

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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

Short Title: Amend Certain Electricity Generation Laws.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

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

8 The General Assembly of North Carolina enacts:

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

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



1 carbon dioxide (CO₂), and mercury (Hg) more than would the installation of
2 sulfur dioxide (SO₂) emissions controls on the older coal-fired generating
3 units.

4 (8) The retirement of coal-fired generating units that are owned and operated by
5 Progress Energy and located in eastern North Carolina and the installation of
6 generating units that use natural gas as their primary fuel to replace them
7 will take up to one year more than would the installation of sulfur dioxide
8 (SO₂) emissions controls on the older coal-fired generating units.

9 (9) In order to promote cleaner air for the citizens of the State, it is in the
10 interest of the State to provide a single, one-year extension of a compliance
11 deadline to Progress Energy so that it may retire one or more coal-fired
12 generating units and install one or more generating units that use natural gas
13 as their primary fuel to replace them.

14 **SECTION 1.(b)** G.S. 143-215.107D reads as rewritten:

15 **"§ 143-215.107D. Emissions of oxides of nitrogen (NO_x) and sulfur dioxide (SO₂) from**
16 **certain coal-fired generating units.**

17 ...

18 (e) ~~An~~ Except as provided in subsection (e1) of this section, an investor-owned public
19 utility that owns or operates coal-fired generating units that collectively emitted 225,000 tons or
20 less of sulfur dioxide (SO₂) in calendar year 2000:

21 (1) Shall not collectively emit from the coal-fired generating units that it owns
22 or operates more than 100,000 tons of sulfur dioxide (SO₂) in any calendar
23 year beginning 1 January 2009.

24 (2) Shall not collectively emit from the coal-fired generating units that it owns
25 or operates more than 50,000 tons of sulfur dioxide (SO₂) in any calendar
26 year beginning 1 January 2013.

27 (e1) An investor-owned public utility that owns or operates coal-fired generating units
28 that collectively emitted 225,000 tons or less of sulfur dioxide (SO₂) in calendar year 2000 may
29 delay compliance with subdivision (2) of subsection (e) of this section until the calendar year
30 beginning 1 January 2014 if the investor-owned public utility demonstrates to the Commission
31 that it will install generating units that use natural gas as the primary fuel at one or more
32 coal-fired generating units that it owns or operates on 1 July 2009 and will permanently cease
33 operations at all coal-fired units at one or more facilities in North Carolina that are not operated
34 with flue gas desulfurization devices. An investor-owned public utility that seeks compliance
35 pursuant to this subsection shall submit a revised verified statement required pursuant to
36 G.S. 62-133.6(i) when it files with the Utilities Commission a certificate of convenience and
37 necessity for a generating unit that uses natural gas as the primary fuel.

38"

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

41 **"§ 62-133.10. Retention of fuel and fuel-related cost savings associated with the purchase**
42 **or construction of a carbon offset facility.**

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

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

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

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

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

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

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

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

- 47 (1) A calculation of the annual revenue requirement associated with the carbon
48 offset facility.
- 49 (2) Information demonstrating the specific items of costs associated with the
50 carbon offset facility's annual revenue requirement are reasonable and
51 prudent.

1 (3) The fuel and fuel-related cost savings resulting from operation of the carbon
2 offset facility.

3 (4) Actual generation output of the carbon offset facility, including a
4 demonstration and quantification of how this generation displaced electric
5 generation resulting in reduced greenhouse gas emissions from existing
6 fossil fuel fired facilities used by the utility to meet the electricity needs of
7 its North Carolina customers during the test year.

8 (g) The Commission shall approve an estimate of the projected fuel and fuel-related
9 cost savings and an annual revenue requirement for an approved facility, as appropriate, in each
10 G.S. 62-133.2 proceeding. The Commission also may approve a true-up procedure for the
11 projected fuel and fuel-related cost savings. In the first G.S. 62-133.2 proceeding conducted
12 after the approved facility is placed in service, the Commission shall determine the reasonable
13 and prudent cost of the facility for ratemaking purposes. The revenue requirement associated
14 with the facility shall include but not be limited to: depreciation; operating and maintenance
15 costs; applicable taxes; and a return on investment, net of accumulated depreciation,
16 accumulated deferred income taxes, and other applicable savings or adjustments. The rate of
17 return on investment shall be based on the then current capital structure, embedded cost of
18 preferred stock, and embedded cost of debt of the public utility net of appropriate income taxes,
19 and the cost of common equity approved in the public utility's then most recent general rate
20 case.

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

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

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

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

32 **"§ 143-215.25A. Exempt dams.**

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

34 (1) Constructed by the United States Army Corps of Engineers, the Tennessee
35 Valley Authority, or another agency of the United States government, when
36 the agency designed or approved plans for the dam and supervised its
37 construction.

38 (2) Constructed with financial assistance from the United States Soil
39 Conservation Service, when that agency designed or approved plans for the
40 dam and supervised its construction.

41 (3) Licensed by the Federal Energy Regulatory Commission, or for which a
42 license application is pending with the Federal Energy Regulatory
43 Commission.

44 (4) For use in connection with electric generating facilities regulated by the
45 Nuclear Regulatory Commission, under the jurisdiction of the North Carolina
46 Utilities Commission, except that a dam operated by a small power
47 producer, as defined in G.S. 62-3(27a), shall be subject to the provisions of
48 this Part even though the dam is constructed pursuant to a certificate of
49 public convenience and necessity issues by the North Carolina Utilities
50 Commission.

1 (5) Under a single private ownership that provides protection only to land or
2 other property under the same ownership and that does not pose a threat to
3 human life or property below the dam.

4 (6) That is less than 15 feet in height or that has an impoundment capacity of
5 less than 10 acre-feet, unless the Department determines that failure of the
6 dam could result in loss of human life or significant damage to property
7 below the dam.

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

11 **SECTION 3.(b)** Any impoundments or other facilities that were in use on the
12 effective date of this section in connection with nonnuclear electric generating facilities under
13 the jurisdiction of the North Carolina Utilities Commission, and that had been exempted under
14 the provisions of G.S. 143-215.25A(4), prior to amendment by Section 3(a) of this act, shall be
15 deemed to have received all of the necessary approvals from the Department of Environment
16 and Natural Resources and the Commission for Dam Safety, and shall not be required to submit
17 application, certificate, or other materials in connection with the continued normal operation
18 and maintenance of those facilities.

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