6.)

**§ 62-152: Repealed by Session Laws 1998-128, s. 13.**

**§ 62-152.1. Uniform rates; joint rate agreements among carriers.**

(a) Definitions. – As used in this section, unless the context otherwise requires, the term:

- (1) "Carrier" means any common carrier as defined in G.S. 62-3(6).
- (2) For purposes of this section, carriers by motor vehicles are carriers of the same class, carriers by pipeline are carriers of the same class, carriers by water are carriers of the same class, carriers by air are carriers of the same class, and freight forwarders are carriers of the same class.
- (3) The term "antitrust laws" means the provisions of Chapter 75 of the General Statutes (N.C.G.S. 75-1, et seq.), relating to combinations in restraint of trade.

(b) For the purpose of achieving a stable rate structure it shall be the policy of this State to fix uniform rates for the same or similar services by carriers of the same class. In order to realize and effectuate this policy and regulatory goal any carrier subject to regulation by this Commission and party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules and regulations as the Commission may prescribe, apply to the Commission for approval of the agreement, and the Commission shall by order approve any such agreement (if approval thereof is not prohibited by subsection (d) or (e) of this section) if it finds that, by reason of furtherance of the transportation policy and goal declared in this section and in G.S. 62-2 or G.S. 62-259 as may be pertinent, the relief provided in subsection (h) shall apply with respect to the making and carrying out of such agreement; otherwise, the application shall be denied. The approval of the Commission shall be granted only upon such terms and conditions as the Commission may prescribe as necessary to enable it to grant its approval in accordance with the standard above set forth in this subsection.

(c) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under this section shall maintain such accounts, records, files and memoranda and shall submit to the Commission such information and reports as may be prescribed by the Commission, and all the accounts, records, files and memoranda shall be subject to inspection by the Commission or its duly authorized representatives.

(d) The Commission shall not approve under this section any agreement between or among carriers of different classes unless it finds that the agreement is of the character described in subsection (b) of this section and is limited to matters relating to transportation under joint rates or over through routes.

(e) The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action after any determination arrived at through such procedure.

(f) The Commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which the approval was granted is not or are not in conformity with the standards set forth in subsection (b) of this section, or whether any such terms and conditions are not necessary for the purposes of conformity with such standards, and, after such investigation, the Commission shall by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with such standards, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standards or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the Commission determines to be reasonably necessary to avoid undue hardships.

(g) No order shall be entered under this section except after interested parties have been afforded reasonable notice and opportunity for hearing.

(h) Parties to any agreement approved by the Commission under this section and other parties are, if the approval of such agreement is not prohibited by subsection (d) or (e) of this section, hereby relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with the terms and conditions prescribed by the Commission.

(i) Any action of the Commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or prescribing the terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of subsection (h) of this section. (1977, c. 219, s. 1; 1998-128, s. 7.)

**§ 62-152.2. Standard transportation practices.**

- (a) For the purposes of this section, "standard transportation practices" means:
- (1) Uniform cargo liability rules.
  - (2) Uniform bills of lading or receipts for property being transported.
  - (3) Uniform cargo credit rules.

(4) Antitrust immunity for joint line rates or routes, classification, and mileage guides.

(b) A person otherwise exempt from regulation by the Commission under Public Law 103-305 may file an application with the Commission to participate in one or more standard transportation practices under rules set out by the Commission. (1995, c. 523, s. 10.1.)

**§ 62-153. Contracts of public utilities with certain companies and for services.**

(a) All public utilities shall file with the Commission copies of contracts with any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company or agency, and when requested by the Commission, copies of contracts with any person selling service of any kind. The Commission may disapprove, after hearing, any such contract if it is found to be unjust or unreasonable, and made for the purpose or with the effect of concealing, transferring or dissipating the earnings of the public utility. Such contracts so disapproved by the Commission shall be void and shall not be carried out by the public utility which is a party thereto, nor shall any payments be made thereunder. Provided, however, that in the case of motor carriers of passengers this subsection shall apply only to such contracts as the Commission shall request such carriers to file.

