GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-390
SENATE BILL 1004

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

The General Assembly of North Carolina enacts:

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

(1) In 2002, North Carolina enacted S.L. 2002-4, the Clean Smokestacks Act, with the goal of improving air quality in the State.

(2) With the enactment of the Clean Smokestacks Act, North Carolina became a national leader in multipollutant air emissions reduction strategies and has experienced significant reductions in oxides of nitrogen (NOx) and sulfur dioxide (SO2), and, as a co-benefit, mercury.

(3) Duke Energy and Progress Energy, the investor-owned public utilities governed by the Clean Smokestacks Act, actively participated in the negotiations that led to the enactment of the Clean Smokestacks Act and recommended substantial emissions reductions requirements and an aggressive timeline for achieving compliance with those requirements.

(4) Both Duke Energy and Progress Energy have produced emissions reductions greater than and sooner than required by the Clean Smokestacks Act.

(5) The retirement of coal-fired generating units and installation of generating units that use natural gas as the primary fuel will reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) more than would the installation of sulfur dioxide (SO2) emissions controls on the coal-fired generating units.

(6) The retirement of coal-fired generating units and installation of generating units that use natural gas as the primary fuel will reduce emissions of carbon dioxide (CO2) and mercury (Hg) significantly more than would the installation of sulfur dioxide (SO2) emissions controls on the coal-fired generating units.

(7) The retirement of coal-fired generating units that are owned and operated by Progress Energy and located in eastern North Carolina and the installation of generating units that use natural gas as their primary fuel to replace them will reduce emissions of oxides of nitrogen (NOx), sulfur dioxide (SO2), carbon dioxide (CO2), and mercury (Hg) more than would the installation of sulfur dioxide (SO2) emissions controls on the older coal-fired generating units.

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

"(h) Notwithstanding any other subsections of this section to the contrary, the Commission shall render its decision on an application for a certificate within 45 days of the date the application is filed if (i) the public utility that has applied for the certificate is subject to the provisions of subsection (e) of G.S. 143-215.107D; (ii) the application involves a request by the public utility to construct a generating unit that uses natural gas as the primary fuel at a specific coal-fired generating site that the public utility owns or operates on July 1, 2009; (iii) the coal-fired generating units at the site are not operated with flue gas desulfurization devices; (iv) the public utility will permanently cease operations of all of the coal-fired generating units at the site on or before the completion of the generating unit that is the subject of the certificate

application; and (v) the installation of the generating unit that uses natural gas as the primary fuel allows the public utility to meet the requirements of subsection (e) of G.S. 143-215.107D. When the public utility applies for a certificate as provided in this subsection, it shall submit to the Commission and the Department of Environment and Natural Resources a revised verified statement required pursuant to subsection (i) of G.S. 62-133.6 and to the Commission an estimate of the costs of construction of the generating unit that uses natural gas as the primary fuel in such detail as the Commission may require. The provisions of G.S. 62-82 and subsection (e) of this section shall not apply to a certificate applied for pursuant to this subsection. The authority granted pursuant to this subsection expires January 1, 2011."

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

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

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

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

(1) The facility is purchased or constructed by an electric public utility between July 1, 2009, and July 1, 2014.

(2) The facility uses solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy to generate electricity or equivalent BTUs.

(3) The electricity or equivalent BTUs produced by the facility will displace electric generation so as to reduce greenhouse gas emissions from existing fossil fuel fired generating facilities used by the utility to meet the electricity needs of its North Carolina customers.

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

(1) Description and location of the facility.

(2) The benefit of the facility.

(3) A list of all necessary permitting and approvals and their status.

(4) Purchase or construction schedule, with in-service or completion date.

(5) Projected costs to purchase or construct and the annual revenue requirement for the facility.

(6) Projected annual generation output of the facility and information detailing how the generation projections were calculated.

(7) Information demonstrating that the operation of the facility will displace electric generation resulting in a reduction of greenhouse gas emissions from existing fossil fuel fired facilities used by the utility to meet the electricity needs of its North Carolina customers.

(8) The projected fuel and fuel-related cost savings the utility seeks to retain and how the savings were calculated.

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

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

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

(1) A calculation of the annual revenue requirement associated with the carbon offset facility.

(2) Information demonstrating the specific items of costs associated with the carbon offset facility's annual revenue requirement are reasonable and prudent.

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

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

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

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

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

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

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

"**§ 143-215.25A. Exempt dams.**

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

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

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

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

(4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.~~under the jurisdiction of the North Carolina~~

~~Utilities Commission, except that a dam operated by a small power producer, as defined in G.S. 62-3(27a), shall be subject to the provisions of this Part even though the dam is constructed pursuant to a certificate of public convenience and necessity issues by the North Carolina Utilities Commission.~~

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

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

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

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

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

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ William L. Wainwright
Speaker Pro Tempore of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 12:28 p.m. this 31st day of July, 2009