(b) No public utility shall pay any fees, commissions or compensation of any description whatsoever to any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company or agency for services rendered or to be rendered without first filing copies of all proposed agreements and contracts with the Commission and obtaining its approval. Provided, however, that this subsection shall not apply to (i) motor carriers of passengers or (ii) power purchase agreements entered into pursuant to the competitive renewable energy procurement process established pursuant to G.S. 62-110.8. (1931, c. 455; 1933, c. 134, s. 8; c. 307, s. 17; 1941, c. 97; 1963, c. 1165, s. 1; 2017-192, s. 2(b).)

**§ 62-154. Surplus power rates.**

The Commission is authorized to investigate the sale of surplus electric power and the rates made for such energy, and to prescribe reasonable rules and rates for such sales. (1963, c. 1165, s. 1.)

**§ 62-155. Electric power rates to promote conservation.**

(a) It is the policy of the State to conserve energy through efficient utilization of all resources.

(b) If the Utilities Commission after study determines that conservation of electricity and economy of operation for the public utility will be furthered thereby, it shall direct each electric public utility to notify its customers by the most economical means available of the anticipated periods in the near future when its generating capacity is likely to be near peak demand and urge its customers to refrain from using electricity at these peak times of the day. In addition, each public utility shall, insofar as practicable, investigate, develop, and put into service, with approval of the Commission, procedures and devices that will temporarily curtail or cut off certain types of appliances or equipment for short periods of time whenever an unusual peak demand threatens to overload its system.

(c) The Commission itself shall inform the general public as to the necessity for controlling demands for electricity at peak periods and shall require the several electric public utilities to carry out its program of information and education in any reasonable manner.

(d) The Commission shall study the feasibility of and, if found to be practicable, just and reasonable, make plans for the public utilities to bill customers by a system of nondiscriminatory peak pricing, with incentive rates for off-peak use of electricity charging more for peak periods than for off-peak periods to reflect the higher cost of providing electric service during periods of peak demand on the utility system. No order regarding such rates shall be issued by the Commission without a prior public hearing, whether in a single electric utility company rate case or in general orders relating to two or more or all electric utilities.

(e) No Class A electric public utility shall apply for any rate change unless it files at the time of the application a report of the probable effect of the proposed rates on peak demand on it and its estimate of the kilowatt hours of electricity that will be used by its customers during the ensuing one year and five years from the time such rates are proposed to become effective.

(f) Each electric public utility serving more than 150,000 North Carolina retail jurisdictional customers as of January 1, 2017, shall file with the Commission an application requesting approval of a program offering reasonable incentives to residential and nonresidential customers for the installation of small customer owned or leased solar energy facilities participating in a public utility's net metering tariff, where the incentive shall be limited to 10 kilowatts alternating current (kW AC) for residential solar installations and 100 kilowatts alternating current (kW AC) for nonresidential solar installations. Each public utility required to offer the incentive program pursuant to this subsection shall be authorized to recover all reasonable and prudent costs of incentives provided to customers and program administrative costs by amortizing the total program incentives distributed during a calendar year and administrative costs over a 20-year period, including a return component adjusted for income taxes at the utility's overall weighted average cost of capital established in its most recent general rate case, which shall be included in the costs recoverable by the public utility pursuant to G.S. 62-133.8(h). Nothing in this section shall prevent the reasonable and prudent costs of a utility's programs to incentivize customer investment in or leasing of solar energy facilities, including an approved incentive, from being reflected in a utility's rates to be recovered through the annual rider established pursuant to G.S. 62-133.8(h). The program incentive established by each public utility subject to this section shall meet all of the following requirements:

- (1) Shall be limited to 10,000 kilowatts (kW) of installed capacity annually starting in January 1, 2018, and continuing until December 31, 2022, and shall provide incentives to participating customers based upon the installed alternating current nameplate capacity of the generators.
- (2) Nonresidential installations will also be limited to 5,000 kilowatts (kW) in aggregate for each of the years of the program.
- (3) Two thousand five hundred kilowatts (kW) of the capacity for nonresidential installations shall be set aside for use by nonprofit organizations; 50 kilowatts (kW) of the set aside shall be allocated to the NC Greenpower Solar Schools Pilot or a similar program. Any set-aside rebates that are not used by December 31, 2022, shall be reallocated for use by any customer who otherwise qualifies. For purposes of this section, "nonprofit organization" means an organization or association recognized by the Department of Revenue as tax exempt pursuant to G.S. 105-130.11(a), or any bona fide branch, chapter, or affiliate of that organization.



- (4) If in any year a portion of the incentives goes unsubscribed, the utility may roll excess incentives over into a subsequent year's allocation. (1975, c. 780, s. 2; 2017-192, s. 8(a).)

**§ 62-156. Power sales by small power producers to public utilities.**

(a) In the event that a small power producer and an electric public utility are unable to mutually agree to a contract for the sale of electricity or to a price for the electricity purchased by the electric public utility, the Commission shall require the electric public utility to purchase the power, under rates and terms established as provided in subsection (b) or (c) of this section.

(b) At least every two years, the Commission shall determine the standard contract avoided cost rates to be included within the tariffs of each electric public utility and paid by electric public utilities for power purchased from small power producers, according to the following standards:

- (1) Standard Contract for Small Power Producers up to 1,000 kilowatts (kW). – The Commission shall approve a standard offer power purchase agreement to be used by the electric public utility in purchasing energy and capacity from small power producers subject to this subsection. Long-term contracts up to 10 years for the purchase of electricity by the electric public utility from small power producers with a design capacity up to and including 1,000 kilowatts (kW) shall be encouraged in order to enhance the economic feasibility of these small power production facilities; provided, however, that when an electric public utility, pursuant to this subsection, has entered into power purchase agreements with small power producers from facilities (i) in the aggregate capacity of 100 megawatts (MW) or more and (ii) which established a legally enforceable obligation after November 15, 2016, the eligibility threshold for that utility's standard offer shall be reduced to 100 kilowatts (kW).
- (2) Avoided Cost of Energy to the Utility. – The rates paid by an electric public utility to a small power producer for energy shall not exceed, over the term of the purchase power contract, the incremental cost to the electric public utility of the electric energy which, but for the purchase from a small power producer, the utility would generate or purchase from another source. A determination of the avoided energy costs to the utility shall include a consideration of the following factors over the term of the power contracts: the expected costs of the additional or existing generating capacity which could be displaced, the expected cost of fuel and other operating expenses of electric energy production which a utility would otherwise incur in generating or purchasing power from another source, and the expected security of the supply of fuel for the utilities' alternative power sources.
- (3) Availability and Reliability of Power. – The rates to be paid by electric public utilities for capacity purchased from a small power producer shall be established with consideration of the reliability and availability of the power. A future capacity need shall only be avoided in a year where the utility's most recent biennial integrated resource plan filed with the Commission pursuant to G.S. 62-110.1(c) has identified a projected capacity need to serve system load and the identified need can be met by the type of small power producer resource based upon its availability and reliability of power, other than for (i) swine or poultry waste for which a need is established consistent with G.S. 62-133.8(e)

and (f) and (ii) hydropower small power producers with power purchase agreements with an electric public utility in effect as of July 27, 2017, and the renewal of such a power purchase agreement, if the hydroelectric small power producer's facility total capacity is equal to or less than five megawatts (MW).

(c) Rates to be paid by electric public utilities to small power producers not eligible for the utility's standard contract pursuant to subsection (b) of this section shall be established through good-faith negotiations between the utility and small power producer, subject to the Commission's oversight as required by law. In establishing rates for purchases from such small power producers, the utility shall design rates consistent with the most recent Commission-approved avoided cost methodology for a fixed five-year term. Rates for such purchases shall take into account factors related to the individual characteristics of the small power producer, as well as the factors identified in subdivisions (2) and (3) of subsection (b) of this section. Notwithstanding this subsection, small power producers that produce electric energy primarily by the use of any of the following renewable energy resources may negotiate for a fixed-term contract that exceeds five years: (i) swine or poultry waste; (ii) hydropower, if the hydroelectric power facility total capacity is equal to or less than five megawatts (MW); or (iii) landfill gas, manure digester gas, agricultural waste digester gas, sewage digester gas, or sewer sludge digester gas.

(d) Notwithstanding any other provision of this section, an electric public utility shall not be required to enter into a contract with or purchase power from a small power producer if the electric public utility's obligation to purchase from such small power producers has been terminated pursuant to 18 C.F.R. § 292.309. (1979, 2nd Sess., c. 1219, s. 2; 2017-192, s. 1(b); 2019-132, s. 3(a).)

#### **§ 62-157. Telecommunications relay service.**

(a) Finding. – The General Assembly finds and declares that it is in the public interest to provide access to public telecommunications services for hearing impaired or speech impaired persons, including those who also have vision impairment, and that a statewide telecommunications relay service for telephone service should be established.

(a1) Definitions. – For purposes of this section:

- (1) "CMRS" is as defined in G.S. 143B-1400.
- (2) "CMRS connection" is as defined in G.S. 143B-1400.
- (3) "CMRS provider" is as defined in G.S. 143B-1400.
- (4) "Exchange access facility" means a connection from a particular telephone subscriber's premises to the telephone system of a service provider, and includes company-provided local access lines, private branch exchange trunks, and centrex network access registers.
- (5) "Local service provider" means a local exchange company, competing local provider, or telephone membership corporation.

(b) Authority to Require Surcharge. – The Commission shall require local service providers to impose a monthly surcharge on all residential and business local exchange access facilities to fund a statewide telecommunications relay service by which hearing impaired or speech impaired persons, including those who also have vision impairment, may communicate with others by telephone. This surcharge, however, may not be imposed on participants in the Subscriber Line Charge Waiver Program or the Link-up Carolina Program established by the Commission. This surcharge, and long distance revenues collected under subsection (f) of this

section, are not includable in gross receipts subject to the franchise tax levied under G.S. 105-120 or the sales tax levied under G.S. 105-164.4.

(c) Specification of Surcharge. – The Department of Health and Human Services shall initiate a telecommunications relay service by filing a petition with the Commission requesting the service and detailing initial projected required funding. The Commission shall, after giving notice and an opportunity to be heard to other interested parties, set the initial monthly surcharge based upon the amount of funding necessary to implement and operate the service, including a reasonable margin for a reserve. The surcharge shall be identified on customer bills as a special surcharge for provision of a telecommunications relay service for hearing impaired and speech impaired persons. The Commission may, upon petition of any interested party, and after giving notice and an opportunity to be heard to other interested parties, revise the surcharge from time to time if the funding requirements change. In no event shall the surcharge exceed twenty-five cents (25¢) per month for each exchange access facility.

(d) Funds to Be Deposited in Special Account. – The local service providers shall collect the surcharge from their customers and deposit the moneys collected with the State Treasurer, who shall maintain the funds in an interest-bearing, nonreverting account. After consulting with the State Treasurer, the Commission shall direct how and when the local service providers shall deposit these moneys. Revenues from this fund shall be available only to the Department of Health and Human Services to administer the statewide telecommunications relay service program, including its establishment, operation, and promotion. The Commission may allow the Department of Health and Human Services to use, over a rolling 12-month period, up to four cents (4¢) per exchange access facility of the surcharge for the purpose of providing telecommunications devices for hearing impaired or speech impaired persons, including those who also have vision impairment, through a distribution program. The Commission shall prepare such guidelines for the distribution program as it deems appropriate and in the public interest. Both the Commission and the Public Staff may audit all aspects of the telecommunications relay service program, including the distribution programs, as they do with any public utility subject to the provisions of this Chapter. Equipment paid for with surcharge revenues, as allowed by the Commission, may be distributed only by the Department of Health and Human Services.

(d1) The Department of Health and Human Services shall utilize revenues from the wireless surcharge collected under subsection (i) of this section to support the Division of Services for the Deaf and the Hard of Hearing, in accordance with G.S. 143B-216.33, G.S. 143B-216.34, and Chapter 8B of the General Statutes.

(e) Administration of Service. – The Department of Health and Human Services shall administer the statewide telecommunications relay service program, including its establishment, operation, and promotion. The Department may contract out the provision of this service for four-year periods to one or more service providers, using the provisions of G.S. 143-129. The Department shall administer all programs and services, including the Regional Resource Centers within the Division of Services for the Deaf and the Hard of Hearing in accordance with G.S. 143B-216.33, G.S. 143B-216.34, and Chapter 8B of the General Statutes.

(f) Charge to Users. – The users of the telecommunications relay service shall be charged their approved long distance and local rates for telephone services (including the surcharge required by this section), but no additional charges may be imposed for the use of the relay service. The local service providers shall collect revenues from the users of the relay service for long distance services provided through the relay service. These revenues shall be deposited in the special fund established in subsection (d) of this section in a manner determined by the

Commission after consulting with the State Treasurer. Local service providers shall be compensated for collection, inquiry, and other administrative services provided by said companies, subject to the approval of the Commission.

(g) Reporting Requirement. – The Commission shall, after consulting with the Department of Health and Human Services, develop a format and filing schedule for a comprehensive financial and operational report on the telecommunications relay service program. The Department of Health and Human Services shall thereafter prepare and file these reports as required by the Commission with the Commission and the Public Staff. The Department shall also be required to report to the Revenue Laws Study Committee.

(h) Power to Regulate. – The Commission shall have the same power to regulate the operation of the telecommunications relay service program as it has to regulate any public utility subject to the provisions of this Chapter.

(i) Wireless Surcharge. – A CMRS provider, as part of its monthly billing process, must collect the same surcharge imposed on each exchange access facility under this section for each CMRS connection. A CMRS provider may deduct a one percent (1%) administrative fee from the total amount of surcharge collected. A CMRS provider shall remit the surcharge collected, less the administrative fee, to the 911 Board in the same manner and with the same frequency as the local service providers remit the surcharge to the State Treasurer. The 911 Board shall remit the funds collected from the surcharge to the special account created under subsection (d) of this section. (1989, c. 599; 1997-443, s. 11A.118(a); 1999-402, s. 1; 2003-341, s. 1; 2007-383, s. 4; 2009-451, s. 10.56(c), (d); 2012-142, s. 10.24(a), (b); 2015-241, s. 7A.3; 2016-94, s. 12J.2.)

#### **§ 62-158. Natural gas expansion.**

(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may, after a hearing, order a natural gas local distribution company to create a special natural gas expansion fund to be used by that company to construct natural gas facilities in areas within the company's franchised territory that otherwise would not be feasible for the company to construct. The fund shall be supervised and administered by the Commission. Any applicable taxes shall be paid out of the fund.

(b) Sources of funding for a natural gas local distribution company's expansion fund may, pursuant to the order of the Commission, after hearing, include:

- (1) Refunds to a local distribution company from the company's suppliers of natural gas and transportation services pursuant to refund orders or requirements of the Federal Energy Regulatory Commission;
- (2) Expansion surcharges by the local distribution company charged to customers purchasing natural gas or transportation services throughout that company's franchised territory; provided, however, in determining the amount of any surcharge the Commission shall take into account the prices of alternative sources of energy and the need to remain competitive with those alternative sources, and the need to maintain just and reasonable rates for natural gas and transportation services for all customers served by the company; provided further that the expansion surcharge shall not be greater than fifteen cents (15¢) per dekatherm; and
- (3) Other sources of funding approved by the Commission.

(c) The application of all such funds to expansion projects shall be pursuant to the order of the Commission. The Commission shall ensure that all projects to which expansion funds are

applied are consistent with the intent of this section and G.S. 62-2(9). In determining economic feasibility, the Commission shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company to construct. In no event shall the Commission authorize a distribution from the fund of an amount greater than the negative net present value of any proposed project as determined by the Commission. If at any time a project is determined by the Commission to have become economically feasible, the Commission may require the company to remit to the expansion fund or to customers appropriate portions of the distributions from the fund related to the project, and the Commission may order such funds to be returned with interest in a reasonable amount to be determined by the Commission. Utility plant acquired with expansion funds shall be included in the local distribution company's rate base at zero cost except to the extent such funds have been remitted by the company pursuant to order of the Commission.

(d) The Commission, after hearing, may adopt rules to implement this section, including rules for the establishment of expansion funds, for the use of such funds, for the remittance to the expansion fund or to customers of supplier and transporter refunds and expansion surcharges or other funds that were sources of the expansion fund, and for appropriate accounting, reporting and ratemaking treatment. (1991, c. 598, s. 2; 2011-291, s. 2.15; 2014-120, s. 10(b).)

#### **§ 62-159. Additional funding for natural gas expansion.**

(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may provide funding through appropriations from the General Assembly or the proceeds of general obligation bonds as provided in this section to either (i) an existing natural gas local distribution company; (ii) a person awarded a new franchise; or (iii) a gas district for the construction of natural gas facilities that it otherwise would not be economically feasible for the company, person, or gas district to construct.

(b) The use of funds provided under this section shall be pursuant to an order of the Commission after a public hearing. The Commission shall ensure that all projects for which funds are provided under this section are consistent with the intent of this section and G.S. 62-2(9). In determining whether to approve the use of funds for a particular project pursuant to this section, the Commission shall consider the scope of a proposed project, including the number of unserved counties and the number of anticipated customers that would be served, the total cost of the project, the extent to which the project is considered feasible, and other relevant factors affecting the public interest. In determining economic feasibility, the Commission shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company, person, or gas district to construct. In no event shall the Commission provide funding under this section of an amount greater than the negative net present value of any proposed project as determined by the Commission. If at any time a project is determined by the Commission to have become economically feasible, the Commission shall require the recipient of funding to remit to the Commission appropriate funds related to the project, and the Commission may order those funds to be returned with interest in a reasonable amount to be determined by the Commission. Funds returned, together with interest, shall be deposited with the State Treasurer to be used for other expansion projects pursuant to the provisions of this section. Utility plant acquired with expansion funds shall be included in the local distribution company's rate base at zero cost except to the extent such funds have been remitted by the company pursuant to order of the Commission. In the event a gas district wishes to sell or otherwise dispose of facilities financed with funds received under this

section, it must first notify the Commission which shall determine the method of repayment or accounting for those funds.

(c) To the extent that one or more of the counties included in a proposed project to be funded pursuant to this section are counties affected by the loss of exclusive franchise rights provided for in G.S. 62-36A(b), the Commission may conclude that the public interest requires that the person obtaining the franchise or funding pursuant to this section be given an exclusive franchise and that the existing franchise be canceled. Any new exclusive franchise granted under this subsection shall be subject to the provisions of G.S. 62-36A(b). This subsection does not apply to gas districts formed under Article 28 of Chapter 160A of the General Statutes.

(d) The Commission, after hearing, shall adopt rules to implement this section as soon as practicable. (1998-132, s. 17; 1999-456, s. 17; 2011-291, s. 2.16; 2014-120, s. 10(c).)

### **§ 62-159.1. Debt collection practices.**

(a) A public utility, electric membership corporation, and telephone membership corporation shall not do any of the following in its debt collection practices:

- (1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:
  - a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
  - b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.
  - c. The person is or becomes responsible for the bill for the service to the customer.
- (2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:
  - a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
  - b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b) Notwithstanding the provisions of subsection (a) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the public utility, electric membership corporation, and telephone membership corporation shall have the power to collect a delinquent account using any remedy provided by law for collecting and enforcing private debts from that customer. (2009-302, s. 1.)

### **§ 62-159.2. Direct renewable energy procurement for major military installations, public universities, and large customers.**

(a) Each electric public utility providing retail electric service to more than 150,000 North Carolina retail jurisdictional customers as of January 1, 2017, shall file with the Commission an application requesting approval of a new program applicable to major military installations, as that

term is defined in G.S. 143-215.115(1), The University of North Carolina, as established in Article 1 of Chapter 116 of the General Statutes, and other new and existing nonresidential customers with either a contract demand (i) equal to or greater than one megawatt (MW) or (ii) at multiple service locations that, in aggregate, is equal to or greater than five megawatts (MW).

(b) Each public utility's program application required by this section shall provide standard contract terms and conditions for participating customers and for renewable energy suppliers from which the electric public utility procures energy and capacity on behalf of the participating customer. The application shall allow eligible customers to select the new renewable energy facility from which the electric public utility shall procure energy and capacity. The standard terms and conditions available to renewable energy suppliers shall provide a range of terms, between two years and 20 years, from which the participating customer may elect. Eligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms.

(c) Each contracted amount of capacity shall be limited to no more than one hundred twenty-five percent (125%) of the maximum annual peak demand of the eligible customer premises. Each public utility shall establish reasonable credit requirements for financial assurance for eligible customers that are consistent with the Uniform Commercial Code of North Carolina. Major military installations and The University of North Carolina are exempt from the financial assurance requirements of this section. The requirements of this subsection shall apply except as otherwise provided by law.

(d) The program shall be offered by the electric public utilities subject to this section for a period of five years or until December 31, 2022, whichever is later, and shall not exceed a combined 600 megawatts (MW) of total capacity. For the public utilities subject to this section, where a major military installation is located within its Commission-assigned service territory, at least 100 megawatts (MW) of new renewable energy facility capacity offered under the program shall be reserved for participation by major military installations. At least 250 megawatts (MW) of new renewable energy facility capacity offered under the programs shall also be reserved for participation by The University of North Carolina. Major military installations and The University of North Carolina must fully subscribe to all their allocations prior to December 31, 2020, or a period of no more than three years after approval of the program, whichever is later. If any portion of total capacity set aside to major military installations or The University of North Carolina is not used, it shall be reallocated for use by any eligible program participant. If any portion of the 600 megawatts (MW) of renewable energy capacity provided for in this section is not awarded prior to the expiration of the program, it shall be reallocated to and included in a competitive procurement in accordance with G.S. 62-110.8(a). The requirements of this subsection shall apply except as otherwise provided by law.

(e) In addition to the participating customer's normal retail bill, the total cost of any renewable energy and capacity procured by or provided by the electric public utility for the benefit of the program customer shall be paid by that customer. The electric public utility shall pay the owner of the renewable energy facility which provided the electricity. The program customer shall receive a bill credit for the energy as determined by the Commission; provided, however, that the bill credit shall not exceed utility's avoided cost. The Commission shall ensure that all other customers are held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer. (2017-192, s. 3(a); 2021-180, s. 11.19(f2).)

**§ 62-159.3. Reserved for future codification purposes.**

**§ 62-159.4. Reserved for future codification purposes.**

**§ 62-159.5. Reserved for future codification purposes.**